HIGH COURT OF JUSTICE (CHANCERY DIVISION) —

17TH, 18TH AND 22ND JULY, 1958

COURT OF APPEAL — 16TH, 19TH AND 20TH FEBRUARY,

AND 9TH MARCH, 1959

HOUSE OF LORDS — 30TH AND 31ST MAY,

1ST JUNE, 5TH, 6TH AND 10TH OCTOBER, AND 22ND NOVEMBER, 1960

Thomson (H.M. Inspector of Taxes)

v.

Moyse (1)

Income Tax, Schedule D—Foreign securities and possessions—Remittances—United States trust income paid into account with United States bank—Cheques drawn in dollars on United States bank in favour of United Kingdom banks—Sterling equivalent credited to accounts with United Kingdom banks—Income Tax Act, 1918 (8 & 9 *Geo*. V, *c*. 40), *Schedule D, Case* IV, *Rule* 2, *and Case* V, *Rule* 2.

The Respondent, a British subject resident in the United Kingdom but domiciled in the United States, was entitled to life interests in the United States in a trust under the will of his late father and in the residuary estate of his late mother. The income from the two life interests was paid in dollars by the executors and trustees into a New York bank.

During the years 1948 *to* 1952, *the Respondent asked one or other of two United Kingdom banks to purchase or convert into sterling the proceeds of certain cheques which he had drawn in their favour in dollars on his New York bank. The particular United Kingdom bank then sold the dollars to the Bank of England or to a person authorised by the Bank of England to purchase the dollars, and the Respondent's account at the United Kingdom bank was credited with the sterling equivalent, less charges. The cheques were cleared on the New York bank and the proceeds credited to the account of the Bank of England with the Federal Reserve Bank.*

On appeal to the Special Commissioners against assessments to Income Tax under both Cases IV *and* V *of Schedule D for the years* 1949–50 *to* 1951–52, *the Respondent contended* (a) *that the sterling sums received by him in the United Kingdom were not remittances of United States income but arose from contracts concluded by him in the United Kingdom with the United Kingdom banks, and* (b) *that his United States income was not received by him in the United Kingdom within the meaning of Case* IV *and Rule* 2 *of Case* V. *The Commissioners held that there had been no remittances of American income into the United Kingdom and that, following* Commissioners of Inland Revenue *v*. Gordon, 33 T.C. 226, *there had been no constructive remittance.*

Held, *that the transactions in question fell within Case* IV *and Case* V *of Schedule D.*

(1) Reported (Ch.D.) [1959] Ch. 464; [1958] 1 W.L.R. 1063; 102 S.J. 758; [1958] 3 All E.R. 225; 226 L.T. Jo. 113; (C.A.) [1959] Ch. 464; [1959] 2 W.L.R. 577; 103 S.J. 326; [1959] 1 All E.R. 660; 227 L.T. Jo. 203; (H.L.) [1960] 3 W.L.R. 929; 104 S.J. 1032; [1960] 3 All E.R. 684; 230 L.T. Jo. 353.

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on 23rd and 24th January, and 1st February, 1957, Stephen Dickson Moyse (hereinafter called "the Respondent") appealed against the following assessments to Income Tax made upon him under Cases IV and V of Schedule D of the Income Tax Act, 1918:

(*a*) Under Case IV for the year 1949–50 in the sum of £2,335 and for the years 1950–51 and 1951–52 in the sum of £2,500 for each year.

(*b*) Under Case V for the year 1949–50 in the sum of £3,457 and for the years 1950–51 and 1951–52 in the sum of £3,500 each year.

The question for determination was whether, in the circumstances hereinafter set out, the Respondent was liable to assessment to Income Tax under Case IV in respect of income from securities in the United States of America and under Case V in respect of income from possessions in that country.

2. At the hearing of the appeal evidence was given by the Respondent and also by the following: Mr. Fritz Brandenburger, the general manager of the banking firm of Seligman Bros., Mr. A. T. Garwood, deputy assistant manager of the overseas branch of the Midland Bank, Ltd., Mr. K. E. Winterburn, a member of the staff of the Kingsway branch of the Midland Bank, Ltd.

The following documents were produced and admitted or proved:

1. Copy of a schedule of U.S.A. cheques.
2. Specimen cheque dated 6th April, 1955, and drawn by the Respondent on the Bank of New York for $6,000 and payable to the order of the Midland Bank, Ltd.
3. The Respondent's original cheque book with the Bank of New York containing counterfoils of cheques drawn by the Respondent from 30th October, 1945, to 22nd May, 1952.
4. Copy of letter of 29th January, 1952, from the Respondent to the Midland Bank, Ltd., and the reply dated 30th January, 1952, from the Midland Bank, Ltd., to the Respondent.
5. Copy of a specimen letter of 17th February, 1949, from Seligman Bros. to the Respondent.
6. Copy of the will of Mrs. Leon Moyse dated 7th June, 1941.
7. Copies of statements of the Respondent's account with the Bank of New York from 1st April, 1948, to 1st December, 1950, and from 1st January, 1951, to 1st March, 1952.
8. Copies of correspondence between the Respondent and Seligman Bros. comprised in the following letters: 31st October, 1945, 23rd November, 1945, 12th June, 1947, 3rd December, 1947, 25th November, 1946, 24th August, 1948, 16th February, 1949, and 8th December, 1948.
9. Copy of the Respondent's account with Seligman Bros. from 30th June, 1948, to 1st January, 1950.
10. Copy of memorandum from the Foreign Exchange Committee of the Bank of England dated 15th December, 1951.

11. Specimen copy of Bank of England form T.C.8.

12. Copy of the Bank of New York statement of the Respondent's account from 1st to 16th February, 1950.

Such of the above documents as are not attached to and do not form part of this Case or are not produced in this Case are available for the use of the High Court if required.

3. The following facts were admitted or proved:

(*a*) The Respondent was born an American citizen and was and remains domiciled in the United States. At all material times the Respondent was a British subject resident in the United Kingdom.

(*b*) At all material times the Respondent was entitled to a life interest in a trust in the United States of America under the will of his father, the late Leon Moyse. He was also entitled to a life interest in the residuary estate of his mother, the late Mrs. A. D. Schmucker (widow of the said Leon Moyse), also in the United States of America. This estate was in course of administration from 19th August, 1943, until 18th April, 1951. The income from these two life interests was paid in dollars by the executors and trustees into the Respondent's account at the Wall Street, New York, branch of the Bank of New York.

It was common ground that this income, in so far as it arose in the course of the administration of the Schmucker estate, was income arising from securities out of the United Kingdom and that, in so far as it arose from that estate after the completion of the administration and from the Leon Moyse trust, it was income arising from possessions out of the United Kingdom.

(*c*) Under Section 1 (1) of the Exchange Control Act, 1947, the Respondent was prohibited from selling, without Treasury permission, the said dollars to any person other than an authorised dealer as defined by Section 42 of the Act. By Section 2 (1) of the Act, in default of Treasury permission to retain them, he was compelled to offer the said dollars for sale to such a dealer. At no time during the material period did the Respondent have permission to sell (otherwise than to an authorised dealer) or to retain the said dollar income, the subject of these appeals. Both Seligman Bros., merchant bankers, of Austin Friars in the City of London, and the Midland Bank, Ltd.. are authorised dealers.

(*d*) Between 1924 and 1926 the Respondent trained as a volunteer with Seligman Bros. From his experience in banking the Respondent was aware that a practice existed whereby a banker, provided he knew the particular customer, might be willing to purchase outright cheques in foreign currencies drawn on foreign banks. This practice of buying and selling cheques drawn in foreign currencies is a very old established one in the City of London and is part of the normal banking business of Seligman Bros. A banker might be willing to act as a principal in this manner even though he had no knowledge of the state of the customer's account at the foreign bank, provided that he was satisfied as to the customer's integrity. Otherwise he would follow the normal method used, for example, in the case of cheques drawn in this country on banks in the United Kingdom, and collect the money from the drawer's foreign bank as an agent and credit the customer's account in due course.

(*e*) Nothing, except as shown in sub-paragraph (*i*) below, was paid into the Respondent's New York bank account other than his income from the aforesaid life interests. For the period relevant to the assessments which are the subject of the appeal the Respondent drew certain cheques in dollars on his New York bank account in favour of either Seligman Bros. or Midland Bank, Ltd. (of London). A list of the said cheques, on which the dollars in question are also allocated between the two trust estates, is set forth and attached hereto marked "A" and forms part of this Case (1).

(*f*) With each of the four cheques drawn in favour of Seligman Bros. in June, August and December, 1948, and February, 1949, the Respondent sent Seligman Bros. a letter asking them to purchase the cheque and to credit his account with the proceeds in sterling and subsequently to transfer part of the proceeds to the credit of his bank account with Midland Bank, Ltd., Kingsway. The letter sent to Seligman Bros. on 24th August, 1948 (for example), stated as follows:

> "I enclose herewith my cheque on New York in the amount of $6,144 .04. Would you kindly purchase this and credit my sterling account correspondingly, under the usual advice. Upon completion of the above, kindly arrange to credit my Account with the Midland Bank Ltd Kingsway Branch, with the amount of £1,750.0.0, debiting my Account with your goodselves correspondingly. Thanking you."

The cheque dated 16th February, 1949, was enclosed with the following letter to Seligman Bros.:

> "I enclose herewith my cheque on New York in the amount of $7,266.29. Would you kindly purchase this and credit my sterling account correspondingly, u.u.a. On completion of the transaction would you kindly arrange to credit my account at the Midland Bank Ltd., Kingsway Branch, with £1600 (Sixteen hundred pounds) u.u.a. Thanking you."

(*g*) Seligman Bros. purchased the aforementioned four cheques. On receipt of each cheque Seligman Bros. wrote to the Respondent using the following form of letter:

"18, Austin Friars,
London, E.C.2.
17th February, 1949.

S. Dickson Moyse, Esq.
W.C.2.

Dear Sirs,

We confirm having SOLD for your account today:

$7,266.29 at 4.03½ producing	£1,800.16.4
for which amount, less 1/8% Exchange Commission & stamp and other charges	2. 5.2
	i.e. £1,798.11.2

We credit your account val. 18th inst. u.u.r. We have received the above foreign currency by cheque on New York.

Yours faithfully,
p.p. SELIGMAN BROTHERS"

The phrase "sold for your account" was used by Seligman Bros. in these letters because during this period Seligman Bros. believed that owing to the exchange control which was introduced under the Defence Regulations they were not permitted to deal in foreign currency on their own account but that they were required to act as

(1) Not included in the present print.

agents of the Bank of England and to sell either to the Bank of England or to persons holding a permit from the Bank of England. Consequently, the pre-war form of confirmation used by Seligman Bros., "We confirm that we have bought from you a cheque for . . .", was altered to "We confirm we have sold for your account". The dollars so purchased were either sold to the Bank of England or to a customer with a permit to purchase dollars from the Bank of England or to a person with whom Seligman Bros. were entitled to deal within the limits set by the Bank of England. The words "We credit your account val. 18th inst." were employed by Seligman Bros. in the above letter in accordance with their usual practice whenever they purchased cheques in foreign currency. The foreign currency was valued in sterling on the day following, which in fact would be the actual day upon which the currency would normally be sold by Seligman Bros. on the market or to the Bank of England. The letters "u.u.r.", meaning "under usual reserve", were always put in any statement by Seligman Bros. whenever they bought or negotiated cheques or bills of exchange. "u.u.r." in no way altered the customer's legal obligation under the contract under the Bills of Exchange Act, 1882, but drew his attention, in case he was not conversant with the legal position, to the fact that recourse could be had to him should any defect be found in the cheque when it ultimately was presented for payment. Seligman Bros. viewed the transactions with the Respondent as purchases and sales of currency. They considered that the contracts were for dollars implemented by the Respondent handing them a cheque in that currency.

(*h*) Seligman Bros. employed correspondents in New York to whom they sent all New York cheques acquired by them by registered mail every day. The New York correspondents were instructed by Seligman Bros. to carry out the following transactions in relation to each one of the Respondent's cheques: (*a*) to have the cheque cleared on the Respondent's bank in New York; (*b*) to credit the dollars to Seligman Bros.' bank account in New York; and (*c*) to pay out of Seligman Bros.' New York bank account so many dollars (as had been sold to the Bank of England) to the Federal Reserve Bank in New York for the credit of the account of the Bank of England. The procedure of the Midland Bank, Ltd., was similar to that of Seligman Bros.

(*i*) A cheque drawn in favour of the Respondent by the United States Treasury representing a refund of United States Federal Tax in the sum of $908.19 was received by the Respondent through the post from the United States Treasury and forwarded by him to Seligman Bros. on 8th December, 1948, with instructions to "convert this into sterling". This particular item was quite distinct from all the other transactions with which this appeal was concerned as the cheque was not drawn on the Respondent's bank account in New York. Nevertheless Seligman Bros. adopted the same practice and purchased this cheque crediting the Respondent with the sterling equivalent.

(*j*) On 16th June, 1949, the Respondent drew a cheque on his New York bank account in favour of the Midland Bank, Ltd., in the same manner as previously he drew cheques in favour of Seligman Bros. From and after this date the Respondent used the Midland Bank, Ltd., for all these transactions, which during the relevant period were as follows:

Date of Cheque	*Sum in Dollars*	*Sterling Credited*		
		£	*s.*	*d.*
16th June, 1949	2,480	613	17	2
11th August, 1949	6,088	1,506	18	5
17th November, 1949	2,730	972	18	4
24th January, 1950	2,800	997	17	1
9th March, 1950	6,500	2,316	9	1
22nd June, 1950	4,300	1,532	8	2
15th September, 1950	4,800	1,710	12	3
15th January, 1951	5,400	1,924	8	11
16th April, 1951	19,000	6,771	3	9
17th September, 1951	8,500	3,029	3	10
23rd October, 1951	3,500	1,247	6	5
29th January, 1952	5,700	2,045	9	10

No copies of the Respondent's letters which accompanied these cheques to the Midland Bank were available except a letter dated 29th January, 1952, from the Respondent to the Midland Bank as follows:

> "I am enclosing herewith my cheque on New York in the amount of $5,700 and shall be glad if you will credit my account with the sterling equivalent."

On 30th January, 1952, the Midland Bank wrote to the Respondent as follows:

> "We are in receipt of your letter of the 29th inst. enclosing your cheque on New York for $5,700, and your account has today been credited with the proceeds, amounting to £2,045 9*s*. 10*d*. This is made up as follows:—

$5,700 at 2·78$\frac{5}{16}$ths	£2,048 1*s*. 1*d*.
Less Commission	£ 2 11*s*. 3*d*.
	£2,045 9*s*. 10*d*."

(*k*) Neither the firm of Seligman Bros. nor Midland Bank, Ltd., was aware of the source of the Respondent's funds lying in his New York bank account nor did either of the two English banks make any enquiry as to the extent of his resources in the United States. The Respondent had been acquainted with the general manager of Seligman Bros. for some 30 years. Seligman Bros. would not purchase a cheque drawn on a foreign bank if the person desiring to sell the cheque was not well known to them as a person of integrity.

(*l*) Seligman Bros. never made returns to the Exchange Control Committee of the Bank of England showing individual items relating to the Respondent. The cheques purchased from the Respondent were included with other cheques in the periodical returns which Seligman Bros. as an "authorized bank" were required to make to the Bank of England. Such returns were in a global sum and did not show individual items. A similar practice was followed by the Midland Bank, Ltd.

(*m*) Midland Bank, Ltd., bought cheques drawn on New York and in such cases would credit the account of the customer the same day, whereas in cases where they were clearing a cheque (which did not arise in the case of the Respondent) it would be a matter of some days before the customer got the credit.

4. It was contended on behalf of the Respondent:

(*a*) that the sums received by the Respondent in the United Kingdom arose from contracts concluded in the United Kingdom between the Respondent and the respective bank, and that these sums were not remittances of United States income;

(*b*) that the Respondent's United States income was not property received by him in the United Kingdom within the meaning of Case IV and Rule 2 of Case V;

(*c*) that the source of the sterling credited to the Respondent's London bank accounts was the sale and purchase as between the Respondent and the particular one of the two United Kingdom banks in each transaction;

(*d*) that the provisions of the Finance Act, 1953, had no bearing upon the years under appeal;

(*e*) that the appeal should be allowed and the assessments should be discharged.

5. It was contended on behalf of H.M. Inspector of Taxes, the Appellant in this case:

(*a*) that the amounts of sterling credited to the Respondent as a result of the cheque transactions in so far as attributable to the estate of the Respondent's mother during the period of administration were sums received in the United Kingdom, within the meaning of Case IV, Rule 2, of Schedule D;

(*b*) that the amounts of sterling credited to the Respondent as a result of the cheque transactions in so far as attributable to the income from the estate of the Respondent's mother after the period of administration or to the income from the estate of the Respondent's father were sums received in the United Kingdom within the meaning of Case V, Rule 2, of Schedule D;

(*c*) that the appeal should fail and that the assessments should be confirmed.

6. The following cases were referred to:

Scottish Mortgage Co. of New Mexico v. *McKelvie*, 2 T.C. 165;
Bartholomay Brewing Co. v. *Wyatt*, 3 T.C. 213;
Nobel Dynamite Trust Co. v. *Wyatt*, 3 T.C. 224;
San Paulo Railway Co. v. *Denver*, 43 W.R. 109;
Norwich Union Fire Insurance Co. v. *Magee*, 3 T.C. 457;
Universal Life Assurance Society v. *Bishop*, 4 T.C. 139;
Standard Life Assurance Co. v. *Allan*, 4 T.C. 446;
Gresham Life Assurance Society, Ltd. v. *Bishop*, 4 T.C. 464;
Scottish Widows' Fund Life Assurance Society v. *Farmer*, 5 T.C. 502;
Scottish Provident Institution v. *Farmer*, 6 T.C. 34;
Pickles v. *Foulsham*, 9 T.C. 261;
In Re *Farrow's Bank, Ltd.*, [1923] 1 Ch. 41;
Hall v. *Marians*, 18 T.C. 148;
Kneen v. *Martin*, 19 T.C. 33;
Timpson's Executors v. *Yerbury*, 20 T.C. 155;
Carter v. *Sharon*, 20 T.C. 229;
Paget v. *Commissioners of Inland Revenue*, 21 T.C. 677;
Wild v. *King Smith*, 24 T.C. 86;
Trinidad Lake Asphalt Operating Co., Ltd. v. *Commissioners of Income Tax for Trinidad and Tobago*, [1945] A.C. 1;
St. Aubyn and Others v. *Attorney-General*, [1952] A.C. 15;
Commissioners of Inland Revenue v. *Gordon*, 33 T.C. 226.

