NO. 1400—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—19TH AND 22ND OCTOBER AND 5TH NOVEMBER, 1945

COURT OF APPEAL—11TH, 12TH AND 25TH JULY, 1946

HOUSE OF LORDS—26TH, 27TH AND 29TH JANUARY AND 27TH FEBRUARY, 1948

NUGENT-HEAD *v.* JACOB (H.M. INSPECTOR OF TAXES) (1)

Income Tax, Schedule D, Case V—*Wife residing in the United Kingdom and entitled in her own right to income from foreign possessions—Husband absent from the United Kingdom throughout the year of assessment—Whether wife assessable in respect of remittances of the income made to her—Income Tax Act,* 1918 (8 *&* 9 *Geo.* V, *c.* 40), *Rule* 16 *of the General Rules.*

The Appellant was entitled in her own right to certain trust income arising in America. She and her husband had resided in the United Kingdom at all material times until November, 1941, *when the husband went abroad on active service with the Forces; for the following three years he was absent from the United Kingdom, but the Appellant continued to reside in the United Kingdom. Under the terms of proviso* (2) *to Rule* 16 *of the General Rules an assessment to Income Tax was made upon the Appellant for the year* 1942-43 *in respect of remittances of income from her foreign possessions made to her in the preceding year. On appeal to the Special Commissioners it was contended by the Appellant that, it being admitted that she was a married woman living with her husband, the income in question was, by virtue of proviso* (1) *to General Rule* 16, *to be deemed to be his income and was to be assessed and charged in his name and not in hers, and that proviso* (2) *to General Rule* 16 *had no application to her case. It was contended by the Crown that, in so far as the income from foreign possessions was remitted to her, under proviso* (2) *to General Rule* 16 *the proper person to assess was the Appellant and not her husband. The Special Commissioners decided that the Crown's contention was correct.*

Held, *that the Appellant was not a married woman living in the United Kingdom separate from her husband within the meaning of proviso* (2) *to General Rule* 16 *of the Income Tax Act,* 1918.

CASE

Stated under Section 149 of the Income Tax Act, 1918, 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

(1) Reported (K.B.) 62 T.L.R. 66; (C.A.) [1947] K.B. 17; (H.L.) [1948] A.C. 321.

of the Income Tax Acts held at Turnstile House, 94/99 High Holborn, London, W.C.1, on 20th September, 1944, Mrs. Marie Nugent-Head (hereinafter called "the Appellant") appealed against an assessment to Income Tax under Case V of Schedule D made upon her in the sum of £12,842 for the year 1942-43 in respect of income arising from foreign possessions.

At the same meeting her husband, Lieut.-Colonel E. S. Nugent-Head, appealed against a similar assessment made upon him for the same year in respect of the same income in the estimated sum of £10,000.

It is admitted that the income in question is within the charging provisions of Case V as aforesaid, and the sole question arising in this appeal is whether, in the circumstances hereinafter set out, an assessment can properly be made upon the Appellant under the terms of proviso (2) to Rule 16 of the General Rules, All Schedules, Income Tax Act, 1918, in respect of certain remittances of that income to her during the year preceding the year of assessment.

2. The following facts were proved or admitted:—

(*a*) The Appellant and her husband were married in 1933 and lived together in London. She was and is an American citizen and at all material times has been ordinarily resident in the United Kingdom. Lieut.-Colonel Nugent-Head is an Englishman, previously in business in this country, who joined the Army in 1939. Until November, 1941, he was stationed at various places in this country, and his wife continued to live in London, but frequently went to stay at hotels near where her husband was from time to time stationed. The husband spent all his periods of leave with his wife. In November, 1941, he went on active service overseas, and up to the hearing of this appeal was still abroad and had not on account of such service been able to return to this country at all. His wife continued to reside in London in a flat which she acquired in her own name in July, 1940, the husband's personal effects were left in her care, and the flat constituted the marital home which was at all times available to the husband should he be able to return to it. The parties frequently and regularly corresponded with each other, and the marriage had been and remained a very happy one. It was admitted on behalf of the Respondent that the Appellant was living with her husband within the meaning of proviso (1) to the said General Rule 16.

(*b*) The Appellant was entitled in her own right to a life interest in certain income arising abroad under the following dispositions which were all governed by American law:—

(1) A settlement of her maternal grandfather dated 7th June, 1917.

(2) The will of her father dated 18th June, 1930, and codicil thereto dated 8th December, 1933.

(3) The will of her mother dated 23rd September, 1933.

Copies of these documents are not annexed hereto, no question arising thereon, and it being admitted that the Appellant was entitled thereunder to income arising from possessions abroad.

(*c*) Some of the income arising under these dispositions was remitted from America to the Appellant in the United Kingdom and in

the year 1941-42, the year preceding the year of the assessment under appeal, the amount of such remittances was £7,082. Since the passing of Section 19, Finance Act, 1940, the Appellant's income arising under the said dispositions has been chargeable to Income Tax on the basis of the full amount arising abroad (whether remitted to the United Kingdom or not) during the year preceding the year of assessment.

(*d*) The full amount of such income arising abroad during the year preceding the year of assessment under appeal was agreed to be £13,615. On behalf of Lieut.-Colonel Nugent-Head it was stated before us in his appeal that he did not dispute his liability to be assessed for the year 1942-43 in the full sum of £13,615 (which included the said sum of £7,082 remitted) pursuant to proviso (1) of the aforesaid General Rule 16, subject to the assessment upon his wife, the Appellant, being discharged.

3. The relevant portion of the proviso to General Rule 16 reads as follows:—

"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

"(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 feme sole if entitled thereto in "her own right . . ."

4. On the foregoing facts it was contended on behalf of the Appellant:—

(1) That, it being admitted that she was a married woman living with her husband, the income in question was, by virtue of proviso (1) to the aforesaid General Rule 16, to be deemed to be his income, and was to be assessed and charged in his name and not in hers.

(2) That she was not a married woman living separate from her husband, and that proviso (2) to the said General Rule 16 had no application to her case.

(3) That there was no provision of the Income Tax Acts which authorised an assessment upon her for the year 1942-43 upon the remittance to the United Kingdom during the preceding year of her income arising from possessions abroad.

(4) That the assessment under appeal should be discharged.

5. It was contended on behalf of the Inspector of Taxes that, in so far as the income from foreign possessions was remitted, viz., £7,082, under proviso (2) to the said Rule, the proper person to assess was the Appellant and not her husband, the assessment upon whom should be restricted to the amount not remitted, viz., £6,533. The following cases were referred to:—

Rex v. *Creamer*, [1919] 1 K.B. 564.
Eadie v. *Commissioners of Inland Revenue*, 9 T.C. 1.
Derry v. *Commissioners of Inland Revenue*, 13 T.C. 30.

