REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Monday, May 17, 1920.

(Before Lords Cave, Atkinson, Shaw, Wrenbury, and Phillimore.)

WILLIAMS *v.* SINGER AND OTHERS.

POOL *v.* ROYAL EXCHANGE ASSURANCE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Inland Revenue—Income Tax—Marriage Contract—Trustees Domiciled in England—Beneficiary Domiciled and Resident Abroad—Liability for Income Tax—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35)—*Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34)—*Finance Act* 1914 (4 *and* 5 *Geo. V, cap.* 10), *sec.* 5.

Under the Income Tax Act 1853, section 2, Schedule D, British trustees acting under the marriage contract of a French lady resident abroad were assessed in respect of income from foreign securities and possessions paid to her abroad. In the second case the respondents, who were domiciled in the United Kingdom, were trustees under a will, and were assessed in respect of the income of foreign investments paid to a Swedish lady also resident abroad. *Held* that as the beneficiary in each case was domiciled and resident abroad the income in question was not liable for income tax merely because the legal ownership of the investments was in British trustees.

Decision of the Court of Appeal (1919, 2 K.B. 108) *affirmed.*

The *facts* sufficiently appear from their Lordships' considered judgment.

LORD CAVE—The question raised in these appeals is whether income from foreign investments which is received abroad by a person not domiciled in this country is chargeable with income tax under the Income Tax Acts by reason of the fact that the investments stand in the names of trustees who are domiciled here. As the point raised in both cases is the same the appeals have been heard together.

In the first of these cases—*Williams* v. *Singer*—the respondents are the trustees of a settlement under which the Princesse de Polignac is the beneficial tenant for life in possession. The settlement is in English form, and the trustees are all domiciled and resident in the United Kingdom, but the Princesse, who is a widow, is a French subject by marriage, and is domiciled and resident abroad. The settled fund so far as it comes into question in these proceedings consists of certain foreign investments of considerable value, and under orders signed by the trustees the whole income from these investments is paid to the account of the Princesse at a bank in New York, no part thereof being remitted to this country. In these circumstances the additional Commissioners for the division of New Sarum in the county of Wilts (in which one of the respondents resides) made two assessments upon the respondents for the year ended the 5th April 1916, namely, an assessment of £60,000 in respect of foreign possessions and an assessment of £5000 in respect of foreign securities—these sums representing approximately the income from the foreign investments comprised in the settlement as above mentioned. The respondents objected to the assessment, and appealed to the Special Commissioners, who, after argument, discharged them, and on a Case being stated for the opinion of the King's Bench Division, Sankey, J., confirmed the decision of the Special Commissioners. An appeal by the Surveyor of Taxes to the Court of Appeal was dismissed, and the Surveyor has appealed to this House.

The facts in the second case—*Pool* v. *Royal Exchange Assurance*—are in all material particulars (with one exception) similar to those in the other case. In this case the respondent company, which has its principal place of business in the city of London, is the trustee of the will of Mr J. P. Mellor, deceased, and the beneficial tenant for life under the will is Mrs H. P. Munthe, a Swedish subject domiciled abroad. The will comprises foreign investments, and the whole income from such investments is paid directly to Mrs Munthe abroad, no part of such income being remitted to this country. The District Commissioners of Taxes for the city of London made assessments upon the respondent company in respect of foreign possessions of £2015 for the year ended the 5th April 1915, and £2108 for the year ended the 5th April 1916, these sums representing the income of the foreign investments above referred to. But these assessments differed

from those which are in question in *William* v. *Singer* in one respect, namely, that instead of being made (as in that case) upon the trustees by name without reference to any trust, they were made upon the respondent company "as trustees under the will of J. P. Mellor deceased for beneficiary Mrs H. P. Munthe." The respondent company appealed to the Special Commissioners, who discharged the assessments, and this decision also has been affirmed by Sankey, J., and the Court of Appeal, and is the subject of appeal to this House.

It was decided in *Colquhoun* v. *Brooks* (14 A.C. 493) that the tax imposed by the Income Tax Acts 1842 and 1853 (Sched. D, cases 4 and 5) upon the income from foreign securities and possessions was leviable upon so much only of that income as was remitted to the United Kingdom. But that limitation was to some extent abrogated by sec. 5 of the Finance Act 1914, which, so far as material in this appeal, is as follows:—"Income tax in respect of income arising from securities, stocks, shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in sec. 100 of the Income Tax Act 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not . . . and the provisions of the Income Tax Acts, including those relating to returns, shall apply accordingly . . . provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom."

