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

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

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

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

Appeals dismissed.

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

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

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

HOUSE OF LORDS.

Monday, May 17, 1920.

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

SINGER *v.* WILLIAMS.

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

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

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

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

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

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

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

language of those statutes, and that the decision must depend on the construction of the Income Tax Act 1842 as modified by later statutes.

By the Act of 1842 foreign income was made assessable under Schedule D of the Act, and fell either within the "fourth case" of the schedule as "interest arising from foreign securities" or within the "fifth case" as "foreign possessions." The rules for assessment provided that in both cases the duty should be computed only on the amounts received in Great Britain; and it was declared that in assessments falling under the fourth case the duty should be computed on the sum received in Great Britain "in the current year," that is, in the year of assessment, but that in those falling under the "fifth case" the computation should be made "on an average of the three preceding years." Under that Act therefore the mode in which the income was to be computed for the purpose of assessment was dependent on the nature of the property from which it was derived. If that property was a foreign security the actual income for the current year was to be the basis of taxation; if it was a foreign possession of some other kind the taxation was to be upon a three-year average as in the "first case." By the Income Tax Act 1853 some modification was made in the general words in Schedule D and the tax was extended to Ireland; but it was provided by section 5 of this Act that the regulations and provisions of the Act of 1842 (so far as consistent with the new Act) should continue to apply. Accordingly it was held in *Colquhoun* v. *Brooks* (14 A.C. 493) that notwithstanding the generality of the language in Schedule D of the Act of 1853 the tax on foreign income was still regulated by the fourth and fifth "cases" in the Act of 1842, and was therefore leviable only on sums received in the United Kingdom.

It appears to have been found by experience that the limitation of the tax on foreign income to income received in the United Kingdom led to transactions by which the liability to tax was avoided, for it was within the power of a person resident in the United Kingdom to cause his foreign income, or some part of it, to be paid to his account abroad and invested or expended there, so that the liability to income tax should not attach to it. It was, no doubt, for this reason that the Legislature enacted section 5 of the Finance Act 1914, which so far as material provided as follows:—"Income tax in respect of income arising from securities, stocks, shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth cases in section 100 of the Income Tax Act 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom to the same deductions and allowances as if it had been so received . . . and the provisions of the Income Tax Acts (including those relating to returns) shall apply accordingly." Then followed a saving clause to which I will refer hereafter, and a proviso that the section should not apply in the case of a person not domiciled or ordinarily resident in the United Kingdom. The effect of this enactment is plain. It abrogates in respect of the four sources of income specified in the section — namely, securities, stocks, shares, and rents — the limitation imposed by the earlier statutes and explained in *Colquhoun* v. *Brooks*—that is to say, that foreign income to be taxable must be received in the United Kingdom; but in other respects it leaves untouched the provisions of those statutes, including the division of foreign property into foreign securities and other foreign possessions and the distinction in the method of assessing the income accruing from those sources respectively. Accordingly in cases falling within the section the interest from foreign securities must still be computed for the purpose of the tax on the amount received in the current year, while the profits from other foreign possessions must continue to be computed on a three-year average.

It follows from the above summary that the main question to be determined in the present case is whether the shares in the Singer Manufacturing Company of New Jersey, which are the subject of the assessment in dispute, are "foreign securities" within case 4 or "foreign possessions" within case 5. If they are "foreign securities" then the assessment which was made upon an average of three years was wrongly made, but if not they are clearly "foreign possessions," and in that case the assessment should stand.

