COUNTESS OF LONGFORD.
THE COMMISSIONERS OF INLAND REVENUE v.
PAKENHAM AND OTHERS.
THE COMMISSIONERS OF INLAND REVENUE v.
EARL OF LONGFORD.
GASCOIGNE v. THE COMMISSIONERS OF INLAND REVENUE.

No. 665.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
18TH AND 19TH NOVEMBER, AND 20TH DECEMBER, 1926.

COURT OF APPEAL.—7TH, 8TH, 11TH AND 27TH JULY, 1927.

HOUSE OF LORDS.—14TH, 16TH AND 17TH FEBRUARY, AND
22ND MARCH, 1928.

(1) THE COMMISSIONERS OF INLAND REVENUE v. COUNTESS OF LONGFORD.(1)

(2) THE COMMISSIONERS OF INLAND REVENUE v. PAKENHAM AND OTHERS.(1)

(3) THE COMMISSIONERS OF INLAND REVENUE v. EARL OF LONGFORD.(2)

(4) GASCOIGNE v. THE COMMISSIONERS OF INLAND REVENUE.(2)

Super-tax — Total income — Minor — Income accumulated during minority—Chargeability—Who assessable in respect of minor's income.

(1), (2) *and* (3). *Under a settlement dated the* 22nd *August*, 1899, *the Respondent in the third case, who was born in December*, 1902, *became tenant in tail male of certain real estates in Ireland (including investments of proceeds of part thereof) on the death of his father on the* 21st *August*, 1915. *The settlement contained no express power of management during minority nor did it contain any direction that the statutory provisions were not to be applied. Trustees were appointed by the settlement for the purposes of Section* 42 *of the Conveyancing Act*, 1881.

Further, on the death of his grandmother on the 22nd *January*, 1918, *he became tenant in tail of certain estates in Bedfordshire under a settlement dated the* 8th *November*, 1862. *By the provisions of the settlement the trustees (who were not the same as the trustees of the* 1899 *settlement) during the minority of any tenant in tail were given powers of management and were to apply such sums as they should think fit for*

(1) Reported K.B.D., [1927] 1 K.B. 594; C.A., [1928] 1 K.B. 118; and H.L., [1928] A.C., 252.
(2) Reported [1927] 1 K.B. 594.

maintenance of the minor and were to accumulate the surplus income upon certain trusts.

The respective trustees of the 1899 *and* 1862 *settlements paid him yearly during his minority sums of* £2,500 *and* £500 *for his maintenance on his becoming entitled to the respective estates, the balance of the income arising from both estates being accumulated.*

Estimated assessments to Super-tax were made as follows :—

(i) *For the year* 1916–17 *on the minor's mother (the Respondent in the first case) as his guardian, intended to cover his total income for the year* 1915–16, *including the whole income arising under the* 1899 *settlement whether used for his maintenance or accumulated ;*

(ii) *for the years* 1917–18, 1918–19 *and* 1919–20 *on the trustees of the* 1899 *settlement (the Respondents in the second case) as trustees of the minor, intended to cover his total income for the respective preceding years, including the whole income arising under the* 1899 *settlement and also under the* 1862 *settlement as from the* 22*nd January*, 1918; *(The trustees of the* 1899 *settlement had in fact made Super-tax returns of the minor's total income for those years but included therein as his income from the settlements only the sums applied for his maintenance.)*

and (iii) *for the year* 1920–21 *on the minor himself, while still a minor, intended to cover his total income for the year* 1919–20 *including the whole income arising under both settlements. (The minor's mother, as his guardian, had already been assessed to Super-tax for the year* 1920–21*—on her own return and without objection being raised—in respect of the sums actually applied for his maintenance under both settlements during the preceding year, but there was no intention of collecting duty twice on such income.)*

All these assessments were appealed against, it being contended, inter alia, *that the income under both settlements so far as accumulated was not receivable by the minor within the meaning of Section* 66 (2) (*d*) *of the Finance* (1909–10) *Act,* 1910, *or Section* 5 (3) (*c*) *of the Income Tax Act,* 1918, *that in any event neither the guardian nor the trustees of the settlements were under any obligation to make returns of such income on behalf of the minor, and, in the alternative, that the guardian*

was not liable to assessment as such in any year, nor were the trustees of either settlement under any obligation to make any Super-tax returns on behalf of the minor.

The Special Commissioners decided (i) *that the income arising under the settlements so far as accumulated was not income receivable by the minor within the meaning of Section* 66 (2) (*d*) *of the Finance* (1909–10) *Act*, 1910, *and Section* 5 (3) (*c*) *of the Income Tax Act*, 1918, *so as to be liable to assessment to Super-tax while still being accumulated, and they accordingly discharged the* 1920–21 *assessment on the minor;* (ii) *that the guardian was liable to assessment to Super-tax on behalf of the minor to the extent of the income of the minor passing through her hands, and as such income for the year* 1915–16 *was below the Super-tax limit, they discharged the* 1916–17 *assessment on her;* (iii) *that the trustees of the* 1899 *settlement, owing to certain correspondence between the Special Commissioners and the trustees' solicitors prior to the making of the assessments, were debarred from objecting to the form of the assessments made on them for the years* 1917–18, 1918–19 *and* 1919–20, *to the extent to which the guardian would have been liable, viz., in respect of the income applied for the minor's maintenance under the settlements, but* (iv) *that the Special Commissioners could not require returns of the minor's total income for Super-tax purposes to be made by the trustees of either settlement. The assessments on the trustees for the years* 1917–18, 1918–19 *and* 1919–20 *were accordingly reduced to the amounts applied for the minor's maintenance under the settlements (with the appropriate addition for Income Tax).*

(4). *The grandfather of the Appellant in the fourth case by his will devised certain estates in Ireland to trustees (her father and another) in trust for the Appellant, the property to be managed during her infancy by her father and the rents thereof to be accumulated and paid to her on attaining* 21 *or marrying under that age, and the residue of the testator's estate was devised and bequeathed to her absolutely, but if she should die under the age of* 21 *and without having been married, then to a grandson absolutely.*

The Appellant attained the age of 21 *on the* 9*th February*, 1919, *and subsequently assessments to Super-tax were made upon her for the years* 1916–17, 1917–18 *and* 1918–19 *in the amount of the gross income arising from the Irish property and the testator's residuary estate in the respective preceding years.*

The Special Commissioners decided, an appeal, that the whole of such income was the income of the Appellant and that the assessments in question had been validly made upon the Appellant herself, having been made within the requisite period upon her after she had attained 21 *in respect of income which had suffered Income Tax by deduction.*

Held,

(i) *in the King's Bench Division, that the whole of the income arising under the* 1862 *settlement (the trust for accumulation during minority being admittedly void as infringing the rule against perpetuities as regards the present tenant in tail) and the* 1899 *settlement in the Longford cases, and under the will in the Gascoigne case, was income of the respective minors for Super-tax purposes, and assessable upon them in person year by year as it accrued;*

(ii) *in the House of Lords, that a guardian of a minor cannot be assessed to Super-tax in respect of the minor's total income; and that trustees cannot be assessed to Super-tax in respect of the total income of a beneficiary, even where such income in fact consists solely of the income of their own trust.*

CASES.

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(1) *The Commissioners of Inland Revenue* v. *Countess of Longford.*

CASE.

Stated under the Finance (1909–10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House, Kingsway, London, on the 27th May, 1921, for the purpose of hearing appeals, the Countess of Longford (hereinafter called "the Respondent") appealed against an assessment to Super-tax made upon her as guardian of her son the Right Honourable the Earl of Longford (a minor) for the year ended 5th April, 1917, in the sum of £12,000 under the provisions relating to Super-tax.

2. The said Right Honourable the Earl of Longford (hereinafter called " the Earl ") is the sixth Earl and was at the time of the hearing of the appeal an infant, having been born on the 29th December, 1902. The Respondent was during his infancy his guardian.

3. By a settlement made on 22nd August, 1899, the Right Honourable Thomas 5th Earl of Longford father of the Earl conveyed certain real estates in Ireland to trustees upon trusts under which upon his own death, which occurred on 21st August, 1915, his son (the Earl) became tenant in tail male. The said settlement contains no express power of management during minority nor does it contain any direction that the statutory provisions are not to be applied. The trustees thereof are by the said settlement appointed trustees for the purposes of the 42nd Section of the Conveyancing and Law of Property Act, 1881. At the time of the fifth Earl's death the property settled consisted and it has since that date consisted partly of realty and partly of personalty which represented the investment of proceeds of sales of realty.

A copy of the deed of settlement marked "A" is annexed to and forms part of this Case.[1]

4. After the Earl became entitled to the estates the subject of the said settlement the trustees thereof paid yearly during his minority a sum of £2,500 for his maintenance, the balance of the income arising therefrom being by them accumulated.

5. During the year 1919 correspondence arose between the Special Commissioners of Income Tax and the Respondent with regard to the Super-tax liability of the income of the Earl and the Respondent having been called upon as guardian of the Earl to make a return for the year ended 5th April, 1917, and having failed to do so, the above assessment to Super-tax the subject of the present Case was made on the Respondent by the Special Commissioners.

6. At the hearing of the appeal which was heard together with appeals by the Hon. G. M. Pakenham, G. F. Stewart and H. N. Walford against assessments to Super-tax made upon them as trustees of the Earl for the three years ended 5th April, 1920, Counsel on behalf of the Respondent referred to correspondence which had passed relative to making the assessments and contended that it was open to him to object *in toto* to assessments being made upon the trustees of the settlement of 22nd August, 1899. A copy of the notice of appeal dated 3rd May, 1920, marked " B " is attached to and forms part of this Case.[1]

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[1] Not included in the present print.

In the alternative he contended :—

(*a*) That the Countess of Longford was not liable to any assessment as guardian for any year.

(*b*) That by virtue of Section 43 of the Conveyancing Act, 1881, the Earl was not entitled under the settlement of 22nd August, 1899, to receive more than the sums allowed to him for maintenance under that settlement.

(*c*) That the trustees of the settlement were not (apart from any submission which they might be deemed to have made in the correspondence above referred to) under any obligation to make any Super-tax returns on behalf of the Appellant.

7. On behalf of the Commissioners of Inland Revenue it was contended (*inter alia*) :—

(*a*) That the Respondent was liable to be assessed to Super-tax in respect of the total income from all sources of the Earl.

(*b*) That such total income included the whole income arising from the said Estates during the year ended 5th April, 1916.

(*c*) That the assessment was in principle correctly made and should be confirmed subject to any necessary adjustment of figures.

8. We, the Commissioners who heard the appeal, gave our decision in this and the appeals referred to in paragraph 6 hereof together as follows :—

" We have read the correspondence relative to the making of the " assessments for the years subsequent to the year 1916–17 and " we have formed the view that the Trustees are debarred from " objecting to the form of the assessments, so far and so far only " as the Minor is liable either through his Trustees or his Guardian " to assessment to Super-tax.

" As regards the liability through the Guardian, who is herself " assessed for the year 1916–17 we hold that it is restricted to so " much of the income of the Minor as passes through her hands. " The authority for assessing her in respect of his income is " contained we think in the case of *Drummond* v. *Collins*, " 6 T.C. 525, notwithstanding that she has not the ' direction ' " ' control or management ' of the property from which the income " issues. Upon the amount allowed or expended for the main- " tenance of the Minor in the year 1915–16 being stated, we are " prepared to adjust the assessment for 1916–17 accordingly.

" For years subsequent to 1916–17 for which the Trustees are " assessed they are liable in our opinion as already stated, to the " same extent at any rate as the Guardian is or would be liable,

"but we have to decide the further question whether the balance
"of the income of the estates, which is being accumulated should
"be assessed for these years. Three points are contended for on
"behalf of the Minor :—

"(1) That neither Guardian nor Trustees are under any obliga-
"tion to make a return of the balance of income in
"question and that the Special Commissioners have
"no power to make an assessment except upon a
"return, or upon failure to make a return, which has
"been legally demanded, from a person who is liable
"to make it;

"(2) That the balance of income in question is not receivable
"by the Minor within the meaning of the Finance
"(1909–10) Act, 1910, Section 66 (2) (*d*); and

"(3) That the income from the estates so far as it is being
"accumulated is not vested income of the Minor.

"We have not found it necessary to make up our minds as to
"the effect of the deeds on the last point and we only think it right
"to observe about it that our decision will leave it open to the
"assessing Commissioners to make an assessment upon the Earl
"upon the whole of the accumulation as soon as he comes of age.

