

No. 820.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
17TH DECEMBER, 1930, AND 10TH AND 11TH MARCH, 1931.

COURT OF APPEAL.—15TH AND 18TH MAY, 1931; 20TH JULY, 1931.

HOUSE OF LORDS.—26TH FEBRUARY, 3RD MARCH AND 19TH APRIL,
1932.

(1) MANSON (H.M. INSPECTOR OF TAXES) *v.* WESLEY.⁽¹⁾

(2) YOUNG (H.M. INSPECTOR OF TAXES) *v.* WM. BERNSTEIN,
LIMITED (in liquidation).

Income Tax, Schedule D—Discontinuance of trade—Basis of liability for preceding year—Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), Schedule D, Rules applicable to Cases I and II, Rule 11 (2)—Finance Act, 1926 (16 & 17 Geo. V, c. 22), Sections 31 (1) (b), 32, 34 (1) and 35.

In each of these cases the business of the Respondent fell to be treated as discontinued in the year 1928–29 and the liability to Income Tax for the preceding year was reviewed under Section 31 (1) (b) of the Finance Act, 1926, and additional assessments were made by reference to the profits of the year ended on the 5th April, 1928, those profits being computed, in accordance with Section 35 of the Finance Act, 1926, by apportioning the profits of the periods for which accounts had been made up and aggregating the appropriate apportioned parts.

It was contended on behalf of the Respondents that, in accordance with the provisions of Section 34 (1) of the Finance Act, 1926, the additional assessments should be computed by reference to the profits for the accounting year of the business ending within the year 1927–28.

Held, that Section 34 (1) of the Finance Act, 1926, had no application to the computation of additional assessments under Section 31 (1) (b) and that the basis of computation originally adopted was correct.

⁽¹⁾ Reported (C.A.) [1931] 2 K.B. 375 and (H.L.) 48 T.L.R. 370.

CASES.

(1) *Manson (H.M. Inspector of Taxes) v. Wesley.*

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 22nd November, 1929, for the purpose of hearing appeals, Harold Wesley, hereinafter called the Respondent, appealed against an additional assessment to Income Tax in the sum of £8,102 for the year ending 5th April, 1928, made upon him by the Additional Commissioners of Income Tax for the Division of Kensington under the provisions of the Income Tax Acts.

2. The Respondent had for some years carried on the business of a manufacturing stationer. On 2nd July, 1928, he sold this business (under the terms of an agreement of that date, a copy of which is annexed hereto⁽¹⁾) to a private limited company (hereinafter referred to as the company), in which all the shares were held by the Respondent or members of his family.

3. It had been customary to make up the accounts of the said business annually to the 30th June in each year. The account for the year ending 30th June, 1926, showed a profit of £6,898, and the account for the year ending 30th June, 1927, a profit of £11,025. Notwithstanding the change of ownership of the business, one account was made up for the whole of the year ending 30th June, 1928, and this account showed a profit of £15,889.

4. The Respondent had originally been assessed to Income Tax for the year ending 5th April, 1928, in the sum of £6,898, being the amount of the profit shown by the accounts for the year ending 30th June, 1926, in accordance with the provisions of Section 29 (1) and Section 34 (1) (a) of the Finance Act, 1926.

5. For the year ending 5th April, 1929, the Respondent was primarily assessable under the same provisions in the sum of £11,025, being the amount of the profits shown by the account for the year ending 30th June, 1927, but as the company succeeded to the trade after the 5th April, 1928, Sub-section (2) of Rule 11 of the Rules applicable to Cases I and II of Schedule D as substituted by Section 32 (1) of the Finance Act, 1926, came into operation and the Respondent was assessed for the year ending 5th April, 1929,

(1) Not included in the present print.

under the provisions of Section 31 (1) (a) and Section 35 of the Finance Act, 1926. No question arises in regard to this last-named assessment.

6. Under the provision contained in Sub-section (2) of Rule 11 of the Rules applicable to Cases I and II of Schedule D, as substituted by Section 32 (1) of the Finance Act, 1926, that, in the case of a succession occurring after the 5th April, 1928, the tax payable for all years of assessment by the person who had previously carried on the trade should be computed as if the trade had been discontinued at the date of succession, the Respondent's liability to Income Tax for the year ending 5th April, 1928, being the year preceding the year of assessment in which the succession occurred, was reviewed under the provisions of Section 31 (1) (b) and the additional assessment under appeal was made. The amount of this assessment was arrived at by aggregating one fourth part of the profits shown by the account for the year ending 30th June, 1927, with three fourth parts of the profits shown by the account for the year ending 30th June, 1928, and deducting from the aggregate sum the amount of the original assessment for the year ending 5th April, 1928. It was admitted by H.M. Inspector of Taxes that if the amount of the assessment had been calculated on correct principles it was mathematically erroneous, and ought to be reduced to the sum of £7,774 as follows:—

One-fourth of £11,025	£2,756
Three-fourths of £15,889	£11,916
			£14,672
Less	£6,898
			£7,774

7. It was contended on behalf of the Respondent:

- (a) That as it had been customary for the Respondent to make up accounts annually to the 30th June in each year, and as only one account was made up to a date within the year preceding the year of assessment in which the succession occurred, and that account was for a period of one year ending the 30th June, 1927, the profits or gains of the year ending the 30th June, 1927, were required by Section 34 (1) (a) of the Finance Act, 1926, to be taken to be the profits or gains of the year ending the 5th April, 1928, which was the year preceding the year of assessment in which the succession occurred.
- (b) That as the profits or gains which were to be taken to be the profits or gains of the year ending the 5th April, 1928, were thus determined by Section 34 (1) (a) of the Finance Act, 1926, it was not necessary, in order to

arrive at the profits or gains of the year ending on that date, to have recourse to the method authorised by Section 35 of the Act, and the said Section 35 was inapplicable.

- (c) That the additional assessment under appeal ought to be reduced to the sum of £4,127, being the difference between the original assessment of £6,898 made for the year ending 5th April, 1928, and the profits or gains of £11,025, shown by the account for the year ending 30th June, 1927, which were required to be taken to be the profits or gains of the year ending 5th April, 1928, for the purposes of Section 31 (1) (b) no less than for the purposes of Section 29 (1).
- (d) Alternatively, that the trade was not permanently discontinued on 22nd May, 1928, and that Section 31 (1) (b) of the Finance Act, 1926, was not applicable.

8. It was contended on behalf of the Crown, *inter alia* :

- (a) That in order to arrive at the profits or gains of the year ending on the 5th day of April in the year preceding the year of assessment in which the succession occurred, it was necessary to adopt the method authorised by Section 35 of the Finance Act, 1926.
- (b) That the amount of the additional assessment under appeal had been computed on correct principles, and ought not to be reduced to less than £7,774.

