No. 656.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—23RD AND 24TH NOVEMBER, 1926.

COURT OF APPEAL.—31ST JANUARY, 1ST AND 2ND FEBRUARY, 1927.

HOUSE OF LORDS.—2ND, 3RD AND 24TH FEBRUARY, 1928.

ORMOND INVESTMENT COMPANY, LIMITED *v.* BETTS (H.M. INSPECTOR OF TAXES).(1)

Income Tax, Schedule D—Foreign possessions—Basis of assessment—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Case* V, *Rule* 1.

The Appellant Company, an investment company incorporated under the Companies Acts in June, 1922, *held shares in a foreign company, and on the 7th December*, 1922, *received a dividend thereon of* £601,717, *which comprised the whole of its income from foreign investments up to the 5th April*, 1923. *Under Rule* 1 *of Case* V *of Schedule D an assessment was raised for* 1922–23 *and on appeal to the Special Commissioners determined in a sum of* £601,717 (*the full amount of income arising from foreign investments in the year of assessment*), *and for* 1923–24 *an assessment was raised and determined on appeal in a like sum of* £601,717 (*the full amount of such income arising in the preceding year*). *The Company claimed that the assessment for the year* 1922–23 *should be reduced to nil* (*the average income from foreign investments for the three years ended the 5th April*, 1922), *and that the assessment for* 1923–24 *should be reduced to* £200,572 (*the average of the income for the three years ended the 5th April*, 1923).

Held, *that Rule* 1 (2) *of the Rules applicable to Cases* I *and* II *of Schedule D did not apply to assessments made under Rule* 1 *of Case* V.

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 the 6th March, 1925, for the purpose of hearing appeals, the Ormond Investment Co., Ltd., (hereinafter

(1) Reported K.B.D. and C.A., [1927] 2 K.B. 326; and H.L., [1928] A.C. 143.

called the Appellant Company) appealed against assessments to Income Tax in the sums of £859,596 and £1,031,372 for the years ending 5th April, 1923, and 5th April, 1924, respectively, made upon it under Case V of Schedule D of the Income Tax Act, 1918.

2. The Appellant Company was formed in June, 1922, and incorporated under the Companies Acts. It carries on the business of an investment company in Bradford.

3. In August, 1922, the Appellant Company acquired a very large holding of Shares in Joseph Benn & Sons, a company incorporated and carrying on business in America. On the 7th December, 1922, the Appellant Company received a dividend of £601,717 on its holding of these shares. It received no further dividend on these shares nor any other income from possessions out of the United Kingdom up to the 5th April, 1923. Dividends were declared by Joseph Benn & Sons not more often than once a year and the dividend paid in December, 1922, was in fact a distribution of two years' profits.

4. The Appellant Company made up the accounts of its business for the period of seven months from 7th June to 31st December, 1922. The assessments under appeal were computed by taking the income of £601,717 shown in this seven months' account and multiplying it by $\frac{10}{7}$ to arrive at the income for the purpose of assessment for the year ending 5th April, 1923 (the Company having been in existence for ten months of that year), and by $\frac{12}{7}$ to arrive at the assessment for the year ending 5th April, 1924.

5. The assessments were made in accordance with the provisions of Rule 1 of Case V of Schedule D, which enacts that :—

> The tax in respect of income arising from stocks, shares or rents in any place out of the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case I, whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances 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.

The other relevant portions of the Income Tax Acts are as follows :—

Rule applicable to Case I, Schedule D.

> The tax shall extend to every trade carried on in the United Kingdom or elsewhere, other than a trade relating to lands, tenements, hereditaments, or heritages directed to be charged under Schedule A, and shall be computed on the full amount of

the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the fifth day of April preceding the year of assessment.

Rules applicable to Cases I and II, Schedule D.

1.—(2) Where the trade, profession, employment, or vocation has been set up and commenced within the said period of three years, the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of the same, and where it has been set up and commenced within the year of assessment, the computation shall be made according to the rules applicable to Case VI.

Rules applicable to Case VI, Schedule D.

2. The computation shall be made, either on the full amount of the profits and gains arising in the year of assessment, or according to an average of such a period, being greater or less than one year, as the case may require, and as may be directed by the commissioners.

Fifth Schedule.

Statements, Lists and Declarations.

VII. By or for every Person carrying on any Trade to be charged under Schedule D.

The amount of the profits or gains thereof, upon a fair and just average of the three preceding years, or of such shorter period as the trade has been carried on.

XI. By every Person entitled to or receiving Income from Possessions out of the United Kingdom to be charged under Schedule D.

(1) In the case of income from stocks, shares or rents, save as hereinafter mentioned, the full amount arising therefrom, on an average of the three preceding years, and the amount of every deduction or allowance claimed in respect thereof, together with the particulars of such deduction and the grounds for claiming such allowance.

Finance Act, 1924, Section 26.

The following rule shall be added after Rule 3 of the Rules applicable to Case V of Schedule D :—

" 4. Where a person who has been charged with tax in " respect of income from a possession out of the United " Kingdom proves that the total amount of tax, computed in

" accordance with Rule 1 of the Rules applicable to Cases I and " II of Schedule D, which was paid in respect of that income " for the first three complete years of assessment during which " he was the owner of the possession, exceeds the total amount " which would have been paid if he had been assessed for each " of those years on the actual amount of the income of each " year, he shall be entitled to repayment of the excess."

6. It was contended on behalf of the Appellant Company :—

(1) That the words " as directed in Case I " in Rule 1 of Case V of Schedule D referred only to the Rule applicable to Case I and did not refer to Rule I (2) of the Rules applicable to Cases I and II, and this view was supported by a comparison of VII and XI in the Fifth Schedule to the Act.

(2) That accordingly under Rule I of Case V the assessments should be computed on the average of the amounts of income arising in the three preceding years, and that it was immaterial whether the Appellant Company was in existence during the whole of that period.

(3) That the assessment for the year 1922–23 should thus be computed on the average income for the three years ending the 5th April, 1922, and should therefore be reduced to Nil, and the assessment for the year 1923–24 should be computed on the average income for the three years ending the 5th April, 1923, and should therefore be reduced to £200,572 (the average of Nil, Nil and £601,717).

(4) That in any event as the accounts for the seven months included a full year's income from possessions out of the United Kingdom, the assessments for each of the years should be reduced to £601,717 the amount of the Appellant Company's income from this source for a full year.

7. It was contended by the Inspector of Taxes on behalf of the Crown (*inter alia*) :—

(1) That the words " as directed in Case I " referred to Rule 1 (2) of the Rules applicable to Cases I and II as well as to the Rule applicable to Case I, and that this was supported by the Income Tax Act, 1842, in which both these Rules formed part of the first Rule of Case I, and also by Section 26 of the Finance Act, 1924.

(2) That the assessment for the year 1922–23 was properly made according to the Rules applicable to Case VI, but that as no further income from this source arose up to the 5th April, 1923, it should be reduced to the sum of £601,717, the amount arising from June, 1922, to the 5th April, 1923.

(3) That the assessment for the year 1923–24 was properly made according to the provisions of Rule 1 (2) of the Rules applicable to Cases I and II, Schedule D, but should be reduced to £601,717.

8. We were of opinion that Rule 1 (2) of the Rules applicable to Cases I and II must be regarded as much a Rule of Case I as the Rule applicable to Case I only, and that it is imported into Case V no less than the similar direction in the proviso in Rule 1 of Case I of the Income Tax Act, 1842.

We accordingly held that the assessment for the year 1922–23 was correctly made on the basis of the Rules of Case VI, but that it should be reduced to £601,717 the full amount of the income arising up to the 5th April, 1923.

We further held that the assessment for the year 1923–24 should be based on the average of the income arising up to the 5th April, 1923, but that it should also be reduced to the sum of £601,717, that being the amount of the income arising from this source for a full period of twelve months.

9. The Appellants immediately upon the determination of the appeal declared to us their 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.

10. The question for the opinion of the Court is whether the assessment to Income Tax under Case V of Schedule D on the Appellant Company for the years 1922–23 and 1923–24 should be computed as directed in Rule 1 (2) of the Rules applicable to Cases I and II of Schedule D.

J. JACOB, R. COKE, } Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

9th July, 1926.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 24th November, 1926, when judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—In this case the question is whether, in assessing a taxpayer in respect of the income from foreign possessions, it is open to the Crown to take advantage of the Rules applicable to Cases I and II, Schedule D, No. 1 (2), so as to take a less average than three years or to take a computation arrived at by reference to the actual receipts of the years of assessment. Now that depends upon whether the words of Rule 1 of Case V, " on an average of three preceding years, as directed in Case I," incorporate the provision of the Rules I have already mentioned which are applicable to Case I as well as to Case II, as to the calculation which is to be made when there is not an average of three preceding years available. Nothing turns upon the form of the printing. In the Act of 1842 the provisions for dealing with cases where a trade had not been set up or commenced for the three years before the year of assessment, having been set up within the three years or since the beginning of the year of assessment, those two provisions took the form of provisos in the sense that they limit what has gone before; they are substantive enactments dealing with a part of the field which has not been touched by what has gone before, and in that form they more artistically appear in the Act of 1918, Rule 1 (2) of the Rules applicable to Cases I and II. Therefore the question is whether, on this construction of that Act, when it is said " an average of " three preceding years as directed in Case I," the Legislature is also saying that under certain circumstances, where the average of three years cannot be applied, a different computation is to be used, namely, an average for less than three years in one case or an average not relating to any preceding years at all but to the actual year of assessment in the latter part of the second proviso in the Act of 1842. I am bound to say it seems to me the words will not do it. " On an average of three preceding years "; that is all it says. That does not bring in the words " together with the " different provisions which are made where there is not an average " of three preceding years "; it simply does not bring them in by the language, in my judgment. Now the matter does not quite stop there, of course, because the contrast between the average plus the two other calculations to be made by the two provisos and the bare average of three preceeding years without more, is clearly pointed in the statutory descriptions of the returns to be made, which are to be found in the Schedule of the Act of 1842,

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Schedule G, No. VII, the return to be made by persons carrying on trades, and so on, "the amount of the balance of the profits "thereof upon a fair and just average of three years, or for such "shorter period as the concern has been carried on," and in No. XI it says: profits from foreign possessions "on an average of the "three preceding years," and nothing more; and it is curious to find that in the forms at present in use, which are sent out for the taxpayer to comply with, he is told in the notes most expressly that in regard to a trade or business he is to take the three years' average if there are three years, and if there are not, then he is to take less than three years or make a computation upon the actual year of the assessment, if the trade has been commenced in the year of assessment. But with regard to foreign possessions again nothing is said in the return except the average of three preceding years, and the taxpayer is not required to make any return—by their own statutory form adopted by the Revenue—he is only required to give an average of the three preceding years and if he cannot do that then it is not provided for by the form. It is to be remembered that at the time when the Act of 1842 was passed, as has often been said before, the foreign possessions to be glanced at were foreign undertakings really mainly in the nature of plantations, and so on. No doubt shares in foreign companies, if they existed at all, were probably negligible in 1842 and it is only within the last thirty years that the question was decided—it arose in the *New York Brewery* case[1]—whether in a particular return a foreign share was a foreign security or a foreign possession. If you look at the old Act you see in Section 108 how these remittances were to be assessed. The Commissioners were situated in London, Glasgow, Bristol and, I think, Liverpool, and they were to regard the period for which the accounts were made up as well as the period immediately before the 5th April, and it clearly shews the class of thing that was being dealt with at that time.