"As regards the first of the two other points we have already
"given our opinion upon the liability of the Guardian. Dealing
"with the Trustees, who have the control and management of the
"property, the question to be decided is whether they can be
"charged with sufficient knowledge enabling them to make a
"return. Were it not for the definite decision which we have
"arrived at on the second point we might have had some doubt as
"to what we ought to decide on this point owing to various remarks
"made by the Judges in the case of *Marion Brooke* (7 T.C. 261) to
"the effect that a trustee might be required to make a partial
"Super-tax return. These dicta in their entirety do not seem to us
"in themselves a necessary part of the judgment of which they
"form part, though it was necessary for the purpose of those
"judgments to give some meaning to the words of the Super-tax
"Act relating to returns by the incapacitated and non-resident
"persons. Such a meaning in the case of the present Minor is
"found in the liability of the Guardian to be assessed for the main-
"tenance money. The return prescribed for the purpose of Super-
"tax is, however, a return of the total income and we do not, there-
"fore, see (apart from the authority of the dicta referred to)
"especially as regards the year in which the Minor has an
"interest in two estates, how the assessing Commissioners can
"require returns in this form from either body of Trustees. It
"seems to us with due respect to those remarks that the Trustees'
"duties begin and end with the administration of the estate, and

"that since the liability of the Minor to Super-tax does not depend "on the estates but upon his total income from the estates and all "other sources the Trustees are not liable to make the returns nor "do we see how, if they must make the partial return referred to, "there is authority to make assessments upon them.

"As regards the second point, inconvenient as it will "undoubtedly prove, we are bound, we think, to decide that income "of a Minor which is being accumulated by Trustees is not "receivable by the Minor. The history of the provisions relating "to such accumulations whether under express deed or implied by "Statute is a long one, but it is governed throughout by the one "dominating consideration that the Minor is not for the time being "to be allowed to receive the money and we cannot therefore in "our opinion say that it is liable to present assessment to "Super-tax."

We accordingly, there being consent between the parties to the appeal as to the amount of income to be returned under our decision, discharged the assessment for the year ending 5th April, 1917, the total income of the Earl from all sources for the year ended 5th April, 1916, on the basis of our decision being below the limit of total income upon which Super-tax was payable for the year ended 5th April, 1917.

9. Immediately upon our so determining the appeal the Commissioners of Inland Revenue expressed their dissatisfaction with our determination as being erroneous in point of law and in due course have required us to state and sign a Case for the opinion of the High Court pursuant to the Finance (1909–10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, which Case we have stated and do sign accordingly.

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

York House,
23, Kingsway,
London, W.C.2.
6th April, 1926.

(2) *The Commissioners of Inland Revenue* v. *Pakenham and others.*

CASE.

Stated under the Finance (1909–10) Act, 1910, Section 72 (6), the Taxes Management Act, 1880, Section 59, and the Income Tax Act, 1918, Sections 7 (6) and 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House, Kingsway, London, on the 27th May, 1921, for the purpose of hearing appeals, the Honourable G. M. Pakenham, G. F. Stewart and H. N. Walford (hereinafter called "the Respondents") appealed against assessments to Super-tax made upon them as trustees of the Right Honourable the Earl of Longford (a minor) for the years specified under the provisions relating to Super-tax.

For the year ended	In the amount of
5th April, 1918	£16,000
5th April, 1919	£16,500
5th April, 1920	£26,000

2. The said Right Honourable the Earl of Longford (hereinafter called "the Earl") is the sixth Earl and was at the time of the hearing of the appeal an infant having been born on the 29th December, 1902. The Countess of Longford his mother was during his infancy his guardian.

3. By a settlement made on 22nd August, 1899, the Right Honourable Thomas 5th Earl of Longford father of the Earl conveyed certain real estates in Ireland to trustees upon trusts under which upon his own death, which occurred on 21st August, 1915, his son (the Earl) became tenant in tail male. The said settlement contains no express power of management during minority nor does it contain any direction that the statutory provisions are not to be applied. The trustees thereof are by the said settlement appointed trustees for the purposes of the 42nd Section of the Conveyancing and Law of Property Act, 1881. At the time of the late Earl's death the property settled consisted and it has since that date consisted partly of realty and partly of personalty which represented the investment of proceeds of sales of realty. The trustees of this settlement are the persons named in the assessments appealed against.

A copy of the deed of settlement marked "A" is annexed to and forms part of this Case.[1]

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[1] Not included in the present print.

4. By a settlement dated 8th November, 1862, certain property referred to as the Bedfordshire Estates was settled by the grandmother of the Earl the Honourable Selina Rice Trevor upon her marriage with the 4th Earl of Longford. By this settlement the estates were limited (subject to a term for raising pin money during the joint lives of the spouses), to the use of the then Earl for life, with remainder to the use of the said Selina Rice Trevor for life, with remainder to the use of the first son of the marriage in tail, with divers remainders over as therein provided. The settlement contained a clause directing the trustees to enter and receive and apply the rents and profits during minority and the trustees were given powers of management and subject thereto were to apply such sums as they should think fit to the maintenance of the infant and to accumulate the surplus, such provisions being limited to the minority of any son of the intended or any future marriage of the said Selina Rice Trevor. The trusts of the accumulations were if the son should attain 21 or die under that age leaving inheritable issue for the son; but if he should die under 21 without such issue then upon trusts as capital money. It was also provided that the provisions of the minority clause (originally made applicable only to the minority of a son of the said Selina Rice Trevor) should apply, so far as they were or could be made applicable, to the minority of any person who would for the time being be entitled under the settlement to the rents and profits. In the events which have happened the Earl upon the death of his grandmother the said Selina Dowager Countess of Longford on 22nd January, 1918, became tenant in tail of these estates. A copy of the said indenture of 8th November, 1862, marked "B" is annexed to and forms part of this Case.(1)

The trustees of this settlement are not the same persons as the trustees of the settlement of 22nd August, 1899.

5. After the Earl became entitled to the estates the subject of the settlement dated 22nd August, 1899, the trustees of that settlement paid yearly during his minority a sum of £2,500 for his maintenance and after the Earl became entitled to the estates the subject of the settlement dated 8th November, 1862, the trustees of that settlement paid yearly during his minority a sum of £500 for his maintenance. The balance of income arising from both estates has been accumulated.

6. During the year 1919 correspondence arose between the Special Commissioners of Income Tax and the guardian of the Earl with regard to the Super-tax liability of the income of the Earl, and the Countess of Longford having been called upon as guardian of the Earl to make a return for the year ended 5th April, 1917, and having failed to do so an estimated assessment to Super-tax

(1) Not included in the present print.

was made on her by the Special Commissioners for that year with the intention of bringing into assessment the total income of the previous year of the Earl from all sources including the whole income arising from the estates the subject of the said settlement of 22nd August, 1899, but not the income arising from the estates the subject of the settlement of 8th November, 1862, the Earl not having become entitled to such estates until the 22nd January, 1918. Such estimated assessment is the subject of another Case also stated by us to-day.

7. At a later date in consequence of the said correspondence the Special Commissioners served notices to make returns of the total income of the Earl from all sources for Super-tax purposes for the years ended 5th April, 1918, 5th April, 1919, and 5th April, 1920, on the Respondents. These returns were in due course made by H. N. Walford on behalf of himself and co-trustees. In such returns of the Earl's total income there was included as the income of the Earl arising from both the said two settled estates each year only the sums paid by the respective trustees of both settlements for maintenance in the respective previous years. Copies of the said returns marked " C ", " D " and " E " respectively are attached to and form part of this Case(1). The above assessments to Super-tax the subject of the present Case were subsequently made on the Respondents as trustees of the Earl for the years ended 5th April, 1918, 5th April, 1919, and 5th April, 1920, with the intention of including therein each year the total income of the Earl from all sources for the respective previous years including the whole income arising from both estates whether used for maintenance or accumulated but only as regards the income from the estates the subject of the settlement of 8th November, 1862, from the time at which the Earl succeeded thereto.

9. At the hearing of the appeal, which was heard together with an appeal by the Countess of Longford against the said Super-tax assessment for the year ended 5th April, 1917, mentioned in paragraph 7 hereof, Counsel on behalf of the Respondents referred to the correspondence which had passed relative to making the assessments and contended that it was open to him to object *in toto* to assessments being made upon the trustees of the settlement of 22nd August, 1899. A copy of the notice of appeal dated December 24th, 1920, marked " F " is attached to and forms part of this Case.(1)

In the alternative he contended—

(*a*) That the Countess of Longford was not liable to any assessments as guardian for any year.

(1) Not included in the present print.

(*b*) That by virtue of Section 43 of the Conveyancing Act, 1881, the Earl was not entitled under the settlement of 22nd August, 1899, to receive more than the sums allowed to him for maintenance under that settlement and that by the provisions above referred to of the settlement of 8th November, 1862, he was assessable on the same principle as regards the income of that settlement.

(*c*) That the trustees of neither settlement were (apart from any submission which they might be deemed to have made in the correspondence above referred to) under any obligation to make any Super-tax returns on behalf of the Appellant.

10. On behalf of the Commissioners of Inland Revenue it was contended (*inter alia*) :—

(*a*) That the Respondents were liable to be assessed to Super-tax in respect of the total income from all sources of the Earl.

(*b*) That such total income included for the purposes of Super-tax for each of the three years ended 5th April, 1920, the whole income arising during the respective previous years (1) from the estates the subject of the settlement of 22nd August, 1899, and (2) from the estates the subject of the settlement of 8th November, 1862, from the date at which the Earl succeeded to such latter estates.

(*c*) That the trustees were liable to make Super-tax returns of the income of the Earl.

(*d*) That the assessments were in principle correctly made and should be confirmed subject to any necessary adjustment of figures.

11. We, the Commissioners who heard the appeal, gave our decision in this and the appeal referred to in paragraph 9 hereof together as follows :—

(*See* p. 578 *ante.*)

We accordingly, there being consent between the parties to the appeal as to the amount of income to be returned under our decision, discharged the assessment for the year ending 5th April, 1917, and reduced the remaining assessments as follows :—

For the year ending 5th April, 1918, to £3,333.
,, ,, ,, 1919, to £3,333.
,, ,, ,, 1920, to £4,285.

12. Immediately upon our so determining the appeal the Commissioners of Inland Revenue expressed their dissatisfaction with our determination as being erroneous in point of law and in due course have required us to state and sign a Case for the opinion of the High

Court pursuant to the Finance (1909–10) Act, 1910, Section 72 (6), the Taxes Management Act, 1880, Section 59, and the Income Tax Act, 1918, Sections 7 (6) and 149, which Case we have stated and do sign accordingly.

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

York House,
23, Kingsway,
London, W.C.2.
6th April, 1926.

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(3) *The Commissioners of Inland Revenue* v. *Earl of Longford.*

CASE

Stated by the Commissioners for the Special Purposes of the Income Tax Acts under the Income Tax Act, 1918, Sections 7 (6) and 149, for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House, Kingsway, London, on the 22nd February, 1924, for the purpose of hearing appeals, the Rt. Hon. the Earl of Longford, a minor, of North Aston Hall, Deddington, Oxfordshire, hereinafter called the Minor, appealed against an assessment to Super-tax made upon him in the estimated sum of £26,000 for the year ended 5th April, 1921, under the provisions of the Acts relating to Super-tax.

2. The facts relating to the income and property of the Minor are as set out in a Case stated upon an appeal against assessments for the three previous years, and bearing even date with this Case, a copy of which marked "A" is annexed hereto and forms part of this Case.(1)

3. For the year ended 5th April, 1921, the Countess of Longford has been assessed to Super-tax as guardian of the Minor in the sum of £4,642. It is admitted on behalf of the Minor that this assessment is correct, and that it represents the amount received by the Countess in the previous year for the maintenance of the Minor from the trustees of the settlements of 8th November, 1862, and 22nd August, 1899. Income Tax has been added to the amount so received in computing the assessment. A copy of the return made by the Countess for the purpose of such assessment marked "B" is annexed to and forms part of this Case.(2)

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(1) See page 581 *ante*.
(2) Not included in the present print.

4. A notice to make a return of total income from all sources for the purposes of Super-tax for the year ended 5th April, 1921, was sent to the Minor at North Aston Hall on 3rd August, 1922. No return having been made the said assessment of £26,000, which is under appeal in this Case, was made by the Special Commissioners upon the Minor on 11th September, 1923.

5. At the hearing of the appeal it was stated on behalf of the Commissioners of Inland Revenue that under no circumstances would duty be collected under the two assessments in excess of the amount payable in respect of the total income of the Minor under such assessment or assessments as should be correct in form.

6. The Minor attained the age of 21 years on 29th December, 1923.

7. At the hearing of the appeal it was contended on behalf of the Minor :—

(1) That the Commissioners should follow their decision for the earlier years and discharge this assessment;

(2) That this assessment was a double assessment with the assessment on the Countess for the same year;

(3) That the Minor had no control over the income sought to be assessed so as to be able to make a return;

(4) That the Minor was not in receipt or control of the income which was being accumulated by the trustees; and

(5) That the assessment should be discharged.

8. On behalf of the Commissioners of Inland Revenue it was contended (*inter alia*) :—

(1) That the Minor could be called on to make a return for the purposes of Super-tax;

(2) That the Minor was assessable to Super-tax;

(3) That the total income of the Minor included for the year ended 5th April, 1921, the whole income arising during the year ended 5th April, 1920, from the respective estates the subject of both the settlements of 8th November, 1862, and 22nd August, 1899;

(4) That the assessment was not a double assessment and was not intended to create any liability to the extent to which it overlapped the assessment on the guardian;

(5) That the assessment was correct in principle and should (subject to any necessary adjustment of figures) be confirmed.