7. We, the Commissioners who heard the appeal, gave our decision in the following terms. The question we had to answer was whether on the facts of the present case—and we had heard evidence not only from the Respondent but also from eminent bankers—the Respondent was liable to tax under Cases IV and V of Schedule D in respect of income from foreign securities and foreign possessions. The Respondent had a bank account in New York, and into that bank account there was credited the whole of his American income. The Respondent gave no instructions to his New York bank to remit sums of money to him in the United Kingdom. From time to time the Respondent drew cheques in dollars on his New York bank account in favour of Seligman Bros. or the Midland Bank, Ltd., which he asked those banks to purchase from him. At the time of each such request the Respondent instructed the purchasing bank to place the proceeds in sterling to the credit of his United Kingdom account. The Respondent's requests and instructions were in every case duly complied with. It seems clear to us that neither Seligman Bros. nor the Midland Bank, Ltd., were acting as a collecting agent on the Respondent's behalf but in every case acted as a principal, and we so found.

Evidence had also been given of the transactions which took place between the purchasing banks and the Bank of England and the correspondents in the United States. Having regard to that evidence, which we accepted, and the arguments that had been addressed to us, we held that no remittances of American income had been brought into the United Kingdom. Furthermore, on the reasoning employed by Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon* (1), we did not accept the view that there had been a constructive remittance. Our decision applied equally to the Case IV assessments as to the Case V assessments. Accordingly, we held that the appeal succeeded in principle and we left figures to be agreed between the parties.

8. The parties having subsequently agreed the figures we, on 26th March, 1957, determined the appeal by reducing the Case IV assessment for the year 1949–50 to £263 and by discharging all the other assessments.

9. The Appellant, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1952, Section 64, which Case we have stated and do sign accordingly.

10. The point of law for the opinion of the High Court is whether, on the facts found by us and hereinbefore set forth, there was evidence upon which we could properly arrive at our decision, and whether on the facts so found our determination of the appeal was correct in law.

H. G. Watson }
F. Gilbert } Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House,
94–99, High Holborn,
London, W.C.1.
5th February, 1958

The case came before Wynn-Parry, J., in the Chancery Division on 17th, 18th and 22nd July, 1958, when judgment was given against the Crown, with costs.

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(1) 33 T.C. 226.

Mr. John Foster, Q.C., and Mr. Alan Orr appeared as Counsel for the Crown, and Mr. F. N. Bucher, Q.C., and Mr. P. J. Brennan for the taxpayer.

Wynn-Parry, J.—The Respondent in this case was entitled to payment of income from: (*a*) the estate of his father, and (*b*) the estate of his mother, both estates being situated in the United States of America. The State where they are situate is not identified in the Case, but it is agreed that ascertainment of that State is not material. Payments of such income were periodically made by the trustees of the two estates into an account in the Respondent's name in the Bank of New York. The Respondent is and was at all material times domiciled in the United States of America. The Respondent is entitled to rely on the provisions of Case IV and Case V of Schedule D of the Income Tax Act, 1918, which is the relevant Statute. During the administration of the estate of his mother the relevant Case is Case IV; after completion of that administration, so far as his mother's estate is concerned, and over the whole period in question, so far as his father's estate is concerned, the relevant Case is Case V.

The elements of the transaction to be considered are these. (*a*) The Respondent drew cheques in dollars on the Bank of New York in favour of one or other of his bankers in this country, Seligman Bros. or the Midland Bank, Ltd. He requested them to convert the proceeds into sterling or to purchase the cheque. (*b*) His English bankers, as authorised dealers under the Exchange Control Act, 1947, then sold the amount of dollars specified in the respective cheques to the Bank of England and credited to his account an amount in sterling equivalent at the then rate of exchange to the amount of dollars specified in the cheques. (*c*) His bankers then by registered mail presented his cheques to the Bank of New York. The Bank of New York honoured the cheques and, on the instructions of his English bankers, transferred the amount of dollars in question in each case to the account of the Bank of England with the Federal Reserve Bank of the United States.

On those facts the question arises, do those transactions fall within Case IV or Case V of Schedule D of the Income Tax Act, 1918? It is to be remembered that the charge is levied under Schedule D, Paragraph (1) (*a*) (i), and that Case IV and Case V of that Schedule are relieving provisions. It follows in my view that they should not be used to extend the liability of the taxpayer.

Mr. Bucher contends that the transactions between the Respondent and his English bankers is reducible to this: (1) I give you a cheque drawn on the Bank of New York in dollars; (2) you give me the sterling equivalent at the prevailing rate of exchange; (3) my cheque on the Bank of New York is the consideration for your payment to me of that sterling sum; (4) if the Bank of New York meet my cheque the transaction is finished; but if they do not do so for lack of sufficient funds, then you can come upon me for the amount of sterling which you have paid to me. In other words, it can be said that this is a contract for the purchase of sterling made in England and to be performed in England, and it is no part of the contract that dollars are to be brought into England. Further, there is no evidence that dollars were brought into England, but, if they were brought in, they were so brought in not as the property of the Respondent but as the property of the Bank of England. In my view this reasoning is correct.

It is further said: Income Tax is a tax on sterling; suppose that between the date of the giving of the cheque drawn on the Bank of New York by the Respondent to his English bankers there had been a fluctuation in the

(Wynn-Parry, J.)

rate of exchange, then it must follow that when the cheque drawn by the Respondent was presented by the English bankers to the Bank of New York it would not produce a sum in sterling equivalent to the sum which had been paid by the English bankers on taking over (to use a neutral term) the Respondent's cheque drawn on the Bank of New York. This, it is said, and I think rightly so, emphasises and supports the view of the Special Commissioners that, however the transaction is regarded, the English bankers acted as principals and not as agents.

Mr. Foster strongly contested this conclusion of the Special Commissioners, but, having carefully considered their findings in paragraph 7 of the Case, which I regard as findings of primary facts, and applying the test applied by Lord Radcliffe in *Edwards* v. *Bairstow* (1), I am not prepared to say that the conclusion of fact at which the Special Commissioners arrived was contrary to the only reasonable possible conclusion. Apart from the statement of primary facts in paragraph 7 of the Case, I observe that the Special Commissioners had the benefit of considering a large number of documents which do not form part of the Case, though they were available for examination, and of hearing witnesses examined and cross-examined. In those circumstances, it appears to me that I should hesitate long before I interfere with their conclusion that the English bankers acted as principals, particularly as it appears to me to be the proper conclusion on my analysis of the facts.

Upon that view of the facts it appears to me that the result must be the same whether the case is considered under Case IV or Case V. I do not, for myself, feel upon that issue that it is necessary to embark upon any detailed review of the authorities.

So far as Case IV is concerned, I think I need do no more than refer to *Paget* v. *Commissioners of Inland Revenue*, 21 T.C. 677. So far as material the headnote reads as follows:

> "Miss Paget held certain Hungarian bearer bonds the interest coupons of which were payable in London in sterling and in certain other countries in the respective currencies of those countries. By a decree dated 22nd December, 1931, the Hungarian Government directed that the interest on the bonds should not be paid direct to creditors but that its equivalent in pengos should be deposited with the Hungarian National Bank and placed in a foreign creditors' fund, out of which bondholders might obtain payment of interest coupons in pengos, but only for use for certain purposes in Hungary. Miss Paget did not obtain payment in this way, but sold certain coupons, after they had fallen due, through agents or coupon dealers in London, who deducted Income Tax on payment to her of the proceeds of such sales. Miss Paget also held certain bearer bonds of the Kingdom of Jugoslavia the coupons of which were payable in American dollars in New York. On 24th July, 1933, the Jugoslavian Government gave notice of its inability to pay the interest in full and offered to meet the coupons maturing from 1st November, 1932, to 1st May, 1935, either by payment in 'blocked' dinars in Belgrade or by payment of 10 per cent. of their face value in dollars and by the issue of funding bonds for the balance. Miss Paget did not accept this scheme but in September, 1933, sold the interest coupons due on 1st November, 1932, and 1st May, 1933, through agents or coupon dealers in London, who deducted Income Tax on payment to her of the proceeds of such sale. On an appeal against assessments to Sur-tax for the year 1932–33 and 1933–34 the Special Commissioners decided (*a*) that the deposit of pengos with the Hungarian National Bank constituted performance of the obligation to pay interest on the Hungarian bonds and the proceeds of the coupons falling due at the respective dates of deposit represented interest arising to Miss Paget and must be included in her total income for Sur-tax purposes".

Then they held differently as regards the Jugoslavian bonds. On appeal to the Court it was held that in neither case did the proceeds of sale of coupons

(1) 36 T.C. 207, at p. 229.

received by Miss Paget constitute income for Income Tax purposes. In the course of his judgment in the Court of Appeal Sir Wilfrid Greene, M.R., having considered the argument that the case fell within Schedule C and having rejected it, said, at pages 691–2 (1):

> "The Appellants' main argument, therefore, fails. But they claimed, in the alternative, that the purchase price of the coupons was 'income arising from securities out of the United Kingdom', and was charged with Income Tax under Case IV of Schedule D. There are two sub-divisions of this argument. The first is that the purchase price was taxable by deduction under Miscellaneous Rule 7 of Schedule D, which applies to certain interest, etc., the Rules of Schedule C already discussed. The second is that Miss Paget was directly assessable in respect of the purchase price. The latter of these two contentions can be disposed of quite shortly. The purchase price received by Miss Paget was not income arising from the bonds at all. It arose from contracts of sale and purchase whereby Miss Paget sold whatever right she had to receive such income in the future, as well as her right to take what was offered by the defaulting debtors. It is, in my opinion, quite impossible to treat this as equivalent in any sense to 'income arising from' the bonds."

Lord Romer also rejected the argument that the case fell within Schedule C, and at pages 699–700 (1), he said:

> "In these circumstances, the only question to be decided is whether the proceeds of sale of a right to receive income in the future can be treated as income for the purpose of the Income Tax Acts. The question thus broadly stated plainly admits of but one answer, and that answer must be in the negative. The proceeds of the sale for a lump sum of an annuity, for instance, are capital in the hands of the vendor and not income. And this is true even when the subject of the sale is not the annuity for its whole duration, but the right to be paid the annuity for a number of years, or even for one year. Nor is it any the less true because the purchaser will pay less for an annuity that will be subject to deduction of Income Tax in his hands than he would pay for a tax free annuity. Nor is it any the less true because in many cases the net income when paid to the purchaser is not income in his hands. In the case, for instance, of a man carrying on the business of dealing in coupons, the sum collected by him on cashing a coupon will be merely a trade receipt and not income. Tax may have been deducted on payment of the coupon, but for Sur-tax purposes the interest represented by the coupon cannot be regarded as forming part of the total income of anybody. This is a position that frequently occurs. The net income received by a trustee under a trust for accumulation of income is a case in point. But it is easy to conceive cases which, while appearing at first sight to be sales for money or money's worth of a right to receive income in the future, are not in reality sales at all. If a man possessed of a coupon representing interest payable under deduction of tax hands it to his tailor as a convenient method of paying for a suit of clothes, the tailor, when cashing the coupon, may well be considered as doing so on behalf of his customer, and then paying himself out of the proceeds. The customer in such a case could not avoid returning the gross amount of the interest as part of his total income for Sur-tax purposes. If, on the other hand, the tailor were to accept the coupon in full discharge of his account, the interest that it represents would not, when paid, be income of the customer. Still less would the suit of clothes form part of his income."

On the reasoning of those passages and having regard to the view which I have taken of the transactions in this case, I conclude that none of the transactions in question fall under Case IV.

So far as Case V is concerned, the transactions in the present case appear to me to fall within the decision in *Carter* v. *Sharon,* 20 T.C. 229. In the case of income from foreign possessions it must be shown either that the taxpayer received it in this country or that he was entitled to it at the time it arrived in this country. There is a passage in the speech of Lord Cave, L.C., in *Pickles* v. *Foulsham,* 9 T.C. 261, at page 288, to which I would desire to refer. Having stated Rule 2 of Case V, Lord Cave said:

(1) 21 T.C.

(Wynn-Parry, J.)

"From this Rule it follows that, in order to be taxable under Case V, an income arising from possessions out of the United Kingdom must be received in the United Kingdom either (*a*) from remittances payable in the United Kingdom, or (*b*) from property imported into the United Kingdom, or (*c*) from money or value arising from property not imported, or (*d*) from money or value received on credit or on account of remittances, property, money, or value brought or to be brought into the United Kingdom. The word 'remittances' (which recalls the expression 'remittances from thence' in the corresponding Rule contained in the Act of 1842) clearly refers to money remitted into the United Kingdom from outside. The other branches of the Rule all refer to property, money or value imported or brought into the United Kingdom, and there are no words in the Rule which can comprise money arising and payable here. If so, the inference is that money so arising and payable is outside the Rule, and so is not taxable under Case V at all."

I cite that passage in support of the proposition, which I do not see can be denied, that in order for Case V to operate the dollars in question in this case must be shown to have been brought into the United Kingdom. I have, however, held that it is not shown that any dollars were brought into the United Kingdom as a result of the transactions in question. The only observation I would add is upon a passage from the speech of Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon,* 33 T.C. 226, at pages 237–8, where his Lordship is reported as saying this, in dealing with an argument put forward by Mr. Tucker which he abandoned in the course of the case:

"There might have been another difficulty in Mr. Tucker's way had he persisted in this argument. To succeed on it, it would have been necessary for him to satisfy us that the 'money or value arising from property not imported' need not itself be brought into the United Kingdom. It is plain from the wording of the Rule that sums cannot be said to be received in the United Kingdom from the first, second or fourth sources unless the source was itself payable in, imported into, or brought or to be brought into the United Kingdom. It would be strange if the sums received in the United Kingdom from the third source were within the Rule although the money or value was not imported or to be imported into the United Kingdom. It would be all the more strange since sums received in the United Kingdom from the fourth source—*i.e.,* 'money or value so received on credit or on account in respect of . . . *such* money or value' (*i.e.,* the third source) —could not bring the Rule into operation unless *such* money or value had been brought or was to be brought into the United Kingdom. I incline therefore, to the view that to succeed under the Rule in respect of sums received from the third source the Crown must establish that the money or value had been brought or was to be brought into the United Kingdom."

It is true that the point there dealt with by Lord Cohen and the opinion which he said he inclined to express was expressly reserved by Lords Morton and Tucker, though Lord Normand adopted the whole of Lord Cohen's speech. I propose for the purposes of this judgment to assume that what Lord Cohen said is, strictly speaking, to be regarded as *obiter,* but, accepting that basis, I would respectfully adopt the language of Lord Cohen as my own for the purposes of this judgment, because the analysis which he there makes appeals, if I may say so with respect, to my mind.

Mr. Foster relied strongly on *Scottish Mortgage Co. of New Mexico* v. *McKelvie,* 2 T.C. 165. That case has been the subject of both comment and criticism. Where it has been considered to have been rightly decided, it has been regarded as a case turning on its very special facts. Certainly it has been said that it is not to be regarded as a starting point from which to draw new inferences. Even more so, I cannot regard it as a satisfactory authority for the purpose of cutting down the relieving effect of Case IV or Case V.

During the arguments a great many authorities were referred to and carefully and exhaustively examined by Mr. Foster. I am grateful to him, and indeed also to Mr. Bucher, for the care which was bestowed upon the authorities, and I intend no disrespect to either of them, particularly to Mr. Foster,

for not having traversed them seriatim. As I hope will be seen from my judgment, my decision really first and last turns on the analysis of the transactions which I have made; and upon that analysis, and having regard to what I conceive to be the effect of Cases IV and V, then, under whichever Case the matter can be said to fall, no dollars representing the income of the Respondent were, over the material period, brought into the United Kingdom.

For these reasons, in my view the appeal must be dismissed, with costs.

The Crown having appealed against the above decision, the case came before the Court of Appeal (Jenkins, Romer and Pearce, L.JJ.) on 16th, 19th and 20th February, 1959, when judgment was reserved. On 9th March, 1959, judgment was given against the Crown, with costs (Pearce, L.J. dissenting).

Mr. John Foster, Q.C., and Mr. Alan Orr appeared as Counsel for the Crown, and Mr. F. N. Bucher, Q.C., and Mr. P. J. Brennan for the taxpayer.

Jenkins, L.J.—This is an appeal by the Crown from a judgment of Wynn-Parry, J., dated 22nd July, 1958, affirming a determination of the Special Commissioners in favour of the Respondent, Mr. Stephen Dickson Moyse, on his appeal against assessments to Income Tax made upon him under Cases IV and V of Schedule D of the Income Tax Act, 1918, for the years 1949–50, 1950–51 and 1951–52. The assessments under Case IV were made in respect of income from securities in the United States of America and those under Case V were made in respect of income from possessions in the United States of America.

The Respondent was born an American citizen and remains domiciled in the United States of America, though he has at all material times been a naturalised British subject and resident in the United Kingdom. He was at all material times entitled to a life interest in a trust in the United States of America under the will of his father, the late Leon Moyse, and also to a life interest in the residuary estate of his mother, the late Mrs. A. D. Schmucker, in the United States of America. The mother's estate was in course of administration from 19th August, 1943, to 18th April, 1951, and it is agreed that under Section 30 of the Finance Act, 1938, the income arising from this estate in the course of administration was for Income Tax purposes to be deemed to be income from securities out of the United Kingdom, and as such assessable under Case IV of Schedule D to the limited extent prescribed by Rule 2 of the Rules applicable to that Case. It is also agreed that the income arising from the Respondent's life interest under his father's will and the income arising from his mother's estate after completion of the administration was income arising from possessions out of the United Kingdom, and as such assessable under Case V of Schedule D, but only to the limited extent prescribed by Rule 2 of the Rules applicable to that Case.

I should next refer to the relevant provisions of the Rules applicable to Cases IV and V of Schedule D. Rules applicable to Case IV:

> "1. The tax in respect of income arising from securities in any place out of the United Kingdom shall be computed on the full amount thereof arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not".

That, I think, is all I need read of Rule 1. Then Rule 2:

(Jenkins, L.J.)

"The foregoing rule shall not apply—(a) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom. . . . The tax in any such case shall be computed on the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom in the year of assessment without any deduction or abatement."

Then the Rules applicable to Case V:

"1. The tax in respect of income arising from possessions out of the United Kingdom . . . shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case I., whether the income has been or will be received in the United Kingdom or not",

and I think that is all I need read of that Rule. Then Rule 2:

"The tax in respect of income arising from possessions out of the United Kingdom, other than income to which rule 1 applies, shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom, on an average of the three preceding years as directed in Case I., without any deduction or abatement other than is therein allowed."

Then Rule 3:

"Rule 1 of the foregoing rules shall not apply—(a) to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom . . . and in such cases the computation shall be made in accordance with rule 2."

