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Judgment Kenya
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No. 12 of 1956.

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

ALFRED GRANVILLE ROSS *Appellant*

AND

THE QUEEN *Respondent.*

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
1957

20 FEB 1957

INSTITUTE OF FINANCE
LEGAL STUDIES

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20 FEB 1957

No. 12 of 1956.

In the Privy Council. INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN
ALFRED GRANVILLE ROSS *Appellant*
AND
THE QUEEN *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN
ALFRED GRANVILLE ROSS *Appellant*
AND
THE QUEEN *Respondent.*

RECORD OF PROCEEDINGS

*In the
Supreme
Court of
Kenya at
Nairobi.*

10

No. 1.
INFORMATION.

No. 1.
Informa-
tion,
27th June
1955.

COLONY AND PROTECTORATE OF KENYA INFORMATION.

IN H.M. SUPREME COURT OF KENYA at Nairobi the 11th day of July 1955. Criminal Case No. 96 of 1955.

At the Sessions holden at Nairobi on the 11th day of July 1955, the Court is informed by the Attorney General on behalf of Our Lady the Queen that ALFRED GRANVILLE ROSS is charged with the following offences :—

STATEMENT OF OFFENCE FIRST COUNT

20 Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE FIRST COUNT

30 Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 9th day of January, 1943, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1941, an amount

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of Shs.33,890/- which, having been earned in the course of the partnership's business during the year of assessment 1942, should have been included by him in the said return.

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tion,
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1955,
continued.

STATEMENT OF OFFENCE SECOND COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE SECOND COUNT

10

Alfred Granville Ross, on or about the 9th day of January, 1943, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1941, an amount of Shs.22,593/- which, being a share to which on the agreed basis of division of the profits of the partnership styled " Ross & Elliott " he was entitled for the year of assessment 1942, should have been included by him in the said return.

STATEMENT OF OFFENCE THIRD COUNT

Wilfully, with intent to evade Tax, omitting from a return made 20
under the Excess Profits Tax Ordinance (No. XIV of 1941) profits chargeable which should have been therein included contrary to section 17 of the Excess Profits Tax Ordinance (No. XIV of 1941) read with section 75 of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE THIRD COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled " Ross & Elliott " on or about the 9th day of January, 1943, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Excess Profits Tax Ordinance (No. XIV 30
of 1941) to wit, Form E.P.1 (S) being a return for the purposes of Excess Profits Tax of the " profits chargeable " of the said partnership for the chargeable accounting period commenced on the 1st January, 1941, and ended on the 31st December, 1941, an amount of Shs.33,890/- which being the profits of the said partnership business during the said chargeable accounting period should have been included by him in such return.

STATEMENT OF OFFENCE FOURTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance 40
(Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE FOURTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 5th day of November, 1943, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1942, an amount of Shs.44,403/- which, having been earned in the course of the partnership's business during the year of assessment 1943, should have been included
10 by him in the said return.

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continued.

STATEMENT OF OFFENCE FIFTH COUNT

Wilfully, with intent to evade Tax, omitting from a Return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE FIFTH COUNT

Alfred Granville Ross, on or about the 5th day of November, 1943 at Nairobi, in the Central Province, with intent to evade tax, omitted from
20 a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1942, an amount of Shs.29,602/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1943, should have been included by him in the said return.

STATEMENT OF OFFENCE SIXTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance
30 (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE SIXTH COUNT

Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 5th day of November, 1943, at Nairobi, in the Central Province with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (NR) for the year ended 31st December, 1942, an amount of Shs.14,801/- which, being a share to
40 which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1943, should have been included by him, Alfred Granville Ross, in the said return.

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No. 1.
Informa-
tion,
27th June
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continued.

STATEMENT OF OFFENCE SEVENTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Excess Profits Tax Ordinance (No. XIV of 1941) profits chargeable which should have been therein included contrary to section 17 of the Excess Profits Tax Ordinance (No. XIV of 1941) read with section 75 of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 10

PARTICULARS OF OFFENCE SEVENTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 5th day of November, 1943, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Excess Profits Tax Ordinance (No. XIV of 1941) to wit, Form E.P.1 (S) being a return for the purposes of Excess Profits Tax of the "profits chargeable" of the said partnership for the chargeable accounting period commenced on the 1st January, 1942, and ended on the 31st December, 1942, an amount of Shs.44,403/- which being the profits of the said partnership business during the said chargeable accounting period should have been included by him in such return.

STATEMENT OF OFFENCE EIGHTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 20

PARTICULARS OF OFFENCE EIGHTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 28th day of December, 1944, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1943, an amount of Shs.40,000/- which, having been earned in the course of the partnership's business during the year of assessment 1944, should have been included by him in the said return. 30

STATEMENT OF OFFENCE NINTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 40

PARTICULARS OF OFFENCE NINTH COUNT

Alfred Granville Ross, on or about the 28th day of December, 1944, at Nairobi, in the Central Province, with intent to evade tax, omitted from

a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1943, an amount of Shs.26,667 – which, being a share to which on the agreed basis of division of the profits of the partnership styled “Ross & Elliott” he was entitled for the year of assessment 1944, should have been included by him in the said return.

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STATEMENT OF OFFENCE TENTH COUNT

10 Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TENTH COUNT

20 Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled “Ross & Elliott,” on or about the 28th day of December, 1944, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (NR) for the year ended 31st December, 1943, an amount of Shs.13,333/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1944, should have been included by him, Alfred Granville Ross, in the said return.

STATEMENT OF OFFENCE ELEVENTH COUNT

30 Wilfully, with intent to evade Tax, omitting from a return made under the Excess Profits Tax Ordinance (No. XIV of 1941) profits chargeable which should have been therein included contrary to section 17 of the Excess Profits Tax Ordinance (No. XIV of 1941) read with section 75 of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE ELEVENTH COUNT

40 Alfred Granville Ross, being the precedent partner in the partnership styled “Ross & Elliott,” on or about the 28th day of December, 1944, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Excess Profits Tax Ordinance (No. XIV of 1941) to wit, Form E.P.1 (S) being a return for the purposes of Excess Profits Tax of the “profits chargeable” of the said partnership for the chargeable accounting period commenced on the 1st January, 1943, and ended on the 31st December, 1943, an amount of Shs.40,000/-, which being the profits of the said partnership business during the said chargeable accounting period should have been included by him in such return.

STATEMENT OF OFFENCE TWELFTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have

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been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWELFTH COUNT

No. 1.
Information,
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continued.

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 8th day of October, 1945, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1944, an amount of Shs.45,083/- which, having been earned in the course of the partnership's business during the year of assessment 1945, should have been included by him in the said return. 10

STATEMENT OF OFFENCE THIRTEENTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE THIRTEENTH COUNT

20

Alfred Granville Ross, on or about the 8th day of October, 1945, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1944, an amount of Shs.30,055/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1945, should have been included by him in the said return.

STATEMENT OF OFFENCE FOURTEENTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 30

PARTICULARS OF OFFENCE FOURTEENTH COUNT

Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 8th day of October, 1945, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (NR) for the year ended 31st December, 1944, an amount of Shs.15,028/- which, being a share to 40

which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1945, should have been included by him, Alfred Granville Ross, in the said return.

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STATEMENT OF OFFENCE FIFTEENTH COUNT

10 Wilfully, with intent to evade Tax, omitting from a return made under the Excess Profits Tax Ordinance (No. XIV of 1941) profits chargeable which should have been therein included contrary to section 17 of the Excess Profits Tax Ordinance (No. XIV of 1941) read with section 75 of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

No. 1.
Information,
27th June
1955,
continued.

PARTICULARS OF OFFENCE FIFTEENTH COUNT

20 Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 8th day of October, 1945, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Excess Profits Tax Ordinance (No. XIV of 1941) to wit, Form E.P.1 (S) being a return for the purposes of Excess Profits Tax of the "profits chargeable" of the said partnership for the chargeable accounting period commenced on the 1st January, 1944, and ended on the 31st December, 1944, an amount of Shs.45,083/- which being the profits of the said partnership business during the said chargeable accounting period should have been included by him in such return.

STATEMENT OF OFFENCE SIXTEENTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE SIXTEENTH COUNT

30 Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 14th day of October, 1946, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1945, an amount of Shs.22,552/- which, having been earned in the course of the partnership's business during the year of assessment 1946, should have been included by him in the said return.

STATEMENT OF OFFENCE SEVENTEENTH COUNT

40 Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

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27th June
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PARTICULARS OF OFFENCE SEVENTEENTH COUNT

Alfred Granville Ross, on or about the 14th day of October, 1946, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1945, an amount of Shs.15,034/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1946, should have been included by him in the said return.

STATEMENT OF OFFENCE EIGHTEENTH COUNT

10

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE EIGHTEENTH COUNT

Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 14th day of October, 1946, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville 20 Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254), to wit, Form I.T.1 (NR) for the year ended 31st December, 1945, an amount of Shs.7,518/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1946 should have been included by him, Alfred Granville Ross, in the said return.

STATEMENT OF OFFENCE NINETEENTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Excess Profits Tax Ordinance (No. XIV of 1941) profits chargeable 30 which should have been therein included contrary to section 17 of the Excess Profits Tax Ordinance (No. XIV of 1941) read with section 75 of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE NINETEENTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 14th day of October, 1946, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Excess Profits Tax Ordinance (No. XIV of 1941) to wit, Form E.P.1 (S) being a return for the purposes of Excess 40 Profits Tax of the "profits chargeable" of the said partnership for the chargeable accounting period commenced on the 1st January, 1945, and ended on the 31st December, 1945, an amount of Shs.22,552/- which being the profits of the said partnership business during the said chargeable accounting period should have been included by him in such return.

STATEMENT OF OFFENCE TWENTIETH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

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tion,
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continued.

PARTICULARS OF OFFENCE TWENTIETH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 25th day of November, 1951, at
10 Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1946, an amount of Shs.56,264/- which, having been earned in the course of the partnership's business during the year of assessment 1947, should have been included by him in the said return.

STATEMENT OF OFFENCE TWENTY-FIRST COUNT

Wilfully, with intent to evade Tax, making use of a fraud contrary to section 75 (1) (c) of the Income Tax Ordinance (Cap. 254) read with the
20 Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTY-FIRST COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 25th day of November, 1951, at Nairobi, in the Central Province, with intent to evade tax, made use of a fraud in that he attached to Form I.T.2, being a return made by him of the income of the said partnership for the year of assessment 1947, an "Expenses Account" for 1946, dated the 31st day of December, 1946, fraudulently purporting to show expenses for the relevant accounting period to be £4,264.10.4, well knowing that the true figure for expenses
30 for the said period was £2,764.10.4.

STATEMENT OF OFFENCE TWENTY-SECOND COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTY-SECOND COUNT

Alfred Granville Ross, on or about the 25th day of November, 1951, at Nairobi, in the Central Province, with intent to evade Tax, omitted
40 from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (E) made on his own behalf and relating to his personal income for the year ended 31st December, 1946, an amount of Shs.57,510/-

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which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1947, should have been included by him in the said return.

STATEMENT OF OFFENCE TWENTYTHIRD COUNT

No. 1.
Informa-
tion,
27th June
1955,
continued.

Wilfully, with intent to evade tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTYTHIRD COUNT

10

Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 25th day of November, 1951, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254), to wit, Form I.T.1 (NR) for the year ended 31st December, 1946, an amount of Shs.28,754/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1947, should have been included by him, Alfred Granville Ross, in the said 20 return.

STATEMENT OF OFFENCE TWENTYFOURTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTYFOURTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 2nd day of December, 1951, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1947, an amount of Shs.75,081/- which, having been earned in the course of the partnership's business during the year of assessment 1948, should have been included by him in the said return. 30

STATEMENT OF OFFENCE TWENTYFIFTH COUNT

Wilfully, with intent to evade Tax, making use of a fraud contrary to section 75 (1) (c) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 40

PARTICULARS OF OFFENCE TWENTYFIFTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 2nd day of December, 1951, at

Nairobi, in the Central Province, with intent to evade tax, made use of a fraud in that he attached to Form I.T.2, being a return made by him of the income of the said partnership for the year of assessment 1948, an "Expenses Account" for 1947, dated the 31st day of December, 1947, fraudulently purporting to show expenses for the relevant accounting period to be £6,676.17.4 well knowing that the true figure for expenses for the said period was £3,676.17.4.

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STATEMENT OF OFFENCE TWENTYSIXTH COUNT

10 Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTYSIXTH COUNT

20 Alfred Granville Ross, on or about the 2nd day of December, 1951, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 made on his own behalf and relating to his personal income for the year ended 31st December, 1947, an amount of Shs.90,054/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1948, should have been included by him in the said return.

STATEMENT OF OFFENCE TWENTYSEVENTH COUNT

Wilfully, with intent to evade tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTYSEVENTH COUNT

30 Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 2nd day of December, 1951, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254), to wit, Form I.T.1 (NR) for the year ended 31st December, 1947, an amount of Shs.45,027/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1948, should have been included by him, Alfred Granville Ross, in the
40 said return.

STATEMENT OF OFFENCE TWENTYEIGHTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have

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been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

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PARTICULARS OF OFFENCE TWENTYEIGHTH COURT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 6th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2 made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1948, an amount of Shs.136,836/—, which, having been earned in the course of the partnership's business during the year of assessment 1949, should have been included by him in the said return. 10

STATEMENT OF OFFENCE TWENTYNINTH COURT

Wilfully, with intent to evade Tax, making use of a fraud contrary to section 75 (1) (e) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE TWENTYNINTH COURT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott" on or about the 6th day of January, 1952, at Nairobi, in the Central Province, with intent to evade Tax, made use of a fraud in that he attached to Form I.T.2, being a return made by him of the income of the said partnership for the year of assessment 1949, an "Expenses Account" for 1948, dated the 31st day of December, 1948, fraudulently purporting to show expenses for the relevant accounting period to be £9,074.9.9 well knowing that the true figure for expenses for the said period was £5,074.9.9. 20

STATEMENT OF OFFENCE THIRTIETH COURT

Wilfully, with intent to evade Tax, making use of a fraud contrary to section 75 (1) (e) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 30

PARTICULARS OF OFFENCE THIRTIETH COURT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 6th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, made use of a fraud in that he attached to Form I.T.2, being a return made by him of the income of the said partnership for the year of assessment 1949, an "Expenses Account" for 1948, dated the 31st day of December, 1948, fraudulently purporting to show expenditure on the item therein entitled "Expenses and Passage D. T. M. Osborne" to be £348.19.5, well knowing that the true figure for the said item was £148.19.5. 40

STATEMENT OF OFFENCE THIRTYFIRST COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

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PARTICULARS OF OFFENCE THIRTYFIRST COUNT

10 Alfred Granville Ross, on or about the 6th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 made on his own behalf and relating to his personal income for the year ended 31st December, 1948, an amount of Shs.147,224/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment, 1949, should have been included by him in the said return.

STATEMENT OF OFFENCE THIRTYSECOND COUNT

20 Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE THIRTYSECOND COUNT

30 Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 6th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.1 (NR) for the year ended 31st December, 1948, an amount of Shs.73,612/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1949, should have been included by him, Alfred Granville Ross, in the said return.

STATEMENT OF OFFENCE THIRTYTHIRD COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

40 PARTICULARS OF OFFENCE THIRTYTHIRD COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 13th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, omitted

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from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, Form I.T.2, made on behalf of the said partnership and relating to the partnership income for the year ended 31st December, 1949, an amount of Shs.165,177/- which, having been earned in the course of the partnership's business during the year of assessment 1950, should have been included by him in the said return.

STATEMENT OF OFFENCE THIRTYFOURTH COUNT

Wilfully, with intent to evade Tax, making use of a fraud contrary to section 75 (1) (e) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952. 10

PARTICULARS OF OFFENCE THIRTYFOURTH COUNT

Alfred Granville Ross, being the precedent partner in the partnership styled "Ross & Elliott," on or about the 13th day of January, 1952, at Nairobi, in the Central Province, with intent to evade tax, made use of a fraud in that he attached to Form I.T.2, being a return made by him of the income of the said partnership for the year of assessment 1950, an "Expenses Account" for 1949, dated the 31st day of December, 1949, fraudulently purporting to show expenses for the relevant accounting period to be £11,731.16.2 well knowing that the true figure for expenses for the said period was £7,731.16.2. 20

STATEMENT OF OFFENCE THIRTYFIFTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE THIRTYFIFTH COUNT

Alfred Granville Ross, on or about the 13th day of January, 1952, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him under the Income Tax Ordinance (Cap. 254) to wit, 30 Form I.T.1, made on his own behalf and relating to his personal income for the year ended 31st December, 1949, an amount of Shs.163,185/- which, being a share to which on the agreed basis of division of the profits of the partnership styled "Ross & Elliott" he was entitled for the year of assessment 1950, should have been included by him in the said return.

STATEMENT OF OFFENCE THIRTYSIXTH COUNT

Wilfully, with intent to evade Tax, omitting from a return made under the Income Tax Ordinance (Cap. 254) Income which should have been therein included, contrary to section 75 (1) (a) of the Income Tax Ordinance (Cap. 254) read with the Fifth Schedule to the East African 40 Income Tax (Management) Act, 1952.

PARTICULARS OF OFFENCE THIRTY-SIXTH COUNT

Alfred Granville Ross, as the agent of Thomas Lea Elliott, his non-resident partner in the partnership styled "Ross & Elliott," on or about the 13th day of January, 1952, at Nairobi, in the Central Province, with intent to evade Tax, omitted from a return made by him, Alfred Granville Ross, on behalf of the said Thomas Lea Elliott, under the Income Tax Ordinance (Cap. 254), to wit, Form I.T.1 (NR) for the year ended 31st December, 1949, an amount of Shs.81,592/- which, being a share to which, on the agreed basis of division of the profits of the said partnership, the said Thomas Lea Elliott was entitled for the year of assessment 1950, should have been included by him, Alfred Granville Ross, in the said return.

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—
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tion,
27th June
1955,
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Dated at Nairobi this 27th day of June, 1955.

D. C. KENNEDY,
Crown Counsel for Attorney-General.

Criminal Case No. 96 of 1955.
(R.M. Nairobi Case)

To ALFRED GRANVILLE ROSS.

TAKE NOTICE that you will be tried on the above Information at the Sessions of the Supreme Court of Kenya to be holden at Nairobi on the 11th day of July 1955, at 10 o'clock in the forenoon.

(Sgd.) N. F. SHAW,
Ag. Dy. Registrar Supreme Court of Kenya.

Nairobi,

This 29th day of June 1955.

List of Prosecution Witnesses

1. GEORGE WHITMORE BROWN.
2. HAROLD WILLIAMS.
3. JOHN LITTLETON.

PLEA OF THE ACCUSED.

*In the
Supreme
Court of
Kenya at
Nairobi.*

IN HER MAJESTY'S SUPREME COURT OF KENYA.
At Nairobi.

Criminal Case No. 96 of 1955.

No. 2.
Plea of the
Accused,
11th July
1955.

REGINA Prosecutrix
versus
ALFRED GRANVILLE ROSS Accused.

10 a.m. 11th July, 1955.

Coram : WINDHAM, J.

10

Bechgaard }
Kennedy } For Crown.

O'Donovan for Accused.

Accused present.

Information read.

Accused pleads Not Guilty to Counts 1-36 inclusive.

Mr. O'Donovan : I feel I should inform your Lordship that the Accused has been in very poor health. He was re-examined by Dr. Gregory who has expressed an opinion that he is suffering from a nervous breakdown. It is not my intention to apply for an adjournment unless the situation should arise where I have to do so, but I think it right to explain the situation now to your Lordship. 20

Judge : You might have to apply for an adjournment later on, but you hope not. The reason why you are explaining it is that it might happen, otherwise I am not concerned with any previous ill-health so long as he is fit to plead and understands the case.



No. 3.
SWEARING IN OF JURY.

*In the
Supreme
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Jury Panel called.

Jurors drawn : Mackenny.
Lackner—Challenged by Crown.
Morris.
Goldhawk.
Barling—Challenged by Defence.
Masonicic—Challenged by Defence.
Leonard.
Goddard.

10

No. 3.
Swearing
in of Jury,
11th July
1955.

Jury sworn : Mr. Goldhawk to be Foreman of Jury.
Charge to the Jury.

Mr. Bechgaard : As a preliminary matter I would request permission for A. S. P. Littleton to remain in Court. He is a witness but a purely formal one, but he is well acquainted with the exhibits.

Mr. O'Donovan : I have no objection.

Judge : He can remain in Court.

PROSECUTION EVIDENCE.

20

No. 4.
EVIDENCE OF G. W. BROWN.

*Prosecution
Evidence.*

No. 4.
G. W.
Brown,
11th July
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Examina-
tion.

Mr. Bechgaard : *Opens :—*

P.W.1 : GEORGE WHITMORE BROWN : sworn.

Q. Your name is George Whitmore Brown ?—A. Yes.

Q. I think you are an Assistant Commissioner of Income Tax ?—
A. Yes.

Q. And a chartered accountant ?—A. Yes.

Q. When did you qualify as a chartered accountant ?—A. In 1953.

Q. And how long have you been in the Income Tax Department ?
30 —A. Since 1947.

Q. What are your duties ?—A. I am a member of the Investigations Branch.

Q. And you have been for how long ?—A. Since September, 1953.

Q. I think in the course of your duties towards the end of 1953 you came across the papers dealing with a partnership called Ross and Elliott ?
—A. Yes.

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tion,
continued.

Q. And on perusing those files you decided to conduct an investigation?—A. Yes.

Q. What was the first step you took in the course of this investigation?
—A. We wrote to Mr. Ross asking him to call at our office for an interview.

Q. Do you produce the carbon copy from your files of that letter?
—A. Yes. (Exhibit R.1 produced and read aloud by Mr. Bechgaard.)

Q. You signed the original yourself?—A. It is signed by Mr. Beck, the Principal Investigation Officer.

Q. Did that letter result in anything?—A. Yes, Mr. Ross visited our office, an appointment was arranged and he visited the office with his accountant, Mr. Taylor. 10

Q. Do you remember the date?—A. I think it was December 7th.

Q. Who was present at that interview?—A. Mr. Ross with Mr. Taylor, and Mr. Beck and I were present on behalf of the Income Tax Department.

Q. Now what is the routine with the Income Tax Department when an interview takes place between a taxpayer and his advisers, and Officers of your Department. Are any notes taken?—A. At any interview which is likely to be of any importance a note is taken immediately after the interview, and on many occasions a copy of that note is sent to the taxpayer or his representative. 20

Q. Was that done in this case?—A. Yes.

Q. Did you yourself make the note?—A. Yes.

Q. Immediately afterwards?—A. Yes.

Q. Would you look at Exhibit Red 2: do you recognise that as being that note?—A. Yes.

Q. That is an accurate account of what transpired at that meeting?
—A. Yes. (Mr. Bechgaard reads aloud Exhibit R.2.)

Q. I think you sent a copy of that to Mr. Taylor?—A. Yes.

Q. What happened after this interview. Did you receive any further communication from the taxpayer or Mr. Taylor?—A. No, I telephoned Mr. Taylor and arranged an interview with him on the 27th January, 1954. At that interview I inquired whether Mr. Taylor had the preliminary information which had been asked for at this interview on the 7th December. Mr. Taylor told me that he had not that information to give me and indicated that he had not been able to obtain the information from his client. 30

Q. I think you were dealing with Mr. Taylor as Mr. Ross' accountant?
—A. That is right.

Q. When did you next see or take any action with regard to the Accused?—A. On the 29th January I wrote a letter to Mr. Taylor saying that if the information asked for was not supplied within ten days of that date, investigations would be conducted along the lines that there had 40

been no voluntary disclosure and that the Commissioner would consider himself quite free to take any action he was entitled to under the Income Tax Ordinance.

Q. Was any voluntary disclosure made then?—*No.*

Q. What action did you take then?—*A.* Subsequently to that letter, on the 15th March, I issued a Notice to Produce under Section 61 of the Income Tax Management Act, requiring the production of documents from Mr. Ross.

Q. Will you look at Exhibit Red 3. Is that a filed copy of the original
10 Notice to Produce?—*A.* This is a copy—I should have said 15th February, not 15th March.

Q. I do not think it is necessary to read this Notice to Produce. Briefly, Mr. Brown, it calls for the production of all books of account and documents for the period 1.1.36 to 31.12.53?—*A.* Yes.

Q. And you give the date, time and place, the date of production being 3rd March, 1954?—*A.* Yes.

Q. Was that notice complied with?—*A.* No.

Q. Did you at any stage receive any further documents from the Accused or from his advisers?—*A.* A good deal later I did receive a
20 proportion of documents after a certain action had been taken.

Q. What were those documents and from whom did you receive them?
—*A.* I received from Mr. Taylor a ledger, cash book.

Q. Do you identify that, Exhibit Red 4 and Exhibit Red 5?—*A.* Yes. (Ledger, Exhibit 4; Cash book, Exhibit 5.)

Q. And Exhibit Red 6, the Petty Cash Book?—*A.* Yes.

Q. As being received from Mr. Taylor?—*A.* Yes.

Q. And a bit later I think you received another exhibit. Who was this from?—*A.* Messrs. Sirley & Kean, who were acting as Mr. Ross' legal advisers.

Q. Is that Exhibit Red 7?—*A.* Yes, an additional Petty Cash Book.
30

Q. For what period?—*A.* 1939, January, to December, 1945.

Q. You examined those books of account I take it?—*A.* Yes.

Q. And did you make any discoveries. Were they complete?—*A.* Many sheets were missing from the ledger, which is a loose-leaf ledger. A large number of sheets had been extracted.

Q. What action did you take on making that discovery?—*A.* I wrote to Messrs. Sirley and Kean pointing out that a large number of sheets were missing and asking them to supply the missing sheets.

Q. Do you recognise Exhibit Red 8 as being the file copy of that
40 letter?—*A.* Yes.

Q. The letter is dated 11th May, 1954, addressed to Messrs. Sirley and Kean. (Mr. Bechgaard reads Exhibit Red 8 aloud.)—*A.* Yes.

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tion,
continued.*

Q. Did you ever receive those sheets?—*A.*No.

Q. Not up to the present time?—*A.* No.

Q. I think you did, however, receive certain other documents from Mr. Ross' advisers?—*A.* I did, yes.

Q. What were those?—*A.* I received the partnership bank pass book covering a certain period. I received certain paid cheques and I received the partnership agreement.

Q. Can you identify the bank pass book as Exhibit Red 9?—*A.* Yes.

Q. From whom did that come?—*A.* This came from Messrs. Sirley and Kean. 10

Q. At this stage did you have sufficient material to enable you to proceed with your investigation?—*A.* No, I did not.

Q. Did you take any steps to obtain further information?—*A.* I served a Notice to Produce on Mr. Ross' partner, Mr. Elliott, under Section 61 of the Management Act.

Q. Do you produce Exhibit Red 10, which is a file copy of that Notice to Produce?—*A.* Yes.

Q. It asks for accounts and documents for the period 1.1.43 to 31.12.51 and gives the time for compliance, 21st October, 1954?—*A.* Yes. 20

Q. I think this was complied with eventually?—*A.* Yes.

Q. I will deal with that later on. Did you serve any further Notice to Produce on the Accused?—*A.* Yes, I served further Notice to Produce in respect of his personal affairs.

Q. That is Exhibit Red 11. Do you identify that. I think it is not signed by you this time?—*A.* No, signed by another member of the Investigation Branch.

Q. With whose signature you are familiar?—*A.* Yes.

Q. As the result of the Notice to Produce, Exhibit Red 10, you received certain papers from Mr. Elliott's advisers out here?—*A.* Yes. 30

Q. I think you re-inforced the first Notice to Produce with a second one?—*A.* Yes, covering an earlier period.

Q. That is Exhibit Red 12?—*A.* Yes.

Q. And these two exhibits together cover the whole period, the first covering the period from 1943 onwards, the second covering 1.1.36 to 31.12.42. You say you received certain papers, whom were they received from?—*A.* Messrs. Angus Laurie and Jeremy who are Mr. Elliott's accountants in East Africa.

Q. And what were the documents you received from Messrs. Angus Laurie and Jeremy?—*A.* I received copies of the final partnership accounts covering the period from 1940 to 1951, and I also received certified local East African receipts and payments accounts covering the same period, which had been prepared in East Africa and sent to Mr. Elliott in the United Kingdom. 40

Q. Can you identify those exhibits ?

Mr. O'Donovan objects to the production except for identification purposes only.

Exhibits Red 13 to 24 produced.

Q. Are you satisfied that those Exhibits Red 13 to 24 were the ones produced to you ?—A. Yes, these are the certified receipts and payments accounts covering the cash and bank transactions in East Africa from the years 1940 to 1951 inclusive.

10 Q. On the basis of those accounts I think you made a report to your superiors in the Department ?—A. Yes, plus the copies.

Q. Plus the results of your examination of the ledger and the cash book and the copies of the final account ?—A. Yes.

Q. Since you have compiled that report I think you have seen a series of Green Exhibits ?—A. Yes.

Q. Have you compared those with the Red Exhibits ?—A. Yes.

Q. And what was the result of your comparison ?—A. They are identical.

Q. These green exhibits will be put to this witness now. They will, of course, later be identified by another Crown witness.

20 Q. For the first year, 1940, I think the Exhibits are Green 1 to 5 ?—A. Yes.

Q. For 1941, Exhibits Green 8 to 12 inclusive ?—A. Yes.

Q. And for the next year, 1942, Green 17 to 21 inclusive ?—A. Yes.

Q. And for the year 1943, Green 24 to 28 ?—A. Yes.

Q. And for 1944, Green 30 to 34 inclusive ?—A. Yes.

Q. And for the year 1945, 38 to 43 inclusive ?—A. Yes.

Q. And for the next year, 1946, 44 to 50 inclusive ?—A. Yes.

Q. For the next year of 1947, 54 to 60 inclusive ?—A. Yes.

Q. For the next year, 1948, 62 to 67 inclusive ?—A. Yes.

30 Q. The year 1949, 69 to 74 inclusive ?—A. Yes.

Q. And the year 1950, 75 to 80 inclusive ?—A. Yes.

Q. And for the year 1951, Green 81 to 86 inclusive ?—A. Yes.

Q. So that with regard to all those Green Exhibits which you have just identified, the accountant result produced by those would be the same as the accountant result produced by the documents on which you based your report ?—A. Yes.

Q. Do you remember the next occasion on which you interviewed the Accused ?—A. It was the 9th October, 1954.

Q. And was a note taken of that interview ?—A. Yes.

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*No. 4.
G. W.*

*Brown,
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tion,
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tion,
continued.*

Q. At the time or not?—*A.* Immediately after the interview.

Q. When it was fresh in your mind?—*A.* Yes.

Q. Was anyone present with you?—*A.* Yes, Mr. Field of the Investigation Branch.

Q. Do you identify Exhibit Red 25 as being a note of what transpired at that interview?—*A.* Yes.

Q. And that is signed by you, dated the 12th, three days later?—*A.* Yes, it had to be typed. (Mr. Bechgaard reads aloud Exhibit R.25.)

Q. Did you send a copy of this note of the interview to anyone?—*A.* I sent copies both to Mr. Ross and to Mr. Taylor. 10

Q. You wrote to Mr. Ross then on the date of the statement, the 12th October, 1954?—*A.* Yes.

Q. Do you identify Exhibit Red 26 as being the file copy of that covering letter?—*A.* Yes. (Mr. Bechgaard reads aloud Exhibit Red 26.)

Q. Would you look at Exhibit Red 27, which is the file copy of the letter addressed by you to Mr. Taylor on the 29th January, the letter to which reference is made. From this letter I propose, subject to anything which my learned friend has to say, to exclude the second and final paragraph. This letter is dated 29th January, 1954 and is addressed to Mr. Taylor. 20

(Mr. Bechgaard reads aloud Exhibit Red 27.)

As a result of that interview, did the interview of the 13th October, 1954 take place?—*A.* Yes.

Q. In your office?—*A.* Yes.

Q. And the usual procedure was followed and was the note taken?—*A.* Yes.

Q. Do you identify that note of the interview?—*A.* Yes.

Q. Signed by you on the 15th with a note—what does that note say?—*A.* “Drafted on the 13th October.” (Mr. Bechgaard reads aloud Exhibit R.28.) 30

Q. I think you sent copies of that note of the interview to Mr. Granville Ross?—*A.* Yes.

Q. Will you identify Exhibit Red 29 as the file copy of the covering letter?—*A.* Yes.

Q. That letter is dated 15th October, 1954, addressed by you to A. Granville Ross and reads as follows (Reads). At that interview the first returns you refer to are Mr. Ross’ personal returns for the years of income 1936–1949 inclusive. The only ones we are concerned with are from 1940 to 1949. Would you look at these exhibits. I think the first one for the year 1940 is Exhibit Red 30?—*A.* Yes. 40

Q. And they then go on 1941 (Exhibit Red 31); 1942 (Exhibit Red 32); 1943 (Exhibit Red 33); 1944 (Exhibit Red 34); 1945 (Exhibit

Red 35); 1946 (Exhibit Red 36); 1947 (Exhibit Red 37); 1948 (Exhibit Red 38); 1949 (Exhibit Red 39)?—A. Yes, all those references are to years of income and not years of assessment.

Q. In respect of those Exhibits Red 30 to Red 39 inclusive I think you explained them all to Ross?—A. Yes, I showed them all to him.

Q. Did he ask any questions with regard to them?—A. I asked him whether the signature on the forms were his signatures and whether the writing on the forms showing the income was his writing.

Q. Did he look at them?—A. He examined all the forms and said
10 they were his signatures and it was his writing.

Q. Those were his personal returns. At the same interview I think you showed him also the partnership returns?—A. Yes.

Q. For the years 1940 to 1951 inclusive. Would you look at the exhibit for the year 1940 (Red 40)?—A. Yes, year of income 1940.

Q. That was shown by you to Ross at that interview?—A. Yes.

Q. What questions did you ask him with regard to that?—A. I asked him whether the signature on the form was his and whether the writing inside the form showing the amount of income was his writing.

Q. Did he look at it?—A. He examined the form and said it was his
20 signature and writing.

Q. I think he did the same with all the exhibits including the partnership returns, is that right?—A. Yes, I think with regard to the year of income 1950 he said that the writing inside was Mr. Taylor's writing who had filled it up for him but the signature was Ross' signature.

Court adjourned at 12.30 p.m.

Court resumed at 2.15 p.m.

P.W.1: GEORGE WHITMORE BROWN: continues on same oath.

Examined by Mr. Bechgaard: (continued)

Q. Before we adjourned we were about to deal with Exhibit Red 40.
30 You said that this was produced by you to the Accused at this interview on the 13th October. It was one of a whole set of partnership returns?—A. Yes.

Q. And you showed it to the Accused?—A. Yes.

Q. And did you ask him any question about that return?—A. I asked him whether the signature on it was his and whether the writing inside, showing the amount of income, was his writing, and he replied that it was.

Q. And in this case the Partnership Return is Exhibit Red 40. Were any other documents attached to that?—A. Yes, an Expenses Account or an account which is headed "Expenses Account, Ross and Elliott,
40 Nairobi for 1940."

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Q. Anything else?—*A.* And a supporting schedule headed “ Ross and Elliott, Commissions Receivable for 1940.”

Q. That is Exhibit Red 42?—*A.* Yes.

Q. Would you now look at Exhibit Red 43. That is, I think, a partnership return for the year of income 1941?—*A.* Yes.

Q. And did you ask the Accused any questions as regards to that?
—*A.* Yes, I asked him whether the signature was his signature and whether the writing inside showing the income was his writing and he replied that it was his signature and the writing was his.

Q. And are there any documents attached to that partnership return? 10

—*A.* Yes, an account headed “ Ross and Elliott, Nairobi Expenses Account, 1941.”

Q. That is Exhibit Red 44?—*A.* Yes.

Q. And anything else?—*A.* A supporting schedule headed East Africa Commissions, 1941.

Q. That is Exhibit Red 45?—*A.* Yes.

Q. And would you now look at Exhibit Red 46. That is the partnership return for the year of income 1942?—*A.* Yes.

Q. Did you follow the same procedure?—*A.* I asked him about the signature and the writing and he confirmed that it was his and in his 20 writing.

Q. And attached to that return there are again two documents?—*A.* One is Ross and Elliott Nairobi Expenses Account, 1942, that is Exhibit Red 47, and a supporting schedule headed East African Commissions, 1942, which is Red 48.

