NO. 922.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
1ST, 2ND AND 14TH FEBRUARY, 1933

COURT OF APPEAL.—10TH AND 11TH JULY, 1933

HOUSE OF LORDS.—12TH, 14TH AND 15TH JUNE AND 24TH JULY, 1934

THE ASSAM RAILWAYS & TRADING CO., LTD. v. THE COMMISSIONERS OF INLAND REVENUE[1]

Income Tax—Relief in respect of Dominion Income Tax—Finance Act, 1920 (10 *&* 11 *Geo.* V, *c.* 18), *Section* 27.

The Appellant Company, which was incorporated and controlled in the United Kingdom, carried on the business of running a railway, working coal mines, brickworks, etc., in Assam and also carried on a plantation business there. The whole of its income arose in India, with the exception of a small amount arising from investments in England. The Company had issued, in the United Kingdom, debenture stock and the interest thereon was paid in the United Kingdom.

In computing the Company's liability to United Kingdom Income Tax under Case I *of Schedule D for the years* 1928–29 *and* 1929–30, *the debenture interest was not allowed as a deduction and certain profits from a tea garden were included as a receipt.*

The assessments on the Company to Indian Income Tax and Super-tax for the corresponding years in respect of its business profits were, in accordance with the provisions of Indian Income Tax law, arrived at after deducting the amount of debenture interest and excluding the tea garden profits.

The Company claimed that the relief in respect of Dominion Income Tax to which it was entitled under Section 27, *Finance Act,* 1920, *should be based on the whole of its income as computed for the purposes of United Kingdom Income Tax (less only the income arising in England) without any deduction for the debenture interest or the tea garden profits. The Special Commissioners, on appeal, refused the relief claimed.*

Held, *that the Company had not borne double taxation on that part of its income which was applied in payment of debenture interest or on the tea garden profits and was not entitled to relief in respect thereof.*

(1) Reported (C.A.) [1933] 2 K.B. 576 and (H.L.) 50 T.L.R. 540.

CASE

Stated under the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 8th January, 1932, The Assam Railways and Trading Co., Ltd., hereinafter called "the "Company", claimed relief in respect of Indian Income Tax under the provisions of Section 27 of the Finance Act, 1920, for the two years ended the 5th April, 1929, and the 5th April, 1930.

2. The Company is a company incorporated in England under the Companies Act with an authorised share capital of £1,160,000, the whole of which had been issued.

The Company had also issued in the United Kingdom £500,000 4½% Mortgage Debenture Stock and £400,000 5% Debenture Stock. The interest paid on these Debenture Stocks for each of the years under appeal amounted to £42,500.

3. The business of the Company was that of running a railway and working coal mines, timber concessions, saw mills, veneer mills and brickworks in Assam, and it also carried on a plantation business there. The whole of the Company's income arose in India with the exception of the dividends on certain English investments which were taxed at the source and certain interest on moneys lying in England with regard to which no question arises.

4. The Company was controlled by its Board in England, and was accordingly taxed under Case I of Schedule D of the Income Tax Act, 1918, on the whole of the profits arising from its business in India. In computing the profits for assessment under Case I no deduction was allowed in respect of the debenture stock interest, amounting to £42,500, and this interest is consequently included in the assessment to United Kingdom Income Tax. The debenture stock which was secured by English trust deeds was issued in the United Kingdom and the interest was paid by the Company in the United Kingdom.

5. Indian Income Tax and Super-tax were charged for the two years in question on the profits of the Company arising in India under the provisions of current Indian Finance Acts and of the Indian Income Tax Act, 1922. The Indian Income Tax year ends on the 31st March.

6. The Company makes up its accounts annually to the 31st March, so that the profits forming the basis of assessment for United Kingdom Income Tax and Indian Income Tax for the two years to which the appeal related were the same, namely, the profits of the years ended 31st March, 1928, and 31st March, 1929, respectively.

7. The following are the material provisions of the Indian Income Tax Act, 1922 :—

3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals.

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing or arising, or received in British India or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

(i) Salaries.
(ii) Interest on securities.
(iii) Property.
(iv) Business.
(v) Professional earnings.
(vi) Other sources.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

(iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid.

18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads :—

(i) "Salaries"; and
(ii) "Interest on securities."

(3) The person responsible for paying any income chargeable under the head " Interest on securities " shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

19. In the case of income chargeable under any other heads than those mentioned in sub-section (1) of section 18, and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

Rule 24. Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax.

A copy, marked "A", of the Indian Income Tax Manual is annexed and may be referred to for the purposes of this Case[1].

[1] Not included in the present print.

8. Under the provisions of Section 10 (2) (iii) of the Indian Income Tax Act, 1922, a deduction was allowed in computing the profits for the purpose of assessment to Indian Income Tax for the interest paid on the debenture stocks of the Company, the money raised by the issue of the debenture stocks being capital borrowed for the purpose of the business, and the interest thereon not being in any way dependent on the earning of the profits. The Company did not deduct Indian Income Tax on payment of the interest under Section 18 of the Indian Income Tax Act, 1922.

The figures shown as £10,708 and £2,365 against the items Bogapani Tea Garden account and Bogapani Tea Garden expenditure respectively in exhibit " B " hereinafter referred to for the year 1928-29, and the figures of £311 and £2,460 against the same items for the year 1929-30 were not included in the net revenue account of the Company and were not brought into the computations for the assessments for Indian Income Tax. These sums were respectively included in the computations for the assessments to United Kingdom tax for these years, being arrived at in the manner shown in note (B) to the said exhibit.

The computations of profits for assessment to United Kingdom and Indian Income Tax differed in several other material respects. Thus, for the year 1928-29, the assessment to United Kingdom Income Tax under Case I of Schedule D was in the sum of £194,168, less £4,995 wear and tear, the £42,500 debenture interest not being allowed as a deduction in computing the profits, and the item " Bogapani Tea Garden Account " being included. For the same year the assessment to Indian Income Tax was in the sum of £129,365, the debenture interest being allowed as a deduction and the item " Bogapani Tea Garden Account " not being included. There were also several other differences between the two computations. The computations for the two taxes for the years 1928-29 and 1929-30, showing in what respects they differed, and with notes on the differences are shown on the document, marked " B ", which is annexed hereto and forms part of this Case[1]. A copy, marked " C ", of the Indian Income Tax and Super-tax demand notes for the year 1928-29, and a copy, marked " D ", of the report and accounts of the Company for the year ended the 31st March, 1928, on which both the United Kingdom and Indian assessments for the year 1928-29 are based, are annexed to and form part of this Case[1].

9. The Inspector of Taxes claimed that in the allowance of relief to the Company under Section 27 of the Finance Act, 1920, both the debenture interest and the item " Bogapani Tea Garden Account " should be deducted in arriving at the amount on which

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[1] Not included in the present print.

relief should be allowed. Thus for the year 1928-29 the Inspector computed the relief allowable as follows (the figures being given as subsequently adjusted) :—

		£
Assessment to United Kingdom Income Tax under Case I of Schedule D		191,803
Less wear and tear		4,995
		£186,808
	£	
Less English income	58	
Debenture interest	42,500	
Bogapani Tea Garden Account ...	8,343	
		50,901
		135,907

Relief on £135,907 at 2*s*. in the £ = £13,590 14*s*. 0*d*.

The Company claimed that relief should be allowed on the sum of £186,808 less £58 English income only, and that no deduction should be made for the debenture interest or the item "Bogapani Tea Garden Account."