We, the Commissioners who heard the appeal, decided that the Minor was not the person in receipt of the income, which was being accumulated by the trustees, so as to be liable to Super-tax thereon as income receivable within the meaning of the Income Tax Act, 1918, Section 5 (3) (*c*). We accordingly discharged the assessment.

Immediately upon our so determining the appeal the Commissioners of Inland Revenue expressed their dissatisfaction with our determination as being erroneous in point of law and in due course have required us to state and sign a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Sections 7 (6) and 149, which Case we have stated and do sign accordingly.

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

York House,
23, Kingsway,
London, W.C.2.
6th April, 1926.

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(4) *Gascoigne* v. *The Commissioners of Inland Revenue.*

CASE

Stated under the Finance (1909–10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 22nd June, 1920, at York House, Kingsway, London, W.C.2, for the purpose of hearing appeals, Cynthia Mary Trench Gascoigne, hereinafter called the Appellant, appealed against three assessments to Super-tax for the years ending 5th April, 1917, 5th April, 1918, 5th April, 1919, respectively, made upon her under the provisions of the Finance (1909–10) Act, 1910, and subsequent enactments.

2. The Appellant is the daughter of Colonel Frederick R. T. Trench Gascoigne and came of age on the 9th February, 1919.

3. Under the will of her grandfather the late Frederick Charles Trench Gascoigne who died on the 12th June, 1905, certain property in Ireland (hereinafter called the Irish property) was devised to trustees (the said Frederick R. T. Trench Gascoigne and another) in trust for the Appellant if living at his decease the property during her infancy to be managed and the rents and profits thereof to be received by the said Frederick R. T. Trench Gascoigne to invest the same so that they should accumulate at compound interest and be paid to the Appellant on her attaining 21 years or

marrying under that age. Should the Appellant not be living at the date of the testator's death the property was to be held in trust for his grandson.

4. The residue of the testator's real and personal estate was devised and bequeathed to the Appellant absolutely but if she should die under the age of 21 years and without having been married then to the said grandson absolutely.

A copy of the will is annexed to and forms part of this Case.(1)

5. The assessments which are the subject of the Case were made on the Appellant in the gross amount of the income arising from the Irish property and the testator's residuary estate in the respective previous years. The assessments were made on the 1st January, 1920, and the notices of assessment issued to the Appellant on the 5th January, 1920.

6. On behalf of the Appellant it was contended (*inter alia*) :—

(1) As regards the Irish property—

(*a*) that a trust had been established under the terms of which the whole of the income was to be accumulated until the Appellant had become of age and that until that eventuality had occurred no income had emerged to her which was liable to Super-tax ;

(*b*) that the Appellant had no power in the intervening period to demand any of the income and that if she had died during that period her representatives could not have claimed any of the income accrued to the date of her death ;

(*c*) that the accumulations paid to the Appellant when she became of age represented capital and not income liable to Super-tax ;

and as regards the residuary estate—

(*d*) that the words " absolutely " used in connection with this bequest related to the nature of the estate and not to the time at which the bequest was deemed to have taken place ;

(*e*) that it was a contingent gift which did not become a vested interest until the Appellant had attained 21 years and had thereby defeated the contingency ;

(*f*) that no power had been reserved for granting any sums for the maintenance of the Appellant during her minority and although in law a beneficiary entitled to a contingent gift from a

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(1) Extracts of the relevant portions only of the will are included in the present print.

person "*in loco parentis*" was entitled in case of necessity to the release of a certain income for maintenance that sum could not represent the whole of the income of the legacy but only such a sum as the Courts might allow;

(*g*) that although for some purposes the corpus might be held to have become absolutely vested in the Appellant on the death of the testator, for taxation purposes it could not be said that any part of the income could have been demanded or received by her during her minority;

(*h*) that the accumulations when eventually received by the Appellant represented capital and not income;

(2) That the assessments were bad in law and that by virtue of the provisions of Section 41 of the Income Tax Act, 1842, the assessments should have been made in the name of the trustees and that in any event as to the years they were out of time.

7. On behalf of the Respondents it was contended (*inter alia*) :—

(1) As regards the Irish property—

(*a*) That the property has been given absolutely to the Appellant on the death of the testator with no gift over;

(*b*) that there was no contingency present and had the Appellant lived for one day only subsequent to the testator's death the whole of the interest in that property vested in her absolutely;

(*c*) that as the corpus vested in her absolutely it was immaterial that the income might have been held for the Appellant by trustees during her minority;

(2) As regards the residuary estate—

(*a*) that the property had been bequeathed absolutely to the Appellant on the death of the testator and that there had been a gift over on the happening of certain events;

(*b*) that the income had accrued year by year and was none the less income because it had been held by the trustees and had only been paid over to the Appellant when she attained the age of 21 years;

(3) That the whole of the income of both the Irish estate and the residuary estate in question had borne Income Tax by deduction and under the provisions of Section 66 of the Finance (1909–10) Act, 1910, it was assessable to Super-tax;

(4) That Section 41 of the Income Tax Act, 1842, was merely machinery to reach the ultimate beneficiary whose income it was desired to tax and that in the present case there was no question of trustees at the date when the Super-tax assessments were made, as the Appellant was then of age.

8. In the course of the hearing the following cases were referred to :—

Stretch v. *Watkins*, (1816) 1 Maddock 253.
Barber v. *Barber*, (1833) 3 M. & C. 688.
Breedon v. *Tugman*, (1834) 3 M. & K. 289.
In re *Buckley's Trusts*, (1883) 22 Ch. Dn. 583.
In re *Wells*, (1899) 43 Ch. Dn. 281.
In re *Humphreys*, [1893] 3 Ch. 1.
In re *Bowlby*, [1904] 2 Ch. 685.
Ex parte *Huxley*(1), [1916] 1 K.B. 788.

9. We, the Commissioners who heard the appeal, having adjourned the matter for consideration between ourselves gave our decision as follows :—

"In this case it is necessary to ascertain the precise "terms of the will with reference to the Irish estate and the "residue of the real and personal estate respectively.

"*As regards the Irish Estate.*—As Miss Gascoigne was "living at the decease of the testator her interest became "vested at his death and although the income (i.e. the rents "and profits) arising from the Irish estate had to be invested "and accumulated for a certain period that income was never-"theless the income of Miss Gascoigne.

"*As regards the residue.*—Miss Gascoigne obtained a "vested and absolute interest in the residue on the death of "the testator. The vested interest was liable to divest if she "died under the age of 21 years and unmarried—*see* In re "*Buckley's Trusts*, 22 Ch. Dn. 583; In re *Wells*, 43 Ch. D. "281; In re *Humphreys*, [1893] 3 Ch. 1.

"In the case of In re *Bowlby*, [1904] 2 Ch. 685, which was "relied upon by the Appellant the legacy was not vested but "was contingent upon the legatee attaining the age of "21 years.

"It follows, therefore, that in the case both of the Irish "estate and the residue the income arising therefrom was the "income of Miss Gascoigne.

"The point remains as to whether the assessments made "upon Miss Gascoigne (as opposed to assessments on her "trustees) in respect of the years during which she was an "infant can be upheld.

"Miss Gascoigne attained the age of 21 years on "9th February, 1919.

(1) 7 T.C. 49.

" The assessments were made in December, 1919, and the " notices of assessment were served on 5th January, 1920.

" In our opinion the assessments are valid in law. They " were made within the requisite period upon Miss Gascoigne " after she had attained 21 years of age in respect of income " which had suffered tax by way of deduction.

" By Section 66 of the Finance (1909–10) Act, 1910, Super- " tax is charged in respect of the income of any individual. " These words are wide enough to include minors—*see* " Ex parte *Huxley*, [1916] 1 K.B. 788; 7 T.C. 49—and we " accordingly confirmed the assessments ".

The Appellant immediately upon the determination of the appeal declared to us her 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 Finance (1909–10) Act, 1910, Section 72 (6), and the Taxes Management Act, 1880, Section 59, which Case we have stated and do sign accordingly.

N. ANDERSON, } Commissioners for the Special
A. GRASEMAN, } Purposes of the Income Tax Acts.

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

20th November, 1923.

EXTRACTS FROM THE WILL OF FREDERICK CHARLES TRENCH GASCOIGNE.

I GIVE AND DEVISE unto . . . . my trustees . . . . to the uses following namely To the use of my Granddaughter Cynthia Trench Gascoigne her heirs and assigns if living at my decease but if she shall not be then living then to the use of my Grandson Alvary Trench Gascoigne his heirs and assigns AND I DECLARE that during the infancy of either of my said Granddaughter or Grandson the lands and premises so devised to or in trust for her or him shall be managed by and the rents and profits thereof be received and taken by my said son Frederick Richard Thomas Trench Gascoigne (whose receipts for the same shall be good and sufficient) who shall invest the same so that they shall accumulate at the compound interest and be paid to such Granddaughter or Grandson on her or his respectively attaining the age of twenty-one years or as to my said Granddaughter marrying under that age.

I DEVISE AND BEQUEATH all the rest residue and remainder of my real and personal estate unto my said Granddaughter Cynthia Trench Gascoigne absolutely. But in case my said Granddaughter shall die under the age of twenty-one years and without having been married then I DEVISE AND BEQUEATH the same unto my said Grandson Alvary Trench Gascoigne absolutely.

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 18th and 19th November, 1926.

The Attorney-General (Sir Douglas Hogg, K.C.), Mr. Stafford Crossman and Mr. R. P. Hills appeared as Counsel for the Crown in each case; Mr. A. M. Latter, K.C., and Mr. A. A. Uthwatt appeared as Counsel for the Respondents in the three Longford cases, and Mr. Cyril King for the Appellant in the Gascoigne case.

On the 20th December, 1926, judgment was given against the Crown, with costs, in the first two cases, and in favour of the Crown, with costs, in the third and fourth cases.

JUDGMENT.

Rowlatt, J.—In all these four cases I am of opinion that the income was income liable to Super-tax. In the case of the Longford settlement of 1862 this result was contended for on the part of the Attorney-General by a detailed argument rested upon the rule against perpetuities. To the relief of all concerned this argument was not contested.

As regards the income under the Longford settlement of 1899 and the income in Miss Gascoigne's case liability was contested on the part of the subject on the strength of my own decision in *Blackwell's* case(1). I rather doubt, in view of the further consideration of the subject for which these cases have afforded me the opportunity, as well as of what occurred in that case in the Court of Appeal, whether my view was right. However that may be, I think the income in these cases was the income of the infant year by year as it accrued. In *Blackwell's* case I thought the income was not his income, and that when he received the accumulated sum on attaining his majority he received it as capital. It was at that point that I went wrong, if wrong I was. In these cases I think that the Section of the Conveyancing Act, 1881, in the Earl of Longford's case, and the clause in the will in Miss Gascoigne's case, merely put the trustees in the position of bankers for the infant, if I may use that phrase, to hold and invest the money on his behalf until his majority. The Commissioners decided against the Crown on the ground that it was not income "receivable" within the meaning of Section 5 (3) (*c*) of the Income Tax Act, 1918, within the year. This conclusion I think wrong for the reasons given in *Blackwell's* case which I will not repeat.

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(1) Commissioners of Inland Revenue v. Blackwell Minor's Trustee, 10 T.C. 235.

(Rowlatt, J.)

In these circumstances the result in Miss Gascoigne's case is that her appeal must be dismissed with costs.

In Lord Longford's case there remain very important questions of machinery. As regards the last of the series of years in question, namely 1920–21, the infant himself was assessed on the whole of the income to which he was entitled under the settlements. The Commissioners, for reasons to which I have already adverted, reduced the assessment to the amount which he had actually received by way of allowance, and the Crown are entitled to have it restored to the full amount unless the infant is unassessable in person. I can see no reason for so holding, (see Ex parte *Huxley*(1), [1916] 1 K.B. 788), and therefore in that case the appeal succeeds with costs.

As to the preceding years the questions are as follows :—

(1) Can his mother as guardian be assessed in respect of all his income for the year 1916-17 under the settlement of 1899, though she handled on his behalf only an amount below the Super-tax limit ?

(2) Can the trustees of the settlement of 1899 be assessed for the year 1917-18 in respect of the infant's income under that settlement? There is no question here of assessing them in respect of income under any settlement with which they had no concern. The question is the broad one whether trustees can be assessed to Super-tax at all.

(3) Can these same trustees be assessed for the years 1918-19 and 1919-20 in respect of the income under their own trust together with the income under that of 1862, with which they had no concern, and of course in an amount and upon a scale dependent on the aggregate of the two incomes?

As regards the guardian I wish first to advert to the provisions of Section 161 of the Income Tax Act, 1918, in order to get them out of the way. That Section does not authorise an assessment. It assumes default in payment by the infant, and that, it seems to me, involves the assessment of the infant. One may observe in passing that it is here that we find what would generally be effective machinery for the recovery of tax upon the income of an infant. This was I think the view of the Lords Justices in Ex parte *Huxley*.

(1) Rex *v.* Newmarket Income Tax Commissioners (*ex parte* Huxley), 7 T.C. 49.

(Rowlatt, J.)