Q. Would you now look at Exhibit Red 49. That is the partnership return for the year of income, 1943?—*A.* Yes.

Q. Did you follow the same procedure here?—*A.* Yes, I asked him to confirm the signature and the writing and Mr. Ross did so.

Q. Are there any documents attached to that return?—*A.* An account 30 headed “ Ross and Elliott, Nairobi, Expenses Account for 1943,” that was Red 50 and a supporting schedule headed “ East Africa Commissions, 1943,” which is Exhibit Red 51.

Q. Would you look more particularly at Exhibit Red 51? Is there anything at the foot of that schedule?—*A.* Yes, there is a rubber—the impress of a rubber-stamp which says “ C.H.S. and R. audit.”

Q. Would you look at Exhibit Red 52. That is, I think, the partnership return income for the year 1944?—*A.* Yes.

Q. And what procedure did you follow in this case?—*A.* I asked Mr. Ross whether the signature was his and whether the writing inside, 40 showing the amount of income, was his writing and he confirmed that it was his signature and his writing inside.

Q. Are there any attachments to that return?—*A.* An account headed “ Ross and Elliott, Nairobi Expenses Account, 1944,” Exhibit Red 53, and a supporting schedule headed “ East African Commissions, 1944,” which is Exhibit Red 54.

Q. Is there anything on Red 54?—A. There is the impress of a rubber stamp which says “C.H.S. and R. audit,” with the date 19.4.45.

Q. Would you now look at Exhibit Red 55. That is, I think, the partnership return for the year of income 1945?—A. Yes.

Q. And at this interview on the 13th October, did you show that to the Accused?—A. Yes, I followed the same procedure and Mr. Ross confirmed that the signature was his signature and that the writing inside, showing the income, was his writing.

10 Q. And were there any attachments to this return?—A. Attached was an account headed “Ross and Elliott, Nairobi Expenses Account 1945,” which is Red 56, and a supporting schedule “East Africa Commissions for 1945,” which is Red 57. This schedule again has the impress of the rubber stamp at the foot marked “C.H.S. and R. audit,” with the date 25.4.46.

Q. Would you look at Exhibit Red 58. I think that is the partnership return of income for the year 1946?—A. Yes.

Q. And at the interview on the 13th October, you showed this to the Accused?—A. Yes, and I asked him about the signature and writing which he confirmed was his.

20 Q. And are there any attachments to that return?—A. There is an account headed “Ross and Elliott, Nairobi Expenses 1946,” which is Exhibit Red 59, and a supporting schedule headed “East Africa Commissions for 1946,” which is Exhibit Red 60. This schedule again has the impress of rubber stamp at the foot “C.H.S. and R. audit, 15.5.47.”

Q. Would you look at Exhibit Red 61. Can you see the partnership return of income for the year 1947?—A. Yes.

30 Q. Did you follow the same procedure on this?—A. Yes, Mr. Ross confirmed that the signature was his and that the writing inside showing the income was his.

Q. I think there are two attachments to this form?—A. Yes, there is an account headed “Ross and Elliott, Nairobi Expenses Account, 1947” which is Red 62, and a supporting schedule headed “East African Commissions for 1947,” which again has a rubber stamp at the foot “C.H.S. and R. audit” with the date 31.5.48, and that is Exhibit Red 63.

Q. Would you look at Exhibit Red 64. That is the partnership return of income for the year 1948. Is that right?—A. Yes.

40 Q. And this was dealt with in the same manner at the interview of the 13th October?—A. Yes, Mr. Ross confirmed his signature and the writing inside and this report had two attachments, an account headed “Ross and Elliott, Nairobi Expenses Account, 1948,” which is Red 65, and a supporting schedule headed “East African Commissions Received” for 1948. This schedule again has the impress of the rubber stamp at the bottom, “C.H.S. and R. audit,” but in this case there is no date. That is Exhibit Red 66.

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Q. Would you now look at Exhibit Red 67. That is the partnership return of income for the year 1949?—*A.* Yes.

Q. And how did you deal with this at the interview at the time?—*A.* I dealt with it in the same way and Mr. Ross confirmed that the signature on the form was his and that the writing inside, showing the income, was also his.

Q. And were there any attachments to this return?—*A.* There was attached an expenses account headed "Ross and Elliott, Nairobi Expenses Account, 1949" which is Exhibit Red 68, and a supporting schedule headed "East African Commissions Received for 1949," which again has 10 the impress of the rubber stamp at the foot marked "C.H.S. and R. audit" with the date 6.6.50. That is Exhibit Red 69.

Q. Would you look at Exhibit Red 70 That is the partnership return of income for the year 1950?—*A.* Yes.

Q. And that was dealt with at the interview of the 13th October, 1954?—*A.* Yes.

Q. And you put the same questions to the Accused?—*A.* Yes.

Q. And showed to him and what was his reply?—*A.* He confirmed that the signature on the form was his but he said that the writing inside was the writing of his accountant, Mr. Taylor. He said that the Depart- 20 ment had asked for the (inaudible) to be put in quickly, so he had asked Mr. Taylor to complete it and he had signed.

Q. Are there any attachments to that form?—*A.* There is an account headed "Expenses Account, 1950, Ross and Elliott, Nairobi," which is Exhibit Red 71, and a supporting schedule headed "East African Commissions Received for 1950," which again has a rubber stamp at the bottom "C.H.S. and R. audit" with the date 18.1.52. That is Exhibit Red 72.

Q. Anything else attached to that return?—*A.* There is also a covering letter from C. Herbert Smith and Russell. 30

Q. Are they chartered accountants?—*A.* Yes, of Birmingham. The letter is addressed to Ross and Elliott, Nairobi. That is Exhibit Red 72A.

Q. Would you now finally in this page look at Exhibit Red 73?—*A.* Yes.

Q. I think that is the partnership return of income for the year 1951?—*A.* Yes.

Q. And how was that dealt with at this interview?—*A.* I put the same questions to Mr. Ross and he confirmed that the signature on the form was his signature and that the writing inside, for showing the income, was his writing. 40

Q. And it had similar attachments to the others?—*A.* The Ross and Elliott Expenses Account, 1951, which is Red 74, and a supporting schedule Ross and Elliott Commissions Received for year ending 31.12.51, which is Exhibit Red 75. This schedule again has the rubber audit "C.H.S. and R.," with the date 23.3.52.

Q. I think that completes the partnership returns that were dealt with by you during the interview on the 13th October?—A. Yes.

Q. Do you recall during that interview you asked Mr. Ross questions in regard to the accounts supporting the years 1942 to 1949?—A. Yes.

Q. You asked, correct me if I am wrong, whether the supporting accounts were originals from Birmingham or copies made in East Africa?—A. That is so, I asked that question.

Q. And Mr. Ross started to reply when he was interrupted by Mr. Taylor?—A. Yes.

10 Q. Who suggested that before Mr. Ross made a final reply to this question he should check up on the facts?—A. Yes.

Q. Did you ever receive a reply to that question?—A. No.

Q. That was the interview of the 13th October. Do you remember when you next saw the Accused?—A. I think it was the 26th October.

Q. And that was in your office?—A. Yes.

Q. And did you follow the normal procedure and take a note of the interview?—A. Yes.

Q. Would you look at Exhibit Red 76. Is that the note of the interview, signed by you?—A. Yes.

20 Q. Signed on the same date?—A. Yes.

Q. I propose to read this. Here again I am omitting the 4th and 5th paragraphs, unless my learned friend has any objection. They are irrelevant to the matter. (Mr. Bechgaard reads aloud Exhibit Red 76.)

Q. At that interview the original agency agreement was produced, Exhibit Red 79. Is that the one produced to you?—A. Yes, this was produced as the original agency agreement.

Q. That is dated 1st May, 1925?—A. Yes.

Q. And also the original partnership agreement dated 1.1.27. That is Exhibit Red 80?—A. Yes, dated 1st January, 1927.

30 Q. And looking at that partnership agreement I think paragraph 2 establishes the name and style?—A. Yes, Ross & Elliott.

Q. And that provides for the provision of the partnership income on what basis?—A. The paragraph reads: "That the net profits, that the balance remaining after the deduction of all business expenses, from the income derived by way of commission and any other sources earned by the said partnership business, shall be distributed as follows, that is to say 33 $\frac{1}{3}$ % of the said net profits shall be paid and credited to the said Thomas Lea Elliott by way of remuneration for agencies secured and services rendered to the said partnership, and the remaining 66 $\frac{2}{3}$ % to be credited to the said Alfred Granville Ross by way of remuneration for his services."

40

Q. Now you sent, I think, a copy of your note of interview to Mr. Ross. Will you look at Exhibit Red 77. Is that the file copy?—A. Yes, dated 27th October. (Mr. Bechgaard reads aloud Exhibit Red 77.)

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Q. And on the same date, Exhibit Red 78, you wrote to Mr. Taylor a very brief note?—*A.* Yes. (Mr. Bechgaard reads aloud Exhibit Red 78.)

Q. In that interview, I think, you made arrangements for a subsequent interview on the 4th November?—*A.* Yes.

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Q. Did that interview take place?—*A.* Yes.

Q. On that date, who was present this time?—*A.* I think Mr. Ross was present by himself, with myself and Mr. Field of the Income Tax Department.

Q. And did you take a note of what transpired?—*A.* Yes.

Q. Do you recognise that note, Exhibit Red 81. Is that signed by 10 you?—*A.* Yes.

Q. Signed by you on the 5th?—*A.* Of November, 1954.

Q. This interview is in the form of a recorded statement. It is not narrative. That was from notes taken by you at the time?—*A.* Yes, I took very full notes at that interview, making the notes as the conversation came along.

His Lordship : From shorthand?—*A.* No, longhand.

Mr. Bechgaard : This note of interview is dated 4th November, 1954. (Mr. Bechgaard reads aloud contents of Exhibit Red 81.)

Q. I think you again sent a copy of these notes to Ross?—*A.* Yes. 20

Q. Exhibit Red 82. Do you identify that as the file copy?—*A.* Yes.

Q. It is dated 9th November, 1954, addressed to Ross (reads)?—*A.* Yes.

Q. That is the usual form you follow in attaching these notes of an interview?—*A.* It is the one I usually follow.

Q. Did you ever in these series of letters you have written to the Accused receive any representations as to their accuracy?—*A.* No.

Q. Would you look at Exhibit Red 83. Is that the cable referred to by Ross and handed to you at the interview?—*A.* Yes.

Q. And it reads (reads)?—*A.* Yes. 30

Q. I think in that you refer to an old letter found in your income tax files?—*A.* Yes.

Q. You yourself have no knowledge how that came to be on the file?—*A.* I have no personal knowledge. It was many years before I joined the Department.

Q. I think I am right in saying it was a carbon copy of a letter dated 21st May, 1941, addressed by somebody with initials T. L. E. to the Accused?—*A.* That is what I believe to be the case.

Mr. Bechgaard : I understand my friend will object to it. We cannot produce it from our proper custody. 40

Q. In that interview reference was made to the basis on which the partnership profits were divided and the question of the Birmingham Office expenses were raised?—*A.* Yes.

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Q. From the official file passed to you were you able to find out how the question of the Birmingham Office expenses were dealt with?—*A.* I was able to see from our income tax files how it had been dealt with. The income tax working papers, together with the letter you have previously referred to.

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Q. Would you look at Exhibit Red 85. That is the working sheet for the year of income 1948 I think?—*A.* This is what we call our working sheet for the year of income 1948 referring to T. L. Elliott and the assessment would have been addressed to Granville Ross as his agent.

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Q. How is the profit of the Birmingham Office expenses dealt with on that working sheet?—*A.* An allowance is made to Elliott of £65.

Q. When you say to Elliott do you mean personally or as partner?—*A.* Personally. The working sheet says that the Ross and Elliott profit is £2,610 a third share is £870 and then it has less allowance for Birmingham Office expenses £65, making the net amount assessed of £130 less £65 equals £65.

Q. Would you look at the working sheet for the subsequent year, Exhibit Red 87. What was the allowance made in that year to Elliott personally in respect of Birmingham Office expenses?—*A.* I think it has to be taken with Red 86. Red 86 shows the profit of the partnership and that profit is divided two-thirds to Ross and one-third to Elliott and Elliott's half is £843. On this piece of paper £500 is deducted for Elliott's share, making a net amount of £343. From the £343 is taken as the amount to be assessed on Elliott on the working sheet.

Q. In other words there was an allowance of £500?—*A.* Yes.

Q. Would you look at the succeeding working sheets, Red 87, 88, 89 and 90. Is the allowance made in those years, 1942, 1943 and 1944?—*A.* The same allowance of £500 is made for the years of income 1942, 1943, 1944 and there is an additional one, Red 91, which gives the allowance for 1945.

Q. I think for the next year, 1946, the working sheet which is Red 92. In other words up to 1945 Elliott was made an allowance of £500 a year?—*A.* Yes.

Q. Do you know what happened in the subsequent years?—*A.* The return for Elliott covering 1946 was not submitted to the Department until 1951 and it would appear that owing to the lapse of time and the change of staff the allowance was overlooked and it was not given to Elliott in subsequent years from 1946 onwards.

Q. After this interview on the 4th November, did you have any further interview with Ross?—*A.* I had interviews on the 17th November and the 18th November, 1954.

Q. Did anything emerge from these interviews. Was any further information supplied?—*A.* To my recollection there was no substantial information supplied. A matter of certain other assessments was raised by Ross.

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Q. But in regard to Ross and Elliott did you receive any further documents or evidence from Ross after that interview?—*A.* No.

Q. I think you then decided to make a report?—*A.* Yes.

Q. By this time you had a wealth of documentary exhibits?—*A.* Yes.

Q. And in order to continue I think you reduced them to the form of comparative statements?—*A.* Yes.

Q. In respect of each of the years under review?—*A.* Yes.

Q. I think you started with the year 1941?—*A.* I think the first one was 1940 actually.

Q. In what cases did you produce these statements? How did you set them out?—*A.* I set them out in columnar form. A comparison between the accounts, copies of which had been sent to me from Elliott through Messrs. Angus Lawrie, Jeremy.

Q. Would you look at Red 95. Would you explain that?—*A.* Column A is an exact copy of the certified receipts and expenditure account of moneys received and paid in East Africa which account was the account sent by Ross to Elliott for the preparation of the final partnership accounts. Column B represents a copy of the accounts, the Green Exhibits, which I had previously seen in the form of Red Exhibits. Column C shows the income of the partnership according to those accounts. Column D is an exact copy of the accounts as submitted by Ross with the partnership return form. Column E shows the income of the partnership according to the accounts submitted by Ross. Column F is headed shortfall in income return and shows any difference between the income shown on the two sets of accounts.

Q. Would you explain the significance of these figures in the box under Column A?—*A.* Column A is a copy of the certified receipts and expenditure account of moneys received or paid in East Africa. It is a cash account. It is not the final partnership account and as such it contains items such as the opening and closing balances, capital, receipts and payments, drawings and similar items which are not relevant to the production of a profit and loss account and these items which are not relevant have therefore been enclosed in a box at the foot of the page.

Q. They are not relevant to the final figures?—*A.* No.

Q. In this first comparative statement for 1940 the income shown in Column C—£2,625 : 3 : 7—is the same as shown in Column E?—*A.* Yes.

Q. So what is the result for this year of 1940?—*A.* The result for this year is that both sets of accounts agree and there is no shortfall in income shown on my statement.

Q. In other words for 1940 the correct income has been returned?—*A.* Yes.

Q. Would you now turn to Red 96 which is the similar comparative statement prepared for the year 1941?—*A.* Yes.

Q. The entry in Column B of two amounts—one of £4,976 : 12 : 9 and one of £1,694 : 10 : 1 that is taken from Exhibit Green 8 is that right?—*A.* They are identical figures.

Q. Would you now look at Exhibit Red 43 to which is attached Red 44. Red 43 is the partnership return for the year 1941?—A. Yes.

Q. Which had attached to it I think two documents Red 44?—A. Red 44 is the account headed "Expenses Account 1941" which was submitted by Ross in support of the partnership return.

Q. What is the amount appearing there for commissions?—A. Only one amount, namely £4,976 : 12 : 9 described as "Commissions as per list."

10 Q. Look again at Green 8. What is omitted from Red 44 which appears in Green 8?—A. An item described as "Commissions received direct." £1,694 : 10 : 1 is omitted from Red 44.

Q. Accordingly in your comparative statement for that year you have shown that amount in Column F?—A. Yes.

20 Q. Would you now look at your comparative statement for 1942—Red 97. Column B there is derived from Exhibit Green 17. Would you look at Exhibit Green 17 and compare it with your Column B. There are three figures?—A. Three figures on the credit of Green 17. The first one is Commissions as per list £2,979 : 10 : 0, the second is from commissions paid direct to Nairobi £706 : 12 : 3, the third is Local Commissions £2,220 : 3 : 2.

Q. Would you now look at Red 46. That is again the partnership return for the year 1942 and that is headed what?—A. Ross & Elliott Expenses Account, 1942.

Q. What commission do they show on the credit side?—A. Red 47 shows the first item "Commissions as per list £2,979 : 10 : 0. It shows the second item "Commissions paid direct to Nairobi £706 : 12 : 3, but it omits the third item of Local Commissions £2,220 : 3 : 2.

Q. Accordingly you have put that amount in Column F under the heading "Shortfall"?—A. Yes.

30 Q. In both the case of this return and the last return is the amount of income returned in the partnership return related to the exhibits attached?—A. Yes, in the year 1942 which I have the partnership returns shows £1,936 : 15 : 58 and the account attached shows a balance £1,936 : 15 : 7 instead of fifty-eight cents.

Q. Would you just look to make sure, at Red 43, to make sure that the return is based on the exhibits attached?—A. The return which covers the year of income 1941 shows £3,148 : 16 : 35 and the account attached shows a balance of £3,148 : 16 : 4.

40 Q. Would you now look at the comparative statement for the next year, Red 98, and with reference to the figures which appear in Column B would you compare those with Exhibit Green 24. According to Green 24 what are the figures for Column B?—A. The credits in Green 24 are three. The first is commissions as per list £3,442 : 3 : 3, the second is commissions paid direct to Nairobi £245 : 3 : 4, the third is local commissions £3,187 : 0 : 10.

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Q. Would you now look at the partnership return for that year which is Red 50. What are the amounts in that account?—*A.* The amounts to the credit of Red 50 are the first item Commissions as per list £3,442 : 3 : 3, the second item commissions paid direct to Nairobi shown in Red 50 as £1,432 : 4 : 2. That is an over declaration on that item, but the third item local commissions which is shown in Green 24 as £3,187 : 0 : 10 is omitted from Red 50.

Q. What is the net result for the year covered by this comparative statement?—*A.* An overdeclaration on one item, an underdeclaration on another, the final result being an under declaration of £2,000. 10

Q. Would you look at the partnership return and confirm what the figure is?—*A.* The figure is £2,955 which is a rounded-up figure of the £2,954 : 14 : 2 shown on Red 50.

Q. Would you look at your comparative statement for 1944—Red 99—and would you compare Column B with Exhibit Green 30. What are the item of the receipts appearing in Green 30?—*A.* In Green 30 there are three items shown as received. The first being commissions as per list £4,931 : 7 : 0, the second commissions paid direct to Nairobi £801 : 14 : 3, the third is local commissions £2,254 : 3 : 1.

Q. Would you now look at Red 52, the partnership return for this year. Attached to that there is an account—Red 53. How does that compare with your Column B which you have based on Green 30?—*A.* On Red 53 there are only two items. The first being commissions as per list £4,931 : 7 : 0, the second being commissions paid direct to Nairobi £801 : 14 : 3, the third item of local commissions £2,254 : 3 : 1 is omitted from Red 53. 20

Q. So you have accordingly extended that into Column F?—*A.* Yes.

Q. Would you now compare the partnership return with the figures on the attached exhibit?—*A.* The partnership return shows £3,357 : 17 : 75 which is the same as the balance shown on Red 53—£3,357 : 17 : 9. 30

Q. The next year, 1945, you prepared a comparative statement Red 100. Would you look at Exhibit Green 38 and compare it with your Column B. What are the credit items in that?—*A.* Green 38 Expenses Account 1945 shows three items on the credit. The first being commissions as per list £8,232 : 6 : 2, the second being commissions paid direct to Nairobi, £1,127 : 12 : 6 and the third is local commissions, £194 : 1 : 9.

Q. Would you now look at the partnership return for the same year—Red 55—to which is attached an expenses account, Red 56, and would you compare that with Green 38?—*A.* In Red 56 there are only two items shown, the first is commissions as per list £8,232 : 6 : 2, the second item is commissions paid direct to Nairobi £194 : 1 : 9. There was no third item shown on Red 56. 40

Q. In effect the third item on the Green exhibit has been switched to become the second item on the Red exhibit?—*A.* That is the effect and the second item on the Green exhibit has been omitted, totalling £1,127 : 12 : 6.

Q. Would you compare the figure returned in Red 55 with the result given by the red attachments?—A. The income shown on Red 55 is £6,153 which compares with Red 56 £6,153 : 3 : 2.

Q. For the next year, 1946, Red 101, in Column B of that you based on Exhibit Green 44. Would you look at Green 44 and read out the received items?—A. The receipts shown by Green 44 for the year 1946 are three in number. The first being commissions as per list £10,554 : 16 : 9, the second being commissions paid direct to Nairobi £2,813 : 4 : 10, and the third being local commissions £13 : 11 : 2.

10 Q. Would you look at Exhibit Red 58, that is the partnership return for the year of income, 1946, that has an account attached to it, Red 59, how does that compare with the figures derived from Green 44?—A. The first item is the same, £10,554 : 16 : 9, the second item on Red 56 £13 : 11 : 2 corresponds to the third item on Green 44, where it is described as local commissions and the second item on Green 44, commissions paid direct to Nairobi £2,813 : 4 : 10, is omitted from Red 59.

20 Q. Would you look at Item 16 under the heading "Expenses" on that statement and would you again look at Green 44. What is the total as given as expenses for that year?—A. Green 44 shows an item described as travelling expenses in B.E.A. £2,764 : 10 : 4.

Q. How does that compare with the figure shown in Red 59?—A. Red 59 shows the item described as expenses but the figure against it is £4,264 : 10 : 4, an increase of £1,500.

Q. For that year you first of all produced or extended into Column F certain omissions and also this amount of £1,500 making a total for the year of £4,313 : 4 : 10?—A. Yes.

Q. Would you look at Exhibit Red 58 and would you say what is the figure returned for that year?—A. The figure shown is £6,265 : 3 : 7, which is the same figure as is shown as the balance of Red 59.

30 Q. For the next year, 1947, you prepared comparative statements Red 102 and Column B there is based on Green 54. Would you read out the received items from Green 54?—A. Green 54 shows two items received. The first is commissions as per list £16,516 : 6 : 5, the second is described as commissions paid direct to Nairobi, £3,754 : 1 : 0.

Q. Would you look at an item on the Green exhibit which gives the total of travelling expenses for East Africa?—A. The figure shown on Green 54 is £3,676 : 17 : 4.

40 Q. Would you now look at Red 61 and the attachment Red 62. Could you compare that with the Green exhibit?—A. On the receipts side of Red 62 there is only one item described as commissions as per audited list £16,516 : 6 : 5, the second item has been omitted amounting to £3,754 : 1 : 0.

Q. What is the amount shown as travelling expenses?—A. On Red 62 the amount shown as expenses is £6,676 : 17 : 4 which is an increase of £3,000 over the figure in Green 54.

Q. So for that year there was a total shortfall of £6,754 : 1 : 0?—A. Yes.

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*Prosecution
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—
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tion,
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Q. Would you look at the partnership return Red 61 and compare the figure returned in that with the red attachments?—A. Red 61 shows £9,786 : 5 : 1 which is the same as the balance shown on Red 62.

Court adjourned at 3.50 p.m. 11.7.55.

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a.m. 12th July, 1955.

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Court as before.

P.W.1 : GEORGE WHITMORE BROWN : on same oath.

Examined by Mr. Beegaard : (continued)

Q. As we adjourned we had just completed the year of income 1947 and were about to go on to the year of income, 1948. For the year of income 1948, I think you prepared another comparative statement which is Exhibit Red 103. The second column of that is based on Green 62. Will you look at that exhibit and read out the receipts shown therein?—A. The receipts shown in Green 62, Ross & Elliott Expenses Account 1948 are two in number. The first is Commissions as per list, £26,084 : 17 : 3d. The second item is Commissions paid direct to Nairobi, £6,841 : 16 : 9d. 10

Q. Would you look at the Partnership Return for that year, which is Red 64 to which is attached an expenses account, Red 65?—A. Yes.

Q. Would you compare that Red Exhibit 65 with the Green Exhibit?—A. In Red 65, the accounts submitted by Mr. Ross there is only one item to credit which is described as Commissions as per audited list, £26,084 : 17 : 3d. The second item of Commissions paid direct to Nairobi, £6,841 : 16 : 9d. is omitted from Red 65. 20

Q. You have accordingly placed it in Column F?—A. Yes.

Q. Would you look again at the Green Exhibit 62 and look at the item in respect of, first of all, East African Expenses?—A. In Green 62 the item is shown as £5,074 : 9 : 9d.

Q. And how does that item compare in Red 65?—A. It shows £9,074 : 9 : 9d.

Q. That is a difference of £4,000?—A. Yes. 30

Q. Which you have again placed in Column F?—A. Yes.

Q. And would you look at another item, Expenses and Passage in Green 62. What is the figure appearing against that?—A. In Green 62 the figure is £148 : 19 : 5d., in Red 65 it appears as £348 : 19 : 5d.

Q. A difference of exactly £200?—A. Yes.

Q. Which you have again extended into Column F?—A. Yes.

Q. Would you look at the partnership return. What is the amount of return for that year 1948?—A. The amount shown is £16,466 : 0 : 4d.

Q. How does that compare with the attachments of Red 65?—A. It is exactly the same as the balance shown on the account, Red 65. 40

Q. Will you look at the comparative statement which you prepared for the succeeding year, 1949, Red Exhibit 104?

Q. Will you compare the second column in that statement with Exhibit Green 69 and read out the credits as shown in Green 69?—A. Two items are shown on the credit, the first being Commissions as per list, £24,832 : 5 : 5d., the second item is described as Commissions paid direct to Nairobi, £8,258 : 17 : 7d.

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Q. Would you now look at the partnership return for that year which is Red 67, and to the attachments to that, Red 68, which is an expenses account. Will you compare that Red 68 with Green 69?—

10 A. In Red 68 there is only one item to credit described as Commissions as audited list, £24,832 : 5 : 5d. The other item, Commissions paid direct Nairobi £8,258 : 17 : 7d. is omitted from Red 68.

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Q. And you have therefore extended that amount into Column F?
A. Yes.

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tion,
continued.*

Q. Would you look again at Green 69? The item for East African Expenses, what figure appears in the Green exhibit?—A. In Green 69 the figure appears as £7,731 : 16 : 2d.

Q. In the Red exhibit?—A. It appears as £11,731 : 16 : 2d.

Q. A difference of exactly £4,000?—A. Yes.

Q. Which you have again extended into column F?—A. Yes.

20 Q. Would you look again at the Green Exhibit 69? Is there any item which does not appear in the Red Exhibit 68?—A. In Green 69 there is a debit expense shown £20, described as part salary, Miles (?) Osborne. That does not appear in Red 68.

Q. So you have extended that into Column F as a credit?—A. Yes.

Q. That is an expense which has not been claimed in the partnership accounts?—A. That is so.

Q. Would you look again at the partnership return? (That of £20 appears as a red figure in the photostat.) What is the amount returned as the partnership income?—A. £13,056 : 8 : 11d.

30 Q. How does that compare with the attachment, Red 68?—A. It is exactly the same figure as the balance shown on the account, Red 68.

Q. The next year, which is 1950, you have prepared another comparative statement which is Exhibit Red 105. Would you compare the second column of that with Exhibit Green 75? What are the receipts shown in that Green Exhibit?—A. In Green 75 there are two items shown as receipts. The first item is described as Commissions as per list £17,484 : 12 : 9d. The second item is described as Commissions paid direct to Nairobi, £5,348 : 10 : 1d.

40 Q. And would you now compare that Green Exhibit with the partnership return for that year, which is Red 70 and the attached account which is Exhibit Red 71?—A. Red 71 also shows two items to the credit. The first described as Commission as per list £17,484 : 12 : 9d., and the second described as Commissions paid direct to Nairobi £5,348 : 10 : 1d. They are the same.

Q. Therefore in respect of that year you have extended nothing into column F?—A. That is true.

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Q. Would you look at that partnership return which is Exhibit Red 70? What is the date of that return as shown on the form?—
A. 20th April, 1954, with a footnote to it saying "Signed by Mr. Ross, 6th May, 1954."

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Q. On what date did your investigation into this case start?—
A. The investigation into this case started in November/December, 1953.

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Q. So this return was received after the investigation had been commenced?—A. Yes.

Q. The next year, 1951, you again prepared a comparative statement, Exhibit Red 106, and again you based the second column on Exhibit Green 81, which is to be compared with Exhibit Red 74. Will you compare those two exhibits, Green 81 and Red 74? They yield the same result?
—A. Yes, they are both the same.

Q. Accordingly there is no difference for that year?—A. No.

Q. Would you look at the partnership return, the date?—A. The date on the partnership return form is the 5th September, 1954.

Q. That is again after the investigations had commenced?—A. Yes.

Q. Leaving these statements for a moment, I will be coming back to them, would you describe the procedure for the taxation of partnerships?—A. Under the Income Tax Management Act and the preceding Ordinance, a partnership as such is not assessable. A return form is, however, sent to the precedent partner under the Act, and the precedent partner is required to complete what we term a Partnership Form, which is required to state the amount of profit made by the partnership in a particular year. Provision is also made on the form to show how that profit is sub-divided between the different partners. In addition to the partnership form, individual forms for each partner have to be completed by the partners or, in the case of a non-resident, by the resident partner or the agent of the non-resident partner. These individual forms are divided into various sections, some of which show the income from the partnership. The figures in the section showing the income from the partnership are checked with the form which has been sent in to cover the partnership and the actual assessments are raised on the partners. No assessment is raised on the partnership.

Q. So from the Income Tax point of view, it is the individual partners who are taxed on their shares, and not the partnership?—A. That is correct.

Q. Would you look at the partnership return for the year, 1941, that is Exhibit Red 43? That form shows the partnership income for the year?—A. Yes.

Q. And what is the allocation of that partnership income?—A. The allocation shows two thirds to Mr. A. Granville Ross, Nairobi, £2,099, and one third to T. Lea Elliott, Birmingham, £1,049.

Q. Would you look at Mr. Ross' personal return for that year, that is Red 31? Does the amount returned check with the amount returned in

the partnership income?—A. Yes, it agrees exactly. The amount in Mr. Ross' personal return is £2,099 : 4 : 25 cts. which, in fact, is the amount shown on the partnership as his share.

Q. Now was a return made for that year for the other partner, Mr. Elliott?—A. I believe in that year there was no return.

Q. Was Mr. Elliott taxed?—A. Yes, the figure being taken from the partnership return form.

Q. Would you look at the comparative statement for the same year, that is Red 96? In column F you have shown an amount of £1,694 : 10 : 1d.
 10 You have explained how you arrived at that already. If your Lordship refers to *Count 1*, that is the subject matter of the charge. That shortfall—what is the partners' respective entitlement?—A. The respective entitlement is one third to Mr. Elliott and two thirds to Mr. Ross, amounting in Mr. Elliott's case to £564 : 16s. and some odd pence.

Q. The exact entitlement being approximately £1,130?—A. Yes.

Q. That is *Count 2*, your Lordship. Would you look at the partnership return for the next year, Exhibit Red 48? What is the amount of return in that partnership return?—A. The amount in the return is £1,936 : 15 : 58 cts., divided two thirds to Mr. A. Granville Ross, Nairobi,
 20 £1,291 : 3 : 75 cts. and one third to Mr. T. Lea Elliott, Birmingham, £645 : 1 : 83 cts.

Q. Would you compare that return with, first of all, Mr. Ross' personal return which is Red 32?—A. The amount shown in Mr. Ross' personal return is also £1,291 : 3 : 75 cts., the same as in the partnership return.

Q. Would you now produce Exhibit Red 110 which is a return made on Mr. Elliott's behalf for that year?—A. I produce the return.

Q. And how does the amount returned in that return compare with the partnership return?—A. The amount shown in Mr. Elliott's return is £645 : 1 : 83 cts., which is the same figure as is shown in the partnership
 30 return.

Q. Would you now look at your comparative statement, Exhibit Red 97? You show in column F a total shortfall of £2,220 : 3 : 2d.? —A. Yes.

Q. That is the subject matter of *Count 4*, and on the basis of division that shortfall is divided into the Accused's entitlement of how much? —A. Two thirds, which is £1,480.

Q. That is *Count 5* your Lordship. And their remaining one third to Elliott, which is approximately?—A. £740.

Q. That is *Count 6*. Now, would you look at the partnership return
 40 for the next year, that is 1943, Exhibit Red 49. What is the total income returned for the partnership for that year?—A. For 1943 the total income return is £2,955, divided between Mr. Alfred Granville Ross, Kenya, two-thirds £1,970. Mr. Thomas Lea Elliott, U.K., one-third £985.

Q. And would you compare those figures with the ones in Mr. Ross' personal return for that which is Red 33?—A. Mr. Ross' personal return, the amount is also shown as £1,970.

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Q. And would you now produce the return made on Mr. Elliott's part, Exhibit Red 111 for the same year?—*A.* I now produce Exhibit Red 111, Mr. Elliott's personal return for the year of income, 1943.

Q. And what is the amount returned therein as his entitlement?—*A.* £985, the same figure as in the partnership return.

Q. Would you now look at your comparative statement for the year, which is Red 98. The total figure shown in column F is £2,000?—*A.* Yes.

Q. That is *Count 8*, your Lordship, and on the basis of division, two-thirds and one-third, that gives?—*A.* £666 to Mr. Elliott and £1,332 to Mr. Ross.

Q. *Counts 9 and 10*, your Lordship. Would you turn to the next year which is 1944, to the partnership return which is Exhibit Red 52. What is the amount returned as the partnership return for that year?—*A.* The amount returned is £3,357 : 17 : 75 cts. Allocated to Mr. A. Granville Ross, Kenya, two-thirds £2,238 : 11 : 85 cts. Mr. T. Lea Elliott, U.K., one-third £1,119 : 5 : 90 cts.

Q. Will you compare Mr. Ross' personal return for that year, which is Red 34?—*A.* Mr. Ross' personal return shows the same figure £2,238 : 11 : 85 cts.

Q. Do you now produce the return made on Mr. Elliott's behalf for that period, Exhibit Red 112?—*A.* I now produce the return made on behalf of Mr. Elliott for the year of income 1944.

Q. And how does the figure returned in that compare with the partnership return, Red 52?—*A.* The figure shown in Mr. Elliott's return is the same as that shown in the partnership return, £1,119 : 5 : 90 cts.

Q. Would you now look at your comparative statement for that year, Exhibit Red 99?—*A.* Yes.

Q. Column F of the shortfall shows a total of £2,254 : 9 : 1d.?—*A.* Yes.

Q. And an item of Shs.6/- as expenses?—*A.* Yes.

Q. That is the subject matter of *Count 12*, your Lordship, and on the agreed basis of division between the two partners, how is that shortfall divided?—*A.* Mr. Elliott would have one-third, which is £751 and Mr. Ross would have two-thirds, which would be £1,502.

Q. Roughly. That is *Counts 13 and 14*. Would you now go on to the next year, 1945 and look at the partnership return, Exhibit Red 55. What is the total partnership income in that?—*A.* The total partnership income is shown as £6,153, allocated Mr. A. Granville Ross, Kenya, two-thirds, £4,102; Mr. T. Lea Elliott, U.K., one-third, £2,051.

Q. And would you now compare that with Mr. Ross' personal return for that year, Exhibit Red 35?—*A.* The figure shown in Mr. Ross' personal return is £4,102, the same as the figure shown in the partnership return.

Q. And would you now produce the return made on Mr. Elliott's behalf, Exhibit Red 113?—*A.* I produce the return made on behalf of Mr. Elliott for the year 1945.

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tion,
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Q. How does that figure compare with Red 55?—*A.* The amount shown in Mr. Elliott's return is £2,051, which is the same figure as the partnership return.

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Q. Would you now look at your comparative statement, Red 100?—*A.* Yes.

