A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—16 AND 17 OCTOBER 1986 AND 10 MARCH 1987

B COURT OF APPEAL—28 AND 29 APRIL AND 25 MAY 1988

HOUSE OF LORDS—4 APRIL AND 4 MAY 1989

C

Dawson *v*. Commissioners of Inland Revenue([1])

D

Income tax—Schedule D Case V—Discretionary settlements—Mixed residence trustees—Whether single United Kingdom trustee (the two other trustees being non-resident) liable to income tax and additional rate tax on income from foreign possessions—Income and Corporation Taxes Act 1970, ss 108, 114, 122 Finance Act 1973, s 16.

E

In the year of assessment 1975–76 the Appellant taxpayer, Mr. Dawson, was one of three trustees of three settlements. The Appellant was resident in the United Kingdom; the other two trustees were non-resident. Under the terms of the settlements no beneficiary had a fixed indefeasible interest in the F income of the settlements. the trust assets were largely situated and the administration of the trusts carried on outside the United Kingdom. No income was remitted to the United Kingdom.

D was assessed to income tax under Schedule D Case V, and to additional rate tax under Finance Act 1973, s 16, on the whole income of the settlements G arising outside the United Kingdom in the year preceeding the year of assessment. He appealed against the assessments.

The Special Commissioners held that D was, as United Kingdom resident co-trustee, entitled to the whole income of the settlements, in the absence of any beneficial entitlement of a beneficiary to the income. The taxpayer H appealed.

The Chancery Division, allowing the taxpayer's appeal, held that where trust property is vested in two or more trustees the trustees are jointly but not severally entitled to the trust property. "Person" in the Taxes Act 1970, s 108 I 1(a)(i) includes "persons". Where no beneficiary can claim the trust income, and the trust property is held by co-trustees, a single trustee resident in the United Kingdom, is not in control of the trust income, within the principle formulated by Viscount Cave L. C. in *Williams* v. *Singer* 7 TC 387 so as to be individually assessable to tax under ss 108 and 114. The Crown appealed.

([1]) Reported (Ch) [1987] 1 WLR 716; [1987] STC 371; (CA) [1988] 1 WLR 930; [1988] 3 All ER 753; [1988] STC 684; (HL) [1990] AC 1; [1989] 2 WLR 858; [1989] 2 All ER 289; [1989] STC 473.

The Court of Appeal, dismissing the Crown's appeal, held that: A

(1) Trustees are entitled to the whole trust property collectively but nothing individually. Unless all the trustees are resident in the United Kingdom, no trustee can be liable to income tax of foreign income.

(2) Liability of a trustee to income tax depends upon the receipt and control test of Viscount Cave L. C. (*Williams* v. *Singer* 7 TC 387 at pages 411–12). B

Because the entitlement of trustees is joint, a single trustee by himself is not in receipt and control of the trust income. C

(3) The residence of one trustee in the United Kingdom was not by itself sufficient to connect the settlements with the United Kingdom, so as to render the income liable to United Kingdom tax.

Per curiam: the Taxes Act 1970, s 108 1(a) (iii) imposes a liability to income tax on United Kingdom source income without regard to the residence of the person(s) to whom it arises or accrues. D

The Crown appealed.

Held, in the House of Lords, dismissing the Crown's appeal, that: E

(1) The income of the settlements arose or accrued to the three trustees jointly, and not jointly and severally.

(2) The word "person" in s 108 1(*a*)(iii) must include the plural "persons", so that, had all three trustees been resident in the United Kingdom, all three would have been jointly assessable to tax: but a single trustee resident in the United Kingdom is not alone assessable, because the income does not arise or accrue to him personally. F

(3) Similarly, in relation to s 114, the persons receiving or entitled to the income are the three trustees jointly and, should the plural "persons" be turned into the singular "person", a single trustee cannot properly be described as the person receiving or entitled to the income. G

H

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.

I

1. On 8 and 9 May the Special Commissioners heard appeals by the Appellant, Mr. Dawson, against assessments to income tax under Sch D made on him as a trustee of certain Cotton Family Settlements for 1975–76.

2. An agreed Statement of Facts was put in evidence, with supporting documents—

A A. Family Tree of the Cotton Family.

B. The 1946 Settlement (E. H. Cotton).

C. The 1957 Settlement (Jack Cotton).

B D. The 1965 Settlement (Gordon Cotton).

E. Order of the High Court dated 9 March 1966.

F. Deed of Appointment of New Trustees (Gordon's 1946 Reversionary Share) dated 12 February 1974.

C

G. Deed of Appointment of New Trustees (Gordon's 1957 Reversionary Share) dated 12 February 1974.

H. Deed of Appointment of New Trustees (Gordon's 1946 Reversionary Share) dated 14 March 1977.

D

I. 1-6 Trust Accounts for years ended 31 December 1975 and 31 December 1976.

J. 1-6 Notices of Assessment.

E K. Letter 24 November 1980 Messrs. Simmons and Simmons to the Inspector of Taxes enclosing Notice of Appeal.

L. Report to the Clerk to the Special Commissioners for listing of the appeal.

F M. Affidavit of Mr. Dawson sworn on 7 May 1985.

N. Letter dated 3 May 1985 from Chantry Wood King, chartered accountants, to Simmons and Simmons enclosing Summaries of Income for the 1946 and 1957 Settlements.

G Copies of those documents are available to the Court if required.

3. I reserved my decision and gave it in writing on 11 June 1985 in favour of the Respondents in principle. A copy of that Decision which sets out the facts, the contentions of the parties and the reasons for my conclusions, is attached to and forms part of this case.

H

4. The following cases were cited in argument in addition to those mentioned in my Decision —

I *Smith* v. *Anderson* (1880) 15 Ch D 247; *Colquhoun* v. *Brooks* 2 TC 49O; (1889) 14 App Cas 493; *Stanley* v. *Commissioners of Inland Revenue* 26 TC 12; [1944] 1 KB 255; *Commissioners of Inland Revenue* v. *Lithgows, Ltd.* 39 TC 270; 1960 SC 405.

5. On 6 November 1985 I formally determined the appeals in figures agreed between the parties: and on 13 November 1985 the Appellant required me to state a Case for the opinion of the High Court under s 56 of the Taxes Management Act 1970. I state and sign this Case accordingly.

6. The question of law for the opinion of the Court is whether I erred in law in holding that Mr. Dawson was assessable to income tax in respect of the trust income for 1975–76. A

R. H. Widdows } Commissioner for the Special Purposes of the Income Tax Acts

B

Turnstile House
98 High Holborn
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27 February 1986

C

Decision

Mr. Dawson appeals against assessments to income tax made on him for the year 1975–76 as trustee of three settlements. The issue in the appeals is whether he, being in each case the only one of three trustees who resided in the United Kingdom, can be assessed to tax on trust income which was derived from a source outside the United Kingdom and not remitted to this country. D

The Facts

The settlements in question are, or are derived from, dispositions made by members of the Cotton family, who were well-known manufacturers in the Birmingham area. They are: E

(1) Gordon Cotton's Reversionary Share of the E. H. Cotton 1946 Settlement (known as "Gordon's 1946 Reversionary Share"):

(2) Gordon Cotton's Reversionary Share of the Jack Cotton 1957 Settlement (known as "Gordon's 1957 Reversionary Share"): and F

(3) Gordon Cotton's 1965 Settlement ("the 1965 Settlement").

A short summary of those dispositions will suffice for the purposes of this Decision. G

The E. H. Cotton 1946 Settlement was made by Ephraim Cotton on 15 March 1946 for the benefit of the "present children" of his nephew Jack Cotton and their issue. The present children were named as the settlor's three great-nephews Derek, Gordon and Jeremy Cotton and his great-niece Jill Cotton. The income of the Trust Fund was to be accumulated until the "prescribed date", when the last of the present children should have attained the age of 21 or died. At the prescribed date the Trust Fund was to be divided into shares, one for each child then living and one for any child who had died leaving issue. Each child's share was to be held on protective trusts for that child during his or her life, subject to a power for the trustees to advance capital, and after the death of that child in trust for such of the children or remoter issue of that child at such age or time and, if more than one, in such shares as that child should by will or codicil appoint : and in default of appointment in trust for any child or children of that child who should attain the age of 21 or, being female, marry under that age, if more than one in equal shares. There was provision for accruer to the other shares on failure of the trusts affecting any of those shares and an ultimate remainder, on H I

A total failure of all the children's trusts, to the Cotton Family Trust for the Birmingham Hebrew Congregation.

The Jack Cotton 1957 Settlement was made by Jack Cotton on 15 March 1957. During the "prescribed period" lasting until 20 February 1967 or such earlier date as the Trustees should determine, the income of the Trust B Fund was to be held on trust for charitable purposes. From the end of that period the Trust Fund was to be held on trusts broadly similar to those of the E. H. Cotton 1946 Settlement for the children and remoter issue of Jack Cotton.

By the beginning of 1966 the prescribed date under the 1946 Settlement C was long past and each of the four "present children" had acquired a vested life interest in a share of the 1946 Trust Fund. The prescribed period under the 1957 settlement was due to expire in a little over a year at the latest. Each of those settlements was then varied by an Arrangement scheduled to an Order of the High Court made on 9 March 1966 in the following respects—

D (1) On the Operative Date (defined so as to occur not later than 12 months after the date of the Order) 60 per cent of each life tenant's share of the 1946 Trust Fund was to be held on trust for the life tenant absolutely, freed of the trusts of the settlement: and 40 per cent of each life tenant's share of that trust fund (the "1946 Reversionary Share") was to be held on the trusts of the 1946 settlement, but so that the life E tenant's protected life interest was extinguished, and the interests expectant on it accelerated, and the life tenant's power to appoint in favour of his issue was to be exercisable by deed or deeds revocable or irrevocable and not by will or codicil.

