VOL. XXXI—PART IX

No. 1446—High Court of Justice (King's Bench Division)—
7th and 8th July, 1948

Court of Appeal—18th, 19th and 26th November, 1948

House of Lords—10th, 11th and 15th May and 23rd June, 1950

Atkinson (H.M. Inspector of Taxes) *v.* Goodlass Wall & Lead Industries, Ltd. (1)

Income Tax, Schedule D, Case V—Dividends from foreign companies —Acquisition of a new source of income or of an addition to a source "in "any year of assessment"—Finance Act, 1926 (16 & 17 *Geo.* V, *c.* 22), *Section* 30, *proviso* (ii), *and Section* 29.

Between 1932 *and* 1936 *the Respondent Company acquired shares in an Argentine company. For some years it had also owned in other foreign companies shares producing dividends and had been assessed to Income Tax under Case* V *on the preceding year's basis for the year* 1942-43 *and previous years in respect of such dividends. In January,* 1943, *the Respondent Company for the first time received a dividend on its holding in the Argentine company, and an additional assessment was made for the year* 1942-43 *on the amount of that dividend, upon the footing that proviso* (ii) *of Section* 30 *of the Finance Act,* 1926, *applied. The Company appealed to the Special Commissioners who discharged the additional assessment.*

Held, *that the words "in any year of assessment" in proviso* (ii) *of Section* 30 *meant the year of assessment for which tax was being computed, and consequently the proviso did not apply.*

Case

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 18th July, 1946, Goodlass Wall & Lead Industries, Ltd. (hereinafter called "the Company") appealed against an additional assessment to Income Tax made under Schedule D, Case V, in the sum of £7,434 for the year ending 5th April, 1943.

2. The Company owns the whole of the issued ordinary shares in Goodlass Wall y Cia., a company incorporated in the Argentine Republic.

(1) Reported (K.B.) [1948] 2 All E.R. 653; (C.A.) [1948] 2 All E.R. 1095; (H.L.) [1950] 2 All E.R. 314.

These shares were issued as follows:—

1932	—	nominal value	$500,000
1933	—	„ „	$100,000
1934	—	„ „	$200,000
1936	—	„ „	$100,000

3.—The Company holds shares in other foreign companies from which it received dividends in 1942-43 and in the preceding year, and was assessed to Income Tax thereon. At the time when the assessment for 1942-43 was made in respect of the income from these shares the Inspector of Taxes did not know that the Appellant Company had received any income from the shares in the Argentine company.

4. In January, 1943, Goodlass Wall y Cia. declared a dividend for the first time on its ordinary shares. The sterling equivalent of the amount of this dividend received by the Company after deduction of Argentine income tax was £7,434. The assessment in question is intended to comprise this sum.

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

(1) that the assessment in respect of income arising from foreign possessions fell to be made on the amount thereof arising in the year preceding the year of assessment under Rule 1 of Case V, Schedule D, as amended by Section 29 (1), Finance Act, 1926, and Section 19, Finance Act, 1940;

(2) that in any year of assessment it was not permissible to separate a particular source of such income and assess the income therefrom separately under Section 30 of the Finance Act, 1926, unless the condition set out in Section 30, proviso (ii), Finance Act, 1926, was satisfied, that is to say, that in that year the particular source of foreign income is acquired;

(3) that the source of the income of £7,434 in respect of which the additional assessment was made for 1942-43 was not acquired in 1942-43;

(4) that the assessment should be discharged.

6. It was contended on behalf of the Inspector of Taxes:—

(1) that the income which arose in 1942-43 from the shares in the Argentine company was an addition to the Company's income from shares in foreign companies and was, within the meaning of Section 30, proviso (ii), of the Finance Act, 1926, an addition acquired in that year to a source of income chargeable under Case V of Schedule D;

(2) that the income from the shares in the Argentine company had in consequence under the said proviso to be computed separately and the provisions of proviso (*b*) to Sub-section (1) of Section 29 of the said Act applied;

(3) that under proviso (*b*) (i) of Sub-section (1) of the said Section 29 Income Tax in respect of the income from the shares in the Argentine company had to be computed as respects the year of assessment in which income first arose, namely 1942-43, on the full amount of the income arising within that year, namely £7,434;

(4) that, even if the shares in the Argentine company were an addition acquired by the Appellant Company in a year of assessment before 1942-43 to a source of income chargeable under Case V of Schedule D, nevertheless under Section 30 ,proviso (ii), of the

Finance Act, 1926, the income from the shares in the Argentine company had to be computed separately and the provisions of proviso (*b*) of Sub-section (1) of Section 29 of the said Act applied, with the result that, as respects the year of assessment in which income from the Argentine shares first arose, namely 1942-43, Income Tax had to be computed on the full amount of the income arising within that year, namely, £7,434;

(5) that the additional assessment had been correctly made in the sum of £7,434 and should be confirmed.

7. We, the Commissioners who heard the appeal, gave our decision in writing as follows:—

Between 1932 and 1936 the Company acquired shares in a company incorporated in the Argentine. For some years it has also owned shares in other foreign companies producing dividends and has been assessed to Income Tax under Case V on the preceding year's basis, without differentiating between the items making up its foreign possessions, in accordance with Section 30, Finance Act, 1926.

In January, 1943, the Company for the first time received a dividend on its holding in the Argentine company and the Crown has made an additional assessment for the year 1942-43 on the actual amount of that dividend, contending that proviso (ii) to the said Section applies on the ground that the Company acquired an addition to a source of income by reason of the accretion of the dividend in question.

It is common ground between the parties that the expression "in any year of assessment" in the said proviso means in this case the year of assessment 1942-43. In our opinion the reference to a new source of profits or an addition to any source of profits in the said proviso must mean in this case the acquisition of the Argentine shares themselves or additional shares in the Argentine company and not, as the Crown contends, the accrual of the dividends for the first time to its existing income from other foreign possessions, just as the reference in proviso (i) to cessation must mean the loss, or parting with, of an item of foreign possessions and not merely the cessation of income therefrom. The appeal succeeds and the assessment is discharged.

8. Immediately upon our determination of the appeal the Appellant expressed to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

H. H. C. GRAHAM, \
F. N. D. PRESTON, / Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99, High Holborn,
London, W.C.1.
12th December, 1946.

The case came before Singleton, J., in the King's Bench Division on 7th and 8th July, 1948, and on the latter date judgment was given against the Crown, with costs.

The Solicitor-General (Sir Frank Soskice, K.C.) and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Terence N. Donovan, K.C., and Mr. L. C. Graham-Dixon for the Respondent Company.

Singleton, J.—The Respondent Company, Goodlass Wall & Lead Industries, Ltd., hold, and at all material times held, the whole of the issued ordinary shares in Goodlass Wall y Cia., a company incorporated in the Argentine Republic. They acquired the shares in that company between the years 1932 and 1936. They also hold, and at all material times held, shares in other foreign companies, and they received, prior to the year of assessment, dividends on some of the shares in other foreign companies, but until the year of assessment, the year 1942-43, they received no dividend from the company, Goodlass Wall y Cia., which I shall describe hereafter as the Argentine company. In January, 1943, the Argentine company declared a dividend for the first time on its ordinary shares, and the amount of that dividend or its sterling equivalent is £7,434. The assessment in question before me is intended to comprise that sum, and it is an additional assessment to Income Tax made under Schedule D, Case V, in the sum of £7,434 for the year ended 5th April, 1943. I repeat that the securities from which that sum came had been held by the Respondent Company for a number of years, though the first dividend paid upon them was paid during the year of assessment. At the time the assessment was made it was not known that the dividend had been received, and consequently there was an additional assessment in the sum of £7,434.

Now, the Respondent Company appealed against that assessment and the Special Commissioners decided in their favour, but on a point or points which have not been argued before me. Against the decision of the Special Commissioners the Crown now appeal, and it is necessary to go into the facts as well as into the law upon the subject.

The contentions put forward before the Special Commissioners are stated in paragraphs 5 and 6 of the Case. The decision of the Special Commissioners was based and founded upon the contentions on behalf of the Inspector of Taxes stated in paragraph 6 (1), (2) and (3) of the Case. Those submissions so contained have not been argued before me by the Solicitor-General at all. He bases his submission before me on a different point altogether, which is covered, it is said, by sub-paragraph (4) of paragraph 6. The income arising from the possessions out of the United Kingdom, that is income from foreign securities, as this income was, was covered by Case V of Schedule D to the Income Tax Act, 1918; and the Rules applicable to Case V had to be applied, until comparatively recently, and Rule 2 of the Rules applicable to Case V was: "The tax in respect "of income arising from possessions out of the United Kingdom . . . shall "be computed on the full amount of the actual sums annually received in "the United Kingdom from remittances payable in the United Kingdom, "or from property imported, or from money or value arising from property "not imported, or from money or value so received on credit or on account "in respect of any such remittances, property, money, or value brought or "to be brought into the United Kingdom, on an average of the three pre-"ceding years as directed in Case I, without any deduction or abatement "other than is therein allowed."

Now, that Rule, which brought in the average of three years' income from foreign investments, led to difficulties, difficulties for the Revenue, it appears, and two authorities were cited before me, one in the House of Lords and the other in the Court of Appeal (1), which show the nature of the questions which arose; and by and by it appeared to those responsible

(1) Whelan v. Henning, 10 T.C. 263, and Grainger v. Mrs. Maxwell's Executors, 10 T.C. 139.