10. It was contended on behalf of the Company :

(1) that the relief should be based on the amount of the income as computed for the purpose of the United Kingdom tax, and that the method by which the Indian assessment was computed and the deductions allowed in arriving at that assessment were immaterial;

(2) that accordingly the fact that the debenture stock interest had been allowed as a deduction and that the Bogapani Tea Garden item had not been included in computing the Indian assessment should not be taken into account, and the relief should be allowed on the amount of the United Kingdom assessment without any deduction for these two items.

11. It was contended on behalf of the Commissioners of Inland Revenue, *inter alia* :

(1) that the debenture interest and the Bogapani Tea Garden profits had been excluded from the subjects of taxation on the Company in India;

(2) that on those parts of the Company's income it had not paid Dominion Income Tax, and, consequently, no relief was due from United Kingdom Income Tax on such parts.

12. The cases of *Rolls Royce, Ltd.* v. *Short*, 10 T.C. 59, and *Commissioners of Inland Revenue* v. *Dalgety & Co., Ltd.*, 15 T.C. 216, were referred to.

13. Having considered the arguments we gave our decision as follows :—

The main question in this case is on what part of the income of the Appellant Company has Indian Income Tax been paid.

The Appellant Company contends that it has paid Indian Income Tax on the whole of its profits arising from its business in India, while the Crown contends that it has only paid Indian Income Tax on its profits from its business in India less the profits applied in payment of its debenture interest for which allowance has been made in computing its business profits under Section 10 (2) of the Indian Income Tax Act, 1922.

It was argued on behalf of the Appellant Company that the whole of the Indian income was income from one source, and that in determining the part of the income on which relief is allowable regard must be had to the source from which it is derived and not to its amount. In support of this argument reliance was placed on a dictum of Warrington, *L.J.*, in the case of *Rolls Royce, Ltd.* v. *Short*(1). It must, however, be observed that in that case the Court was only concerned with English income as a whole and Indian income as a whole, and no question arose as to whether Indian Income Tax had been paid on different parts of the Indian income.

It seems clear to us that where under Dominion Income Tax law different parts of the Dominion income are separately treated as regards the liability to Dominion Income Tax, we are bound to discriminate between those different parts and see whether Dominion Income Tax has been paid in respect of each of those parts or not.

In this case the income applied in payment of the debenture interest has been specifically excluded from the profits on which the Appellant Company has been assessed to Indian Income Tax and consequently no Indian Income Tax has been in fact paid in respect of the part of the profits so applied.

Moreover, under Section 18 of the Indian Income Tax Act, 1922, debenture interest is made the subject of a separate charge to Indian Income Tax, though in the case of the Appellant Company no tax has been paid under the provisions of that Section.

In view of the specific separation of the income applied in payment of the debenture interest from the rest of the income, we are of opinion that the income so applied must be regarded as a separate part of the Appellant Company's income and as no

(1) 10 T.C. at pp. 71–2.

Indian Income Tax has been paid on this part of its income, no relief can be allowed thereon and the appeal fails on the main question.

On the subsidiary question of the profits of the Bogapani Tea Garden, it appears on the evidence before us that these profits have not been made liable to Indian Income Tax and that no Indian Income Tax has been paid in respect thereof. We hold, therefore, that no relief can be granted in respect of these profits.

On the figures being agreed, we will give our final decision.

Relief was subsequently granted in accordance with this decision.

14. The Appellant Company immediately upon the determination of the appeal declared to us its dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

15. The question for the opinion of the Court is whether in computing the amount on which relief is due to the Company under Section 27 of the Finance Act, 1920, in respect of Indian Income Tax the interest on the debenture stock and the Bogapani Tea Garden item as adjusted are to be deducted.

J. JACOB, P. WILLIAMSON, } Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
23rd November, 1932.

The case came before Finlay, *J.*, in the King's Bench Division on the 1st and 2nd February, 1933, when judgment was reserved. On the 14th February, 1933, judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. C. L. King appeared as Counsel for the Company and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Finlay, J.—This is a difficult case, and it depends upon the view to be taken of Section 27 of the Finance Act, 1920, as applied to the particular facts of this case. I desire to begin my judgment by reading a short passage from the judgment of Mr. Justice

(Finlay, J.)

Rowlatt in the case of *Rolls Royce, Limited* v. *Short*, 10 T.C. 59, where, at page 66, he says this, and what he says has certainly been shown to be right by subsequent developments upon this point : " Now it is a little unfortunate that the Section has been " drafted in the way it has, because this expression ' part of " ' income ' has been introduced and has caused a good deal of " embarrassment. We have not heard hitherto in the history " of the Income Tax Acts of any such thing as part of an income, " and it is painful to reflect that a new chapter of difficulties may " be opened to us."

The facts are quite clearly set out in the Case. One begins with paragraph 2, which says that the Company is a company incorporated in England with an authorised share capital of over £1,000,000. The Company had also issued in the United Kingdom £500,000 4½ per cent. mortgage debenture stock and £400,000 5 per cent. debenture stock. The interest paid on these debenture stocks amounted to £42,500. Paragraph 3 states : " The " business of the Company was that of running a railway and " working coal mines, timber concessions, saw mills, veneer mills " and brickworks in Assam, and it also carried on a plantation " business there. The whole of the Company's income arose in " India with the exception of the dividends on certain English " investments which were taxed at the source and certain interest " on moneys lying in England with regard to which no question " arises." On that paragraph it is, I think, a little important to point out that the Company was not merely a railway company, as its name suggests. It was both a railway company and a trading company, and it appears to have traded in a variety of things : coal mines, timber concessions, saw mills, veneer mills, brickworks and plantations. Paragraph 4 is : " The Company was " controlled by its Board in England and was accordingly taxed " under Case I of Schedule D . . . . on the whole of the profits " arising from its business in India. In computing the profits for " assessment under Case I no deduction was allowed in respect of the " debenture stock interest, amounting to £42,500, and this interest " is consequently included in the assessment to United Kingdom " Income Tax." Paragraph 5 is : " Indian Income Tax and " Super-tax were charged for the two years in question on the " profits of the Company arising in India under the provisions " of current Indian Finance Acts and of the Indian Income Tax " Act, 1922. The Indian Income Tax year ends on the 31st " March." Paragraph 6 relates to a detail as to the Company's accounts. Paragraph 7 sets out a number of provisions, some of them important, of the Indian Income Tax Acts. Paragraph 8 is this : " Under the provisions of Section 10 (2) (iii) of the Indian " Income Tax Act, 1922, a deduction was allowed in computing

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" the profits for the purpose of assessment to Indian Income Tax " for the interest paid on the debenture stocks of the Company, " the money raised by the issue of the debenture stocks being " capital borrowed for the purpose of the business, and the interest " thereon not being in any way dependent on the earning of the " profits. The Company did not deduct Indian Income Tax on " payment of the interest under Section 18 of the Indian Income " Tax Act, 1922." That, of course, shows a difference, and an important difference, in the method of assessment between Great Britain and India. Here, as we all know, the assessment is made upon the whole profits without any deduction in respect of debenture interest, and then the Company, so to speak, recoups itself by deducting tax from the debenture interest when it pays it. In India the method is different. The Section shows that there is a right to make a deduction in respect of the payment of interest on borrowed capital where that payment is not in any way dependent on the earning of profits. Paragraph 8 goes on: " The figures shown as £10,708 " and £2,365 against the items Bogapani Tea Garden account " and Bogapani Tea Garden expenditure, respectively, in " exhibit 'B' hereinafter referred to, for the year 1928–29, and " the figures of £311 and £2,460 against the same items for the " year 1929–30 were not included in the net revenue account of " the Company and were not brought into the computations for " the assessments for Indian Income Tax. These sums were " respectively included in the computations for the assessments " to United Kingdom tax for these years, being arrived at in " the manner shown in note (B) to the said exhibit." Then there follow various details as to which the method of assessment for Income Tax in England and in India differs, as probably one would expect them to differ. It is very unlikely that in any other country a system so complicated as the English Income Tax system would be precisely reproduced, and one would expect to find, as one does find, that where Income Tax is introduced in a dominion, while the broad lines may be the same, there are numerous differences in the detail as to the method of assessment, and a different result in figures is, of course, brought out.

