~~P.C.~~
~~GHQ.G.Q.~~.

Judgment
37, 1965

IN THE PRIVY COUNCIL

No. 45 of 1964

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

PATRICK ALFRED REYNOLDS — Appellant

- and -

THE COMMISSIONER OF INCOME TAX — Respondent

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37 Norfolk Street,
London W.C.2.

Solicitors for the Respondent.

IN THE PRIVY COUNCIL No. 45 of 1964

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IN THE PRIVY COUNCIL. No. 45 of 1964

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

PATRICK ALFRED REYNOLDS — Appellant

- and -

THE COMMISSIONER OF INCOME TAX — Respondent

RECORD OF PROCEEDINGS

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10 No. 1.

NOTICE OF APPEAL

In the Supreme Court

No. 1.

Notice of Appeal

15th July, 1958.

T R I N I D A D :

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.

No. 538 of 1958

In the Matter of the Income Tax Ordinance Ch. 33, No.1.

And

In the Matter of an Appeal by PATRICK ALFRED REYNOLDS

****

20 LET the Commissioner of Income Tax for the Colony of Trinidad and Tobago (hereinafter called "the Commissioner") attend his Lordship the Sitting Judge in Chambers at the Court House, Port of Spain on Thursday the 9th day of October, 1958, at the hour of 10:00 o'clock in the forenoon on the hearing of an application on the part of

In the Supreme Court

No. 1.

Notice of Appeal.

15th July, 1958.

Continued.

Patrick Alfred Reynolds of No. 8, First Avenue, Cascade, Company Director, (hereinafter called "the Appellant") by way of appeal against the assessment made by the Commissioner on the Appellant by Notice of Assessment dated the 4th day of July, 1958 (confirming Notice of Assessment dated the 28th day of November, 1957, and numbered 2-F20 of 1957) assessing the joint assessable income of the Appellant and his wife for the year of assessment ended 31st December, 1957, at the sum of $32,487.00 and the chargeable income of the Appellant for the said year at the sum of $27,951.00 and the tax charged thereon at the sum of $11,788.15, for an order that:-

(a) the said assessment is invalid and/or not a true and correct assessment for the reason that there fails to be deducted from the joint assessable income of the Appellant and his wife and from the chargeable income of the Appellant the sum of $14,000.00 being the amount paid by the wife out of her income to Alfred Jefferies Prior during the year ended 31st December, 1956, under 'Covenant' in a certain deed of Covenant dated the 28th December, 1956, duly produced to and noted by the Commissioner;

(b) the said assessment be set aside, or, alternatively, be amended by reducing the joint assessable income of the Appellant and his wife to the sum of $18,487.00 and the chargeable income of the Appellant to the sum of $13,951.00 and by reducing correspondingly the tax charged thereon;

and

(c) the costs of this appeal be taxed and paid by the Commissioner to the Appellant.

DATED this 15th day of July 1958.

This Summons was taken out by MESSRS. FITZWILLIAM, STONE & ALCAZAR of No. 17 St. Vincent Street, Port of Spain, Solicitors for the Appellant.

Appellant's Solicitors.

No. 2.

JUDGMENT.

In the Supreme Court

No. 2.

Judgment

31st July, 1959.

TRINIDAD.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 538/1958

IN RE: INCOME TAX ORDINANCE Ch.33 No.1.

Between

PATRICK ALFRED REYNOLDS

Plaintiff

And

THE COMMISSIONER OF INCOME TAX

Defendant

J U D G M E N T

This is an appeal by Summons by Mr. Patrick Alfred Reynolds against an assessment made upon him by the Commissioner of Income Tax by Notice of Assessment dated 4th July 1958 (confirming an earlier Notice of Assessment dated 28th November 1957 and numbered 2-F20 of 1957).

The relevant legislation which I have to consider consists of the Income Tax Ordinance Ch.33 No. 1 and a number of amending Ordinances which refer to Ch.33 No. 1 as "The Principal Ordinance" and which are expressed to be read together as one with that Ordinance. For convenience in this judgment I shall make reference to the "Income Tax Ordinance" or just simply "the Ordinance" or "the present Ordinance" as meaning the Principal Ordinance Ch.33 No. 1 as amended by and read with all the amending Ordinances.

The facts of the case which are not in dispute are shortly as follows:-

The appellant and his wife Mrs. Audrey Jean Reynolds live together and are both in receipt of income from earnings and investments. On 28th December 1956 Mrs. Reynolds entered into a Deed

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Continued.

of Covenant whereby she created a trust for the benefit of the four minor children of the marriage. She appointed Mr. Alfred Jefferies Prior her trustee, and covenanted to pay to him for a period of 3 years the annual sum of $3,500 in respect of each of the children, to be held by him for their benefit, maintenance and/or education, until their maturity or marriage which ever took place the sooner. At the time of the execution of the deed the children's ages ranged from 12 years down to 1 month.

The appellant's return for the year of assessment ending 31st December 1957 and based on income received in 1956 showed a total income of $40,164.86. Of this sum $18,202.00 represented his wife's income.

Apart from the standard deductions allowable, appellant in his return claimed as allowable deductions from income payments made under three dispositions. Two of these dispositions were made by himself and his claim was allowed in respect of these so that we are not here concerned with them.

The claim we are concerned with is that in respect of the third disposition made by Mrs. Reynolds out of her income by the Deed of Covenant of 28th December 1956 which I have already described. Appellant's claim in respect of that disposition is to deduct the whole amount paid thereunder for the year of assessment, namely $14,000, from his wife's returned income of $18,202.00 thus reducing it for tax purposes to $4,202.

The Commissioner disallowed this claim and the appellant duly gave notice of objection. The Commissioner reviewed his assessment but confirmed it. It is from that assessment that Mr. Reynolds now appeals.

Sec.43(5) of the Income Tax Ordinance provides that the onus of proving the assessment complained of to be excessive lies on the appellant.

By sub sec.(6) of the same section the Judge hearing the appeal has in effect to make his own assessment, which of course may or may not agree with the Commissioner's assessment.

The issue for determination may shortly be stated as follows:-

Bearing in mind that for the purpose of the Income Tax Ordinance, the income of a wife living with her husband is, by section 18, deemed to be the income of her husband, are annual payments made by her out of her own income under a Deed of Covenant to a trustee for the benefit of her minor children allowable deductions in calculating the husband's chargeable income?

The answer to this question will rest entirely upon the interpretation of the relevant provisions of the Income Tax Ordinance - in particular secs.10 (1) (f) and 34(2) - and their application, so interpreted, to the facts, which I have related, in this case.

I do not think it is necessary for me to elaborate in any detail on the canons which should be applied in construing the relevant provisions of the Ordinance. Basically I have to give effect to the intention of the Legislature as expressed in the Ordinance. I have to look primarily to the Ordinance itself construing the words used in their ordinary and natural sense - unless of course in the case of particular expressions there is something to the contrary in the context or in the scheme of the Ordinance - and if those words are clear and explicit then they themselves are the best evidence of the intention of the Legislature. It is only when there are ambiguities, inconsistencies, omissions and the like that recourse may be had to outside circumstances such as those comprising the rule in Heydon's case (1584) 3 Co. Rep.7a.

These considerations apply to the construction of all Acts and Ordinances but it may be said that their application in the case of Taxing Acts is of special importance. Taxing Acts have to be construed strictly (See per Hamilton J. in Attorney-General v. Peek 1912 2 K.B.192 at p.208).

"In construing Income Tax Acts" said Sankey L.J. in Inland Revenue Commissioners v. Dalgety & Co. 1930 1 K.B.1 at pp.38, 39 "One must not forget the canon to be employed. The Court is not to be guided so much by the objects, which it thinks such Acts are to achieve, as by considering whether the words of the Act have reached the

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alleged subject of taxation. This construction was laid down with great clearness in two cases by Lord Halsbury L.C. In Lord Advocate v. Fleming (1897) A.C. 145, at p.152 he said, in dealing with such Acts: "We have no governing principle of the Act to look at; we have simply to go on the Act itself to see whether the duty claimed under it is that which the Legislature has enacted." In Tennant v. Smith (1892) A.C. 150, an earlier case, he said at p.154: "In a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed. Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation."

Again in Cape Brandy Syndicate v. Inland Revenue Commissioners 1921 1 K.B.64 at p.71 Rowlatt J. said:

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in; nothing is to be implied. One can only look fairly at the language used."

The dictum was expressly approved by Lord Simon L.C. in Canadian Eagle Oil Co. Ltd. v. R 1945 2 All E.R. 499 at page 507.

The overall plan on which a Taxing Statute is designed, and operates, is well summarised by Lord Dunedin in Whitney v. Inland Revenue Commissioners 1926 A.C. 37 at p. 52 where he says:

> "Now there are three stages in the imposition of a tax: there is the

declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next there is the assessment - Liability does not depend on assessment - that ex hypothesi, has already been fixed. But, assessment particularises the exact sum which a person liable has to pay. Lastly, came the methods of recovery, if the person taxed does not voluntarily pay."

It is of some importance to distinguish those sections which operate the first of Lord Dunedin's three stages - that is those that impose tax liability and are generally designated charging sections- and those which enact the remaining two stages - namely assessment or quantification and collection - which are usually termed machinery sections.

Although the same principles of construction apply to both charging and machinery sections the method of their application is slightly different.

Thus is Hennell v. Inland Revenue Commissioners 1933 1 K.B.415. Lord Hanworth M.R. said at pp.420, 421:

> "... it has been for a number of years an unbroken rule of the Courts that, where there is a charging section or charging Act the meaning of which is in doubt, it ought to be construed in favour of the subject."

But in Littman v. Barrow 1951 2 All E.R.393 at p.398 Cohen L.J. held that this rule did not apply to a provision giving a taxpayer relief - that is a machinery provision - from a charging section which clearly imposed liability. Again in Whitney v. Inland Revenue Commissioner (supra) Lord Dunedin said at p.52:

> "My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make the liability effective. A statute is desired to be workable, and the inter-

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pretation thereof by a Court should be to accrue that object, unless crucial omission or clear direction makes that end unattainable."

The inference is that whereas a charging section must be construed strictly and in cases of doubt against the Crown, a machinery Section should be construed more liberally and in favour of the Crown's assessing and collecting the tax which has been clearly imposed.

The strictness with which a charging section must be construed regardless of whether the results inflict hardship or invite evasions is well illustrated by the following two passages.

In Partington v. the Attorney-General 1869 English and Irish Appeal Cases 100 at p.122 Lord Cairns said:

> "... as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed, comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown seeking to recover the tax, cannot being the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

> And in Inland Revenue Commissioners v. Wolfson 1949 1 All E.R.865 Lord Simmonds said at p.868:

> "It is urged that the construction that I favour leaves an easy loophole through which the evasive taxpayer may find escape. That may be so but I will repeat what has been said before. It is not the function of a Court of law to give to words a strained or unnatural meaning because only thus will a taxing section

> apply to a transaction which, had the legislature thought of it, would have been covered by appropriate words. It is the duty of the Court to give to the words of this sub-section their reasonable meaning ...."

I think it may be said as a matter of principle that it is the duty of the Court to give to the words of every sub-section and thus the words of the whole Ordinance their reasonable meaning.

Unfortunately difficulties arise in elucidating the reasonable meaning of the words used, particularly when, for the practical purposes of application to specific and actual problems, that reasonable meaning has to be ascertained with some measure of precision.

The learned author of Konstam's "The Law of Income Tax " (12th Edn.) describes the situation graphically when referring to the Income Tax Act 1952 in paragraph 7. He says:

> "Even apart from the fact ... that many of its underlying principles can only be gathered by implication, it is often difficult to interpret. Ordinary canons of construction cannot be applied; it is unsafe to assume without diligent study that the same word is used in two places in the same sense, that different words are not used to mean the same thing, or that any series of expressions or any set of provisions is intended to be exhaustive, so that what is not mentioned is excluded."

So far as the Income Tax Ordinance is concerned and its application to the present case, I have experienced just this sort of difficulty. In particular I have had great difficulty in deciding in what sense certain words are used, notably such words as "charge", "Tax" and "income" and their various derivatives.

I shall deal with these problems of word interpretation as and when I come to them.

I would like now to take this case step by step through the principal operative parts of the Ordinance which affect it and endeavour to

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arrive at the solution to the problem which has been posed.

I shall start with Secs. 5 and 6.

Sec. 5 enacts that:

"Income Tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for each year of assessment upon income of any person accruing in or derived from the Colony or elsewhere, and whether received in the Colony or not in respect of ...."

There then follow sub-sections (a) to (g) which set out various sources of income.

Sec. 6 is in the following terms:-

"Subject to the provisions of this Ordinance, tax shall be charged, levied, and collected for such year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment."

A good deal of argument was directed in this case to the question of which of these two sections was the charging section - Counsel for the appellant contending for section 6 and the Crown contending for section 5.

A charging section is a section which imposes a charge, as opposed to a machinery section which simply provides rules for quantifying the charge imposed or for collecting it.

Now the word "charge" does not appear in section 5 but the essential words that do appear are clear: "Income tax shall ..... be payable ..... upon income of any person ...." These words in my view constitute a clear charge of income tax upon income.

In Sec. 6 the essential words are "... tax shall be charged, levied, and collected ... upon the chargeable income of any person ...."

It seems to me that the only indication pointing to sec. 6 being a charging section is

the use of the word "charge". That is a powerful indication but it is not conclusive. All the rest of the section is devoted to the machinery of quantification and collection.

The words "levied and collected" connote the actual raising and extraction of the tax by legal or physical process. See Strouds Judicial Dictionary (Second Edn.) under "Levy" at p.p.1088, 1089, and p. 534 of the 1931 Supplement.

I have already referred to the difficulty I have had in elucidating the meaning of the word "charge" and its derivatives. Used as a verb it can mean anything from "impose a liability upon" to "assess". See for example, R. v. Hulme (Inhabitants) 1843 4 Q.B. 538.

From the immediate context of sec.6 I incline to the view that "charged" in that section is really used in the sense of "assessed". There are other considerations which support this view. If sec.5 is the charging section as I think it is, what is the point of following it up with another charging section? Then I think it is permissible to look at the cross-headings. Although doubt has been expressed as to whether cross-headings placed above groups of sections can strictly be regarded as part of the Act in which they appear there is authority that such a heading may be looked at "as giving the key to the interpretation of the clauses ranged under it unless the wording is inconsistent with such interpretation." See per Lord Collins in Toronto Corporation v. Toronto Railway 1907 A.C.315 at p. 324 and per Cohen J. in Re Carlton 1945 1 All E.R. 559 at p.562, (affirmed on appeal but without expression of any definite opinion on this point - see 1945 2 All E.R. 370 n). It is also well settled that - unlike a marginal note - a cross-heading may be referred to for the purpose of determining any doubtful expression in a section under this heading. See for instance Martins v. Fowler 1926 A.C. 746 where Lord Derling at p.750 stated that such headings "may be regarded as preambles to the provisions following them."

In the Income Tax Ordinance the cross-heading to sec. 5 and to sec.5 alone is "Imposition of Income Tax"; while Sec.6 and the following sec.7 are headed "Basis of Assessment."

