A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—17TH AND 21ST DECEMBER 1965

COURT OF APPEAL—5TH AND 6TH MAY 1966

HOUSE OF LORDS—30TH AND 31ST JANUARY AND 15TH MARCH 1967

Davies (H.M. Inspector of Taxes) *v.* Davies, Jenkins & Co. Ltd.[1]

Income tax, Schedule D—Deduction—Subvention payment—Payment made
B *after cessation of payee company's trade—Whether deduction allowable to payer —Finance Act* 1953 (1 & 2 *Eliz.* 2, *c.* 34), *s.* 20.

On 24*th February* 1960 *and* 28*th March* 1961 *the Respondent Company made payments under a subvention agreement to W Ltd. (which owned all the Respondent Company's share capital) in respect of losses for the accounting periods ending* 31*st March* 1959 *and* 31*st March* 1960 *respectively. W Ltd. ceased*
C *trading as cotton spinners on* 21*st December* 1959.

On appeal against assessments to income tax under Case I *of Schedule D for the years* 1959–60 *and* 1960–61, *the Company claimed that the payments were allowable as a trading expense under s.* 20, *Finance Act* 1953. *For the Crown it was contended,* inter alia, *that, since W Ltd. was not trading when the payments were made, it was not a "company" within the meaning of s.* 20(9), *and conse-*
D *quently the payments were not within s.* 20(1). *The Special Commissioners rejected this contention and allowed the appeal.*

Held, *that s.* 20 *did not require that at the time when it received the subvention payment the payee company should be carrying on a trade.*

CASE

Stated under the Income Tax Act 1952, s. 64, by the Commissioners for the
E 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 16th, 17th and 31st October and 1st November 1963 Davies, Jenkins & Co. Ltd. (hereinafter called "the Company") appealed against assessments to income tax made upon it under Case I of Schedule D
F for the years 1959–60 and 1960–61 in the sums of £5,000 and £20,000 respectively.

2. The sole question for our decision which now remains in issue was whether certain payments made by the Company under a subvention agreement in the circumstances hereinafter appearing are allowable deductions under

[1] Reported (Ch. D.) [1966] 1 W.L.R. 446; 110 S.J. 232; [1966] 1 All E.R. 716; (C.A.) [1966] 1 W.L.R. 1094; 110 S.J. 429; [1966] 2 All E.R. 930; (H.L.) [1967] 2 W.L.R. 1139; 111 S.J. 277; [1967] 1 All E.R. 913.

s. 20 of the Finance Act 1953 in computing its profits for the purposes of Case I of Schedule D for the years 1959–60 and 1960–61, the said payments having been made after the payee company had ceased trading. A

3. The relevant facts are as follows:

(1) A subvention agreement was entered into on 17th March 1955 between (1) Wood Bros. (Glossop) Holdings Ltd. ("Wood Bros. Holdings"), (2) Wood Bros. (Glossop) Ltd. ("Wood Bros. Glossop"), (3) the Company, (4) Thomas Nuttall & Sons (Bolton) Ltd., (5) Thomas Nuttall & Sons (Oak Mill) Ltd. and (6) Wood Bros. (Men's Wear) Ltd. A copy of the agreement is annexed hereto, marked "A", and forms part of this Case(1). B

(2) Two payments were made under this agreement by the Company to Wood Bros. Glossop, the first, of £13,327, on 24th February 1960 in respect of the accounting period 1st April 1958 to 31st March 1959, and the second, of £12,395, on 28th March 1961 in respect of the accounting period 1st April 1959 to 31st March 1960. C

(3) From 1st April 1958 to 28th March 1961 all Wood Bros. Glossop's ordinary shares were held by Wood Bros. Holdings, and all the Company's shares were held by Wood Bros. Glossop.

(4) The Company had surpluses under s. 20(5) in the two accounting periods ended 31st March 1959 and 31st March 1960 sufficient to justify the said payments. D

(5) Wood Bros. Glossop had deficits under s. 20(5) during the first of the said accounting periods sufficient to absorb the payment from the Company and during the second of the said accounting periods sufficient to absorb £6,669 of the payment by the Company. E

(6) The date of cessation of the trade of Wood Bros. Glossop as cotton spinners was 21st December 1959.

4. The following case was cited to us: *Commissioners of Inland Revenue* v. *Clifforia Investments Ltd.*(2) [1963] 1 W.L.R. 396.

5. It was contended on behalf of the Respondent Company that:

(1) Throughout the period from the beginning of Wood Bros. Glossop's accounting periods in respect of which the payments had been made and the making of the payments the Company had been a subsidiary of Wood Bros. Glossop, within the meaning of s. 20(10). The Company was therefore an associated company in relation to Wood Bros. Glossop, within the meaning of this subsection. F

(2) Subsection (10) describes the relationship of association for the purposes of the whole of s. 20. G

(3) The Company had therefore made subvention payments to an associated company within the meaning of subs. (1).

(4) The subvention payments should therefore be treated as trading expenses of the Company.

6. It was contended on behalf of H.M. Inspector of Taxes that: H

(1) Section 20(1) of the Finance Act 1953 deals with the position where a company receives a subvention payment from an associated company.

(2) Subsection (10) sets out the conditions which, for the purposes of the whole of s. 20, must be satisfied before a company making a subvention payment to another can be treated as the other's associated company, namely, "if, but

(1) Not included in the present print. (2) 40 T.C. 608.

A only if, at all times between the beginning of the payee company's accounting period in respect of which the payment is made and the making of the payment one of them is the subsidiary of the other . . ."

(3) Subsection (9), however, provides that for the purposes of the whole of s. 20 "references to a company shall be taken to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the B United Kingdom". The word "company" as defined in this subsection therefore governs the meaning of the word "company" in subs. (10).

(4) Since Wood Bros. Glossop was not trading when the payments in question were made, it was not a company within the meaning of subs. (9), nor an "associated company" within the meaning of subs. (10).

(5) The payments in question should therefore not be treated under subs. C (1) as trading expenses of the Company. No deduction accordingly fell to be allowed therefor in the years 1959–60 and 1960–61 as claimed.

7. We, the Commissioners who heard the appeal, took time to consider our decision and gave it in writing on 10th January 1964 the relevant part of which is as follows:

(7) The second question we have to decide affects the years 1959–60 and D 1960–61, and it is whether payments made under a subvention agreement by the Company can be allowed as deductions under s. 20 of the Finance Act 1953 as if they were trading expenses, the payments having been made after the payee company, Wood Bros. (Glossop), had ceased trading.

(8) To consider subs. (1) first:

> ". . . where a company has a deficit for tax purposes during any E accounting period of the company, and receives a subvention payment in respect of that period . . ."

Wood Bros. Glossop had such deficits during the relevant accounting periods; up to a date in the second accounting period (21st December 1959) it was a company within the meaning of subs. (9); and it received the payments in question in respect of those periods.

F

> ". . . receives a subvention payment in respect of that period from an associated company . . ."

The question is, therefore, whether the Company was an associated company in relation to Wood Bros. Glossop.

(9) We think the answer to this question lies in subs. (10), for it is that subsection which describes what companies making subvention payments shall G be treated as associated companies of the payees. Its opening words are: "For the purposes of this section . . .", and it must therefore apply to subs. (1). At all times between the beginning of the first relevant accounting period of Wood Bros. Glossop and the date on which the second payment was made, the Company was a subsidiary of Wood Bros. Glossop within the meaning of subs. (10). On this view the Company was an associated company of Wood H Bros. Glossop, and the payments in question should be allowed as deductions under subs. (1) as if they were trading expenses of the Company.

(10) But the Crown seeks to import the description of "company" in subs. (9) into subs. (10), contending that, since Wood Bros. Glossop was not trading when the payments were received, it was not a company "at all times . . ." within the meaning of subs. (10).

I (11) We reject this contention. We have already said that in our view it is subs. (10) which governs the question of association for the purposes of subs. (1),

and we think we are supported in this view by a consideration of paras. 1 and 3 of Sch. 4 to the Finance Act 1954 and s. 18 of that Act. It seems to us implicit in this legislation that a subvention payment made to a payee company after cessation qualified under s. 20(1) of the Finance Act 1953. In particular, para. 3 of the above-mentioned Schedule would seem to have little if any content if this is not so.

We do not think this 1954 legislation is based on a mistaken view of s. 20 of the Finance Act 1953.

(12) The payments in question should be allowed as deductions to the Company as if they were trading expenses, and the appeal on this point succeeds.

(13) We leave the figures to be agreed.

8. Figures having been agreed, we gave our final determination on 24th February 1964 by discharging the assessment for 1959–60 and reducing the assessment for 1960–61 to £19,898.

9. H.M. Inspector of Taxes 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, s. 64, which Case we have stated and do sign accordingly.

10. The question of law for the opinion of the Court is whether we were right in holding that the subvention payments should be treated as trading expenses of the Company under the provisions of s. 20(1) of the Finance Act 1953.

R. W. Quayle
H. G. Watson
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94–99 High Holborn,
London W.C.1.
6th November 1964.

The case came before Stamp J. in the Chancery Division on 17th and 21st December 1965, when judgment was given in favour of the Crown, with costs.

Sir George Honeyman Q.C. and *J. Raymond Phillips* for the Crown.