The question in the case relates to two items and two items only. One is the debenture interest, which, as I have pointed out, was brought into charge as part of the profits of the Company in England, but was not brought into charge as part of the profits of the Company in India, because a deduction in respect of it was expressly authorised. The other matter is the profit in respect of the Bogapani Tea Garden which was brought into charge in England, but was not brought into charge in the computation of profits for the purpose of Indian Income

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Tax. The findings of the Commissioners are to be found in paragraph 13. The Commissioners set out the contentions of the parties, and they say this: "It seems clear to us that where "under Dominion Income Tax law different parts of the Dominion "income are separately treated as regards the liability to Dominion "Income Tax, we are bound to discriminate between "those different parts and see whether Dominion Income "Tax has been paid in respect of each of those parts or "not. In this case the income applied in payment of the "debenture interest has been specifically excluded from the profits "on which the Appellant Company has been assessed to Indian "Income Tax and consequently no Indian Income Tax has been "in fact paid in respect of the part of the profits so applied. "Moreover, under Section 18 of the Indian Income Tax Act, 1922, "debenture interest is made the subject of a separate charge to "Indian Income Tax, though in the case of the Appellant Com-"pany no tax has been paid under the provisions of that Section. "In view of the specific separation of the income applied in pay-"ment of the debenture interest from the rest of the income, we "are of opinion that the income so applied must be regarded as a "separate part of the Appellant Company's income and, as no "Indian Income Tax has been paid on this part of its income, "no relief can be allowed thereon and the appeal fails on the "main question. On the subsidiary question of the profits of the "Bogapani Tea Garden, it appears on the evidence before us "that these profits have not been made liable to Indian Income "Tax and that no Indian Income Tax has been paid in respect "thereof. We hold, therefore, that no relief can be granted in "respect of these profits."

The argument turns mainly, of course, upon the meaning to be attributed to Section 27 of the Finance Act of 1920, and it is really only necessary to deal with the first words of that Section; they are extremely difficult; but the actual part of the Section which comes into question is not long: "If any person who has paid, "by deduction or otherwise, or is liable to pay, United Kingdom "income tax for any year of assessment on any part of his "income proves to the satisfaction of the Special Commissioners "that he has paid Dominion income tax for that year in respect "of the same part of his income, he shall be entitled to relief from "United Kingdom income tax paid or payable by him on that "part of his income at a rate thereon to be determined as follows."

I now come to Mr. Latter's argument. He elaborated it with his usual skill; but the main point of it can be put quite shortly, and it was this, that the part has reference, not to any figures, but to the source; the part of the income is the income arising

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in the colony and, in support of that, he relied upon a passage in the judgment of Lord Justice Warrington in the *Rolls Royce* case, 10 T.C. 59, and the actual passage is at pages 71–2, where the Lord Justice says this : " Having regard to the different modes " of assessment prevailing in England and India respectively, the " profits of the Indian business chargeable in the two countries " can never be identical in amount, and it is therefore clear that " in separating from the entire income the part of the income " to which Section 27 is applicable, regard must be had to the " source from which it is derived and not to its amount. In this " case the part of the income to be considered is the profits of " the Indian branch." The argument of the Attorney-General and of Mr. Hills, on the other side, was to this effect, that no doubt it was true that it was the source and not figures that were to be considered; but the question remained : What was the source? And here it was said that the source was the Bogapani Tea Garden and the debentures. Reference was made to two cases, namely, the *Rolls Royce* case, to which I have already alluded, and the *Dalgety* case[1]. Neither of those cases, I think, is exactly in point, although both, of course, are valuable because the various Courts discussed the meaning and the construction of this admittedly very difficult Section. The *Rolls Royce* case is reported at 10 T.C. 59, and the result of that case can, I think, be quite simply put. The Rolls Royce company, who, of course, are the well-known manufacturers of motor cars, carried on business in England where their headquarters were, and they had various branches, among others an Indian branch. One may take the years in question as being the years 1, 2, 3 and 4, and in the year 4 the company were assessed in England, in accordance with the then law, upon the average profits of the years 1, 2 and 3. In the year 4 they made a profit in India. In the years 1, 2 and 3 they made a loss in India and that loss was, of course, brought in for the purpose of arriving at the average profits. Tax was paid in India on the Indian profits in the year 4. In that state of the facts it was held by Mr. Justice Rowlatt and by the Court of Appeal that the company were not entitled to relief because they had not paid United Kingdom Income Tax on the Indian income. Like most cases when it has been decided it seems rather easy. It would seem to be clear that there was not any payment at all of United Kingdom tax on the Indian income because there was no Indian income to be brought in; there had been a loss in each of the years. I think that it is clear from the judgment of Lord Justice Warrington[2] that a mere difference

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(1) Commissioners of Inland Revenue *v.* Dalgety and Co., Ltd., 15 T.C. 216.

(2) 10 T.C. at pp. 70 *et seq.*

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in the method of computation will not affect the right to relief, but the learned Lord Justice seems to me to leave open the question of what is the source.

The *Dalgety* case is reported at 15 T.C. 216. There, there was a company controlled in the United Kingdom trading in Australia and New Zealand. It paid tax in the United Kingdom and also in Australia and New Zealand. It had debenture interest and, paying that debenture interest, it deducted and, in accordance with the familiar scheme, retained the tax. It was held in that case that the company was entitled to relief in respect of the total amount of profits brought into United Kingdom tax, and not merely in respect of the balance remaining after the deduction of debenture interest. The case went through all the Courts and was very fully discussed, and the result pretty clearly is to show that there were anomalies on either view, but the House of Lords held, as I have said, that the company was entitled to treat as its profits for this purpose its total profits assessable to United Kingdom Income Tax without reference to the fact that it was able by machinery, so to speak, to shift part of the burden on to somebody else.

In this case, as I pointed out earlier, there are various differences of computation, and these have not been brought into question. The point of the case is this : can it be said that the Company has paid Indian Income Tax on the Bogapani Tea Garden and on the debenture interest? I do not think it can be said that it has paid Indian tax on these things. As to Bogapani, I am bound to say that it is not absolutely clear to me why that was excluded altogether from Indian tax, but there is no doubt that it was, and we have an express finding to that effect. I referred earlier, when I was going through the Case, to paragraph 3, and that appears to me to be important as an illustration; it shows the various things which the Company carried on. It is possible to imagine, of course, that by reason of some special taxation on railways, railways might be excluded from Income Tax. It would be possible to imagine that, for similar reasons, coal mines or timber concessions or saw mills or veneer mills or brickworks or plantations might be. Any of these things might, for one reason or another, fall to be excluded from Indian Income Tax. The Company, one company, of course, carries on these various businesses, and each of these contributes, so to speak, its part to the total income of the Company. It seems to me that if one supposes that, say, railways, or brickworks, were excluded specifically from Indian Income Tax, it would be impossible to say that that part of the income which the Company derived from the railway or the brickwork had borne both taxes. It would bear, no doubt, United Kingdom tax, but it would not bear Indian

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tax, and that, as it seems to me, is the position with regard to the Bogapani Tea Garden. It has been thought proper to exclude that part of the business from Indian Income Tax. It has paid no Indian Income Tax. Therefore, it seems to me that it is impossible to say that that part of the income, and it is a separate part derived from a separate source, has borne both taxes.