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In my view these headings give a clear indication that sec.5 is intended to be the charging section and that secs.6 and 7 should establish the basis or principle of the machinery for assessment.

It is of course one thing to elucidate the intention of the legislature in drafting a section and quite another to say that on the plain meaning of the words used that that intention has been expressed. If the meaning of the words used in the section is plain that meaning will prevail whatever may appear in the cross heading. But it seems to me that if the texts of secs. 5 and 6 are looked at fairly and naturally, they can and should be read as conforming to the cross headings appearing above them.

For the opposite view namely that Sec.6 is at any rate a, if not the charging section, there are two persuasive arguments to consider. In the first place there is the comparison with the Palestinian Income Tax Ordinance, 1941. Sections 5 and 6 of the Palestinian Ordinance are in substantially the same terms as secs.5 and 6 of the Income Tax Ordinance. The Palestinian Ordinance has been the subject of a careful and detailed analysis by the learned author of Fellman's "The Palestine Income Tax Law and Practice." His observations on sec.5 starting on page 56 are headed "Charge of Income Tax."

But when he deals with sec.6 on pages 113 et seq. he described sec.6 as a "charging section." He goes on to state the history of sec.6 and to quote on pp.115 and 116 a number of Palestinian cases. From the first of these - Osherowits v. Assessing Officer, Tel.Aviv. (Income Tax Appeal No. 20/42; Annotated Law Reports 1943 p.50) - it appears that the Court held the view that sec.6 was not a charging section. But in the later cases of Halsby v. Assessing Officer, Lydda District (Civil Appeal No. 345/43; Annotated Law Reports 1944 p.50) the effect of the decision of both the Court of the first instance and of the Court of Appeal was that sec.6 was a charging section.

It would have been helpful if I had had available a report of this lattor case so that I could have followed in detail the process of reasoning whereby the Courts came to this con-

clusion, but Fellman provides some detail, Sec.6 (1) of the Palestinian Ordinance enacts that:

> "Subject to the provisions of sub.sec.(2). tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment, notwithstanding that the source of income may have ceased before or during the year of assessment."

Sub-secs.(2) and (3) which follow deal with cessation of employment and do not concern us here.

Fellman's report of Halaby's case reads as follows:

> "Mr. H. had carried on business in partnership until 31st December, 1941 which had then been converted into a company. The partnership has made considerable profits during 1941 and an assessment was made upon him for 1942/43 on his share in these profits. Mr. H. claimed in Court that he was not assessable on these profits for 1942/43 since the source of income, the partnership, was not in existence during that year and that no profits accrued to him from that source during 1942/43. The claim was dismissed both by the Court of first instance as well as by the Court of Appeal, thus establishing that section 6 was a charging section, that the Palestine Ordinance followed in that respect, not the U.K. but the Indian Law, and that the existence or non-existence of the source during the year of assessment was immaterial."

The second circumstance which argues in favour of appellant's contention that sec.6 and not sec.5 is the charging section arises from a consideration of the Income Tax Ordinance No.8 of 1922.

In that Ordinance Sec.4 is in the following terms:-

> "From and after the commencement of this Ordinance there shall be raised, levied, collected and paid annually to the Receiver-General for the purposes of the general

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revenue of the Colony, a tax on the incomes of all persons, called 'Income Tax', subject however to the provisions of this Ordinance."

There is no cross heading to sec.4 which is followed by sec.5 specifying the rates of tax, and then secs.6 and 7 under the heading "Income Chargeable."

Sec.7(1) enacts that

"The tax shall be payable in respect of the following incomes that is to say:-

and it goes on in paras. (a) to (e) to specify various sources of income.

It does not require a very close study of the wording of these two sections to see that substantially sec.4 of the Income Tax Ordinance No. 8 of 1922 is the equivalent of sec.6 of the Income Tax Ordinance and Sec.7 of No. 8 of 1922, the equivalent of sec. 5.

Now Mr. Butt has argued that in No. 8 of 1922 sec.4 is the charging section beyond peradventure.

He says that if that is so then there is every reason for concluding that its equivalent sec.6 in the Income Tax Ordinance is the charging section. That is a persuasive argument. But as between the 1922 Ordinance and the present Ordinance there have been changes and one of those changes has been totranspose these two sections.

Now it seems to me that the language of either could be read as imposing a charge. But bearing in mind the three-fold process of the ordinance - Imposition of liability - quantification - and recovery - one would expect to find charging provisions appearing before assessment provisions in the Ordinance; and of two sections containing words capable of construction as charging provisions, one would expect the first to be the charging section, and the second either not in truth a charging section at all, or at best only supplementary to or explanatory of the first. This seems logical reasoning, bearing in mind particularly the words of Lord Dunedin in

Whitney v. Inland Revenue Commissioner 1926 A.C. 37 at p.52 which I have already quoted where he says: "... there is the declaration of liability... Next there is the assessment. Liability does not depend on assessment. That ex hypothesi has already been fixed."

The importance of deciding which of the two Secs.5 or 6 is the charging section lies in this: if Sec.5 is the charging section it charges "income" and the significance of "chargeable income" only arises at the latter stage of assessment. If sec.6 is the charging section alone, then it clearly charges "chargeable income" only. All along Mr. Butt has strenuously contended that the Ordinance does not charge income, it only charges chargeable income. The reasons why he attaches such importance to this contention will become apparent when I come to consider the effect of Sec.18 of the Ordinance. It is necessary, therefore, to consider briefly the conceptions of the terms "income" and chargeable income" with particular reference to their use in the Income Tax Ordinance.

"Income" is not defined in the Ordinance but the word is used by itself frequently throughout the Ordinance. What is defined in the Ordinance is "chargeable income." It would seem, therefore, that where the Ordinance uses the words "chargeable income" it must do so with the meaning expressly given to it, and where the Ordinance uses the word "income", the meaning of it is not to be confined to the meaning of "chargeable income", although of course, it may be qualified by the context in which it is used.

The definition of "income has exercised the minds of the jurists and writers for very many years and indeed Professor F.E. La Brie has devoted an entire book to the subject (The Meaning of Income in the Law of Income Tax".) Used by itself it seems to me that the word must be given as liberal a meaning as the context allows. As Jessel M.R. said in Re Huggins: Ex parte Huggins 1882 51 L.T.Ch.935 when referring to certain receipts of the appellant in that case: "'Income' is as large a word as can be used."

On pp.21-27 of his "The Meaning of Income in the Law of Income Tax," Professor La Brie develops his general conception of income in this

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way: "Income," he says "means literally "incoming" or "what comes in" considered in relation to money or money's worth." See also per Lord McNaghten in Tennant v. Smith 3 T.C. 158 at p.171. He then goes on to qualify this: "Income", he continues, "does not for the purpose of Income tax law, include all the realisable wealth which in a physical sense, 'comes in'. Its meaning is limited by two cardinal principles either or both of which are involved in every decided case on the subject." He goes on to describe these two cardinal principles. The first is that "income" includes only means arising or resulting from the pursuit of gain. It does not, for instance, include the realised value of a source of income, or the gain made on realising the value of a capital asset. It is "the gain derived from capital, from labour, or from both combined." (See per Justice Pitney in Eisner v. Macomber 1919252 U.S.189 at p.207 - a dictum approved and repeated in Inland Revenue Commissioners v. Blott 1921 2 App.Cas.171 per Viscount Findlay at p.195; and in Pool v. Guardian Investment Trusts Co. Ltd. 1922 1 K.E. 347 per Sankey J. at p.359). The second cardinal principle limiting the meaning of "income" for practical purposes is that "income" means "net income", that is to say "incoming" less certain "outgoing", or expenditure, to be determined according to ordinary commercial principles. (See per Lord Herschell in Russell v. Town and County Bank 1888 13 App.Cas.418 at p. 424).

But even with the modifying influence of these two cardinal principles, it is apparent that the concept of "income" is a wide one and a great deal wider than "chargeable income" as defined in Section 2 of the Income Tax Ordinance. That definition reads as follows:-

> "'Chargeable income' means the aggregate amount of income of any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under this Ordinance."

The first thing one notices about this definition is that it contains no reference to the meaning of the word "chargeable". "Chargeable income" is not defined as that portion of income on which income tax is to be charged or anything of that sort. It is a purely mathe-

matical or algebraical definition of x - y where x is the gross income and y the allowable deductions. In the Income Tax Ordinance No. 8 of 1922 there appears in sec. 2 this definition:

> "'Income' means net income, namely, the sum remaining after deducting the expenses (if any) of acquiring the income, including the necessary expenses actually paid in carrying on any business or trade, but not including personal living or family expenses...."

The definition goes on specifically to include the value of certain benefits with which we are not concerned. This definition follows closely the concept of income as "incoming" less certain "outgoing" or expenditure which I have already referred to when I was dealing with the second cardinal principle modifying in practice the naturally wide meaning of income. When the Income Tax Ordinance 1922 goes on to prescribe in sections 4 - 7 for the raising and charging of tax upon various incomes, it is the net income, "the sum remaining after deducting the expenses of acquiring the income", on which the charge is laid. Deductions are dealt with in secs.15 and 16. Both these sections start with the words "In computing the income to be charged ....". Sec.15 then prescribes what may not and sec.16 what may be deducted. "The income to be charged" referred to in secs.15 and 16 can only be the net income less allowable deductions.

The "income to be charged" referred to in secs.15 and 16 of the 1922 Ordinance is thus virtually identical with the "chargeable income" of the present ordinance.

In both ordinances therefore there would seem to be a dual conception of charge - the general charge on income and the particular charge on that portion of the income upon which the tax payable is assessed and from which the tax assessed is recovered.

Mr. Butt's argument that the Ordinance does not charge income but only charges chargeable income must fail if sec.5 of the present Ordinance alone is the charging section omitting words not relevant to the question under consideration. Sec.5 enacts that:

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"Income tax shall... be payable...upon income." Nothing is said about chargeable income. I do not hesitate to give the word "income" as used in sec.5 its wide interpretation. As I have already pointed out the mere fact that the word "income" appears in sec.5 and the words "chargeable income" in sec.6 is an indication that the legislature is not restricting the application of sec.5 to "chargeable income."

In Longsdon v. Minister of Pensions and National Insurance 1956 1 Q.B. 587 Havers J. had this to say at page 595:

> "I have to construe this section according to its natural and ordinary meaning, unless that would lead to some repugnance or absurdity. I am asked where the word 'income' is mentioned, to construe it as 'net income' or 'income assessable to income tax' or 'income after deduction of expenditure' or words of that kind. It would have been a perfectly simple thing if that had been the intention of Parliament to have put in the word 'net' or some such word as that, which would have made it perfectly plain that what Parliament was contemplating here was the net income, or one which was assessable to tax, or some similar phrase. On the contrary, Parliament has simply used the word 'income' without adding any words of limitation or qualification. I think I am bound to give that word its natural and ordinary meaning, which is as Bronson J. said in People v. Niagara Board of Supervisors: (4 Hill (N.Y.) 20, 23) "that which comes in."

The conclusion I come to from all these considerations is, that upon the true and proper interpretation of Sec.5 and 6 taking into account not only the wording of those two secs. but the scheme and operation of the Ordinance as a whole, sec.5 is the paramount charging section and that sec.6 is - to make use of a popular modern expression in the nature of a "package" section embodying both charging and machinery provisions. Its status is rather similar to that described by Finlay J. in Denny v. Reed 18 T.C.254 at p.259 where commenting on the effect of the general charge imposed by Schedule E. and the provisions

of Rule 1 thereto of the Income Tax Act 1918 he said:

> "You have the general charge imposed by Schedule E and then you have the First Rule, that the tax is to be "annually - charged on every person having or exercising "an office or employment of profit... in respect of all "salaries, fees" and so forth "for the year of assessment." There was some discussion before me as to whether that was a charging Section or a machinery Section. I, myself, think that probably a Rule such as that which lays down that the tax is to be annually charged on a person, and annually charged on him in respect of certain things, is properly called a charging Section, but it does not, to my mind, very much matter whether you call it a charging Section or a machinery Section. Whether charging or machinery you have to look at it and construe it as part of the Act."

I hold that sec.5 is the charging section but sec.6 is a charging section in part also.

Sec.6 which follows specifies the actual portion of income upon which that general charge shall be imposed in practice. But I do not see how the specific application of charge in sec.6 can be read as detracting from or de-limiting the generality of the charge in sec.5. Indeed to hold we would be to depart from a principle of construction where general words precede particular ones. SeeCanadian National Railways v. Canada Steamship Lines Ltd. 1945 A.C.204. (See the Head-note, and passages in the judgment of the Court at p.211).

Whether one calls sec.6 a charging section or a machinery section or a package section, it still has to be construed and given effect to, but that must be done subject to the generality of the provisions of sec.5.

I would now like to consider the effect of sec.18 of the Ordinance. This section is the last but one of a number of sections grouped under the heading "Ascertainment of chargeable Income." It enacts that:-

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"The income of a married woman living with her husband shall, for the purpose of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee: Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her."

In considering the effect of this section, I shall have occasion to use the term "wife and married woman" and unless I expressly state otherwise I shall be referring whenever I use these terms to a wife or married woman living with her husband.

For the Crown it was argued that Sec.18 was a charging section, and that a husband was as much charged by it in respect of his wife's income as if that income were one of the sources of income specified in Sec.5. I think, however, that if this effect had been intended the legislature would have specifically included in Sec.5. the income of a wife living with her husband as one of the sources of income set out there. This the legislature has not done. But the Crown's case goes further. As I understood the Acting Attorney General's argument it was that as for the purposes of the Income Tax Ordinance a married woman is still an "incapacitated person" - see sec. 2 of the Ordinance - she could have no income of her own, and any income accruing to her was in law her husband's; and in so far as she purported to deal with, or dispose of it, she could only do so as her husband's agent. Accordingly, it was submitted, if she did dispose of it, it was her husband who was the disponer in law.

I do not think, however, that the wife's position can be so lightly regarded. Sec.18 goes no further than to say that for the purpose of the Ordinance the income of a married woman living with her husband shall be deemed to be the husband's income. The force and meaning of "deemed to be" received some interpretation in the case of Perry v. Astor 19 T.C.255. This case dealt in part with the meaning of Sec.20

of the Finance Act 1922, which provided, inter alia, that income which was subject to certain modes of disposition should "be deemed...to be the income" of certain specified classes of persons and "not to be....the income of any other person." Lord Macmillan at p.420 described the result as follows: "The result of the process of 'deeming' which the section directs is in my opinion not to bring into tax any incomes not previously chargeable but to substitute one person for another as the person liable to be charged in respect of the income already chargeable.

The same reasoning applies here. A married woman notwithstanding that she is an "incapacitated person" is included in the category of "any person", and as such her income is subject to the general charge of income tax imposed by Sec.5. It is likewise subject to the provisions of Sec.6. dealing with the charge, levy, and collection of tax "upon the chargeable income of any person."

I cannot accept therefore, the argument of the Crown that a wife has no chargeable income in Trinidad whilst living with her husband. In my view she does have a chargeable income, but the charge, when assessed, is recovered from her husband and not from her. This is the effect of Sec.18 and it is pure machinery.

