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*748 Inland Revenue Commissioners Appellants; v Hinchy Respondent.

Positive/Neutral Judicial Consideration

Court
House of Lords

Judgment Date
18 February 1960

Report Citation
[1960] 2 W.L.R. 448
[1960] A.C. 748

ICLR

House of Lords

Viscount Kilmuir L.C. , Lord Reid , Lord Radcliffe , Lord Cohen and Lord Keith of Avonholm.

1960 Jan. 11, 12, 14; Feb. 18.

Revenue—Income tax—Penalty—"Treble the tax which he ought to be "charged"—Bank interest misstated in income tax return—Additional assessment made—Claim for penalties—Power of remission— Income Tax Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 10), s. 25 (3) .

Judicial Precedent—Statute—Construction—Assumed construction for decision on different point —Whether binding.

Statute—Construction—Absurdity—Unreasonable or oppressive result—Lack of ambiguity—Tax penalty.

Statute—Construction—Consolidating Act—To be construed against background of previous sociology—Savage tax penalty—Relevance of provisions consolidated.

Statute—Construction—Same words used in other provisions—Tax penalty.

Statute—Construction—Punctuation—Acts before 1850—Irrelevance Modern Acts (post, p. 765).

Statute—Construction—Different language of different provisions—Relevance—Incongruous provisions lumped together (post, p. 766).

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The respondent, in making a return of income for the year ending April, 1952, stated that interest from his Savings Bank deposits amounted to £18 6s. In fact the interest was £51 5s. 9d., and after that was discovered an assessment was made on him. The tax on the amount understated was £14 5s. Subsequently, the Inland Revenue Commissioners, by writ dated June 15, 1956, claimed £438 13s. 6d. for penalties, being treble the total amount of tax payable by the respondent in respect of the tax year 1952-53, plus £20, under section 25 (3) of the Income Tax Act, 1952 , which provides: "A person who neglects or refuses to deliver ... a true and correct ... return which he is required under the preceding provisions of this Chapter to deliver shall - (a) if proceeded against by action in any court, forfeit the sum of £20 and treble the tax which he ought to be charged under this Act. ..."

The Crown contended that "the tax which he ought to be charged under this Act" meant the whole tax chargeable for the relevant year without deduction of P. A. Y. E. payments but excluding tax deducted at source by those who paid dividends etc. and surtax:-

Held:

(1) that the liability to the penalty must arise when the offence was committed, i.e., either, where no return has been made, when the time for making a return has expired, or, where an incorrect return has been made, when such a return has been received by the proper officer of the Revenue (post, pp. 760, 771, 775).

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(2) That the words of section 25 (3) are not ambiguous and cannot mean anything but treble the whole tax which ought to be charged for the relevant year (post, pp. 763, 769, 775, 781).

Attorney-General v. Till [1910] A.C. 50; 26 T.L.R. 134 applied .

Quaere, whether surtax should be excluded from the computation of that whole tax (post, pp. 765, 776, 777, 782).

Decision of the Court of Appeal [1959] 2 Q.B. 357; [1959] 3 W.L.R. 66; [1959] 2 All E.R. 512 reversed.

APPEAL from the Court of Appeal (Lord Evershed M.R., Ormerod and Harman L.JJ.).

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This was an appeal from an order of the Court of Appeal dated May 11, 1959, allowing in part an appeal by the appellants, the Commissioners of Inland Revenue, from a judgment of Diplock J. given on December 2, 1958, on the trial of an action for penalties under the Income Tax Act, 1952 , brought by the appellants against the respondent, Albert Edwin Hinchy, in the Queen's Bench Division of the High Court. By the judgment of Diplock J. it was adjudged that judgment should be entered for the appellants for the sum of £20 without costs, and by the order of the Court of Appeal the judgment was varied by substituting a Judgment in favour of the appellants for £62 15s. in lieu of the judgment for £20.