F. Heyworth Talbot Q.C. and *Peter Rees* for the Company.

Stamp J.—The point in issue in this case and the relevant facts may be stated with brevity. The question is whether a payment made by one company to another, which would otherwise qualify as a subvention payment within the meaning and for the purposes of s. 20 of the Finance Act 1953 is outside the ambit of the section by reason of the fact that at the date of the payment the recipient company had ceased to trade. Davies, Jenkins & Co. Ltd., the Appellant taxpayer, made the payments in question, and Wood Bros. (Glossop) Ltd. received them, after the latter company had ceased to trade. Although it is common ground in this appeal that had the recipient company's trade con-

A tinued until the date of receipt all the requirements of the section would have been satisfied, it is contended on behalf of the Crown that a subvention payment which is to qualify for the purpose of the section must be made at a time when the recipient is trading.

Subject only to the question whether I may look at a subsequent Finance Act, that of 1954, for the purpose of construing s. 20 of the Finance Act 1953, B the matter turns exclusively upon the construction of s. 20, read in the light of the tax legislation as it then existed and with regard to the purpose which s. 20 was designed to achieve.

I read so much of s. 20 as appears to me to be material:

> "(1) Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and C receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then in computing for the purposes of income tax the profits or gains or losses of those companies the payment shall be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit, and shall be allowed as a deduction to the D other company as if it were a trading expense incurred on that day. (2) Subject to the next following subsection, a payment made by one company to another shall be treated as a subvention payment within the meaning of this section if, but only if, it is made under an agreement providing for the paying company to bear or share in losses or a particular loss of the payee company, and is not a payment which (apart from this section) would be E taken into account in computing profits or gains or losses of either company or on which (apart from this section and from any relief from tax) the payee company would be liable to bear tax by deduction or otherwise . . ."

Then there is a proviso to that subsection which I need not read; nor is subs. (3), I think, relevant for the purposes of this case. I read subss. (4) and (5) F because of the reference to a trade which one finds there.

> "(4) Where a subvention payment is made to a company in respect of more than one accounting period of the company, or is made to or by a company carrying on more than one trade, the payment shall be apportioned in such manner as appears . . . to be just in order to determine the part to be attributed for the purposes of this section to any period or G trade. (5) For the purposes of this section, the question, as respects any period, whether a company has a deficit or surplus for tax purposes, or what is the amount of that deficit or surplus, shall be determined by deducting from—(*a*) the aggregate amount—(i) of any profits or gains arising in that period from a trade carried on by it wholly or partly in the United Kingdom (computed in accordance with the provisions, other than H this section, applicable to Case I of Schedule D); and (ii) of any income for the year of assessment in which that period ends (computed in accordance with the provisions of the Income Tax Acts) other than profits or gains arising from any such trade; (*b*) the aggregate amount—(i) of any loss sustained by it in the period in any such trade (computed in the same manner as profits or gains under the provisions, other than this section, I applicable to Case I of Schedule D); and (ii) of any allowances in respect of any such trade under Part X or XI of the Income Tax Act, 1952, for the said year of assessment, other than those given by way of deduction in

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computing profits or gains or losses; and (iii) of any payments made by it in the said year of assessment to which section one hundred and sixty-nine or one hundred and seventy of the said Act applies, other than payments to which the said section one hundred and seventy applies by virtue of section three hundred and eighteen of the said Act or which are deductible in computing the profits or gains or losses of a trade carried on by it"

—and then at the end there is a proviso which I need not read. I need not read subs. (6), (7) or (8).

"(9) For the purposes of this section, 'company' includes any body corporate, but references to a company shall be taken to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom: Provided that this section shall apply in relation to a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, as if that business were the carrying on of a trade, and in the case of such a company, any payment which is directed by this section to be treated as a trading receipt or a trading expense shall be treated as a payment chargeable under Case VI of Schedule D or as an expense of management, as the case may be. (10) For the purposes of this section, a company making a subvention payment to another shall be treated as the other's associated company if, but only if, at all times between the beginning of the payee company's accounting period in respect of which the payment is made and the making of the payment one of them is the subsidiary of the other, or both are subsidiaries of a third company, and for this purpose 'subsidiary' has the meaning assigned to it for certain purposes of the profits tax by section forty-two of the Finance Act, 1938."

I need not read the rest of the section.

The Crown, as I understand it, puts its contention in two ways. First, it is contended that, reading subs. (1) and subs. (9) together, the proper conclusion is that the recipient company must have the qualification required by subs. (9) at the time of the receipt of the subvention payment. Secondly, it is submitted that if subss. (9) and (10) are read together this conclusion becomes irresistible. The latter argument, upon which emphasis was laid as well before the Special Commissioners as before this Court, may be stated thus. It is only those payments which are received from an associated company which are, under subs. (1), to qualify as subvention payments. Subsection (10) makes it plain that the payer company is not an associated company of the recipient so as to qualify the payment as a subvention payment unless at the time of the receipt it is an associated company of the recipient. If at the time of the receipt the recipient company is not trading the payer company cannot then be its associated company within subs. (10), because by the effect of subs. (9) references in subs. (10) to a company apply only to a company carrying on a trade in the United Kingdom and accordingly do not apply to the recipient. And since at the date of payment the recipient was not the payee's associated company, neither was the payer the recipient's associated company, and it follows, so the argument runs, that the payment which the recipient company received was not in this case received from an associated company and so does not fall within subs. (1).

Counsel on both sides—Mr. Heyworth Talbot, on behalf of the taxpayer, emphasises this—point out that the purpose of the section is to relieve a family of associated companies from the hardship occasioned where a trading loss

A suffered by one cannot be set off for tax purposes against a profit made by the others. Mr. Heyworth Talbot points out that it is natural and right and fair that payments made by or to a company which at the date of the payment has ceased to be a member of the family should not operate to give the former member or its former relatives the relief accorded by the section; but he submits, and I accept that submission, that it is neither fair nor natural nor right that B this should be so when all that has happened to the family is that one of its members has ceased to trade. He points out that, if the Crown is right that the relief cannot be accorded when the payer or recipient has ceased to trade when the payment is made, the effect must always be to deny relief, or at least the appropriate relief, in respect of the last accounting period, namely, that down to the date of cesser: for only thereafter will the amount of the loss and profits C be known and only then can the appropriate subvention payment be made. I cannot think that the riposte of the Crown to the effect that the subvention payment can be made before the end of the last accounting period in anticipation of the cesser and on an estimate of the probable losses or profits of the several members of the family is a satisfactory answer to the anomaly. In a group of companies any such estimate might in the event be proved to have been very D wide of the mark.

It is further submitted on behalf of the taxpayer that it is not a proper approach to the construction of a Statute to do as the Crown seeks to do and to import into one definition section the definition in another; and Mr. Heyworth Talbot submits in effect that subss. (9) and (10) are to be read as imposing separate independent qualifications or definitions. He points out the impos- E sibility of reading the reference to "a company", which appears in the proviso to subs. (9), as a reference, to quote the words of that subsection:

> "only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom",

for to do so would make nonsense; and just as one must read the proviso to subs. (9) without applying to the word "company" the interpretation to be put F upon it in the body of the subsection because it is all part of the interpretation, so it is urged must you read subs. (10), which is also part of the interpretation of the section, without treating the reference there to a company as a reference to a company of the limited class described in subs. (9).

I find these submissions of the taxpayer very formidable, and if I thought that the draftsman had otherwise left in obscurity the point or period of time G at which a recipient company must be trading in order that a subvention payment may qualify, I would be reluctant to hold, in the face of those submissions, that the draftsman intended to remove the obscurity by the somewhat elaborate referential argument based on subs. (10). It would have been so easy to have incorporated into subs. (9) itself words similar to those found in subs. (10), whereas the two subsections as drawn are in marked distinction.

H But in my judgment the Crown does not need its supporting argument. Even if the reference to a company in subs. (10) is not to be construed as a reference to a company having the subs. (9) qualification, you are still left with a situation in which the two subsections have to be applied to subs. (1) independently. Subsection (1) is the enacting part of s. 20, and, applying to the reference to a company in the opening words of subs. (1) the qualification or description I that subs. (9) requires you to apply, you find that it is where a company trading in the United Kingdom has a deficit in any accounting period and receives a

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subvention payment in respect of that period that the payment is to receive the treatment required by the section. And it is to be noted that it is the word "payment" which is grammatically the subject of the sentence which you find in subs. (1), and it is the payment which is to receive the treatment prescribed; and if the question be asked, at what moment of time is the company which receives the payment to have the qualification required by subs. (9), I would, in the absence of something indicating the contrary, conclude that it was at the time of the payment which brings subs. (1) into operation.

There is another approach which leads to the same conclusion. Subsection (9) requires you to "take" (note the words "shall be taken") the reference to a company in subs. (1) as applying only to a company (note the present tense) "resident in the United Kingdom and carrying on" (note again the present tense) a trade there; and before subs. (1) can apply you must find the case to be one where, reading subs. (9) into subs. (1), "a company resident in the United Kingdom and carrying on a trade" there has such a deficit as is there described and receives a subvention payment. In this case no such company did receive a subvention payment. Similarly, in the absence of some contrary indication, I would conclude that the paying company must have the qualification of being an associated company at the moment of receipt and payment. Subsection (10), however, of course requires that qualification to subsist as well over the whole period between the beginning of the payee's accounting year and the payment.