It is obvious that, having regard to the proviso to the above section, the Princesse de Polignac and Mrs Munthe, who are domiciled abroad, could not have been assessed to income tax in respect of the foreign income above referred to. But the Revenue authorities contend that they are entitled to levy tax upon that income by means of assessments upon the trustees who are domiciled in this country. If this contention is upheld the trustees will of course be entitled to retain the tax so paid out of the trust income payable to the beneficial life tenants, who will thus have to bear the burden of the tax from which the proviso appears to relieve them, but the appellants contend that this is the effect of the statutes. The question to be determined is whether they have that effect.

In support of the above contention counsel for the appellants relied principally upon the language of Schedule D to the Income Tax Act 1853, which provides that the duties thereby imposed are to be deemed to be granted and made payable "for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatsoever, whether situate in the United Kingdom or elsewhere," and upon the first general rule in section 100 of the Income Tax Act 1842, which provides that the duties upon profits imposed by Schedule D are to be charged on and paid by the persons "receiving or entitled unto" such profits; and they contended that as the income in question in the cases under appeal "accrued" to the trustees as the legal holders of the investments, and the trustees are the persons legally "entitled" to receive it, they are the persons chargeable under the Act. Indeed I understood Mr Cunliffe to go so far as to say that when funds are vested in trustees the Revenue authorities are entitled to look to those trustees for the tax, and are neither bound nor entitled to look beyond the legal ownership.

I think it clear that such a proposition cannot be maintained. It is contrary to the express words of section 42 of the Income Tax Act 1842, which provides that no trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereto, and who shall have made a return of the name and residence of such person in manner required by the Act, shall be required to do any other act for the purpose of assessing such person. And apart from this provision a decision that in the case of trust property the trustee alone is to be looked to would lead to strange results. If the legal ownership alone is to be considered, a beneficial owner in moderate circumstances may lose his right to exemption or abatement by reason of the fact that he has wealthy trustees, or a wealthy beneficiary may escape supertax by appointing a number of trustees in less affluent circumstances. Indeed, if the Act is to be construed as counsel for the appellants suggest, a beneficiary domiciled in this country may altogether avoid the tax on his foreign income spent abroad by the simple expedient of appointing one or more foreign trustees. Accordingly I put this contention aside.

On the other hand I do not think it would be correct to say that whenever property is held in trust the person liable to be taxed is the beneficiary and not the trustee. Section 41 of the Income Tax Act 1842 renders the trustee, guardian, or other person who has the control of the property of an infant, married woman, or lunatic, chargeable to income tax in the place of such infant, married woman, or lunatic; and the same section declares that any person not resident in Great Britain shall be chargeable in the name of his trustee or agent having the receipt of any profits or gains. Section 108 of the same Act, which deals with the profits or gains arising from foreign possessions or foreign securities, provides that in default of the owner or proprietor being charged, the trustee, agent, or receiver of such profits or gains shall be charged for the same. And even apart from these special provisions I am not prepared to deny that there are many cases in which a trustee in receipt of trust income may be chargeable with the tax upon such income. For instance, a trustee carrying on a trade for the benefit of creditors or beneficiaries, a trustee for charitable purposes, or a trustee who is under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution,

appears to come within this category, and other similar cases may be imagined.