Now if the view is right that the two provisos so called in Case I in the Act of 1842 and the first Rule of Cases I and II of the present Act are to be applied to foreign possessions, one has got somehow to transmute the language applicable to a trade set up and commenced into language which is applicable to foreign possessions. How do you do it? Are you to treat the foreign possession as like a trade and to look at the time when the foreign possession was set up and commenced? Does that mean when he acquired it? If so it must mean that there is a separate calculation with regard to every piece of foreign property that the man has. If he has land and buys another piece of land, is the other piece of land a new piece of land? If he has land that is

(1) Bartholomay Brewing Company *v.* Wyatt, 3 T.C. 213.

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waste land and he develops it, is that a new possession or an old possession? It seems to me that that is not the scheme of it at all, that what is looked at is the receipts. That was really all the Legislature had to go upon through these four Commissioners at the places of import. Can you treat the beginning of the receipts as the setting up and commencing of something? I do not think the words are applicable to that at all. Really to put this construction on the Act is to ask the Court to undertake the drafting of some provision to meet a hole which was left in the Act of 1842 and has been left in the Act of 1918, the stopping of which by some elaborate means was probably not worth while in the view of the people who drafted the Act of 1842, under very different commercial circumstances. That is my view on the Act of 1842 and the Act of 1918.

But now I am confronted with a very difficult question as to the effect of subsequent legislation, because in 1924, after the years in question in this case, a section was passed giving relief from taxation which the section supposed to have been made on a person for the first three complete years during which he was the owner—that is how they put it there—of the foreign possession, and it is said that that is a declaration by Parliament that in some way or other, it does not expressly say by this section, a person has been liable to assessment from the first moment when he was the owner of a foreign possession; treating the act of ownership, I suppose, the same as the setting up and commencement of a trade—an entirely different thing. Am I to give effect to that argument? It is really rather, I might almost say, a sinister and menacing proposition, because it means nothing less than this, that if my view of the first Act is right—if it is wrong then of course it does not arise—but assuming it is right then the argument is: Very well, by these means Parliament has retrospectively by allusion taxed something which was not taxed in terms at the time by previous legislation. I have been referred to the *Cape Brandy* case(1) which came before me and went to the Court of Appeal. There the Legislature had passed an Act increasing the duty on the footing that the duty did exist in the case, and the question in the case before me was whether it existed at all. What I did was not so important as what happened in the Court of Appeal. The Master of the Rolls approved my result, but he did it upon the footing that the first Act was clearly ambiguous, and indeed Lord Justice Younger held that the first Act secured to the Crown its position without the second Act at all. So no doubt it was very ambiguous. Lord Justice Scrutton decided upon the ground that the second Act was really the Act which applied; so he really does not deal with this aspect of it. The

(1) The Cape Brandy Syndicate *v.* The Commissioners of Inland Revenue 12 T.C. 358.

(Rowlatt, J.)

Master of the Rolls clearly said, as really must be the case when one thinks of it, that subsequent legislation if it proceeds upon erroneous construction of previous legislation cannot alter that previous legislation. Then he goes on to deal with the question of ambiguity. Now that was that case. In the case of *The Attorney-General* v. *Clarkson*, [1900] 1 Q.B. 156, that was a case where a Statute had been expounded by a case and then there was a subsequent Act of Parliament which obviously proceeded on the view that that case was well decided. That comes really within a different class of case. I think *O'Kane's* case (1) was also cited, but that was a different matter and I think I took the view which Mr. Reginald Hills was interested in. But upon the best consideration I can give I am unable to say that there is this ambiguity in the early Act and that it has been settled by this subsequent Act. I think really the position is described correctly by Mr. Latter when he says the Revenue have been putting forward in practice a certain principle of taxation and they introduced an Act of Parliament to mitigate that practice and so it is said that they have got from Parliament a retrospective confirmation of that practice. I think that is the right way to describe it, and it seems to me that to take the view contended for here by the Crown is going further than any case has gone before and going to a length which is really rather alarming.

Therefore I think the Appellants are entitled to succeed in this appeal. As regards the next year they do not quarrel with the principle of being assessed on the average of the three preceding years, although they have only one year to bring into that average or one year to contribute to the figures on which the average is arrived at, and although—I do not think this makes any difference, curious though it may seem—the company was not in existence before the first year of their receipts. I say nothing about that, whether it is right or wrong. I do not want to be thought for a moment to suggest that it is wrong. I only say that it has not been in controversy in this case.

For these reasons I think the appeal must be allowed with costs.

Mr. Bremner.—My Lord, certain sums have been paid by my client and I should ask your Lordship that we should have interest at the usual rate on the sums which have been paid on account.

Rowlatt, J.—That is so, is not it, Mr. Hills?

Mr. Reginald Hills.—Yes, my Lord.

Rowlatt, J.—Very well.

Mr. Bremner.—If your Lordship pleases.

(1) J. & R. O'Kane & Co. *v.* The Commissioners of Inland Revenue, 12 T.C. 303.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Sargant and Lawrence, *L.JJ.*) on the 31st January and 1st and 2nd February, 1927.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. A. M. Bremner for the Company.

On the 2nd February, 1927, judgment was given unanimously in favour of the Crown, with costs, reversing the decision of the Court below.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you further, Mr. Hills.

This is an important case from the point of view of the subject and indeed of the Crown, but we have had the case fully and thoroughly well argued, and therefore I do not think we should gain by reserving our judgment; rather will it be more convenient, while the matter is fresh in our minds, to deal with the issues which arise.

The facts on which the point has to be determined are these. The Ormond Investment Company, Limited, is a company formed in June, 1922, incorporated under the Companies Acts. It carries on the business of an investment company in Bradford. In August in that same year it acquired a large holding in shares in a company incorporated to carry on business in America; and in the course of this same financial year, namely, on the 7th December, 1922, the Appellant Company received a dividend of £601,717 on its holding of these shares. It received no further dividend on these shares or any other income from possessions out of the United Kingdom up to the close of the financial year on the 5th April, 1923, and it appears that this sum of £601,717 was a dividend arising from a distribution of two years' profits.

The question that arises is this: Is that Company, the Ormond Investment Company, Limited, liable to assessment to Income Tax in respect of the sum which it has received from its foreign investment? The two years that are in question are the financial years which ended respectively on the 5th April, 1923, and the 5th April, 1924.

It is clear that the profit derived from foreign investments is comprehended as a subject for charge in the Income Tax Acts, but it is said, by reason of matters with which I will deal more particularly presently, that this company is not liable to pay anything to Income Tax for the financial year ending 5th April,

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1923, and that no assessment can be made upon it for that year; and the next year, the year ending 5th April, 1924, a modified assessment can be made upon it.

Mr. Bremner has called our attention to the well-known words which have been used in these Income Tax cases by many noted Judges in the past. It is well always to bear them in mind, and I refer to the passage to which he called our attention, in order to show that in the judgment I am about to deliver I have not overlooked the words, which are the words of Lord Cairns. "If "the person sought to be taxed comes within the letter of the "law he must be taxed, however great the hardship may appear "to the judicial mind to be. On the other hand, if the Crown, "seeking to recover the tax, cannot bring the subject within the "letter of the law, the subject is free, however apparently within "the spirit of the law the case might otherwise appear to be" (*Partington* v. *Attorney-General*, (1869), 4 E. & I. App. 100, at page 122). Equally we must bear in mind the words which have been quoted, following those words of Lord Cairns, the words of Lord Justice Cotton (1): "I quite agree we ought "not to put a strained construction upon that section in order "to make liable to taxation that which would not otherwise be "liable, but I think it is now settled that in construing these "Revenue Acts, as well as other Acts, we ought to give a fair "and reasonable construction, and not to lean in favour of one "side or the other, on the ground that it is a tax imposed upon "the subject, and therefore ought not to be enforced unless it "comes clearly within the words."

As I point out, upon the facts it would appear that in the year of assessment to April, 1923, the Appellant Company were the holders of shares in this American company and they received the large sum which I have already named from that holding in the course of that financial year. Inasmuch, therefore, as the Income Tax Acts imposed a liability on the receipts from foreign possessions, prima facie it would appear that there was in the hands of this Company a receipt liable to taxation.

The Income Tax Acts are renewed from year to year. If an Income Tax Act is passed in any financial year it brings into operation the permanent Act of 1918, for by Section 1 it is provided that: "Where any Act enacts that income tax shall be "charged for any year at any rate, the tax at that rate shall be "charged for that year in respect of all property, profits, or gains "respectively described or comprised in the schedules marked A, "B, C, D, and E, contained in the First Schedule to this Act "and in accordance with the Rules respectively applicable to "those Schedules." It also provides, by Section 2, that: "Every

(1) Gilbertson v. Fergusson, 1 T.C. 501, at p. 519.

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" assessment and charge to tax shall be made for a year com-
" mencing on the sixth day of April and ending on the following
" fifth day of April ".

There was for the financial year ending 5th April, 1923, a Finance Act passed which did impose an Income Tax. Thus the operation of the Income Tax Act of 1918 was started.

There is, therefore, at first sight a charge because there was a holding and a receipt from that holding received in this country. I may therefore cast aside the principle of the cases which have been more than once referred to, namely, *Brown* v. *The National Provident Institution*(1), reported in the House of Lords in [1921] 2 A.C. 222, where the subject was not taxed because in the year of assessment he did not hold a security which attracted tax. In that year of assessment there were no profits which were gained in that year and all that was contended was that inasmuch as he had in a previous year held a security which yielded a profit, he was liable in that subsequent year to taxation. I clear away, therefore, those cases and the similar case of *Grainger* v. *Maxwell*(2), [1926] 1 K.B. 430, merely observing the distinction that in this case there was an investment held and there was a gain or profit received from that foreign investment in this country in that financial year. As there was an Income Tax in operation in that financial year, there is by Section 1 of the Act of 1918 a charge upon that gain or profit in that financial year. The mode by which that charge is to be made effectual is found in Schedule D, which says with regard to the tax under Schedule D, into which Schedule foreign investments or receipts from foreign possessions fall : " Tax under this Schedule shall be " charged in respect of (*a*) The annual profits or gains arising or " accruing—(i) to any person residing in the United Kingdom " from any kind of property whatever, whether situate in the " United Kingdom or elsewhere ". It appears quite clear, therefore, that by virtue of the annual Act and the Act of 1918, Section 1, and the Schedule, there is a charge upon these profits accruing from a kind of property situate elsewhere than in the United Kingdom.

