No. 879.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—16TH AND 17TH MARCH, 1932

COURT OF APPEAL.—25TH JULY, 1932

HOUSE OF LORDS.—21ST FEBRUARY, 1933

THE TRUSTEES OF WATSON (A MINOR) *v.* WIGGINS (H.M. INSPECTOR OF TAXES)(1)

Income Tax—Disposition of income—Deed of settlement in favour of son containing power of revocation exercisable with consent of third party—Finance Act, 1922 (12 & 13 *Geo.* V, *c.* 17), *Section* 20 (1) (*c*).

A settlor by deed covenanted to pay to trustees, during the joint lives of himself and his son, an annuity to be held in trust for the son, with power to the trustees, during the son's minority, to apply the annuity for the son's education, maintenance and benefit. The deed of settlement contained a power of revocation which could be exercised by the settlor with the consent of any one of five specified persons. The power of revocction had not been exercised.

The annuity was paid under deduction of Income Tax at the standard rate.

In connection with a claim for repayment of tax on behalf of the son for the year 1930–31, *the trustees contended that the annuity constituted income of the son. The Inspector of Taxes objected to the claim on the ground that, by reason of the power of revocation contained in the deed, the annuity was payable to or applicable for the benefit of the son for some period less than his life and was not payable during the whole life of the settlor and must, in accordance with Section* 20 (1) (*c*) *of the Finance Act*, 1922, *be deemed to be the income of the settlor. The General Commissioners dismissed an appeal by the trustees against the Inspector's objection.*

Held, *that the power of revocation in the settlement did not render the annuity payable " for some period less than the life of the child " within the meaning of Section* 20 (1) (*c*) *and that the annuity was not to be deemed income of the settlor.*

CASE

Stated by the Commissioners for the General Purposes of the Income Tax acting in and for the Division of West Brixton, in the County of Surrey, under the Income Tax Act, 1918, Sections 27 and 149, for the opinion of the King's Bench Division of the High Court of Justice.

(1) Reported (K.B.D. and C.A.) [1933] 1 K.B. 245 and (H.L.) 49 T.L.R. 326.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax acting in and for the Division of West Brixton held at 94 East Hill, Wandsworth, in the County of Surrey, on the 17th of November, 1931, Francis Greville Melmose Watson (a minor), by his Trustees, claimed relief from Income Tax under the relevant statutory provisions for the year ended the 5th April, 1931.

2. No question of figures is involved in this Case, the sole question upon which the opinion of the Court is desired being whether the sums received by the Trustees (hereinafter named), under the settlement below referred to during the year ended the 5th day of April, 1931, were income of the said minor for the purpose of computing the allowances and deductions to which the said minor was entitled under the relevant statutory provisions for that year.

3. By an indenture of settlement dated the 5th of March, 1930, and made between Frederick Percy Watson (thereinafter and hereinafter referred to as the settlor), of the one part, and Bernard Burton, Gordon Dabell and Shirley Worthington Woolmer (thereinafter and hereinafter referred to as the present Trustees), of the other part, after reciting that the settlor was desirous of making the provision thereinafter contained for his son, Francis Greville Melmose Watson, who was born on the 26th of November, 1916, the settlor covenanted with the present Trustees that he would, during the joint lives of himself and his said son, pay the present Trustees (or other the trustees for the time being of the said settlement) an annuity of £350, to be paid by equal quarterly instalments on the usual quarter days, the first proportion of instalment to be paid on the 25th of March, 1930.

4. It was by the said settlement declared that the present Trustees (or other the trustees for the time being of the said indenture) should stand possessed of the said annuity in trust for the said son, with the same power, during his minority, to apply such annuity for or towards his maintenance, education and benefit as the Trustees would have if the said annuity were income of property vested in the Trustees upon trust for the said son for an absolute interest. It was further declared that as long as the law allowed, the Trustees should accumulate and invest any income not applied by them as aforesaid in any trust securities for the time being, but with power at any time to resort to such accumulations and to apply the same as though they were current income.