The fact is that if the Income Tax Acts are examined it will be found that the person charged with the tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them he is liable to be assessed upon them. If the trustee receives and controls them he is primarily so liable. If they are under the control of a guardian or committee for a person not *sui juris* or of an agent or receiver for persons resident abroad, they are taxed in his hands. But in cases where a trustee or agent is made chargeable with the tax the statutes recognise the fact that he is a trustee or agent for others, and he is taxed on behalf of and as representing his beneficiaries or principals. This is made clear by the language of many sections of the Act of 1842. For instance, section 41 provides that a person not resident in Great Britain shall be chargeable "in the name of" his trustee or agent. Section 44 refers to the trustee or agent of any person as being assessed "in respect of" such person, and gives him a right of an agent or receiver for persons to retain the tax out of any money of such person coming to his hands. Section 51, under which trustees and others are bound to make returns, refers to the event of the beneficiary being charged either "in the name of" the trustee or other person making the return or in his own name. Section 53 refers to the trustee or agent as being charged "on account" of the beneficiary, and similar expressions are found in other sections. In short, the intention of the Act appears to be that where a beneficiary is in possession and control of the trust income and is *sui juris* he is the person to be taxed, and that while a trustee may in certain cases be charged with the tax, he is in all such cases to be treated as charged on behalf or in respect of his beneficiaries, who will accordingly be entitled to any exemption or abatement which the Acts allow.

Applying the above conclusions to the present case, it follows, in my opinion, first, that the respondent trustees who have directed the trust income to be paid to the beneficial tenants for life, and themselves receive no part of it, are not assessable to tax in respect of such income; and secondly, that even if they were so assessable they would be assessable as trustees on behalf of the life tenants, who would accordingly be entitled to the benefit of the exemption contained in the proviso in section 5 of the Finance Act 1914. The assessments in question in *Pool* v. *Royal Exchange Assurance Company*, which were made upon the respondents as trustees for the beneficiary Mrs Munthe, and were probably so made with reference to sections 41 and 108 of the Act of 1842, support this view of the Acts, but it does not appear to me that the absence of similar words in the assessments in *Williams* v. *Singer* makes any difference in the result.

The above conclusion is supported by the consideration that under the express words of section 5 of the Finance Act 1914 a person thereby charged with tax is authorised to deduct from the taxable income "any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom. It is difficult to believe that it was the intention of the Legislature while exempting from tax any definite part of the income which is payable to a person abroad to impose the tax upon the whole income where so payable.

For the above reasons I think that the contention of the appellants fails, and accordingly that these appeals should be dismissed with costs.

LORD ATKINSON—I have had the pleasure and advantage of reading the judgment which has just been delivered by Lord Cave. I thoroughly concur in it and I have nothing to add.

LORD SHAW—The address just delivered to the House from the Woolsack so fully and exactly expresses the opinion I have formed that I agree without adding anything.

LORD WRENBURY — In the decision of this case it is essential to bear in mind (1) that the income with which we are concerned is derived from foreign securities or foreign possessions, (2) that no part of it is received in this country, (3) that the beneficiary to whom it is paid is a foreign subject neither domiciled nor resident in the United Kingdom, and on the other hand that (4) the trustees are domiciled and resident in the United Kingdom.

The appellants initiate their contentions by pointing out quite accurately that section 100 of the Act of 1842, to which they point as being the charging section, charges annual profits or gains accruing to any person whether a subject of His Majesty or not, although not resident in the United Kingdom, from property in the United Kingdom, and that by the fourth and fifth cases duty is to be charged in respect of interest arising from foreign securities or foreign possessions, and is to be computed upon the sums received in Great Britain. The duties are to be charged upon the persons "receiving or entitled unto the same." So far therefore a foreign subject resident in this country is chargeable upon income of foreign securities or foreign investments received in this country. But a foreign subject resident abroad and receiving the income abroad is not chargeable. This position, however, they say was altered by section 5 of the Finance Act 1914, when it provided that income tax in respect of income arising from foreign securities shall notwithstanding anything in the rules under the fourth and fifth cases in section 100 of the Act of 1842 be computed on the full amount of the income whether received in the

United Kingdom or not. But the effect of section 5 of the Act of 1914 so far would seem to be only that where there is a person chargeable in respect of income arising from foreign securities he is to be charged, not as the Act of 1842 had provided upon so much as is received in the United Kingdom, but upon the full amount whether received in the United Kingdom or not. The appellants, however, seek to find in words of enlargement of the income charged an enactment affecting the characteristics of the person chargeable. I do not think that is the effect of section 5 of the Act of 1914. The two things are quite distinct. The property chargeable is one thing, the person liable to be charged is another. Section 5 affects the former but not the latter. But the matter does not stop there, for section 5 concludes with a proviso which excludes from its operation a person not domiciled in the United Kingdom, or being a British subject not ordinarily resident in the United Kingdom. In other words, if the "person" there referred to is the beneficiary, then section 5 does not apply to the beneficiary in the case before your Lordships, and if it were sought to assess her the matter would remain as it was under the Act of 1842 and she would not be assessable, for she is a foreign subject, and the income is not received in this country.

