No. 255.—House of Lords.—30th April, 1903.(1)

Scottish Provident Institution *v.* Allan.

The statement of the case and Judgment in the Court of Exchequer (Scotland) are given above at page 409.

The judgment of the Court of Exchequer was upheld in the House of Lords.

Haldane, K.C. (*Blackburn* with him) for the Appellants.—The tax is only upon interest on security abroad so far as such interest is brought home. *Gresham Life*

(1) Reported A.C. 1903, 129.

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Assurance Society v. *Bishop*.(1) The Institution has endeavoured, in the most deliberate way, to bring home only the principal which it had lent in Australia. (*The Lord Chancellor*.—You have to pay on the profits of the business which is a money lending business. Interest is one form of profits. If you have made the profits and sent them back to this country, you cannot avoid the tax by nicknaming them capital.) The taxing word is "interest," and this is different from profits taxable under Case 1. The money left abroad might be all of it accumulations of interest, the principal having been brought home. (*Lord Shand*.—If it is capital you have brought back and distributed as bonus, you have been paying back capital, which I should think you have no authority to do.) You do not destroy the character of a sum of money by paying it into a bank. It is only doing what many people do.

Again, the Finance Act each year is passed in respect of current income. Sections 176 of 5 and 6 Vict., cap. 35. Past interest which has been accumulated is not a subject of taxation. If taxed at all, interest should be taxed when earned. Case 4 is really in the nature of an exception. *Colquhoun* v. *Brooks*.(2) (*The Lord Chancellor*.—The amount of the remittances was taken by consent as applicable to the particular year. The question was whether it was interest or capital and that had no reference to the question of the particular year. The point raised does not arise now.)

At the conclusion of the Argument on behalf of the Appellants, Counsel appearing for the Respondent, but not being called upon, their Lordships delivered Judgment as follows :—

JUDGMENT.

The Lord Chancellor

The Lord Chancellor.—My Lords, so far as I am concerned, I think this is really a question of fact. The question is what inference can properly be drawn from the facts as stated by the Commissioners.

The broad facts, and the only facts I shall consider, are these : this is a large amount of money which has been sent to this country ; it has been sent to this country from investments made abroad, that is to say, made in Australia. I cannot appropriate, nor do I think the parties probably could appropriate without the assistance of an Actuary, the exact amount earned by each particular investment and say what should be properly applied to capital and what to income. The Commissioners have had the matter before them and they have come to the conclusion that such and such an amount is the amount which they would appropriate to the interest which has been received. It appears to me that we are rather misplacing the burden of proof. This is a large amount of profit

(1) 4. T.C. 465. (2) 2. T.C. 490.

which has been made, a large amount which, out of profits, has been remitted to this country. If that is true, then Income Tax is payable upon it. If that is not the exact amount, but the parties would be able to show that some part of it ought to be appropriated to capital, and if they could make it apparent that the thing which was received in this country was not only profit, or was not at all profit, but was simply a repayment of capital, I think it is for them to show that. *Prima facie* this is a large amount of profit (looking at the figures) made by this trading Company. It is a mutual Company, no doubt, but that only affects the question what you will do with the profits when you have got them.

The next question is, whether or not, though earned abroad, the profits have been brought to this country. Here is a large amount, putting these figures together, which, to my mind must include, and obviously does include, a large amount of profits. I think it is for the Company to show, if the fact be so, that that ought to receive a certain amount of deduction, because a good deal of it was repayment of that which was in truth the capital and not profit at all No attempt has been made to do that, but what has been done in lieu of that is to write out to the local agents and say: Whenever you send money to this country do not find out what in strictness is the difference between capital and income, but describe whatever you send back to us as repayment of capital, take care you do not describe it as interest. It is obvious that the mere nicknaming the sum received and ascribing to it, because it is so named, the character of capital and not of income, cannot defeat the right of the Crown to have the tax levied upon that which in substance and truth is profit earned abroad but brought to this country.