9. We, the Commissioners who heard the appeal, gave our decision in the following terms :—

“ Every year of assessment begins on the 6th April, and the year preceding any year of assessment is the year ending the 5th April immediately preceding the beginning of the year of assessment. The expression ‘ the year ending on the fifth day of April in the year preceding the year of assessment ’ is therefore precisely equivalent to ‘ the year preceding the year of assessment.’ ”

“ Applying the words of the Act to the concrete facts, and assuming that we are right in our decision that ‘ discontinued ’ at the end of Section 32 (2) bears the same meaning as ‘ permanently discontinued ’ at the beginning of Section 31 (1), we cannot avoid the conclusion that the amount to which the assessment for the year ending 5th April, 1928, is adjustable under Section 31 (1) (b) is the amount of profits or gains resulting from the account for the year ending 30th June, 1927.

“ The company succeeded to the trade on 22nd May, 1928, and is assessable under Section 32 (2) as if it had set up or commenced the trade at that time. The assessment on the

“predecessor for the year beginning 6th April, 1928, originally based on the profits of the year ending 30th June, 1927, has to be adjusted under Section 31 (1) (a) to the amount of the profits of the period from 6th April to 21st May, 1928, and as there is no account for that specific period, recourse must be had to the method authorised by Section 35, and the profits of the year ending 30th June, 1928, must be divided and apportioned to that period. The charge for the year ending 5th April, 1928, has also to be adjusted under Section 31 (1) (b) to the amount of the profits of that year, and here again, but for the provisions of Section 34 (1) (a), it would be necessary, as the Inspector contends it is, to have recourse to Section 35. But it has been customary to make up accounts, an account has been made up for a period of one year ending 30th June, 1927, and this is the only account made up to a date within the year ending 5th April, 1928. In these circumstances, it is prescribed by Section 34 (1) (a) that the profits or gains of the year ending 30th June, 1927, shall be taken to be the profits or gains of the year ending 5th April, 1928. A figure is thus provided which meets the requirements of Section 31 (1) (b), and there is no necessity to adopt the method of Section 35 in order to arrive at the profits of the year ending 5th April, 1928.

“We accordingly reduce the additional assessment for 1927-28 to £4,127, being the difference between the first assessment of £6,898 and the amount of the profit of £11,025 shown by the account for the year ending 30th June, 1927.”

(*Note.*—At the hearing of the appeal, both sides assumed that the date of the succession to the trade was 22nd May, 1928, and so informed us. From the attached agreement it appears that this was in fact incorrect, but the exact date of the succession is not material to the present Case.)

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

P. WILLIAMSON, }
N. ANDERSON, } Commissioners for the Special
Purposes of the Income Tax Acts.

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

19th June, 1930.

(2) *Young (H.M. Inspector of Taxes) v. William Bernstein,
Limited (in liquidation).*

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 27th May, 1930, for the purpose of hearing appeals, William Bernstein, Limited, (in liquidation), hereinafter called the Respondent Company, appealed against an additional assessment to Income Tax in the sum of £26,372 for the year ending 5th April, 1928, made upon the Respondent Company by the Additional Commissioners of Income Tax for the City of London under the provisions of the Income Tax Acts.

2. The Respondent Company had since 1924 carried on the business of manufacturers of and dealers in fur garments. By agreement dated 15th June, 1928, it sold this business as from 30th April, 1928, to William Bernstein (Furriers), Limited, hereinafter called the new company.

It was admitted that there was a succession on 15th June, 1928, by the new company to the trade of the Respondent Company.

3. It had been customary to make up the accounts of the said business annually to the 31st December in each year. The account for the year ending 31st December, 1927, which was the only account made up to a date within the year ending 5th April, 1928, showed a profit as adjusted for purposes of Income Tax of £21,441. In view of the projected sale of the business, a further account was made up for the period of four months ending 30th April, 1928, and this account showed an adjusted profit of £23,224.

4. The Respondent Company had originally been assessed to Income Tax for the year ending 5th April, 1928, in the sum of £8,505.

5. For the year ending 5th April, 1929, the Respondent Company was assessed to Income Tax (under the provisions of Rule 11 (2) of Cases I and II of Schedule D as substituted by Section 32 (1) of the Finance Act, 1926, and Section 31 (1) (a) of the Finance Act, 1926) on the amount of the profits and gains of the period beginning on the 6th April, 1928, and ending on the date of the sale of the business to the new company, the amount of the said profits and gains being arrived at by the method authorised by Section 35 of the Finance Act, 1926. This assessment was not under appeal.

6. Under the provision contained in Sub-section (2) of Rule 11 of Cases I and II of Schedule D as substituted by Section 32 (1) of the Finance Act, 1926, that, in the case of a succession occurring

after the 5th April, 1928, the tax payable for all years of assessment by the person who had previously carried on the trade should be computed as if the trade had been discontinued at the date of succession, the Respondent Company's liability to Income Tax for the year ending 5th April, 1928 (being the year preceding the year of assessment in which the succession occurred), was reviewed under the provisions of Section 31 (1) (b) and the additional assessment under appeal was made. The amount of this assessment was arrived at by aggregating approximately three-fourths of the profits shown by the account for the year ending 31st December, 1927, with three-fourths of the profits shown by the account for the four months ending 30th April, 1928, and deducting the amount of the original assessment for the year ending 5th April, 1928. It was admitted by H.M. Inspector of Taxes that the calculation was arithmetically erroneous. If the apportionment of the profits shown by the said accounts is made with reference to the periods from 6th April, 1927, to 31st December, 1927, and from 1st January, 1928, to 5th April, 1928, the additional assessment would amount to £25,780 arrived at as follows:—

270/365ths of the profit for the year to 31st December, 1927 (£21,441)	£15,860
96/121sts of the profit for the four months to 30th April, 1928 (£23,224)	£18,425
	£34,285
Deduct amount of original assessment for 1927-28 ...	£8,505
	£25,780

7. It was contended on behalf of the Respondent Company that Section 31 of the Finance Act, 1926, must be read in conjunction with Section 34, and, as it had been customary for the Respondent Company to make up accounts and only one account had been made up to a date within the year of assessment and that account was for a period of one year, the amount on which the Respondent Company was to be charged under Section 31 (1) (b) for the year ending 5th April, 1928, was the amount of the profits or gains of the year ending on the 31st December, 1927.

8. It was contended on behalf of the Crown, *inter alia* :

- (a) That the amount of the profits or gains on which the Respondent Company was liable to be charged in an additional assessment under Section 31 (1) (b) of the Finance Act, 1926, for the year ending 5th April, 1928, was £25,780, being the amount of the profits or gains of the year ending on that date (£34,285), calculated in the manner shown above in paragraph 6, less the amount of the original assessment (£8,505).

- (b) That Section 34 of the Finance Act, 1926, was not applicable to the computation of profits for the purposes of Section 31.
- (c) That the additional assessment under appeal was correct in principle and ought to be confirmed subject to correction of the arithmetical error in calculating the figure.