Q. Column F you have shown a total shortfall of £1,127 : 12 : 6d.?—*A.* Yes.

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Q. *Count* 16, your Lordship. Now on the basis of two-thirds and one-third, how does that figure split up?—*A.* One-third to Mr. Elliott would be £376, and two-thirds to Mr. Ross, would be £762.

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Q. *Counts* 17 and 18. Would you look at the partnership return for the next year, 1946, Exhibit Red 58. What is the partnership income return for that year?—*A.* On Red 58 for the year of income, 1946, the income returned is £6,265 : 3 : 7d. Divided, Mr. A. Granville Ross, Kenya, two-thirds, £4,176 : 15 : 8d. Mr. T. Lea Elliott, U.K., one-third, £2,088 : 7 : 10d.

Examina-
tion,
continued.

Q. Would you compare that with Mr. Ross' personal return for 1946, that is Red 36?—*A.* The amount shown in Mr. Ross' personal return is £4,176 : 15 : 8d., the same figure as that shown in the partnership return.

Q. And do you produce now the return made on Mr. Elliott's behalf for that year, which is Exhibit Red 114?—*A.* I produce the return made on behalf of Mr. Elliott for the year of income, 1946. This personal return shows £2,088 : 7 : 10, which is the same figure as is shown in the partnership return.

Q. Would you now look at your comparative statement for that year, which is Red 101?—*A.* Yes.

Q. In column F you show two amounts, the first one is an amount of £2,813 : 4 : 10d.?—*A.* Yes.

Q. That is *Count* 20, your Lordship. The second amount is £1,500 which is the subject matter of *Count* 21?—*A.* Yes.

Q. The total of those two comes to £4,313 : 4 : 10d.?—*A.* Yes.

Q. And on the basis of two-thirds and one-third, what does that amount split into?—*A.* One-third to Mr. Elliott would be £1,438 and two-thirds to Mr. Ross would be £2,876.

Q. *Counts* 22 and 23, Your Lordship. Would you proceed to the next year, 1947, and look at the partnership return, Exhibit Red 61. What is the total partnership income returned?—*A.* The total amount returned is £9,786, divided between Mr. A. Granville Ross, Kenya, two-thirds £6,524 : 3 : 4d. and Mr. T. Lea Elliott, U.K. one-third, £3,262 : 1 : 8d.

Q. And would you compare that first with Mr. Ross' personal return for that year, Red 37?—*A.* The amount shown in Mr. Ross' personal return is £6,524 : 3 : 4d., the same amount as shown in the partnership return.

Q. Do you now produce the return made on behalf of Mr. Elliott for that year, Exhibit Red 115?—*A.* I now produce Red 115, a return made on behalf of Mr. Elliott for the year of income, 1947.

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Q. How does that compare?—*A.* The amount shown in Mr. Elliott's return is £3,262 : 1 : 8d., the same figure as is shown in the partnership return.

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Q. Would you now look at your comparative statement for that year, Exhibit Red 102. In column F you have extended two amounts, the first one is £3,754 : 1 : 0d.?—*A.* Yes.

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Q. Count No. 24, Your Lordship. The second amount is an amount of £3,000?—*A.* Yes.

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Q. That is *Count 25.* And those two amounts give a total of £6,754 : 1 : 0d.?—*A.* Yes. 10

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tion,
continued.*

Q. Now, on the usual basis of division, in this partnership what figures does that amount yield?—*A.* One-third to Mr. Elliott would be £2,251 and two-thirds to Mr. Ross would be £4,502.

Q. Counts 26 and 27. We will proceed to the next year, 1948, and look at the partnership return, Exhibit Red 64?—*A.* The amount shown in the partnership return is £16,466 : 0 : 4d., divided between Mr. A. Granville Ross, two-thirds £10,977 : 6 : 11d., Mr. T. Elliott, U.K., one-third, £5,488 : 13 : 5d.

Q. Would you now compare that with Mr. Ross' personal return for that year, Red 38?—*A.* The amount shown in Mr. Ross' personal return is £10,977 : 6 : 11d., the same amount as is shown in the partnership return. 20

Q. And do you now produce the return made on Mr. Elliott's behalf for that year, Exhibit Red 116?—*A.* Yes, Red 116 is Mr. Elliott's return for the year of income 1948, and the amount shown is £5,488 : 13 : 5d., the same amount as is shown in the partnership return.

Q. Would you now look at your comparative statement for that year, Exhibit Red 103. In column F of that Exhibit you have shown three amounts. The first is an amount of £6,841 : 16 : 9d.?—*A.* Yes.

Q. Count 28, Your Lordship. The second amount is an amount of £4,000?—*A.* Yes. 30

Q. Count 29, and the third amount is an amount of £2,000?—*A.* Yes.

Q. Count 30; the total of those three amounts comes to £11,041 : 16 : 9d.?—*A.* Yes.

Q. And on the basis of division, two-thirds and one-third, what figures emerge from that total?—*A.* One-third to Mr. Elliott would be £3,680 and two-thirds to Mr. Ross would be £7,360.

Q. Counts 31 and 32. Would you turn to 1949. The partnership return for that year is Exhibit Red 67. What is the total of income returned in that form?—*A.* The total income returned is £13,056 : 8 : 11, divided between Mr. A. Granville Ross, Kenya, two-thirds, £8,704 : 5 : 11d. Mr. T. L. Elliott, U.K., one-third, £4,352 : 3 : 0d. 40

Q. Would you now look at Mr. Ross' personal return and compare it, Exhibit Red 39?—*A.* Mr. Ross' personal return shows £8,704 : 5 : 11d., which is the same figure as is shown in the partnership return.

Q. And do you now produce the return made on Mr. Elliott's behalf for that year, Exhibit Red 117 ?—*A.* Yes, I now produce Exhibit Red 117, the return made on behalf of Mr. Elliott for the year of income, 1949.

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Q. How does the figure compare with the partnership return ?—*A.* Mr. Elliott's personal return shows £4,352 : 3 : 0d., which is the same figure as is shown in the partnership return.

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Q. Would you now look at your comparative statement for that year, Red 104 ?—*A.* Yes.

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10 *Q.* In column F you have shown two figures and one red figure ?—*A.* Yes.

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Q. The first figure is one of £8,258 : 17 : 7d. ?—*A.* Yes.

Q. *Count* 33. The second figure is £4,000 ?—*A.* Yes.

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tion,
continued.*

Q. That is *Count* 34. Now the third figure is a credit of £20, so the total of that column comes to £12,238 : 17 : 7 ?—*A.* Yes.

Q. And on the basis of two-thirds and one-third, what figures emerge from that total ?—*A.* One-third is Mr. Elliott's, £4,079, and two-thirds to Mr. Ross would be £8,158.

20 *Q.* *Counts* 35 and 36. Now Mr. Brown, Excess Profits Tax. Would you explain to me what years was that in force ?—*A.* The Excess Profits Tax was in force for the years 1940—from July 1st to 31st December, that is six months, 1941, 1942, 1943, 1944 and 1945.

30 *Q.* And would you explain that tax very briefly and its inter-relation with income tax for those years ?—*A.* The Excess Profits Tax was a wartime tax and the tax was charged on the excess of the profits made during the period I have already mentioned, of what is termed the standard profits. The standard profits were arrived at in various ways but in this particular case the standard profit was an average of three years profits which were, I think, 1936, 1937 and 1938. That is an average of three years profits prior to the outbreak of war. The excess of the profits earned during the excess profits tax period in any one year, which was termed a chargeable accounting period, the excess of that profit over the standard profit was taxed at the rate of 60 %.

Q. And how did that tax operate in conjunction with income tax ?—*A.* The profit for excess profits tax purposes was based on the same accounts as the profit for income tax purposes, the Excess Profits Tax was liable as a deduction for income tax purposes.

Q. So, in other words, the same accounts would have to be returned in respect of Excess Profits Tax and Income Tax ?—*A.* Yes.

40 *Q.* But after the excess tax had been taken off, that would be allowed for income tax purposes ?—*A.* Yes.

Q. Was it computed in this case ?—*A.* Yes.

Q. Do you produce Exhibit Red 118. What is that document ?—*A.* This document is a note made by a Mr., I believe, Albert Spencer. It is initialled "A. S." and dated 8th July, 1942, and it says (Witness reads aloud Exhibit Red 118). The effect of the note is that the standard profit was agreed at £2,303.

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Q. Was that agreement given legal effect in any subsequent notices ?
—*A.* The agreement was acted upon in making the excess profits tax assessments upon the partnership and subsequently as in all other cases of excess profits tax, a document called a Notice of Determination was served upon the partnership indicating that the liability as arrived at on these figures and on the basis of this standard profit had been determined, and the case was concluded.

Q. Do you produce that Notice of Determination, Exhibit Red 119 ?
—*A.* Yes.

Q. Was any objection received to that Notice of Determination ?— 10
A. No.

Q. Do you produce Exhibit Red 120, which is an Excess Profits Tax return for the first half-year period, 1st July, 1940, to 31st December, 1940 ?
—*A.* Yes.

Q. What is the income returned for Excess Profits Tax purposes for that year ?—*A.* The income returned which is in fact for the half-year, is shown as £1,312 : 11 : 80 cts.

Q. And how does that compare with the partnership return for that year which is Exhibit Red 40 ?—*A.* It is exactly half the figure shown in Red 40, which of course, is a full year. 20

Q. So 1940 is in order as far as Excess Profits Tax is concerned ?—*A.* The Excess Profits Tax return form in effect says the same figure as the Income Tax form.

Q. Would you now produce the Excess Profits Tax form for the next year, 1941, Exhibit Red 121 ?—*A.* Yes.

Q. And would you compare that with the partnership return for that year which is Red 43 ?—*A.* The amount shown in the Excess Profits Tax form returned is £3,148 : 16 : 35 cts., which is the same as the amount shown in the partnership Income Tax return form.

Q. Would you now go back to your comparative statement for that 30 year, which is Red 96. You have shown as shortfall for income tax purposes the sum of £1,694 : 10 : 1d. ?—*A.* Yes.

Q. Count 3, Your Lordship. Would you produce the Excess Profits Tax return form for the next year, 1942, Red 122, and will you compare that with the partnership return for the same year, Red 46 ?—*A.* The Excess Profits Tax return form shows an amount returned of £1,936 : 15 : 58 cts., which is the same amount as is shown in the partnership income tax return form.

Q. And would you look at your comparative statement for the year, Red 97. You show a shortfall for income tax purposes of £2,220 : 3 : 2d. ? 40
—*A.* Yes.

Q. And how does that affect the Excess Profits Tax position ?—*A.* The Excess Profits Tax return form should have shown a figure greater by £2,220 : 3 : 2d.

Q. Count 7. And the next year, do you produce an Excess Profits Tax return for 1943, Red 123 ?—*A.* Yes.

Q. And would you compare that with the partnership return for the same year, Red 49 ?—*A.* Yes, the amount returned by the Excess Profits Tax return form is £2,955, which is the same amount as is shown in the Income Tax return form.

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Q. And would you now look at your comparative statement for that year, Exhibit Red 98. You have shown in Column F a shortfall of £2,000 for Income Tax purposes ?—*A.* Yes.

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Q. How does that affect the Excess Profits Tax position ?—*A.* The amount returned in the Excess Profits Tax return form should have been 10 greater by £2,000.

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Q. Count 11. Will you produce the Excess Profits Tax return form for 1944, Red 124 ?—*A.* Yes.

Q. Would you compare that with the partnership return for the same year, Red 52 ?—*A.* Yes, the amount shown in the Excess Profits Tax return form is £3,357 which is the same figure apart from shillings and pence, as is shown in the Income Tax return form.

Q. And would you look at your comparative statement for that year, Exhibit Red 99 ?—*A.* Yes.

Q. Column F you have shown as total shortfall the amount of 20 £2,254 : 9 : 1d. ?—*A.* Yes.

Q. What is the effect of that on the Excess Profits Tax position ?—*A.* The amount shown in the Excess Profits Tax return form should have been greater by £2,254 : 9 : 1d.

Q. Count 15. And do you now produce the Excess Profits Tax return for the last year, 1945 Red 125. Will you compare that with the partnership return for the same year, that is Red 55 ?—*A.* The amount returned in the Excess Profits Tax return form is £6,150. The amount shown in the Income Tax return form is £6,153.

Q. A difference of £3 ?—*A.* Yes.

30 *Q.* And would you now look at your comparative statement for that year, Exhibit Red 100 ?—*A.* Yes.

Q. You have shown in column F a total shortfall of £1,127 : 12 : 6d.

Q. How does that affect the Excess Profits Tax position ?—*A.* The Excess Profits Tax return form should have shown a figure greater by £1,127 : 12 : 6d.

Q. Count 19. In the course of this investigation, have you had an opportunity of becoming acquainted with Mr. Ross' handwriting ?
A. Yes.

Q. You are not a handwriting expert ?—*A.* No.

40 *Q.* Could you recognise Mr. Ross' handwriting and signature ?—
A. Yes.

Q. Would you look first of all at Exhibits 110 to 117 inclusive. Those are returns made on behalf of Mr. Elliott, eight forms in all. Whose signature and writing are on those forms ?—*A.* The best of my belief they are Mr. Ross' signatures.

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Q. And would you now look at Exhibits Red 120 to 125 inclusive. Those are the Excess Profits Tax return forms ; would you again look at those six forms carefully, especially the part containing the signature ?
—*A.* To the best of my belief they are Mr. Ross' signatures.

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Q. Going back to the beginning of your evidence, from the chronological point of view, you stated, that you received Exhibits 4 to 9 inclusive from Mr. Ross' advisers, Mr. Taylor and Messrs. Sirley & Kean. Did you examine those Exhibits when you received them. Did you at any stage use those Exhibits or information gathered from them for the purpose of checking with the returns submitted by the Accused ?—*A.* Yes, there are 10 five Exhibits, 4, 5, 6, 7.

Q. Exhibit 4 is the ledger ?—*A.* Yes.

Q. What did you check in that ledger ?—*A.* In Exhibit 4 I particularly checked the account headed " Commissions Principles, C.3."

Q. What years are they for ?—*A.* The sheets are in the ledger for the years 1940, 1941 ; 1943, 1945 and 1946 are missing ; 1947, 1948, 1949, 1950 and 1951 are in the ledger. I checked in the first year connected with this case, 1941. I did not have the partnership cash book, but I was able to check substantially all the entries to the credit of this account with the partnership bank pass book. 20

Q. Exhibit Red 9 ?—*A.* Yes.

Q. And what did that check show ?—*A.* It showed that the credit to this Commissions Account in the year 1941 had, in fact, been paid into the partnership bank account.

Q. And how did that situation compare with the situation as revealed by the returns of income for that year ?—*A.* Well, it was confirmation that the entry in the certified Receipts and Expenditure Account was correct, and it confirmed that the entry in the Final Account, obtained from Mr. Elliott, the Green Exhibit, was correct, and it was an additional check on my belief that these commissions had been omitted from the account 30 sent in by Mr. Ross.

Q. In any of these years were you able to make a hundred per cent. check ?—*A.* In the year 1949 I also had the cash book, so that I was able to check first of all the amounts being paid into the bank in the bank passbook, the amounts being entered into the cash book, which was the next step, the amounts entered into this ledger account, the amounts being entered on the certified Receipts and Expenditure account, which was the next step, the amounts shown on the final partnership accounts, that is the Green exhibit for 1949, which was the final step, and finally I was able to see that these amounts had been omitted from the account 40 rendered by Mr. Ross.

Q. Would it be correct to say that from that year, 1949, you were able, by a one hundred per cent. check, to satisfy yourself from those books along with the amount of £8,258 : 17 : 7d. shown in column F of Red 104 ?
—*A.* By a completely independent check I was able to satisfy myself that that figure should have been included on the account sent in with the income tax return, but had been omitted.

Q. Now you produced to us a number of comparative statements. Have you prepared a summary of those?—A. Yes.

Q. And from that summary, what is the total figure of income understated in those returns?—A. The total figure of income understated is £43,644 : 15 : 0d.

Q. Do you produce that?—A. I produce this summary of comparative statements, Red 135.

The Court adjourned at 11.25 a.m. for ten minutes.

Cross-examined by Mr. O'Donovan:

10 Q. The notes which you made of the interviews with the Accused were as complete and adequate as you could make them?—A. I think they are.

Q. You have not left anything out?—A. They are not absolutely verbatim but they are very full and as far as I know contain all the material matters.

Q. Would you agree that in the course of these interviews the Accused reiterated his desire to co-operate with your Department by supplying as much information as he could?—A. He did repeat that more than once.

20 Q. And in fact in the course of these interviews he disclosed more and more matters which have now become relevant to the Prosecution against him?—A. I think I would say that he was disclosing matters relating to his personal affairs but I do not consider that he disclosed any material points relating to the partnership affairs which are the subject of this prosecution.

Q. As your interviews with him proceeded he disclosed more and more did he not as regards matters which he did not disclose and which you asked him and he said he had employed somebody to go through the books in order to provide information?—A. He gave me a good deal of
30 general information about the working of the partnership and he did say particularly in connection with a file which was not produced that first of all he said the file was with Shapley, Barrett, then later he said it was being examined by his assistant.

Q. At any rate he was co-operating with your Department in your investigation?—A. My personal view was that he was professing to co-operate, but I did not consider he was co-operating in these matters.

Q. It was only once that you warned him that he need not answer any questions which you may put to him?—A. I warned him once and I think at the next interview I drew his attention to the previous warning
40 without actually repeating my words.

Q. But you went on cross-examining him in effect didn't you?—A. He assured me he understood the position.

Q. Would it be correct to say that your attitude as investigating officer was to get as much out of him in the course of his discussions with

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you as you could with a view to his prosecution?—A. It would not be correct to say my attitude was to get as much as possible out of him with a view to prosecution. My attitude was certainly to get as much as I could out of him but the decision to prosecute was taken later and not by me.

Q. To get as much information from him with a view to a decision being taken by someone else as to his prosecution?—A. I would not agree that that was the motive. The motive was to obtain the information to find out what income had not been returned.

Q. But that in fact is what occurred. You got as much as you could 10 out of him, as you possibly could?—A. It is certainly being used in evidence, I agree.

Q. And at the same time as he was engaging in these discussions with you which are the subject of these charges, he was also negotiating with you about other years of income, isn't that so?—A. He did not raise the matter of other years until, I think, it was November 17th, which was at the end of these series of interviews.

Q. And in fact he agreed to pay your Department and did in respect of the other years of income, amounting to £20,000?—A. He paid an amount of £20,000 in respect of the years of income 1950 and 1951, but it 20 had been made quite clear to him that that payment had no relation to the matters under discussion at the moment.

Q. At the same time or rather at the end of these discussions about the years up to 1949 you were agreeing with him or negotiating with regard to his tax for the two subsequent years?—A. Certainly the matter was discussed and he paid £20,000.

Q. Which was agreed tax?—A. It was not actually agreed at the time of payment but after the particular assessments were amended the tax payable came out in effect to £20,000.

Q. So you accept that in full settlement?—A. It was accepted in 30 settlement of the two particular assessments.

Q. I want to make it clear. I am suggesting that your Department was not very fair to the Accused, that although he had reiterated his desire to co-operate, that although he attended interviews, although he answered questions put by you, although he had expressed his willingness to pay an agreed figure in respect of subsequent years, in spite of that co-operation you were driving him on to say he had not, so that you could take the decision to prosecute?—A. I am afraid I do not agree. The Department behaved quite fairly.

Q. It is not the policy of your Department to prosecute where 40 voluntary disclosures are made?—A. Generally speaking no firm undertaking is given to a taxpayer, but just as in this particular case at the initial interview the taxpayer was given to understand that if he made a full and complete disclosure it was unlikely that the Commissioner would institute proceedings.

Q. I think you said that you joined the Investigation Department in 1947?—A. I joined the Income Tax Department in 1947 and I was transferred to Investigation Branch in 1953.

Q. When did you first have occasion to look through the files in your Department and read the returns of income?—A. The files were referred to me in October or November, 1953.

Q. You had never seen them before?—A. No, they were actually referred to me. I did not search for them.

Q. That is the first time you saw them?—A. Yes.

Q. I think you said with regard to the partnership returns that there were accounts attached?—A. Yes.

10 Q. By attached I suggest to you that in fact all that means when you saw them that there were certain accounts pinned on with a pin or a paper slide?—A. That is correct. Most of the returns have accounts and they are all placed in a file in sequence.

Q. They are not only sent at the same time?—A. No.

Q. In which case they could be pinned on by your Department on receipt?—A. Yes.

Q. You cannot say of your own knowledge whether the partnership income tax returns signed by the Accused were submitted to your Department with the accounts already attached to them?—A. I cannot say of my own knowledge.

20 Q. On the occasion when you did discuss these returns with the Accused you asked him in respect of each of them whether he had signed the income tax return?—A. Yes.

Q. And according to the note you made at the time, that is Red 28, all you asked him about was "Are these signatures on your return forms your signatures?"—A. Yes.

Q. So you did not put the accounts to him. You put the income tax form and asked him to verify his signature?—A. To my recollection I did not specifically ask him to identify the accounts.

30 Q. You told us that as regards Elliott's personal income tax return an allowance of £500 was made in the earlier years in respect of his Birmingham office?—A. Yes.

Q. I think you went on to say that an allowable deduction was overlooked from 1946 onwards because of the change of staff in your Department?—A. I suggested that that was the reason for it. I have no knowledge as I was not interested in the matter at the time.

40 Q. Do I correctly interpret that answer as meaning that in your view as the Investigating Officer that had it not been for this oversight that that deduction should have continued to be allowed in subsequent years after 1946?—A. I believe that the deduction of £500 should have continued after 1946.

Q. Your Department did not allow a deduction in respect of income unless it is an expense wholly and exclusively incurred in the production of the income?—A. That I think is the wording of the Ordinance.

Q. Is it again a fair inference from your last reply that your Department recognises that there were expenses incurred in Birmingham for the

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production of the income of the partnership of Ross & Elliott which were a legitimate deduction in arriving at their net income?—A. I do not agree that that would be a fair inference. I think the inference is that the Department decided that there were expenses incurred in Birmingham which were incurred in the production of Mr. Elliott's share of the account.

Q. You have referred to the Partnership Agreement. Can you point to any single sentence in the agreement which excludes the Birmingham expenses as a partnership liability?—A. Speaking without reference to the document, to my recollection Birmingham expenses are not mentioned. 10

Q. And it would be normal would it not where two partners residing in different places—two acting partners—incurring expenses in the production of the profits that those expenses in the absence of an agreement would be the liability of the partnership?—A. I would reply to that by saying that these circumstances do not really appear to be normal in as much as I believe that Elliott is a partner in many partnerships all over the world and he runs this Birmingham office as far as I know to deal with all those partnerships and his other affairs in the United Kingdom. 20

Q. In the absence of something to the contrary where you have two partners in two different places both actively engaged in the earning of partnership profits, the expenses which each of them incur for the purpose of earning that profit would be a partnership liability?—A. I would agree that as a pure generalisation. I would expect that expenses incurred by either partner in earning the partnership profits would be a partnership liability purely as a generalisation.

Q. Do you see anything in the Partnership Agreement (Red 80) which would make that generalisation unfair in this particular case?—A. I see two clauses which state: Clause 1: that the net profits, that is the balance remaining after deduction of all business expenses shall be distributed two thirds and one third. I see that and I also see Clause 13 which says that an account shall be prepared each year and that it goes on to give directions immediately after the signing of such account each partner may draw out his share of profits. Those two clauses combined with the accounts which were rendered and the returns which divided the figures between partners would lead me to believe that the net profits contemplated in this agreement were the profits shown in the accounts otherwise the charge for the Birmingham expenses I would imagine would be shown as a deduction in the accounts. 30 40

Judge: Is the construction of the Partnership Agreement a proper question for this witness?

Mr. O'Donovan: No, my Lord.

Q. You have prepared various comparative tables which in effect are a summary of the accusations against the Accused?—A. That is so.

Q. Based on the assumption that the various documents which you have received are correct?—A. Yes.

Q. And based, I suggest, on two further assumptions. First that all the profits of the partnership, whether due to Elliott's efforts in Birmingham or Ross' in Nairobi are returnable as the income of a partnership in Kenya?—A. Based on the assumption that they are derived from or received—

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Q. Isn't that exactly what I asked you?—A. Yes.

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Q. That the entire profits whether due to Elliott's efforts in Birmingham or Ross' in Nairobi are all returnable here, all assessable as East African income?—A. It is based on that and of course in 1940 and 1950 and 1951 the partnership returns were rendered on that basis.

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Q. Have you any basis for that assumption beyond the fact that the Accused (inaudible)?—A. I have no evidence or belief that the profits are not assessable in Kenya.

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Q. Have you any evidence either way?—A. I think I have the evidence of the three years.

Q. Have you anything else?—A. The Partnership Agreement says the same (reads).

Q. Or elsewhere does it say?—A. It says Sean's Chambers, or other such place or places in B.E.A.

Q. I do not want to challenge what you think or what I think, but you knew in the course of your investigation that there was an office of Ross & Elliott in Birmingham?—A. No.

Q. What did you think the £500 was in respect of?—A. I conceived it to be in respect of expenditure on Elliott's own office.

Q. You knew he had an office in Birmingham?—A. T. L. Elliott & Company or Mr. Elliott.

Q. If the deduction of £500 a year was reasonable at all the inference is you realised or your Department did that Elliott was engaging amongst his other activities in earning part of the profits in Birmingham?—A. He was not working on partnership business in Birmingham.

Q. I ask you again have you any basis in fact on the facts found out by you apart from the three years in which the whole partnership accounts were returned in Kenya for assuming that all the profits were assessable in East Africa as East African income tax?—A. I hold the opinion that the business is transacted in East Africa. I could be wrong but that is my opinion.

Q. You could be wrong. The second assumption is this, is it not. That none of the Birmingham expenses should be shown as a partnership liability?—A. In my view, the Birmingham expenses are not a partnership liability.

Q. And you have drawn up your comparative table on that assumption?—A. That is so.

Q. The £500 allowed to Elliott was merely a fictitious or nominal or artificial sum?—A. It was. I would describe it as a nominal sum

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which as far as I can see from the papers had been agreed at an early stage as representing the proportion of the Birmingham office expenses which related to East African business.

Q. Would you not regard it as representing roughly speaking what it was thought might be equivalent to the share of the Birmingham office expenses attributable to Ross & Elliott?—*A.* It is a round figure I agree.

Q. Have you any evidence of the exact figure of the Birmingham expenses which could properly be attributable either to Ross & Elliott or to Elliott's share of Ross & Elliott?—*A.* I have no figures in the period under consideration.

10

No Re-examination.

Question by Jury.

Q. Is it the responsibility of a person submitting a return for income tax purposes to make a claim for expenses? I will put it this way. A man puts in expenses for £500 for one year and it is accepted, the next year he does not put it in. Is it the Income Tax Department's duty to point out that it has not been claimed. In other words must he claim specifically in submitting a return?—*A.* I think I can answer that by saying it is the duty of the taxpayer to render the return form which is supposed to show the final net income on which he is to be assessed. 20 That may or may not be supported by accounts. In fact we may not know how the final figure is arrived at, therefore it is obviously the duty of the taxpayer to take not only his receipts but his expenditure and that goes when sending in his form with the figures inserted therein. In practice if the Department found that a taxpayer had accidentally omitted a certain expense which the Department was sure he was entitled to the Department would draw his attention to it and in fact in my calculations on this case this £500 has been allowed in the later calculations which show the amount of tax lost.

Judge : Does your answer amount to this. It is the duty of the 30 taxpayer to claim for the next year if he incurred those expenses?—*A.* The onus is on the taxpayer to give us the correct figure of income. If he makes a mistake against himself and we are aware of it we would draw his attention to it.

Q. But you do not consider it is your duty, but in practice you do?—*A.* That is what I say.

No. 5.
EVIDENCE OF H. WILLIAMS.

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P.W. 2 HAROLD WILLIAMS—Sworn.

Examined by Mr. Bechgaard:

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Q. I think you are a Director and Company Secretary of T. L. ELLIOTT & Co. LTD. of 19 FREDERICK STREET, BIRMINGHAM ?—A. Yes.

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Q. How would you describe the business of T. L. ELLIOTT & Co. ?—
A. They act as representatives for manufacturing principals in various overseas markets including E. AFRICA.

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10 Q. As far as the E. African side of the business is carried on is there some other organisation ?—A. There is at the moment yes.

Q. Before 1952 ?—A. We were in partnership with Ross as Ross & ELLIOTT.

Q. The ELLIOTT in that is ?—A. T. L. ELLIOTT.

Q. Who is the Managing Director ?—A. Yes.

Q. How long have you been with that Company ?—A. Since 1928.

Q. In what capacity ?—A. As a junior first then I was transferred to the accounts department in 1934.

20 Q. When were you appointed secretary ?—A. 1943 and I was acting under the control of the financial director until 1947 after which date I took over full control of the books of the company.

Q. The then financial director was ?—A. Mr. BAMFORD who died last year.

Q. So since 1947 you have been in sole control of the accounts side of T. L. ELLIOTT which included ROSS & ELLIOTT ?—A. Yes.

Q. Before that from 1934 to 1947 you were in the Accounts department ?—A. Yes.

Q. Did you have to deal with the accounting side of ROSS & ELLIOTT ?—A. Yes.

30 Q. Can you produce the BIRMINGHAM office copy of the Partnership Agreement between ELLIOTT and ROSS (B.1) ?—A. That is the copy.

Q. Can you identify the signatures at the end of that document ?—
A. Yes they are T. L. ELLIOTT'S and A. GRANVILLE ROSS'S.

Q. For how long have you been acquainted with ROSS ?—A. I have met him on his visits to the U.K. I cannot tell you exactly how many visits but I have met him on several occasions.

Q. Are you familiar with his handwriting ?—A. Yes I can identify his handwriting.

40 Q. Would you explain the routine of this partnership ROSS & ELLIOTT. What did it handle first ?—A. They acted in B.E.A. as manufacturers representatives and the income of the partnership came from principals in the way of commissions.

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Q. ROSS I think resided in E. Africa?—A. ROSS in NAIROBI and ELLIOTT in BIRMINGHAM.

Q. These commissions you refer to how were they received?—A. A big proportion was received in BIRMINGHAM and a certain amount remitted direct to BIRMINGHAM.

Q. The goods I think in every instance were sold in E. AFRICA?—
A. It was commission on goods sold in E. AFRICA.

Q. Did the partnership sell goods anywhere else?—A. I believe that at one time they did cover the BELGIAN CONGO.

Q. Did they sell in the U.K.?—A. No. 10

Q. You say some of these commissions were received in E. AFRICA and some in the U.K.?—A. Most received in BIRMINGHAM but some were remitted direct.

Q. How were they treated from the accounting point of view?—A. In the U.K. we kept a record of commission received and at the end of the year we produced a statement showing those commissions and it was checked by the Company's auditors and their seal was affixed—C. HERBERT SMITH & RUSSELL.

Q. How were expenses of the partnership dealt with?—A. They were incurred in E. AFRICA and ROSS at the end of the year sent back 20 to BIRMINGHAM a receipts and expenditure account and on this account he showed the expenses incurred in E. AFRICA.

Q. Were there any expenses incurred in BIRMINGHAM?—A. A very small amount. They were charged to the partnership with the approval of ROSS and mainly covered subscriptions to trade journals but the BIRMINGHAM office expenses were not charged to the partnership.

Q. How were the BIRMINGHAM office expenses dealt with?—A. They were charged against our General Revenue.

Q. Would that appear at all in the partnership accounts?—A. No.

Q. For how long did this situation continue with regard to 30 BIRMINGHAM office expenses?—A. From 1927 until 13th June, 1952, the terminal date of the partnership.

Q. To your knowledge was that situation ever queried by ROSS?—
A. Never.

Q. Under that Partnership Agreement I think the profits were divided one-third to ELLIOTT and two-thirds to ROSS?—A. Yes.

Q. That continued the whole time?—A. Yes.

Q. There was no query about that?—A. No.

Q. What would be the actual procedure in every year as far as accounts were concerned. Would you describe the procedure step by step. How 40 did you arrive at the final accounts?—A. ROSS sent a Receipts and Expenditure Account supported by schedules showing encashments on behalf of principals, outlays made and commissions paid direct to NAIROBI and we entered these accounts in the appropriate accounts in our books for

the ROSS & ELLIOTT partnership and then we drew up the final annual partnership accounts and sent these to ROSS with a statement showing commissions received in the U.K.

Q. And the partnership profits were divisible on the basis of which accounts?—*A.* On the accounts shown as an Expense Account and it is shown as two thirds to ROSS, that was after all expenses had been paid.

Q. Those were the two thirds and one third on the basis of the accounts prepared by you in BIRMINGHAM?—*A.* Yes.

10 *Q.* Would you look at R.13. That is the Receipts and Expenditure Account for the year 1940. Can you identify that?—*A.* Yes.

Q. What is the basis of your identification?—*A.* I can see Mr. BAMFORD has broken down various amounts here and I can recognise his handwriting.

Q. Who are those accounts signed by?—*A.* There is a covering letter from ROSS that isn't signed and the accounts are actually prepared by D. G. STEWART & CO. NAIROBI.

Q. On the receipt of those accounts you analyse them?—*A.* Yes and enter them into the appropriate accounts we keep for the partnership
20 in the books of T. L. ELLIOTT & Co.

Q. On the basis of those figures you prepared your final accounts?—*A.* Yes.

Q. Would you now look at G.15. Can you identify that?—*A.* Yes they are the BIRMINGHAM office copies of the original accounts sent to ROSS for 1940.

Q. Would you describe them one by one. Starting with G.1?—*A.* The first account is headed ROSS & ELLIOTT Expenses Account 1940. It is on this account that the profit of the partnership is shown. No. 2 is ROSS & ELLIOTT in account with T. L. ELLIOTT & CO. BIRMINGHAM,
30 and this is a memorandum account to show how the funds furnished by the BIRMINGHAM office had been spent during the year. No. 3 is ROSS' personal account. It shows ROSS's share of the profit from the ROSS & ELLIOTT partnership for that particular year plus a share of profits made on (inaudible) and a debit of certain outlays made at the request of ROSS.

Q. Would you look at G.2. What is the balance shown there on the account between ROSS & ELLIOTT NAIROBI and the Company?—*A.* The commencing balance is £729 : 17 : 6 and the final £1,000 : 7 : 7.

Q. Would you now look at R.13, does that balance appear in there?—*A.* Yes, it is shown as Shs.20000.7/56.

40 *Q.* Would you look at R.41. That is an Expense Account for 1940. Would you compare that with G.1?—*A.* They agree.

Q. Would you now compare R.42 with G.5?—*A.* They agree.

Q. So for 1940 the red exhibits and the green exhibits agree?—*A.* Yes.

Q. Would you look at R.14. Can you identify that?—*A.* Yes.

Q. That purports to be a Receipts and Expenditure Account for 1941 as received from ROSS?—*A.* Yes and I identify that by the handwriting of Mr. BAMFORD.

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tion,
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Q. What procedure was followed on the receipt of those accounts from E. Africa?—*A.* The same procedure as the previous year. We broke the accounts down and entered them in the accounts of the partnership and then produced the final annual partnership accounts and sent them to Ross.

Q. I think the opening balance on this account is £1,000.7.7 or what is it?—*A.* This is in shillings. There is a balance shown at the Standard Bank of S.A., but the opening balance at the bank is 17,000.

Q. The opening balance on the last R. exhibit was a balance of £1,000.7.7. Does that appear in this year?—*A.* That would be the 10 balance at the bank and the local debtors due agreeing with the £1,000.7.7.

Q. Have you compared these red exhibits with the balance in your books?—*A.* Yes.

Q. Are they the same?—*A.* There are a few small differences in some years because certain debit notes or credit notes handled by Ross are not brought into our books until the following year but it did not affect the profits of the partnership in any way.

Q. Would it be correct to say there are minor variations which could be reconciled?—*A.* Yes. 20

Q. Have you satisfied yourself that they are reconciled?—*A.* Yes.

Q. Would you now look at G.8 to 12. I think they follow more or less the same pattern every year. Would you describe those exhibits briefly?—*A.* G.8 is the Expense Account on which is shown the profit of the partnership for the year 1941. G.9 is the account between Ross & ELLIOTT and T. L. ELLIOTT'S BIRMINGHAM which is the Memorandum Account showing how the funds have been spent during the year. G.10 is Ross' personal account. G.11 is the commissions received in the U.K. G.12 is a schedule showing profits made on plywood and general shipments to AFRICA in 1941. 30

Q. Would you compare R.44 with G.8. Do they agree?—*A.* They do not agree.

Q. What is the difference?—*A.* R.44 the commissions received direct amount to £1,594.10.1 but that does not appear in this account.

