NO. 1115—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
15TH AND 18TH OCTOBER, 1937

COURT OF APPEAL—16TH AND 17TH MAY AND 2ND JUNE, 1938

HOUSE OF LORDS—22ND, 23RD AND 26TH JUNE AND 27TH JULY, 1939

BARNES (H.M. INSPECTOR OF TAXES) v. HELY-HUTCHINSON[1]

Income Tax, Schedule D, Case V—*Foreign possessions—Preference shares in company abroad owning ordinary shares in British companies—Preference dividend partly paid out of dividends on such shares—Double taxation.*

The Respondent owned a number of preference shares, carrying a fixed cumulative dividend, in an Indian company which itself owned ordinary shares in two British companies. The preference dividend paid by the Indian company in June, 1931, *was paid partly out of taxed dividends received on its shares in the British companies in the year* 1930–31, *and partly out of certain other income which had not borne United Kingdom Income Tax. The said dividend was paid by the company, without deduction of Income Tax, by warrants sent direct to the shareholders.*

On appeal against an assessment to Income Tax under Case V *of Schedule D for the year* 1932–33 *which included the full amount of the preference dividend so received by him, the Respondent contended that such part of the said dividend as was paid out of profits and gains which had already borne United Kingdom Income Tax could not again be subjected to the same tax.*

Held, *that the Respondent had been correctly assessed under Case* V *of Schedule D upon the full amount of the preference dividend received by him from the Indian company.*

CASE

Stated by the Commissioners for the General Purposes of the Income Tax for the City of London pursuant to the provisions of Section 149 of the Income Tax Act, 1918, for the opinion of the High Court of Justice.

1. At a meeting of the said Commissioners held on the 18th day of May, 1936, at Gresham College, Basinghall Street, in the said City, John Walter Hely-Hutchinson, of 7, Mincing Lane, London, E.C.3. (hereinafter called " the Respondent ") appealed against an

[1] Reported (K.B.) [1938] 1 K.B. 469; (C.A.) [1939] 1 K.B. 93; (H.L.) [1940] A.C. 81.

assessment to Income Tax made upon him under the Rules applicable to Case V of Schedule D of the Income Tax Act, 1918, for the year ended the 5th day of April, 1933, in the sum of £6,045.

2. The Respondent is the beneficial owner of 525 preference shares of Rs.1,000 each in George Henderson & Co., Ltd. (hereinafter called " the Company ") which is a company registered in Calcutta. The said preference shares are entitled to a fixed cumulative dividend at the rate of 8 per cent. per annum. In addition to its preference capital the Company also has issued ordinary share capital. The Company is the beneficial owner of a large number of ordinary shares in two companies registered in England, *viz.*, The Barnagore Jute Factory Company, Ltd. and the Hunwal Tea Co., Ltd. (hereinafter called " the British Companies "). The whole of the profits of the British Companies are assessed to United Kingdom Income Tax.

A copy of the Memorandum and Articles of Association of the Company is attached hereto, marked " A ", and forms part of this Case[1].

3. During the year ended the 5th day of April, 1931, the Company received dividends upon its ordinary shares in the British Companies amounting in Indian money to Rs.1,15,143. These dividends were paid out of profits of the British Companies which had borne United Kingdom Income Tax and such tax was deducted by the British Companies from the dividends in question.

4. The said dividends were employed by the Company together with other income which had not borne United Kingdom Income Tax for the purpose of paying a dividend of 8 per cent. upon the preference shares of the Company. It was agreed at the hearing that 44·12 per cent. of the said preference dividend was paid by the Company out of the said taxed dividends received from the British Companies.

5. The said dividend upon the preference shares of the Company was paid in full without any deduction for Income Tax on the 22nd day of June, 1931, and the Respondent received as and for the dividend due to him the sum of Rs.42,000. The said dividend was paid by the Company by means of dividend warrants sent direct to the shareholders without the intervention of any paying agents.

6. Included in the assessment now under appeal is the full amount of the dividend so received by the Respondent.

7. It was contended on behalf of the Respondent that such part of the said dividend as was paid out of profits and gains which had already borne United Kingdom Income Tax (*viz.*, 44·12 per cent.) could not again be subjected to the same tax and that the assessment should be reduced accordingly.

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[1] Not included in the present print.

8. It was contended on behalf of the Appellant :—

(1) That the Respondent was properly assessed under Rule 1 of Case V on the full amount of the preference dividend received by him from the Company.

(2) That the assessment on the Respondent did not involve "double taxation" in that the Respondent and the Company were respectively chargeable as separate entities in respect of separate sources of income.

(3) That the relief in *Gilbertson* v. *Fergusson*(1) was given on equitable grounds and that such grounds did not exist in the present case where the income assessed was in respect of a fixed preference as contrasted with an ordinary dividend.

(4) That there is no reason in law or in equity why a preference shareholder in a foreign company should not suffer taxation on the full amount of the preference dividend he receives since a preference shareholder in an English company would suffer taxation by deduction at the source.

(5) That the present case was distinguishable from *Gilbertson* v. *Fergusson* by reason of the fact that, in *Gilbertson* v. *Fergusson* the company paying the dividends was the same as the company whose English profits had already been taxed, whereas, in the present case, there was the interposition of the Indian Company having no direct trading connection with this country, and whose profits had not been directly assessed to United Kingdom Income Tax.

9. The cases of

Gilbertson v. *Fergusson*, 1 T.C. 501,

Neumann v. *Commissioners of Inland Revenue*, 18 T.C. 332,

Bradbury v. *English Sewing Cotton Co., Ltd.*, 8 T.C. 481,

were referred to.

The Commissioners held that they were bound by the decision in *Gilbertson* v. *Fergusson* and that the appeal must be allowed as regards such part of the dividend in question as was paid out of profits and gains which had already borne United Kingdom Income Tax.

The Inspector of Taxes thereupon expressed dissatisfaction with the finding of the Commissioners as being erroneous in point of law and required us to state a Case for the opinion of the High Court of Justice which we have stated and do sign accordingly.

JOHN PAKEMAN,
A. C. GLADSTONE,
ALAN GEOFFREY HOTHAM, } Commissioners for the General Purposes of the Income Tax for the City of London.

5th April, 1937.

(1) 1 T.C. 501.

The case came before Lawrence, J., in the King's Bench Division on the 15th and 18th October, 1937, and on the latter date judgment was given against the Crown, with costs.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Roland Burrows, K.C., and Mr. Terence Donovan for the Respondent.

JUDGMENT

Lawrence, J.—In spite of the able arguments which have been addressed to me on behalf of the Crown, I think that on the authorities as they stand the decision of the Commissioners was right.