The argument which I have referred to as the Crown's supporting argument, although not in my judgment conclusive, does in my view fall into place and support the conclusion I have come to.

In coming to that conclusion, I have not forgotten the language of Lord Macmillan in *Perry* v. *Astor*([1]) 19 T.C. 255, at page 288, to which I was referred. There Lord Macmillan said this:

> "So far as the intention of an enactment may be gathered from its own terms it is permissible to have regard to that intention in interpreting it, and if more than one interpretation is possible, that interpretation should be adopted which is most consonant with and is best calculated to give effect to the intention of the enactment as so ascertained. More especially, where two sections forming part of a single statutory code are found, when read literally, to conflict, a court of construction may properly so read their terms as, if possible, to effect their reconciliation."

I have also anxiously considered the argument of Mr. Heyworth Talbot to which I have referred. But I find no conflict between one part of the section and another, and no interpretation which I regard as a possible alternative construction to the one I have adopted. It is to be observed that, since this is not a taxing section, the taxpayer cannot take refuge behind the rules affecting the construction of such a section.

The Special Commissioners, without, so it appears, considering the application of subs. (9) to subs. (1), rejected the Crown's argument, and in doing so derived assistance from the provisions of the Finance Act 1954. It is in my judgment clear, for reasons which I need not state because it is common ground between the parties that it is so, that s. 18 of that Act was passed in the belief that it was not necessary for the purposes of s. 20 of the earlier Act that the recipient company should be trading at the time of receipt of a subvention payment; and one provision at least of the later Act is wholly nugatory if, as I

([1]) [1935] A.C. 398.

have held, that view was mistaken. Mr. Heyworth Talbot, while conceding that the erroneous view of Parliament as to the effect of earlier legislation does not make the law, relied upon passages in the speech of Lord Macmillan, to which I have referred, as authority for the view that where two Acts of Parliament form part of a single code one may construe the two together. But in *Perry* v. *Astor*[1] Lord Macmillan construed the later Act by reference to the earlier one, and in my judgment it would be flying in the face of the authority of the House of Lords in *John Hudson & Co. Ltd.* v. *Kirkness*[2] 36 T.C. 28 to look at the later Act for the purpose of ascertaining the meaning of the earlier one even where the two Acts do form part of a single code, the argument that you may do so having been described by Rowlatt J., in *Ormond Investment Co. Ltd.* v. *Betts*[3] as "a sinister and menacing proposition". Only if at the end of the day I could come to the conclusion that s. 20 of the 1953 Act was, to quote the words which received the approval of Lord Simonds in the *Hudson* case[4], "fairly and equally open to divers meanings[5]", could I look to the 1954 Act to resolve the ambiguity.

I should perhaps add this. So far as I can see, s. 20 without any aid from subs. (9) could only operate in fact in respect of the accounts of trading companies (see subs. (5) of the section). One cannot, therefore, help thinking that subs. (9) was really introduced, not for the purpose of introducing an unnecessary limit of the application of the section to trading companies, but to limit it to those resident and trading in the United Kingdom. Unfortunately, the terms of the proviso to subs. (9) make it impossible to give that subsection such a limited application. If it be correct that already by the effect of subs. (5) the section could have no effective operation except in respect of companies trading during an accounting period, this is all the more reason for treating subs. (9), when read with subs. (1), as imposing the further qualification that the recipient company should also be trading at the date of the receipt of the payment.

Phillips—My Lord, I ask that the appeal may be allowed, and as to the form of the Order I would ask that the case be remitted to the Special Commissioners to adjust the assessments in accordance with the terms of your Lordship's judgment.

Stamp J.—Is that right, Mr. Heyworth Talbot?

Talbot Q.C.—Entirely right, my Lord. I do not know whether my friend was intentionally generous when he made no reference to costs.

Phillips—I had not forgotten, my Lord. I thought it was proper to deal with the form of the Order first.

Stamp J.—I thought we had not got as far as that.

Phillips—I do ask for costs, my Lord.

Stamp J.—Would that be right? You cannot resist that?

Talbot Q.C.—I cannot resist that.

Stamp J.—I will make that Order.

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(1) 19 T.C. 255, at pp. 288–91. (2) [1955] A.C. 696.
(3) 13 T.C. 400, at p. 407; [1927] 2 K.B. 326. (4) 36 T.C., at p. 62.
(5) 13 T.C., at p. 429, *per* Lord Buckmaster.

The Company having appealed against the above decision, the case came before the Court of Appeal (Harman, Diplock and Winn L.JJ.) on 5th and 6th May 1966, when judgment was given in favour of the Crown, with costs (Harman L.J. dissenting). A

F. Heyworth Talbot Q.C. and *Peter Rees* for the Company.

Sir George Honeyman Q.C. and *J. Raymond Phillips* for the Crown.

The following cases were cited in argument: *Perry* v. *Astor* 19 T.C. 255; [1935] A.C. 398; *Commissioners of Inland Revenue* v. *Clifforia Investments Ltd.* 40 T.C. 608; [1963] 1 W.L.R. 396. B

Harman L.J.—This is a short point, but none the easier for that. The claiment here, Davies, Jenkins & Co. Ltd., is a subsidiary of another company called Wood Bros. (Glossop) Ltd., which in its turn is a subsidiary of Wood Bros. (Holdings) Ltd. They are a series of interlocked companies having something to do with the textile trade. It was for long a grievance in cases of companies which worked on this system of interlocked subsidiaries that the profits of one could not be set off against losses of another. The Finance Act 1953 proposed to remedy this defect. It is said that the provisions of s. 20 of that Act do not apply to the circumstances of this case—that, although the claimant is a company which is in this interlocked position, and although its subsidiary did make a loss, or rather have a deficit as it is called, it is not possible to allow to the claimant the amount which it paid to its subsidiary to make good that loss because at the date when the payment was made the subsidiary had ceased to carry on trade. The trading ceased on 21st December 1959. Two payments were in respect of the periods, first, to March 1959, and second, to March 1960. The payments were made, first, in February 1960 and, secondly, in March 1961, and on those last dates the subsidiary was not carrying on a trade. It was not wound up but it had ceased to do any business. It is said, therefore, that the section does not apply. The Special Commissioners held that it did apply, but they were reversed by the learned Judge, who, in a very careful judgment, explained why, although he thought it anomalous, he did not see how on the wording of the Act it was possible to avoid the result which the Crown claimed. C D E F

Now that is admittedly an anomaly, and in my judgment it is a hardship. The Crown says that it can be mitigated by some forecasting by one or other of the two companies in question and the fact that they do not get it quite right does not very much matter between companies which are as closely interlocked as these companies are. I do not think that is a very satisfactory way of managing legislation, but there it is. Otherwise the result of the Crown's argument is that for the last trading year of any subsidiary which makes a deficit it can never receive a subvention payment. I ought perhaps to say that a subvention payment is a payment under an agreement between companies in an interlocked position such as there is here. In this case the agreement was made in 1955, and it provided that if any one of the group made a loss one or other of the remaining members of the group should make it good. It was decided by the holding company (which had the decisive voice in the matter, as I understand) that Davies, Jenkins & Co. Ltd., which had trading surpluses in the accounting years in question, should be the member of the group to make good these deficits. That it has done, and it claims to be allowed that in its accounts under s. 20. That has been denied to it by the learned Judge: hence this appeal. G H I

A Section 20 is a comparatively long and involved section. One should start at the back end of it and look at subs. (9), which (in rather odd language) provides that:

> "For the purposes of this section . . . references to a company shall be taken to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom . . ."

B So in reading subs. (1) references to a company are references to what I may call an English trading concern. So you begin like this:

> "Subject to the provisions of this section, where [an English trading concern] has a deficit for tax purposes during any accounting period of [that concern] and receives a subvention payment in respect of that period from an associated company [trading in England] having a surplus for tax
> C purposes in the corresponding period, then in computing for the purposes of income tax the profits or gains or losses of those companies the payment shall be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit, and shall be allowed as a deduction to the other company as if it were a trading expense incurred on that day."

D Therefore you have to have a company trading in England and incurring a deficit over one of its accounting periods. The company to which the payment was made here was trading in England when it made the deficit first in question, and it did receive a subvention payment in respect of that period from another company, namely the claimant, which was also a company trading in England over the same period—or rather the corresponding period: it is not necessary
E that it be the same but it must be a corresponding period—and the claimant had a surplus for that time. If that is so, I do not for myself quite see why the subvention payment made under the subvention agreement for that period should not rank within subs. (1), because it is to be treated as receivable by the one company on the last day of the accounting period during which it had a deficit and is to be allowed to the other as if it were a trading expense incurred
F on that day. So that of the two companies one puts it down as a debt incurred in the accounting period, and the other puts it down as a credit receivable during the same period. It does not say it has to be received in that period.