5. It was provided by the said indenture that the settlor might, at any time or times thereafter, by deed or deeds revocable or irrevocable, with the consent of any one of the following persons, that was to say, the present Trustees (the said Bernard Burton, Gordon Dabell and Shirley Worthington Woolmer) or Aubrey Arthur Woolmer (since deceased) and Kenneth Anns, revoke in whole or in part the trusts and powers declared by and contained in the said indenture and appoint any new or other trusts, powers and provisions in lieu thereof, and that nothing in the said indenture

contained should make it obligatory on the Trustees to take action to enforce the covenant by the settlor therein contained unless and until special notice had been given to the Trustees by or on behalf of the beneficiary and reasonable security had been given to them for the costs of any such proceedings. A copy of the said indenture is annexed to and may be read as part of this Case(1).

6. During the year ended the 5th of April, 1931, the settlor duly paid to the present Trustees the instalments of the said annuity payable during that year under the said indenture, the said instalments amounting in all to the sum of £350. There was deducted by the settlor, from each instalment so paid, Income Tax at the rate of 4*s*. 6*d*. in the £, amounting in all to £78 15*s*., the net sum of £271 5*s*. being received by the present Trustees. In addition, for the period from the 5th day of March, 1930 (the date of the settlement), to the 25th day of March, 1930, the settlor duly paid to the present Trustees the proportion of the instalment due the 25th March, 1930, amounting to the sum of £19 8*s*. 10*d*., and deducted therefrom the sum of £3 17*s*. 9*d*. Income Tax at the rate of 4*s*. in the £, the net sum of £15 11*s*. 1*d*. being received by the present Trustees. It is not disputed that the said instalments so paid were paid by the settlor out of profits and gains brought into charge to tax in his hands, or that (subject to the question arising in this Case) the sums deducted for Income Tax from the said instalments were lawfully deducted.

7. On the 15th of July, 1931, the said Francis Greville Melmose Watson (through the present Trustees) lodged a claim with the Respondent for relief from, and repayment of Income Tax by reference to the tax so deducted from the said instalments of the annuity as aforesaid, on the footing that the instalments paid to the Trustees during the said year were his income.

8. On the 8th of October, 1931, the Respondent objected to this claim upon the ground that the said income must be regarded as the income of the settlor and not of the said Francis Greville Melmose Watson, in that it is payable for some period less than the life of the said Francis Greville Melmose Watson within the meaning of the Finance Act, 1922, Section 20 (1) (*c*). It was against this objection that the appeal was brought.

9. The settlor had not exercised the power of revocation reserved to him either wholly or in part at the date of the hearing of the appeal by us.

10. The Finance Act, 1922, Section 20 (1), contains (among others) the following provision :—

" (1) Any income—

" (*a*) of which any person is able, or has, at any time " since the fifth day of April, nineteen hundred and " twenty-two, been able, without the consent of

(1) Not included in the present print.

" any other person by means of the exercise of any " power of appointment, power of revocation or " otherwise howsoever by virtue or in consequence " of a disposition made directly or indirectly by " himself, to obtain for himself the beneficial enjoy- " ment; or

" (*b*) * * * *

" (*c*) which by virtue or in consequence of any disposi- " tion made, directly or indirectly, by any person " after the fifth day of April, nineteen hundred and " fourteen, is payable to or applicable for the benefit " of a child of that person for some period less than " the life of the child;

" shall, subject to the provisions of this section, but in cases " under the above paragraph (*c*) only if and so long as the " child is an infant and unmarried, be deemed for the pur- " poses of the enactments relating to income tax (including " super-tax) to be the income of the person who is or was " able to obtain the beneficial enjoyment thereof, or of the " person, if living, by whom the disposition was made, as " the case may be, and not to be for those purposes the " income of any other person: . . . .

" Provided also that—

" (i) the above paragraph (*c*) shall not apply as regards " any income . . . . which is payable to or applicable " for the benefit of a child during the whole period of " the life of the person by whom the disposition was " made; and

" (ii) for the purposes of the said paragraph (*c*) income shall " not be deemed to be payable to or applicable for " the benefit of a child for some period less than its " life by reason only that the disposition contains a " provision for the payment to some other person of " the income in the event of the bankruptcy of the " child, or of an assignment thereof, or a charge " thereon being executed by the child."