The facts, stated by Lord Keith of Avonholm, were as follows: The respondent filled up the prescribed form containing a return of income and claim for allowances. The return, which was in respect of the income tax year 1952-53, was dated April 19, 1952. It disclosed as arising in the year ended April 5, 1952, untaxed interest on accounts and deposits in banks, including Post Office and other savings banks, of £18 6s. 0d. In fact the Post Office Savings Bank interest credited to the respondent and his wife in that year was £51 5s. 9d. After several years' correspondence an assessment was made, on November 30, 1955, of £30 in respect of untaxed interest, tax on which at 9s. 6d. in the pound came to £14 5s. 0d. This amounted to tax on the whole £51 of Post Office Savings Bank interest, for £21, part of his personal allowance, was deducted from the £51, leaving a net sum of £30. On March 9, 1956, a Schedule E assessment was issued, in respect of the respondent's employment, amounting, after allowances, to £427, on which tax was computed of £125 6s. 6d. These two assessments, apart from some Schedule A assessment, otherwise settled by allowances, constituted the respondent's whole tax liability for the tax year 1952-53. Liability in respect of a Schedule E assessment was computed on income arising in ***750** the tax year and was subject of direct assessment. It was not income from which tax was deducted at the source. The liability in respect of the savings bank interest, on the other hand, fell to be computed on the income arising in the preceding year, 1951-52. The respondent's total liability to tax for the year 1952-53, as so assessed and charged, was thus £139 11s. 6d., the sum of £14 5s. 0d. and £125 6s. 6d. The next material date was June 13, 1956, the date of issue of the writ for penalties. The claim made by the writ was for £438 14s. 6d., being penalty, under section 25 (3) of the Income Tax Act, 1952 , of £20 and treble the tax on £139 11s. 6d.

Sir Reginald Manningham-Buller Q.C., A.-G., John Pennycuick Q.C. and *Alan Orr* for the appellants. The only question is the meaning of "treble the tax which he ought to be charged under this Act" in section 25 (3) of the Income Tax Act, 1952 . It is the sum for which the respondent had to be sued if he was sued at all. The case is important because (a) if the Court of Appeal was right the Revenue has been following the wrong practice for over a century, and (b) it is essential that the Income Tax Acts should be revised and, for that purpose, the meaning of these words must be decided in the House of Lords now, for if the revision were made on the basis of the Court of Appeal's decision and it were later held to be wrong, the whole revision would be thrown out of gear.

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Section 25 (3) (a) originates from section 55 of the Income Tax Act, 1842 . The only change, so far as the commissioners are concerned, is the substitution of the word "tax" for "duty." The meaning of the relevant words is that the defaulter is liable for treble the total sum which he ought to be charged if assessed under the Act and not, in the case of an incorrect return, treble the tax due on the amount which he has failed to disclose; very different language would secure the latter result. In section 55 there is no reference to a true and correct list, declaration, statement or return.

The only case of any relevance on section 55 is *Attorney-General v. Till.* [1] In the Court of Appeal Cozens-Hardy M.R. and Fletcher Moulton L.J. thought the penalty inappropriate for an inaccurate return. The House of Lords reversed the Court of Appeal, but there was no direct reference to the views of the ***751** court below on the extent of the penalty. It is inconceivable that, if the Lords had thought that view wrong, they would not have said so. If they had thought that the liability imposed was only £20 plus treble the tax due on the sum not disclosed they would have made it clear, but they did not do so.

Liability to the penalty arises on the default either in sending in no return or in sending in an inaccurate one. Under section 55 of the Act of 1842 all the duty which ought to be charged had to be found out and multiplied by three. The same calculation must be made under section 25 (3) of the Act of 1952, which is intended to refer to all the tax which ought to be charged, not just to the tax on the income which should have been disclosed but was not. The liability to treble tax is always the same: see section 107 of the Income Tax Act, 1918 , and *Attorney-General v. Johnstone.* [2] Section 23 (2) of the Finance Act, 1923 , which reduced the penalty maintained in section 107 of the Act of 1918 to £20, is replaced by section 25 (3) of the Act of 1952.

The amount which a taxpayer "ought to be charged under this Act" is the same whether he has made no return or an incomplete return. It does not depend on any action by the Revenue: see Simon's Income Tax, 2nd ed., p. 290, para. 417. There is no authority for the statement in Konstam's Income Tax, 12th ed., para. 383, which ignores *Till's* case. [3] It is not what the Act says. Before one can find out the maximum penalty one must find out what is the tax which the taxpayer "ought to be charged under this Act." Assessment is the only way in which it can be finally determined; it quantifies the liability: see sections 35, 36 (2), 37 and 50 (2) of the Income Tax Act, 1952 . In this case there was no appeal against the assessments, which are therefore final and conclusive as to the tax which the respondent should be charged for the year 1952-53.