By Clause 2 of Schedule D : " Tax under this Schedule shall " be charged under the following cases "—or categories I suppose one might call them. With regard to this particular one : " Tax " in respect of income arising from possessions out of the United " Kingdom ". That finds its place in Case V. So far, therefore, it appears plain that there is to be a tax ; it is charged in respect of this income arising from these foreign possessions.

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(1) 8 T.C. 57. (2) 10 T.C. 139.

(Lord Hanworth, M.R.)

The difficulty arises from the construction to be placed upon the Rules which are applicable to Case V, but it is well to pause for a moment and see that as far as I have gone at present it is plain that there is a charge of the tax upon this income arising from possessions out of the United Kingdom imposed by the effect of the Acts to which I have already referred. How is that tax to be measured? Rule 1 of Case V says this: "The "tax in respect of income arising from stocks, shares or rents "in any place out of the United Kingdom shall be computed on "the full amount thereof on an average of the three preceding "years, as directed in Case I, whether the income has been or "will be received in the United Kingdom or not, subject, in the "case of income not received in the United Kingdom, to the "same deductions and allowances 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."

I am going to take the words of that Rule first of all as if they did not contain the words "as directed in Case I". It is then said that the measure or computation of the tax to be paid is to be arrived at on the full amount on an average of the three preceding years. Speaking for myself, I find no difficulty in giving a clear interpretation to those words, "the three preceding "years". What preceding years? The years which, as has been stated in Section 2 of the Act, are the years of assessment, that is the year which runs from the 6th April in one year to the 5th April in the following year, and you find definitely the indicative article there, "the three preceding years". It appears to me quite easy to give a definite meaning to those preceding years and that if you will read the Sections of the Act and not trouble yourself with other portions of the Act referable to other cases and other businesses, it is easy to give a meaning to "the "three preceding years" that are indicated, namely, three financial years.

But it is said that if that is the interpretation, then, as there was not a complete period of three preceding years before this year of assessment, if you compute it by looking at what the receipts were up to the 5th April, 1922, the total receipts were nil, therefore your computation based upon those three preceding years is nil; with the result that although there is a tax imposed, yet, as by the Rules for computation you arrive at the answer nil, there is no sum to be recovered from this company.

With that form of reading and argument, if Rule I applicable to Case V stood as I have suggested, I would agree; but it does not. It says the amount of the tax is to be computed "on the "full amount thereof on an average of the three preceding years,

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" as directed in Case I ". Observe, it is not as directed in any particular Rule to be found under Case I, nor does it narrow the matter down to a particular Rule under Case I. It speaks of the computation of the tax " on an average of the three preceding " years, as directed in Case I.

For my part, I cannot but accept the view that those words are intended referentially to bring in Case I with its concomitants. I turn back, therefore, to Case I and I find that Clause 2 in Schedule D, Case I, refers to " tax in respect of any trade not " contained in any other Schedule ", and that when you are dealing with Case I or Case II or Case III, you have to read the Cases, " subject to and in accordance with the rules applicable to " the said Cases respectively ". There is a Rule, which relates to Case I and only to Case I, which does refer to the assessment on the basis of " a fair and just average of three years ". To my mind the words of Rule 1 applicable to Case V are clear, and the initial Rule to Case I adds substantially nothing to what is indicated in Rule 1 applicable to Case V.

But I find great difficulty in accepting the argument that what is meant by the words " as directed in Case I " is that you are to go to Case I, so far as Case I, and any Rule under it that may refer to three years, and to nothing else. It is true that Case I plus the Rule applicable to Case I refers to three years, but as I have already pointed out, you have got " the three preceding " years " already mentioned in Rule 1 of Case V. More than that, you have referentially a direction that you are to go to Case I, from which there is no deduction and on which there is no restriction. Therefore when you come to Case I, it appears to me that you must read Case I " subject to and in accordance " with the rules applicable to the said Cases respectively."

What is the meaning of " respectively "? Surely it means to distribute to the Cases such Rules as are appropriate and belong to those Cases respectively. There are a number of Rules which apply to Case I and also to Case II, but the fact that they also apply to Case II is relied upon to exclude them from notice when you are dealing with the Rule which you are to follow in consequence of the words " as directed in Case I " which are found in Rule 1 of Case V.

I cannot so restrict those words. It appears to me that, reading the word " respectively " in its right and proper sense, it does introduce for the purpose of consideration of Case I all Rules which are proper to Case I. If that is the right meaning then one may expand the words of Rule 1 of Case V to " as " directed in Case I, with the Rules proper to that Case." If that is the way, as I think it is, in which that reference is to be

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read, then there is introduced not only the Rule which is restricted to Case I alone, but there are also the Rules which are catalogued and are to be read in reference to Case I as well as Case II, but not less to Case I because they are applicable also to Case II.

When you turn to those Rules which are applicable to Cases I and II you there find a scheme under which it is possible to form a computation of what the tax ought to be where you have a trade, profession, employment, or vocation set up and commenced within the period of three years, and also where it has been set up and commenced within the year of assessment. Indeed, you have then introduced by your reference to Case I a code which will apply and give you a method of computation in respect of all receipts which have been received not merely for three years and more, but which have been received for a less period of time, be that time two years or even so short a time as during the year of assessment.

I am not unmindful of the difficulties that you may have with regard to making use of Rules which are primarily intended and directed to the setting up of trade or profession or employment or vocation, but which are in fact to be applied to the receipt of foreign possessions. In a number of cases in the Income Tax Act it is not easy to give a precise or perfect definition of what the words may mean or do mean, but many of these difficulties are overcome in the actual cases which have to be solved by determination of the facts. That determination of the facts is left to those who are entrusted with that duty, and who are not unacquainted with business, whether of trade or of the receipt of profits from foreign possessions.

I will only observe this: that in the interpretation section, Section 237, "'Trade' includes every trade, manufacture, "adventure or concern in the nature of trade". For myself I am not much impressed by the argument, which is this: that you must so strictly criticise the method of computation that if you find some difficulties or apparent difficulties in that method arising from what appear to be its terms, you are to hold as an alternative that the necessary result of those difficulties is that there is a freedom of taxation altogether, because the only computation which you ought to reach is nil.

Two other difficulties are suggested. It is said that if you will turn to Schedule A you will find that there is a definite provision for the computation of the tax where a shorter period than that indicated in the Schedule is to be taken as the period over which an average is to be found. It is pointed out that in the "Rules for estimating the value of certain Lands, Tenements,

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" Hereditaments or Heritages which are not to be charged accord-
" ing to the preceding General Rule," you will find various measures over which you are to ascertain an average, sometimes three, sometimes five, sometimes seven years, and you will find under Rule 8 (which is to be found on page 347 of the red Dowell) that where the possession or interest commences within the period upon the basis of which the profits are to be computed, the profits of one year shall be estimated in proportion to the profits received, and so on. Equally it is said that in another place, in the case of No. III of Schedule A, " Rules for esti-
" mating the annual value of certain other Lands, Tenements,
" Hereditaments, or Heritages which are not to be charged
" according to the preceding General Rule ", that is in reference to quarries of stone, slate, limestone and the like, where five years is to be taken, there equally you will find a provision that where the longer period is not available a shorter period may be taken.

To my mind the argument suggested from those premises is against Mr. Latter's clients rather than in their favour. It rather appears to me that if the Statute has been careful where a period of some years is to be taken as the basis on which the profits are to be computed, the Statute has been alive to the fact that so long a basis might not exist and has made provision accordingly. Is it to be said then that in the case of this particular subject matter, namely, receipts from foreign possessions, that very important and obvious point has been overlooked and that where three years is the basis on which the profits are to be computed there is no provision at all for a shorter period when no such basis is available? It appears to me that that is one of the reasons why there is introduced into Rule 1 applicable to Case V, not merely some specific Rule applicable to Case I, but why you are to compute as directed in Case I, that being a comprehensive term to embrace the Case and its satellite Rules.

Then it is said that some light may be found from the forms which are given in the Act. Attention was called to the particular form which would be used in this particular case. It is to be found at page 783 of the red Dowell, and deals with an average of three preceding years and does not provide a form for a different kind of assessment. But those forms are introduced by Section 207, which says that the rules and directions and the forms are to be used so far as the same are respectively applicable. Whether we turn to the original of what Mr. Bremner not unfairly called the verbose antecedent of that Section or whether we look at the Section itself, its intention appears to be clear. If those forms and rules are applicable they are to be used; but if they are not they are not to be used, and the words, " so far

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" as the same are respectively applicable " prevent one turning to the forms or rules for an exposition of the Sections of the Act; rather one has to determine the meaning of the Sections of the Act and then where they fit, the rules and directions and forms are to be made use of, but not further.

Now I have dealt with those two points. It appears to me, therefore, that upon the plain construction of the Act there is a charge upon the profits from these possessions; that the difficulty only arises as to computation, and that inasmuch as there is a charge the computation is to be made upon the Rule attached to Case V, modified as it is as directed in Case I.

In my view, therefore, the difficulties which prevailed on the mind of Mr. Justice Rowlatt are not a valid excuse for the subject not paying his tax. As I am differing from Mr. Justice Rowlatt I desire, of course, to pay full respect to his judgment; but it appears to me that there is a danger in looking at the difficulties which arise in working out a computation which may be solved in many cases on questions of fact and failing to observe what is the overriding effect of the Act in charging these possessions to the tax and trying to find out a working system on which the computation is to be based.

It is, from my point of view, unnecessary to deal with the second point that was presented by the Attorney-General and argued very fully by Mr. Latter. I incline to agree with the view that Mr. Latter presented, that one ought to proceed with some caution before saying that a subsequent Statute is a Parliamentary interpretation of a previous one; and the words that he quoted from Mr. Craies' edition of the Statutes at Law, on page 135, may perhaps be a cautious statement of how the Statutes ought to be used. On the other hand, one must not forget the broad principle stated by Lord Mansfield that where there are different Statutes *in pari materia*, though made at different times or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

In this case, even if I had to rely upon what is called the statutory interpretation of the Income Tax Acts, namely, Section 26 of the Finance Act, 1924, it does not appear necessary to say that that is an interpretation of the previous Statute. It is perhaps sufficient to say, as Lord Justice Younger did in his judgment in the *Cape Brandy* case(1), that he finds in a subsequent Statute a statutory assertion and recognition of the view that he took of an earlier Statute; or that you find a demonstration and that you can find an emphasis on a particular view. It may

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be that the second Statute is not to be taken as strictly an interpretation Act. For that purpose, it may be necessary to find such words as that " in reference to the previous Act it shall be " read and taken to mean and always to have meant ", or " that " it shall be deemed to have meant and always to have meant " —you must have some particular words of that sort. Nevertheless, casting aside the need for any interpretation, I do find that in the Act of 1924, Section 26 is in consonance with the conclusion which I have reached on the earlier Statute, and in that sense I may say that I find a recognition and an assertion of the view which, on other grounds, I have already reached.

It appears to me, therefore, for these reasons, that the appeal must be allowed with costs, and the assessment which was affirmed by the Commissioners must be re-imposed.