But next, the appellants say that the persons assessable are not the beneficiary but the trustees, the persons legally entitled to the income. Section 2 of the Income Tax Act 1853 provides, as regards Schedule D, that for or in respect of annual profits accruing to any persons residing in the United Kingdom from any kind of property whatsoever, whether situate in the United Kingdom or elsewhere, a certain duty shall be paid. The trustees they say are "persons" within these words; they are assessable, and the foreign subject must suffer the tax in consequence. I am not of this opinion. It is not necessary in this case to investigate the question whether trustees are in any case assessable. I express no opinion that they are not. The case was put of a trust for accumulation of income for an infant contingently on his attaining twenty-one—a case in which there is not in existence a beneficiary presently entitled to the income—and section 14 of the Finance Act 1917 was referred to as showing, as no doubt is the case, that nevertheless someone must be liable in respect of the tax, and it was said this would be the trustees. I do not concern myself with this matter. It is not this case. There is here a beneficiary of full age and not under disability. Is the tax recoverable upon the footing of the domicile and nationality of the beneficiary or of the trustees? That is the question. Upon this question section 41 *et seq.* of the Act of 1842 are most material. Section 41 deals with two cases, viz., (1) beneficiaries under disability, and (2) persons not resident in the United Kingdom whether subjects of His Majesty or not. In the former case the trustee is to be chargeable in like manner as would be charged if the beneficiary were not under disability. In the latter case the beneficiary is to be chargeable in the name of the trustee, and the trustee is to be answerable for doing such acts as shall be required for "the assessing of any such persons." Here therefore are particular cases in which the trustee is to be dealt with in manner provided by this section. The case of a beneficiary not under disability and resident in and not out of the United Kingdom is not dealt with in any similar manner, and why? Presumably because such a person is to be dealt with by assessment in his own name. Section 42 is one which discharged a trustee who returns a certain list disclosing the person who actually receives the income from responsibility for doing any other act "for the purpose of assessing such person," *i.e.*, the beneficiary. Section 44 is one which entitles the trustee of a person under disability, and who is assessed "in respect of such person," to retain money sufficient to pay the assessment. These sections point to the conclusion that the person to be taxed is the beneficiary, not the trustee, and none the less because under certain circumstances the beneficiary is to be reached through the trustee. If the trustee is a foreign subject resident abroad, but the beneficiary is in the United Kingdom, taxation will not be escaped, and if the trustee is a British subject resident in the United Kingdom, but the beneficiary is a foreign subject resident abroad, taxation is not imposed by reason of those facts.

No one can say that the Income Tax Acts are easy reading, but upon the question before your Lordships their effect is, I think, reasonably plain. I agree with the judgments given below, and am of opinion that this appeal fails and should be dismissed.

LORD PHILLIMORE—The facts in the case of *Williams* v. *Singer* are as follows:—The respondents are the legal owners of the investments in question, and are entitled at law to receive the income from them, but they hold the investments and the title to the income as trustees under the marriage settlement of the Princesse de Polignac, a lady apparently of American extraction who has married two French nobles in succession and is now a widow. Under the various instruments, which include two marriage settlements and the release of power of appointment contained in the first, the trustees in the events which have happened hold the property on trust to pay the income to the Princesse during her life and then to her children, if any, as to which your Lordships are not informed, of the marriage, and failing children to such persons as the Princesse should by will appoint, and subject thereto for the brothers and sisters of the Princesse. There are some subsidiary provisions in the deed which were relied upon by counsel for the appellant, but I do not think that any of your Lordships were impressed by them. The Princesse is a French subject and is not resident in the United Kingdom. The respondents instructed a bank in New York to collect and receive the dividends on the shares in the Singer Company and to credit them to the account of the Princesse at the

same bank. These dividends have not been remitted to or received in the United Kingdom. Upon this set of facts Sankey, J., decided as follows—"In my opinion it is not possible to make a trustee liable for income tax to be paid out of the moneys of the *cestuique* trust when the *cestuique* trust is himself not liable. The machinery of section 41 of the Act of 1842 is machinery by which through a trustee a person who is liable for income tax can be reached. The residence of a trustee is not visited upon the *cestuique* trust so as to make the latter liable for income tax when he would not otherwise be so liable."