6. We, the Commissioners who heard the Appellant's appeal and that of her husband, gave our decision in the two appeals as follows:—

For the year 1942-43 alternative assessments to Income Tax, Schedule D, were made upon the Appellant and her husband in respect of income arising from foreign possessions in America to which Mrs. Nugent-Head was entitled in her own right. The latter is an American citizen but at all material times was resident in the United Kingdom and married to an Englishman who, since 1st November, 1941, has been continually abroad on active service with the Forces. It is not disputed that there is liability to Income Tax in respect of the income in question, and the point for determination is upon whom and to what extent the assessment should be made.

It is admitted by the Crown that Mrs. Nugent-Head has been living with her husband within the meaning of those words in proviso (1) to Rule 16 of the General Rules, All Schedules, so as to make her income, at least in part, assessable and chargeable on her husband; but it is claimed that in respect of that part representing remittances, amounting to some £7,082, the assessment should be made upon Mrs. Nugent-Head by virtue of the provisions of proviso (2) to the said Rule, and the decision of the Court of Session in *Derry* v. *Commissioners of Inland Revenue*, 13 T.C. 30, is relied upon.

We are of opinion that, notwithstanding difficulties in construing the said Rule and provisos, the Crown's contention is correct and that proviso (2) should be treated as a qualification of proviso (1), i.e., as dealing with the particular case of a married couple, who, although living together, are temporarily in different places and then only as regards a specified portion of the wife's income, i.e., remittances. In accordance with this decision we reduce the assessment for 1942-43 made upon Mrs. Nugent-Head to the amount of the remittances, namely, £7,082, and reduce the assessment upon Lieut.-Colonel Nugent-Head in respect of the balance of the income to £6,533.

7. Immediately upon the determination of the appeals both the Appellant and Lieut.-Colonel Nugent-Head declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state Cases for the opinion of the High Court pursuant to Section 149 of the Income Tax Act, 1918, but Lieut.-Colonel Nugent-Head subsequently withdrew his demand for a Case, and the Case which we now state and do sign accordingly is on behalf of the Appellant only.

F. ENGLAND,
F. N. D. PRESTON, } Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99 High Holborn,
London, W.C.1.
22nd January, 1945.

The case came before Macnaghten, J., in the King's Bench Division on 19th and 22nd October, 1945, when judgment was reserved. On 5th November, 1945, judgment was given against the Crown, with costs.

Mr. Frederick Grant, K.C., and Mr. Terence Donovan, K.C., appeared as Counsel for Mrs. Nugent-Head, and the Solicitor-General (Sir Frank Soskice, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Macnaghten, J.—This is an appeal by Mrs. Marie Nugent-Head, the wife of Lieut.-Colonel E. S. Nugent-Head, against an assessment to Income Tax under Case V of Schedule D for the year 1942-43 in the sum of £7,082 made upon her as a feme sole pursuant to the provisions of Rule 16 of the All Schedules Rules of the Income Tax Act, 1918. Her case is that she is not assessable to tax under that Rule or at all.

The Appellant, an American citizen, married her husband, an Englishman, in 1933. It was a very happy marriage and they lived together in London until, on the outbreak of war with Germany in 1939, her husband joined the Army. For the next two years he was stationed at various places in the United Kingdom, but in November, 1941, he was sent abroad and he remained abroad throughout the next three years. During the whole of the year of the assessment the Appellant was living in a flat in London, and her husband was living overseas in discharge of his military duties.

Under a settlement made by her grandfather and the testamentary dispositions of her parents, the Appellant enjoys a considerable income from property in America. During the year 1941-42 her income from that source amounted to £13,615, and of that sum £7,082 was remitted to her in London and the balance, £6,533, was retained in America.

It is admitted that the whole of the income became assessable for the year 1942-43 under Case V of Schedule D as "income arising "from possessions out of the United Kingdom".

The questions at issue are whether the assessment should be made on the Appellant, or on her husband, or partly on one and partly on the other. The answer to those questions depends upon the meaning and effect of Rule 16 which runs thus: "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 (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 feme 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 reproduces the provisions of Section 45 of the Income Tax Act, 1842. That Section was based on provisions to be found in the Income Tax Acts of 1803, 1805 and 1806.

In view of the changes in the law relating to the property of married women which have taken place in the last 100 years, it is not surprising that provisions with regard to the taxation of their

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income which were apt and intelligible in the beginning of the 19th century have become inapt and ambiguous when re-enacted in the Income Tax Act, 1918. The present case illustrates the urgent need for the simplification and clarification of the law relating to Income Tax, which the present Chancellor of the Exchequer and his predecessors have all recognised.

Rule 16, apart from its provisos, itself is plain and simple. A married woman who has an income of her own is to be assessed and charged to tax like any spinster. The difficulty in construing the Rule is caused by the two provisos. The first proviso deals with the case of a married woman "living with her husband", and the second deals with the case of a married woman "living in the United King-"dom separate from her husband, whether the husband be tem-"porarily absent from her or from the United Kingdom or other-"wise". Both these provisos are ambiguous. Does the first proviso include such a case as the present one where the spouses would be living together if they could, but the force of circumstances compels them to live apart? Does the second proviso refer to the case where the spouses are separated by a judicial decree, or by mutual agreement, or by the desertion of one or other of them? If that is the meaning of the word "separate" in the second proviso, the words "whether the husband be temporarily absent from her or from the "United Kingdom or otherwise" seem inappropriate. On the other hand, if the second proviso only refers to cases where the spouses happen for the time to be living in different places, it seems to follow that the words "living with her husband" in the first proviso must mean living together at the same place.

Before the Special Commissioners and in this Court the Crown contended that, although the Appellant and her husband were in fact living far apart, she was, nevertheless, during all the time of their separation "living with her husband" in the sense in which those words are used in the first proviso. The Appellant, accepting this contention as well founded, maintained that, since she was living with her husband within the meaning of the first proviso, it followed that her income must be deemed to be the income of her husband, and that it must be assessed and charged in his name and not in her name, since that is what the first proviso says quite plainly.

To that the Crown made answer that, although the Appellant was "living with her husband" within the meaning of the first proviso, she was also "living separate from her husband" within the meaning of the second proviso, and, therefore, as to the remittance of £7,082, to which she was entitled in her own right, she should be assessed and charged as a feme sole.

The Special Commissioners accepted the view put forward by the Crown as correct, and they accordingly assessed Colonel Nugent-Head in the sum of £6,533 on the ground that the Appellant was living with her husband within the meaning of the first proviso, and they assessed the Appellant in the sum of £7,082 on the ground that she was living separate from her husband within the meaning of the second proviso.

Colonel Nugent-Head accepts the decision of the Special Commissioners, but his wife brings this appeal: she maintains that the

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whole of her income, £13,615, ought to be assessed and charged on her husband.