9. We, the Commissioners who heard the appeal, held that as every year of assessment begins on the 6th April, and the year preceding the year of assessment must therefore, in the absence of any special provision in a different sense, necessarily and invariably end on the 5th April, no distinction could be drawn between the expressions "the year ending on the fifth day of April in the year "preceding the year of assessment" in Section 31 (1) (b) and "the year preceding the year of assessment" in Section 34 (1). In the present case the conditions required by Section 34 (1) (a) were fulfilled, and we considered that, for the purpose of arriving at the amount of the profits or gains of the year ending on the 5th April, 1928, being the year preceding the year of assessment in which the succession occurred, Section 31 (1) (b) and Section 34 (1) (a) must be read together and the method prescribed by Section 34 (1) (a) for computing the profits or gains of the year preceding the year of assessment must be adopted to the exclusion of the method conditionally authorised by Section 35. We accordingly took the amount of £21,441 shown as the Respondent Company's profit by its account for the year ending 31st December, 1927, to be the amount of the profits or gains of the year ending 5th April, 1928, and reduced the additional assessment to the sum of £12,936, being the difference between the said amount of £21,441 and the amount of the original assessment of £8,505.

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

11. The sole question for the determination of the Court is whether the said additional assessment under appeal should be in the sum of £12,936, based on the profits of the year ended 31st December, 1927, or in the sum of £25,780, based on the profits of the year ended 5th April, 1928.

P. WILLIAMSON, } Commissioners for the Special Purposes
R. COKE, } of the Income Tax Acts.

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

15th October, 1930.

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 17th December, 1930, and the 10th and 11th March, 1931, and on the last mentioned date judgment was given against the Crown in both cases, with costs.

The Solicitor-General (Sir Stafford Cripps, 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 Respondents.

JUDGMENT.

Rowlatt, J.—In this case the Respondent, whose accounts were made up to the 30th June in each year, discontinued trading on 2nd July, 1928, and Section 31 (1) of the Finance Act, 1926, became applicable to him. He was assessed under Sub-clause (a) of that Section for the year ending 5th April, 1929, by apportionment pursuant to Section 35, and as to that no question arises.

The Sub-section, however, also required, by Sub-clause (b), a new computation of his taxable income for the year ending the 5th April, 1928, without reference by way of measurement to the profits of the year before; and the question is whether Section 34 (1) applies to this computation. If it does not, we are remitted to an apportionment under Section 35, which is what the Crown contends for. If it does, Section 35 is excluded and the computation is governed by the figures for the trading year ending 30th June, 1927. In other words, is the year ending 5th April, 1928, as it figures in the scheme of Section 31 (1) (b), "the year preceding the year of assessment" within the meaning of Section 34 (1)?

The Solicitor-General argued that Section 34 (1) only applied where tax was charged in respect of one year (the year of assessment) by reference to the figures of a preceding year (the year of measure), and that here we have to deal with a tax for the year ending the 5th April, 1928, by reference to its own figures. With regard to the language of Section 31 (1) (b), he contended that the words "ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs" were a single adjectival phrase merely identifying the year, and did not stamp it with the description of "the year preceding the year of assessment" so as to bring it within Section 34 (1); and it is true that, as Section 31 (1) is imposing a charge by way of additional assessment for that year, it cannot be the year preceding the year of that additional assessment. At the same time, as the Commissioners point out in their careful judgment, it does describe it as "the year preceding the year of assessment", though it adds the words "in which the discontinuance occurs."

(Rowlatt, J.)

I was much impressed by the Solicitor-General's argument, but it is necessary to examine closely the structure of Section 31 (1). The two Sub-clauses (a) and (b) are, of course, subordinate to the opening words of the Sub-section, and these words show that the Sub-section as a whole is dealing with a year of assessment in which a discontinuance of trade occurs. Sub-clause (a) deals with the assessment for that year, and Sub-clause (b), by reference to the circumstance in that year of the trade being discontinued, imposes a retrospective charge upon the profits of the preceding year. I think the year of the discontinuance is throughout the Sub-section "the year of assessment," and the year before is "the year preceding the year of assessment." I do not think the addition of the words "in which the discontinuance occurs" makes the phrase "year of assessment" merely the appellation of a year as the subject of identification in point of chronology.

I may point out that if the object of the opening words of Sub-clause (b) were merely to identify the year, and not to label it as "the year preceding the year of assessment," it would have been quite simple and, I trust, not uncongenial to the draftsman, to have merely written, "year ending on the 5th April preceding the discontinuance." I think the very artificial language used was intended to bring the year within the phrase, "the year preceding the year of assessment." Whatever the proper construction, the scheme of expression adopted cannot be called either simple or direct; but as regards the substance of the enactment the plan of taking the figures of the trader's year in this, as in other, cases, where the profits of a full year have to be reckoned up, is clear and convenient, and what one would expect to find employed.

The appeal must be dismissed with costs, and the same result will follow in the case of *Young v. Bernstein*.

(1) *Manson (H.M. Inspector of Taxes) v. Wesley*.

The Crown having appealed against the decision in this case in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Romer, *L.JJ.*) on the 15th and 18th May, 1931, and on the latter date judgment was given unanimously in favour of the Crown, reversing the decision of the Court below.

The Solicitor-General (Sir Stafford Cripps, *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 Respondent.

JUDGMENT.

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

This is a troublesome point; and it is one on which I confess my own mind has fluctuated a good deal. It is a point which arises upon the difficulty of construing a certain number of Sections in the Finance Act of 1926, and in particular Section 31. It is, perhaps, unfortunate that a word or two is not added in that Section, which would have prevented any difficulty arising.

The facts on which the point arises are these. Mr. Wesley carried on a business, and he sold the business to a company, which took the business over as from 2nd July, 1928. That left this position: that from and after the 2nd July, 1928, the business belonged to the company, and was carried on by the company; but in the year 1928 (that is, for the time which elapsed between the 6th April and 1st July, 1928) Mr. Wesley was carrying on the business; but from and after that, the 2nd July, he had wholly discontinued his business. What then is the liability which is to be imposed upon him? I think it is very important to observe that the old liability, as it stood before the Act of 1926 was passed, was measured under a Rule which is to be found as Rule 8 of the Rules applicable to Cases I and II of Schedule D. That Rule 8, in its Sub-rule (2), provides that "where a trade . . . is discontinued in any year, any person charged or chargeable with tax in respect thereof shall be entitled to be charged on the actual amount of profits or gains arising therefrom in that year." It is to be observed by the plain terms of that Rule that what you are to deal with, for the purposes of ascertaining the liability of the owner of the business, is the actual amount of the profits or gains arising therefrom in that year, that is, the year of discontinuance. That Rule is specifically repealed by the 5th Schedule, Part I, to the Finance Act of 1926. Attention has been called to the fact that the words "actual amount of the profits" are no longer to be found in the Section that we have to consider. By the change of words it would seem that a change of purpose was indicated by the Legislature.