The nearest comparative English provision is to be found in the Income Tax Act 1918, as Proviso (1) to Rule 16 of the General Rules applicable to Schedules A,B,C,D, and E. The whole rule is in the following terms:

> "A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried;
>
> Provided that -
>
> (1) the profits of a married woman living with her husband shall be deemed the profits of the husband, and shall be assessed and charged in his name, and not in her name or the name of her trustee; and

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(2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a femme sole if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit."

This rule substantially reproduced Sec.45 of the Income Tax Act 1842 and Purdie v. The King 1914 111 L.T. (N.S.K.B.D.) 531 is authority for saying that that section is a collecting and not a charging provision.

The effect and operation of Rule 16 were considered in the case of Leitch v. Emmot 14 T.C.633 which came before the Court of Appeal. In that case a lady who had been living with her husband became a widow in the year of assessment and it was decided that she might be assessed for that year of assessment on her income of the previous year notwithstanding that in that previous year she was a married woman living with her husband and consequently by Rule 16 her profits were deemed to be the profits of her husband. At page 643. Lawrence L.J. said:

"It is clear, to my mind, therefore, that the married woman is charged to tax in respect of her income for the year of assessment, to be measured by the income from the same investments received by her in the preceding year, thus shewing that the income for the purpose of the charge and of the measure of the tax is treated as her income. The proviso does not alter the character of the income charged to tax or the measure of the tax, but merely provides, with the object of facilitating the collection of the tax, that the assessment and charge shall be made in the name of the husband and for that purpose the wife's income shall be treated as the income of the husband. This provision does not, in my opinion, operate to convert the income

of the wife, into income of the husband further than is necessary for the purpose of collecting the tax."

In my view the same position must prevail here: a married woman in Trinidad coming under the general category of "any person" is charged to tax in respect of her income in accordance with the provisions of Sec.5 & 6 but to facilitate collection, sec.18 provides that her income shall be treated as that of her husband.

One of the arguments on behalf of the Crown was that sec.18 of the Income Tax Ordinance was a substantive provision in that Ordinance, whereas its counterpart, Proviso (i) to Rule 16 of the All Schedules Rules of the Income Tax Act 1918, had only the status of a proviso, so that sec.18 could not be regarded as a mere machinery provision but must be treated as a charging section, charging the husband, that is, with income tax upon his wife's income. I cannot accede to this submission. It seems to me plain upon the wording and effect of sec.18 that it is purely a machinery section designed to facilitate the assessment and collection of tax from a married couple, and that its provisions would have this effect whether they were enacted in the form of a section of the Ordinance as they are here, or as a rule, or as a proviso.

In Browning v Buckworth 19 T.C.149 the question arose as to whether War Loan and Bank Interest of a wife who was in the peculiar position of living with her husband although she was ordinarily resident in England and he was ordinarily resident in Egypt, could be taxed. As she was living with her husband Proviso (1) to Rule 16 applied so that her income was deemed to be that of her husband and fell to be assessed and charged in his name. But as he was non-resident in England he could not be taxed and the question arose as to whether in these circumstances the tax could be recovered from her. Finlay J. held that it could not. At pp.153 and 154 he said:

> "As a matter of construction, it seems to me that this lady is, and indeed, she is admitted to be, a married woman living with her husband. It accordingly follows, if one construes the Rule quite simply that the assessment on her must be bad...

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I decide the case as a matter of construction, and I confess that I decide it with reluctance because if the lady is resident here - and it has been found that she is - there is no reason why her War Loan interest should not be taxed, and it is never very satisfactory to decide, as I do decide, that here the machinery fails."

Elmhurst v. The Commissioner of Inland Revenue 21 T.C.386 is authority for the proposition that a wife's income is not converted into her husband's income other than for the purpose of collecting tax; and in Palmer v. Cattermole 21 T.C.191 it was held that Leitch v. Emmott only applied to matters of computation.

For the appellant it was argued that the word "income" in sec.18 must mean "chargeable income" because it is only "chargeable income" which is in fact charged. I have already held against this contention when discussing the effect of secs.5 and 6. Secs.5 the basic charging section, clearly charges "income". In Sec.18 the word used is "income" and not "chargeable income." If the legislature had intended to limit the application of sec.18 to the chargeable income of a married woman then nothing would have been simpler than to use the words "chargeable income."

I am satisfied that the word income here is used in its natural and unrestricted sense, and indeed in this case Mr. Reynolds has included all his wife's income in his return, and not only what might be conceived of as the chargeable part of it.

I come now to the consideration of Sec.10 which allows certain deductions to be made from income in ascertaining what part of income is to be chargeable income. Sub-section (1) deals with the actual deductions and sub-section (2) is a rule making provision with which we are not here concerned.

Sub-section (1) is in the following terms:-

> "For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred

during the year preceding the year of assessment by such person in the production of the income, including -"

There then follows in paras.(a) to (k) a number of specified outgoings and payments of which (f) is directly relevant to this case.

The terms of para.(f) are:

"Annuities or other annual payments whether payable within or out of the Colony, either as a charge on any property of the person paying the same reservation thereout, or as a personal debt or obligation by virtue of any contract: Provided that no voluntary allowances or payments of any description shall be deducted."

Appellant claims that the annual payments his wife is making under her Deed of Covenant for the benefit of their 4 minor children are allowable deductions under Sec.10 (1) (f). It is the Crown's case, however, that these annual payments are not allowable deductions under Sec.10 (1) (f). The Crown's argument is based on the opening words of Sec.10(1) which prescribe as allowable deductions "all outgoings and expenses wholly incurred ... in the production of the income." They say that these words must be read as governing all that follows. All that follows comprises the specified outgoings set out in paras.(a) to (k) and embraces in the ambit of sec.10 (1) by the use of the word "including."

I think the proper way to interpret this provision is to assume that the legislature means what it says and to give a generous rather than a niggardly interpretation to the word "including". Although in its primary sense "inclusion" connotes inclusion "within", in my view it can also indicate inclusion alongside.

In Stroud's Judicial Dictionary (2nd Edn.) on page 1241 the learned author dealing with the meaning of "namely" quotes a passage from 2 Jarman (on Wills 4th Edn.) at page 229. I have been unable to locate a copy of this edition of Jarman nor have I been able to trace the passage in any later edition but it is recorded in Stroud as follows:

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> "A difference in grammatical sense, in strictness exists between the words 'namely' and 'including'. 'Namely' imports interpretation i.e. indicates what is included in the previous term; but 'including' imports addition, i.e. indicates something not included."

The passage is not perhaps too happily worded but its meaning is clear that the effect of the 'including' is to bring in that which would not otherwise have been regarded as included.

For myself I would adopt the language of Mc Cardie J. in Mellows v. Low 1923 1 K.B. 522 as applicable to the meaning and effect of "including" in this case. At p.526 he said:

> "In my view the word 'includes'...means what it says - that it includes the matters thereafter mentioned; in other words, it is a word of enlargement rather than restriction ...."

The scope and effect of the words of Sec.10(1)(f) came in for consideration in the Trinidad Case of Joseph Calvan Kelshall (No.443 of 1939). In that case the Court was concerned with the provisions of Sec.10.(1)(f) of the Income Tax Ordinance Chapter 203 of the Laws of Trinidad and Tobago 1925 (Vol.III p.2474 at p.2479).

The facts of that case were as follows:- Mr. Kelshallhad entered into a Deed of Covenant on 28th March, 1936, whereby he covenanted to pay to Trustees, two sums of £325 each per annum for the period of 3 years for the benefit of his 2 children. The Commissioner for Income Tax assessed these sums as part of his income. Mr. Kelshall appealed against that assessment on two grounds: first, that the sums in question did not form part of his income at all, since the effect of the deed was to alienate them; secondly, that if they did, they fell to be deducted from income under the provisions of Sec.10 (1) (f).

Mr. Kelshall succeeded on both grounds. Gilchrist J's decision was not appealed against and has stood virtually unchallenged until today. With regard to the first ground on

which Mr. Kelshall succeeded it is conceded by counsel for the appellant that subsequent decisions in the House of Lords and elsewhere have shown that that ground can no longer be supported since it is in conflict with established principle. Income does not cease to be income because of the mode of its disposition. It is the source from which, and the manner in which, it is derived that determines whether a sum of money is income or not and not the manner of its disposition. I need spend no more time on that ground.

With regard to the second ground Gilchrist J. in para. 46 of his judgment had this to say:

> "In my opinion the word "including" in subsection (1) is intended to enlarge the allowable deductions specified in (a) to (h) in addition to deductions of all outgoings and expenses incurred in the production of income but in respect of certain of the items it limits the extent of the deductions as for instance in (a),(b) and (h)."

The"limits" which Gilchrist J. refers to in (a) (b) and (h) are words expressly relating the allowable deductions therein directly or indirectly to the acquisition of the income. The same words appear in these provisions today notwithstanding that Sec.10(1) has been amended in other respects.

Gilchrist J. continues in para 47 of his judgment to say:-

> "In paragraph (f) there are no words of limitation such as are in (a),(b) and (h)... In my opinion if it were intended to limit the effect of paragraph (f) as to annuities and/or other payments as specified in the said paragraph to the production of income it would have been an easy matter for the Legislature to have so stated by the use of words of the same import as in paragraphs (a),(b) and (h)."

I find myself in agreement with this reasoning. But even if I had been disposed to differ, I do not see how I could very well have substituted my own views for those of Gilchrist

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J. on a matter, not of principle but of pure interpretation, which has stood unchallenged and unquestioned for so long. Even a higher Court would be slow to over-rule a decision interpreting a statute which has long been acted upon - See Bourne v. Kenne (1919) A.C. 815 per Lord Buckmaster at P.874 and Royal Crown Derby Porcelain Co. Ltd. v. Russell 1949 1 All E.R. 749 per Denning L.J. at p.755.

Now it is true that in a subsequent section, Sec.12. dealing with deductions that will not be allowed, the legislature has enacted by subsection (1) para.(b) that "For the purpose of ascertaining the chargeable income of any person, no deduction shall be allowed in respect of

(b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income."

But I do not see how this provision could be regarded as negativing or fettering any of the prior provisions of Sec.10(1). I cannot feel it was the intention of the legislature to allow deductions in one section and then take them away in another. Such a contortion of intent would have to be evidenced by the clearest possible words. That which is expressly allowed cannot by implication be excluded.

No particular point was taken either in Kelshall's case nor in the case before me as to the meaning and effect of the proviso to Sec. 10(1)(f) which excludes from its operation all voluntary allowances or payments. I take that proviso to exclude all payments made at the mere whim or will of the disponer, from which he can resile at any moment convenient to himself. It would not apply to payments made under a properly drafted deed of covenant. Gilchrist J. in Kelshall's case came to a similar conclusion.

For all these reasons I am satisfied that the annual payments made in this case by Mrs. Reynolds under the Deed of Covenant she entered into on 28th December 1956 are such as can be deducted from her income for the purpose of determining the chargeable portion of it under the provisions of Sec.10(1)(f), so far as those provisions go.

This leads me to what I consider to be the really crucial issue in this case, namely, are these payments made by Mrs. Reynolds caught by the provisions of Sec.34(2) and so brought back again into tax.

The Acting Attorney General has argued that Sec.10 must be read with Sec.34. To a certain extent I agree. But I would not go so far as to say that Sec.34 must be read into Sec.10. which appears to me what the Crown is really contending for. If that had been the intention of the legislature it could have been achieved by an amendment of Sec.10 itself incorporating the provisions of Sec.34 by way of subsection, proviso or otherwise. I think Secs.10 and 34 represent distinct and separate, though closely related, stages in the quantification process: so that if an annual payment escapes tax under Sec.10 (1)(f) it is for the Crown to show that it is brought back into tax again by Sec.34 2: and of course Sec.34(2) must be construed strictly.

In my view the decision in this case rest almost entirely on the interpretation of this section and its impact upon these dispositions.

Section.34 (2) in its present form was introduced by Sec.5 of the Income Tax (Amendment) Ordinance 1951-1953; it replaced the then existing version of Sec 34(2) which in its turn had been introduced (as Sec.33A(2)) by Sec.8 of the Income Tax (Amendment) Ordinance 1941 into the then principal Ordinance.

I think it is of some importance to compare what was originally enacted with the present provision.

By Sec.8 of the Income Tax (Amendment) Ordinance 1941 Sec.33A(2) was introduced into the then Principal Ordinance in the following terms:-

> "Where a person transfers property to a minor either directly or indirectly, or through the intervention of a trustor by any other means whatsoever, such person shall, nevertheless, during the period of the minority of the transferee, be liable to be taxed on the income derived from such property, or from property substituted therefor, as if such transfer

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had not been made, and subsequent to such period of minority, the transferor shall continue to be taxed in respect of the income derived from such property, or from property substituted therefor, as if such transfer had not been made unless the Commissioner is satisfied that such transfer was not made for the purpose of avoiding tax."

It is quite clear that what the legislature was doing here was to bring back into tax the income from the corpus of a transfer to a minor; it was not attempting to tax the corpus of the transfer, that is the property transferred itself, whatever its character might be.

In its present form Sec.34(2) reads:-

"Where, under or by virtue of a disposition made directly or indirectly by any disponer, the whole or any part of what would otherwise have been the income of that disponer is payable to or for the benefit whether present or future and whether on the fulfilment of a condition or the happening of a contingency, or as the result of the exercise of a power of discretion conferred on any person, or otherwise, of a minor, or is deemed under the provisions of Sec.35 of the Ordinance to have been recovered by or for the benefit whether present or future, and whether on the fulfilment of a condition or the happening of a contingency,or as a result of the exercise of a power or discretion conferred on any person, or otherwise, of a minor, such disponer shall, nevertheless, during the period of the minority of such minor, be liable to be taxed in respect of the sums so payable as if the disposition had not been made, and subsequent to such period of minority such disponer shall continue to be liable to be taxed in respect of the sums so payable as if such disposition had not been made unless the Commissioner is satisfied that the disposition was not made for the purpose of avoiding tax."

This is a lengthy provision but the

essential words of it so far as this case is directly concerned are these:-

> "Where under or by virtue of a disposition made directly or indirectly by any disponer, the whole or any part of what would otherwise have been the income of that disposition is payable to or for the benefit ... of a minor ... such disposition shall, nevertheless, during the period of the minority of such minor, be liable to be taxed in respect of the sums so payable as if the disposition had not been made."

By sub-sec (7): "In this section, 'disposition' includes any trust, grant, covenant, agreement, arrangement or transfer of assets."

I would like to deal first with the submission advanced by the Acting Attorney-General for the Crown that "the disponer" referred to in Sec.34(2) is the husband and not the wife. This argument is derived from his earlier submission that a married woman is an incapacitated person under the Income Tax Ordinance, and this fact coupled with the provisions of Sec.18 of the Ordinance combine to make her income not her own but her husband's. I have already found against that submission. In consequence I cannot accept the argument that "the disponer" in Sec.34(2) is the husband. If in fact - as is the case here - a wife makes a disposition out of her own income then clearly she, and no one else, is the disponer.

The argument for the appellant is that on its proper construction, Sec.34(2) cannot and does not apply to the annual payments made by Mrs. Reynolds under her Deed of Covenant. They remain in consequence allowable deductions under Sec.10 (1) (f) and are not brought back into tax.