The income from the Respondent's two life interests was, during the period relevant to the present appeal, paid in dollars by the executors and trustees into the Respondent's account at the Wall Street branch of the Bank of New York. With one exception, to which I will later refer, nothing except the Respondent's income from the two life interests was paid into his New York bank account. Under Sections 1 (1) and 2 (1) of the Exchange Control Act, 1947, the Respondent was prohibited, save with Treasury permission which he did not have at any material time, from selling the dollars credited to his New York account to any person other than an authorised dealer as defined by Section 42 of the Act and also from retaining them, and was bound to offer them for sale to an authorised dealer. In these circumstances the Respondent effected in London, at first with Seligman Bros. and later with the Midland Bank, Ltd., both being English banks and authorised dealers under the Exchange Control Act, 1947, the transactions giving rise to the disputed assessments. These transactions are described in great detail in the Case stated by the Special Commissioners, who received oral evidence and considered a large number of documents, and I need not repeat the facts at length.

The essential features common to all the transactions in question appear to have been these. (i) The Respondent drew a cheque on his New York bank account for a specified sum in U.S. dollars in favour of the English bank, i.e., Seligman Bros. or the Midland Bank, Ltd. (ii) The Respondent delivered this cheque to the English bank with a request that they should purchase it for the sterling equivalent of its amount in dollars at the current rate of exchange. (iii) The English bank acceded to this request, sold a like amount of dollars to the Bank of England or some other permitted purchaser, and credited the Respondent's account with them in London with the sterling equivalent of the amount of the cheque in dollars at the rate of exchange ruling on the day following their confirmation of the purchase, which would normally be the

date of their sale to the Bank of England or on the permitted market of the like amount of dollars. (iv) The English bank sent the cheque by registered mail to their correspondents in New York with instructions (*a*) to have the cheque cleared on the Respondent's New York bank account, (*b*) to credit the English bank's New York bank account with the resulting dollars, and (*c*) to pay out of the last-mentioned bank account the amount of dollars which had been sold to the Bank of England to the Federal Reserve Bank in New York for the credit of the account of the Bank of England.

The Special Commissioners' findings—to a great extent findings of fact—in regard to the character and effect of these transactions are summarised in paragraph 7 of the Case Stated, from which I quote the following:

> "We, the Commissioners who heard the appeal, gave our decision in the following terms. The question we had to answer was whether on the facts of the present case—and we had heard evidence not only from the Respondent but also from eminent bankers—the Respondent was liable to tax under Cases IV and V of Schedule D in respect of income from foreign securities and foreign possessions. The Respondent had a bank account in New York, and into that bank account there was credited the whole of his American income. The Respondent gave no instructions to his New York bank to remit sums of money to him in the United Kingdom. From time to time the Respondent drew cheques in dollars on his New York bank account in favour of Seligman Bros. or the Midland Bank, Ltd., which he asked those banks to purchase from him. At the time of each such request the Respondent instructed the purchasing bank to place the proceeds in sterling to the credit of his United Kingdom account. The Respondent's requests and instructions were in every case duly complied with. It seems clear to us that neither Seligman Bros. nor the Midland Bank, Ltd., were acting as a collecting agent on the Respondent's behalf but in every case acted as a principal, and we so found. Evidence had also been given of the transactions which took place between the purchasing banks and the Bank of England and the correspondents in the United States. Having regard to that evidence, which we accepted, and the arguments that have been addressed to us, we held that no remittances of American income had been brought into the United Kingdom. Furthermore, on the reasoning employed by Lord Cohen in *Commissioners of Inland Revenue v. Gordon* (1), we did not accept the view that there had been a constructive remittance."

As to the sums sought to be assessed under Case IV of Schedule D as income received in this country from the mother's estate, the Respondent's assessable income from this source is limited to "the full amount . . . of the sums which have been, or will be, received in the United Kingdom in the year of assessment. . . ." I take it to be plain beyond argument that in order to fall within this description the sum sought to be assessed must not only be received in the United Kingdom but must also be income, and furthermore must be "income arising from securities in any place out of the United Kingdom" within the meaning of Case IV of Schedule D. This means, I think, that the income in question must originate abroad as the product of securities outside the United Kingdom and be received in the United Kingdom from abroad. Here there is no doubt that income arose to the Respondent from his mother's residuary estate under the New York trust to which it was subject and was received by the Respondent as and when it was paid into his New York bank account by the executors or trustees. But it was received by him in New York and not in the United Kingdom and consequently did not attract tax. To make it taxable under Case IV it must be shown to have been in some way brought into the United Kingdom and to have been there received by, or to the order of, the Respondent.

Similar considerations apply to the sums sought to be assessed under Case V as income received in this country from the mother's estate since the

(1) 33 T.C. 226.

(Jenkins, L.J.)

completion of the administration and from the father's estate, or in other words as income from possessions of the Respondent out of the United Kingdom, though the language of Rule 2 of the Rules applicable to Case V differs from that of Rule 2 of the Rules applicable to Case IV, in that it describes the assessable income as the full amount of the actual sums annually received in the United Kingdom from a number of specified sources of which the first, and the only one I need consider at this stage, is "from remittances payable in the United Kingdom". That expression appears to me to be directed to any sum belonging to the taxpayer, and being income from some foreign possession of his, which is brought to the United Kingdom from a place outside the United Kingdom by means of a remittance entitling the taxpayer (or some other person to his order) to receive payment in the United Kingdom of the sum in question.

In each of the transactions under review the only sum received by the Respondent was the purchase price in sterling of the cheque sold to the English bank, which purchase price was paid to the Respondent in London, pursuant to a contract made in London, by the English bank. The Commissioners held, and there was in my view ample evidence upon which they could hold, that in each case the English bank acted as a principal and not as a collecting agent, and in my view it would be wrong for us to disturb that finding. The question with respect to each transaction must then be whether by drawing the dollar cheque on his New York account in favour of the English bank and selling it to the English bank for sterling in London, the English bank acting as principal and not as collecting agent, the Respondent received in the United Kingdom out of his bank account in New York the sums of dollars specified in the cheque, converted into sterling at the appropriate rate of exchange. Unless constrained by authority to hold otherwise I would answer that question in the negative.

It is clear that in actual fact none of these transactions involved the transfer of any sum from the Respondent's bank account in New York to, or to the order of, the Respondent in the United Kingdom. The price in sterling received by the Respondent for the cheque from the English bank in London clearly did not come from the Respondent's bank account in New York. The amount in dollars received by the English bank on presenting the cheque for payment at the Respondent's bank in New York did of course come from his account with that bank. But it was received at that bank in New York by the English bank and not by or to the order of the Respondent in the United Kingdom. It was no part of the bargain that the amount so received by the English bank should be brought into the United Kingdom, and there is no evidence that it was so brought. If it was, it came to this country as money in which the Respondent had no interest whatever, and which accordingly could not be his income for tax purposes.

But Mr. Foster, for the Crown, submitted that in each transaction the Respondent, by drawing the dollar cheque on his account in New York in favour of the English bank and selling it to the English bank for the equivalent in sterling of its amount in dollars, brought to and received in the United Kingdom from his bank account in New York the sum in dollars specified in the cheque or the equivalent of that sum in sterling. If my analysis of the facts is correct it seems to me, unless I am compelled by authority to hold otherwise, that this view cannot be supported. I would say that the amount received by the Respondent in each case, though no doubt received by him in the United Kingdom, lacked the essential character of a sum brought to the United Kingdom from New York, and neither the sterling sum in question nor the

cheque for which it was paid would appear to me to have constituted a remittance from New York payable in the United Kingdom.

Mr. Foster referred us to a number of authorities. In *Timpson's Executors* v. *Yerbury,* 20 T.C. 155, payments by way of gift were made by the taxpayer to her children by means of bills of exchange drawn on London and paid for out of the income standing to her credit in her account with the trustees of a New York trust under which she had a life interest. It was held in the Court of Appeal that the amounts so remitted remained her income up to the date of the encashment of the bills of exchange in the United Kingdom, on the ground that the amounts of the bills represented incomplete gifts which she could have revoked at any time before the bills were cashed, and consequently that she was taxable on those amounts as income to which she was entitled when it reached the United Kingdom. I do not see how this case advances the Crown's argument. It is plain that there were actual remittances of income from New York to the United Kingdom, payable in the United Kingdom, the only question being to whom the income so remitted belonged. Conversely, in *Carter* v. *Sharon,* 20 T.C. 229, the foreign trust in question was governed by Californian law, under which the property in a sum remitted to the taxpayer's daughter became the absolute property of the daughter on the posting of the draft in California, with the result that the income brought to the United Kingdom was not income to which the taxpayer was entitled when it reached the United Kingdom. This decision appears to me to assist the Respondent on the hypothesis that the proceeds of the cheques in the present case ultimately reached the United Kingdom, but to afford no support to the Crown's argument. As in *Timpson's Executors* v. *Yerbury* there was clearly an actual remittance from the place abroad to the United Kingdom of the amount of the draft which was payable in the United Kingdom.

Some reliance was placed by Mr. Foster on *Scottish Mortgage Co. of New Mexico* v. *McKelvie,* 2 T.C. 165, where a company formed for the purpose of borrowing money in this country and investing it abroad at higher rates of interest was treated for the purposes of Case IV of Schedule D as having received in this country from America sums which, though in fact raised in this country by the issue of shares and debentures and from depositors, it dealt with in its books here as profits from its American investments and applied as such. That case, now of doubtful authority, was used by Mr. Foster for the purpose of extending to mere book entries the proposition, which (within due limits) I fully accept, that funds can for tax purposes be considered as having been remitted to this country from abroad where the transaction is carried out by debiting a foreign account and crediting an account here by means of a cheque, bill or draft in accordance with ordinary banking procedure, without any actual or physical transfer of currency to this country from abroad.

For the same purpose Mr. Foster referred us to *Gresham Life Assurance Society, Ltd.* v. *Bishop,* 4 T.C. 464, where an assurance society included in its yearly statement of accounts in this country interest received abroad but not in fact remitted to this country, and such interest was held not to have been received in the United Kingdom within the meaning of Case IV. In particular Mr. Foster relied on the following passage from the speech of Lord Lindley, at page 476:

> "My Lords, I agree with the Court of Appeal that a sum of money may be received in more ways than one, *e.g.,* by the transfer of a coin or a negotiable

(Jenkins, L.J.)

> instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the Statute which your Lordships have to interpret."

But these observations are subject to this important qualification, conveyed by Lord Lindley in the immediately following words:

> "But to constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money. A mere entry in an account which does not represent such a transaction does not prove any receipt, whatever else it may be worth."

I would also refer to this passage from the speech of Lord Halsbury, L.C., at pages 472–3 [1] :

> "Now, here the money has not actually been received in this country. It is to be observed that the Legislature has assumed, by the distinction which it has made between the mode of ascertaining the amount payable generally upon the balance of gains and profits and the amount taxable in respect of the interest payable upon foreign investments, that it had ear-marked that sum and made it subject to distinct and peculiar incidents. The difficulty of identifying the actual sum is no limit on the enactment. The Legislature must be supposed to have contemplated the possibility of drawing a distinction between money received in this country and money accounted for or credited in account. If it were not for the difficulty of ear-marking money I should think no one would have any doubt that the money must be received in this country to bring it within the words of the statute. If it were not money but some commodity, say tobacco, which a trader carrying on business in London and Paris was accounting for to his London house, no one would say that, though the Paris tobacco was credited in account as a set-off against some expense or something that the supposed London firm had to set-off against the same claim, and that as the London firm was paid by the Paris tobacco, therefore the tobacco was liable to the import duty on tobacco because it was taken into account in the books of the London firm. In no way that I can give any reasonable interpretation to has the money reached this country or been received in this country. It, like the tobacco in the case suggested, has not been imported, and if the Legislature had intended that bringing it into account was to be equivalent to its being received, it would have been easy to say so. It cannot be said that the use of artificial meanings to be attached to ordinary language is either unknown or unusual in legislation; and if it was intended to make this a special subject of taxation to be taxed whenever and wherever an equivalent amount was credited or booked or in any other way recognised as having come under the dominion of the owner in this country, nothing could have been easier than to enact it in plain terms."

Lord Macnaghten said, at page 473:

> "I do not understand what is meant by constructive receipt in such a case as this, or how any sums can be said to have been received in the United Kingdom unless they have been brought to the United Kingdom, or unless there has been a remittance 'payable in the United Kingdom', to borrow the language of the rule applicable to the fifth case."

And, at page 474:

> "As my noble and learned friend Lord Robertson, when Lord President, observed in the case of the Provident Scottish Institution [2], 'Every man and every company having foreign or colonial investments of course knows of the interest arising from them, takes note of it, and enters it in any statement of affairs which may require to be made up.' But that, as I think, and as the Lord President thought, is a very different thing from bringing the interest home—a very different thing from the receipt of the money here, either in specie or as represented by a remittance payable in this country."

Lord Macnaghten went on to distinguish the *New Mexico* case [3] as a very special case.

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(1) 4 T.C. (2) 3 T.C. 443, at p. 456. (3) 2 T.C. 165.

Lord Shand, at pages 474–5 [1], said this:

> "It is true that the appellants received the interest on their foreign securities by the hands of their agents abroad. But I think it is equally true that, as they left that interest where it was gained, it was never received in this country. When it was entered in the Company's balance sheet in order to the ascertainment of the profits of the year, it was so entered as estate which had not been received in England, but as property belonging to the Company which they acquired abroad, which had not been brought home or received here, but which was part of their foreign assets. Money or securities in that position was properly taken into account in the ascertainment of the year's profits, not because it had been received in England, but because although not so received it was part of assets of value which the Company had acquired and held abroad. In the Scottish case of the Investment Company of New Mexico, the *species facti* was different, for there the Company treated the money as received in this country, and merely saved themselves the expense of cross remittances. It appeared there that the Company was not entitled to divide the money earned abroad unless it was received as profits in this country. It was treated as so received merely to avoid the expense and inconvenience of cross remittances, money sent home and the same amount sent back by cross cheques or drafts. That was a material point in the decision of the case as showing that the money had been really received in this country."

Lord Brampton, at page 475, said this:

> "My Lords, it is conceded that no part of the money in question was ever received in the United Kingdom in specie, or in any form known to the commercial world for the transmission of money from one country or place to another. But it was argued that if not actually it was 'constructively' so received in the accounts of the Society. I confess I do not like that expression, nor do I quite understand what it means. If a 'constructive' receipt is the same thing as an actual receipt, I see no reason for the use of the word 'constructive' at all. If it means something differing from or short of an actual receipt, then it seems to me that a constructive receipt is not recognised by the Statute, which in using the word 'received' alone, must be taken to have used it having regard to its ordinary acceptation."

At the end of his speech Lord Brampton doubted the correctness of the *New Mexico* case [2], and expressed the view that if sound it was distinguishable.

A somewhat similar case was that of *Forbes* v. *Scottish Provident Institution,* 3 T.C. 443, referred to with approval by Lord Macnaghten in the *Gresham Life Assurance Society* case [3]. I quote from the headnote:

> "A Scottish Mutual Life Assurance Society lends out sums of money in Australia on interest. The interest accruing is not remitted to the United Kingdom *in forma specifica,* but is retained abroad and invested. It is, however, entered in the revenue account of the Society as received. . . . *Held,* that interest not received in the United Kingdom is not assessable to Income Tax, and that the facts in these cases do not amount to constructive remittance."

The Lord President (Robertson), at page 456, said:

> "The phrase 'constructive remittance' in the second query in these cases is one which, if used at all, requires to be carefully guarded. As employed in the present argument, it would practically obliterate the limitation in the rule of Case 4."

Then, immediately after the passage quoted by Lord Macnaghten, the Lord President, at page 456, said this:

> "But this will never make interest 'received in the United Kingdom'. The New Mexican case . . . was totally different. The money there could only be said not to have been received, if money sent home by bill is not received in this country, or if no colonial interests are received in the United Kingdom which do not reach it in specific form."

In *Scottish Provident Institution* v. *Farmer,* 6 T.C. 34, a life assurance society invested abroad in bearer bonds income arising from foreign and colonial securities in America, sent the bonds to this country, and in due course sold them, the proceeds of sale being received by the society at its

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(1) 4 T.C. (2) 2 T.C. 165. (3) 4 T.C. 464.

(Jenkins, L.J.)

head office in this country, and it was held that the bonds were chargeable under Case IV of Schedule D in the year in which they were realised. Mr. Foster invited us to hold that the cheques drawn by the Respondent on his New York bank in favour of the English banks in the present case were equivalent to the bearer bonds in the case just cited, and that the proceeds of sale of the cheques received by the Respondent from the English banks in the present case were equivalent to the proceeds of sale of the bonds in that case. I cannot agree. The bonds in *Scottish Provident Institution* v. *Farmer* (1) were investments made out of the American income and accordingly in the most direct sense represented that income. They were physically remitted from America to this country, and actually realised here. On the other hand, the cheque in each of the transactions with which this case is concerned was an order on the Respondent's bank in New York to pay dollars to the English bank in New York out of the funds standing to the credit of the Respondent's New York bank account, and the sum in sterling paid by the English bank for the cheque was paid for the right to receive the dollars in New York from the Respondent's bank there on presentation of the cheque to that bank. In *Scottish Provident Institution* v. *Farmer*, the income was brought to this country from America. In the present case it was not so brought.

In *Kneen* v. *Martin,* 19 T.C. 33, is was unsuccessfully sought to charge a person resident but not domiciled in this country with tax on sums remitted to this country. At page 45, Finlay, J., said this:

> "The Attorney-General pointed out, and pointed out most forcibly, that you might have cases where income was received and then the income was remitted, not, of course, in the actual cash or cheque received, but remitted by the purchase of a bond or some such method as that. I do not for a moment doubt that if one can see in any particular case that the sum remitted is income, even though it has, for purposes of being remitted, changed its form, then in that event it would remain income and would attract tax. Having said that and having indicated, as I do desire to indicate, that this case to my mind proceeds, as indeed the Special Commissioners thought, very largely upon its own facts, upon those facts I agree, on the whole, with the conclusion at which they arrived, and therefore this appeal is dismissed."

In the Court of Appeal Romer, L.J., said this, at page 51:

> "I agree. Considering, first of all, Rule 2 of the Rules applicable to Case V, the point that has to be determined is whether, when the Rule refers to the 'actual sums annually received in the United Kingdom', it means sums representing income or whether it means sums whether representing income or representing capital. It is to be observed that whether we construe the word 'sums' in the one way or in the other, those sums are equally capable of being sent to this country in any one of the four methods, or the three methods, that are referred to in the Rule. They can be sent in the form of remittances payable in the United Kingdom, or in the form of property imported, or in the form of money or value arising from property not imported. Those words, therefore, throw no light whatsoever on the question of what the meaning of the word 'sums' may be."