The Respondent is a preference shareholder in an Indian company, and that Indian company is a shareholder in two English companies. The profits of those English companies have suffered taxation. The question which I have to decide is whether the Respondent can get the benefit of a proportion of the tax which has been paid by those English companies.

The dividends which the Indian company received from the two English companies formed 44.12 per cent. of the total profits of the Indian company, and the Respondent contends, and the Commissioners have held, that he is to be treated as having borne tax on 44.12 per cent. of the dividends which he actually received from the Indian company. That view has been adopted by the Commissioners, basing themselves upon the authority of the case of *Gilbertson* v. *Fergusson*, 1 T.C. 501, which was decided a long while ago. That was the case of the Imperial Ottoman Bank, which had an English agency in London which conducted a banking business in London and made profits in England. It was held that the English committee which acted as paying agent to English shareholders in the Imperial Ottoman Bank was entitled to the benefit of the tax paid upon the English profits in the proportion that those profits bore to the total profits of the Imperial Ottoman Bank. The Commissioners have held that that case is applicable to the present case. The contention for the English agency of the Imperial Ottoman Bank was that as the profits of the English agency were sufficient to pay the dividends payable in England, those dividends ought to be paid without any further tax being paid upon them; but the Court held that that was not so, but that those dividends were bound to suffer taxation except as to the proportion which the English profits bore to the total profits of the Imperial Ottoman Bank.

The Attorney-General and Mr. Hills have contended that *Gilbertson* v. *Fergusson* is at any rate not decisive of the present case and really throws no light upon it, in the first place because the point actually decided as to the proportion was conceded by the Crown;

(Lawrence, J.)

secondly, because in that case they were dealing with ordinary shareholders who suffer the taxation, as the Attorney-General and Mr. Hills contended, directly and alone as opposed to a preference shareholder, whose preference dividend, if it is paid to him in full, suffers no part of the taxation; and, thirdly, because the judgments in that case, in dealing with the question of double taxation, say that the principle against double taxation applies where it is the same person who suffers the tax, and that there it was the Ottoman Bank which suffered the tax and which was assessed, whereas here it is not the Respondent who suffered the tax but the English companies. Lastly, it is contended for the Crown that, in any event, in this case the connection between the Respondent and the companies which have paid the tax is too remote, and that whereas in the case of English companies the tax is assessed upon the company, in the case of the Imperial Ottoman Bank, referred to in *Gilbertson* v. *Fergusson*(1), it was assessed upon the agency and in the present case it is assessed, there being no agency, upon the particular shareholder, namely, the Respondent. Reliance was placed on behalf of the Respondent not only upon the case of *Gilbertson* v. *Fergusson* but upon the principle which has been enunciated in the House of Lords in *Neumann* v. *Commissioners of Inland Revenue*, 18 T.C. 332, by which decision it has been held that where the profits of a company have suffered Income Tax, those profits should not suffer further Income Tax in the hands of the company's shareholders. The Crown contend that that principle is applicable only to English companies by reason of the provisions of the Income Tax Acts which deal with English companies, and that no such principle applies to foreign companies.

In my opinion, *Gilbertson* v. *Fergusson* shows that a similar principle is applicable to foreign companies and that, notwithstanding the fact that the tax upon dividends from foreign companies depends upon Case V of Schedule D and upon Miscellaneous Rule 1, the principle against double taxation applies in the case of foreign companies so as to exempt shareholders in foreign companies from suffering double taxation. I can see no reason for distinguishing between a foreign company which pays its dividends through a paying agent and one which pays them direct to the shareholders; nor can I see any difference between a preference shareholder and an ordinary shareholder. The ordinary shareholder may be said, in one sense, to suffer the tax more directly than the preference shareholder, but the preference shareholder feels the burden of the tax as well, and the principle which underlies *Neumann's* case (a principle which appears to me to have been the governing principle for the decision in *Gilbertson* v. *Fergusson*) shows that it is not necessary that the individual

(1) 1 T.C. 501.

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shareholder should actually bear the whole burden of the tax; it is sufficient if the profits out of which the dividends are paid have suffered tax. That is the principle of *Neumann's* case[1]. In this present case the profits of the Indian company, George Henderson & Company, Limited, in so far as they consist of the profits of the two English companies, have suffered English Income Tax just as the profits of the Imperial Ottoman Bank English agency had suffered English Income Tax, and, therefore, in the proportion that the said profits bear to the total profits of George Henderson & Company, Limited, I am of opinion that the Respondent, the individual shareholder in George Henderson & Company, Limited, is entitled to relief from taxation upon his dividends.

For these reasons I am of opinion that the decision of the Commissioners was right, and the appeal will be dismissed with costs.

Mr. Roland Burrows.—If your Lordship pleases.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Sir Wilfrid Greene, M.R., and Scott and Clauson, L.JJ.) on the 16th and 17th May, 1938, when judgment was reserved. On the 2nd June, 1938, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Roland Burrows, K.C., and Mr. Terence Donovan for the Respondent.

JUDGMENT

Sir Wilfrid Greene, M.R.—This is an appeal by the Inspector of Taxes against a decision of Lawrence, J., affirming a decision of the General Commissioners for the City of London, who had allowed an appeal by the Respondent. The assessment in question was made upon the Respondent under the Rules applicable to Case V of Schedule D of the Income Tax Act, 1918, for the year ending 5th April, 1933, in the sum of £6,045. The Respondent owns certain 8 per cent. cumulative preference shares in an Indian company called George Henderson & Co., Ltd., whose issued capital comprises both preference and ordinary shares. That company owns a large number of ordinary shares in two British companies, the whole of whose profits are assessed to United Kingdom Income Tax. During the year ending the 5th April, 1931, the Indian company received dividends upon its shares in the British companies. The dividends were paid out of profits of the British companies which had borne United Kingdom Income Tax, and tax was deducted from the dividends when they were paid.

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(1) 18 T.C. 332.

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On the 22nd June, 1931, the Indian company paid the dividend on its preference shares. It was paid in full without deduction of tax by means of rupee warrants sent direct to the shareholders (including the Respondent) without the intervention of any paying agents.

The assessment made upon the Respondent was on a sum which included the sterling equivalent of the full amount of his dividend. The Respondent claimed that, as part of the dividend (agreed at 44.12 per cent.) was paid out of the taxed dividends received by the Indian company from the British companies, that part should not again be subjected to United Kingdom Income Tax in his hands and that the assessment should be reduced accordingly. This claim was, as I have said, successful before the General Commissioners and Lawrence, J.