Q. G.8 is the carbon copy of the accounts sent to Ross. Are you satisfied it is accurate?—*A.* Quite.

Court adjourned at 12.40 p.m.

Court resumed at 2.15 p.m.

P.W.2 HAROLD WILLIAMS, continues on same oath.

Examined by Mr. Bechgaard: (continued)

40

Q. Now would you look at Green Exhibits 15 and 16 and explain what they are?—*A.* Green 15 is the Expenses Account for 1941, Green 16 is Mr. Ross' personal account for the same year.

Q. And you already in dealing with Exhibits Green 8 to 12 dealt with those two accounts as Exhibits Green 8 and 10. Would you explain the duplication?—A. Well, Green 15, the expenses account, after this had been sent to Mr. Ross we discovered that the commissions paid direct to Nairobi had been omitted from this account, and it reflected in Mr. Ross' personal account for that year, so we immediately sent amended accounts out for 1941.

Q. So exhibits Green 15 and 16 were prepared first?—A. Yes.

Q. And the error was discovered how soon?—A. I think the next day.

10 Q. And you then prepared exhibit Green 8 to replace Green 15?
—A. That's correct.

Q. And Green 10 to replace Green 16?—A. That's true.

Q. Did you inform Mr. Ross of this mistake?—A. We did, and I think—after this time I can't swear to this—I am fairly sure that we cabled Mr. Ross that we had sent incorrect accounts. We certainly wrote to Mr. Ross and told him that the accounts I sent were incorrect and enclosing amended true accounts.

20 Q. Have you searched your correspondence files for the relevant period?
—A. We have but unfortunately a lot of our files were destroyed in enemy air raids on the city and we also sent quite a lot away for salvage.

Q. Would you compare Green 16 with exhibit Red 44. Are they the same or are they different?—A. They are the same.

Q. So exhibit Green 15 being wrong, as you've said, it follows that Red 44—?—A.—is also wrong.

Q. From the partnership point of view?—A. Yes.

Q. And the same result would follow with Green 16?—A. Yes.

Q. Would you now look at exhibit Red 15, that is the Receipts and Expenditure Account for the next year, 1942. Can you identify that?
—A. I can.

30 Q. How do you identify it?—A. Mr. Bamford's handwriting is on it, also my own.

Q. Did you follow the same procedure?—A. Exactly the same.

Q. What was that?—A. We analysed it and posted it on the accounts kept for the partnership.

Q. And are you satisfied that the opening balances are reconciled?
—A. Yes.

Q. You've done that yourself?—A. Yes.

40 Q. Would you look at exhibits Green 17 to 21. Can you identify those. What do you identify them as?—A. They are the copies of the amended account.

Q. Your file copies?—A. Yes.

Q. Would you again briefly describe this?—A. Green 17 is the Expenses Account and on this account the balance shown is the balance

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of the partnership for the year. Green 18 is the Memorandum Account showing how the funds advanced by the Birmingham office were expended during the year. Green 19 is Mr. Ross' personal account. Green 20 is the list of the commissions paid to the U.K. and it also shows on this list commissions paid direct to Nairobi and local commissions, and Green 21 is allowances and commissions received and carried forward to 1943.

Q. Would you now compare Green 17 with Exhibit Red 47. Do they agree?—A. No, sir.

Q. What is the difference?—A. The local commissions amounting to £2,221.3.2d. does not appear on the Red 47. 10

Q. Are you yourself satisfied as to the accuracy of Green 17?—A. That is the actual file copy of the account sent to Mr. Ross.

Q. And on what basis has the partnership profit for that year been calculated. On which of those two documents?—A. Green 17 is the true one, 2/3rds has been credited to Mr. Ross.

Q. Would you look more particularly at exhibit Red 47. Would you look at the stationery, the paper on which it is typed. What is the heading?—A. Elliott's Overseas Agency Co.

Q. And was that paper in use by your office at the time?—A. No, it was out of date in 1942. 20

Q. For how long?—A. I should say from about 1935 because there is a name here Elliott and Hopkins, Cape Town, and the style of that company was changed, I believe, in 1935 or '34, so this letter heading wasn't in use in 1942.

Q. Could that Red 47 have come from your office?—A. No sir.

Q. Will you now look at exhibit Red 16? That is a Receipts and Expenditure Account for the year 1943. Can you identify that?—A. I can.

Q. How?—A. By the handwriting of Mr. Bamford and my own figures at the bottom. 30

Q. And you received that in your office and you followed the usual procedure?—A. Yes.

Q. You analysed it?—A. We did.

Q. And incorporated it in your books?—A. Yes.

Q. Are you yourself satisfied that the opening balances can be reconciled?—A. Yes.

Q. Would you now look at exhibits Green 24 to 28? Do you identify those?—A. Yes, I do.

Q. What are they?—A. They are the file copies of the original accounts sent to Mr. Ross for the partnership for the year 1943. 40

Q. And would you describe them briefly?—A. Green 24 is the Expenses Account, the balance represents the profit of the partnership for the year 1943. Green 25 is the Memorandum Account covering the

funds provided by the Birmingham office. Green 26 is Mr. Ross's personal account. Green 27 is the list of commissions received in the U.K. for the year 1943, and Green 28 is a schedule showing profits made during that year.

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Q. That is outside the partnership?—A. Yes.

Q. Would you compare Green 24 with Red 50? Are they the same?
—A. No, they are not.

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Q. What is the difference?—A. On Green 24 we show commissions paid direct to Nairobi amounting to £245 : 3 : 4d. and local commissions
10 £3,187 : 0 : 10d., whereas on Red 50 there is an item shown as commissions paid direct to Nairobi of £1,432 : 4 : 2d.

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Q. And the net difference between those two is?—A. £2,000.

Q. Would you look at the Red exhibit again, Red 50, and look at the paper on which it is typed? What type of paper is it?—A. Elliotts Overseas Co., Limited letter heading paper which was never used for that type of letter and in any event was out of date in 1943.

Q. Like Red 47?—A. Yes.

Q. Could that exhibit have come from your office?—A. No sir.

Q. Would you compare Red 51 with Green 27? Do they agree?
20 A. They appear to be the same but this one is torn at the bottom.

Q. I think Red 51 has an auditors stamp?—A. Yes.

Q. Are you familiar with that stamp?—A. Yes.

Q. Could it or could it have not come from your office?—A. It must have come from our office.

Q. For the next year, 1944, will you look at exhibit Red 17? Do you identify that?—A. I do.

Q. By?—A. By Mr. Bamford's handwriting and my own figures at the bottom.

Q. And on receipt of that what procedure did you follow?—A. We
30 analysed this account.

Q. And?—A. We posted it to the accounts kept for the partnership in the offices of T. L. Elliott.

Q. And you used those for the preparation of the final accounts?
—A. Yes.

Q. Would you look at exhibits Green 30 to 34? Can you identify those?—A. Yes.

Q. What are they?—A. The file copies of the original accounts sent to Mr. Ross for the year 1944.

Q. Would you describe those exhibits?—A. Green 30 is the Expenses
40 Account, the balance represents the profit of the partnership for the year 1944. Green 31 is the Memorandum Account covering funds advanced by the Birmingham office. Green 32 is Mr. Ross' personal account.

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Green 33 is the schedule of commissions received in the U.K. and Green 34 shows profits made on general shipments during 1944, and those were outside the partnership.

Q. Would you now compare exhibit Red 53 with Green 30, are they the same or do they differ?—*A.* They are not the same.

Q. What is the difference?—*A.* Local commissions amounting to £2,254 : 3 : 1d. have been omitted from the Red 53 and in addition, on the debit side there is a small item of 6/- on Red 53 which is not shown on Green 30.

Q. Now what type of paper is that on?—*A.* On the Elliott Overseas Agency letter heading paper, and it is similar to the paper I saw a few minutes ago. 10

Q. Could that have come from your office?—*A.* No sir.

Q. Would you compare Red 54 with Green 33, being the schedule of commissions received in Birmingham?—*A.* They are the same.

Q. And I think here again Red 54——?—*A.*——bears the auditors stamp.

Q. Now for the next year, 1945, would you look at Exhibit Red 18. Do you identify that?—*A.* I do, it has Mr. Bamford's figures on and my own at the bottom. 20

Q. And on receipt?—*A.* We analysed this account and posted the various amounts to the accounts kept for the partnership and prepared the final accounts for the year 1945.

Q. Would you look at Green Exhibits 38 to 43. Can you identify those?—*A.* I do.

Q. What are they?—*A.* The file copies of the original accounts sent to Mr. Ross of the final accounts for the year 1945.

Q. Would you describe them briefly?—*A.* Green 38 is the Expenses Account showing the profit of the partnership for the year 1945. Green 39 is the account covering the funds advanced by the Birmingham office. 30 Green 40 is Mr. Ross' personal account. Green 41 is the list of commissions received in the U.K. Green 42 is the schedule showing the profits made on general shipments to East Africa in 1945, and Green 43 is the schedule showing items shipped to East Africa on a buying basis. Both the latter accounts were not inside the partnership but a share was agreed to by Mr. Ross.

Q. Will you compare Green 38 with Red 56. Do they agree?—*A.* They do not.

Q. What is the difference?—*A.* The commissions paid direct to Nairobi amounting to £1,127 12 6d. does not appear on the Red 56. 40

Q. What type of paper is Red 51 typed on?—*A.* On the Elliott's Overseas letter headed paper but I should say in 1945 that paper was used for correspondence but not for accounts.

Q. Would you now compare Red 57 with Green 41?—*A.* They are the same.

Q. And Red 57 ?—A. That has the auditors stamp.

Q. So Red 57 ?—A. Came from our office.

Q. Would you say that this paper was not used for accounts in 1945. What paper do you use ?—A. We never use letter headed paper. Always blank bank paper.

Q. And Red 57, is that the sort of paper ?—A. No, but it is the more up to date headed paper.

Q. Now I think all these Green exhibits are based on the partnership books ?—A. They are.

10 Q. Do you produce a ledger account, Exhibit Green 6 ?—A. Yes.

Q. What is that, a ledger account of what ?—A. Ross and Elliott's account. It covers the funds advanced by the Birmingham office during each particular year.

Q. And do you identify Green 7 ?—A. I do.

Q. What is that ?—A. That was the Journal used in 1947.

Q. And for the purposes of the Ross and Elliott account, what do you enter into that Journal ?—A. We have accounts here debited Ross and Elliott and credited Ross and Elliott.

20 Q. When you received these Red exhibits from East Africa, into what books did you analyse them ?—A. Into here (Journal) and from here into the ledger accounts.

Q. That is up to 1947 ?—A. I think it may be later than that—1948.

Q. The continuation of that is Green 68 ?—A. Yes, it goes up to 1951.

Q. And do you identify Exhibit Green 13. What is that ?—A. That is the account entitled Nairobi Travelling Expenses Account.

Q. And Exhibit Green 14 ?—A. That is the personal and private ledger account.

30 Q. For what period, up to when ?—A. 1944.

Q. And the continuation of that exhibit Green 25 ?—A. That is up to 1951.

Q. And where is the current private ledger ?—A. Back in the Birmingham office.

Q. Did you take a photostat copy of the closing pages of that account ?—A. I did.

Q. Ross' account ?—A. I did.

Q. Exhibit Green 92 ? Do you identify that ?—A. I do.

40 Q. I think you signed it before the photostat copy was taken in your presence together with ?—A. Mr. Littleton.

Q. Now all these accounts which you have identified are they the basis on which the Green exhibits are made ?—A. Yes.

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Q. Would you now look at Exhibit Red 19 for 1946, the Receipts and Expenses Account for that year. Do you identify it?—*A.* I do.

Q. By?—*A.* Mr. Bamford's handwriting and my own.

Q. And on receipt what did you do?—*A.* We analysed it and posted it to the accounts kept in the books of T. L. Elliott and Co., Ltd., for Ross and Elliott partnership, and then prepared the final accounts.

Q. Would you look at Green Exhibits 44 to 50. Do you identify these?—*A.* I do.

Q. What are they?—*A.* The file copies of the original account sent to Mr. Ross for the year 1946. 10

Q. Would you describe them briefly again?—*A.* Green 44 is the Expenses Account on which is shown the profit of the partnership for the year 1946. Green 45 is the Memorandum Account covering funds provided by Birmingham. Green 46 is Mr. Ross' personal account. Green 47 is an Expense Account and it is to adjust their books with Mr. Ross' bank balance. Green 48 is a list of commissions paid to the U.K. for the year 1946. Green 49 is a schedule of general shipments, and Green 50 is a schedule showing commission on tools shipped to East Africa for that year.

Q. Here again the last two are outside the partnership?—*A.* Yes. 20

Q. Would you compare Red 59 with Green 44. Do they agree?—*A.* No, they don't.

Q. What is the difference?—*A.* On Red 59 there is a debit of £4,264.10.4d. for expenses, whereas on Green 44 the expenses are shown as £2,764.10.4d. On the credit side the commissions paid direct to Nairobi of £2,873.4.10d. which appears on Green 44 does not appear on Red 59.

Q. What sort of paper is Red 59 typed on?—*A.* Ross and Elliott letter headed paper.

Q. Is that the normal letter heading for accounts?—*A.* No, it is 30 never used for accounts.

Q. Would you compare Red 60 with Green 48. Are they the same?—*A.* They are.

Q. And Red 60?—*A.* There appears the auditors rubber stamp.

Q. So that came from your office?—*A.* Yes.

Q. Could Red 59 come from your Office?—*A.* No. definitely not.

Q. Now for that year would you look at Green exhibits 51, 52 and 53. I think they are debit notes. Do you identify them?—*A.* I do.

Q. What are they?—*A.* Debit notes from Ross and Elliott, Nairobi. Green 51 is made out to the Birmingham office and it is marked with "R. 40 and E. Excess Profits Tax, 1945." The previous one was for 1944, and Green 52 is made out to the Birmingham office and marked "R. and E. Excess Profits Tax 1944 balance and 1945 balance."

Q. When they were received, how were they dealt with?—A. On the bottom of each debit note Mr. Ross has written how much was to be debited to his personal account and how much to Birmingham office, and the amount chargeable to Mr. Ross was debited on this personal account for that year.

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Q. Would you look at exhibit Red 20 for the following year, 1947?—Do you identify that?—A. I do.

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Q. By?—A. It has my handwriting on the return.

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Q. And on its receipt what did you do with it?—A. Analysed the account and posted it to the accounts we kept in the books of the Elliott and Ross partnership, and then prepared final accounts for the year 1947.

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Q. Will you look at Green exhibits 54 to 60. Do you identify those?—A. I do.

Q. What are they?—A. The file copies of the original accounts sent to Mr. Ross for the year 1947.

Q. Would you describe them briefly?—A. Green 54 is the Expenses Account on which is shown the balance representing the profit for the partnership for the year 1947. Green 55 is the Ross and Elliott account in T. L. Elliott and Co., Ltd., covering funds advanced by the Birmingham office. Green 56 is Ross' personal account. Green 57 is a suspense account to adjust our office with Ross' bank balance. Green 58 is a schedule of commissions received in U.K., and Green 59 is a schedule of general shipments and Green 60, items shipped on a buying commission basis.

Q. Would you compare Green 54 with Red 62. Do they agree?—A. No, they don't. The expenses on Green 54 are shown as £3,676.17.4d. and they are shown on Red 62 as £6,676.17.4d.

Q. A difference of £3,000?—A. Yes.

Q. And on the credit side?—A. Commissions paid direct to Nairobi amounting to £3,754.1.0d. appear on Green 54 but are not shown on Red 62.

Q. What type of paper?—A. On the Ross and Elliott letter headed paper.

Q. Is that used for accounts?—A. Never.

Q. Could that have come from your office?—A. Never.

Q. And Red 62 could not have come from you. Has the question of office expenses ever been the subject of correspondence between your office and Ross and Elliott?—A. Not to my knowledge.

Q. Do you have any explanation for the difference for this year and preceding ones?—A. None whatsoever.

Q. I think the partnership terminated on the 30th June, 1953?—A. That is true.

Q. Is there any reference made on those accounts?—A. None whatever.

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Q. Would you now compare Red 63 with Green 58, which is the schedule of commissions received in Birmingham?—*A.* They are the same.

Q. Red 63?—*A.* Bears the auditors rubber stamp.

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Q. And therefore that has come from your office?—*A.* It has.

Q. Proceed to the next year, 1948. Would you look at exhibit Red 21. Do you identify that?—*A.* I do.

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Q. By?—*A.* My figures and handwriting.

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Q. And on receiving that?—*A.* We analysed this account, posted the items to the various accounts we have for Ross and Elliott partnership 10 in our books, and then prepared the final accounts for the year.

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tion,
continued.*

Q. Would you look at exhibits Green 62 to 67. Do you identify those?—*A.* I do, they are the file copies of the original accounts sent to Mr. Ross in the year 1948.

Q. Would you describe them briefly?—*A.* Green 62 is the Expenses Account on which is shown the profit for the partnership for the year. Green 63 is the account covering funds advanced by Birmingham office. Green 64 is Mr. Ross' personal account. Green 65 is a schedule of commissions received in the U.K. Green 66 is a schedule of general shipments and Green 67 is a schedule of items shipped on a buying commission basis. 20

Q. Would you compare Green 62 with Exhibit Red 65. Do they agree?—*A.* No, they don't.

Q. What is the difference?—*A.* On Green 62 we have an item shown as expenses for the passage of Mr. D. R. M. Osborne £148.19.5d. This is shown on Red 65 as £348.19.5d. The travelling expenses in British East Africa shown on Green 62 is £5,074.9.9d. This is shown on Red 65 as £9,074.9.9d.

Q. An increase of £4,000?—*A.* Yes, and on the credit side Green 62 shows commissions paid direct to Nairobi amounting to £6,841.16.9d. This is not shown on Red 65. 30

Q. Going back to the two first differences, the increase of £200 in the passage of Mr. Osborne, do you know of any justification for that increase?—*A.* No.

Q. And the second one is the £4,000 difference for the travelling expenses in East Africa do you know of any justification for that?—*A.* None whatever.

Q. Would you look at Red 65. What type of paper is that typed on?—*A.* Paper we describe as inter-office memo paper and it has never been used for the typing of accounts.

Q. And could Red 65 have come from your Birmingham office? 40—*A.* No.

Q. Would you compare Red 66 with Green 65, Green 65 being the schedule of commissions received in the United Kingdom?—*A.* They are the same.

Q. And Red 66, I think, has your auditors stamp ?—A. It has.

Q. So Red 66 has come from your office ?—A. Yes.

Q. Now turn to the next year, 1949. Would you look at exhibit Red 22. Do you identify that ?—A. I do.

Q. By ?—A. My own handwriting and figures.

Q. And on receipt how did you deal with that ?—A. I analysed this account and posted it to the account kept for the partnership in the books of T. Elliott and Co., and prepared the final accounts for the year, 1949.

10 Q. Would you look at Green exhibits 69 and onwards to 74. Do you identify those ?—A. I do.

Q. What are they ?—A. The file copies of the original accounts sent to Mr. Ross for the year 1949.

Q. Would you describe them ?—A. Green 69 is the Expenses Account on which is shown the profit of the partnership for the year 1949. Green 70 is the Ross and Elliott account. Green 71 is Mr. Ross' personal account. Green 72 is the schedule of commissions paid to the U.K. for the year 1949. Green 73 is a schedule of general shipments, and Green 74 is a schedule of items shipped on a buying commission basis.

20 Q. Would you now compare exhibit Green 69 with Red 68. Do they agree ?—A. No, they do not.

3.05 p.m. 12.7.55.

P.W.2 (continued).

Q. What is the difference ?—A. The travelling expenses in B.E.A. are shown on G.69 as a figure of £7,731.16.2 but it is shown on R. 68 as £11,731.16.2. On the credit side Commissions paid direct to NAIROBI £8,258.17.7 appear on G.69 but does not appear on R.68.

Q. Reverting to the difference on travelling expenses. Do you know any reason for this ?—A. No.

30 Q. Would you look at the paper on which R.68 is typed. Is that the paper used for accounts in your office ?—A. No, it is the old letter heading that was many years out of date in 1949.

Q. So R.68 did not come from your office ?—A. No.

Q. Would you look again and compare these two exhibits R.68 and G.69. I think on G.69 there is an item for £20 ?—A. It is not shown on R.68.

Q. Would you compare R.69 with G.72 ?—A. They are the same and it bears the auditors rubber stamp.

Q. The next year is 1950. Do you identify R.23 ?—A. I do. It has my writing on it.

40 Q. After incorporating the details in your books did you produce the usual set of annual accounts ?—A. Yes.

Q. Do you identify G.75 to 80 ?—A. I do.

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Q. Would you compare G. 75 with R. 71?—*A.* There are no differences.

Q. The year 1950. The Green exhibit forms also tally with the red exhibits. What paper is the red exhibits typed on?—*A.* Paper used for the accounts.

Q. So R. 71 comes from your office?—*A.* Yes.

Q. The next year 1951. Would you look at R. 24?—*A.* It has my writing on it and I identify it.

Q. Would you compare G. 81 with R. 74?—*A.* It is the same and bears my signature. 10

Q. So again for 1951 there is no difference between the red and green exhibits?—*A.* No.

Q. During the rest of these years I think you received a series of debit notes from the accused. You have already identified three?—*A.* Yes, the tax for the years 1947, 48, 49 and 50 we received assessments and I think they were received in 1952 but we had no copy of the tax returns.

Q. Would you look at G. 22 and 23? Do you identify them?—*A.* Yes, they are debit notes from Ross. G. 22 is made out to T. L. ELLIOTT and it is marked Excess Profits Tax charged as per statement attached for the year 1941. G. 23 is personal income tax chargeable to Mr. T. L. ELLIOTT but it does not state the year. 20

Q. Can you identify exhibit G. 29? Is that another debit note?—*A.* Yes, in respect of personal income tax as per statement attached, marked Year of Account 1944.

Q. Would you look at G. 36 and 37?—*A.* I identify that. That concerns Excess Profits Tax. G. 36 is for Excess Profits Tax Assessment for 1943 and G. 37 is made out to Mr. T. L. ELLIOTT and it says Personal Income Tax for the year 1944.

Q. Would you now look at G. 61?—*A.* I identify that. That is a debit note from the accused in respect of taxation as per attached assessments 1945 and 1946. Year of account 1947. 30

Q. And you identify G. 87 to 90 inclusive. I think they are the debit notes you referred to at the beginning?—*A.* Yes.

Q. That covers tax for the years 1947, 48, 49 and 1950?—*A.* Yes.

Q. In regard to the partnership tax affairs what was the normal routine? Did you submit any returns?—*A.* No, we left it to the resident partner to make all income tax returns. We had I think in 1946, 47, approximately 11 or 12 overseas offices and we always relied on the resident partner to make the correct return of tax. 40

Q. In the case of E. AFRICA did you see the returns?—*A.* No.

Q. Or copies of them?—*A.* No.

Q. On some occasions you received Assessment Notices?—*A.* Yes, but when we received the later assessments for the years 1947, 48 and 49

and 50 and we knew that these covered years when there had been quite good profits we wrote to Ross and asked him on what basis we were being assessed for tax.

Q. What was the approximate date of that letter?—A. In 1951 I think.

Q. Was that the first occasion?—A. We always relied previous to that . . . we had no doubt.

10 Q. What was the position regarding your U.K. tax?—A. In the early years up to 1945 our share of profits were small, under £2,000, but in later years, in 1947, 48 and 49 when profits were much bigger we showed these assessments paid by Ross on our behalf and passed them over to our accountants and they have already recovered over £3,000 from the British tax authorities against the amount we have paid here.

Q. In other words the tax that ELLIOTT or the BIRMINGHAM office pays on their one third share is claimed under double taxation?—A. Yes.

Q. Would you look at G. 92? What is the present balance shown on that debit or credit to Ross?—A. There is a credit balance of £20,354 : 8 : 11 plus another credit of £82 : 4 : 10.

20 Q. Does that represent the final balance due on the dissolution of the partnership?—A. That represents the amount due to Ross personally.

Q. That figure of £20,000 as far as the partnership of ROSS & ELLIOTT is concerned is that based on the figures in your books?—A. Yes.

Q. Which are translated into the green exhibits?—A. Yes.

Q. In other words it is not based on the red exhibits?—A. No.

Q. So the accused's cash entitlement is based on the green exhibits and the figures given in those?—A. Yes.

Q. In these final accounts you differentiate between commissions as commissions paid in the U.K. and E. AFRICA?—A. We did.

30 Q. Has there ever been any suggestion that part of those commissions were not taxable from the partnership point of view?—A. No.

Q. Are you likely to differ substantially from that figure of £20,000?—A. I don't think so except that before I draw up the final accounts I want a certificate from Ross that the liabilities of the partnership have been (inaudible).

Q. You said at the beginning that you are familiar with Ross' handwriting. Would you look at Exhibits R.110 to 117?—A. They are all in Ross' handwriting.

40 Q. Would you also look at R.120 to 125?—A. They are all in Ross' handwriting.

Cross-examined by Mr. O'Donovan :

Q. The business of ROSS & ELLIOTT consists of earning commissions from manufacturers?—A. Yes.

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Q. I think the great bulk of those manufacturers were established in the U.K. ?—*A.* Yes.

Q. The firm ROSS & ELLIOTT had various Agency Agreements with these manufacturers ?—*A.* Yes.

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Q. I suggest that without exception all those Agency Agreements were entered into in England and signed by Mr. ELLIOTT ?—*A.* I cannot confirm that, I do not know, but I should imagine there were several Agency Agreements that must have been signed by ROSS but I would not know for certain. The majority of them were signed by ELLIOTT.

Q. That was a U.K. contract between ROSS & ELLIOTT and a U.K. 10
manufacturer appointing ROSS & ELLIOTT as the manufacturer's agent ?
—*A.* ROSS & ELLIOTT of BIRMINGHAM and NAIROBI entered into an
Agency Agreement with English manufacturers and the English partners
in those cases would not all sign such an Agreement.

Q. In addition to those agencies which belonged to ROSS & ELLIOTT
I suggest that there were other agencies which belonged to ELLIOTT per-
sonally. That is to say the agency was held in his name but he permitted
ROSS & ELLIOTT to participate so far as E. AFRICA was concerned ?—
A. There may have been a few agreements made out in the name of
ELLIOTT'S OVERSEAS AGENCIES but the great majority of the agreements 20
were in ROSS & ELLIOTT'S name.

Q. But some were not ?—*A.* In earlier days yes, but later on I doubt
it, but I cannot confirm that without seeing the agreements.

Q. Mr. ELLIOTT was by no means a sleeping partner was he ?—*A.* He
was very active.

Q. Do you consider his activities in England on behalf of the partner-
ship earned him in a practical sense the share of the profits he got ?—
A. That is hardly for me to express an opinion on.

Q. Was he very active in England in regard to the conduct of the
affairs of this part of the world ?—*A.* Certainly. 30

Q. In the case of indents from customers which had been obtained
from NAIROBI or anywhere else in E. AFRICA I am instructed that the
procedure was to forward the indent or a copy to the BIRMINGHAM office?
—*A.* Yes.

Q. You actually had a brass name plate in BIRMINGHAM bearing
the name of ROSS & ELLIOTT amongst others ?—*A.* We were the English
office of ROSS & ELLIOTT.

Q. It was your BIRMINGHAM office which on receipt of the indents
would arrange the contract with the manufacturer ?—*A.* Yes, we would
send the indent to the manufacturers but in many cases confirmation 40
would be through London shippers and they would confirm the indent and
arrange payment. What we did was to send the indent to the manu-
facturers.

Q. You got an indent which is an offer and you dealt in BIRMINGHAM
with the manufacturer ?—*A.* Yes.

Q. And got his acceptance?—A. Not necessarily his acceptance. The order would be confirmed by a London shipper and he would accept it or refuse it to the London shipper.

Q. But you would arrange the U.K. end of this business?—A. We looked after the U.K. end.

Q. Which was an essential part of it?—A. Yes.

Q. Without that the indent was useless?—A. Not necessarily so. We acted in a good many ways for ROSS & ELLIOTT.

Q. There were other occasions when E. AFRICAN buyers would approach
10 the BIRMINGHAM office direct?—A. They called and we usually entertained—

Q. I am taking a case when E. AFRICAN buyers placed orders direct with BIRMINGHAM?—A. You mean a company here would send the order direct to BIRMINGHAM.

Q. Yes?—A. I doubt it very much. It would come through Ross' office here.

Q. I suggest there were occasions not only when the order was placed direct in ENGLAND but also occasions when an E. AFRICAN customer who happened to be in ENGLAND on business would call at your BIRMINGHAM
20 office?—A. Yes, but he would make the order out through his LONDON shippers.

Q. And you would deal with the business in ENGLAND?—A. We would pass the order on.

Q. And you would credit ROSS & ELLIOTT because it happened to relate to E. AFRICA?—A. Naturally.

Q. Don't misunderstand me, I am not trying to attack you but on the contrary I am paying you the compliment of suggesting that your BIRMINGHAM office were responsible directly to the earning of quite a fair proportion of the profits of ROSS & ELLIOTT?—A. That is a matter of
30 opinion.

Q. You know a lot about the activities of the BIRMINGHAM office?—A. Quite a lot, I have been there since 1928.

Q. Are you capable, armed with that knowledge based on 27 years' experience, of saying whether or not the BIRMINGHAM office contributed substantially to the profits earned by ROSS & ELLIOTT?—A. Yes, I should say they did.

Q. You say no terminal accounts relating to the accused have been made out?—A. I have recently drawn them up.

Q. I suggest in fact no BIRMINGHAM office accounts showing his final
40 position at any stage have been made for many years?—A. Yes they have.

Q. And in your BIRMINGHAM office you hold a credit of about £20,000 for ROSS?—A. Yes and he also holds money for the company amounting to about £10,000, the net difference being about £9,000 that we owe to ROSS.

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Q. The great bulk of profits were received in BIRMINGHAM by ROSS & ELLIOTT and they were payable in ENGLAND from the manufacturers ?
—A. Yes but in later years quite a lot were paid direct to ROSS.

Q. The great bulk was paid to your BIRMINGHAM office ?—A. Yes.

Q. Do you know what proportion of ROSS' share of the profits he took back to E. AFRICA ?—A. I don't quite understand what you mean.

Q. Remitted to E. AFRICA ?—A. ROSS drew what he wanted each year.

Q. He drew it sometimes in ENGLAND ?—A. He drew amounts in ENGLAND when he wanted it. He came in 1949 and drew certain monies 10 for doctors fees and we paid amounts out.

Q. Do you know that he had an English bank account ?—A. I don't know.

Q. Could you possibly tell from your books what proportion of the profits of ROSS & ELLIOTT found its way to ROSS' LONDON bank account and his E. AFRICA bank account ?—A. I could tell from the accounts what he drew each year.

Q. Could you tell whether it was remitted out of England ?—A. I don't know what he did with it.

Q. It could have been paid into his bank account in England ?— 20
A. We did not pay it in.

Q. You would not know whether it was remitted out of ENGLAND or not ?—A. We did not remit it.

Q. You would not know whether he remitted his profits out of ENGLAND or not ?—A. No.

Q. Are you a qualified accountant ?—A. No.

Q. Are you a qualified Company Secretary ?—A. No.

Q. When did you first have any real responsibility with regard to the accounts of ROSS & ELLIOTT ?—A. From 1940.

Q. Was your position not in fact that of book-keeper until about 1947. 30
—A. No, I think the fact is answered that the secretary of the company in 1943—

Q. Which company ?—A. The parent company T. L. ELLIOTT & Co.

Q. Have you ever been an employee of the ROSS & ELLIOTT partnership ?—A. No.

Q. Have you been paid by them or acted as their agent ?—A. No.

Q. Did you work in regard to the book-keeping under the direction of Mr. BAMFORD ?—A. We worked together from 1940 onwards until 1947 and then from 1947 I took full control. He was in charge until 1947.

Q. Did you until 1947 have to work under his direction ?—A. I did. 40

Q. I suggest what happened was that Mr. BAMFORD had an office and you and another employee shared another office and Mr. BAMFORD

used to pass you vouchers to enter into books?—A. It is hardly true. Mr. BAMFORD had an office he shared with ELLIOTT and I had an office leading off from there but it wasn't in the general office and Mr. ROSS would not come through my office to get into ELLIOTT's office.

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Q. Used Mr. BAMFORD not to direct you what to put in a book or what not to put in a book?—A. He was in control.

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Q. Control what you put into a book?—A. If I made an incorrect entry he would correct it.

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10 Q. But did he give you no instructions in the first place?—A. He knew I had been so many years that I knew the procedure.

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Q. You had to keep a number of accounts did you not?—A. Yes.

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tion
continued.

Q. You kept a number of company accounts?—A. Associated companies.

Q. You and your associate kept those accounts under BAMFORD's direction including for example ELLIOTT LUCAS LTD.?—A. I was not concerned with ELLIOTT LUCAS until 1935.

Q. Did you have to keep the accounts of HILL ELLIOTT & Co.?—A. It was a firm similar to ROSS & ELLIOTT and they were in INDIA.

20 Q. Did you have to keep their books?—A. No, they had their own books in INDIA, it was incorporated in INDIA.

Q. Did you have to keep entries in your own books relating to them?—A. All commissions received.

Q. Did you have to act similarly with regard to ELVICIA TOOLS?—A. I don't think I have been associated with them in any way whatever.

Q. Did you have to keep Mr. T. L. ELLIOTT's personal account?—A. Yes and I signed his personal cheques.

Q. And other members of his family?—A. No.

Q. The books you kept were they the books of account of T. L. ELLIOTT & Co.?—A. Yes.

30 Q. They are a limited liability company's books?—A. Yes.

Q. The books you have produced in this court are not the partnership books of ROSS & ELLIOTT they are books kept by a company in which accounts reflecting on the transactions of ROSS & ELLIOTT are conducted?—A. Yes.

Q. Was it not true that BAMFORD used to open all the mail which came to the BIRMINGHAM office?—A. I think he opened the mail until 1943. In 1940 BAMFORD I think only appeared in the office in the mornings and went home at mid-day. He was a man of over 70 then and he died last June at 81.

40 Q. Do you recollect when Mr. LITTLETON came to ENGLAND?—A. I remember him coming.

Q. In order to investigate the income tax position of ROSS & ELLIOTT?—A. Yes.

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Q. He questioned you then as well as ELLIOTT ?—A. He saw ELLIOTT and also me.

Q. And as a result of seeing you did you then go through the company's records to make sure what papers you could find ?—A. Yes.

Q. You handed to him a number of documents ?—A. Yes.

Q. Some of which were carbon copies and some originals ?—A. Yes.

Q. Can you be certain that you had personally seen all those carbon copies and other documents prior to LITTLETON asking you to look through your files ?—A. They had been under my control.

Q. Did you recognise each of them as a document which you had seen 10 before ?—A. I did, every one.

Q. Will you look at R.13 to 24. You say you know Ross' handwriting ?—A. Yes.

Q. Is there any example of his handwriting or signature on any one of those documents ?—A. No, there is not a signature on any of them.

Q. Is there any handwriting of his on any ?—A. Yes on this account for the year 1945—R.18.

Q. Is that the only one on which you can find anything written ?—A. Yes.

Q. That is a schedule of principals commissions ?—A. I believe it is. 20

Q. Do you recollect having received those personally before ?—A. They would not be addressed to me personally.

Q. Do you know where you received them from. Can you recollect how they came into your possession ?—A. They came from ROSS as always.

Q. Do you remember it ?—A. I can remember them coming.

Q. They were not addressed to you personally ?—A. No.

Q. How did you receive each one ?—A. I do not remember whether they came by air or sea mail but I remember the accounts coming because I was always so anxious to get these overseas accounts finalised and sent 30 to the principals so I was always enquiring whether they had come.

Q. From whom did you enquire ?—A. BAMFORD until 1943-44 opened the mail but all these papers relating to accounts found their way to my desk.

Q. How ?—A. BAMFORD would bring them to me.

Q. All of them ?—A. If I was not there whoever opened the mail possibly Mr. T. L. ELLIOTT would bring them. He would bring them in and say "Here are the accounts for the last year."