(2) From 20 February 1967 (assuming the Operative Date to have F occurred by then) 25 per cent of each child's settled share of the 1957 Trust Fund was to be held for him or her absolutely; and the remaining 75 per cent ("the 1957 Reversionary Share") was to be held on the trusts of the 1957 settlement but so that each child's protected life interest should be extinguished in respect of that proportion of the share and the power to appoint in favour of the children and remoter issue of each G child should be exercisable by deed, with or without power of revocation, and not by will or codicil.

The Arrangement also provided that separate sets of trustees should be appointed for the Reversionary Shares of the 1946 and 1957 settlements: and the provisions contained in each settlement (clause 13 of the 1946 settlement H and clause 15(5) of the 1957 settlement) which enabled the powers vested in the trustees to be exercised by a majority were to cease to have effect by clauses 7(3) and 12(3) of the Arrangement (applied to Gordon's shares by clauses 8 and 13 respectively).

The 1965 Settlement was made by Gordon Cotton on 31 March 1965. I During the Trust Period (defined so as to end on a date determined by reference to royal lives or such earlier date as the trustees might determine) the Trust Fund was to be held on trust as to income and capital for such members of a defined class ("the Objects of the Power") as the trustees should appoint. The Objects of the Power were—

(i) the "Discretionary Beneficiaries", namely the settlor's daughter Eve Jacqueline (then 3 months old) and any future child or children of

the settlor, their children and remoter issue and the spouses, widows and widowers of all such persons: A

(ii) such charitable objects as the Trustees should think fit:

(iii) persons regularly employed by the settlor or his wife after the date of the trust deed:

B

(iv) Mrs. Hulme-Beaman, Mr. and Mrs. Browning:

(v) the children and remoter issue of Derek and Jeremy Cotton and Jill de Yong (formerly Cotton), their spouses, widows and widowers.

In default of and until and subject to any such appointment the income was to be paid during the Trust Period to such of the Discretionary Beneficiaries or to such charitable objects as the Trustees thought fit: and subject to that the Trust Fund was to be held for the settlor's children on attaining 21 or, if female, marrying, in equal shares. The Trustees had power to accumulate income as an accretion to capital for 21 years from the date of the deed. C

D

On 24 March 1969 Gordon Cotton moved, with his family, from the United Kingdom to Switzerland, where they have since remained.

On 12 February 1974 two of the three trustees of Gordon's 1946 and 1957 Reversionary Shares and of the 1965 settlement retired and were replaced by new trustees, both resident outside the United Kingdom, namely E

(1) M. Jacques Darier, resident in Geneva, and

(2) Intermutual Trust Reg of Vaduz in Liechtenstein.

F

Mr. Dawson continued as the third trustee of all three trust funds until 1977 when he was replaced by an overseas resident.

From 1974 onwards the trustees of each fund transacted their business at regular meetings held exclusively outside the United Kingdom and Mr. Dawson attended those meetings. He did not, and had no power to, conduct any of the trustees' business himself while he was in the United Kingdom: nor did he personally receive any of the trust income. G

After the Arrangement of March 1966 certain assets were appropriated to Gordon's 1946 and 1957 Reversionary Shares respectively. In 1975–76 those assets and the assets subject to the 1965 settlement comprised holdings of stocks and shares in United Kingdom and foreign companies and land in the United Kingdom. Stock and share certificates were registered in the names of Darier et Cie, a Swiss Bank, or nominees on their behalf, and were held by banks or recognised depositories in the country of origin or where they were purchased. The income of the trust funds was paid directly into separate bank accounts maintained for each fund by Darier et Cie. The principal currency of those accounts was Swiss Francs. H I

Throughout the year 1975–76 Gordon Cotton, his wife and three minor children (born in 1964, 1966 and 1974 respectively) were resident and ordinarily resident in Switzerland and not in the United Kingdom. The three minor children were the only beneficiaries under the trusts of Gordon's 1946

A and 1957 Reversionary Shares, other than those entitled in remainder on failure of the trusts for Gordon's children and remoter issue.

The income of the 1965 settlement was wholly accumulated in 1975–76. Of the income of the 1946 Reversionary Share SF 100,000 were released to Gordon Cotton for the benefit of his children and the balance was accumu-
B lated. Similarly SF 50,000 were released from the income of the 1957 Reversionary Share for the children's benefit and the balance was accumulated. Those distributions were decided on by the trustees, meeting in Switzerland.

C Mr. Dawson, who is a stockbroker, has been a close friend of Gordon Cotton since 1964 and his appointment as trustee of the settlements in question arose out of that friendship. When the two foreign Trustees were appointed in 1974 Mr. Dawson was retained as the third trustee as a result of advice that there should be one trustee living within the jurisdiction of the English Court accountable for the proper conduct of the trusts in accordance
D with English trust law. He was chosen because of his friendship with the Cotton family and because they valued his investment advice.

The Issues

No issue is raised in these appeals in respect of trust income derived
E from assets in the United Kingdom. Mr. Dawson accepts liability to tax on that income as a trustee resident in this country; but he challenges the Revenue's right to assess him to basic rate tax under Case V of Sch D, and to additional rate tax under s 16 Finance Act 1973, on trust income derived from foreign possessions.

F Section 108.1. of the Income and Corporation Taxes Act 1970 provides, so far as relevant, that—

> "Tax under this Schedule shall be charged in respect of:—
>
> (a) the annual profits or gains arising or accruing—
>
> G (i) to any person residing in the United Kingdom property, whether situated in the United Kingdom or elsewhere..."

and s 114(1) of the same Act (persons chargeable) provides that—

> "Subject to subsections (2) and (3) below, income tax under
> H Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged."

The only other relevant statutory provision is section 16(1) of the Finance Act 1973, which provides that—

> I "So far as income arising to trustees is income to which this section applies it shall, in addition to being chargeable to income tax at the basic rate, be chargeable at the additional rate."

Contentions

Mr. Oliver Q.C. advances two contentions on behalf of Mr. Dawson—

1. Even if it were accepted that trust income from foreign possessions arose or accrued to Mr. Dawson no assessment could be made on him because he was not a person "receiving or entitled to" that income within the meaning of s 114(1) of the Act. A

2. But that income did not arise or accrue to Mr. Dawson within the meaning of s 108.1(a) of the Act and was not within the charge to tax under Sch D. B

On the first point Mr. Oliver submits that there are two stages to the imposition of liability to pay tax under Sch D. The charge to tax is imposed in principle by s 108: but where direct assessment is required it can be made only on a person who comes within s 114(1). Since Mr. Dawson did not "receive" the income in question, either actually or constructively, he is assessable only if he can be said to have been "entitled" to it. C

Mr. Dawson was not entitled to the income, in Mr. Oliver's submission, simply because he was joint owner with the foreign trustees of the assets from which the income arose. The proposition that the Inland Revenue need not look beyond the legal ownership of trust assets was rejected in *Williams* v. *Singer*(1) 7 TC 387 where it was said that the charge to tax is aimed at the person in receipt and control of the income *(per* Lord Cave at p.411). In its application to trustees s 114(1) should be read in the light of s 72 of the Taxes Management Act 1970 (under which the trustee of an incapacitated person is chargeable to tax if he has control of that person's property, but not otherwise) and s 76 of the same Act (which relieves a trustee of his obligations in connection with assessment to tax where he has authorised the receipt of income by the person entitled to it). To accord with the policy of the Taxes Acts the meaning of "entitled" in s 114(1) must be limited to beneficial entitlement or entitlement to receive or control the application of income. D E F

There is no authority on the particular issue raised by the facts of this case. In previous cases, such as *Reid's Trustees*(2) 14 TC 512 and *Kelly* v. *Rogers*(3) 19 TC 692 all the trustees were resident in the United Kingdom. The proper conclusion is, however, in Mr. Oliver's submission, that Mr. Dawson was not entitled to the foreign income of these trusts in any relevant sense. As one of three trustees he had no independent power to receive or control it. Indeed he could be bound by a majority decision as to its application. G

In support of his second contention Mr. Oliver submits that the income arose and accrued to all three trustees collectively but not to Mr. Dawson as an individual. In fact, since the investments were registered in the name of a Swiss Bank the income arose and accrued initially to the Bank and Mr. Dawson was powerless to obtain control of it. It could not reasonably be said that the whole of the income arose to him for the purpose of s 108 or s 16 of the Finance Act 1973. H I

Mr. Southern, for the Inland Revenue, points out that, except where special provision is made, as in s 52(1) of the Capital Gains Tax Act 1979, a trust has no corporate residence. Where residence is a relevant factor it must be the residence of the trustees or the beneficiaries which is considered. He

(1) [1921] 1 AC 65. (2) 1929 SC 439. (3) [1935] 2 KB 446.

A also emphasizes that the office of trustee cannot be assumed to a limited extent but necessarily involves the full obligations attached to it by law. Mr. Dawson's position was not subordinate to that of the foreign trustees in respect of the foreign assets: he was retained as the United Kingdom trustee for good reasons and it was his duty to see to the proper performance of the trusts.

B

Liability to tax on trust income is, in the Revenue's submission, primarily on the trustees, although this can be displaced where a beneficiary has the right to claim income as his own as soon as it arises: *Williams* v. *Singer.* Where no beneficiary has such a right the trustees are taxable, for they are the persons who receive or are entitled to the income within the meaning of s C 114(1) : *Kelly* v. *Rogers.* And that is the position in the present case for it is conceded that the beneficiaries of the 1946 and 1957 Reversionary Shares were in 1975–76 Gordon Cotton's minor children whose interests were contingent. It is equally clear that no beneficiary could call for the income of the 1965 settlement.