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for tax legislation that a change ought to be made so as to cover cases in which it appeared that the subject or company was avoiding or might avoid paying Income Tax on any of their foreign investments. That led to certain Sections in the Finance Act, 1926, and it is upon Sections in that Act that the argument before me has developed. One change which was made was brought about by Section 22 of the Finance Act, 1926; nothing turns upon that. The other changes affecting this question are to be found in Sections 29 and 30 of the Act. Section 29 says: "(1) Such enactments in the Income "Tax Acts as provide that income tax under Schedule D shall in certain "cases be computed on the full amount of the balance of the profits or "gains, or on the full amount of the income, upon an average of three "years, and so much of Rules 1 and 2 of the Rules applicable to Case IV "of Schedule D as provides that income tax under that Case shall be "computed on the full amount of the income which arises, or which has "been or will be received, in the year of assessment, shall cease to have "effect, and any income tax in respect of profits or gains or income charge-"able under Case I, Case II, Case IV, or Case V of Schedule D which "would but for the foregoing provisions of this section have been computed "as aforesaid shall be computed, subject to the provisions of this Part of "this Act and subject as hereinafter provided, on the full amount of the "profits or gains or income of the year preceding the year of assessment". Then there were provisoes. The change made by Section 29 is that the computation shall be "on the full amount of the profits or gains or income "of the year preceding the year of assessment". The first part of proviso (*b*)—(*b*) (i)—is as follows: "In the case of income tax chargeable under "Case IV or Case V of Schedule D—(i) income tax shall be computed, as "respects the year of assessment in which the income first arises, on the "full amount of the income arising within that year".

Now I confess that I thought when my attention was directed to that at first that the problem was a comparatively simple one. I could not see at first why Section 29, proviso (*b*) (i), did not apply, and it appeared to me that this income having been received in the year of assessment, that was the year in which the income first arises and it ought to be included in the full amount of the income arising in that year; but that only shows how easily one may get a wrong view of a Section. It was pointed out, I think by the learned Solicitor-General, and it has been emphasised by Mr. Donovan, and it is common ground between the parties, that that proviso does not apply to this case unless it is brought in by virtue of Section 30, to which I shall have to refer by and by. The reason is this, if I understand the matter correctly, that some time ago a question of this character was considered in the House of Lords in the case of *Diggines* v. *Forestal Land, Timber and Railways Co., Ltd.*, 15 T.C. 630, and in that case, as the headnote says: "The Respondent Company was in receipt of "dividends from foreign companies in various countries. The point at "issue was whether the consequent liability to Income Tax, Schedule D, "under Case V, for the years 1921-22 to 1926-27 should be based on the "average amount of the whole of the dividends arising to the Company "from foreign Companies in the three years of average, or upon the footing "that each of the holdings of shares was a separate source of income "separately assessable." It was held "that the liability should be based "on the average amount of the whole of the dividends." I notice that in that case Rowlatt, J., at page 634, expressed his regret at not having to deal with the question; he felt himself bound by a decision of the Scottish

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Courts, and so did the majority of the Court of Appeal, apparently, but their decision was upset by unanimous decision of the House of Lords to the effect that I have read. Both sides agree that, as the Respondent Company had income from foreign investments already, proviso (*b*) (i) of Section 29 does not apply unless it is brought into play by Section 30. Before the year of assessment the Company had income from foreign investments of this kind, so the income did not first arise within that year; that is common ground between the parties. So one has to go to Section 30, bearing in mind that there are other provisoes, (ii), (iii) and (iv), in (*b*) of Section 29 to which I have been referred. Section 30 says: "All profits or income "in respect of which any person is chargeable either under Rule 1 of the "Rules applicable to Case III of Schedule D, or under Case IV of Schedule "D or under Case V of Schedule D may respectively be assessed and charged "in one sum:"—and that is the block assessment, as Mr. Donovan called it, and, as he said, the word "may" is almost, if not quite equivalent to "shall". Proviso (i) to Section 30 is not directly relevant, though it was used before me to illustrate an argument, and I shall refer to it by and by. Proviso (ii) is in these terms: "If in any year of assessment any person "acquires a new source of any such profits or income or an addition to "any source of any such profits or income, income tax in respect of the "profits or income from that source or from the addition to that source "shall be computed separately, and in the case of profits or income charge-"able under Rule 1 of the Rules applicable to Case III the provisions of "paragraph (1) of Rule 2 of those Rules shall apply, and in the case of "profits or income chargeable under Case IV or Case V of Schedule D "the provisions of proviso (*b*) to subsection (1) of the last preceding "section of this Act shall apply". If I may try to put it shortly, if in any year of assessment any person acquires a new source of such income, the income from that source shall be computed separately and provisions of (*b*) to Section 29 shall apply. It is in that way that the proviso to Section 29 is brought in. It is upon the true construction of proviso (ii) to Section 30 that the parties differ. There really is only one difference between them, and it is as to what is the true meaning in the Sub-section of the words "If in any year of assessment". That is the whole point between the parties, I gather, and it is to that point that the argument in the case has been directed.

The submission of the learned Solicitor-General was that the words "If in any year of assessment" meant "If in any year" or "If at any time", and that the word "any" must be read as "any" and as inconsistent with the limitation suggested by the other side. His submission was that there had been a new source of income, a source acquired some years back but still it was a new source of income acquired in some year of assessment, and therefore it was within the words "If in any year of assess-"ment". That was his submission.

Mr. Donovan, on the other hand, submitted that if one were reading the words "If in any year of assessment" in their natural and ordinary sense one would regard them as referring to the year in respect of which income or tax was being computed. That was the natural way, he submitted, and he referred to the first proviso to Section 30 as showing how one must read the like words in that first proviso, and he added, "Why should one give the words a different meaning in proviso (ii) from that which they must have in proviso (i)?" Now, proviso (i) is: "If in any year "of assessment any person charged or chargeable in respect of any such

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" profits or income as aforesaid ceases to possess any particular source of " any such profits or income or any part of any such source, income tax " in respect of the profits or income from that source or that part shall be " computed separately, and the provisions of the section in this Part of " this Act which relates to the discontinuance of a trade, profession or " vocation, shall, subject to the necessary modifications, apply in any such " case as if the cesser of the possession of the source or part were the " discontinuance of a trade ".

The Section in that Part of the Act which relates to the discontinuance of a trade, profession or vocation is the following Section, Section 31, and that provides what shall be done in the case of a discontinuance of a trade. It is: " (1) Where in any year of assessment a trade, profession or vocation " is permanently discontinued, then, notwithstanding anything in this Part " of this Act—(*a*) the person charged or chargeable with tax in respect " thereof shall be charged for that year on the amount of the profits or " gains of the period beginning on the sixth day of April in that year and " ending on the date of the discontinuance ", subject to certain things; and Mr. Donovan claimed that that Section, and in particular the words in that Section " for that year ", showed that when one is interpreting the first proviso to Section 30 and is dealing with the words " in any year of assess- " ment ", the meaning must be " in any year of assessment in respect of which one is computing tax or income ", and his submission was that the words in the second proviso to Section 30 must be read in the same way.

I have already mentioned the submission of the Solicitor-General upon the point, but he, the Solicitor-General, reinforced his point, and reinforced it, as I think, strongly by his reference back to the other provisoes to (*b*) of Section 29, and he pointed out that it was difficult if not impossible to see how the later provisoes, (*b*) (ii), (iii) and (iv), could work if the Respondent Company's submission in regard to the meaning of proviso (ii) to Section 30 was right. That does cause a difficulty. Mr. Donovan submitted that those provisoes could be worked, and he said: "Once a company comes within proviso (ii) of Section 30 it is put within the proviso of Section 29 and stays there until each of those provisoes is exhausted, that is until the full effect of proviso (*b*) (iii) has been applied. It is a little difficult for me to see how they can work, but I appreciate that there is an argument upon it, though, if I may say so, it is not as clear as the rest of Mr. Donovan's argument upon this subject has been. I think it has been said before now that, when one gets legislation of this character, one very often does find provisoes to Sub-sections which are difficult to reconcile with each other on any construction.

When one looks at Section 30 and at the provisoes in particular, it is to be remembered that Section 30 is dealing with a new source of income, not with increased income from an old source but with new income from a new source. If proviso (ii) of Section 30 applies, it brings in the provisions of proviso (*b*) of Section 29, and the result would be that under the proviso (*b*) (i) of Section 29 Income Tax on the £7,434 would be charged or computed in respect of the year of assessment.

As I have said, really the only question for decision arises upon the true construction of proviso (ii) of Section 30. There is nothing in the finding of the Special Commissioners with regard to this point at all; they do not appear to have dealt with it. I was told that it was treated rather as a subsidiary point before them. I need hardly say that does not affect my view upon the matter at all. They decided the point in their case in

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favour of the Company on other grounds altogether. They set out in their findings in the middle of paragraph 7 of the Case: "It is common ground "between the parties that the expression 'In any year of assessment' in "the said proviso means in this case the year of assessment 1942-43." I think I ought to make clear that that is only with reference to the other point which was argued before them, and it has no bearing upon any question that has been argued before me. I confess I should have thought, in construing proviso (ii) of Section 30 of the Act of 1926, that the words "If in any year of assessment" meant the year for which tax was being computed; that is how it strikes me upon the look of it, but I appreciate the submissions of the Solicitor-General that the word "any" appears before them.

Mr. Donovan referred me, as I have said, to the first proviso, and he based his submission in part upon that. I was referred to various other Sections, in particular to certain definitions in the Income Tax Act, 1918, and to one or two Sections of that Act which are made applicable by Section 37 of the Finance Act, 1926. Section 2 of the Income Tax Act, 1918, is: "Every assessment and charge to tax shall be made for a year "commencing on the sixth day of April and ending on the following fifth "day of April, except where under the provisions of this Act weekly wage-"earners are to be assessed and charged half-yearly." Then the definition Section, Section 237 of the Act of 1918, says: "In this Act, unless the "context otherwise requires . . . 'Year of assessment' means, with reference "to any tax, the year for which such tax was granted by any Act granting "duties of income tax." I think that does lend force to Mr. Donovan's argument, read, as it is, with Section 2 of the Act. The Solicitor-General directed my attention to the words "unless the context otherwise requires", and he submitted that the context did otherwise require—if it was necessary to go so far as that because of the provisoes to Section 29, provisoes (*b*) (ii), (iii) and (iv).