And later, on the same page, he said:

> "I am clearly of opinion, that the word 'sums' in both Rules means, and means only, sums representing income."

In *Hall* v. *Marians,* 19 T.C. 582, the facts were complicated, but very briefly they appear to have been of this nature. The taxpayer's wife had an overdraft at the head office of the National Bank of India. She also had an account with the Colombo branch of the bank and that branch held for her certain Indian bonds in which income derived by her from a business carried on in Colombo was invested. The overdraft at the head office of the bank

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(1) 6 T.C. 34.

was made on the security of these bonds, which however remained in Colombo. On her instructions the head office transferred the overdraft to Colombo (i.e., the amount was credited to her account in London and debited to her account in Colombo) and shortly afterwards the Indian bonds were sold in Colombo and the proceeds applied in paying off her overdraft at the Colombo branch. It was contended for the Crown that this transaction involved the remittance to this country from Colombo of income in the shape of the proceeds of sale of the bonds, such remittance having been made by the combined effect of the crediting to the lady's account in London of the amount of the overdraft, the debiting to her account in Colombo of the like amount, and the discharge of the resulting overdraft at the Colombo branch by the sale of the Indian bonds. The Court of Appeal, reversing Finlay, J.'s judgment, rejected this contention. Lord Hanworth, M.R., said this, at page 597:

> "To suggest that to attract liability to tax there must be an actual remittance seems quite to overlook the ordinary transactions of commercial men. The probability is that if and so far as either goods or bullion pass from one country to another it is only upon the totality being reached that it can be shown in favour of which country the account lies. If a good illustration is wanted of money which was treated as a remittance although no money had actually passed, an illustration is found in *Scottish Mortgage Company of New Mexico* v. *McKelvie*, 2 T.C. 165."

Then, after a citation from that case, he said this, further down page 597:

> "That is a very excellent illustration that it is not necessary that there should be a remittance. If you are able to treat what is in your hands as if it were a receipt of income, and if it is used as such, then it is impossible to prevent the incidence of tax by saying that in fact it had not been remitted."

I think the learned Master of the Rolls, in view of what he had just previously said, must be taken as meaning here "an actual remittance." Then after referring to the facts and to Lord Lindley's speech in *Gresham Life Assurance Society, Ltd.* v. *Bishop* (1), the Master of the Rolls continued (2):

> "Upon those facts, is it right to say that there had been a remittance of a value or a credit in respect of that debt? Is that the way in which this £2,912 was dealt with; was it liquidated by a remittance in any form or in any value or not? The Commissioners obviously thought not, and I for my part cannot find that there was a remittance to or a receipt of something in the United Kingdom from what, of course, obviously is a position outside it. Mr. Justice Finlay came to the conclusion that this money was used to extinguish a debt which was here. That puzzles me rather. What money? It is quite true that the money which was derived from the bonds when they were sold in May was used to liquidate the debt which at that time had gone out to Colombo, but I find no materials on which I can say that Mrs. Marians has, in the financial year ending 5th April, 1930, enjoyed the benefit of a remittance within the many-headed categories which are to be found in Rule 2 of Case V. I find myself unable on any question of law to upset the decision of the Commissioners, which I think they had abundant material for reaching. I think the right course, therefore, is to restore their finding and conclusion as one which they have come to on the question of fact and were entitled so to do, and in respect of which I do not find that they have in any way misdirected themselves on a point of law."

Romer, L.J., said this, at page 602:

> "In other words, it appears to me that, if she deliberately adopts a form like this, then she is entitled to all the benefits that flow from the adoption of such a form and that we are not entitled to say, 'Oh yes, but in substance it is precisely the same thing as though she had adopted the other form and had had income remitted to this country'."

I fear my citations are becoming unduly long, and I will not refer at length to *Paget* v. *Commissioners of Inland Revenue*, 21 T.C. 677, which is fully cited in the judgment of Wynn-Parry, J. I confess to some doubt as to whether

(1) 4 T.C. 464. (2) 19 T.C., at pp. 598–9.

(Jenkins, L.J.)

it can be said in this case as in *Paget's* case that the price paid for the cheque in each of the transactions now under review was a payment made to the Respondent by the English bank for the purchase of a capital asset in the shape of the right to receive part of the income arising from the trusts in the United States. From the English bank's point of view the asset bought was simply the right to receive in New York the amount of the cheque in dollars out of the funds standing to the credit of the Respondent's New York bank account. From the Respondent's point of view the income paid into that account had already been paid by the persons liable to pay it, namely the trustees of the United States trusts, and was lying in the bank in New York simply as an accumulation of income already received. I therefore prefer to decide this case simply on the issue whether the amount of the cheque in each transaction was ever brought into this country, or in other words remitted to this country from New York.

In a passage from his speech in *Pickles* v. *Foulsham,* 9 T.C. 261, cited by the learned Judge but I think worth repeating, Lord Cave, L.C., after reading Rule 2 of the Rules applicable to Case V, continued, at page 288:

> "From this Rule it follows that, in order to be taxable under Case V, an income arising from possessions out of the United Kingdom must be received in the United Kingdom either (*a*) from remittances payable in the United Kingdom, or (*b*) from property imported into the United Kingdom, or (*c*) from money or value arising from property not imported, or (*d*) from money or value received on credit or on account of remittances, property, money, or value brought or to be brought into the United Kingdom. The word 'remittances' (which recalls the expression 'remittances from thence' in the corresponding Rule contained in the Act of 1842) clearly refers to money remitted into the United Kingdom from outside. The other branches of the Rule all refer to property, money or value imported or brought into the United Kingdom, and there are no words in the Rule which can comprise money arising and payable here. If so, the inference is that money so arising and payable is outside the Rule, and so is not taxable under Case V at all."

This passage is of assistance not only as emphasising the general requirement that in order to be taxable under this Case the item sought to be taxed must have been brought into the United Kingdom from abroad but also as indicating that the third of the sources referred to, viz., "from money or value arising from property not imported", is not excepted from this general requirement. If that is so, it follows that Mr. Foster must fail in a subsidiary argument raised by him to the effect that in each of the present transactions (so far as the claim in respect of it is based on Rule 2 of the Rules applicable to Case V) the sterling payment made by the English bank in London for the dollar cheque was income arising from possessions out of the United Kingdom in the shape of a sum received in the United Kingdom from "money or value arising from property not imported" within the meaning of the Rule. Clearly the sterling payment was received by the Respondent in the United Kingdom, but clearly also it arose in the United Kingdom and was not brought into the United Kingdom from abroad.

This last point was adverted to by Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon,* 33 T.C. 226, where the House of Lords on broadly similar facts came to the same conclusion as had been reached by the Court of Appeal in *Hall* v. *Marians*(1). I respectfully adopt the view tentatively expressed by Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon,* at pages 237–8. It is fully set out in the judgment of the learned Judge, and I need only cite the concluding sentence:

(1) 19 T.C. 582.

(Jenkins, L.J.)

> "I incline therefore, to the view that to succeed under the Rule in respect of sums received from the third source the Crown must establish that the money or value had been brought or was to be brought into the United Kingdom."

I am fortified in my adoption of Lord Cohen's view by the consideration that it appears to me to accord with Lord Cave's analysis of Rule 2 of Case V in *Pickles* v. *Foulsham* (1).

Mr. Foster referred to the Financial Powers (U.S.A. Securities) Act, 1941, and the U.S.A. Securities (Income Tax Relief) Regulations, 1941, made thereunder (S.R. & O. 1941 No. 1563) as throwing light on the construction and effect of the Rules applicable to Cases IV and V of Schedule D. Speaking for myself, I have been unable to derive any assistance from this later legislation for the purposes of the matter in hand.

It appears to me that the fallacy underlying Mr. Foster's main argument is this. He said that money can be remitted or brought to the United Kingdom from abroad by creating a credit here and a debit abroad. He said that in each of the present transactions what was done resulted in the Respondent being credited by the English bank in London with a sum representing the purchase price in sterling of the dollar cheque and in the Respondent's account with his bank in New York being subsequently debited with the amount of the dollar cheque when presented. He would therefore have us conclude that there was a remittance or transfer of the dollars or their sterling equivalent from New York to London. But I fail to see how the transaction, merely because it was carried out by means of a credit in London and a later debit in New York, could amount to a remittance or transfer of the dollars or their sterling equivalent from New York to London, unless it would have done so if carried out by physical means as opposed to book entries. Suppose A, proposing to visit the United States, wants to have dollars available to him there, and suppose his friend B wants sterling to spend in London and is possessed of dollars lying in the form of currency in a safe deposit rented to him in New York, both parties being resident here. A and B agree that A shall pay B in London the sterling equivalent of $1,000, and in consideration of such payment B shall give A the key of his safe deposit box in New York with an authority to take from the box $1,000 in currency for his own use and benefit. The transaction is duly carried out, so that A collects from the safe deposit the $1,000, the whole of which he proceeds to spend in the United States. As a result of this transaction, have the dollars been remitted or brought into this country? I should say clearly not. A would have bought from B in London, under a contract entered into and for a payment made in this country, dollars lying in New York, and would have received and spent those dollars in America. Conversely B would have sold those dollars to A in London under the contract and for the payment so made, the payment arising wholly in this country. The transaction I have supposed appears to me to be as nearly as possible the equivalent of any one of the transactions now in question, carried out by physical means as opposed to book entries, and I do not see why the difference in the machinery adopted should affect the result.

It is no doubt true of each of the transactions with which we are here concerned that substantially the same result was produced as if the English bank had collected the amount of the dollar cheque in New York as agent for the Respondent and had then as such agent paid or credited to the Respondent in this country the sterling equivalent of the dollars so received, and that if the transaction had taken that form the consequences in point of liability to tax under Case IV or Case V might well have been different. But

(1) 9 T.C. 261.

(Jenkins, L.J.)

this appears to me to be irrelevant. The transaction must for tax purposes be taken as it is. I repeat what was said by Romer, L.J., in *Hall* v. *Marians* (1):

> "In other words, it appears to me that, if she deliberately adopts a form like this, then she is entitled to all the benefits that flow from the adoption of such a form and that we are not entitled to say, 'Oh yes, but in substance it is precisely the same thing as though she had adopted the other form and had had income remitted to this country'."

The contention that these transactions involved in each case a constructive receipt by the Respondent in this country from his bank account in New York of the sterling equivalent of the amount of the cheque in dollars in my view cannot be supported. On this branch of the argument I would respectfully adopt the observations quoted above of Lord Macnaghten and Lord Brampton in *Gresham Life Assurance Society, Ltd.* v. *Bishop* (2), and of the Lord President (Robertson) in *Forbes* v. *Scottish Provident Institution* (3), and also those of Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon* (4).

One minor transaction of a different kind from those so far described requires brief consideration. It appears that in December, 1948, the Respondent received in this country through the post from the United States Treasury a cheque in his favour for $908.19 representing a refund of United States Federal Tax and forwarded it to Seligman Bros. with instructions to "convert this into sterling", which instructions Seligman Bros. carried out by purchasing the cheque and crediting the Respondent with the sterling equivalent. It was not seriously disputed that this transaction, which was of a wholly different character from the others, did involve a remittance to this country from the United States of the amount of the cheque sent through the post from the United States Treasury to the Respondent in this country.

For the reasons I have endeavoured to state, I am of opinion that on the facts found the Special Commissioners came to a correct conclusion in law which was rightly upheld by the learned Judge. Accordingly I would dismiss this appeal.

Romer, L.J.—In *Pickles* v. *Foulsham*, 9 T.C. 261, Lord Cave, L.C., classified the ways in which income can be "received" for the purposes of Case V of Schedule D of the Income Tax Act, 1918. Having referred to Rule 2, he said, at page 288:

> "From this Rule it follows that, in order to be taxable under Case V, an income arising from possessions out of the United Kingdom must be received in the United Kingdom either (*a*) from remittances payable in the United Kingdom, or (*b*) from property imported into the United Kingdom, or (*c*) from money or value arising from property not imported, or (*d*) from money or value received on credit or on account of remittances, property, money, or value brought or to be brought into the United Kingdom."

Whatever then the position may be under head (*c*), the taxpayer in the present case is not chargeable in respect of his American income except to the extent that it is brought or is to be brought into the United Kingdom in one of the three other ways which Lord Cave specified. This element of importation was referred to by Lord Macnaghten in *Gresham Life Assurance Society, Ltd.* v. *Bishop*, 4 T.C. 464, at page 474, as "bringing the interest home" and was clearly recognised by Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon*, 33 T.C. 226, when he said, at page 238:

> "It is plain from the wording of the Rule that sums cannot be said to be received in the United Kingdom from the first, second or fourth sources unless

(1) 19 T.C. 582, at p. 602. (2) 4 T.C. 464, at pp. 473 and 475. (3) 3 T.C. 443, at p. 456. (4) 33 T.C. 226, at p. 242.

(Romer, L.J.)

the source was itself payable in, imported into, or brought or to be brought into the United Kingdom."

A further principle which it is necessary to bear in mind in the present case was enunciated by Romer, L.J., in *Hall* v. *Marians*, 19 T.C. 582, at page 602, as follows:

> "If, by having capital remitted to this country, she escapes payment of Income Tax, she is entitled to do so, although in the end she is in precisely the same financial position as though she had had income remitted. In other words, it appears to me that, if she deliberately adopts a form like this, then she is entitled to all the benefits that flow from the adoption of such a form and that we are not entitled to say, 'Oh yes, but in substance it is precisely the same thing as though she had adopted the other form and had had income remitted to this country'."

Allied to this principle it is well settled that Rule 2 only applies where there has been actual receipt of foreign income here; there is no such thing as "constructive receipt" under the Rule.

> "In those circumstances,"

said Lord Cohen in *Gordon's* case [1], at page 242,

> "to hold that there was a remittance to London in the present case would, I think, be to disregard the warnings given by Lord Halsbury, L.C., and Lord Macnaghten in *Gresham Life Assurance Society* v. *Bishop* [2] . . . not to be led astray by an equivalent to a remittance or receipt or a constructive receipt."

It cannot, I think, be fairly suggested that the sterling credits which Mr. Moyse received from the London banks to whom he sold his American cheques during the relevant years were within heads (*b*) or (*d*) of Lord Cave's four categories, but the Crown contends that the sums were taxable as remittances payable in the United Kingdom (head (*a*)) or as money or value arising from property not imported (head (*c*)). In the light of the principles to which I have already referred Mr. Moyse is not taxable under head (*a*) unless upon an analysis of the actual transactions into which he entered with the London banks he is shown to have received, actually and not constructively, American income of his which was brought, or which was to be brought, into the United Kingdom. Unless this is shown he is not taxable upon remittances, nor is he so taxable if what he received was no more than the equivalent of a remittance.

It accordingly becomes necessary to examine the form which the relevant transactions took upon the facts as found by the Special Commissioners. Mr. Moyse had at all material times dollars standing to his credit at his New York bank and these dollars represented income which had been paid into his account at that bank by the trustees of certain American trusts under which he was a beneficiary. The New York bank were accordingly debtors to Mr. Moyse in an amount represented by the dollars which from time to time stood to his credit in their books. Mr. Moyse, though domiciled in the United States of America, was resident in this country. Subject to the Exchange Control Regulations he could at any time and in various ways have had his dollars remitted to him or to his order here; and had he done so there can be no doubt but that the dollars so remitted would have been chargeable to tax under Case V. Instead of doing that, however, he drew cheques on his dollar account in the New York bank and sold those cheques to the London banks, who paid him for them here in sterling. The Special Commissioners found that these transactions between Mr. Moyse and the London banks were transactions as between principal and principal and not as between principal and agent; in other words they found (and the finding has not been challenged by the Crown and could not very well be) that Mr. Moyse was the seller of the cheques and the London banks were the buyers.

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(1) 33 T.C. 226. (2) 4 T.C. 464.

(Romer, L.J.)

What changes were effected in the position of the various parties concerned as a result of these transactions of sale and purchase? They would appear to be as follows. (i) Sums of sterling, formerly the property of the London banks, became the property of Mr. Moyse. (ii) The London banks became entitled to call upon the New York bank to pay them the amount of dollars for which the cheques were drawn. (iii) The New York bank could and must, on presentation of the cheques, pay these dollars to the London banks instead of paying them to Mr. Moyse. (iv) So far as Mr. Moyse was concerned each transaction was entirely closed on payment to him of the sterling consideration except in the very improbable event of his cheques being dishonoured in New York. In these circumstances can it be said that the receipt by Mr. Moyse in London of the sterling sums constituted a receipt by him of American income brought or to be brought into the United Kingdom? The question is not an easy one, but for myself I think it must be answered in the negative. Mr. Moyse never directed the New York bank to remit any money to him here either as dollars or in the form of sterling, nor did he direct the bank to remit the dollars to the London banks in this country as his agents. Had he done so he would no doubt have been taxable on the amounts so remitted: *Timpson's Executors* v. *Yerbury,* 20 T.C. 155. The London banks however could (and in fact did) receive payment of the dollars in the United States of America. Eventually no doubt, and via the Bank of England, they received sterling in this country which represented the dollars which they or their agents in the United States of America acquired from the New York bank on presentation of Mr. Moyse's cheques; but by that time the transaction, as I have already said, had been closed so far as Mr. Moyse was concerned, and he had no interest whatever in the sterling which was paid by the Bank of England to the London banks, even assuming that the sterling was remitted to this country in one form or another from America. He had in effect assigned his legal right to the dollars to the London banks before any sterling or credit which represented them was brought into this country: compare *Carter* v. *Sharon,* 20 T.C. 229.

Accordingly, having regard to the form which the transactions between Mr. Moyse and the London banks took, it does not seem to me that it can be said of the sterling sums which Mr. Moyse received that they were remittances of his American income payable in this country. It has been suggested, however, that these sums are taxable upon a view which was adumbrated in *Hall* v. *Marians* by Romer, L.J., where he said [1]:

> "Had the bank in this country allowed her to draw the £440 on account or in advance or in respect of sums of money that they were expecting to receive in the future from the bank in Colombo, representing income from her foreign possessions, the matter would have been different, but, as I understand it, this money, the money which she was allowed to draw from the bank, was a loan from the bank in its strict sense, and that is found as a fact by the Commissioners".

I respectfully agree with Lord Cohen in *Gordon's* case[2] in thinking that if the stated hypothesis had been actual fact the late Romer, L.J., would have decided the *Marians* case in the opposite way. I do not, however, think that the observations which I have quoted are applicable to the facts of the present case. There is no reason to suppose that Mr. Moyse ever intended that his American income should be transmitted to him in this country at any time and he never, so far as I am aware, gave any instructions to the New York bank to that effect. So far as the London banks were concerned the Commissioners state that these banks knew nothing about Mr. Moyse's American

(1) 19 T.C. 582, at p. 600. (2) 33 T.C. 226, at p. 240.

income and were quite unaware that the dollars which they purchased from him represented income of his in the United States of America. In these circumstances it is difficult to see how they were allowing Mr. Moyse to draw sterling sums on account or in advance in the manner indicated by Romer, L.J.