The argument is based on two grounds. In the first place Mr. Butt says the phrase "what would otherwise have been the income of the disponer" cannot be construed as including that which is the income of the disponer.

There is a difference, he points out, between that which never was but would have otherwise have been, and that which was but did not continue to be; and the words "what would

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otherwise have been" cannot be read as embracing both these conceptions.

The section, he argues deals with income from the disposition and not with the disposition of the disponer's income. Put in another way, his submission is that the income dealt with in Sec.34(2) is income derived from the corpus of the disposition (whether that corpus be itself income of the disponer or not) and is not concerned with the corpus itself even if the corpus is income of the disponer. There would of course have been no refuting this argument if the terms of Sec.34(2) had remained as drafted in the 1941 Ordinance. But they have been considerably enlarged.

Now it is very easy to get into a tangle of technicality when construing a provision of this nature, but the simple solution is always to be preferred to the complex, and the plain and natural meaning to the obstruse or artificial, always provided of course that such interpretation is in consonance with the context.

My first observation accordingly is this: I see no reason in the context of the Ordinance, and in particular in Sec.34 of it, why the word "income" in Sec.34(2) should not be given its unrestricted and natural meaning of "that which comes in" considered in relation to money or money's worth, to which I have already given consideration earlier in this judgment.

It is wrong in principle to give a word a technical meaning when the natural meaning is available and does no violence to the Statute, and it is well settled that where a word has both a popular and a technical meaning the Court has to be satisfied that it is not being used in its popular meaning before any technical meaning can be applied. See Inland Revenue Commissioners v. Gribble 1913 3 K.B.212.

If we adopt this wide definition or concept of income in Sec.34(2) we get a far simpler and less strained solution of the meaning of the words used. "What would otherwise have been the income "becomes in short "what would otherwise have come in."

If we apply the provision so construed to the annual payments made under the Deed of

Covenant here we find that they do not "come in" to the disponer because of the disposition. If there had been no disposition they would have come in to the disponer, but because of the disposition what would otherwise have come in to the disponer is in fact"... payable to or for the benefit .... of a minor"; it does not come in to the disponer, it goes out to her trustee.

It seems to me therefore that Mrs. Reynold's disposition here is caught by the words "what would otherwise have been the income of the disponer," and I so hold.

The second ground of appellant's argument on the interpretation of Sec.34(2) concerns the words "such disponer shall..... be liable to be taxed in respect of the sums so payable as if the disposition had not been made." I have already held that "such disponer" can only mean the wife. So the question arises: how would the wife have been liable to be taxed in respect of the sums payable under the disposition if the disposition had not been made?

If the disposition had not been made the monies forming the corpus of the annual payments would have been received by the wife as part of her income. But by Sec.18 for the purpose of the Ordinance, her income is deemed to be her husband's income and is to be charged in the name of her husband and not in her name.

Mr. Butt's argument is that in these circumstances she, the disponer, cannot be said to be "liable to be taxed" in respect of these sums at all, and consequently Sec.34(2) cannot and does not catch a disposition made by her out of her income.

But what does "Shall..... be liable to be taxed" mean? These words must be construed strictly but this does not mean they should receive an unnaturally restricted meaning.

There is no definition of the verb "to tax" in the Ordinance. By its natural meaning it is not confined to any particular stage of the process of taxation and I think it should be read, where to do so does not injure the context, as embracing the whole process of taxation from the imposition of the liability through its quantification and up to and including

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the collection of the tax itself.

In my view "shall... be liable to be taxed" means shall be legally subject to the process of taxation. Now to recapitulate briefly what I have said earlier in my judgment: Sec.5 imposes the charge of income tax upon the income of "any person" and Sec.6 says that it shall be "charged levied and collected upon the chargeable income of any person."

"Any person" includes a married woman whether she is living or not living with her husband, so that so far as the process of taxation is concerned her income is liable to the first stage of that process, that is it is liable to charge. Furthermore it is clear from the proviso to Sec.18 that in certain circumstances her income could be liable for what is normally the last stage in the process, namely collection.

Now how can it be said that if her income is liable to charge of tax and in certain circumstances liable to collection of tax, she herself is not liable to taxation in respect of her income.

Mr. Butt has argued that it is persons who are taxed and incomes that are charged. The Acting Attorney General took exactly the opposite view.

But I do not think either of those terms "Tax" or "charge" can be so restricted. They are wide terms: one can properly speak of taxing persons or charging them with income tax and equally of taxing or charging their incomes.

You tax or charge the person in the sense that you impose upon that person the liability or responsibility for the tax due (if any) on his income; but the actual surgery of the taxation so to speak is performed not on the person but primarily on his or her income.

So it is done in a variety of ways: thus

in the case of a married couple living together, which is the case here, it is done by deeming the wife's income to be the husband's charging him with it, and thus in effect levying the charge on their joint income.

It will be apparent from what I have said that I regard the meaning of the word "taxed" in Sec.34(2) as the deciding factor as to whether a married woman's dispositions are caught by this provision.

Let me make it clear, therefore at once that if I felt "taxed" should be construed as "assessed" or "charged" - in the sense that is, of "computed" - I would hold that Mrs. Reynold's disposition was not caught. I think the position would be that the intendment behind Sec.34(2) was to catch it, but on the plain meaning of the words used the machinery had failed - as in the case of Browning v. Duckworth 19 T.C.149 to achieve that object.

As it is I construe "taxed" in what I consider to be its natural and unrestricted meaning, and I hold that the annual payments made by Mrs. Reynolds under her Deed of Covenant dated 28th December 1956 are brought into tax by the provisions of Sec.34(2) and are accordingly not allowable deductions in calculating the chargeable portion of her income.

For all these reasons I hold that the assessment made upon the appellant by the Commissioner of Income Tax by his Notice of Assessment dated 4th July 1958 is correct and this appeal must be dismissed with costs to be taxed.

Certified fit for counsel.

31st July, 1959.

/s/ J.R. Blagden
CHIEF JUSTICE
(Acting)

In the Supreme Court

No. 3.

Order

31st July, 1959.

No. 3.

ORDER.

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 538 of 1958

In the Matter of the Income Tax Ordinance Chapter 33 No. 1

And

In the Matter of an Appeal of PATRICK ALFRED REYNOLDS

IN CHAMBERS

Entered the 1st day of June, 1964
Dated the 31st day of July, 1959
Before the Honourable Mr. Justice J.R.Blagden,
Acting Chief Justice

The application of the appellant, Patrick Alfred Reynolds, by Originating Summons filed herein and dated the 15th day of July, 1959, coming on for hearing on the 6th and 13th days of March, 1959, and the 7th and 20th, days of May, 1959, upon reading the said summons and the exhibits produced in evidence at the said hearing, and upon hearing Counsel for the said appellant and for the Commissioner of Income Tax, this matter was adjourned for decision and coming on for decision this day in the presence of the same legal appearances,

IT IS ORDERED

That the application of the appellant be and the same is hereby dismissed with costs to be taxed, Fit for Counsel.

Deputy Registrar.

In the Supreme Court of Trinidad and Tobago

No. 4

Case Stated

7th March 1960

No. 4

Case Stated

IN THE SUPREME COURT OF TRINIDAD AND TOBACO

No. 538 of 1958

BETWEEN

PATRICK ALFRED REYNOLDS Appellant

and

THE COMMISSIONER OF INCOME TAX Respondent

STATED under Sec.43(10) of the Income Tax Ordinance Cap.33 No.1 (hereinafter referred to as "the Income Tax Ordinance" which term shall be construed as meaning the Income Tax Ordinance Cap.33 No.1 as amended by and read with the Income Tax (Amendment) Ordinance 1951-1953 and the Income Tax (Amendment) Ordinances Nos. 20 and 30 of 1954, 26 of 1955, 11 and 34 of 1956, 23 of 1957, and 18 of 1958) by the Judge of the Chambers Court, Port of Spain, for the opinion of the Full Court of the Supreme Court of Trinidad and Tobaco.

1. At a Session of the Chambers Court, Port of Spain, held on 6th March 1959, Partick Alfred Reynolds (hereinafter called "the appellant") appealed by summons against an assessment made upon him by the Commissioner of Income Tax by Notice of Assessment dated 4th July 1958 (confirming an earlier Notice of Assessment dated 28th November 1957 and numbered 2-F20 of 1957).

2. The said assessment assessed the joint assessable income of the appellant and his wife Mrs. Audrey Jean Reynolds (hereinafter referred to as "the wife") for the year of assessment ended 31st December 1957 at the sum of $32,487.00, and the chargeable income of the appellant for the said year at the sum of $27,951.00; and the tax charged thereon at the sum of $11,788.15; and purported to disallow a claim by the appellant to deduct from the joint assessable income of the appellant and the wife and from the chargeable income of the appellant the sum of $14,000.00,

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being the amount paid by the wife out of her income during the year ended 31st December 1956 for the benefit of their four minor children to one Alfred Jefferies Prior as trustee under a Deed of Covenant dated 28th December 1956.

3. The question of law for the Full Court to decide upon the facts found by me and set out in para.4 is whether, having regard to the provisions of sec.18 of the Income Tax Ordinance whereby the income of a wife living with her husband is deemed to be the income of her husband, annual payments made by the wife out of her own income under a Deed of Covenant to a trustee for the benefit of her minor children are allowable deductions in calculating the chargeable income of the appellant, with particular reference to the provisions of sections 10(1)(f) and 34(2) of the Income Tax Ordinance.

4. The facts as admitted or found by me are as follows:-

The appellant and the wife live together and are both in receipt of income from earnings and investments. On 28th December 1956 the wife entered into a Deed of Covenant whereby she created a trust for the benefit of the four minor children of the marriage. She appointed Mr. Alfred Jefferies Prior her trustee, and covenanted to pay to him for a period of 3 years the annual sums of $3,500 in respect of each of the children, to be held by him for their benefit, maintenance and/or education, until their maturity or marriage whichever took place the sooner. At the time of the execution of the deed the children's ages ranged from 12 years down to 1 month.

The appellant's return for the year of assessment ending 31st December 1957 and based on income received in 1956 showed a total income of $40,164.86. Of this sum $18,202.00 represented his wife's income.

Apart from the standard deductions allowable, appellant in his return claimed as allowable deductions from income payments made under three dispositions. Two of these dispositions were made by himself and his claim was allowed in respect of these; the third was the disposition

made by the wife under the aforesaid Deed of Covenant of 28th December 1956. Appellant's claim under this disposition (hereinafter referred to as "the wife's annual payments") was to deduct the whole amount paid thereunder for the year of assessment, namely $14,000, from the wife's returned income of $18,202.00 thus reducing it for tax purposes to $4,202. The Commissioner disallowed this claim and the appellant duly gave notice of objection. The Commissioner reviewed his assessment but confirmed it. It is from that assessment that the appellant appealed.

5. The determination of the issues raised by the summons involves, inter alia, the interpretation of certain definitions appearing in sec.2 and a number of provisions contained in secs. 5, 6, 10(1)(f), 18 and 34(2) of the Income Tax Ordinance. For convenience the relevant definitions and provisions are set out below:-

"2. In this Ordinance -

"chargeable income" means the aggregate amount of the income of any persons from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under this Ordinance;"

"incapacitated person" means any infant, married woman, person of unsound mind, idiot, or insane person;"

"5. Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for each year of assessment upon income of any person accruing in or derived from the Colony or elsewhere, and whether received in the Colony or not in respect of -"

(There follow sub-secs.(a) to (g) which set out various sources of income).

"6. Subject to the provisions of this Ordinance, tax shall be charged, levied, and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment."

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"10.(1) For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including -

(f) annuities or other annual payments whether payable within or out of the Colony, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract;

Provided that no voluntary allowances or payments of any description shall be deducted;"

"18. The income of a married woman living with her husband shall, for the purpose of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustees:

Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her."

34.(2) Where, under or by virtue of a disposition made directly or indirectly by any disponer, the whole or any part of what would otherwise have been the income of that disponer is payable to or for the benefit, whether present or future and whether on the fulfilment of a condition or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise, of a minor, or is deemed under the provisions of section 35 of this Ordinance to have been received by or for the benefit, whether present or future,

and whether on the fulfilment of a condition or the happening of a contingency, or as a result of the exercise of a power or discretion conferred on any person, or otherwise, of a minor, such disponer shall, nevertheless, during the period of the minority of such minor, be liable to be taxed in respect of the sums so payable as if such disposition had not been made, and subsequent to such period of minority, such disponer shall continue to be liable to be taxed in respect of the sums so payable as if such disposition had not been made unless the Commissioner is satisfied that the disposition was not made for the purpose of avoiding tax."

6. It was contended on behalf of the appellant:-

(a) That sec.6 is the charging section of the Income Tax Ordinance and consequently it is not income which is charged with tax but only "chargeable income".

(b) That sec.18 is purely a machinery section: by it a wife's income is deemed to be her husband's income and is charged in his name. But this does not mean that the wife's income is the husband's income; any disposition made by her of her income remains a disposition by her and does not become nor is it deemed to be a disposition by her husband out of his income.

(c) That the word "income" in sec.18 must be interpreted as "chargeable income" since it is only "chargeable income" which is in fact charged.

(d) That the wife's annual payments are allowable deductions under sec.10(1)(f).

(e) That the onus is on the Crown to show that the wife's annual payments are brought back into tax by the provisions of sec.34(2).

(f) That on its proper construction, sec.43(2) does not and cannot apply to the wife's annual payments for two reasons:

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(i) The phrase "what would otherwise have been the income of the disponer" cannot be construed as including that which is the income of the disponer. The income dealt with in sec.34(2) is income derived from the corpus of the disposition only and does not include the corpus itself even if the corpus is income of the disponer.

(ii) The words "such disponer shall, nevertheless, during the period of the minority of such minor, be liable to be taxed in respect of the sums so payable as if such disposition had not been made" cannot apply to the wife because, as she is a married woman living with her husband, she is not, having regard to the provisions of sec.18 liable to be taxed at all.

7. It was contended on behalf of the Crown:-

(a) That Sec.5 is the charging section of the Income Tax Ordinance and it charges income and not merely that which is defined in Sec.2 as "chargeable income".

(b) That by virtue of the definition of "incapacitated person" in sec.2, a married woman is an "incapacitated person" for the purposes of the Income Tax Ordinance, and the effect of sec.18 is not only to make a wife's income her husband's for all purposes relating to income taxation, but also to preclude her from being a tax-payer or a disponer of income at all. Consequently she can have no "chargeable income", and if she purports to make a disposition of her income, it is her husband who must be regarded as the true disponer for the purposes of the Income Tax Ordinance.

(c) That the words of sec.10(1) prescribing as allowable deductions "all outgoings

and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income" must be read as governing all the paragraphs which follow; and consequently the wife's annual payments cannot be considered as allowable deductions under sec.10(1)(f) in as much as the appellant has failed to show that they were "outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income."

(d) That sec.10 must be read together with sec.34 so that the onus is on the appellant to show not only that the wife's annual payments are allowable deductions under sec.10(1)(f) but also that they are not caught by the provisions of sec.34(2).