Questions which deal with the operation of the Income Tax Acts in relation to the dividends distributed by companies are usually troublesome. The present question is no exception to the rule. But in my opinion it has been correctly answered by the General Commissioners and Lawrence, J. In the case of a company whose taxable income is derived exclusively from British sources it is the company that is taxed, not the shareholders. If the income is derived from a trade or business it is taxed as the company's income, and when it is distributed in the form of dividend to the shareholders they are regarded, in effect, as receiving their shares in profits which have already been subjected to tax (*see* Rule 20 of the All Schedules Rules). The company may, if it pleases, deduct from each dividend which it so pays a sum which in theory (but not necessarily in practice) represents the share of the tax borne by the company which is referable to that dividend. The shareholder is in effect receiving a share in a fund out of which the Crown has already taken the tax to which it is entitled. The fact that the profit is, so to speak, passed through the company before it emerges in the shape of dividend is not regarded as creating a new income for tax purposes and, accordingly, the shareholder is not liable to assessment in respect of his dividend. If the company holds shares in another company whose profits are subject to tax and receives dividends on those shares the position is more complicated, but the principle to be applied is the same. The holding company is not taxable in respect of those dividends any more than an individual shareholder would be taxable; and when, in its turn, it distributes a dividend to its shareholders which is referable, in whole or in part, to the dividends which it has received, they in their turn are not liable to be assessed any more than they were in the case of dividends paid out of trading profits. They are in this case, too, regarded as receiving their share of a fund which has already borne tax—and that notwithstanding that the holding company is, so to speak, interposed between them and

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the company which originally earned the profits and paid the tax. In fact, the Revenue is not entitled to put its hands into the same bag more than once and the bag is regarded as keeping its identity until its contents are finally divided. The simile of the bag is, of course, inaccurate in that a particular dividend cannot necessarily be related to a particular profit, while the provisions for deduction of tax from dividend have become quite artificial. But for present purposes the simile is not, I think, a misleading one.

I will now take the case of a foreign company part of whose income is subjected to British Income Tax. Let it first be assumed that the company's share capital consists entirely of ordinary shares, that it carries on a trade here the profits from which are assessable to tax under Schedule D and that it also holds foreign investments the income from which is not subject to tax. It pays a dividend in part out of the profits of its trade and in part out of the income received from its investments. In so far as the dividend is referable to the profits of the trade it is paid out of a fund which has already borne tax, and the amount available for distribution has been diminished by the amount of the tax. It appears to me that on principle the Revenue is not entitled to assess the British shareholder to tax in respect of so much of his dividend as is referable to the profits of the trade. If it could it would be putting its hands into the same bag twice and there would be double taxation. I see no ground for saying that a new income, taxable in the shareholder's hands, comes into existence when the dividend is paid. Here, just as in the case of the wholly British company first mentioned, he is receiving a share of a fund which has already borne tax. In other words, the bag remains the same.

I cannot see that any different result ought to follow if the position is reversed and the foreign company carries on a trade abroad, the profits of which are not subjected to tax, and receives dividends from an English company. It is true that in this case the foreign company is not liable to direct assessment, as was the case with the foreign company which carried on a trade here. It is also true that the English company from which it receives its dividends has been taxed on its profits in its own right and not in right of its shareholders. Nevertheless, the foreign company receiving the dividend has suffered the burden of tax in that the fund of profits out of which the dividend is paid has been struck with tax. In respect of those profits the Revenue has received the tax to which it is entitled, and it is not, in my opinion, entitled to follow them into the hands of the ultimate recipient and tax them again in his hands.

If the view which I have expressed is correct, it disposes of the main argument of the Crown, which was to the effect that, in the case of a foreign company, a new income arises when its dividend is received by a British shareholder and that this new income is

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taxable in his hands without regard to the tax history of the fund out of which the dividend is paid. In other words, the Crown claims that, in the case of a foreign company, the bag must be treated as losing its identity and that what would amount to double taxation in the case of a British company and its shareholders is unobjectionable when the company is a foreign one. I can find no support in principle or in authority for this view.

The alternative argument advanced on behalf of the Crown was directed to the special case of the preference shareholder. It was said that, whatever may be the case of an ordinary shareholder, the preference shareholder who receives his dividend in full has not suffered any diminution of his dividend by reason of British taxation and that therefore he ought to be liable to be assessed on the full amount of his dividend. In my opinion this argument is unsound. The preference dividend, like the ordinary dividend, is paid out of a fund in respect of which the Revenue has received its tax. The way in which the balance of that fund is divided up among the shareholders is a domestic matter for them, and the fact that a certain class of shareholder is entitled to receive out of it a fixed amount before the other class can claim anything does not appear to me to alter the position in any way. It simply means that as between the two classes of shareholders the burden of the tax is thrown upon the ordinary shareholder but this does not, in my judgment, give the Revenue any greater rights.

The General Commissioners and Lawrence, J., held that the case was covered by the principles laid down by this Court in the year 1881 in *Gilbertson* v. *Fergusson*, 7 Q.B.D. 562(1). That case was decided at a time when the application of the Income Tax Acts in the matter of dividends had not been fully worked out, and some of the observations made may require qualification in the light of subsequent decisions. But the correctness of the result, so far as it is relevant for present purposes, was then admitted by the Revenue and we were informed at the Bar that it has regularly been followed in practice. There are two real differences and one apparent difference between that case and the present. The apparent difference lies in the fact that the same persons, namely, the London agents of the Imperial Ottoman Bank, were assessed in respect both of its English profits and of the dividends paid to English shareholders. But they were so assessed in different capacities, and the same result must have followed if the dividends had been remitted direct to the English shareholders from Turkey and they had been subjected to direct assessment, as was admitted by Mr. Dicey, who argued the appeal for the Crown (*see* page 567(2)). The two real differences are : first, that there was a direct assessment on the Bank through its London agents in respect of the Bank's English profits, which is not the case here,

(1) 1 T.C., 501. (2) *Ibid.*, at p. 515.

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and, secondly, that the shares were ordinary and not preference shares. I have already given my reasons for thinking that these two differences do not affect the result, and, in my opinion, the principles laid down in that case apply to the present.

The appeal is accordingly dismissed with costs.

Scott, L.J.—The question in this appeal is one of general importance—whether a shareholder resident in England and taxable under Case V in respect of interest or dividends paid him by a foreign company, itself not liable to assessment to British Income Tax, is entitled to relief from the gross figure of his assessment on proof by him that the source of the company's income was wholly or in part dividend on shares owned by it in British companies which were liable to and had deducted tax from the dividend so paid.