In the Act of 1926 there are several Sections to which our attention has been drawn. First of all, Section 29 (1) provides that instead of a system of three years' average, the profits or gains are to be computed "on the full amount of the profits or gains or income of the year preceding the year of assessment." That was the Section which abolished the three years' system and introduced in its place one year, "the year preceding the year of assessment," as the basis of charge. Section 34 gives the period of computation of the profits and gains, and provides where businesses make up their accounts to a certain date, the profits to that date in the year preceding the year of assessment shall be taken "to be the profits or gains of the year preceding the year of assessment." This Section is designed to prevent it being necessary to make up a special trading account ending with the

(Lord Hanworth, M.R.)

financial year, 5th April, and enables the trader to make use of the figures that he has got in his own financial year. Section 35, as Mr. Bremner pointed out, introduced a new system of liberty in the Income Tax Acts—it provides for the apportionment of profits. Before that Section there was no liberty or power to apportion the profits. Section 35 says: "Where in the case of any profits or "gains chargeable" under certain Cases "it is necessary, in order "to arrive at the profits or gains or losses of any year of assessment "or other period to divide and apportion to specific periods the "profits or gains," then it shall be lawful to make a division or apportionment of them. In addition to that, Section 31 replaces Rule 8 (2) that I have referred to.

The present case upon the facts is one where there has been discontinuance of trade by Mr. Harold Wesley. It is not a case where there has been a succession in the sense of Section 32, such as the substitution of a partner in a partnership, or the like, but the business is carried on in the same way, though not precisely by the same persons. Here we have a case in which there has been a discontinuance; and it appears to me that, in the Case as stated by the Commissioners in paragraph 5 at the top of page 2, they inaccurately use the words "the company succeeded to the trade "after the 5th April, 1928." It really was a case in which there had been by this taxpayer, Mr. Wesley, a complete discontinuance, and the company took on the business, and in that sense succeeded, but from the point of view of Mr. Wesley, one must not allow a confusion to arise as if he had not fully and permanently discontinued his business. The year of assessment that we have to consider is the year ending April, 1928—the year from the 6th April, 1927, to the 5th April, 1928. The only question is: What is the measure of the liability of Mr. Wesley for that period? No question arises with regard to his liability for the year ending 5th April, 1929. That, as stated in paragraph 5 of the Case, has been easily adjusted. It has been adjusted in this way. Under Section 31, Sub-section (1) (a) there is a provision whereby he is to be chargeable on the amounts of the profits or gains beginning on the 6th April in the year of discontinuance and ending at the date of discontinuance. That has been done and no question arises, therefore, under, or in respect of, that year ending the 5th April, 1929.

By Section 31, Sub-section (1) (b), there is a further liability imposed upon the trader who has discontinued his business. It provides that an additional assessment can be made upon him in appropriate circumstances; and it is in reference to this additional assessment that the question arises. As I have pointed out, in Rule 8 (2) of the Rules to which I have referred, there was a distinct and simple reference to "actual profits"; but that word "actual" does not appear in Section 31 (1) (b). If that be so, it seems not right to introduce an argument based

(Lord Hanworth, M.R.)

on the suggestion that no change in Income Tax practice was intended. The argument would seem to bear the other way. The effect of Section 31, Sub-section (1) (b), is that an additional assessment is to be made over and above the amount on which taxation was imposed in the year preceding the year of assessment in which discontinuance occurs, if the new amount to be ascertained by the method laid down in this clause exceeds the amount of the original assessment. The root difference between the Crown and this taxpayer is what is meant by "the year preceding the year of assessment." The words seem to be plain—"the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs." The discontinuance occurred in July, 1928. The year preceding the year of assessment in which the discontinuance occurs would appear to be the year ending April 5th, 1928. Therefore, one has to ascertain what is the sum which should be imposed as a liability in this year which ended immediately before the year in which the discontinuance occurs. The latter part of the Section seems to make this plain: "an additional assessment may be made upon him, so that he shall be charged for that preceding year"—that is the year preceding the year in which the discontinuance occurs—"on the amount of the profits or gains of the said year ending on the fifth day of April." For the purpose of the additional assessment, regard must first be had to the fact that the Respondent has already had an assessment made upon him by resort to the provisions of Section 34 (1) and he has been allowed to take his own financial year as indicating the figure which is basic to the charge upon him. There has then to be ascertained the profits down to April 5th, but it is not possible, I think, to say that what is contemplated by Sub-section (1) (b) would be discovered by applying Section 34. If that had been so, it would have been easy to put words into Sub-section (1) (b) to make it plain. The words of Sub-section (1) (b) are plain and do not admit of resort to what might be called Income Tax practice, under which the trader is assessed by reference to the profits shown in his accounts to any particular date.

For these reasons, it appears to me that it is not possible to accept the view presented by the Commissioners, who have reduced the figure of liability from £7,774 to £4,127, which change has been accepted by Mr. Justice Rowlatt. It appears to me, for the reasons which I have endeavoured to express, that the Additional Commissioners were right in their original computation of £7,774, and the assessment of that figure should be restored.

For these reasons, the appeal will be allowed with costs here and below; and the case must be remitted to the Commissioners, unless it is plain and accepted by the parties that the trading figure ought to stand of £7,774.

Lawrence, L.J.—I agree. The question in this case is whether the additional assessment to Income Tax in the sum of £8,102, which admittedly ought to be reduced to the sum of £7,774, made by the Additional Commissioners upon the Respondent for the year ending 5th April, 1928, was computed upon correct principles. The Respondent had carried on the business of a manufacturing stationer for some years prior to 2nd July, 1928, on which date he sold his business to a private limited company. The Finance Act of 1926 effected an alteration in the then prevailing method of computing profits under Schedule D in cases like the present. By Section 29 of the Act it was provided that instead of the profits being computed upon the average of three years, as theretofore, they should in future be computed on the amount of profits "of the year preceding the year of assessment." By Section 34 (1) it was enacted, *inter alia*, that where in the case of any trade it had been customary to make up accounts yearly to a date within the year of assessment, the profits of the year ending on that date should be taken to be the profits of the year preceding the year of assessment. In the case of the Respondent's trade, it had been customary to make up a yearly account to the 30th June in each year. The profits of the year ending on that date had, whilst the trade was being carried on, been taken to be the profits of the year preceding the year of assessment. The Act of 1926, in addition to making the alteration in the method of computing the profits to which I have referred, contains special provisions applicable to cases where a trade had been permanently discontinued in the year of assessment. Those provisions are to be found in Section 31, which Section, so far as material for the purposes of this case, provides by Sub-section (1) that where in any year of assessment the trade is permanently discontinued, then, notwithstanding anything in Part IV of the Act, (sub-clause (a)) the person charged with Income Tax in respect thereof shall be charged for that year on the amount of the profits or gains for the period beginning on the 6th April in that year, and ending on the date of the discontinuance. If he is charged otherwise than in accordance with that provision, any tax overpaid is to be repaid, or an additional assessment is to be made upon him as the case may require. Sub-clause (b) enacts: "if the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year, . . . an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of profits or gains of the said year ending on the fifth day of April." In the present case the Respondent's trade was permanently discontinued on 2nd July, 1928, when it was sold to the company; that is to say, in the year of assessment commencing on 6th April, 1928, and ending on 5th April, 1929. As regards the period from the 6th April, 1928, to the 2nd July, 1928, the provisions of Sub-section (1) (a) became applicable, and the

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Respondent was duly assessed on the profits of that period. No question arises as to this assessment. As regards the year ending 5th April, 1928, the provisions of Section 31 (1) (b) became applicable and an additional assessment was made upon the Respondent, computed upon the excess of profits of that year over the amount on which the Respondent had been charged for that year.