There was one other matter to which I was referred, and that is the usual form of grant of tax which for the year in question, the year 1942-43, was Section 21 of the Act: "Income tax for the year 1942-43 shall be "charged at the standard rate of ten shillings in the pound", and so on—that is the grant of tax.

Now, I do not pretend that this is an easy case, but on the whole, faced as I am with interpreting the words in Section 30 of the Finance Act, 1926, "If in any year of assessment any person acquires a new source "of any such profits or income or an addition to any source of any such "profits", I think that means, "If in the year of assessment with which the taxing authority is then dealing"; it means, "If in the year for which tax is then being computed": the year in which you are charging. That is my view upon it, and it is strengthened, as I have already said, by the interpretation Section of the Income Tax Act, 1918, and still more by proviso (i) of Section 30 and the considerations thereunder. I cannot see why one ought to be asked to read the words "in any year of assessment" in any different sense in proviso (ii) of Section 30 from that which applies in the case of proviso (i). The result is, I think, that the argument put forward by the learned Solicitor-General on behalf of the Crown fails and this appeal must be dismissed.

Mr. Donovan.—With costs?

Singleton, J.—Yes.

An appeal having been entered against the above decision the case came before the Court of Appeal (Tucker, Cohen and Asquith, L.JJ.) on 18th and 19th November, 1948, when judgment was reserved. On 26th November, 1948, judgment was given unanimously in favour of the Crown, with costs.

Mr. J. Millard Tucker, K.C., and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Terence N. Donovan, K.C., and Mr. L. C. Graham-Dixon for the Respondent Company.

Tucker, L.J.—In this case I will ask Cohen, L.J., to deliver the first judgment.

Cohen, L.J.—This is an appeal from an Order of Singleton, J. (as he then was), dated 8th July, 1948, whereby he affirmed the decision of the Special Commissioners who had discharged an additional assessment of £7,434 made on the Respondents for the year ending 5th April, 1943.

The facts which gave rise to this assessment are as follows. The Respondents owned the whole of the issued capital of an Argentine company, Goodlass Wall y Cia., having acquired that capital over a series of years ending with the year 1936. No dividend was declared on those shares until January, 1943. The Respondents, however, owned shares in other foreign companies in the Income Tax year 1942-43 and in the preceding year, and had been assessed to Income Tax thereon. At the time the assessment for the year 1942-43 was made the Inspector was unaware of the receipt of the dividend on the shares in Goodlass Wall y Cia. When he heard of it he made an additional assessment under the power conferred by Section 125 of the Income Tax Act, 1918, to cover the sterling equivalent of that dividend. It is the validity of this assessment which is now in question.

The Crown contends that the income in question was chargeable under the Rules applicable to Case V of Schedule D to the Income Tax Act, 1918, which relates to tax in respect of income from possessions out of the United Kingdom. The original Rule 1 dealt with tax in respect of stocks, shares and rents in any place out of the United Kingdom, and the original Rule 2 dealt with tax in respect of income arising from possessions out of the United Kingdom other than stocks, shares and rents. The division into categories was altered by Section 19 of the Finance Act, 1940, and Rules 1 and 2, which I will now read, are as follows. Rule 1: "The tax in "respect of income arising from possessions out of the United Kingdom "other than income which (*a*) is immediately derived by a person from the "carrying on by him of any trade, profession or vocation either solely or "in partnership; or (*b*) arises from any office, employment or pension, shall "be computed on the full amount thereof on an average of the three pre-"ceding years, as directed in Case I, whether the income has been or will "be received in the United Kingdom or not, subject, in the case of income "not received in the United Kingdom, to the same deductions and allow-"ances as are provided in rule 1 of the rules applicable to Case IV, and "the provisions of this Act, including those relating to the delivery of "statements, shall apply accordingly." Rule 2: "The tax in respect of "income arising from possessions out of the United Kingdom, other than "income to which rule 1 applies, shall be computed on the full amount of "the actual sums annually received in the United Kingdom from re-"mittances payable in the United Kingdom, or from property imported, or "from money or value arising from property not imported, or from money

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"or value so received on credit or on account in respect of any such re-"mittances, property, money, or value brought or to be brought into the "United Kingdom, on an average of the three preceding years as directed "in Case I, without any deduction or abatement other than is therein "allowed."

The relevance of Rule 2 to the question now before us is that in the case of *Diggines* v. *Forestal Land, Timber and Railways Co., Ltd.*, 15 T.C. 630; [1931] A.C. 380, it was decided that the income, the full amount whereof had to be computed under Rule 1 of the Rules applicable to Case V, was the full amount of all the income arising from stocks, shares and rents and that there was no justification for further sub-division or for treating each separate holding separately.

Certain decisions of this Court indicated some loop-holes in the provisions applicable to Case V, and the law was altered in 1926 to fill the gaps. Mr. Millard Tucker, for the Crown, invited us to bear this in mind when considering the case now before us, but the cases to which he referred us do not indicate that the precise point with which we have to deal was before the Court in any of them. I think Mr. Donovan was right when he said that the intention and effect of the 1926 Act was to impose a tax on the subject where no tax was previously payable, and that we must construe the relevant Sections of the 1926 Act like any other Section imposing a tax on the subject.

I turn, therefore, to the 1926 Act. Section 29 (1), read with Section 37 (2), so far as it relates to Case V of Schedule D, in substance provides that any Income Tax chargeable thereunder which would theretofore have been computed on the basis of a three years average, shall, as from 6th April, 1927, be computed, subject to the other provisions of Part IV of the Finance Act, 1926, and subject, as thereinafter in Section 29 provided, on the full amount of the profits or gains or income of the year preceding the year of assessment.

The proviso to Section 29 referred to, so far as relevant, is in the following terms: "Provided that—(*b*) In the case of income tax chargeable "under... Case V of Schedule D—(i) income tax shall be computed, as "respects the year of assessment in which the income first arises, on the "full amount of the income arising within that year: (ii) where the income "first arose on some day in the year preceding the year of assessment "other than the sixth day of April, income tax shall be computed on the "income of the year of assessment: (iii) where the income first arose on "the sixth day of April in the year preceding the year of assessment, or on "some day in the year next before the year preceding the year of assess-"ment other than the sixth day of April, the person charged shall be "entitled, on giving notice in writing to the surveyor within twelve months "after the end of the year of assessment, to be charged on the amount of "the income of that year, and if the tax charged has been paid, any tax "overpaid shall be repaid". It is to be observed that this proviso deals with computation in three different years of assessment.

Now, had the shares in Goodlass Wall y Cia. been the only possession held by the Respondents which came under Rule 1, this proviso would have been applicable to the dividend now in question, but, in view of the decision in the *Forestal Land* case and of the fact that the Respondents at the material dates held other foreign stocks or shares, the proviso would

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not be applicable if the matter rested on Section 29 alone. Section 30, however, provides as follows: "All profits or income in respect of which "any person is chargeable either under Rule 1 of the Rules applicable to "Case III of Schedule D, or under Case IV of Schedule D or under Case "V of Schedule D may respectively be assessed and charged in one sum". I pause here to observe that the power there given is, no doubt, a power exercisable in each year of assessment as regards the profits or income of that year. It is subject to two provisoes. The first proviso reads as follows: "If in any year of assessment any person charged or chargeable "in respect of any such profits or income as aforesaid ceases to possess "any particular source of any such profits or income or any part of such "source, income tax in respect of the profits or income from that source or "that part shall be computed separately, and the provisions of the section "in this Part of this Act which relates to the discontinuance of a trade, pro-"fession or vocation, shall, subject to the necessary modifications, apply in "such case as if the cesser of the possession of the source or part were the "discontinuance of a trade". The Section there referred to is Section 31, which is in these terms: "(1) Where in any year of assessment a trade, "profession or vocation is permanently discontinued, then, notwithstanding "anything in this Part of this Act—(*a*) the person charged or chargeable "with tax in respect thereof shall be charged for that year on the amount of "the profits or gains of the period beginning on the sixth day of April in "that year and ending on the date of the discontinuance, subject to any "deduction or set-off to which he may be entitled under the section of this "Part of this Act which provides for relief in respect of certain losses or "under Rule 13 of the Rules applicable to Cases I and II of Schedule D, "and, if he has been charged otherwise than in accordance with this pro-"vision, any tax overpaid shall be repaid, or an additional assessment may "be made upon him, as the case may require;" and (*b*) provides for the re-opening of the accounts, if necessary, for the previous year and for an additional assessment, but I do not think I need refer to it in detail, or to Sub-section (2) of that Section. I return to proviso (ii) to Section 30, which is in these terms: "If in any year of assessment any person acquires "a new source of any such profits or income or an addition to any source "of any such profits or income, income tax in respect of the profits or "income from that source or from the addition to that source shall be com-"puted separately, and in the case of profits or income chargeable under "Rule 1 of the Rules applicable to Case III the provisions of paragraph "(1) of Rule 2 of those Rules shall apply, and in the case of profits or "income chargeable under Case IV or Case V of Schedule D the pro-"visions of proviso (*b*) to subsection (1) of the last preceding section of "this Act shall apply." That is the important proviso for the matter we have to consider.