In my judgment therefore the Commissioners and the learned Judge were right in thinking that Mr. Moyse is not taxable under the first head of Case V, namely on remittances payable in the United Kingdom; and it only remains to consider whether the sterling sums which he received from the London banks were "money or value arising from property not imported", and taxable as such. As to this, Lord Cave, L.C., expressed the view in *Pickles* v. *Foulsham* (1) that the "money or value" under this head of charge is confined to money or value which is brought into this country even though the property from which it arises is not. This view was also taken by Lord Cohen in *Gordon's* case (2) and his Lordship gave cogent reasons to support it in his speech, which had the concurrence of Lord Normand. In these circumstances it would not, I think, be right for this Court to put a different construction on the relevant language even though we are not in strictness bound by the views which Lord Cave, Lord Cohen, and Lord Normand have expressed, having regard to the fact that they were *obiter*. Accordingly, applying these views, Mr. Moyse is not chargeable under the third head of Case V; and as he is not in my opinion chargeable under the first head, I would dismiss the appeal.

Pearce, L.J.—It is with the greatest diffidence that I express a view contrary to that of Jenkins and Romer, L.JJ. I take some comfort from the thought that the solution of the problem can hardly be said to be obvious. For if the view which the Respondent puts forward is correct it seems that for over a century many persons have without protest paid tax for which they were not liable; and during that period the fact that tax liability under Cases IV and V can be avoided by a simple, normal and legitimate transaction has escaped the observation of the eagle-eyed.

The transactions in debate are those by which the Respondent used for the purposes of living in England the income which was paid in dollars into his New York bank. He had many such dealings both with the Midland Bank in London and with Seligman Bros. who are merchant bankers in the City of London. For convenience I will refer to them as "the English bank". The Respondent sent or presented to the English bank a cheque for dollars drawn on his New York bank account. The English bank bought the Respondent's cheque, viewing the transaction as a purchase of dollars, and credited the Respondent's account on the same or following day with the sterling equivalent of the dollars at the prevailing rate of exchange. Had the English bank been clearing the cheque by collecting it on the Respondent's account the credit would not have been made until some days later. It is conceded that in that case the Respondent would have been liable to tax. In this case the bank was not acting as a collecting agent but dealing as principal with principal in a purchase of dollars. The Case finds that this practice of buying and selling cheques drawn in foreign currencies is a very old-established one in the City of London and is part of the normal banking business of the English bank. The Respondent was prohibited by the Exchange Control Act, 1947, from selling dollars to any person other than an authorised dealer such as was the English bank. Having sold his cheque the Respondent was no longer concerned with it, save in so far as he would have been liable had it been dishonoured. The English bank who had thus become holders for value sent the cheque

(1) 9 T.C. 261, at p. 288. (2) 33 T.C. 226, at p. 238.

(Pearce, L.J.)

to their New York correspondents, who had it cleared on the Respondent's New York bank, credited the dollars so received to the English bank's account with them, and paid the dollars out of that account to the Federal Bank in New York for the credit of the Bank of England to whom the dollars had been sold. The Case is silent as to how, when, or where the Bank of England paid to the English bank the sterling proceeds of the dollars.

Thus the transaction consisted in the Respondent's selling for sterling in England dollar cheques drawn on his American income lying in a bank in New York. If that simple description is adequate, it would at first sight appear that he had to that extent received his American income in the United Kingdom, when one gives to the word "receive" its ordinary meaning. But one has to investigate the transaction more narrowly and consider the meaning of the word "receive" as defined by the cases. Without disregarding the substance of a commercial transaction one has to consider its technical and exact form. Lord Simonds observed in *St. Aubyn* v. *Attorney-General*, [1952] A.C. 15, at page 32:

> "The question is not at what transaction the section is, according to some alleged general purpose, aimed but what transaction its language, according to its natural meaning, fairly and squarely hits."

The English bank bought the cheque on the basis that the dollars would be paid out of the Respondent's account at the New York bank on which the cheque was drawn by him. It can in my view hardly be said (as Mr. Bucher, for the Respondent, argued) that there was no nexus between the Respondent's dollars in his New York account and his sterling in England. He bought the latter with the former. In *Gresham Life Assurance Society, Ltd.* v. *Bishop*, 4 T.C. 464, at page 475, Lord Brampton said:

> "it is conceded that no part of the money in question was ever received in the United Kingdom in specie, or in any form known to the commercial world for the transmission of money from one country or place to another."

It seems clear that in his view money transmitted in any form known to the commercial world to the United Kingdom from another country would have been "received" in the United Kingdom. Here the Respondent wished to have for use in the United Kingdom in sterling the income which was lying in dollars in the United States. That necessitated some form of transmission. He achieved it by a normal and old-established commercial method.

But Mr. Bucher argues that, to constitute a receipt in the United Kingdom within Cases IV and V, (*a*) there must be importation of something of value, and (*b*) that importation must be income or represent income—for both those points he relies on *Hall* v. *Marians*, 19 T.C. 582, and *Gordon's* case, 33 T.C. 226—and (*c*) the thing imported must belong to the taxpayer at the time of importation—for this point he relies on *Timpson's Executors* v. *Yerbury*, 20 T.C. 155, and *Carter* v. *Sharon*, 20 T.C. 229. In this case, he argues, the blank cheque which the Respondent brought to this country was itself worthless, the dollars never were imported into this country, and the fruit of his cheque, if it came back at all to this country, certainly did not belong to the Respondent when it did so since the Respondent had already sold it. He also argues that the dollar income of which the Respondent sold part ceased to be income when it was sold and became capital (*Paget* v. *Commissioners of Inland Revenue*, 21 T.C. 677).

It is convenient to deal first with the question whether the American income of the Respondent remained income after it was sold, so that the proceeds of the sale were income. Undoubtedly the dollars in the American bank were

(Pearce, L.J.)

income may alter in form does not prevent it retaining the quality of income: capital, as e.g., on the sale of an annuity. The mere fact however that the income may alter in form does not prevent it retaining the quality of income: see *Scottish Provident Institution* v. *Farmer*, 6 T.C. 34, where bearer bonds were bought abroad out of income, and when they were brought to this country and sold the proceeds of sale were held to be income.

In *Paget* v. *Commissioners of Inland Revenue* [1], Miss Paget held Hungarian bearer bonds the interest coupons of which were payable in London in sterling and in certain other countries in the respective currencies of those countries. By a decree the Hungarian Government directed that the interest on the bonds should not be paid direct to creditors but that its equivalent in pengos should be deposited with the Hungarian National Bank and placed in a foreign creditors' fund, out of which bondholders might obtain payment of interest coupons in pengos, but only for use for certain purposes in Hungary. Miss Paget did not obtain payment in this way but sold coupons, after they had fallen due, through coupon dealers in London, who deducted Income Tax on payment to her of the proceeds of such sales. Miss Paget also held bearer bonds of the Kingdom of Jugoslavia the coupons of which were payable in American dollars in New York. The Jugoslav Government gave notice of its inability to pay the interest in full and offered a composition, either by payment in "blocked" dinars in Belgrade, or by payment of ten per cent. of their face value in dollars and by the issuing of funding bonds for the balance. Miss Paget did not accept this scheme but sold the interest coupons as in the case of the Hungarian bonds.

The Court of Appeal held that neither in the case of the Hungarian nor the Jugoslav bonds did the proceeds of the sale of coupons received by Miss Paget constitute income. In neither case had the income passed to Miss Paget's hands nor was it at her disposal. On the Jugoslav bonds she was offered a choice between two methods of composition. In respect of the Hungarian bonds a sum of pengos representing interest of bondholders (but only for use in Hungary) had been deposited in the Hungarian bank. That bank was not her agent to accept the deposit of such pengos on her account, and though she could have got them if the Hungarian Bank had sanctioned it, the income in the form to which she was entitled on the original terms of the bonds was not available to her. At page 692, Sir Wilfrid Greene, M.R., said:

> "The purchase price received by Miss Paget was not income arising from the bonds at all. It arose from contracts of sale and purchase whereby Miss Paget sold whatever right she had to receive such income in the future, as well as her right to take what was offered by the defaulting debtors."

At page 702, MacKinnon, L.J., said:

> "In both these cases the foreign debtors had defaulted, and refused to pay the interest promised by their bonds. Budapest offered to pay instead a certain amount of pengos which could only be enjoyed as currency within the limits of Hungary. Jugoslavia offered instead to pay in dinars, or partly in dollars and partly in funding bonds. What Miss Paget sold was the possibility of making money abroad upon the acceptance of these offers."

The coupons sold by Miss Paget did not represent income lying at her disposal. In my view the sale of rights to future interest and compositions offered by defaulting debtors is wholly different from the sale in our case of the Respondent's income lying at his disposal in the bank. No other case was cited to us on this point. I think that that case is clearly distinguishable. Here the dollars constituted income before they were sold for sterling and the sterling

[1] 21 T.C. 677.

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proceeds were also income. It is interesting to note that if the Respondent's contention on the major point in the case before us is correct the sums realised by Miss Paget could not in any event have been received by her in the United Kingdom within the meaning of Case IV, since the foreign income in that case could not itself be brought into this country. But the case was not dealt with on those lines.

In dealing with the main point, namely whether there was a receipt of his income by the Respondent in this country, both sides relied on the case of *Timpson's Executors* v. *Yerbury*, 20 T.C. 155. In that case the taxpayer, who was resident in the United Kingdom, was a life tenant of income in New York. She directed the trustees in New York to pay allowances to her children living in the United Kingdom out of her interest in the income of the trust. They accordingly sent bills of exchange drawn on London either to the children or their bankers in the United Kingdom and debited the taxpayer's account with the equivalent in dollars of the sterling value of the bills. It was held by the Court of Appeal that the amounts so remitted remained income of the taxpayer up to the date of the encashment of the bills of exchange in the United Kingdom and were therefore received by her there. Lord Wright, M.R., said, at pages 180–1:

> "In fact it came in equity and in the way I have stated as her income; however she chose to apply it, whether to payment of debts or in purchase of valuable things or of service or as a voluntary allowance, it was income of hers to which she was entitled. Actual receipt by her would, I think, be too narrow a condition of chargeability: no one would doubt that she should in fairness be charged where the income was applied in this country to the discharge of debts or the acquirement of valuable things or interests, but I find it difficult to bring such payments any more than gratuitous payments like the payments in question within the charging Rule, if that Rule is limited to cases where there is actual receipt in this country by the taxpayer personally. But the test that the taxpayer should be entitled to the income (provided, as I here assume, that it comes as her income), whether she actually receives it or not, appears to me to be in accordance both with the language and the intent of the Rules. Rule 1 of the Miscellaneous Rules applies to all Cases under Schedule D and is aptly framed, and is, I think, effective, to charge all income of the taxpayer though the taxpayer never handles it himself, because he applies the income before it reaches him, so that he never actually receives it, though he disposes of it. What Rule 2 of the Rules applicable to Case V, read with Rule 1 of the Miscellaneous Rules, requires is that the actual sums of the taxpayer's income should at least come to this country under such circumstances that the taxpayer, if he does not actually receive them, is entitled to them, and these conditions were fulfilled in the present case. I reserve for further consideration, in case the question should ever arise, the question whether if income accrues abroad either *quâ* legal estate or *quâ* equitable estate to a taxpayer resident in this country, Rule 2 of the Rules applicable to Case V and Rule 1 of the Miscellaneous Rules would make the taxpayer liable to charge in that event, even though the taxpayer disposed of his interest in that income before it was received in the United Kingdom, so long as the actual sums of that income were in fact received by the alienee in this country."

Romer, L.J., said, at page 181:

> "In computing the tax, therefore, sums paid to third parties for the benefit or at the request of the party so entitled have to be taken into account; and this is only what one would expect."

And, at page 186, Greene, L.J., said:

> "If this view be correct the fact that the actual hands to receive in this country the money derived from the remittances were those of the children appears to me to be irrelevant, since, provided the income in respect of which the assessment is made is income to which the person assessed is entitled, it is, in my judgment, immaterial whether the sum 'received in the United Kingdom' is received by him or by some third party upon his instructions."

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In *Carter* v. *Sharon,* 20 T.C. 229, the question reserved by the Master of the Rolls in *Timpson's Executors* v. *Yerbury* (1) arose for decision. The facts were similar save that the gifts were made by bankers' drafts which by Californian law passed irrevocably to the donee at the latest when the drafts were posted in California. Lawrence, J., distinguished the case from *Timpson's Executors* v. *Yerbury* on the ground that in the latter case the Court of Appeal decided that the allowances to the deceased's children only became complete upon the receipt and encashment of the bills of exchange by the children, and that therefore at the time the income or the money came into the United Kingdom it was income to which Mrs. Timpson was entitled; whereas in the case before him the money had ceased to belong to the donor at the time when it came into the United Kingdom and therefore she did not receive it in the United Kingdom.

The principle in those two cases is clear in so far as it applies to transactions of the kind that were there being considered; but the bearing of those cases on the transaction which we have to consider is not so clear. Mr. Bucher relies on them as showing that the money must belong to the taxpayer when it actually crosses the Atlantic. Mr. Foster contends that as in *Timpson's* case there was a complete gift completed when the donee cashed the bill of exchange, so in the case before us the dollars in the cheque were brought into the country when the Respondent signed the cheque and were the property of the Respondent until the bank actually cashed (or paid for) the cheque. If the taxpayer in *Timpson's* case received a bill of exchange when her child received and cashed it, *a fortiori,* he argues, when the Respondent cashed (i.e., received cash for) the cheque for himself he must have received it.

In *Gresham Life Assurance Society, Ltd.* v. *Bishop,* 4 T.C. 464, the House of Lords held that interest on an investment abroad could not be held to be remitted to this country merely because it was included in an English insurance company's yearly accounts for the purpose of the triennial valuation on which profits were estimated. Lord Halsbury, L.C., at page 473, said:

> "I do not think any amount of book-keeping or treatment of these assets, wherever they may be, will be equivalent to or the same thing as receiving the amount in this country. The words are simple, intelligible, and represent an ordinary and simple thing. I cannot think we ought to go beyond the words themselves".

And, on the same page, Lord Macnaghten said:

> "I do not understand what is meant by constructive receipt in such a case as this, or how any sums can be said to have been received in the United Kingdom unless they have been brought to the United Kingdom, or unless there has been a remittance 'payable in the United Kingdom', to borrow the language of the rule applicable to the fifth case."

It is true that in *Scottish Mortgage Co. of New Mexico* v. *McKelvie,* 2 T.C. 165, book entries had been held to constitute a receipt when they were made to obviate the necessity of cross remittances. Lord Macnaghten explained the case in this way (2):

> "In that case, as it seems to me, in the transmission to this country of money which the Company was free to distribute, and the transmission to America by way of exchange of an equivalent amount which the Company was bound to reinvest, the Company acted as their own bankers, and did for themselves, by an entry in their books, what might have been done less conveniently and less economically by an ordinary bank or financial agent on their behalf."

Lord Lindley, at page 478, described the case as

> "very peculiar. Money received by the Company's agents abroad was clearly and unmistakably treated by the Company as remitted to and received by it here, and

(1) 20 T.C. 155. (2) 4 T.C., at p. 474.

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> money here was treated by the Company as remitted abroad in exchange for it. The exchange was effected by a book entry, but that entry was the business mode of carrying out cross-remittances which it would have been unbusiness-like and really childish to have effected in any other way. But thinking, as I do, that McKelvie's case [1] may be properly upheld, I am not prepared to adopt it as a new starting point for further inferences."

In *Hall* v. *Marians*, 19 T.C. 582, the facts are far removed from the facts of the case before us. The Respondent's wife, living in London, was entitled to a share of profits of a business at Colombo. Those profits were paid to her account with the Colombo branch of a bank whose head office was in London and were invested in Indian bonds. From time to time she had borrowed moneys from the London branch on the security of the bonds. The amount of her loan account was debited to the Colombo branch which was instructed to realise securities to pay it off. The transfer was effected by cross entries in the books of the two offices. A few weeks later the overdraft was discharged in Colombo out of the proceeds of the Indian bonds. Assessments under Rule 2 of Case V were made on the ground that the extinction of the debt due to the bank by crediting the proceeds of the bonds constituted a receipt by the wife of a taxable remittance either when the advances were made or when her loan was transferred to Colombo. The Court of Appeal held that there had been no remittance to this country. Lord Hanworth, M.R., said, at page 596:

> "As I read Rule 2 of Case V it clearly indicates that there must have been, in one form or another, something which amounted to a sum received in the country."

After reading the Rule he continued, at page 597:

> "To suggest that to attract liability to tax there must be an actual remittance seems quite to overlook the ordinary transactions of commercial men. The probability is that if and so far as either goods or bullion pass from one country to another it is only upon the totality being reached that it can be shown in favour of which country the account lies. If a good illustration is wanted of money which was treated as a remittance although no money had actually passed, an illustration is found in *Scottish Mortgage Company of New Mexico* v. *McKelvie*, 2 T.C. 165. There there was a sum lying outside this country of £500; there was a sum lying over here of £500. The sum which was lying in this country was treated as being income received, and the transaction was wisely carried out without any remission of money, or, indeed, drafts from one side to the other."

After quoting some observations of the Lord President, he continued:

> "That is a very excellent illustration that it is not necessary that there should be a remittance. If you are able to treat what is in your hands as if it were a receipt of income, and if it is used as such, then it is impossible to prevent the incidence of the tax by saying that in fact it had not been remitted."

Then, at page 598, he quoted from Lord Lindley's words in *Gresham Life Assurance Society, Ltd.* v. *Bishop*, [1902] A.C. 287, at page 296 [2]:

> "A sum of money may be received in more ways than one, e.g., by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the statute which your Lordships have to interpret. But to constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money."

Romer, L.J., said, at page 600:

> "It was suggested, I think, by Mr. Hills in his argument that, having so borrowed it on the security of sums representing her income in India, that was

(1) 2 T.C. 165. (2) 4 T.C. 464, at p. 476.

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a sum which must be deemed to have been or which was received by her in the United Kingdom 'on credit or on account in respect of any such remittances,' and so on, as mentioned in the Rule; in other words, that the sum so borrowed was a sum received in this country within the meaning of Rule 2. I do not myself take that view. Had the bank in this country allowed her to draw the £440 on account or in advance or in respect of sums of money that they were expecting to receive in the future from the bank in Colombo, representing income from her foreign possessions, the matter would have been different, but, as I understand it, this money, the money that she was allowed to draw from the bank, was a loan from the bank in its strict sense".