8. I held that

(a) Sec.5 is the paramount charging section of this Ordinance and it charges income generally and not only chargeable income.

(b) Sec.6 is a composite section embodying both charging and machinery provisions.

(c) The provisions of sec.18 whereby the income of a married woman living with her husband is deemed to be that of her husband and is charged in his name and not hers, include the whole of the wife's income and not only that part of it falling under the definition of "chargeable income"; but they do not operate so as to convert the wife's income into her husband's income. Similarly, these provisions do not preclude the wife from being a taxpayer nor from being a disponer of her own income.

(d) The effect of the word "including" in sub.sec.(1) of sec.10 is to enlarge the ambit of the allowable deductions described therein as "all outgoings and

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expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income", by the addition of all the items specified in paras.(a) to (g) next following, and consequently the wife's annual payments, which are payments coming within the terms of para.(f), are allowable deductions under sec.10(1).

(e) The onus is on the Crown to show that, pursuant to the provisions of secs.5, 6 and 18, the wife's income is liable to taxation; thereafter the onus shifts to the appellant to show that the wife's annual payments are allowable deductions under sec.10(1)(f). The appellant having discharged that burden, the onus returns to the Crown to show that the wife's annual payments are brought back into tax by the provisions of sec.34(2).

(f) Notwithstanding that by sec.2 the definition of "incapacitated person" is expressed to include a "married woman", and notwithstanding that by the provisions of sec.18 the income of a married woman living with her husband is deemed to be the income of her husband and is charged in her husband's name and not in her own name, where, as here, a wife makes a disposition out of her own income, she, and not her husband, is the disponer of it.

(g) The word "income" in sec.34(2) is not restricted to "chargeable income" as defined in sec.2 and must be given its unrestricted and natural meaning of "that which comes in" considered in relation to money or money's worth. In the light of this construction the wife's annual payments come within the ambit of the phrase "what would otherwise have been the income of the disponer".

(h) The word "taxed" in sec.34(2) where it occurs in the phrase "such disponer shall, nevertheless, during the period of the minority of such minor, be liable

to be taxed in respect of the sums so payable as if such disposition had not been made" must be construed as embracing the whole process of taxation, and the said phrase interpreted as meaning that such disponer shall be legally liable to the process of taxation. Accordingly the wife's annual payments which, by reason of their disposition are caught by the phrase "what would otherwise have been the income of the disponer" become "liable to be taxed in respect of the sums so payable as if such disposition had not been made", and are therefore not allowable deductions in ascertaining the appellant's chargeable income.

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I therefore dismissed the appeal and confirmed the assessment.

9. The appellant after the determination of the appeal, declared to me his dissatisfaction therewith as being erroneous in point of law and in due course required me to state a case for the opinion of the Full Court pursuant to the Income Tax Ordinance Cap.33 No.1 sec.43(10), which case I have stated and do sign accordingly.

Dated the 4th day of March, 1960.

J. R. BLAGDEN

Judge of the Chambers Court.

7th March, 1960.

No. 5

Judgment of Wooding C.J.

In the Court of Appeal

No. 5

Judgment of Wooding C.J.

25th March 1964

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

No.538 of 1958

B E T W E E N

PATRICK ALFRED REYNOLDS Appellant

AND

THE COMMISSIONER OF INCOME TAX Respondent

In the Court of Appeal

No. 5

Judgment of Wooding C.J. continued

25th March 1964

BEFORE: The Hon. Sir Hugh Wooding, C.J.
" " Mr. Justice I.E. Hytali, J.A.
" " Mr. Justice C.E. Phillips, J.A.

March 25, 1964.

Mr. E. Hamel Wells for the appellant.
The Solicitor-General and Mr. C. Bernard for the respondent.

J U D G M E N T

In March 1940 Gilchrist J., sitting as a judge in chambers, allowed the appeal of Joseph Galvan Kelshall. It was an appeal against the refusal by the Commissioners of Income Tax to allow in diminution of his chargeable income payments which he had covenanted to make annually to trustees for the benefit of his two sons. There was no appeal against that decision. Ever since then, the revenue authorities have accepted like annual payments by taxpayers as permissible deductions in ascertaining chargeable income. But, in order to contain such deductions within what may be regarded as not inappropriate limits, the legislature passed amending legislation making certain dispositions non-deductible. Two challenges, however, are raised by the instant case. Patrick Arthur Reynolds, to whom I shall hereafter refer as "the taxpayer", contends that the amending legislation is incompetent to deny him the deductions claimed; the Commissioner retorts by questioning the decision of Gilchrist J.

The facts stated are as follow. The taxpayer and his wife live together and are both in receipt of income from earnings and investments. On 28th December 1956 the wife entered into a deed of covenant whereby she created a trust for the benefit of the four children of the marriage. She appointed Alfred Jefferies Prior as trustee and covenanted to pay to him for a period of three years annual sums of $3,500 in respect of each of the children, to be held by him for their benefit, maintenance and/or education until their maturity or marriage whichever should take place sooner. At the date of the deed the children's ages ranged from twelve years to one month.

In making his return for the year of assessment ended 31st December 1957 based on income received in the preceding year, the taxpayer showed his wife's income as $18,202 but deducted therefrom the aggregate sum of $14,000 which she had paid thereout under her deed of covenant. The Commissioner disallowed the deduction. The taxpayer objected to the disallowance but on his review the Commissioner confirmed it. He then appealed to a judge in chambers but Blagden J. dismissed his appeal. Accordingly, he asked for a case to be stated on a question of law and it is that case which is now before this court.

The controversy at the bar ranged over a wide area and many interesting and intricate questions were debated before us. We have also read what was almost a treatise by the learned judge. But I trust I shall not be thought disrespectful when I say that, in my view, the issues can be kept within a fairly narrow compass and that I intend to keep them so. Their resolution, in my opinion, depends upon the construction of certain provisions of the Income Tax Ordinance, Ch.33 No.1, to which I shall hereafter refer as "the Ordinance": that, it seems, is now generally agreed.

Both in concept and in content the Ordinance differs fundamentally from the English Income Tax Acts. And no other statute to which reference has been made or on the interpretation of which my own researches have uncovered authority enacts provisions 'in pari materia' with those to be interpreted on this appeal. It is therefore not very practicable in the instant case to rely on cases decided elsewhere save in respect of basic principles of construction. But even these call for little citation of authority: they are already too well known. They require me to discover within its four corners the true intent and meaning of the Ordinance. It must be read as a whole so as to correlate its several parts. Its language when plain must be given its full significance. Resort may be had to special rules of construction if its terms should prove ambiguous, but there should be no such recourse simply to provide a means of entry for the fisc or a hatch of escape for a taxpayer. The imposition of tax being the prerogative of the legislature, the courts must enforce what the legislature decrees. No exaction can be

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Judgment of Wooding C.J. continued

25th March 1964

maintained which is not specifically levied, and no avoidance permitted which finds support from sophistry alone. Interpretation must be strict because it is a taxing statute but, as Rowlatt J. explained in Cape Brandy Syndicate v Inland Revenue Commissioners (1921) 1 K.B. 64, at p.71, that principle -

> "simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

Let me then state briefly what from reading the Ordinance as a whole I discern to be the relevant general scheme to which it gives effect. It differentiates between income and chargeable income: income being what comes in from the several sources specified in section 5, and chargeable income being defined in section 2 as what remains of that income after allowing the appropriate allowable deductions. Such deductions fall into one or other of two categories: what I shall call "income-producing expenses" and "personal allowances". Income-producing expenses are governed by sections 10, 11, 12 and 13 but the material sections for the purpose of this case are sections 10 and 12. Personal allowances are prescribed by sections 14, 15, 16 and 18A. The income of a married woman who is living with her husband (hereafter compendiously referred to as "a wife") is by section 18 deemed for the purpose of the Ordinance to be her husband's income. Consequently (and the same section so provides), her income is chargeable in the name of her husband. She therefore has no chargeable income and is not herself chargeable with tax. Not being chargeable with tax, section 27 does not require her to make any return of her income: it is her husband who must. The return which he makes and is required by section 36(1) to deliver to the Commissioner is a true and correct return of the whole of his income from every source whatever. By the operation of section 18, therefore, that must include the whole of a wife's income which for the purpose of the Ordinance is deemed to be his. It is he who is assessed to tax as provided by section 39. Section 42 entitles him to object to

any such assessment and, if he is dissatisfied with the Commissioner's determination of his objection, section 43 affords him a right of appeal to a judge in chambers and thereafter a right to have the judge state a case on a question of law for the opinion of this court. A wife is given no right either to object or to appeal. She has no say and cannot be heard. Indeed, in the view of the Ordinance, she is by definition in section 2 an "incapacitated person".

Construing its language fairly and without reading in anything which it does not itself express, I am of opinion that whenever the Ordinance speaks of income without any qualitative it means income derived from all or any of the sources specified in section 5. Accordingly, when section 18 deems a wife's income for the purpose of the Ordinance to be her husband's, I hold that what is so deemed is the whole of her income which is so derived, and not merely her chargeable income as the taxpayer has sought to contend. As I have said, she is incapable of having any chargeable income. I disagree, therefore, with the learned judge that it is for the purpose only of its machinery and not at all of its charging sections that the Ordinance deems her income to be his. The language of section 18 is clear and explicit. It says that the deeming is for the purpose of the Ordinance. That language must be given its full significance.

Before dealing with the deductions allowable from income when ascertaining chargeable income, I think it convenient to refer to the provisions of section 34. Its history is as follows. The ratio for the decision in Kelshall's case was that income alienated by a taxpayer making payments under covenant thereout so divests him of any beneficial interest therein as to result in the alienated income forming no part of his taxable income. Everyone now agrees that this ratio was wrong. Nobody any longer disputes that if a person applies his income passing through his hands in satisfaction of a liability, even if he be obliged so to apply it, the income nevertheless was and remains his income. But Gilchrist J. also held, obiter, that annual payments under covenant out of income are comprehensible within paragraph (f) of section 10(1) of the Ordinance and are not excluded by the proviso thereto.

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The section reads as follows:

> "10(1) - For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including - .....
>
> (f) annuities or other annual payments whether payable within or out of the Territory, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract: Provided that no voluntary allowances or payments of any description shall be deducted".

He held that the payments were not excluded by the proviso because he interpreted the voluntary payments referred to therein as meaning payments "in the nature of gifts or a series of gifts dependent on the will of the donor" and not as including payments under a deed since, "though the deed was voluntarily entered into, a legal liability is created and the payments thereunder are legally enforceable and not dependent on the will of the disponer". Obviously, his decision had alarming potentialities; so the legislature moved quickly to repel the danger. First in 1941, then again ten years later (and, although this can in no way affect the instant case, once more in 1963) amending legislation was enacted as I stated earlier. The 1951 enactment included section 34(2) which, so far as is material, is in the following terms:

> "34(2) - Where under or by virtue of a disposition made ..... by any disponer, the whole or any part of what would otherwise have been the income of that disponer is payable to or for the benefit ..... of a minor, ...

such disponer shall nevertheless, during the period of the minority of such minor, be liable to be taxed in respect of the sums so payable as if the disposition had not been made .....".

As I construe the subsection, it does not and cannot refer to a disposition by a wife. It is a truism to state that in construing a statute "complete generality is not necessarily to be attributed to general words": See per Lord Wrenbury in In re Viscountess Rhondda's Claim (1922) 2 A.C. 339, at p.397. Hence it is to be observed that, although "any disponer"is a phrase wide wnough to include a wife, nevertheless since she is not liable to be taxed at all, she cannot be included within the meaning of "such disponer". Further, the income of a wife being deemed for the purpose of the Ordinance to be her husband's income, it is he who within the contemplation of the Ordinance may dispose of it to or for the benefit of another. She cannot: 'Nemo dat quod non habet'. I therefore disagree with Blagden J. that a wife may be a disponer within the contemplation of the subsection. Holding that view as he did, it is, I think, not surprising that he was obliged to distort the meaning of the words "shall be liable to be taxed" and to construe them as signifying "shall be legally subject to the process of taxation". In so doing he was of course harking back to his interpretation of section 18 as deeming a wife's income to be her husband's for the purpose of the machinery sections only. But, as I have said, there is no warrant for any such limitation of the language employed by the section.

I consider now the deductions allowable from income when ascertaining chargeable income. I begin with what I have called personal allowances and say at once that, in my judgment, none of them is available to a wife in her own right. Strictly, it is not necessary to pursue this further since the deduction in issue is not in respect of a personal allowance. But I think it informative to do so. As will be seen, I think, it confirms the view I expressed regarding section 34(2) that general words wide enough to include a wife must on occasion receive a narrower construction in consequence of reading the Ordinance as a whole.

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Each of the sections 14, 15, 16 and 18A, which relate to personal allowances, commences with the words "in ascertaining the chargeable income of an individual", and the word "individual" is obviously wide enough to include a wife. But, since a wife can have no chargeable income, she must necessarily be outside the purview of these sections. The personal allowances include: by section 14, a sum of $1,200, nothing however being stated in respect of whom or for what; by section15, a sum of $480 in respect of a wife, plus other sums in respect of children in the custody and maintained at the expense of the individual to whom the deduction is allowed; by section 16, the total (up to a prescribed maximum) of all annual premiums paid by the individual on his life and/or the life of his wife; and by section 18A, a sum equal to any "earned income" of a wife up to a maximum and subject to the conditions therein specified. These provisions further exemplify that, as used in these sections, the word "individual" cannot include a wife. For the purpose of the Ordinance she has no income out of which to maintain a child or to pay any insurance premiums. Being married and living with her husband, she can have no child in her separate custody. As she makes no return to the Commissioner, she cannot claim the allowance of $1,200. And the "earned income" of a wife is expressly recognised as being included in the chargeable income of the individual to whom the deduction is allowed. Notwithstanding the use of the word "individual", therefore, it does not include a wife. In this respect, I repeat that in the view of the Ordinance she is an "incapacitated person".

There remain to be considered the provisions governing what I have called income-producing expenses. In this regard, I shall not go beyond sections 10(1) and 12 since the other provisions are not material. In my judgment, these two sections must be read very closely together. Beyond a peradventure in my opinion, they are complementary enactments and must be treated as such. I have already quoted section 10(1) which is affirmative in text. Its governing stipulation explicitly is that "there shall be deducted all outgoings and expenses <u>wholly and exclusively</u> incurred . . . . <u>in the production of the income</u>". Its complement, in negative terms, is section 12.

This enacts 'inter alia' that -

> "For the purpose of ascertaining the chargeable income of any person, no deduction shall be allowed in respect of -
>
> (a) domestic or private expenses;
>
> (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income".

Complementary though the two sections are, neither Gilchrist J. nor Blagden J. attempted to read them together. Indeed, in the Kelshall case Gilchrist J. made no reference whatever to section 12. It was a very strange omission, especially as he adverted to sections 15 and 16 of Ordinance No.8 of 1922, respectively the predecessors of sections 12 and 10 of the Ordinance. But Blagden J. did consider section 12 and he said this about it:

> "I do not see how this provision could be regarded as negative or fettering any of the prior provisions of section 10(1). I cannot feel it was the intention of the legislature to allow deductions in one section and then take them away in another. Such a contortion of intent would have to be evidenced by the clearest possible words. That which is expressly allowed cannot by implication be excluded".