11. The following contentions were (among others) advanced on behalf of the Appellants, on the hearing of the appeal, in support of the said claim as follows:

(i) that the instalments paid under the settlement were income of the beneficiary for the year of claim and were not income of the settlor;

(ii) the fact that a power to revoke (not exercised) with the consent of the persons named in the settlement was reserved to the settlor did not prevent the income being income of the beneficiary;

(iii) that the claim should be allowed.

12. On behalf of the Respondent it was contended (*inter alia*):

(i) that, by reason of the power of revocation, the annuity in question was payable to or applicable for the benefit of the said Francis Greville Melmose Watson for some period less than his life;

(ii) that, by reason of the said power of revocation, the annuity was not payable to or applicable for the benefit of the said Francis Greville Melmose Watson during the whole period of the life of the settlor;

(iii) that the said annuity must be deemed to be the income of the settlor and not the income of the said Francis Greville Melmose Watson;

(iv) that the claim should be refused.

13. Having considered the facts and arguments adduced before us, we dismissed the appeal.

14. The Appellants, immediately after the determination of the appeal by us, declared to us their dissatisfaction with our decision as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Sections 27 and 149, which Case we have stated and do sign accordingly.

J. V. ELLIOTT TAYLOR,
FRED GROSE,
K. VAUGHAN MORGAN,
} Commissioners.

94, East Hill,
Wandsworth.

17th December, 1931.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 16th and 17th March, 1932, and on the latter date judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., Mr. G. Simonds, K.C., and Mr. C. L. King appeared as Counsel for the Trustees and the Attorney-General (Sir T. W. Inskip, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I need not trouble you, Mr. Latter.

I do not think I can support this decision of the Commissioners. I do not think that this question can be solved by paraphrasing the Act of Parliament and applying it to a paraphrase of the provisions of this deed. Nor do I think we are helped by considering whether arrangements, otherwise framed but having the same

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financial or fundamental value, would be within the words of this Act.

I think what we have to ascertain is whether the Revenue can show (not whether the subject can show the contrary) that what has been done, in the way in which it has been done, falls within the exact words of this paragraph (*c*). What the paragraph says is(1) : " Income which *is* "—I lay some stress upon the word "is"— " payable to or applicable . . . . for some period less than the life " of the child." At the present moment this income certainly is payable to the child for his whole life, or, at least, the life of himself and his father.

What Mr. Stamp has pressed upon me is that if you look at proviso (i) and proviso (ii) of the second set of provisos to Sub-section (1)(2), you can see that there are particular exemptions which show (so Mr. Stamp says) that, but for the exemption, paragraph (*c*) which we are construing, would apply to a case where the income is payable to the child for a period which may be less than the life of the child. I am not sure that those provisions ought not to be regarded as merely put in, as the phrase goes, *ex abundanti cautela*, that is to say, to make sure that no question shall arise on a case, in circumstances which occurred to the draftsman as possibly raising a doubt, which it was not intended to include. On that footing it would not be right to say that the expression of those exemptions founds an argument against an extended meaning to the governing clause in circumstances not mentioned in the exemptions.

But I think myself that there is another ground on which that argument can be displaced. I do not think the exemptions deal with circumstances quite in the same plane as the circumstances with which we have to deal. The exemptions are dealing with events working at defeasance within the limits of the limitation itself. The limitation stands unless bankruptcy or assignment or the death of the father or something intervenes which may shorten the limitation as it stands. It is all very well to say that a power of revocation is a kind of limitation, but that is not quite how it is put, and when you have a power of revocation exercised it gets rid of the limitation. The power of revocation not at present having been exercised, I do not think you can say that the income is payable for a less period than the life of the child. I do not think, *rebus sic stantibus*, it is true to say that this income is payable for a less period than the life of the child. As matters now stand, it is payable for the life of the child. It may be that the deed under which it is payable may be altogether torn up by the exercise of the power of revocation. The power of revocation is dealt with in another Sub-section which will not hit this case. In all the

(1) Finance Act, 1922, Section 20(1)(*c*).
(2) Finance Act, 1922. Provisos to Section 20(1).

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circumstances of the case, I am of the opinion that at the present moment I am not in a position to say that this case is within paragraph (*c*). Therefore, the appeal must be allowed with costs.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 25th July, 1932, when judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir T. W. Inskip, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., Mr. G. Simonds, K.C., and Mr. C. L. King for the Trustees.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you, Mr. Latter. This appeal must be dismissed.