The conclusion that liability arises at the time of default and that quantification of the liability is by assessment is supported by the Irish case of *Attorney-General v. White.* [4] Failure to appeal against the assessment makes the amount final and conclusive.

Section 25 (3) of the Act of 1952 refers to "the preceding provisions of this Chapter." See, therefore, sections 18 (2), 19 and 20 , dealing with returns. Section 19 deals with the return by an individual of his previous year's income from all sources. ***752** Section 20 deals with the return of the current year's chargeable income under the respective Schedules. The background of these two sections

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is the fact that by the Finance Act, 1927 , super tax was replaced by surtax, a deferred instalment of the income tax of the preceding year. One result of that was that there was no need for separate returns for the two taxes: see section 43 (3) of the Act of 1927 - now section 25 (1) of the Act of 1952 - which provided that no person should be required to make more than one return annually of the sources of his income and the amounts derived therefrom. "Person" includes a company (which is not liable to surtax) as well as an individual, but it would be pointless to require companies, not liable to surtax, to return, for instance, dividends already charged to tax. Section 43 (1) of the Finance Act, 1927 - the provisions of which are now contained in section 19 of the Act of 1952 - required a true and correct return of all the sources of income and the amount derived from each source, and section 19 now provides the basis for income tax and surtax assessment. Section 20 of the Act of 1952 (containing the provisions formerly in section 100 of the Income Tax Act, 1918) deals with returns of profits requiring to be taxed.

Four sections of the Act of 1952, all of which impose duties, a breach of which involves penalties under section 25 , are section 21 (section 53 of the Act of 1842), section 22 (section 21 of the Act of 1842), section 23 (section 50 of the Act of 1842) and section 24 (section 52 of the Act of 1842). In the same way a breach of the provisions of their predecessors involved liability to penalties under section 55 of the Act of 1842. The present penalty provision applies, as did its predecessor, to a wide range of offences, some serious, some trivial. Until 1923 the treble tax was only a ceiling; the matter was left to the commissioners. Ever since 1842 the penalties imposed for the same sort of conduct have been likely to vary enormously as between one person and another, both equally at fault. This was obvious at the time of *Till's* case [5] and *Johnston's* case. [6] The construction of section 25 (3) is one thing and cannot be affected because Parliament has applied it to sections to which, perhaps, it should not apply: see sections 30, 27, 28 (now repealed by section 44 (9) and Schedule V, Part I, of the Finance Act, 1956) and section 29 .

Until 1923 the penalty of £20 and treble tax was the maximum; the commissioners could fix the penalty to suit the offence, but in 1923, when the penalty obtainable in an action was reduced from £50 to £20, treble tax was made recoverable ***753*** in the courts. The words "not exceeding" were left out (section 23 (2) of the Finance Act, 1923). But this omission cannot affect the construction of the words "treble the tax [or duty] which he ought to be charged under this Act." There has been speculation on the reason for the omission. Parliament may not have wished to put on the courts the burden of making a full investigation into the circumstances of every tax case.

In 1842 Parliament imposed a very heavy liability for all breaches of tax law and left it to the commissioners to decide what was appropriate. In section 25 (3) of the Act of 1952 the penalty is the same. Parliament may have deliberately fixed the penalty very high so as to be sure of penalising the worst cases, at the same time giving those charged with the duty of collecting the Revenue ample powers to avoid the scandal of fancy penalties: see sections 500, 55 and 25 (5) of the Act of 1952.