What happened here was that the losses of one, and the profits of the other, were not ascertained until a later period, so that each payment was not made till that later period. But in the books of both companies I think that the
G entries are taken to be made in respect of the period during which each of these companies was trading, and it does not seem to me that the fact that the company had ceased to trade makes any difference. What is said is that the company must be trading in England when it receives the payment, and if it is not trading in England at the date of receipt it cannot qualify. But with all respect, I think that "receives" there means nothing in respect of time: it is
H not the present tense in the temporal sense at all. You might as well say "it has received"; or you might easily say "it shall receive." It is "*whenever* it receives"—"where" means "whenever"; and where a company has plied its trade in England and has made its deficit during a given accounting period and has a parent or an associated company which has a surplus over the corresponding period, and there is a subvention agreement between them, I cannot see why
I that subvention should not rank as s. 20(1) says it does.

(Harman L.J.)

It is said, however, as I understand it, that s. 20(10) makes that impossible. That reads:

> "For the purposes of this section"—that I suppose is s. 20 and not the subsection—"a company making a subvention payment to another shall be treated as the other's associated company if, but only if, at all times between the beginning of the payee company's accounting period in respect of which the payment is made and the making of the payment one of them is a subsidiary of the other . . ."

In this case with regard to these two companies one remained a subsidiary of the other during the whole period and both of them in fact (as the definition goes on) were subsidiaries of the holding company, and I do not see why that particular definition destroys what I would otherwise call the proper meaning of subs. (1) because of the reference to the making of the payment. One does not cease to be a subsidiary of the other simply because one of them or the other of them ceases to trade. "Subsidiary" company has nothing to do with trading. A company is subsidiary if all its shares, or 75 per cent. of them, are held by the parent.

If it lay with me I should allow this appeal; but I understand that my brethren are of another opinion.

Diplock L.J.—If I thought that the words of s. 20 of the Finance Act 1953 were equivocal, I should be the first to adopt an interpretation which would avoid what I think it is common ground between the taxpayer and the Crown is an anomaly where a subsidiary company has given up trading before it receives the subvention payment under s. 20(1).

It is always invidious, when Harman L.J. and Stamp J. have taken different views as to the construction of the section, to say that there is only one possible meaning to be ascribed to the words. But for my part I think that the words are too plain, and that to qualify for the relief afforded by s. 20(1) the recipient must be a company carrying on a trade wholly or partly in the United Kingdom at the time of the receipt of the payment as well as during the accounting period in which the deficit is incurred. Stamp J. in his judgment set out the reasons for arriving at this view in terms much more felicitous than I could attempt and lengthier than I need venture on Friday afternoon. I would dismiss the appeal for the reasons which Stamp J. gave.

Winn L.J.—I agree explicitly with the judgment delivered by Diplock L.J. It seems to me that if one poses the question: "When this payment was received by the recipient company and paid by the Appellant Company, was the recipient company a resident trading company, and was it, within the limited meaning of the word 'company' prescribed by subs. (9), an associated company of the payer Company?" there is only one possible answer and that is: "No". I regret this decision, but for my own part I can see no way of avoiding it. Neither the delightful advocacy of Mr. Heyworth Talbot nor (still less) any of the suggestions I myself threw out in a futile attempt to help his case in this Court have in my view any real validity. I too think that this appeal must be dismissed.

Harman L.J.—Then the appeal is dismissed.

Honeyman Q.C.—It will be dismissed with costs, my Lord?

Harman L.J.—With costs, yes.

Talbot Q.C.—I am instructed, my Lord, to ask your Lordships to give leave to appeal. It is true that the amount at stake in this case is not very sub-

A stantial, but the point of principle is one of some concern and it is on those grounds that I venture to make this application.

(*The Court conferred.*)

Harman L.J.—Yes, we give you leave.

The Company having appealed against the above decision, the case came before the House of Lords (Viscount Dilhorne and Lords MacDermott,
B Morris of Borth-y-Gest, Guest and Upjohn) on 30th and 31st January 1967, when judgment was reserved. On 15th March 1967 judgment was given against the Crown, with costs (Lord Guest dissenting).

F. Heyworth Talbot Q.C., Roy Borneman Q.C., and *Peter Rees* for the Company.

Sir George Honeyman Q.C., J. Raymond Phillips and *J. P. Warner* for the
C Crown.

The following cases were cited in argument in addition to those referred to in Lord Dilhorne's speech:—*Perry* v. *Astor* 19 T.C. 255; [1935] A.C. 398; *Commissioners of Inland Revenue* v. *Clifforia Investments Ltd.* 40 T.C. 608; [1963] 1 W.L.R. 396.

Viscount Dilhorne—My Lords, in this case the Crown contend that the
D Appellant Company is not entitled by virtue of s. 20 of the Finance Act 1953, as amended by s. 23 of the Finance Act 1958, when computing profits or losses for the purposes of income tax, to deduct two payments it had made to Wood Bros. (Glossop) Ltd. as if they were trading expenses.

The Crown contend that the Appellant Company cannot do so, as at the time the payments were made Wood Bros (Glossop) Ltd. had ceased to carry
E on a trade. They maintain that s. 20 only applies to companies which at all relevant times and at the time of receipt of the payment come within subs. (9) of that section, that is to say, companies resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom. Such a company can conveniently be referred to as a trading company. Section 20(9) further provides that a company "whose business consists mainly in the making of
F investments and the principal part of whose income is derived therefrom" is for the purposes of s. 20 to be treated as a trading company. When considering s. 20, therefore, all references to a trading company must be taken to include what may conveniently be called an investment company. It is further provided by s. 20(10) that, to avail themselves of the rights given by the section, both the paying company and the receiving company must at all material times,
G including in particular the time at which the payment is made, have either been subsidiaries, within the meaning of s. 42 of the Finance Act 1938, of a third company or one the subsidiary of the other. The Appellant Company was at all material times, including the time of the making of the payments in question, a subsidiary of Wood Bros. (Glossop) Ltd.

Section 20(2) provides that such payments are only to be treated as sub-
H vention payments within the meaning of the section if they are made

> "under an agreement providing for the paying company to bear or share in losses or a particular loss of the payee company, and is not a payment

(Viscount Dilhorne)

> which (apart from [the] section) would be taken into account in computing profits or gains or losses of either company or on which (apart from [the] section and from any relief from tax) the payee company would be liable to bear tax by deduction or otherwise."

The payments made by the Appellant Company were made pursuant to such an agreement and were not payments which apart from the section would be taken into account in computing profits or losses or on which the payee company would be liable to bear tax by deduction or otherwise.

Section 20(1) reads as follows:

> "Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then in computing for the purposes of income tax the profits or gains or losses of those companies the payment shall be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit, and shall be allowed as a deduction to the other company as if it were a trading expense incurred on that day."

The provisions to which I have referred were not altered by the Finance Act 1958.

Wood Bros. (Glossop) Ltd. had deficits for tax purposes in two of its accounting periods and the Appellant Company had surpluses for tax purposes in its corresponding periods. They were both trading companies within the meaning of subs. (10), but Wood Bros. (Glossop) Ltd. ceased to trade towards the end of its second accounting period and had ceased to trade when it received the payments from the Appellant Company. From the beginning of the relevant accounting periods, and at the time of the making of the payments, one was the subsidiary of the other. The Appellant Company contend that the payments they made are to be treated as trading receipts by Wood Bros. (Glossop) Ltd. on the last day of each of the respective accounting periods and are to be allowed as a deduction to the Appellant Company as if they were trading expenses incurred on those days.

It is only after the end of an accounting period that it can be ascertained that one company has a deficit for tax purposes and another a surplus in the corresponding period. Then, if a payment is made pursuant to an agreement which comes within subs. (2), and one company is the subsidiary of the other or both are subsidiaries of a third company, the payment can be treated as a trading receipt of one company and a trading expense of the other. The proviso to s. 20(2) of the 1953 Act provided that the payment had to be made within or before the year of assessment following that in which the period ends. This was extended by the Finance Act 1958 to require it to be made in or before the second year of assessment following that in which the period ends. Thus it is possible for a payment made a considerable time after the end of the accounting period to come within the section and to be treated as a payment received on the last day of the payee company's accounting period, and, if the other requirements of the section are satisfied, to be treated as a trading receipt and a trading expense of the companies. Provided that the payment is made within the prescribed time and provided that then one company was still the subsidiary of the other or that both were of a third company, nothing

A appears to turn on the actual date of payment. But the Crown contend that the section only applies if at the actual date of payment the company which receives it is carrying on a trade.

There appears to be no good reason for so restricting the application of the section. The Crown was not able to suggest one, but they contended that on its true construction the section had that effect. They concede that
B Parliament, when s. 18 of the Finance Act 1954 and paras. 1 and 3 of Sch. 4 to that Act were enacted, proceeded upon the basis that the provisions of s. 20 did not cease to apply if the company which received the payment had at the time of receipt ceased to trade, but they rightly say that the content of subsequent legislation affords no reliable guide to the interpretation of an earlier Statute, as Parliament may have proceeded upon an erroneous view on the law:
C see *Kirkness* v. *John Hudson & Co. Ltd.*(1) [1955] A.C. 696. It is, however, inconceivable that the Government of the day would have introduced a Finance Bill containing what are now s. 18 of and paras. 1 and 3 of Sch. 4 to the Finance Act 1954 if the Revenue had not at that time held the view that cessation of trading by the receiving company did not affect the application of s. 20. Indeed, the Crown admitted that it was not until after the decision in *Bullock*
D v. *Unit Construction Co. Ltd.*(2) 38 T.C. 712, a case on the meaning to be attached to the word "resident" in s. 20(9), that it occured to them that the scope of s. 20 was limited as they now suggest and that it ought to be given the construction for which they now contend.