D

If the trustees are collectively entitled to the income of the trust funds it must follow, in the Revenue's submission, that each trustee is entitled to the whole of it. No other conclusion is possible for there is no basis on which one trustee's entitlement could be limited to a part of the income only. They are joint tenants of the trust assets and each trustee's duty is to get in and administer the whole of the trust property, with a right of contribution from E the others for the expenses of administration. Each and every trustee is liable to assessment if he comes within the charging provisions of the Taxes Acts and Mr. Dawson, being resident, is so chargeable. The fact that the trust is wholly administered abroad, which is admitted, is irrelevant.

F Mr. Southern asks for the assessments under Case V of Sch D and the additional rate assessments to be confirmed in principle.

Conclusions

Having recited the rival arguments I can express my conclusions quite G shortly; for it seems to me that, forcefully though Mr. Oliver has contested it, the Revenue's argument must be accepted, both in its exposition of the law and in its application of the law to the facts.

Trustees are not assessable to tax on trust income merely by reason of their legal ownership of the trust assets. That was established in *Williams* v. H *Singer* 7 TC 387, where the Lord Chancellor, Lord Cave said, at page 411—

> "The fact is that, if the Income Tax Acts are examined, it will be found that the person charged with tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is I attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them, he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable."

and of that passage Finlay J. said in *Kelly* v. *Rogers* 19 TC 692, at 700, in a judgment approved by the Court of Appeal—

"Now that lays down, as I read the speech of the Lord Chancellor, a principle and I see no reason at all for restricting that principle to English income or to income which arises in this country or which arises under an English trust, or anything of that sort."

Applying that principle I have no doubt that the trustees of each of these settlements would collectively be assessable to tax on the income from foreign assets of the trust funds if they were all resident in the United Kingdom. In 1975–76 there was no beneficiary who could claim any of the trust income as of right. It arose and accrued to the trustees in each case : and they were the persons who received it or were entitled to it, in the sense of controlling it, for the purposes of s 114(1). The only question of any difficulty is whether Mr. Dawson is assessable individually as the only trustee resident in the United Kingdom.

This question is, surprisingly perhaps, a novel one, not covered by authority. The application of basic legal principles leads, in my opinion, however, to the result for which the Revenue contends. As joint tenants the trustees are jointly and severally owners of the trust assets and entitled to the whole of the income arising from them. Each trustee is chargeable, in principle, on the full amount of the income provided that he is resident in the United Kingdom and the assessments are correctly raised on Mr. Dawson as the only trustee who was resident in the United Kingdom in 1975–76.

I would add two observations. First, the argument was presented on both sides on the basis that, under the terms of the E. H. Cotton 1946 settlement and the Jack Cotton 1957 settlement, the trustees were empowered to act by a majority so that one trustee could be bound by a decision of the other two in which he had not concurred. Had this seemed a material point I should have recalled the parties for further argument because I am not satisfied that those provisions subsisted after the 1966 Arrangement in view of clauses 7(3) and 12(3) which I have referred to above. I have not done so because the point is not, in my view, of any importance. Even had clauses 13 of the 1946 settlement and clause 15(5) of the 1957 settlement remained in force after 1966 (which, as it appears to me, they did not) Mr. Dawson's position would have been in no way inferior to that of the other two trustees. The income would still have accrued to each and every trustee and each would have been bound to see to its application, even though he might have been outvoted in the event of a difference of opinion. That possibility would not, in my opinion, have displaced Mr. Dawson's primary liability to tax or affected his position as a person entitled to the income for the purposes of s 114(1).

Secondly, I confess to some sympathy with Mr. Dawson's case, although I have felt bound to rule against it. It is by no means clear to me why, in principle, his residence in this country should attract a charge to UK tax on trust income arising from foreign assets which is administered abroad for the benefit of beneficiaries resident abroad. There is a marked contrast between income tax principles, as I have felt bound to apply them, and the statutory provisions relating to trusts administered abroad for capital gains tax purposes; and it may be that the income tax principles might usefully be reviewed in this respect. That is, however, a matter of policy with which I cannot be concerned.

A The appeals fail; and the proceedings stand adjourned for agreement of the figures in which the assessments are to be determined.

R. H. Widdows } Commissioner for the Special Purposes of the Income Tax Acts

B Turnstile House
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11 June 1985

C

The case was heard in the Chancery Division before Vinelott J. on 16 and 17 October 1986 when judgment was reserved. On 10 March 1987 judgment was given against the Crown, with costs.

D *S.J. Oliver Q.C.* and *J.R. Kessler* for the taxpayer.

J.F. Mummery for the Crown.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*R* v. *The Croydon and Norwood Tramways* E *Company* (1886) 18 QBD 39; *Gascoigne* v. *The Commissioners of Inland Revenue* 13 TC 573; [1927] 1 KB 594; *Reid's Trustees* v. *Commissioners of Inland Revenue* 14 TC 512; 1929 SC 439; *Stanley* v. *The Commissioners of Inland Revenue* 26 TC 12; [1944] KB 255; *Clark* v. *Oceanic Contractors Inc* 56 TC 183; [1983] 2 AC 94.

F

Vinelott J.:—This is an appeal by way of Case Stated from the Special Commissioners. By consent the appeal was heard by one of their number. It raises a short but difficult and important question as to the liability of a trustee who is resident in this country and who is one of a number of trustees G the majority of whom are not resident in this country to tax on income of the trust derived from sources outside the United Kingdom.

The facts are fully set out in the Case Stated. A brief summary will suffice for the purposes of this judgment. I will start with the trusts governing the three funds from which the income in question was derived.
H

First, by virtue of the joint effect of a Settlement made by one Ephraim Cotton and dated 15 March 1946 and of an order made under the Variation of Trusts Act 1958 on 9 March 1966 a fund (which I will call "Gordon's 1946 Reversionary Fund") became held from the operative date defined in the arrangement (which occurred shortly thereafter) on trust for such of the I issue of the settlor's great nephew Gordon Cotton (the son of the settlor's nephew Jack Cotton) as he should by deed appoint and in default of appointment for his children who should attain 21 or if daughters attain that age or marry. In March 1966 Gordon had only one child, a daughter Eva who was born on 19 December 1964. Since then he has had two further children, both daughters, who were born on 21 August 1966 and 14 March 1973 respectively. During the fiscal year 1975–76 (which is the period to which the

assessments under appeal relate) the power of appointment had not been exercised. There was then a remote possibility that the trusts in favour of Gordon's children would fail. In that event Gordon's 1946 reversionary fund would have been held (subject to any appointment in favour of his issue) on precisely similar trusts for the children and remoter issue of his two brothers Derek and Jeremy and his sister Jill with cross accruer between their respective shares. There was an ultimate trust on failure of all these trusts in favour of Gordon's parents if they or either of them should survive the survivor of their four children, and if neither should survive for a named United Kingdom charity. The 1946 Settlement contained a provision authorising the powers and discretions conferred on the trustees to be exercised by a majority, but that power was deleted by the arrangement.

Secondly, by virtue of a Settlement dated 15 March 1957 made by Jack Cotton and of the arrangement a fund (which I will call "Gordon's 1957 Reversionary Fund") became held with effect from 20 February 1967 on trusts in favour of Gordon's issue which were similar in all respects to the trusts affecting Gordon's 1946 reversionary fund with similar accruers in favour of the issue of Jack Cotton's other children. On failure of all those trusts, which again was a remote possibility in 1975–76, Gordon's 1957 reversionary fund would have been held subject to a power to apply the whole or any part to the same named charity on trust for an artificial class of next of kin of Jack Cotton ascertained as if he had died intestate and unmarried immediately after the death of the survivor of his children. The 1957 Settlement contained a similar majority clause which was also deleted by the arrangement. During the fiscal year 1975–76 Gordon's power of appointment in favour of his issue had not been exercised.

Thirdly, by a Settlement dated 31 March 1965 and made by Gordon a fund (which I will call "Gordon's 1965 Settlement Fund") was settled on wide discretionary trusts. The Settlement contained first an overriding power of appointment exercisable until the expiration of a trust period (defined as the period commencing at the date of the Settlement and ending at the expiration of 21 years from the death of the survivor of a class of royal lives and Eva) in favour of a defined class of "Objects of the Power". That class was defined as including a narrower class of discretionary beneficiaries (Gordon's children and their respective children and remoter issue and the spouses, widows and widowers of any of them), persons employed after the date of the Settlement by Gordon or by any wife of his, three named individuals, and the children and more remote issue of his two brothers and his sister. During the fiscal year 1975–76 that power had not been exercised. In default of exercise of the power there was a power to accumulate income for 21 years and subject thereto a discretionary trust of income in favour of the discretionary beneficiaries and an ultimate trust of capital for the children of Gordon who should attain 21 or if daughters attain 21 or marry. Then on failure of all the foregoing trusts there was a trust for charitable objects or purposes at the discretion of the trustees.

In 1969 Gordon emigrated and became permanently resident with his family in Switzerland. At that time the Appellant Mr. Dawson and two other professional men both resident in the United Kingdom were trustees of each of the three funds. By deeds of appointment dated 12 February 1974 a Swiss bank and a Liechtenstein trust company were appointed trustees in place of Mr. Dawson's co-trustees. He remained a trustee until 14 March 1977 when, by deed of that date, another Swiss banker was appointed in his place. Thus

A from 12 February 1974 until 14 March 1977 two of the three trustees of each of the three funds were not resident (and were also neither domiciled nor ordinarily resident) in the United Kingdom. During this period the funds or some of them comprised some small holdings of stocks and shares of United Kingdom companies and land in the United Kingdom. However, by far the larger part of each of the funds was invested in stocks, shares and securities B of non-United Kingdom companies. Stock and share certificates were, at the direction of the trustees, registered in the name of a Swiss bank or in the name of nominees to its order and were held by that bank or by banks and recognised depositories in the country where the relevant companies were incorporated or resident. The income was paid into accounts of the trustees C maintained for each of the three funds with the same Swiss bank. Distributions of income were decided at meetings of the trustees held in Switzerland.

