HIGH COURT OF JUSTICE (CHANCERY DIVISION)—

25TH, 26TH, 29TH AND 30TH JUNE, AND 24TH JULY, 1959

COURT OF APPEAL—8TH, 9TH AND 10TH MARCH, 1960

HOUSE OF LORDS—8TH AND 9TH FEBRUARY, AND

2ND MARCH, 1961

Commissioners of Inland Revenue

v.

Collco Dealings, Ltd. (1) (2)

Commissioners of Inland Revenue

v.

Lucbor Dealings, Ltd. (1)

Income Tax—Dividend-stripping—Repayment of tax deducted from dividends claimed by companies resident in the Republic of Ireland—Income Tax Act, 1952 (15 & 16 *Geo.* VI & 1 *Eliz.* II, *c.* 10), *Section* 349 *and Eighteenth Schedule, Part* I, *Paragraph* 1 (*a*); *Finance* (*No.* 2) *Act*, 1955 (4 & 5 *Eliz.* II, *c.* 17), *Section* 4 (2).

The Respondent Companies were at all material times resident in the Republic of Ireland and not resident in the United Kingdom. They claimed repayment of tax deducted from dividends received on shares of a class to which Section 4 *of the Finance* (*No.* 2) *Act*, 1955, *applied, on the ground that they were not persons "entitled under any enactment to an exemption from income tax" within the terms of the said Section* 4 (2). *The Commissioners of Inland Revenue rejected their claim.*

On appeal, the Special Commissioners accepted the Companies' contention that the words of Section 4 (2) *did not apply to persons resident in the Republic of Ireland, who were exempted by treaty from United Kingdom Income Tax.*

Held, *that the words of Section* 4 (2) *included persons exempted from United Kingdom Income Tax by virtue of their residence in the Republic of Ireland.*

CASES

Commissioners of Inland Revenue v. *Collco Dealings, Ltd.*

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.

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(1) Reported (Ch.D.) [1959] 1 W.L.R. 995; 103 S.J. 635 and 832; [1959] 3 All E.R. 351; 228 L.T. Jo. 74; (C.A.) [1960] Ch. 592; [1960] 2 W.L.R. 848; 104 S.J. 407; [1960] 2 All E.R. 44; 229 L.T. Jo. 226.

(2) Reported (H.L.) [1961] 2 W.L.R. 401; 105 S.J. 230; [1961] 1 All E.R. 762; 231 L.T. Jo. 161.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 10th and 11th November, 1958, Collco Dealings, Ltd. (hereinafter called "Collco"), appealed against the refusal of the Commissioners of Inland Revenue to grant exemption from United Kingdom tax in respect of certain dividends received by Collco from English companies. Collco was at all material times resident in Eire and not in the United Kingdom, and claimed exemption from British tax by virtue of Section 349 and Paragraph 1(*a*) of Part I of the Eighteenth Schedule to the Income Tax Act, 1952. The refusal of such claim was based on the provisions of Section 4(2) of the Finance (No. 2) Act, 1955, and the question for our decision was whether Collco came, within the words of that Section, "a person entitled under any enactment to an exemption from income tax", or did not come within such words because it was a resident of Eire.

2. The following facts were agreed:

(*a*) Collco Dealings, Ltd., was incorporated in the Republic of Ireland on 29th May, 1957, and has at all material times been resident in the Republic of Ireland and not resident in the United Kingdom.

(*b*) On 31st October, 1957, 1,000 ordinary shares of £1 each, fully paid, in Carpets & Textiles (Wholesale), Ltd. (being the whole of the issued share capital of that company), were sold by Matrim Finance, Ltd., to, and acquired by, Collco.

(*c*) On 1st November, 1957, an interim dividend of £174 10*s*. per share, subject to deduction of Income Tax, was declared by Carpets & Textiles (Wholesale), Ltd., and became payable, as a result of which Collco received a gross dividend of £174,500 from which United Kingdom Income Tax of £74,162 10*s*. had been deducted.

(*d*) The dividend so declared was wholly paid out of profits accumulated before the date on which the shares were acquired by Collco.

(*e*) Carpets & Textiles (Wholesale), Ltd., is a company incorporated on 1st April, 1950, under the Companies Act, 1948, and has throughout been resident in the United Kingdom.

(*f*) The ordinary shares in Carpets & Textiles (Wholesale), Ltd., acquired as aforesaid, are shares of a class to which Section 4 of the Finance (No. 2) Act, 1955, applies, as defined in Sub-section (8) (*c*) thereof.

(*g*) Also on 31st October, 1957, 2,000 ordinary shares of £1 each, fully paid, in a company then known as Afco Agencies, Ltd., and hereinafter referred to as "Afco", although now known as A.F. Finance, Ltd. (being the whole of the issued share capital of that company), were sold by Matrim Finance, Ltd., to, and acquired by, Collco.

(*h*) On 1st November, 1957, an interim dividend of £52 per share, subject to deduction of Income Tax, was declared by Afco and became payable, as a result of which Collco received a gross dividend of £104,000 from which United Kingdom Income Tax of £44,200 had been deducted.

(*i*) The dividend so declared was wholly paid out of profits accumulated before the date on which the shares were acquired by Collco.

(*j*) Afco is a company incorporated on 1st March, 1951, under the Companies Act, 1948, and has throughout been resident in the United Kingdom.

(*k*) The ordinary shares in Afco, acquired as aforesaid, are shares of a class to which Section 4 of the Finance (No. 2) Act, 1955, applies, as defined in Sub-section (8) (*c*) thereof.

3. It was also admitted by Counsel for the Commissioners of Inland Revenue, during the course of the hearing, that repayments of Income Tax at

the full standard rate had been made to Irish residents between 1945 and 1948 on dividends from which Income Tax had been deducted when payment was made by companies resident in the United Kingdom which had received double taxation relief.

4. It was not contended by Counsel for Collco that Collco would be liable to pay Irish tax in respect of the dividends in question.

5. The Finance Acts passed by the Parliament of Eire for the years 1926, 1928, 1948 and 1958 were in evidence before us, and copies are available for the use of the Court if required.

6. It was contended on behalf of Collco that the wide words of Section 4(2) were to be limited and controlled on well-known principles so as to exclude residents of Eire, who were by treaty excluded from the ambit of British Income Tax.

7. It was contended on behalf of the Appellants, the Commissioners of Inland Revenue, that Section 4(2) applied to Collco notwithstanding that it was a resident of Eire, and that it was not entitled to the exemption claimed.

8. We, the Commissioners, took time to consider our decision, and gave it in writing as follows:

1. The question for our decision is whether the words "a person entitled under any enactment to an exemption" in Section 4(2) of the Finance (No. 2) Act, 1955, apply to persons resident in Eire and not in the United Kingdom, to whom exemption from British tax was granted by the various Sections re-enacted by Section 349 of the Income Tax Act, 1952. It is clear that the general words quoted are wide enough to cover Eire residents so entitled to exemption, but the very wideness and generality of the words lets in the argument that they are to be controlled and limited in their application under certain well-recognised principles of construction.

2. We are unable to accept the argument that the general policy of the Income Tax legislation compels us to impose the limitation asked for. We have, however, come to the conclusion that Eire residents have to be excluded from the wide application of the words of Section 4(2) by reason of two principles of construction which have found expression in the decided cases. In the first place, it appears to be settled law that, if possible, a construction is not to be given to general words in a Statute which would have the effect of imposing the will of Parliament upon persons not within its jurisdiction (see *Colquhoun* v. *Heddon*[1], 25 Q.B.D. 129, at page 134, Ex parte *Blain*, 12 Ch.D. 522), and we consider that Parliament, by entering into the treaty of April, 1926, with the Government of Eire, in effect relinquished jurisdiction in matters of Income Tax over residents of Eire who are not also residents of the United Kingdom. That this is so is, we consider, emphasised by paragraph 7 of the treaty. In the second place, if the inroad contained in Section 4(2) upon the exemption to tax is effective against residents of Eire, it would in our opinion be a breach of the treaty which afforded absolute exemption from British tax to such residents; and it appears to be a recognised principle of English law that words in an Act of Parliament are not to be construed in a sense which would create a breach of a treaty between this country and another unless such words are so explicit as to allow of no other interpretation. The principal authority for this view appears to be the case of *The Queen* v. *Wilson*, 3 Q.B.D. 42; and, although the actual decision in that case can be explained on the ground that the Order in Council itself imposed limitations upon the extradition powers in accordance

(1) 2 T.C. 621, at p. 625.

with Section 2 of the Extradition Act, 1870, Cockburn, C.J., in his judgment, used words which seem to us to recognise such a principle as axiomatic.