In 1842 when this liability was imposed the specific financial penalty was in many cases likely to be more important to a taxpayer than treble his total tax liability. Take a man with a professional or

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business income of £1,000 a year and £50 investment income untaxed and £200 investment income taxed at, source, a man of substance. Until 1920, when there was a new system of allowances and deductions, there was no difference, whether he was a bachelor or a married man, with or without children. In 1855 the rate of income tax was 1s. 4d. in the £; in 1875 it was 2d. These rates represented the high and the low watermark of income tax in the eighteen-fifties and eighteen-seventies. At those rates the tax on the income supposed would be, respectively, about £55 10s. and £6 18s. 10d. Thus, the treble tax did not then attain astronomical proportions, whereas in 1952-53 the same income would give rise to a liability of £217 in the case of a bachelor, £174 5s. in the case of a married man and £93 10s. in the case of a married man with two children. Nevertheless, the increase cannot alter the meaning of the words.

The change to treble tax in section 48 (1) of the Act of 1952 (corresponding to section 178 of the Act of 1842) is in words having the same meaning as those in section 25 (3). Section 25 (3) cannot be read as containing the proviso which is in section 48 (1). In paragraph 4 of Schedule VI the provision for "treble the tax in respect of all the sources of his income" has been interpreted as including tax deducted at source: *Lord Advocate v. M'Laren.* [7]

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The language and meaning of section 25 (3) are plain and difficulty only arises if one tries to give them a special meaning to lessen their impact on some of the cases to which they apply. It is true that the court has no discretion; Parliament has left that with the commissioners: section 500 . It is highly improbable that penalty proceedings would be started for an understatement or overstatement of £1. If the taxpayer discovers his mistake he can avoid all liability to penalty by recourse to section 55 (1) . The Revenue has never claimed that the surtax liability should be trebled, and it is only since the consolidation Act of 1952, when the charge to both income tax and surtax was consolidated into one Act, that for the first time it could be argued that the words "under this Act" include surtax. The wide powers of the Revenue and the Treasury to mitigate the penalties are a recognition that the courts may be required to give judgment for a larger penalty than would appear to be fair.

Section 25 (like its predecessor) applies to many cases where the person making the return has fully disclosed his whole income: see section 23 (lists of lodgers and inmates), section 27 (lists of employees) and section 29 (bank's untaxed interest). If the decisions below are right the penalty for breach of these provisions, however serious, can only be £20. Parliament could not have intended that.

Assessment is essential to quantify the penalty. The court cannot assess the tax liability and, if it did, that would not be binding on the commissioners. If on a subsequent appeal to the commissioners the assessment was reduced below the court's figure the penalty would then have exceeded three times the tax which the taxpayer ought to be charged.

In the case of fraud the Revenue could use section 48 , but it is far simpler to use section 25 (3) and paragraph 4 of Schedule VI , and not to undertake the burden of proving fraud. Thus, section 48 is rather a piece of dead wood.

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The offence is committed when the time for making the return has expired without a return having been made or when a false return is made. Immediately there arises, and since 1842 there has arisen, liability to treble the tax or duty which the taxpayer ought to be charged under the Act. If one asks what ought to be charged under the Act, one expects to be told the total liability. That answer is not affected by the fact that an assessment could be made on some of the income which the taxpayer has disclosed. An assessment can be made when there is no **755* return at all. There is no logicality in the penal code. The other sections are no safe guide to the construction of section 25 (3), which should be considered by itself. The meaning of the phrase "tax he ought to be charged under the Act" has not changed since 1842. It did not change in 1923. The words must have the same meaning as in section 18 (2) of the Act of 1952, where they could not mean the difference between the taxpayer's total liability and his liability on the income which he has disclosed, because that section is dealing with the case where no return at all has been made. So the answer to the question, what ought X to be charged under the Act of 1952? is simply the total sum which he is liable to pay on assessment. It is true that this view produces anomalies, but there are bound to be anomalies, whichever way the case is decided.

When an incorrect return has been made, there are three possibilities in relation to the assessment: (1) The taxpayer may be assessed on his return before it is found to be incorrect. (2) He may be assessed on a different figure from that shown on his return. (3) He may not be assessed at all on his return because (as in the present case) the inspector before assessing him may have made inquiries. Thus, assessment has no effect on the quantum of the liability which arises on default to render a true and correct return. The proviso to section 48 (1) of the Act of 1952 operates if there has been an assessment; if the Court of Appeal is right that proviso must be read into section 25 (3).