The argument which leads to the curious conclusion that the Appellant was living with her husband, and the same time was living separate from him, is, as I understand it, this: that, although the two provisos are separate and purport to deal with two different cases, the first with the case of a wife living with her husband and the second with the case of a wife living separate from her husband, the second proviso should be read, not as a separate proviso, but as a qualification of the first proviso, because it is said the Rule itself provides for the case of a married woman living separate from her husband, and the second proviso would be unnecessary, unless it be read as a qualification of the first.

If the second proviso merely said that in the case supposed, namely, that a married woman, receiving a remittance from foreign property while living in the United Kingdom separate from her husband, should be assessed and charged as a feme sole, there would no doubt be some force in that argument. But the proviso does not say that. It says that she is only to be assessed as a feme sole if she is entitled to the remittance in her own right. If she receives it from her husband, or through him, or from his property, or on his credit, she is not to be assessed as a feme sole; in that case she is to be assessed as the agent of her husband.

Reference was made to the Scottish case of *Derry* v. *Commissioners of Inland Revenue*, 13 T.C. 30, as giving some support to the decision of the Special Commissioners. In that case Mrs. Derry, the wife of Dr. Douglas Derry, was in receipt of income assessable under Case V of Schedule D as income arising from possessions out of the United Kingdom. Owing to a nervous breakdown she was living in a nursing home in England, and there was little hope that she would ever recover sufficiently to be able to leave the nursing home. Her husband was Professor of Anatomy at the University of Cairo, and he lived there throughout the year, except when he came on leave to England for a period of less than three months. He was never able to live with his wife at the nursing home. The question submitted to the Court was whether Mrs. Derry was assessable under Rule 16. The Court consisted of Lord Sands, Lord Blackburn and Lord Ashmore, and they all agreed that the answer to that question was in the affirmative, but each gave a different reason for that decision. Lord Blackburn thought that Mrs. Derry was not living with her husband within the meaning of the first proviso, and therefore came within the general Rule that all married women, other than married women living with their husbands, were to be assessed as spinsters. Lord Ashmore considered that, on the facts stated by the Commissioners, Mrs. Derry was living separate from her husband, and that she therefore came within the second proviso. He did not express any opinion as to whether she was living with her husband within the meaning of the first proviso. Lord Sands, however, was of opinion that she was "living with her husband" within the meaning of the first proviso, and also living "separate from her husband" within the meaning of the second proviso. The argument was put very clearly by Lord Sands in these words, on page 37: "The opening "enactment of Rule 16 deals with all married women. Proviso (1)

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"deals with married women living with their husbands. A married "woman not living with her husband is covered by the opening "clause; a married woman living with her husband by the proviso. "But these two classes include all married women . . . A married "woman not living with her husband falls under the opening clause. "Under that clause her separate estate is assessable. She obtains no "relief from direct assessment under proviso (1), which deals only "with married women living with their husbands. Proviso (2) would "therefore be unnecessary and meaningless if regarded simply as a "qualification of the provision of the opening clause as regards the "wife's separate income."

As I have said, that argument would have some force but for the fact Parliament has thought fit to provide that a married woman living separate from her husband, if entitled to the remittance in her own right, is to be assessed as a feme sole, but that, if she receives it from or through her husband, or from his property, or on his credit, she is not to be assessed as a feme sole but as the agent of her husband. Therefore I venture with all respect to think that it is not necessary to do violence to the Rule, by treating the second proviso as if it was a part of the first, and then, having done that, to treat it as an exception from the case provided for by the first proviso.

In my opinion if the first proviso is to be construed as covering a case such as this, where the husband and the wife have been living far apart, then the second proviso must be read in its natural sense as applying to the case where the spouses have separated in the ordinary sense of the word.

In these circumstances I think the appeal must be allowed and the assessment quashed.

Mr. Grant.—With costs ?

Macnaghten, J.—Yes.

Mr. Grant.—I understand that the tax has been paid in accordance with the Commissioners' decision. Would your Lordship direct return of the tax with interest ? I think 3 per cent. has been regarded as the proper rate.

Macnaghten, J.—Is there any objection to that, Mr. Solicitor ?

The Solicitor-General.—No, my Lord.

Macnaghten, J.—Then let that be so.

Mr. Grant.—If your Lordship pleases.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Scott, Bucknill and Somervell, L.JJ.) on 11th and 12th July, 1946, when judgment was reserved. On 25th July, 1946, judgment was given unanimously in favour of the Crown, with costs, reversing the decision of the Court below.

The Solicitor-General (Sir Frank Soskice, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills (Mr. Oliver Bertram with them)

appeared as Counsel for the Crown, and Mr. Frederick Grant, K.C., and Mr. Terence Donovan, K.C., for Mrs. Nugent-Head.

JUDGMENT

Scott, L.J.—In this appeal the facts are clearly and sufficiently found by the Commissioners and the only question in issue is one of interpretation of Rule 16 of the General Rules in the Income Tax Act, 1918. The Respondent before us is the wife of Lieut.-Colonel E. S. Nugent-Head. She was, under that Rule, assessed and charged to Income Tax for the year 1942-43 in respect of the sum of £7,082, income received by her from her own possessions in the United States of America. The question is whether she was rightly so charged. She and her husband had lived together happily in England since their marriage in 1933, but in November, 1941, he had been sent abroad on military duties overseas. There he remained, by military orders, for three years. There was no change in the marriage relations, except that caused by his physical absence; had it not been for the military orders, he would have been at all relevant times living with her in the matrimonial home as before. In these circumstances, she appealed, without success, to the Special Commissioners, and then to the King's Bench Division, where Macnaghten, J., allowed her appeal. Hence the appeal by the Crown to this Court. The total income received, or receivable, by her for the year upon which her assessment was based was £13,615, but the balance of £6,533 was retained in America. There is no dispute as to amount, and it is conceded that the husband is in any event chargeable under Case V with the £6,533, and if she succeeds in her present appeal, with the £7,082 also. The only question for us is whether under Rule 16 she is properly assessable and chargeable with the £7,082.

The whole ligitation is attributable, in my opinion, to the extraordinary ambiguity of the language used in proviso (2) to Rule 16; and the statutory history of that language shows how the reluctance of the Inland Revenue to see any parliamentary change made in ancient wording to which they have got accustomed and of which they think (often rightly) they know the meaning (though the taxpayer probably does not) may lead to unnecessary disputes and therefore much public inconvenience. This is the Rule: "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 (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 re-"mittance from property out of the United Kingdom, shall be assessed "and charged as a feme 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."