Sargant, L.J.—I am of the same opinion. The question we have to decide raises the familiar difficulty as to the extent of certain referential words. Here, as in many other cases, we have to decide what do those words comprehend, what is their content? The words in question are found in Rule 1 applicable to Case V of Schedule D of the Income Tax Act, 1918, and they provide that " The tax in respect of income arising from stocks, shares " or rents in any place out of the United Kingdom "—the matter alleged to be taxable being of that nature in this case—" shall be " computed on the full amount thereof on an average of the " three preceding years, as directed in Case I ". When one turns to Case I, there is an initial Rule applicable to Case I only, and that provides that the tax is to " extend to every trade " and shall be computed " upon a fair and just average of three years " ending " on a certain day or an alternative day. Then after a Rule which applies only to Case II, we get a number of Rules applicable both to Cases I and II, and those Rules, of course, are Rules which are applicable to Case I, though they are also applicable to Case II. Rule 1 of those Rules provides for cases in which the trade has not been established for the three years on which the average is ordinarily to be ascertained, and provides that in those cases the tax is to be assessed upon a varying principle.

Now the question is whether, in those words, " The tax . . . " shall be computed on the full amount thereof on an average of " the three preceding years, as directed in Case I", you are taking in by those comprehensive words of reference merely the directions in that initial Rule applicable where the trade has lasted three years already, or whether you are also to take in the subsequent Rules which apply for the comparatively infrequent case in which the trade has lasted for less than three years.

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For the Crown, what is said is that the reference is to the directions in Case I, which in itself is quite broad enough to include that subsequent Rule, and that the direction to compute upon the full amount thereof on an average of the three preceding years may well, when you are dealing with short referential words, deal with and comprehend not only the ordinary case in which three years have already elapsed so that their average can be ascertained strictly in accordance with the Rule, but comprehend also the less common case where three years have not elapsed and certain substituted Rules have to be used for the purpose of the computation.

That argument is very much enforced by this: that what the Rules are dealing with is the computation and not the imposition of the tax, and that words of imposition of the tax having been obviously sufficiently full to include cases not only in which three years have preceded the year of assessment, but in which one or two years only have preceded, or where the tax arises in the year of assessment itself, it would be a most extraordinary result if the Legislature, having imposed that tax so as to include those cases, were then to say impliedly that you may provide for a computation, but the computation to be provided for is one which results in no tax at all being imposed. Such a construction as that, in all those cases—cases which were directly within the view of the Legislature when they were dealing with Case I—would seem to stultify altogether the taxing provisions which apply to Case V.

Those arguments on the part of the Crown appear to me to be exceedingly strong, and I think, further, that there is some difficulty in giving to the words themselves in Case V the narrow meaning contended for on the part of the Respondents. Because, when Mr. Bremner was endeavouring to point out what was brought into Case V by the referential words from that initial Rule in Case I, he had first of all to say that you had to bring in the epithets " fair and just "; but that, whereas in Case V the computation was to be on an average of the three preceding years, the effect of bringing in the Rule applicable to Case I was that that average was to be a fair and just average, because those were the words used in the Rule applicable to Case I. I cannot really attach any importance to that. I think the average must necessarily be a fair and just average, and it is quite unnecessary to have any reference back to the previous Rule for the purpose of importing those adjectives. If necessary, they could have been inserted perfectly well in the Rule applicable to Case V without unduly lengthening that Rule. But then, what was more important was this. Mr. Bremner said that the words, " on an average of the three preceding years, as directed

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" in Case I ", define the three preceding years which had to be taken into account. In the case of a trade it would be the three preceding years down to the time of the taking of the ordinary account of the firm or the trade, and if there was no time of that sort, it would be to the 5th of April preceding the year of assessment.

The first alternative as to the time of starting the trade hardly seems applicable to a case of this kind, and therefore one would think that the 5th day of April preceding the year of assessment would be the *terminus ad quem*. I do not think that those words " as directed in Case I " are so narrow as to be satisfied by such an interpretation. If the object of those words had been merely to say that the three preceding years were to be the same as those directed in Case I, I think the words would either have been " the three years preceding the year of the assessment", or, if the alternative was to be preserved, the language used would have been " the average of the three preceding years as defined in " Case I ". In my opinion, the words " as directed in Case I " are larger and more comprehensive words and are not satisfied by bringing in only those two elements which were mentioned by Mr. Bremner. It seems to me they are better adapted for bringing in the subsequent provisions under which there is an alternative method of taxation when the three years' average is not applicable. I do not think that in ordinary language it would be at all inappropriate to say, when speaking of the Rules applicable to Case I, that with regard to the profits of trade, and so on, the three years' average was the rule. So that in this Schedule, in bringing in the three years' average system which you find with regard to Case I, I see nothing at all definitely wrong in including in that phrase not merely the three years' average system in cases where that is applicable, but also the substituted provisions of very much the same nature which are to be found in cases where a three years' average was not possible.

In my judgment, therefore, though I must confess that the matter is to me an extremely difficult one, and that with regard to the question of the true interpretation of the Act my opinion has somewhat fluctuated during the course of the argument, still in the result I differ from the result arrived at by the learned Judge, and think that there is comprehended in these referential words in the Rule applicable to Case V, not merely the Rule applicable to Case I only, but the Rule numbered 1 amongst those applicable to both Case I and Case II.

On the other point, as regards the legislative interpretation of the Statute of 1918, which is said to be found in Section 26 of the Act of 1924, I am inclined to take rather a stronger view in support of the Appellant's contention than that taken by the

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Master of the Rolls. It seems to me that there is a well recognised principle that where the interpretation of a Statute is obscure, ambiguous, or readily capable of more than one interpretation, light may be cast on the true view to be taken of that Statute, by a subsequent Statute either reciting the effect of the previous Statute or assuming that the construction is in one definite direction by virtue of the enactments made in the subsequent Statute.

I follow, in that respect, the view stated by the late Master of the Rolls, Lord Sterndale, in the *Cape Brandy* case[1], and I think it is of importance to consider not merely the statutory interpretation, but the same doctrine as it arises with regard to the construction of other documents. Because, after all, Acts of Parliament are documents to be construed, in many respects, in very much the same way as other legal documents. To my mind, the case to which I called attention, and the observations by Lord Brougham, to which I called attention in the argument, are of considerable assistance in this case.

The case to which I refer is the case of *Darley* v. *Martin*, which is reported in 13 Common Bench Reports, at page 683. There there had been a will, the interpretation of which was a matter of some difficulty. The will might have meant, taking it alone, either that the beneficiary took a life interest only in leaseholds with a gift over if she died without leaving issue, or, on another interpretation (which I think would certainly have been that put on the will if the leaseholds had been freeholds) she would have taken an estate tail in freeholds, and so took, in the leaseholds, an absolute interest.

Chief Justice Jervis, in delivering the judgment of the Court, says this at page 690: " And, as to the effect of the codicil, it " was argued, that an erroneous reference in a codicil to the " dispositions of the will, cannot constitute a new bequest in " opposition to the will: and *Skerratt* v. *Oakley* (7 T.R. 492) " was relied on. But it appears to us that the argument with " respect to the effect of the codicil, when rightly considered, is " not that the will is at all revoked or varied by the codicil; but " rather that, the will and codicil being all one testament, the " language of the will may be interpreted by that of the codicil; " and that, accordingly "—and then he arrives at the conclusion which he does on that document.

Lord Brougham, in the case of *Williamson* v. *Advocate-General*, in 10 Clark & Finelly, at page 17, says: " I come then, " lastly, to consider the way in which the testator has dealt

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" with the property, and as it were explained his own previous " intentions in the recital to the second deed. The recital in that " deed expressly uses the word ' required '. He says, ' whereas, " ' amongst others, my trustees are *required* to turn my means " ' and effects thereby conveyed in trust into money '. It is a " very good mode of construing an instrument, to take a man's " own words when the meaning appears doubtful (which, how- " ever, I am in this case disposed to deny) ; I think it is a good " mode of getting at his meaning, to see what he himself thought " he had done."

It appears to me that that principle is equally applicable to successive Acts of Parliament, and that in cases where there is an ambiguity, a real difficulty of interpretation, it is a legitimate method of determining what Parliament has done, to see what Parliament says subsequently, either definitely or by implication, that it had previously done.

There was some argument addressed to us by Mr. Latter rather to show that there was no ambiguity in this case, but inasmuch as it has taken two days in this Court to arrive at the true determination of the meaning of this Statute, and as we are ultimately coming to a conclusion on it different from that of Mr. Justice Rowlatt, it seems to me that we are well within the rule as to ambiguity, and that there is here such an ambiguity as that it is permissible to attempt to solve it by reference to a later Act of Parliament.

Lawrence, L.J.—I agree that this appeal should be allowed, and will only add a very few remarks of my own.

The first question is whether the relevant referential words " as directed in Case I," which occur in Rule 1 of the Rules applicable to Case V, are strong enough to import the provisions of Rule 1 of the Rules applicable to Cases I and II, which Rule deals with the case where a trade has been set up or commenced within the period of three years upon the average of which the profits are to be computed, or whether the referential words I have referred to operate to import only the provisions of the Rule applicable to Case I, which deals only with the computation of profits or gains on a three years' average.

I frankly confess that I have not arrived at any definite conclusion as to the true answer to be given to that question, and had the result of this appeal depended upon my opinion upon the construction of those referential words, I should have desired further time to consider the case. But having listened attentively to the arguments of Counsel at the Bar, and to the weighty judgments delivered by the Master of the Rolls and Lord Justice

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Sargant, I have unhesitatingly come to the conclusion that there is an ambiguity in the language employed in the Rule under consideration, and that the argument of the Respondents that the Rule is plain and clearly only refers to the ascertainment or computation of the profits on an average of three years, cannot be sustained.

Now if, as I think, there is this ambiguity in Rule 1, then I am further of opinion—and here I agree with Lord Justice Sargant—that Section 26 of the Finance Act, 1924, may, in the circumstances of this case, be looked at, in order to see what is the proper or true construction to be placed upon the words in question.

I found that opinion upon both the *Clarkson* case(1), and the *Cape Brandy* case(2). If it be permissible to look at Section 26 of the Act of 1924, I do not think there can be any reasonable doubt that the Legislature has itself fixed the true interpretation upon the Rule in question. The whole of Section 26, which adds a new Rule to the fasciculus of Rules applicable to Case V, is based on the assumption that Rule 1, which we are now construing, imports not only the Rule applicable to Case I, but also Rule 1 applicable to Cases I and II; otherwise it is quite meaningless; and in that sense I think that the Legislature has itself put a construction upon a very doubtful expression, and that this Court is bound to give effect to that construction.

The Company having appealed against the decision in the Court of Appeal, the case came before the House of Lords before Lord Buckmaster, Viscount Sumner, and Lords Atkinson, Wrenbury and Warrington of Clyffe on the 2nd and 3rd February, 1928, when judgment was reserved.

Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir Douglas Hogg, K.C.), and Mr. R. P. Hills for the Crown.

On the 24th February, 1928, judgment was delivered against the Crown, with costs (Lord Buckmaster dissenting), reversing the decision of the Court of Appeal.