I find it impossible to follow this reasoning. The truth of the matter is that, although with the concurrence of counsel on both sides he jettisoned the ratio of Gilchrist J.'s decision in the Kelshall case, he accepted his obiter dictum as soundly based and, in any event, considered that he was bound by it because he felt he could not, on a matter not of principle but of pure interpretation, substitute other views for those which had stood unchallenged and unquestioned for so long. Having thus arrived at what in my opinion is a wrong conclusion on the construction of paragraph (f) of

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section 10(1), he then found himself in a difficulty about section 12. And, with blinkers donned, he saw contortions where in fact there was none.

I go back to what I said quite early in this judgment, I must discover within the four corners of the Ordinance what its true intent and meaning are. I must therefore keep in mind the injunction that "it is the first duty of the court to give effect to the whole expression of the parliamentary intention": see per Lord Evershed, M.R., in Eastbourne Corporation v Fortes Ice Cream Parlour (1955) Ltd. (1959) 2 Q.B. 92 at p.107 The same advice was given by the Privy Council in Canada Sugar Refining Co. v. Reg. (1898) A.C. 735. at p.741, where the Board said:

> "Every clause of a statute should be construed with reference to the context and to other clauses of the Act so as, so far as possible, to make a consistent enactment of the whole statute . . . .".

For a thorough understanding then of section 10(1), it is necessary to correlate with it the sources of income enumerated in section 5, the definition of chargeable income in section 2 and the prohibitory provisions of section 12. It will be observed that what I have described as the governing stipulation in section 10(1) allows a deduction from income of all outgoings and expenses wholly and exclusively incurred in the production of the income. That does not mean that income must necessarily result from an outgoing or expense which has been incurred in order to qualify it for deduction. The stipulation will be satisfied, I think, "if the expenditure . . . . . is incidental and relevant to the operations or activities regularly carried on for the production of the income": see W. Nevill & Co. Ltd. v. Federal Commissioner of Taxation (1937) 56 C.L.R. 290, per Dixon J. at p.305. It has however been contended that if section 10(1) is given no wider construction its enactment will serve no purpose because the phrase "gains or profits" used in section 5 connotes that the income represented thereby has already been subject to such outgoings and expenses. In my opinion, that is by no means so. Accounting practice recognises a clear

difference between profits on operating or trading account and profits on profit and loss account, that is to say, between gross profits and net profits. The difference, of course, is that gross profits are the excess of returns over outlay whereas net profits are what remains after overheads and indirect expenses have been deducted from that excess. To ascertain chargeable income, therefore, the gross income from the several sources enumerated in section 5 must be subject to the deductions allowable under section 10(1). But, in ascertaining what deductions may be allowed thereunder, regard must also be had to the prohibitions of section 12. What the Ordinance prohibits should be consistent with what it allows.

Its consistency will readily be observed provided the essential stipulation in section 10(1) is kept steadily in mind. The word "including" which precedes the enumeration of the several items in the lettered paragraphs following may be a term of enlargement as everyone agrees, but the enlargement ought never to lose its association with the stipulation which governs it. Accordingly, the annual payments contemplated by paragraph (f) must, in my judgment, be referable in some way to the production of a taxpayer's income if they are to be allowed to him as deductions. Examples of such payments would, I think, include superannuation pensions and allowances, minimum royalties on as yet unexploited oil-mining leases, and life and accident insurance premiums for insuring an undertaking against being deprived, permanently or temporarily, of the services of expert or managing personnel. Other examples may also be quoted. But, whatever they are, they must in my judgment be incidental and relevant to the production of the income the chargeable quantum of which is to be ascertained as prescribed by the Ordinance. It was, in my view, specially to underline this that section 12 was enacted expressly to prohibit, and thereby to make it abundantly clear that nothing in section 10(1) should be thought effectual to allow, the deduction of any outgoings or expenses which are domestic or private expenses or which are not laid out or expended wholly and exclusively for the purpose of acquiring the income. In my opinion, payments (whether under covenant or otherwise) made and intended for the maintenance, education or

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benefit of one's own children are within both prohibitions: they are private expenses, and they are wholly unrelated to the acquisition of any relevant income.

My attention has been called to what appears to be a contrary decision by Collymore C.J., sitting as a judge in chambers in Barbados, in In re McDermott, No.23 of 1956. He held that payments under covenant to the mother-in-law of a taxpayer are within the allowable deductions in calculating assessable income. Two observations must be noted however. First, nowhere in his judgment did the learned Chief Justice refer at all to the prohibitory section 12(1) of the Barbados Income Tax Act which, in terms, is practically identical with our section 12. And, secondly, the facultative provisions of section 18 of the Act, which alone he examined, are couched in very different language from our section 10(1). The wording of that section begins as follows:

> "In calculating the assessable income derived by any person from any source, deduction shall be allowed in respect of any of the following sums or matters:"

Four items are then enumerated all but one of which are specifically referred to as outgoings or expenses "in acquiring the income upon which tax is payable". The single exception was originally 'ipsimissis verbis' our paragraph (f), but by an amending Act passed in 1954 the proviso with which the paragraph ends was altered to read thus:

> "provided that no voluntary allowances or voluntary payments of any description shall be deducted other than voluntary payments by way of an annuity or other annual payment made exclusively -
>
> (a) for charitable, religious, educational or scientific purposes of a public nature within the Island, or
>
> (b) for charitable, religious, educational or scientific purposes of a public nature which, being without the Island, are approved by the Governor-in-Executive Committee for the purpose of permitting deductions to be made in pursuance of this subsection".

In view of these observations, the decision causes me no pause. Accordingly, I adhere to my interpretation of the provisions of the Ordinance.

I have thought it appropriate to go thus fully into the matter although section 10(1) of the Ordinance allows the outgoings and expenses deductible thereunder only if they are incurred by the person whose chargeable income is being ascertained. From what I have said earlier a wife is not and cannot be any such person. Nevertheless, it seems to me that, if her gross income is deemed to be her husband's and the chargeable quantum is to be ascertained, he must be allowed to stand in her shoes for the purpose of section 10(1). I think this because for the purpose of the Ordinance it is his income in the production of which the outgoings and expenses were incurred. I have therefore considered that it should be said very plainly that, subject to the question which I reserve hereunder, unless an annual payment is an outgoing or expense "incurred in the production of the income", it cannot qualify as an allowable deduction under any paragraph of section 10(1). Additionally, however, for the purpose of the Ordinance it is in my judgment not competent for a wife to give away, whether under the compulsion of a deed of covenant or otherwise, any part of what is deemed to be her husband's income, nor is it permissible for him to claim that any payment so given by her is an outgoing or expense incurred in the production of the income. Her obligations, however arising, cannot be a charge debitable against income which is deemed in whole to be her husband's. Accordingly, whatever the fate of the Kelshall decision ultimately, I will be no party to extending its mischief beyond its narrowest limits. That decision relates to payments under covenant made by a taxpayer himself. Thus far it goes; it must go no further.

The question which I reserve may now be stated. Although I strongly disapprove both the ratio and the obiter dictum of Gilchrist J., I do not expressly overrule his decision. I refrain from so doing not because I think, as Blagden J did, that it "has stood unchallenged and unquestioned for so long". It was challenged in this case within a mere twenty years, so that it had acquired no antiquity deserving of venerable respect.

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What makes me hesitate is that I consider it an open question which it is quite unnecessary now to decide, and on which therefore I expressly reserve my opinion, whether by its subsequent legislation the legislature has implicitly declared the Kelshall decision to be a correct interpretation of section 10(1)(f). If and when it comes up for determination, the court will have to consider whether there was inherent in the legislation a retrospective declaration as to the meaning of the paragraph or it merely proceeded upon an erroneous assumption of what the paragraph meant: see per Lord Simonds in Kirkness v. John Hudson & Co. Ltd. (1955) A.C.696, at p.714, and cf. Whitfield v Lord Le Despencer (1778) 2 Cowp.754, per Lord Mansfield at p.766, and Triefus & Co. Ltd. v Post Office 1957 2 Q.B. 352.

In the result, then, although I disagree with the reasons which led Blagden J. to hold against the taxpayer, I agree with his conclusion. Accordingly, I would dismiss the appeal with costs.

H.O.B.Wooding
Chief Justice.

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TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

No. 538 of 1958

B E T W E E N

PATRICK ALFRED REYNOLDS — Appellant

AND

THE COMMISSIONER OF INCOME TAX — Respondent

BEFORE: The Hon. Sir Hugh Wooding, C.J.
" " Mr. Justice I.E. Hyatali, J.A.
" " Mr. Justice C.E. Phillips, J.A.

March 25, 1964.

Mr. E. Hamel Wells for the appellant.
The Solicitor-General and Mr. C. Bernard for the respondent.

J U D G M E N T

The material facts have already been stated by the learned Chief Justice and it would be otiose for me to repeat them. I share his view that the issues in this appeal are within a narrow compass and ought to be so confined. The husband contends that the trust created by his wife from and out of her income in favour of their infant children is not caught by s.34 of the Income Tax Ordinance but that, nonetheless, it qualifies as a deduction under s.10(1)(f) thereof, which he maintains was correctly construed in the obiter dictum of Gilchrist J., in the Kelshall case. Before this contention can be considered however, the husband must overcome the hurdle of showing that in the Contemplation of the Ordinance his wife is the owner of the income which accrued to her and that she is entitled to have ascertained thereout a chargeable income under the provisions thereof. Upon this question, the whole appeal turns and since the answer thereto is dependent upon the construction of certain statutory provisions with which the decision of Gilchrist J., was not concerned, I think it appropriate, in view of the large number of authorities to which we were referred, to say as Donovan, L.J. very recently said in Inland Revenue Commissioners v. Frere (1964) 1 All E.R.73 at p.79 that -

> "As to the authorities the present point is res integra. There is little value therefore, in parading them all, seeking from them an implication, now one way and now the other, and relying on judicial remarks made without the problem being in mind at all. This is not intended as a criticism of the arguments of either side, which indeed have been most helpful; it is merely my reason for keeping an examination of the authorities down to a minimum. For it is agreed on both sides that the question can be treated as one of the true construction of the provisions of the Acts ... which I have cited".

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I therefore advert at once to the relevant provisions of the Ordinance which I propose to notice in the briefest terms. Section 5 provides that tax shall be payable on the income accruing to a person from the sources specified therein. Section 18 enacts that for the purposes of the Ordinance "the income of a married woman living with her husband shall ... be deemed to be the income of the husband" and chargeable to tax in his and not her name. Section 6 directs that tax shall be charged levied and collected on "chargeable income" which is defined by s.2 as the "aggregate amount of the income of any person from the sources specified in s.5 after allowing the appropriate deductions and exemptions under the Ordinance." In this connection it is only necessary to refer to s.10(1)(f) which enacts that -

> "(1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred . . . . by such person in the production of the income including -
> .....
>
> (f) annuities or other annual payments . . . . either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise or as a reservation thereout or as a personal debt or obligation by virtue of any contract;
>
> Provided that no voluntary allowances or payments of any description shall be deducted;"

As against what this section permits must be read what s.12 forbids and for present purposes it suffices to note that inter alia, it prohibits any deduction on account of any disbursements or expenses which are not wholly and exclusively laid out or expended for the purpose of acquiring the income.

Finally there is s.34 which, with s.10(1)(f) particularly in view, prescribes that where any disponer disposes of the whole or any part of what would otherwise have been disponer's income for

the benefit of a minor, such disponer shall during the period of such minority be liable to be taxed in respect of such disposition as if it had not been made; and it further goes on to enact that at the end of such minority, such disponer shall continue to be liable to be taxed in respect of the disposition unless the commissioner is satisfied that it was not made for the purpose of avoiding tax.

On his construction of these provisions the husband argues firstly, that the disposition made by his wife under her deed of covenant of December 28, 1956, is not within the purview of s.34 as this enactment is directed against income disposed of to minors by a disponer who is, in the words of the section, 'liable to be taxed'. His wife, it was said, was not so liable as she was living with him; secondly, that what is deemed by s.18 to be his income is his wife's chargeable income inasmuch as the Ordinance is only concerned with taxing such income; and thirdly, that in ascertaining her chargeable income, her disposition aforesaid qualifies as a permissible deduction under para.(f) of s.10(1) and should accordingly be deducted from her income accruing from the sources specified in s.5.

The respondent's reply to the husband's first argument may be put in this way: the effect of deeming A's income to be B's, makes it B's and once it becomes B's A is left with nothing to dispose of. This submission is, in my view, unassailable. The word 'deemed' nowadays may well be regarded as the magic wand of legislative draftsmen who frequently employ it in modern legislation to achieve a variety of useful objects. To borrow the words of Lord Radcliffe in St.Aubyn (L.M.) v A.G.(No.2) (1951) 2 All E.R. at p.498, "sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is in the ordinary sense impossible".

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Here in s.18 the word 'deemed', in my view, is employed to make what is not the actual fact, a fact for the purposes of the Ordinance. Accordingly, the income of the wife must for income tax purposes be regarded as the income of the husband, who in the result becomes liable to pay tax on the footing that he had actually earned the aggregate of hers and his. Section 34 is consequently inapplicable to her and this is so not because she is not liable to be taxed within the meaning thereof as the husband contends, but because she cannot be a disponer of income which in the contemplation of s.18 belongs to another.

What then is the meaning of 'income' in s.18? The husband argues that it means 'chargeable income', since the Ordinance is concerned with taxing such income only. This argument has already been effectively answered and I would merely add two observations. Firstly, the reason advanced in favour of that interpretation suffers from a material defect in that what the Ordinance is really concerned with is taxing the chargeable income of a person chargeable to tax, which is quite a different matter. Its provisions make it plain that it is only such a person who is entitled or can claim to have a chargeable income. Manifestly, the wife is not such a person and for this reason it is impossible for her to maintain that 'income' in s.18 means her chargeable income. Secondly, the husband is caught in a web of inconsistency when he urges in one breath that the wife escapes s.34 because she is not liable to be taxed and in the other that s.10(1)(f) must be applied to ascertain her a chargeable income. I am quite unable to follow how a person who is not liable to be taxed can possibly be said to have a chargeable income nevertheless. I can find no justification for reading in the suggested qualification to the word 'income' in s.18 or for departing from its ordinary and natural meaning. In my judgment it means and I so hold, the whole of the income accruing to the wife from the sources specified in s.5.

This disposes of the first and second submissions of the husband and brings me to the third. Here too the argument fails, for if the wife is not entitled or cannot claim to have a chargeable income, then she is debarred from invoking the provisions of s.10(1)(f) to have it ascertained.

The question which nevertheless arises is whether, the husband as the owner of her income, is similarly debarred in respect of the annual payments which she covenanted by deed to make to their children. I am of opinion that he is, since on my reading of para.(f) of s.10(1) it contemplates an annual payment made by the person chargeable to tax. All the implications of this submission however, have already been fully discussed by the learned Chief Justice and I do not consider that I can usefully add anything to his conclusions with which I fully agree.