It appears that Romer, L.J., in the words I have read held the view that it was immaterial that the English resident received the money in advance and that the remittance came into the country at a later date. It seems to me with respect that that view is correct. If one applies Romer, L.J.'s hypothesis to the case before us, the Respondent would have been taxable if he had borrowed the sterling from the English bank "on account or in advance or in respect of sums of money that they were expecting to receive in the future" in London from the bank in New York, representing income from his foreign possessions. If that be so, it would be a strange proposition to hold that because instead of borrowing he bought the sterling by giving to the English bank the certainty (instead of the expectation) that they would receive the price from his New York income he is *not* taxable—always provided that the English bank in fact ultimately received the proceeds of the cheque here.

At pages 602–3 in the same case [1], Maugham, L.J., said:

"Liability to tax, therefore, depends on the locality of the receipt; in other words, the liability in respect of the sums received, whether they are from remittances or from property imported, or money or value from property not imported, or from the credits mentioned in the fourth possible method of remittance, depends on the place in which, in a reasonable business sense, the sums are received."

Those words of Maugham, L.J., are, in my view, important. The divergence of view in this case comes largely from differing views as to "the place in which, in a reasonable business sense, the sums are received".

In a subsequent case, *Commissioners of Inland Revenue* v. *Gordon,* 33 T.C. 226, a similar transaction with regard to the transfer of overdrafts was considered. The House of Lords, like the lower Courts, held that it was difficult to distinguish the case in any material respect from *Hall* v. *Marians* and held that the transaction did not come within Case V. Lord Cohen, at page 240, specifically dealt with the hypothesis of Romer, L.J. [2], to which I have referred and says:

"Mr. Tucker read this passage as meaning that if the stated hypothesis had been actual fact Romer, L.J., would have decided the case in the opposite way. Romer, L.J., does not express a concluded opinion but I think it is a fair inference that he would have done so. Even so, I do not think his observations help Mr. Tucker, since in the present case I am unable to trace any finding of fact that the bank in England ever made the loan on account of or in advance or in respect of money of the Respondent representing income which the bank were expecting to receive in England from the branch in Colombo."

It will be seen that none of the cases deals with a transaction of precisely this nature. The principles which as it seems to me can be deduced from the cases to which I have referred are these. First, to bring a transaction within Case IV as received in the United Kingdom or Case V as received in the United Kingdom from remittances payable in the United Kingdom income from abroad must have come to this country. Secondly, that income must have been received in this country by the taxpayer. It must therefore

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(1) 19 T.C. 582. (2) *Ibid.* at p. 600.

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at some time in this country be in the possession of or at the disposal of the taxpayer. If he can direct its disposal he receives it in the person of the alienee. Thirdly, that money may have come to this country in one of the ways in which money does come to a country in a commercial sense. It need not of course come *in specie*. It may, I think, start as dollars and arrive as pounds sterling. It may come by the transfer of a credit from a foreign bank or branch to an English bank or branch. But there must be such a transfer. Fourthly, the fact that the taxpayer receives the fruit of the income before its arrival is immaterial provided the income does in fact arrive (see Romer, L.J.'s hypothesis [1]). And in such a case it need not, as it seems to me, be his property when it arrives since he has received the proceeds of it and directed the transfer.

It is true that *Timpson's Executors* v. *Yerbury* [2] and *Carter* v. *Sharon* [3] would at first sight appear to be authority for saying that the remittance must belong to the taxpayer when it actually comes into this country. On the facts of those cases there would not otherwise have been any receipt at all in this country, since there had been no receipt in advance by the taxpayer. But in the case where the taxpayer receives the proceeds in advance on condition that the income itself arrives to reimburse the person who has lent such proceeds to the taxpayer or paid them as purchase price, I cannot see that principle demands that the remittance should actually be the property of the taxpayer at the time of transit. So to hold would be departing very far from the ordinary sense of the words "received in the United Kingdom", and I should be loth to do so unless compelled by authority. In my view no authority so compels me.

Applying these principles to the case before us, I think that the Respondent by selling for sterling in London a cheque drawn on his foreign income received it in the United Kingdom, if it be shown that the foreign income later arrived in the United Kingdom. It need not arrive in dollars; it may arrive in pounds. It may arrive in any manner in which money is transmitted by banks. Nor need it be identified among a mass of banking transactions if the reasonable business inference is that it did so arrive: see the words of Lord Hanworth, M.R., in *Hall* v. *Marians*, 19 T.C. 582, at page 597:

> "The probability is that if and so far as either goods or bullion pass from one country to another it is only upon the totality being reached that it can be shown in favour of which country the account lies."

The Bank of England bought the dollars. The proceeds of them must, I think, have been a sterling credit to the English bank standing in the books of the Bank of England. I have felt some doubt as to whether that is an inference one may rightly draw, but any other inference seems quite impracticable. As I understand the case, the whole transaction was based on the known fact that the English bank would have to sell the dollars to the Bank of England and out of the proceeds of that sale would recoup itself for the price paid for the cheque. Thus the circle was complete. The English bank had in the United Kingdom from the Respondent's dollars the sterling equivalent which (with a small profit to them) represented the sterling that they had already paid to the Respondent. In my view the Respondent has received the relevant income in the United Kingdom within the meaning of Case IV. He has also in my view received the income from remittances payable within the United Kingdom within the meaning of Case V.

It was common ground to both Counsel that the effect of Case IV and Case V on the transactions which we have before us is identical and that they can find no case where it has been held that the effect of the two Cases differs.

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[1] 19 T.C. 582, at p. 600. [2] 20 T.C. 155. [3] 20 T.C. 229.

While Case IV gives no particulars as to what is meant by "received", Case V gives particulars. Rule 2 of Case V, which has been already read by my Lord, provides that the tax shall be computed on the full amount of the actual sums annually received in the United Kingdom under four heads—(*a*) from remittances payable in the United Kingdom, (*b*) from property imported, (*c*) from money or value arising from property not imported, or (*d*) from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom. Mr. Foster claims that in any event the relevant transactions must in the last resort come within the terms of (*c*) above, namely the Respondent's transaction must constitute a receipt in the United Kingdom of money or value arising from property not imported. He contends that the words mean that the money or value can arise in this country and need never have been brought into it at all. Mr. Bucher argues that one should read into the words the condition that the money or value must itself have been imported.

The words are not easy to construe. Historically these two heads of charge originated in Mr. Pitt's Income Tax Act, 1799. They figure in that Act as:

> "Seventeenth Case. 1*st. From Foreign Possessions.* The full Amount of the actual Annual Net Income received in *Great Britain*"

—there follow directions as to periods of assessment.

> "Eighteenth Case. 2*d. Money arising from Foreign Securities.* The Annual Income of such Securities, if the same were existing in the preceding Year, to be estimated"

—and so forth. In the Income Tax Act, 1803, the Cases became Schedule D, Cases IV and V.

> *"Fourth Case.—The Duty to be charged in respect of Interest arising from Securities in* Ireland, *or in the* British *Plantations in* America, *or in any other of His Majesty's Dominions out of* Great Britain, *and foreign Securities.* The Duty to be charged in respect thereof shall be computed on a Sum not less than the Whole and just Sum and Sums (so far as the same can be computed) which have been or will be received in *Great Britain,* in the current Year, without any Deduction or Abatement.
>
> *Fifth Case.—The Duty to be charged in respect of Possessions in* Ireland, *or in the* British *Plantations in* America, *or in any other of His Majesty's Dominions out of* Great Britain, *and foreign Possessions.* The Duty to be charged in respect thereof shall be computed at not less than the full Amount of the actual Sums annually received in *Great Britain,* either for Remittances from thence payable in *Great Britain,* or from Property imported from thence into *Great Britain,* or from Money or Value received in *Great Britain,* and arising from Property of any Person or Persons, which shall not have been imported into *Great Britain,* computing the same on an Average of the three preceding Years, as directed in the first Case, without Deduction or Abatement."

The Income Tax Act of 1842 made no alterations material to the argument before us save that in that Act in Case V there appear for the first time the concluding words (namely (*d*)):

> "or from Money or Value so received on Credit or on Account in respect of such Remittances, Property, Money, or Value brought or to be brought into *Great Britain*".

The Income Tax Act, 1918, re-enacted words similar in material respects save that in Rule 2 of Case V the words "from thence" are omitted in two places (namely in (*a*) and (*b*)).

If the matter were free from authority I should incline to the view that money or value under (*c*) need not be imported, for the following reasons. Firstly, in the 1803 Act the words in (*c*), namely "arising from Property of

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any Person or Persons, which shall not have been imported", do not contain the words "from thence" after the word "arising", whereas (*a*) and (*b*) do contain the words "from thence". This seems to show that the Legislature, while intending that in (*a*) and (*b*) importation should be connoted, did not so intend in (*c*). Secondly, in the 1803 Act and thereafter the use of the word "arising" is far more apt to indicate something whose origin was in this country than something brought into it. It is the antithesis, as it seems to me, of "imported" in this context. Thirdly, having dealt under (*a*) with remittances and under (*b*) with property imported, it would be natural to go on to deal with the case of the person who did not have the proceeds from the sale of his crop of sugar in the plantations remitted to him here and who did not import his crop of sugar and sell it here but who sold it in this country to some purchaser who would dispose of it abroad or import it at some later date. He would thus be receiving income arising from property not imported. Receipt of the money in this country, not its importation into it, would be the test of (*c*). The tax would then have a coherent framework instead of having an obvious and illogical loophole. Fourthly, if (*c*) only deals with money or value which has itself been imported, it adds nothing to (*a*) and (*b*) which cover money imported and property imported. Moreover, if the money or value referred to in (*c*) is only that which has been imported, there cannot be any relevance in considering whether it came from property not imported or any other income source. Fifthly, the Act does not say that the money or value has to be imported. I do however appreciate that the words of (*d*) as a matter of construction definitely point in a contrary direction. But it is hard to believe that they were inserted in the Act of 1842 (and thereafter in the Act of 1918) with a view to altering the meaning of (*c*), so as to impose the connotation that the money or value must be imported and create the loophole to which I have referred. Had this been intended it could have been clearly expressed in two or three words.

For the above reasons I do not myself see the need or justification for reading into (*c*) words which it does not contain. But opinions have been given *obiter* on the words of (*c*). Lord Cave, L.C., after setting out the words of the Rule, said in *Pickles* v. *Foulsham*, 9 T.C. 261, at page 288:

> "The word 'remittances' (which recalls the expression 'remittances from thence' in the corresponding Rule contained in the Act of 1842) clearly refers to money remitted into the United Kindom from outside. The other branches of the Rule all refer to property, money or value imported or brought into the United Kingdom, and there are no words in the Rule which can comprise money arising and payable here. If so, the inference is that money so arising and payable is outside the Rule, and so is not taxable under Case V at all."

This view was expressed *obiter* and was not part of the *ratio decidendi* of the case, since Rule 2 was held on other grounds clearly inappropriate to the facts which were there considered. Lord Cohen in *Commissioners of Inland Revenue* v. *Gordon*, 33 T.C. 226, at pages 237–8, said:

> "At one time Mr. Tucker, who appeared for the Appellants, suggested that it might be said that there were sums received in the United Kingdom from 'money or value arising from property not imported', but I think that he ultimately recognised that it was impossible to bring this case within the third source without grossly distorting the language used and, in particular, without placing on the word 'from' a meaning which it could not properly bear. There might have been another difficulty in Mr. Tucker's way had he persisted in this argument. To succeed on it, it would have been necessary for him to satisfy us that the 'money or value arising from property not imported' need not itself be brought into the United Kingdom. It is plain from the wording of the Rule that sums cannot be said to be received in the United Kingdom from the first, second or fourth sources unless the source was itself payable in, imported into, or brought or to be brought

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into the United Kingdom. It would be strange if the sums received in the United Kingdom from the third source were within the Rule although the money or value was not imported or to be imported into the United Kingdom. It would be all the more strange since sums received in the United Kingdom from the fourth source—*i.e.*, 'money or value so received on credit or on account in respect of . . . *such* money or value' (*i.e.*, the third source)—could not bring the Rule into operation unless *such* money or value had been brought or was to be brought into the United Kingdom. I incline, therefore, to the view that to succeed under the Rule in respect of sums received from the third source the Crown must establish that the money or value had been brought or was to be brought into the United Kingdom."

But apparently this particular point was not the subject of detailed argument. Lord Normand said that he agreed with Lord Cohen's opinion "*in omnibus*"(1), but Lord Morton of Henryton and Lord Tucker, while agreeing with Lord Cohen's opinion in other respects, expressly reserved the question as to whether the money or value arising from property not imported must itself be brought into the United Kingdom (2).

In view of the weighty sources from which those expressions of opinion (though *obiter*) emanate, I should not feel it proper to hold otherwise. But for the other reasons I have given I would be in favour of allowing the appeal.

Mr. F. N. Bucher.—My Lord, will your Lordships dismiss the appeal with costs?

Jenkins, L.J.—Yes, that follows, Mr. Bucher. You cannot object to that?

Mr. John Foster.—No, my Lord. Would your Lordships allow an appeal in this case?

Jenkins, L.J.—Well, of course, there have been three hearings in the case and you have been unsuccessful in each of them, but you now are comforted by a powerful dissension from my brother Pearce. At the same time there are limits to the extent to which a taxpayer should be carried. I suppose what you are trying to do now is to establish a general principle?

Mr. Foster.—Yes, my Lord.

Jenkins, L.J.—Speaking for myself, I think it should only be on terms that the Crown should pay the whole of the costs of it. There are difficulties about our dealing with the costs in the House of Lords.

Mr. Foster.—Yes, my Lord. I am not dissenting from what your Lordship has said, but supposing their Lordships took a similar view in the House of Lords—it is a difficult case—would it not be fair that the Crown should pay all the costs in the House of Lords; but if it turned out that the House of Lords differed, that the taxpayer should pay the costs in the Court of Appeal?

Jenkins, L.J.—It follows then that the Crown undertakes not to disturb the Orders for costs so far made, and in the event of the appeal to the House of Lords succeeding there would be no request for costs in the House of Lords. That is the usual practice?

Mr. Foster.—Yes, my Lord. If the House of Lords take the view of the Court of Appeal, then the taxpayer would not have lost in the Court of Appeal and he should not be made to pay the costs in the House of Lords. The Crown would be prepared to agree to that.

Jenkins, L.J.—Mr. Bucher, on those undertakings what do you say?

Mr. Bucher.—I could not possibly resist your Lordships' leave to appeal on those terms.

Jenkins, L.J.—Very well, we will grant leave on those terms.

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(1) 33 T.C. 226, at p. 234. (2) *Ibid.*, at pp. 234–5.

The Crown having appealed against the above decision, the case came before the House of Lords (Viscount Simonds and Lords Reid, Radcliffe, Cohen and Denning) on 30th and 31st May, 1st June, and 5th, 6th and 10th October, 1960, when judgment was reserved. On 22nd November, 1960, judgment was given unanimously in favour of the Crown.

Mr. John Foster, Q.C., Mr. Alan Orr and Mr. M. Heald appeared as Counsel for the Crown, and Mr. F. N. Bucher, Q.C., and Mr. P. J. Brennan for the taxpayer.

Viscount Simonds (read by Lord Reid).—My Lords, at the conclusion of the argument in this case I was clearly of opinion that the appeal must succeed. I wrote my opinion accordingly, but, having had the privilege of reading the opinion which my noble and learned friend, Lord Radcliffe, is about to deliver, I have decided to withdraw it. For I am in complete agreement with his reasoning and conclusions, and think it on the whole desirable, in this difficult branch of the law, that the same result should not be reached by the use of slightly different words. I shall, therefore, content myself with moving that the appeal should be allowed and the assessments on the Respondent to Income Tax restored. The Order in the Courts below in regard to costs will not be disturbed, and there will be no Order as to costs in this House.

Lord Reid.—My Lords, the Respondent was born in the United States of America: he is now a British subject resident in this country, but he retains his American domicile of origin. He was in receipt of income in the United States part of which arose from "securities out of the United Kingdom" within the meaning of Case IV, and the remainder of which arose from "possessions out of the United Kingdom" within the meaning of Case V, of Schedule D of the Income Tax Act, 1918.

During the years 1949–50, 1950–51 and 1951–52 he held money, derived from income from those sources, in the Bank of New York in New York. On some 16 occasions he drew cheques on the Bank of New York and sold these cheques in London to Seligman Bros. or the Midland Bank, Ltd.,whereupon he was paid immediately the sterling equivalent of the number of dollars in the cheques. Thereafter the English banks sent the cheques to New York, and cashed them and collected the dollars there. I accept the finding of the Commissioners that these transactions were sales of the cheques, so that the English banks acted as principals and not as collecting agents in cashing the cheques and collecting the proceeds. But if any of the cheques had been dishonoured the banks would have had recourse against the Respondent. The final result of each transaction was that the amount of accrued income held by the Respondent in New York was diminished by the number of dollars in the cheque and that the Respondent had in his hands in London a sum in sterling equivalent to that number of dollars. The question in this case is whether the sums which he received in London by these transactions come within the scope of Cases IV and V of Schedule D. If they do, there is no dispute about the allocation of these sums between the two Cases.

The Respondent not having been domiciled in the United Kingdom, the relevant provisions of the Income Tax Act, 1918, are Rule 2 (*a*) of the Rules applicable to Case IV:

> "The tax in any such case shall be computed on the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom in the year of asesssment without any deduction or abatement"

and Rule 2 of the Rules applicable to Case V:

> "The tax in respect of income arising from possessions out of the United Kingdom"

—other than income to which Rule 1 applies—

> "shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom, on an average of the three preceding years as directed in Case I., without any deduction or abatement other than is therein allowed."

By reason of Section 29 of the Finance Act, 1926, the computation directed by the latter Rule must be made in respect of the year preceding the year of assessment and not on a three years' average.

At first sight it would seem that the requirements of these provisions are satisfied. As regards Case IV, the Respondent undoubtedly received in the United Kingdom the sums paid to him as the price of the cheques and, in each case, by virtue of the contract under which he received the sum, the amount of accrued income held by him in New York was diminished by a corresponding amount. And, as regards Case V, again he undoubtedly received such sums and they would appear to be money arising from property not imported; that is, his accrued income in New York, which he assigned in order to get these sums. But obviously this case cannot be disposed of as easily as that. There is a wealth of authority about these provisions and on the strength of that authority the Commissioners, Wynn-Parry, J., and the majority of the Court of Appeal all held that the facts of this case do not satisfy the statutory provisions. The main ground of judgment in each case was that the sums paid to the Respondent had not been brought into the United Kingdom and that there is nothing to show that any money was ever brought into the United Kingdom in connection with these transactions. That is quite true. But there is nothing in Case IV requiring that money should be brought into the United Kingdom, and this requirement is only attached to one head of Case V which does not apply to the present case. The views of these learned Judges do, however, receive much support from a number of authorities, if statements made in them are really of general application.