Q. They would find their way on to your table ?—A. Yes.

Q. You are assuming therefore they must have come from NAIROBI 40 from the accused ?—A. If you prefer to put it that way I assumed.

Q. You have identified a number of green exhibits and most of them are company accounts. You say you have seen all those before. Were you personally responsible for the preparation of each of them?—A. I was responsible for the preparation of the E. AFRICAN side from 1946 to 1952 prior to that I assisted in drafting the accounts and I saw them before they were posted to Ross.

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Q. Who actually finalised them?—A. BAMFORD would finalise them up to about 1946–1947.

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10 Q. When was the last time after he had finalised them that you would see them?—A. He would show them to me and ask me whether I could see any mistakes.

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Q. Would you see them after that?—A. They then go to the mailing clerk for posting.

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tion,
continued.

Q. Do you know of your own knowledge that they were posted to the accused in NAIROBI or are you making another assumption?—A. I assumed they were posted.

Q. You say you did receive debit notes and assessments relating to ELLIOTT's income tax in the U.K.?—A. We received them in the U.K.

20 Q. Was ELLIOTT at all curious to know how much tax he had been charged in E. AFRICA and how it had been calculated?—A. He was, but prior to 1945 our profits were very small and after then when we had the very big debit notes for the years 1947 to 1950 we wrote to Ross asking on what basis we had been assessed.

Q. Will you produce the letter you wrote?—A. I haven't got it but I think ELLIOTT wrote it.

Q. Is this the one—B.5?—A. I think that is the letter.

Mr. O'Donovan : I produce this letter as Exhibit B.5.

30 Q. You seriously say do you that that letter indicates how anxious you were in England to find out how tax was calculated?—A. We had wanted to know when we received the assessments the figure on which tax had been paid because we were recovering it from the British tax authorities and we wrote in order that we could put the information to our accountants.

Q. You realise now that had you looked at the reverse of the assessments you received you would have found the sums on which ELLIOTT had paid tax?—A. Yes, but we did not know on what basis we were being assessed. We did not know what allowance ELLIOTT was getting as a non-resident partner, but we left it to Ross.

40 Q. You want to say that if there was any (inaudible) you were quite innocent?—A. We were, we paid U.K. tax.

Q. Did you look at the figures stated in the assessments you received?—A. Yes.

Q. Did you try to reconcile them?—A. We could not.

Q. Did you try to?—A. Yes, we did.

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Q. When you could not did you write to accused?—*A.* Yes.

Q. Would it not have been simpler to ask him to explain the discrepancy?—*A.* No, because we relied on Ross and had no reason to think there was underpayment of tax.

Q. Then why ask for the Third Schedule?—*A.* Because when the amounts arrived we paid over £4,000 and our accountants wanted to know.

Q. When your own accountants wanted to know why not write and ask him the question you wanted to know?—*A.* We had no reason to believe there was any underpayment of tax. We were quite . . . It would rather have looked as though we doubted Ross' capabilities. 10

Q. Without suspecting you could simply have written and asked for an explanation of figures in which you could have received an innocent reply?—*A.* The earlier years were quite small—

Q. You speak of a first occasion in relation to which these charges relate when you sent an amended account?—*A.* In 1941.

Q. Do you remember that incident?—*A.* Yes, perfectly well.

Q. How long after the original accounts did you send the amended ones?—*A.* The next day I think. BAMFORD left at mid-day after the incorrect accounts had been drawn up and posted to Ross and he came in the next morning and said to me did I know what we had done and I said no and he said we have omitted those commissions paid direct to NAIROBI and amended accounts were drawn up immediately and posted. I am confident that a cable also was sent to Ross advising him to ignore the accounts in the post, but I cannot produce the cable. 20

Q. You do not know of your own knowledge that the amended accounts were ever posted?—*A.* They were drawn up but I did not see them put in the letter box.

Q. Can you produce from your records a single letter or acknowledgment signed by the accused of any of this literature you allege you have sent him?—*A.* I do not think he ever did acknowledge them, he accepted them. 30

Re-
examina-
tion.

Re-examined by Mr. Bechgaard.

Q. Were any letters ever received querying these accounts?—*A.* Not to my knowledge. Ross always accepted the accounts but I think he did write occasionally saying he expected that it would be a good year, but there was no comment on the accounts.

Q. Do you remember a series of red exhibits, the schedules of commissions received in the U.K. all except the first one bearing the CHS & R audit stamp. They have been produced I think out of the Income Tax Department's custody and you have given evidence that those were the ones that came from your office?—*A.* Those with the rubber stamp CHS & R must have come from the BIRMINGHAM office. 40

Q. So you could assume therefore that the accounts were received in E. AFRICA?—*A.* Yes.

Court adjourned at 4 p.m.

12.7.55.

No. 6.
EVIDENCE OF J. LITTLETON.

a.m. 13th July, 1955.

Court as before.

P.W.3—JOHN LITTLETON, sworn.

Examined by Mr. Bechgaard:

Q. You are an Assistant Superintendent attached to the C.I.D. Headquarters, Nairobi?—A. I am.

Q. And in February of this year you received instructions to commence
10 investigations into the present case?—A. I did.

Q. You received a certain number of exhibits from Mr. Brown?
—A. Yes.

Q. What were these?—A. The ones which are now marked with a red number.

Q. And later, on instructions received again, you flew to the United Kingdom to investigate the case there?—A. Yes, on the 25th March.

Q. I think you were accompanied by——?—A. Mr. Kennedy, Crown Counsel.

Q. To advise you?—A. That is so.

20 Q. And you took some of those exhibits with you?—A. I did.

Q. What did you do with the others?—A. The originals of some and photostat copies of others, those which I didn't take with me were locked in my cabinet in my office.

Q. On arrival in the U.K. where did you go?—A. On the 30th March I went to the offices of Messrs. T. L. ELLIOTT and Company Limited in Frederick Street, BIRMINGHAM.

Q. And for how long did you pursue your investigations?—A. I was there until the 14th of April, and during that time I saw Mr. Thomas Lea Elliott and the witness Mr. Harold Williams.

30 Q. And were any exhibits produced?—A. They were. The exhibits which are now marked Green, and the two which are marked with a blue number.

Q. And what did you do with these exhibits?—A. Brought them back to Kenya.

Q. Would you look at exhibit Green 92? That is a photostat copy of the account of the accused in the ledgers of T. L. Elliott & Co.?—
A. This is a double page No. 213 of a personal ledger at the offices of Messrs. T. L. Elliott, Birmingham, which I understand was still in common use. I signed the page on the 14th April this year and on that day it
40 was photostated in my presence and the copies produced. Mr. Williams was also present and signed the page.

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tion.

Q. On your return from England did you see the Accused at any stage in connection with this case?—*A.* Yes, on the 3rd May this year I saw him at Soames Chambers, Government Road, Nairobi at about 12.5 p.m. I told him I was a Police Officer and that I had a warrant for his arrest. Attached to the warrant were the 36 charges now before this court, and I read over to him the first charge and explained to him that there were 35 other charges of a similar nature. I cautioned him and he said “I have already explained all these matters to Brown of the Income Tax. I think this is most unfair.” He was taken to C.I.D. Headquarters where all 36 charges were read over to him and he was served with a copy 10 of them. Cautioned, he said “I have nothing to say at this stage.”

Cross-examined by Mr. O'Donovan :

Q. When you were in England, did you make inquiries of Mr. Elliott?—*A.* I did, I took a statement from him.

Q. Did he produce some of those exhibits to you?—*A.* They were produced physically first by Mr. Williams and identified to me by Mr. Elliott during the course of his statement.

Q. Is that because Mr. Williams had not identified them all in the first place?—*A.* No, he knew of them all but Mr. Elliott spoke of them in his statement and they were sort of there to refer to and identify. 20

Q. Was it arranged for Mr. Elliott to come to this country from England to give evidence?—*A.* Yes, it was.

Q. Did he in fact get as far as Mombasa?—*A.* He did.

Q. Was it not, in fact, the intention of the Crown to call him, not at the preliminary inquiry but at this trial, and notice to that effect was given to the defence? Do you know whether Mr. Elliott was examined? He is an old man and was examined in England was he not, medically?—*A.* I understand so.

Q. And found to be fit enough to come to Nairobi to give evidence?

His Lordship : Is that evidence here? 30

Mr. O'Donovan : No, my Lord.

No re-examination.

Mr. Bechgaard : That is the close of the Prosecution case.

Section 302 (2) complied with.

(Accused elects not to give evidence.)

Mr. Bechgaard addresses.

Mr. O'Donovan addresses.

Court adjourned at 12.00.

No. 7.

SUMMING UP OF WINDHAM, J.

10 a.m. 14.7.55.

SUMMING UP.

Gentlemen of the Jury, you have heard the evidence in this case and the speeches of learned counsel and it now falls to you after I have summed up the evidence and commented on it to make up your mind whether you think that these charges or any of them have been proved against the accused man. Now before I start to review the evidence there are one

- 10 or two matters of a more general nature which I ought to inform you of. First of all you will remember the cardinal rule of criminal law that the Crown must prove its case against an accused person beyond reasonable doubt and that if it does not do so, and if you are left with some reasonable doubt as to whether the case has been proved, then it is your duty to bring in a verdict of not guilty. Now reasonable doubt means a doubt based on the evidence, and which appeals to your sense of reason, and which is a genuine doubt which might make you feel uneasy in your consciences if you were to bring the verdict of guilty in spite of such a doubt. It is not just any possibility—any faint possibility—that the accused might not
- 20 be guilty. You can bring in a verdict of guilty if there is nothing more than that. Reasonable doubt is a solid doubt based on the evidence, and the Crown must prove its case without leaving any such doubt.

Well now Gentlemen you are the judges of fact in this case, so that if there is any fact which has to be proved and which has not been proved to your satisfaction, then it is your duty to bring in a verdict of not guilty if that fact is of the essence of one of the elements of the charges. If there are any matters of law that is my province and I will direct you and you will have to follow my directions on that.

- Now we will turn to the charges. There are the formidable number of
- 30 36 and they are all based on alleged offences against the Income Tax Legislation or legislation akin to that, namely, Excess Profits Legislation. Of the 36 counts you have no doubt already appreciated they can be taken in groups. First of all, the alleged offences relate to the years 1941/1949 inclusive. Now Count 1 alleges an offence against the Income Tax Legislation, namely, that for 1941 the accused omitted from his Income Tax Return certain commissions which it is alleged the partnership had in fact made and that omission was £1,694 odd. In the Charge Sheet all these figures in pounds are expressed in shillings. That is the first count. Now the second count is bound up with it because it relates to the same
- 40 shortfall being considered in relation to the return attributable to the accused himself and to his two-thirds share in the partnership; it is in short, two-thirds of that figure I have given you. In respect of 1941 you may remember there was no return for the other partner so there is no charge for 1941 in respect of that one-third; but for all the other years you will notice that the charges with relation to the non-disclosure of commissions are in groups of three, first in respect of the partnership and second in respect of the two-thirds share of Ross, the accused, and thirdly in respect of the one-third share of ELLIOTT his partner. So Counts 1 and 2 are in respect of that alleged shortfall for 1941. Count 3 is one of the five

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counts that relate to the Excess Profits Tax Ordinance 1941, that is to say the Ordinance which imposed a 60 per cent. excess profits tax during the years of the war, and that again, in respect of those five years 1941 to 1945, is bound up with the same alleged shortfalls or failure to disclose commissions as are covered by the other counts relating to the income tax proper. You will remember that Mr. BROWN gave evidence. He told you that the Ordinance was in force for those five years and that in assessing the excess profits it was based on the same returns as those for income tax. So if the return for income tax was false you would have in respect of those five years four offences. For 1942 there are charges 4, 5, 6 and 7. 10
Charge 4 for the partnership, 5 for the accused's two-thirds share, 6 for ELLIOTT'S one-third share and 7 for the excess profits. Similarly for 1943, there were the next four charges, 8, 9, 10 and 11; 11 being the excess profits charge. Similarly for 1944 there were the following four charges, 12, 13, 14 and 15, count 15 being in respect of the excess profits. Then again for 1945 you have got Counts 16, 17, 18 and 19, count 19 being for the excess profits. That is the last year in which the Excess Profits Legislation is concerned. In respect of 1946 there were four charges. But this time Count 20 relates to a failure to disclose commission, and count 21 relates to an alleged over-declaration regarding expenses incurred. It alleges 20
fraud in that too much was submitted in respect of expenses incurred. Counts 26 and 27 are the two-thirds and one-third of the count relating to the partnership return. That is 1947. Turning to 1948 there were five counts, 28 to 32. 28 is a shortfall in commission, 29 and 30 are both over-statements of expenses, 31 and 32 are the two-thirds and one-third share attributable to these two partners respectively. Lastly 1949. Count 33 is the shortfall regarding commission, count 34 relates to over-statement of expenses, and 35 and 36 are the two-thirds and one-third share of these two partners. You will remember the evidence that the returns are given in respect of the partnership but the tax is assessable 30
on the partners and in proportion to the share in which they are entitled to be paid profits under their Partnership Agreement. That takes you through the Counts rather briefly Gentlemen. Now the Counts relating to the failure to declare commissions are under Section 75 of the Income Tax Ordinance which has now been replaced by the East Africa Income Tax (Management) Ordinance 1952, but the offences, if they were committed, were incurred whilst the old Ordinance was in force, so that would be an offence under that Ordinance. As a matter of fact the nature of the offence has not been changed from the old Ordinance to the new. Well the offences in respect of those charges are: "Any person who with intent 40
to evade or to assist anyone else to evade tax omits from a return any income which should have been included." The Counts which relate to the overstatement of expenses are under another paragraph of the same section which says: "any person who with intent to evade or to assist any other person to evade tax makes use of any fraud or authorises the use of any fraud." So the one case is omitting to include what you should have included and the other case is fraudulently saying you incurred expenses whereas in fact you incurred fewer expenses. While we are dealing with this section I would draw your attention to subsection (2) of it which 50
says: "Where in any proceedings under the section it is proved that any false statement or entry is made by any person that person

shall be presumed to have made that false statement or entry with intent to evade tax," so if the contrary is not proved, that is to say, if it has not been proved that these acts were done not with the intention of evading tax, then you must presume that they were done with the intention. Of course you have first got to be satisfied whether the offence was committed at all, whether anything was omitted which should have been included or whether there was a false statement with regard to what expenses had been incurred. Now the main contention on behalf of the Crown in this case is, and they seek to prove it by the evidence of Mr. BROWN and

10 Mr. WILLIAMS and from circumstantial evidence, they seek to prove that the accused when he submitted partnership returns to the BIRMINGHAM end of the partnership gave figures which were the correct figures with regard to commission obtained and expenses incurred and that the BIRMINGHAM office on the strength of these figures submitted broke them down and on the basis of that sent out finalised partnership statements, which were the Green exhibits, back to the accused in KENYA so that he could see that the true figures were based on the information he himself had given; and after that, when he made his income tax returns, he deliberately, that is what the Crown would ask you to infer, omitted each

20 year considerable sums in respect of those commissions and also overstated his expenses sometimes by adding £1,000 on and sometimes a few hundreds and that the total of these shortfalls, according to the figures which the Crown witnesses have given, over that period of eight years comes to something like £43,000. Now one of the important points which you have got to decide for yourselves and have no reasonable doubt about it, is whether it has been proved to your satisfaction beyond reasonable doubt from the circumstances or in any other way, first of all, that the figures said to have been sent by the accused from NAIROBI to BIRMINGHAM, the original figures on which these Green exhibits are based—whether they

30 were in fact sent by the accused or whether they were received from the accused. Because of course in a case of this kind it is seldom if ever that a witness can come and say "I flew myself with these things in my hand, having been given them by the accused, and I gave them into the hands of ELLIOTT or someone in that office." The only evidence is that they were assumed to have been received from the accused through the post, and Mr. WILLIAMS has given evidence on that point which I will refer you to and you must make up your minds whether you think that it has been sufficiently proved to you. Now Mr. WILLIAMS said this: "The partnership expenses were mainly incurred in E. Africa. The accused sent

40 accounts of these He sent receipts and expenditure accounts including commissions paid in NAIROBI. On these we drew up the final partnership accounts. Profits were divided on the basis of the accounts prepared by us." Later on he said this of Exhibits R.13 to 24 which are the exhibits which are said to have been sent from NAIROBI by the accused to BIRMINGHAM. He said "R.13-24 contained nothing in the accused's handwriting or signature except that on R.18 his handwriting appeared in the schedule. These exhibits came from the accused. I can remember them coming, although they were not addressed to me. I remember because I was always anxious to get these overseas accounts finalised.

50 They all found their way to my desk. BAMFORD would bring them to me" (he was the old man who died a year or two ago)—"or Mr. Elliott's son would, or whoever opened the mail. I naturally assumed that they

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in fact came from the accused." Well Gentlemen you have got that evidence that they were not in accused's handwriting, except one which had some handwriting on it; but in the ordinary course of business WILLIAMS assumed that they would come from him because it was the NAIROBI partner who would send these returns and that was the practice over the years. And you will also bear in mind that there is in law a presumption, it is to be found in Section 114 of the Indian Evidence Act, by which you may if you want to presume, that if it was the accused who in the ordinary course of business sent these accounts, therefore these particular exhibits R.14-22 did come from the accused. But you are not bound to assume that; it is entirely a matter for you whether you think in all the circumstances that that point has been proved sufficiently. 10

Well now we come to the question of the Green exhibits, that is to say, the statements made up in BIRMINGHAM on the basis of those Red exhibits and sent from BIRMINGHAM to the accused. Mr. WILLIAMS produced the carbon copies of those Green exhibits. Well there again you have to decide whether, taking that presumption I have already pointed out, you think that those Green exhibits of statements of partnership accounts were in fact sent from BIRMINGHAM and reached the accused. Those Green exhibits went in groups of five and you will remember they started with Green 8 and I think the last was 74. Well now what is the evidence about that? Mr. WILLIAMS said this: "From 1946 to 1952 I was responsible for preparing the Green exhibits. Until that time BAMFORD would finalise them and show them to me. I then assumed that they were posted to the accused in the ordinary course of business." He admits he did not, and you would hardly expect him to have done, actually see them being put into the post box. There again you must make up your minds whether you think that has been proved to the satisfaction of yourselves; because the Crown's case is that the accused had received these exhibits and knew perfectly well what the correct figures were which he should embody in his income tax returns, that not only he knew what the figures were but he should have seen they were in fact the figures he himself had sent to BIRMINGHAM, but that nevertheless he submitted different figures to the income tax authorities in his returns. 20 30

Well now the third stage in the Crown's case is this submission of the returns. The income tax returns were Exhibits R.43-69 inclusive and they were in groups of three. I am now talking about the nine years he is being charged with, but you will remember there were exhibits for a year or two before and after also put in, but I am talking about those nine years. Well now Mr. BROWN, the income tax man, who gave evidence and who had a number of interviews with the accused before these proceedings started, says that the accused admitted having written and signed those income tax returns, that is to say Exhibits R.43, 46, 49 and so on. But you will remember that to each return were attached two other exhibits, one in respect of the expenses incurred and the other in respect of commissions, and it has been suggested by learned counsel for the defence, and you must consider the suggestion, that although the accused admits having signed the returns themselves there is nothing to show that he attached those attachments; and it was those attachments, in particular R.44, 47 and 50 and so on, it was those which were compared with the Green exhibits that we have just been mentioning and between 40 50

which the discrepancies were discovered which are the basis of these charges against the accused. Well now the accused in his interviews did not say that those attachments had been attached when he submitted the returns themselves; on the other hand he did not deny it. And you will remember there was some evidence from Mr. WILLIAMS that those exhibits were written on paper of a kind which was certainly not in use at the time by the BIRMINGHAM end of the firm for accounts; in some years the paper was quite obsolete or in other years it was used perhaps for correspondence, but not for accounts. Well there

10 again you have to make up your mind whether you think it has been proved that the accused when he submitted those returns must have omitted the attachments with them. Here again I will touch on the question of proof. It is not the only way of proving a thing to get an eye witness to say he saw him attaching them. Things can be proved by circumstances, and they can be proved to your satisfaction, if you feel that the circumstances only point to that conclusion that the accused must have attached them. Circumstantial evidence is a very important kind of evidence both in Criminal and Civil proceedings. In criminal proceedings, if there is only circumstantial evidence to act on, you cannot reach a conclusion adverse

20 to the accused unless you feel that the only reasonable direction which the circumstances point is the direction which would incriminate the accused. If you feel there is any other reasonable possibility, I do not mean a vague possibility, then you should give the accused the benefit of any doubt. But if you think the only reasonable possible conclusion from all the circumstances is that the accused must have attached those attachments, well, you are entitled to find that he did, and that he was making himself responsible for these statements in the income tax returns which contain the shortfall in commission returns and the exaggerated statements of expenses incurred. You must always remember that the Crown's case

30 must succeed on its own merits, so if you feel it has not been proved beyond reasonable doubt that the accused submitted these returns you should give the accused the benefit of that doubt and you should not take into consideration the fact that the accused has not given evidence himself. The only way in which you can take that fact into consideration is in a negative way, namely, that he has not produced any explanation which you might have thought would raise a reasonable doubt in your mind as to what the circumstances prove. If the accused says nothing then you may feel the circumstantial evidence is so strong that it must point to his

40 guilt and there is nothing he has said raising a reasonable doubt in your minds. But the circumstances must be strong enough to prove the case beyond reasonable doubt. Just touching on the question of persons not giving evidence, I will at this stage mention the fact of Mr. ELLIOTT himself not having given evidence. You will remember he was not called. He was to have given evidence. He came as far as MOMBASA with that object in view and learned counsel for the defence has pointed out that since Mr. ELLIOTT has not given evidence you are entitled to presume, as he was a Crown witness, that it is perhaps because the evidence he would have given would have been against the Crown and favourable to the accused and that is perhaps why the Crown have not called him. On

50 the other hand you have the statement from learned counsel for the Crown from the bar which was not objected to that there was a report on Mr. ELLIOTT's health from a doctor suggesting that it would have been

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dangerous to his health if he had come up here to give evidence and the Crown in the interests of his health did not call him. Well there Gentlemen you can draw what conclusion you like as to the absence of Mr. ELLIOTT from the witness box.

Now we will turn to the question of whether, if there was a short declaration as to profits made, that was any contravention of the Ordinance, that is to say, whether there was a failure to disclose what ought to have been disclosed in the return; and it has been suggested for the defence that there is nothing to show that the shortfall in profits for each year was a shortfall which would fall to be taxed in E. AFRICA. It is suggested 10 that perhaps some of these profits would be taxable in the U.K. and therefore there was no obligation to show them in KENYA or E. AFRICA. Well now we will first of all turn to the law—Section 7 (1) of the Income Tax Ordinance which is Section 8 of the replacing Act without any material alteration, says: “Tax shall be charged in respect of each year of income upon the income of any person accruing in, derived from, or received in EAST AFRICA.” So you must be satisfied that the income which was not declared, if you feel it was not declared—these commissions—you must be satisfied that it was income which would be taxable in E. AFRICA, that is 20 to say it accrued in, was derived from or was received in E. AFRICA. We have had evidence that some commissions were paid in the U.K. and you must apply your mind to the question whether these particular shortfalls have been proved beyond reasonable doubt to have been commissions on which income tax could properly be chargeable in E. AFRICA. Now Mr. BROWN in his evidence, when he was dealing year by year with these various shortfalls, in each case said that the shortfall commission items were those described here as “local commission” or as “payable direct to NAIROBI” and if you go through the evidence you will see that that is so in each case. I have been through it and I have checked up on that but you may remember yourself. If that is so, then you may feel that these 30 particular shortfalls certainly would relate to commission which accrued in, derived from or was received in E. AFRICA.

I turn now to the question of overstatement of expenses. Well now it may be that some excessive claims might be for expenses incurred in the U.K. Learned counsel for the defence has said that with regard to the BIRMINGHAM expenses nobody has said what they are, and maybe the allegedly excessive claims for expenses included some incurred in the U.K. On the other hand you will recall, or I will remind you, that Mr. BROWN when he gave evidence about these excessive claims for expenses in each case described the item under which these claims fell. 40 Now the first one in 1946 was a matter of £1,500 described as travelling expenses in B.E.A. Next 1947, £3,000 was described as travelling expenses for E. AFRICA. 1948, £4,000 E. AFRICAN expenses and another one for that same year which was for £200 (described in the shorthand report as £2,000, but that is an error, it should be £200), that is described as expenses and passage, and the next in 1949 was £4,000, described as E. AFRICAN expenses.

Now you will consider the question which was raised by learned counsel for the defence as to whether certain books which were produced by Mr. WILLIAMS from the BIRMINGHAM end are admissible as evidence 50 against the accused. Learned counsel for the defence stated, and that

statement was correct in law, that an accused cannot be bound by any statement in something which is not made by himself or even by one of his partners, and those books, G. 6, 7 and 92, were books produced by Mr. WILLIAMS and they were not the partnership books of ROSS & ELLIOTT but they were the books of T. L. ELLIOTT and Co. Ltd. which of course was not the same and so properly any statements in those books would not be binding on the accused. On the other hand you will recall Mr. WILLIAMS' evidence that statements in those books were placed there on the strength of these Red exhibits 14 and 22 which were said

10 to have been sent by the accused from NAIROBI. Perhaps I had better read the passage. Mr. WILLIAMS was being examined and he said: "Q. What would be the actual procedure in every year as far as accounts were concerned?" He said: "ROSS sent a Receipts and Expenditure Account supported by schedules showing encashments on behalf of principals, etc., and we entered these accounts in the appropriate accounts in our books for the ROSS & ELLIOTT partnership and then we drew up the final annual partnership accounts and sent these to ROSS with a statement showing commissions received in the U.K." Q. "And the partnership profits were divisible on the basis of which accounts?" A. "On

20 the accounts shown as an Expense Account and it is shown as two-thirds to ROSS, that was after all expenses had been paid." And then: "On the receipt of those accounts you analyse them?" A. "Yes and enter them into the appropriate accounts we keep for the partnership in the books of T. L. ELLIOTT & Co." So from that you might feel that while the entries in those books might not be binding on the accused, yet if they were transcribed from papers from the accused then they might be said to be admissions from the accused, if you are satisfied that R. 14-22 were sent by him from NAIROBI to BIRMINGHAM.

Another matter which you should consider in making up your mind

30 whether you think the case has been proved against the accused beyond reasonable doubt is his attitude at the interviews and during the time before these proceedings were instituted. It was Mr. BROWN who gave evidence about that and he said that the accused seemed during these interviews willing to co-operate and get the matter cleared up. But he said: "I got the impression that he was not so much willing to co-operate as wanting to appear to be willing to co-operate." Of course that is rather a different thing. The accused did bring certain books you will remember, not all at once but over the course of a few interviews, those first Red exhibits

40 4-8, received either from the accused or his accountant, Mr. TAYLOR, ledger, cash book, petty cash book and another petty cash book. Mr. BROWN said that many sheets had been extracted from the ledger, Ex. 4, and he never got the missing sheets. We do not know what they were, but that is a fact, if you believe Mr. BROWN, a piece of evidence which you must give what weight you feel proper to. There was also in connection with the question of expenses incurred at the BIRMINGHAM end the evidence about that £500 payment to ELLIOTT which you asked about Gentlemen yourselves, the £500 which was not continued in later years. Perhaps I had better refer to the evidence on that too. "Q. What

50 did you think the £500 was in respect of?—A. I conceived it to be in respect of expenditure on ELLIOTT'S own office. Q. You knew he had an office in BIRMINGHAM?—A. T. L. ELLIOTT & Co. or Mr. ELLIOTT. Q. If the deduction of £500 a year was reasonable at all the inference is you

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realised or your department did that ELLIOTT was engaging amongst his other activities in earning part of the profits in BIRMINGHAM?—
A. He was not working on partnership business in BIRMINGHAM.” Then there were a number of other questions. “The £500 allowed to ELLIOTT was merely a fictitious or nominal or artificial sum?—A. It was. I would describe it as a nominal sum which as far as I can see from the papers had been agreed at an early stage as representing the proportion of the BIRMINGHAM office expenses which related to E. AFRICAN business.” And in answer to your question Gentlemen: “If the person submitting the return puts in a claim for expenses, for one year, then it is up to him to claim for next year too, if incurred. If he doesn’t we will point it out, though it is not our duty to do so.” 10

Well Gentlemen I do not think there is very much more I have to say to you. I think I have been over the evidence and pointed out what matters you have to be satisfied about beyond reasonable doubt before you can convict the accused on these counts. I do not think it is a case where you would have to deliberate upon which counts you would have to convict and which counts not, because it seems to me they are very much bound up together, except perhaps you might find the matter of travelling expenses has not been proved whereas the question of the commission shortfalls have, or vice versa; otherwise the charges all link up with the allegedly false returns in two respects, by commission omitted which had been originally submitted by the accused as commission received, and secondly the exaggeration in respect of these expenses incurred. You will bear in mind that everything has to be proved beyond reasonable doubt either from circumstances or direct testimony, and if you feel it has not been proved that the accused himself submitted these figures, wherein the shortfalls were included, or the exaggeration of expenses, then he has not committed an offence. But you may feel that circumstances show that it must have been he who did it. You must also be satisfied that the commissions which he failed to submit were commissions which were properly chargeable in E. AFRICA as having accrued in or been payable there. If you have any reasonable doubt on that, even if he did submit short figures, the case would not be proved because they would not be figures which he was under a duty to submit at all. 30

You can have, Gentlemen, all the exhibits during your retirement and you are also entitled if you want a copy of the shorthand record of the case if you should want it for any reason or other. Remember the case must be proved beyond reasonable doubt in the case of each count. Unless there is anything further that you want directions on, I will ask you to retire to consider your verdict. If there is would you let me know. 40

Foreman of Jury: The Jury ask if they could be given a tabulation of the charges which would act as a reminder.

Judge: That can be done.

Jury retired at 11.05 a.m.

Jury returned at 12.40 p.m. for further directions.

Judge: I understand you are in some difficulty.

Foreman of Jury : In regard to Counts 21, 25, 29, 30 and 34, these relate to the alleged overstatements of expenses for 1946/1949. We understand Your Lordship to say that in the returns submitted to the Income Tax authorities did he record expenses in B.E.A. or in E. Africa.

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Judge : The record is thus : In 1946, that is the Count 21, it was said to be Travelling Expenses in B.E.A.

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Foreman of Jury : Our copies of Exhibits R.59, 62, 65 and 68—these have copies of the attachments alleged to have been submitted with the relevant income tax returns, make no reference as to where those
10 expenses were incurred.

Judge : With regard to 1946 the record of the evidence is, the question was : “ Would you look at Item 16 under the heading ‘ Expenses ’ on that statement and would you again look at G.44. What is the total as given as expenses for that year ?—A. G.44 shows an item described as travelling expenses in B.E.A.—£2,764 10s. 4d.” Have you got the Green exhibits ?

Foreman of Jury : We have the Green exhibits. It is said to be described in G.44. It is the Red exhibit which is alleged to have been submitted by the accused, but in your remarks to us you mentioned
20 expenses incurred in B.E.A.

Judge : The next question was : “ How does that compare with the figure shown in R.59 ?—A. R.59 shows the item described as expenses but the figure against it is £4,264 10s. 4d., an increase of £1,500.” But there is nothing to show what that extra £1,500 was, whether it was travelling expenses in B.E.A. That is in the Green exhibit, not the Red one.

Foreman of Jury : The other four are the same and the same applies to the other four.

Judge : The position is, if you feel that there is nothing to show what
30 the extra claim for expenses is, over and above what is contained in the Green exhibits, and if you feel in addition to that, that since there is nothing to show what those extra expenses were and whether they were expenses incurred in E. AFRICA, they have not been proved to be expenses which would be a proper deduction for the purpose of E. AFRICAN income tax ; if you feel that has not been proved, then you should bring in a verdict of not guilty on those charges relating to the travelling expenses.

Jury retired at 12.45 p.m.

Court adjourned at 12.45.

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VERDICT.

Court resumed at 2.15 p.m.

Jury returned at 2.15 p.m.

Deputy Registrar : Gentlemen of the Jury, are you agreed upon your verdict. Do you find the accused, ALFRED GRANVILLE ROSS, guilty or not guilty.

JURY find accused guilty, unanimously, on Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36. 10

Mr. Bechgaard : The Crown can prove one previous conviction, namely, failure to comply with a notice given under the E.A. Income Tax Ordinance contrary Section 89 (a). The penalty was a fine of Shs.300 or one month's imprisonment and the fine was paid.

Mr. O'Donovan : That is admitted.

Mr. Bechgaard : Under Section 91 the penalty is a fine not exceeding Shs.10,000/- and treble the amount of tax for which he is liable. I am prepared to call evidence as to the amount of tax actually lost and also of the tax for which the accused will be liable. The penalty also includes imprisonment. 20

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No. 9.
G. W. BROWN (re-called).

a.m. 14th July, 1955.

P.W. 1—GEORGE WHITMORE BROWN, re-called and sworn :

Examined by Mr. Bechgaard :

Q. I think you are aware that the accused has been charged under 36 counts in this case ?—*A.* Yes.

Q. And on the basis of the amounts embodied in those charges you have made calculations showing first of all on sheet " A ", a calculation of the tax lost over the period in question ?—*A.* Yes. 30

Q. The tax lost is calculated under three separate heads ?—*A.* Yes.

Q. The first head being the amount lost in respect of Excess Profits Tax ?—*A.* Yes.

Q. The second head being the tax lost owing to the failure of the accused to submit his old return or to include this income in his old return ?—*A.* Yes.

Q. And the third head, tax lost owing to his failure to include those amounts in the return made on behalf of his non-resident partner?—
A. Yes.

Q. For the payment of which he was duly allowed?—A. Yes.

Q. And for these years in question, the total comes to Shs.564,822/-?—
A. Yes.

Q. Or in pounds, £28,241?—A. Yes.

Q. That figure is made up in respect of every year in the form shown on the sheet?—A. Yes.

10 *His Lordship*: Is this an exhibit in front of him, something which has gone in?

Mr. Bechgaard: He prepared it and is putting it in as an exhibit my Lord. (Exhibit R.136.)

His Lordship: Is it simply a form of calculations?

Mr. Bechgaard: Yes, my Lord, that is the tax lost. The second question is that under the section it mentions that in respect of every offence, he is liable to treble the tax for which he is liable. In other words, it is not related to the tax lost, but to the tax payable by the taxpayer for the year in question. I am going to ask Mr. BROWN to give evidence on
20 what would have been the total of tax—in other words—the yardstick. Now, will you turn to sheet “D” of your computations, headed “Alfred Granville Ross, calculation of income tax lost.” You have a column there which is shown as “Tax as Adjusted”?—A. Yes.

Q. What does that represent?—A. That represents what the liability to tax for each year is after taking into account the omissions of income of Mr. Ross in respect of his own personal return.

Q. And would you read along for the years in question. In 1941?—
A. Shs.6,588/-; for 1942, Shs.6,720/-; for 1943, Shs.8,980/-; for 1944,
30 Shs.11,303/-; for 1945, Shs.17,232/-; for 1946, Shs.60,082/-; for 1947,
Shs.109,532/-; 1948, Shs.227,072/-; 1949, Shs.197,072/-. That is the accused personal.

His Lordship: What does this total?—A. I am sorry, I have no total. We'll have to add those up.

Mr. Bechgaard: Roughly Shs.640,000/-, my Lord.

Q. Would you now turn to sheet “E”?—A. Yes.

Q. That is the sum calculation in respect of the non-resident partner?—
A. Yes.

Q. And there the figures again, starting in 1941?—A. Shs.1,824/-.

Q. And advancing through the years?—A. 1942 is Shs.624/-; 1943
40 is Shs.798/-; 1944 is Shs.918/-; 1945 is Shs.1,362/-; 1946 is Shs.12,580/-;
1947 is Shs.32,248/-; 1948 is Shs.77,367/-; 1949 is Shs.67,182/-.

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Q. Roughly speaking Shs.190,000/- ?—*A.* Yes.

His Lordship : Have you anything to add to those figures ?—*A.* No.

(No cross-examination of witness.)

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His Lordship : Mr. Bechgaard, do you press for a prison sentence or not, I'd like to know, or do you leave it entirely in the hands of the Court ?

Mr. Bechgaard : I must leave it entirely in the hands of the Court.