As to the decision of Gilchrist, J. in the Kelshall case I propose to say but little. It was conceded by both sides that its ratio cannot be supported but, as to what he stated obiter, we have been pressed on the one hand to accept it as a correct statement of the law and on the other, that it should be over-ruled as bad. For my part I shall not consider it since, in my opinion, it has no bearing on the questions for decision in this appeal. I would merely express an a priori view that a court should be slow to overrule a fiscal decision of this nature when citizens for more than twenty years have ordered and conducted their affairs on the faith of its validity; and more especially when the subsequent conduct of the legislature may with justification be interpreted as a ratification thereof; for the legislature proceeded thereafter, not to nullify it but only to confine the area of its operation and in the process to indicate, albeit indirectly, as the final provision of s.34 demonstrates, that a disposition by covenant in favour of an adult shall be regarded as effective if the commissioner is satisfied that it was not made for the purpose of avoiding tax. Moreover, when one finds that they gave further and clearer recognition to this decision in the Income Tax Act of 1963, then speaking for myself I should be extremely loth to divert the road along which they have been content to travel for so long.

For the foregoing reasons I agree that the appeal should be dismissed with costs.

Isaac E. Hyatali
Justice of Appeal.

(L.S.)
9th April 1964.

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Judgment of Phillips J.A.

25th March 1964

No. 7

Judgment of Phillips J.A.

TRINIDAD & TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No. 538 of 1958

Between

PATRICK ALFRED REYNOLDS
Appellant

And

THE COMMISSIONER OF INCOME TAX
Respondent

BEFORE: The Hon. Sir Hugh Wooding, C.J.
" " Mr. Justice I.E.Hyatali, J.A.
" " Mr. Justice C.E.Phillips,J.A.

March 25, 1964.

Mr. Hamel Wells for the appellant.
Mr. C.A.Kelsick, Solicitor General & Mr. Clinton Bernard for the respondent.

J U D G M E N T

I am of opinion that the learned trial judge, having embarked upon a wrong and devious course, fortuitously arrived at the correct destination in this case.

As I see it, the question for consideration is whether upon the true construction of section 10(1) and section 34(2) of the Income Tax Ordinance,Ch.33 No.1 (as amended) the "annual payments" which the wife made out of her income to the trustee for the benefit of her minor children are allowable deductions for the purpose of ascertaining the husband's chargeable income.

As a necessary preliminary to the proper determination of this question, I think it is imperative to bear in mind the status which a

married woman occupies in the scheme of the Ordinance, and to arrive at the proper interpretation of section 18 thereof, which provides as follows:

> "The income of a married woman living with her husband shall, for the purpose of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee:
>
> Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstandng that no assessment has been made upon her".

It was submitted on behalf of the appellant that the word "income" in this section means "chargeable" income. It was contended that notwithstanding the fact that a wife living with her husband is neither liable to make any return of her income nor to have any assessment for income tax purposes made upon her, nevertheless, she remains liable to be charged with tax (albeit in the name of her husband) and therefore, that her "income" which is deemed to be her husband's is not her "income" but her "chargeable"income.

It seems to me that acceptance of this proposition would be contrary to the fundamental rule of construction that words are to be given their plain and natural meaning unless the context otherwise requires. I am clearly of opinion that both the context and the whole scheme of the Ordinance operate against the validity of this interpretation, and it is nihil ad rem to say that section 5 of the Ordinance imposes a liability to pay tax on "any person". It is worthy of notice that such a liability is not imposed on "every" person. Moreover, the Ordinance places the wife in the category of an "incapacitated person" side by side with "any infant, person of unsound mind, idiot or insane person".

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Judgment of Phillips J.A. continued

25th March 1964

Section 27 of the Ordinance enacts that:-

> "A person who is chargeable in respect of an incapacitated person, or in whose name a non-resident is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for the payment of the tax chargeable thereon".

The person chargeable with tax in respect of a wife living with her husband is the husband and not the wife herself. When, therefore, section 18 deems the wife's "income" to be that of the husband, it becomes manifest, in my opinion, that such "income" can only mean her "income", seeing that the wife is not chargeable with tax and therefore has no "chargeable" income for the purposes of the Ordinance.

It follows, as a result, that no question can ever arise of making allowable deductions from the wife's income qua her income. This question, in my judgment, arises only in relation to ascertaining the chargeable income of the husband, which ex hypothesi includes the income of the wife. In appropriate cases, e.g. where the wife's income is derived from the source described in section 5, para.(a) of the Ordinance as "gains or profits from any trade, business, profession or vocation", it may be necessary in order to ascertain the husband's chargeable income to deduct expenses incurred by the wife in the production of that portion of the income which by virtue of the Ordinance he obtains from his wife. But this, be it emphasized, is not done for the purpose of ascertaining the wife's chargeable income.

Section 10(1) of the Ordinance, so far as is material for present purposes, enacts as follows:-

> "10(1) - For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including
> . .....

(f) annuities or other annual payments whether payable within or out of the territory, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract:

Provided that no voluntary allowances or payments of any description shall be deducted".

Considerable argument was directed both before the trial judge and this Court to the question as to the nature of the annuities or annual payments which, according to the true construction of the section, fall to be deducted in ascertaining the chargeable income of a taxpayer. The contention on behalf of the appellant, founded as it was on an unreported decision of Gilchrist J., dated 8th March, 1940, given in the appeal of Joseph G. Kelshall from the assessment of the Commissioners of Income Tax in Supreme Court proceedings No.443 of 1939, was accepted by the trial judge, who held that the payments made by the wife in this case were allowable deductions under the provisions of section 10(1)(f), but, as he stated, "were brought back into tax" by the provisions of section 34(2).

In my judgment, neither of these findings is correct. Having had the advantage of perusing the judgment of the learned Chief Justice, I find myself in complete agreement with his strictures in relation to Kelshall's case, and I do not consider that I can usefully add anything in connection with that question.

For my part, I do not think it strictly necessary for the determination of the present case to decide whether or not the judgment in Kelshall's case is correct, for the simple reason that, in myopinion, even on the assumption that it is correct, it can have no application whatever to the circumstances of the case under consideration. Whereas in Kelshall's case it was the taxpayer himself who had covenanted to make the annual payments, in the present case the covenantor making those payments is not the taxpayer himself, but his wife.

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Judgment of Phillips J.A. continued

25th March 1964

It seems to me that the avowed intention of section 10 of the Ordinance is to allow certain deductions from the income of a taxpayer for the purpose of ascertaining his chargeable income. Consequently, it is, in my opinion, prima facie contemplated by the Ordinance that the only payments or expenses which fall within the scope of section 10(1) are expenses incurred or payments made by the person chargeable with tax. There may, of course, be cases, as already stated, in which a husband would be entitled to have deductions made of expenses incurred by his wife in the production of her income. This is because the statute deems her income to be his, from which it follows that expenses incurred in connection with its coming into being must also be deemed to be his. This, however, is not such a case, the payments in question being alienations by the wife of a portion of her income by deed of covenant.

It is interesting to note, in parenthesis, that the trial judge circumvented this difficulty by holding (contrary to my opinion) that the appellant's wife had a "chargeable" income, and that the deductions in question were properly claimed "for the purpose of determining the chargeable portion of /her income/", being apparently oblivious of the fact that the only question before him was to determine whether the appellant was entitled to claim the said deductions for the purpose of determining his chargeable income.

In such circumstances I am satisfied that on the basis of the construction of section 10(1)(f) adopted by Gilchrist, J. in Kelshall's case and Blagden, J. in the present case, viz. that the annual payments contemplated by that enactment need not be payments having the slightest connection with the production of the income, section 10(1)(f) cannot be held to be applicable to the present case, in which the payments under consideration were not made by the taxpayer himself. In the result, therefore, I hold that the purported alienation of her income by the wife cannot be effective to reduce the amount of her income which, for the purposes of the Ordinance, is deemed to be her husband's.

Up to this point I have indicated the reasons why I consider that the wife's annual payments are

not deductible under the provisions of section 10(1)(f) for the purpose of ascertaining the chargeable income of the husband. To turn now to section 34(2) - this enactment may be said to be an express modification by the Legislature of the effect of the erroneous construction put upon section 10(1)(f) by the decision in Kelshall's case. The intention of the enactment is manifestly to limit the effect of that decision by removing from its ambit the precise class of case now under consideration, namely, a disposition in favour of minors.

It follows, therefore, that if the annual payments in question are not allowable deductions within the provisions of section 10(1)(f) of the Ordinance, they cannot possible be affected by the operation of section 34(2). I have already held that section 10(1)(f) has no application to the annual payments contracted to be made by the wife in this case. In these circumstances, no question can properly arise for the application of section 34(2).

In view, however, of the fact, that the learned trial judge founded his judgment on section 34(2), and that much argument was addressed to this Court as to its proper construction, I consider it desirable to express my clear and unhesitating opinion that that section can only apply to dispositions made by the taxpayer himself, that is, the person who is liable under the Ordinance to have his income assessed and charged with tax. In the present case where the disposition was made not by the husband but by the wife, who is an "incapacitated person" not assessble or chargeable with tax, I am of opinion that no disposition of the kind contemplated by the section has been made, and that the wife cannot be regarded as a "disponer" within the meaning or for the purposes of the Ordinance.

For the foregoing reasons, I agree that this appeal fails and must be dismissed with costs.

Clement E. Phillips,
Justice of Appeal.

In the Court of Appeal

No. 8

Order

25th March 1964

No. 8

Order

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

Civil Appeal 538 of 1958

Between

PATRICK ALFRED REYNOLDS Appellant

and

THE COMMISSIONER OF INCOME TAX Respondent

Entered the 15th day of June, 1964.

Dated the 25th day of March, 1964.

Before the Honourables - Sir H.O.B.Wooding, Chief Justice (President)
Mr. Justice I.E. Hyatali
Mr. Justice C.E. Phillips

UPON READING a Case Stated dated 4th March, 1960, under Section 43(10) of the Income Tax Ordinance by the Honourable Mr. Justice J. R. Blagden for the opinion of this Court.

AND UPON READING the Judgment of the said Honourable Mr. Justice J.R.Blagden dated 31st July, 1959

AND UPON HEARING Counsel for both parties

AND MATURE DELIBERATION THEREUPON HAD IT IS ORDERED that this Appeal be dismissed with costs.

GEORGE R. BENNY
Deputy Registrar, Supreme Court.

No. 9

Order granting Final Leave to Appeal to Privy Council

In the Court of Appeal

No. 9

Order granting Final leave to Appeal to Privy Council

29th July 1964

TRINIDAD

IN THE HIGH COURT OF JUSTICE

Privy Council No.2 of 1964

In Re: Income Tax Ordinance Ch.33 No. 1

Between

PATRICK ALFRED REYNOLDS Appellant

and

THE COMMISSIONER OF INCOME TAX Respondent

IN CHAMBERS

Entered the 14th day of August, 1964.
Dated the 29th day of July, 1964.
Before the Honourable Mr. Justice C. E. Phillips.

On the return of the summons dated the 27th day of July, 1964, upon reading the said Summons, the affidavit of James Morgan sworn to on the 26th day of July, 1964 and the Certificate of the Registrar of the Supreme Court of Judicature dated the 14th day of July, 1964, all filed herein.

UPON HEARING solicitor for the appellant and solicitor for the respondent

THIS COURT DOTH ORDER

that final leave be and the same is hereby granted to the said appellant to appeal to Her Majesty in Her Privy Council against the Judgment of the Court of Appeal dated the 25th day of March, 1964.

F.S. & A. Deputy Registrar.

Exhibits

"A"

Deed of Covenant, Audrey J. Reynolds to Alfred J. Prior

28th December 1956

E X H I B I T S

"A" - Deed of Covenant, Audrey J. Reynolds to Alfred J. Prior.

THIS DEED OF COVENANT is made the Twenty-eighth day of December in the Year of Our Lord One thousand nine hundred and fifty-six Between AUDREY JEAN REYNOLDS of 8 First Avenue, Cascade, in the Ward of St. Anns in the Island of Trinidad, Married Woman, (hereinafter called "the Grantor") of the one part and ALFRED JEFFERIES PRIOR of 8 First Avenue, Cascade aforesaid, Architect, (hereinafter called "the Trustee") of the other part

WHEREAS the Grantor is the mother of four children, namely, Patrick Ernest Reynolds, who was born on the 1st day of September 1944, Peter Francis Reynolds, who was born on the 1st day of February 1948, Brigid Ann Reynolds, who was born on the 9th day of March 1950, and Briony Nicola Reynolds, who was born on the 22nd day of November 1956, (which said four children are hereinafter together called "the Beneficiaries")

AND WHEREAS the Grantor is desirous of making such provision for the Beneficiaries as is hereinafter contained.

NOW THIS DEED WITNESSETH as follows:-

1. For effectuating the said desire and in consideration of the natural love and affection of the Grantor for the Beneficiaries the Grantor hereby covenants with the Trustee as follows:-

(a) (i) To pay to the Trustee for a period of three years during the joint lives of herself and the said Patrick Ernest Reynolds the annual sum of Three thousand five hundred Dollars on the Thirty-first day of December in each year the first of such yearly payments to be paid on the Thirty-first day of this current month of December One thousand nine hundred and fifty-six.

(ii) To pay to the Trustee for a period of three years during the joint lives of herself and the said Peter Francis Reynolds

the annual sum of Three thousand five hundred Dollars on the Thirty-first day of December in each and every year the first of such yearly payments to be paid on the Thirty-first day of this current month of December One thousand nine hundred and fifty-six.

(iii) To pay to the Trustee for a period of three years during the joint lives of herself and the said Brigid Ann Reynolds the annual sum of Three thousand five hundred Dollars on the Thirty-first day of December in each and every the first of such yearly payments to be paid on the Thirty-first day of this current month of December One thousand nine hundred and fifty-six.

(iv) To pay to the Trustee for a period of three years during the joint lives of herself and the said Briony Nicola Reynolds the annual sum of Three thousand five hundred Dollars on the Thirty-first day of December in each and every year the first of such yearly payments to be paid on the Thirty-first day of this current month of December One thousand nine hundred and fifty-six.

(b) The aforesaid payments shall be held by the Trustee Upon Trust for the maintenance and/or education and/or benefit of the Beneficiaries respectively until they shall have respectively attained the age of twenty one years or marry under that age and upon the Beneficiaries respectively attaining the age of twenty-one years or marrying under that age Upon Trust to pay the said payments (less Income Tax, if any) or the balance thereof remaining in his hands to the said Beneficiaries respectively.

2. It is hereby expressly declared as follows :-

(a) The Trustee shall have sole and uncontrolled discretion as to what he may consider to be for the advancement and/or benefit of the Beneficiaries and the Trust in their favour hereinbefore contained until they shall have respectively attained the age of twenty one

Exhibits

"A"

Deed of Covenant Audrey J. Reynolds to Alfred J.Prior continued

28th December 1956

years or have married under that age and no question shall be raised by the Beneficiaries or any one or more of them as to the exercise of such discretion as aforesaid.