The question is therefore whether, by virtue of Section 7, Sub-section (6), and Rule 4 of the General Rules to all Schedules, what I may call representative assessments can be made upon trustees and guardians on the actual total income of the beneficiary. If not, a secondary point might arise, namely, whether they can be made on a total income taken as regards the particular trustee or guardian as limited to the income with which the trust or guardianship is concerned. The Attorney-General did not however, contend for this, so I do not deal with it.

For Income Tax purposes under the Act of 1842, and still under the Act of 1918, there is no obligation to make a general return of, and no assessment is made on, total income. As pointed out by Lord Macnaghten in *Attorney-General* v. *London County Council*(1), any such idea was foreign to the scheme of the Act of 1842. The tax was, and is, imposed Schedule by Schedule, and its assessment and collection were, and are, divided locally among the places where the income arises. It is inconceivable in my view that for Income Tax purposes trustees or guardians or agents for non-residents (who in the Act of 1842 and now under Rule 5 of the General Rules to Schedules A, B, C, D and E are found in association with trustees and guardians) should be assessable save in respect of the trust, the guardianship or the agency. No distinction was suggested by the Attorney-General between trustees for incapacitated persons and agents for non-resident persons, in whose name the non-resident is assessable.

Under the Act of 1842, agents were only assessable if they had the receipt of the profits or gains. Necessarily therefore they were only assessable in respect of the income of the agency. By the Finance (No. 2) Act, 1915, that limitation has been removed, and I understand the Attorney-General to contend that this leaves an agent exposed to assessment to Income Tax in respect of any British income of his non-resident principal (and, I think he should have added, of his wife). The only limitations he would concede were that the agent must be an agent for income and not e.g. an agent for sale or purchase of a mere investment; and secondly, that he must still be an agent at the time of assessment. It seems to me, however, that the immunity of an agent from assessment in respect of income unconnected with his agency did not depend on the requirement that he should be in receipt of the profits or gains taxed, but is fundamental, arising from the natural construction of the Act.

(1) 4 T.C. at p. 295.

(Rowlatt, J.)

This being the position of these representative persons for Income Tax purposes, I now come to Super-tax. This tax is administered by one central authority, and the territorial and piecemeal organisation of Income Tax, as has been pointed out in the House of Lords, does not apply to it. It depends also on one general return bringing the income of the individual under all Schedules and in all places into one total. Against this total may be set deductions unconnected with any particular item of the income, as for instance annual payments of interest (see *Lord Howe's* case(1), [1919] 2 K.B. at page 348) and (until recently) life assurance premiums.

By Section 7 (2) of the Act of 1918 persons assessable to Income Tax as representing incapacitated, non-resident, or deceased persons (as to these latter see Rule 18 of the General Rules for Schedules A, B, C, D and E) may be required to make a return of the total income of the person represented. In *Brooke* v. *Commissioners of Inland Revenue*(2), [1918] 1 K.B. 257, the Master of the Rolls expressed the opinion that under this Rule a trustee was bound to the best of his ability to include in the return income outside his trust. The liability to assessment depends, however, not on this Sub-section but on Sub-section (6). The Attorney-General nevertheless based an argument on Sub-section (5) in connection with Sub-section (2) as follows. As he said, under Sub-section (5) it is only if there is a failure to make a return, or the Special Commissioners are not satisfied with it, that they can assess according to the best of their judgment; therefore when there is such a return as that described by the Master of the Rolls they must, unless dissatisfied, assess the person returning, and upon the total amount returned. I do not think this is involved in the words used. I see no reason why they should not on the information in the return make an assessment on the beneficiary.

The right to assess the representative depends on Sub-section (6). By this Sub-section all the provisions of the Act relating (*inter alia*) to persons who are to be chargeable with Income Tax and to Income Tax assessments are, so far as applicable, to apply to the charge and assessment of Super-tax. That Sub-section does not specifically mention, as did Sub-section (2), persons chargeable in a representative capacity. If they are included it is under the general words "persons

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(1) Earl Howe *v.* The Commissioners of Inland Revenue, 7 T.C. 289.
(2) 7 T.C. 261.

(Rowlatt, J.)

" chargeable " and the inclusion is not limited to persons representative of incapacitated, non-resident and deceased persons to which the provision in Sub-section (2) is confined. If all persons chargeable to Income Tax are also chargeable to Super-tax in respect of the total income (whether their own or another's) of which that in respect of which they are charged to Income Tax forms part, then it would seem to follow that every occupier chargeable with the landlord's tax under Schedule A (see No. VII, Rule 1) would be chargeable with his landlord's Super-tax. A receiver appointed by the Court (see General Rule 15) would be in an analogous position. Every railway company would be chargeable by reference to Schedule E, Rule 7 (2), with the Super-tax of its higher officials. Perhaps even partners by reference to Schedule D, Cases I and II, Rules 10 and 12, would be liable to be jointly assessed for the Super-tax of all of them. Other persons exposed to this liability would be the collectors of tithes, royalties and fines (Schedule A, No. II), the managers of mines and the like (Schedule A, No. III), and the occupier of lands subject to tithes. Doubtless there are other persons in like situation. None of these persons would necessarily have adequate security for their indemnity. They could not command knowledge of the other income of their principals, or of the deductions available, nor could they independently promote an appeal. These are very startling consequences. The truth is that the machinery applicable to the compartments into which incomes divide themselves for Income Tax purposes does not fit in this respect a tax like Super-tax imposed on income in the bulk.

There is another way in which it can be put. The question is whether, say, a trustee is chargeable to Super-tax in respect of income of his beneficiary outside his trust. Now there is no provision which makes him chargeable with Income Tax in respect of such income, and therefore none, it seems to me, by the application of which he can be made chargeable to Super-tax in respect of it. Perhaps an example may make it clearer. Suppose between 1910 and 1915 there were an agent for a non-resident person, say, exercising a trade on his behalf by making contracts but not in receipt of the profits or gains. He was not liable for Income Tax thereon. But if he received any other income for the principal he thereby (according to the present argument) became liable for Super-tax upon the first-named profits. This by the application of the Income Tax principle by which he was not liable.

(Rowlatt, J.)

The conclusion I have come to does not involve the consequence that there is nothing in the charge of Super-tax to which the Income Tax provisions as to persons chargeable can be applied under the Sub-section. It is to be observed that Section 4, like the Section in the Finance (1909–10) Act, 1910, which it replaces, merely creates liability to Super-tax in respect of the income of any individual. Section 5 (2) which makes Income Tax assessments conclusive for Super-tax purposes was not to be found in the Finance (1909–10) Act, 1910. It was to be expected that some reference would be found to the person chargeable even if there was no such thing as representative chargeability to Income Tax. One important effect of the application of the Income Tax provisions is to make a husband chargeable to Super-tax on his wife's income as if it were his own. It is possible also that it is only under this Sub-section that executors can be charged.

In the result the appeal of the Crown as regards the years 1918–19 and 1919–20 fails.

The question remains whether the trustees can be assessed for the year 1917-18 on the income of their own trust being in fact the total income of the infant. I think I must deal with this point as the facts directly raise it though the Attorney-General did not contend for any such limited success, pinning his faith to the larger view. If I may say so, I think he was right because in my view if trustees and the like are not assessable on the total income *simpliciter*, the accident that there is no other income can make no difference. The non-existence of other income is a fact outside their sphere as much as the quantum of it if there is any. Moreover the difficulty as to independent deductions still applies. I think therefore that the appeal in respect of this year fails also and must be dismissed with costs.

The trustees have been assessed on the income actually allowed to the infant and they have not appealed, being content to pay on those figures. It was not suggested that they are precluded from arguing the point of principle in resisting the larger demand.

Mr. A. Andrewes Uthwatt.—In Lord Longford's case the figures are not agreed. The case will be remitted as to figures?

Rowlatt, J.—Very well. This is 1916–17 liability. Let me urge that it is about time that this gentleman who is now 24 ascertained to what Income Tax he was liable when he was fourteen. It is abominable.

The Crown having appealed against the decision of the King's Bench Division in the cases of *The Commissioners of Inland Revenue* v. *The Countess of Longford* and *The Commissioners of Inland Revenue* v. *Pakenham and others*, the cases came before the Court of Appeal (Lord Hanworth, *M.R.*, and Scrutton and Sargant, *L.JJ.*) on the 7th, 8th and 11th July, 1927, when judgment was reserved.

The Attorney-General (Sir Douglas Hogg, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. A. A. Uthwatt for the Respondents.

On the 27th July, 1927, judgment was delivered against the Crown, with costs (unanimously in the first case, Sargant, *L.J.* dissenting in the second case), confirming the decisions of the Court below.

JUDGMENT.

Lord Hanworth, M.R.—The present, or sixth Earl of Longford was born on the 29th December, 1902, and thus came of age on the 29th December, 1923. His father died on the 21st August, 1915, and after that date until he attained his majority his mother, the Countess of Longford, acted as his guardian and in the year 1916–1917 received £2,500 for his maintenance from funds held in trust for him.

The Hon. G. M. Pakenham, G. F. Stewart and H. N. Walford are the trustees of the marriage settlement made upon the marriage of the late, the fifth, Earl and the Countess of Longford in 1899, and in the financial years 1917–1920 received the income of that particular trust and paid therefrom the £2,500 a year to the Countess for the maintenance of her son.

In 1862, upon her marriage with the fourth Earl of Longford, certain estates were settled by the grandmother of the present Earl, and upon her death on the 22nd January, 1918, the present Earl became entitled as tenant in tail to the rents and profits of these estates. The trustees of this settlement of 1862 were not the same as the trustees of the settlement made in 1899. During the minority of the present Earl these trustees of the settlement of 1862, since the present Earl became entitled in 1918, have contributed a sum of £500 a year for his maintenance, thus increasing the total sum paid to the Countess for his maintenance to £3,000 a year. The balance of the income received by the two sets of trustees under the two settlements was accumulated.

(Lord Hanworth, M.R.)

The Countess of Longford was called upon by the Special Commissioners of Income Tax to make a return for Super-tax for the year ending the 5th April, 1917, in respect of the income of the present Earl and failed to do so. The Special Commissioners thereupon made an estimated assessment of £12,000 for that year upon her as guardian, based upon the total income of the Earl in the previous year from all sources, including the whole income arising from the property, the subject of the settlement of 1899, but not the income arising from the estates subject to the settlement of 1862, which as already stated, did not fall into the possession of the Earl till the death of his grandmother in January, 1918.

For the financial year ending the 5th April, 1918, the trustees of the settlement of 1899 were called upon to make a similar return for Super-tax of the income of the Earl, but returned only the sum paid for his maintenance in the previous year.

In the years ending the 5th April, 1919 and 1920, these trustees returned the total sum paid for his maintenance from both settlements of 1899 and 1862, in the previous years respectively, but not the full sums received as the income of both settlements.

The Special Commissioners thereupon made estimated assessments upon the trustees as follows :—for the year ending 5th April, 1918, £16,000; for the year ending 5th April, 1919, £16,500; for the year ending 5th April, 1920, £26,000.

The Special Commissioners claim the right to make these assessments upon the guardian and trustees respectively by virtue of the powers given originally by Section 41 of the Income Tax Act, 1842, which is now replaced by Section 7, Sub-section (5), of the Income Tax Act, 1918. Inasmuch as the earlier assessments were made before the later Act superseded the Act of 1842, I have in this judgment referred both to the original Sections and the existing Sections.

The question in all these appeals is whether the guardian and trustees can be assessed to Super-tax in a representative capacity under Section 41 (General Rule 4, Income Tax Act, 1918) to the full amount of the income of the minor or their beneficiary respectively.

The Commissioners decided in favour of the Countess of Longford upon the assessment for the year 1917 : and inasmuch as the income received by her for the maintenance of the Earl for the previous year ended the 5th April, 1916, fell below the total income upon which Super-tax was payable for the financial year 1917, they discharged the assessment altogether.

(Lord Hanworth, M.R.)

For the year 1918, the Commissioners made an assessment upon the trustees in respect of the income paid over for the use of the minor in the previous year, under the 1899 settlement, and for the years 1919 and 1920 upon the income paid over from both the settlements, of 1862 as well as that of 1899. The figures were agreed, but the above is the nature of the assessments made. The Commissioners held that the amounts received by the trustees which were not paid over for the use of the minor, but accumulated in their hands, were not income which should have been included in the assessments.

Mr. Justice Rowlatt has upheld the decisions of the Commissioners. The result is that the assessments upon the trustees are only upon the amounts actually allowed to the minor, and not upon the full sums received by them under their trust, part of which was not paid over but accumulated. Counsel for the Crown have argued in this Court both points and claimed that the guardian and the trustees can be assessed in a representative capacity (*a*) upon the total income of the minor whether in fact it is paid into the guardian's hands, or is received by the trustees from the trust which they administer, or from a trust or trusts, not under their control, and (*b*), alternatively, upon the full sum in fact received by the trustees whether that sum is or is not immediately payable to and enjoyed by the minor, or is in part accumulated for his ultimate benefit when he has become of full age.