Now, Mr. Donovan says, first, that the expression "the year of assess-"ment" must bear the same meaning in each paragraph of the proviso to Section 30 and must in each case mean the year in which the assessment in question is made; and, second, he says the Income Tax to be computed separately must be the Income Tax for that year on the profits or income from a source, or part of a source or addition to a source, whichever be in question. Applying those principles to the facts of this case he says that in the year of assessment 1942-43 the Respondents acquired no new source and, therefore, proviso (ii) is not applicable and no additional assessment is justifiable.

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Before the Special Commissioners the Crown argued that the income received from Goodlass Wall y Cia. in 1942-43 was, within the meaning of proviso (ii), an addition to a source of income. The Commissioners rejected that argument, and before the learned Judge and before us the Crown has admitted that they were right in so doing. Mr. Tucker, however, relies on an alternative point which was taken before the Commissioners and was the only point argued before the learned Judge. It is stated in paragraph 6 (4) of the Stated Case, as follows: "that, even if the shares in the "Argentine company were an addition acquired by the Appellant Com- "pany in a year of assessment before 1942-43 to a source of income "chargeable under Case V of Schedule D, nevertheless under Section 30, "proviso (ii), of the Finance Act, 1926, the income from the shares in the "Argentine company had to be computed separately and the provisions of "proviso (*b*) of Sub-section (1) of Section 29 of the said Act applied, with "the result that, as respects the year of assessment in which income from "the Argentine shares first arose, namely, 1942-43, Income Tax had to be "computed on the full amount of the income arising within that year, "namely, £7,434".

Mr. Tucker elaborated the argument on the following lines. First, he admitted that, if possible, the words "in any year of assessment" should be given the same meaning in both paragraphs of the proviso, but he said the natural meaning was that the Inspector, when making his assessment in year 1, must look and see whether the events referred to in the provisoes had occurred in year 1 or in any preceding year of assessment. If any such event had occurred the Inspector must give effect to the provisoes. He did not agree that only the Income Tax for year 1 could be affected by proviso (i). He submitted that it was the proviso which made it clear that in year 2 nothing could be included for income received in year 1 from a source which ceased to be possessed in that year. He added that, even if he was wrong on this point, it did not follow that a restricted meaning should be placed on the expression "year of assessment", but merely that, owing to the subject-matter with which the first paragraph of the proviso was dealing, the proviso might in operation have a limited effect.

Turning to the second paragraph of the proviso, he pointed out that, if Mr. Donovan's argument was well founded, it meant that full effect would not be given to the direction to apply proviso (*b*) to Section 29 since effect would only be given at most to paragraph (i) of proviso (*b*). He further pointed out that, in certain circumstances, no effect whatsoever would be given to proviso (*b*). Thus, assume that in the year 1936-37 and the preceding year the Respondents had income from other foreign stocks and shares. In that year they acquired an addition to a source, namely, shares of the nominal value of £100,000 in Goodlass Wall y Cia. In assessing the Respondents under Case V for that year, he would have to give effect to proviso (ii) to Section 30; but he could not apply proviso (*b*) (i) as directed thereby since no income was received from the £100,000 worth of shares in the year 1936-37.

He contrasted that state of affairs with the position if his construction were accepted. The Inspector, when making his assessment in each year after 1936-37, would have to take note of the fact that shares had been acquired in that year. In the first year in which income arose he would assess the Respondents under proviso (*b*) (i) and he would give effect to paragraphs (ii) and (iii) of proviso (*b*) in each of the two following years.

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We were informed that a similar argument was addressed to the learned Judge in the Court below by the Solicitor-General. It was rejected by the learned Judge, first, because his own *prima facie* view was that the words "if in any year of assessment" meant the year for which tax was being computed, secondly, because he was impressed by Mr. Donovan's argument based on a comparison of the two paragraphs of the proviso to Section 30, and thirdly, because he accepted an argument of Mr. Donovan based on the definition of "year of assessment" in Section 237 of the Income Tax Act, 1918.

So far as the first two grounds are concerned, it is sufficient for me to say that I think the answer given by Mr. Tucker is correct. I do not think that the construction for which he argues involves a strained construction or involves placing a different meaning on the words in question in one proviso from that adopted in the other. True it is that, on Mr. Tucker's argument, the same result would have been achieved if each proviso had commenced "If at any time", but in a proviso dealing with method of computation it is not unnatural to refer instead to "any year of assess-"ment". I do not think that we should be justified in adopting an inter-pretation which, as Mr. Tucker pointed out, might involve that partial or, indeed, no effect would be given to proviso (*b*) of Section 29 when made applicable by proviso (ii) to Section 30.

I must say a little more about the third ground. In Section 237 of the Income Tax Act, 1918, "Year of assessment" is defined as follows: "'Year "'of assessment' means, with reference to any tax, the year for which such "tax was granted by any Act granting duties of income tax." Mr. Donovan says the definition applies and, since we are dealing with tax granted for the year 1942-43, the expression "any year of assessment" must be confined to that year. But this argument, in my opinion, ignores the fact that the definition only applies "unless the context otherwise "requires". Now, the use of the word "any" before the words "year of "assessment" and the fact that the whole of proviso (*b*) is imported and that proviso affects more than one year of assessment, in my opinion, require that a wider meaning shall be given to the words "any year of "assessment" than that of the definition.

For these reasons I would allow the appeal.

Tucker, L.J.—I agree with the judgment which has been delivered by Cohen, L.J. The construction of the words "any year of assessment" in proviso (ii) to Section 30 of the Finance Act, 1926, is, I think, assisted by rewriting the whole of Section 30 so as to give effect to Section 31 as regards proviso (i), and proviso (*b*) (i) to Section 29, Sub-section (1), as regards proviso (ii). So rewritten Section 30, so far as material, reads as follows: "All profits or income in respect of which any person is charge-able under Rule 1 of Case III, or under Case IV or Case V of Schedule D may respectively be assessed and charged in one sum: Provided that—(i) If in any year of assessment any person charged or chargeable in respect of any such profits or income as aforesaid ceases to possess any particular source of any such profits or income or any part of any such source, income tax in respect of the profits or income from that source or that part shall be computed separately, and the person charged or charge-able with tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the sixth day of April in that year and ending on the date of discontinuance: (ii) If

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in any year of assessment any person acquires a new source of any such profits or income or an addition to any source of any such profits or income, income tax in respect of the profits or income from that source shall be computed separately, and in the case of profits or income chargeable under Case V of Schedule D, income tax shall be computed, as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year."

If in each of these provisoes the words "any year of assessment" are construed as meaning "in any income tax year", the provisions seem to me to be clear and to work out naturally. Furthermore, in proviso (ii) so rewritten, you get the contrast between "*any* year of assessment" in the opening line and "the year of assessment" in the concluding words where the year in which the computation to tax has to be made.

I agree that the appeal succeeds.

Asquith, L.J.—I also agree.

Mr. Hills.—May I ask for costs to be allowed in the appeal here and below?

Tucker, L.J.—Yes.

Mr. Donovan.—Would your Lordships allow my clients leave to appeal if they think fit to say so?

Tucker L.J.—Have your any observations, Mr. Hills?

Mr. Hills.—I respectfully submit it is a matter which should be left for your Lordships to decide.

Tucker, L.J.—Yes.

An appeal having been entered against the above decision, the case came before the House of Lords (Lords Simonds, Normand, Morton of Henryton, MacDermott and Reid) on 10th, 11th and 15th May, 1950, when judgment was reserved. On 23rd June, 1950, judgment was given unanimously against the Crown, with costs.

Mr. Terence N. Donovan, K.C., and Mr. L. C. Graham-Dixon appeared as Counsel for the Appellant Company. The Solicitor-General (Sir Frank Soskice, K.C.), Mr. J. Millard Tucker, K.C., and Mr. Reginald P. Hills appeared for the Crown.

Lord Simonds.—My Lords, I have felt great difficulty in coming to a decision in this case, but as your Lordships are unanimous in thinking that the appeal should be allowed I do not think that I should be justified in occupying the time of the House by an expression of my doubts. I propose therefore to concur in the conclusion to which you have come.

Lord Normand.—My Lords, the key to the problem in this difficult case is the meaning of the words "in any year of assessment" in proviso (ii) of Section 30 of the Finance Act, 1926. These words must if possible bear the same meaning in proviso (ii) as in proviso (i), and both provisoes must be construed in the light of the leading enactment of the Section. The Section requires all profits or income in respect of which any person is chargeable either under Rule 1 of the Rules applicable to Case III of Schedule D or under Case IV of Schedule D or under Case V of Schedule D to be respectively assessed and charged in one sum. Here we are concerned with Case V. I think that there is in the leading enactment an

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implied reference to the particular year of assessment, *viz.*, the year in which the person chargeable is being assessed on the income of that year. The measure of the income is (Section 29 (1)) the full amount of the profits or gains of the year preceding the year of assessment. Here the reference to the particular year in which the person chargeable is being assessed is explicit. So from the outset we are concerned with a year of assessment, meaning the year in which an assessment is being made on a person in respect of the income of that year measured by the income of the previous year.

The provisoes are exceptions to the rule that the income of the year preceding the year of assessment is to be the measure of the profits of the year of assessment. Proviso (i) deals with the case in which any person charged or chargeable in respect of any such income (*viz.*, income chargeable under Rule 1, Case III, or Case IV or Case V of Schedule D) ceases to possess any particular source of such income, and it provides that Income Tax in respect of the income from that source shall be computed separately and that the provisions of Section 31 shall apply as if the cesser of the possession of the source were the discontinuance of a trade. I pause there to point out that the Income Tax which is to be computed separately is apparently the Income Tax on the profits of the year in which the cesser of possession takes place. Section 31 (1) (*a*) provides that when in any year of assessment a trade is permanently discontinued a person charged or chargeable with tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning the sixth day of April in that year and ending on the date of discontinuance. Thus "in "any year of assessment" can only mean *that* year in which the person is to be charged for that year, and in Section 30, proviso (i), the words "any year of assessment" must have the same meaning.