The normal meaning of the word "securities" is not open to doubt. The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment, but I am not prepared to say that other forms of security (such as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No doubt the meaning of the word may be enlarged by an interpretation clause contained in the statute, as by the interpretation clauses in the Conveyancing and Law of Property Act 1881, the Settled Land Act 1882, the Trustee Act 1893, and the Finance Act 1916; or the context may show, as in certain cases relating to the construction of wills—*Re Rayner* (1904, 1 Ch. 176) and *Re Gent & Eason's Contract* (1905, 1 Ch. 386)—that the word is used to denote in addition to securities in the ordinary sense other investments such as stocks or shares. But in the absence of any such aid to interpretation I think it clear that the word "securities" must be construed in the sense above defined, and accordingly does not include shares or stock in a company. In the present case there is no interpretation clause, and there appears to me to be no context which affects the ordinary meaning of the word "securities." The combination in the "fourth case" of the word "interest" with the word "securities" tells strongly in favour of a strict interpreta-

tion of the latter word, and the same combination appears in Schedule G, rule 10. The exception from the fourth case of "such annuities, dividends, and shares as are directed to be charged under Schedule C of this Act" affords no argument to the contrary, as the dividends there referred to are plainly dividends on Government annuities, and the "shares" are shares of such annuities. The context therefore so far as it goes is in favour of the view that the shares of a foreign company are not "securities" within the meaning of the fourth case, and accordingly fall within the fifth case. This was so decided in *Bartholomay Brewery Company* v. *Wyatt* (1893, 2 Q.B. 499), where Wright, J., said that "shares in a company are not securities but portions of its capital," and to the same effect is the dictum of Moulton, L.J., in *Gramophone and Typewriter, Limited* v. *Stanley* (1908, 2 K.B. 89), that "the holding of shares in a foreign corporation entirely situated and carrying on business in a foreign country falls unquestionably under case 5." I see no reason for questioning those opinions, with which I fully agree. It was argued on behalf of the appellant that a decision in favour of the respondent would lead to an anomalous distinction between shares in foreign companies and shares in British companies, as in the case of shares of the latter kind tax is deducted under sec. 54 of the Income Tax Act 1842 from the dividend for such year, but it appears to me that any argument to be derived from sec. 54 tells the other way. As pointed out by Warrington, L.J., in the Court of Appeal, the shareholder in a British company pays by way of deduction a part of the tax paid by the company, and this has already been computed on the principle of average, while in the case of a foreign company the profits of the company cannot be charged at all, and the tax falls for the first time on the income of the shareholder. This being so, a closer analogy is established between the two cases by applying the principle of average to the dividends on foreign shares than by taxing the dividend for each year.

Counsel for the appellant also relied upon certain provisions contained in section 10 of the Income Tax Act 1853 and in some later statutes (see Revenue (No. 2) Act 1861, sec. 36, and Customs and Inland Revenue Act 1885, sec. 26), which require bankers and others entrusted with the payment of foreign dividends to persons in the United Kingdom to pay to the Revenue authorities the tax on such dividends as assessed by the Commissioners under Schedule D, charging the amounts so paid to the persons entitled to the dividends in question. They pointed out that paying agents of the character described have generally no materials for arriving at an average of the dividends receivable by any particular shareholder, and accordingly must and do pay and deduct tax at the current rate in respect of the amounts actually received in the year of assessment without reference to any average, and they contend that these enactments and the practice followed in carrying them into effect throw a light on the construction of the Act of 1842 and the meaning of the word "securities" therein contained. It may be that the practice is as stated. No doubt it is convenient, and in the long run inflicts no injustice upon the shareholders concerned. But I am not satisfied that it is in strict and technical accordance with the enactments in question. It does not appear to me that it would be beyond the power of the Commissioners, who are required by the statutes to determine the sums to be deducted, to proceed by way of average, and however this may be, I am unable to see how the fact that upwards of ten years after the passing of the Act of 1842 special machinery was provided for collecting in a limited class the tax thereby imposed, can alter the general liability of the taxpayer as between himself and the Crown or affect the construction of the earlier Act of 1842. Indeed, any weight which might otherwise be given to these provisions as a parliamentary construction of the earlier statute is overborne by the considerations (1) that in section 108 of the same Act of 1853 the "stocks, funds, or shares" of a foreign company are clearly distinguished from the "securities given by or on account of any such company"; (2) that in section 5 of the Finance Act 1914 (which was passed after the above-cited decisions as to the meaning of the word "securities") stocks and shares are referred to as something distinct from securities; and (3) that in the schedule to the Income Tax 1918, the consolidating statute now in force, stocks and shares are classified as coming under case 5 and not under case 4.