In the Court of Appeal Swinfen Eady, M.R., expressed himself as follows—"It was argued for the Crown that this section (section 41 of the Act of 1842) did not extend to a case in which a trustee was legal owner, and was merely inserted in the statute to include cases when a trustee not being legal owner nevertheless had 'the direction, control, or management.' This contention, however, is not well founded. A trustee for a married woman is a person who is usually the legal owner of the property to which the married woman is beneficially entitled. I am of opinion that the view expressed by Sankey, J., was well founded, and that section 41 is mere machinery by which a person who is liable for income tax can be reached through the trustee or other persons mentioned in the section. The residence of the trustee is not a determining factor to render liable to income tax a person who would not otherwise be liable, or through the medium of a trustee to render income liable to tax which would not be so liable in the hands of the beneficiary himself. The income in question does not in my opinion fall within 'annual profits or gains accruing to any person residing within the United Kingdom' within the meaning of Schedule D. This income accrues to a foreigner residing abroad, and the fact that there are English trustees residing here does not bring this income into charge. He also relied upon the proviso at the conclusion of section 5."

Warrington, L.J., held that it was the liability of the beneficiary which was to cover that of the trustee, and that in consequence, as the beneficiary was not resident within the United Kingdom, the trustees were not liable. But he went further and considered the general question of the liability of trustees to assessment and taxation, and expressed himself as follows—"Is a trustee residing in the United Kingdom liable to be taxed on gains and profits accruing to him in which he has no beneficial interest? In my opinion the provisions contained in the sections dealing with trustees in the Act of 1842 show clearly enough that the person liable to be taxed is the beneficiary and not the trustee, and that the provisions of section 41 are mere machinery by which in the cases there specified the tax may be the more readily recovered." And again—"It is to be observed that the section makes no provision for the assessing of a trustee for a person not under disability and resident in this country." He also relied upon the proviso.

Scrutton, L.J., thus expressed himself—"The conclusion I draw from these involved sections is that Parliament was endeavouring to put the burden on the beneficial owner, and only used the trustee as machinery to get at the person who had the benefit of the income. The trustee was only to be assessed 'in respect of' the *cestuique* trust (section 44) 'on account of such other person' (section 53), 'on behalf of the other person' (section 55). The person to whom the property belongs is to be charged in the name of the trustee (section 51). It follows that, in my opinion, when Parliament exempted a class of persons from the operation of the statute of 1914, they were at any rate including the beneficial owner or *cestuique* trust if he came within the description of the class. The *cestuique* trust in each of the present cases is not domiciled in England, and therefore in my view comes within the protection of the proviso, and is not bound to pay on her whole income but only on that part which her trustees receive in England. The word 'person' in the proviso, in my view, includes a beneficial owner or *cestuique* trust who can satisfy the requirements of the proviso." The Lord Justice was also inclined to think that the same result might be arrived at by treating the payment to the *cestuique* trust as an annual payment out of the income to a person resident out of the United Kingdom under the earlier part of section 5.

The points raised by the judgment of the Court of Appeal cover a wide field, and the arguments of the counsel for the appellants have of necessity traversed the same ground, but at the conclusion of the argument for the appellants your Lordships were of opinion that it would not be necessary for the purpose of deciding this case to express your opinion upon some of the points raised. It was suggested by counsel for the appellant that the Income Tax Acts, except in certain special and rather narrow instances, took no account of the position of trustees but regarded only the legal ownership. On the other hand, from some of the language in the judgment of the Court of Appeal, especially that of Warrington, L.J., it would appear that a contention that the Income Tax Acts looked generally to the beneficiary and disregarded the trustee except as a means of reaching the beneficiary in certain rare cases had found favour. I do not propose to express an opinion whether either, or which if either, of these two extreme views is right.

The charge is laid upon the taxpayer by the first section of each taxing Act—"For and in respect of the annual profits or gains arising from or accruing to any person or persons whatever, resident in the United Kingdom, from any kind of property whatever." For the purpose of ascertaining the person to be charged by section 5 of the Act of 1914 your Lordships have to determine who are the persons charged either by the words just quoted or by any additional provisions in the later sections of the Act of 1842.