Mr. O'Donovan : In mitigation of the accused's defence I urge first his age, he is 58, married with a family. He has spent all his life in Kenya and has built up many businesses which have proved of profit to this country. Until the present case, leaving aside the trivial conviction for failure to disclose accounts and which arose in the course of this investigation, he has no other previous convictions. My client has a very good war record. He enlisted in the Army in the First World War at the age of 17 and he was badly wounded, in fact he has a bullet or piece of shrapnel which is lodged near his heart and it is still there to this day and it has had a very serious effect on his health. I also urge the fact that the accused is in a serious state of ill-health as I mentioned at the outset of the proceedings. It is the opinion of Dr. Gregory, who has examined him a few weeks ago, that he is suffering from a nervous breakdown. In Dr. Gregory's opinion the accused should, if Your Lordship imposed a sentence which permitted it, return as soon as possible to London for further treatment. He has been treated for a nervous complaint in a London clinic some years ago. In view of his age and his ill-health I submit this is a case where Your Lordship would feel that a sentence of imprisonment should not necessarily be imposed. I think Mr. Brown, the investigating officer of the Income Tax Department, would bear me out when I say in the course of the investigations into accused's private affairs it became clear that quite a lot of accused's time and money has been spent on the support and assistance of other persons outside his own family and dependants purely as a charity. Lastly I submit that the financial penalties which follow from the conviction are themselves necessarily draconic.

Judge : What do you mean by " which follow from the conviction " ?

Mr. O'Donovan : I am referring to the treble penalties.

Judge : You mean which could be imposed.

Mr. O'Donovan : Yes and it would, I submit, suffice. I have always understood it was the normal procedure of the Commissioner to take treble the tax lost and not treble the actual amount of the original liability for income tax. In so far as the same act of the accused constitutes an offence under two separate Ordinances, the Income Tax Ordinance and the Excess Profits Ordinance, I submit that he should not be punished twice by reason of Section 20—Section 21 of the Penal Code—which apply also to the

provisions of any other law apart from the provisions of the Code. My learned friend referred to Section 91 of the Income Tax (Management) Act which, with respect to him, does not apply. If I may refer to the Fifth Schedule of the Management Act it is provided therein on page 99, that is the second part of paragraph 1 of the 5th Schedule: "The enactments repealed by Section 99 . . . contained in the repealed enactments."

*In the
Supreme
Court of
Kenya at
Nairobi.*

No. 9.
G. W.
Brown
(re-called),
14th July
1955,
continued.

Judge : That is the usual proviso with regard to penalties ?

10 *Mr. Bechgaard* : With respect to my learned friend I think the usual position is that penalties (inaudible) and what is the law is the law applicable at the time of the conviction.

Judge : What would you say would be the effect of the proviso ?

Mr. Bechgaard : To save the substance in law of Cap. 254, but to make the procedural proviso of the new Act applicable and it says so in so many words, but I don't think it makes any difference, but the section does go on—paragraph 1 of the 5th Schedule—"shall, notwithstanding . . . repealed enactments." In other words since June, 1952, we look to the High Commission Act.

20 *Judge* : You do contend that the effect of it is to impose what is said to be a more serious penalty retrospective of an act committed under an old Ordinance.

Mr. Bechgaard : Yes. It has also been before Their Lordships of the Privy Council in respect of the Emergency Regulations. In other words if you commit an act before the death penalty was imposed and you are convicted afterwards you are liable.

Mr. O'Donovan : In my submission the proviso specifically and in turn prevents the result following which he says flows from the first part of—

Judge : You say the penalties are those prescribed in the Ordinance originally enacted ?

30 *Mr. O'Donovan* : Yes. Under Section 91 of the Act both the fine and treble tax and imprisonment can be (inaudible) whereas under the Income Tax Ordinance, Section 75, he is liable to a fine not exceeding Shs.10,000/- and treble the tax or both such fine and imprisonment. The effect of which, in my submission, is that if the penalty is imposed imprisonment cannot also be imposed.

Judge : You mean if treble the amount of tax is imposed imprisonment cannot be imposed, or not if any fine is imposed ?

Mr. O'Donovan : If the treble penalty is imposed.

40 *Judge* : I see what you mean. The question of sentence will be reserved until to-morrow at 10 a.m.

Court adjourned at 2.50 p.m. 14.7.55.

*In the
Supreme
Court of
Kenya at
Nairobi.*

No. 10.
Sentence,
15th July
1955.

**No. 10.
SENTENCE.**

Upon a perusal of paragraph 1 of the Fifth Schedule to the East African Income Tax Ordinance (Management) Act, 1952, including the proviso thereto, I am of the view that the penal provisions applicable to the offences committed by the Accused are those set out in Section 91 (1) of that Act, which is contained in Part XIII thereof, and are not the slightly less severe ones set out in Section 75 (1) of the repealed Income Tax Ordinance (Cap. 254), because the proviso to paragraph 1 of the said Fifth Schedule does not apply to this Accused since proceedings had not yet been instituted against him in 1951 when the said Act came into force. 10

In sentencing the Accused I base the pecuniary penalties which I impose upon the figures of tax lost (as adjusted) in each of the years 1941 to 1949 inclusive, as calculated by Mr. G. W. Brown, Assistant Commissioner of Income Tax, and set out by him in sheets D and E of the table Exhibit Red 136, for which the Accused is liable. I propose to order the Accused to pay *double* the amount of tax for which he is liable in respect of each year of income. I accordingly order him to pay the following amounts:—

In respect of Counts 1, 2 and 3 together (1941), the sum of Shs.16,824/-. 20

In respect of Counts 4, 5, 6 and 7 together (1942), the sum of Shs.14,688/-.

In respect of Counts 8, 9, 10 and 11 together (1943), the sum of Shs.19,556/-.

In respect of Counts 12, 13, 14 and 15 together (1944), the sum of Shs.24,442/-.

In respect of Counts 16, 17, 18 and 19 together (1945), the sum of Shs.37,188/-.

In respect of Counts 20, 21, 22 and 23 together (1946), the sum of Shs.145,324/-. 30

In respect of Counts 24, 25, 26 and 27 together (1947), the sum of Shs.283,560/-.

In respect of Counts 28, 29, 30, 31 and 32 together (1948), the sum of Shs.608,878/-.

In respect of Counts 33, 34, 35 and 36 together (1949), the sum of Shs.528,508/-.

It has been urged on the Accused's behalf that this is a case where a sentence of imprisonment should not necessarily be imposed. The income tax frauds committed by the Accused are, however, on a very large scale and were continued over a number of years, and I consider that his offences call for a prison sentence. At the same time I take into consideration all the mitigating factors to which his Counsel has drawn attention, and in particular to his age and bad state of health. I sentence the Accused on each of the thirty-six Counts to simple imprisonment for a term of one year. All the terms will be concurrent. 40

15th July, 1955.

R. WINDHAM.

Mr. O'Donovan : My instructions are to appeal from the convictions and sentences and the Notice of Appeal has been prepared and will be filed in a few minutes. I ask Your Lordship for bail on behalf of the Accused pending the appeal. My learned friend indicates that he would not oppose the application and I make it on the grounds of the age and ill-health of the Accused. Technically the Notice of Appeal should have been put in before I made the application and I ask Your Lordship to deal with it as if it had already been put in. It is simply a question of writing into it the particulars of Your Lordship's sentence.

*In the
Supreme
Court of
Kenya at
Nairobi.*
—
No. 10.
Sentence,
15th July
1955,
continued.

10 *Judge* : It will be filed within the next—

Mr. O'Donovan : Half-hour.

Mr. Bechgaard : I do not wish to be obstructive but I think the proper procedure would be to file the appeal and there is no reason why the Accused should leave the precincts of the building and the application then made to Your Lordship in chambers.

Mr. O'Donovan : If Your Lordship pleases.

Judge : As regards the application I think perhaps it would be better. What is the shortest time you could make this application in ?

Mr. O'Donovan : Within the next few minutes.

20 *Judge* : Apply in chambers in ten minutes' time and I will give the application.

IN CHAMBERS : *15th July, 1955. 10.25 a.m.*

O'Donovan : I am appealing. Notice of appeal has just been filed this morning. I therefore ask for bail pending appeal. I ask for it on ground of Accused's age and ill-health, combined with complexity of case and voluminous documents.

Kennedy : I do not oppose, provided bail is very substantial, related to total amount of penalties, £83,948.

30 *Court* : I consider that the circumstances are exceptional enough to justify this application for bail pending appeal, which is not opposed. The application will be granted, upon bail in the sum of £83,948, with two sureties for that amount, and upon the condition that the Accused shall deposit £5,000 in Court to-day, and that his passport, which is now in the custody of the Magistrate's Court, shall forthwith be taken into and retained in the custody of the Registrar of the Supreme Court.

R. WINDHAM.

15th July, 1955.

*In the
Court of
Appeal for
Eastern
Africa.*

**No. 11.
NOTICE OF APPEAL.**

No. 11.
Notice of
Appeal,
15th July
1955.

TAKE NOTICE that Alfred Granville Ross, the above-named accused appeals to Her Majesty's Court of Appeal for Eastern Africa against the decision of the Honourable Mr. Justice Windham sitting with a jury given at Nairobi on the 14th day of July, 1955, whereby the Appellant was convicted on the following charges :—

(1) Wilfully, with intent to avoid tax, omitting from a return made under the Income Tax Ordinance income which should have been included therein contrary to Section 75 (1) (a) of the Income Tax Ordinance. (26 counts.)

(2) Wilfully, with intent to avoid tax, omitting from a return under the Excess Profits Tax Ordinance profits chargeable which should have been included therein contrary to Section 17 of the Excess Profits Tax Ordinance. (5 counts.)

(3) Wilfully, with intent to evade tax, making use of a fraud contrary to Section 75 (1) (e) of the Income Tax Ordinance. (5 counts.)

and was sentenced on the 15th day of July, 1955, to :—

Count 1. To pay a penalty of Shs.16,824/- on Counts 1, 2, 3 and 4 and to undergo one year's simple imprisonment. 20

Count 2. Penalty as above stated. One year's simple imprisonment.

Count 3. One year's simple imprisonment. Penalty as above stated.

Count 4. To pay a penalty of Shs.14,688/- on Counts 4, 5 and 6, and one year's simple imprisonment.

Count 5. Penalty as above. One year's simple imprisonment.

Count 6. Penalty as above. One year's simple imprisonment.

Count 7. One year's simple imprisonment. 30

Count 8. To pay a penalty of Shs.19,556/- on Counts 8, 9 and 10, and one year's simple imprisonment.

Count 9. Penalty as above stated. One year's simple imprisonment.

Count 10. Penalty as above stated. One year's simple imprisonment.

Count 11. One year's simple imprisonment.

Count 12. To pay a penalty of Shs.24,442/- on Counts 12, 13, 14 and 15, and one year's simple imprisonment.

Count 13. Penalty as above stated. One year's simple imprisonment. 40

Count 14. Penalty as above stated. One year's simple imprisonment.

Count 15. Penalty as above stated. One year's simple imprisonment.

Count 16. To pay a penalty of Shs.37,188/- on Counts 16, 17, 18 and 19 and one year's simple imprisonment.

Count 17. Penalty as above stated. One year's simple imprisonment.

Count 18. Penalty as above stated. One year's simple imprisonment.

Count 19. Penalty as above stated. One year's simple imprisonment.

Count 20. To pay a penalty on Counts 20, 21, 22 and 23 of Shs.185,324/- and one year's simple imprisonment.

Count 21. Penalty as above stated. One year's simple imprisonment.

Count 22. Penalty as above stated. One year's simple imprisonment.

Count 23. Penalty as above. One year's simple imprisonment.

Count 24. To pay a penalty of Shs.283,560/- on Counts 24, 25, 26 and 27, and one year's simple imprisonment.

Count 25. Penalty as above. One year's simple imprisonment.

Count 26. Penalty as above. One year's simple imprisonment.

Count 27.

Count 28.

Count 29.

Count 30.

Count 31.

Count 32.

Count 33.

Count 34.

Count 35.

Count 36.

Penalty 608,878/- . One year's simple Imprisonment on each Count.

Penalty 528,508/- . One year's simple Imprisonment on each Count.

In the Court of Appeal for Eastern Africa.

No. 11.
Notice of Appeal,
15th July 1955,
continued.

10

20

30

The appeal is against the convictions and sentences on all counts.

Dated at Nairobi this 15th day of July, 1955.

(Sgd.) B. O'DONOVAN,
Advocate for the Appellant.

To the Registrar of the Supreme Court.

The address for service of the Appellant is care of Messrs. Robson & O'Donovan, Advocates, Lullington House, P.O. Box 5305, Nairobi.

Filed at Nairobi the 15th day of July, 1955, at Nairobi.

40

(Sgd.) R. H. LOWNIE,
Deputy Registrar,
Supreme Court of Kenya.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 12.

AMENDED MEMORANDUM OF APPEAL.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
at Nairobi.

Criminal Appeal No. 340 of 1955.

Between ALFRED GRANVILLE ROSS Appellant

and

REGINA Respondent.

(Appeal from a conviction of Her Majesty's Supreme Court of Nairobi
at Nairobi (Mr. Justice Windham) dated 15th July, 1955 10

in

Criminal Case No. 96 of 1955

Between REGINA Prosecutrix

and

ALFRED GRANVILLE ROSS Accused.)

AMENDED MEMORANDUM OF APPEAL.

Alfred Granville Ross, the Appellant above named, appeals to Her
Majesty's Court of Appeal for Eastern Africa against the decision above
mentioned, whereby the Appellant was convicted of the following
charges :— 20

(1) Wilfully, with intent to avoid tax, omitting from a return
made under the Income Tax Ordinance income which should have
been included therein contrary to section 75 (1) (a) of the Income
Tax Ordinance. (26 counts)

(2) Wilfully, with intent to avoid tax, omitting from a return
under the Excess Profits Tax Ordinance profits chargeable which
should have been included therein contrary to section 17 of the
Excess Profits Tax Ordinance. (5 counts)

(3) Wilfully, with intent to evade tax, making use of a fraud
contrary to section 75 (1) (e) of the Income Tax Ordinance. 30
(5 counts)

and sentenced to one year's simple imprisonment on each count to run
concurrently and to pay penalties of a total of Shs.1,718,968/- in counts 1
to 6 inclusive, counts 8, 9 and 10, and counts 12 to 36 inclusive, on the
following grounds, namely :—

1. The learned trial Judge failed to direct the jury or alternatively
failed sufficiently to direct the jury as to the law and evidence concerning
the income and profit chargeable which should have been included in the
income tax returns made by the Appellant :—

(A) The learned trial Judge failed to direct the jury that the 40
commission of a Manufacturer's Representative, whose income is
derived from principals in the way of commission on sales, accrues
at the place where such sales are effected, and failed to direct the
jury on the evidence given on this point in his summing up.

(B) The learned trial Judge failed to direct the jury that in any
event it was unnecessary for the Appellant to include in his return

profits which had been earned from contracts made in the United Kingdom or elsewhere outside East Africa, and failed to direct the jury on the evidence given on this point in his summing up.

10 (c) The learned trial Judge misdirected the jury as to the law and evidence when, notwithstanding the matters set forth in (A) and (B) above, he directed the jury that the omitted commissions had been described as "local commission" or as "payable direct to Nairobi" and that this was proof that they represented income accrued in, derived from, or received in East Africa, which ought to have been included in the returns.

(d) The learned trial Judge failed to direct the jury that in considering whether there had been any fraudulent omission of income which should have been included in the returns they should take into account the fact that the Appellant had included in his returns sums in respect of income arising in the United Kingdom which were in each year in excess of the income alleged by the prosecution to have been improperly omitted.

20 2. There was no evidence to support a finding that the Appellant had omitted from any of the returns income which ought to have been included.

3. The learned trial Judge in his summing up misdirected the jury in law as to the scope and effect of section 75 (2) of the Income Tax Ordinance by reading the subsection to the jury with the omission of certain material words.

30 4. The learned trial Judge misdirected the jury in his summing up as to the evidence which had been given in relation to expenses. In particular, the Judge wrongly informed the jury that the Appellant in the returns for each year described the expenses in each year as travelling expenses for East Africa, and did not make the true position clear in answer to questions put by the jury after they had retired.

5. The learned trial Judge failed to direct the jury sufficiently in law as to the matters necessary to constitute fraud.

6. The learned trial Judge wrongly admitted evidence of statements made by the accused in response to an offer of clemency made on the 7th December, 1953, and misdirected the jury in his summing up that they should take into account the Appellant's attitude at the interviews with the investigating officer, after such offer of clemency had been made, and without drawing any distinction between the interviews before and after the withdrawal of the offer of clemency on the 12th October, 1954.

40 7. The learned trial Judge had no power to impose a sentence of both treble tax and imprisonment. In the alternative, the sentences imposed are harsh and excessive.

Dated at Nairobi this Nineteenth day of October, 1955.

(Sgd.) J. P. HARRIS,
Robson & O'Donovan,
Advocates for the Appellant.

*In the
Court of
Appeal for
Eastern
Africa.*

—
No. 12.
Amended
Memoran-
dum of
Appeal,
19th
October
1955,
continued.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 13.
Notes of
Worley, P.,
27th
October
1955.

No. 13.

NOTES OF WORLEY, P.

27.X.55.

CORAM : WORLEY, P.
BACON, J. A.
CORRIE, J.

O'Donovan, Mrs. Kean with him, for Appellant who is present having surrendered to his bail.

Bechgaard, Kennedy with him, for Respondent.

O'Donovan : Application to file and read amended Memorandum of 10 Appeal. Only one new ground.

Bechgaard : Grounds 2, 3, 5, 6 are new. Judgment on 15/7 : notice same day. Memorandum of Appeal 8/8. Amended Memo 20/10.

O'Donovan : Grounds 2, 3 and 5 are cognate to original grounds. Material time is how much notice Crown has had—complicated case—many exhibits. Serious case.

Wilmot

24 Cr. App. R. 54.

not taken by surprise.

Application allowed.

O'Donovan : opens :—

20

Facts not in dispute. Partnership—manufacturers' representative. Commission received from manufacturers under agency agreement. Ross worked at Nairobi end, Eliot in Birmingham.

(*Bechgaard* : These facts are not agreed.)

Ross canvassed orders—sent them to England—Eliot got them accepted in England and dealt with matters relating to payment, shipping, etc. Bulk of commissions paid in England—small number paid here.

Crown Case :

(A) Total income of partnership wherever arising or received should have been disclosed by Appellant.

30

(B) Appellant not entitled to claim as deduction against profits anything more than E.A. expenses.

Case was in 1941, 47, 48 & 49 no part of commission paid direct to Nairobi was included and in 1946 understated.

In 1942, 1943, 1944 no part of local commission was included.

In 1946, 1947, 1948 and 1949 expenses included in return exceeded amounts shown in partnership accounts for E.A. expenses.

e.g. Ex. R.98 (1943) ; Cf. Col. B with Col. D.

„ R.50 shews how total in Col. D made up—2/3rds to Ross.

„ R.49 is relevant return by Ross £2,955.

40

Crown sought to establish that R.49 contained falsehood—it is falsity of *printed form* which is alleged.

Main issue :

Have Crown established what was correct figure which Appellant should have disclosed. Clear he disclosed less than total of all commissions received by partnership: but he disclosed more than amount of commissions received or paid locally.

pp. 48–49 *Brown's evidence*: shews assumptions on which Crown case made.

As to the £500 allowance for Elliot: see pp. 47–48—Birmingham expenses.

- 10 p. 52 *Williams's evidence*: Where profits arose. "goods sold in E. Africa"—not technically correct. Profits made in Congo couldn't be chargeable in Kenya unless remitted here.

No evidence to shew with certainty what proportion of profits earned in Congo or in what years.

pp. 65–67: As to Agency agreements and system.

p. 67: Rely strongly on this—contract is made where contract is accepted.

- 20 R & E were not confirming house—never responsible for payment—merely agents for commission. Practical test is where contract is effective i.e. where property passes. On this, defence submitted that (conceding mathematics & that Appellant had disclosed less than combined U.K. & E.A. total) had Crown shewn either that—

(A) Appellant obliged to disclose full total; or

(B) a defined proportion of total, amounting to more than he had in fact disclosed.

If not, then Appellant could not be convicted because he might very well have paid too much.

Direction to jury: p. 80.

S.O. to 10.30 a.m. 28/10.

- 30 28.X.55 Bench and Bar as before.

28th
October
1955.

O'Donovan continues :

Year 1943 Red 98—under statement of E.A. profits Count 8: error alleged is in I.T. 2 (the official printed form) i.e. Red 49—nothing said in charge about any other document amended.

(But see sect. 6 of R. 49 & R. 50 & R. 51.)

Immaterial whether Appellant thought he was defrauding revenue: question is, did Crown prove that he had done so as matter of law.

R. 50 & R. 51 give details.

See Brown's evidence p. 24.

- 40 pp. 31–32.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 13.
Notes of
Worley, P.,
28th
October
1955,
continued.

Williams p. 56 identifies Green 24.

R. 98 shews Appellant returned £2,000 less than total partnership profits in U.K. and E.A. Concede calculations contained in accounts in support of £2,955 in R. 49 are false. But ask Court to assume for moment that none of commission received in U.K. had to be shewn in E.A. return. On that basis, the correct amount to be shewn in R. 49 would have been £1,512. On same assumption, direction to jury would be:—though Appellant has disclosed £2,955, whereas his liability was only in respect of £1,512 he is still guilty of fraud: and can be convicted and punished because of miscalculations resulting in overpayment. And also liable to penalties based on non-existent tax loss. I say this is the effect of the direction which was in fact given: i.e. that because the Appellant was guilty of omission of E.A. income he must be convicted, regardless of what his true liability was. 10

Crux of case is was U.K. commission liable to E.A. Tax? Inclusion of these in return may be taken as admission that they were liable: but it is not conclusive or irrebuttable admission and is not the only evidence.

Where is the *actus reus* shewing fraud. In other years, Appellant disclosed whole of U.K. profits. No quarrel with direction that it was not necessary to consider each count separately. 20

What income accrued in or was derived from these Territories?

Amboni case: I.E.A. Tax Cases 131: 148.

Sinclair J. approved by E.A.C.A. "derived from."

P. 162 Briggs J.A. derived = arising, accruing.

Present case.

Business carried on in Nairobi and Birmingham—earned by combined efforts of both offices. Not axiomatic that entire profits are derived from E.A. source. Part could be derived from two sources—Birmingham & Nairobi. Part from transactions completed wholly out of E.A. would be derived from Birmingham and part from local sales. 30

Gunn: I.T. Law & Practice 3rd Ed. p. 146. Australian I.T. Act s. 25—"arising" and "derived" p. 153: para. 340—contract *re* "wheat fixtures."

Here: Appellant mainly got indents from local buyers, i.e., offers which were accepted in U.K. therefore profits arose in U.K.

I agree question of fact but I say Judge in effect told jury it was unnecessary for them to consider whether U.K. income returnable in E.A.: all they had to consider was whether the amounts omitted were in respect of commissions taxable in East Africa.

Submit: if open to jury as ordinary people to find it had not been established that whole partnership income was not liable to E.A. tax then the misdirection has occasioned a failure of justice—chance of acquittal lost. This Court doesn't have to go so far as to hold that U.K. income was not returnable—enough to hold that jury might have so found. 40

Gunn : p. 154 para. 341.

If not proved that whole of U.K. income was returnable then it has not been shewn that figure which should have been returned was greater than figure actually returned.

To Corrie, J. C. 254 sect. 75 (1) (a) was charge—penalties were based on assumption that whole of partnership income was taxable in East Africa.

I say it was open to jury to find that there should have at least been an apportionment.

10 *Commissioners of Tax v. Kirk* : 1900 A.C. 588, Py. Co.—where profits arise from several sources, Kanga & Palkhivala—L. & P. of I.T. 3rd Ed. p. 294 Indian Act s. 4.

P. 317 “Selling Agents Commission.”

Indian Act s. 42 (3)—Apportionment p. 320—comment on *Kirk's* case. Nothing in Crown case to shew that sale effected in E.A.—in sense that property passed here. 1926 A.C. 424 at 432 : *Cave L.C. C. of T. v. Brit : Aus : Wool etc.* 1931 A.C. 224 : 255.

Test is : where are contracts made.

20 Distinguish : *Colquhoun v. Brookes* 1889 14 A.C. 493—entirely different problem. *Bennett v. Marshall*, 1938 1 K.B. 591, at p. 603 M.R. (case of employment).

I say profits of partnership cannot be treated *en bloc*, but according to where they derive.

Contracts wholly made in England—certainly not liable to East African tax.

to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

O'Donovan continues :—

30 Counts 21, 25, 29, 31, 34 : Expenses. Partnership Agreement R. 80 : paras. 5, 6 & 7. I say Elliot entitled to debit to partnership, such part of his B'ham office expenses as could reasonably be attributed to the business of partnership. Brown—up to 1936. E.A.I.T. did not allow any of B'ham expenses against partnership profits ; but allowed Elliot personally £500 p.a. against his share of partnership profit. From 1946 onwards this allowance stopped—perhaps by oversight.

40 Counts relate to 1946–1949. In these years Appellant claimed allowance for expenses in computing partnership income which were in excess of purely local expenses. Williams's evidence was that in drawing accounts on Ross & Elliot they didn't debit expenses to that partnership but debited to “general revenue” (of the Company) and Elliot would claim this as rebate on U.K. tax. This may have advantaged Elliott in U.K. But clearly not in accordance with agreement. Upon dissolution, each partner could make surcharges on partnership a/c—nothing in law

*In the
Court of
Appeal for
Eastern
Africa.*

No. 13.
Notes of
Worley, P.,
28th
October
1955,
continued.

*In the
Court of
Appeal for
Eastern
Africa.*

No. 13.
Notes of
Worley, P.,
28th
October
1955,
continued.

even now to prevent Elliott claiming *vis-a-vis* partnership his B'ham expenses. £500 allowance wasn't in accordance with agreement. Ross claimed "general expense" not E.A.

Judgment p. 80—misdirection. "E.A. expenses" was error. Brown's evidence. pp. 82–83 Jury returned for explanation—Judge repeated error.

Clear that jury had not made clear to Judge what their difficulty was. Judge's further directions further confused issue. Non-direction on substantial point—he should have pointed out to jury that Appellant had in each year disclosed partnership income in excess of E.A. profits and including profits earned in England. Also that Appellant entitled to claim as deduction all the expenses wherever incurred in earning the income which he had disclosed. 10

£500 implies admission that expenses were incurred in England in producing income in England. Had this been done, it is impossible to say that jury would have convicted.

Appellant's admissions :

7.12.53 1st interview—R. 2 : offer of clemency—certain admissions made as to his personal returns. Sirley & Kean produced books of accounts before withdrawal of offer of clemency. 20

Brown p. 44—shews that these books disclosed that A had received local income which hadn't been disclosed in I.T. return. If my first assumption is correct, then this is not a confession: *aliter*, if my assumption is incorrect.

Important because does not cover all years and judge told jury he needn't consider counts separately.

(Bechgaard—pp. 18–19 offer of clemency withdrawn before books produced. Not taken below.)

O'Donovan : Not produced within 10 days. But see R. 25 where letter of 29.1.54 referred to. R. 26 dated 3 days later formally withdraws offer. I say that at first interview, there was admission of an income tax offence. I concede this objection not taken at trial. My objection is that all admissions made prior to withdrawal of offer of clemency are inadmissible under Sect. 24 Evidence Act. Re absence of objection at trial : 30

R. v. Roberts 1936 (I) A.E.R. 23.

R. v. Barker 1941 2 K.B. 381.

Court : Appellant was bound to produce his true books—Barker produced false ones.

O'Donovan : Finance Act amendment. 40

(Bechgaard : E.A. Income Tax Act s. 504.)

1954 s. 93A.

I say the amendment is *ultra vires* the High Commission.

To Court : I say all books and admissions produced and made before October 26th are admissible.

President : But the ultimatum 10 days expired long before.

O'Donovan : There I am confined to the oral admission at first interview.

As to *ultra vires*, I refer to Schedule of H.

A.G. Canada v. A.G. Ontario 1937 A.C. 326.

A.G. Australia v. Col. Sugor A.C. 237.

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No. 13.
Notes of
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28th
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continued.

Sentence :

10 Excessive—mitigating circumstances. Judge should consider whether I.T. had lost any money. If Court accepts my first part of argument and accused disclosed income he need not have, then the penalties are draconic.

If Appellant had merely put in return without annexing accounts, he couldn't have been convicted. Or if accounts sent later, merely charged with giving false information.

Cap. 254 Sect. 75 (1).

E.A. (H.C.) I.T. Act (No. 8/52) Sect. 91—punished under this.

Judge relied on Fifth Schedule Para. I (see p. 116)—this is ambiguous.

20 Obviously sect. 75 not regarded as repealed because charges laid under that “read with Fifth Schedule.”

Fifth Schedule : Para. 1—not to be strictly construed.

D.P.P. v. Lamb 1941 2 All E.R. 499.

Buchman v. Button 1943 2 A.E.R. 82.

1887 19 Q.B.D. 638.

There are procedural provisions in Part XIII distinct from the penalty provisions.

Court : But there is no difference between the two sections.

To 1.11.55 at 10.30 a.m.

30 2. XI.55 Bench and Bar as before save that O'Donovan is unable to attend.

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1955.

Bechgaard in reply :—

As to alleged misdirections :—

(a) omissions—31 charges.

(b) 21, 25, 29, 30 & 34.

As to (a)—it is said defence not adequately put. What was defence? Purely speculative—contained in some XXn. and counsel's addresses—no note of latter in record: Kennedy took a note, which I wish to have read.

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Kenn : I don't know what is in it.

Court : That would be an unusual course. The usual course is for counsel to state from the Bar what the submissions were from his recollection or any notes made by him or his junior. If not accepted by defence, they will raise the point.

Bechgaard : I only wish to make the point that the submission made in this Court was only one of several made at trial. Only one authority on this cited.

Argument now is: income of partnership A + B. A being E.A. income—which is admittedly taxable. Defence says Crown must shew 10 that whole of B. was also taxable in the sense of “should have been returned.”

Does Crown have to have resolved in its favour an intricate question of I.T. law when that question has never been in issue.

Only criminal cases in which civil rights come in issue is the claim of right, where only question is was claim made bona fide.

Here, it is not suggested that the return was bona fide : Appellant is claiming benefit of clumsy fraud.

What is meaning of “should have been returned” ? Must relate to time when return made. We say all A + B should have been returned 20 and we have proved. We don't say that it is an offence not to return A if B is found not to be taxable. We stand by proposition that whole of A + B was taxable and should have been returned.

Submit :—

1. To each of partnership returns (43, 46, 49, 52, 55, 58, 61, 64 & 67) Appellant has annexed schedules shewing how gross income made out (R. 45, 48, 51, 54, 57, 60, 63, 66, 69). Those schedules contain the B income correctly returned and are admissions that it is taxable. On basis of these returns, assessments raised, and taxes paid. Correctness never impugned till trial.

30

Vol. III Cap. 254 Sect. 63.

Final and conclusive for all purposes of this Ordinance—including sect. 75.

S.O. to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

Bechgaard continues :—

If the above-quoted sections are procedural, then V Schedule applies.

Cap. 254 sect. 63 = E.A. Act sect. 79.
71 = 87.
56 = 72.

40

But Proviso to sect. 79 not exactly same as proviso to sect. 63 : effect in law is same.

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2nd argument :

Having regard to evidence before Court, the Crown adequately proved that A + B should have been returned.

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continued.

5 positive facts :—

(1) R. 80 Partnership Agreement. Preamble partnership—in Nairobi and elsewhere in B.E.A.

Clause 1 Not terminated till 30.6.52.

10 „ 2 Place of business.

„ 3 Bankers.

Ross to sign all cheques, unless otherwise agreed.

Resident partner in Nairobi controlled business.

Clause 4 Capital only productively employed in B.E.A.

„ 5 Shews partnership only contemplated sale of goods in B.E.A. market.

„ 6 Ross's existing business in Nairobi transferred to partnership.

I referred to this R. 80 in addressing Jury.

20 R. 79 specimen Manufacturer's Agreement—only contemplates agency in B.E.A.

Duty of Ross—see R. 80 clause 12 i.e. as outlined in previous agreement in R. 79.

(2) Partnership Returns (R. 43, 46, 49 etc.)—all prepared by Ross with annexures, e.g. R. 45 all headed “East African Commissions.”

(3) Appellant's Personal Returns : R. 31–39.—Nairobi given as place where business carried on.

30 (4) Years, 1940, 1950 & 1951—Appellant returned all his income i.e. A & B.

1940 E.P.T. came in—standard profit had to be agreed as basis for taxation. Agreed on basis of A + B.

pp. 41–42 Evidence Brown : re R. 118 determination of standard profit 8.7.42. Not queried till trial in 1955.

1950–51 Returns submitted after investigation started—tax on A + B agreed and paid—See p. 46. Returns for these three years rule out any question of accidental omission.

(5) *Goods sold in E.A.*

40 Whole income was commissions on sales. Sales were effected in E.A.

Court : Quære : the offers to buy are obtained in E.A. and accepted by manufacturer in England.

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Two negative points :

1. Defence says income B not taxable here because taxable in England. This amounts to a claim to pay tax at higher rate. Inaccurate because the two liabilities to tax are not mutually exclusive, cf. Elliott's share.

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2. Claim never raised before—investigation started in 1953—but claim not raised till trial. See evidence p. 65.

Relevant law :

Cap. 254 "Accruing in or derived in." *Amboni* case—no assistance—limited coy.—Court wouldn't look beyond Memo and Articles. Partner- 10
ships and Individuals—position different. Simon Vol. II para. 50 p. 51.
Control etc.—location of control is largely question of fact. Para. 51—
Control by individuals. Para. 569 p. 468—*Bennett v. Marshall : Foulsham*
v. Pickles. Both employment cases—irrelevant.

What is the source of the income ?

1940 A.C. 774, 789 *Rhodesia Metals v. C. of T.*—the only operations of the partnership were canvassing orders in B.E.A. which were sent to U.K. and goods came out here.

Cites : *Malayan Shipping Co. Fed. C. of T.* (1946) 3 A.I.T.R. 258, 261—where did operations take place which led to profit ? What was the 20
essence of business ? I say the obtaining of orders which substantially
earned the commission.

Maclaine & Co. v. Eccott 1926 A.C. 424—was purely case of sale and purchase of goods.

Kanga & Palkhivala—Law of I.T. p. 316.

Place of accrual of business profits—question of fact in each case.

Paragraph re Selling agents' commission—reports not available here.

Danger of decisions under other law.

Evidence not challenged—only reasonable conclusion is that A+B 30
was derived from B.E.A. source. Williams' evidence that Elliott did quite
a lot of work in Birmingham doesn't destroy this. He had to do something
for his 1/3rd share. Major part of work done in Birmingham—reflected in
sharing of profits. I concede work done at both ends—Elliott admitted
his E.A. liability for his share of profits. Possibly Ross *may* be liable for
U.K. tax.

Can there be more than one source ?

Rhodesaid Metals case p. 789.

Summing up : p. 80 : p. 82—having regard to defence put, I say this was adequate direction.

Alt. If proper direction given, jury could only reasonably arrive at 40
same verdict.

Immer & Davies 13 Cr. Ap. R. 22 (1917).

R. v. Zielinski 34 Cr. App. R. 193, 198.

To Court : I concede that Judge didn't specifically put to jury that it was for them to find as a fact that whole income was derived from E. Africa.

Court : He did not tell them they must be satisfied that whole income derived from or accrued in East Africa. He only told them they must be satisfied that the "shortfall" i.e. A. income was taxable here.

Bechgaard : Judge concentrated on A. income and dealt generally with
10 B. income. Point only raised late in case. I say summing-up on whole was fair. And that, even if defence not fully put, still any reasonable jury properly directed, would have convicted.

If Court has any doubt on this, then re-trial.

S.O. to 10.30 a.m. 3/11.

3.XI.55. Bench and Bar as before.

Bechgaard continues :

Did Judge follow A+B formula or adopt one of his own—did he think it sufficient for jury to find—

- 20 (A) was there a shortage ;
(B) if so, was it A or B income ;
(C) if A, then charge was proved ;
(D) if B, then they must find if it was liable to E.A. tax.

Corrie : No direction on "wilfully".

Bechgaard : Question is one of interpretation of the section 75.