3. The view we have taken of the proper construction of Section 4 (2) appears to us to receive strong confirmation from the course of legislation with regard to the liability of Eire residents prior to the Act of 1955. The Finance (No. 2) Act, 1945, uses words, in Section 52, which have on their face the widest application and would in their natural meaning apply to Eire residents. But when the treaty of 21st July, 1947, was subsequently concluded, by which the two countries mutually agreed that the limitation upon repayments set out in Section 52 was to be applied to Eire residents, it was thought necessary to give effect to that treaty so far as English taxation was concerned by Section 37 of the Finance Act, 1948. This seems to us an indication that Section 52 was not considered by the Legislature, despite its wide terms, to apply to Eire residents.
4. In our opinion, therefore, Section 4 (2) of the Finance (No. 2) Act, 1955, has no application to Collco, and it is entitled to repayment of tax deducted from the dividends in question. We accordingly make an order for repayment of the sum agreed upon between the parties, namely £118,362 10*s*.

9. The Commissioners of Inland Revenue immediately after the determination of the appeal declared to us their 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 Paragraph 4(3) of Part III of the Eighteenth Schedule to, and Section 64 of, the Income Tax Act, 1952, which Case we have stated and do sign accordingly.

10. The question for the opinion of the Court is whether, upon the admitted facts, our decision was correct in law.

B. Todd-Jones
F. Gilbert
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94–99, High Holborn,
London, W.C.1.
25th February, 1959.

Commissioners of Inland Revenue v. *Lucbor Dealings, Ltd.*

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 a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 10th and 11th November, 1958, Lucbor Dealings, Ltd. (hereinafter called "Lucbor"), appealed against the refusal of the Commissioners of Inland Revenue to grant exemption from United Kingdom tax in respect of certain dividends received by Lucbor from English companies. Lucbor came, within the words of that Section, "a person entitled under any dom, and claimed exemption from British tax by virtue of Section 349 and Paragraph 1 (*a*) of Part I of the Eighteenth Schedule to the Income Tax Act, 1952. The refusal of such claim was based on the provisions of Section 4 (2) of the Finance (No. 2) Act, 1955, and the question for our decision was whether Lucbor came, within the words of that Section, "a person entitled under any enactment to an exemption from income tax", or did not come within such words because it was a resident of Eire.

2. The following facts were agreed:

(*a*) Lucbor Dealings, Ltd., was incorporated in the Republic of Ireland on 18th November, 1957, and has at all material times been resident in the Republic of Ireland and not resident in the United Kingdom.

(*b*) On 5th December, 1957, 20,000 6 per cent. cumulative preference shares, 5,000 "A" ordinary shares and 32,500 "B" ordinary shares, all of £1 each, fully paid, in A. Luson Finance, Ltd. (being the whole of the issued share capital of that company), were sold to, and acquired by, Lucbor.

(*c*) On 6th December, 1957, a dividend of 18½ per cent., subject to deduction of Income Tax, for the 37 months ended 30th April, 1957, was declared and became payable on the aforementioned preference shares, and an interim dividend of 39*s.* 6*d.* per share, subject to deduction of Income Tax, was declared and became payable on each share of the aforementioned classes of ordinary shares; as a result of which Lucbor received a gross dividend on the aforementioned preference shares of £3,700, from which United Kingdom Income Tax of £1,572 10*s.* had been deducted, a gross dividend on the aforementioned "A" ordinary shares of £9,875, from which United Kingdom Income Tax of £4,196 17*s.* 6*d.* had been deducted, and a gross dividend on the aforementioned "B" ordinary shares of £64,187 10*s.*, from which United Kingdom Income Tax of £27,279 13*s.* 9*d.* had been deducted.

(*d*) The dividends so declared were wholly paid out of profits accumulated before the date on which the said shares were acquired by Lucbor.

(*e*) A. Luson Finance, Ltd. (formerly A. Luson & Sons, Ltd.), is a company incorporated on 8th June, 1934, under the Companies Act, 1929, and has throughout been resident in the United Kingdom.

(*f*) The ordinary shares in A. Luson Finance, Ltd., acquired as aforesaid, are shares of a class to which Section 4 of the Finance (No. 2) Act, 1955, applies, as defined in Sub-section (8) (*c*) thereof.

3. It was also admitted by Counsel for the Commissioners of Inland Revenue, during the course of the hearing, that repayments of Income Tax at the full standard rate had been made to Irish residents between 1945 and 1948 on dividends from which Income Tax had been deducted when payment was made by companies resident in the United Kingdom which had received double taxation relief.

4. It was not contended by Counsel for Lucbor that Lucbor would be liable to pay Irish tax in respect of the dividends in question.

5. The Finance Acts passed by the Parliament of Eire for the years 1926, 1928, 1948 and 1958 were in evidence before us, and copies are available for the use of the Court if required.

6. It was contended on behalf of Lucbor that the wide words of Section 4 (2) were to be limited and controlled on well-known principles so as to exclude residents of Eire, who were by treaty excluded from the ambit of British Income Tax.

7. It was contended on behalf of the Commissioners of Inland Revenue that Section 4 (2) applied to Lucbor notwithstanding that it was a resident of Eire, and that it was not entitled to the exemption claimed.

8. We, the Commissioners, took time to consider our decision, and gave it in writing as follows:

1. The question for our decision is whether the words "a person entitled under any enactment to an exemption" in Section 4 (2) of the Finance (No. 2) Act,

1955, apply to persons resident in Eire and not in the United Kingdom, to whom exemption from British tax was granted by the various Sections re-enacted by Section 349 of the Income Tax Act, 1952. It is clear that the general words quoted are wide enough to cover Eire residents so entitled to exemption, but the very wideness and generality of the words lets in the argument that they are to be controlled and limited in their application under certain well-recognised principles of construction.

2. We are unable to accept the argument that the general policy of the Income Tax legislation compels us to impose the limitation asked for. We have, however, come to the conclusion that Eire residents have to be excluded from the wide application of the words of Section 4 (2) by reason of two principles of construction which have found expression in the decided cases. In the first place, it appears to be settled law that, if possible, a construction is not to be given to general words in a Statute which would have the effect of imposing the will of Parliament upon persons not within its jurisdiction (see *Colquhoun* v. *Heddon*(1), 25 Q.B.D. 129, at page 134, Ex parte *Blain*, 12 Ch.D. 522), and we consider that Parliament, by entering into the treaty of April, 1926, with the Government of Eire, in effect relinquished jurisdiction in matters of Income Tax over residents of Eire who are not also residents of the United Kingdom. That this is so is, we consider, emphasised by paragraph 7 of the treaty. In the second place, if the inroad contained in Section 4 (2) upon the exemption to tax is effective against residents of Eire, it would in our opinion be a breach of the treaty which afforded absolute exemption from British tax to such residents; and it appears to be a recognised principle of English law that words in an Act of Parliament are not to be construed in a sense which would create a breach of a treaty between this country and another unless such words are so explicit as to allow of no other interpretation. The principal authority for this view appears to be the case of *The Queen* v. *Wilson*, 3 Q.B.D. 42; and, although the actual decision in that case can be explained on the ground that the Order in Council itself imposed limitations upon the extradition powers in accordance with Section 2 of the Extradition Act, 1870, Cockburn, C.J., in his judgment, used words which seem to us to recognise such a principle as axiomatic.

3. The view we have taken of the proper construction of Section 4 (2) appears to us to receive strong confirmation from the course of legislation with regard to the liability of Eire residents prior to the Act of 1955. The Finance (No. 2) Act, 1945, uses words, in Section 52, which have on their face the widest application and would in their natural meaning apply to Eire residents. But when the treaty of 21st July, 1947, was subsequently concluded, by which the two countries mutually agreed that the limitation upon repayments set out in Section 52 was to be applied to Eire residents, it was thought necessary to give effect to that treaty so far as English taxation was concerned by Section 37 of the Finance Act, 1948. This seems to us an indication that Section 52 was not considered by the Legislature, despite its wide terms, to apply to Eire residents.