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(1) The Attorney-General *v.* Clarkson, [1900] 1 Q.B. 156.

(2) The Cape Brandy Syndicate *v.* The Commissioners of Inland Revenue, 12 T.C. 358.

JUDGMENT.

Lord Buckmaster.—My Lords, this case affords a further illustration, if further illustration were required, of the confusion of our law upon which the assessment and recovery of Income Tax depends, but the duty of this House does not extend beyond attempting to call attention to the fact and to point out its consequent hardship upon the subject and its cost and trouble to the Crown.

The Appellants are a company incorporated in this country on the 7th June, 1922, for the purpose of carrying on the business of an investment company, and in August of 1922 they acquired a large holding of shares in an American company called Joseph Benn & Sons. On the 7th December, 1922, the Appellants received a dividend of £601,717 in respect of its holding of the said shares. These are all the material preliminary facts. The law is to be found in the Income Tax Act, 1918.

By Section 1 of this Statute it is provided that where any Act enacts that Income Tax shall be charged for any year at any rate the tax shall be charged for that year in respect of all property described or comprised in the Schedules A, B, C, D and E contained in the First Schedule to the Statute and in accordance with the Rules applicable thereto. Schedule D states under paragraph 1 that tax thereunder shall be charged in respect of annual profits or gains arising or accruing to any person residing in the United Kingdom from any property whatever whether situate in the United Kingdom or elsewhere, and, under paragraph 2, that the tax under that Schedule shall be charged under certain six Cases ; the first of which is " Tax in respect of any trade not contained in any other " Schedule " and the fifth is " Tax in respect of income arising from " possessions out of the United Kingdom ". Sets of Rules then follow applicable to the several six Cases. The first of these sets applies only to Case I. The second to Case II, the third to Cases I and II and so on until we reach the Rules applicable to Case V. The first of these is as follows :—" 1. The tax in respect of income " arising from stocks, shares or rents in any place out of the United " Kingdom shall be computed on the full amount thereof on an " average of the three preceding years, as directed in Case I, whether " the income has been or will be received in the United Kingdom or " not, subject, in the case of income not received in the United " Kingdom, to the same deductions and allowances 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."

Case I under Schedule D is, as has been pointed out, the tax in respect of any trade not contained in any other Schedule and the Rules applicable to Case I consist, first, of one Rule solely applicable thereto and other Rules applicable to both Cases I and II. The Rule solely applicable to Case I is as follows : " The tax shall

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" extend to every trade carried on in the United Kingdom or else-
" where, other than a trade relating to lands, tenements, hereditа-
" ments, or heritages directed to be charged under Schedule A, and
" shall be computed on the full amount of the balance of the profits
" or gains upon a fair and just average of three years ending on that
" day of the year immediately preceding the year of assessment on
" which the accounts of the said trade have been usually made up,
" or on the fifth day of April preceding the year of assessment " ;
and the relevant Rules applicable to Cases I and II are these :
" 1.—(1) The tax shall be charged without any other deduction than
" is by this Act allowed. (2) Where the trade, profession, employ-
" ment, or vocation has been set up and commenced within the said
" period of three years, the computation shall be made on the
" average of the profits or gains for one year from the period of the
" first setting up of the same, and where it has been set up and
" commenced within the year of assessment, the computation shall
" be made according to the rules applicable to Case VI." Rule 2 of
Case VI is the only one applicable and that provides that : " The
" computation shall be made, either on the full amount of the
" profits or gains arising in the year of assessment, or according to
" an average of such a period, being greater or less than one year,
" as the case may require, and as may be directed by the com-
" missioners."

The tangle of these cross references is extremely difficult to unravel, and it is plain that the Inland Revenue authorities themselves were, in the first instance, baffled by the problem, nor am I clear that even at this moment the Crown is able to define the exact method by which the liability of the subject should be ascertained. This is shown by the following facts. The first assessment made on the Appellants in respect of the £601,717 they had received was made as for the year ending the 5th April, 1923, and the sum taken as the basis of assessment was £859,596, or a quarter of a million more than the Company had actually obtained ; while for the succeeding year ending 5th April, 1924, in respect of this single and same receipt of £601,717 they were assessed in the sum of £1,031,372. The Inland Revenue authorities were not, of course, responsible for the apparent and startling injustice of these assessments ; the result was the result of their attempt honestly to understand an obscure Act of Parliament. It is unnecessary to explain the operation by which this conclusion was reached because the Special Commissioners, before whom the case came, decided that, although the assessment for 1922–23 was correctly made on the basis of the Rules applicable, they, in exercise of the power that they possessed, reduced the assessment to £601,717, the actual amount received, and, as regards the assessment for the year 1923–24, they decided that the assessment should be based on the average of the

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income arising up to the 5th April, 1923, but that it also should be reduced to the sum of £601,717, that being the amount of the income arising from the investment for a full period of twelve months. The case then came before Mr. Justice Rowlatt, who decided that there was nothing subject to assessment for the year ending the 5th April, 1923, and reduced the assessment to £200,572 for the succeeding year. From this judgment the Crown appealed, and the appeal was allowed and the assessments restored as the Special Commissioners found them. The basis of the decision of Mr. Justice Rowlatt was that the phrase "as directed in Case I" embraced only the Rule that exclusively related to Case I and did not include the Rules that were applicable both to Case I and Case II. The Court of Appeal took the view that the direction under Case V embraced both sets of the Rules, or, in other words, that a Rule was not the less a Rule under Case I because it was also a Rule under Case II, and they fortified their judgment by reference to a subsequent Statute passed in 1924, which was in the following terms:— "The following rule shall be added after Rule 3 of the Rules "applicable to Case V of Schedule D:—'4. Where a person who "'has been charged with tax in respect of income from a possession "'out of the United Kingdom proves that the total amount of tax, "'computed in accordance with Rule 1 of the Rules applicable to "'Cases I and II of Schedule D, which was paid in respect of that "'income for the first three complete years of assessment during "'which he was the owner of the possession, exceeds the total "'amount which would have been paid if he had been assessed for "'each of those years on the actual amount of the income of each "'year, he shall be entitled to repayment of the excess.'" From their decision this appeal has been brought.

The main ground of the Appellants' contention was that Mr. Justice Rowlatt was right in confining the direction under Case V to the Rule exclusively relating to Case I, but they further urged that, even if the other Rules were included, they could not, according to the true construction of the Act, apply to the circumstances of the present case and that it was not legitimate to influence that construction by reference to the provisions of the later Statute. It is, of course, quite plain that the Act has confused two totally distinct things—the income from an investment and the profits of a trade. It is as though rules were made for the care and regulation of cattle by reference to a Schedule which related only to the management of an aquarium. In attempting to solve the difficulties I have not overlooked the cardinal principle relating to Acts that impose taxation on the subject, a principle well known to the common law and that has not been and ought not to be weakened, namely, that the imposition of a tax must be in plain terms. In the words of Lord Blackburn in *Coltness Iron Company* v. *Black*(1), 6 App. Cas.

(1) 1 T.C. 287, at p. 316.

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315, at page 330: "No tax can be imposed on a subject without "words in an Act of Parliament clearly showing an intention to lay "a burden on him." It is in that respect kindred to the creation of a penalty or the establishment of a crime. The subject ought not to be involved in these liabilities by an elaborate process of hair-splitting arguments. In this case, however, the imposition of the tax is quite plain; it is the charge in respect of income arising from possessions out of the United Kingdom. The property in dispute, therefore, is primarily plainly made subject to the tax and the question is whether the directions given as to how that property is to be computed for the purpose of assessing the tax have resulted in taking away the liability. With regard to the first objection I thought at first that the phrase "as directed in Case I" might be merely repeating what had been said before; that is to say, that the computation was to take place on an average of the three preceding years, which is what the Rule solely applicable to Case I directs, but to take that view would mean that the words were purely surplusage and I, therefore, think that we must look to all the Rules under Case I for further directions. Without for the moment regarding what the provisions of these Rules may be, I find no means of escaping from the conclusion that the Rule that applies also to Case II as well as to Case I is none the less the direction in the case of Case I, and I do not think, in considering this point, it is irrelevant to bear in mind that the Act of 1918 consolidated, though it did not attempt to crystallize, the previous Statutes, and that the proviso that is now put under the head of Cases I and II was originally part of the Rule under Case I—for convenience and brevity in the consolidation the matter was arranged in the way in which it now stands.

The next difficulty is far more severe. The Rules in question have nothing whatever to do with income arising from stocks and shares or rents; they exclusively relate, in the Rule solely applicable to Case I, to a trade, and, in those applicable to Cases I and II, to a trade, profession, employment or vocation. What then is the meaning of requiring the computation to be effected as directed in this manner? I cannot help thinking that for this purpose the receipt of income must be regarded as though it were a receipt from a trade and that, consequently, in the first place it must be computed upon a fair and just average of the receipts of three years ending either on the day on which a company such as the present would make up its balance sheet or on the 5th day of April preceding the year of assessment. It is said on behalf of the Appellants that the only effect of the Rule is to show that the accounts must be made up on the 5th day of April preceding the year of assessment, but if this were the case it was already provided by Section 2 of the Statute, and in the Rule that phrase has only its full meaning when

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it is put as an alternative to the other method of making up the accounts. If, therefore, the other method of making up the accounts may also be brought into consideration, it then becomes more clear that the receipt of income must be homologated with the profits of a trade, and if this step be reached, accepting the view that the Rules applicable to Cases I and II must also be introduced, there seems to me no reason why the computation of a first receipt should not be dealt with in the same way as that which is provided where the trade has been set up within the period of three years. The Appellants have pointed out that, even if this be accomplished, the difficulty of knowing what is the equivalent, connected with the receipt of income, to the commencement of the trade is by no means clear. The Crown at one time in the course of the arguments thought it was the date of the acquisition of the investment from which the income was received, and, if this were so, a person or a company holding a block of investments would have to treat each one separately and might be called upon to make innumerable different returns. In the present case the difference between acquisition of the property and receipt of the income is immaterial, but my interpretation of the Act is that it is the receipt of the income that must be taken as the equivalent of the setting up of the trade. I am far from professing confidence as to this interpretation of the Statute. I feel, as Lord Justice Fry once said, that in this maze I have lost my way beyond recall by the guiding voice of my brethren, but I feel that the interpretation that I have given is the only one that can fairly give effect to the tax that is certainly imposed by the Statute upon the receipt of such moneys. Bearing in mind that this House has decided that no assessment can be made in any year unless the money is received in that year, a contrary construction would involve that, under the provisions of this Act, although it determined that receipts of moneys from foreign possessions should be taxed, a person who only became entitled to receive them at lapses of four years would escape taxation altogether, for upon the Appellants' hypothesis, he would not be liable for the first year and, on the decision of this House, he could not be assessed for the next three seeing that therein he would receive no money. I have not overlooked the further argument of the Appellants that the form provided for return contains no provision that would embrace a sum such as this received by a company for the first time within the first year of its life, but the Attorney-General pointed out similar omissions in other forms where the omitted matter was the clear subject of taxation, and even apart from this I think the mere incompleteness of a prescribed form is an uncertain guide to the construction of the Statute to which it applies.