Before modern reforms of the law relating to the property of married women, the only event in which a married woman was taxed personally was if she was acting as a "sole trader." By the custom

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of the City of London, and possibly some others, she was then regarded as a feme sole. If she had equitable interests it was not herself, but her trustees, who were taxed. Both those positions were recognised in the early Income Tax Acts (1803, Sections 91 and 89; 1805, Sections 101 and 99; 1806, Sections 56 and 54; 1842, Section 45), Sections 56 and 45 adding the case of profits to which she was entitled "to her sole or separate use": but no question is raised in the present appeal upon those words. In the case of "a married woman living with her husband" the husband alone is chargeable, because no other treatment of her would have been consistent with the ancient identification of the wife with the husband so far as rights of property were concerned. The statutory expression of the common law view appeared as a proviso in practically the same terms as in the present proviso (1) to Rule 16 (see, for instance, Section 91 of the Act of 1803). The present proviso (2) first took shape in the latter part of Section 101 of the 1805 Act, which was as follows: "Provided also, that any married woman living in Great Britain "separate from her husband, whether such husband shall be temporarily absent from her or from Great Britain, or otherwise, who "shall receive any allowance or remittance from property out of "Great Britain, shall be charged as a feme sole, if entitled thereto "in her own right, and as the agent of the husband, if she receive "the same from or through him, or from his property or on his credit." Mr. Grant's main argument for Mrs. Nugent-Head is that the word "separate" means and has always meant "separated"—either judicially or by deed or at least to such a degree in fact as to show such disruption of the matrimonial home as would be recognised for some purpose or other in Courts with matrimonial jurisdiction. It was further urged, with undoubted force, that the words "whether the husband be temporarily absent from her or from the United Kingdom "or otherwise" are unintelligible; and on that Mr. Grant invoked the principle that a taxing Act should be construed strictly, and not against the taxpayer. He therefore submitted that such unintelligible words should be disregarded. If the proviso had stopped short after the direction for charging her in respect of any allowance or remittance from property out of the United Kingdom, as a feme sole, this argument might well have prevailed; but that interpretation is, in my opinion, rendered impossible by the last two lines of the second proviso, which charge her "as the agent of" her "husband if she receives "the same" (i.e., the allowance or remittance from abroad) "from or "through him, or from his property, or on his credit." The argument is made impossible because *ex hypothesi* she is "separate" from him when she so receives his money; and the receipt of money voluntarily sent by him is inconsistent with the meaning of the word "separate" which is essential to the argument on her behalf.

When that provision was first added, namely, in 1805, many husbands went to India or the plantations in search of a livelihood, and remained abroad for two or more years, and yet were in no sense breaking up the matrimonial home: on the contrary they were keeping it up and remitting money to their wives for the purpose of maintaining it. In other words, there was no such separation as the argument predicates is to be read into the word "separate". In the eye of the law the wife was still "living with her husband". This construction which interprets the word "separate" as a synonym for

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"not living with the husband" in a merely local and factual sense is the only one which is not inconsistent with the word "temporarily". What the words "or otherwise" were intended to cover I cannot guess; but the dominant idea is that the wife may be receiving money from her husband though "separate"; and I therefore construe that word as merely representing the antithesis to living at the time in question in the same place as the husband.

I have not discussed the three decisions which were cited to us as they do not materially assist in the particular questions of construction raised by the present appeal, but I have read Bucknill, L.J.'s judgment and completely agree with it. It is much more illuminating than my own.

I think the wife was rightly assessed and charged, and the appeal must be allowed with costs here and below.

Bucknill, L.J. (read by Somervell, L.J.)—This is an appeal from the judgment of Macnaghten, J., holding that the Respondent was not personally liable to be assessed for Income Tax for the year 1942-43 in respect of a sum of £7,082 received by her from abroad and to which she was entitled in her own right. There is no dispute about the material facts. They are set out by the Special Commissioners in the Case and stated more briefly by the learned Judge in his judgment. The question for the decision of the Court is whether on those facts at the time when the wife was assessed and charged the Respondent was a married woman living in the United Kingdom separate from her husband, within the meaning of proviso (2) to Rule 16. Macnaghten, J., reversing the decision of the Special Commissioners, held that the Respondent did not come within those words.

The decision of the Special Commissioners was based on their opinion that proviso (2) should be treated as a qualification of proviso (1), i.e., as dealing with the particular case of a married couple who although living together within proviso (1) are temporarily in different places. Macnaghten, J., on the other hand, came to the conclusion that if proviso (1) is to be construed as covering a case such as the present one (which the Crown admitted was so) then "the second "proviso must be read in its natural sense as applying to the case "where the spouses have separated in the ordinary sense of the "word"(1), to quote the precise words at the end of his judgment.

There is no authority bearing directly on the point. The opinions of the Judges of the Court of Session in *Derry* v. *Commissioners of Inland Revenue*, 13 T.C. 30, were conflicting as to whether in the particular circumstances of that case the wife was living with her husband within the meaning of proviso (1). The case therefore differs fundamentally from the present case inasmuch as in the present case the Crown has admitted that at the material time the Respondent was living with her husband within the meaning of proviso (1).

"Wives living with their husbands" have been held to include all wives having a common matrimonial home with their husbands. The home need not be a house or even a room, and need not be at any fixed geographical point. Such wives include those whose husbands are absent from home, provided the absence is not due to a

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deliberate intention on the part of one or both spouses to break up the matrimonial home, or is not due to any decree or order of a competent Court that the parties be no longer bound to cohabit with one another. In other words, "wives living with their husbands" fall into two classes, (*a*) husbands and wives in fact living together, and (*b*) husbands and wives who are for the time being living apart not because they wish to do so but by reason of the force of circumstances.

The question then arises: Does the expression "wives living sep- "arate from their husbands" in proviso (2) include wives in my suggested sub-class (*b*) of proviso (1), or does it only include wives who are living separate from their husbands because of some judicial decree or order, or because of a deliberate intention on the part of one or both spouses to break up the matrimonial home? I think the question is a difficult one to answer, but there are two reasons which lead me to the conclusion that the Special Commissioners were right in their reading of the Rule. The first reason is that if proviso (2) only includes wives living separate from their husbands because of some decree or order, or by mutual consent, or through desertion, then, inasmuch as such wives obviously do not come within proviso (1), they fall within the general words of the Rule. Consequently proviso (2) would be unnecessary and in effect a mere partial repetition of the general words. On such a reading, to quote from the judgment of Lord Sands in *Derry's* case[1], "Proviso (2) would . . . "be unnecessary and meaningless if regarded simply as a qualifica- "tion of the provision of the opening clause as regards the wife's "separate income."