4. In our opinion, therefore, Section 4 (2) of the Finance (No. 2) Act, 1955, has no application to Lucbor, and it is entitled to repayment of tax deducted from the dividends in question. We accordingly make an order for repayment of the sum agreed upon between the parties, namely £31,476 11*s.* 3*d.*

9. The Commissioners of Inland Revenue immediately after the determination of the appeal declared to us their 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 Paragraph 4 (3) of Part III of the

(1) 2 T.C. 621, at p. 625.

Eighteenth Schedule to, and Section 64 of, the Income Tax Act, 1952, which Case we have stated and do sign accordingly.

10. The question for the opinion of the Court is whether, upon the admitted facts, our decision was correct in law.

B. Todd-Jones
F. Gilbert
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94-99, High Holborn,
London, W.C.1.
25th February, 1959.

The cases came before Vaisey, J., in the Chancery Division on 25th, 26th, 29th and 30th June, 1959, when judgment was reserved. On 24th July, 1959, judgment was given in favour of the Crown with costs.

The Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr. E. B. Stamp and Mr. Alan Orr appeared as Counsel for the Crown, and Mr. John Foster, Q.C., and Mr. Philip Shelbourne for the Companies.

Vaisey, J.—This is an appeal from a decision of the Special Commissioners dated 25th February, 1959, in favour of Collco Dealings, Ltd., which was incorporated in the Republic of Ireland on 29th May, 1957, and has at all material times been deemed to be resident in the Republic and not resident in the United Kingdom. The facts are not in dispute. The case itself involves considerable sums of money; and other cases which may be governed by my decision involve, as I understand, even larger sums. The appeal was argued before me at great length, and I thought it was desirable that a full record of the proceedings should be made and preserved for future reference. I was accordingly, at my request, supplied with a transcript of the whole of what was said during the hearing. That transcript is now before me and has materially helped me in the preparation of this judgment, enabling me to express it with far less prolixity than would otherwise have been possible.

The question is quite short, and may be quite shortly stated. It is whether, in Section 4 (2) of the Finance (No. 2) Act, 1955, the words "a person entitled under any enactment to an exemption from income tax" include and apply to persons resident in the Republic of Ireland and not in the United Kingdom, to whom exemption from tax was granted by the various Sections re-enacted by Section 349 of the Income Tax Act, 1952. The Special Commissioners agreed that the words quoted were wide enough, and appropriate, to cover Irish residents entitled to exemption, such as the Respondent Company; but they went on to say that the "very wideness and generality" of the words give rise to the conclusion that they must be limited in their application. They answered the question which they have formulated in the negative.

A great deal of the hearing was occupied in dealing with what I may call the "wideness and generality" argument. Nearly forty cases were cited in support of it. Thus, in *River Wear Commissioners* v. *Adamson*, 1 Q.B.D. 546, it was held that a provision that "any damage" done by any vessel subjected the owner to liability must be controlled by the principle that an owner is not responsible for damage due to no fault of his own. In *Washer* v. *Elliott*, 1 C.P.D. 169, the expression "all Courts" was held to be limited to Courts pos-

(Vaisey, J.)

sessed of a certain jurisdiction. In *Metropolitan Board of Works* v. *London and North Western Railway Co.*, 14 Ch.D. 521, "any person" was held to mean only any person entitled to the benefit of a particular Act. It would be easy to supply other examples. For instance, if it were said that "everybody in the 1870's wore elastic-sided boots", no one would suppose that the whole of humanity was intended, but only a class of wearers of boots. I confess that the argument based on alleged wideness or generality seems to me to be totally ill-founded. Persons entitled to statutory exemption from tax form a very limited and perfectly well-defined class of the community; and I should have described the words in question as highly narrow and particular, and not in the least degree either wide or general. My duty in the present case seems to me to be to construe the relevant words of Section 4 (2) as they stand, and not to put a gloss upon them for a purely extraneous reason. The words are expressly narrow and particular—the reverse of wide and general—and as they stand are absolutely unambiguous. It is in my view a cardinal principle of interpretation that the words of a Statute must be taken to mean what they say, so that their meaning must be ascertained with no regard to any ulterior consequences of so interpreting them. No better exposition of this principle is known to me than the speech of Viscount Simonds in the case of *Attorney-General* v. *Prince Ernest Augustus of Hanover*, [1957] A.C. 436. I need not recapitulate the facts of that case, in which my own judgment had been reversed by the Court of Appeal and was wholly disapproved of in the House of Lords. From that speech I quote the following sentence[1]:

> "I reject, therefore, the argument in favour of restricting the meaning of the enacting words so far as it is based on any other consideration than that of the words of the statute itself."

It seems to me that, if Section 4 (2) does any violence to or interferes with the arrangements made between this country and the Republic of Ireland and embodied in the treaty mentioned in the Stated Case, the matter cannot be cured by a process of interpretation which seems to me to be illicit. If there is anything to be put right, it must be done either by diplomatic means or by legislation: compare *Republic of Italy* v. *Hambros Bank, Ltd.*, [1950] Ch. 314. In this case, the treaty has been incorporated in and is part of the statute law; and, if it has thereby lost its superior status and falls to be construed in its context along with the rest of that law, it has obviously, I should have thought, been qualified by the plain terms of Section 4 (2).

It cannot be disputed that the words "entitled under any enactment" include residents in Ireland, nor may it be denied that the exemption to which they are entitled is statutory. The Special Commissioners enunciate the principle upon which they base their decision in favour of the Respondent Company by appealing to international comity, while admitting that if the relevant words are so explicit as to allow for no other interpretation the words must have their proper force. Now it seems to me that the words here are in fact explicit beyond any question at all, and it seems to me that I am bound to construe them exactly as they stand without any more regard to ulterior consequences and extraneous considerations than what was held to be proper in the *Prince of Hanover's* case.

The statement of the Special Commissioners that this country has in effect relinquished jurisdiction in matters of Income Tax over residents of Ireland who are not also residents of the United Kingdom is to my mind a very

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[1] At p. 462.

questionable statement, but it is not, I think, a matter upon which I should here express any definite opinion.

I do not regard this as altogether an easy case, and the principles which govern it are, I think, expressed with accuracy in the 10th (1953) edition of Maxwell on the Interpretation of Statutes, at pages 148–9, as follows:

> "Under the same general presumption that the legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law. If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clearness to induce a court to believe that it entertained it, for if any other construction is possible, it would be adopted to avoid imputing such an intention to the legislature. All general terms must be narrowed in construction to avoid it. But if the statute is unambiguous, its provisions must be followed, even if they are contrary to international law."

In that passage which I have just read, the expressions "as far as its language admits", "irresistible clearness" and "if any other construction is possible" are all-important, and should be emphasised in the present case. I will assume, but certainly not decide, that there has, as alleged, been an infraction or breach of the treaty, but I do not see that I can repair it by applying an inadmissible canon of construction. Adopting the concluding words of the quotation from Maxwell, I hold that as the Statute is unambiguous its provisions must be followed even if they are contrary to international law—or, I may add, any international treaty or arrangements.

Towards the end of the hearing a point was made on behalf of the Crown that the confirmation of the treaty involved the proposition that its terms were precarious and liable to be varied by future legislation; and, as a corollary, that it had been varied by the Act of 1955. I do not base my decision on that; and the fact that Mr. Foster, for the Respondents, had, as he complained, no opportunity of dealing with that particular point is irrelevant.

The plain object of Section 4 (2) was to prevent what is colloquially called "dividend-stripping", and if the decision of the Special Commissioners stands, residents in Ireland can do what their fellow taxpayers in his country are prohibited from doing. If that is the law, so be it; but the consequence is not one which commends itself to me on general principles of justice and fairness. If Parliament had intended to exclude residents in Ireland from the restrictions imposed by Section 4 (2), nothing would have been easier than to insert a few plain and simple words to give effect to it. That was a consideration which had great weight with the House of Lords in the *Prince of Hanover's* case [1].

I think that the decision of the Special Commissioners was erroneous and should be reversed, and the figures re-adjusted accordingly. The Respondent Company must pay the Crown's taxed costs of the appeal. The costs of providing me with the transcript of the hearing, I think—though I will hear Counsel on this—should be shared equally between the Crown and the Respondent Company. It is those last five or six words I want to hear you on, Mr. Stamp.

Mr. E. B. Stamp.—May it please your Lordship, I was going to ask at the moment simply that your Lordship allows the appeal with costs. Of course, there is no question of figures. It is a claim for repayment of tax, and your Lordship has held that it is not well founded.

