dismissed by the Court of Appeal. The appellant is now asking your Lordships to reverse the orders made in the Courts below. [*His Lordship read Schedule I, paragraphs* 4, 14, *and* 15, *and continued*]—

The last-mentioned paragraph of the First Schedule obviously contemplates that a workman may have to submit to medical examination under paragraph 4 as well as paragraph 14 more than once, and paragraph 4 is in my opinion quite consistent with his having to do so, though it is open to the Secretary of State to prescribe that the examinations shall not take place otherwise than at certain intervals. The only regulations made by the Secretary of State on this subject are those of the 28th June 1907, which prescribe the intervals at which examinations under paragraph 14 are to take place, but are silent as to examinations under paragraph 4.

If, as I think, the fourth paragraph contemplates more than one medical examination, and the regulations of the Secretary of State are silent as to the number of examinations which are permissible, the question whether the appellant was justified in refusing to be examined as required by the respondents on the 22nd September 1913 depends upon whether the requisition was reasonable under the circumstances—a question of fact not for the decision of your Lordships but of the County Court Judge who dealt with the matter, and whose finding can only be disturbed if as a matter of law the requisition could not under any circumstances have been properly made. This in my opinion is the result of your Lordships' decision in *Morgan* v. *Dixon Limited*, 1912 A.C. 74. The appellant bases his contention that the requisition could under no circumstances have been properly made—first, on the contention that paragraph 4 contemplates only one examination—a contention which is in my opinion sufficiently disposed of by reference to paragraph 15; and secondly, on the absence of any regulations in that behalf of the Secretary of State under paragraph 15. In my opinion paragraph 15 must not be read as prohibiting any medical examinations which the Secretary of State does not specifically authorise, but as leaving the County Court judge to determine whether any proposed examination is reasonable under the circumstances, subject only to any regulations made by the Secretary of State as to the intervals at which such examinations are to take place.

Some discussion occurred in the course of argument as to the meaning of the words "any workman receiving weekly payments under this Act" in paragraph 14 of Sched. 1 and the corresponding words "a workman in receipt of weekly payments" in the regulations of the 28th June 1907. Counsel on both sides seemed disposed to agree that these words could not apply to workmen who had for a time received weekly payments but had ceased to receive them because the incapacity during which alone they were payable had, or was alleged to have, come to an end. I prefer to reserve my opinion on this point, though as a matter of practice it can be of very little importance. If the cessation of payment of the weekly sum to which the workman is entitled under the Act puts an end to the operation of paragraph 14, the right of the employer under paragraph 4 must, in my opinion, be held to revive, and if, as I think, recurrent examinations are possible under that paragraph, no difficulty would occur in practice, nor would any injustice or inconvenience be caused to either employer or workman.

In my opinion the appeal fails, and should be dismissed, with costs.

Appeal dismissed with expenses.

Counsel for the Appellant—Leslie Scott, K.C.—A. T. James. Agents—Smith, Rundell, & Dods, for Morgan, Bruce, & Nicholas, Pontypridd, Solicitors.

Counsel for the Respondents—Scott Fox, K.C.—Albert Parsons, K.C. Agents—Bell, Brodrick, & Gray, for C. & W. Kenshole, Aberdare, Solicitors.

HOUSE OF LORDS.

Thursday, June 10, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Wrenbury.)

DRUMMOND *v.* COLLINS.

(On Appeal from the Court of Appeal in England.)

Revenue — Income Tax — Foreign Possessions—Remittances to a Guardian in the United Kingdom—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 41, 100, *Sched. D, Case* 5—*Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 44), *sec.* 2, *Sched. D.*

A testator, resident in America, by his will vested his property in trustees, and directed them in their discretion to apply the trust funds for the benefit of his grandchildren. The testator's son's widow was now resident in England with the children, and as guardian of the children received remittances from the trustees in America for their maintenance and education.

Held that these remittances were assessable to income tax under section 100, case 5, of the Income Tax Act 1842, Sched. D, as being moneys received in England in respect of foreign possessions.

Decision of the Court of Appeal reported [1914] 2 K.B. 643, *affirmed.*

Appeal from a decision of the Court of Appeal affirming a decision of Horridge, J., reported 1913, 3 K.B. 583.