The Respondent appealed against the assessment to the Special Commissioners on the ground that it was incorrectly computed, contending that the profits of the year ending 5th April, 1928, ought to be computed under Section 34 (1) on the profits shown by his customary yearly account to have been made in his trade up to the 30th June, 1927, and not on the actual profits of the year ending on 5th April, 1928. The Special Commissioners upheld the Respondent's contention and allowed his appeal. Mr. Justice Rowlatt has affirmed the decision of the Special Commissioners, hence the present appeal. In my judgment the conclusions arrived at by the Special Commissioners and Mr. Justice Rowlatt were erroneous.

Section 34 (1), in my opinion, only deals with the method of computing profits for the year preceding the year of assessment for the purpose of arriving at the amount of Income Tax to be charged in the year of assessment under Section 29, and has no application to an additional assessment under Section 31 (1) (b). In the present case under the combined operation of Sections 29 and 34 (1), the Respondent was rightly assessed for the year ending on the 5th April, 1928, (being the year preceding the year of assessment in which the discontinuance occurred) on the profits of the preceding year 1926-27, computed on the customary annual account made up to 30th June, 1926. The sum arrived at by this method of computation was £6,898. For the purpose of arriving at the amount of the additional assessment to be made under Section 31 (1) (b) the Additional Commissioners proceeded to find out the amount of profits of the year ending 5th April, 1928. This they did by applying Section 35 and making an apportionment under that Section. Section 35 provides: "Where in the case of any profits . . . it is necessary, in order to arrive at the profits . . . of any year of assessment . . . to divide and apportion to specific periods the profits . . . for any period for which the accounts have been made up, or to aggregate any such profits . . . or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation." By applying this method the Additional Commissioners took one-fourth of the profits (amounting to £11,026) shown by the annual account made up to 30th June, 1927, to have been earned up to that date, and three-fourths of the profits (amounting to £15,889) shown by the account made up to the 30th June, 1928, to have been earned up to that date, and aggregated these apportioned parts of the profits and

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thus arrived at the sum of £14,672 as the total amount of the profits of the year preceding the year of assessment in which the discontinuance had taken place. The profits so ascertained exceeded the amount on which the Respondent had been already assessed for that year by the sum of £7,774, and an additional assessment for that amount was made upon him, so that he should be charged for that year on the amount of profits of that year ending on the 5th April, 1928. In my opinion, this assessment was made on the correct principles and came strictly within the letter and true meaning of Section 31 (1) (b).

Turning once more to that Section, I will read it again in the light of the facts which I have stated. Sub-section (1) provides "Where in any year of assessment a trade is permanently discontinued"—we know that the trade in this year was permanently discontinued on the 2nd July, 1928, that is to say, in the year of assessment 1928-29—then, notwithstanding the previous provisions in Section 29, two consequences are to ensue. I need not deal with the broken period of the 5th April, 1928, to the 2nd July, 1928. There is no question arising about that. But as regards the year preceding that year (that is to say the year 1927-28) Sub-section (b) provides that: "if the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs"—that we know is the year ending on the 5th April, 1928—and the profits here dealt with are the profits of the year 1927-28—"exceed the amount on which the person has been charged for that preceding year"—that is to say, exceed the amount on which the Respondent had been charged to tax for the year ending 1928, which we know they did exceed by a sum of £7,774—an additional assessment is to be made upon him "so that he shall be charged for that preceding year"—that is to say, for the year ending 5th April, 1928—"on the amount of the profits . . . of the said year ending on the fifth day of April"—that is to say, he is to be charged for the year ending 5th April, 1928, by way of additional assessment, on the excess of the profits of that year over the amount for which he had been already assessed for that year, which excess we know amounts to the sum of £7,774. In ascertaining the excess in respect of which the additional assessment is to be made under this Sub-section, there seems to me to be no room for the application of Section 34. The latter Section deals solely with the method of calculation to be adopted in ascertaining the profits of the year preceding the year of assessment, whereas what has to be ascertained in order to arrive at the excess under Section 31 (1) (b) is the amount of profit of the year of assessment. The method of computation prescribed by Section 34 has already been applied in the present case in ascertaining the Respondent's original assessment for the year ending 5th April, 1928. Under Section 31 (1) (b)

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it became necessary to ascertain to what extent the actual profits of that year exceeded the amount of the original assessment made for that year, and Section 34 does not prescribe any method of computing those profits which must be computed by applying Section 35. For these reasons, I have come to the conclusion that this appeal ought to be allowed with costs here and below.

Romer, L.J.—I agree. The question arising on the appeal is a very short one, and turns principally on Section 31, Sub-section (1), of the Finance Act, 1926. That Sub-section, as its introductory words say, applies "Where in any year of assessment" which means, of course, in any year beginning on the 6th April of one year and ending on the 5th April of the next year, "a trade, profession or vocation is permanently discontinued." When that event happens the Sub-section comes into operation and then proceeds to deal with two things. Paragraph (a) of the Sub-section deals with an assessment to be made in respect of the year in which the discontinuance occurs. Paragraph (b) deals with a further assessment to be made in respect of the year preceding the year in which the discontinuance occurs. In the present case the discontinuance of the trade took place on the 2nd July, 1928. Thereupon an assessment for the year April, 1928, to April, 1929, had to be made and it was in accordance with paragraph (a). No question turns in this appeal upon that assessment. Under paragraph (b) a further assessment had to be made in respect of the year 1927-28, and it is the amount of that additional assessment that is in question on this appeal. Looking at the Sub-section and applying the dates, it appears that what has to be done is to compare the profits or gains of the year ending on the 5th day of April, 1928, with the amount on which the Respondent was charged for that year. That amount we know is, as provided by Section 29, Sub-section (1), of the Act, the amount of the profits for the year preceding 1927-28, namely, the year 1926-27. That comparison having been made, if the profits or gains for the year ending on the 5th April, 1928, exceed the amount of the profits for the year preceding that, then an additional assessment is to be made equivalent to the amount of that excess. So that, looking at the plain words of the Section, the profits for the year ending 5th April, 1928, have to be ascertained. Now one would think that there was no difficulty about that, but the Respondent says: "Yes, there is," because if you look at Section 34, Sub-section (1), you will find that the profits are not to be ascertained up to the 5th April, 1928, but up to the 30th June, 1927, that is, the date in that year to which our accounts are made up. Section 34 (1) says this: "Where in the case of any trade, profession or vocation, or of the occupation of any land"—one can leave out those words—"it has been customary to make up accounts,—(a) if only one account was made up to a date within the year preceding the year of assessment, and that account was