The assessments under appeal are assessments for the year 1975–76. They are based on the estimated income of the funds derived from sources D outside the United Kingdom. During that year Gordon was paid 100,000 Swiss francs out of the income of Gordon's 1946 reversionary fund and 50,000 Swiss francs out of the income of Gordon's 1957 reversionary fund, in each case for the benefit of his infant children. The balance of the income and the whole of the income of Gordon's 1965 Settlement fund was accumulated. As can be seen from the foregoing summary of the trusts, in the case E of Gordon's 1946 reversionary fund and Gordon's 1957 reversionary fund there was a remote possibility that the accumulated income would ultimately enure for the benefit of persons resident in the United Kingdom (issue of Gordon's two brothers or of his sister). In the case of Gordon's 1965 Settlement fund, although his children and any future member of the class of discretionary beneficiaries were clearly intended to be the primary beneficia- F ries the accumulated income could have been applied in favour of the wider class of objects of the power, some of whom were resident in the United Kingdom.

The assessments under appeal are assessments to basic rate tax and to additional rate tax on the income from sources outside the United Kingdom. G It is not in dispute that a trustee is not assessable to higher rate tax on income which accrues to him as a trustee and equally is not entitled to any personal reliefs or allowances given to individuals in respect of income accruing to them. It has always been accepted that although a trustee who is an individual may be assessable to tax as a person he is not assessable to higher H rate tax which is charged on the total income of an individual and is not entitled to any relief or allowance afforded to an individual. Additional rate tax is chargeable in respect of income within any of the categories set out in s 16(2) of the Finance Act 1973 which is chargeable to income tax at the basic rate. It is therefore only necessary to consider those provisions of the Income Tax Acts which govern the charge to tax at the basic rate.

I

Section 108 of the Income and Corporation Taxes Act 1970 provides so far as material that tax under Sch D

> "shall be charged in respect of—(a) the annual profits or gains arising or accruing—(i) to any persons residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and . . . (iii) to any person, whether a British

subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom."

That section must be read in conjunction with s 114(1), which provides that (subject to an immaterial exception) "income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged".

The scope of the charge in s 108 para 1(*a*)(i) is limited in the case of income arising from securities out of the United Kingdom (Case IV) or from possessions out of the United Kingdom (Case V) by s 122. Under s 122(1) (as amended prior to 1975–76) tax chargeable under Cases IV or V is to be computed on the income arising in the year preceding the year of assessment whether received in the United Kingdom or not. However, subs (2) provides that subs (1) is not to apply to any person who satisfies the Board that he is not domiciled in the United Kingdom or that being a British subject or a citizen of the Republic of Ireland he is not ordinarily resident in the United Kingdom. In the excepted cases tax is charged by subs (3) on the amounts received in the United Kingdom in the year preceding the year of assessment.

The Income Tax Acts (unlike the Capital Gains Tax Act and the Capital Taxes Acts) do not contain any comprehensive provision dealing with the assessment of trustees. Part VII of the Taxes Management Act 1970 contains a number of provisions directed to specific situations. Under s 72 the trustee or guardian or a person who similarly has the control or management of the property of an incapacitated person whether resident in the United Kingdom or not is made chargeable to tax in the same manner and to the same extent as that person would have been chargeable if not under an incapacity; under s 73 the parent, guardian or tutor of an infant is made liable to tax in default of payment by the infant; and under s 74 the personal representative of a deceased person is made liable for tax chargeable on him. In all these cases the trustee, parent or personal representative is made chargeable as the representative and in place of the infant or the incapacitated or deceased person. Under s 75 a receiver appointed by the Court with the control of property chargeable to tax is similarly made chargeable in the same manner and to the extent that the property would have been made chargeable if not under the control of the Court. Section 76 exonerates a trustee who has authorised the receipt of the income of trust property by a beneficiary entitled thereto from any duty beyond making a return giving the particulars set out in s 13.

None of these specific provisions provides for the case where the legal ownership of property is vested in a trustee who does not hold it on behalf of a person under an incapacity and who has not mandated the income to a beneficiary entitled to the income. The question whether in such a case the trustee is assessable as the person to whom the income accrues or whether the person (if any) beneficially entitled to the income is assessable was not answered until the decision of the House of Lords in *Williams* v. *Singer*(1) [1921] 1 AC 41. That case arose as a result of the provisions of s 5 of the Finance Act 1914 which extended the charge under Cases IV and V of Sch D to the full amount of the income accruing whether received in the United Kingdom or not subject to a proviso in the terms now contained in s 122(2)(a). Under the Income Tax Acts of 1842 and 1853, although income from property outside the United Kingdom accruing to a person resident in

(1) 7 TC 387.

A the United Kingdom was within the charge to tax in Sch D, the amount of the income assessable was limited to income received in the United Kingdom.

In *Williams* v. *Singer* the trustees were resident and (as appears from the speeches in the House of Lords though not from the Case Stated) domiciled in the United Kingdom. The income of investments situate outside the B United Kingdom was at their direction paid direct to the life tenant who was beneficially entitled to the income as it accrued and who was not resident (or domiciled or ordinarily resident) in the United Kingdom. The case for the Crown was that the income accrued to the trustees as the legal owners of the trust fund and that as they were resident here they were assessable to tax on it. Section 42 of the Act of 1842 (which is reproduced with modifications in s C 76 of the Taxes Management Act) was not in point because that section as originally framed only applied where income was mandated to a beneficiary resident in Great Britain (see *per* Scrutton L.J., [1919] 2 KB 108 at page 122; the construction and possible application of s 42 seems not to have been pursued in the House of Lords).

D The principles governing the assessment of trustees is set out in a passage in the speech of Lord Cave which I should I think read in full. Having referred to s 41 of the 1842 Act (which is reproduced, though not in its precise terms, in ss 72 and 73 of the Taxes Management Act) and s 108 of the 1842 Act (which until its repeal by the Finance Act 1915 provided that tax in respect of profits or gains from foreign possessions or foreign securities E might be charged on the trustee, agent or receiver receiving the same in default of the owner being charged in respect of them) Lord Cave continued as follows(1):

> "And even apart from these special provisions I am not prepared to deny that there are many cases in which a trustee in receipt of trust F income may be chargeable with the tax upon such income. For instance, a trustee carrying on a trade for the benefit of creditors or beneficiaries, a trustee for charitable purposes, or a trustee who is under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution, appears to come within this category; and other similar cases may be imagined.
>
> G The fact is that if the Income Tax Acts are examined, it will be found that the person charged with the tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of H taxing the profits where they are found. If the beneficiary receives them he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable. If they are under the control of a guardian or committee for a person not sui juris or of an agent or receiver for persons resident abroad, they are taxed in his hands."

I In the instant case there can be no doubt that if Mr. Dawson had been a sole trustee of the three funds he would have been liable to be assessed on the income accruing from them whether derived from property within or without the United Kingdom. The question is whether Mr. Dawson as the only one of the trustees who was resident in the United Kingdom can be separately

(1) [1921] 1 AC 41 at page 72.

assessed. The Special Commissioner, having cited part of the passage in the speech of Lord Cave which I have cited and a passage in the judgment of Finlay J. in Kelly v. Rogers(1), 19 TC 692, where he pointed out that there was no reason to restrict the principle governing the liability of a trustee to tax on the income of the trust property "to English income or to income which arises in this country or which arises under an English trust, or anything of that sort", answered this question in favour of the Crown on the ground that "As joint tenants the trustees are jointly and severally owners of the trust assets and entitled to the whole of the income arising from them. Each trustee is chargeable, in principle, on the full amount of the income provided that he is resident in the United Kingdom".

Mr. Mummery did not seek to support that reasoning. Although there may be cases where it is appropriate to describe persons in whom property is vested as "jointly and severally entitled" to the property (for instance, if they are beneficially entitled as tenant in common) trustees as such (that is, apart from any beneficial interest they may have) are jointly and not severally entitled to the trust property. No one of the trustees is entitled to call for the income to be paid to him. The case for the Crown in this appeal is that any one of several trustees has control of the trust income (unless a beneficiary is indefeasibly entitled to it as it accrues) because (in the absence of a majority clause) the income must be paid to or put under the control of the trustees and cannot be dealt with without the concurrence of each of them. It is said that that degree of control, which Mr. Mummery described as "negative control", is sufficient to bring any one of several trustees within the principle stated by Lord Cave and to make him assessable to tax. Mr. Mummery submitted in the alternative that each of several trustees is entitled to the income in the sense of having a claim to it within s 114(1). I hope I have accurately summarised Mr. Mummery's submissions. I confess that I have experienced some difficulty in understanding them.