The charge to Super-tax was imposed by Section 66 (1) of the Finance (1909–10) Act, 1910 (Income Tax Act, 1918, Section 4), in respect of the income of any individual the total of which from all sources exceeded the then limit of £5,000, as an additional duty of Income Tax, and by Section 66 (2) (now 1918 Act, Section 5 (1)), the total income of any individual from all sources was taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemption or abatements under the Income Tax Acts, subject to certain directions thereinafter specified. These latter words are altered in Section 5 of the Act of 1918 to " is required to be " estimated in a return made in connection with any claim for " a deduction from assessable income, but subject to the pro- " visions hereinafter contained." These words were introduced in substitution for the previous words by Section 32 of the Finance Act, 1920, when the system of assessable income was introduced. But there is no substantial change in effect. Their meaning is that Section 190 of the 1842 Act is introduced whereby Schedule G, with its Rules and directions, is to be followed,

(Lord Hanworth, M.R.)

" so far as the same are respectively applicable to the case of " each person, corporation, company or society described or " mentioned in this Act, on behalf of themselves, and also of " others for whom they act in any of the characters described " in this Act, ... by each such person, corporation, company, " or society, or by his or their agents or officers, in the cases " where such agents or officers are authorised to make such " returns." That is to say, the returns are to be made according to the several Schedules and those are to be followed and attended to by persons who act in a representative character. The same system is preserved by Section 207 of the Act of 1918 and the Rules and directions contained in the Fifth Schedule to the Act.

By Section 72 (2), (Income Tax Act, 1918, Section 7 (2)), every person upon whom a notice is served requiring him to make a return of his total income from all sources is to make that return, whether he is or is not chargeable with Super-tax after the return has been made. This Section expressly lays this duty upon a person who is chargeable in a representative capacity under Section 41 (Income Tax Act, 1918, Section 7 (2)).

It has been held that under this Sub-section trustees are to make a return, to the full extent of their knowledge and information, of all the sources of income of their beneficiary, whether that income is derived from their own trust or another source (See *Brooke* v. *Commissioners of Inland Revenue*(1), [1917] 1 K.B. 61, and [1918] 1 K.B. 257). But that Sub-section only secures the return to the extent of the best ability of the person on whom the duty of making it falls, and expressly leaves open the question of chargeability in respect of the income returned. The right to charge the trustees as claimed in the present appeals is said to be derived from Sub-section (6) of Section 72 of the Finance (1909–10) Act, 1910 (Section 7, Sub-section (6) of the Act of 1918).

The Sub-section applies the provisions of the Income Tax Acts relating to persons who are to be chargeable with duty, assessments, and the appeals against those assessments and the collection and recovery of the duty and the like " so far as they " are applicable ", to the " charge, assessment, collection and " recovery of duty under this section." There are persons who are chargeable under that Section, for the Super-tax which is primarily charged under Section 66 is to be assessed and charged

(1) 7 T.C. 261.

(Lord Hanworth, M.R.)

by the Special Commissioners, and they have power under Sub-section (5) to make an assessment to the best of their judgment upon any person who fails to make such a return as is required of him under Sub-section (2) and to make additional assessments under Sub-section (7) (Section 7 (7) of the Act of 1918).

It is thus, in my opinion, pressing the words of Section 72 (6) (Section 7 (6)) a very long way to claim that under it the Sections of the Income Tax Act, which are introduced by reference " so far as they are applicable ", and in reference to persons who are to be chargeable, have made trustees, who are compelled to make a return, also chargeable fully, not only to the extent of the income they receive, but also to the extent of the totality of the income of the beneficiary for whom they receive and hold a contributory part. The mere reference to Section 41 in Sub-section (2) and the actual words " who are to be charge- " able " in Sub-section (6) will not, in my judgment, have such an effect, and if there is such a power, it must be derived from elsewhere.

Under Section 41 of the Act of 1842, an agent who was charged in respect of the profits of a foreign principal was chargeable to the extent only of monies received into his hands. That was by virtue of the words in Section 100, " shall be " charged annually on and paid by the persons receiving the " same ", and was decided in *Colquhoun* v. *Brooks*(1), 14 App. Cas. 493. It was not until Section 31 of the Finance (No. 2) Act, 1915, came into force that an agent was made liable in respect of profits on business carried on through his agency whether he received them or not. Thus Section 41 as it was originally interpreted did not contemplate or impose a liability beyond the actual receipt of income into the hands of the representative person.

An infant can be directly assessed to Super-tax. That was decided in *Huxley's* case(2), [1916] 1 K.B. 788; and by Section 173 of the Act of 1842, upon default of the infant to pay, the parents or guardians or tutors of such infant were made liable and charged with the payments which the infant ought to have paid. See also Section 92 of the Taxes Management Act, 1880. Both these Sections contemplate the direct liability of an infant by their words " where a person " chargeable with the duties is under the age of 21 years ".

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(1) 2 T.C. 490.

(2) Rex v. Newmarket Income Tax Commissioners (*ex parte* Huxley), 7 T.C. 49.

(Lord Hanworth, M.R.)

In my judgment, therefore, no inference can be drawn from the Income Tax Act as it stood, that there was any liability imposed upon guardians or trustees beyond the sums actually received by them in the representative capacity.

Lord Dunedin in his speech in *Whitney* v. *Commissioners of Inland Revenue*(1), [1926] A.C. at p. 52, stated that there are three stages in the imposition of a tax :—1. The declaration of liability—that is the part of the Statute which determines what persons, in respect of what property, are liable; 2. The assessment which fixes the amount a person has to pay; 3. The methods of recovery, if the person taxed does not voluntarily pay.

Applying the process of those three stages to the present case—by Section 66 (Section 4 of 1918), Super-tax is levied in respect of the income of any individual, the total of which from all sources reaches a certain standard. In *Tischler* v. *Apthorpe*(2) it was decided that direct assessment upon a firm can be made even though there is supplementary machinery under Sections 41 and 53 available whereby their agent could be assessed : and see per Lord Justice Fry in *Werle v. Colquhoun*(3), 20 Q.B.D. at p. 763. In *Rex* v. *Newmarket Income Tax Commissioners*(4), [1916] 1 K.B. 788, Lord Cozens-Hardy took this same view. Looking at Section 173 of the Act of 1842, and Section 92 of the Taxes Management Act, 1880, he said(5) : "I cannot escape " from the language of those two Sections. They seem to assert " that the infant is a Crown debtor, except so far, if at all, as a " different result may follow under the earlier Sections where " there is a trustee or guardian ". The other members of the Court use language to the same effect. This case also decides that the machinery of direct assessment can be used. Mr. Justice Rowlatt in *Maclaine & Co.* v. *Eccott*, 10 T.C. 545, pointed out that when the liability of non-resident persons was enlarged, it is the non-resident who remains chargeable and assessable though in the name of, and by the instrumentality of, the agent.

Thus there can be no question that the first two stages stated by Lord Dunedin can be fulfilled without recourse to the imposition of the liability upon the trustee or guardian. The third stage is easily complied with, for in addition to the usual methods of recovery, Sections 41 and 173 of the 1842 Act and 92 of the Act of 1880 (Section 161 and General Rules of the 1918 Act) come in aid to lay the duty of payment upon the representative person in lieu of the person primarily liable.

(1) 10 T.C. 88, at p. 110. (2) 2 T.C. 89. (3) 2 T.C. 402.
(4) 7 T.C. 49. (5) *Ibid.* at p. 54.

(Lord Hanworth, M.R.)

But the argument for the Crown in the present case is in the reverse order. It is claimed that because representative persons are required to make returns for Super-tax, and because Sections relating to the Income Tax are made available " so far as they " are applicable ", and relating to persons who are to be chargeable, there must be a liability laid upon those representative persons.

Section 31, Sub-section (2), of the Finance (No. 2) Act, 1915, provided that a non-resident person should be chargeable in respect of certain profits or gains under Section 41 of the Act of 1842, as amended and enlarged by that Section 31, and it was attempted in *Greenwood* v. *F. L. Smidth & Co.*(1), [1922] 1 A.C. 417, to impose a liability upon a non-resident in respect of trade even though it was not exercised in the United Kingdom, because Section 31 (1) (*b*) had extended Section 41, so as to cover profits not actually received by the agent. The attempt failed and Lord Buckmaster at page 423(2) observed that the Courts cannot assent to the view that if a Section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.

I have already said in *Whitney's* case(3), [1924] 2 K.B. at p. 610, that I agree with Lord Sterndale's view expressed in *Davis* v. *Commissioners of Inland Revenue*(4), [1923] 1 K.B. at p. 373, that if it be sought to deduce from the statement that Super-tax is an additional Income Tax " the proposition that " therefore all provisions with regard to Income Tax and Super- " tax are to be considered as common to them both there is no " foundation for such a deduction ". I agree with Mr. Latter that it is a big jump to hold that the agent, trustee or guardian is assessable and chargeable for the total income of the person whom he represents and of whose income from all sources he may have imperfect knowledge, as well of its total amount, as of the deductions which that person may be entitled to make from it; while as I have already pointed out, the same system of estimation of the income is retained as is required in a return made for Income Tax in connection with any claim for a deduction from assessable income under the distributive Schedules and with the deductions allowed under them.

The inconveniences—indeed hardships—which the view contended for by the Appellants involves are well set out by Mr. Justice Rowlatt in his judgment, [1927] 1 K.B. 594, at

(1) 8 T.C. 193. (2) 8 T.C. at p. 206. (3) 10 T.C. 88.
(4) 8 T.C. 341, at p. 355.

(Lord Hanworth, M.R.)

p. 614. Assume three trusts with a beneficial income in each of £1,500 a year, how can the Super-tax, with its graduations of the rate to be charged, be estimated upon the total income of £4,500 and recovered from one set of trustees? In *Williams* v. *Singer*(1), [1919] 2 K.B. 108, it was clearly stated in the judgments of the Court who were considering Section 41 that the person liable to be taxed is the beneficiary, and that the purpose of the Section is to provide machinery by which in the cases specified Income Tax may be more readily recovered.

In the report of the same case in the House of Lords, [1921] 1 A.C. 65, Lord Cave expresses the view, at page 72(2), that there may be cases in which a trustee in receipt of trust income may be chargeable with Income Tax upon such income, but that in cases where a trustee or agent is made chargeable with the tax, the Statutes recognise the fact that he is a trustee or agent for others and he is taxed on behalf of and as representing his beneficiaries or principals—see also per Lords Wrenbury and Phillimore at pages 76 and 82. For these reasons I agree with Mr. Justice Rowlatt on the first point.

The second point above stated was apparently not fully argued before Mr. Justice Rowlatt, but it has been fully argued by Mr. Hills in this Court. In my judgment, the judgment of Mr. Justice Rowlatt is right upon both points. I agree with his reasoning upon the second point and do not desire to add more, for the reasons which I have given upon the first point apply in a large measure to the second.

The appeals must be dismissed with costs.

Scrutton, L.J.—The present Earl of Longford was born on December 29th, 1902, succeeded to the earldom on August 21st, 1915, and came of age on December 29th, 1923. He had, on succeeding to the title, a total income which subjected him to the payment of Super-tax. These appeals relate to the endeavours of the Inland Revenue to find the best way of making him pay.

1. For the year April 6th, 1916, to April 5th, 1917, the Crown assessed his mother and guardian, the Countess of Longford. She paid on the amount of income she administered; the Revenue desired to assess her on the total income of the Earl. The Special Commissioners declined so to assess her, and Mr. Justice Rowlatt affirmed their decision. The Crown appeal.

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(1) 7 T.C. 387. (2) *Ibid.* at p. 411.

(Scrutton, L.J.)

2. For the year 1917–1918, the Crown assessed the trustees of the settlement under which the whole income of the Earl was derived on the whole income of the year. The Special Commissioners discharged the liability as to such part of the income as the trustees were accumulating, as not being income of the Earl, and also declined to assess the trustees personally for either the whole income or the part of the income they handed over. Mr. Justice Rowlatt disagreed with their decision as to the accumulated funds, but held that the trustees could not be assessed either on the whole income or that part of the income which was paid to the guardian of the Earl. The Crown appeal.

3. On January 22nd, 1918, the Earl, by the death of his grandmother, became entitled under another settlement with different trustees to a further income. The Crown accordingly assessed, for the years 1918–1919 and 1919–1920, the first trustees on the whole income of the Earl. The Special Commissioners again declined to assess either the whole income of both or either trust, or on the part accumulated, or the part administered. Mr. Justice Rowlatt disagreed as to the part accumulated, but declined to assess both sets or either set of trustees either on the whole income of the two trusts, or the whole income of either trust, or on the part handed over. The Crown appeal.

4. For the year 1920–1921, the Crown assessed the Earl of Longford direct. The assessment was discharged by the Special Commissioners, but restored by the Judge on the authority of Ex parte *Huxley*(1), [1916] 1 K.B. 788, and there is no appeal against this decision.

All infants, therefore, can be directly assessed to Super-tax, and having been so assessed, under Section 173 of the Act of 1842 (now Section 161 of the Act of 1918) the parent, guardian or tutor can be made liable for the tax originally charged on the infant.

The questions in the appeal are :—

I. Whether the guardian can be directly assessed to Super-tax in respect of the infant, either on the infant's whole income or the part of it which the guardian administers, without the necessity of assessing the infant.