With regard to the more important matter (at all events, as far as figures are concerned) of debenture interest, that, as I pointed out earlier, is expressly excluded. It is not brought into charge for purposes of Indian Income Tax. Suppose one has a company assessable under Case I, controlled in England but carrying on business in India: suppose the company has debenture interest of £50,000 a year and in a year it makes profits of £40,000: in England, of course, that company would be assessed on the £40,000. In India there would be no assessment because, the company being entitled to deduct the £50,000 debenture interest, there would be no profits. It seems to me to be quite clear that in that case it could not be said that any part of the income had borne tax in India. No part of the income had borne tax in India, for the somewhat obvious reason that no assessment had been made in India; there would be nothing to assess. Suppose that the interest is £50,000 and the profits £60,000: there you would, of course, have an English assessment on £60,000 and an Indian assessment, other differences of computation being put out of the case, on £10,000. Could it be said that the English income of £60,000, the assessable income of the company in England, had borne double tax? I think not. It seems to me, when one takes that illustration, that it becomes, I will not say clear, for nothing is clear under this Section, but that it becomes reasonably clear that, the debenture interest being included in England and excluded in India, it cannot with accuracy be said that that part of the income has borne the double tax. In a Section so obscure as this it is most undesirable, I think, to attempt to decide anything except the actual point, and I confine and rigorously confine my decision to the matter which is before me, namely, whether the Special Commissioners were right in the view which they took, that the Bogapani Tea Garden profits and the debenture interest could not be said to have borne the double taxation. I accept the argument of Mr. Latter to a large extent and I need hardly say that I desire to follow and to apply the principle which was laid down by Lord Justice Warrington, but applying that principle, as I understand it, I think I ought to hold that, in respect of these two matters, the Company has not borne double taxation on that part of its income and, therefore, that its claim fails. On these grounds, recognising fully as I do that the case is a difficult one, and confining my decision, as I do,

(Finlay, J.)

to the actual points raised in the case, I decide this appeal in favour of the Crown.

Mr. Hills.—The appeal will be dismissed with costs, my Lord?

Finlay, J.—Yes.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Slesser, *L.JJ.*) on the 10th and 11th July, 1933, and on the latter date judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. C. L. King appeared as Counsel for the Company and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—This is an appeal from a decision of Mr. Justice Finlay which was given on the 14th February, 1933. The case raises an important point—I may say a very important point—to the Appellants, the Assam Railways and Trading Company, Limited. They are seeking to have relief under Section 27 of the Finance Act, 1920, in respect of certain Income Tax charged in the United Kingdom by reason of the fact that they have paid what is called " Dominion Income Tax ".

The facts upon which the point arises may be stated quite shortly. The business of the Company is a composite one. It runs a railway and, as the part of its name " Trading Company " indicates, it has other activities: for instance, it works coal mines, timber concessions, saw mills and brickworks, and carries on a plantation business in Assam. The Company is an English company; it is controlled by a Board in England. It is taxed under Case I of Schedule D on the whole of the profits which arise from its business in India, and it is from India, and from India alone, that its profits are derived.

The Company has issued certain debentures, and the interest upon those debentures amounts to the sum of £42,500. That figure has been referred to with some insistence because it is the largest of the sums which make up the divergence in the two views expressed between the Appellants and the Respondents in this Court. The Company claim that they are entitled to have a deduction made in respect of the Income Tax

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which they have been charged in India. They say that the whole of their profits arising from the whole of their business have come under the review of the Income Tax authorities in India and the result is that they have, according to the system prevailing in India, paid Income Tax upon the whole of their profits before those profits came over here and were received by the Board in London, and they claim that they are entitled, in consequence, to have the relief which they are given by Section 27 measured by the fact that the whole of their profits have already suffered a diminution by paying Income Tax to the Indian central authority.

One of the most notable differences between the systems of calculating the assessable income in India and in England is this: whereas under Rule 3 of the Rules applicable to Cases I and II of Schedule D it is provided that in the United Kingdom in computing the amounts of the profits or gains which are to be charged no sum shall be deducted in respect of any annual interest payable out of the profits and gains and there is, therefore, no right to deduct the sum which has to be paid by way of interest upon the debenture debt, it is otherwise in India, and apparently they are allowed to deduct, before computing their true profits, a sum which has to be charged against those profits for the purpose of paying the debenture interest. It will be noted, therefore, that in figures which are considerable, but are not so large that a sum of £42,500 is a negligible item, there must arise a considerable difference between the profits which are subjected to Indian Income Tax and the profits which, according to English computation, would be subjected to the English Income Tax. In the first case, the Company would be entitled to deduct £42,500 from their profit in India and therefore pay a smaller sum as the total due from them for Income Tax, whereas, if the same profits were to be scrutinised according to the English system, they would not be allowed to deduct this £42,500. I have given that figure in order to mark a distinction which stands out in the two systems adopted by India and by the United Kingdom; but I think that dwelling upon a particular item, large and important though it is, is likely to lead one into an error when we have to consider the problem that is before us.

The question is, to what relief from the United Kingdom Income Tax are the Assam Railways & Trading Company, Limited, entitled? They contend (I am reading paragraph 10 of the Case) "that "the relief should be based on the amount of the income as com- "puted for the purpose of the United Kingdom tax, and that the "method by which the Indian assessment was computed and the "deductions allowed in arriving at that assessment were "immaterial; that, accordingly, the fact that the debenture stock "interest had been allowed as a deduction and that the Bogapani "Tea Garden item had not been included in computing the Indian

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" assessment should not be taken into account, and the relief should " be allowed on the amount of the United Kingdom assessment " without any deduction for these twc items." Shortly put, I may repeat that the claim of the Company is to say: " The whole " of our profits have been reviewed for the purpose of paying " Income Tax in India; it is the whole of those same profits which " are under review in the United Kingdom for the United Kingdom " tax; and we are entitled to relief in respect of the whole of those " profits, for they are the same in both countries."

We have to look at Section 27 very carefully. Two cases have been called to our attention, the one the *Rolls Royce* case(1), in 10 T.C., the other the *Dalgety* case(2), in 15 T.C. I think it may be at once stated that the latter case has no relevance to the point we have to consider. In the *Rolls Royce* case, it is said by Mr. Latter, in a forcible argument, that there are words to be found in Lord Justice Warrington's judgment, and also in Lord Justice Atkin's, which, if they do not confirm, at any rate lead on, to the view which he has advanced in this Court. For my part, while I adhere to the judgment I expressed in that case, and in particular to the conditions on which relief is given and which I table on page 69 of the report in 10 T.C., I also think it wise to repeat what I said there(3); " It is never possible to forecast " the result of such a relieving Section generally. Experience may " prove that in effect it does not give relief in as many cases as it " was hoped and anticipated, and indeed intended that it should " do." This case, to my mind, must be considered in the light of its own facts and in the interpretation to be put upon the Section itself. Section 27 was intended to give a relief from the United Kingdom tax in respect and because of the payment already made of a similar tax in a Dominion, and, as I point out in the *Rolls Royce* case(4), a person who is entitled to relief is a person who has paid United Kingdom tax by deduction or otherwise for any year of assessment on any part of his income. The relief is a relief from United Kingdom tax, and it is upon that part of his income which has paid Dominion Income Tax.

Now, what does one mean by " United Kingdom Income Tax " and " Dominion Income Tax "? Before I examine Sub-section (1), I wish to go to the table of interpretations which are to be found in Sub-section (8) and which are contained in (*b*), (*c*) and (*d*). We are there told that for the purpose of the construction of this Sub-section (1) we are to interpret the term " United Kingdom income " tax " in a particular way, and it means the " income tax . . . . " chargeable in accordance with the provisions of the Income Tax

(1) Rolls Royce, Ltd. *v.* Short, 10 T.C. 59.
(2) Commissioners of Inland Revenue *v.* Dalgety and Co., Ltd., 15 T.C. 216.
(3) 10 T.C. at p. 70. (4) *Ibid.* at p. 69.