An argument was founded on the direction contained in section 5 of the Act of 1914 that the tax should be computed on the "full amount" of the income whether received in the United Kingdom or not, and it was suggested that the expression "full amount" there used meant the actual income for the year. But the expression "full amount" is found in the rules relating to case 5 in the Act of 1842 as well as in other parts of the Income Tax Acts, and no inference can be drawn from the use of the same expression in section 5 of the Act of 1914.

A last argument was founded upon the saving clause contained in section 5. That clause, which immediately follows the direction (above set out) that the provisions of the Income Tax Acts shall apply, is as follows:- "And nothing in those provisions as to the receipt of sums in the United Kingdom shall be construed so as to render liable under those rules to income tax for the current or any subsequent year any sums which represent . . . (*b*) income from any such securities, stocks, shares, or rents which was paid or became due before the 6th April 1914."

It was contended that if the tax is computed upon an average of three years preceding the financial year 1915-1916, such computation must include income which was paid or became due before the 6th April 1914, and accordingly is an infringement of par. (*b*) of the above clause. It appears to me that this argument rests upon a misunder-

standing of the provision in question. The enactment is that "nothing in those provisions" (that is to say, in the provisions of the Income Tax Acts) "as to the receipt of sums in the United Kingdom shall be construed so as to render liable under those rules to income tax for the current or any subsequent year" income which was paid or became due before the duty was imposed in the new form, and the object appears to be to protect the taxpayer from being liable to a double tax, namely, the tax under the new Act on all foreign income of the nature described, and the tax under the earlier statutes on similar income accrued before the date mentioned and remitted after that date to the United Kingdom. It has no reference to the computation of income for the purposes of section 5 of the new Act.

For the above reasons it appears to me that the dividends in question were properly assessed upon an average of three years, and accordingly that this appeal fails and should be dismissed with costs.

LORD ATKINSON—I concur.

Schedule D of the Act of 1842 treats the interest arising from securities upon which income tax is to be charged as something, if not different in kind, at all events different in the mode in which it is to be measured for the purpose of this tax, from the income arising from "foreign possessions."

The first question for decision therefore is, Are shares in a manufacturing company like shares in those companies which carry on their business in the United States of America "securities" or "foreign possessions" within the meaning of the Income Tax Acts of 1842 or 1853? Now shares in such a company are portions of the capital of the company. The company carries on its manufacture in factories built on American soil for the benefit of its shareholders. The net profits made by those operations are divisible in whole or in part amongst those shareholders. These profits are as it were the fruit of the tree planted on American soil, and should the company be wound up, if its assets were more than sufficient to discharge all its debts and liabilities the overplus would be divisible amongst its shareholders. A share in such a company resembles a chose in action in this respect, but in this respect only, that it is assignable, and the assignee would be entitled to sue upon it to obtain his appropriate share of the net profits just as the original holders would be. In my opinion therefore shares in such a company are "foreign possessions" within the meaning of the fifth case, Schedule D, of the Income Tax Act of 1842 rather than securities within the fourth "case." In popular language shares such as these may sometimes be described as securities, and the context in wills and other instruments in which the word "securities" is found may show that the word was used to include shares in companies.

In *Colquhoun* v. *Brooks* (61 L.T. Rep. 518, 14 A.C. 493) the matter dealt with was the "income derived by the respondent, who was resident and domiciled in England, from a trading firm carrying on a business in Australia, in which firm he was a partner," not a shareholder. In that respect the case differs from the present, but the reasoning upon which the judgments of Lords Herschell and Macnaghten were based applies, I think, to the present case. Lord Herschell there said—"Now the word 'possessions' is not used in the part of Schedule D which describes the subjects of the tax. Speaking generally they are defined to be profits arising from property and those arising from trades and professions. When therefore the word 'possessions' is employed it seems to indicate an intention to cover more than 'property,' and it is difficult to see why, unless the intention were to embrace something more, the latter word was not used. 'Possessions' is a wide expression; it is not a word of technical meaning; the Act supplies no interpretation of it. I cannot see why it may not fitly be interpreted as relating to all that is possessed in His Majesty's dominions outside the United Kingdom or in foreign countries which is a source of income. And if so, I do not think any violence would be done to the language if it were held to include the interest which a person possesses in a business carried on elsewhere." It would appear to me that these last words apply to a shareholder in a foreign manufacturing company equally with a partner in a foreign firm engaged in commerce.