The Court of Appeal was greatly affected by the anomalies which it considered would arise on the application of the Crown's contentions to the provisions of sections 21, 22, 27 and 29 of the Act of 1952. But, as against this, there is the meaning of the phrase in question; it is capable of only one meaning.

The history of the provision in question starts with section 55 of the Act of 1842. In *Till's* case [8] it was held that it applied to a failure to deliver a true and correct return. Since 1918 that cannot be challenged. The penalty, though severe, is not so severe as to compel the rejection of the natural meaning of the phrase in question, especially having regard to the powers of mitigation. Compare the wording of section 441 (4) of the Act of 1952 and section 111 of the Income Tax Act, 1806 .

It if a possible construction of section 25 (3) of the Act of 1952 and section 55 of the Act of 1842 that it is to be inferred that the liability to treble tax only arises in relation to a return **756* of income by a person chargeable to tax and is then three times the tax liability chargeable to him in that capacity.

There are three possible views: (a) that treble tax means what the Crown says it does and applies to these provisions; (b) that it means what the Crown says, but only applies when the defaulter

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is making a return of income and in some capacity is chargeable to tax and then three times his tax liability in that capacity; (c) that "tax which he ought to be charged under this Act" means something less than his total liability to tax, which would involve writing something into section 25 (3) which is not there, something like the proviso to section 48, a thing not permissible because it would amount to legislating. As to the second possibility mentioned, under section 21 of the Act of 1952, dealing with returns by persons acting for others, the person making the return is chargeable, and "treble the tax he ought to be charged under this Act" means treble the tax he ought to be charged in that capacity. Under sections 22, 23, 27 and 29 there is no chargeability.

It is not possible to fit the penalty sections into a logical pattern, but some help can be got from sections 18 and 49 (2) and paragraph 4 of Schedule VI and by comparison with sections 48 and 49 (1) . The tax which X ought to pay under the Act of 1952 in any one year must be his total liability. If one were construing section 18 alone, that is the only conclusion one could reach. The meaning must be the same in both the sub-paragraphs of section 25 (3): see also section 107 of the Act of 1918 (both before and after the amendment in 1923) and section 55 of the Act of 1842. When properly construed, the words are capable of only one meaning. The meaning given them by the Court of Appeal in this case amounts to a rewriting. That is not right.

Liability to pay treble the tax which he ought to be charged under the Act only arises when the defaulter is either personally or in some specified capacity chargeable to tax, and then the sum to be trebled is that for which he is properly chargeable in that capacity.

The Revenue practice has not been challenged till now: see *Lochgelly Iron and Coal Co. Ltd. v. M'Mullan* [9] and *Income Tax Special Commissioners v. Pemsel.* [10]

John Pennycuick Q.C. following. Section 23 (3) of the Act ***757*** of 1952 should be given its natural construction. Under section 19 the obligation on the taxpayer is to perform a single act, to deliver a true and correct return in the prescribed form of all the sources of his income - a single act which he either performs or fails to perform. If he fails to perform it, he is liable to the penalty. There is no question of partial performance: see *Till's* case. [11] The penalty depends, not on the nature of the default but on the terms in which the penalty itself is prescribed - "treble the tax which he ought to be charged under this Act." These words are capable of only one meaning; they denote treble the whole of the income tax to which the defaulter is chargeable by direct assessment for the year of assessment in question. The Court of Appeal took the view that the words were capable of a different interpretation. [12]

One basis which the Court of Appeal seems to suggest is that one must take the point of time when the assessment has been made, see what assessment has been made and calculate the penalty on the amount of the income which has remained unassessed by reason of the incorrect return. But it is only after the return has been made and considered that the commissioners make the assessment for the year of assessment, and if the true view that "the tax which he ought to be charged under the Act" is the tax not yet assessed at the date of the default, the words would refer to the whole tax for that year. The offence of the taxpayer was committed once and for all.