Whatever be the result of this case, one cannot help but feel some sympathy with the unfortunate taxpayer, the Appellant Company, which no doubt
E acted in the belief, as originally the Revenue thought was the case, that it was entitled if it made the payments in question to treat them as trading expenses, and which now finds itself involved in this litigation, with the result so far that it has been held not entitled to do so. The Crown now seek, not by securing Parliamentary approval of an amendment to s. 20 to make it clear that the section is to be so limited, but by litigation with a taxpayer, to establish
F that it is. If the section, properly construed, has to be interpreted as the Crown now suggest, then, although that was not the view of the Revenue originally or of Parliament when the Finance Act 1954 was enacted, that is the end of the matter so far as your Lordships are concerned.

The Crown's argument depends on the application of subs. (9) to the rest of s. 20. They say that in consequence of this subsection the company which
G receives the payment referred to in subs. (10) must at the time of the receipt have been a trading company; and, secondly, that in construing subs. (10) one must apply subs. (9), with the result that both companies must be subsidiaries of a third company or one the subsidiary of the other and both must be trading companies within subs. (9) at the time the payment is received.

It will be convenient to consider the second argument first. There are
H obvious reasons for requiring that at all times down to the making of the payment or payments the companies concerned should be members of the same group. That is secured by subs. (10). There are obvious reasons for defining, if the section is not to apply to all companies, the class of companies to which it is to apply. That is done by subs. (9). But there is no reason why companies which qualify for the benefits given by the section should be deprived of them
I if the company receiving the payment has at the time of its receipt ceased to

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(1) 36 T.C. 28. (2) [1960] A.C. 351.

(Viscount Dilhorne)

trade. Each of the subss. (9) and (10) begins with the words "For the purposes of this section", and the Crown therefore contends that subs. (9) must be applied to subs. (10). That contention appears to me to depend on the fact that the contents of the two subsections were not included in one subsection or indeed in a separate section of the Act. If, for instance, instead of there being two subsections, there had been one commencing with the words "For the purposes of this section" containing two paragraphs (*a*) and (*b*), and para. (*a*) contained what is now in subs. (9) and para. (*b*) what is in subs. (10), it would not be right as a matter of construction to interpret the contents of para. (*b*) in the light of the contents of para. (*a*) and it would, in my opinion, be clear that paras. (*a*) and (*b*) were each intended to apply to the other subsections of the section, which one might call the operative part. Similarly, if the contents of subss. (9) and (10) were included in a separate section, commencing with the words "For the purposes of section 20", it would be clear that they were only intended to apply to that section. I refuse to infer that the effect of these two subsections is different from that which their contents would have if in one subsection or in a separate section, and I am therefore of the opinion that this contention advanced by the Crown should be rejected.

In subs. (1) every reference to a company has to be treated, *inter alia,* as a reference to a trading company coming within subs. (9). Bearing this in mind, subs. (1) appears to me to require the following conditions to be satisfied for the section to apply: first, a trading company must have a deficit for tax purposes in one of its accounting periods; secondly, it (that is, the company) must have received a payment in respect of that period from an associated trading company which has a surplus for tax purposes for the corresponding period. If the words "the company" appeared before the word "receives" in the subsection, then one would be compelled to the conclusion that at the time of the receipt of the payment the company must have been carrying on a trade for the section to apply. On the other hand, if the word "it" appeared before the word "receives", one would not have to apply to that word subs. (9). I see no reason to read into subs. (1) the word "company" when it does not appear, so as to attract subs. (9). The application of that subsection to the word "company" where it appears in the subsection is apt to define the class of companies which can, if they have respectively a deficit and a surplus for tax purposes in corresponding accounting periods, avail themselves of the section. Reading the subsection as if the word "company" appeared before the word "receives" imports a further condition into the second condition stated above by the inclusion of the words "while carrying on a trade" after the word "must". I do not think that the language of the subsection read with subs. (9) requires this to be done or that it has this meaning. As I have said, there is no valid reason for imposing such a requirement.

If company A has a deficit for tax purposes at a time when it is carrying on a trade, then one has to look to see whether company A has received a subvention payment from an associated trading company. One is not, in my opinion, required to consider whether company A was carrying on a trade when it received the payment. If it had been intended that this should be done, then one would have expected that to have been made clear, either by the insertion of the words "the company" before "receives" or in some other way.

In my opinion Harman L.J. was right in rejecting the Crown's contentions, and the section should be held to have the meaning which the Revenue

originally thought it had and which Parliament attached to it when the Finance Act 1954 was passed.

I would therefore allow the appeal.

Lord MacDermott—My Lords, I have had the advantage of reading the opinions prepared by my noble and learned friends Lord Morris of Borth-y-Gest and Lord Upjohn. I agree with their conclusion that this appeal should be allowed, and with their reasoning for that conclusion and their description of the material circumstances. I do not, therefore, propose to burden your Lordships with any detailed exposition of the relevant facts and enactments, and only wish to add some observations of my own on the main issue because of the acute divergence of judicial opinion on that issue which this litigation has revealed.

The essence of the case made against the Appellant Company, and accepted in the Courts below, was that its claim to relief under s. 20(1) of the Finance Act 1953, in respect of the subvention payments it had made to another company of which it was a subsidiary (and which for brevity I will call "Glossop"), failed because at the time these payments were made Glossop (as was admitted) had ceased to trade. This contention was based, in turn, on s. 20(9), which says that:

> "(9) For the purposes of this section . . . references to a company shall be taken to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom . . ."

Section 20(1) sets out the conditions on which the relief it provides for is to be granted. The first two of these appear, separated by the second comma, in the opening words of the subsection, which read:

> "(1) Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and receives a subvention payment in respect of that period . . ."

It was not disputed, and there can be no doubt, that the word "company" as it is used twice in this part of the subsection means, by virtue of subs. (9), a resident and trading company. Glossop had a deficit during an accounting period while thus qualified, and the first condition of subs. (1) was accordingly satisfied. The second condition begins with the words "and receives", and here it is that the main issue emerges. On the one hand, the Crown says, in effect, that these words mean "and the company receives", and so invoke subs. (9), as it were *de novo*, with the result that they must be read as referring to a receiving company which is still, at the time of the receiving, a resident trading company; and, on the other hand, the Appellant Company submits that the reference is simply to a company which has been brought over the threshold of subs. (1) by complying with its first condition, and that the trading qualification need not, therefore, continue to exist until the time when the subvention payment is eventually made.

My Lords, of these contentions, that of the Crown seems to me to place more weight on subs. (9) than it was intended to bear. It is a form of definition that must be applied with caution, for it involves characteristics or qualifications which may not be constant, and it relates to a situation which, however subs. (1) may be read, is bound to develop over, and can only be completed after, the lapse of an appreciable period of time. But, in my opinion, two things at least are reasonably clear.

(Lord MacDermott)

In the first place, if s. 20 is read as a whole it is evident that subs. (9) cannot be interpreted as requiring that, in every instance where the word "company" is used or referred to, the reference must be to a resident trading company. The proviso to subs. (9) furnishes one example of this, as Stamp J. has already observed([1]); and another may, I think, be found in that part of subs. (1) which comes after the conditions for relief have been stated and provides that "then in computing . . . the profits or gains or losses of those companies . . ." the payment shall be treated as a trading receipt and a trading expense of the payee and paying companies respectively. A company might well cease trading after receipt of a subvention payment and before the accounts had allowed the necessary computation to begin. Applied indiscriminately subs. (9) would appear to bar the computation and therefore the relief in that event, but the Crown did not contend for such an irrational result, and I do not think a construction which produced it could be supported. If, then, "those companies" in this context may include companies which were but are no longer qualified under subs. (9), why should the Appellant Company's submission on the words "and receives" be excluded merely on the language of the enactment?

And, secondly, there is nothing, at any rate that I can discern, in the language of s. 20 to preclude, on this issue of construction, a consideration of the policy and purpose of the Legislature as revealed in the enactment itself. Stamp J. at first instance and Diplock and Winn L.JJ. in the Court of Appeal seem to have taken a different view on the ground that the words of the Statute were plain and unequivocal and offered no possible alternative to the interpretation contended for by the Crown. My Lords, with the greatest respect, I am unable to agree. The submission of the Appellant Company seems to me to ride not less but rather more easily than that of the Crown on the grammar and wording of the section, and I can find nothing in any of the subsections, including subs. (10), which comes near to making the Crown's submission the only possible or even the more likely interpretation. It is, of course, trite to say that statutory definitions can, on occasion, produce unexpected results that seem to work against the apparent tenor of a particular context. But I do not think the language of subs. (9), which as Harman L.J. pointed out is rather odd, can be said to have this kind of draconian effect. If I am right in the view already expressed, it has to be applied with some degree of selectivity, and, in any event, it begins with the words "For the purposes of this section . . ." Those words may mean much or little in different contexts, but with them present here it would be strange indeed if a court of construction could not ask, with relevance to the issue now before your Lordships, what the purposes of the section were.