The short facts are these, that by an indenture of settlement made on the 5th March, 1930, the settlor evinced his desire to make provision for his son, who was born on the 26th November, 1916, and so he covenanted with the present Trustees of the settlement that he would, during the joint lives of himself and his son, pay to the Trustees a sum of £350 by equal quarterly instalments. That term was carried out and the money was paid, but, in making the payment to the Trustees, the father deducted the sum payable in respect of Income Tax and he deducted it because he had the right of retainer under Rule 19, which enables the person who is to pay an annuity to deduct the tax. Contained in the Case is this statement: "It is not disputed that the said instalments so paid were "paid by the settlor out of profits and gains brought into charge to "tax in his hands, or that (subject to the question arising in this "Case) the sums deducted for Income Tax from the said instalments "were lawfully deducted." Upon the money being received in the hands of the Trustees and for the benefit of the son, the son through the present Trustees lodged a claim "for relief from, and repayment "of, Income Tax by reference to the tax so deducted from the said "instalments of the annuity as aforesaid on the footing that the "instalments paid to the Trustees during the said year were his "income. . . . . "The Respondent"—that is, the Inspector of "Taxes—objected to this claim upon the ground that the income "must be regarded as the income of the settlor"—that is, of the father—and not the income of the son, and he held that his rights to uphold that view were based upon Section 20, Sub-section (1) (*c*) of the Finance Act, 1922. Therefore we have to consider whether or not, by virtue of this Section 20, the Inspector of Taxes is right or

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wrong in saying that this income, so provided by the father for his son, paid over to the Trustees for his son, enjoyed by his son, and in respect of which the son requires the Income Tax to be repaid to him because he is not fully liable for so much as had been deducted, is the income of the father, and whether that claim can be substantiated under Section 20 of this Finance Act, 1922.

It is said by Mr. Stamp, and quite rightly, that in these matters the practice of the Courts is to look at the substance of the matter. No trader is to be excused from paying the tax due in respect of his trade by reason of the fact that he has wrongly attempted to make a charge upon capital of something that ought to be charged to revenue and, equally, no trader is to be prejudiced by reason of the fact that he has improperly attributed to revenue something which is really a capital charge. One has to look at what is the substance of the matter and regard it in a practical way, and the Appellant in this case says that, looked at from the practical point of view, this settlement is a device whereby income, which is really the father's, is passed over to the Trustees for the son, and the indication that it is the income of the father is made plain by the fact that there is this power reserved to the father under a proviso contained in the settlement, which is as follows : " Provided always " that the settlor may at any time or times hereafter by deed or deeds " revocable or irrevocable with the consent of any one of the " following persons "—and then come five persons' names, three being the Trustees and two outside persons—" revoke in whole or " in part the trusts and powers declared by and contained in these " presents." It is said by the Appellant that a deed which is revocable with the consent of any one of five persons is, for all practical purposes, in truth and substance a revocable deed, that it is not valid, that it does not stand good, and therefore, this is a stratagem whereby money, that is really the income of the father, is set aside for the son, but ineffectively. We have, therefore, to look at Section 20; and I am afraid the answer to the question of substance and the difficulty in regarding this from what may be called a practical point of view, or a broad point of view, is the very meticulous nature of Section 20 which provides with precision for a great number of events, and it does not boldly and baldly say that such a provision as is made by this deed is one which is quite ineffective to transfer income from the settlor to the beneficiary. It appears to me that the catch words to this Section are what have caused the trouble; they are imperfect and incomplete. The catch words say : " Income under revocable and certain other dispositions to be " treated as income of disponor." That is not what the Section says. It is that income under dispositions which are revocable in certain cases, and so on, may be treated as income of the disponor. First of all, let me look at paragraph (*a*) of Sub-section (1) which, as I have said, is meticulous. " Any income of which any person

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" is able, or has . . . . been able, without the consent of any other " person by means of the exercise of any power of appointment, " power of revocation or otherwise howsoever by virtue or in conse- " sequence of a disposition . . . . to obtain for himself the beneficial " enjoyment." However much one may look at the substance of the matter, one must not sweep away words out of an Act of Parliament, and it is plain that paragraph (*a*) deals only with powers of revocation which can be exercised without the consent of any other person. That paragraph confessedly—Mr. Stamp at once says so—does not apply to this deed, because the revocation, as I have pointed out, in this deed, cannot be made effective except with the consent of one of five persons. Paragraph (*a*), therefore, does not avail, and it only leaves this mark behind it that there is great precision in that part of the Clause dealing with a revocable disposition.