I think it convenient to mention first

that section 43 adds to the list of persons charged a receiver appointed by a court, not as a person chargeable in himself, this being a very convenient provision for ensuring that the person ultimately found to be the owner shall pay.

Then comes section 41, which also adds to the list of persons who are not owners under any construction, but yet are to be charged, the guardian of an infant or the curator or committee of an insane person whether the infant or insane person reside in Great Britain or not, and the factor, agent, or receiver of a person not resident in Great Britain. These are unquestionable additions. Then in the same section and in the same relation is inserted the trustee of a married woman certainly, possibly also the trustee for an infant or insane person. If the trustee as being the legal owner is already chargeable under the general section, there would be no necessity for his insertion into this section. It was attempted to escape from the force of this argument by a suggestion that the word "trustee" did not mean trustee but something else. The Master of the Rolls expressed himself upon this point in words which I have already quoted. I find it rather difficult to express my rejection of the argument in respectful language. The very essence of the position of a trustee is that he is a person who at law has all the rights of an owner, but who has nevertheless the obligation, which he has undertaken by accepting the trust, of using his powers as legal owner for the benefit of some person not himself or some object not his own.

As to married women, the Act of 1842 was passed long before the modern Married Women's Property Acts, and the one case where under the law as it then stood a married woman could be treated as the legal owner, or as in a position equivalent to that of a legal owner, is especially provided for by section 45.

It remains therefore that the argument from this section is a forcible one. In certain specified cases the trustee in common with the guardian and committee is made chargeable to income tax, in like manner and to the same amount as would be charged if the infant were of full age or the married woman were sole or the insane person capable of acting for himself.

But for this section the guardian or committee would not be liable.

Section 42 provides that "no trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereunto . . . nor any agent or receiver of any person being of full age and resident in Great Britain other than a married woman, lunatic, idiot, and insane person," who returns a list giving the name and residence of such person, shall be required "to do any other act for the purpose of assessing such person," unless the Commissioner requires his evidence.

Be it observed the provision is not that a trustee, agent, or receiver who furnishes a list shall be released from assessment and charge, but that he is not to be required to do anything more for the purpose of arriving at the assessment of the person to be charged.

By section 51 "every person who shall be in receipt of any money or value or the profits or gains arising from any source mentioned in this Act of or belonging to any other person . . . for which such person is chargeable" shall deliver a list "with a declaration whether such person is of full age, or a married woman living with her husband, or a married woman for whose payment of the duty hereby charged the husband is not accountable by this Act, or resident in Great Britain, or an infant, idiot, lunatic, or insane person, in order that such person . . . may be charged either in the name of the person delivering such list, if the same shall be so chargeable, or in the name of the person to whom such property shall belong, if of full age and resident in Great Britain, and the same be so chargeable by this Act."

Further light is thrown upon this matter by the provisions of section 108 for regulating the mode in which duty in respect of profits or gains arising from foreign possessions or foreign securities is to be assessed. The section contains a provision in the following words:—"In default of the owner or proprietor thereof being charged, the trustee, agent, or receiver of such profits or gains shall be charged for the same . . . whether the person to whom the said profits belong shall be resident in Great Britain or not."

Who is the person to whom the profits belong, and who is called the owner or proprietor and in default of whom the trustee is to be charged? Surely the beneficiary, the owner in equity.

Putting these sections together it would appear that trustees in the cases provided for in section 41 and section 108 are made the persons assessable and liable, but that no trustee who has authorised the receipt of the profits from the trust property by the person entitled is assessable or liable, being bound only to the discharge of the obligations imposed upon him by section 42.

It may perhaps be said that where there is a trust for accumulation or for payment of debts no person can be said to be entitled to the receipt of the profits, and that in such cases the trustee is to be the person to be assessed. It is possible also that where trustees have the management of a business they should be the persons to be assessed or charged. There are disbursements which may have to be made in the course of conducting a business which a prudent owner would consider as deductions from profits, and which trustees would make before they paid the net income over to the beneficiary, but which nevertheless for income tax purposes, as the law at present stands, are not considered as legitimate deductions from income — cases of which the decision of this House in *Strong & Company* v. *Woodifield* (1906 A.C. 448) is an example. In these cases if the revenue is to receive its full quota it would seem that the assessment must be put upon the trustee and not upon the beneficiary, and that in such cases the trustee is the person to be assessed.