Before going on to proviso (ii) of Section 30 I will deal with an argument submitted by the Solicitor-General against this construction of the words "in any year of assessment" in Section 30, proviso (i). He said that in the year of assessment next after the year in which an investment was sold, the taxpayer would be taxed on the income of that investment under Section 29, unless the words "any year of assessment" were construed as the equivalent of "at any time". I do not agree with this submission. In the case supposed, the income from the investment sold must in the year in which it is sold be treated under the proviso as income from a separate source and the tax on it must be separately computed, and it is therefore not part of the global income in that year of the whole mass of Case V investments. In the next year the investment no longer exists as a source of income and there is no basis of chargeability. (*Brown* v. *National Provident Institution*[1], [1921] 2 A.C. 222.) The taxpayer therefore has no need to bring the income from the sold investment within the scope of proviso (i) in any year after the year of sale, nor to extend the application of this proviso by construing "any year of assess-"ment" so as to include any year but that year.

If the same construction of "any year of assessment" is applied in proviso (ii) of Section 30, the year of acquisition of the new source is "the year of assessment", and it must also be the year in which the Income Tax in respect of the profits on income from that source is to be separately computed. The proviso is not concerned with any year in which a new

(1) 8 T.C. 57.

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source has been acquired unless it has yielded income in that year. Nor is it concerned with any year after the year in which the new source was acquired. Income for the years after the year of acquisition will in all cases fall under the rule of the leading enactment of the Section.

The Crown's answer to this was put alternatively. If, it was said, "any "year of assessment" must be construed as "any year in which an assessment is being made", the Inspector must call for a return in every year of new sources acquired in the year, and if they yield no income in that year he must compute the Income Tax at zero. This, I must confess, appears to me to be an imaginary procedure. There is no provision in the Income Tax Acts which authorises a demand for a return of new sources of income until they yield a profit, and the computation of the Income Tax on investments which have never yielded income is no better than a fiction. Failing that argument, the Crown contends that the words "in any year "of assessment" mean no more than "at any time", but that results in assigning different meanings to technical words of Income Tax law in two parts of the same Section, and it is therefore a construction which should if possible be avoided.

It is in the second half of proviso (ii), where the consequences of separating the income of the acquired source from the income of other Case V investments are expressed, that the Appellants run into difficulties.

The proviso appears in terms to apply with broad generality the whole provisions of proviso (*b*) of Sub-section (1) of Section 29. Proviso (*b*) is divided into four paragraphs, and of these the first and fourth alone are capable of being applied on the Appellants' construction of Section 30, proviso (ii). For that proviso *ex hypothesi* applies only if the new source is acquired and yields income in the same year, but paragraphs (ii) and (iii) of proviso (*b*) of Section 29 (1) apply only if the income first arose in the year preceding the year of assessment. The Appellants are therefore constrained to construe proviso (ii) of Section 30 as if it applied Section 29 (1), proviso (*b*) subject to the implied reservation "so far as applicable". This is not an impossible construction, but it is by no means a convincing and satisfactory solution of the Appellants' problem.

I have not so far referred to the definition of "year of assessment" in Section 237 of the Income Tax Act, 1918. Unless the context otherwise requires, "year of assessment" is there defined as meaning "with reference "to any tax, the year for which such tax was granted by any Act granting "duties of income tax". The Appellants maintain that the year for which tax was granted by any Act granting duties of Income Tax means the year of charge under each successive Finance Act in respect of income for that year. Accordingly, in proviso (ii) of Section 30 the words "year of assess-"ment" mean the year in which income on the investment acquired in that year falls to be taxed under the Finance Act for that year. I think, with some hesitation, that the Appellants' construction is right and, if so, the definition confirms the meaning of the words which I have inferred from their context.

There are difficulties which neither the Appellants nor the Respondent have succeeded in solving. But the greater difficulties seem to me to be in the way of the Crown's success.

In any event in a doubtful case the Crown must fail.

Lord Morton of Henryton.—My Lords, this appeal raises a question as to the true construction of proviso (ii) to Section 30 of the Finance Act, 1926. The construction contended for by the Crown, and upheld by the Court of Appeal, results in a charge to Income Tax being imposed upon the Appellants for the year 1942-43 in respect of certain income from a foreign investment arising in the same year. The construction contended for by the Appellants, and upheld by the Special Commissioners and by Singleton, J., would result in the normal "preceding year" basis of assessment being applied, pursuant to the provisions of Section 29 (1) of the Finance Act, 1926; that is, the income in question would be taken into account for the purpose of making the assessment for the year 1943-44.

The facts are fully set out in the Case Stated and may be summarised as follows. The Appellants "reside" and carry on business in the United Kingdom. They own all the issued ordinary shares, of a total nominal value of $900,000, in Goodlass Wall y Cia., a company incorporated in the Argentine Republic, which I shall hereafter call "the Argentine company". These shares were issued to the Appellants from time to time as follows:—

1932	Nominal	value	$500,000
1933	„	„	$100,000
1934	„	„	$200,000
1936	„	„	$100,000.

The Appellants at all material times also held shares in other foreign companies, and received dividends thereon in the year ended 5th April, 1943, and in earlier years. Assessments to Income Tax were made upon the Appellants yearly in respect of these dividends under Case V of Schedule D of the Income Tax Act, 1918, the basis of the assessment in each year being the income received in the immediately preceding year.

No dividend was received from the holding of shares in the Argentine company until the year 1942-43. In January, 1943, the Argentine company declared a dividend upon its ordinary shares, amounting in sterling to £7,434. The assessment upon the Appellants for the year 1942-43 under Case V of Schedule D was made before this dividend was declared, but upon being informed of the declaration of this dividend, the Respondent caused the additional assessment for 1942-43, which is the subject of this appeal, to be made in respect thereof. This was done in purported reliance upon proviso (ii) to Section 30 of the Finance Act, 1926.

It is convenient at this point to set out Sections 30 and 31 of the Act of 1926, together with the relevant portions of Section 29 of the same Act.

Finance Act, 1926:

Section 29—

"(1) Such enactments in the Income Tax Acts as provide that "income tax under Schedule D shall in certain cases be computed on "the full amount of the balance of the profits or gains, or on the full "amount of the income, upon an average of three years, and so much "of Rules 1 and 2 of the Rules applicable to Case IV of Schedule D "as provides that income tax under that Case shall be computed on "the full amount of the income which arises, or which has been or "will be received, in the year of assessment, shall cease to have effect, "and any income tax in respect of profits or gains or income charge-"able under Case I, Case II, Case IV, or Case V of Schedule D "which would but for the foregoing provisions of this section have "been computed as aforesaid shall be computed, subject to the pro-

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" visions of this Part of this Act and subject as hereinafter provided, " on the full amount of the profits or gains or income of the year " preceding the year of assessment:

" Provided that—

" (*a*) Any person charged with income tax in respect of the " profits or gains of any trade, profession or vocation which has " been set up or commenced within the year preceding the year " of assessment shall be entitled, on giving notice in writing to " the surveyor within twelve months after the end of the year of " assessment, to be charged to income tax on the amount of the " profits or gains of the year of assessment; and

" (*b*) In the case of income tax chargeable under Case IV or " Case V of Schedule D—

" (i) income tax shall be computed, as respects the year of " assessment in which the income first arises, on the full " amount of the income arising within that year:

" (ii) where the income first arose on some day in the year " preceding the year of assessment other than the sixth day " of April, income tax shall be computed on the income of " the year of assessment:

" (iii) where the income first arose on the sixth day of April " in the year preceding the year of assessment, or on some " day in the year next before the year preceding the year of " assessment other than the sixth day of April, the person " charged shall be entitled, on giving notice in writing to the " surveyor within twelve months after the end of the year of " assessment, to be charged on the amount of the income of " that year, and if the tax charged has been paid, any tax " overpaid shall be repaid:

" (iv) references in this proviso to income which arises or " which arose shall, in cases where income tax is to be com- " puted by reference to the amount of income received in " Great Britain or Northern Ireland, be construed as " references to income which is or was so received."

Section 30—

" All profits or income in respect of which any person is charge- " able either under Rule 1 of the Rules applicable to Case III of " Schedule D, or under Case IV of Schedule D or under Case V of " Schedule D may respectively be assessed and charged in one sum:

" Provided that—

" (i) If in any year of assessment any person charged or charge- " able in respect of any such profits or income as aforesaid ceases " to possess any particular source of any such profits or income or " any part of any such source, income tax in respect of the profits " or income from that source or that part shall be computed " separately, and the provisions of the section in this Part of this " Act which relates to the discontinuance of a trade, profession or " vocation, shall, subject to the necessary modifications, apply in " any such case as if the cesser of the possession of the source or " part were the discontinuance of a trade:

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"(ii) If in any year of assessment any person acquires a new "source of any such profits or income or an addition to any "source of any such profits or income, income tax in respect of "the profits or income from that source or from the addition to "that source shall be computed separately, and in the case of "profits or income chargeable under Rule 1 of the Rules applic- "able to Case III the provisions of paragraph (1) of Rule 2 of "those Rules shall apply, and in the case of profits or income "chargeable under Case IV or Case V of Schedule D the pro- "visions of proviso (*b*) to subsection (1) of the last preceding "section of this Act shall apply:

"(iii) Where any income in respect of which any person has "previously been charged or chargeable under Case IV or Case V "of Schedule D becomes at any time chargeable to tax by deduc- "tion under the provisions of Rule 7 of the Miscellaneous Rules "applicable to Schedule D, the provisions of paragraph (i) of this "proviso shall apply as if that person had at the time aforesaid "ceased to possess the security or possession from which the in- "come arises:

"(iv) Where income arising to any person from any security or "possession in any place out of Great Britain and Northern "Ireland ceases at any time to be chargeable to income tax by "deduction under the provisions of Rule 7 of the Miscellaneous "Rules applicable to Schedule D, the provisions of paragraph (ii) "of this proviso shall apply as if that security or possession were "a new source of income acquired by that person at that time."