I concede no direction on whether B income chargeable in East Africa or not. Therefore cannot assume jury so found.

As to excessive expenses :

No connection between omission to allow Elliott £500 and inflation of E.A. expenses.

30 1945 Return was dated 14.10.46. Next return was in 1951. At time when this was made Ross could not have known that I.T. Department was not going to allow Elliott the £500. We say that this was a fraud because the money was never expended by partnership.

R.81 p. 2 foot—p. 3. Record of interview : these expenses were not paid by partnership and so we say it was fraud to use them to reduce I.T.

p. 61 Williams—no reserve for these expenses.

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p. 62 Williams—re Green 62 and Red 65.

See also p. 63 : and p. 65.

N.B. Re Ross's cash entitlement—We know no outstanding debit against Ross and that these expenses were not chargeable to partnership.

The £500 was personal to Elliott.

Count No. 30 :

Osborne's passage expenses—inflated by £200. There had already been a general adjustment for 1948 of £4,000 : see Count 29.

Summing up p. 80 :

I concede a misdirection but did not deceive jury who had all the 10 exhibits and came back.

P. 83—further direction : admittedly not clear. (*Quaere* : if transcript correct.)

The direction was unduly favourable to Ross—Judge never put our case to jury i.e. that the expenses were never incurred by *partnership*.

Ultra vires :

Court : We don't wish to hear you on that. We think it too late to object to admission of evidence : only the statement of the first interview could have been "induced."

As to E.P.T. charges :—

20

—that Ordinance incorporates the penal sections of I.T. Ordinance. These stand or fall with the I.T. offences.

Sentence :

Act S. 91 = Ordinance 75.

"treble amount of tax" i.e. whole amount.

Judge took this yardstick and doubled it and then took it as his yardstick for each year instead of for each offence. Also, he overlooked E.P.T. Actual amount of tax involved £28,000. Offences committed over several years. R. 136 pp. D & E.

Court : These figures depend on whether B income is chargeable in 30 East Africa.

Bechgaard : He has never disputed his liability e.g. for year 1941. Nor could he do so I say having regard to sect. 63. Judge apparently took the same view—treated it as matter of law.

Mrs. Kean :

Sect. 63 Ord. (Act Sect. 79.)

—“final for all purposes.” If so, must also be final against Commissioner. I say this doesn't apply to criminal cases at all. Bechgaard is really pleading an estoppel which doesn't apply to criminal charge.

Bechgaard's 5 points :—

1. Partnership Agreement—statements are not binding.

S.O. to 2.30 p.m.

2.30 p.m. Bench and Bar as before.

Mrs. Kean continues :—

Court : Indicates intention to order re-trial.

10 *Mrs. Kean* : 1950 17 E.A.C.A. 128—Not fault of accused.

(Crim. App. No. 63 of 1950)

Appellant's state of health : length of time these proceedings have taken. Suggests misdirection due to failure of prosecution to establish facts they should have established.

Not fault of defence—point taken in cross-examination and in address.

Bechgaard : 13 E.A.C.A. 151 *R. v. Dossani*.

—failure to consider defence. No loopholes here ; difficulty in Judge's mind was caused not by prosecution but by defence.

20 *Court* : Refers to full Judgment in Crim. App. No. 63/50.

C. A. V.

Appellant informed that his bail continues until final decision of the Court.

(Sgd.) N. A. W.,
P.

17. XI. 55. Bench and Bar as before, save that Bechgaard is not present.

Judgment of the Court read by Bacon J.A.

New trial ordered.

30 *O'Donovan* : I apply for bail under R. 41 on the same terms as to bail as ordered by the committing Magistrate.

Kennedy : No objection.

Order accordingly.

(Sgd.) N. A. WORLEY,
P.

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No. 14.
JUDGMENT.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
at Nairobi.

Criminal Appeal No. 340 of 1955.

(From Criminal Case No. 96 of 1955 of H.M. Supreme Court of Kenya
at Nairobi.)

ALFRED GRANVILLE ROSS Appellant

versus

REGINA Respondent. 10

JUDGMENT.

Prepared by BACON J.A.

This appeal is against convictions of the Supreme Court of Kenya on 36 counts contained in an information dated 27th June, 1955, and against the sentences passed in relation to each of those convictions.

The information in effect charged the Appellant with making false returns of income with intent to evade Kenya Income Tax and Excess Profits Tax in respect of various years of assessment or chargeable accounting periods between 1941 and 1949 inclusive. The counts fall into three categories : first, 26 counts under sub-section (1) (a) of section 75 of the Income Tax Ordinance (Cap. 254 of the Laws of Kenya, 1948) charging wilful omissions from Income Tax returns of income which should have been included therein ; secondly, five counts under section 17 of the Excess Profits Tax Ordinance (Cap. 255) charging similar omissions ; and thirdly, five counts under sub-section (1) (e) of section 75 of the Income Tax Ordinance charging fraudulent inclusion of alleged expenses in Income Tax returns. 20

The 36 counts are also divisible into the following groups :—

First, those relating to returns made by the Appellant declaring the income of a firm of which the Appellant was a member ; secondly, those relating to returns made by the Appellant of his personal income ; and thirdly, those relating to returns made by the Appellant on behalf of his partner who was, at all material times, not resident in British East Africa. As might well be expected, the returns of personal income, namely those in the second or third group, were as regards any given year calculated on the footing of the same omission or inclusion as was a feature of the partnership return for that year ; but the Crown sought to prove that the 30

consistency ended there, inasmuch as each of the returns in question was inconsistent with figures prepared by or within the knowledge of the Appellant at the respective times when the returns were sent in.

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The background of the case is briefly as follows. Throughout the material period the Appellant was in partnership with one Thomas Lea Elliott under an agreement in writing made on the 1st January 1927 in the business of manufacturers' agents and representatives. Elliott and the Appellant conducted the partnership business from offices in Birmingham, England, and in Nairobi respectively. The partnership
10 held a number of agencies for English manufacturers covering British East Africa. Broadly speaking, the method of conducting most of the business was that the Appellant canvassed for orders from customers in the British East African territories, he then passed the orders to the office in Birmingham, and Elliott made the arrangements for the supply and shipment of the goods. The profits of the business were thus—if not entirely, at any rate very largely—earned in the form of commissions on the orders thus obtained and fulfilled, that is to say, on offers to buy made in British East Africa and acceptances of those offers given in
20 England. In general terms it may be said that the business was carried on by the co-operation of the partners operating at a distance. By clause 7 of the partnership agreement “the net profits, that is the balance remaining after deduction of all business expenses from the income derived by way of commission and any other source earned by the said partnership business” were to be divided between the partners as to one-third to Elliott and as to two-thirds to the Appellant. Accounts were settled annually on the footing of figures supplied by the Appellant to the Birmingham office and figures worked out in that office thereafter.

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continued.

The statutory provisions upon which the charges were founded are as follows, omitting immaterial parts.

30 Sub-section (1) (a) of section 75 of the Income Tax Ordinance reads :—

“ Any person who wilfully with intent to evade tax omits from a return made under this Ordinance any income which should be included . . . shall be guilty of an offence . . . ”

Sub-section (1) (o) of section 17 of the Excess Profits Tax Ordinance applies section 75 of the Income Tax Ordinance to the assessment and collection of Excess Profits Tax.

Sub-section (1) (e) of Section 75 of the Income Tax Ordinance reads :—

“ Any person who wilfully with intent to evade tax makes use of any fraud . . . shall be guilty of an offence . . . ”

40 The relevant charging sections are the following :—

Sub-section (1) (a) of section 7 of the Income Tax Ordinance reads :—

“ Income tax shall, subject to the provisions of this Ordinance, be payable . . . upon the income of any person who is not resident in the Colony, accruing in, derived from, or received in, the Colony, and upon the income of any person who is resident in the Colony, accruing in, derived from or received in, the Colony and/or another East African territory in respect of gains or profits from any trade, business . . . ”

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Sub-section (1) of section 4 of the Excess Profits Tax Ordinance reads :—

“ The profits chargeable with excess profits tax shall be all profits derived by any person from any business chargeable with income tax under the Income Tax Ordinance.”

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The trial was before a Judge sitting with a jury and the jury were called upon to deal with a considerably complicated case introducing a large number of exhibits and to reach their findings on what must have appeared to them as an involved series of issues.

The grounds of appeal against the convictions were, first, a number 10 of alleged misdirections and non-directions by the learned Judge, and secondly, the absence of any evidence to support a finding of guilty in the case of any of the charges of wilful omission.

In our view it was of prime importance that the jury should have a clear understanding of the precise questions of fact to which they should address their minds, that they should clearly distinguish between the two classes of alleged offences and know the elements constituting each class, and that they should have explicit guidance in particular as to the factors which ought to be taken into account by them in determining what profits of the partnership business the Appellant was obliged by law to include 20 in the returns of income.

In the case of the 31 counts charging omission of profits the elements of the offence are these : first, that there was a certain income which should have been included in the returns ; secondly, that that income was omitted ; thirdly, that it was the accused who omitted it ; fourthly, that he omitted it wilfully, that is to say, deliberately ; and lastly, that he did so with intent to evade tax.

In the case of the five counts relating to expenses, the elements of the offence are, first, that a false item of expenses allegedly incurred by the partnership in the course of earning the income concerned was 30 included in the return ; secondly, that it was the accused who included it ; thirdly, that he did so wilfully ; fourthly, that in so doing he made use of a fraud, that is to say, was consciously dishonest ; and lastly, that he did so with intent to evade tax.

Accordingly, the first question which arises on this appeal is as to whether the learned Judge put those matters clearly to the jury. We are unable to find in the summing-up a satisfactory answer. There was, we think, no clear direction on a number of essential points. The elements constituting the offences were not explained or even enumerated. In particular, no sufficiently clear guidance was given on the question of 40 what categories of income should have been included in the returns, although this was a question of fact for the jury (see *Commissioner of Income Tax v. P. Co. Ltd.* (1954) 1 E.A.T.C. 131 at p. 148 and at p. 162). On the case presented for the Crown it was the basic issue as regards 31 out of the 36 counts and was the subject of such prolonged discussion at the trial as may well have left the jury wondering how the matter stood ; the various considerations affecting this issue such as the location of the

control of the business, the place or places where the capital was adventured and the source or sources of the partnership income were not brought to the jury's notice; and any mention of that part of the income which was actually received in the United Kingdom and might be found not to have accrued in or been derived from British East Africa was only a passing reference.

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We must further point out that the learned Judge's calculation of the fine imposed on the Appellant was based, not on any finding of the jury to whom the question was never put, but on the assumption that the
10 whole profits of the partnership were chargeable for tax under the Ordinances.

We therefore feel obliged to hold that the summing-up was inadequate in several material respects. On this aspect of the case it remains to be decided whether the jury must inevitably have convicted on all the counts if the case had been fully and properly put to them by the learned Judge. We cannot say that in our opinion that would have been so; we think that it is open to question whether the jury really understood the issues with which they had to deal, and whether, if they had understood them, they would have decided as they did.

The Court was pressed by counsel for the Appellant to quash the
20 convictions and enter an acquittal on the strength of the inadequacy, as we think it was, of the summing-up, but in our opinion that is not the proper course. There is discretion as to ordering a new trial and in the exercise of that discretion we do so. In our view that is the only way in which justice can be done at this stage. In the circumstances we naturally refrain from commenting in any way on the merits of the case.

We feel, however, that we ought to put on record the view which we expressed during the hearing of the appeal on the Appellant's contention that his books of account and the other documents which he produced
30 were wrongly admitted in evidence, their production having been induced by an offer of clemency. That argument appeared to us to be wholly fallacious, as in fact those books and documents were not produced as a result of any such inducement but only after the expiry of a ten days' ultimatum and in compliance with a statutory notice disobedience to which would have been a criminal offence.

A subsidiary question which would arise in the event of a conviction on any of these counts is that of the statutory provisions as to the sentence which may be passed. Since this matter was argued at the hearing of this appeal, and since it might become material on a new trial, we think
40 we should express the view at which we have arrived. The question is whether the sentence which may be imposed is governed by sub-section (1) of section 75 of the Income Tax Ordinance or by sub-section (1) of section 91 of the East African Income Tax (Management) Act, 1952. The controversy arose out of the terms of paragraph 1 of the Fifth Schedule to that Act, the material part of which reads as follows:—

“ 1. The enactments repealed by section 99 (in this Schedule referred to as the repealed enactments) shall, notwithstanding their repeal by such section, continue to apply to income tax chargeable,

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leviable, and collectable, under those enactments in respect of the years of assessment (as defined in those enactments) up to and including the year of assessment commencing on the 1st January, 1951, as if those enactments had not been repealed, so, however, that as from the date of the publication of this Act in the Gazette the procedural provisions contained in Parts VIII to XIII inclusive of this Act shall apply as if such procedural provisions had been contained in the repealed enactments.”

We do not think that the latter part of that paragraph commencing with the words “so, however,” has any application to sub-section (1) of section 91 of the Act, which is a purely penal provision and cannot in our opinion be said to be a procedural provision. The result is that in our view it is sub-section (1) of section 75 of the Income Tax Ordinance which governs the penalty which might be imposed in the present case. 10

Accordingly we quash the present convictions and set aside the sentences imposed, and order that the case be remitted to the Supreme Court for a new trial.

N. A. WORLEY,
President.

ROGER BACON, 20
Justice of Appeal.

O. C. K. CORRIE,
Judge.

Nairobi.
17th November, 1955.

No. 15.

ORDER.

*In the
Court of
Appeal for
Eastern
Africa.*

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
at Nairobi.

Criminal Appeal No. 340 of 1955.

Between ALFRED GRANVILLE ROSS Appellant
and

THE QUEEN Respondent

10 (Appeal from convictions and sentences of the Supreme Court of Kenya
at Nairobi (Mr. Justice Windham) dated 15th July, 1955, in
Criminal Case No. 96 of 1955

Between THE QUEEN Prosecutrix
and

ALFRED GRANVILLE ROSS Accused.)

In Court this 17th day of November, 1955.

Before—

The HONOURABLE the PRESIDENT (Sir NEWNHAM WORLEY)

The HONOURABLE Mr. JUSTICE BACON, a Justice of Appeal

and

20 The HONOURABLE Mr. JUSTICE CORRIE, a Judge of the Court.

This appeal coming on for hearing on the 27th and 28th days of
October 1955 and on the 2nd and 3rd days of November 1955 in the
present of Mr. B. O'Donovan and Mrs. L. Kean advocates for the Appellant
and Messrs. K. Bechgaard and D. C. Kennedy advocates for the Crown
the Respondent it was ordered that this appeal do stand for judgment
and upon the same coming for judgment this day IT IS ORDERED
that the convictions of the Appellant on the thirty-six counts set out in
the Information presented on the 27th day of June 1955 whereon he was
tried by the Supreme Court of Kenya be and are hereby quashed and the
sentences passed on the Appellant in consequence of the said convictions
be and are hereby set aside AND IT IS FURTHER ORDERED that
30 the Appellant be tried again on the aforesaid Information by the Supreme
Court AND THIS COURT DOTH ORDER that the Appellant be
released on his furnishing bail on the same terms as ordered by the
committing Magistrate to appear before the Supreme Court to answer the
aforesaid Information.

Given under my hand and the seal of the Court at Nairobi, the
17th day of November, 1955.

M. D. DESAI,
Acting Registrar.

40 Extracted on 17th day of November, 1955.

M. D. DESAI,
Associate Registrar.
17.11.1955.

ORDER granting Special Leave to Appeal to Her Majesty in Council.*In the
Privy
Council.*No. 16.
Order
granting
Special
Leave to
Appeal to
Her
Majesty in
Council,
24th April
1956.**AT THE COURT AT BUCKINGHAM PALACE.**

The 24th day of April, 1956.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY**MARQUESS OF READING****Mr. SECRETARY HEAD****Mr. SECRETARY LLOYD-GEORGE****Mr. MAUDLING****(acting for the Lord President)**

WHEREAS there was this day read at the Board a Report from the 10
Judicial Committee of the Privy Council dated the 20th day of March 1956
in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of Alfred
Granville Ross in the matter of an Appeal from the Court of Appeal
for Eastern Africa at Nairobi between the Petitioner Appellant and
Your Majesty Respondent setting forth: that on the 15th July 1955
the Petitioner was convicted by the Supreme Court of Nairobi on
36 counts contained in an information dated the 27th June 1955 20
charging the Petitioner with making false returns of income with
intent to evade Kenya income tax and excess profits tax in respect
of various years of assessment or chargeable accounting periods
between 1941 and 1949 inclusive and sentenced to a concurrent term
of one year on each count and to penalties amounting in all to
£83,948: that the Petitioner appealed to the Court of Appeal for
Eastern Africa against the convictions and sentences and on the
17th November 1955 that Court quashed the convictions and set
aside the sentences and ordered that the case be remitted to the
Supreme Court for a new trial: that the Petitioner desires to appeal 30
against that part of the said Judgment of the Court of Appeal
which directed a new trial: that the questions to be decided in this
proposed appeal are (1) Whether Her Majesty's Court of Appeal
for Eastern Africa has jurisdiction to order a re-trial in a criminal
case and (2) What are the principles upon which such jurisdiction
(if any) ought to be exercised and in particular whether it ought
to be exercised so as to enable the prosecution to fill in important
gaps in the evidence: And humbly praying Your Majesty in Council
to grant the Petitioner special leave to appeal from that part of
the Judgment of the Court of Appeal for Eastern Africa dated the 40
17th November 1955 remitting the case to the Supreme Court of
Nairobi for a new trial or for such further or other order as to
Your Majesty may seem fit:

“ THE LORDS OF THE COMMITTEE in obedience to His late
Majesty's said Order in Council have taken the humble Petition

into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against that part of the Judgment of the Court of Appeal for Eastern Africa dated the 17th day of November 1955 remitting the case to the Supreme Court of Nairobi for a new trial :

*In the
Privy
Council.*

No. 16.
Order
granting
Special
Leave to
Appeal to
Her
Majesty in
Council,
24th April
1956,
continued.

10

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Kenya for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

EXHIBITS.

Exhibits.

Green 24.
Partnership
Expenses
Account
for the
year 1943,
31st
December
1943.

Green 24.—Partnership Expenses Account for the year 1943.

ROSS & ELLIOTT, NAIROBI.

31st December, 1943.

		EXPENSES ACCOUNT, 1943.					
1943		£	s.	d.	1943		
					£	s.	d.
Dec. 31	To exchange on remittances	13	10	0	Dec. 31	By Commissions as per list	3442 3 3
„	„ Mercantile Guardian	6	0		„	„ Commissions paid direct to Nairobi ..	245 3 4
„	„ Travelling expenses in B.E.A.	1905	17	3	„	„ Local Commission ..	3187 0 10
„	„ Balance	4954	14	2			
		<hr/>					
		£6874	7	5			£6874 7 5
		<hr/>					<hr/>

Two-thirds of £4954.14.2 = £3303.2.10.

Green 25.
Statement
of T. Lea
Elliott
& Co.
Birmingham,
31st
December
1943.

Green 25.—Statement of T. Lea Elliott & Co., Birmingham.

ROSS & ELLIOTT, NAIROBI.

31st December, 1943.

IN ACCOUNT WITH T. LEA ELLIOTT & Co., BIRMINGHAM.

1943		£	s.	d.	1943		£	s.	d.
Jan. 1	To Balance	4310	4	0	Dec. 31	By outlays on behalf of			
Dec. 31	„ remittances	2600	0	0		Principals	646	5	0
„	„ encashments	219	16	8	„	„ Travelling expenses	1905	17	3
„	„ Commissions paid direct	245	3	4	„	„ A. G. Ross— Personal drawings	4616	14	11
„	„ Local Commissions	3187	0	10	„	„ Balance	3393	7	8
		<hr/>							
		£10562	4	10			£10562	4	10
		<hr/>							<hr/>
1944	Jan. 1	To Balance	£3393	7	8				
			<hr/>						<hr/>

Green 26.—A. G. Ross, Personal Account 1943.*Exhibits.*

		31st December, 1943.					Green 26.	
1943		£	s.	d.	1943		A. G. Ross	
Oct. 6	To Right Book Club ..	1	16	0	Jan. 1	By Balance	4603 15 8	Personal
Dec. 31	„ personal drawings in 1943	4616	14	11	Dec. 31	„ share of commis- sions	3303 2 10	Account
„ 31	„ share of debit 1203 as per instructions..	338	8	0	31	„ share of profit on factored goods ..	10 11 1	31st
„ 31	„ Balance	2960	18	5	31	„ National Carbon Co. debit 1183	7 9	December
		<hr/>					<hr/>	1943,
		£7917	17	4			£7917 17 4	31st
		<hr/>					<hr/>	December
					1944			1943.
					Jan. 1	By Balance	£2960 18 5	
							<hr/>	

Green 28.—General Shipments to East Africa in 1943.

Green 28.

		31st December, 1943.					Green 28.
		COST			SELL		General
		£	s.	d.	£	s.	Shipments
31.5.43	G. M. Sulemanji & Sons	32	18	3	38	9 9	to East
8.6.43	do.	17	18	9	21	1 1	Africa in
12.7.43	F. J. Hawkes & Co. Ltd.	79	9	4	91	17 8	1943,
		<hr/>			<hr/>		31st
		130	6	4	151	8 6	December
					130	6 4	1943.
					<hr/>		
					£21	2 2	
					<hr/>		

½ share of £21.2.2 = £10.11.1

*Exhibits.***Red 16.—Receipts and Expenditure Account for the year ending 31st December 1943.**

Red 16.
Receipts
and Expen-
diture
Account
for the
year ending
31st
December
1943,
12th
January
1944.

MESSRS. ROSS & ELLIOTT—NAIROBI.

RECEIPTS

1. Standard Bank of S.A. Ltd., Nairobi ..		Shs. 86203.96
Balance at credit at 31.12.42.		
2. T. Lea Elliott & Co. Birmingham—remittances received	Shs. 52000.00	
3. Encashments on behalf of Principals as per schedule 1 attached	4396.65	
4. Principals Commissions as per Schedule 2 attached	4903.37	
5. Local Commissions as follows :—		
(A) Biscuits	Shs. 2625.15	
(B) Cigars	832.66	
(C) Cordials	2018.00	
(D) Dog Biscuits	677.45	
(E) Jam	6120.19	
(F) Provisions	1983.65	
(G) Syrup	8222.00	
(H) Tobacco	40586.71	
(I) Tea	675.00	
	<hr/>	63740.81
		<hr/>
		125040.83
		<hr/>
Total Receipts		Shs. 211244.79

Deduct Expenditure :

1. Salaries & Wages paid during year	14125.00
2. Office Rent paid during year	2400.00
3. Travelling Expenses paid during year ..	4465.97
4. Stationery & Printing paid during year ..	380.30
5. General Expenses paid during year	5688.31
6. Postages, Petties & Bank charges paid during year	2000.72
7. Commissions paid to travellers during year ..	—
8. A. Granville Ross, Esq., Personal Drawings	92334.90
9. Outlays on behalf of Principals as per Schedule 3 attached	12924.99
10. Dar-es-Salaam office expenses as per Schedule 4 attached	8268.17
11. Mombasa office payments	20.00
12. Elizabethville Office	155.85
13. Zanzibar Office	612.90
	<hr/>
Total expenditure	143377.11

Shs. 67867.68

BALANCE :

made up as follows :—

Standard Bank of S.A. Ltd. Nairobi at credit at date	64867.68
Local Accounts: E.A. War Supplies Board	3000.00
	Shs. 67867.68

Nairobi 12th January, 1944.

We have audited the Books and Accounts of Messrs. Ross & Elliott, Nairobi, and have prepared therefrom the foregoing Receipts and Expenditure Account and the attached Schedules referred to therein. Subject to the remark that the Books and Accounts only deal with the cash and bank transactions of the business effected in East Africa we are of the opinion that the foregoing account and the attached schedules are properly drawn up in accordance with the Books of the firm and the explanations and information given to us.

D. G. STEWART & COMPANY,
(Sgd.) D. G. STEWART,
Chartered Accountants.

Exhibits.

Red 16.
Receipts
and Expen-
diture
Account
for the
year ending
31st
December
1943,
12th
January
1944,
continued.

MESSRS. ROSS & ELLIOTT—NAIROBI

SCHEDULE I

ENCASHMENTS ON BEHALF OF PRINCIPALS—1943

D. Q. Henriques & Co. Ltd. ..		C.N. 1214	Shs. 190.00
Charles Lavy & Co. Ltd.	C.N. 1189 23.50	B/f 598.50	
	1192 42.50	C.N. 1212 42.50	
	1197 42.50	1215 42.50	
	1198 362.50	1220 42.50	
	1199 42.50	1225 42.50	
	1205 42.50	1230 42.50	
	1209 42.50	1236 42.50	
			853.50
	C/f. 598.50		
H. C. Marshall & Co.	C.N. 1221 26.00		26.00
A/B Optimus		C.N. 1235	85.45
Walker Bros. (London) Ltd. ..	C.N. 1188 25.75		
	1190 134.20		
	1191 3001.50		
	1201 30.00		
	1211 42.50		3233.95
			Shs. 4388.90
<i>Add:</i> National Carbon Co. (Pty) Ltd. 1942 Debit Note 1183 Refunded			7.75
			Shs. 4396.65

SCHEDULE II

PRINCIPALS' COMMISSIONS—1943

Burmeister Bros.	Shs. 540.40
W. J. Bush & Co. Ltd.	3513.34
London Emery Works Co. Ltd.	52.75
Perfect Circle Co.	718.40
Russell Manufacturing Co.	78.48
	Shs. 4903.37

Red 33.—Income Tax Return of A. G. Ross for the year 1943.

Exhibits.

It is not sufficient to leave a space blank.

Where there was no income the word "NIL" should be entered.

Page 2

Page 3

Statement of Total Income for the year ended 31st December, 1943

Total brought forward from page 2 ...

A.—INCOME ACCRUED IN OR DERIVED FROM KENYA, TANGANYIKA, UGANDA OR ZANZIBAR

1. FROM AGRICULTURE OR FARMING
State acreage, Land Office No., situation and type of farm or plantation. If not the owner, state his name and address, and amount of rent paid.
NOTE—If income is from a Partnership, a separate return must be made on Form I.T.2, and share of profits entered here.

2. FROM THE TRADE, BUSINESS, PROFESSION OR VOCATION
State nature of business, Trade name and where carried on
Manufacturers Representatives,
Ross & Elliott,
Gort Rd.,
Nairobi.

3. FROM ANY PENSION OTHER THAN IN RESPECT OF WOUNDS OR DISABILITY CAUSED IN WAR
State from whom received

4. FROM EMPLOYMENT
Department, or Name of Employer
Address
Description of Office or Employment
Salary or Wages (including Leave Pay, Fees, Bonus and Commission) £
House Allowance in Cash ...
Estimated Annual Value of Free Quarters, Board or Residence ...
(State House No. and Situation)
Period Occupied if not Full Year.
Other Remuneration or Allowances ...
Less—Expenses:—
TOTAL ... £

C.—DEDUCTION FOR:—

(1) INTEREST CHARGES ON MORTGAGE OR LOAN EMPLOYED IN ACQUIRING ANY INCOME DECLARED IN THIS RETURN AND NOT ALREADY DEDUCTED ABOVE

Amount of Debt	Rate of Interest	Security	Creditor's Name and Address	Purpose for which the charge was created	Amount of Interest payable in the year ended 31-12-43

(2) LOSSES IN TRADE OR AGRICULTURE (IF ANY), Carried forward

Net Losses in previous years ... £
Less allowed against other Income last year ... £
Net Loss claimed this year ... £

TOTAL NET INCOME ... £ Nil

NOTE.—The Declaration overleaf must be signed.

CLAIM FOR DEDUCTIONS

To be completed by or on behalf of a resident in Kenya, Tanganyika, Uganda or Zanzibar

NOTE.—These deductions should NOT be deducted in computing the income returned on page 3 of the form. A deduction of £200 is allowed to a single person, but where the total income exceeds £200 the deduction is reduced by one-half of the amount by which the total income exceeds that amount except where the individual is entitled to claim a deduction in respect of a child.

- WIFE.**—A deduction of £350 is allowed to a married man.
Full Name of Wife: Rose Selina Granville-Ross.
who was living with the taxpayer or wholly maintained by him during the year ended 31st December, 1943.
- CHILDREN.**—A deduction of £80 is allowed for one child and £40 for each subsequent child, with a maximum of £200 is allowed in respect of children living and maintained by the taxpayer during the year ended 31st December, 1943, and under sixteen years of age on 1st January, 1943, or who, if over that age were receiving full-time instruction at any University, College, School or other Educational Establishment, or were articulated or indentured. "Child" includes a step-child, or an adopted child, but no deduction is allowed in respect of a child who was entitled in his own right to an income exceeding £75 in the year.

Full name of each child	Date of birth	Name and Address of the University, College, etc., in the case of a child over sixteen years of age	State whether wholly maintained during the year	Has the child any income in own right? If so, state amount, excluding scholarship, etc., income
Nona Evelyn G.-R.	17.2.36		Wholly	—
Brian Rex G.-R.	1.8.37		do.	—

3. DEPENDANTS.—A deduction of the amount expended during the year ended 31st December, 1943, is allowed subject to a maximum of £60 in respect of a dependant who is the widowed mother of the taxpayer or of his wife, or a relative who is incapacitated by old age or infirmity from maintaining himself. It also includes a relative who is a housekeeper residing with and maintained by a widower. In all cases the dependant's total income from all sources must not exceed £150 in the year ended 31st December, 1943. Where two or more persons contribute to the maintenance the deduction of £60 is divided in proportion to the amount of their respective contributions.

Name and Address of Dependant or Housekeeper	Relation to taxpayer or his wife	Date of Birth, if aged; or nature of infirmity	Annual income of relative excluding any voluntary allowance	Amount expended	Has any other person contributed to the maintenance. If so what amount

4. LIFE INSURANCE OR CONTRIBUTIONS TO PENSION, PROVIDENT FUNDS, ETC.—A deduction is allowed in respect of:—

- The amount of premium paid in respect of an insurance on the taxpayer's or his wife's life.
 - The annual contribution to an approved Widows' and Orphans' Pension Scheme, Pension, Provident Fund, etc.
- The total allowance is restricted to one-sixth of the total income or £100, whichever is the less.

Name of Assurance Company, Fund or Pension Scheme	Whether on life of taxpayer or his wife	Capital sum payable at death	Amount of annual premiums or contributions paid in the year ended 31st December, 1943
S. A. Mutual Life Ass.	Self—Life	£1000	£24. 10. 0
Prudential Assurance	do.	£6000	£247. 5. 0

NOTE.—If there is not sufficient space to enter full details, please attach a separate statement of the Income and enter the total in the appropriate space, which should be marked "as per statement attached."

£ 2386.0.0

£ 2386.0.0

£ 81.0.0

£ Nil

£ Nil

£ Nil

£ 35.0.0

£ 35.0.0

£ 300.0.0

£ 300.0.0

£

£

£ 2386.0.0

£ 2386.0.0

Total carried forward ...

Total carried forward ...

Red 49.—Partnership Income Tax Return for the year 1943.

N.B.—It is not sufficient to leave a space blank.

Statement of Total Income for the Year ended 31st December, 1943

SECTION A—Income accrued in or derived from Kenya, Tanganyika, Uganda or Zanzibar

1. FROM AGRICULTURE OR FARMING

State type of Farm or Plantation, etc. Total Acreage
Land Office No. Acreage under cultivation
Situation.
If not owner, state rent paid: £
Name and Address of Owner.

2. FROM THE TRADE, BUSINESS OR PROFESSION OF Agents carried on at Gort Rd., Nairobi, Kenya.

3. FROM ANY PROPERTY (RENTS, PREMIUMS, Etc.). Deduct Mortgage or Loan Interest below

Table with columns: SITUATION, Gross Rents, etc., Crown or Ground Rents, Rates, Repairs, etc., Net Income

4. FROM ANY DIVIDENDS, INTEREST OR ANNUITIES

5. FROM ANY OTHER SOURCE NOT INCLUDED ABOVE

6. INCOME RECEIVED IN KENYA, TANGANYIKA, UGANDA OR ZANZIBAR, FROM OUTSIDE THESE TERRITORIES

Please state the Territory in which the Income was received. Kenya.
(a) From the United Kingdom or any British Possession:—
Included in above as per Statement.
(b) From any Foreign Country:—

TOTAL ... £ 2955.0.0

DEDUCTION FOR:— (1) INTEREST CHARGES ON MORTGAGE OR LOAN EMPLOYED IN ACQUIRING ANY INCOME DECLARED IN THIS RETURN AND NOT ALREADY DEDUCTED ABOVE

Table with columns: Amount of Debt, Rate of Interest, Security, Creditor's Name and Address, Purpose for which the charge was created, Amount of Interest payable in the year ended 31-12-43

(2) LOSSES IN TRADE OR AGRICULTURE (IF ANY), Carried forward.

Net Losses in previous years
Less allowed against other Income last year
Net Loss claimed this year
TOTAL INCOME ... £ 2955.0.0

SECTION B—To be completed in the case of a Partnership

NAMES AND OTHER PARTICULARS OF THE SEVERAL PARTNERS FOR THE YEAR PRECEDING THE YEAR OF ASSESSMENT

Table with columns: Names of the Partners, Residence of each Partner, Whether "Sleeping" or "Acting" Partner, Particulars of Distribution between Partners of the Profits or Losses (Salary, Interest on Capital, Basis of Distribution of Balance, Amount of Partner's share of Balance), Return for the year 1943 (undated).

DETAILED INSTRUCTIONS

NOTE.—The Commissioner of Income Tax will willingly give assistance on any special difficulty not covered by these Instructions which are intended for the guidance of taxpayers generally.

INCOME DERIVED FROM AGRICULTURE.—Separate Instructions are enclosed.
INCOME DERIVED FROM A TRADE, BUSINESS OR PROFESSION.—A full description of the trading activities should be given, together with the addresses of the principal office and all branches of the concern.
ACCOUNTS.—If a copy of the Trading Account and Balance Sheet has not already been forwarded to the Commissioner, a copy certified as correct should be attached to the Return. An Insurance Company must make a Supplementary Return on Form I.T. (2) L.I.

Normally, the profits of the year ended the 31st December, 1943, should be stated. Where, however, accounts are usually made up each year to some date other than the 31st December, the profit of the year to the date of the Balance Sheet, in the year ending 31st March, 1944, may be accepted.
Where a previous return has been made to such a date, accounts made up to a different date may be accepted subject to any adjustment which may be just and reasonable.

Outgoings and Expenses Allowable

These are, broadly speaking, expenses not being capital expenditure, wholly and exclusively incurred for the purposes of the trade, business, profession or vocation. They include:
Interest upon any money borrowed where the Commissioner is satisfied that the interest was paid on capital employed in acquiring the income, and the interest is not payable by a non-resident person to another non-resident person.

Rent of land or buildings occupied for the purpose of acquiring the income.
Any loss arising where property including premises being mills, factories or other similar premises, plant or machinery, has been scrapped or sold. The loss is to be calculated by deducting the sale or scrap value and any sum recovered under an insurance or indemnity from the written down value of the property. The written down value is the reduced value after writing off from the original cost depreciation at the rates allowed for income tax as from the date of purchase. Where, however, any such property which was purchased prior to the 1st January, 1939 (in Kenya 1st January, 1937) has been replaced, the depreciation which took place prior to that date is not to be deducted in arriving at the written down value.

Any sum expended for structural alterations to premises to the extent that they are necessary to maintain the existing rent or annual value, and any sum expended for repairs of premises, plant and machinery employed in acquiring the income or for the repair, renewal or alteration of implements, utensils or articles so employed, except where an allowance is granted in respect of wear and tear.

Debts proved to be bad, and doubtful debts to the extent that they are respectively estimated to be bad. Recoveries of amounts previously written off must be treated as receipts of the year.

Contributions by an employer to an approved pension, saving or provident fund, etc.;
Cost of measures for the prevention of soil erosion;
Cost of imported cattle, sheep, horses and swine purchased for stud purposes and imported poultry;

So much of the price paid for:
(i) land acquired to cut and sell timber therefrom;
(ii) the right to fell timber for sale;

as is attributable to the timber felled in the year.
Mining Operations.—Under Section 13 (1) (n) rules may be prescribed allowing deductions in respect of capital expenditure incurred in mining operations. Any person who includes income from mining in his return will be notified by the Commissioner in due course as to any such deductions which may be due.