II. Whether the trustees of the settlement under which the infant receives income can be assessed directly to Super-tax in respect of the infant, and, if so, whether on the whole of the infant's income from every source, or the whole of the income

(1) 7 T.C. 49.

(Scrutton, L.J.)

from the settlement of which they are trustees. The distinction between funds paid over and funds accumulated is no longer in question; both are income of the infant.

Super-tax was granted by the Finance Act of 1910, and is now dealt with in Part II of the Income Tax Act of 1918, as modified by subsequent Finance Acts, especially that of 1925, which commences a graduated tax at a rate rising with the amount of income. Income up to £2,000 is free; the next £500 pays ninepence in the pound, and so with gradual rises till each pound above £30,000 pays six shillings in the pound. By Section 66 of the Act of 1910 Super-tax is charged " on the " income of any individual " (which excludes companies): it is charged on the total income of that individual from all sources for the previous year. By Section 72 (1) the total income is assessed by the Special Commissioners. In this it differs from Income Tax which is assessed on various parts of the income by various General or Additional Commissioners, according to the situation of the property, or residence of the individual, or Schedule under which the income is taxable.

Section 72 (2) provides for returns of total income and (4) for penalties if the person who has to make the return " without " reasonable excuse " fails to make such a return. The " persons " who have to make returns are :—

(1) a person required to make a return of " his total " income ";

(2) a person who is chargeable with or liable to be assessed to Income Tax under Section 41 of the Income Tax Act, 1842, as representing an incapacitated or non-resident person—who makes a return of the total income from all sources of the incapacitated or non-resident person;

(3) a person who is chargeable with or liable to be assessed to Income Tax under Section 24 of the Customs Act, 1890, as representing a deceased person—who makes a return of the total income from all sources of the deceased person. The recited Section provides that if a person dies without having made a return of his profits, his executors or administrators may be directly charged in respect of the profits arising before his death.

Every person in classes (1), (2) & (3) is to make a return " whether he is or is not chargeable with Super-tax "; which assumes that some of them are not chargeable with Super-tax. These words may refer to total incomes under £2,000 not chargeable as compared with incomes over £2,000 which are chargeable; or to persons chargeable, such as the owner of the income, or the executor, who is chargeable though his testator is not assessed, as compared with trustees, if they are not chargeable on the whole income of the *cestui que* trust.

(Scrutton, L.J.)

Going back to Section 41 of the Act of 1842, it provides that certain classes of persons (1) bearing certain relations to a second class of persons (who are described in the Act of 1910, Section 72 (2), and the Act of 1918 (General Rule 4 and Section 237, definitions) as "incapacitated persons"), and (2) having the direction, control or management of the property of such incapacitated persons, shall be chargeable to the duties of Income Tax in the same manner and to the same amount as the incapacitated person would be charged, if he were not incapacitated. The first class of persons is described as "trustees, "guardians, tutors, curators or committee"; the incapacitated persons as "infants, married women, lunatics, idiots or insane".

The first class of trustees, etc., were to be taxed, whether the incapacitated person was or was not resident in Great Britain.

Section 41 dealt with a further class of person; the resident factor, agent or receiver of a non-resident person, who had the receipt of any profits or gains belonging to such non-resident person, was chargeable in the like manner and to the like amount as if such non-resident person were resident in Great Britain and in the actual receipt of such profits.

Of the persons whose own income could be taxed in the name of a representative, it will be seen that (*a*) the infant was also directly assessable, Ex parte *Huxley*(1); (*b*) the married woman under Section 45 was taxable in the name of her husband, and not in the name of her trustees, or in her own name. Now under Rule 16 of the General Rules of the Act of 1918, a married woman can in certain circumstances and for certain profits be taxed in her own name.

As to a lunatic, Mr. Justice Lush in Ex parte *Huxley* [1916] 1 K.B. at page 794(2), seemed to think *obiter* that a lunatic could not be directly charged, but Lord Cozens-Hardy in the Court of Appeal appears to take an opposite view.

It seems clear that so far as Income Tax is concerned, the liability of the trustee or agent does not exclude the liability of the principal, whether incapacitated or non-resident; and vice-versa. It also seems clear that for Income Tax purposes the liability of the trustee or agent is limited to the profits which he controls or manages; and though the limitation of the liability of the agent to profits received has been removed by the Finance (No. 2) Act, 1915, Section 31 (now Act of 1918, General Rules, No. 5), I think the liability for Income Tax of the trustee or agent is still limited to the British property or trade he controls or manages, though he does not "receive" the profits, and does

(1) 7 T.C. 49. (2) *Ibid.* at p. 52.

(Scrutton, L.J.)

not extend to all British profits of the principal, though the trustee or agent has nothing to do with part of those profits, still less to all profits whether British or not. There may be an assessment for Income Tax on the trustee or agent in respect of part of the profits, just as there may be a partial assessment on a resident principal, or one of full capacity.

We now reach the real difficulty in the case. Section 72 (6) of the Finance (1909–10) Act, 1910 (now Section 7 (6) of the Act of 1918) enacts that "all provisions of the Income Tax Acts "relating to persons who are to be chargeable with duty, assess- "ments, etc. . . . . shall, so far as they are applicable, "apply to the charge . . . . of duty under this section," i.e., to the duty of Super-tax. The Crown say that the trustee or guardian of an infant is chargeable to Income Tax under Section 41 of the Act of 1842, and is therefore by this Section made chargeable to Super-tax. Their contention would also apparently apply to all representatives under Section 41, including the agent of a non-resident principal who has British properties yielding profits liable to Income Tax. The Crown further contend that they can assess these representatives to Super-tax on all profits of their principal, though the representative has no control, management or receipt of those profits or of the properties from which the profits are derived. Mr. Justice Rowlatt says that the contention of the Attorney-General before him was limited to assessment of the total income of the principal, and not put forward as to the total income controlled by the trustee(1). Before us, however, undoubtedly the latter view was contended for in the alternative at any rate by the junior Counsel for the Crown.

Counsel for the subject contended that Section 41 was only to apply "so far as applicable to Super-tax", and that the limited assessment for Income Tax which might be one of a number of assessments in different places and by different Commissioners, together covering all the profits liable to tax, had no application to a single assessment for Super-tax made by one authority, at a rate varying with the amount of the total income. The argument may be illustrated by a case: A, a non-resident principal, has three English agents, carrying on three separate businesses each producing a profit of £1,500, £4,500 in all. No one of them will be assessed to Income Tax at more than £1,500. How in the Crown's view are they to be assessed to Super-tax? The income under £2,000 is not to be assessed at all; from £2,000 to £2,500 it pays ninepence in the pound; from £2,500 to £3,000, one shilling; from £3,000 to £4,000, one shilling and sixpence; and the last

(1) See p. 594 *ante*.

(Scrutton, L.J.)

£500, making £4,500, at two shillings and threepence. To which agent are you to allow the first £2,000 and at what rate will each agent pay? There is no provision for this sort of thing in Section 41, which is not concerned with assessments on total income at different rates in one assessment; but only with assessments on income controlled or managed, at one rate. Of course you might have a provision that the total amount due from the principal for Super-tax, if he were assessed directly, should be ascertained, and then the liability divided amongst the three agents, proportionately to their respective incomes. But where is there a trace of this in Section 41? I do not understand how a provision for liability for Income Tax only on income controlled or managed, when applied to Super-tax, can produce a liability on the agent for all income of the principal whether controlled or managed by the agent or not. If the trustee cannot be assessed on his *cestui que* trust's total income, I can see nothing in Section 41 to provide for a pro rata adjustment of the Super-tax obtained by one assessment of the total income, over the various agents who manage parts of that income.

It has been held by the House of Lords in *Whitney's* case[1], [1926] A.C. 37, that a non-resident principal can be directly assessed to Super-tax on his British profits after notice sent to him. There is, as far as I know, no decision yet where an agent has been assessed to Super-tax on the whole or part of the profits of his non-resident principal.

In my opinion, the provisions of Section 41 are not applicable to the assessment of Super-tax on a representative of a principal, either in respect of the whole or part of his principal's income; and I therefore agree with the judgment of Mr. Justice Rowlatt, and think that the appeals of the Crown should be dismissed.

There are two matters of regret in the case. First, the length of time these proceedings have occupied. In 1927, the assessment for 1916 has not yet finally been determined; and five years were taken to state the Special Case. No satisfactory explanation was offered to us of the delay. Secondly, I think the case is a bad example of legislation by reference. Probably to get a Bill through Parliament, a number of existing statutory provisions are incorporated "so far as applicable". I doubt whether Parliament or the draftsmen, or the responsible Minister, ever considered which of those provisions were applicable, but the whole block is thrown at the head of the Courts which have to consider which of them are applicable in whole or part. This case is an example of the deplorable result.

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(1) 10 T.C. 88.

Sargant, L.J.

Commissioners of Inland Revenue v. *Countess of Longford.*

In my opinion there is a clear and simple reason for dismissing this appeal. I cannot see that the Countess ever had, within Section 41 of the Income Tax Act, 1842, "the "direction, control or management of the property or concern" of her infant son or the receipt of the profits or gains of the property within the language of Lord Parker in *Drummond* v. *Collins*(1), [1915] A.C. at page 1019. The control or management of the property and the receipt of the profits and gains were in the hands of the trustees who made her from and out of the income of the property such an allowance as they thought fit for the purpose of the maintenance and education of her son. It was of course they and not she who were chargeable with Income Tax on the whole income of her property including the amount of any such allowance which was no doubt a net sum. Nor did she, I think, receive it as guardian in the sense in which that word is used in Section 41. She received it not of independent right but as the person to whom the trustees under their discretionary powers thought fit to entrust the actual expenditure of the allowance in question. Even therefore if the allowance in the year 1916–17 exceeded the then limit for Super-tax the Countess was not within Section 72 of the Finance (1909–10) Act, 1910, as not being a person chargeable with Income Tax as representing her son.

Commissioners of Inland Revenue v. *Pakenham and others.*

Super-tax was created and imposed for the first time by Part IV, Sections 65 to 72 inclusive, of the Finance (1909–10) Act, 1910. At that time the machinery for the assessment and collection of Income Tax was regulated by the Income Tax Act, 1842. Section 72 of the above Act of 1910 contains a general referential application of this machinery to the assessment and collection of Super-tax, and the questions to be determined on this appeal depend on the effect of this general referential application, and particularly with regard to any application to Super-tax of the special provisions of Section 41 of the Act of 1842.

Mr. Justice Rowlatt in his judgment has referred throughout to the similar provisions of the consolidating Statute, namely, the Income Tax Act of 1918. But the appeal has been argued before us with reference to the similar provisions of the Income Tax Act, 1842, and Part IV of the Finance (1909–10) Act, 1910. The latter seems to me the more convenient course and is that which I propose to adopt. For these two Acts do in fact govern the earlier of the three periods which are in question. And further,

(1) 6 T.C. 525, at p. 540.

(Sargant, L.J.)
in considering the incorporation in the later provisions of 1910 of the earlier existing provisions of 1842, it is of assistance to preserve the chronological order of the legislation.

Section 41 of the Act of 1842 provides that (amongst other persons) trustees having the management of the property of an infant shall be chargeable to Income Tax in like manner and to the same amount as would be charged if the infant were of full age, and that every such trustee shall be answerable for the doing of all such acts as shall be required to be done by virtue of that Act in order to the assessing of any such infant to the duties granted by that Act and paying the same. It is clear that the Respondent trustees were, under this Section, chargeable for and liable to pay the Income Tax payable as from the 21st August, 1915, in respect of the Irish estates which were comprised in the settlement of 1899.

Under Sub-section (2) of Section 72 of the Finance (1909–10) Act, 1910, after service upon any person of a notice by the Special Commissioners requiring him to make a return of his total income from all sources, he becomes bound to make such a return "whether he is or is not chargeable with the super-tax"—these last words, I think, clearly referring to cases where the subject may think he is below the Super-tax limit and preventing such a person from refusing to make a return on that ground. And in the case of such a notice served upon any person who is chargeable with or liable to be assessed to Income Tax under Section 41 of the Income Tax Act, 1842, as representing an incapacitated person (which phrase of course includes an infant), he is liable to make a return of the total income from all sources of the incapacitated person. It seems clear that the terms of this Section apply to and include the Respondent trustees, and impose a statutory obligation on them to make a return of at least the income of the Irish estates as comprised in the settlement of 1899. Indeed, this was hardly contested by the Counsel for the Respondents, and appears to be concluded by the decision in *Brooke* v. *Commissioners of Inland Revenue*(1), [1917] 1 K.B. 61, and [1918] 1 K.B. 257. And see also *Huni's* case(2), [1923] 2 K.B. 563, and *Whitney's* case(3), [1924] 2 K.B. 602, and [1926] A.C. 37. Further, the words of the Sub-section, taken in their ordinary meaning, do in terms appear to impose a prima facie obligation on the Respondent trustees to make a return of the total income of the infant, though ignorance as to any income other than that from the Irish estates may be a reasonable excuse under Sub-section (4) for failing to make a return of any such other income.

Then, after a Sub-section (5) which enables the Special Commissioners to make an assessment in default of a satisfactory

(1) 7 T.C. 261. (2) 8 T.C. 466. (3) 10 T.C. 88.