It is contended by the Respondent that unless such relief is given there would be double taxation on what is, throughout its distribution, one and the same income, and that although there is no express statutory prohibition of such double taxation there is a principle of Income Tax law which forbids it.

I agree with my two colleagues, whose judgments I have had the privilege of reading, and with the Commissioners and Lawrence, J., that there is such a principle and that our judgment must be for the Respondent.

The material facts in the appeal are these: (1) two British companies, A and B, resident in England, and taxable here upon the profits of their respective trades, earned profits and in the year 1930–31 were assessed to tax upon their assessable incomes; (2) in distributing dividends to the holders of their ordinary shares they deducted tax; (3) George Henderson & Co., Ltd., a company carrying on business in India but not in England (which I will call the Indian company) was a shareholder in each of the two companies and received substantial dividends from which tax had been deducted; (4) it had one other source of income, *viz.*, trade profits earned in India, the ratio between the two for the relevant period being: dividends from companies A and B 44.12 per cent., and Indian profits 55.88 per cent.; (5) the Respondent is a holder of 8 per cent. preference shares in the Indian company and was paid by it his dividend in full without deduction; (6) the Crown claimed tax under Case V of Schedule D upon the whole of this dividend, but the Respondent contended that to the extent of 44.12 per cent. his income received from the Indian company had already suffered British Income Tax by deduction and that to that extent he was entitled to relief.

As support for his contention he relied on *Gilbertson* v. *Fergusson*, 7 Q.B.D. 562 and 1 T.C. 501. The Commissioners upheld his contention, holding that they were bound by *Gilbertson's* case.

(Scott, L.J.)

Gilbertson's case[1], although helpful on the general principle, is not conclusive on the present appeal, because the foreign company there, the Ottoman Bank, had a branch business in England, where it earned a large part of its profits and was directly taxed upon them under Schedule D: and the dividends paid by the company to shareholders resident in England were at least partly attributable to that English income. There is a statement of what I think is the true principle in a passage in the judgment which Clauson, L.J., is about to deliver; and to the language of his statement I respectfully subscribe. The broad principle is that the Income Tax law of to-day still thinks of a company as a body of persons, and of the shareholders as corporators having a direct interest in the capital and income of their corporation, almost as if the Income Tax Act had been passed in 1818, and not 1918. A consequence of this legislative outlook is that dividend is really dividend—a division of the profits; and when a payment is made to shareholders it is a mere distribution for which the shareholders incur no tax liability. If the company is in respect of the dividend amenable to British Income Tax law, having paid tax for itself and its corporators, it naturally is given the right of deducting each corporator's share of the tax. If the distribution instead of being direct is made indirect by the intervention of a foreign holding company not amenable to British Income Tax law, and the foreign company, as a shareholder, receives a distribution of tax-paid profits from English companies in which it holds shares, and then, not having any other income, passes on what it receives, less only expenses, reserves, etc., to an English shareholder, the process is still, in essence, distribution of the income of the British operating companies, although, so to speak, there are two pipes instead of one through which the stream of profits has to flow, and there has been some leakage perhaps at their junction. The onus of proof, however, must always rest upon the British shareholder who is assessed under Case V to prove that the dividend he has received did come directly or indirectly from a British source which had paid tax on the income distributed. But if he can prove that fact the principle, in my opinion, applies.

The principle was considered in *Gilbertson's* case and further in *Bradbury* v. *English Sewing Cotton Co., Ltd.*, 8 T.C. 481, especially by Lord Phillimore at pages 519 and 520, but it is dealt with fully in the opinions in the House of Lords in *Neumann* v. *Commissioners of Inland Revenue*, 18 T.C. 332, and especially those of Lord Tomlin at pages 358 to 362, and Lord Wright at pages 368 to 371. It is unnecessary, in my view, to add anything further, as I entirely agree with my colleagues' judgments.

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(1) 1 T.C. 501.

Clauson, L.J.—Mr. Hely-Hutchinson, whom I will call the taxpayer, is resident in England and holds certain 8 per cent. cumulative preference shares in an Indian company. The Indian company is in a position to pay and has paid his dividends in full. On the footing that these dividends are (as they admittedly are) income arising from possessions out of the United Kingdom, he has been assessed to tax upon that amount. It appears that 44.12 per cent. of the Indian company's income arises from investments in shares in English companies, the dividends upon which it of course receives less British tax. The rest of its income is earned in India and is not amenable to British taxation. It is agreed that, if these two classes of income are treated as applied *pro rata* towards the provision of the dividends on the taxpayer's shares in the Indian company, those dividends are provided to the extent of 44.12 per cent. from the taxed dividends and as to the balance out of the Indian company's untaxed income. The taxpayer admits that he must pay tax on so much of his dividends as are, in this sense, provided out of the Indian company's untaxed income : but he claims that he must be treated as free of liability to tax on such part of his dividends as is, in this sense, provided out of the portion of the Indian company's income which has already suffered British tax.

The taxpayer cannot point to anything in the Acts which modifies in his case the clear charge *prima facie* falling on him under Schedule D, Case V; but he says, and says rightly, that the Court recognises the principle that the Acts do not impose double taxation, and he says that if he be called upon to pay tax on that part of his dividends which is (by the process I have indicated above) traced to its origin in the taxed dividends received by the Indian company, this principle will be infringed.

The principle is stated by Brett, L.J., in *Gilbertson* v. *Fergusson*, 7 Q.B.D. 562, at page 570(1), as follows : " Now it may " be true that there are no specific words in this statute which " point out that the Government are not to receive the tax twice " over, but it would be so clearly unjust and obviously contrary " to the meaning of the statute that the Government should have " the tax payable twice over by the same person in respect of the " same thing, that I should say it was a necessary implication " that that could not be right ".

The first matter for investigation is whether, if tax be paid by the taxpayer as claimed by the Crown, tax will be paid more than once in respect of some part of the taxpayer's income. The Indian company suffered British tax on part of its income, which is the fund which provides the taxpayer's dividend : and the question which arises is whether this payment can be said to be a payment of British tax in respect of the dividend paid to the taxpayer out

(1) 1 T.C. 501, at p. 518.

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of that income. An employer pays tax on his income and out of the fund which has so borne tax he pays wages to his chauffeur. It obviously cannot be suggested that to tax the chauffeur on his wages is to infringe the principle against double taxation. The employer's income is one taxable subject : the chauffeur's income is another, though it is true that the chauffeur's wages are found out of the employer's income. In the same way, it is suggested that the Indian company's income arising from its shares in English companies is one subject of taxation, and that the preference dividend paid to the taxpayer is another and separate subject of taxation, though it is true that a part of the latter is provided out of the former.