Section 31—

"(1) Where in any year of assessment a trade, profession or "vocation is permanently discontinued, then, notwithstanding anything "in this Part of this Act—

"(*a*) the person charged or chargeable with tax in respect "thereof shall be charged for that year on the amount of the "profits or gains of the period beginning on the sixth day of "April in that year and ending on the date of the discontinu- "ance, subject to any deduction or set-off to which he may "be entitled under the section of this Part of this Act which "provides for relief in respect of certain losses or under Rule "13 of the Rules applicable to Cases I and II of Schedule D, "and, if he has been charged otherwise than in accordance "with this provision, any tax overpaid shall be repaid, or an "additional assessment may be made upon him, as the case "may require;

"(*b*) if the profits or gains of the year ending on the fifth "day of April in the year preceding the year of assessment "in which the discontinuance occurs exceed the amount on "which the person has been charged for that preceding year, "or would have been charged if no such deduction or set-off "as aforesaid had been allowed, an additional assessment may "be made upon him, so that he shall be charged for that "preceding year on the amount of the profits or gains of the "said year ending on the fifth day of April, subject to any

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"such deduction or set-off as aforesaid to which he may be "entitled.

"(2) In the case of the death of a person who, if he had not died, "would, under the provisions of this section, have become chargeable "to income tax for any year, the tax which would have been so charge- "able shall be assessed and charged upon his executors or adminis- "trators, and shall be a debt due from and payable out of his estate."

It is common ground between the parties that if proviso (ii) to Section 30 does not apply to the present case, the additional assessment in question must be discharged, and the dividend of £7,434 will appear for the first time in the assessment of income under Case V of Schedule D for the year 1943-44, along with the other dividends received by the Appellants from their foreign investments in the year 1942-43. It is also common ground between the parties, in your Lordships' House, that a taxpayer can "acquire "a new source of income" within the meaning of proviso (ii) if he acquires shares from which income may arise at some future time. Arguments which may be inconsistent with this view were advanced in the Courts below by the Crown, but are not now relied upon.

The respective contentions of the parties in your Lordships' House may be summarised as follows. The Appellants contend that the words: "If in any year of assessment any person acquires a new source of any "such profits or income" and the words "income tax in respect of the "profits or income from that source . . . shall be computed separately" both relate to the same year of assessment. "The year for which Income Tax is being computed in the present case", they say, "is the year 1942-43. We did not acquire any new source of income in that year, since the shares in the Argentine company had all been acquired by the year 1936. Thus the event which brings proviso (ii) into play has not happened." The Crown, on the other hand, contends that the proviso applies to any case in which a new source of income is acquired in any year of assessment, and income arises from that source in the year of acquisition or in any subsequent year. The Crown does not now rely upon the words "or an addition to any source" in proviso (ii).

My Lords, if proviso (ii) had ended with the words "computed "separately", I should have had no hesitation in accepting the Appellants' contention, which gives to the earlier part of the proviso the natural meaning of the words used. It is necessary, however, to consider whether there is a context which should lead this House to accept the contention of the Crown. Counsel for the Crown contended that such a context could be found in the latter words of the proviso, "and in the case of profits or "income chargeable under Rule 1 of the Rules applicable to Case III the "provisions of paragraph (1) of Rule 2 of those Rules shall apply, and in "the case of profits or income chargeable under Case IV or Case V of "Schedule D the provisions of proviso (*b*) to subsection (1) of the last pre- "ceding section of this Act shall apply". They pointed out that if the Appellants' contention were correct it would be impossible to apply, to Case V income coming within proviso (ii) to Section 30, the whole of the provisions of proviso (*b*) to Section 29. "According to the Appellants' contention", they said, "proviso (*b*) to Section 30 only comes into operation if a new source of income is acquired and *in the same year* income arises from that source. If this happens, it would be possible to put sub-clause (i) of proviso (*b*) to Section 29 into operation, but the latter sub-clause of

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proviso (*b*) could never operate in respect of that income". This is admitted by Counsel for the Appellants. Counsel for the Crown also pointed out that a similar difficulty would arise, under the same part of proviso (ii), in the case of income coming under Case III, since only the first portion of the provisions of paragraph (1) of Rule 2 of the Rules applicable to Case III could be brought into operation. This is, however, in substance the same argument as that which I have already stated in regard to Case V income, and need not be further elaborated.

While I appreciate that this argument on the part of the Crown is of some weight, the difficulty would be surmounted, at least to some extent, if the concluding words of proviso (ii), "shall apply", were construed as meaning "shall apply so far as applicable".

I do not think that there is any other context which supports the contention of the Crown, but there is a context which, in my view, strongly supports the contention of the Appellants. It is quite clear that in proviso (i) to Section 30 the words: "If in any year of assessment any person "charged or chargeable in respect of any such profits or income as afore-"said ceases to possess any particular source of any such profits or income ". . . " and the words "income tax in respect of the profits or income "from that source . . . shall be computed separately" both relate to the same year. In other words, the Income Tax there referred to is the Income Tax for the year in which the taxpayer ceases to possess the particular source of income. I cannot believe that the very similar words in proviso (ii), which immediately follows proviso (i) in the same Section, are to be construed in a different sense, and if they are to be construed in the same sense the Income Tax referred to in proviso (ii) must be the Income Tax for the year in which the taxpayer "acquires a new source".

Giving due weight to the contexts relied upon by the parties respectively, I see no reason why your Lordships should not give to the earlier part of proviso (ii) the meaning which it would naturally bear in the absence of any context, and I have come to the conclusion that the Appellants' construction of proviso (ii) is correct. I am assisted in coming to this conclusion by a consideration of certain practical difficulties which arise in applying the Crown's construction to the facts of the present case. The Solicitor-General was invited by your Lordships, in the course of his argument, to explain how proviso (ii) would operate if his contention were correct. He asked the House to assume, for the sake of simplicity, that the Appellants had acquired all their shares in the Argentine company in the year 1935-36, and continued as follows—I trust that I am correctly reproducing the substance of his explanation: "The Inspector of Taxes would 'note' that the Appellants had acquired this new source of income in a year of assessment. That is enough to bring proviso (ii) to Section 30 into operation, and the Inspector would note that, under the proviso, Income Tax in respect of the income from that source must be 'computed 'separately'. The Income Tax so computed would be nil in each year of assessment up to and including the year 1941-42. In the year 1942-43 income arose from this source for the first time and the Inspector rightly made the assessment which is the subject of this appeal, applying proviso (*b*) to Section 29, as he is told to do by proviso (ii) to Section 30." I do not think that any better explanation could have been given, but I find this explanation unconvincing. Your Lordships were not referred to any statutory provision which requires a person or company, on acquiring a new

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investment which is producing no income, to inform the Inspector of Taxes of this acquisition, and it was never explained to my satisfaction how he would come to learn of it. Moreover, neither the Solicitor-General nor Mr. Millard Tucker was able to refer your Lordships to any statute which laid down the procedure to be followed by the Inspector of Taxes, as outlined by the Solicitor-General. These practical considerations supply a further reason why I cannot accept the Crown's construction of proviso (ii) to Section 30.

I should add that Counsel for the Appellants relied very strongly upon the definition of "year of assessment" which appears in Section 237 of the Income Tax Act, 1918, but I do not find this definition of any assistance in the present case.

My Lords, I regret to find myself at variance with the view expressed by the Court of Appeal. I think I have sufficiently explained why I cannot accept the Crown's construction of proviso (ii) to Section 30, and even if I gave more weight to the arguments in favour of that construction, I should still feel a very real doubt whether the proviso does or does not justify the assessment now in question. In these circumstances, it would be contrary to well-established principles to uphold the assessment.

I would allow the appeal and affirm the determination of the Special Commissioners that the assessment must be discharged. The Crown must pay the costs of the Appellants here and below.

Lord MacDermott.—My Lords, the Appellants having acquired, prior to 1937, certain shares in Goodlass Wall y Cia., a company incorporated in the Argentine Republic, received for the first time a dividend thereon, amounting to £7,434, during the fiscal year 1942-43. In the same year and also in the preceding year they had received dividends from other foreign companies and had been assessed to Income Tax on them under Case V of Schedule D. On learning of the payment of £7,434 the Respondent raised an additional assessment for 1942-43 in respect thereof. This was done on the view that proviso (ii) of Section 30 of the Finance Act, 1926, applied to this payment. The question now is whether this view was well founded in law. If so, the additional assessment should stand and the present appeal be dismissed; if not, the appeal should be allowed and the additional assessment discharged, it being common ground that in that event the Appellants' assessment for 1942-43 in respect of income from foreign possessions fell to be computed on the amount thereof arising in the year 1941-42, which, as already indicated, included no dividend from the Argentine company.