For these reasons, my Lords, I am of opinion that the Judgment of the Court below was right and that this Appeal should be dismissed with Costs and I move your Lordships accordingly.

Lord Shand.—My Lords, I agree that the decision of the Court below ought to be adhered to.

The question is as your Lordship has put it, entirely one of fact. The amount of money which was sent out by the Company as capital remains in Australia. It has been gradually increased and not diminished and that amount money still remains there. The Company still have the amount of capital which they sent out. The moneys that have come home were, therefore, in the nature of interest, and I do not think that the mere circumstances of there being such letters as are here founded upon, as making them out to be capital though they are really interest can have that effect.

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Lord Shand.
Lord Davey.

I am, therefore of opinion, with your Lordships, that the decision which is appealed against should be adhered to.

Lord Davey.—My Lords, I agree in the motion proposed, and I agree with what has been said by my noble and learned friends, that this is a mere question of fact. I should like to ask what facts we have before us from which we can draw our inference. We have this fact (I will use round numbers, because the exact amount is not important) that by the end of the year 1898, before the 31st of December this Company had remitted to Australia, for the purpose of investments on mortgages there, a sum of one ond a half millions, and at the end of the period in question, on the 31st December, 1898, they had over two and a half millions there. In every sense this is profit.

Now, my Lords, what is the profit made from, because I agree with what Mr. Haldane said, that under Schedule D you tax the interest received on securities? The profit is only the interest received on the securities. There can be nothing else. That is the only source from which, from the nature of the business carried on, the profit is derived. Therefore, I think the Crown is entitled to draw the inference, and your Lordships are entitled to draw the inference, that this extra sum of £1,034,707, I will call it an extra million, which existed at the end of the year 1898, did represent in one way or another moneys which had been received in respect of the interest derived from the securities on which the original million and a half have been invested.

My Lords, the whole of the case of Mr. Haldane's clients, the Insurance Company, rests upon this table on page 6 of the case. Now I must say that this table gives me the impression of being made up for the purpose, because what do we find? I will take the very first entry. We find on the 1st of February, 1898, the agent of the Company in Australia remitting to this country a sum of £44,000. We are gravely told to believe that that was a remittance of four sums of capital which had been received by the agents in Australia at four different times, three of them in the year 1891 and the other in the year 1896. I must say that that is a draft upon my credulity, a strain upon my powers of belief, which they will not bear. I agree that the mere calling it capital for the purpose of the Inland Revenue Department will not make into capital that which is essentially and in truth profit, a profit made by the interest received on the securities.

My Lords, the other question which was raised by Mr. Blackburn I do not treat as being before us, and I express no opinion upon it. All the parties seem to have agreed that the question of whether this sum of £217,350 represented interest or capital was the question for decision, and upon that point I have do hesitation in saying that I agree entirely with the Judgment of the Inner House.

Lord Robertson.—My Lords, the circumstances that for convenience the year 1898 was enquired into instead of 1899 does not effect the question befor the House, for the parties accepted the figures so reached as applicable to the year of assessment.

The question then is, was this sum of £212,000, which admittedly was remitted, profits or gains of the year? As the whole money remitted came out of a bank account it is impossible to indentify the money and the facts of the case must furnish the inference. On this question of fact it seems to me that the Judgment of the Court of Session is clearly right. First of all there is the fact of remittance in two consecutive years; for the year 1898 is taken as fairly representing the year 1899. There is no suggestion that any exceptional reason required remittances of capital, in either year or in both. On the other hand it is certain that the amount of invested capital left behind in the Colony, after these remittances is larger than before; so that the capital is fully accounted for. Well then, what is done with this so-called capital remitted? The answer is, exactly what would be done with profits. The inference from these facts is that the moneys remitted were in fact profits, and, in the absence of anything to the contrary, profits of the year in which they were remitted.

Questions put :—

That the Judgment appealed from be reserved.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.