In the view that I have formed, the consideration of the question as to the effect of the subsequent Statute does not become material, but the point has been dealt with by the Court of Appeal and

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it is, therefore, not desirable that I should abstain from stating my opinion. I do not think that, in the circumstances of this case, the subsequent Statute can properly be referred to for the purpose of interpreting the earlier. It is, of course, certain that Parliament can by Statute declare the meaning of previous Acts. It would be competent for them to do so even though their declaration offended the plain language of the earlier Act. It would be an unnecessary step to take unless it were intended contrary to the general principles of legislation to make the explanatory Act retrospective, seeing that the subsequent Statute could by independent enactment do what was desired. It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated Statute, be interpreted so as to make the second Statute effectual, which is what the Courts would desire to do; and it is also possible that, where a Statute has created a crime or imposed a penalty, a subsequent Act showing that that crime was intended to have a limited interpretation or that the circumstances were to be regarded as narrow in which the penalty attached, would be used for the purpose of giving effect to the well-known principle of construction to which I referred at an earlier stage. But I find myself unable to accept what Lord Justice Sargant said, that the principles in certain cases are applicable to the construction of successive Acts of Parliament.

There are three cases to which he refers: *Skerratt* v. *Oakley*, 7 T.R. 492, *Darley* v. *Martin*, in 13 C.B. 683, *Williamson* v. *Advocate-General*, 10 Clark and Finnelly, page 1. The first of these was a case where a mistake in the codicil was rectified by reference to the will, which if applied to Statutes would mean that a later Statute might be construed by the help of an earlier, a proposition to which there is no objection.

The second was a case of an ambiguous expression in the will held to have one of two possible meanings by virtue of the codicil; and the third was a case of two Scotch testamentary dispositions which were read together and thus made more plain what Lord Brougham thought was plain before. It is important to notice that all these cases deal with testamentary documents.

Now there are several important distinctions between wills and codicils and successive Acts of Parliament. In the first place, however long the will has preceded the codicil, they both operate from the same moment and, by the ordinary rules of construction, are construed together. In an Act of Parliament this is not so. The first Act will operate from its fixed date so that its interpretation becomes at once a matter of necessity, and great unfairness may ensue if an interpretation, which an Act of Parliament would fairly bear unaided by subsequent Statutes, was inferentially changed by

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other words in a subsequent Act. I find it difficult to assimilate the comparison between private individuals, who are masters of their own estate, and the claims of beneficiaries under their dispositions, to the operations of a Legislature which apply equally to all His Majesty's subjects.

The case of the *Attorney-General* v. *Clarkson*, [1900] 1 Q.B. 156, does not really advance the Respondents' arguments since there the earlier Act had been the subject of judicial decision and the second Act proceeded on the hypothesis that the decision was correct. As Lord Lindley said the later Act "adopts" the construction put upon the earlier and in another sentence he says it "recognises" the construction. I find myself unable to agree with Sir F. H. Jeune when he says "the Legislature have acted as their own "interpreters of the earlier Act." It is the function of the Courts to interpret and of the Legislature to enact.

The case of the *Cape Brandy Syndicate*(1), [1921] 2 K.B. 403, follows in effect the case of *Attorney-General* v. *Clarkson*, as is seen in the following passage from the judgment of Lord Sterndale at p. 414 (2): "I think it is clearly established in *Attorney-General* v. "*Clarkson* that subsequent legislation on the same subject may be "looked at in order to see the proper construction to be put upon "an earlier Act where that earlier Act is ambiguous. I quite agree "that subsequent legislation, if it proceed upon an erroneous con-"struction of previous legislation, cannot alter that previous "legislation, but if there be any ambiguity in the earlier legislation "then the subsequent legislation may fix the proper interpretation "which is to be put upon the earlier." This is in my opinion an accurate expression of the law, if by "any ambiguity" is meant a phrase fairly and equally open to divers meanings, but in this case the difficulty is not due to ambiguity but to the application of rules suitable for one purpose to another for which they are wholly unfit. The only possible ambiguity is in considering whether the words "as directed in Case I" are specially limited to the solitary Rule to which I have referred or to all Rules applicable to Case I. This to my mind is not ambiguous and there is no need to have recourse to the later Statute for its interpretation. But for these reasons I think the appeal fails.

Viscount Sumner.—My Lords, the Appellant Company carry on the business of an investment company but nothing turns on this. They have been assessed as property owners, namely as shareholders in a company incorporated and carrying on business in the United States, "in respect of income arising from . . . shares . . in "any place out of the United Kingdom" under Schedule D, Case V, Rule 1. About seven months after incorporation the Appellant

(1) 12 T.C. 358. (2) *Ibid.* at page 373.

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Company received £601,717 as a dividend on this holding and in respect of this one dividend they have been assessed in the sum of £859,596 for the fiscal year 1922–23 and again in the sum of £1,031,372 for the fiscal year 1923–24, being the assessments originally under appeal. These figures were arrived at by taking $\frac{10}{7}$ths of £601,717, 10 months being the length of time from the Company's incorporation in 1922 to the end of the fiscal year, and $\frac{12}{7}$ths for the following fiscal year, which was supposed to be the right method of computation where a trade has been set up and commenced in the year of assessment, owing to the words " according to an average " of such a period, being greater or less than one year, as the case " may require " within Rule 2 of the Rules applicable to Case VI, to which reference is made in Rule No. 1 (2) of the Rules applicable to Cases I and II. The Crown did not maintain the claim for this mode of assessment, but, while still contending that the computation should be made according to Rule 2 of the Rules applicable to Case VI, reduced the amounts, on which the assessment was to be made, to £601,717 in each of the two years. It is not necessary to examine the higher assessments further. The lower assessments were arrived at by contending that Rule 1 (2) of the Rules applicable to Cases I and II is, by Rule 1 of the Rules applicable to Case V, part of the directions for the computation of tax on income arising from shares in a place out of the United Kingdom ; that in the case of such shares the date of their acquisition corresponds to and is impliedly directed to be used by the words " when the trade has " been set up within the said period of three years ", and, therefore, that the computation was on £601,717 as the average for one year from the date of acquisition, which is the basis of taxation for the second period, and on the like sum for the first period, being the full amount arising in that period of assessment. Having succeeded in this revised contention before the Special Commissioners, the Inland Revenue failed before Mr. Justice Rowlatt, who reduced the assessment to £200,572 for the second year of assessment, 1923–24, when it first became possible to take an average of three years ending on 5th April, 1923, within the Rule applicable to Case I, and discharged it in the first year when no such average was possible. His judgment was reversed by the Court of Appeal.

My Lords, the whole question turns on the words " as directed " in Case I " in Rule 1 of the Rules applicable to Case V, and in my opinion directions, relevant to shares in a foreign company, are only to be found in the Rule applicable to Case I. Rule 1 of the Rules applicable to Cases I and II is no doubt a Rule applicable to Case I, but it is limited to occasions where an average for one year can be computed from the first setting up and commencement of something which is obviously itself the source of the profits or gains. In its express terms this Rule applies to trading profits. The contention

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is that by analogy it can be applied to foreign shares, which are not in themselves stock in trade and the dividends of which are not trading profits. I cannot accept this. The analogy between the date of starting a trade, which is an aggregate of many operations, and the date when an investor buys a stock to hold, is too remote to be applicable, and in any case the Crown does not tax by analogy but by Statute, and there is nothing in the Act which says what is here contended for. It is said that singular results and even a loss of tax will occur on the Appellants' contention, and that this cannot have been intended by the Legislature, but it is not for us to say nor do we know what the Legislature may or may not have meant, apart from its words by which we are bound alike in what they say and in what they do not. Words, which impose tax in general terms, may still receive a particular limitation where the computation rules omit the directions appropriate and indispensable to levying the tax in the particular case.

An independent contention has been raised on the part of the Inland Revenue based on the new Rule which has now been inserted (though not retrospectively) after Rule 3 of the Rules applicable to Case V of Schedule D, by Section 26 of the Finance Act, 1924, a provision which, by Section 41, is to be construed together with the Income Tax Acts. The matter is put in two ways : the first is that the provisions of the different Rules, which I have discussed above, are ambiguous and that in interpreting them it is therefore legitimate to see how subsequent legislation *in pari materia* has revealed the Legislature's view of their meaning ; the second is that taxing Acts, passed from time to time, are analogous to a will and codicils, and that Acts, which are directed to be read together, are analogous to one long instrument, so that the Legislature's mind as to earlier passages may be revealed by considering how it is expressed in later passages. There is some authority for the analogy thus declared to exist, but I need only say that the analogy, if there is one, is not close and the canon of interpretation, if it is sound, does not carry one much further. My answer, however, to the first proposition is that the Rules referred to are not ambiguous. What they say is clear. It is their results (I agree both ways) that seem puzzling and in some cases unexpected, but that only shows that the legislation is somewhat arbitrary, which sometimes cannot be helped, not that, while the words are reasonably capable of two different meanings, there is no reason on the face of the Act why one should be more right than the other. The new Rule itself no doubt assumes that in fact there may be cases where, in respect of income from a foreign possession, a person may be charged with tax computed under Rule 1 of the Rules applicable to Cases I and II and it directs, in such a case, that if the events specified subsequently arise, he shall get relief provided he asks for it within the appointed time.

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Let it be that this contemplates a legitimate application of the method of computation referred to and is not a mere provision for cases where the charge has been made unjustifiably, for then the money ought to be refunded without waiting for a claim to be made within a limited time. Still the case dealt with is only that of applying such a computation to foreign possessions, for which Rule 2 of the Rules applicable to Case V provides, and not to stocks and shares, which are dealt with in Rule 1. Why a distinction should be made I do not know, but made it is, and this I think is sufficient ground for saying that the new Rule cannot be regarded as imposing a non-natural construction on Rule 1.

My Lords, I think the appeal should be allowed, and I move your Lordships accordingly.

Lord Atkinson.—My Lords, the facts have been fully stated already. It is unnecessary for me to repeat them further than to the extent needed to make my judgment intelligible.

The assessments impeached in this appeal are (1) that for the year ending the 5th April, 1923, amounting to £859,596, and (2) that for the year ending the 5th April, 1924, in the sum of £1,031,372.

These two assessments purport to have been made under and in accordance with the provisions of Rule 1 of the Rules applicable to Case V of Schedule D of the Income Tax Act of 1918. That Rule runs as follows: "The tax in respect of income arising from "stocks, shares or rents in any place out of the United Kingdom "shall be computed on the full amount thereof on an average of "the three preceding years, *as directed in Case I*, whether the income "has been or will be received in the United Kingdom or not, subject, "in the case of income not received in the United Kingdom, to the "same deductions and allowances as are provided in rule 1 of the "rules applicable to Case IV, and the provisions of this Act, in-"cluding those relating to the delivery of statements, shall apply "accordingly."