If this suggestion be well founded the Crown's claim will be justified.

There is, however, a familiar principle, enshrined in Rules 1 and 20 of the All Schedules Rules and fully explained in the speeches of the learned Lords in *Neumann* v. *Commissioners of Inland Revenue*, [1934] A.C. 215(1), that for the purposes of the Acts the profits or gains of a company, even though it be a corporation and as such an entity separate from its shareholders, are to be treated as the profits or gains of the members of the corporation, with the result that taxation of the company's profits or gains " franks " the dividends paid out of them to the shareholders from further tax. Machinery is provided by the latter part of Rule 20 which enables those who administer the concerns of the company to throw the tax upon the shareholders by deduction from the dividends, but that machinery is permissive only. Whether the company deducts tax from the dividend or not, no further tax can be charged by the Crown against the shareholder in respect of the dividend : in his hands it is " franked " from tax, since the profits of the " body " of persons " of whom he is one have already borne tax. The dividend is regarded as merely the individual shareholder's part of the profits or gains of himself and the other members of the " body of persons ", and is not a taxable subject separate and apart from those profits or gains. If this be a true view of the position it follows that in the present case, tax having already been paid by the Indian company (by suffering deduction) on 44.12 per cent. of the dividend in respect of which tax is being claimed, tax will be paid twice over upon that portion of the dividend if the Crown's claim be allowed.

There are, however, certain points to which I must refer. It is too late to argue that the phrase " body of persons " in Rule 20 applies only to a body of persons associated together under the law of this country : it is well settled that the regulation applies to a " body of persons " associated under foreign law, if chargeable to

(1) 18 T.C. 332.

(Clauson, L.J.)

tax under the Income Tax Act. It may be suggested that an Indian company not directly charged to tax under the Act but merely in receipt of income from which British tax has been deducted is outside Rule 20. I can see no reason for differentiating between the position of a " body of persons " the subject of direct assessment and a " body of persons " reached by way of deduction of tax, and accordingly I see no escape from the conclusion that the Indian company and its shareholders are, in respect to any question of taxation under the Income Tax Act, a " body of persons " within the meaning of Rule 20. It may be and indeed has been suggested that no body of persons comes within the meaning of Rule 20 which is so associated, *e.g.*, under the laws of a foreign State, as to be precluded from enforcing against such of its shareholders as are not subject, by residence or otherwise, to the laws of this country, the right of deduction of tax conferred by Rule 20. I doubt whether, as the authorities stand, such a construction of the regulation is open to this Court : but however that may be, I can feel no doubt that the suggestion cannot be supported. The machinery of Rule 20 is aimed at enabling the tax on a " body of persons " to be adjusted as between the body and its constituent members, but I can find no indication in the Rule that it is to be inapplicable to a " body of persons " because the machinery of adjustment may, owing to the operation of foreign law, happen to be unenforceable as against some of the constituent members.

There is still one further point for consideration. If the taxpayer succeeds in his contention, the result, in this particular case, does undoubtedly follow that the taxpayer himself bears only 55.88 per cent. of the full tax on his dividend, so that he, at all events, cannot say that he has suffered double taxation in his own pocket : indeed, he personally has suffered less than full taxation. Owing to the facts (*a*) that the Indian company's profits are sufficient to pay his dividend in full, and (*b*) that as between himself and his fellow shareholders, owing to the fact that the Income Tax Act is not law in India, the latter cannot throw on him his share of the tax which the funds of the company have borne in respect of the English assets, he has been fortunate enough to be able to escape part of the tax so far as concerns his own pocket : but the fact remains that the Crown will, in the sense already explained, have the full tax, though not more than the full tax, on the dividend which he receives. As I understand the " principle " against double taxation ", it is a principle which operates against the Crown and not a principle which can be invoked against the taxpayer. It does not lay down that every taxpayer shall bear tax on all his income, and if he does so bear tax he cannot be charged with more. It is grounded on the position that Parliament has granted the Crown a tax payable once, and not more than once, in respect of the same subject of taxation, even if the taxpayer

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who enjoys the subject of taxation has been so fortunate as to have had some portion of his tax provided to the Crown from some source other than his own pocket.

In deference to the course which the arguments took in this Court, I have thought it right to express my judgment with some elaboration; but my reasons do not, I think, differ in substance from those which have been far more succinctly expressed by the learned Judge below.

In my judgment, the appeal should be dismissed.

Mr. Hills.—My Lord, my clients desire leave to appeal in this case.

Sir Wilfrid Greene, M.R.—Mr. Hills, in this case the General Commissioners, the learned Judge and this Court unanimously have come to a certain conclusion. Nevertheless, the case is one the importance of which to the Crown we readily appreciate. On the other hand, it is not a case where it would, in our judgment, be right that this matter of principle, which is of great interest to the Crown, should be litigated to the House of Lords at the expense of one taxpayer. Therefore, subject to anything that you may have to say, we should follow a course which is not uncommon in cases of this kind, of giving leave upon terms that, in any event, the Crown should pay the solicitor and client costs of the taxpayer and, of course, should not ask for the Orders as to costs below in any way to be disturbed.

Mr. Hills.—I am quite willing on behalf of my clients to consent to those terms.

Sir Wilfrid Greene, M.R.—It is a proper case for those terms.

Mr. Hills.—If your Lordship pleases. I am told that we have paid the costs below. We have agreed below before.

The Crown having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Lords Atkin, Russell of Killowen, Macmillan and Wright) on the 22nd, 23rd and 26th June, 1939, when judgment was reserved. On the 27th July, 1939, judgment was given unanimously in favour of the Crown, reversing the decision of the Courts below.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Roland Burrows, K.C., and Mr. Terence Donovan for the Respondent.

JUDGMENT

Lord Atkin (read by Lord Russell of Killowen).—My Lords, this is an appeal from the Court of Appeal affirming a decision of Lawrence, J., who dismissed an appeal from the Commissioners

(Lord Atkin.)

for the General Purposes of the Income Tax for the City of London, who had allowed an appeal by the Respondent against an assessment for Income Tax. It will thus be seen that the Inspector of Taxes has been held to be wrong all along the line. Nevertheless, I venture to think that he is right and that his appeal should be allowed.