Vaisey, J.—That is right.

Mr. Stamp.—So I would respectfully submit to your Lordship that the appeal should be allowed with costs.

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[1] [1957] A.C. 436.

Vaisey, J.—That is what I decide.

Mr. Stamp.—If your Lordship pleases.

Vaisey, J.—There is no question of adjusting figures in this case?

Mr. Stamp.—No, my Lord.

Vaisey, J.—Then all I will do is allow the appeal with costs.

Mr. Philip Shelbourne.—On the question of the transcript, my Lord, my recollection, subject to what my learned friend says, is that actually during the hearing of this case your Lordship made an Order as to that, that the costs should be shared equally in any event.

Mr. Stamp.—I am content with that. I am content to pay half the costs of that.

Vaisey, J.—Yes, I think that is right. As a matter of fact, if I decided anything it was that the costs should be costs in the action, but I do not think that would be quite fair.

Mr. Stamp.—The Crown are quite content.

Vaisey, J.—You are for the Crown, and they will have the transcript if it is any use to them. It will not be of any use to the present Respondents.

Mr. Stamp.—If your Lordship pleases.

Vaisey, J.—Then, appeal allowed with costs. So be it.

Mr. Stamp.—I invite your Lordship to make a similar Order in the case of *Commissioners of Inland Revenue* v. *Lucbor Dealings, Ltd.* It has been agreed that the facts are indistinguishable in principle.

Vaisey, J.—I thought so. I think I must treat this case in exactly the same way.

Mr. Shelbourne.—Out of respect for the judgment which your Lordship has just delivered, I would agree with my learned friend.

Mr. Stamp.—The costs of the transcript are exclusively costs in Collco.

Vaisey, J.—The costs of the transcript do not come into this case at all. There will be the ordinary decision and Order, that the appeal of the Crown is allowed with costs.

Mr. Stamp.—If your Lordship pleases.

The Companies having appealed against the above decisions, the cases came before the Court of Appeal (Lord Evershed, M.R., and Pearce and Harman, L.JJ.) on 8th, 9th and 10th March, 1960, when judgment was given unanimously in favour of the Crown, with costs.

Mr. John Foster, Q.C., and Mr. Philip Shelbourne appeared as Counsel for the Companies, and the Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr. E. B. Stamp and Mr. Alan Orr for the Crown.

Lord Evershed, M.R.—The Appellant in this appeal, Collco Dealings, Ltd., is, in effect, seeking to recover certain sums in respect of United Kingdom Income Tax which, apart from legislation passed in the year 1955, it might, and, I can assume, would, have been able to recover as being a person resident in the Irish Republic.

The facts of the case are set out in paragraph 2 of the Case Stated, and I need do no more than summarise them. The Appellant Company was in-

corporated in the month of May, 1957, and in the following October and November it purchased shares in English companies from another English company called Matrim Finance, Ltd. To the ordinary man the story has an arresting quality. The shares in the first company so purchased were shares in an English company called Carpets & Textiles (Wholesale), Ltd., which had at the material time an issued capital of 1,000 ordinary shares of £1 each. That company then proceeded, no doubt under the impetus of the new share owners, to declare and pay a dividend of 17,450 per cent. on the shares. That large dividend was paid, to a substantial extent, at any rate, out of the accumulated past profits in respect of which United Kingdom Income Tax had been paid. The transaction fell within a description known as "dividend-stripping".

Apart from the 1955 legislation the Irish Appellant would, as I have already stated, either certainly or in all probability, have been able to recover from the United Kingdom Revenue not, as we were informed, the actual tax which had been paid in respect of the accumulated profits, but a sum of Income Tax (which might have been larger) calculated by grossing up this vast dividend; but the right so to recover such a sum must—and I put this early in my judgment and in the forefront of it—depend upon some statutory right to be found in United Kingdom legislation.

Now, as a matter of history, a series of agreements had been made between representatives of the Governments, on the one side of the United Kingdom, and on the other side of what was formerly the Irish Free State and later became the Irish Republic. Those agreements were confirmed in both countries by appropriate legislation. So far as this case is concerned, it will only be necessary to pay regard, except in passing, to the United Kingdom legislation contained in the consolidating Income Tax Act of 1952, and Section 349 of that Act in particular, and in Section 4 of the Finance (No. 2) Act, 1955, to which I alluded earlier. But in order to make clearer the history and, I hope, the arguments, it is necessary to have in mind that the first of the agreements which I have mentioned was made in the year 1926 between the representatives of the two Governments I have named. It is now to be found in the Eighteenth Schedule to the Income Tax Act, 1952. The effect of it, so far as relevant, was that a person who should prove to the satisfaction of the Commissioners of Inland Revenue that he was resident in the Irish Free State and not resident in Great Britain or Northern Ireland should be entitled to exemption from British Income Tax for the year in question in respect of properties situated in, and profits and gains arising in or from, Great Britain and Northern Ireland, and also to exemption from British Super-tax for the same year. There was a corresponding arrangement for the benefit of United Kingdom residents as respects property in the Irish Free State. That was the purpose of the agreement, and it was executed by ministers on both sides.

Article 8 provided as follows:

> "This Agreement shall be subject to confirmation by the British Parliament and by [the Irish Free State Parliament] and shall have effect only if and so long as legislation confirming the Agreement is in force"

in both countries. That, it is hardly necessary to say, was necessary in order that individual citizens of the two countries should, in fact, enjoy the rights which the agreement intended to confer or provide. That is the agreement, the intended benefit of which the Appellant in this case asserts.

The agreement was later modified twice during the relevant period. The first modification came about in the year 1928 and was rendered desirable or necessary because there was in this country substituted for what was called

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Super-tax a new designation, Surtax, so that the provision to which I referred above, if, and so far as, implemented by appropriate United Kingdom legislation, would be inapposite since it referred to Super-tax and not Surtax. In the same way, in 1947 another agreement was made between representatives of the two countries in order to deal with this sort of case: an English company might not in truth have paid United Kingdom Income Tax at the standard rate because, owing to arrangements applicable between this country and other countries also enshrined in United Kingdom legislation, the English company in question might only have paid at a lower rate, called net United Kingdom rate; and the agreement signed in July, 1947, was intended to make applicable to Irish residents comprehended by the original agreement the net United Kingdom rate of tax instead of the standard rate, where applicable. I have mentioned these later agreements in order that the history may be understood, but, as I said earlier, the claim here rests upon the effect (as implemented in legislation) of the 1926 agreement, and we are not in this case concerned with the later modifications, save to the extent that part of Mr. Foster's forcible argument for the Appellant turned in some measure upon what happened in 1945, 1947 and 1948 in connection with this so-called net United Kingdom rate, and to that argument I shall presently return.

The 1926 agreement was, in accordance with the contemplation of its eighth Article, implemented by United Kingdom legislation shortly afterwards. That legislation was later reproduced in Section 349 of the consolidating Act, the Income Tax Act, 1952. I will therefore at once turn to that Section. Sub-section (1) reads:

> "The confirmation, by section twenty-three of the Finance Act, 1926, section twenty-one of the Finance Act, 1928, and section thirty-seven of the Finance Act, 1948, of the agreements in force at the passing of this Act between the United Kingdom and the Republic of Ireland which are set out in Part I of the Eighteenth Schedule to this Act is not affected by the repeal, by this Act, of the said sections twenty-three, twenty-one and thirty-seven."

The purpose of that Sub-section is obvious. As I have stated, the agreements in question are set out in the Eighteenth Schedule, from which I have already read some reference. I come to Sub-section (2):

> "Accordingly the first of the said agreements,"

—that is, the 1926 agreement—

> "as modified by the second and third of the said agreements, shall, for any year of assessment for which, under the law of the Republic of Ireland, it has effect with respect to exemption and relief from Republic of Ireland tax, have effect with respect to exemption or relief to be granted from United Kingdom tax, and the references in the said agreements to enactments repealed by this Act shall be taken for that purpose to be references to the corresponding provisions of this Act".

and there was then a proviso which I can pass over. I make one short reference to Sub-section (3):

> "For the purpose of giving effect to the said agreements, this Act, in relation to . . . (*c*) claims by persons resident in the Republic of Ireland, shall, for any year for which the said agreements are in force, have effect subject to the modifications set out in Part III of the said Eighteenth Schedule."