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"Acts." Next (*c*) "The expression 'Dominion income tax' "means any income tax or super-tax charged under any law in "force in any Dominion, if that tax appears to the Special Com- "missioners to correspond with United Kingdom income tax or "super-tax." The duty of deciding whether such a tax corresponds with Income Tax or Super-tax of the United Kingdom charged upon the Special Commissioners is no doubt for this purpose, that in some Dominions there may be an analogous tax, imposed under a different name or with a somewhat different system, but yet a tax which the subject may be able to convince the Special Commissioners has the same characteristics that belong to our own Income Tax over here. "(*d*) The expression 'Dominion rate of tax' "means the rate determined by dividing the amount of the "Dominion income tax paid for the year by the amount of the "income in respect of which the Dominion income tax is charged "for that year." Then there is an exception, that where it is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax shall be determined by the Special Commissioners, power being given to the Commissioners to adjust what needs adjustment if it is not charged in respect of actual profits. Then come some further words, that "For the purposes of this section, the rate of "United Kingdom income tax shall be ascertained by dividing by "the amount of the taxable income of the person concerned the "amount of tax payable by that person on that income before "deduction of any relief granted" and so on. To my mind, the directions and interpretation given in (*b*), (*c*) and (*d*) all point to the separate systems of ascertainment of Income Tax being treated as separate and independent—different firmaments, if I may use that expression—and you are to ascertain the Dominion rate of tax by taking the sum which is actually charged for the year and making your calculation by a dividend and a divisor; and, in the same way, you are to ascertain the rate of the United Kingdom Income Tax, again, by taking the actual amount of the taxable income. We have therefore got in those passages a definite reference to what is the statutory or taxable income quite apart from, and independent of, the real income.

Now, be it remembered that the amount of relief which is to be given under Sub-section (1) is not from the whole of the tax paid in a Dominion; it is to be determined as follows: "(*a*) If the Dominion "rate of tax does not exceed one-half of the appropriate rate of "United Kingdom income tax, the rate at which relief is to be "given shall be the Dominion rate of tax: (*b*) In any other case the "rate at which relief is to be given shall be one-half of the appro- "priate rate of United Kingdom income tax." To my mind, it is quite plain that you have got to take the two separate systems of

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ascertaining taxable incomes in each country and, when you have got those two rates, then you are able to set one rate against the other, and you may get the whole of the Dominion rate allowed if that is less than one-half of the appropriate rate in the United Kingdom, but you cannot get more than one-half. Those factors are, to my mind, very important in considering what is to be the right interpretation of Sub-section (1).

In the present case we have not the complexity which arose in the *Rolls Royce* case of a different system of computing the tax, nor have we got the difficulty that may arise from the different terminations of the year of charge. We have the simple case of two similar periods and the same profits, but charged under the statutory directions in each country in a different way and resulting, therefore, in a different tax. It is said by Mr. Latter : " If you will " apply the system of what may be called the *Salisbury House* " case[1] to the profits which have been dealt with in India, the " whole of the income has been scrutinised for the purpose of being " charged to Dominion Income Tax ; all of it has been passed in " review ; and it matters not whether some items have been allowed " by way of deduction or not. The whole of it has been reviewed " and therefore it is comparable with the whole of the income which " has once more to be reviewed for United Kingdom Income Tax ". I repeat that by way of emphasis because I now proceed to look at Sub-section (1). It says this : " If any person who has paid, by " deduction or otherwise, or is liable to pay, United Kingdom " income tax for any year of assessment on any part of " his income." Now it must be remembered that these words include and identify a person of this sort, a person who may have a composite income derived in part from securities which would fall to be taxed under Schedule C, some part of whose income would fall to be taxed under Schedule A, and some portion of whose income is derived by profits sent over from a Dominion. The part of the income that is cognisable under this Section is the part which comes from the source overseas and which is, to that extent, separate and distinguished from the part which he may enjoy and falls, say, under Schedule C. Having got that, if that person " proves to the satisfaction of the Special Commissioners that he " has paid Dominion income tax for that year in respect of the same " part of his income "—again that would be the part as contradistinguished from the part of his income that falls under Schedule C— " he shall be entitled to relief from United Kingdom income tax " paid or payable by him on that part of his income "—that is, the part that comes from overseas—" at a rate thereon to be determined as follows."

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(1) Salisbury House Estate, Ltd. *v.* Fry, 15 T.C. 266.

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The situation which is claimed by Mr. Latter, on behalf of the Company, is very arguable; it is attractive and, indeed, I make no secret that during a considerable part of this case I was inclined to hold the view which Mr. Latter presented. I am glad to reveal that because it shows—at least I hope it shows—that I have given full consideration to the view Mr. Latter presented. But when we come to consider what is to be the relief, it has to be shown by the taxpayer that, on a part of the income which is his statutory income in the United Kingdom, he has paid Dominion Income Tax for that year. Are we to re-open and to readjust the figures in each country? Are we to set side by side the items which compose the total assessable income for which the man is to be charged first in the Dominion and afterwards in the United Kingdom? To my mind, not so. You have to deal with the results which have been attained by following the legislative directions in each country, and you have to deal with the total result when those exemptions or deductions or abatements have been allowed, and you cannot scrutinise those abatements or deductions by a comparison with a different system in the other part of the Commonwealth; and it falls upon the taxpayer to prove that he has paid Income Tax for that year in respect of the same part of his income. He has paid, in the present case, tax in India on a part of his income which is revealed by the assessment made upon him which I find at page 5 in the Exhibit "C"—there is found the order as to what this company is to pay: "Order. The Income Tax adjustment account of the Company is "as follows"—profit is taken, and the allowance for debenture interest, and so on. The result is that the total figure is £129,365; then, by converting that into rupees at 1*s*. 6*d*., you get a figure of 1,724,866 rupees, and an Income Tax at 18 pies upon that brings you to a total assessment of 161,706 rupees 3 annas. That is the total of the statutory income which is made chargeable to Income Tax, and that is the amount that is paid. Taking that as the starting point, the Company can then show that it has paid Income Tax at the rate which will be discovered by following out the directions which I have already referred to in (*d*) (1) : you will then find that it has paid tax on this sum of £129,365 at that rate and, as we know those are the profits of the Company, the company can show that to that extent, the extent of £129,365, it has paid Dominion tax for that year in respect of that part of its income, and that is the same part as falls to be included in the total statutory income subjected to United Kingdom Income Tax. It is in respect of that sum and, so far as I can understand, that sum only, that the relief is given by the

(1) i.e., (*d*) of Sub-section (8) of Section 27, Finance Act, 1920.

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Section. As a matter of fact, we read from the Case that for some reason, which I dare say is good but does not for the moment appear very easy to understand, the Commissioners have allowed that Dominion Income Tax has been paid on a sum of £135,907, part of the total sum which is assessed to United Kingdom Income Tax, namely, £186,808. If any adjustment has to be made, the Case will have to go back to the Commissioners for it to be made, but, as I suppose the Crown are content with the figures as represented in the Case, the figure of relief would then stand as on £135,907, which appears to be larger than the figure on which there was an actual payment of the tax upon the statutory figure found to be liable to Dominion Income Tax.