The Respondent is the holder of 525 preference shares of Rs.1,000 each in George Henderson & Co., Ltd., entitling the holder to a fixed cumulative dividend at the rate of 8 per cent. per annum. The company is registered in Calcutta and has also issued ordinary share capital. It is the holder of ordinary shares in two companies registered in England, the Barnagore Jute Factory Co., Ltd., and the Hunwal Tea Co., Ltd. The whole of the profits of these British companies were assessed to British Income Tax, and when they paid dividends to George Henderson & Co., Ltd. (the Indian company) they deducted the appropriate amount of tax according to Rule 20 of the Miscellaneous Rules applicable to all Schedules. The Indian company also received income which had not suffered deduction for British Income Tax; the proportion of taxed to untaxed income for the year in question was for this case agreed to be 44.12 to 55.88. The Respondent, on 22nd June, 1931, was paid as dividend upon his preference shares the sum of Rs.42,000. It was paid to him direct by the company and without any deduction for Income Tax. He was assessed under Rule 1, Case V, on the full amount of the dividend. He contended that such part of the dividend as was paid out of profits and gains which had already borne British Income Tax (*i.e.*, 44.12 per cent.) could not again be subjected to British Income Tax and that his assessment should be reduced accordingly. It is this contention which has been successful in the Courts below.

The position of a shareholder in a foreign company, so far as Income Tax is concerned, is entirely different from that of a shareholder in a British company. So far as the latter is concerned he is not liable to be charged or assessed for Income Tax on his dividends at all, though he is liable in respect of them for Sur-tax. The position of such a shareholder has been discussed in the case recently heard of *Cull* v. *Commissioners of Inland Revenue*[1], and need not here be further expounded. But the shareholder in a foreign company is charged under Schedule D, *i.e.*, in respect of the annual profits or gains arising to any person residing in the United Kingdom from any property whatever, whether situate in the United Kingdom or elsewhere, and specifically under Case V: "Tax in respect of income arising from possessions out of the "United Kingdom", and the first Rule applicable to Case V: "The tax in respect of income arising from stocks, shares or rents "in any place out of the United Kingdom shall be computed on

(1) See p. 603 *ante*.

(Lord Atkin.)

"the full amount thereof on an average of the three preceding "years, as directed in Case I, whether the income has been or will "be received in the United Kingdom or not . . . .". (The provision as to the three years' average has been altered by Section 29 of the Finance Act, 1926, by substituting the amount of the preceding year.) It is obvious, therefore, that as far as the Statute is concerned, the Respondent was chargeable on the whole dividend received, and it is not suggested that his claim to an abatement rests upon any statutory provision. His case depends upon a decision of the Court of Appeal in *Gilbertson* v. *Fergusson*, 5 Ex.D. 57, and 7 Q.B.D. 562(1). In that case the persons charged were members of the English committee of the board of directors of the Imperial Ottoman Bank, a Turkish corporation which carried on business in this country and abroad. The management of this business in this country was entrusted to the English members of the general committee of management, who would correspond to the board of directors. The Bank earned profits both in this country and abroad, and on the profits made in this country the Bank was charged with Income Tax through the English committee, who were, in fact, the parties assessed. Dividends were declared out of the total profits of the Bank, and the dividends due to British shareholders were paid to them by the English committee. In respect of dividends so paid the English committee were assessed to Income Tax under the provisions of the Income Tax Act, 1842, Section 2, and the Act of 1853, Section 10, which provided that all persons entrusted with the payment of dividends were to pay the duties on the dividends on behalf of the persons entitled to the same out of the moneys in their hands. In respect of this last assessment the London committee complained that they should not be assessed upon the whole of the dividends paid by them to the English shareholders but only on a proportionate part, *viz.*, the proportion that the profits made abroad bore to the profits made in England : for, they said, on the profits made in England tax had already been paid to the Crown. I have omitted other subsidiary issues which do not bear upon the point in question. The majority in the Exchequer Division, Barons Huddleston and Pollock, Chief Baron Kelly dissenting, and the Court of Appeal, Bramwell, Brett and Cotton, L.JJ., accepted the view of the London committee that the assessment should be proportionately reduced. The reason for the decision appears from the judgment of Brett, L.J., 7 Q.B.D., at page 570(2) : "By the statute the "Government are entitled to receive the income tax upon all the "profits made in respect of the business carried on in England, "and also beyond that on all dividends paid in England, whether "in respect of profits made in England or in Turkey. Now it may "be true that there are no specific words in this statute which

(1) 1 T.C. 501. (2) *Ibid.*, at pp. 517/8.

(Lord Atkin.)

" point out that the Government are not to receive the tax twice " over, but it would be so clearly unjust and obviously contrary " to the meaning of the statute that the Government should have " the tax payable twice over by the same person in respect of the " same thing, that I should say it was a necessary implication that " that could not be right ". Cotton, L.J., at page 572 says(1): " It must be conceded that if there are any shareholders who reside " in England and receive dividends there they are chargeable under " the Act, and are bound to make a return and pay the tax on " what they so receive. There is no exception in their case in " respect of so much of their dividends as is attributable to or " arising in respect of profits made in England, but I take it there " would be this implied exception, that when duty is charged as " against the person in one part of the Act he is not to be charged " again under another part applying no doubt in terms to him, " but intended to include those who have not been charged under " the preceding part ".

It will be seen that there, as in the present case, the shareholders were liable to pay tax on foreign dividends, though in that case the tax was paid "on behalf of" them by the persons entrusted with money to pay the dividends. As far as the company had been taxed on its profits made in England it seems to me plain that the reasoning proceeded on the theory then prevailing that the company paid tax on its profits on behalf of its shareholders, a theory which, as was pointed out in *Cull's* case(2), no longer can be maintained. But it seems equally plain that the exception which the Courts were able to imply was based upon this very ground—the injustice that would prevail if the tax were payable twice over by the same person in respect of the same thing. Whatever the grounds of the decision, it has stood to the present day, and the Attorney-General did not seek to dispute its validity in facts such as those found in that case. There has been much legislation in Income Tax matters since the date of its decision, and this House would hesitate long in these circumstances before infringing a decision of such long standing and so often acted upon. But does the decision affect the present case? In that case, no doubt, as in this, the shareholder was being charged in respect of dividends in a foreign company. In that case the foreign company had been directly charged with Income Tax on its English profits. In the present case the foreign company had not been and could not be charged with Income Tax on its dividends derived from the British companies. The fund out of which profits had been declared by the British company had no doubt been diminished by the incidence of the British tax; and the Indian Company had suffered the deduction from its dividends in respect of " tax " which the British

(1) **1 T.C. 501, at p. 519.** (2) *See* p. 603 *ante*.