The first difficulty which confronts one in the construction of this Rule is this—that it requires that the tax it imposes in respect of income arising from stocks and shares outside the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years "*as directed in Case I*", a Case which deals, not with the income arising from stocks and shares wherever situated at all, but with income from trade profits and gains derived from trade by those who carry it on. This directing Rule, as one may style it, runs thus: "The tax shall extend to every trade "carried on in the United Kingdom or elsewhere, other than a "trade relating to lands, tenements, hereditaments, or heritages "directed to be charged under Schedule A, and shall be computed

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" on the full amount of the balance of the profits and gains upon a " fair and just average of three years ending on that day of the " year immediately preceding the year of assessment on which the " accounts of the said trade have been usually made up. . . . ."

It is quite obvious that the provisions touching the making up of the accounts of a trade are wholly inapplicable to the receipt by the Appellants of their dividends on foreign securities. The alternative termination of the three years on which the average is to be taken, namely, the 5th day of April preceding the year of assessment may not be quite so inapplicable. Section 207 of the Income Tax Act of 1918 provides that the statements to be delivered by the persons or bodies bound to deliver them, of the amount of the annual value of their profits on which any taxes are chargeable, are to be framed in accordance with the rules and directions contained in the Fifth Schedule of this Act. Sub-head VII of this latter Schedule provides that for every person carrying on any trade to be charged under Schedule D the statement is to contain the amount of the profits or gains thereof on a fair and just average of the three preceding years, or of such shorter period as the trade shall have been carried on.

It has been contended on behalf of the Crown that in construing Rule 1 of the Rules applicable to Case V, Schedule D, the words " *as directed in Case I* " should be read as if they ran " as directed by " Rules applicable to Cases I and II ". This change if justifiable, which I hardly think it is, would not serve the purpose of the Crown because these latter Rules deal only with profits and gains derived from trade, professions, employments or vocations, and provide that where those sources of revenue have been set up and commenced within the period of three years mentioned in reference to which the computation is to be made of the average profits and gains for one year, that year is to run from this same " *setting up and commence-* " *ment* ". It has been suggested on behalf of the Crown that the purchase of the foreign securities by the Appellants may be taken to be the setting up and commencement of the trade, profession, employment or vocation mentioned in the aforesaid Rules ; to which it is objected by the Appellants that the foreign securities might not have been acquired on one occasion but from time to time on unconnected occasions, separated perhaps by considerable intervals of time. It was suggested, as I understood, that this difficulty could be got over by treating the whole of the securities as a bundle all acquired at the same time. I do not think this is a possible mode of construing these Rules. I think they are entirely inapplicable to the taxation of the sources of wealth from which the Appellants' income is derived, and the acquisition by the Appellants of those sources.

(Lord Atkinson.)

My Lords, when it is remembered that it is well established that one is bound in construing Revenue Acts to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden upon him, that the words of the Statute must be adhered to and that so-called equitable constructions of them are not permissible (*Partington* v. *Attorney-General*, 4 E. & I. App. 100 at page 122 ; *Gilbertson* v. *Fergusson*(1), 7 Q.B.D. 562 ; *In re Micklethwait*, 11 Ex. 452 ; *Tennant* v. *Smith*(2), [1892] A.C. 150), I am for the reasons I have mentioned unable to come to the conclusion that the different provisions of Schedule D of the Act of 1918, to which I have referred, clearly impose the burden of Income Tax on the Appellants in respect of the dividends they have received from their foreign securities.

The Master of the Rolls, as I read his judgment, came to the conclusion that, apart altogether from the alleged curative effect of Section 26 of the Finance Act of 1924, the provisions of the Statute of 1918 which I have referred to were in themselves sufficiently clear, plain and unambiguous to impose, according to established principles, Income Tax on the sum received by the Appellants from their foreign possessions. If that be the Master of the Rolls' opinion, I am quite unable to concur with him in it. It has been contended, however, on the part of the Crown, that by Section 26 of the Finance Act of 1924 any mistake and any blunder which might have been committed in passing the provision of the Statute of 1918 to which I have referred, or any ambiguity left as to the meaning of the language used, has been completely cured ; and by it the provisions of the Statute of 1918 have been rendered capable of imposing on the Appellants the burden the Crown seek to have imposed upon them. Lord Justice Lawrence rests his decision to a great extent, if not indeed altogether, on the effect of this Section 26, while Lord Justice Sargant apparently admits that he has received great assistance from it in solving the ambiguities and getting over the difficulties of interpretation presented by the provisions of the above-mentioned Rule 1 and also those presented by Rules 1 and 2 applicable to the same Case. The Master of the Rolls does not apparently take a view so strong as those of his colleagues as to the effect of Section 26 in solving ambiguities, but, without admitting any need of assistance in the interpretation of the above-mentioned Rules and Cases, he finds in this Section 26 a recognition and assertion of views he had already independently reached. It is, under those circumstances, imperatively necessary to examine in detail the provisions of Section 26 and the conditions under which, as established by authority, such a Section as this can be held to be capable of affording the help needed.

(1) 1 T.C. 501. (2) 3 T.C. 158.

(Lord Atkinson.)

The Section begins by providing that the Rule set out in the Section and numbered 4 shall be added after Rule 3 of the Rules applicable to Case V, Schedule D. The very first of these Rules is one containing the embarrassing direction that the computation therein mentioned is to be made on an average of three years *as directed in Case I*. The Section does not purport of itself to impose a tax upon any person in respect of income derived from a possession out of the United Kingdom or to modify such a tax if already imposed. What it does purport to do is to secure redress for a person properly, i.e., lawfully, charged for Income Tax so that, if by the use of the methods mentioned he should be overcharged, he shall get the excess refunded to him. The function of which this Section contemplates the discharge by the Rules named is the computation of the amount of the tax which the person to whom the income from the foreign possession belongs has to pay, and not the imposition of that tax. Lord Justice Sargant seems to hold that a legislative interpretation of the Statute of 1918 is to be found in this Section 26 of the Act of 1924, and therefore the case comes within a well-recognised principle dealing with the construction of Statutes, namely, that where the interpretation of a Statute is obscure or ambiguous or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent Statute. Many authorities have been cited by Mr. Maugham on behalf of the Appellants on this point. He referred to Maxwell on Statutes 464. In *Dore* v. *Gray*, 2 T.R. 358, it was laid down that an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it; but where it is gathered from a later Act that the Legislature attached a certain meaning to certain words in an earlier cognate Act this would be taken as a legislative declaration of its meaning. In the case of the *Earl of Shrewsbury* v. *Scott*, 6 Common Bench, N.S., page 1, Chief Justice Cockburn said at page 180: "I quite concur "in the argument that a mistake as to the state of the law on the "part of the Legislature in a private Act of Parliament,—nay, I "may say, upon the authority of the case of *Ex parte Lloyd*, 1 Simon "N.R. 248, even in a public Act,—and legislation founded on such "mistake, would not have the effect of making that the law which "the Legislature had erroneously assumed to be so."

In *The Attorney-General* v. *Wood*, [1897] 2 Q.B. 102, Mr. Justice Vaughan Williams in giving judgment is reported to have said (page 110): "I wish to add that I do not think that the fact that "Section 14 of the Finance Act of 1896 contains an enactment in "the sense of the construction which I am now putting on Section 5, "Sub-section 3, of the Act of 1894 shows that that construction is "wrong because, if it were right, the amending Act might be said "to be useless. The amending Act may be merely declaratory to

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" clear up doubts, and, even if not so intended, the presence of the " Section in the later Act cannot determine the construction of the " earlier."

The case of *Attorney-General* v. *Clarkson*, [1900] 1 Q.B. 156, was also cited on behalf of the Appellants. It is an important case. It was, according to the headnote, decided that if property be contingently settled, Estate Duty is, under Section 5, Sub-section 1(*a*) of the Finance Act of 1894, payable upon it before the contemplated contingency arises, but that under the fourteenth Section of the subsequent Statute (the Finance Act of 1898) if the contingency does not and cannot ever arise the duty paid will be repaid, because this Section 14 of the Act of 1898 amounts to an adoption by the Legislature of the construction put upon Section 5, Sub-section 1 (*a*), of the Finance Act of 1894. Section 5, Sub-section 1 (*a*) of this latter Act ran as follows : " Where property in respect of which estate duty " is leviable is settled by the will of the deceased or having been " settled by some other disposition passes under that disposition " on the death of the deceased to some person not competent to " dispose of the property : (*a*) A further estate duty (called settle- " ment estate duty) on the principal value of the settled property " shall be levied at the rate hereinafter specified, except where the " only life interest in the property after the death of the deceased is " that of a wife or husband of the deceased." Section 14 of the Finance Act of 1898 runs thus :—" Where in the case of a death " occurring after the commencement of this Act settlement estate " duty is paid in respect of any property contingently settled, and " it is thereafter shown that the contingency has not arisen and " cannot arise, the said duty paid in respect of such property shall " be repaid."

Lord Lindley, Master of the Rolls, as he then was, in delivering judgment when referring to this Section 14 said : " Consider what " that means. It affirms in substance the decision in the *Attorney-* " *General* v. *Fairley*(1), and proceeds upon the assumption that it " was right. It adopts the construction put by it upon Section 5 " and the Sections of the Act of 1882 which are incorporated in the " Act of 1894, and says in unmistakable language that the duty " must be paid before it is known whether the contingency will or " will not arise." There does not appear to me to be any relation between Section 26 of the Statute of 1924 and the Income Tax Act of 1918 comparable in closeness with that between Section 14 of the Finance Act, 1898, and Section 5, Sub-section 1 (*a*), of the Finance Act of 1894. In the case of the *Cape Brandy Syndicate* v. *Inland Revenue Commissioners*(2) that case was also cited with approval.

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(1) [1897] 1 Q.B. 698. (2) 12 T.C. 358.

(Lord Atkinson.)

I am quite unable to come to the conclusion at which the learned Judges of the Court of Appeal arrived touching the effect of Section 26 of the Act of 1924. I am therefore of opinion that the appeal should be allowed with costs.

Lord Wrenbury.—My Lords, Case I and Case II of Schedule D of the Income Tax Act, 1918, have to do with tax in respect of trade and of professions. Case V has to do with tax in respect of income arising from foreign possessions. The one may be described as tax upon earned income—the other as tax upon unearned income arising from foreign possessions. The one is tax upon a trader—the other is tax upon an investor. Upon this appeal your Lordships are concerned with tax under Case V. The Appellants are an investment company. They were incorporated on the 7th June, 1922, and in August, 1922, acquired as an investment a large holding of shares in an American company called Joseph Benn & Sons. On the 7th December, 1922, they received a sum of £601,717 as a dividend on these shares. During the financial year 1922–23 they received no further dividend on these shares—nor any other income from possessions out of the United Kingdom. The question to be decided is as to the amount of the assessment to be made for the financial years 1922–23 and 1923–24.

The relevant Rule in Schedule D is No. 1 of the Rules applicable to Case V. That Rule requires that the tax shall be computed on "an average of the three preceding years as directed in Case I". From the Rule relating to Case I, I find that the three years are "three years ending on that day of the year immediately preceding "the year of assessment on which the accounts of the said trade" (for this Rule is addressed to the case of trade) "have been usually "made up, or on the 5th day of April preceding the year of assess-"ment."