Part III of the Eighteenth Schedule is headed:

> "Provisions for giving effect to Agreements set out in Part I of this Schedule",

including, of course, the 1926 agreement; and it is true to say that it is substantially what one would call a series of mechanical provisions to make appropriate for the cases contemplated the relevant parts of the fiscal legislation in the United Kingdom, which is notoriously complex, in particular to make applicable the terms of Schedule D for the purposes of taxation computations, and so forth. We have not examined closely the precise effect of these pro-

visions, and I am not suggesting that they in any real way qualify the *prima facie* right which would be given to an Irish resident by Section 349 (2) standing alone, that is to say, by the statement that the agreement and the rights intended to be enjoyed by Irish residents should have effect in the United Kingdom. I only observe that by the terms of Sub-section (3) for the purpose of giving effect to the agreements the Act should for any year have effect subject to certain modifications. It is sufficient to say that, in so far as there was any modification of the rights intended to be conferred, it would obviously not go to the root of the matter but would be a modification based rather on procedural considerations. Still, I mention it for reasons which may later become more apparent.

It is plain enough so far that what the United Kingdom Parliament did in 1952 was to say that the terms of the 1926 agreement, as stated in Part I of the Eighteenth Schedule, should be incorporated in the English law as part of the Income Tax Act, 1952, and so should take effect and be effective in English law. It is clear and must not be forgotten (and, indeed, I have already stated it) that if an Irish citizen desires to take advantage of the benefit which the 1926 agreement intended that he should enjoy, he must be able to invoke for that purpose some provision of the English law; more particularly, in this sort of case, some provision of a United Kingdom Statute: and his right in England to enjoy the benefit, to be able to have this exemption (which means to be able to recover Income Tax), depends upon and depends exclusively upon the Section which I have read.

In the course of opening the case Mr. Foster referred a good deal to matters of international law and international comity, and some references were made to cases. Gracefully, Mr. Foster did not cite all the cases which were cited to Vaisey, J., but it must be quite clear, first of all, that it is competent to the Legislature of the United Kingdom to impose Income Tax in respect of profits or gains which arise in the jurisdiction, and that competence is in no way qualified because the profits and gains may be enjoyed by someone who is himself not so resident. If, therefore, Parliament decides that tax at a certain rate should be levied in respect of that class of property, or, alternatively, decides that in certain cases persons who might otherwise suffer the tax should be entitled to exemption, it cannot be said that Parliament is trying to exert a jurisdiction over foreigners in the sense that it is trying to legislate outside the proper jurisdiction of the United Kingdom Parliament. The point is to emphasise that the fact that a person who has a statutory right to an exemption in respect of Income Tax, a statutory right to recover, may be a foreigner is of itself quite irrelevant, and does not appear to me to involve any question of comity or international law. So, as I think, the effect of Section 349 is on the face of it to say, by enacting as part of the municipal law of England the agreement of 1926, that Irish residents may have certain rights to recover tax which is exigible in respect of property in England or profits and gains arising in England. In so far as Parliament chose in 1952 to confer that statutory right, *prima facie* it must be equally clear that Parliament, by some later statutory provision, can modify or wholly revoke or repeal it. Putting it quite briefly, what is said here on behalf of the Crown, and was the view formed by Vaisey, J., is that in the 1955 Act Parliament, in the exercise of its undoubted sovereign power, did so qualify the statutory right which Section 349 had conferred.

I turn accordingly to Section 4 of the Finance (No. 2) Act, 1955, and I need only read Sub-section (2):

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> "Where a person entitled under any enactment to an exemption from income tax which extends to dividends on shares becomes entitled to receive a dividend on a holding of shares of any class to which this section applies"

—and then there follow several lines describing the class of shares to which the Section does apply—

> "then, if those shares, . . . amount to ten per cent. or more of the issued shares of that class, the exemption shall, to an extent proportionate to the said extent to which the dividend is paid out of profits accumulated before the date on which the shares were acquired, not apply to the dividend".

I have read, I hope, enough to make the general purport of the Sub-section intelligible. It was intended to strike at this so-called dividend-stripping practice. There is no doubt that the shares in Carpet & Textiles (Wholesale), Ltd., that I have mentioned were shares of the class covered by the Sub-section.

Prima facie, therefore, the case would appear simple enough. The Appellant here was a person who was entitled under an enactment, namely, the Income Tax Act, 1952, Section 349, to an exemption; and this Sub-section in the 1955 Act qualified that exemption. The Sub-section did not take the exemption away altogether, but it said, as regards dividends in respect of particular classes of shares, that the person specified would not get the full privilege; he would not be entitled to recover the whole amount of the tax but only a certain proportion of it.

Now, as Vaisey, J., observed, the point is, when finally analysed, short, and on the face of it, as I venture to think, simple. But the argument which the Appellant has put forward is, first, to this effect: the Appellant says that you cannot, in a case of this kind, give to the language which I have read from Section 4 of the 1955 Act its natural effect, because to do so would in some way strike at—would involve a breach of—an agreement between this country and another sovereign state; and that is something which offends against the comity of nations. I do not propose, with all respect to Mr. Foster, to take much time upon that submission. It suffices, as I think, to say two things. First, what Mr. Foster called treaties were these agreements, of which the 1926 agreement is the relevant one, and on the face of that agreement its effect and continued effect depended, and was expressed to depend, upon confirmation by the Legislature of the two countries; so that the agreement itself contemplated on its face that either side might at some time, if it thought fit, by the exercise of its sovereign legislative power put an end to it. Second, as I repeat once more, so far as the Appellant's rights in this case are concerned, they must depend upon some provision giving effect to them in a United Kingdom Statute which necessarily must be subject to review and modification by later legislative enactments.

At this stage I should, perhaps, refer to the way in which the matter was decided by the Commissioners in the Case Stated, their decision being in favour of the Appellant. They said, in paragraph 8 of the Case:

> "In the first place, it appears to be settled law that, if possible, a construction is not to be given to general words in a Statute"

—and the reference is, of course, to Section 4 (2) of the 1955 Act—

> "which would have the effect of imposing the will of Parliament upon persons not within its jurisdiction . . . and we consider that Parliament, by entering into the treaty of April, 1926, with the Government of Eire, in effect relinquished jurisdiction in matters of Income Tax over residents of Eire".

I am quite unable to accept the proposition there stated, and Mr. Foster before us did not at all support it. I have already said, with regard to United Kingdom Income Tax, that there is no question of imposing the will of Parliament

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on persons not within its jurisdiction; still less can it be said, in my judgment, that the treaty of April,1926, had the effect that the United Kingdom Parliament relinquished jurisdiction in matters of Income Tax over residents of Eire. The Case, however, went on as follows:

> "In the second place, if the inroad contained in Section 4 (2) upon the exemption of tax is effective against residents of Eire, it would in our opinion be a breach of the treaty which afforded absolute exemption from British tax to such residents; and it appears to be a recognised principle of English law that words in an Act of Parliament are not to be construed in a sense which would create a breach of a treaty between this country and another unless such words are so explicit as to allow of no other interpretation."

Then a reference follows to *The Queen* v. *Wilson*, 3 Q.B.D. 42.

It is upon that basis, though his expression of the point was not quite the same, that Mr. Foster has founded his argument. But there has seemed to me, I confess, one grave difficulty which the argument has to face, the difficulty which in the end must be, in my judgment, fatal to it. The opening words of Section 4 (2) of the Act of 1955, which I have already read, are: "Where a person entitled under any enactment". The difficulty that I have indicated is this: on the face of it, "any enactment" obviously means any Act of the United Kingdom Parliament. If the words are not to have that meaning, then, what is the qualified meaning which is to be given to them? In some cases (and there was an illustration of what I am saying in one of the cases cited, *The Queen* v. *Manchester Justices*, 5 E. & B. 702) it was possible, in the light of the relevant context, to limit the phrase "Acts of Parliament" to mean special Acts of Parliament as distinct from general Acts of Parliament; but no such qualified definition appears here to be possible. It must in the end be said, as I think, by Mr. Foster, that "any enactment" has to be construed as "any enactment except an enactment which affects Irish residents". I am not saying that that is necessarily impossible. If the context and the relevant Sections require it, that might be the answer. But it is obviously, as I think, a construction involving very grave difficulty. Put the other way round, it seems to me, the phrase "under any enactment" *prima facie* means, and is quite unambiguously referring to, any United Kingdom Act of Parliament, and Section 349, part of the Act of 1952, is therefore on the face of it and, as I think, unambiguously, comprehended in the phrase "any enactment".