The second reason is that on such a limited reading of proviso (2) the words "whether the husband be temporarily absent from her" would be almost impossible to apply to any case. "Temporary "absence from her" does not seem to fit in at all with the idea of separation by decree or order, or by mutual consent, or by desertion. Although judicial interpretation has given to the phrase "wives liv- "ing with their husbands" a meaning which includes wives who are temporarily separated from their husbands by force of circumstances, no interpretation has been given to the phrase "wives separated from "their husbands owing to his temporary absence from her" so as to limit it to wives separated by decree or order or mutual consent or desertion. In this connection I may quote the phrase "separation "allowance" used officially for payments made under certain circumstances to wives while their husbands are serving in the forces of the Crown, although still having a common matrimonial home. Thus Article 986 of the Royal Warrant for the pay, etc., of the Army published in 1914 is as follows: "A soldier borne on the married estab- "lishment of his corps who, owing to service abroad, is separated "from his wife and family shall contribute", etc.; and the side note to Section 1 of the Army (Amendment) No. 2 Act, 1915, is "Pro- "visions as to separation allowances."

For these reasons I think that the decision of the Special Commissioners was right and that the appeal should be allowed.

Somervell, L.J.—This appeal turns on the construction of Rule 16 of the All Schedules Rules, dealing with the assessment of married

(1) 13 T.C., at p. 37.

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women. I will not set out the Rule or restate the facts, as this has already been done.

It was conceded by the Crown at the hearing before the Commissioners that on the facts as set out in the Case the Respondent was "living with her husband" within the meaning of proviso (1), because although they were apart for a long period, the marriage, which was a happy one, subsisted. This concession is not, of course, binding on the Court, but it is in accordance, I think, with the construction placed upon these words by Rowlatt, J., in *Eadie* v. *Commissioners of Inland Revenue*, 9 T.C. 1, at pages 7-8, and I will consider the arguments on the assumption that it is correct.

On this basis the learned Judge held that proviso (2) should be construed as applying to cases outside proviso (1), i.e., to cases where the spouses are not living together but are separated by a decree of the Court or by a deed or, I think, where, without any deed, each spouse has set up a separate home because there is no further desire for matrimonial relations and a common home. Mr. Grant supported this view, and I will consider his argument in more detail later. This view is supported by the general lay-out of the Rule. The Solicitor-General contended that it was impossible to construe the words of proviso (2) as limited to cases where the parties were separated in the sense that the marriage had broken down and there was no longer a common matrimonial home. He submitted that the phrase must be construed as a whole and the words "living ... separate from her "husband" construed in the light of the words following. The expression "temporarily absent from her" is apt to describe an absence such as that in question here and is unintelligible if Parliament intended to confine the proviso to wives legally separated from their husbands. The phrase "temporarily absent from her" suggests primarily the case where she remains at the matrimonial home and he is away on service or on official duties or business. These words compel the Court to construe proviso (2), in part at any rate, as an exception to or cutting down of proviso (1).

He also relied on the final words of the proviso as supporting his contruction. This he said was intended to cover a case where, for example, a husband overseas in the plantations sent remittances to his wife. The Revenue authorities would be unable to collect the tax from him because of his absence. The remittance would escape effective tax unless the wife could be assessed. Though, no doubt, it is possible that a husband legally separated from his wife by an order of the Ecclesiastical Courts might make such remittances, the problem would arise far more frequently in cases where the marriage was fully subsisting. If Mr. Grant's construction is right, this far more frequent case is left unprovided for, although Parliament clearly had the problem of such remittances escaping taxation in mind.

The only authority dealing with the construction of this proviso is the Scotch case of *Derry* v. *Commissioners of Inland Revenue*, 13 T.C. 30. In that case Lord Sands construed the Section substantially in the way contended for by the Crown. He based this to some extent on the argument that the opening words and proviso (1) are exhaustive. All cases not falling within proviso (1) fall to be dealt with under the opening words, and therefore the first part of proviso

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(2) is unnecessary unless it is construed as covering cases within proviso (1). Mr. Grant pointed out that this was not so when proviso (2) was first introduced in the Act of 1805, 45 Geo. III, c. 49, Section 101. At that time a married woman could only be assessed and charged in her own name on profits as a sole trader. Her income from sources here could be assessed on her trustees, but there were no means of assessing her on income from foreign possessions if she was not living with her husband. No doubt the Court is entitled to look at the history of a statutory provision, particularly when it appears, as Rule 16 does today, in a Consolidation Act. On the other hand, the proviso with the words on which Lord Sands based his argument appears both in the Act of 1806 and in the Act of 1842. Lord Sands did not, I think, rely solely on this point, and in any case, as it seems to me, we have to construe the words as they now appear.

The Solicitor-General submitted quite rightly that it was sufficient for him to establish that the words covered this case. There was, however, a good deal of discussion on the words "or otherwise". They may bring in cases where there is a legal and permanent separation. It is in such cases unnecessary to provide for the wife being assessed in respect of remittances she was entitled to in her own right, but the later words under which she could be assessed as agent for her husband would be effective.

Mr. Grant's main argument may be summarised as follows. He relied, and rightly, on the form of the Rule. He submitted further that "living separate from her husband" is the opposite of "living "with her husband". This is, he submitted, the condition precedent of proviso (2). The following words may be inapt but cannot cut down this condition. He would read the Rule somewhat as follows: A married woman living in the United Kingdom but not living with her husband in the sense of proviso (1) can be assessed whether the husband is in the United Kingdom or not and whether the separation, as he construes that word in this proviso, is temporary or not.

The arguments on both sides were developed with force and clarity and my opinion fluctuated. If the words "living separ- "ate" had stood alone I should have accepted Mr. Grant's argument. I am, however, clear that one must construe the phrase as a whole. I have come to the conclusion that the words "whether ... temporarily absent from her or from the United "Kingdom or otherwise" are inappropriate if the Legislature had in mind legal separations and are on the whole appropriate to cover the facts of the present case. I also think there is substance in the Solicitor-General's argument based on the concluding words.

Other points were discussed. Mr. Stamp submitted that the rather curious words "from her or from the United Kingdom" were inserted after "absent", as, if they had not been there, it might not have been clear that absence from the wife although the husband was in the United Kingdom was to be covered. What is the necessary period of absence? I should myself have thought the year of assessment. This agrees with the Solicitor-General's submission. Mr. Stamp submitted that it was the pre-

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vious year, on the figures of which the assessment would be based.

It is, I think, possible that the form of the Rule, which, as I have said, dates back in essentials to 1806, may be due to the framers and re-enactors, possibly wrongly, construing the words "living with her husband" as meaning cohabitation in a common home. The form of the proviso certainly affords an argument for this construction, and I think it may have been the view of Lord Blackburn in *Derry's* case(1). I express no opinion on the point.

Although the Solicitor-General submitted that the Rule clearly covered the present case, he frankly admitted the difficulties and obscurities of the Rule. It is unfortunate that a Rule which has such a wide application should be left in this state.

For the above reasons I think the appeal should be allowed.

Mr. Stamp.—The appeal will be allowed with costs ?

Scott, L.J.—Yes.

Mr. Grant.—I am instructed to ask your Lordships for leave to appeal to the House of Lords. Your Lordships will appreciate it is a matter of general importance and there have been a difference of judicial opinion on it.