Lord Macnaghten, after reviewing the earlier legislation on this subject of income tax, said—"Turning now to the 'fifth case' I ask why are not the respondent's profits and gains from his Melbourne business within the 'fifth case'? What is the meaning of the terms 'possessions' in that 'case'? The word 'possessions is not a technical word. It seems to me that this is the widest and most comprehensive word that could be used. Why, for instance, should 'possessions' in Ireland not mean everything — every source of income — that the person has in Ireland whatever it may be . . . I use the expression 'source of income' because it is as a 'source of income' that the Act contemplates and deals with property and everything else that a person chargeable under the Act may have, and the Act itself in section 52 uses the expression 'sources' chargeable under the Act and 'all sources contained in the several schedules' as describing everything in respect of which the tax is imposed."

This case was decided in 1889, twenty-five years before the Act of 1914 was passed, and it was accordingly held in it that the respondent's portion of the profits of his foreign firm not received in the United Kingdom was not liable to income tax, but that the portion of those profits which was received in the United Kingdom was because of that subject to income tax, which had to be computed on an average of the three years as directed in the first case of Schedule D "on a sum not less than the full amount of the balance of the profits and gains of the trade, manufacture, or concern mentioned on a fair and just average of three years ending on such day of the year immediately

preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern shall have been usually made up, or on the fifth day of April preceding the year of assessment." By section 5 of the Finance Act 1914 income tax in respect of income arising from securities or from something treated as other than securities, namely, "stocks, shares, or rent," is to be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not so received to the same deductions and allowances as if it had been received, and also subject to the other deductions named. It was urged on behalf of the appellant that owing to the provision of certain of the machinery or collecting sections of the Act of 1842 it would be quite impossible to make the computation directed to be made where the income tax was to be levied on the full amount of the income under the 5th section of the Act of 1914. There may be some difficulty in applying these sections to such a case, but I am not all convinced that it exceeds to a substantial degree, if at all, the difficulty of applying them to cases where only the portion of the income received in the United Kingdom was subject to the tax. The provisions of the Income Tax Act relating to returns are made applicable to the former case as they always have been to the latter, and the receiver of the income in such case will be under the same obligation to make those returns as he was when only a portion of his income was received in the United Kingdom. By the first proviso of this section 5 income from any securities, stocks, or shares or rents on which income tax has been paid under the section, or which was paid or became due before the 6th April 1914, was not to be rendered liable under the rules to income tax for the current or any subsequent year. But though income tax cannot be levied on such sums of income as these, there is nothing to prevent their being taken into account in fixing the fair and just average of the income for three years as required by Schedule D, "case" 5 and "case" 1.

Sir John Simon urged, as I understood him, that in the present instance to take the profits and gains received by the appellant in the year 1913 for the purpose of arriving at this average would amount in effect to taxing them. I do not think this is so. For instance, if the income accruing to the appellant in that year was very small, the taking it into account for the purpose of averaging would reduce the income to be taxed in the year 1916 much below what was actually received. Where the income from any source is variable in amount from year to year the taking the three years' average of it is in relief of the taxpayer rather than the contrary.

In my view the decision of the Court of Appeal was right on both points. I therefore think that the appeal should be dismissed with costs here and below.

LORD SHAW—I agree.

The appellant is ordinarily resident in the United Kingdom. He receives certain income in this country "as a shareholder in an American corporation, *i.e.*, the Singer Manufacturing Company of New Jersey in the United States of America." The simple question in the case is, Whether the income consisting of the dividends so received, falls within the fourth case or the fifth case of Schedule D of the Income Tax Act of 1842. In other words, does this income fall under the denomination of "interest arising from . . . foreign securities," or under the fifth case "in respect of . . . foreign possessions"?