Allowance for Wear and Tear

A deduction may be made of a reasonable amount for the wear and tear of property owned by the taxpayer including plant and machinery, arising out of the use or employment of such property in the year ended 31st December, 1943. Where the property is rented on terms that the burden of wear and tear falls upon the taxpayer, he may claim the deduction which would be due to him if the property had belonged to him.

No deduction can be made for the depreciation of buildings, or other structures of a permanent nature, but where premises are in the nature of mills, factories or other similar premises, a deduction of an amount, not exceeding one per cent. of the original cost may be claimed.

Reference should be made to the deductions in regard to income from agriculture in connexion with dipping tanks, fences, etc.

Red 50.—Partnership Expenses Account for the year 1943.

Exhibits.

ROSS & ELLIOTT, NAIROBI.				31.12.43			Red 50. Partnership Expenses Account for the year 1943, 31st December 1943.
EXPENSES ACCOUNT, 1943.				£	s.	d.	
1943		£	s. d.	1943	£	s. d.	
Dec. 31	To exchange on remittances		13 10 0	Commissions as per list	3,442	3 3	
„ „	„ Mercantile Guardian ..		6 0	Commissions paid direct			
„ „	„ Travelling expenses in B.E.A.		1,905 17 3	to Nairobi	1,432	4 2	
	„ Balance		2,954 14 2				
			<u>£4,874 7 5</u>		<u>£4,874 7 5</u>		

Two-thirds of £2,954.14.2 = £1,969.16.2.

Red 51.—East African Commissions for the year 1943.

EAST AFRICAN COMMISSIONS 1943				Red 51.			
<i>Amounts brought forward from 1942</i>				£	s.	d.	East African Com- missions for the year 1943 (undated)
	Crawford F. & Co.	Allowance	.. ..	5	0	0	
	Elliott-Lucas Ltd. .. ..	„	.. ..	30	0	0	
	Gilpin & Whitehouse Ltd. .. ..	„	.. ..	17	0	8	
	Hampton, C. & J. Ltd. .. ..	„	.. ..	31	8	5	
	Lane & Girvan Ltd. .. ..	„	.. ..	7	4	1	
	Patons & Baldwins Ltd. .. ..	„	.. ..	50	0	0	
	Spear & Jackson Ltd. .. ..	„	.. ..	25	0	0	
	Taylor Law & Co. Ltd. .. ..	„	.. ..	21	2	7	
	Thomson, M. C. & Co. .. ..	„	.. ..	5	7	3	
	Walker Bros. (London) Ltd. .. ..	„	.. ..	100	0	0	
	Wardle Cotton Co. Ltd. .. ..	„	.. ..	25	0	0	
	Welsh Tinplate & Metal Stpg. Co. .. ..	„	.. ..	25	0	0	
	Automotive Products Ltd.	Commission	.. ..	55	16	8	
	Elliott-Lucas Ltd. .. ..	„	.. ..	1	8	9	
	Hartley, Hy. & Co. .. ..	„	.. ..	154	19	8	
	Howards & Sons Ltd. .. ..	„	.. ..	112	12	6	
				<u>667</u>	<u>0</u>	<u>7</u>	
	Carried forward			667	0	7	

<i>Exhibits.</i>		£	s.	d.
	Brought forward	667	0	7
Red 51.	1943			
East	Ashwell & Nesbit Ltd.	14	9	0
African	Automotive Products Co.	59	4	6
Com-	Baker, John & Sons Ltd.	4	7	10
missions	Bourne Jos. & Sons Ltd.	12	6	5
for the	British Indestructo Glass Ltd.	24	0	6
year 1943	Brown Bros. Ltd.	66	9	8
(undated),	Cellular Clothing Co. Ltd.	75	19	8
<i>continued.</i>	Clyde Nail Co. Ltd.	2	10	4
	Cookson, Jos. Ltd.	11	6	
	Cranbux Ltd.	29	18	1
	Crompton, Thos. & Sons Ltd.	90	14	9
	Central Agency Ltd.	302	10	9
	Dickinson, Herbert & Co.	64	16	2
	Elliott-Lucas Ltd.	1	17	4
	French, W. T. & Son Ltd.	19	8	
	Galvo Wire Netting Ltd.	4	19	3
	Gilpin & Whitehouse Ltd.	13	12	4
	Hampton, C. & J. Ltd.	74	16	1
	Lane & Girvan Ltd.	67	16	11
	Lavy, Chas. & Co. Ltd.	157	2	0
	Love, Clifford & Co. Ltd.	57	11	2
	Maremont Automotive Products Co.	108	8	6
	Marshall, H. C. & Co.	69	1	8
	Debit 1134 now collected	5	3	
		69	6	11
	Neill, Jas. & Co. Ltd.	26	5	9
	Patons & Baldwins Ltd.	114	16	2
	Pepper Lee & Co. Ltd.	58	12	8
	Peto & Radford Ltd.	35	14	0
	Spear & Jackson Ltd.	62	14	5
	Turner, Wm. & Bro. Ltd.	76	1	10
	Trawford, Chas. & Co.	18	6	
	Thomson, M. C. & Co. Ltd.	7	5	4
	Westminster Trading Co. Pty. Ltd.	572	0	1
	Wardle Cotton Co. Ltd.	16	11	2
	Allowance for 1943	25	0	0
		41	11	2
	Welsh Tinplate & Metal Stpg. Co.	6	2	10
	Webb, John & Coy. Ltd.	1	7	5
	Wheway, Job & Son Ltd.	23	1	1
	Walker Bros. (London) Ltd.	444	2	1
		£3,442	3	3

Red 79.—Agreement between T. Lea Elliott & Company and Alfred Granville Ross.

Exhibits.

AN AGREEMENT made this 1st day of May One Thousand Nine Hundred and Twenty-Five, between T. LEA ELLIOTT & COMPANY, Manufacturers Agents and Merchants of 40 Summer Row Birmingham England of the first part and ALFRED GRANVILLE ROSS of P.O. BOX 150 Nairobi, Kenya Colony, East Africa of the second part. WHEREBY IT IS AGREED between the parties :—

Red 79.
Agreement
between
T. Lea
Elliott &
Company
and Alfred
Granville
Ross,
1st May
1925.

1. The said T. Lea Elliott & Co. (hereinafter called the Principals) do hereby appoint the said Alfred Granville Ross (hereinafter called the
10 Agent) to be their Agent, and to be the Sub-Agent of the Manufacturers whose names are scheduled in this document and such others as may be added from time to time (hereinafter called the Manufacturers) for Kenya Colony Uganda Tanganyika Territory and Zanzibar (hereinafter called the Territory) subject to the terms of and continuance of Agency Agreements with such manufacturers (vide copy of Manufacturers Agreement attached herewith).

2. The Agent undertakes during the continuance of this Agreement to canvass customers regularly and conduct the business to the best of his ability in the interests of all concerned and generally to abide by the
20 terms and conditions entered into by the Principals in their Manufacturers' Agency Agreements.

Further to provide at his own cost a suitable permanent showroom at Nairobi Kenya and to visit Mombasa at least twice a year and the following places at least once a year—Kisumu, Nakuru, Kampala, Jinja, Dar-es-Salaam, Tanga, and Zanzibar and submit for customers inspection a suitable range of samples.

Further to correspond regularly with the Principals and the chief Manufacturers giving detailed reports of work done on their behalf.

3. The Principals shall pay by way of remuneration to the Agent :—

30 (A) 60% (Sixty per cent.) of the total commissions and/or travelling allowances (if any) received by them from the Manufacturers on account of goods exported to the Territory.

(B) One-third of the gross profit made where goods are shipped by the Principals in their own name on a factoring or merchant basis.

(C) £6.13.4 (SIX POUNDS THIRTEEN SHILLINGS AND FOUR PENCE) per £100 (One hundred pounds Sterling) of commission received from the Manufacturers—such payments to be understood as a contribution to staff and travelling expenses.

40 (D) Where the Principals act as buying Agents no share of the commission charged shall be returnable to the Agent.

4. The Principals undertake to forward to the Agent copies of invoices for all goods exported to the Territory as soon as they are received from the Manufacturers and also as near as possible to the end of each

Exhibits.
 Red 79.
 Agreement
 between
 T. Lea
 Elliott &
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 Granville
 Ross,
 1st May
 1925,
continued.

half-year to render a statement of Commission account and to send a remittance to cover same to the Agent's credit at the London Office of the Standard Bank of South Africa Ltd.

5. The Principals agree to pay the Agent upon request and in advance from time to time any reasonable sum or sums on account of commission earned under the preceding paragraph 3.

6. The Principals agree to deliver samples catalogues and all necessary business stationery free of charge to Nairobi reimbursing the Agents for clearing charges duty and carriage on same.

7. The Agent undertakes to keep proper account sales of all samples and/or stock which he shall dispose of from time to time and to render a statement of same accompanied by vouchers at the end of every six months—in such a form as they can be presented to the Manufacturers whose property they are—All proceeds of such sales are to be credited at once to the Principals and value shall then be deducted from commission earned.

8. All samples shall remain the property of the Principals in trust for the Manufacturers and the Agent shall insure them against risk of loss, theft, fire, etc.

9. The Agent shall pay all salaries travelling and other expenses in and about this Agency.

10. The Agent shall for convenience when handling the agencies scheduled herewith trade as Ross & Elliott, but nothing in this Agreement shall be construed as constituting a partnership between the parties hereto.

11. The Principals consent to the Agent holding at the time of this Agreement the following Agencies only independently of this Agreement :—

Albert M. Regate	..	..	..	..	London	
Burgess Heaton & Reid Ltd.	..	..	..	..	Bradford	30
Holeproof Hosiery & Co. Ltd.	..	..	..	..	London	
British Cycle Manufacturing Co. Ltd.	..	..	..	..	Birmingham	
J. Lyons & Co. Ltd.	..	..	..	..	London	
Chas. Morgan & Co. Ltd.	..	..	..	..	London	

and agree that the Agent shall retain in full any remuneration he may receive from these Agencies but this Agreement stipulates that the Agent shall not accept any further Agencies except with the consent in writing of the Principals—which will however only be given provided that any such Agencies do not clash with or interfere with the efficient working of agencies controlled by the Principals.

40

12. In the event of retiral from business, bankruptcy or death of the Agent this Agreement shall terminate automatically from the date of such event, and commission as hereinbefore provided for shall only be payable

to the Assigns Trustees or heirs of the Agent on all orders shipped by Principals or Manufacturers to the Territory stated within six weeks of such event happening.

13. This Agreement shall commence as from May first 1925 and commission be payable to the Agent upon all orders booked on and after the date.

This Agreement subject to the foregoing conditions shall remain in force for 3 years (THREE YEARS) from the date hereof and shall thereafter continue subject to the termination at any time by a six months' notice in writing by either party in which case the Agent's share of commission shall be payable by the Principals on all orders shipped within six weeks of the date of final termination of this Agreement.

IN WITNESS whereof these presents have been executed this 29th day of May 1925.

In the presence of

(Sgd.) J. H. FERNANDIE.

(Sgd.) A. GRANVILLE ROSS

(Sgd.) T. L. ELLIOTT
trading as T. LEA ELLIOTT & Co.

Exhibits.

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Red 79.
Agreement
between
T. Lea
Elliott &
Company
and Alfred
Granville
Ross,
1st May
1925,
continued.

20

Red 80.—Agreement between Alfred Granville Ross and Thomas Lea Elliott.

Red 80.
Agreement
between
Alfred
Granville
Ross and
Thomas
Lea Elliott,
1st
January
1927.

AN AGREEMENT made this First day of January One thousand nine hundred and twentyseven Between ALFRED GRANVILLE ROSS of Cearns Chambers, Government Road, Nairobi, Kenya Colony, Manufacturers' Representative of the one part and THOMAS LEA ELLIOTT of 40 Summer Row, Birmingham in the County of Warwick in England Manufacturers' Representative of the other part WHEREAS the said Alfred Granville Ross has for some time past been and is now carrying on in Nairobi the business of a Manufacturers' Representative AND WHEREAS the said Thomas Lea Elliott has for some time past and is now carrying on at Birmingham aforesaid the business of a Manufacturers' Representative AND WHEREAS the said Alfred Granville Ross has for some time past been acting as British East African Agent and Representative of the said Thomas Lea Elliott AND WHEREAS the said parties hereto have agreed to enter into a partnership in the business of Manufacturers' Representative in Nairobi and elsewhere in British East Africa in accordance with Agreement entered into on the First day of May One thousand nine hundred and twentyfive (1st May 1925) upon the terms and conditions hereinafter expressed and contained NOW THIS AGREEMENT WITNESSETH that each of them the said Alfred Granville Ross and the said Thomas Lea Elliott

Exhibits.
 —
 Red 80.
 Agreement
 between
 Alfred
 Granville
 Ross and
 Thomas
 Lea Elliott,
 1st
 January
 1927,
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(so far as the covenants agreements, provisions, and stipulations hereinafter contained are to be observed and performed by him, his Executors and Administrators) hereby covenants and agree with the other of them in manner following, that is to say :—

1. The said Alfred Granville Ross and Thomas Lea Elliott shall become and be and henceforth continue partners in the business of Manufacturers' Agents and Representatives for a term of seven years commencing from the first day of January One thousand nine hundred and twentyseven if the said partners shall so long live.

2. The Firm name and style of the partnership shall be " Ross & Elliott " and the business of the partnership shall be carried on at Cearns Chambers, Government Road, Nairobi, Kenya Colony aforesaid or at such other place or places in British East Africa as shall from time to time be mutually agreed upon by the said partners. 10

3. The Bankers of the firm shall be the Standard Bank of South Africa Ltd., at its office in Nairobi or such other Bankers as shall from time to time be mutually agreed upon by the said partners. All moneys, cheques, Bills, notes, and other negotiable instruments which shall or may from time to time be received by the partners or either of them for or on account of or in connection with the said partnership business shall be immediately paid to the Bankers for the time being of the partnership, and all disbursements for or on account of the Partnership business shall be made by cheque on such Bankers. All cheques drawn on the Partnership Account shall be signed by the said Alfred Granville Ross unless otherwise mutually agreed upon by the said partners. 20

4. The Capital of the said partnership business shall be considered to be the sum of One thousand pounds (£1000.0.0) which shall be considered to have been brought in to the said business by the partners in equal shares and shall belong to the partners in equal shares. PROVIDED that until such time as the said Alfred Granville Ross shall be able to contribute his moiety of the expenses of carrying on the said business the said Thomas Lea Elliott shall supply the necessary finance to the extent of not more than One hundred pounds (£100) per month, or Twelve hundred pounds in any one year (£1200) payable by letter of credit to the order of the said Alfred Granville Ross through the Standard Bank of South Africa Ltd., Nairobi Kenya or such other Bank or Banks as may be mutually agreed upon. 30

5. The said Thomas Lea Elliott shall immediately on the signing of this Agreement transfer to the said partnership business all the British East African Hardware and other agencies held by him in connection with his said business carried on as "T. Lea Elliott & Co." at Birmingham aforesaid and all future agencies acquired by him in his said business at Birmingham for the sale or export of goods and merchandise for the British East African market and shall also appoint the said partnership business to be the sole British East African agents and representatives of the said firm of T. Lea Elliott & Company during the term of this agreement. 40

6. The said Alfred Granville Ross shall immediately on the signing of this Agreement transfer to the said partnership business the whole of

his existing business as a Manufacturers Representative and Agent and all agencies held by him in British East Africa, and also all the office plant, furniture and fittings now used by him in connection with his said business at Cearns Chambers, Government Road Nairobi Kenya aforesaid. PROVIDED that the said Alfred Granville Ross shall not be bound to account to the said partnership business for any other monies earned or received by him in any manner whatsoever outside the said partnership business except as a Manufacturers Representative or agent. AND PROVIDED FURTHER that the said Alfred Granville Ross shall have the right to carry on in his own name but for partnership account those agencies held by him and controlled by Mr. A. M. Reigate of London.

Exhibits.
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Red 80.
Agreement
between
Alfred
Granville
Ross and
Thomas
Lea Elliott,
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continued.

7. The net profits that is the balance remaining after deduction of all business expenses from the income derived by way of commission and any other source earned by the said partnership business shall be distributed as follows that is to say Thirty-three and one-third per cent. ($33\frac{1}{3}\%$) of the said net profits shall be paid and credited to the said Thomas Lea Elliott aforesaid by way of remuneration for agencies secured and services rendered to the said partnership and the remaining Sixty-six and two-thirds per cent. ($66\frac{2}{3}\%$) shall remain and be credited to the said Alfred Granville Ross by way of remuneration for his services. PROVIDED that the said Alfred Granville Ross shall be at liberty to draw in advance a sum not exceeding £55 (Fifty-five pounds) per month for his personal subsistence and in the event of his drawings on this account being in excess of his share of the profits due to him in any one year such excess amount shall be carried forward to the debit of his personal account until it is finally liquidated.

8. Proper books of account shall be kept by the partners and entries made therein of all such matters, transactions, and things as are usually written in books of account kept by persons engaged in concerns or businesses of a similar nature, and such books, together with all documents, securities, letters, and other things belonging to or concerning the said partnership business shall be kept at the office where the partnership business shall for the time being be carried on and each of the partners shall have free access to the same to inspect, examine, and copy the same whenever he shall think fit.

9. If either partner shall at any time with the consent of the other advance any money to the firm beyond the amount of the capital hereby agreed to have been brought in by him the same shall be a debt to him from the firm and may be withdrawn by him at any time upon giving to the other partner one months previous notice in writing and shall in the meantime bear interest after the rate of six pounds (£6) per centum per annum computed from the time of such advance.

10. The partners shall be faithful to each other in all partnership transactions and at all times furnish to each other correct accounts and statements of and concerning all such transactions without any concealment or suppression. Neither of the partners shall employ any money or effects belonging to the firm or engage its credit except on account of the partnership business and the bona fide carrying on of the same or do or suffer

Exhibits.
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 Red 80.
 Agreement
 between
 Alfred
 Granville
 Ross and
 Thomas
 Lea Elliott,
 1st
 January
 1927,
continued.

anything to be done whereby any such partnership money or effects or his interests therein may be taken in execution or in anywise assigned charged or encumbered for or in respect of his private debts. Neither of the partners shall without the consent in writing of the other become bail or surety for any person.

11. Neither of the partners shall without the consent in writing of the other release or compound any debt owing to or any claim of the firm and if either partner shall do so he shall if required by the other make good to the firm the full amount of such debit or claim.

12. Generally speaking the duty and responsibility of the said Alfred Granville Ross shall be those outlined in the original agreement between the partners hereto dated the First day of May One thousand nine hundred and twentyfive under clause 2. 10

13. On the thirty-first day of December in each and every year during the continuance of the said partnership or within three calendar months thereafter a general account and balance sheet shall be taken up to the same thirty-first day of December of the credits, property, and effects, debts, and liabilities, of the said partnership and every such half-yearly account shall be entered in two books and be signed in each such book by each partner and after such signature, each partner shall keep one of the said books and shall be bound by such account except that if any manifest error be found therein by either partner and signified in writing to the other within three calendar months after the same shall have been so signed by each of them, such error shall be rectified. Immediately after the signing of such account each partner may draw out his share of the profits as thereby appearing. 20

14. If the partnership be dissolved by the death or bankruptcy of either partner, or is dissolved by the Court under Section 35 of the said Act, or otherwise, or on account of the insanity, incapacity, or misconduct of either partner, in any of such cases the other partner may purchase the share of the partner whose death, bankruptcy, incapacity, or misconduct or the charge of whose share has caused this dissolution in the partnership property upon giving to his legal personal representatives, official assignee, or committee, or to the outgoing partner himself, as the case may require, a notice in writing to that effect at any time within three calendar months from the date of the dissolution, such purchase to take effect as from the date of the dissolution. A notice left at the usual or last known place of abode or business of the person for whom it is intended shall be deemed to be given to him for the purpose of this clause. PROVIDED that in the event of a dissolution of the Partnership by the mutual Agreement and consent of the said partners during the joint lives of the partners whether by effluxion of time or otherwise then and in such event all the Hardware agencies and other agencies now or at any time during continuance of the partnership introduced or brought into the partnership business by the said Thomas Lea Elliott shall revert to and be assigned and transferred to the said Thomas Lea Elliott free from any charge or payment whatsoever for the same. And all the soft goods agencies and other agencies now or at any time during the continuance of the partnership introduced or brought into the partnership business by the said Alfred Granville Ross 30 40

shall revert to and be assigned and transferred to the said Alfred Granville Ross free from any charge or payment. And on the happening of such dissolution as last aforesaid all agency agreements, letters of appointment, documents, correspondence, and other papers and things relating to any of the said agencies shall be handed over to and retained by the partner who is entitled to the respective agencies under this clause. And each partner shall to the best of his power and ability assist the other in completing or adjusting any outstanding business in connection with the said agencies.

Exhibits.
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Red 80.
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Ross and
Thomas
Lea Elliott,
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10 15. In the event of a dissolution of the Partnership by the death of either party and if the option of purchase given by clause 14 hereof shall have been exercised then and in such event the surviving and continuing partner shall (if he shall so long live) pay to the estate of the deceased partner in addition to the purchase price for the share of the deceased partner as provided in clause 16 hereof five per cent. of the net annual profits to arise from the said business for a period of ten years from the date of the dissolution of the said partnership which shall be fixed as at the date of the death of the deceased partner. Such payments to be made half-yearly on the thirty-first day of December and the thirtieth day of June and to be ascertained in the same manner as provided in clause 13 hereof with regard to the division of profits during the continuance of the partnership. It is the intention of the parties hereto that the payment in this Clause provided for shall be in lieu of any payment for the goodwill of the said partnership business.

30 16. Subject to provisions of clauses 14 and 15 hereof the price to be paid for the purchase of the share of a deceased or outgoing partner under the foregoing provisions shall be the net value thereof after providing for the debts and liabilities of the firm on the day of the determination of the partnership and in ascertaining such value the goodwill of the said partnership business shall not be taken into account. And if the parties shall be unable to agree as to the value thereof the same shall be ascertained by two indifferent persons one to be appointed by the Vendor and the other by the Purchaser or by an Umpire to be appointed by the Valuers before they proceed to business. And if either party shall fail to appoint a Valuer for the space of fourteen days after being called on so to do by the other party, or shall appoint a Valuer who shall refuse to act, the valuer appointed by the Other party shall make a final valuation alone. The sum of money ascertained to be the value of the said share shall be paid by the Purchaser to the Vendor by equal instalments at the expiration of six, twelve, eighteen and twentyfour months respectively from the determination of the partnership with interest for the same, or the instalments thereof for the time being remaining unpaid after the rate of six pounds per centum per annum and shall be secured by a Promissory Note of the Purchaser or such other security as may be agreed on by the parties, and the Purchaser shall also indemnify the Vendor and the estate of the deceased or outgoing partner against the debts and liabilities of the firm, and the Vendor or the Vendors shall, at the request and cost of the Purchaser do and execute all such acts, deeds, and things as may be necessary or proper for vesting in him or them the share purchased by him or them as aforesaid and for enabling him or them to get in the outstanding credits and effects of the firm.

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 Red 80.
 Agreement
 between
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 Lea Elliott,
 1st
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 1927,
continued.

17. Upon the determination of the partnership by effluxion of time, or upon its determination by any means, if the option given by clause 14 hereof shall not have arisen or been exercised and subject to the proviso to the said clause 14 hereof then as soon as conveniently may be a full and general account and valuation shall be taken of the property, assets, and liabilities of the partnership, and the property and assets shall be sold and realised and the debts due to the partnership shall be collected and got in, and the moneys arising thereby shall be applied in the first place in discharge of the liabilities of the partnership and the expense of and incidental to the taking of the said account and valuation and of and incidental to such sale realisation and getting in as aforesaid, and in the next place in payment to each partner or his representatives, of any unpaid profits due to him or them and repayment of his or their share of capital, and the residue (if any) shall be divided between the partners or their representatives in equal shares, and the partners or their representatives shall execute and do all such instruments and things for carrying out the realisation and division of the partnership assets, and particularly will execute such mutual indemnities and releases as may be reasonable and proper. PROVIDED ALWAYS that if the proceeds of the realisation shall not be sufficient after the discharge of the liabilities of the Partnership and of such expenses as aforesaid, and the payment of any unpaid profits as aforesaid, to repay to the partners or their representatives their respective share of capital in full then such shares shall be repaid rateably so far as such proceeds shall extend and neither of the partners nor his representatives shall have any claim on the other partner or his or their representatives in respect of the deficiency. 10

18. If during the continuance of the said partnership or at any time afterwards any difference shall arise between the said partners in regard to the construction of any of the clauses hereof or to any division, act, or thing, to be made or done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, such difference shall be forthwith referred to Arbitration under the Provisions of the Arbitration Act 1902 or any Act amending the same or in substitution thereof. 30

IN WITNESS whereof the said parties hereto have hereunto set their hands the day and year first before written.

Witness to the signature of T. L. ELLIOTT

(Sgd.) FRANCIS HENRY HOPKINS, (Sgd.) T. L. ELLIOTT.
 40 Summer Row,
 Birmingham.

40

Witness to the signature of A. GRANVILLE-ROSS

(Sgd.) H. J. NORIE, (Sgd.) A. GRANVILLE-ROSS.
 Managing Clerk to F. HOLLEY,
 Solicitor,
 Nairobi.

STATEMENT OF TOTAL INCOME LIABLE TO KENYA, TANGANYIKA, UGANDA OR ZANZIBAR INCOME TAX FOR THE YEAR ENDED 31st DECEMBER, 1943
(TO BE COMPLETED BY ALL NON-RESIDENTS)

STATEMENT OF INCOME NOT LIABLE TO KENYA, TANGANYIKA, UGANDA OR ZANZIBAR INCOME TAX FOR THE YEAR ENDED 31st DECEMBER, 1943

INCOME ACCRUED IN OR DERIVED FROM KENYA, TANGANYIKA, UGANDA OR ZANZIBAR

To be Completed by a Non-Resident British Subject or an Individual Resident in the British Empire Who is Entitled to Claim Personal Deductions on Page 4.

1. FROM AGRICULTURE OR FARMING
State type of Farm or Plantation, etc.
Land Office No. Total Acreage
Situation Acreage under cultivation
If not owner, state Name and Address of Owner and Rent Paid : £
If a Partnership, state Name and the share of the profits entered here.)

EARNED INCOME
State precisely the source of each item of income, and the gross amount before deduction of United Kingdom or Empire Tax.
£ Nil

2. FROM THE TRADE, BUSINESS PROFESSION, OR VOCATION of Manufacturers Representatives
carried on under the Trade Name of Ross & Elliott at Gort Rd., Nairobi, Kenya.
Share of the Partnership Income of Ross & Elliott as shown in the separate partnership return
Note—A Balance Sheet, Trading Account and Profit and Loss Account (which should be in sufficient detail to show under separate headings the general nature of the expenses) should be furnished together with a statement showing how the income has been computed.

PROPERTY OCCUPIED AND RENTS
THE ANNUAL VALUE OF ANY PROPERTY OCCUPIED MUST BE INCLUDED
£ 985.0.0

3. FROM ANY EMPLOYMENT OR PENSION OTHER THAN IN RESPECT OF WOUNDS OR DISABILITY CAUSED IN WAR
State from whom received

INVESTMENT INCOME
FROM ANY SOURCE NOT INCLUDED ABOVE
£ Nil

4. FROM ANY PROPERTY (RENTS, PREMIUMS, ETC.) Deduct Mortgage or Loan Interest below

Situation	Gross Rents, etc.	Crown or Ground Rents	Rates, Repairs, etc.	Net Income

DEDUCTIONS FOR CHARGES SUCH AS GROUND OR HEAD RENT, ANNUAL INTEREST, ETC.

Nature of the Charge	Name of Person to Whom Payable	Gross Amount
(a) Ground or Head Rent		£ s. d.
(b) Interest on Mortgage or Loan— £..... at per cent.		
(c) Other Annual Charge		
TOTAL		

5. FROM ANY DIVIDENDS, INTEREST, ANNUITIES, ETC. Detail each Item separately, and ATTACH VOUCHERS

	Tax Deducted	Gross Income
	£	£

FROM ANY SOURCE NOT INCLUDED ABOVE
£ Nil

6. FROM ANY OTHER SOURCE NOT INCLUDED ABOVE. Give Details of Source

DEDUCTION FOR :—
(1) INTEREST CHARGES ON MORTGAGE OR LOAN EMPLOYED IN ACQUIRING ANY INCOME DECLARED IN THIS RETURN AND NOT ALREADY DEDUCTED ABOVE

Amount of Debt	Rate of Interest	Security	Creditor's Name and Address	Purpose for which the charge was created	Amount of Interest Payable in the year ended 31-12-43

(2) LOSSES IN TRADE OR AGRICULTURE (IF ANY), Carried forward.
Net Losses in previous years £
Less allowed against other Income last year £
Net Loss claimed this year £

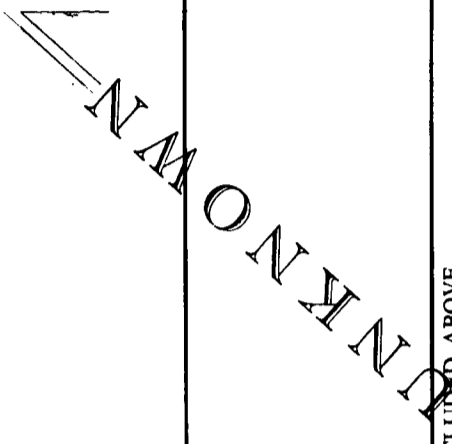
TOTAL INCOME LIABLE TO KENYA, TANGANYIKA, UGANDA OR ZANZIBAR TAX FROM PAGE 2
ADD TOTAL INCOME LIABLE TO KENYA, TANGANYIKA, UGANDA OR ZANZIBAR TAX FROM PAGE 3
£ 985.0.0

DEDUCTION FOR :—
(1) INTEREST CHARGES ON MORTGAGE OR LOAN EMPLOYED IN ACQUIRING ANY INCOME DECLARED IN THIS RETURN AND NOT ALREADY DEDUCTED ABOVE

TOTAL INCOME FROM ALL SOURCES
£ 985.0.0

TOTAL CARRIED TO PAGE 3 ... £ 985.0.0

TOTAL INCOME FROM ALL SOURCES ... £ 985.0.0



Reference to Explanatory Notes

RETURN FOR THE PURPOSES OF EXCESS PROFITS TAX.

The Return must set out the particulars detailed below relating to the profits and/or capital of all businesses, the profits of which are liable to excess profits tax, and must be accompanied by trading accounts and balance sheets for the chargeable accounting period together with a statement showing how the figures in the Return have been calculated.

Note.—(a) Where trading accounts and balance sheets have already been submitted for income tax purposes, further copies need not be supplied where the information shown in those accounts is sufficient for the purpose of this Return.

(b) A company liable to Excess Profits Tax in the United Kingdom on the whole of its profits may submit a certified copy of the United Kingdom Excess Profits Tax computation for the chargeable accounting period in support of this Return.

BUSINESSES CARRIED ON IN KENYA, TANGANYIKA, UGANDA OR ZANZIBAR.

The business of (nature of business) Manufacturers Representatives carried on by (name of person or persons) Alfred Granville-Ross & Thomas Lea Elliott at (place of business) Gort Rd., Nairobi under the trade name of Ross & Elliott AND

the business of (nature of business) Nil carried on at (place of business) Nil under the trade name of Nil

If more than two businesses are carried on by the same person, particulars of the other businesses should be entered on a supplementary schedule attached to this Return.

PROFITS CHARGEABLE.

State :

The profits of all businesses for the chargeable accounting period beginning on 1.1.1943 and ending on 31.12.1943, computed in accordance with the provisions of the Ordinances or Decree ... £ 2955.0.0

Deduct :

Standard profits in accordance with subsection 4 of Section 9 ... £ 2303.0.0

Where the standard profits are in accordance with subsections (1) (c), (3) or (4), of Section 9—

State :

Average capital employed in the business in the chargeable accounting period ... £
Average capital employed in the business in the standard period ... £

Difference at ... per cent. on ... £ = £

Profit standard adjusted for capital variation ... £

In the case of a profession add £250 for each working proprietor ... £

EXCESS ... £652.0.0

ELECTION IN THE CASE OF A BUSINESS OF AGRICULTURE.

I hereby elect that in computing the profits derived from a business of agriculture :—

* (a) where the land is used for the purpose of permanent cultivation, to deduct such an annual sum as to the Commissioner may seem reasonable for the purpose of redeeming the initial cost of clearing the land, planting and maintaining the crop up to and during its productive life ;

* (b) NOT to take into account the values of live stock and produce held by me at the beginning and end of each accounting period.

Delete as necessary.

Signature of person making the Return.

NOTE.—Where no election is made under (a) the cost of clearing the land, planting and maintaining the crop will be allowed as a deduction as and when it was incurred.

Statement regarding Standard Profits, Capital and Deductions to be made in Computing Profits

1. STANDARD PROFITS.

Do you elect the standard profits to be :—

- Section 9 (1) (a)—the minimum standard ;
Section 9 (1) (b)—the statutory percentage on the average amount of capital employed in the business in the chargeable accounting period ; or
Section 9 (1) (c)—the profits of the year ended 31st December, 1939.

If you wish to make an election, state whether (a), (b) or (c)

- If no election is made the standard profits are to be :—
Section 9 (3)—the average profits of the years ended 31st December, 1937, 1938 and 1939 ; or
Section 9 (4)—where the business commenced after 1st January, 1937, and before 1st January, 1939, the average of the profits from the date of commencement to 31st December, 1939.

In either case any losses for a period ended 31st December are to be ignored in calculating the average, but where profits were made for a period of less than one year, then the standard profits must be—

- Section 9 (6)—the statutory percentage of the average amount of capital employed in the business in the chargeable accounting period ;
except where under :
Section 9 (8)—a special standard is fixed by the Board of Referees.
In making your Return on the opposite page you must indicate which of the above have been adopted.

2. CAPITAL.

(a) Companies.

If there has been ANY CHANGE in the control of the company since the end of the previous chargeable accounting period give below a list of the directors and any manager who owns more than 20 per cent. of the issued share capital of the company ; the number of shares of each class held by each during the chargeable accounting period whether in their own names or in the names of nominees, and the voting power attached to each class of share at the Annual General Meeting of the Company.

Table with 3 columns: Name of Director, Shares held and class of shares, and rows for Total shares held by directors, Total issued share capital of company, Is the owner of the shares entitled to vote?, and (b) Where the business is carried on by a person other than a company, state whether he is the beneficial owner of any investments which are pledged as security for the repayment of any money borrowed for the purpose of the business, (c) If so, give a list of these investments, and their value at the beginning and the end of the chargeable accounting period.

Reference to Explanatory Notes

Excess Profits Tax Return of Messrs. Ross & Elliott for 1943 (undated).

Red 135.—Ross & Elliott Summary of Comparative Statements for the years of income 1940 to 1951 inclusive. *Exhibits.*

<i>Year of Income</i>	<i>Overstatement of Expenses</i>			<i>Suppression of Commission</i>			<i>Total Understatement of partnership Income</i>			Red 135. Ross & Elliott Summary of Comparative Statements for the years of Income 1940 to 1951 inclusive (undated).
	£	s.	d.	£	s.	d.	£	s.	d.	
1940	—	—	—	—	—	—	
1941	—	1,694	10 1	1,694	10 1		
1942	—	2,220	3 2	2,220	3 2		
1943	—	2,000	0 0	2,000	0 0		
1944	6 0	2,254	3 1	2,254	9 1		
1945	—	1,127	12 6	1,127	12 6		
1946	1,500 0 0	2,813	4 10	4,313	4 10		
1947	3,000 0 0	3,754	1 0	6,754	1 0		
1948	4,200 0 0	6,841	16 9	11,041	16 9		
1949	3,980 0 0	8,258	17 7	12,238	17 7		
1950	—	—	—	—	—		
1951	—	—	—	—	—		
Grand Total	..			£12,680 6 0	£30,964 9 0		£43,644 15 0			

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

ALFRED GRANVILLE ROSS *Appellant*

AND

THE QUEEN *Respondent.*

RECORD OF PROCEEDINGS

THEODORE GODDARD & CO.,
5 NEW COURT,
LINCOLN'S INN,
LONDON, W.C.2,
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37 NORFOLK STREET,
LONDON, W.C.2,
Solicitors for the Respondent.