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But the Court of Appeal apparently intended to indicate as the proper basis for the computation of the penalty, the tax appropriate to the undisclosed income, the tax referable to the income omitted from the return. If there were no allowances and reliefs, and tax were at a flat rate, that might be workable. But if the view of the Court of Appeal was right, it would have been properly expressed in a statute by a provision to the effect that the penalty was to be "treble the excess of the tax chargeable on the basis of a true and correct return over the tax chargeable on the basis of the return actually delivered." But those words cannot be written into section 25 (3). To do so would not be to construe the section. The courts are not entitled to read words into an Act: see *Vickers, Sons & Maxim Ltd. v. Evans.* [13] Where there is an ambiguity the court will prefer a meaning ***758** which does not produce oppressive results, but if the words are not ambiguous the court must give effect to them. Before the court can read into an Act words which are not there, it must be satisfied that something which was intended to be included has been left out, and also it must be satisfied what that something is. This requirement is not satisfied here.

Section 25 (3) should be contrasted with section 48 where one is looking back, whereas here one is looking forward.

The respondent did not appear and was not represented.

Their Lordships took time for consideration.

February 18. VISCOUNT KILMUIR L.C.

My Lords, this is an appeal from an order of the Court of Appeal (Lord Evershed M.R., Ormerod and Harman L.JJ.) in England, allowing in part an appeal by the appellants from a judgment of Diplock J. on the trial of an action for penalties under the Income Tax Act, 1952 . Diplock J. held that judgment should be entered for the appellants for the sum of £20 without costs, while the Court of Appeal substituted a judgment in favour of the appellants for £62 15s. The Court of Appeal thus added to the sum of £20 treble the tax on the amount which would have escaped taxation had a return made by the respondent formed the basis of assessment.

The facts are that on April 19, 1952, the respondent filled up the prescribed form containing a return of income and claim for allowances for the income tax year 1952-53. In that return he set out the figures of £18 6s. as the bank interest. In fact the correct amount of his income from that source in the year ending April 5, 1952, was £51 5s. 9d.

In order to appreciate the basis of the judgments of the courts below it is material to observe that no assessment was ever made on Mr. Hinchy on the basis of his incorrect return, that the only assessment made on him for the relevant year was made after the correct amount had been discovered, and that this assessment in respect of all the tax for which he was liable for that year was made before the issue of the writ on June 13, 1956.

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These facts raise the question of the construction of subsection (3) of section 25 of the Income Tax Act, 1952 , which provides: "A person who neglects or refuses to deliver, within the time limited in any notice served on him, or wilfully makes delay in delivering, a true and correct list, declaration, statement or return which he is required under the preceding provisions of this Chapter to deliver shall - (a) if proceeded *759 against by action in any court, forfeit the sum of £20 and treble the tax which he ought to be charged under this Act; or (b) if proceeded against before the General Commissioners, forfeit a sum not exceeding £20 and treble the tax which he ought to be charged under this Act, and where he is proceeded against before the General Commissioners, the penalty shall be recovered in the same manner as any other penalty under this Act, and the increased tax shall be added to the assessment."

The argument for the Crown which was developed before Diplock J., and later before the Court of Appeal, may be summarised as follows: The penalty imposed by the said section 25 (3), in the case of proceedings by action in a court, is a fixed penalty which the court (unlike the General Commissioners, in proceedings brought before those commissioners) has been given by the legislature no power to mitigate but which the Commissioners of Inland Revenue or the Treasury may mitigate under section 500 of the Act. The said penalty has been applied by the legislature to a very wide variety of defaults. It embraces cases in which no return has been delivered at all, cases in which an incorrect return has been delivered, and cases (as under section 27 , requiring the delivery by employers of lists of their employees) where a duty is cast upon one person to deliver a document relating to the tax liability of another, and where default in performing such duty can have no bearing on the ascertainment of the defaulter's own liability to tax. It applies irrespective of whether there has been fraud on the part of the defaulter and to cases in which there has been a serious, trivial, or even no direct, loss of tax to the Revenue. But the penalty applied to all these cases is a single penalty, and on the true construction of the relevant words in section 25 (3) (which must, it was submitted, be given the same construction as the corresponding words applied to proceedings before General Commissioners in section 55 of the Income Tax Act, 1842) such penalty is a penalty of £20 and treble the total tax to which the defaulter is chargeable by direct assessment for the year of assessment in question; the words "ought to be charged" limiting the ambit of the penalty to such tax as could be directly assessed on the defaulter, and there being in this respect a material difference in the wording of section 25 (3) and the wording "treble the tax chargeable in respect of all the sources of his income" of paragraph 4 of Schedule VI of the Income Tax Act, 1952 . It was further contended that the penalty could not be made to work in all the cases to which it is *760 made applicable if it were construed as limited to treble the tax avoided by the default; and that if the legislature had intended the subsection to bear this meaning it would have used the phraseology to be found in section 48 of the Act. The Crown's construction of the words had not, so far as was known, ever been challenged in the period of over a century which had elapsed since the enactment of the Income Tax Act, 1842 .