It is for these reasons that I have come to the conclusion that the Respondents are right, and that the appeal must be dismissed with costs. I will only add this, that, while I adhere to the conditions that I table in the *Rolls Royce* case, I do not find assistance from that case because I think that all the Judges were making the observations that they did in that case *alio intuitu*, and we have a different problem to solve here, based upon the proper construction of Section 27.

Lawrence, L.J.—I agree. Section 27 is aimed at relieving a taxpayer against double taxation where he has already paid Dominion Income Tax in respect of the income which is sought to be taxed in the United Kingdom.

In the present case there is no complication of facts or figures. The Income Tax is assessed on the gains and profits earned in the same period in India and in England; the amount of the profits and gains to be brought into charge for Income Tax is the same in both countries. In India allowances are made in respect of the profits and gains which result in the taxable income of the Appellants being £129,365; in the United Kingdom allowances are made in respect of the same profits and gains which result in the taxable income of the Appellants being £186,808. What has to be ascertained in order to measure the relief to which the taxpayer is entitled under Section 27 is, on what part of the taxable income in the United Kingdom have the Appellants paid Income Tax in India? To my mind, the answer, in the circumstances of this case, is plain; that they have only paid Indian Income Tax upon £129,365, part of the taxable income in the United Kingdom of £186,808, and that there is no duplication of taxation so far as regards the difference between those two sums, with the result that the Appellants are only entitled to relief in respect of £129,365, part of their taxable income of £186,808. That, it seems to me, is carrying out both the letter and the spirit of the Section 27.

I agree that this appeal fails.

Slesser, L.J.—I agree. I find, in the case of *Rolls Royce, Limited* v. *Short*(1), although the matter there to be considered was different from that in the present case, a statement of principle in the judgment of the Master of the Rolls which I apply in the present case. On page 70 my Lord says this : " The fact of paying " a tax in a Dominion does not induce relief. The basic condition is " that a person has paid tax on his income over here—then, if " some part of that income so charged and assessed to tax in the " United Kingdom can be identified and proved to have paid " Dominion tax, that same part which has suffered dual taxation " can be relieved of the tax paid here, up to the measure of relief " given by the Section ". Applying that basic condition to the present case, I ask myself what amount here can be identified and proved to have paid Dominion tax so that, related to the Income Tax charged in the United Kingdom, it can be said that that amount has suffered dual taxation, and the amount, as appears from paragraph 8 of the Case, is £129,365. That sum, and that sum only, in my opinion, can be identified and proved to have paid Dominion tax out of the total of £186,808 assessed to United Kingdom Income Tax. I do feel the difficulty which has been pressed upon us by Mr. Latter to be such that we are compelled to say, as his argument would lead us to say, that, directly it is shown that a part of the income which is assessable to United Kingdom Income Tax has paid tax in India, necessarily the whole part which is assessable to Income Tax in India is thereby relieved regardless of the amount of income there liable to taxation. I do not think that the language requires that, and I think the language which speaks of the necessity that he has paid Income Tax in respect of the same part of his income requires the Commissioners first to enquire what is the part of the income, and then to consider, as my Lord has said in the *Rolls Royce* case, whether he has in fact paid Dominion Income Tax on it or not. The result of any other view, unless one were driven by the language to take it, would be, as it seems to me, that, however small the sum which had been paid in India on Dominion Income Tax there which was paid in respect of part of his income, the whole of the income which came under review in that country, though possibly completely exempted, would have to be deducted from the United Kingdom Income Tax here, so that the result is that, so far from suffering dual taxation, the subject might escape a very considerable amount of taxation in both countries. Fortunately, I do not think, either on the authority of the *Rolls Royce* case or on the language of this Section, we are driven to that conclusion.

Lord Hanworth, M.R.—I do not suppose you want to have any adjustment, Mr. Hills?

Mr. Hills.—No, my Lord.

(1) 10 T.C. 59

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Lords Blanesburgh, Warrington of Clyffe, Atkin, Thankerton and Wright) on the 12th, 14th and 15th June, 1934, when judgment was reserved. On the 24th July, 1934, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. C. L. King appeared as Counsel for the Company and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Blanesburgh.—My Lords, I have found that the more the question raised by this appeal is considered, the greater is the difficulty it presents. It is only after close examination that the ambiguities of Section 27 (1) of the Finance Act, 1920, become apparent. The Section suggests no serious problem when the "part" of the assessee's income brought into charge for the year of assessment to United Kingdom Income Tax is, in its amount, equal to "the same part" of his income brought into charge for the same year to Dominion Income Tax. Nor is the difficulty serious when the Section has to be applied to a case in which the "part" of the assessee's income brought into charge for the purpose of Dominion Income Tax is, in its amount, greater than that brought into charge in the United Kingdom. The extent of the relief from United Kingdom Income Tax given by the Section is in each of these cases not doubtful. The assessee, in respect of the whole of the sum representing the "part" of his income which has been brought into charge in the United Kingdom, is entitled to the relief given by the Section, and that relief will operate to discharge him to the prescribed extent from the burden of a double taxation, one in the Dominion and the other in the United Kingdom.

So far the relief granted is relief from a double taxation, and nothing more. The real difficulty of the Section arises when it has to be ascertained, as in this instance it has, whether that still remains its purpose and result when its provisions have to be applied to a case in which the "part" of the assessee's income brought into charge for the purpose of Dominion Income Tax is in amount less than that brought into charge in the United Kingdom. Is the Section in this case also effective only to relieve the assessee from payment of double Income Tax to the prescribed amount and to the extent to which he would otherwise be required to make it, or is the Section in this instance alone operative in quite a different way, so that when the assessee has met every claim in respect of the "part" of his income charged to Dominion Income Tax, however small in amount that "part" may be, he is, by the

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Section, relieved in respect of the whole amount, however large, which represents the same " part " of his income brought into charge in the United Kingdom? In other words, are the Appellants here entitled, as they contend, to relief under the Section in respect of the whole of their business income brought into charge in the United Kingdom, irrespective of what is brought into charge in India, or, as the Attorney-General contends, only in respect of so much of that income as has been or will be charged to Income Tax there?

On this point I feel constrained, on consideration, to say that the actual language of the Section is not unfavourable to the Appellant's contention. Not adverting for the moment to the question whether the word " part " as used in the Section does or does not connote a sum of money brought into charge both in the United Kingdom and, in this case, in India, that word does certainly, I think, point to the source from which the income is derived, " the part " and " the same part " being brought in the Section into relation with each other by their identity of source. The word appears to me to denote what may be described as a " compartment " of the assessee's total income, if I may select, as a more pregnant term, one suggested by its similarity in sound. Then, again, it is not, I think, unfavourable to the Appellants' contention that, in order to entitle an assessee to relief, it is in terms enough that he has paid Dominion Income Tax " in " respect of " that same " compartment " of his income. While there is nothing to indicate that the effective compartment must correspond in amount to the United Kingdom counterpart, rather the reverse, yet the extent of relief is, so far as words are concerned, expressed to be invariable. It is always relief at a prescribed rate " from United Kingdom Income Tax paid or payable by him on that " part of his income "; that is, may it not be said, from the whole of that tax.

I have been moved by these considerations which seem to me to have weight. But they are not to my mind final, nor do they, I think, outweigh the reasoning which leads to the conclusion that the Section, in every case where it has to be applied, is really directed against a charge *pro tanto* of double Income Tax upon any portion of any " compartment " of the assessee's total income, and that there is no sufficient indication in the language employed necessitating the conclusion that any further relief is contemplated or provided for.

Accordingly, while conscious of difficulty, I am ready to accept the construction in that sense placed upon the Section by my noble and learned friends, Lord Warrington of Clyffe and Lord Wright, in their judgments, which I have had the advantage of reading and which I accept.