In the passage which I have cited Lord Cave explains the circumstances in which trustees are and the circumstances in which they are not assessable to tax in respect of income which accrues to them as the legal owners of the trust property. His observations were not directed to the question whether, where income which accrues or arises to trustees as the legal owners of their trust fund does not arise from the profits of any trade carried on by them and does not belong as it accrues to any beneficiary indefeasibly entitled to it, an assessment can be raised against any one of their number. The case for the Crown in Williams v. Singer was that the trustees

> "as the legal owners of the property concerned, are the persons to whom the annual profits or gains arose and accrued therefrom within the meaning of Schedule D of section 2 of the Income Tax Act, 1853, and are similarly the persons receiving or entitled to the profits under the general rule in section 100 of the Income Tax Act, 1842"

(see at page 66). It was not suggested in argument or in any of the speeches in the House of Lords or in any of the judgments in the Courts below that if there had been no beneficiary entitled to the income as it accrued an assessment could have been raised against any one of the trustees, and indeed the proposition that if there had been no beneficiary entitled to the income the trustees would have been jointly assessable as the persons in control of the

(1) [1935] 2 KB 466.

A income seems to have been accepted (see, for instance, the speech of Lord Wrenbury at page 75).

The real issue in this case as I see it is whether, where income from property situate outside the United Kingdom accrues or arises to trustees and one of the trustees is resident outside the United Kingdom, the income B falls within the charge to tax in para 1(a)(i) of s 108. In the absence of any context to the contrary "person" must be read as including "persons". If para 1(a)(i) is expanded to read "the annual profits or gains arising or accruing to any person or persons residing in the United Kingdom" it is to my mind quite plain that where income accrues and is paid to two or more C trustees as the legal owners of the property from which the income is derived the trustees are not chargeable as such (that is, if none of them is beneficially entitled to the income or any part of it) unless they are all resident in the United Kingdom. The question therefore is whether there is anything else in the Taxes Act which evidences a contrary intention excluding the *prima facie* rule that "person" should be read as including "persons" and an intention D that in the circumstances I have described any one of the trustees resident in the United Kingdom is to be chargeable on the whole of the income.

No contrary intention can be inferred from the provisions of s 108.1(a)(i) alone; it is capable of being read in the way I have indicated. The only other relevant provision is s 122(2)(a). That section appears to be E framed on the assumption that it will be possible to say of any person within the charge to tax in para 1(a)(i) that he is or is not domiciled in the United Kingdom, or that if he is a British subject or a citizen of the Republic of Ireland he either is or is not ordinarily resident in the United Kingdom. It is not easy to see how s 122(2)(a) is to be applied if income accrues to two trustees both resident in the United Kingdom one of whom claims to be F domiciled outside the United Kingdom and the other to be a British subject or a subject of the Republic of Ireland and not ordinarily resident in the United Kingdom: nor whether, if there are two trustees both resident in the United Kingdom one of whom is within and the other of whom is without s 122(2)(*a*), that one without s 122(2)(*a*) is assessable to tax on unremitted G income. It is unnecessary to consider these questions and I express no opinion on them. It is quite clear if s 108 and s 114 are construed in the light of the earlier legislation which they replaced that s 122(2)(*a*) cannot be resorted to as a guide to the scope of the charge.

Paragraph 1(a)(i) and s 114(1) do not differ materially from the corre-H sponding provisions of the Act of 1842. Section 1 of that Act brought within the charge to duty in Sch D the "annual profits or gains arising or accruing to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere". Section 100 provided that the duties so charged should extend to every description of property or profits not contained in Schedules A, B, or C and to every description of employ-I ment not contained in Sch E and should be "charged annually on and paid by the Persons, Bodies Politic and Corporate, Fraternities, Fellowships, Companies, or Societies whether corporate or not corporate receiving or entitled to the same". The 1842 Act, of course, was passed long before the enactment of any general Interpretation Act. However, s 192 of the 1842 Act provided that reference to any person should be understood to include several persons unless there was something repugnant to that construction.

The Act of 1842 reintroduced the income tax for a period of three years. It was subsequently extended. In 1853 it was supplemented by the Income Tax Act of that year. Section 1 of the 1853 Act provided that after 5 April 1853 there should be charged for the years there mentioned duties at the rates specified in respect of (among other things) "the annual Profits or Gains arising or accruing to any Person or Persons whatever residing in the United Kingdom from any Kind of Property whatever whether situate in the United Kingdom or elsewhere", and those words were repeated in every subsequent taxing Act (see *per* Lord Phillimore in *Williams* v. *Singer*(1) at page 80). Section 2 then set out the Schedules under which the duties were to be charged. Schedule D was in the same terms so far as material as s 1 of the 1842 Act save for the substitution of references to the United Kingdom for references to Great Britain. Section 10 of the 1853 Act extended the provisions in the 1842 Act for assessing and charging the duties imposed by the 1853 Act, including s 100. The provisions of the 1853 Act as amended were reproduced in the Income Tax Act 1918: the charge to tax under Sch D in s 2 of the 1853 Act was reproduced in para 1 of Sch D, and the provisions as to the persons assessable in s 100 of the 1842 Act were reproduced in Rule 1 of the Miscellaneous Rules applicable to Sch D (taken in conjunction with the definition of a "body of persons" in s 237). There was a change in the pattern of the legislation in the Income Tax Act 1952. The charge to tax under Sch D was reproduced in para 1 of s 122 and the provisions as to the persons assessable in s 148. There is no reference in s 148 to "bodies of persons", but s 362(1) provided that "Every body or persons shall be chargeable to tax in like manner as any person is chargeable under the provisions of this Act". That modification clearly did not affect the scope of Sch D beyond making it explicit that the charge in s 2 of the 1853 Act extended to profits and gains accruing to a body or persons resident in the United Kingdom. Paragraph 1 of s 122 is, of course, now para 2 of s 108 and s 148 is s 114(1). Section 362(1) is reproduced (with amendments to take account of the introduction of corporation tax) in s 71 of the Taxes Management Act.

It is quite clear that s 5 of the 1914 Act did not affect the scope of the charge in s 2 of the 1853 Act but only the basis of the assessment of the income within the charge. In *Williams* v. *Singer* Lord Wrenbury observed (at page 75) that the effect of s 5 "would seem to be only that where there is a person chargeable in respect of incomes arising from foreign securities he is to be charged not as the Act of 1842 had provided upon so much as is received in the United Kingdom but upon the full amount whether received in the United Kingdom or not". The scope of the charge to Sch D tax in para 1 of Sch D and in Rule 1 of the Miscellaneous Rules applicable to Sch D was clearly no wider than the scope of the earlier provisions which were replaced: the 1918 Act, like the 1952 and 1970 Acts, was a consolidating Act.

At first sight *Pool* v. *Royal Exchange Assurance* (which was heard together with *Williams* v. *Singer*) appears to afford some support for the proposition that one of two trustees can be separately assessed to tax on income accruing to the trustees. The facts in that case were similar to the facts in *Williams* v. *Singer* except that (as appears from para 2(a) of the Case Stated, which is set out in 7 TC 394) first although there were two trustees both resident and domiciled in the United Kingdom only one of them, Royal Exchange Assurance, was assessed, and secondly the income in question was paid to the New York office of Royal Exchange Assurance and then paid

(1) [1921] 1 AC 41.

A over to the life tenant. In *Williams* v. *Singer,* of course, the income was paid at the direction of the trustees direct to the life tenant. However, the Case Stated records[1] an agreement between the parties that "the assessments under appeal shall not be impeached on the ground that [the name of one of the trustees] is omitted". At the time when the appeal to the Special Commissioners was heard this formal defect, if it was a defect, could no B doubt have been cured by a further assessment. The question whether the assessment was impeachable on this ground was not adverted to in the House of Lords or in the Courts below. In the Court of Appeal Counsel for the taxpayer in *Williams* v. *Singer* submitted that in making the assessment in *Pool* v. *Royal Exchange Assurance* the Commissioners had deliberately adopted s 53 of the 1842 Act and that under s 53 the trustees were taxed only C as representatives of the person beneficially entitled, who in that case as in *Williams* v. *Singer* was resident and domiciled outside the United Kingdom. It is unnecessary to examine the provisions of s 53 at length. So far as I have been able to discover it was not repeated in the 1918 Act. It provided for a return by and the assessment of a trustee for a person under an incapacity or D outside Great Britain in respect of profits or gains on which that person was chargeable. It is of some significance that while that section envisaged that one of several trustees might be assessed in certain circumstances it provided expressly that if more than one assessment should be made relief should be given against the double assessment. In the instant case, if the Crown's case were well-founded some similar provision would have to be implied to avoid E assessments in respect of the same income being made on more than one of the trustees.

In *Pool* v. *Royal Exchange Assurance* the suggestion that the assessments should be treated as made under s 53 (and that the Royal Exchange Assurance was charged in a purely representative character for a person resi- F dent and domiciled abroad) was not considered. However, in *Pool* v. *Royal Exchange Assurance*(2) the Royal Exchange Assurance would clearly have been liable to be assessed if it or the trustees together had been in control of the income. The trustees to whom the income accrued were both resident and domiciled in the United Kingdom and the income was actually received by the Royal Exchange Assurance. Indeed, it may well be that the income would G have been liable to be assessed simply on the ground that it was received by the Royal Exchange Assurance and so accrued to it. As I understand it where income is by agreement of the trustees paid to one of their number (for instance, where there are a number of family trustees and one professional trustee and the income is mandated to him) the trustee who receives the income is normally assessed on this ground. The question however in H *Pool* v. *Royal Exchange Assurance,* as in *Williams* v. *Singer*, was not whether Royal Exchange Assurance could be separately assessed but whether trustees could be assessed on income from property outside the United Kingdom which belonged beneficially to a person resident and domiciled outside the United Kingdom.