Section 30 of the Act of 1926 consists of a single sentence (which I shall refer to as the main enactment) followed by four provisoes. I need not quote the Section in its entirety, but it will be convenient to set out the main enactment and the first two provisoes. These, with the omission of certain references therein to the Rules of Case III and to Case IV which do not, in my opinion, throw any light on the question to be decided, read as follows:—

> "30. All profits or income in respect of which any person is "chargeable . . . under Case V of Schedule D may . . . be assessed and "charged in one sum:

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"Provided that—

"(i) If in any year of assessment any person charged or chargeable in respect of any such profits or income as aforesaid ceases to possess any particular source of any such profits or income or any part of any such source, income tax in respect of the profits or income from that source or that part shall be computed separately, and the provisions of the section in this Part of this Act which relates to the discontinuance of a trade, profession or vocation, shall, subject to the necessary modifications, apply in any such case as if the cesser of the possession of the source or part were the discontinuance of a trade:

"(ii) If in any year of assessment any person acquires a new source of any such profits or income or an addition to any source of any such profits or income, income tax in respect of the profits or income from that source or from the addition to that source shall be computed separately, . . . and in the case of profits or income chargeable under . . . Case V of Schedule D the provisions of proviso (*b*) to subsection (1) of the last preceding section of this Act shall apply".

Considered alone the main enactment but fortifies the Appellants' contention that, by virtue of the change in the basis of assessment effected by Section 29 (1) of the Act of 1926, the tax for 1942-43 should be computed on the income of the preceding year from their foreign possessions considered as a single source. This was not disputed, and the case for the Crown depended altogether on the applicability of the exception contained in the second proviso. Before considering the provisoes, however, it may be observed that the terms of the main enactment relate to a year in respect of which the subject concerned is chargeable to tax. The meaning remains unaltered if, after the word "chargeable", there are inserted the words "in any year of assessment". The main enactment is, I think, clear enough without this addition, but it serves to emphasise the nature of the subject-matter which the provisoes are intended to qualify.

Coming to proviso (ii), it will be well to refer at once to the opposing contentions regarding its construction and operation. As I understand them their substance may be stated thus. For the Appellants it was said that the opening words of the proviso, "If in any year of assessment" refer to the particular year for which tax is being computed, in this case the year 1942-43; that the additional source, the shares in the Argentine company, was not acquired in that year; and that in consequence the condition was not satisfied and the proviso could not be applied. For the Crown, stress was laid on the word "any", and it was submitted that "in any year of assessment" was an expression wide enough to include any year previous to the year for which tax was being computed. The condition of the proviso, the argument proceeded, was therefore satisfied by the acquisition of the additional source prior to 1942-43, with the result that the proviso applied and in turn brought proviso (*b*) (i) of Section 29 (1) into operation so as to make the Appellants chargeable in 1942-43 in respect of the income arising in that year from the additional source.

My Lords, the natural meaning of the words "in any year of assessment", when they are read in the light of their immediate context and with due regard to the terms of the main enactment, is, in my opinion, that

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contended for by the Appellants. The structure of the text and the language used are such as to link these words naturally and grammatically not only with the year of assessment to which the main enactment relates but also with the year in respect of which the direction "shall be computed "separately" is given. The interpretation favoured by the Crown, on the other hand, would give no real effect to the words "of assessment"; would read "acquires" as "acquires or has acquired"; and in certain cases, such as the present, would necessitate a computation based on events standing years apart. I doubt if the Income Tax Acts provide adequate machinery for a process of that kind, but, however that may be, I think the language of the proviso down to the word "separately" cannot, without straining, be said to contemplate the acquisition of a new source and its initial productivity as occurring in different years.

It remains to see whether the case for the Crown can be supported by the wider context upon which it relied. Two points call for consideration in this connection. Both sides agreed that on any rational construction the crucial phrase, "If in any year of assessment", must have the same meaning in proviso (ii) as in proviso (i), and both claimed that it had. For the Crown it was said that if in proviso (i) this phrase related, as the Appellants submitted, to the year of separate computation thereby directed, the subject would in the following year suffer tax in respect of the lost source and the application of paragraph (*b*) of Section 31 (1) would produce a further anomaly. I am not satisfied that these results would follow, but I need not encumber this opinion with my reasons for that view, as I think the wording of proviso (i) is such as to preclude any real doubt as to what is meant by "any year of assessment" therein. It is the year in which a person is "charged or chargeable in respect of any such profits or income" *and* "ceases to possess any particular source of any such profits or income". I do not think any other reading is possible without disregarding the clear import of the language, and if that is so it seems no less clear that the year of separate computation is the same year. I am therefore of opinion that the point under discussion serves only to strengthen the interpretation of proviso (ii) advanced on behalf of the Appellants.

The second point arises on the concluding words of proviso (ii) which say that "the provisions of proviso (*b*)" of Section 29 (1) shall apply. On the Appellants' construction of "in any year of assessment", proviso (ii) only bears on the computation of a single year, the year which sees the new source acquired and yielding income after acquisition. In cases within proviso (ii) this, it was conceded, means that, in the course of the separate computation directed by that proviso, the only provision of proviso (*b*) of Section 29 (1) which can be applied is paragraph (i). That paragraph enacts that tax under Case IV or Case V is to be computed, as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year. But this paragraph of proviso (*b*) is followed by two other substantive provisions of which, for present purposes, only paragraph (ii) need be mentioned. It enacts that where the income first arose in the year preceding the year of assessment tax is to be computed on the income of the year of assessment. On the Crown's construction of proviso (ii) of Section 30 the process of separate computation is not limited to a single year and accordingly, if that is the sound construction, effect can be given not only to paragraph (i) of proviso (*b*) of Section 29 (1), but also to paragraph (ii) and, for a similar reason, to paragraph (iii) as well. This, it was said, was a strong indication that the Crown's was the

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correct interpretation, for what proviso (ii) applies is not "the appropriate "provision" but "the provisions" of proviso (*b*).

My Lords, I do not think it was in dispute that in cases falling within proviso (ii) of Section 30 the Crown would, in certain circumstances, lose tax if resort to proviso (*b*) of the preceding Section were limited to paragraph (i) thereof. That, no doubt, lends point to the argument under discussion, but it does not conclude it. The problem is one of construction throughout, and the question, as I see it, comes to this—Do the implications of the application of the "provisions of proviso (*b*)" suffice to outweigh the considerations in favour of the Appellants' interpretation which arise on the earlier parts of Section 30? In my opinion they do not do so. I think the whole tenor of the relevant portions of the Section, apart from the reference to proviso (*b*), manifests the meaning contended for by the Appellants with a certainty which ought to prevail. The Crown's construction would not only involve a modification of what seems to me to be plainly conveyed by the important first part of proviso (ii); it would also, by giving the expression "in any year of assessment" a different sense in each of the first two provisoes, lead to an inconsistency in the structure of the Section at variance with its obvious design. In short, I think less disrespect is done to the natural signification of the language used by adding at the end of the proviso (ii) some such phrase as "in so far as the same are capable of taking effect" than by introducing the changes necessary to let the proviso read as the Crown says it should. It may be that the failure to make provision for cases in which a new or additional source of income does not become fruitful until after the year of acquisition, constitutes a defect in the scheme of the taxing code. But if a fair reading of the text reveals the defect it is not for the Courts to repair the omission.

For these reasons I think the additional assessment was bad. I would therefore allow the appeal.

Lord Reid.—My Lords, for some years before 1943 the Appellant Company had owned shares in an Argentine company which had never produced any income, and had also owned shares in other foreign companies which had produced income. In January, 1943, the Appellants for the first time received a dividend from their holding in the Argentine company. That dividend amounted to £7,434, and the Appellants were assessed to Income Tax on that sum under Schedule D, Case V, for the year 1942-43, the year during which the income had been received.

The general principles which now govern assessments under Case V are contained in Sections 29 and 30 of the Finance Act, 1926. In the first place Section 30 requires that, subject to the exceptions therein stated, all income in respect of which any person is chargeable under Case V must be assessed and charged in one sum. The Section uses the word "may", but it is, I think, clear that its provisions are mandatory and not permissive. Then Section 29 requires, again subject to exceptions, that Income Tax in respect of income chargeable under Case V shall be computed on the income of the year preceding the year of assessment. The exceptions relating to Case V are set out in proviso (*b*) to Section 29; they apply to "the "year of assessment in which the income first arises", the next following year, and, where the taxpayer so elects, the next year again. During these years the general rule is not to be followed but tax is to be computed on the income arising during the year of assessment. As Section 30 directs that all income of a taxpayer chargeable under Case V is to be taken

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together and assessed on one sum, the year "in which the income first "arises" must mean the first year in which any income chargeable under Case V arises; and if the matter stopped there subsequent changes in the sources from which Case V income was obtained would be immaterial, and the acquisition of a new source would not bring the proviso into operation again. Income from a new source would simply be pooled from the beginning with the rest of the taxpayer's Case V income and the general rule of Section 29 would apply, so that Income Tax on income from the new source would first become payable in the year following the year in which it was received. But that result is to some extent prevented by the second proviso to Section 30: to what extent it is prevented is the principal matter for decision in this case. This case turns on the interpretation of the second proviso, but that proviso cannot be taken by itself without regard to the meaning of the first proviso, and I must therefore quote both. The relevant part of the Section is in the following terms:—

> "All profits or income in respect of which any person is chargeable "either under Rule 1 of the Rules applicable to Case III of Schedule "D, or under Case IV of Schedule D or under Case V of Schedule D "may respectively be assessed and charged in one sum:
>
> > "Provided that—
> >
> > "(i) If in any year of assessment any person charged or charge- "able in respect of any such profits or income as aforesaid ceases "to possess any particular source of any such profits or income or "any part of any such source, income tax in respect of the profits "or income from that source or that part shall be computed "separately, and the provisions of the section in this Part of this "Act which relates to the discontinuance of a trade, profession or "vocation, shall, subject to the necessary modifications, apply in "any such case as if the cesser of the possession of the source or "part were the discontinuance of a trade:
> > "(ii) If in any year of assessment any person acquires a new "source of any such profits or income or an addition to any source "of any such profits or income, income tax in respect of the profits "or income from that source or from the addition to that source "shall be computed separately, and in the case of profits or income "chargeable under Rule 1 of the Rules applicable to Case III the "provisions of paragraph (1) of Rule 2 of those Rules shall apply, "and in the case of profits or income chargeable under Case IV "or Case V of Schedule D the provisions of proviso (*b*) to sub- "section (1) of the last preceding section of this Act shall apply".