Scott, L.J.—Yes. The Rule is so clear that we think you ought to have leave !

Mr. Grant.—If your Lordship pleases.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon and Lords Porter, Uthwatt, du Parcq and Oaksey) on 26th, 27th and 29th January, 1948, when judgment was reserved. On 27th February, 1948, judgment was given unanimously against the Crown, with costs, reversing the decision of the Court below.

Mr. Frederick Grant, K.C., and Mr. Terence Donovan, K.C., appeared as Counsel for Mrs. Nugent-Head, and the Solicitor-General (Sir Frank Soskice, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

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(1) 13 T.C., at p. 40.

JUDGMENT

Viscount Simon.—My Lords, this is an appeal from the Court of Appeal (Scott, Bucknill and Somervell, L.JJ.) which reversed the decision of Macnaghten, J., in favour of the Appellant. The question of law is raised by Case stated by the Commissioners for the Special Purposes of the Income Tax Acts and is whether the Appellant, who is a married woman living with her husband, is rightly assessed to Income Tax under Case V of Schedule D for the year 1942-43 in respect of remittances amounting to £7,082 which she received in London in the previous year from property in America. The balance of her American income for that year, namely, £6,533, was retained in America. It is not disputed that the whole of her American income was assessable as "income arising from "possessions out of the United Kingdom". The question is—who is liable to pay the tax on it, the Appellant, or her husband? The Court of Appeal, in agreement with the Special Commissioners, held that in the circumstances of the case the Appellant was rightly assessed for the amount remitted, namely, £7,082, while her husband, Lieut.-Colonel Nugent-Head, should be assessed for the amount not remitted, namely, £6,533.

It is much to be regretted that the present statute-law defining in what cases a married woman is herself liable to Income Tax, and in what cases the liability to tax on her income falls on her husband instead, is not stated in plain and unambiguous language. Even if the heavy task of re-enacting the whole of our Income Tax law in less complicated terms is too great to be undertaken at present, it would be well worth while to revise and re-express that part of it which deals with married women. As it is, the words now in operation are largely borrowed from Acts of 1803, 1805 and 1806, at which dates the effect of marriage on the property of the wife was very different from what it is today. Income Tax came to an end after Waterloo, and from 1816 there was no Income Tax in this country till 1842. Nevertheless, the relevant provisions of the Act of 1842 are plainly modelled on the repealed Sections and now reappear practically unaltered in Rule 16 of the All Schedules Rules in the consolidating Act of 1918.

The result is that the judiciary has to interpret and apply, as best it can, the following words:

> "16. 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
>
> "(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 feme sole if entitled thereto "in her own right, and as the agent of the husband if

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"she receives the same from or through him, or from "his property, or on his credit."

The relevant circumstances, as found by the Commissioners, are as follows. The Appellant, who was an American citizen, and her husband, who is an Englishman, were married in 1933 and lived together in London. At all material times she was ordinarily resident in the United Kingdom. Her husband was in business in this country, but in 1939 he joined the Army. Until November, 1941, he was stationed at various places in this country, and his wife continued to live in London, but frequently went to stay at hotels near where her husband was from time to time stationed. The husband spent all his periods of leave with his wife. In November, 1941, he went on active service overseas, and up to the hearing by the Special Commissioners (September, 1944) was still abroad, and had not, on account of such service, been able to return to this country at all. His wife continued to reside in London in a flat which she acquired in her own name in July, 1940, the husband's personal effects were left in her care, and the flat constituted the marital home which was at all times available to the husband should he be able to return to it. The parties frequently and regularly corresponded, and the marriage had been and remained a very happy one. It was admitted on behalf of the Respondent that, as already stated, the Appellant was "living with her husband" within the meaning of proviso (1) to the said General Rule 16.

The Crown contends (and this contention prevailed in the Court of Appeal) that the Appellant, in the relevant year, whilst admittedly "a married woman living with her husband" under the first proviso of the Rule, was at the same time "a married woman living in the "United Kingdom separate from her husband" within the meaning of the second proviso of the Rule. The Appellant, on the other hand, argues that such a contention does violence to the structure of the Rule and that the two provisos deal with contrasted situations both of which cannot exist at the same time. In other words, the Appellant says that if a married woman is "living with her husband" she cannot at the same time be said to be "living . . . separate "from her husband", and that, as it is admitted that she satisfies the condition in which the first proviso operates, none of her income can be assessed and charged in her name, and the circumstance that she and her husband were, owing to his war duties, in different places, does not and cannot involve the proposition that she is "living "separate" from him.

There can be little doubt that, if the form in which the two provisos appear is the governing consideration, a distinction between two opposed conditions is indicated. The Crown's argument that proviso (2) should be read as a qualification of proviso (1) is *prima facie* opposed to the natural construction of two provisos connected by the word "and" and apparently dealing with contrasted situations. But the Solicitor-General points to the words in the second proviso, "whether the husband be temporarily absent from "her or from the United Kingdom or otherwise", and urges that temporary absence of the husband is consistent with the fact that the wife was "living with her husband". The argument then is that temporary absence is a form of separation dealt with in the second

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proviso and that it is therefore quite possible and indeed necessary to read proviso (2) as a qualification of proviso (1). If this is not the correct interpretation, why, it is asked, is temporary absence mentioned at all?

A further argument used to support the Crown's view is that if proviso (2) applies only in cases where proviso (1) does not apply, then it is surplusage, since the first words of the Rule in themselves make a married woman who is not living with her husband assessable and chargeable to tax if she is entitled to any property or profits to her separate use. This second argument can, I think, be disposed of at once, for the language of proviso (2) is not in terms addressed to property or profits to which a married woman is entitled to her separate use, but deals with the special case of allowance or remittance from property out of the United Kingdom. Moreover, the last words of proviso (2) dealing with receipts from the husband are not under any construction surplusage. This second argument therefore fails.

The first argument, however, raises a difficult point; the considerations on either side are set out in the contrasting judgments of Macnaghten, J., and of the Court of Appeal.

I have reached the conclusion that the two provisos deal with contrasted situations and that the second ought not to be read as a qualification of the first. The first deals with the case where there has been no rupture of marital relations and the parties are living together in the ordinary way of man and wife. The fact that one of them is physically away from the other for a time, even for a long time, whether from duty or illness or other cause, is no reason for saying that the wife is not "living with her "husband".

The finding of the Commissioners that the Appellant in this case was ordinarily resident in the United Kingdom involves this, that her husband was also a resident here in the Income Tax sense, although he may have been for a time physically abroad. The marital home was here and it was the home of both of them. The Commissioners therefore rightly found, and the Crown rightly admitted, that the Appellant was, notwithstanding her husband's absence, "living with her husband".