I come then to paragraph (*c*): " Any income . . . . " (*c*) which by virtue or in consequence of any disposition " made, directly or indirectly, by any person after . . . . " a certain date " . . . . is payable to or applicable for the " benefit of a child of that person for some period less " than the life of the child "—in other words, where the income is terminable, or not continuing for the whole life of the child. I turn to this deed to see whether it is payable for the whole life of the child and I find it is payable during the joint lives of the father and of the son, but in proviso (i) to this very Sub-section it is provided that paragraph (*c*) shall apply—I turn it round in the affirmative way—even though there should be a lapse on the death of the person by whom the disposition is made. Although, therefore, the father by appointing the income during the joint lives of himself and his son only, is appointing it for a period that may be less than the whole life of his son, for the father might die before the son, that contingency does not render the income income which must be treated as the father's income on the ground that it is not made payable to the son during his whole life. Once more, therefore, one finds meticulous provisions dealing with the possibility of the income being payable during joint lives. Then we come to this effective part of Sub-section (i): I will read the words[1]: " Any income . . . . which by virtue or in consequence " of any disposition . . . . is payable . . . . for the benefit of a " child . . . . for some period less than the life of the child shall, " subject to the provisions of this section, but in cases under the " above paragraph (*c*) only if and so long as the child is an infant " and unmarried, be deemed for the purposes of the enactments " relating to income tax . . . . to be the income of the person who " is or was able to obtain the beneficial enjoyment thereof, or of " the person, if living, by whom the disposition was made, as the

[1] Section 20 (1) (*c*), Finance Act, 1922.

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" case may be, and not to be for those purposes the income of any " other person." Really a glance at paragraph (*c*) and this effective Clause makes it plain that the Sub-section is drawn with great precision and must be considered accordingly, and in view of the proviso to which I have referred, and in view of the fact that, for the purposes of revocation an outside consent must be obtained, there is not a benefit given to the child for a period less than the life of the child, nor can that provision by virtue or in consequence of this disposition be revoked except with the consent of some outside persons.

But a further argument is presented under proviso (ii) which says that " for the purposes of the said paragraph (*c*) income shall not be " deemed to be payable to or applicable for the benefit of the child " for some period less than its life by reason only that the disposition " contains a provision "—shortly put, for a protecting clause, protecting against bankruptcy or assignment or otherwise. In other words, affirmatively the proviso says that the child is to be treated as taking during the whole of his life, although you may have a protecting clause protecting the child against bankruptcy, and even where the income is no longer to be paid as of right, because of bankruptcy, still it is to be treated as payable during the whole of the child's life.

Now, is it possible to set all these meticulous provisions aside, to neglect the words in paragraph (*c*), which says : " by virtue or in consequence of any disposition," and say that because if and when, with the consent of some outside persons, the deed is wholly torn up there will be a defeasance of the income, we ought to treat the deed as one which is revocable *simpliciter* and one, therefore, which does not provide for the payment of income for a period of the child's life? I feel that that is not possible. I think we have to take the deed and test it by the sequence of touchstones which are laid down in the Section.

I look with some care at the case which was decided by the Court of Session(1), and I find that the Lord President says that, inasmuch as the payments there were only to be made until the youngest of a class of children attained the age of twenty-one, that prevented it being possible to say that the children had a right to income for the period of their respective lives, and he says by virtue of the terms of the deed it is quite obvious that the income was for periods less than their lives. It is quite true he went on to deal with some other aspects of the case, but I observe that Lord Sands, while not disagreeing from those observations of the Lord President, said this(2) : " I do not disagree with the result at which your Lordship " has arrived, but I think that the consideration that there was this " contingency which deprived the income, in any view, of being

(1) Levitt *v.* Commissioners of Inland Revenue, page 719 *ante*.
(2) Page 726 *ante*.