Possession is a wide generic term. It comprehends all that a man possesses, and whether it be the shares of the Singer Company or the dividends received from those shares, it is, no doubt true that the word "possessions" would cover them. "Foreign possessions" in this wide generic sense would cover "foreign securities" also but for the fact that the statute under construction has enumerated foreign securities as a different case and one to be treated on different principles from the case of foreign possessions. Foreign securities, so to speak, are cut out of the comprehensive term and made to stand by themselves in a different and separate category.

The word "securities" has no legal signification which necessarily attaches to it on all occasions of the use of the term. It is an ordinary English word used in a variety of collocations; and it is to be interpreted without the embarrassment of a legal definision and simply according to the best conclusion one can make as to the real meaning of the term as it is employed in, say, a testament, an agreement, or a taxing or other statute as the case may be.

The attempt to transfer legal definitions derived from one collocation to another leads to confusion and sometimes to a defeat of true intention. Of these two things accordingly "foreign possessions" and "foreign securities"—which of the two terms fits the case of the shares in the Singer Company of New Jersey? A security means a security upon something. Securities in the present instance, being in contrast with or separation from possessions, cannot be taken as the same word would be taken if applied, for instance, to the lodging by a customer of securities with his bank, in which case the term would naturally apply to the scrip which he hands over the counter. Securities in the fourth case of Schedule D appear to me to mean securities upon something as contrasted with the possession of something. The term involves the idea of the relation of creditor with debtor, the creditor having a security over property, concern, assets, goods or other things, which are, so to speak, put in pledge by the debtor and form the security for the fulfilment of his obligation to the creditor. This is not the position of Mr Singer's title. He is a shareholder. The relation between him and his fellow shareholders is not that of creditor with debtor, but of partner or joint-adventurer with the other shareholders; his relation with the company is that of part-owner of

the concern. The property which he so holds falls, in my opinion, accordingly, as a matter of construction, under the term "possessions," and not under the term "securities." The remarks of Wright, J., in *Bartholomay Brewery Company* v. *Wyatt* (1893, 2 Q.B. 499) and of Moulton, L.J., in *Gramaphone Limited* v. *Stanley* (1908, 2 K.B. 89) may, as was argued, have been *obiter*, but I am humbly of opinion that they were entirely sound.

The practical results of this view seem to confirm it completely. For in practice the return from securities is in the general case a fixed and certain return, whereas in practice the income or dividends derived from shares is or may be in the general case variable and uncertain, depending as it does upon the rise or fall of the fortunes of the business. To the former, *i.e.*, securities with a fixed return, the principle of averaging up one year with another is not in place; whereas to the latter, the case of variable returns from possessions, the principle of averaging up during a course of three years naturally applies. I think the statute meant in this practical way to have the assessment proceed, and the distinction of the case of securities taxed year by year as the fixed income comes in, from the case of possessions taxed upon the average of the variable return, follows the line of incidence which the Legislature of set purpose meant to pursue. In my opinion that purpose was sufficiently accomplished by the distinction between the two cases, and I may add that I am not satisfied that in the working of the statute there may be produced such difficulties as were conjectured in argument, and these would need, in my opinion, to be shown to be well nigh insuperable before they could affect the interpretation of the Act.

LORD WRENBURY—I agree.

I desire only to add a few words as to the meaning of the expressions "securities" in case four and "foreign possessions" in case five of Schedule D, for it is on the meaning of these words that the decision of this case depends.

A security, I take it, is a possession such that the grantee or holder of the security holds as against the granter a right to resort to some property or some fund for the satisfaction of some demand, after whose satisfaction the balance of the property or fund belongs to the grantor. There are two owners, and the right of the one has precedence of the right of the other. A share in a corporation does not answer the above description. There are not two owners, the one entitled to a security upon something and the other entitled to the balance after satisfying that demand. A share confers upon the holder a right to a proportionate part of the assets of the corporation — it may be a proportionate part of its profits by way of dividend, or it may be a proportionate part of its distributive assets in liquidation. There is no owner other than himself.