My Lords, these considerations lead me to the view that the proper construction is that for which the Appellant Company has argued. To my mind, it is the view to be preferred on the terms of the Statute and, beyond that, it is the view best calculated to give effect to the policy of s. 20. That policy has been described by Harman L.J. in the Court of Appeal and by my noble and learned friends in the opinions to which I have already referred, and I need not describe it again. It is not in dispute and is readily conveyed to the informed mind by the terms of the section. Suffice it to say that the Appellant Company's contention accords entirely with the intendment of the section, whereas that of the Crown would mean, in effect, that relief thereunder could

([1]) *See* page 281 *ante*.

A not be granted in respect of a deficit incurred in a company's last accounting period—an anomalous result for which no explanation was forthcoming.

The Crown also based an argument on subs. (10), but as it cannot prevail if that based on subs. (9) fails, I need say no more about it, except to add that I share the view favoured by those of your Lordships who consider that subss. (9) and (10) are independent of each other and should be read and applied
B accordingly.

For these reasons I think Harman L.J. was right and I would allow the appeal.

Lord Morris of Borth-y-Gest—My Lords, at all relevant times all the ordinary shares in Davies, Jenkins & Co. Ltd. (the Appellants) were beneficially held by Wood Bros. (Glossop) Ltd. At all relevant times all the ordinary
C shares in that latter company were beneficially held by Wood Bros. (Glossop) Holdings Ltd. There are two accounting periods of Wood Bros. (Glossop) Ltd. which are relevant for present purposes. The first is the accounting period from 1st April 1958 to 31st March 1959. That company was resident in England and carried on the trade of cotton spinners in England throughout the whole of that period. It is not in dispute that it had "a deficit for tax purposes",
D within the meaning of s. 20 of the Finance Act 1953, during that accounting period. It is not in dispute that the Appellants had "a surplus for tax purposes", within the meaning of s. 20, in the corresponding period. In respect of that period the Appellants made a subvention payment of £13,327 to Wood Bros. (Glossop) Ltd. The payment was made on 24th February 1960. Wood Bros. (Glossop) Ltd. had ceased to trade on 21st December 1959. Their deficit for
E the accounting period was such as to absorb the £13,327. The second relevant accounting period of Wood Bros. (Glossop) Ltd. is the period from 1st April 1959 to 31st March 1960. That company was resident in England and it carried on the trade of cotton spinners in England until 21st December 1959. It is not in dispute that it had a deficit for tax purposes during the accounting period, nor is it in dispute that in the corresponding period the Appellants had a surplus
F for tax purposes. The Appellants made a subvention payment of £12,395 in respect of that period to Wood Bros. (Glossop) Ltd. It was made on 28th March 1961. The deficit of Wood Bros. (Glossop) Ltd. absorbed £6,669 of the £12,395. The two subvention payments were made pursuant to a subvention agreement which was dated 17th March 1955 and was an agreement which satisfied the requirements of s. 20(2).

G The question which has arisen is whether the Special Commissioners were right in holding that the subvention payments should be treated as trading expenses of the Appellants under the provisions of s. 20(1). In ordinary circumstances a subvention payment will be made after the end of the accounting period of the receiving company. It will be made to such company after it is ascertained that it has a deficit for tax purposes. That will only be ascertained
H after the end of the accounting period. A payment will be made by the paying company after it is ascertained that it has a surplus for tax purposes. In computing for the purposes of income tax the profits or gains or losses of the respective companies a payment is "treated" as a trading receipt receivable by the receiving company "on the last day of the accounting period during which it has the deficit" and is to be "allowed as a deduction to the other company
I as if it were a trading expense incurred on that day": see subs. (1). It would seem to follow that from a practical point of view the actual date of the subvention payment is of no materiality save that regard must be had to the proviso to

(Lord Morris of Borth-y-Gest)

subs. (2), which lays it down that a payment in respect of any accounting period of the payee company is not to be treated as a subvention payment unless made in or before the second year of assessment following that in which the period ends. There would seem to be no necessity that trading should be continuing at the time of a payment, though association must be continuing.

The result of the provisions to which I have referred would seem to be that (when considering, for example, the first payment) the sum of £13,327 paid by the Appellants to Wood Bros. (Glossop) Ltd. on 24th February 1960 is, in computing for the purposes of income tax the profits or gains or losses of the companies, to be "treated" as a trading receipt receivable by the latter company on 31st March 1959, and as a trading expense of the Appellants incurred on 31st March 1959. It is said, however, by the Crown that the words of s. 20(1) preclude this result for the reason that on the date of receipt by Wood Bros. (Glossop) Ltd. that company had ceased to carry on trade. If this contention is correct it produces an anomaly. It would mean that in respect of the final trading year of a subsidiary company which has a deficit a subvention payment cannot ordinarily be received. If this is what the section provides then of course its provisions must be faithfully followed.

I pass therefore to consider the words of subs. (1). The important words are:

> "Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then . . ."

The word "where" clearly does not refer to a place. It is used in the sense of "if" or "whenever". The word "then" is not used as referring to time. It prescribes results or consequences which are to follow. The word "company" must be read having regard to the provisions of subs. (9): for the purposes of the section the word "company" includes any body corporate,

> "but references to a company shall be taken to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom".

In regard to the meaning of an associated company it is necessary to have regard to subs. (10). Applying the provisions of subs. (9) to subs. (10), and applying both to subs. (1), the consequence is that, if a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom has a deficit for tax purposes during an accounting period and receives a subvention payment in respect of that period from a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom, and if at all times between the beginning of the payee company's accounting period in respect of which the payment is made and the making of the payment one of them is a subsidiary (within the meaning of s. 42 of the Finance Act 1938) of the other, then the payment is to be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit and is to be allowed as a deduction to the other company as if it were a trading expense incurred on that day. I see no reason why the words "and receives" should not be read perfectly naturally and literally. The section does not stipulate that there must be receipt at some particular time. It would be surprising if it did. The time of receipt

A is unimportant save that there is a late date limit as laid down by the proviso to subs. (2). I see no need to read in or to insert words so as to require that receipt must be before a company has discontinued trading.

On the facts of the present case the application of s. 20 may be considered by posing and answering certain questions. Was Wood Bros. (Glossop) Ltd. a company resident in the United Kingdom and carrying on a trade wholly B or partly in the United Kingdom during the two accounting periods? The answer is in the affirmative. Did Wood Bros. (Glossop) Ltd. have a deficit for tax purposes during the two accounting periods? The answer again is in the affirmative. (It was common ground that the fact that the cessation of trade was before the end of the second accounting period does not affect the issues now arising.) Did Wood Bros. (Glossop) Ltd. receive subvention payments in C respect of those periods? The answer is in the affirmative. At all times between 1st April 1958 (the beginning of the payee company's accounting period) and 28th March 1961 (the date of the second payment) was one of the two companies the subsidiary of the other? The answer is in the affirmative.

In subs. (1) it is made clear that the receiving company must be a company that comes within certain descriptions. The descriptions are to be found in D subs. (9). The deficit for tax purposes during an accounting period must be that of a company resident in and trading in the United Kingdom during the accounting period. It is only receipt of a payment by such a company that can be regarded as a subvention receipt. The date of receipt seems, however, to be of no particular importance provided that it is not too long delayed. There is the further requirement which is prescribed in subs. (10). In order that the E paying company is to be treated as an associated company of the other one of them must have been the subsidiary of the other (or both of them subsidiaries of a third company) at all times between the beginning of the payee company's accounting period and the making of the payment. That additional requirement was satisfied. The fact that the payee company ceased to trade did not affect the "subsidiary" relationship.

F It seems to me that the purpose of subs. (10) was to provide that both the paying and the receiving company should continue to be, so to speak, members of the family down to the time of payment. There is force, therefore, in the contention that subs. (9) and subs. (10) should be read as imposing separate independent qualifications and that subs. (9) should not be infused into subs. (10). If, however, subs. (9) is to be applied to subs. (10) then I think G that in that event what is being provided for as between the two companies is as follows. One of them that was resident in and carrying on trade in the United Kingdom during an accounting period will have had a deficit for tax purposes during the accounting period. The other that also was resident in and carrying on trade in the United Kingdom during the corresponding period will have had a surplus for tax purposes in the corresponding period. There having been H a subvention agreement between them, the latter company at some stage will make a payment pursuant to the agreement to the former. The paying company will be "treated" as the other's "associated company" for the purposes of subs. (1) provided that one continues to be the subsidiary of the other down to the time of payment. Subject to that, the date of making the payment is immaterial. The word "making" in the phrase "a company making a sub- I vention payment to another" denotes no more than that, as between one company that could be described as above and another company that could be described as above, there will at some time have been a subvention payment.

(Lord Morris of Borth-y-Gest)

In a subsection clearly designed for a particular purpose I cannot think that from the word "making" there should be extracted the requirement that the receiving company must be continuing to trade at the moment of receipt.