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" one for the period of life, is fatal," and he puts his judgment upon the very terms of the deed itself, and Lord Blackburn the same, and Lord Morison, in particular, says[1] : " The other im- " portant words in the Sub-section are ' for some period less than " ' the life of the child,' and, accordingly, in considering whether a " particular income escapes taxation or not under this Section, you " have to look at the terms of the disposition, ascertain whether the " child has an absolute right, and ascertain whether that right is " for a less period than its own lifetime." In other words, the Court of Session, dealing with this matter, did look at the right of the child by virtue and in consequence of the disposition. We have to do the same, and, by virtue of the disposition, examined in the light of these paragraphs and provisos, it cannot be said that the provision is made for the benefit of the child for a period less than the life of the child.

The consequence is that we agree with Mr. Justice Rowlatt and the appeal is dismissed with costs.

Slesser, L.J.—I agree. This disposition is expressed to be for the joint lives of the settlor and his son. By the second proviso to Sub-section (1) of Section 20, it is enacted that paragraph (*c*), which we are here considering, " shall " not apply as regards any income . . . . which is payable " to or applicable for the benefit of the child during the " whole period of the life of the person by whom the disposition " was made." So that you may approach this case by excluding the contingency that the rights of the son will not last for his whole life by reason of the death of the father before him. Excluding that matter and regarding the operation of paragraph (*c*) as beginning only after that period, as the proviso enacts, there is no doubt, in my mind, that it does exist for a period not less than for the life of the child; nor is it suggested by the learned Attorney-General or Mr. Stamp that, apart from a certain matter, to which I will refer, the disposition is not for the period of the life of the child. The provision upon which they rely to exclude that is contained in this language : " Provided always that " the settlor may at any time or times hereafter by " deed or deeds revocable or irrevocable with the consent . . . ." of certain named persons " . . . . revoke in whole or in part the " trusts." They argue that, in so far as the whole of this disposition is dependent upon a revocation at any time by the settlor, with the assent of one of the named persons, therefore it cannot properly be said that this is a disposition under which income is payable for the life of the child, but is for some period less than the life of the child in so far as the revocation may at any time operate. I am unable to accept that view on the reading of the Section. The income is to be payable by virtue of the disposition, and the disposition, as

(1) Page 727 *ante*.

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I have stated, is, in my opinion, one for the life of the child. Therefore, we start with this, that we have an income payable by virtue or in consequence of a disposition for the period of the life of the child and not a period less than the life of the child. The fact that it remains within the power of the settlor to bring the whole disposition to an end by revocation does not seem to me to justify the assumption that the disposition itself is for a period less than the life of the child. It is not. The disposition is for the life of the child. The settlor has reserved to himself the power to end the disposition, but that is an entirely different matter. I agree with my Lord that the language of the Sub-section might have provided for such a case, but it does not. In those circumstances, we have to give effect to the language as it exists and, in my opinion, the Crown fail to bring this case within paragraph (*c*) for the reasons which I have stated, and the appeal must fail.

Romer, L.J.—I agree, and have very little to add. It is said that, unless we give effect to the contention of the Crown, we shall be defeating the obvious intention of the Legislature, as expressed in Section 20 of the Finance Act, 1922; but when I look at that Section, I find in the fore-front—I say " in the fore-front," because it appears in paragraph (*a*) of Sub-section (1)—an indication of intention which seems to me strongly to support the decision of Mr. Justice Rowlatt. Looking at that Sub-section I find that the Legislature has provided that, where a person, under or by virtue of a disposition made by himself, has the capacity, whether by exercising a power of appointment, or a power of revocation, or otherwise, of making certain income his own, that income shall, for the purposes of taxation, be treated as his own, and not that of the person from whom he has the power of taking it away by the exercise of the power of revocation or power of appointment, or whatever it may be. But the Legislature has expressed its intention in so many words, that that provision shall only apply where the power can be exercised without obtaining the consent of some third party; in other words, I find in that Sub-section an intention of the Legislature that, where income can only be made the income of the owner of the power by the exercise of a power with the consent of some third person, having regard to the necessity of obtaining that consent, the income is not to be considered as sufficiently within his power to justify it being treated for the purpose of taxation, as his own.