The question for determination was whether certain sums remitted from America by the trustees in America of the will of Mr Marshall Field, of Chicago, to the appellant Mrs Drummond, in England, as guardian of three infant children, for the education and maintenance of these children, were assessable to income tax under the fifth case of

Sched. D of the Income Tax Act 1842 and section 2, Sched. D, of the Income Tax Act 1853.

In 1890 the appellant married Mr Marshall Field jun., who died in 1905, and by whom she had three children. These children were under the age of twenty-one, and lived with their mother in England. The mother had since married, and was now Mrs Drummond.

The testator, Mr Marshall Field sen., by his will gave his property, which was situated abroad, to foreign trustees upon trust for the benefit of his deceased son's children, who were minors, there being a provision that the trustees should accumulate the income of the respective shares of the children and add the accumulations to capital until the children should respectively attain the age of twenty-five years, and that no child should have any vested interest during the continuance of the trust for accumulation.

By clause 7 of his will the testator directed that out of the net income of the trust estate held in trust for any child of Mr Marshall Field jun., or issue of a child, the trustees should make such provision from time to time as they in their uncontrolled discretion might think necessary or advisable for the suitable maintenance and education of such child or issue thereof until such child or issue thereof should be entitled under the provisions of the will to receive payments of income directly from the said trustees, and that such provision should be paid over by the trustees from time to time to each such child or issue thereof, or to the guardian or guardians of each such child or issue thereof, or might be otherwise applied for the benefit of each such child or issue thereof as the trustees might think advisable; and if and so far as the suitable maintenance or education of any such child or issue thereof should from time to time appear to the trustees to be sufficiently provided for in other ways or from other sources, the trustees shall refrain from making any provision therefor out of the trust estate. The income not so applied was to be accumulated in accordance with the provisions of the will.

The trustees from time to time remitted to the mother of the children, who was their guardian, after she came to reside in England large sums of money in accordance with the provisions of the will for the maintenance and education of the children.

The appellant as the guardian of the children was charged under section 41 of the Income Tax Act 1842 with income tax in respect of these remittances as being moneys received in this country in respect of foreign possessions within section 100, Sched. D, case 5, of the Income Tax Act 1842, and also as being annual profits arising to a person residing in the United Kingdom from property situate elsewhere than in the United Kingdom within section 2, Sched. D, of the Income Tax Act 1853.

The Commissioners confirmed this assessment..

HORRIDGE, J., held that the Commissioners were right, and affirmed their determination that these remittances were assessable to income tax in the hands of the guardian, and his decision was upheld by the Court of Appeal (LORD COZENS-HARDY, M.R., and Sir SAMUEL EVANS, P., JOYCE, J., dissenting).

The guardian appealed.

After hearing appellant's counsel only—

EARL LOREBURN—In this case an American gentleman left by his will a large sum of money to trustees upon trusts which tied up his property with a view to its accumulation for a long time, and created a somewhat complicated series of interests. We have in my opinion no concern with the ultimate distribution of these funds. We are concerned only with one provision. The will authorised, and indeed required, the trustees in America to exercise their discretion as to providing money for the maintenance of the testator's grandchildren, who are now minors. In pursuance of this authority the trustees exercised their discretion and remitted to the now appellant, the mother of these children, certain sums of money for their maintenance; and the Court of Appeal by a majority has held that these sums are chargeable with income tax because the lady and the children reside in England and the money was received in England. I think the Court of Appeal and Horridge, J., whose decision they affirmed, were perfectly right. The Income Tax Acts are framed in very general terms. It is necessary so to frame Acts of this kind lest some case manifestly within the purpose of the Legislature may escape the tax. But courts of law have cut down or even contradicted the language of the Legislature when on a full view of the Act, considering its scheme and its machinery and the manifest purpose of it, they have thought that a particular case or class of cases was not intended to fall within the taxing clause relied upon by the Crown. A notable instance is the case of *Colquhoun* v. *Brooks*, 14 A.C. 493, decided nearly thirty years ago and always followed. It was a decision of this House. This and similar precedents are often quoted in support of attempts to pare down the statutory language.