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“ for a period of one year, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment.” But what we are doing here is not to ascertain the profits of the year preceding the year of the assessment, but to ascertain the profits of the year of assessment and then compare them with the profits of the year preceding the year of assessment. The Section, therefore, obviously has no application when we are attempting to ascertain the profits of the business for the year ending the 5th April, 1928, for the purposes of comparing it with the profits for which, in respect of that year, it was assessed to Income Tax. Then it is said : “ Yes, the Section does apply because this year 1927 to 1928 is the year preceding the year of assessment.” It is an astounding proposition, if I may say so with the greatest respect for those who think there is something in it. The argument is based upon what I cannot help thinking is a mis-reading of the language of sub-paragraph (b) of the first Sub-section to Section 31. That paragraph says : “ If the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs ” and so on. Those words “ the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs ” are words of description and nothing else. Every year of assessment precedes another year of assessment and the fact that the year of assessment may be described as preceding the following year of assessment does not make it for the purposes of assessment the year preceding the year of assessment. Under paragraph (b) of Sub-section (1) of Section 31 the year 1927-28 is the year of assessment, and it does not cease to be a year of assessment because it is described as being the year preceding the year of assessment 1928-29. Sub-section (1) of Section 34, therefore, has no application to the case. Profits from the 6th April, 1927, to the 5th April, 1928, have to be ascertained. Here, fortunately, both in the interests of the Respondent, the taxpayer, and of the Crown, instead of a new account having to be drawn, Section 35 comes into operation and the profits can be ascertained for the purposes of this further assessment that has to be made under paragraph (b), by taking the proper proportion of the profits shown by the Respondent’s balance sheet ending on the 30th June, 1927, and the proper proportion of the profits shown by their balance sheet ending on the 30th June, 1928. For these reasons, it appears to me that this appeal must be allowed.

Mr. Hills.—With regard to the costs your Lordships will remember there was an agreement.

Lord Hanworth, M.R.—I beg your pardon. I am sorry that I said what I did, because I meant to have taken note of the fact that in this case you have agreed to pay the costs.

Mr. Hills.—We do not disturb the order in the Court below. It is only reversed as to the substance, not as to the costs. In this case the order will be that my learned friend's costs are paid by the Crown.

Lord Hanworth, M.R.—Yes. I am sorry, Mr. Bremner, I made a slip in dealing with the costs, but I had forgotten what had been said on Friday.

Mr. Bremner.—No harm is done.

(2) *Young (H.M. Inspector of Taxes) v. Wm. Bernstein, Limited (in liquidation).*

The Crown having appealed against the decision in this case in the King's Bench Division, an application was made to the Court of Appeal, prior to the hearing of the case of *Manson v. Wesley*, that the matter should stand over until judgment was given in the latter case. The application was granted, and on the 20th July, 1931, further application was made in the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Slesser, *L.JJ.*) to have the case restored to the list and judgment entered in favour of the Crown. This application was granted and judgment was accordingly given in favour of the Crown, reversing the decision of the Court below.

Manson (H.M. Inspector of Taxes) v. Wesley.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Lord Warrington of Clyffe and Lords Thankerton, Macmillan and Atkin) on the 26th February and the 3rd March, 1932, when judgment was reserved. On the 19th April, 1932, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. F. Grant appeared as Counsel for the Appellant and the Attorney-General (Sir T. W. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Warrington of Clyffe.—My Lords, the question in this appeal turns on the true construction and effect of certain provisions of the Finance Act, 1926, relating to the mode of assessment to Income Tax under Schedule D in cases where the trade in question is permanently discontinued in any year of assessment and, in particular, of Section 31 (1) (b) of that Act.

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The Appellant's trade was permanently discontinued on the 2nd July, 1928, that is to say, in the year of assessment commencing on the 6th April, 1928, and ending on the 5th April, 1929.

Under Section 31 (1) (a) of the Statute in question, the Appellant became chargeable and was charged for the year of assessment, 1928-29, on the amount of the profits of the period beginning on the 6th April, 1928, and ending on the date of the discontinuance, roughly speaking, one quarter of the year, and no question arises as to the correctness of this charge.

The question really arises on the true construction and effect of Section 31 (1) (b). This Section, omitting immaterial words, is as follows: "If the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of the profits or gains of the said year ending on the fifth day of April."

The year preceding the year of assessment in which the discontinuance occurs was in the present case the year from the 6th April, 1927, to the 5th April, 1928. For that year the Appellant had been charged under Section 29 of the Act on the full amount of the profits or gains of the year preceding the year of assessment, namely, of the year from the 6th April, 1926, to the 5th April, 1927, and under Section 34 (1) (a) the profits of the year ending the 30th June, 1926 (up to which date the customary annual account was made up), were taken to be the profits of the year preceding the year of assessment, namely, of the year 1926-27. The profits of the year ending the 5th April, 1928, in fact exceeded the amount on which the Appellant had been charged for that year and, accordingly, Section 31 (1) (b) came into operation and the additional assessment had to be made.

On the true construction and effect of Section 31 (1) (b), with all respect to those who have expressed a different view, it seems to me to be reasonably clear that, in order to effect the express purpose of the provision, namely, that, as the result of the additional assessment, the Appellant is to be charged on the amount of the profits for the year ending the 5th April, 1928, some means of making the additional assessment other than those prescribed in cases where the year is itself the "year of assessment" (namely, the provisions already referred to of Section 29 (1) and Section 34) must be resorted to. Fortunately, these other means are supplied by Section 35 which (omitting immaterial words) is as follows: "(1) Where in the case of any profits or gains chargeable under Case I of Schedule D it is necessary, in order to arrive at the profits of any year of assessment or other period, to divide and apportion to specific periods the profits for any

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“ period for which the accounts have been made up . . . it shall
 “ be lawful to make such a division and apportionment . . .
 “ (2) Any apportionment under this section shall be made in pro-
 “ portion to the number of months or fractions of months in the
 “ respective periods.”

The additional assessment complained of has been made by the Crown under the provisions of Section 35. I agree with the Court of Appeal that it has been rightly so made and, in my judgment, the appeal fails and should be dismissed.