I start off with that indication of intention, and it seems to me that paragraph (*a*) has dealt completely and fully with all cases where the disponor has power of retaking possession of the income by means of a power of revocation or a power of appointment that he can exercise in his own favour. When we come to the subsequent paragraphs (*b*) and (*c*)—especially (*c*)—I find, as I think, the Legislature dealing now with particular dispositions that have been made

(Romer, L.J.)

by some instrument. Looking at this instrument, the settlement in the present case, it seems to me perfectly plain that, by virtue and in consequence of that instrument—looking at nothing else—this income is payable to the child during the child's lifetime, and not for a period less than the lifetime of the child. It is true that the settlement can be destroyed by the settlor by exercise of the power of revocation with the consent of one of the five Trustees, just as it would be destroyed if the settlor had become bankrupt within two years from the date of the settlement, and, in certain events, if he became bankrupt within ten years from the date of the settlement, but that does not enable the Court to say that, by virtue or in consequence of the instrument, while it is unrevoked and unimpeached, the income is not payable to the child during his lifetime.

It was said by Mr. Stamp that we ought to read this settlement as though the direction were to pay the income to the child during his life or until the power of revocation is exercised. If that had been expressed in terms, I think I should agree that the infant was not entitled by virtue or in consequence of the instrument to the income during his life. No one knows better than Mr. Stamp, who put forward that argument, the distinction between a direction to pay income to somebody until he becomes bankrupt and a direction to pay income to some person, the effect of that trust being defeated by a subsequent bankruptcy. Here, if the trust had been to pay the income to this child until the settlor became bankrupt within two years or ten years, or any other period short of life, then I should agree that the income was not payable to the child by virtue or in consequence of this instrument during his life, but the fact that, in the event of the settlor's bankruptcy within two years the income would no longer be payable, does not enable one to say that the income is payable under or in consequence of this instrument to him for less than the period of his life.

I only want to add this. I agree with every word of the judgment of Mr. Justice Rowlatt with one exception. The two provisos to Sub-section (1) he thought might be regarded as merely put in *ex abundanti cautela*. I do not take that view at all. They were absolutely necessary because, if it had not been for those provisions, a trust to pay the income to a child until he became bankrupt, or until he assigned or until he made a charge upon it, would not, as I look at the matter, be a trust to pay the income to the child during his life.

For these reasons I agree that this appeal should be dismissed.

Mr. Latter.—Your Lordship's Order is that the appeal will be dismissed with costs?

Lord Hanworth, M.R.—Yes, Mr. Latter.

The Crown having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Buckmaster, Lords Warrington of Clyffe, Tomlin, Russell of Killowen and Wright) on the 21st February, 1933, when judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir T. W. Inskip, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., Mr. G. Simonds, K.C., and Mr. C. L. King for the Trustees.

JUDGMENT

Viscount Buckmaster.—My Lords, this question arises out of a settlement that was executed on the 5th March, 1930, by one, Frederick Percy Watson. It is an unusual document; by it, he covenanted with certain trustees that he would, during the joint lives of himself and his named son, pay to the Trustees an annuity of £350 a year to be held by them in trust for the settlor's son and so that, while he was a minor, they should have power to provide for his maintenance, education and benefit, with power to accumulate the income that was not used. There was nothing further in the deed relating to the disposition of this annuity, but it contained a final proviso to the effect that the settlor might at any time or times and by deed or deeds revocable or irrevocable, with the consent of any one of five persons, of whom two were the Trustees, revoke in whole or in part the trusts and powers declared by and contained in the deed, and appoint any new or other trusts, powers and provisions in lieu thereof.

The annuity was duly paid and, being paid out of moneys from which Income Tax had been deducted, the Trustees applied for repayment of the tax on behalf of the infant child. This application was disallowed by the Special Commissioners, whose decision was reversed by Mr. Justice Rowlatt, and Mr. Justice Rowlatt's judgment was in terms affirmed by the Court of Appeal, from whom this appeal proceeds. The ground upon which the Crown base their claim is this: they say that, by reason of the fact that the settlement contains a power of revocation, its provisions make the annuity applicable for the benefit of the child of the settlor for some period less than the life of the child and that, consequently, it is brought within the operation of Sub-section (1) (*c*) of Section 20 of the Finance Act, 1922.