Before considering these authorities, I think it well to see what the effect would be if this view were right. I take a case which no one has ever even suggested would not be within the scope of these provisions—the case of a bank acting as a collecting agent. If a customer hands to an English bank for collection a cheque drawn on a foreign bank, the English bank will send the cheque abroad for collection and, when notified that the money has been collected, it will give to the customer in this country the equivalent in sterling at the current rate of exchange. If all the money held by the foreign bank was accrued income of the customer, no one would doubt that he must pay Income Tax on the sum which he receives in this country. But it does not in the least follow that any money will have been remitted from the foreign country or brought into the United Kingdom in connection with the transaction. If, when the cheque was handed to it for collection, the bank required to send, say, £100,000 abroad, either physically by exporting cash or bullion or by buying here a right to receive that sum in that country, the cheque when collected would provide, say, £10,000 worth of the foreign currency which the bank wants and now the bank would only have to send out £90,000. So collecting the cheque abroad and giving the customer sterling here would not involve bringing anything at all into the United Kingdom: it would only involve less being sent out than would otherwise have been necessary. But it would be

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quite absurd to suggest that the customer escapes paying Income Tax merely because of the accident that, in his particular case, collecting his cheque did not involve anything being brought into the United Kingdom.

With such a case in mind I turn to the authorities. The first which I need consider is *Gresham Life Assurance Society, Ltd.* v. *Bishop*(1), [1902] A.C. 287. There, no sum had in fact been received by the society in the United Kingdom. The argument for the Crown was that "received in the United Kingdom" is not confined to physical receipt and that it was enough that the society's foreign income had been used to pay foreign debts which would otherwise have had to be paid out of money here. No one appears to have had in mind a case where a sum was in fact received in this country although nothing had been brought into this country: it seems to have been assumed that, if a sum being or representing foreign income is received in this country, it must have been brought in; but any such assumption was quite unnecessary for the decision at which this House arrived. It is true that Lord Macnaghten said (2):

> "I do not understand what is meant by constructive receipt in such a case as this, or how any sums can be said to have been received in the United Kingdom unless they have been brought to the United Kingdom, or unless there has been a remittance 'payable in the United Kingdom' ".

But I cannot infer from that that, if a method had been pointed out to him by which a sum of income could be received in the United Kingdom without anything being brought in, he would have held that the sum so received was not taxable. I think that the same applies to the other noble and learned Lords whose speeches are reported. The subsequent application of what was said in the *Gresham* case seems to me a good example of the danger of applying judicial pronouncements literally to situations which cannot have been in mind when they were made. Then, in *Scottish Widows' Fund Life Assurance Society* v. *Farmer*, 5 T.C. 502 at page 508, Lord Dunedin, the Lord President, said that the word in the Statute

> "is 'receipt', and nothing less than actual receipt will do. Now, actual receipt of money, it seems to me, can only be effected in one of two ways. Either the money itself must be brought over *in specie*, or the money must be sent in the form which, according to the ordinary usages of commerce, is one of the known forms of remittance."

I would agree that there was no remittance in the present case, because the whole of the money in New York was still there at and after the time when the Respondent received the price of the cheques here. But again, the point in the *Scottish Widows'* case was that no money was in fact received here, and Lord Dunedin's statement that there were only two ways was *obiter*. A third way has now appeared. In *Pickles* v. *Foulsham*, 9 T.C. 261, the point decided by this House was that the sums received were not income from a foreign possession. What the Respondent founds on is a passage from the speech of Lord Cave, L.C. (3), in which he said that the sum there in question was not a remittance and that the other branches of Rule 2 of Case V

> "all refer to property, money or value imported or brought into the United Kingdom, and there are no words in the Rule which can comprise money arising and payable here."

There was no question in that case of the sum received here being or representing foreign income and, again, I do not think that Lord Cave's words should be applied literally to a case so far removed as the present from the case which he was then considering.

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(1) 4 T.C. 464. (2) *Ibid.*, at p. 473. (3) 9 T.C. at p. 288.

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Many other cases were cited which contain statements similar to those which I have quoted, but I do not think it would be useful to multiply citations. In all except two the facts were far removed from the facts of this case: there was no question of a sum being actually received by the taxpayer in this country with a corresponding diminution of the amount of the taxpayer's accrued income abroad. There are several cases where a sum derived from the taxpayer's income was received in this country by someone other than the taxpayer himself. I see no reason to doubt these decisions, but they do not appear to me to help in the present case because, in this case, the sums in question were actually received by the taxpayer himself. The two cases which I must deal with are *Hall* v. *Marians*, 19 T.C. 582, and *Commissioners of Inland Revenue* v. *Gordon*, 33 T.C. 226. The latter is a decision of this House. In it an arrangement was made whereby the taxpayer did receive money in this country, with a consequential reduction of the amount of his accrued income in Ceylon. He borrowed money in this country from a bank and arranged that the bank should be repaid in Ceylon. *Hall's* case was somewhat similar. These cases would have caused me considerable difficulty were it not for the fact that, by reason of the provisions of Section 24, Finance Act, 1953, they are no longer good law. They do not add much to the general statements in the earlier authorities, but they do apply those statements to facts which, though distinguishable, are not very far removed from the facts of the present case. The fact that the decisions are no longer valid in my view diminishes the authority of the *rationes decidendi*, but if I had been sitting in a lower Court I would have hesitated before reaching the decision which I think I ought now to take.

First I return to the case of a banker collecting a cheque for a customer but bringing nothing into this country. A survey of the authorities has satisfied me that they contain nothing which precludes me from holding that, in every case where a customer employs a banker to collect, by means of his foreign cheque, money abroad which is part of his income, the sum which the customer receives in this country is a "sum received" within the meaning of Cases IV and V and that it is immaterial that no money was in fact brought into this country in the course of, or in connection with, the transaction. Indeed, I think it most improbable that any of those learned Judges whose judgments have been cited by the Respondent would have disagreed with that view. From the point of view of the taxpayer, his income has been brought into the United Kingdom. He had, but no longer has, money in a bank abroad: he now has an equivalent amount of money in his hands in this country. How that was achieved is no concern of his, and I cannot read the statutory provisions as making his liability to tax depend on the method which his banker employed.

Then I turn to see in what respect the transactions in this case differ from the case of a banker collecting a cheque for a customer. If, in this case, the Respondent had handed each of these cheques to his bank for collection instead of selling it to the bank, everything might—and probably would—have happened in just the same way, with one exception: the Respondent would in each case have received his money in London a day or two later. For the Respondent this is said to make all the difference between liability and non-liability to tax: where the bank collects the cheque, the amount of his income in the New York bank is diminished before he gets his money here and so what he gets here can be regarded as being part of his income; but, in the present case, the whole of his accrued income was still in New York when he received the price of the cheque here, so what he got here cannot be part

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of his income. The flaw in this argument is in regarding the sum at his credit in New York as being still truly at his disposal during the interval between his selling the cheque here and the cheque being presented for payment in New York. By selling his cheque here he assigned his right to the money in New York. It is true that he could have defeated this assignment by stopping payment of the cheque or drawing the money out of his New York bank before the cheque which he had sold had been presented for payment. But this would have been dishonest and would have entitled the English bank to recourse against him. So I see no difficulty in regarding the sums which the Respondent received in London as being received in place of corresponding sums at his credit in New York, which then ceased to be at his disposal.

That is sufficient to satisfy Case IV. Case V requires further consideration: under it not only must a sum be received, it must be received in one of the four ways specified in the Rule. These four ways seem to comprehend all possible methods, but if a case should ever happen in which a sum is received, but not in one of these four ways, then Case V would not apply: to that extent it is narrower in scope than Case IV. I do not think that the first, second or fourth heads apply in the present case, but, in my opinion, the third does apply: "money or value arising from property not imported". The money arising is the price of the cheques received here by the Respondent and it arose from the Respondent's property in New York—his right to the sums at his credit there which he assigned by means of the cheques. But it was argued, both on authority and on the construction of the Rule itself, that we must read into this third head a requirement that the "money or value" must itself have been imported or brought into the United Kingdom. With regard to authority, I think that the same considerations apply to those which I have set out in dealing with the more general question whether all "sums received" within the meaning of Cases IV and V must be brought into the United Kingdom. On the construction of the Statute, I would say that the words sought to be read in are not there and they are not necessary to make the provision workable: on the contrary, if they were read in, the third head would add nothing to the other three and there would be created an obvious opportunity for avoidance of tax. The history of Case V is set out by Pearce, L.J., in his judgment in this case. It goes back to 1803 and is said to have been introduced to deal with profits from plantations in the West Indies. Originally it did not contain what is now the fourth head. It appears to have been based on the view that there were three ways in which an owner could enjoy his profits in this country: by a remittance of money from the colony; by bringing, say, his sugar to this country and selling it here; or by selling the sugar here for delivery in the colony and receiving the price here. If it were right to insert the words now sought to be read in, the latter method would never have been caught by the provisions of Case V and there would always have been a rather obvious method of avoiding liability to tax.

The difficulty has been created by the addition of the fourth head, which I think goes back to 1805. It deals with money or value received on credit or on account in respect of anything covered by the first three heads, and it is governed by the words "brought . . . into the United Kingdom". It would be anomalous, so it is said, that these words should apply where money is received on credit or account in respect of, say, sugar sold for delivery in the colony, but not to the actual proceeds of the sale. I cannot help suspecting that the original draftsman of this fourth head did not fully understand the scope of the other three heads and, if I have to choose between holding that there is this anomaly and holding that the words "brought . . . into the United

Kingdom" must be read into the third head, I feel bound to hold that the existence of this anomaly is not a sufficient reason for reading those words into the third head. I am therefore of opinion that the provisions of Case V do apply to this case. Accordingly, I would allow this appeal.

Lord Radcliffe (read by Lord Tucker).—My Lords, I do not need to travel again over the facts of this case, which have been stated already. It is a straightforward story of a resident of this country selling dollars in his bank account in New York in exchange for sterling which the bankers in London were ready to provide. The American bank account was fed only by the receipt of income arising from his American securities or possessions. I should say that, in the plain meaning of language, the sterling credits were sums received by him in this country out of his American income, which had *pro tanto* been used to acquire them, and that in this sense he had brought over his American income to the United Kingdom. That being so, the sums so received are, in my opinion, properly computed in assessing his tax under Case IV and Case V of Schedule D.

What has puzzled me throughout is to see how or why the banking transactions for effecting the remittance of his money from America to which the Respondent resorted should be regarded as insufficient to constitute the sterling proceeds received as assessable sums for the purpose of these two Cases. He did not, of course, invest his American income in bullion or commodities to be shipped over here and sold, or in United States dollar bills for similar realisation: but then nobody says or supposes that assessability is confined to such transactions. Nor did he instruct his bankers or agents to use his dollar income in buying a bill on London which would have been discounted or presented here for payment. These would have been possible methods of "bringing" the money here and, no doubt, have all been resorted to in their time. But what he did do seems to me to have been in all essentials a similar transaction and to have amounted just as much to a "bringing" in the relevant sense. He wrote out his cheques on his New York bankers directing them to hand over his dollars to, or to the order of, his United Kingdom purchasers; and these purchasers in return acknowledged a sterling debt to him calculated at the current rate of exchange between New York and London. He parted with his dollars: he got his sterling. He emptied one pocket of dollars in order to fill another pocket with sterling. It is true that the cheques in question were written out and signed in London and, if you please, sold here, so that the instruments themselves did not cross the Atlantic until he had made this sale and, even then, only in the outward direction; but what importance can there be in the actual place of making the instrument, or in its physical movements, if the direct result of the mechanism employed was to turn the taxpayer's income in one country into money or value in the other country, to which he had decided to transfer it? Yet, up to now, three Courts in succession have rejected the idea of the Respondent being assessable in respect of these sterling sums and it is evident to me, when I study the language of the judgments given, that they all proceed on the basis that the "bringing in" which they regard as necessary to liability involves some operation that was lacking from the transactions that were here carried out. Thus, the Special Commissioners in paragraph 7 of the Stated Case rest their conclusion on the view that

> "no remittances of American income had been brought into the United Kingdom."

I do not know whether that is supposed to be a finding of fact or a conclusion of law: the latter, I think. In either event, the conclusion or finding shirks the

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test of liability propounded by the Statute. Wynn-Parry, J., in the High Court [1], founds himself upon the proposition that

> "in order for Case V to operate the dollars in question in this case must be shown to have been brought into the United Kingdom",

and dismisses the appeal of the Crown on the ground that

> "no dollars representing the income of the Respondent were, over the material period, brought into the United Kingdom.[2]"

In the same way, Jenkins, L.J., makes it his determining point [3] that it was no part of the bargain when the Respondent sold his cheques that the dollars taken over by the purchasers should be brought into the United Kingdom, and there is no evidence that they were so brought. The sterling credits he received

> "lacked the essential character of a sum brought to the United Kingdom from New York";

and Romer, L.J., proceeds upon just the same line of reasoning. He even commits himself [4] to what is to me the startling statement that:

> "There is no reason to suppose that Mr. Moyse ever intended that his American income should be transmitted to him in this country at any time".

It is evident, therefore, that the judgments below have proceeded according to some conception of the meaning of these words "bringing in" which is altogether different from that which I attribute to them. As I have indicated, I am clearly of opinion that this conception is a mistaken one and served only to obscure the significance of the true statutory test, whether income arising abroad has or has not been received as sums of money in the United Kingdom. Out of respect for the contrary view I would gladly offer my comments upon it in detail, but I am in the difficulty that I have not found it possible to discover from the expressions employed what it is that is regarded as missing from the transactions under review that so prevents them being treated as remittances of foreign income. I must, therefore, confine myself to one or two observations which will, I hope, at least make clear what is my own reading of the words of the Statute.

The second Rules under Case IV and Case V are concerned with the turning of income which has arisen in one country into the expendable resources of its owner in another: to effect that the owner parts with the resources that represent his income in the country of origin in order to obtain in exchange resources in the country where he desires to spend them. He would spend his dollars, let us say, that is, his right to be paid dollars by his bank in New York, in order to obtain—through a bill payable, let us say, in London, or a bank credit in London—the right to sterling, that is the right to be paid sterling by his London debtor. The thing that he would not do in order to "bring" his American money into this country would be to bring his dollars here. In fact, that is just the reverse of what he would or could do: firstly because he has to part with the dollars to acquire the sterling, and secondly because, that apart, there is generally speaking no use for dollars in the United Kingdom, except in the very limited sense that dollar bills could be sold here for sterling to those who might wish to hold them as reserve or take them back to spend in the United States. It is plain, therefore, that the "bringing in" of a person's income in this context means nothing more than the effecting of its transmission from one country to the other by whatever means the

(1) *See* page 302 *ante*. (2) *See* page 303 *ante*. (3) *See* page 306 *ante*. (4) *See page* 316 *ante*.

agencies of commerce or finance may make available for that purpose. If that transmission takes place, it is neither here nor there to ask whether anything, items of property or instrument of transfer, has actually been brought into the country or not. No more is it relevant to know what has happened to the taxpayer's money in the country where the income arises. *Ex hypothesi* he has transferred it—in this case, the dollar credit—to the purchaser who is to provide him with sterling. What use the purchaser may make of the dollars has no bearing on the question whether the taxpayer has received sums of sterling through remittance of his American income. Subject to exchange control regulations, with which I do not deal, the purchaser may retain the dollar credit undrawn upon, or he may draw upon it for expenditure in America; or he may, as was done here, transfer it against sterling to the Bank of England or an authorised purchaser of dollars. None of that is of any relevance to the present issue.

I appreciate, of course, that the views expressed by Wynn-Parry, J., and the Court of Appeal were regarded by them as founded both upon the wording of Cases IV and V and upon what has been said in earlier judicial decisions dealing with other points arising under these two Cases. My opinion is that neither the words of the Income Tax Act nor these earlier decisions, properly understood, do support these views. But I have no right to dispose of the matter quite as summarily as that.

To take the Act first. There is nothing in Case IV about bringing anything in. When Rule 2 is invoked, the computation in respect of income from foreign securities depends simply on the question, what is the amount of sums which have been or will be received in the United Kingdom in the year of assessment. No doubt proper construction of those words requires that the sums computable must be sums "of" the income, by which I would understand "sums of money derived from the application of the income to achieving the necessary transfer". But that is all. If sterling sums are received and are so attributable, that is enough for liability. Case V is, in my view, similarly conceived. The formula for liability under its Rule 2 is the same, the full amount of the actual sums of the income received in the United Kingdom. Since there seems to be no good reason for applying a different standard to income from foreign possessions from that applied to income from foreign securities, it would be strange if there were in fact a different formula. It is true that the Rule then goes on to list a number of sources from which the sums to be computed may have been received; and this additional wording has, I think, been the origin of some of the mystification which has crept into this branch of the law. There has been a tendency to treat these several instances of the way in which income may be remitted as if they were limiting the generality of the phrase "actual sums . . . received in the United Kingdom" and it may be said in defence of such a reading that the strict grammar of the sentence does so suggest. In my view, however, it would be wrong to give any weight to this; for I cannot think that it was ever the intention of the Legislature to say in effect that, whereas under Case IV all sums of foreign income were to be computable if received in the United Kingdom, under Case V only those sums of income received were to be computable which were attributable to the specified operations or sources. There could be no reason for such a distinction. I think, therefore, that these four sub-heads, as they have been called, should be treated as illustrations (no doubt intended to form a comprehensive list of illustrations) of the way in which, when foreign income is transmitted to this country, the transmission can be effected and the sterling sums obtained. These sub-heads, which are not all very clearly phrased,

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should accordingly be construed according to their general sense and without too much nicety of language. For instance, "remittances payable in the United Kingdom" is a phrase capable of applying to the instrument employed to effect the transfer, to the credit arising from the transfer and, I think, to the whole operation of remitting money to be paid here. I draw attention to this because one or two of our authorities have treated these and other words with more semantic scruple than is appropriate to the context: and from that have come some of our present troubles. The point is of no practical significance in the case now under review since, even if the Respondent's sterling credit was not a sum received from remittances payable in the United Kingdom, as I think that it probably was, it was certainly money or value arising from property not imported; that is, the dollar credit in New York which he sold.