I Mr. Mummery submitted that a decision that where one of several trustees is resident outside the United Kingdom no assessment can be made in respect of income accruing and paid to the trustees from sources outside the United Kingdom would open the door to widespread avoidance. It would be open, he said, to the trustees of a trust under which all those entitled or

(1) 7 TC 387 at Page 394.

likely to become entitled to any beneficial interest were resident and domiciled or ordinarily resident in the United Kingdom to avoid United Kingdom tax altogether by the expedient of appointing a single non-resident trustee and investing the trust fund in investments outside the United Kingdom. Indeed, United Kingdom tax would be avoided even if the income were paid into an account of the trustees in the United Kingdom or remitted to beneficiaries in the United Kingdom. Mr. Oliver's answer to this submission was that the Crown have had wide powers ever since s 18 of the Finance Act 1936 was enacted to counteract the avoidance of tax by means of the transfer of assets abroad and that those provisions (since replaced by ss 45 and 46 of the Finance Act 1981) apply as well to the appointment of one trustee resident outside the United Kingdom to act jointly with trustees resident in the United Kingdom with a view to the investment of the trust fund outside the United Kingdom as they do to the replacement of all the trustees resident outside the United Kingdom and the transfer of the trust assets to them. Whether ss 45 and 46 would apply in the one and not in the other case is a question which has not been argued and on which I express no opinion. If the result of this decision is to leave a gap for unacceptable avoidance that gap must be closed by legislation.

Mr. Mummery's submission, if well-founded, would give rise to the more striking anomaly that even in the case of a trust constituted outside the United Kingdom by a settlor domiciled and resident outside the United Kingdom and comprising investments situate wholly outside the United Kingdom and established for the benefit of foreign subjects resident and domiciled outside the United Kingdom (or for public or charitable purposes outside the United Kingdom) if one of the trustees became resident in the United Kingdom he would fall within the charge to United Kingdom tax provided of course that the income did not belong beneficially to a beneficiary resident and domiciled outside the United Kingdom, and subject also so far as concerns income not remitted here to the exception in s 122(2)(a). The trustee resident in the United Kingdom would be so assessable notwithstanding that he had not himself received the income and even if under the law governing the trust he had no right of recourse against the trust assets and no right of contribution from his co-trustees. I understand that in practice the Crown have not sought to tax a trustee resident in the United Kingdom on income from property out of the United Kingdom if the majority of the trustees are resident outside the United Kingdom and the fund was settled by a person domiciled outside the United Kingdom. Mr. Mummery accepted that if the Crown's contentions as to the scope of s 108.1(a)(i) and s 114(1) are well founded there can be no justification for that extra-statutory amelioration of the law.

In the instant case the Crown is, in effect, asserting the right to tax a person resident in the United Kingdom solely upon the ground of residence on income from property outside the United Kingdom in which he has no beneficial interest and over which he has no control, and to do so notwithstanding that he may have no right of recourse to the income on which he is assessed to tax and no right of indemnity or contribution against the income or from the persons beneficially entitled to it. In my judgment the very clearest language would be required to justify a claim as wide as that.

For the reasons I have given I think this appeal must be allowed.

A *Appeal allowed, with costs.*

The Crown's appeal was heard in the Court of Appeal (Kerr, Dillon and B Nicholls L. JJ.) on 28 and 29 April 1988 when judgment was reserved. On 25 May 1988 judgment was given against the Crown, with costs.

S.J. Oliver Q.C. and *J.R. Kessler* for the taxpayer.

C *J. F. Mummery* for the Crown.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*Fry* v. *Shiels Trustees* 6 TC 583; 1915 SC 159; *BSC Footwear Ltd.* v. *Ridgway* 47 TC 495; [1972] AC 544; *Farrell* v. *Alexander* [1977] AC 59; *Roome and Denne* v. *Edwards* 54 TC 359; [1982] AC D 279.

Nicholls L.J.: This appeal raises a question concerning tax on trust E income in which at the relevant time no beneficiary had an indefeasible vested interest. The question is whether a trustee residing in the United Kingdom, but whose co-trustees reside abroad, is liable to income tax on the income of the trust fund arising from investments situated outside the United Kingdom. The Special Commissioners answered Yes to that question. The taxpayer appealed and Vinelott J. answered No. The Crown has now further F appealed to this Court.

The answer to the question turns on the true construction of para 1 (a)(i) in Sch D, as set out in s 108 of the Income and Corporation Taxes Act 1970. Nothing turns on the detailed facts concerning the three trust funds G with which this appeal is concerned. The facts are summarised succinctly by the Judge in the opening paragraphs of his judgment: see [1987] 1 WLR 716, 717–719. It is sufficient for me to note that the three trusts were made, on dates between 1946 and 1965, by settlors who were domiciled and resident in the United Kingdom. The principal beneficiaries under each of the three trusts were members of the family of Mr. Gordon Cotton. In 1969 he emi-H grated to Switzerland, and became permanently resident there with his family. In 1974 each trust had three trustees, all resident in the United Kingdom. On 12 February 1974 two of the trustees retired from each trust. They were replaced by non-resident trustees: a Swiss bank and a Liechtenstein company. The third trustee was the respondent, Mr. Oliver Dawson. He is a stockbroker. He remained in office as one of the trustees of each trust until I 14 March 1977, when he too retired and was replaced by another Swiss banker.

The assessments under appeal are assessments for the year 1975–76, that is to say, within the period when Mr. Dawson was a trustee along with two other trustees neither of whom was domiciled or ordinarily resident in the United Kingdom. The Judge summarised the facts regarding the investment

of the trust funds and the administration of the trusts during this period as follows[1]:

> "During this period the funds or some of them comprised some small holdings of stocks and shares of United Kingdom companies and land in the United Kingdom. However, by far the larger part of each of the funds was invested in stocks, shares and securities of non-United Kingdom companies. Stock and share certificates were, at the direction of the trustees, registered in the name of a Swiss bank or in the name of nominees to its order and were held by that bank or by banks and recognised depositories in the country where the relevant companies were incorporated or resident. The income was paid into accounts of the trustees maintained for each of the three funds with the same Swiss bank. Distributions of income were decided at meetings of the trustees held in Switzerland."

The assessments under appeal are based on the estimated income of the trust funds derived from sources outside the United Kingdom in the fiscal year 1975–76. In that year Mr. Gordon Cotton was paid altogether Sw. Fr. 150,000 from the income of two of the trusts, for the benefit of his infant children, but otherwise all the income of the three trusts was accumulated.

The difficulty in the present case arises because the legislation relating to income tax makes no express provision regarding income accruing to persons as trustees. This is in marked contrast to the position regarding some other taxes, such as capital gains tax. So far as is material, s 108 is in these terms:

> "108. The Schedule referred to as Schedule D is as follows:—
>
> SCHEDULE D
>
> 1. Tax under this schedule shall be charged in respect of—
>
> (a) the annual profits or gains arising or accruing—
>
> (i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and ...
>
> (iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, ..."

Section 109 then provides for tax under Sch D to be charged under several cases, in the familiar way. The relevant two cases are cases IV and V, which apply to income arising respectively from securities out of the United Kingdom and from possessions out of the United Kingdom. Section 114 identifies the persons chargeable to income tax under Sch D. Omitting immaterial words, s 114(1) provides: "114–(1)... income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged."

On their face these provisions raise the question of whether the income relevant on these appeals was income which accrued to Mr. Dawson (s 108) and which he received or to which he was entitled (s 114). But the relevant

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(1) Page 313A/C *ante*.

A income was trust income, and the entitlement of trustees to trust property, is joint, not joint and several. Accordingly this trust income accrued, not to Mr. Dawson alone, but to him jointly with his co-trustees: "each joint tenant holds the whole and holds nothing, that is, he holds the whole jointly and nothing separately" (Co.Litt.186a). However, joint entitlement to income does not give rise to any difficulty where all those entitled are resident in the B United Kingdom, because the singular "person" in para 1(*a*)(i) of Sch D is to be read as including the plural "persons" by virtue of what is now s 6(*c*) of the Interpretation Act 1978 (replacing a similar provision in s 1(1)(b) of the Interpretation Act 1889). So construed, para 1(*a*)(i) applies to annual profits or gains "arising or accruing — (i) to any person *or persons* residing in the United Kingdom...". That it is proper so to construe para 1(*a*)(i) was com- C mon ground before us. The correctness of this construction is confirmed by noting that before the enactment of an interpretation Act of general application the initial charging section in the Income Tax Acts spelt out the plural "persons" expressly. Section 1 of the Income Tax Act 1853 provided for tax to be charged on the annual profits or gains arising or accruing to any person or persons whatever residing in the United Kingdom from any kind of D property whatever, whether situate in the United Kingdom or elsewhere".

Section 2 introduced the Schedules, and Sch D did not differ, in any respect material for the purposes of this appeal, from para 1(a)(i) in s 108 of the Act of 1970. Thus arises the crucial question of construction: how is para 1(a)(i) to be interpreted when the income accrues to persons jointly, one (or E more) of whom resides in the United Kingdom and the other (or others) of whom resides out of the United Kingdom? The Crown contended that in such a case para 1(a)(i) is satisfied if *any* of the persons were residing in the United Kingdom. The taxpayer contended that in such a case para 1(a)(i) is not satisfied unless *all* the persons were residing in the United Kingdom.