The second proviso, in my opinion, deals with the contrasted case where there has been a rupture in normal matrimonial relations. This may arise from a decree of judicial separation, or from the parties executing a deed of separation, or from a more informal agreement between the spouses that they will not live together. In such circumstances proviso (2) applies and the operation of the opening words of the Rule do not nullify anything in the first proviso. I do not find so much difficulty in construing the words in proviso (2) specially relied upon by the Crown as appears to have been felt in the Court of Appeal. The case may arise in which a husband and wife, who have not been getting on well together, may agree that they will live separate from one another for a time, say, a couple of years, and will then see whether it would not be better to come together again and live in a common home as an ordinary man and wife. I should suppose that such an arrangement is not infrequently brought about by the intervention of parents

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or other friends as a way of obviating more serious steps. It may be the means of saving the marriage in the long run.

As for the words "or otherwise" to which Scott, L.J., said he could give no meaning, I think they cover a case where the separation is permanent and the husband's absence has no set limit. If the phrase about temporary absence was not included in proviso (2), a married woman whom it was sought to assess and charge under that proviso might argue that the proviso did not apply because her husband would be returning to her after a time, or that, though he was physically absent, he was still in the United Kingdom. The phrase which is supposed to create so much difficulty would at any rate meet that argument. But there is a further point. As proviso (2) stands the Crown must contend that without any rupture of marital relations the wife can be charged in a case where her husband has never left the United Kingdom at all but is detained at work at some place within it other than the marital home. Inasmuch as the husband would be resident in this country and would be regarded as living with his wife, though physically absent, there seems no reason why proviso (2) should be needed to apply in such a case.

The conclusion at which I arrive can therefore be broadly stated as follows. Proviso (1) deals with the case where there has been no matrimonial rupture and the wife is "living with her "husband", albeit that her husband for one reason or another is away from her for a considerable period of time. Proviso (2) deals with the contrasted case where there is a rupture in marital relations and the wife is "living in the United Kingdom separate from her "husband". The word, it will be noted, is "living", not "being".

This view accords with what was said by Rowlatt, J., in *Eadie* v. *Commissioners of Inland Revenue*, [1924] 2 K.B. 198, at page 207 (9 T.C. 1, at page 8). In the Scotch case of *Derry* v. *Commissioners of Inland Revenue*, 1927 S.C. 714 (13 T.C. 30), Mrs. Derry was held to be rightly assessed in respect of her Canadian income received here when her husband was necessarily away from her for a long period in Cairo. The grounds upon which the three Lords of Session arrived at this conclusion differed. Lord Sands and Lord Ashmore held that proviso (2) applied, and that the wife was *de facto* living in the United Kingdom separate from her husband within the meaning of that proviso; Lord Blackburn reached his conclusion on the ground that the principal words of the Rule applied, and that there was ample evidence to justify a finding that the terms of proviso (1) did not apply. It will be observed, therefore, that none of the Judges sought to read proviso (2) as a qualification upon proviso (1). In so far as the decision involves the view that prolonged absence in itself proves that the spouses are not living together, I respectfully dissent from it.

The construction which I put upon this crabbed and involved piece of legislation avoids the necessity of discussing other difficulties which might have to be dealt with if the Crown's main contention were right. If a married woman who is living with her husband can at the same time be a married woman living separate from her husband on the ground that he is physically absent from her, for how long has this absence to persist? It was suggested, I understand, that the absence must be for a whole year, though I see nothing in the words to say so. And which year, the year of

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assessment or the previous year? These difficulties, however, do not now arise.

I move that the appeal be allowed with costs, and that the judgment of Macnaghten, J., be restored.

Lord Porter.—My Lords, I have had an opportunity of reading the speech just delivered by my noble and learned friend on the Woolsack, and find myself so much in agreement with it that I have not thought it necessary to add any observations of my own.

Lord Uthwatt.—My Lords, the provision contained in Rule 16 of the Rules to All Schedules has a long history which is set forth in the judgment given by Scott, L.J., in the Court of Appeal. That part of it which is now embodied in the second proviso made its first appearance in the Income Tax Act, 1805, and its present form does not in any material respect differ from its original form. Research inspired by curiosity has failed to reveal the reasons which led to the introduction made in 1805. It may be that the Solicitor-General is right in his conjecture that the new part when first introduced was designed as a collecting provision to deal with the case where the husbands were in India or the plantations and their wives were living in Great Britain. Other conjectures may, however, be made. I venture one. The opening part of the provision dealt only with married women who were sole traders or who were entitled to property for their separate use. No reference to separate use is contained in the new part introduced in 1805. Property received by a married woman from her husband would certainly not be property held to her separate use, and property received from abroad by her from other sources might well not be either property held to her separate use or property belonging to her husband by marital right. It may therefore be that this new provision was then intended to catch property which otherwise would escape charge. But the matter is one of historical interest only. Whatever be the reasons which led to the passing in 1805 of the new provision, those reasons cannot be of any relevance on the question of the construction of the provision as it appears in the Income Tax Act, 1918. That Act must be construed as it stands by reference to its contents.

Rule 16 of the General Rules is in the following terms :—

> "16. 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
>
> "(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 feme sole if entitled thereto "in her own right, and as the agent of the husband if

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> "she receives the same from or through him, or from his "property, or on his credit."

Your Lordships are asked by the Respondent to hold that as a matter of construction of the Rule a married woman living with her husband within the meaning of the first proviso may at the same time be a married woman living separate from her husband within the meaning of the second proviso. The Respondent contends that, upon the facts of the case, Mrs. Nugent-Head fills both descriptions.

Rule 16, one may agree, is a curious rule. The married woman who was a sole trader in 1918 stood in no different position as respects her property from any other married woman, and property held to the separate use of a married woman as that phrase is technically understood was, in 1918, uncommon. The provision does not in terms take any notice of the capacity given to married women to hold property conferred by the Married Women's Property Acts, and property held by virtue of the capacity so conferred was the common form of married women's property in 1918. Again, married women who live with their husbands are treated as exceptional persons — relegated for treatment to a proviso. Lastly, a married woman living separate from her husband who receives remittances from abroad — not I imagine a common case — is treated as one whose position demands detailed treatment. In respect of remittances from her husband or his property, she is to be taxed as his agent, and in respect of remittances from other property as a feme sole. Neither the selection of remittances from abroad for separate treatment nor the distinction between the two cases marks any intelligible taxing principle. Astonishing conclusions may indeed be expected to emerge from a rule so conceived and framed, but I am unable to come to the conclusion that it is rounded off in the way the Respondent suggests.

Upon two matters the Appellant and Respondent are agreed.

It is common ground that Rule 16 is a collecting section and not a charging section and the question at issue is therefore not whether certain profits are to be charged to Income Tax but whether it is the husband or the wife who is to be assessed in respect of those profits.

It is again common ground that a married woman is living with her husband within the meaning of the first proviso to Rule 16 when they are sharing their matrimonial life, although they may for the time being be geographically separate.