I have searched the authorities on the meaning of the two Cases to see whether they invite us or require us to take a different view. If it is not disrespectful to say so, I cannot see what influence, apart from a few sentences which need mention, they are supposed to have on what is now before us. For instance, reliance has been placed upon the well-known decision of this House in *Gresham Life Assurance Society, Ltd.* v. *Bishop*, 4 T.C. 464, which settled that a taxpayer did not receive sums of money here from his foreign income merely by taking that income into account in his yearly statement of profits. Well, of course, he did not. Drawing up an account of your income does not in itself involve any operation of transmitting money at all. Nor was the taxpayer, as in *Scottish Mortgage Co. of New Mexico* v. *McKelvie*, 2 T.C. 165, under what was treated as a statutory prohibition of denying that in fact he had transmitted money. The House pointed out that there was no such thing as a constructive receipt for this purpose. But then there is nothing constructive about the Respondent's receipt of his sterling sums in the present case. There they were to his credit in his London bank. It is said, as if it had a bearing on our decision, that those sterling sums arose within the United Kingdom from a sale made here. In that limited sense, I have no doubt that they did. But what has that to do with liability? If, having foreign income, I invest it in property, import the property, and then sell it here, the sterling proceeds arise in the United Kingdom from a sale made here: yet the proceeds are certainly computable (see, for instance, *Scottish Provident Institution* v. *Farmer*, 6 T.C. 34). There is the case of *Paget* v. *Commissioners of Inland Revenue*, 21 T.C. 677, the circumstances of which were that, interest payments on certain foreign bonds being in default, the taxpayer sold her coupons in this country and received the proceeds here. What she sold was not a right to take over any existing credit—she had never had her income—but the right to receive such income in the future as well as the right to get what could be got from the defaulting debtors. There was in fact no income to transmit. The decision was that the sum so received by her was not her income at all for the purposes of the Income Tax Acts. I do not see what light that can throw upon the present case. Equally, I find nothing of assistance in either of the cases *Timpson's Executors* v. *Yerbury*, 20 T.C. 155, and *Carter* v. *Sharon*, 20 T.C. 229, which were deployed before us, Counsel on each side finding in them comfort and support. Nor, I think, did the two members of the Court of Appeal who were in favour of the Respondent. In both cases, ordinary means of transmitting money from one country to another had been employed. That was not in dispute. What was in issue was whether what was received in this country had been received by the taxpayer at any stage. The decisions turned on the rules of English law as to the effectuating of voluntary dispositions of property.

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Then there is *Foulsham* v. *Pickles*(1), [1925] A.C. 458. This again was a case, like the *Gresham Life Assurance Society* case(2), in which no operations at all had taken place for transferring income: the income in question, the Respondent's salary, had been paid into his bank account in the United Kingdom and remained there. All that was in dispute was whether it arose from a foreign posession, an oversea employment, so as to justify the assessment that had been made under Case V. What was decided was that the source of the income was not a foreign possession. That does not help us. The only difficulty is caused by some words used by Lord Cave, L.C., in his speech, in which he sets out his version of the language of Case V, Rule 2, and says, no doubt correctly(3):

> "The word 'remittances' . . . refers to money remitted into the United Kingdom from outside. The other branches of the Rule all refer to property, money or value imported or brought into the United Kingdom, and there are no words in the Rule which can comprise money arising and payable here. If so, the inference is that money so arising and payable is outside the Rule, and so is not taxable under Case V at all."

I can attach no value to this passage as an attempted interpretation of Rule 2 of Case V, and I have not been able to satisfy myself whether it has any intelligible meaning. It is not an accurate recital of the language of the various branches: and if it really means that "money arising and payable here" cannot in any circumstances constitute a receipt under the Rule, it is contrary to the obvious meaning of, for instance, the second branch itself and, for that matter, to the decision in *Scottish Provident Institution* v. *Farmer* (4). The passage is not in any way relevant to the decision that the source of income was not a foreign possession, and is not of any authority. For myself I think that all that Lord Cave intended to say was that, if money arises in the United Kingdom as the original form of someone's income, as Mr. Pickles' had, so that there is never at any time any foreign income that can go through the process of transmission, there is nothing to which Rule 2 of Case V can apply. I agree with that.

That leaves the two cases under the fourth branch, *Hall* v. *Marians,* 19 T.C. 582, and *Commissioners of Inland Revenue* v. *Gordon,* 33 T.C. 226. They were cases of peculiar difficulty, depending on the relationship between loans made in this country and the foreign income out of which they were ultimately paid off. In essence the decisions adopted the view that you could, as it were, take the debt over to the income instead of bringing the income to the debt. Whether that is the right way to treat the facts when the creditor is a bank with London and overseas branches is not now of any importance, since the Legislature has intervened after the *Gordon* case to reverse the consequences of that decision and to bring such operations within Rule 2 of Case V for the future. It would be a mistake, in those circumstances, to build any principles upon the basis of those two decisions. The Courts' reasoning was, I think, conditioned by the findings of fact made by the Special Commissioners, and I can only say that in the *Gordon* case I should have found it very difficult to treat the finding of fact as one which ought to be accepted by the Court. Nor do I need to say anything about the passage in the speech of my noble and learned friend Lord Cohen which has been quoted in the judgments below. It was *obiter* and plainly formed no part of the decision of the House. It was probably an echo of what Lord Cave had said in *Foulsham* v. *Pickles* and, as expressed, I would not be ready to agree with it, but, like other passages on this subject, the meaning remains uncertain until it is expanded to

(1) 9 T.C. 261. (2) 4 T.C. 464. (3) 9 T.C., at p. 288. (4) 6 T.C. 34.

(Lord Radcliffe)

show in what sense those ambiguous words "brought or to be brought into the United Kingdom" are meant to be taken.

In the result, I see no difference in this case between the sterling credit which the Respondent received against the cheque drawn by the United States Treasury on its dollar account, which is admitted to be computable, and the sterling credits which he received against the dollar cheque drawn by him on his own account.

I would allow the appeal.

Lord Cohen.—My Lords, I agree that this appeal should be allowed for the reasons given by my noble and learned friend Lord Radcliffe. I only desire to add a few words since the decision in the Court below was based, in part at least, on an *obiter dictum* of mine in the case of *Commissioners of Inland Revenue* v. *Gordon,* 33 T.C. 226.

The facts in that case were very different from those now before your Lordships. In that case, the taxpayer had obtained loans by way of overdraft from the head office in London of the National Bank of India, Ltd. He had also an account with the Colombo branch of the bank which was fed in part by transfers of business profits from the accounts of a firm carrying on business in Ceylon in which the taxpayer was senior partner. The taxpayer never gave any security for the loans and no part of the rupee balance to the credit of his account in Ceylon was ever remitted to London, but, by arrangement with the head office in London, the overdraft was transferred to Colombo whenever it reached £500. It was there converted into rupees and satisfied by periodic payments into his Colombo account from the respondent's firm. There was no doubt that those periodic payments represented income from possessions of the taxpayer out of the United Kingdom within Case V of Schedule D, and the Crown contended that the arrangement with the head office of the bank constituted a remittance of money to this country from Colombo within Rule 2 of the Rules applicable to Case V. This argument was rejected by the Special Commissioners, and their decision was affirmed by the First Division of the Court of Session and by your Lordships' House. The ground of your Lordships' decision is, I think, clear from the penultimate paragraph of my speech on that occasion (see page 242). This paragraph was accepted as correct by the other noble and learned Lords then present and read as follows:

> "Applying this citation to the present case, it is attractive to suggest that, as the Respondent obtained and spent these loans in London and was, so far as the evidence goes, able to discharge them only from monies in Ceylon, part at any rate of which was income, and as the loan was in fact discharged, the money he received in England must have been received at least in part from remittances of income from Ceylon. Attractive though this may be it seems to me quite impossible to bring what happened within the compass of the Rule. It is plain that the income receipts of the Respondent were all received in Ceylon. It is plain that the monies he received in London were advances of capital. There is no finding that those advances were made on credit or on account in respect of income in Ceylon which it was intended should be brought to London. On the contrary, the parties expressly agreed that the debt should be discharged in Ceylon; it was so discharged and there is no evidence that the rupees which the bank received in Ceylon were ever remitted to London."

In the course of my speech I had set out, at page 237, the four specified sources from which the sums received in the United Kingdom must have been received to bring Rule 2 of the Rules applicable to Case V of Schedule D into operation. The third of these sources was "money or value arising from property not imported". In relation to an argument that the sums sought to be charged fell within that source, I said, at page 238:

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> "I incline therefore, to the view that to succeed under the Rule in respect of sums received from the third source the Crown must establish that the money or value had been brought or was to be brought into the United Kingdom."

My noble and learned friend Lord Normand concurred in this *dictum,* but the other noble and learned Lords reserved the point for consideration if and when it should arise. The actual decision in *Gordon's* case ([1]) is now of no importance since the law was amended by Section 24, Finance Act, 1953, but the *dictum* for which I was responsible was relied on by Wynn-Parry, J., and by the majority of the Court of Appeal in the case now before your Lordships.

My Lords, I do not think the *dictum* does justify their conclusion. Mr. Bucher, for the Respondent, relied on it as supporting the view that a sum of money must actually be brought into this country from abroad and that as in the present case no dollars, and no equivalent of dollars, were brought into this country, the Appellant must fail. I do not think the *dictum* justifies this conclusion. If it does, it must be wrong, for it would ignore the ordinary commercial practice prevailing among business men. I think that the basis of the decision in *Gordon's* case was that, in that case, the money or value received in England was a receipt on capital account and that there was no nexus between it and the income receipt in Ceylon. In the present case, on the contrary, the true view of the transactions may in my opinion be summarised as follows:

(1) The Respondent received income in New York from his father's estate and from his mother's estate. This was income arising from securities out of the United Kingdom within Case IV or, as the case might be, income from possessions out of the United Kingdom within Case V.

(2) This income was paid into the Respondent's bank account in New York. The balance to the credit of that account was property outside the United Kingdom.

(3) When the Respondent drew a cheque on that account and sold it for sterling to Seligman Bros. or the Midland Bank, Ltd., the sterling credited to his account was money or value in the United Kingdom arising from the property in the New York bank account; and, accordingly, the Crown are entitled to tax on the full amount of it. So far as Case V is concerned, this liability arises because the sterling is, as I have said, money or value arising from property not imported. Under Case IV, the sterling is a sum of income which was received by the Respondent in the United Kingdom in the relevant year of assessment and it arose from securities out of the United Kingdom.

If there is anything in my *dictum* in *Gordon's* case which conflicts with the above summary of the position in the present case, I can only express the hope that the *dictum* will receive from your Lordships as sudden a death as was given to the decision in *Gordon's* case by Section 24 of the Finance Act, 1953.

Lord Denning (read by Lord Cohen).—My Lords, the question in this case is, what tax is payable by Mr. Moyse on his New York income. He lives in England but is domiciled in the United States. At all material times he was entitled to an income in the United States of some $17,000 a year. It was

([1]) 33 T.C. 226.

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credited to his account at the Wall Street branch of the Bank of New York. Some of his income (about $7,000) arose from "securities" in the United States; the rest (about $10,000) from "possessions" in the United States. He is not liable to pay Income Tax here on this income except in so far as it is "received" in the United Kingdom. The United Kingdom tax payable by him is chargeable under two Cases of Schedule D:

(1) in so far as the income arose from "securities", it is to be computed on the full amount of "the sums which have been, or will be, received in the United Kingdom" (see Case IV, Rule 2) and

(2) in so far as the income arose from "possessions", it is to be computed on the full amount of "the actual sums annually received in the United Kingdom" from certain sources (see Case V, Rule 2 and 3).

Let me first consider the tax chargeable under Case IV. Clearly, tax is only to be computed on the sums received in England. These sums must be directly referable to Mr. Moyse's New York income in this sense, that they must come out of his New York income, or be deductible from it or be traceable to it, so that in the end his New York income is seen to be the provider of the sums received in England. If Mr. Moyse receives the sums out of that income in England himself, he must, of course, pay tax on those sums. But he need not receive them himself. It is sufficient if the sums are received in England by some third person by his authority. Thus, if Mr. Moyse, instead of receiving the money himself, tells his New York banker to send a remittance to his butcher or baker or candlestick-maker in England, he is chargeable with tax on it for the simple reason that he was "entitled" to the income which has been used to pay the debt; and he must pay tax on it when it is received in England, no matter by whom it is received, so long as it is received by his authority (see Rule 1 of the Miscellaneous Rules applicable to Schedule D and *Timpson's Executors* v. *Yerbury* (1), [1936] 1 K.B. 645). Nor is it necessary that Mr. Moyse or the third party should receive the sums in coins or dollar notes or treasury notes. It is sufficient if he or the third party receives the sums in England in any of the other forms of money recognized by commercial men, such as bills of exchange, cheques, promissory notes or cash at bank (see *Gresham Life Assurance Society, Ltd.* v. *Bishop*(2), [1902] A.C. 287 at page 296 *per* Lord Lindley). Thus, if Mr. Moyse, whilst in New York, draws a cheque in dollars on his New York bank in favour of his butcher or baker or candlestick-maker in England and brings the cheque over himself—or sends it over by post—and hands it to the tradesman in payment of the debt, then Mr. Moyse is chargeable with tax on it. So much is conceded. But the reason is not because Mr. Moyse brought the cheque over from New York, or posted it in New York. It is because the tradesman received it here in payment of his account on the authority of Mr. Moyse himself. The position would be just the same if Mr. Moyse, with Treasury permission, wrote out the same cheque in England and handed it over himself to the tradesman here. But the dollar cheque itself would be a "sum received" in England by the tradesman on the authority of Mr. Moyse: and, as it was payable out of his New York income, Mr. Moyse is chargeable with tax on it. My Lords, I have just said that the dollar cheque itself would be a "sum received" in England by the tradesman: and this is, I think, a cardinal point in the case. It is immaterial how the

(1) 20 T.C. 155. (2) 4 T.C. 464.

tradesman cashes the cheque. He may, with Treasury permission, cash the cheque in the United States and keep the dollars there; or he may sell the cheque to an authorised dealer in England and receive the proceeds in sterling; or the cheque may be stolen from him and cashed by a wrongdoer, in which case he may sue the wrongdoer in conversion. None of that concerns the man who pays by cheque, for he has got the goods and paid his debt. True it is that the payment is conditional on the cheque being met, but that is only a condition subsequent. If the cheque is met, it ranks as an actual payment from the time it was given and not a conditional one. If the cheque is not met, the tradesman can have recourse to the debtor, because then there has been no payment. But subject to it being defeated by that condition subsequent, the payment is complete at the time when and the place where the cheque is accepted by the creditor.

Now, how does this all apply in the present case? The Commissioners were, of course, quite right in holding that

> "neither Seligman Bros. nor the Midland Bank, Ltd., were acting as a collecting agent on the Respondent's behalf but in every case acted as a principal".

A bank acts as a collecting agent when a customer hands to the bank a cheque payable to him (the customer) and asks the bank to collect the amount and credit it to his account when received. But the cheques in this case were not made payable to the customer. In every case a cheque was drawn by the customer (Mr. Moyse) and made payable to the bank itself, Seligman Bros. or the Midland Bank, Ltd., as the case may be, and the customer received sterling in exchange for it. In short, the customer (Mr. Moyse) bought sterling from the bank and paid for it by a dollar cheque. It is just the same as if Mr. Moyse, instead of buying sterling, had bought anything else in England —a diamond or whatever else you please—and paid for it, with Treasury permission, by a dollar cheque on his New York bank account. The bank which sold sterling was in no different position from a tradesman who sells goods. It received payment by dollar cheque. The cheques were "sums received" in England by the bank with the authority of Mr. Moyse and, as they were payable out of his New York income, they must be brought into the computation of tax. There is another way of reaching the same result. Instead of saying that the dollar cheque was the "sum received", it can be said that the sterling which Mr. Moyse received from the bank was a "sum received" by him in the United Kingdom. And he used his New York income to produce that sum, for it was only received by means of a cheque which depleted his New York income by a corresponding amount. So it was directly referable to his New York income and must be brought into the computation of tax accordingly. But I prefer to regard the dollar cheque received by the bank as the "sum received". If Mr. Moyse gave the dollar cheque to a relative here as a gift, it would come into the computation of tax, even though he himself got nothing in return. So it is not the receipt of the sterling which is the crucial thing, but the receipt of the dollar cheque.

Let me next consider the tax chargeable under Case V. It is plain that here, as under Case IV, the tax is to be computed on such part of the income as consists of "sums . . . received in the United Kingdom". Thus far, all I have said about Case IV applies to Case V also. The dollar cheques were sums received by the banks in England. But in addition, under Case V the sums must be received—

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(*a*) "from remittances payable in the United Kingdom",
(*b*) "or from property imported",
(*c*) "or from money or value arising from property not imported",
(*d*) "or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom".

My Lords, I do not think these four sources render Case V very different from Case IV. The four heads comprehend almost every conceivable way in which the income can be used to produce sums which are received in the United Kingdom. But if a choice has to be made, I put this case under head (*c*). The New York bank account of Mr. Moyse was "property not imported" into the United Kingdom. When Mr. Moyse drew a dollar cheque on that account and used it to pay his English banker, he brought into existence "money or value arising from property not imported". And when the banker received in England the dollar cheque in payment of his debt, he received a sum from that source. And, as he received it by the authority of Mr. Moyse, it is to be brought into computation under Case V.

Mr. Bucher conceded that, if the cheques had been drawn by Mr. Moyse in New York and then brought by him into England or sent by post to England, they would have to be brought into computation to tax under Case V; but he said that, as they had been drawn in England and handed over in England, they were outside Case V. He said that the money or value must be brought into the United Kingdom. I cannot accept this contention. The money or value must be received in the United Kingdom, but it need not be imported here. Thus in the old days, if the owner of a sugar plantation in America sold the sugar to an English buyer for delivery abroad, but received the price in England—as he might well do—he would be chargeable with tax on it, so far as it represented income, under Schedule D, Case V, head (*c*) of the Income Tax Act, 1803. The sugar would not be imported into England. Nor would the money or value be imported into England. But the price would be received here, and that would suffice. And there is no material difference between the wording of the 1803 Act and the 1918 Act on this point. I find myself in full agreement with what Pearce, L.J., said on this point, [1959] Ch. 464, at pages 519–21 (1).

It all comes back, therefore, to the question whether these dollar cheques were "sums received" in the United Kingdom. I think they were. They were sums received by the banks on the authority of Mr. Moyse and must therefore be taken into computation for tax under Case IV and Case V.

I need not say much about *Hall* v. *Marians,* 19 T.C. 582, and *Commissioners of Inland Revenue* v. *Gordon* (2), [1952] 1 T.L.R. 913. The decisions in those cases have been reversed by Parliament in Section 24 of the Finance Act, 1953, and they can no longer be regarded as of binding authority, nor can the reasons on which they were based.

I would therefore allow the appeal and hold that Mr. Moyse is liable to assessment as claimed by the Crown.

Questions put:

(1) *See* pages 325-7 *ante*. (2) 33 T.C. 226.

That the Order appealed from be reversed.

The Contents have it.

That the assessments to Income Tax made upon the Respondent be restored.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Vandercom, Stanton & Co.]