(Lord Atkin.)

companies were entitled to make if they chose, the nature of which I have mentioned in *Cull's* case[1]. I think that this distinction makes it difficult to apply the decision in *Gilbertson* v. *Fergusson*[2] now to the case of ordinary shareholders in the Indian company. Where does the inquiry end in the case of a shareholder in a foreign company? If he can inquire which of the dividends received by that company had suffered British tax, can he go on to inquire what proportion of those dividends were derived from income that had suffered tax and so *ad infinitum*? and what fraction of a fraction of a fraction has eventually to be calculated and verified?

But even if the implied exception could be adopted for the ordinary shareholder, I am at a loss to understand any reasons for its applying to a preference shareholder; or in what possible sense it can be said that to him an injustice has been done of making tax " payable twice over by the same person in respect of the same " thing "[3]. The preference shareholder who receives his full dividend has suffered nothing directly or indirectly. That a larger sum of profits out of which he receives his dividend is diminished by tax is nothing to him as long as there is sufficient left to pay him the sum which the company has contracted to pay. I can see nothing either unjust or contrary to the Statute in exacting tax for the first time from him; and I think that his claim for a proportionate abatement fails.

I should add that I am not myself prepared to accept the view that some implied exception arises where a " fund " is taxed, a principle which appears to have found favour in the Court of Appeal and was much pressed before us on behalf of the Respondent. Funds are not taxed; the analogy of one or more bags[4] into which the Inland Revenue inserts its fingers seems to me, with respect, to be inaccurate. Persons are charged in respect of profits; and if they are to have the benefit of an implied relief from the plain words of the Statute, it appears to me that it must be shown to be unjust for those persons to be taxed, in other words, that either directly or perhaps indirectly they are being taxed twice. In the present case I think that the Respondent on his full assessment will only be taxed once.

I think therefore that the Orders of the Court of Appeal and of Lawrence, J., and the determination of the Commissioners for General Purposes should be set aside and that the original assessment in the sum of £6,045 should be restored. In accordance with the terms imposed when the Court of Appeal gave leave to appeal to your Lordships' House, the Appellant should pay the costs here as between solicitor and client.

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(1) *See* p. 603 *ante*. (2) 1 T.C. 501. (3) *Ibid.*, at p. 518. (4) *See* p. 662 *ante*.

Lord Russell of Killowen.—My Lords, I have been given the opportunity of considering the opinion which I have just read, and also the opinion about to be delivered by my noble and learned friend Lord Wright. They indicate exactly the views which I entertain on the subject of this appeal. It is merely from a desire to avoid repetition, and not from any want of respect for the Courts from which we are differing, that I content myself with concurring in the motion proposed without recording any separate opinion of my own.

Lord Macmillan.—My Lords, I also concur.

Lord Wright.—My Lords, the Respondent, a British taxpayer, has received Rs.42,000 or £3,150 remitted to him from India as dividends on 525 8 per cent. preference shares of Rs.1,000 each in an Indian company named George Henderson & Co., Ltd., resident and carrying on business in India. The company's profits for the year were as to 44.12 per cent. derived from dividends paid to the company by two British companies in which it was a shareholder. The profits of these companies had borne British Income Tax. The question in the appeal is whether the Respondent is entitled to relief to the extent of 44.12 per cent. in respect of British Income Tax on the sum which he has actually received from India. He has succeeded in that contention before the Revenue Judge and the Court of Appeal.

It would certainly seem strange that the Respondent who has received his 8 per cent. in full without any deduction either in England or in India, should not bear the same tax on this piece of income as any other taxpayer who is subject to British Income Tax. It is not suggested that there is any express statutory provision which reduces his liability. On the contrary, the words of Schedule D, Case V, seem to provide specifically to the contrary effect. Case V deals with tax in respect of income arising from possessions out of the United Kingdom. The preference shares in the Indian company are beyond question foreign possessions and the dividends are income arising from them. Hence, under Rule 1 of Case V, the tax in respect of that income is to be computed on the full amount thereof. It is not suggested that any deduction is permissible under Rule 1 of Case IV, in respect of Income Tax in the place where the income has arisen or on any other ground. The contention which has found favour with the Courts below is that as the income of the Indian company has borne British Income Tax to the extent of 44.12 per cent., in the sense that dividends in these companies were paid under deduction of British Income Tax, the preference dividends received by the Respondent must be held to have borne British Income Tax in the same proportion; otherwise, it is said that if it is now taxed in full it will be doubly taxed in the hands of the same person. The analogy

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is invoked of a shareholder in a British company who, according to the principle now well settled, is not taxed separately on his dividend to standard Income Tax. The dividend is deemed to have already borne tax, because tax has been paid on the company's profits as a whole. This rule is explained in *Neumann's* case, [1934] A.C. 215(1). Reliance is also placed on behalf of the Respondent on *Gilbertson* v. *Fergusson*, 7 Q.B.D. 562(2).

I do not think for several reasons that the analogy of dividends of an English company applies, and I see no sufficient ground in a case like the present for relieving the Respondent from what is expressed to be his liability under Case V. I think the dividends in question are properly to be regarded as individual pieces of income, received by him in this country. I apply here the words of Lord Phillimore in *Bradbury* v. *English Sewing Cotton Co., Ltd.*, [1923] A.C. 744, at page 770(3), which seem to me to describe accurately, at least in a case like this, the position of a British taxpayer who receives annual sums from foreign possessions, whether the foreign possessions are land or goods or shares in a foreign company. Lord Phillimore said as to the dividends : " The periodic sums which are so remitted to him must " be entered by him in his return, and are liable to assessment and " taxation, not because they are dividends on shares in foreign " companies, but simply because they are remittances from foreign " sources. The officers of the Crown do not know and do not care " what is the character of the sources from which the money " comes ". I do not stop to inquire if this statement is universally applicable, but it is accurate at least in regard to preference dividends from a foreign company such as those in question here. I cannot see any sufficient ground to justify such exemption or abatement as the Respondent claims. Preference dividends in an English company would generally be taxed by deduction under General Rule 20. The company is treated as having the right to deduct the appropriate tax because it is deemed to have franked the dividends in the hands of the shareholder by paying the tax on the totality of its own profits. If the English company does deduct tax under Rule 20, as would be the case if the preference dividends were declared under deduction of tax or tax free, the dividends would be free of standard tax and equally if the dividends were declared without deduction of tax. But the same rule or fiction cannot, in my opinion, be applied to the dividends on these preference shares in the Indian company which are remitted in full to this country. It cannot be said that the Indian company has paid English tax on its profits or any part of them in such a way as to frank the preference dividends, in whole or in part, in the hands of the English recipient. The rule or fiction has never been, nor can it be, extended so far. It is said, however, that the total fund

(1) 18 T.C. 332. (2) 1 T.C. 501. (3) 8 T.C. 481, at p. 519.