There agreement stops. The case for the Appellant is that the second proviso has no application to a married woman who is living with her husband. The case for the Respondent is that such a married woman may also be a married woman living in the United Kingdom separate from her husband within the meaning of the second proviso; and that, where such a married woman emerges for consideration, the second proviso operates as a qualification on the first proviso, with the result that in respect of allowances or remittances received by her from property out of the United Kingdom she, and not her husband, is to be charged and assessed.

The argument for the Respondent may be put concisely. Due weight must be given to the words "whether the husband be

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"temporarily absent from her or from the United Kingdom or "otherwise", and the word "temporarily" is to be emphasised. If that be done it is apparent that the proviso envisages a case where the wife is living separate from the husband by reason only of a temporary absence from her of the husband — a state of affairs which is consistent with the wife living with her husband in the sense of the first proviso. The matter does not rest there. It is apparent (and the Respondent is clearly right in this) that unless there can be a married woman who is living with her husband within the meaning of the first proviso and living separate from him within the meaning of the second proviso, the first limb of the second proviso does nothing. It merely reiterates as regards all women (not being women living with their husbands within the meaning of the first proviso) a liability to tax which has already attached to them under the opening part of the Rule. Some content must be given to the first limb of the second proviso, and that can only be done by accepting the Respondent's contention as to the meaning of the phrase "living separate" and reading the second proviso as a proviso either to the first proviso or to all the preceding parts of the Rule. Logic must reign.

My Lords, I am not prepared, in light of the peculiarities of the Rule to which I have adverted, to attach much weight to the argument of the Respondent based upon the lack of content of the first limb of the second proviso if his construction be not accepted. If that construction be not required by other considerations, the first limb of the proviso may be taken as directed to pointing the contrast between the foreign remittances to which a married woman is to be assessed as a feme sole and the foreign remittances to which she is to be assessed as agent of her husband.

Taking the lay-out of the Rule, the two provisos are governed by the one set of words "Provided that" and they are connected by the word "and". The natural reading is that each proviso is independent of the other and that each modifies only the substantive Rule. That expectation is borne out by the circumstance that the first proviso deals with the case of a married woman living with her husband and the second proviso with a married woman living separate from her husband. In the normal use of language, to say of a married woman that she lives separate from the husband is to contradict the proposition that she is living with her husband. The weight of the argument for the Respondent lies in the appearance in the second proviso of the phrase "whether the husband be temporarily absent "from her or from the United Kingdom or otherwise". Absence in some rational sense there must be, but, subject to this, that phrase includes within its embrace any form of marital absence however long or short in point of time and however great or small the geographical distance between the spouses. Resort to the words "living separate" is not legitimate in order to modify the meaning of the phrase. But in construing the proviso, the sentence must be read as a whole. The leading idea to my mind is that the wife is to be living separate from her husband and there is added the phrase in question dealing with one, and only one, of the matters involved in "living separate" — physical absence. The outstanding fact is that the phrase is put in as a parenthesis. Surely the effect of the sentence is that, given that the married woman is living in the United Kingdom

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separate from her husband, nothing else matters. Enquiry into the affairs of the matrimonial life is to be confined to the one fact, is the wife living in the United Kingdom separate from her husband ? Further delving into her matrimonial life is to be irrelevant. Taking that view of the effect of the parenthetical words, I am of the opinion that the two provisos deal with separate cases and that it is not right to treat the second proviso as in any way qualifying the first proviso.

I find it unnecessary to deal with many of the matters covered in argument. I would only say that the difficulties in the way of the Respondent are increased by the circumstance that, until 1927, the assessment on allowances and remittances from abroad was based on an average of the receipts for the previous three years, and that it is not necessary to express an opinion on the point whether the enquiry on the question whether the wife is living separate is to be addressed to the date of receipt of remittances or to the year of assessment. It is not reassuring that upon this point both these views — the one by way of alternative to the other — were put forward for your Lordships' consideration by the Respondent. The Act apparently in this regard does not bear a clear meaning to those whose duty it is to administer it consistently.

It is not for lack of respect for the opinion of those who in this and other cases have taken a contrary view as to the effect of the Rule that I do not deal with the reasons that have been given by them. I may, I trust, be forgiven for saying that it does not diminish my confidence in my own view to recall that some three not entirely consistent reasons have been given in support of the opposite conclusion.

On the facts of the case Mrs. Nugent-Head was a married woman living with her husband at all possibly relevant dates. I would, therefore, allow the appeal.

Lord du Parcq.—My Lords, the Appellant and the Respondent are agreed that the phrase "living with her husband", which qualifies the term "married woman" in the first proviso to Rule 16, is apt to describe a wife living in amity with her husband, although she may be compelled by circumstances temporarily, and it may be for a long time, to live apart from him. If there had been any argument to the contrary effect the problem before your Lordships might have presented a different aspect, but, even so, I see no reason to think that your Lordships' scrutiny of this perplexing Rule would, in the end, have produced a different result. I am content to assume that both the parties, in so far as they are agreed, are right.

If that be granted, it seems to me to be reasonably plain that, unless there is something in the context which points unmistakably to a contrary conclusion, the words "living . . . separate from her "husband" in the second proviso must be read as expressing the antithesis of "living with her husband". The Court of Appeal found a reason for rejecting this construction in the words "whether "the husband be temporarily absent from her or from the United "Kingdom or otherwise" and in the reference to "any allowance "or remittance" which the wife may receive "from or through" her husband, "or from his property, or on his credit". I do not

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myself feel that these words are any less in harmony with the construction adopted by Macnaghten, J., than with that which commended itself to the Court of Appeal. Few Judges who have had to deal with cases in which marital relations have come under review can have failed to observe that separations which are caused by a rift in the marriage are by no means inevitably permanent. Not every "desertion" (for instance) endures for the full three years which make it a sufficiently grave matrimonial offence to be ground for a divorce. As for allowances and remittances, I should have thought that nothing was more common than for a husband who has agreed with his wife that she should live separate and apart from him to perform his legal obligation and maintain her. He can only maintain her by somehow supplying her with money, which will certainly come "from or through him", and may in many instances be properly described as coming "from his property" or "on his credit".

I agree with those of your Lordships who have preceded me that Macnaghten, J., came to the right conclusion, and I would allow this appeal.

Lord Porter.—My Lords, my noble and learned friend, **Lord Oaksey,** who is unable to be present, has asked me to say that he has had an opportunity of reading the opinion of the noble Lord on the Woolsack, and he agrees with it.

Questions put:

That the Order appealed from be reversed.

The Contents have it.

That the judgment of Macnaghten, J., be restored and that the Respondent do pay the Appellant her costs here and in the Court of Appeal.

The Contents have it.

[Solicitors:—Gordon, Dodds & Co.; Solicitor of Inland Revenue.]

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