But the case has been put, and I venture to think it is the only way it could be put, in this fashion. It is said that if you look at Section 349 (2) of the 1952 Act there is there in clear and express terms confirmation of the 1926 agreement and a statement by the Legislature that it is to have effect so long, at any rate, as it has corresponding effect in the Republic of Ireland. The argument goes on to contend that the terms of Section 4 (2) of the 1955 Act do not boldly and clearly say: "The agreement shall no longer have effect", but they purport to qualify the rights given under the agreement by Section 349 while leaving, as it were, the general confirmation contained in Section 349 (2) upon the Statute Book; and so it is said that there is created an inconsistency.

In my judgment, the answer to the point is, however, this. Sub-section (2) states, no doubt quite clearly, that the 1926 agreement, the terms of which are incorporated in the Eighteenth Schedule, shall have effect; and Parliament later said, as it was entitled to do, "The effect shall be modified". It is true that the modification might have been taken by those representing the Republic of Ireland to involve a breach and, therefore, a repudiation of the whole agreement, and that would mean an end of it. On the facts as we have seen them, that point was not taken, and it does not seem to me to follow at all

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that any modification of the statutory rights which Section 349 (2) conferred necessarily is inconsistent with the continued confirmation in general terms of the 1926 agreement. But Mr. Foster has also supported this part of his contention by referring to something which I earlier anticipated, namely, the 1947 agreement, and the place it took in the history of this matter between the two countries. It will be recalled that the purpose of the 1947 agreement was to substitute in appropriate cases for the standard rate of United Kingdom Income Tax which the Irish resident could recover, a lesser figure called the net United Kingdom rate. That net rate had been brought into the Income Tax code, so to speak, in the United Kingdom by the Finance (No. 2) Act, 1945. Section 52 of the 1945 Act, so far as relevant, provided:

> "notwithstanding anything in the Income Tax Acts, no relief or repayment in respect of the tax deducted [and so on] shall be allowed at a rate exceeding"

the net United Kingdom rate.

Mr. Foster's point was to this effect. In so far as that provision applied to an Irish resident, it qualified the right which he had under Section 23 of the Finance Act, 1926, to recover at the full standard United Kingdom Income Tax rate; and, therefore, just as Section 4 of the 1955 Act created an inconsistency, as he says, with Section 349 of the Act of 1952, so the provisions of Section 52 of the 1945 Act which I have read were inconsistent with Section 23 of the 1926 Act, and if they were given effect to, says Mr. Foster, they would involve a breach of the agreement, if not its termination. And observe, says Mr. Foster, in those circumstances what was done. It was apparent on the findings in the Case and from the later events, such as the 1947 agreement and the later enactment in the United Kingdom in 1948, that the United Kingdom Revenue authorities—and, as Mr. Foster says, Parliament itself—proceeded on the basis that Section 52 of the 1945 Act did not, in truth, affect or qualify the statutory right given to Irish residents by the 1926 Finance Act. Mr. Foster invokes that in support of the view that the 1955 Act should similarly be construed now. Mr. Foster does not go so far as to say that the view taken by Parliament in 1945 and 1948 of the effect or construction of the Section of the 1945 Act is necessarily conclusive as to what the right view of that construction is, but he says it does, after all, lend support to the view that the construction for which he contends is one that has been and can reasonably be accepted.

I think one answer to that argument is this, that the apparent view taken by the United Kingdom Revenue—and, if you like, by the United Kingdom Parliament when it enacted this 1948 Act to implement the 1947 agreement—is equally consistent with the view that, whatever the right construction of Section 52 of the 1945 Act might have been, the Revenue and Parliament, for reasons which they no doubt thought good, did not think it desirable to invoke against the Irish resident the qualifying effect of Section 52 of the 1945 Act. They cannot, as I think, put it higher than that. If that is right, then it does not seem to me that the matter with which we are concerned is really further advanced. So, I come back to this, and, agreeing once more with Vaisey, J.'s statement, the point is indeed short: the question is—having in mind the obvious competence, the acknowledged competence, of the United Kingdom Parliament to qualify any statutory right to exemption or repayment of United Kingdom Income Tax which any person may have, be he a charity, a foreigner, or what you will—can you give, in all the circumstances of this case, to the phrase "in any enactment" a meaning, can you impose upon it some qualification which will have the result that the Section will not apply to the present Appellant as being a person otherwise entitled to the specific relief which Section

349 of the Act of 1952 conferred upon him? I have come, like Vaisey, J., I must confess, to a clear conclusion that you cannot: in those circumstances, and without, I hope, being disrespectful to the argument by abstaining from citation of the other cases which were mentioned to us, I would conclude that this appeal fails and must be dismissed.

Pearce, L.J.—I agree with what my Lord has said. The relevant words of Section 4 (2) are clear and simple. It is argued that they are so wide and general as to contain a possible ambiguity or to invite some limitation, but they refer to what the learned Judge described as a very limited and well defined class of the community. In spite of Mr. Foster's forcible argument, I see no warrant for reading into the words "a person" or "any enactment" the respective glosses that have been suggested.

In my view the learned Judge was right in the conclusion at which he arrived and the appeal should be dismissed.

Harman, L.J.—I agree, and with all deference to the eloquent argument presented to us, I thought this a plain enough case. The Irish resident who wishes to obtain exemption from tax arising upon a dividend payable in this country must go to the United Kingdom Parliament to obtain it. What Parliament has given Parliament may take away, and that it has done to the limited extent which the Act of 1955 proposes in a limited class of cases and in order to stop an abuse. It would be astonishing if that abuse, no longer available to a person resident in England, could still be perpetrated by those resident in the Irish Republic. Of course, if Parliament had chosen to say that should be so, it could do so; but it is very unlikely that it did intend to do so and, in my view, it has put a stop to it in the plainest terms which apply no less to the stranger than to the citizen in this country.

Mr. E. B. Stamp.—Would your Lordships order that the appeal be dismissed with costs?

Lord Evershed, M.R.—That follows, Mr. Foster?

Mr. John Foster.—My Lord, that follows. Would your Lordships grant leave to appeal? It is an interesting question and an important one, my Lord.

Lord Evershed, M.R.—I suppose there is a considerable amount of money involved in it, for one thing, and residents of another country, for another. Mr. Stamp, I suppose the Crown takes the usual course?

Mr. Stamp.—I am instructed not to offer any observations on that, my Lord.

Mr. Foster.—Then, I think the course is to call the other case on, my Lord?

Lord Evershed, M.R.—Yes.

Commissioners of Inland Revenue v. *Lucbor Dealings, Ltd.*

Lord Evershed, M.R.—Is this more or less arresting in its narrow sense?

Mr. Foster.—My Lord, that follows. Your Lordship will dismiss the appeal with costs?

Lord Evershed, M.R.—There is nothing more you would like to say about it?

Mr. Foster.—I would like it to be carried with the other to the House of Lords.

Harman, L.J.—It is an even better name—Lucbor.

Mr. Stamp.—Your Lordships will make the same Order in this case?

Lord Evershed, M.R.—You ask for it to be dismissed, and we dismiss it with costs.

Mr. Stamp.—Yes. My learned friend makes a similar application, I understand?

Mr. Foster.—Yes, I make a similar application.

Mr. Stamp.—On which I make no observations.

Lord Evershed, M.R.—Very well.

Collco Dealings, Ltd., having appealed against the above decision, the case came before the House of Lords (Viscount Simonds and Lords Morton of Henryton, Reid, Radcliffe and Guest) on 8th and 9th February, 1961, when judgment was reserved. On 2nd March, 1961, judgment was given unanimously in favour of the Crown, with costs.

Sir Andrew Clark, Q.C., Mr. John Foster, Q.C., and Mr. R. Buchanan-Dunlop appeared as Counsel for the Company, and the Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr. E. B. Stamp and Mr. Alan Orr for the Crown.

Viscount Simonds.—My Lords, this is, in my opinion, a very clear case, and I am so well satisfied with the judgments of Vaisey, J., and of the Master of the Rolls and his colleagues in the Court of Appeal that I propose to deal with it at no great length.