These meanings must, no doubt, yield to any inference to be drawn from the context in which the expression occurs, and necessarily to any express definition such as that in section 27 (7) of the Finance Act 1916. Here there is no such context or definition. Our attention has been drawn to provisions in the Acts which no doubt render it difficult or laborious to ascertain the three year average in the case of shares in a foreign corporation. They are not, I think, sufficient to affect that which is the meaning of the word "securities" as I have stated it.

I think the appeal fails.

LORD PHILLIMORE—I agree.

This is not a question of the liability to tax, but solely of the measure by which the taxable income of the appellant for the year in question is to be ascertained, whether the source of income for which it is proposed to tax the appellant is to be considered as interest arising from foreign securities, in which case it is to be computed as that which has been or will be received in Great Britain in the current year under the fourth case of Schedule D, or whether it comes under the fifth case as income from foreign possessions, in which case it is to be computed on an average of the three preceding years.

In common with the rest of your Lordships I attach no importance to an argument which was based on the language of the Act which brought this income within the sphere of taxation, that is, section 5 of the Finance Act of 1914. The object of that Act is to make persons resident in this country taxable on their income arising from securities, stocks, shares, and rents in any place out of the United Kingdom, whether the income has been or will be received in the United Kingdom or not. As regards such income when received out of the United Kingdom it is to be taxed in future in the same way as if it had been received in the United Kingdom, that is, according to the same measure. If supposing it had come into this country it would have been taxable under the fifth case, it not coming into this country is taxable under the same case, and the measure which would have to be applied if the dividends on Singer's shares in the Singer's Company had been remitted to the appellant in this country instead of being retained in the United States is the same as the measure applicable to this case.

The contention on behalf of the surveyor is based upon a strict construction of the language of cases 4 and 5. The argument on behalf of the appellant rests upon the anomalies which such a construction would produce, and also partly upon an inference from certain statutes with regard to the payment of income tax by persons entrusted with payment in England of dividend in the shares of foreign companies.

The first suggested anomaly is, that whereas in respect of companies in the United Kingdom the shareholder pays the income tax appropriate to the particular dividend which is usually, though not always, deducted by the company before payment, and so pays income tax upon the actual sum he receives yearly, the holder of shares in

a foreign company will if he comes under the fifth case pay on a computation of the average of the three preceding years. It is true that the effect of this will be that the measure of income tax paid on dividends from companies outside the United Kingdom will year by year be different from the measure of income tax paid or borne on dividends declared by companies in the United Kingdom. But a British company taken as a corporate entity does pay income tax like any other trader upon a notional annual income arrived at by computing the average of its profits for the three preceding years, and the method by which this income tax is in turn transferred to the shareholder is that provided by section 54 of the Act of 1842, which provides that there should be allowed out of the dividends which it pays "a proportionate deduction in respect of the duty so charged." A foreign company which does not pay the British income tax in its corporate capacity makes no such proportionate deduction, and it is not unreasonable that when the shareholder comes to pay, instead of having his tax deducted at the source, he should pay upon the three years' average as being a shareholder in a trading concern.

The next anomaly arises in this way. By the Income Tax (Foreign Dividends) Act of 1842 every person entrusted with the payment of annuities or dividends or shares of annuities out of the revenue of any foreign State has to deliver an account to the Commissioners for Special Purposes, who will make an assessment on such person under Schedule C. He is then authorised to pay the income tax and deduct it from the payment which would have to be made to the investor.