The case now before your Lordships is not one of such cases. The trustees here merely exist in order to preserve the settlement. Their duty, so long as the Princesse is alive, is to see that the dividends reach her. In law they are entitled to them, and they must give the discharge to the company, but the person entitled within the meaning of section 42 and the person to whom they belong within the meaning of section 51 is, as it appears to me, the Princesse.

These considerations might be enough to decide the case in favour of the respondents, but I think that the proviso of section 5 of the Statute of 1914 may be fairly relied upon as an indication that the statute did not intend to reach a person in the position of this lady.

Lastly, while, as at present advised, I am inclined to agree with counsel for the appellant that the words in the earlier part of the section, "a deduction on account of any annual interest, or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom," are not meant to cover the case where a trustee in this country is bound to pay the whole income to a person outside, still I think that the words are useful as supporting the general sense of the conclusion at which I have arrived. If the income which the Princesse is to receive for these shares had been charged, say, by the person who first gave them to her, with an annuity in favour of an old servant residing in America, it seems to me that this annuity could be deducted from the income liable to tax, and it would be strange if this were so and yet the residue of income also received by a person residing out of the United Kingdom were liable to tax. I agree that the appeal in this case also should be dismissed.

The case of *Pool* v. *Royal Exchange Assurance* should be determined on the same grounds, and I agree that the appeal also in this case shall be dismissed.

Appeals dismissed.

Counsel for the Appellant in both Appeals —Sir G. Hewart (Attorney-General)—Cunliffe, K.C.—Hills. Agent—H. Bertram Cox, Solicitor of Inland Revenue.

Counsel for the First Respondent—Disturnal, K.C. — Latter. Agents — Charles Russell & Company, Solicitors.

Counsel for the Second Respondent—Disturnal, K.C.—Bremner. Agents—Burton, Yeates, & Hart, Solicitors.

HOUSE OF LORDS.

Monday, May 17, 1920.

(Before Lords Cave, Atkinson, Shaw, Wrenbury, and Phillimore.)

SINGER *v.* WILLIAMS.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue — Income Tax — Assessment of Dividends from Shares in a Foreign Company — Foreign Securities—Foreign Possessions—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Cases* 4 *and* 5—*Finance Act* 1914 (4 *and* 5 *Geo. V, cap.* 10), *sec.* 5.

The appellant, who resided in England and was a shareholder in an American corporation, claimed in respect of his income therefrom to be assessed upon the dividends received during the last financial year and not upon the average dividends of the preceding three years. *Held* that such income was derived from foreign possessions — case 5 of Schedule D of the Income Tax Act 1842 —not from foreign securities—case 4— and that the duty therefore fell to be computed on a three years' average.

The *facts* appear from their Lordships' considered judgment.

LORD CAVE—This appeal raises a question as to the mode in which the income from certain foreign investments should be assessed to income tax under the Income Tax Acts and section 5 of the Finance Act 1914.

The appellant, who is domiciled or ordinarily resident in this country, is the holder of shares in an American corporation called the Singer Manufacturing Company of New Jersey. The dividends on these shares are not remitted to this country but are placed to the credit of the appellant in the United States. The Commissioners for the Romsey Division of the county of Hants, acting under the above-mentioned section of the Finance Act 1914, assessed the appellant to income tax in respect of the year ending on the 5th April 1916 in the sum of £80,000 (since reduced to £76,687) as being the profit received from the above shares on an average of the three years preceding the year of assessment. The appellant objected to this assessment on the ground that on the true construction of the statutes he was not liable to be assessed on a three year average but only on the actual amount of dividend received in the year of assessment, namely, £47,080. On an appeal to the High Court of Justice the assessment made by the Commissioners was confirmed by Sankey, J., whose decision was afterwards affirmed by the Court of Appeal. Thereupon this appeal was brought.

In the course of the argument for the appellant reference was made to certain earlier statutes relating to income tax which are now repealed. It appears to me that for the purposes of this case no reliable inference can be drawn from the