The crucial question in the case can, I think, be stated in this way: For what year or years does the second proviso direct that Income Tax in respect of income from a new or additional source shall be computed separately? But before coming to that question it is necessary to determine what is meant by a new source of income. The Section applies to income chargeable under Case III, Case IV and Case V—for brevity I shall call such income Case III income, Case IV income and Case V income. The Section treats these three classes of income separately: in considering whether certain Case V income is income from a new source or how the proviso applies to it, it is immaterial whether or not the taxpayer is in receipt of Case III or Case IV income. I may add, while referring to Case III income, that the second part of the second proviso directs different rules

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to be applied where Case III income is in question from those which apply in the other cases, but I am satisfied that there is no material difference between the two, and therefore for the purposes of this case I can consider the Section as if it only applied to Case V income; no further light is thrown on it by discussing its application to Case III income. A "new source" of Case V income implies that the taxpayer already had a source of such income when he acquired the new source: if he did not there is no need for the proviso, as the case would fall directly under proviso (*b*) to Section 29 to which I have already referred. Originally there was a controversy in this case about what is meant by a "new source". It was contended for the Respondent that a person does not acquire a new source of income merely by acquiring shares or other property which may later yield income, but that those shares or that other property only become a "new source" of income when they actually begin to yield income. That contention was unsuccessful, and it is not now maintained. It is now admitted, and I think rightly admitted, that the Appellants acquired a new source of income in acquiring the shares of the Argentine company in and before 1936, although no income arose from those shares until 1943.

I can now return to what I have called the crucial question in the case. The proviso does not state expressly for what year or years Income Tax in respect of income from a new source is to be computed separately. The Appellants contend that the direction to compute separately refers back to the initial words of the proviso, so that the direction only refers to the year of assessment in which the new source was acquired. The Respondent, on the other hand, contends that the direction refers forward to the subsequent part of the proviso, so that separate computation must continue for a sufficient period to enable full effect to be given to the provisions of proviso (*b*) to Section 29 (1). If this contention is correct, then separate computation must in every case continue for two years (or for three years if the taxpayer so elects) and separate computation will only begin when the new source begins to yield income.

I think it right to consider first what is the natural meaning of the language of the second proviso. Its framework can perhaps be more clearly shown if I contract what is not essential in this connection and express the proviso thus—If in any year of assessment a certain thing happens, Income Tax in respect of certain income shall be computed separately, and in the case of Case III income certain rules shall apply and in the case of Case IV or Case V income certain other rules shall apply. I think that the natural interpretation of such a provision is that the direction to compute separately refers solely to the year of assessment specified, and that the part of the proviso which follows that direction and is introduced by the word "and" is intended to set out the manner in which the separate computation already directed is to be done. There appear to me to be two main objections to the Respondent's interpretation. In the first place it makes the words at the beginning, "in any year of "assessment", meaningless: they might as well be "at any time" or even be omitted altogether, because according to the Respondent it does not matter when the new source was acquired, the only thing that matters is when income from it first arose, and that may be long after the year in which it was acquired. I would find this objection formidable in any case, but it becomes much more formidable when one looks at the definition of "year of assessment" in Section 237 of the Income Tax Act, 1918: "In "this Act, unless the context otherwise requires . . . 'Year of assessment'

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" means, with reference to any tax, the year for which such tax was granted " by any Act granting duties of income tax."

On the Appellants' interpretation of the proviso this definition is exactly in point, but the Respondent is forced to argue that the context does not permit its application. I find it difficult, if not impossible, so to hold, because the phrase " year of assessment " is apparently used in this proviso with reference to a tax, the tax which the immediately succeeding part of the proviso directs to be computed separately. But I think that by itself this objection would not be fatal and I proceed to the next, which arises out of the language of the latter part of the proviso. Somewhere a direction must be found as to the period during which there is to be a separate computation; no one suggests that this is to go on indefinitely, and I find it difficult to read into a provision in the form " and " certain rules shall apply a direction that the separate computation earlier mentioned shall continue for so long as is necessary to enable the whole of those rules to apply. That may have been the intention, but I do not find it easy to suppose that a person having that intention would express it in the way in which this proviso is expressed. The strength of the Respondent's case is that where there is a direction that certain rules shall apply one would naturally expect that there would be at least some cases in which they could all apply: but admittedly on the Appellants' interpretation paragraphs (ii) and (iii) of proviso (*b*) to Section 29 (1) and the corresponding provisions in the Rules applicable to Case III can never have any application to a case under this proviso. On the Appellants' construction, paragraph (i) of proviso (*b*) will apply if any income from the new source arises during the year of assessment in which the source was acquired, but not otherwise. This is not a satisfactory interpretation, but in my judgment it is not an impossible interpretation. I think that the direction to apply these rules can mean that they shall be applied, but only in so far as they can be applied, during the year for which separate computation has already been directed.

There is a further argument from the provisions of proviso (i) to Section 30. What I have called the framework of this proviso is very similar to that of the second proviso. Both begin: " If in any year of " assessment " something happens; both then direct separate computation of tax without expressly stating for what period, and both conclude, " and " certain rules shall apply. If it could be shown that in the application of the first proviso cases can be found where the intention of the proviso would plainly be defeated if separate computation of tax is limited to the year of assessment specified, that would be a strong reason for holding that both must have been intended to have a wider application. If, on the other hand, the apparent purpose of the first proviso can be fulfilled without any separate computation in any year of assessment other than that specified, that would be an equally strong reason for adopting the Appellants' interpretation of the second proviso. The first proviso deals with the case of a person holding several sources of Case V income (or of Case III or Case IV income) who in the course of a particular year of assessment ceases to possess one of them, and it directs the application of certain provisions as if the cesser of possession of the source were the discontinuance of a trade. Is there any application of these provisions which is impossible if tax is only computed separately in the year of assessment specified in the proviso? The Respondent argued that separate computation would also be necessary in the year following and in certain cases in the

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preceding year. As regards the year following, which I shall call year 2, the argument was put in this way. Suppose a taxpayer to have ten sources of Case V income at the beginning of year 1 and to sell one, called A, during the year. Suppose further that A has yielded income in year 1 before its sale. As regards year 1 there is no difficulty: the statute directs separate computation of tax on the income from A in year 1. But when you come to year 2 it is said there is a difficulty. Tax in respect of year 2 is payable on the income in year 1 from all Case V sources taken together. In year 2 the taxpayer only holds 9 sources, and he is not intended to be taxed in that year on any income from source A which he ceased to possess during year 1. But it is said, unless the proviso also applies in year 2 he will be taxed in that year on the income received from all Case V sources, including A, in year 1. I think that this argument is fallacious for this reason. The reason why the income from all ten sources is pooled is because Section 30 says so; but proviso (i) to that Section makes an exception. It says that the income from source A in year 1 is to be taken out of the Case V pool of that year's income. So the Case V pool of year 1 income only includes the income from the other nine sources. When you come to compute tax for year 2 you are told to go to the Case V pool for year 1. But when you get there you do not find any income from A in it, because during year 1 the proviso took it out. In other words, the proviso only operates in year 1, but the result of that operation is reflected in year 2 because tax for year 2 is based on what happened in year 1. I take next the second argument, the argument with regard to the penultimate year. This argument is based on Section 31 (1) (*b*) of the 1926 Act. This Section allows the Inland Revenue to make an additional assessment for that year if the actual income for that year from what I have called source A exceeds the amount on which the taxpayer was charged, that is, the actual income from source A in the year before the penultimate year. It is said that to operate this provision requires separate computation of the tax due in the penultimate year in respect of income from source A. I do not think so. There is no question of disturbing the original assessment or the original computation of tax for that year, and that computation would take into account the income from source A as included in what I have called the Case V pool. All that happens is that liability is adjusted by an additional assessment. I have therefore come to the conclusion that the Respondent has failed to show that it is ever necessary in giving effect to proviso (i) to Section 30 to compute tax separately in respect of any year of assessment other than that in which the taxpayer ceases to possess the particular source; and if that be right the argument from proviso (i), far from helping the Respondent, adds materially to the weight of the considerations favouring the Appellants' interpretation.

The only other question which I need notice is whether there are any general considerations in favour of the Respondent's contention. The result of the special methods of computation which apply at the beginning and end of a taxpayer's possession of a particular source of income is that very frequently the total sum on which he is assessed to tax for the whole years of his possession of the source differs materially from the total amount of income which he has received from it; and if it could be shown that one of the interpretations put forward in this case generally produced a more equitable result than the other, that might be entitled to some weight. But that has not been shown and probably could not be. Taking all the

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considerations with which I have dealt and giving due weight to them, I am left in no doubt that the Appellants' interpretation of the proviso is that which ought to be accepted, and I therefore agree that this appeal should be allowed.

Questions put:

That the Order appealed from be reversed.

The Contents have it.

That the judgment of Singleton, J., be restored, and that the Respondent do pay to the Appellants their costs here and in the Court of Appeal.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Linklaters & Paines.]