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With them I agree that this appeal should be dismissed and I move your Lordships accordingly.

Lord Warrington of Clyffe (read by Lord Atkin).—My Lords, this is an appeal from an Order of the Court of Appeal, dated the 11th July, 1933, dismissing an appeal by the present Appellants from an Order of the King's Bench Division, dated the 14th February, 1933, which affirmed a decision of the Special Commissioners upon a claim by the Appellants for relief from United Kingdom Income Tax.

The question depends upon the true construction and effect, in the events which have happened, of Section 27 of the Finance Act, 1920. That Section, so far as it is material to the solution of the question, is as follows : " (1) If any person who has paid, " by deduction or otherwise, ... United Kingdom income tax " for any year of assessment on any part of his income proves to " the satisfaction of the Special Commissioners that he has paid " Dominion income tax for that year in respect of the same part " of his income, he shall be entitled to relief from United Kingdom " income tax paid or payable by him on that part of his income " at a rate thereon to be determined as follows :—" There follow provisions for the determination of the rate, as to which no question arises in the present case. Sub-section (8) contains the following definitions : " (*b*) The expressions ' United Kingdom income tax ' " . . . . mean . . . . income tax . . . . chargeable in accordance with " the provisions of the Income Tax Acts; (*c*) The expression " ' Dominion income tax ' means any income tax . . . . charged " under any law in force in any Dominion, if that tax appears to " the Special Commissioners to correspond with United Kingdom " income tax."

The Dominion Income Tax in the present case is that charged under the law of India, and there is no question that it falls within the above-mentioned definition. The Appellants are an English company incorporated and resident in England. They carry on a composite business in India. With some immaterial exceptions of trifling amount, the whole of their income for the two years ending the 5th April, 1929, and the 5th April, 1930, arose in India and was charged to United Kingdom Income Tax as profits of trade under Case I of Schedule D. The claim to relief was made in respect of several years, but the year ending the 5th April, 1929, may be taken as typical of the rest, and, in fact, has alone been the subject of actual decision in the Courts below.

The Appellants were charged to United Kingdom Income Tax for that year on their profits from India in the sum of £186,750. For the same year they were charged to Dominion Income Tax in the sum of £129,365 only. The difference arises from the fact

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that in India certain debenture interest was allowed as a deduction from the gross profits and the profits from certain tea gardens were excluded from the account. This course was not allowed in England.

There were other divergencies in the two systems of taxation which combined to make up a further excess of £6,542 in the United Kingdom profits which, when also so excluded, reduced the amount of £186,750 to £129,365, the amount assessed to Indian Income Tax. The Court of Appeal has held that, on the true construction of the Section, relief from United Kingdom Income Tax can be allowed on £129,365 only, that being, in their opinion, that part of the Appellants' income in respect of which they have paid Dominion Income Tax. The question depends on the true construction of the Section in question read, of course, in connection with and as part of the Income Tax Act as a whole and in accordance with the usual rules of construction.

Counsel for the Appellants, indeed, insisted that he was entitled to support his argument on construction by referring to the Report of the Royal Commission on Income Tax published in 1920. On this point I have read and considered the opinion about to be delivered by my noble and learned friend, Lord Wright. With his opinion I concur and have nothing to add to what he has said.

On the question of construction the contention of the Appellants was that " that part of his income " refers only to the source from which the income is derived. The source in this case was the Indian business of the company, and it was contended that, inasmuch as the whole of that income was taxed to United Kingdom Income Tax in the sum of £186,750, it is in respect of that sum that relief should be given. I cannot agree with this contention. The word " part " is not in any sense a word of art with a peculiar meaning derived from the subject matter in connection with which it is used. We are here dealing with a sum of money referred to as income. " Part " of a sum of money means in its ordinary signification so many pounds, shillings and pence out of a larger amount. If the income is £100, a small sum, say £50, would properly be described as a part thereof. In the present case the part of his income on which the taxpayer has paid tax in England is £186,750. In India he has paid tax on a smaller part numerically of the same income. To obtain relief he has to prove that he has paid Dominion tax on the same part of his income as that on which he paid United Kingdom tax. He can only prove this in respect of the smaller sum. I can see no reason why, for the purpose of identification, any other meaning should be given to the word " part " than the numerical meaning. " Double taxation " is not in terms mentioned in the Section, but it is obvious that the object of the provision is

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to obtain *pro tanto* the avoidance of that result. The taxpayer has paid Dominion Income Tax in respect of £x of his income; he is entitled to relief in respect of £x part of the same income and to no more.

Some criticism was directed to the use of " on " in relation to United Kingdom Income Tax, and " in respect of " in relation to Dominion Income Tax, but I see no point in this; the two expressions mean virtually the same thing.

The case of *Rolls Royce, Limited* v. *Short*, 10 T.C. 59, was referred to by the Appellants' Counsel, who relied upon certain observations of my own as supporting his present contention. I do not see that this is so. Those observations, which I have read, must be understood as referring to the case then before the Court, and so read they have no bearing on the present case. I may add, however, that I can detect in them no divergence between my own views and those of my learned brethren in the Court of Appeal.

The present case is a simple one. Others may arise in which further complications will have to be dealt with. That is no reason why the simple solution in the present case should not be the right one.

On the whole, I agree with the conclusion of the Court of Appeal, and am of opinion that this appeal should be dismissed.

Lord Atkin.—My Lords, I have had the opportunity of reading the opinion which is about to be delivered by my noble and learned friend Lord Wright, and I agree with it and with the opinion which I have just read.

Lord Wright.—My Lords, I am authorised by my noble and learned friend **Lord Thankerton** to say that he agrees with the opinion which I am about to deliver.

My Lords, the question to be decided in this appeal is what is the extent of relief in respect of Income Tax to which the Appellants are entitled under Section 27 (1) of the Finance Act, 1920, as amended by Section 46 and Fifth Schedule, Part II, 2 (i) of the Finance Act, 1927. The facts are simple. The Appellants are a joint stock company incorporated and registered in England. Their business is carried on in Assam and consists of running a railway, working coal mines, timber concessions and other undertakings, including a tea plantation. Not the whole but almost the whole of their income for the two years which are here in question, having been taken as typical, that is, the years ending on 5th April, 1929, and 5th April, 1930, arose in India. That income was duly charged to United Kingdom Income Tax under Case I of Schedule D of the Income Tax Act, 1918.

(Lord Wright.)

It will be sufficient, in order to illustrate the point at issue, to take the figures for the year 1928–29. No difficulty arises in this case in comparing the figures for the United Kingdom tax and for the Indian tax respectively. In both assessments the computation of profits is based on those of the preceding year, the period taken in the accounts being that ending on the 31st March, 1928. A trifling sum of £58 was earned by the Appellants in England for transfer fees : this having been deducted, the assessment of profits for Income Tax in the United Kingdom came out at £186,750, but the same profits were assessed to Income Tax in India at £129,365. The Appellants claimed relief at 2*s*. in the £ on the former sum. The Special Commissioners granted relief in respect of £135,907. The difference between the latter figure and £129,365 is £6,542. The Court of Appeal in confirming, in substance, the ruling of the Special Commissioners, took the view, rightly, as I think, that the true amount on which relief should be given was £129,365, and I shall proceed on the basis of that figure, though no claim is made by the Respondents to have the figure of £135,907 altered.

In effect the position is that the Appellants have paid or become liable to pay United Kingdom Income Tax for the year 1928–29 on an assessment on part of their income of £186,750, but, in respect of the same income for the same year, have paid in India on an assessment of £129,365. The difference between the two assessments is, in the main, due to the fact that in India the sum of £42,500 for debenture interest was allowed as a deduction from the tax, whereas in the United Kingdom no such deduction was allowed. In addition, in India profits from a tea garden owned by the Appellants were for some reason not taken into account, whereas these profits were included in the profits under the United Kingdom assessment. As already indicated, there were other similar but minor differences in the assessments, which it is not necessary here to consider.