(b) The Trustee may settle and determine all matters as to which any douht difficulty or question may arise in the course of the execution of the trusts in these presents or incidental thereto and every such determination whether made upon any question formally raised or implied in any of the acts or proceedings of the Trustee or otherwise and although such determination may not be in accordance with the fixed rules of law shall conclusively bind all persons interested under these presents and generally the Trustee may act in relation to the Trust funds as fully as if he were the absolute owner of the same without being responsible for any loss occasioned thereby.

(c) If at any time during the continuance of the the trusts the Beneficiaries or any one or more of them shall become bankrupt or shall assign or charge his or her interest hereunder or any part thereof then such interest shall cease and any moneys which would or might be payable to the Beneficiary or Beneficiaries who shall have so become bankrupt or shall have so assigned or charged his or her interest hereunder or any part thereof in the absence of this proviso shall be held by the Trustee in trust to use the same in his absolute discretion for the maintenance or support of the Beneficiary or Beneficiaries who shall have become bankrupt or shall have assigned or charged his or her interest hereunder or any part thereof or any spouse child or children of such Beneficiary or Beneficiaries.

(d) The Trustee shall apply the income of the trusts for and towards the maintenance or education or otherwise for the benefit of the Beneficiaries until they shall respectively attain the age of twenty-one years or marry under that age and he may either himself so apply the same or he may pay the same to the guardian or guardians for the time being of the Beneficiaries or any one or more of them or to any headmaster, teacher, or any

person selected by such guardian or guardians for that purpose without seeing to or being in any way responsible for the application thereof.

(e) The Trustee shall accumulate the surplus if any of the income of the trusts in favour of the Beneficiaries respectively until they shall respectively attain the age of twenty one years or marry under that age and shall pay the surplus so accumulated to the Beneficiaries respectively on their respectively attaining the age of twenty-one years or marrying under that age.

(f) The Trustee may make payments to the Beneficiaries respectively and the receipt of the Beneficiary to whom any such payment or payments shall be made shall be a good discharge to the Trustee notwithstanding that such Beneficiary may at the time of giving such receipt be an infant.

(g) Any neglect by the Trustee to enforce in whole or in part the covenants hereinbefore contained on the part of the Grantor shall not be considered a breach of trust and the Trustee shall not in any wise be responsible for such neglect.

3. It is hereby further declared as follows:

(a) That the power of removing any trustee for the time being and appointing any new or additional trustee or trustees hereof shall be vested in the Grantor during her lifetime and shall be exercisable by her in writing at any time.

(b) That the Grantor may at any time or times hereafter by writing or by deed or deeds revocable or irrevocable with the consent of any one of the following persons that is to say the present Trustee or of any future now or additional trustee or trustees appointed as aforesaid (not being the Grantor herself or her husband) revoke in whole or in part this deed and/or any of the trusts and powers declared by and contained in these presents and/or appoint any new or other trusts and provisions in lieu thereof.

Exhibits

"A"

Deed of Covenant Audrey J. Reynolds to Alfred J.Prior continued

(c) That the Trustee may invest any moneys accumulated by him as aforesaid in any securities that he may in his absolute discretion decide whether the same are authorised by law for the investment of trust monies or not.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first hereinabove written.

28th December 1956

Signed and delivered by the within named AUDREY JEAN REYNOLDS as and for her act and deed in the presence of: A. Jean Reynolds

Dorothy E. Cumberbatch,
17, St. Vincent Street,
Port of Spain,
Stenographer. and of me
Peter Stanley Edward Stone,
Conveyancer.

Signed and delivered by the within named ALFRED JEFFERIES PRIOR as and for his act and deed in the presence of:- A. J. Prior

Dorothy E. Cumberbatch,
17, St. Vincent Street,
Port of Spain,
Stenographer, and of me
Peter Stanley Edward Stone,
Conveyancer.

"Y"

Two examples of Assessments

"Y" Two examples of Assessments

EXAMPLE 'A'. (Section 18, Q "Income" or "Chargeable Income")

	Husband	Wife
Income	5000	2000
Allowance Section 10 etc.	320	2000
Section 14	1200	
Section 15	480	
	3000 +	0 = 3000 = 400 Tax

If 'income' relevant then wife may have to pay 2/7 of 400 = 115 and husband pays 285.

If 'chargeable income' relevant then wife pays 0 and husband 400.

Exhibits

"Y"

Two examples of Assessments

EXAMPLE 'B'

	Husband	Wife
Income	10000	2000
Allowances		
Section 10	7000	
" 11	320	
" 14	1200	
" 15	480	
	1000	+ 2000 = 3000 = 400 Tax

If 'income' relevant then wife may pay 2/12 of 400 = 66 and husband pays 334.

If 'chargeable income' relevant then wife pays 2/3 of 400 = 266 and husband pays 134.

DOCUMENTS INCLUDED IN RECORD BUT OBJECTED TO BY RESPONDENT

"C" - Deed of Covenant, Jean A. Reynolds, Patrick A. Reynolds and Audrey F. Canning

Documents included in Record but objected to by Respondent

"C"

Deed of Covenant, Jean A. Reynolds, Patrick A. Reynolds and Audrey F. Canning

6th November 1951

THIS DEED OF COVENANT is made the sixth day of November in the Year of Our Lord One thousand nine hundred and fifty one Between JEAN AUDREY REYNOLDS of Diego Martin in the Island of Trinidad, Married Woman (hereinafter called "the Grantor") of the first part PATRICK ALFRED REYNOLDS of the same place, Merchant, (hereinafter called "the Surety") of the second part and AUDREY FLORENCE CANNING of 10 Queen's Park West in the City of Port of Spain in the said Island, Widow, (hereinafter called "the Grantee") of the third part.

WHEREAS the Grantee is the mother of the Grantor and the grantor is desirous of making such provision for the Grantee as is hereinafter contained and the Surety has agreed to join in these presents for the purpose of more effectively ensuring such provision

NOW THIS DEED WITNESSETH as follows:-

In pursuance of the said desire and in consideration of the natural love and affection which the Grantor bears towards the Grantee the Grantor

Documents included in Record but objected to by Respondent

"C"

Deed of Covenant, Jean A. Reynolds, Patrick A. Reynolds and Audrey F. Canning continued

6th November 1951

and the Surety hereby jointly and severally covenant with the Grantee that they or one of them or their respective personal representatives will pay out of her or his personal income to the Grantee and they hereby grant to her accordingly during her life an annuity of FOUR THOUSAND DOLLARS on the Thirtieth day of November in each and every year the first payment to be made on the Thirtieth day of November One thousand nine hundred and fifty-two.

2. It is hereby expressly declared as follows :-

(a) If at any time during the continuance of this covenant the Grantee shall become bankrupt or shall assign or charge her interest hereunder or any part thereof then such interest shall cease and any moneys which would or might be payable to the Grantee in the absence of this proviso shall be held by the Grantor in Trust to use the same in her absolute discretion for the maintenance or support of the Grantee.

(b) The Surety shall not be released by time being given to the Grantor or her personal representatives or by any other variation of this deed or any other matter by which the Surety as a surety might be released.

IN WITNESS WHEREOF the said JEAN AUDREY REYNOLDS and PATRICK ALFRED REYNOLDS have hereunto set their respective hands the day and year first hereinabove written

SIGNED and delivered by the within named JEAN AUDREY REYNOLDS and PATRICK ALFRED REYNOLDS as and for their respective acts and deed in the presence of: } Sgd: Jean Reynolds } Sgd. P.A. Reynolds

Noble S. Barry
17, St. Vincent Str.
Port of Spain,
Solicitor's clerk. and of me

(Sgd) Henry Albert Pelham Alcazar
Conveyancer.

"D" - Deed of Covenant, Patrick A. Reynolds to Neville C. Boos

Documents included in Record but objected to by Respondent

"D"

Deed of Covenant, Patrick A. Reynolds to Neville C. Boos

19th November 1951

THIS DEED made this Nineteenth day of November in the year one thousand and Fifty-one Between PATRICK ALFRED REYNOLDS of the Ward of Diego Martin in the Island of Trinidad Company Director (hereinafter called "the Settler") of the one part and NEVILLE CHARLES BOOS of the same place Company Director (hereinafter called "the Trustee") of the other part:

W H E R E A S the Settler is desirous of making such provision as is hereinafter provided for the maintenance and/or benefit of his mother EMILY FLORENCE SARGEAUNT of Pitfold Close, Lee, London, S.E.3 England (hereinafter called "the Beneficiary")

NOW THIS DEED WITNESSETH as follows:-

1. In pursuance of the said desire and for divers good consideration the Settler hereby covenants with the Trustee as follows, that is to say:

TO pay to the Trustee for a period of Ten years during the joint lives of himself and the Beneficiary the annual sum of ONE THOUSAND TWO HUNDRED AND NINE DOLLARS AND SIXTY CENTS on the 31st day of December in each and every year including the current year 1951.

Such payments (hereinafter called "the Trust Funds") to be held by the Trustee UPON TRUST for the maintenance and/or benefit of the Beneficiary.

2. IT IS HEREBY EXPRESSLY DECLARED as follows:-

(a) The Trustee shall have sole and uncontrolled discretion as what he may consider to be for the benefit of the Beneficiary under the trusts in her favour hereinbefore contained and no question shall be raised by the Beneficiary as to the exercise of such discretion as aforesaid.

(b) The Trustee may settle and determine all matters as to which any doubt difficulty or question may arise in the course of the

Documents included in Record but objected to by Respondent

"D"

Deed of Covenant, Patrick A. Reynolds to Neville C. Boos

19th November 1951

execution of the trusts in these presents or incidental thereto and every such determination whether made upon any question formally raised or implied in any of the acts of proceedings of the Trustee or otherwise and although such determination may not be in accordance with the fixed rules of law shall conclusively bind all persons interested under these presents and generally the Trustee may act in relation to the trust funds as fully as if he were the absolute owner of the same without being responsible for any loss occasioned thereby.

(c) If at any time during the continuance of the trust the Beneficiary shall become bankrupt or shall assign or charge her interest hereunder or any part thereof then such interest shall cease and any moneys which would or might be payable to the Beneficiary in the absence of this proviso shall be held by the Trustee in trust to use the same im his absolute discretion for the maintenance or support of the Beneficiary.

(d) The Trustee shall apply the income of the trust for and towards the maintenance or otherwise for the benefit of the Beneficiary.

(e) The Trustee shall accumulate the surplus, if any, of the income of the trust in favour of the Beneficiary and shall pay the surplus so accumulated to the Beneficiary.

(f) The Trustee may make payments to the Beneficiary and her receipt for any such payment or payments shall be a good discharge to the Trustee.

(g) Any neglect by the Trustee to enforce in whole or in part the covenants hereinbefore contained on the part of the Settlor may not be considered a breach of trust and the Trustee shall not in anywise be responsible for such neglect.

3. IT IS HEREBY FURTHER DECLARED as follows:-

(a) That the power of removing any trustee for the time being and appointing any new or additional trustee or trustees hereof shall be vested in the Settlor during his lifetime and shall be exercisable by him in writing at any time.

(b) That the Settlor may at any time or times hereafter by writing or by deed or deeds revocable or irrevocable with the consent of any one of the following persons that is to say the present Trustee or any further new or additional trustee or trustees appointed as aforesaid (not being the Settlor himself or his wife) revoke in whole or in part this deed and/or any of the trusts and powers declared by and contained in these presents and/or appoint any new or other trusts and provisions in lieu thereof.

(c) That the Trustee may invest any moneys accumulated by him as aforesaid in any securities that he may decide Provided Always that in case of securities not authorised for the investment of trust moneys the consent of the Settlor in writing of such investment must first be obtained by the Trustee and the Trustee shall have full power from time to time to vary such investment but no change of any investment shall during the life of the Settlor be made without the Settlor's consent in writing save the variation for the investing the trust funds or any part thereof in securities for the time being authorised by law for the investment of trust moneys.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands the day and year first herein written.

Signed and delivered by the within named Patrick Alfred Freynolds in the presence of) P. A. Reynolds

E. Belanger of No.11
St. Vincent Street,
P.O.S. Stenotypist

and of me

Victor H. Stollmeyer
Conveyancer.

Documents included in Record but objected to by Respondent

"D"

Deed of Covenant, Patrick A. Reynolds to Neville C. Boos continued

19th December 1951

Statement of Agreed Facts

Statement of Agreed Facts

IN THE MATTER OF AN APPEAL BY

PATRICK ALFRED REYNOLDS

and

THE INCOME TAX ORDINANCE CHAP. 33 No.1.

STATEMENT OF AGREED FACTS

Mrs. Audrey Reynolds of 8 First Avenue, Cascade, a married woman living with her husband Patrick Alfred Reynolds at all material times and continuing was entitled to receive income from earnings and investments and in fact received such income.

Mrs. Reynolds entered into a Deed of Covenant (hereto attached and marked "A") on the 28th day of December, 1956, by which she created a Trust for the benefit of the four children of their marriage Patrick, Peter, Brigid, Briony, all, then being minors. By that Deed Mrs. Reynolds covenanted to pay for a period of three years to Mr. Alfred Jefferies Prior (whom she appointed her Trustee), annual sums of $3,500 to be held by him until maturity or marriage (whichever the shorter period may be) for the maintenance and/or education and benefit of each of the above-mentioned beneficiaries. The respective ages of the children at the time of the execution were 12 years, 8 years, 6 years and 1 month.

The return of Mr. Reynolds (hereto attached and marked "B"), assessment 1957 (i.e. the income year 1956) shows an income of $40,165. It will be noted that the portion of the income returned from property and earnings of the wife was $18.202.

Mr. Reynolds' return shows claims for deductions from income in respect of payments made under 3 dispositions: 2 dispositions by Mr. Reynolds totalling $5,209 made under deeds dated the 6th day of November, 1951 and the 19th day of November, 1951 (hereto attached and marked "C" and "D" respectively) the other of $14,000 made by his wife under deed marked "A" hereto attached. The claim

Statement of Agreed Facts continued

of Mr. Reynolds in respect of the payments made by him is not in dispute. The claim by Mr. Reynolds in respect of the payment made by his wife was not allowed and Mr. Reynolds duly gave notice of objection, a copy of which is hereto attached and marked "E". The Commissioner has reviewed his assessment and has disallowed the objection as appears from his letter to Mr. Reynolds hereto attached and marked "F". The statement of income is as follows:

Statement of Income

(Original Assessment)

	Self	Wife	
	$ ¢	$ ¢	
Employment	20,405.53	200.00	
less	636.00		
	19,769.53		
Owner occupied Property	600.00		
Interest	6.00		
Dividends	1,587.33	18,002.00	
	21,962.86	18,202.00	- $40,164.86

Re-Assessment

Dividends	48.00	479.00	
	$22,010.86	18,681.60	- $40,691.86

The formalities of objection and confirmation having been complied with (Section 42) Mr. Reynolds now appeals to a Judge in Chambers (Section 43) against the assessment which has accordingly been made upon him. The Judge must as a result exercise the powers of the Commissioner. He may reduce or increase the assessment. He may dismiss the appeal. He may allow the appeal.

Notices of Assessment and Re-assessment are attached hereto and marked "G" and "H" respectively.

IN THE PRIVY COUNCIL No. 45 of 1964

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

PATRICK ALFRED REYNOLDS Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37 Norfolk Street,
London W.C.2.

Solicitors for the Respondent.