The Appellant Company was incorporated in the Republic of Ireland on 29th May, 1957, and has at all material times been resident there and not in the United Kingdom. On 31st October, 1957, it acquired 1,000 ordinary shares of £1 each in a company called Carpets & Textiles (Wholesale), Ltd., which on the next day declared an interim dividend of £174 10*s.* per share, subject to deduction of Income Tax. It accordingly received a sum of £100,337 10*s.* (£174,500 less Income Tax £74,162 10*s.*). The dividend was wholly paid out of profits accumulated before the shares were acquired by the Appellant Company. On the same 31st October it acquired 2,000 ordinary shares of £1 each in a company called Afco Agencies, Ltd., which company in its turn on the next day declared an interim dividend of £52 per share, subject to deduction of tax. The Appellant Company accordingly received a net dividend of £59,800 (£104,000 less Income Tax £44,200). This dividend also was wholly paid out of profits accumulated before the shares were acquired by the Appellant Company. These transactions, which might seem strange to those unversed in the devious ways of tax avoidance, had their natural sequel in a claim for repayment of the tax that had been deducted. It was this claim and its rejection that led to these proceedings.

Upon what, then, was the claim based, and upon what its rejection?

By a series of agreements made by the British Government, first with the Government of the Irish Free State and afterwards with the Government of the Republic of Ireland, provision was made, *inter alia*, for the reciprocal exemption from Income Tax and Super-tax—later Surtax—of persons resident in Great Britain (including Northern Ireland) or in the Irish Free State (or Republic of Ireland) but not resident in both countries. Each of such agreements, of which the first was dated 14th April, 1926, and the last that is material for our present purpose was dated 21st July, 1947, provided that it should be subject to confirmation by legislation both by the United Kingdom Parliament

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and by the Irish Legislature, and should have effect only if and so long as that legislation was in force. Each agreement was duly confirmed by appropriate legislation in both countries. It is necessary only to refer to Section 349 of the Income Tax Act, 1952, which confirmed and gave statutory force to them, thereby giving to persons residing only in the Republic of Ireland the statutory right to exemption from United Kingdom Income Tax and Surtax. The Act further provided, by Paragraph 4 (1) of Part III of the Eighteenth Schedule, that any claim for exemption from tax on the ground that the claimant was resident in the Republic of Ireland and was not resident in the United Kingdom should be made to the Commissioners of Inland Revenue in such form as they might prescribe, and the Commissioners should, on proof of the facts to their satisfaction, allow the claim accordingly.

On the basis of this Act the Appellant Company claimed the return of the several sums of tax which had been deducted from the dividends that I have mentioned. I do not doubt that the claims must have been allowed but for the Act to which I now refer. In the meantime, however, the United Kingdom Government had become aware of the practice compendiously, if not felicitously, called "dividend-stripping", of which the transactions that I have already mentioned were conspicuous examples. Not only residents in Ireland, but certain other corporations or bodies to which exemption from tax had been conceded, were using the concession in a manner that could not have been contemplated when it was made. Accordingly, by the Finance (No. 2) Act, 1955, it was provided, by Section 4 (2):

> "Where a person entitled under any enactment to an exemption from income tax which extends to dividends on shares becomes entitled to receive a dividend on a holding of shares of any class to which this section applies, being shares sold or issued to him or otherwise acquired by him after the said twenty-sixth day of October and not more than six years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with [other shares therein specified] amount to ten per cent. or more of the issued shares of that class, the exemption shall, to an extent proportionate to the said extent to which the dividend is paid out of profits accumulated before the date on which the shares were acquired, not apply to the dividend".

The shares in respect of which the dividends in question were received by the Appellant Company were "shares of a class to which the section applies". Here, then, was the answer to the claim for return of tax, and the Commissioners of Inland Revenue rejected it accordingly. The Company appealed from the rejection to the Commissioners for the Special Purposes of the Income Tax, who allowed the appeal. But when the matter was brought before the High Court on Case Stated their determination was reversed by Vaisey, J., whose decision was unanimously upheld by the Court of Appeal. Your Lordships are now asked to restore the determination of the Special Commissioners and declare that the Appellant Company is entitled to exemption from tax in respect of the dividends in question.

My Lords, the argument in favour of the appeal was not lacking in vigour or ingenuity, but in my opinion it was not well founded. The words of the relevant Sub-section are very clear. The single question is whether the Appellant Company is "a person entitled under any enactment to an exemption from income tax". At least it claims to be so entitled in the present case: that is the foundation of these proceedings. But it is said in the first place that it is not entitled under an enactment but under an agreement, which the Appellant Company, to add weight to the argument, prefers to call a treaty. But this contention cannot be accepted. The Company has no rights

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under any agreement. Its rights arise from the Act of Parliament which confirms the agreement and gives it the force of law. It was said that its rights then arose not "under" the enactment but "by virtue of it". This distinction appears to me too tenuous to form the basis of a serious argument: but, if I had to make a choice, I should say that the rights arose "under" rather than "by virtue of". Then it was said that the words of the Sub-section are wide and general. The maxim *generalia specialibus non derogant* was invoked. But this contention fell by the way when it was pointed out that every case in which exemption had been granted was a special case, and that this contention would lead to the Sub-section having no application at all.

It had been urged that the general words of the Sub-section should be so construed as not to have the effect of imposing, or appearing to impose, the will of Parliament upon persons not within its jurisdiction. This argument, which had influenced the Special Commissioners, was not advanced before this House. A somewhat similar argument was, however, pressed upon your Lordships and was perhaps more strongly than any other relied on by the Appellant Company. It was to the effect that to apply Section 4 (2) to the Appellant Company would create a breach of the 1926 and following agreements, and would be inconsistent with the comity of nations and the established rules of international law: the Sub-section must accordingly be so construed as to avoid this result. My Lords, the language that I have used is taken from a passage at pages 148 and 149 of the 10th edition of Maxwell on the Interpretation of Statutes, which ends with the sentence:

> "But if the statute is unambiguous, its provisions must be followed, even if they are contrary to international law."

It would not, I think, be possible to state in clearer language and with less ambiguity the determination of the Legislature to put an end, in all and every case, to a practice which was a gross misuse of a concession. What, after all, is involved? It is nothing else than that, when Parliament said "under any enactment", it meant any enactment except . . .". But it was not found easy to state precisely the terms of the exception. The best that I could get was "except an enactment which is part of a reciprocal arrangement with a sovereign foreign State". It is said that the plain words of the Statute are to be disregarded and these words arbitrarily inserted in order to observe the comity of nations and the established rules of international law. I am not sure upon which of these high-sounding phrases the Appellant Company chiefly relies. But I would answer that neither comity nor rule of international law can be invoked to prevent a sovereign State from taking what steps it thinks fit to protect its own revenue laws from gross abuse or to save its own citizens from unjust discrimination in favour of foreigners. To demand that the plain words of the Statute should be disregarded in order to do that very thing is an extravagance to which this House will not, I hope, give ear. I am well aware that there are cases—many were cited to your Lordships—in which the principle stated in Maxwell has been applied, though less often, I think, upon an appeal to comity of nations than to rules of international law. But each case must be judged in its own context, and I know of no case in which at the same time the words of a Statute were unambiguously clear and it was sought to vary them upon grounds which could not be justified by broad considerations of justice or expediency nor could be supposed to commend themselves to that sovereign power whose citizens relied on them.

For these reasons and for the reasons given in the Courts below, with which, as I have said, I agree, I am of opinion that this appeal should be dismissed with costs.

Lord Morton of Henryton (read by Viscount Simonds).—My Lords, the question arising for decision on this appeal is whether the Appellant Company is or is not "a person entitled under any enactment to an exemption from income tax" within the meaning of Section 4 (2) of the Finance (No. 2) Act, 1955. There is no doubt that, at the time when this Sub-section came into force, the Company was "entitled to an exemption from income tax" and, if it was so entitled "under any enactment", the Sub-section applies to the Company and deprives it of exemption from tax in respect of certain very large dividends declared by two English companies and paid to the Appellant Company.