In the present case your Lordships were urged to do the same thing as was done in the case of *Colquhoun* v. *Brooks*, but to do it in respect of other language, and in my opinion without any justification at all.

It is abundantly clear that the present case falls within the letter of the Act. These sums were derived from remittances from America payable in Great Britain, or from money or value received in Great Britain and arising from property that has not been imported into Great Britain. They also come within the words of Sched. D as profits or gains accruing from property to a person residing in the United Kingdom.

It was argued, however, that these allowances sent from America are not "income" of the children, because they were voluntary payments by the trustees. I do not assent to the proposition that a voluntary payment can never be charged, but it is enough to say that these were not voluntary payments in any relevant sense. They were payments made in fulfilment of a testamentary dis-

position for the benefit of the children in the exercise of a discretion conferred by the will. They were the children's income in fact. Then it was contended that the mother to whom the money was paid as guardian could not be charged as guardian under section 41 because she had not control of the foreign property from which they were derived. I do not find any language in the section which gives countenance to this argument. The lady had control of the sums which are sought to be charged with the tax.

I can see nothing in these Acts which leads to the view that property of this kind was intended to be free from this taxation, and the words of the Act clearly impose it. Lord Cairns long ago said that "if the person sought to be taxed comes within the letter of the law he must be taxed." And though there have been cases in which the letter of the law has been disregarded in view of other statutory language I think it can be done only in case of necessity. It must be a necessary interpretation.

LORD ATKINSON—I concur and I have nothing to add.

LORD PARKER—I too concur.

The moneys transmitted in this case from America were certainly profits and gains arising from property. The property from which they arose was equally clearly a foreign possession within the meaning of case 5, as interpreted by the decisions of this House. Why, then, should these moneys not be subject to income tax?

As I understand the appellants' argument, it depends on the proposition that case 5 applies only to profits or gains from foreign possessions when these possessions belong to the person sought to be assessed, and that this property did not in the present case belong either to the infants or to their guardian.

In my opinion it is enough for case 5 to apply that the person to be assessed has such an interest in the property as to entitle him to the profits or gains in question. The infants had in my opinion such an interest. Though they might be incapable because of their age of giving a receipt for the money, it is in my opinion none the less clear that the money in question was, as soon as the trustees had exercised their discretionary trust, held in trust for these infants as beneficiaries.

Moreover, I do not see why the guardian who received the money for application on the infants' behalf should not be assessable under section 41. This section is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation. It would, in my opinion, be too narrow a view if it were held that the section was only applicable if the guardian or other person mentioned in this section actually managed or held the control of this property or concern from which the profits or gains sought to be assessed arose. It seems to me enough that the guardian or other person should receive and have the direction and application on behalf of the owner of the profits and gains sought to be assessed.

LORD SUMNER—I concur.

LORD WRENBURY — Upon this appeal there are two questions for decision—first, whether the remittances made to this country are income subject to income tax, and secondly, whether, if they are, the appellant is a person proper to be assessed.

Upon the former question the first matter is to investigate upon the provisions of the will what the remittances in question are. In the events which have happened the trustees are by the will directed to hold the trust estate and to apply the net income for the use and benefit of the children. So far I find a direct and unfettered gift of the income in favour of the children. There follows a direction that out of the net income of the proportionate share held in trust for any child the trustees make such provision from time to time as they in their uncontrolled discretion think necessary or advisable for the maintenance and education of the child until he is entitled under provisions after contained to receive the income directly from the trustees. This provision may be paid to the child or to the guardian of the child. Subject to the above directions, the income of the shares is to be accumulated until dates which have not yet arrived, at which dates payments are to be made to the children direct. In all this I find nothing contingent. The gifts are each one of them in favour of the children, but the dates for payment to the children are fixed with reference to the exercise by the trustees of their discretion or the ages from time to time of the children. At the time with which your Lordships have to do there could be no payment except by exercise of the discretion vested in the trustees—but so soon as their discretion is exercised in favour of the child the resulting payment seems to me upon the language of the will to be a payment of income to which the child is entitled by virtue of the gift made by the testator. I cannot see any ground upon which such income is not subject to income tax.