Lord Thankerton.—My Lords, on the 2nd July, 1928, the Appellant, who carried on the business of a manufacturing stationer, sold his business to a private limited company, and it is not disputed that the provisions of Section 31 (1) of the Finance Act, 1926, became applicable for the purpose of determining his liability to Income Tax. These provisions are as follows : “ 31. (1) Where in
 “ any year of assessment a trade, profession or vocation is per-
 “ manently discontinued, then, notwithstanding anything in this
 “ Part of this Act—(a) the person charged or chargeable with tax
 “ in respect thereof shall be charged for that year on the amount of
 “ the profits or gains of the period beginning on the sixth day of
 “ April in that year and ending on the date of the discontinuance,
 “ subject to any deduction or set-off to which he may be entitled
 “ under the section of this Part of this Act which provides for
 “ relief in respect of certain losses or under Rule 13 of the Rules
 “ applicable to Cases I and II of Schedule D, and, if he has been
 “ charged otherwise than in accordance with this provision, any
 “ tax overpaid shall be repaid, or an additional assessment may be
 “ made upon him, as the case may require ; (b) if the profits or gains
 “ of the year ending on the fifth day of April in the year preceding
 “ the year of assessment in which the discontinuance occurs exceed
 “ the amount on which the person has been charged for that preced-
 “ ing year, or would have been charged if no such deduction or
 “ set-off as aforesaid had been allowed, an additional assessment
 “ may be made upon him, so that he shall be charged for that
 “ preceding year on the amount of the profits or gains of the said
 “ year ending on the fifth day of April, subject to any such deduc-
 “ tion or set-off as aforesaid to which he may be entitled.” It had
 been customary to make up the accounts of the Appellant’s business for a period of twelve months up to 30th June in each year. For the material years these accounts had shown a profit as follows :—

Account to 30th June, 1926	£6,898
Account to 30th June, 1927	£11,025
Account to 30th June, 1928	£15,889

For the Income Tax year 1927–28 the Appellant had been assessed to Income Tax on the profits and gains of that year computed—as directed by Section 29 (1) of the Finance Act, 1926—“ on the full

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“ amount of the profits or gains or income of the year preceding “ the year of assessment ” as defined by Section 34 (1) (a) of that Act, which is as follows: “ 34. (1) Where in the case of any “ trade, profession or vocation, or of the occupation of any land “ occupied solely or mainly for the purposes of husbandry, or of “ the occupation of any woodlands, it has been customary to make “ up accounts—(a) if only one account was made up to a date within “ the year preceding the year of assessment, and that account was “ for a period of one year, the profits or gains of the year ending “ on that date shall be taken to be the profits or gains of the year “ preceding the year of assessment.” Accordingly, the profit of £6,898 shown by the account to 30th June, 1926, provided the figure on which the profits or gains for the Income Tax year 1927–28 were computed. Similarly, if the trade had not been discontinued during the Income Tax year 1928–29, the figure of profit, *viz.*, £11,025, shown by the account to 30th June, 1927, would have provided the figure on which the profits or gains for the Income Tax year 1928–29 would have been computed.

On the discontinuance of the Appellant's business at 2nd July, 1928, two assessments were made upon him under the provisions of Section 31 (1) of the Finance Act, 1926, *viz.* :—(1) an assessment in respect of the broken period of the Income Tax year 1928–29 (6th April to 2nd July, 1928) under Section 31 (1) (a), the amount being ascertained by an apportionment under Section 35 of the Act and, (2) an additional assessment in the sum of £8,102 (corrected to £7,774) for the year ending 5th April, 1928, under Section 31 (1) (b), the amount being ascertained by an apportionment under Section 35, and deduction therefrom of the original assessment of £6,898.

No exception was taken by the Appellant to the first of these assessments, but he challenges the amount of the second assessment as not being arrived at in terms of the provisions of Section 31 (1) (b), and it will be convenient to examine exactly how this assessment was arrived at. Section 35, which was used for the purpose, provides as follows: “ 35. Where in the case of any profits or “ gains chargeable under Case I, Case II, Rule 4 of Case III or “ Case VI of Schedule D it is necessary, in order to arrive at the “ profits or gains or losses of any year of assessment or other period, “ to divide and apportion to specific periods the profits or gains or “ losses for any period for which the accounts have been made up, “ or to aggregate any such profits or gains or losses or any appor- “ tioned parts thereof, it shall be lawful to make such a division “ and apportionment or aggregation: Provided that nothing in this “ section shall be construed as limiting the power of the general “ commissioners with respect to the adjustment of an assessment “ under Rule 9 of the Rules applicable to Cases I and II of “ Schedule D. (2) Any apportionment under this section shall be

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“made in proportion to the number of months or fractions of “months in the respective periods.” Proceeding on the view that the “year of assessment” of the additional assessment under Section 31 (1) (b) was the Income Tax year 1927–28 and applying Section 35, the additional assessment was arrived at as follows:—

	£
One-fourth of the profit of £11,025 shown by the account to 30th June, 1927	2,756
Three-fourths of the profit of £15,889 shown by the account to 30th June, 1928	11,916
	14,672
Less the original assessment	6,898
	£7,774

The Appellant disputes this construction of Section 31 (1) (b) and maintains that the “year of assessment” of the additional assessment is the “year of assessment in which the discontinuance “occurs”, which is admittedly the Income Tax year 1928–29, that the “profits or gains of the year ending on the fifth day of April in “the year preceding the year of assessment in which the discontinuance occurs” are therefore the profits or gains of the year preceding the year of assessment and fall to be computed under Section 34 (1) (a) and that, accordingly, it is not necessary to resort to Section 35 for an apportionment. In this view, the additional assessment would be an assessment for the year ending 5th April, 1929—not the year ending 5th April, 1928—and would be arrived at as follows:—

	£
Profit shown by the account to 30th June, 1927 ...	11,025
Less the original assessment	6,898
	£4,127

The Appellant seeks to have the assessment corrected to that figure.

My Lords, certain general observations may be made at this stage. Under Section 237 of the Income Tax Act, 1918, “‘Year “‘of assessment’ means, with reference to any tax the year for “which such tax was granted by any Act granting duties of income “tax”, and this provision, taken along with Sections 1 and 2 of the 1918 Act, makes clear that the year of charge and year of assessment must be the same. Secondly, the Income Tax Act, 1918, as amended by later Finance Acts, operates as regard any particular Income Tax year by virtue of the Finance Act of that year, in terms of Section 1 of the 1918 Act.

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It follows, in my opinion, that the solution of the present question will depend on whether the additional assessment provided for under Section 31 (1) (b) of the Finance Act, 1926, which amends the Income Tax Act, 1918, was charged in the present case by the Finance Act, 1927, or by the Finance Act, 1928. The amendments of the 1918 Act made by Part IV of the Finance Act, 1926, were operative under both the Finance Act, 1927, and the Finance Act, 1928, as regards their respective Income Tax years.

In my opinion, the whole question turns on the construction of the words in Section 31 (1) (b) "an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of the profits or gains of the said year ending on the fifth day of April." It is agreed that in this case "the said year" is the year ending 5th April, 1928. Now, these are words of charge and not words of computation and it is difficult to see how the Finance Act of 1928 could be held to charge the profits of the year to 5th April, 1928, although it could charge the profits of the year ending 5th April, 1929, by computing them on the profits of the year ending 5th April, 1928. On the other hand, I see no difficulty in holding that the additional assessment is part of the charge made by the Finance Act, 1927, on the profits of the Income Tax year ending 5th April, 1928, and that it is authorised by the operation of Part IV of the Finance Act, 1926, under the Finance Act, 1927, which enacted that Income Tax should be charged for the year ending 5th April, 1928 (Income Tax Act, 1918, Section 1).