(Sargant, L.J.)

return, comes Sub-section (6), which is the really crucial one in this case. Under that Sub-section "all provisions of the Income "Tax Acts relating to persons who are to be chargeable with "duty, assessments, and appeals against those assessments, and "to the collection and recovery of duty and to cases to be stated "for the opinion of the High Court shall, so far as they are "applicable, apply to the charge, assessment, collection, and "recovery of duty under this section". The question here is whether the Respondent trustees are persons who fall within the words of that Sub-section and so are liable to have made upon them what the learned Judge in a very convenient phrase has called representative assessments.

Mr. Justice Rowlatt has pointed out with much force the marked distinction between Income Tax and Super-tax, consisting mainly in the partial local and piecemeal assessment of the one and the wide general assessment of the other. He has also pointed out the difficulties that may arise in certain cases through a sweeping application to Super-tax of the principle of representative assessment as enacted with regard to Income Tax. And in the result he has, as I understand him, held that representative assessments cannot be made in respect of Super-tax at all under this Sub-section. But in my judgment, and with great respect to him, he has allowed his consciousness of these difficulties to lead him in effect to strike out Sub-section (6) altogether from the Statute. To my mind it is reasonably clear that Sub-section (6) is consequential on Sub-section (2) and deals with and renders representatively assessable to Super-tax the same classes of representatives as are liable to make returns under Sub-section (2), who again are the same classes as are liable under Section 41 of the Act of 1842 to representative assessments to Income Tax. The Legislature in enacting Sub-section (6) and assimilating the liability of trustees to Super-tax to their liability to Income Tax must have had in mind the broad distinctions between Income Tax and Super-tax. And I do not think any construction of Section 72 and particularly of Sub-section (6) is permissible, which negatives altogether the possibility of representative assessments to Super-tax. The marked distinction pointed out by the learned Judge between Income Tax and Super-tax might have formed good grounds for declining to pass legislation applying to the collection of Super-tax machinery analogous to that already existing for the collection of Income Tax. They do not in my view form reasons for interpreting the legislation, when once passed, in any other than the natural meaning of the words used. And I do not think that the language of Sub-section (6) as to persons chargeable with duty can be satisfied by construing them as referring merely to the

(Sargant, L.J.)

liability of a husband to tax on his wife's income under Section 45 of the Act of 1842.

The words in Sub-section (6) "so far as they are "applicable" have still to be considered. Much more stress was laid upon them in the argument for the Respondents than in the judgment of Mr. Justice Rowlatt. But they do not seem to me sufficient to exclude, in the cases now in question, the prima facie representative assessability of the Respondent trustees. Taking for instance the two years in which the income of the infant was derived from the Irish estates, I cannot see that the mere possibility that there might be some other income of the infant can prevent the provisions of the Income Tax Acts with reference to the representative assessment of the trustees to Income Tax from being applicable so as to render them representatively assessable to Super-tax to the extent of the assessments which were actually made upon them. As regards those years at least the assessments on them would appear to be sustainable, for I omit for clearness the possibility that in the second year some small income has been brought in from the Bedfordshire estates.

Then again take the case of the year 1919–20 when the income of the infant was derived both from the Irish estates under the settlement of 1899 and from the Bedfordshire estates under the settlement of 1862. Is there sufficient in the fact of there being this double source of income to relieve the trustees of the Irish estates from the obligation to make a return of the total income of the infant from both estates or to exclude the trustees of the Irish estates from liability to assessment on the total income? I do not think so. No doubt if these trustees are unable to ascertain and state the income of the Bedfordshire estates, this will be a reasonable excuse within Sub-section (4) for failure to make a return of total income and will save them from any penalty under that Sub-section. But it will not prevent the Special Commissioners making an assessment under Sub-section (5) if they choose. And I see no sufficient reason for holding that the circumstances of the case are such as to bring into play the saving words of Sub-section (6) and to make the provisions of Section 41 of the Act of 1842 as to the assessment of these trustees to Income Tax inapplicable to their assessment to Super-tax in respect of the income of both estates.

There is indeed one case in which the provisions of Section 41 might not be applicable to the assessment of trustees of a particular fund to Super-tax, namely, a case in which the income of that fund was so small in proportion to the other income that the Super-tax on the total income actually exceeded the income of the particular fund. In such a case the words "so far as

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"applicable" might no doubt prevent any assessment of the trustees to an amount exceeding their trust income. But this would be a very exceptional case and is obviously not the case here. As matters stand here, I do not see sufficient to render inapplicable the general statutory direction that the liability of the trustees to assessment to Income Tax under Section 41 is extended to a liability to assessment for Super-tax, although that tax will be calculable on the income of both estates.

A great deal was made in the argument for the Respondents of the difficulties that might arise where there were several trust funds, particularly in view of the present graduated rates of Super-tax. I doubt whether it is permissible to rely on this last circumstance in construing the Act of 1910 which imposed a flat rate of duty only, unless perhaps for the purpose of urging that this graduation of the rate of duty is another circumstance which has by now prevented the provisions of Section 41 of the Act of 1842 from being "applicable". But, in my opinion, these difficulties are more apparent than real. After all, the charge of Super-tax falls ultimately not on the trustees but on the total income of the infant *cestui que* trust. And it matters not at all either to the infant or to the trustees sought to be assessed whether the tax is taken from the income of one trust fund rather than of another so long as the trustees of any one fund are not rendered liable for more than the whole income of their fund. In such a case where their liability would exceed their funds, and in any other possible case in which the perfectly rigid application of the provisions of Section 41 of the 1842 Act would be liable to cause actual injustice, this result would, I think, be prevented by the limiting words of Sub-section (6), "so far as "applicable". But in cases like the present where there are two funds only and the figures are such that the assessment of Super-tax on the trustees of the one fund (in this case the Irish estates) involves a liability very far short of the income of that fund, I cannot myself see that the provisions as to the assessment of these trustees to Income Tax are so inapplicable to their assessment to Super-tax as to except this case from the general legislative directions of Section 72 and particularly of Sub-sections (2) and (6) thereof.

In my opinion the judgment in this case should be reversed and the assessment on the trustees should be confirmed, subject of course to the ascertainment of figures, which it is agreed need some examination and adjustment.

Mr. Latter.—The appeal is dismissed?

Lord Hanworth, M.R.—Yes, in both cases the appeals are dismissed with costs.

The Crown having appealed against the decisions in the Court of Appeal the two cases came before the House of Lords (Lord Buckmaster, Viscount Sumner, and Lords Wrenbury, Carson and Warrington of Clyffe) on the 14th, 16th and 17th February, 1928, when judgment was reserved.

The Attorney-General (Sir Douglas Hogg, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. A. A. Uthwatt for the Respondents.

On the 22nd March, 1928, judgment was delivered in both cases unanimously against the Crown, with costs, confirming the decisions of the Court below.

JUDGMENT.

Lord Buckmaster.—My Lords, I am of opinion that these appeals must fail. I had prepared and reduced to writing the reasons that have led me to that conclusion, but since doing so I have had the advantage of reading the judgments of my noble and learned friends, Lord Sumner and Lord Warrington, with which I entirely agree, and there is no need that those judgments should be repeated. The question involved is of no great principle of law; it is nothing but the construction of clumsy and ill-fitting clauses in Acts of Parliament. When, therefore, the result that has been reached is one in which there is common agreement, there is no need to expatiate upon the process of reasoning which has been used in order that it should be determined. I am therefore of opinion that these appeals should fail, and I shall move the House that they be dismissed.

Viscount Sumner.—My Lords, the Respondents have all been charged with Super-tax under General Rule 4 of the Income Tax Act, 1918, or under the words of Section 41 of the Income Tax Act, 1842, which enacts "that the trustee, guardian, tutor, "curator, or committee of any person, being an infant, or "married woman, lunatic, idiot, or insane, and having the "direction, control or management of the property or concern of "such infant, married woman, lunatic, idiot, or insane person " . . . . shall be chargeable . . . . in like manner "and to the same amount as would be charged if such infant were "of full age", etc. If this provision of the Income Tax Acts is not applicable to Super-tax within Section 7 of the Act of 1918 or Section 72 (6) of Part IV of the Finance (1909-10) Act, 1910, they cannot be charged and the appeals fail.

There are, however, two further respects, in which, as I think, some of the assessments were bad and were rightly discharged—(1) The Countess of Longford, as guardian of the infant Earl, had not

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the control or management of his property at all. She simply laid out for his benefit such sums as his trustees thought fit to assign for his maintenance and placed in her hands, to be disbursed for them in that behalf, but the money remained vested in them in trust and was subject to their control or management. (2) After an interest in the Bedfordshire estates vested in the Earl in 1918, he was beneficially entitled to the income of two trust properties, the Irish estates, in which his interest had taken effect in 1915, and the Bedfordshire estates, the trustees in each case being different persons, separately assessed. " The management of the property " of the infant " means grammatically the management of all the property of the infant in respect of which the trustees are charged, and these words are part of the description of the persons chargeable. Such really is the position with regard to Income Tax. As applied to Super-tax, charged on a trustee of a part of the whole income to which the beneficiary is entitled, the matter is otherwise. If persons having the management of some of the property of the infant were intended to be included in this description, the definite article " the " must have been omitted. In connection with Super-tax such an intention would have been entirely out of place. The imposition of personal liability for an additional duty of Income Tax, levied on the total income of the beneficiary as ascertained by a complete enumeration of all sources subject only to certain authorised deductions, upon a trustee, who held a part only of the beneficiary's entire property and that part possibly only a small one or a part yielding no income, would be a travesty of rational taxation.

These considerations, however, do not apply to the trustees of the Irish estates before the Earl's interest in the Bedfordshire properties took effect, and their case in the earliest years of these assessments must be specially considered. While Section 66 of the Finance Act of 1910 defines what Super-tax is and imposes the charge, it is Section 72 which provides by a series of Sub-sections for the mode of assessment and the machinery of collection. Sub-sections (1) to (5) inclusive deal only with assessment. It is not till Sub-section (6) is reached that provision is made for charge, collection and recovery of duty, and this is accentuated by the fact that Sub-section (2) authorises the requirement of returns from persons (including those who represent incapacitated, non-resident or deceased persons) whether or not they are chargeable with Super-tax, so that in some of such cases that provision is only for the purpose of obtaining information.

Sub-section (6) is framed as an omnibus incorporation of pre-existing provisions upon an indefinitely selective plan. " All " provisions of the Income Tax Acts relating to persons who are

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" to be chargeable with duty, assessments, and appeals against " those assessments, and to the collection and recovery of duty " . . . . shall, so far as they are applicable, apply to the " charge, assessment, collection, and recovery of duty under this " section ".

In deliberately adopting this terse and compressed form of enactment the Legislature was, no doubt, fully alive to the fact that its merits and convenience are attended by some disadvantages. The risk of this had, however, to be run. By using the words " so far as they are applicable ", Parliament handed over to others what it might have prescribed itself, and those others were persons who were not legislators but judges. The Income Tax provisions were not made applicable, so that they could be enforced, but were to be enforced only so far as they were applicable. Nothing corresponding to *mutatis mutandis* or any other labour saving but indefinite phrase is to be found here. The distinction is material. An administrator might hold a provision to be applicable which avoids a loss of revenue, even though the taxpayer loses the benefit of the form of the Statute, but judges have to determine the applicability of a regulation by asking how far it is consistent with justice to the subject and with proper construction of the enactment. Accordingly we must not feel constrained to pronounce this Section applicable merely because the contrary construction may involve the use of cumbrous and defective machinery for collecting the tax or even may lead to the escape of some who have quite money enough to pay with.

My Lords, viewed in this way I do not think Section 41 is " applicable " to Super-tax. The application would, I think, make the Section read much to the following effect : " The trustee of any " infant, whether resident here or abroad, who has the control or " management of the chargeable property of that infant, shall " himself be chargeable, as the infant would be charged if of age, " both as to the extent of his chargeability and as to the manner " of enforcing it." Let us see what the effect would be and whether it does or does not pass the bounds of application.

In the case of Income Tax the extent of the liability, depending as it does on the various Schedules and Cases under which the particular part of the property is being assessed, is limited to the income of the property which is under the trustees' control and is assessable within the particular assessment area. If the trustee returns and pays on that, he is not further chargeable, although the infant may be beneficially interested in other taxable property over which that trustee has no control at all. The manner in which he is made liable is by the method of local and separate assessments provided for Income Tax. Exemptions and deductions are the

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subject of a separate manner of reclaiming tax already paid, with which the trustee is not, as such, in any way concerned.

In the case of Super-tax it is far otherwise. The person who is chargeable, whether in a representative capacity for another person or on his own account, has to return the whole of the income, which is subject to Super-tax, and he has to make the deductions which the Act allows, if there are any, before his return, on which the tax is to be computed, is complete and ready for enforcement of the tax. In the case of a return by a person representing someone else, the Super-tax, duly computed, is wholly and as a whole chargeable on him. For Super-tax purposes there is no provision for making piecemeal assessments or for levying the tax in part on one person and in part on another. The person who is made liable to charge at all has to bear the entire burden of it.