At the time when s. 20 is being applied and administered the events being considered will all be in the past. So the words "where a company has a deficit for tax purposes" will denote a company (as specified in subs. (9)) which had a deficit during an accounting period. But such a company will only look to subs. (1) if it has received a subvention payment. The word "receives" in the subsection bears the meaning "has received". I agree with the view expressed by Harman L.J. in his dissenting judgment in the Court of Appeal that the use of the word "receives" does not denote the present tense in a temporal sense. The receipt of a payment will almost inevitably be made at some future time after the end of the accounting period which has resulted in a deficit for tax purposes. After the receipt of a payment it may be treated as a trading receipt receivable for the past period. It will be the fact of receipt that will be of importance and not its date. To insist on a requirement that the receipt must be before a company ceases to trade involves reading into the subsection some words that are not there. But at the date of payment the subsidiary relationship must be existing. As to that it is clear that one company does not cease to be a subsidiary of another merely because one or other of them ceases to trade.

I understand that it is accepted that when Parliament enacted s. 18 of the Finance Act 1954 it must have proceeded on the basis that it was not necessary for the purposes of s. 20 of the Finance Act 1953 that the recipient company should be trading at the time of receipt of a subvention payment. This, in my view, neither relieves the Courts from giving free and untrammelled consideration to the interpretation of s. 20 nor does it furnish material for their guidance in so giving it. It is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.

For the reasons which I have set out, and agreeing as I do with the approach of Harman L.J., I would allow the appeal.

Lord Guest—My Lords, I have the misfortune to differ from the rest of your Lordships, and, although I regard this case as a difficult one of statutory construction, I can express my views quite shortly. The short question, by no means easy of answer, is whether, in order to obtain the benefit of what has been described as the subvention procedure available to associated companies under s. 20 of the Finance Act 1953, it is necessary that the company receiving the subvention payment should be resident and trading in the United Kingdom at the date when the subvention payment is received. It must obviously be trading during the accounting period when the deficit occurs, and it is agreed that the company making the payment and the company receiving the payment must be associated, within the meaning of s. 20(10), from the beginning of the payee company's accounting period to the date of making the payment, but the recipient company, it is argued, need not be resident and trading when the payment is received.

There are 13 subsections to s. 20 of the Finance Act 1953, but it is only necessary to quote subss. (1), (9) and (10), which are in the following terms:

> "20.—(1) Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then in computing for the purposes of income tax the profits

A or gains or losses of those companies the payment shall be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit, and shall be allowed as a deduction to the other company as if it were a trading expense incurred on that day . . . (9) For the purposes of this section, 'company' includes any body corporate, but references to a company shall be taken to apply
B only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom: Provided that this section shall apply in relation to a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, as if that business were the carrying on of a trade, and in the case of such a company, any payment which is directed by this
C section to be treated as a trading receipt or a trading expense shall be treated as a payment chargeable under Case VI of Schedule D or as an expense of management, as the case may be. (10) For the purposes of this section, a company making a subvention payment to another shall be treated as the other's associated company if, but only if, at all times between the beginning of the payee company's accounting period in respect
D of which the payment is made and the making of the payment one of them is the subsidiary of the other, or both are subsidiaries of a third company, and for this purpose 'subsidiary' has the meaning assigned to it for certain purposes of the profits tax by section forty-two of the Finance Act, 1938."

Subsection (1) prescribes the conditions necessary before a subvention payment can be allowed as a deduction for income tax purposes. First, the
E company must have a deficit for tax purposes; second, the company must be what has been compendiously described as a "resident and trading company" within the meaning of subs. (9); third, the company must receive a subvention payment from an associated company within the meaning of subs. (10). If these conditions are satisfied, "then", and only then, do the results follow.

The Crown contend that, in interpreting subs. (1) in order to give effect
F to the importation of the definition of "company" in subs. (9), the grammatical construction of subs. (1) requires that, in order to qualify, the company must not only be resident and trading during the accounting period but must also be resident and trading when the subvention payment is received. The company in question, the Crown says, cannot "receive a subvention payment" under subs. (1) unless it is a company within subs. (9). The Appellants would read
G subs. (1) so that the company in question, having qualified as a resident and trading company when the deficit is incurred under the first limb of the section, becomes a "designated company", as it is called, for the rest of the subvention procedure and, having so qualified, it matters not that it has ceased to be resident and to trade when the subvention payment is received. I cannot so read the subsection. This interpretation flies in the very face of the grammatical con-
H struction of subs. (1). It would result in the two verbs "has" and "receives" in the first and second limbs of the section being controlled by two different subjects, in the first limb a company which is resident and trading and in the second limb a company which need be neither. It is said that there is a marked distinction between the words used in subs. (9) to define a "company" and the words used in subs. (10) to define an "associated company". In the latter case
I the company must have been associated "at all times" between the beginning of the accounting period and the making of the payment, whereas in the former case nothing is said about the period during which the company must be resident and trading. I can see no force in this distinction, and I would point out

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that for the purposes of subs. (10) it was necessary to provide the period during which association had to exist. Merely to have provided for association *simpliciter* would have been meaningless. The necessity for the company being resident and trading up to the date of payment is implicit in the definition of "company". The subvention procedure never begins until the company qualifies as resident and trading. Moreover, if the words of subs. (9) are taken with the words of subs. (10), there can be no association between one company and another unless both companies fulfil the qualifications of subs. (9). I regard residence and trading as an essential preliminary to the operation of subs. (1).

I realise that this interpretation of s. 20 may run counter to what may be supposed to have been the intention of Parliament. But the intention of Parliament can only be deduced from the words used. These words are, in my view, quite clear. It is also said that this interpretation may result in the anomaly that the subvention procedure can never be available during the terminal period of the company's trading life. I recognise this anomaly, but if it is an anomaly it is for the Legislature to correct it, not the Courts. Although it may not matter that the company in question has ceased trading at the date of payment, it may be of importance, the Crown said, if the company has ceased to be resident and trading in the United Kingdom at that date. Residence and trading are inseparably linked together. However this may be, I cannot see that there is any ambiguity in the words of s. 20 or that if they are interpreted according to their natural and grammatical meaning they can lead to any other result than that for which the Crown contends. There is no room, in my view, for what would amount, in my view, to judicial legislation.

I find the judgment of Stamp J. entirely satisfactory, and I would dismiss the appeal.

Lord Upjohn—My Lords, this appeal is concerned with a very short point of construction on s. 20 of the Finance Act 1953. This section was introduced in 1953 to meet the development by the commercial community of the use of subsidiary and associated companies to carry out large enterprises, usually under the umbrella of a parent company controlling the group. The practice had long grown up whereby, if one subsidiary or associated company made a loss and another a profit, agreements were made within the group for a profitable subsidiary to make a subvention payment to a less successful subsidiary making a loss in any trading year. This was obviously a fair and sensible practice, but the Income Tax Acts made no provision for bringing subvention payments or receipts into the well understood basis of computation on income tax principles for the purpose of making annual assessments of profits or losses of companies. To remedy this state of affairs and in justice to the taxpayer Parliament enacted s. 20, whereby, putting it generally, within the group and for income tax purposes the profitable company could claim an allowance for its payments to the company making the loss, but, in justice to the Crown, this had to be taken into account as part of the trading receipts of the company having the loss, with the corollary (so we were told) that if the company making the loss subsequently made a profit it could not claim to set off its earlier losses, at all events to the extent to which they had been met in earlier years by a subvention payment.

The scheme of s. 20 was rightly and properly conditioned for its application, and the sole question is whether the Appellant Company has satisfied those conditions. The facts are of the simplest. The Appellant Company was a wholly-owned subsidiary of Wood Bros. (Glossop) Ltd. (I shall call it

A "Glossop"), which latter was a subsidiary of the parent company, Wood Bros. Holdings Ltd. By virtue of a subvention agreement made between the member companies of the group in 1955 the Appellant Company made two payments to Glossop: (1) in respect of the accounting period 1st April 1958 to 31st March 1959, the sum of £13,327 on 24th February 1960; (2) in respect of the accounting period 1st April 1959 to 31st March 1960, the sum of £12,395 on
B 28th March 1961. No difficulty would have arisen about these payments, which would have qualified to be brought into computation as a deduction for the purposes of income tax by the Appellant Company under s. 20, apart from the fact that Glossop ceased to trade on 21st December 1959. I should mention here that the Crown and the Appellant Company have expressly disclaimed any reliance on the fact that in respect of the second accounting
C period Glossop ceased to trade before the end of that period.