(Lord Wright.)

of the Indian company's profits has been reduced because the dividends from its shares in the two British companies have been paid under deduction of British tax. That is true, but that does not mean that the actual dividends paid to the Respondent were affected. All it means is that the divisible profits of the Indian company were proportionately less on that account. The Indian company did not directly pay any British tax or deduct anything on that account from the sums paid to the Respondent. All these matters seem to me to be entirely irrelevant to him. He got the full amount of the dividends just as if the dividends from the two British companies had not been paid under deduction of tax. If as a result of the deduction of British tax on the dividends received from the British companies by the Indian company, the latter's net profits had been reduced so as not to suffice to pay the Respondent his 8 per cent. dividends in full, the amount of the foreign remittances sent to him would, or might, be so much less. In that event, his liability for Income Tax under Case V would be proportionately reduced. It is contended that he is affected because the fund out of which his dividends are drawn is reduced to the extent that the Indian company's dividends on the shares in the British company were reduced by the deduction of British Income Tax. But the tax assessed on the Respondent is not levied on the Indian company's fund of profits but on the foreign income arising from them to the Respondent. That income is, in the facts of this case, completely unaffected. In truth, at least in a case like the present, the analogy of an English company is misleading. But even when what is being considered is the taxation of the dividends of an English company, it is not correct to say that it is anything but the shareholder's income as represented by the dividends which is taxed. The English company is taxed on the balance of its profits or gains, that is, on its income; the shareholder is taxed on his own income. The shareholder is never taxed on the company's fund of profits, but only on the dividend which comes to him in payment of the debt which is created when the company declares the dividend. The tax is, in every case, on the individual's income, not on a fund possessed by another person, the company, even though it is the fund of profits of that company from which the individual's income, or part of it, will be paid. The effect of General Rules 19, 20, and 21 is in no way inconsistent with this fundamental principle, nor is the rule according to which English dividends are not separately assessable to standard Income Tax. This principle must not be obscured by reason of the circumstance that, in the way already noted, the dividend is treated as franked by the tax paid by the company. The fund which is taxed in the hands of the company and the dividend which is declared by the company and paid to the shareholder are separate items for taxation law. It is only the latter which is the shareholder's income.

(Lord Wright.)

Notwithstanding the elaborate reasoning in the Court below, I cannot see any sufficient ground why the Respondent should escape the full tax on these preference dividends.

The case of *Gilbertson* v. *Fergusson* (*supra*[1])) has been much relied on in argument. I do not desire to express any final opinion on the exact decision in that case, which differed from the present, because it dealt, not with preference, but with ordinary shares, and also because the Ottoman Bank, which was the foreign company, had been trading in England and had been directly taxed on the profits of its English trading. The claim in the action was two-fold : first, a claim against the company represented by its London Agency in respect of the profits of its English trading, and secondly, a claim also against the London Agency, in respect of the moneys entrusted to them to distribute as dividends to English shareholders. In the latter claim, the Agency were in truth assessed as representing English shareholders. It was held that the latter assessment should be reduced in respect of so much of the dividends as represented profits arising within the United Kingdom. But in that case the dividends were ordinary, and not preference dividends, so that the amount of the ordinary dividends might, in fact or in theory, have been reduced by the English taxation. There is the further difference that the Indian company, unlike the Ottoman Bank, was not carrying on business in England and was not directly assessable or assessed in England. Its contribution to British taxation was indirect, in the sense that there had been the deduction made by the two British companies in paying their dividends to the Indian company. Thus it may be said that the Indian company occupied the same position for this purpose as did the English shareholders in the Ottoman Bank case[1], whereas the Respondent is one stage more remote. The Indian company is interposed between the Respondent and any question of British taxation on the Indian company's income. Logically, the process of tracing back profits of a foreign company to ascertain if they have, however remotely, indirectly borne British tax, should not stop at a single stage, but I need not point out the practical difficulties of going back beyond the simple stage at which the foreign company has directly borne British tax. It is not, however, necessary here to examine *Gilbertson's* case, in principle or in detail. It raises questions perhaps of great importance but questions not material to this appeal. Your Lordships were told that it has been followed in practice and it has certainly stood for many years. If it is ever, after this lapse of time, to be reconsidered, that should be done, when occasion arises, where the facts are analogous. In the present case the circumstances are so different that a decision can be arrived at without finally exploring *Gilbertson*.

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(1) 1 T.C. 501.

(Lord Wright.)

I may add in conclusion that I do not think this case involves any question of double taxation. In Lord Davey's words in *London County Council* v. *Attorney-General*, [1901] A.C. 26, at page 43 [1] "the Crown . . . . cannot demand the tax twice "over on the same income". Lord Davey illustrates the rule by instances[1] such as those of mortgagee or annuitant, where the owner of the property and the annuitant are entitled to the income between them and if the Crown receives tax from the owner on the whole income, it has no further claim against the annuitant on whose account the owner is deemed to have paid as well as on his own. The same principle has been said, but not accurately, to apply to the case of dividends of an English company, a matter to which I have adverted above. In *Gilbertson* (*supra*), at page 570[2], Brett, L.J., said that it would be clearly unjust and obviously contrary to the meaning of the Statute that the Government should have the tax payable twice over by the same person in respect of the same thing. Whatever the precise scope of the rule against double taxation, it must at least involve that it is the same income, that it is the same person in respect of the same piece of income that is being doubly taxed, whether directly or indirectly, and that the double taxation is by British assessment. In this case nothing of the sort can be predicated. The income in question is the amount of preference dividends received by the Respondent. That income which is the income of the Respondent has not been taxed in India. If it is now taxed in England there cannot, in my opinion, be said to be double taxation. The British tax which the Indian Company has indirectly borne on 44.12 per cent. of its profits has not, in my opinion, been borne by the Respondent in any sense.

With all respect to the distinguished Judges who have in this case taken a different view, I would allow the appeal.

Questions Put:

That the Order appealed from be reversed, except as to costs.

The Contents have it.

That the assessment in the sum of six thousand and forty-five pounds (£6,045) be restored, and that, pursuant to the terms on which leave to appeal to this House was granted, the Appellant do pay to the Respondent his costs in this House as between solicitor and client.

The Contents have it.

[Solicitors :—Solicitor of Inland Revenue; Sanderson, Lee & Co.]

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[1] 4 T.C. 265, at p. 299. **[2] 1 T.C. 501, at p. 518.**

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