My Lords, I think this comparison at once shows that, in the case of Super-tax, charging a trustee " in like manner " as the beneficiary would be charged, if of age, is a totally different scheme of charge from that enacted for Income Tax. The case is not one of selecting such parts of the Income Tax schemes as are applicable to the scheme of the Super-tax, and making use of them, but of introducing provisions which are applicable to Super-tax and correspond to the Income Tax provisions but are not already enacted anywhere. That is not a problem for Courts of Justice. It involves substituting the words " with suitable modifications " for the words " so far as applicable " and that is not for us to do.

Further it could be done only to the grave and unjust prejudice of the trustee to be charged. Whatever he may happen to know or be able to ascertain in a particular case, he is not as trustee seized of any information outside the limits of his trust. He does not know that there may not be other trustees of other trust property, or that the infant is not making something here or abroad. Instances of such precocious industry are not uncommon and are sometimes on a considerable scale. The Act has to be read as applicable to all cases falling generally within its words, whether or not in particular, and perhaps numerous, cases the trustee is so circumstanced as to meet with no such difficulties. He cannot know *qua* trustee whether he is chargeable or not, or whether he should contest his liability or not, for, so far as he is aware, he may be in control of all the chargeable property of the infant, and thus, having made the return, he may have to pay on an excessive amount, because in his ignorance he did not make deductions which ought to have been made, before arriving at the nett sum chargeable to Super-tax. If he refuses to make the return, on the ground that there may be other chargeable property of the infant over which he has no control, he

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does so at his peril. If he pays, he may be unable to indemnify himself, or may be only able to enforce his rights at the cost of litigation, which at best will leave him with costs to bear himself.

For these reasons, my Lords, I think these assessments were rightly dealt with by the Commissioners and the appeals fail. It is not necessary to point out how the infant or other incapacitated person is to be made amenable, though Section 72(2) furnishes the Inland Revenue with means of obtaining extensive information, more than many trustees could get. All I can say is that I agree with the Court of Appeal in thinking that the argument for the Revenue makes a greater call on the words " so far as applicable " than those words can bear.

I think that it is irrelevant to refer to the cases in which it has been said that Sections merely providing a machinery for collection of a charge, which is imposed in general terms elsewhere, cannot restrict the attachment of the charge, being " in aid and not in " derogation of it " (*Tischler* v. *Apthorpe*(1) and *Werle* v. *Colquhoun*(2)), because here the express words, " so far as they are " applicable ", of themselves limit the application of the collection Sections for all purposes, and direct an enquiry and a discrimination between those which apply and those which do not. The latter cannot aid the charge of Super-tax, since they do not apply to it.

My Lords, I am desired to add that in the opinion I have just read to your Lordships my noble and learned friends **Lord Wrenbury** and **Lord Carson** concur.

Lord Warrington of Clyffe (read by Lord Buckmaster).—My Lords, these are two appeals raising the question whether an infant can be assessed to Super-tax in the one case in the name of his guardian and in the other in the name of trustees who have the control and management of certain property to the income of which he is entitled.

The infant (the 6th Earl of Longford) was born on the 29th December, 1902, and attained the age of 21 years on the 29th December, 1923. The Respondent, the Countess of Longford, became on the death on the 21st August, 1915, of the 5th Earl, the guardian of his son the infant. The infant on his father's death became entitled as tenant in tail male to certain lands and hereditaments in Ireland and to certain personalty which represented the proceeds of sale of realty under a settlement dated the 29th August, 1899, of which the Respondents in the second appeal are the trustees. The trustees were by the settlement appointed trustees for the purposes of Section 42 of the Conveyancing and Law of Property Act, 1881.

(1) 2 T.C. 89, at p. 94. (2) 2 T.C. 402.

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Upon the death on the 12th January, 1918, of his grandmother Selina Dowager Countess of Longford the infant became entitled as tenant in tail male to certain estates in Bedfordshire under a settlement dated the 8th November, 1862, the trustees whereof are not the same persons as the trustees of the settlement of 1899.

Apparently—though the fact is not expressly stated in either of the two Cases hereafter mentioned—the infant was not, until the 22nd January, 1918, entitled to the income of any property other than that comprised in the settlement of 1899.

After the death of the 5th Earl the trustees of the last mentioned settlement paid yearly during the minority of the infant the sum of £2,500 for his maintenance, the residue of the income under the settlement being accumulated.

For the year ending the 5th April, 1917, the Special Commissioners of Income Tax made an assessment upon the Respondent, the Countess, as guardian of the infant, in a sum of £12,000 being the estimated amount of the total income of the Earl under the settlement of 1899. On appeal this assessment was discharged, it appearing that the only income passing through the hands of the guardian was the above-mentioned allowance for maintenance, and that this was below the Super-tax limit. A Case stated by the Special Commissioners for the opinion of the High Court was heard by Mr. Justice Rowlatt on the 20th December, 1926. The learned Judge dismissed the appeal of the present Appellants and confirmed the discharge of the assessment. His judgment was, on the 27th July, 1927, affirmed by the Court of Appeal (Lord Hanworth, Master of the Rolls, and Lord Justice Scrutton and Lord Justice Sargant).

As regards the appeal in the case of the Countess, it is enough to say that I agree with the judgments in the Court of Appeal and particularly with that of Lord Justice Sargant, and that this appeal should be dismissed with costs.

I now turn to the other appeal—that against the trustees of the settlement of 1899. The years in question in this case are the years of charge ending respectively the 5th April, 1918, the 5th April, 1919, and the 5th April, 1920. It will be observed that the first of these years was that in which, viz., on the 12th January, 1918, the infant became entitled to the property comprised in the settlement of 1862, but none of the income of this property accrued to him during the year preceding the year of charge. Assessments having been made upon the trustees of the settlement of 1899 in respect of the total income of the infant for each of the said three years of charge, the trustees appealed to the Special Commissioners, who, being of opinion that the trustees were not liable to be assessed to Super-tax reduced the assessments to certain agreed sums in each

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of the three years. A Case was stated for the opinion of the High Court and was heard by Mr. Justice Rowlatt, who on the 20th December, 1926, made an order confirming that of the Commissioners and dismissed the appeal. An appeal to the Court of Appeal was on the 27th July, 1927, dismissed by a majority (Lord Hanworth, Master of the Rolls, and Lord Justice Scrutton, Lord Justice Sargant dissenting).

In subsequent years of charge the infant himself while still a minor was assessed to Super-tax, and there was no appeal as to the assessment.

The question turns on the true construction and effect of the provisions as to Super-tax contained in Part IV of the Finance (1909–10) Act, 1910. It is true that in the last year the Act in force was the Income Tax Act, 1918, but the provisions of this Act are practically identical with those previously in force and it will be convenient to pursue the course adopted in the argument and deal with the old Acts alone. It is, however, necessary to bear in mind that the original limit for Super-tax has been lowered in amount and the tax itself is charged according to a graduated scale.

By Section 66 (1) of the Act of 1910 there is to be charged in respect of the income of any individual, the total of which exceeds a fixed sum, an additional duty of Income Tax (in the Act referred to as Super-tax) at the rate of 6*d*. for every pound of the amount by which the total income exceeds so much. By (2) "For the "purposes of the super-tax, the total income of any individual from "all sources shall be taken to be the total income of that individual "from all sources for the previous year, estimated in the same "manner as the total income from all sources is estimated for the "purposes of exemptions or abatements under the Income Tax "Acts; but"—and then there follow directions as to particular deductions applicable only to Super-tax. Section 72 (2), omitting immaterial words, is as follows: "Every person on whom notice is "served . . . . . requiring him to make a return of his income from "all sources or, in the case of a notice served upon any person who "is chargeable with or liable to be assessed to income tax under "section forty-one of the Income Tax Act, 1842 . . . . . as "representing an incapacitated, non-resident, or deceased person, "shall, whether he is or is not chargeable with the super-tax, make "such a return in the form and within the time required by the "notice." In (5) provision is made for an assessment by the Commissioners if no return or an unsatisfactory one is made; (6), again omitting what is immaterial for the present purpose, is as follows:—"All provisions of the Income Tax Acts relating to "persons who are to be chargeable with duty, assessments, and "&c.. . . . . . shall, so far as they are applicable, apply to the "charge, assessment, &c. . . . . . of duty under this section . . . . ."

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Before proceeding to consider the provisions of the Income Tax Acts referred to in (6) it is well to call attention to certain fundamental differences between Income Tax and Super-tax. Income Tax is chargeable under certain categories as to some of which no assessment on the taxpayer is made, e.g., the case of income from securities the tax on which is deducted at the source. No assessment of total income is made, nor is any return of such income required except where a claim is made for exemption or abatement. For this purpose certain payments out of income may be deducted before the total is ascertained.

In the case of Super-tax the assessment itself is in respect of the total income from all sources, a form of assessment for which there is no provision in the Income Tax Acts.

Section 41 of the Income Tax Act, 1842, reading it shortly and omitting what is immaterial, is as follows :—" The trustee, " guardian, tutor, curator, or committee of any person, being an " infant, or married woman, lunatic, idiot, or insane person, and " having the direction, control, or management of the property or " concern of such infant, married woman, lunatic, idiot, or " insane person . . . . . shall be chargeable to the said duties in like " manner and to the same amount as would be charged if such " infant were of full age, or such married woman were sole, or " such lunatic, idiot or insane person were capable of acting for " himself ". Provision is made for the charging of a non-resident person in the name of such trustee etc., as above or of any factor, agent or receiver having the receipt of any profits or gains arising as mentioned in the Act and belonging to any such person " and " every such trustee shall be answerable for the doing of all " such acts, matters, and things as shall be required to be done " by virtue of this Act in order to the assessing of any such person " to the duties granted by this Act, and paying the same ". Provision is made (Section 44) for the indemnity of the persons described in Section 41 in respect of any duty they may pay. The provisions relating to claims for exemption and abatement and statements of total income from all sources for that purpose are contained in Section 164. It is unnecessary to state them.

As to Section 41 it is to be observed that the chargeability of the trustee depends upon his having the control or management of " the property " of the incapacitated person. " The property " there seems to me to be not the entire property of the incapacitated person, but that property as to which the trustee etc., has the control and management. The application of the Section is further limited to that part of the property as to which the incapacitated person would be chargeable if not under incapacity. It would not for example include property the income of which was taxed at the

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source. In short the Section does not make the trustee chargeable in respect of the total income of the incapacitated person or even in respect of the income of the whole property under his control or management but only in respect of that income as to which the incapacitated person would be directly chargeable.

Under the provisions relating to Super-tax the position is fundamentally different. This tax is charged on the total income from all sources of the subject, and that income is a technical term; it is not merely the sum total of the several amounts of income charged with Income Tax under the different categories specified in the Income Tax Act, but it is that income after certain deductions and adjustments which are not permissible under that Act.

Is then the provision in Section 41 of the Act of 1842 as to the chargeability of a trustee "applicable" to Super-tax so as, under Section 72 (6) of the Act of 1910, to render him chargeable to the latter tax? I agree with Mr. Justice Rowlatt, and the majority of the Court of Appeal, that in the absence of special directions to that effect it is impossible to apply the provisions in question to circumstances so different from those in respect of which they were enacted.

Taking the facts of the present case, the effect of the application of the provisions of Section 41 in the last two of the years in question would be to render the trustees chargeable not only in respect of the income they themselves receive but in respect also of that received by the trustees of the settlement of 1862, and they have in fact been so charged in the assessments now in question. It may be that as between themselves and the latter trustees the burden might be apportioned, but there are no provisions in the Statutes for any such arrangement.

As regards the first year it is true that the only income included in the assessment was that received by the trustees of the settlement of 1899, but even so there is the same difficulty that the "total "income" is not the same as the income in respect of which the trustees would be chargeable under Section 41, and I cannot think that the mere accident that there is not included in the total income any item of receipt not derived from the trusts of the settlement can make such a difference as to bring into application a provision which, if there were even the most trifling additional item of receipts, would be inapplicable.

Great reliance was placed by the Appellants on the provisions of Section 72 (2) of the Act of 1910 as to returns. I do not think this Sub-section affects the question; it contains, it is true, a substantive provision that a person chargeable to Income Tax under Section 41 as representing an incapacitated person may be required to make a return of the total income from all sources of the incapacitated

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person. But it does not follow that, because the Statute requires in express terms information from such representative person, he is therefore to be chargeable, by words of reference such as are contained in Sub-section (6), to an extent to which he could not be charged under Section 41 and in respect of a tax so different in its nature as Super-tax is from the tax mentioned in that Section.

On the whole, for the reasons I have given, which are I think substantially those given by the majority in the Court of Appeal and by Mr. Justice Rowlatt, I think this appeal fails and ought to be dismissed with costs.

Questions put:

In *Commissioners of Inland Revenue* v. *Countess of Longford.*

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

In *Commissioners of Inland Revenue* v. *Jakenham and others.*

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Solicitors :—The Solicitor of Inland Revenue; Messrs. Walfords (for the Earl of Longford, Countess of Longford and Trustees); and Messrs. Maxwell, Simpson & Co. (for Messrs. Simpson, Peckover, Curtis & Batley, of Leeds) for Miss Gascoigne.]