The Rule to which I have last referred is qualified by Rule 1 (2) of the "Rules applicable to Cases I and II". We have heard an argument as to whether this qualification is imported as to Case V by the words in the Rules applicable to Case V, "three preceding years "as directed in Case I." In my opinion it is, but for the present purpose it is immaterial whether it is or not. And for this reason. The qualification in question is addressed only to the case of a trade and is governed by the date at which the trade was commenced. The present case is one of investment. There is no provision that in the case of an investment the date of acquisition of the investment or any other date shall be taken as the equivalent of the commencement of the trade. Rule 1 (2) of the Rules applicable to Cases I and II has in my opinion no application to the case of an investment. This rules out in the case of the investor the introduction of the reference made in that Rule to the Rule applicable to Case VI.

(Lord Wrenbury.)

We have heard a further argument as to whether Section 26 of the Finance Act, 1924, is to be regarded as throwing light upon the construction of the Act of 1918. My Lords, in my opinion an Act of 1924 passed on the 1st August, 1924, which is not expressed to be retrospective and does not directly or inferentially purport to put a construction upon a previous Act, can have no bearing upon a question arising upon events which happened in 1922 and as to which the last relevant date is the 5th April, 1924.

It results that for the present purpose your Lordships are concerned only with " Rules applicable to Case V ", and Case I, " Rule " applicable to Case I ".

I need not read the last mentioned Rule again. Applying its language to the facts of this case it provides that for the financial year 1922–23 the tax shall be computed on the full amount of the profits of the investment upon a fair and just average of three years ending on the 5th April, 1922. The profits must be the profits accruing to the person taxed ; they cannot include the profits if any accruing to his predecessor in title as holder of the shares. For the year 1922–23 therefore I must take three years before April, 1922, and note that the taxpayer received nothing in those three years. He must therefore be assessed at Nil for the year 1922–23.

Then as to the year 1923–24 the taxpayer received £601,717 in December, 1922 (that is to say in one of the three relevant years) and nothing in the other two. He must be assessed therefore upon one third of £601,717 and no more.

I am fully conscious of the fact that if this is the true construction of the Act the following consequence ensues. If A buys a foreign share say in the financial year 1922–23 and sells it to B at the end of that year, after receiving a dividend upon it, he pays no tax. If B, the purchaser from him, follows A's example and sells before the end of the year in which he bought the share he pays no tax, and so with every subsequent holder. But I cannot strain the Act for the purpose of creating a liability to tax which the Act has not imposed by plain or as I think by any words. The fact is that by creating the liability of the investor in foreign shares by words of reference to a Rule which is addressed to the case of a trade the Act has become involved in a confusion in which the Legislature has not observed that in some circumstances it has let the investor in foreign shares go free.

I find myself quite unable to support the assessment made by the Special Commissioners and upheld by the Court of Appeal, viz. £601,717 (the full amount of the dividend) for the year 1922–23, and again the full sum of £601,717 for the year 1923–24. This appeal must, in my opinion, be allowed and those assessments discharged, and there must be substituted an assessment of Nil for 1922–23 and

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£200,572 6*s.* 8*d.* for the year 1923–24. The Appellants must I think have repayment of the costs they have been ordered to pay and must have their costs here and below.

Lord Warrington of Clyffe.—My Lords, the question in this case is as to the mode in which the tax on certain income of the Appellants representing a dividend of a foreign company ought to be computed under Rule 1 of the Rules applicable to Case V of Schedule D of the Income Tax Act, 1918, and turns on the true construction of that Rule.

The result of the Crown's contention upheld in the Court below is somewhat startling, for under it the Appellants have in two successive years of assessment been assessed in the full amount of a dividend received in the first of those years, which is thus taxed twice over.

The years of assessment in question are the years 1922–23 and 1923–24.

The Appellant Company was incorporated in June, 1922, under the Companies (Consolidation) Act, 1908. It carries on business as an investment company.

In August, 1922, the Company acquired a large interest in Joseph Benn & Sons, a company incorporated in the United States of America. In December, 1922, the Company received a dividend of £601,717 on its shares in the American company. It received no further dividend or income from this or any other foreign possession during the year ending the 5th April, 1923.

The Commissioners of Inland Revenue, purporting to act under Rules hereinafter mentioned, assessed the Appellants for the year 1922–23 in respect of the above-mentioned sum at the sum of £859,596, treating the £601,717 as the earnings for seven months out of a business year of 10 months, dividing it by 7 and multiplying the result by 10. For the year 1923–24, which was a full business year of 12 months, they multiplied 1/7th of the same £601,717 by 12 and assessed the Appellants at £1,031,372.

The Company appealed to the Special Commissioners who reduced the assessment for each year to £601,717, but held that with this variation the assessment should be confirmed. The Commissioners stated a Case for the opinion of the Court, and by an Order of Mr. Justice Rowlatt dated the 24th November, 1926, the assessment was discharged as to the year 1922–23 and reduced to £200,572 as to the year 1923–24. This Order was on the 2nd February, 1927, reversed by the Court of Appeal who restored the assessment made by the Special Commissioners for each of the two years in question.

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The question turns on the true construction of Rule 1 of the Rules applicable to Case V. It is in the following terms: "The "tax in respect of income arising from stocks, shares or rents "in any place out of the United Kingdom shall be computed on the "full amount thereof on an average of the three preceding years, "as directed in Case I . . ." The remainder of the Rule is immaterial.

The only Rule applicable to Case I in which a direction as to an average of three years is given is the following:—

"*Rule applicable to Case I.*—The tax shall extend to every trade "carried on in the United Kingdom or elsewhere . . . and shall "be computed on the full amount of the balance of the profits or "gains upon a fair and just average of three years ending on that "day of the year immediately preceding the year of assessment on "which the accounts of the said trade have been usually made up, "or on the fifth day of April preceding the year of assessment."

A similar Rule is applicable to Case II except that the three years are referred to as "ending as in Case I".

So far there is in my opinion little difficulty in arriving at the true construction of the Rule 1 applicable to Case V. It is dealing with income arising from stocks, &c., and directs that the tax is to be computed on an average of the three preceding years. If the Rule had stopped there, there might have been a question what years were meant—were they the preceding years in which a dividend had been received, or were they calendar years, or years of assessment? This question is settled by the words "as directed in Case I". The preceding years are there defined as ending on one of two alternative days, and, as there is under Case V no trade in question, the second alternative is alone appropriate, and the three preceding years are those ending on the 5th April preceding the year of assessment.

It is true that applying the Rule thus interpreted to the present case, no income having been received in any one of the three years preceding the first of the two years of assessment, the assessment for that year would be Nil, but in the next year inasmuch as in the year immediately preceding there was a sum of £601,717 the assessment would be one-third of that sum, viz., £200,572, the amount fixed by the Order of Mr. Justice Rowlatt, and so on in succeeding years taking into account any further profits received.

But the Respondent says there is another "direction in Case I" referred to in the Rule applicable to Case V, viz., Rule 1 (2) of the Rules applicable to Cases I and II. "Where the trade, profession, "employment, or vocation has been set up and commenced within "the said period of three years, the computation shall be made on "the average of the profits or gains for one year from the period

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" of the first setting up of the same, and where it has been set up and " commenced within the year of assessment, the computation shall " be made according to the rules applicable to Case VI."

The material Rule applicable to Case VI is Rule 2: " The " computation shall be made, either on the full amount of the " profits or gains arising in the year of assessment, or according to " an average of such a period, being greater or less than one year, " as the case may require, and as may be directed by the " commissioners."

It is on the view that these provisions apply to Case V that the Special Commissioners and the Court of Appeal have proceeded.

I cannot with all respect adopt their view. I am not affected by the fact that the Rule in dispute is applicable to Case II as well as to Case I. What does impress me is that the Rule refers only to a trade, profession, employment or vocation and gives directions for computation depending on the time when the trade, &c., was set up or commenced, and there are no directions for making the very considerable changes necessary if it is to apply to dividends on securities.

The Commissioners and the Court of Appeal have assumed that the acquisition of the securities is the equivalent date, but this is a mere assumption and not justified by anything in the Act of Parliament. Moreover, if the securities were acquired at different dates there would be extraordinary complications in the application of the Rule under Case VI.

The same expression as in Rule 1 of the Rules under Case V " as directed in Case I " is used in Rule 2 under Case V, under which it would be if anything still more difficult so to mould the Rule in dispute as to make it workable.

Moreover, the Rule gives no directions for computation on an average of three years but on certain other averages substituted in certain events for that of three years.

A further point was made by the Respondents founded on Section 26 of the Finance Act, 1924. It was said that the effect of this Section is to declare that the construction of the Income Tax Act for which the Crown now contends is and always has been the true construction. Much reliance was placed on this point by Lord Justice Sargant, but with all respect to that learned Judge I cannot concur in his view. The Section does not contain any such declaration express or implied. It merely assumes that persons may have paid tax computed in accordance with Rule 1 of the Rules applicable to Cases I and II of Schedule D and gives those persons the relief mentioned in the Section. It says nothing about the legality or otherwise of such computation. To read the Section as amounting to a retrospective declaration as to the true construction of the previous Act seems to me to give it an effect which it will not bear.

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For these reasons I am of opinion that this appeal ought to be allowed with costs here and below and the Order of Mr. Justice Rowlatt restored.

Questions put :—

That the Judgment appealed from be reversed.

The Contents have it.

That this appeal be allowed, the Judgment of Mr. Justice Rowlatt restored, and that the Respondent do pay to the Appellants their costs here and below.

The Contents have it.

Mr. Bremner.—My Lords, incidentally out of your Lordships' decision, which I gather restores the Order of Mr. Justice Rowlatt, a matter arises upon which I am instructed to ask your Lordships for a direction. Under the Order made by the Special Commissioners a large amount of tax was paid to the Revenue. Then Mr. Justice Rowlatt upset that decision, as your Lordships know, and he directed that the tax which had been paid should be repaid to my clients, and he made the usual order for interest. When we got to the Court of Appeal the tax went back again to the Revenue and also the interest. Now, as regards the interest up to March of last year, that is covered by Mr. Justice Rowlatt's decision, and that, I take it, is restored, but I am instructed to ask your Lordships to be pleased to direct that the interest from the date in March of last year, when the tax and the interest were both repaid, down to the date of your Lordships' decision should be paid to my clients.

Lord Buckmaster.—Down to the date of repayment—not to the date of to-day.

Mr. Bremner.—If your Lordship pleases, down to the date of repayment. My learned friend does not object.

Lord Buckmaster.—It sounds reasonable ; probably that is why he does not object.

Mr. Reginald Hills.—My Lord, it is in accordance with the Statute.

Lord Buckmaster.—Yes.

[Solicitors : Messrs. Bell, Brodrick & Gray, for Jonathan Knowles, Bradford ; The Solicitor of Inland Revenue.]

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