F Let me say at once that neither of these contentions produces a wholly satisfactory result. Whichever of the contentions is correct, the end result will be surprising and unattractive in some circumstances. There is no problem with trust income accruing from property situate in the United Kingdom. In such a case the income will be chargeable under para 1(*a*)(iii), even if the trustees are all resident outside the United Kingdom. The difficulty arises G with regard to trust income derived from non-United Kingdom sources. In argument the taxpayer instanced an accumulation trust whereunder everything is "foreign": the settlor, the proper law of the trust, the beneficiaries, and the location of the trust property. In such a case if all the trustees reside abroad none of them is chargeable to income tax in respect of the income of the trust property. But on the Crown's construction, if one of them is or H becomes resident in the United Kingdom, that trustee then becomes chargeable to tax on all the income remitted to this country and, subject to s 122, even on the income which is not remitted. This is a surprising result. But the converse is equally true and equally anomalous. Suppose a settlor, resident here, of a trust whose proper law is English and whose income is currently being accumulated. Suppose further that the beneficiaries are all resident I here. In such a case, if all the trustees are resident and ordinarily resident here they are chargeable to income tax in respect of the income of the trust even if it derived wholly from sources outside the United Kingdom and even if none of it is remitted to the United Kingdom. But if an additional trustee, resident abroad, were to be appointed, on the taxpayer's argument the effect would be that thenceforth none of that income would be chargeable to tax under para 1(*a*)(i).

The same point can be made with regard to the three trusts in point on the present appeal. If Mr. Dawson had been the sole trustee in 1975–76 the Crown's claim would have been unanswerable. The judge so observed, and I agree with him. Conversely, if Mr. Dawson had retired a few years earlier, the Crown's claim could not have got off the ground. So what is to be done with cases of "mixed residences"? Which is the crucial factor: is it the residence in the United Kingdom of one of the trustees? or is it the residence out of the United Kingdom of one of the trustees?

Since neither of the two alternatives produces a satisfactory result, it is tempting to consider whether a more robust interpretation of para 1(a)(i) might not be called for. For example, where the income accrues to persons jointly as trustees, their residence as trustees is to be taken to be the country where the general administration of the trust is ordinarily carried on, by analogy with the provision in s 153 concerning partnerships. Or again, by analogy to s 52 of the Capital Gains Tax Act 1979: the trustees are to be taken to be resident in the United Kingdom unless the general administration of the trust is ordinarily carried on abroad and the trustees or a majority of them are not resident or ordinarily resident in the United Kingdom. Rightly, in my view, neither party sought to advance any such construction of para 1(*a*)(i). There are several differing ways in which such a provision might sensibly be drawn, and to attempt to choose between them would be to go far beyond the legitimate bounds of construction of this paragraph.

So I return to the two alternatives. In my view the taxpayer's construction is to be preferred. On a natural reading of para 1(a)(i) the necessary qualification "residing in the United Kingdom" is a qualification which, when the income accrues to one person, applies to that person and, when the income accrues to persons jointly, applies to all those persons: they must all possess the attribute of "residing in the United Kingdom". I can see no justification for reading the statutory provision, as expanded by the Interpretation Act, as satisfied, where the income accrues to more than one person jointly, if any one of them possesses the necessary attribute of residing in the United Kingdom even though the other or others do not.

To this conclusion, which is sufficient to dispose of this appeal, I append three footnotes. First, I have referred to the fact that at the relevant time no beneficiary had an absolute, vested interest in the income in question. If the facts had been otherwise, and there had been such a beneficiary, nice questions might have arisen on whether indeed there was any income "accruing" to the trustees (para 1 (a)(i)) as distinct from, or in addition to, the beneficiary, and on whether the trustees, as distinct from or in addition to the beneficiary, received or were entitled to the income within s 114(1). In such a case consideration would have to be given to the guidance afforded by a trilogy of cases: *Williams* v. *Singer*(1) [1921] 1 AC 65, *Baker* v. *Archer-Shee*(2) [1927] AC 844, and *Commissioners of Inland Revenue* v. *T. W. Law Ltd.*,(3) 29 TC 467. That point does not arise in this case. It is sufficient to note that there is nothing in those authorities which assists on the short, narrow point of construction with which the present appeal is concerned.

Secondly, and following from the first point, it is to be noted that in this case the trustees had no beneficial interest in the trust fund. This is not a case where, for example, the trustees were holding property upon trust for them-

(1) 7 TC 387. (2) 11 TC 749. (3) [1950] 2 All ER 196.

A selves as tenants in common or, even, as beneficial joint tenants. I express no view on whether the position would be different in either of those instances.

Thirdly, I have already noted that my preferred answer to the question of construction, as much as the rival answer contended for by the Crown, produces some surprising results. Lest it be thought that the answer I would B give to the question of construction leaves the door wide open for wholesale tax avoidance, I mention in passing that over 50 years ago Parliament addressed itself to the question of the avoidance of tax by means of the transfer of assets whereby income becomes payable to persons resident out of the United Kingdom: see s 18 of the Finance Act 1936, now replaced by ss 45 and 46 of the Finance Act 1981. To what extent, and in what circum- C stances, these provisions would avail the Crown where a non-resident trustee is appointed to act with trustees resident in the United Kingdom was, rightly, not a matter explored before us, and I express no view on this.

I agree with the conclusion of the Judge. I would dismiss this appeal.

D **Dillon L. J.**:—Section 108 of the Taxes Act 1970 sets out the charge to tax under Sch D, which is the only Schedule relevant to the present case. So far as material to the present case, tax under the Schedule is to be charged in respect of:

"(a) the annual profits or gains arising or accruing—

E (i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and ...

(iii) to any person whether a British subject or not, although not F resident in the United Kingdom, from any property whatever in the United Kingdom."

It is implicit in this that tax is not chargeable under Sch D in respect of the annual profits or gains arising to any person not resident in the United Kingdom from any property whatever not situated in the United Kingdom; that is in accordance with the general principle stated by Lord Herschell in G *Colquhoun* v. *Brooks*(1) (1889) 14 AC 493 at 504 that: "The Income Tax Acts ... themselves impose a territorial limit; either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there."

H That general principle was regarded as still broadly correct by Lord Wilberforce in *Clark* v. *Oceanic Contractors Inc.*(2) [1983] 2 AC 130 at 151–2; it had earlier been approved by Lord Hailsham (with whose speech all the other members of the House agreed) in *Westminster Bank* v. *National Bank of Greece*(3) [1971] AC 945. The reason why tax legislation is in general territorially limited can be attributed, as it was by Lord Esher M.R. in *Colquhoun* I v. *Brooks* 21 QBD at 57, to the comity of nations, and the recognition by each nation of the field over which it can properly legislate, or it can be attributed, as it was by Lord Scarman in *Clark* v. *Oceanic Contractors* at 145 F, to a recognition by Parliament of the almost universally accepted principle that fiscal legislation is not enforceable outside the limits of the territorial

(1) 2 TC 490. (2) 56 TC 183 (3) 46 TC 472.

sovereignty of the Kingdom. Either approach leads to the same general principle, which is to my mind the very important background to this case. A

On the authorities, there is no doubt at all that the trust income from the foreign investments of the trusts arose or accrued, within the meaning of those words as used in s 108 to all the three trustees jointly; see *Reid's Trustees* v. *Commissioners of Inland Revenue*,(1) 14 TC 512 and *Kelly* v. *Rogers*,(2) [1935] 2 KB 446. Mr. Mummery submits that the corollary of that is that the trust income arose or accrued to Mr. Oliver Dawson, who is resident in the United Kingdom, and so is taxable; but if that is correct, the corollary is equally that the trust income arose or accrued to the two other trustees who are not resident in the United Kingdom, and so is not taxable. B

C

It is of course clear that if all the trustees were resident in the United Kingdom the income would be taxable under Sch D, but if none of them was so resident it would not be taxable. It is irrelevant to tax liability that the trustees resident outside the jurisdiction happen to be a majority. It is equally irrelevant to tax liability that when the settlements were made, the settlors were domiciled in the United Kingdom. The Crown has apparently been operating a practice of not seeking to tax a trustee resident in the United Kingdom on income from property out of the United Kingdom if the majority of the trustees are resident outside the United Kingdom and the fund was settled by a person domiciled outside the United Kingdom; it has been common ground on the argument of this appeal, however, that the domicil of the settlor is in strict law irrelevant to the taxability of trust income arising from foreign investments. D E

What is important, in my judgment, is the nature of the joint ownership by trustees of the trust investments, and their joint entitlement to the income of those investments.

F

In *Commissioners of Inland Revenue* v. *T. W. Law Ltd.*(3), 29 TC 467, where a mother and her two sons held shares in a company jointly as trustees, the court had to consider, for certain tax purposes, whether the sons were "working proprietors" of the company who "owned" the shares. At page 471 Romer J. said this in his judgment:

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"... it was argued before me on behalf of the Company that the sons and their mother were joint tenants of the trust holding of 1,485 shares; that the interest of each joint tenant is an interest in an undivided whole; and that accordingly it may fairly be said that in law each of the trustees owns the entirety of the trust holding. I am quite unable to accept this argument. The fact that a joint tenant has a legal interest in the entirety of the subject matter of the joint tenancy seems to me to be far removed from the conception that each such tenant 'owns' the subject matter, whatever the meaning that may be attributed to the word 'own'. It is difficult to think of any act of ownership in relation to the shares that either of the sons can perform on his own. He cannot sell them, transfer them, mortgage them or give a discharge to the Company for dividends declared on them." H I

So, in the present case, in the judgment under appeal Vinelott J. said, and I agree with him, that no one of the trustees was entitled to call for the income to be paid to him. As it is put in Megarry and Wade on the Law of

(1) 1929 SC 439. (2) 19 TC 692. (3) [1950] 2 All ER 196.

A Real Property 5th Edn. at p.418 and in Halsbury's Laws of England 4th Edn. vol. 39, para 529 note 5, by reference in each case to Coke upon Littleton 186a, each joint tenant holds nothing by himself and yet holds the whole together with his fellows.

Because of the very limited nature of the interest of one only of several B trustees in the trust investments and in the income of such investments and because also of the general principle of the territorial basis of tax legislation to which I have referred, I for my part am unable to hold that the trust income from foreign investments has arisen or accrued to Mr. Dawson, a person residing in the Untied Kingdom, so as to render that income chargeable to tax under s 108(1)(*a*)(i). The income has arisen or accrued to all the C three trustees jointly, but they are not all persons residing in the United Kingdom.