My Lords, in order to see whether that is the true meaning of that Sub-section, it is necessary to examine the whole Section in which the Sub-section is to be found. It provides that, in three definite cases, the income under a settlement shall be deemed, for the purposes of the enactments relating to Income Tax, to be the income of the person who was able to obtain the beneficial enjoyment thereof or of the person, if living, by whom the disposition

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was made and not to be, for Income Tax purposes, the income of any other person. The three cases in which that result arises are quite separate and distinct. The first paragraph (*a*) is one in general terms relating to dispositions whenever made, and it provides that the income of which any person is able, or has at any time since the 5th April, 1922, been able, without the consent of any other person, by means of the exercise of any power of appointment, power of revocation, or otherwise, to obtain for himself the beneficial enjoyment, is deemed to be his income. Your Lordships will appreciate the fact that that paragraph applies impartially, whoever the beneficiary may be and however long the period of time of his enjoyment may be, or whenever the deed has been executed. All that is necessary is that, in the case of a person who is able, without the consent of any other person, by the exercise of a power of revocation or appointment, to obtain for himself the beneficial enjoyment, the income, however disposed of, has to be treated as income for the purposes of Super-tax of the person in whom that power resides. That paragraph cannot apply in the present case, since here the power of revocation can only be exercised with consent. Paragraph (*b*) is a totally different one : that provides for the case where, by a document executed after the 1st May, 1922, other than a document that is made for valuable and sufficient consideration, income is payable to or applicable for the benefit of any other person for a period that cannot exceed six years—it may apply to any persons; it is not limited in any way to children, but the whole thing depends upon the period of six years, which is the limit of time within which this deed must operate. The final one is paragraph (*c*), which, if words that are not important are omitted, provides for the case where, by virtue of any disposition made by any person after the 5th April, 1914, income is payable to or applicable for the benefit of a child of that person for some period less than the life of the child, and this paragraph contains no reference to any power of revocation.

In this case, the money was limited for the joint lives of the child and the father, and that, upon the face of it, might appear to show that it was for a period less than the life of the child within the meaning of the Sub-section; but the Crown have assented to the view that that construction is not open, by virtue of a later provision in the Section, and, therefore, that question is removed from controversy.

The point, and the only point that has been hitherto argued, and upon which the opinion of this House has been invited, is whether or not the mere fact that there is a power of revocation contained in the deed ensures that the limitations of the interest are for a less period than the life of the child. My Lords, I am unable to follow that argument any more than were the other learned Judges before whom it has been advanced. If you disregard wholly, as the Crown are prepared to do, the fact that this

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is a limitation for joint lives and consider it merely as a limitation for one life, it appears to me that it is impossible to say that it is for a period less than the life of the child merely because there is a means by which the actual estate that is conferred may be terminated and cut short. The limitation is for the life of the child, subject to a power that enables the limitation itself to be set aside, but that does not prevent the limitation while it lasts, and is not set aside, being for the life of the child. I am strongly confirmed in that view by the contrast between paragraphs (*c*) and (*a*). It is quite plain that whoever was drafting this Section realised entirely what might happen if a person had a power of revocation, and, in the case where the deed was dealing with any beneficiary, whether related or not to the settlor, and there was a general power of revocation without the consent of any person, then, in that case, special provisions are made for it, and the provisions would have affected the particular circumstances that have arisen in this case but for the fact that the power of revocation, which is referred to in paragraph (*a*), is one that must be exercised without the consent of any other person, and here the power of revocation can only be exercised with the consent of one of five named persons.

My Lords, these reasons satisfy me that in paragraph (*c*) it was never intended that a limitation for the life of a child should be regarded as a limitation for less than that period by reason of the introduction of a power of revocation which would enable the whole of the provisions to be destroyed, and this is in accordance with the opinion of the Court of Appeal, whose judgment on this point should, I think, be affirmed.

Lord Warrington of Clyffe.—My Lords, I am of the same opinion.

Lord Tomlin.—My Lords, I agree.

Lord Russell of Killowen.—My Lords, I am of the same opinion, although I have grave doubts whether, upon the actual framework of the settlement here in question, the case falls at all within the provisions of paragraph (*c*), but, upon the assumption that it does, I entirely concur in the motion which has been proposed.

Lord Wright.—My Lords, I agree.

Questions put:

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Solicitors:—Shirley Woolmer & Co.; Solicitor of Inland Revenue.]