In that view, the phrase "the year preceding the year of assessment in which the discontinuance occurs" is merely for the purpose of identifying the profits or gains which are to be subject to the additional assessment and also to the charge involved in such assessment and, as I have already stated, I am of opinion that the profits and gains of that previous year could only be held to be charged and assessable under the Finance Act of that previous year. Further, the words "so that he shall be charged for that preceding year on the amount of the profits or gains of the said year" in Section 31 (1) (b) are to be contrasted with the words "shall be charged for that year" (*i.e.*, the year of assessment in which the trade is discontinued) "on the amount of the profits or gains of the period beginning on the sixth day of April in that year and ending on the date of the discontinuance" in Section 31 (1) (a).

If, then, the year of assessment of the additional assessment is the year ending 5th April, 1928, there is no room for the application of Section 34 (1) (a), and it is necessary to have recourse to Section 35, with the result that the appeal fails. It seems to me that the Special Commissioners and Mr. Justice Rowlatt did not give sufficient weight to the view that it is the profits and gains of

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1927-28 that are being brought into charge and assessment. I agree with the learned judges of the Court of Appeal and, in particular, with the judgment of Lord Justice Romer.

I am of opinion, therefore, that the appeal ought to be dismissed with costs.

Lord Macmillan.—My Lords, Mr. Wesley, the Appellant, on 2nd July, 1928, permanently discontinued the trade of a manufacturing stationer, which he had previously carried on, and transferred his business to a private limited company. The question before your Lordships relates to the effect of that discontinuance on the Appellant's liability to Income Tax in respect of the profits or gains of his former business. The Appellant was in the practice of making up his accounts annually as at 30th June in each year and the circumstance that his financial year thus did not coincide with the tax year, which ends annually on 5th April, is one of the causes which have given rise to the present problem.

As regards the assessment for the year to 5th April, 1929, there is no dispute. The parties are agreed that under Section 31 (1) (a) of the Finance Act, 1926, the Appellant is for that year chargeable with tax on the amount of the profits of the business from 6th April, 1928, to 2nd July, 1928, the date of discontinuance. As the business was not wound-up but was continued by the company which took it over, and, as the latter, following the Appellant's practice, prepared a single account for the whole year to 30th June, 1928, covering the period before as well as the period after its succession, the Appellant's profits from 6th April to 2nd July, 1928, were ascertained by utilising the method of apportionment provided by Section 35 of the Act of 1926.

It is with regard to the Appellant's assessment for the tax year 1927-28 that a question has arisen. For that year, the Appellant was duly assessed to tax on £6,898, the amount of his profits or gains as brought out in his accounts for the year to 30th June, 1926, that being the terminal date of his last financial year preceding the tax year 1927-28. (See Sections 29 (1) and 34 (1) (a) of the Finance Act, 1926.) But, in consequence of the discontinuance of his trade on 2nd July, 1928, the Inland Revenue became entitled under Section 31 (1) (b) of the Act of 1926 to reconsider his assessment for 1927-28 in order to ascertain whether his profits or gains for that year, that is, for the year ending 5th April, 1928, exceeded the amount on which he had already been charged for that year and if any excess was found to exist to make an additional assessment upon him. The comparison which the Act directs is between (1) the Appellant's profits or gains for the year ending on 5th April, 1928, and (2) the amount on which the Appellant was charged for that year, the declared object being that the Appellant should be charged for the year ending 5th April, 1928, on the amount of the

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profits or gains of that year. The comparison intended to be instituted, as I conceive it, is between the statutory income notionally attributed to the Appellant for the tax year 1927-28 and his actual income in that year.

Now as to one of the factors in the comparison, namely, the amount on which the Appellant was actually charged for the tax year 1927-28, there is of course no question. It is an historical fact that he was charged on £6,898, arrived at as I have already explained. The controversy relates to the other factor, namely, the profits or gains of the Appellant's trade for the year ending 5th April, 1928. The Appellant invokes Section 34 (1) (a) of the Act of 1926 and says that on a sound construction of Section 31 (1) (b) his profits or gains for the year ending 5th April, 1928, ought to be ascertained from his accounts for the year ending 30th June, 1927, on which basis the figure would be £11,025. The Crown replies that what the Act requires is that the actual profits for the year ending 5th April, 1928, be taken and that these are to be ascertained by taking under Section 35 the appropriate proportions of the profits or gains brought out in the accounts of the business for the years to 30th June, 1927, and 30th June, 1928, that is, one-fourth of the former and three-fourths of the latter. The profits for the year to 30th June, 1927, as already stated, were £11,025, one-fourth whereof is £2,756; the profits for the year to 30th June, 1928, were £15,889, three-fourths whereof are £11,916. Adding these two sums of £2,756 and £11,916, a total of £14,672 is brought out. Stated arithmetically, accordingly, the issue is whether the comparison should be between £11,025 and £6,898 or between £14,672 and £6,898. If the former is right, the Appellant is liable to an additional assessment on £11,025 minus £6,898, equals £4,127; if the latter is right, the Appellant is liable to an additional assessment on £14,672 minus £6,898, equals £7,774. The Special Commissioners and Mr. Justice Rowlatt took the former view, the Court of Appeal the latter.

My Lords, in my opinion the Court of Appeal were right. The critical words are those requiring the ascertainment of "the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs." The year of assessment in which the discontinuance occurred in the present case was the tax year 1928-29. The year preceding that year was the year 1927-28. If this is right—and I confess I have difficulty in seeing how it can be otherwise than right—the Appellant in my view cannot avail himself of Section 34 (1) (a) in order to make his accounts for the year to 30th June, 1927, the basis of ascertaining his profits or gains for the year ending 5th April, 1928. The date 30th June, 1927, is a date within the tax year 1927-28 and not a date within the year preceding the tax year 1927-28. Moreover, the Appellant has already availed himself

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of Section 34 (1) (a) for the purpose of ascertaining his profits or gains for 1927-28, inasmuch as his original assessment for that year was in virtue of Section 34 (1) (a) based on his accounts for the year ending 30th June, 1926. I do not think it can be used over again to ascertain the profits or gains of the year 1927-28 on a different basis.

It comes to this, that the Appellant in order to succeed must establish that the additional assessment provided for under Section 31 (1) (b) is an additional assessment for the year 1928-29, that that year is accordingly the year of assessment within the meaning of Section 34 (1) (a) and that his profits or gains for the year 1927-28 for the purpose of Section 31 (1) (b) must therefore, under Section 34 (1) (a), be based on his accounts for the year ending 30th June, 1927, being his accounts made up to a date within the year preceding the year of assessment. I am of opinion that there is no warrant for such a construction.

Finding myself, as I do, in agreement with the decision of the Court of Appeal and particularly with the judgment of Lord Justice Romer, I concur in the motion that the appeal be dismissed.

Lord Tomlin.—My Lords, I am asked to state that Lord Atkin concurs in the opinion which has been read by my noble and learned friend Lord Warrington.

Questions put :

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this appeal dismissed with costs.

The Contents have it.

[Solicitors :—Solicitor of Inland Revenue ; for Wm. Bernstein, Ltd., C. R. Enever & Co. ; for H. Wesley, de la Chapelle & Co., and Gery & Brooks.]