The rival contentions may be thus summarised. The Appellants claim that, though the Indian assessment is only at the figure of £129,365, it is an assessment on the whole amount of the profits of £186,750 : in other words, it exhausts the taxable capacity in India of the whole of those profits, so that the Appellants have paid Indian Income Tax on the whole of that sum and hence are on that footing entitled to Income Tax relief under Section 27 of the Act of 1920 on the whole of that sum. The Respondents, on the other hand, contend that double Income Tax has only been paid on £129,365, and no more, within the meaning of the Section, and hence that it is only on that sum that relief is claimable.

The question, which is by no means free from difficulty, depends on the true construction of the words of the Section, read in connection with the Income Tax Act as a whole and in accordance with

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the usual rules of construction. Mr. Latter sought to introduce into his argument certain recommendations from a Report of a Royal Commission on Income Tax in 1920; he argued that, as the Act of 1920 followed these recommendations, it should be presumed that the words of the Section were intended to give effect to them and hence they could be used to show what was the intention of the Legislature in enacting the Section. It would perhaps, in this case, be sufficient ground for rejecting, as your Lordships did, this contention and refusing to look at the Report, that it had not been used or referred to either before the Special Commissioners or before Mr. Justice Finlay or the Court of Appeal. But, on principle, no such evidence for the purpose of showing the intention, that is, the purpose or object, of an Act is admissible: the intention of the Legislature must be ascertained from the words of the statute with such extraneous assistance as is legitimate. As to this I agree with Lord Justice Farwell in *Rex* v. *West Riding of Yorkshire County Council*, [1906] 2 K.B. 676, at page 717, where he says "that the true rule is expressed with accuracy by "Lord Langdale in giving the judgment of the Privy Council in "the *Gorham* case in Moore, 1852 edition, page 462: 'We must "'endeavour to attain for ourselves the true meaning of the "'language employed'—in the Articles and Liturgy—'assisted "'only by the consideration of such external or historical facts "'as we may find necessary to enable us to understand the subject-"'matter to which the instruments relate, and the meaning of "'the words employed.'" In this House, where the judgment of the Court of Appeal was reversed (*Attorney-General* v. *West Riding of Yorkshire County Council*, [1907] A.C. 29), no reference was made to this point. It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible, and the Report of Commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted. Mr. Latter relied on certain observations of Lord Halsbury, Lord Chancellor, in *Eastman Photographic Materials Company, Limited* v. *Comptroller-General of Patents Designs and Trade Marks*, [1898] A.C. 571, at page 575. The Lord Chancellor was there referring to the Report of a Commission that had sat to enquire into the working of the earlier Act, which had been superseded by the Act actually being construed by the House, but Lord Halsbury refers to the Report, not directly to ascertain the intention of the words used in the Act, but because, as he says "no more accurate source of information as to what "was the evil or defect which the Act of Parliament now under "construction was intended to remedy could be imagined than "the Report of that Commission." Lord Halsbury, it is clear, was

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treating the Report as extraneous matter to show what were the surrounding circumstances with reference to which the words were used and which came within the principle stated by Lord Langdale. The rule is, in principle, analogous to the rules laid down in the four resolutions of the Barons of the Exchequer recorded in *Heydon's* case, 3 Coke's Reports, 7 (6).

On the facts of the present case, I am of opinion that the Appellants fail in their contention. The Section requires that the taxpayer should prove (1) that he has paid tax in the United Kingdom for any year on a certain sum which is part of his income; in this connection, I do not think that the word " part " is used to exclude the whole but merely to point to an ascertainable sum of income which is brought into question; (2) that he has paid tax in the Dominion " in respect of " the same part of his income for that year : here the words " in respect of " as contrasted with " on " do not, I think, involve any latent distinction, since the word " on " would be inapplicable to the " same income " which becomes a separate taxable subject in the Dominion. The taxpayer then becomes entitled to relief. It seems clear that there must be a definite part of income brought into question, and that can only be expressed in a sum of money. As income *ex vi termini* must be expressed in a sum of money, the words " the same part of " his income " must involve a comparison between two sums of money which prove to be the same. The contention of the Appellants is to the contrary : it is said on their behalf that the words " the same part of his income " refer solely to what is called the source, and that identity of amount is immaterial and does not come into question except for the purpose of ascertaining the rate of tax to be allowed for. I cannot agree with this argument. No doubt questions of source, as it has been called, that is, such questions as where the income comes from, are essential to identify, so far as that aspect goes, what is taxed in the United Kingdom with what is taxed in the Dominion, but, in addition, the income itself, that is, the amount of money, must also be identified. I think the words " the same part of his income " are apt to include both elements of comparison and identification.

The facts here may be peculiar in that they present none of the complications which will often prevent a clear identification and comparison of the income on which United Kingdom tax is paid with that on which the Dominion tax has been paid. There may, for instance, be differences in regard to the year of charge, or in the method of computing the income for tax purposes. Thus, in *Rolls Royce, Limited* v. *Short*, 10 T.C. 59, the part of the company's income there in question paid no tax in the United Kingdom because such part was not taxable as the law then stood,

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no profits having been made by the company on their Indian business on the average of the three preceding years, whereas in India, as now both in India and the United Kingdom, tax was payable on the basis of the preceding year's income which by itself showed a profit. Hence, though tax had been paid on the profit in question in India, the foundation of a claim under Section 27 failed because the company had not paid or become liable to pay tax on those profits in the United Kingdom. Certain observations in that case are to be read in reference to its special facts. But there is no such discrepancy in the present case. The Appellants, having paid tax in the United Kingdom on £186,750, have not paid tax at all in India on two definite and separable amounts, parts of that sum of £186,750, namely, £42,500, the debenture interest, and the sum representing the profits of the tea garden. On the words of the Section, it seems that the Appellants can only show double taxation in regard to £129,365, which is a part of the £186,750. In other words, I think that, in such a case as this, where definite amounts are in question, " paid " means paid in fact and cannot be applied in truth to these definite amounts, which are simply in India deducted from the profits assessable, as not being liable to tax at all. Accordingly, on the facts of this case, I do not think it is correct to say that the Appellants have paid in India tax on the whole sum of £186,750 so as to be able to claim relief on the whole. I reject the contention made on behalf of the Appellants and based by them on the ground that the whole sum has been taxed to its full taxable capacity according to Indian law; the admissible deductions, it is said, amount simply to a method of assessment or computation of the entire profits and not a mere immunity of certain items. No doubt there may be cases in which a reduction in the amount of the assessment in the Dominion may be consistent merely with a difference in computation, so that it may be said that the larger sum taxed in the United Kingdom ought to be regarded as taxed *in toto* in the Dominion by the smaller assessment, and that the taxpayer in that event has paid tax on the same part of his income taken at the larger figure both in the United Kingdom and in the Dominion. But I think that, on the true view of the facts of the present case, certain definite parts of income which are taxed in the United Kingdom are excluded from taxation altogether in India, so that the element of double taxation does not exist at all in regard to those parts of the Appellants' income.

In other words, in my judgment, the same part of their income on or in respect of which the Appellants have paid double tax is not £186,750, but £129,365, and it is on that part alone of their income that they are entitled to relief.

In the result, I think the appeal should be dismissed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it

That the Order appealed against be affirmed and that this appeal be dismissed with costs.

The Contents have it

[Solicitors :—Taylor & Humbert; Solicitor of Inland Revenue.]

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