Let me, however, assume that the above reasoning is not correct and that the interest of the infants is contingent—that is to say, that the income is income of the child in one contingency and income of another (the person entitled under the gift-over) in another contingency—that the money which is paid for the benefit of the child is not income of the child rendered payable by the action of the trustees, but is income which but for the action of the trustees would have been income of someone else (the person entitled under the gift-over) which only comes to the child because the trustees under the provisions of the will divert it from that other person and make it available for the child. It remains, however, that in this case when the trustees exercise their discretion in favour of the child the interest of the child ceases to be contingent and

becomes vested. Whether the money is paid to the child or to the guardian of the child or to the schoolmaster or to the tailor or other person who supplies the wants of the child, it is paid to or to the use of the child and is income of the child.

It is, however, contended that the case is not within the fifth case of the Act of 1842 for that this is not a foreign possession. This argument, if I rightly understand it, is that property—*e.g.*, income derived from assets in another country—is not a foreign possession unless the person taxed owns the corpus of the foreign possession. If this were true, no life tenant or other person having a limited interest in property abroad would be assessable under the fifth case. The test is not, I think, whether there is an absolute interest in a foreign possession, but whether there is such an interest in a foreign possession that the party assessed derives income from it. The case is, I think, within the fifth case, and whether this is so or not it is, I think, within Schedule D of the Act of 1853. The income is annual profits arising to a person residing in the United Kingdom from property situate elsewhere than in the United Kingdom. For these reasons I submit to your Lordships that the remittances are income subject to income tax.

Then is the appellant a party assessable? I think she is. She is trustee of the fund for the child and guardian of the child, and has the direction, control, or management of the income being property of the child. The language of section 41 of the Act of 1842 meets the case.

I agree that the appeal fails and should be dismissed.

Appeal dismissed.

Counsel for the Appellant—Sir R. Finlay, K.C.—P. O. Laurence, K.C.—G. A. Scott. Agents—Boodle, Hatfield, & Co., Solicitors.

Counsel for the Respondent—Sir E. Carson (A.-G.)—Sir F. E. Smith (S.-G.)—W. Finlay, K.C.—T. H. Parr. Agent—H. Bertram Cox, Solicitor for Inland Revenue.

HOUSE OF LORDS.

Thursday, October 14, 1915.

(Before the Lord Chancellor (Buckmaster), Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

BARNSLEY BRITISH CO-OPERATIVE SOCIETY, LIMITED *v.* WORSBOROUGH URBAN DISTRICT COUNCIL.

(On Appeal from the Court of Appeal in England.)

Road—Public Road—Extraordinary Traffic — Highways and Locomotives (Amendment) Act 1878 (41 *and* 42 *Vict. cap.* 77, *sec.* 23) — *Use of a Country Road by a Tractor Owing to Danger upon the Main Road.*

The appellants were a firm using traction engines for the transport of their wares to neighbouring branches. Owing to a certain part of the main road being rendered unsafe for this traffic, the appellants used, and thereby destroyed, a country road unsuited for the support of such heavy traffic. The respondents claimed damages under section 23 of the Highways and Locomotives (Amendment) Act 1878.

Held that the question whether traffic was extraordinary was one of fact. Further, that constant use of the road by the appellants' traction engine from 1909 to 1911 was not in itself sufficient to render by the end of that period such traffic ordinary.

The *facts* are apparent from their Lordships' judgment, delivered by

Lord Chancellor (Buckmaster) — In this case the appellants are the Barnsley British Co-operative Society, against whom Rowlatt, J., has entered judgment for the sum of £150 in favour of the respondents the Worsborough Urban District Council, that sum being the amount of damage that he assessed as the damage caused by the appellants owing to their extraordinary use of certain roads within the respondents' district. The Court of Appeal affirmed the judgment of Rowlatt, J., and from that judgment the appellants appeal to your Lordships' House. They base their appeal upon two grounds. They say (1) that the action ought not to have been brought except in accordance with the strict conditions of section 23 of the Highways and Locomotives Act 1878, and that those conditions were not complied with; and (2) that even if all those conditions were satisfied, yet none the less the traffic which was the subject of complaint was not extraordinary, having regard to all the circumstances of the case.

Now the first point appears to have been urged with some determination before