By section 10 of the Income Tax Act 1853 these provisions are extended to the assessing and charging under Schedule D of the duties on all interest, dividends, or other annual payments payable out of or in respect of stocks, funds, or shares of any foreign company, and there is subsequent legislation which carries the matter somewhat further in the same direction. It is said, as it seems to me correctly, that the person entrusted who is to make his return will make his return yearly, and will return for assessment and tax the interest or dividends accruing to his principal for that year, and will deduct from the sum he pays to his principal the tax of that year, and that there will be no question of average, and therefore that where the Act of 1853 or subsequent similar legislation applies the measure will be that applicable to the fourth case, and not that applicable to the fifth. As I have said, it appears to me that this contention is right. The argument then proceeds. If this be so, and yet the contention of the Commissioners is right for a case where dividends are paid direct to the shareholder and not to a person entrusted, the mere difference of machinery will make a difference in the measure. Having arrived at this conclusion, then you must admit, it is said, that a difference in the mode of payment, which the company and perhaps the shareholder can make at pleasure, will make a difference in the measure by which the tax is to be computed, with a result which may be injurious to the revenue. Then the argument concludes. Either this shows that the true meaning of the word "securities" in the fourth case is such as to include under it stocks, funds, and shares, or whatever might otherwise be deemed to be the meaning the Act of 1853 has put as a statutory construction upon this word.

There is force in this argument, and at one time I was a good deal swayed by it, but I think it is not strong enough. The result may well be that the anomaly exists, that there are two measures, one applicable where the shareholder receives his foreign dividends direct and one applicable when there is a person entrusted by the company with the payment of dividends. The result is strange, but not impossible, and the arguments for the appellant being exhausted I turn to the arguments for the surveyor. They are derived from the actual language. I have not been myself much impressed by the word "securities." No doubt the proper meaning is that which has just been given by my noble and learned friend Lord Wrenbury. No doubt also the Court of Chancery has construed the word "securities" when it appears in the instrument creating the trust as confined to securities in the strict sense of the word unless there should be other words in the instrument showing that the creator of the trust has attached to them a different meaning. But then it must be remembered that the Court of Chancery started with the view that there was only one investment open to trustees, that is in Consolidated Bank annuities, that even investments in other Government stocks, such as Reduced 3 per cent. or New 3 per cent., were only gradually and somewhat grudgingly admitted, and that thenceforward as from time to time the area of trustees' investments has been extended either by the private instrument or by Act of Parliament the Court has always looked on each new investment as having the duty of making good its title to admission.

In a popular sense the word "securities" includes I think nowadays the scrip of stocks and shares. It may be said that this sense is a loose one, but so I think is the word "possessions" used in the fifth case. To me possessions would mean something tangible.

Possessions abroad would mean such things as a sugar plantation or bales of goods, and I should distinguish choses in possession from choses in action, and include in the latter stocks and shares carrying dividends as well as all interest bearing debts. But there is high authority for saying that the word "foreign possessions" in the fifth case includes any form of property from which profit can be derived, and would indeed include property coming under the fourth case if it had not been specifically cut out from the larger mass. Perhaps the real explanation is that in 1842 there were few incorporated companies, fewer which were foreign companies, and fewer still

which were foreign companies having shares owned in Great Britain, so that while the Legislature has used language which has been construed as wide enough to include all foreign species of property, what were principally in mind at the time were investments in lands, or in plantations or factories abroad. Accepting then the argument of the Crown that the fifth case deals with the mass, and the fourth case with the excepted body only, I am impressed in the fourth case not so much by the word "securities" as by the words "interest arising from securities." Even there the language is not very clear. The words run —"The duty to be charged in respect of interest arising from securities in the British plantations in America or in any other of Her Majesty's Dominions out of Great Britain and foreign securities with the exception of annuities charged under Sched. D. Do these words mean the duty to be charged in respect of interest arising from foreign securities, or do they mean the duty to be charged in respect of foreign securities? It might be hard to say, but the matter is cleared up by Schedule G, Rule 10, where the phrase used is "every person receiving in Great Britain interest from securities out of Great Britain," while Rule 11 speaks of "every person receiving in Great Britain profits from possessions out of Great Britain." Reading the language of the fourth case by the construction put upon it by these Rules I can have no doubt that the fourth case is limited to securities in the narrower and technical sense, and that these shares are not such securities, and are to be assessed on the three yearly average, and that the decision of the Court of Appeal is right and should be confirmed.

Appeal dismissed.

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