Counsel for the Appellant Company submitted first that it was entitled to exemption under an agreement made on 14th April, 1926, between the British Government and the Government of the Irish Free State, as amended by subsequent agreements, and not under any enactment. The effect of these agreements, stated shortly, was that a person who could prove that for any year he was resident in the Republic of Ireland and was not also resident in Great Britain or Northern Ireland was to be "entitled to exemption" from British Income Tax for that year in respect of all property situate and all profits or gains arising in Great Britain or Northern Ireland. Similar relief from Irish Income Tax was given to persons resident only in the United Kingdom in respect of Irish Income Tax. The Appellant Company was able to prove that it was resident only in the Republic of Ireland, but it is clear, to my mind, that it did not become "entitled" to any exemption from British Income Tax under these agreements. Nothing but a British Statute could confer any such exemption, and this was recognised by clause 8 of the agreement of 1926, which was repeated in the subsequent agreements and was as follows:

> "This Agreement shall be subject to confirmation by the British Parliament and by the Oireachtas of the Irish Free State and shall have effect only if and so long as legislation confirming the Agreement is in force both in Great Britain and Northern Ireland and in the Irish Free State."

The 1926 agreement, and the subsequent agreements which modified it, were all confirmed by Statutes of each country, and the British confirming Statute which was operative when Section 4 (2) of the Finance (No. 2) Act, 1955, came into force was the Income Tax Act, 1952, the relevant Section being Section 349. If the words "entitled under any enactment" are to be given their ordinary meaning, it is clear that in 1955 the Appellant Company was entitled to an exemption from Income Tax "under" the Statute of 1952 and not under any of the agreements already mentioned. Counsel for the Company, however, submitted that Section 4 (2) of the Act of 1955 should be given a narrow construction, because otherwise it would infringe the comity of nations by unilaterally depriving Irish residents of the benefits conferred on them by the agreements and confirmed by Statute. They invited your Lordships to hold either (*a*) that the words "person entitled" in the Sub-section mean a person who is entitled solely and exclusively under an enactment, and do not extend to include a person who is entitled under an agreement with a foreign state by virtue of its incorporation in the municipal law of England by an English Statute, or (*b*) that the words "any enactment" mean "any enactment standing alone and not being part of a reciprocal arrangement with a foreign state". In support of the second construction they pointed out that words such as "any", or "all", or "every", have been given a narrow meaning in many cases, some of which were cited to your Lordships.

My Lords, I am unable to give either of the suggested meanings to the very plain words of Section 4 (2) of the Act of 1955. I accept the statement in Maxwell on the Interpretation of Statutes, 10th edition, at page 149: "if the statute is unambiguous, its provisions must be followed". I can see no ambiguity in Section 4 (2), and I do not think that its provisions give rise to any

(Lord Morton of Henryton)

breach of international comity. Both parties to the agreements recognise that they might at any moment be brought to an end by the Legislature of either country revoking the statutory confirmation thereof: see clause 8 of the agreement of 1926, already quoted. Moreover, in the cases where wide words have been given a narrower meaning there has always been some reason to think that the Legislature could not have intended the wide words to have their full effect. I find no such reason in the present case, and I agree with the observations of Vaisey, J.([1]), that

> "The plain object of Section 4 (2) was to prevent what is colloquially called 'dividend-stripping', and if the decision of the Special Commissioners stands, residents in Ireland can do what their fellow taxpayers in this country are prohibited from doing. If that is the law, so be it; but the consequence is not one which commends itself to me on general principles of justice and fairness."

I would dismiss the appeal.

Lord Reid.—My Lords, I agree with my noble and learned friends that this appeal should be dismissed, but I should prefer to rely on rather different reasons.

I am not satisfied that it would be wrong in any circumstances to attach a limited meaning to the words of Section 4 (2) of the 1955 Act. In some of the authorities cited to your Lordships, words to my mind equally unambiguous have been so limited, and if the result of holding that these words cannot be given a limited meaning were that Parliament must be held to have created a jurisdiction wider than anything consistent with the broad principles of international law, I would at least hesitate. But there is no question of that kind in this case. The most that can be said is that, unless a limitation is implied, the Sub-section enacts something inconsistent with the provisions of a treaty, and even that is hardly accurate. It appears to me that there is by no means so strong a presumption against Parliament having done that. Although the infringement of a treaty may cause loss to individuals, the only person properly entitled to complain of such infringement is the other party to the treaty. No doubt if that other party is aggrieved the infringement is a breach of the comity of nations and there is a presumption that Parliament did not intend to act contrary to the comity of nations. But I do not think that there is necessarily a presumption that every infringement of a treaty is a breach of the comity of nations. After a treaty has been made circumstances may alter and it may be reasonable to take unilateral action in the expectation that the other party to the treaty will not object. Indeed, the other party may have been consulted and have raised no objection. We do not know what happened in this case. But we do know that, on a previous occasion, unilateral action was taken by Section 52 of the Finance (No. 2) Act, 1945, and this was followed by an alteration of the treaty in 1947 which altered the scope of the original tax exemption to correspond with the provisions of the 1945 Act. And there is another reason against inferring any limitation of the scope of Section 4 (2). We were furnished with a list of statutory exemptions from Income Tax, and it appears that there were three main methods by which tax could be avoided in the way which Section 4 (2) is designed to prevent. It could be done with the co-operation of charities, of the trustees of certain superannuation funds or of Irish residents. Clearly it would have been of little value to prevent two of these methods and leave the third untouched, and I cannot attribute to Parliament an intention to limit the scope of Section 4 (2) so as to produce that result. Accordingly it appears to me that there is no substance in the Appellant's case.

([1]) *See* page 517 *ante*.

Lord Radcliffe (read by Lord Reid).—My Lords, I agree that this appeal ought to be dismissed for the reasons which have been given by my noble and learned friend on the Woolsack.

The only one of the Appellant's contentions that appeared to me to have any plausibility was that which sought to restrict the apparent range of Section 4 (2) of the Finance (No. 2) Act, 1955, by the argument that, if applied to persons enjoying exemption as being resident in Eire but not also in the United Kingdom, it would contradict the provisions of the inter-governmental agreements about double taxation between the two countries. It is no doubt true that statutory words apparently unlimited in scope may be given a restricted field of application if there is admissible ground for importing such a restriction; and the consideration that, if not construed in some limited sense, they would amount to a breach of international law is well recognised as such a ground. But a supposed intention not to depart from observance of the comity of nations is a much vaguer criterion by which to determine the range of a Statute; and when the departure consists in no more than a provision inconsistent with an inter-governmental agreement about taxation, which by its own terms is subordinated to the approval of the respective Legislatures of the countries concerned and persists only so long as its terms are maintained in force as law by those Legislatures, I think that there is no useful aid at all to be obtained from this principle of interpretation. The principle depends wholly on the supposition of a particular intention in the Legislature, and I do not think that in the case before us there is any reason to make the supposition which is suggested.

Lord Guest.—My Lords, in order to succeed in this appeal, the Appellants have to show that they do not come within the terms of Section 4 (2) of the Finance (No. 2) Act, 1955, as "a person entitled under any enactment to an exemption from income tax". The claim made by the Appellants for exemption from Income Tax was made in accordance with Paragraph 4 (1) of Part III of the Eighteenth Schedule to the Income Tax Act, 1952. Their claim for exemption is founded on Section 349 of the Income Tax Act, 1952. Under Sub-section (1) of that Section the agreements between the United Kingdom and the Republic of Ireland in regard to relief from double taxation are confirmed, but it is only by virtue of Sub-section (2) that the agreements have the effect of exempting persons entitled under the agreements from liability to United Kingdom Income Tax. The only limitation upon the right to exemption is that the law of the Republic of Ireland must grant relief during the relevant year of assessment. The Appellants' argument that the exemption is not "under" Section 349, but is "in virtue" of that Section, to my mind discloses a distinction without a difference. As the Income Tax is imposed by a United Kingdom enactment, relief from its imposition could only be granted by a similar enactment. The Appellants cannot approbate and reprobate the Income Tax Acts. In order to claim exemption from United Kingdom Income Tax they must appeal to a United Kingdom enactment, namely, Section 349 of the Income Tax Act, 1952. At the same time they are repudiating Section 4 (2) of the Act of 1955, which refers to the same class of persons who benefited under the Act of 1952. In my opinion it is impossible to put the limitation sought by the Appellants on Section 4 (2). It refers to a limited class of persons readily identifiable, and the Appellants come within that class. Assuming that Section 4 (2) involves a breach of a treaty with the Republic of Ireland, as to which I have some doubt, it must be given effect to, notwithstanding its effect on international agreements, if its language admits of no doubt (Maxwell on Interpretation of Statutes, 10th edition, page 154). The language of Section 4 (2) is unambiguous and applies, in my view, to the Appellants.

(Lord Guest)

I would dismiss the appeal.

Questions put

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; R. M. Bull & Co.]