To put it the other way round, the court cannot regard the income as having accrued to Mr. Dawson alone, and disregard the two other trustees because they were not resident in the United Kingdom.

D

Some support for this view is perhaps afforded by the comment of Viscount Cave in *Williams* v. *Singer*[1] [1921] 1 AC 65 at 72, that, if the Income Tax Acts are examined, it will be found that the person charged with the tax is neither the trustee nor the beneficiary as such but the person in actual receipt and control of the income which it is sought to reach. Of E course Lord Cave did not have a situation such as that of the present case in mind, and his comment is not to be pressed too far. He was concerned with the antithesis between the trustees as a whole, who were all resident in the United Kingdom, and a single beneficiary, resident abroad, who had received the trust income direct from the foreign companies in which the trust funds were invested. In that context it was the beneficiary who was in receipt and F control of the trust income. In the present case, I do not regard Mr. Dawson alone as in receipt or control of the trust income, since the entitlement of the trustees was joint.

For these reasons I agree with the conclusion of Vinelott J., and I would dismiss this appeal.

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Kerr L. J.:—I agree that this appeal should be dismissed for the reasons stated in the judgments of Nicholls and Dillon L.JJ. to which I cannot usefully add anything.

Appeal dismissed, with costs. Leave to appeal to the House of Lords refused.

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The Crown's appeal was heard in the House of Lords (Lords Keith of Kinkel, Templeman, Ackner, Oliver of Aylmerton and Lowry) on 4 and 5 I April 1989 when judgment was reserved. On 4 May 1989 judgment was given unanimously against the Crown, with costs.

S. Oliver Q.C. and *J. Kessler* for the Taxpayer.

J. Mummery for the Crown.

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(1) 7 TC 387.

The following cases were cited in argument:—*Commissioners of Inland Revenue* v. *T.W. Law Ltd.* 29 TC 467; [1950] 2 All ER 196; *Reid's Trustees* v. *Commissioners of Inland Revenue* 14 TC 512; 1929 SC 439; *Roome* v. *Edwards* 54 TC 359; [1982] AC 279; *Thibodean Family Trust* v. *The Queen* 1978 CTC 539; *Whitney* v. *Commissioners of Inland Revenue* 10 TC 88; [1926] AC 37; *Williams* v. *Singer* 7 TC 387; [1921] 1 AC 65.

Lord Keith of Kinkel:—My Lords, The Respondent in this appeal was, until he resigned in 1977, a trustee under each of three discretionary settlements governed by English law made at various dates between 1946 and 1965 by members of a family called Cotton, who were on these dates domiciled and resident in England. The principal beneficiaries under each trust were the issue of a Mr. Gordon Cotton, one of the settlors. In 1969 Mr. Gordon Cotton emigrated to Switzerland with his immediate family, and became permanently resident there. Up until 12 February 1974 each trust had three trustees all resident in the United Kingdom, including the Respondent. On that date the two other trustees resigned and there were assumed in their place an individual residing in Switzerland and a Liechtenstein company.

During the fiscal year 1975–76 the trust assets consisted principally in holdings of securities of non-United Kingdom companies, though there were also some small holdings in United Kingdom companies and some land in England. The certificates for the foreign company securities were in the name of a Swiss bank or other foreign nominees, and the income from these securities was paid into accounts in the name of the trustees at the same Swiss bank. In the year in question certain small sums were paid by the trustees out of income to Mr. Gordon Cotton for the benefit of his infant children, and all the rest of the income was accumulated. The distributions were decided upon at a meeting of the trustees held in Switzerland.

Further details about the three settlements are to be found in the judgment of Vinelott J. in the Chancery Division ([1987] 1 WLR 716), and it is unnecessary for present purposes to recapitulate them.

In respect of that fiscal year 1975–1976, the Appellants, the Commissioners of Inland Revenue, assessed the Respondent to basic rate tax and additional rate tax on the whole income of the three settlements, including that arising from the foreign assets comprised therein.

The Respondent accepted liability for tax on the income from United Kingdom assets, but disputed liability for tax on income from the foreign assets. He appealed to a single Special Commissioner, who decided against him. That decision was reversed by Vinelott J. on 10 March 1987, and the reversal was affirmed by the Court of Appeal (Kerr, Dillon and Nicholls L.JJ.) on 25 May 1988 [1988] 1 WLR 930. The Revenue now appeal, with leave given here, to your Lordships' House.

The issue in the appeal, which has not been considered in any previous reported case, is whether, where one of a number of trustees of a settlement resides in the United Kingdom but the other or others reside abroad, the one who resides in the United Kingdom is liable for income tax upon income of the settlement which arises from assets situated outside the United Kingdom. Resolution of that issue turns on the proper construction of part of the Sch

A D provisions contained in s 108 of the Income and Corporation Taxes Act 1970. Paragraph 1(a) of these provisions enacts:

"1. Tax under this Schedule shall be charged in respect of—

(*a*) the annual profits or gains arising or accruing—

B (i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and

(ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere, and

C (iii) to any person, whether a British subject or not, although not resident in the United Kingdom from any property whatever in the United Kingdom, or from any trade, profession or vocation exercised within the United Kingdom ..."

D The persons chargeable to tax under Sch D are identified by s 114, of which only subs (1) is relevant for present purposes. So far as material, it provides: "income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged."

E The argument for the Revenue accepts that the income of the settlements arose or accrued to the three trustees jointly, and not jointly and severally, so that none of them was entitled in law separately to any particular share or fraction of the income. It is contended, however, that the whole income from the foreign investments did, on a proper construction of para 1(a) (i) of s 108, arise or accrue to the Respondent as a person residing in the F United Kingdom, and that the circumstance that it did so to him jointly with two co-trustees resident abroad is irrelevant. However, the word "person" in that sub-sub-paragraph must include the plural "persons" by virtue of s 6(c) of the Interpretation Act 1978. If all three trustees had been resident in the United Kingdom application of the enactment would have been such the income would have been treated as arising or accruing to all three, and all G three would have been jointly assessable to tax. In the situation which prevails here, namely that one of the trustees is resident in the United Kingdom but the other two are resident abroad, the income likewise arises or accrues to all three, but all three cannot be jointly assessed to tax. There can be no justification for assessing to tax the Respondent alone, on the ground that he is resident in the United Kingdom, because the income does not arise or H accrue to him personally. He has no right of control over the income. His only interest in it is a right and duty to secure, in conjunction with his co-trustees, that it is applied in accordance with the directions of the trust deeds. Similarly, when one turns to s 114(1) of the Act of 1970 it is found that the persons receiving or entitled to the income are the three trustees jointly. Should the plural "persons" be turned into the singular "person" it is found I that the Respondent as an individual cannot properly be described as *the* person receiving or entitled to the income. Reference was made to certain other provisions of the Act of 1970, in particular s 153, which relates to partnerships controlled abroad. I have not, however, been able to gather any assistance from elsewhere in the Act towards the true construction of the enactments under immediate consideration. I have reached the conclusion, as did the Court of Appeal, that these enactments do not have the effect of

imposing on the Respondent, in the circumstances of the case, liability to tax on the foreign income of the three settlements.

Much was made, on either side of the bar, of the anomalies which would arise if the competing argument was successful. For the Respondent it was urged that, if the Revenue's argument was correct, the income arising from foreign sources to the trustees of a settlement made by a settlor domiciled abroad and administered abroad would, if no beneficiary had a vested right to the income and if one of several co-trustees happened to be resident in the United Kingdom, properly be liable to be assessed to United Kingdom taxation upon that one trustee. That trustee would be unable to obtain any indemnity out of the trust funds. It was stated that in practice the Revenue did not seek to raise any assessments to tax in such situations. The anomalous legal position must, however, prevail whatever the Revenue practice might be. Counsel for the Revenue, for his part, observed that, if the Respondent's argument were correct, the foreign income of an accumulation trust administered in England and governed by English law could be made to avoid taxation by the simple expedient of appointing one co-trustee resident abroad. He further maintained that the anti-avoidance provisions of s 478 of the Act of 1970 and s 45 of the Finance Act 1981, relating to the transfer of assets abroad, could in the case of trusts be sidestepped by a similar expedient.

The issue cannot be resolved by a balancing of the anomalies which would arise upon either view. It is sufficient to say that the enactments directly in point do not, upon a sound analysis, support the construction contended for by the Revenue. It can be perceived that there would be much to be said for making the liability to tax depend upon the centre of administration of the trust and the place of residence of the majority of the trustees, as is the position with Capital Gains Tax: see s 52 of the Capital Gains Tax Act 1979. But Parliament has not so far chosen to do that.

My Lords, for these reasons, which are in substance the same as those favoured by the Court of Appeal, with whose judgments I entirely agree, I would dismiss the appeal.

Lord Templeman:—My Lords, For the reasons given by my noble and learned friend, Lord Keith of Kinkel, I would dismiss this appeal.

Lord Ackner:—My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Keith of Kinkel. I agree with it and would dismiss the appeal for the reasons which he has given.

Lord Oliver of Aylmerton:—My Lords, I have had the advantage of reading in draft the speech delivered by my noble and learned friend, Lord Keith of Kinkel. I agree with it and would dismiss the appeal for the reasons which he has given.

Lord Lowry:—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Keith of Kinkel.

I agree with it and, for the reasons which he gives, I, too, would dismiss this appeal.

Appeal dismissed, with costs.

[Solicitors:—Messrs. Simmons & Simmons; Solicitor of Inland Revenue.]