The sole question, therefore, is whether the Appellant Company is unable to claim the benefit of s. 20 by reason only of the fact that Glossop ceased to trade before the dates of payment of the sums payable under the subvention agreement. I must now set out the relevant terms of s. 20, upon which alone this question is to be determined. While it is a long and involved section with
D many subsections, it is agreed that, as Stamp J. said, subs. (1) is the enacting part of the section. This subsection, however, must be construed in the light of the all important subss. (9) and (10). So I need set out little more than these subsections:

"20.—(1) Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company,
E and receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then in computing for the purposes of income tax the profits or gains or losses of those companies the payment shall be treated as a trading receipt receivable by the one company on the last day of the accounting period during which it has the deficit, and shall be allowed
F as a deduction to the other company as if it were a trading expense incurred on that day. (2) . . . Provided that a payment in respect of any accounting period of the payee company shall not be treated as a subvention payment unless made in or before the second year of assessment following that in which the period ends. . . . (9) For the purposes of this section, 'company' includes any body corporate, but references to a company shall be taken
G to apply only to a company resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom: Provided that this section shall apply in relation to a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, as if that business were the carrying on of a trade, and in the case of such a company, any payment which is directed
H by this section to be treated as a trading receipt or a trading expense shall be treated as a payment chargeable under Case VI of Schedule D or as an expense of management, as the case may be. (10) For the purposes of this section, a company making a subvention payment to another shall be treated as the other's associated company if, but only if, at all times between the beginning of the payee company's accounting period in
I respect of which the payment is made and the making of the payment one of them is the subsidiary of the other, or both are subsidiaries of a third company, and for this purpose 'subsidiary' has the meaning assigned

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to it for certain purposes of the profits tax by section forty-two of the Finance Act, 1938." A

The Special Commissioners reached the conclusion, based to some extent upon the provisions of the Finance Act 1954, that a subvention payment made to Glossop after it had ceased to trade still qualified under s. 20. The Crown appealed from their decision. Stamp J. reversed the decision of the Commissioners and held that the Appellant Company were not entitled to B any allowance in respect of their payments to Glossop, as at the moment of payment Glossop was not trading and therefore was not qualified as payee by subs. (9); nor was it qualified as an associated company at that moment of time (as he held that it must be) by subs. (10). On appeal Diplock and Winn L.JJ., in very brief judgments, agreed with Stamp J. and with his reasons, without adding any of their own. Harman L.J. dissented, and would have C allowed the appeal.

The argument of the Crown before your Lordships followed closely and relied upon the reasons given by Stamp J. in his judgment, though for my part I think that Stamp J., while agreeing with those arguments in principle, reached the same conclusion by a slightly different route, which I shall examine later. The Crown's argument is that you must fasten upon the definition of D "company" in subs. (9), and so that in the enacting subs. (1), where the word "company" first occurs, you must read it as a company "resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom", which qualification for brevity in argument was referred to as a "resident trading company", a phrase which, for the like reason, I shall adopt. So far this proposition could not be disputed. The argument then proceeds that, E where the word "company" follows—"during any accounting period of the company"—you must again read in the words of the definition, and so reading on "and receives" you find that to qualify for the benefit the company must be a resident trading company which receives—i.e. a company which at the moment of receipt is a resident trading company. Stamp J. expressed this point of view very clearly when he said, [1966] 1 W.L.R. 446, at page 454([1]): F

> "Subsection (9) requires one to 'take' (note the words 'shall be taken') the reference to a company in subsection (1) as applying only to a company (note the present tense) 'resident in the United Kingdom and carrying on' (note again the present tense) a trade there; and before subsection (1) can apply you must find the case to be one where, reading subsection (9) into subsection (1), 'a company resident in the United G Kingdom and carrying on a trade' there has such a deficit as is there described and receives a subvention payment. In this case no such company did receive a subvention payment."

The Crown superadded to this view an argument based on reading subss. (9) and (10) together, and again I think Stamp J. has expressed this view concisely in a passage in his judgment following on that which I have just H quoted:

> "Similarly, in the absence of some contrary indication, I would conclude that the paying company must have the qualification of being an associated company at the moment of receipt and payment. Subsection (10), however, of course requires that qualification to subsist as well over

([1]) *See* page 280 *ante*.

A the whole period between the beginning of the payee's accounting year and the payment."

My Lords, I find myself quite unable to accept these views of the matter, which seem to me to do complete violence to the words of the section and to all normal canons of construction. Looking at subs. (1), the enacting part, it is quite clear that the only relevant period is the relevant accounting period
B of the payee company (Glossop). Of course there must be a paying company (the Appellant Company), for that is a *causa sine qua non;* without that the section does not bite. But the actual moment of payment is utterly irrelevant to any matter mentioned in subs. (1). It is relevant only to the proviso in subs. (2), i.e., the payment must be made within two years, and to subs. (10), where it must be established that at the moment of payment the companies must be
C associated. So I approach the enacting subs. (1) with this in mind, that the moment of payment does not seem to be of any importance provided it has been made. Had Parliament thought that the moment of payment was vital to claim the benefit of the section in the sense that the company must then be a resident trading company, I note that Parliament knew how to do that in subs. (10), and it has signally failed to do so in subs. (9)—I would suppose because it
D thought that consideration to be irrelevant when construing subs. (1), as indeed it seems to me. So I fail to understand why Stamp J. placed such emphasis on the time of payment.

But, apart from this consideration, it seems to me that, assuming subs. (9) to be in truth a definition section, a matter to which I shall return, it is quite a wrong method of construction slavishly to read in the definition when-
E ever and wherever the word so defined occurs. Regard must be had to the context. The "company" in s. 20(1), where it first occurs, is plainly defined as a resident trading company. Having been so defined, as a matter of construction of that subsection it is perfectly plain that, where the word secondly occurs, the word "company" refers back to the company already defined, i.e., it must be read as "that company", and to introduce again the words of the definition
F is a misuse of language. The construction of the subsection seems to me plain. It should be read and construed in this way: ". . . where a resident trading company has a deficit for tax purposes during any accounting period of that company and it receives . . ."

The matter, however, does not end there, for if you have to read in the definition of company as a resident trading company after the word where
G it secondly occurs it gives what is, to my mind, a wholly misleading construction to the section, for it introduces *sub silentio* (on the Crown's argument already mentioned) the further condition that the company must be a resident trading company not only during the relevant accounting period but also at the moment of time of payment of the subvention, which for the reasons I have already mentioned seems utterly irrelevant to this matter.

H Therefore, construing this subsection in the ordinary way and giving each word in the subsection its ordinary meaning and applying the so-called definition subsection in the ordinary way in which such subsections should be applied, I reach, with all respect to Stamp J. and the majority of the Court of Appeal, the clear conclusion that to qualify for the benefit of s. 20 the Appellant Company does not have to prove that Glossop, the payee company, continued
I trading until the moment of payment.

(Lord Upjohn)

So much for the Crown's argument; but I must turn to the first reason given by Stamp J. in his judgment for reaching his conclusion. He said(1), [1966] 1 W.L.R. 446, at page 454, and in fairness to him I set it out in full: A

> "Moreover it is to be noted that it is the word 'payment' which is grammatically the subject of the sentence which one finds in subsection (1), and it is 'the payment' which is to receive the treatment prescribed; and if the question be asked, 'At what moment of time is the company which receives the payment to have the qualification required by subsection (9)?' I would . . . conclude that it was at the time of the payment, that it was payment at that moment of time which brings subsection (1) into operation." B

My Lords, while as a matter of substance or grammar I cannot exalt the time of payment to the significance given to it by the learned Judge, I think he posed to himself the right question, which I shall answer later. But this leads me to a closer examination of subss. (9) and (10). Subsection (9) has been referred to as a definition subsection, and so, in a sense, it is; but as it applies in the same subclause to an investment trust company as though it was a resident trading company, as a matter of construction it is loose, and in my view it was intended as no more than a "qualification" subsection. It merely defines those companies which are qualified to obtain the benefits of subs. (1). This consideration is an additional, or indeed independent, ground for disposing of the Crown's claim in their main argument. To my mind also subss. (9) and (10) are quite independent of each other, and cannot be read as a whole so as to produce the result already mentioned, and accepted by Stamp J. Subsection (9) sets out the qualifications which companies within a group must satisfy to claim the benefit of the section. Subsection (10) is dealing, and dealing only, with the question whether companies are associated or subsidiary. For the first and only relevant time, apart from the proviso to subs. (2), subs. (10) rightly brings in the element of the importance of the time of payment. If at the moment of payment the payor company is no longer within the group or family there is no reason why it should be entitled to the benefit of the section. C D E F

So I pose to myself the question posed by Stamp J. I answer it by saying that, for the reasons I have already stated, I cannot see any relevance in the *time* of payment. I look for the purposes of the enacting subsection, subs. (1), to the relevant accounting period and to no other, for that is the only relevant consideration, subss. (2) and (10) being out of the way. During the relevant accounting period the Appellant Company satisfied all the conditions of the section, and with all respect to the judgment of the Court of Appeal to the contrary I would regard this as a clear case, as I think did Harman L.J. I reach this conclusion without any reference to arguments based on ambiguity, anomalies or later Statutes. G

My Lords, I am disturbed, as I have been disturbed in another case very recently, at the conduct of the Board of Inland Revenue in respect of these matters. Until 1958 they very rightly accepted the interpretation which I have placed upon this section without question; they caused an Act to be passed in 1954 on the footing of this interpretation (they now say that was all a mistake), and so the matter remained until in 1958 some question arose, not upon trading, but upon residence. This led, so your Lordships were informed, to a reappraisal of the section, and the Board then adopted a construction which, in my opinion, is quite untenable and incidentally introduced anomalies. If the Board want to H I

(1) *See* page 280 *ante*.

A change the basis of taxation from the clear words which Parliament has used, and to alter a clearly settled practice understood by the Crown and subject alike, surely they should seek statutory powers to do so and not, by an internal change of practice, try to alter well settled law.

I would allow this appeal and restore the decision of the Commissioners.

Questions put:

B That the Order appealed from be reversed and the determination of the Special Commissioners restored.

The Contents have it.

That the Respondent do pay to the Appellants their costs here and below.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Coward, Chance & Co.]