Diplock J. took the view that the consequence of the construction of section 25 (3) contended for by the Crown seemed to him to be absurd and unjust, and if there was some other possible construction, consistent with the words, which led to results less absurd and unjust, he would be inclined to adopt it. In his view, there was such an alternative construction, for it seemed to him

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that a reasonable meaning of the words "the tax which he ought to be charged under this Act" was the tax to which the taxpayer ought to be duly assessed, but to which he had not been duly assessed by reason of the default; that is to say, the increased tax which, when one looked at the latter part of the subsection, was to be added to the assessment. In this respect he thought that section 48 of the Income Tax Act, 1952 (dealing with penalties for fraud), expressed in clearer and lengthier language what was intended to be conveyed by the elliptical expression in section 25 (3).

This construction raised the question of determining at what point of time one must ascertain the amount of tax which the taxpayer ought to be charged, and Diplock J. gave the answer of the date at which the proceedings, whether before the court or the General Commissioners, are brought. As, therefore, in the present case the proceedings had been commenced after the respondent had been charged with all the tax for which he was liable, there was at the date of the commencement of the action no tax with which he ought to be charged under the Act, and the only amount recoverable was the fixed penalty of £20.

Like the Court of Appeal, I regret that I am unable to accept this view as to the point of time. Its result would be that if the error were discovered before the assessment was made, the making of the correct assessment would eradicate that portion of the penalty arrived at by multiplying the tax. I cannot accept this. The liability to the penalty must, in my view, arise when the offence is committed, that is, when no return is made, when the time for making a return has expired, or, where an incorrect return has been made, when such a return has been received by the commissioners.

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The Court of Appeal did, however, approve of the antecedent reasoning of Diplock J. and the gist of their view is expressed in the following quotation [14] : "So, as a matter of English, it seems to us at least a legitimate interpretation of the phrase 'tax which he ought to be charged' to limit its significance to that amount of tax with which, at the relevant point of time, the taxpayer ought to be charged but with which he has not been charged by reason of his defective return: in other words, the tax appropriate to the undisclosed income."

The difficulty of the view of the Court of Appeal is that this expression appears to predicate that there has been an assessment by which the taxpayer has been charged with the lesser amount by reason of his defective return, and that this forms the basis of the penalty under section 25. It is unfortunate that the Court of Appeal do not seem to have appreciated that there had been no assessment on the respondent on the basis of the incorrect return which could play its part in the quantification of the penalty. In this case, as in many others, there is not, to use the language of the Court of Appeal, [15] "tax ... with which he [the taxpayer] has not been charged by reason of the defective return." He has not been charged because the time for charging him has not yet arrived. When that time does come, non constat that the return will have any causative effect on his assessment. The latter may be based on other information, and in the case of income under Schedule E must be based on his income in the current and not the past year. It is an essential constituent of this problem that at the time of the commission of an offence under section 25,

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assessment may be in the future whereas, under section 48 (the fraud section), assessment must be in the past.

Nevertheless, although the concluding reasoning of the Court of Appeal does not, in my opinion, fit the facts of this case or the general procedure of taxation, it would be wrong to ignore what the Attorney-General termed the "underlying thought of that judgment." They considered that the penalty provisions produced minimum penalties wholly unrelated to the extent of the default, so extravagant as to be shocking in a final provision, and at least one anomaly which might well be thought to run quite contrary to ordinary justice. They considered that the penalties were so unfair and unjust and contained variations so numerous and illogical as to produce, in their view, the result that no safe view could be got, from other sections of the Act, ***762** in the attempt to construe section 25. Although they did not use the words of Lord Loreburn in *Attorney-General v. Till,* [16] that the penalties were "unreasonable or oppressive," yet they clearly considered them to be of that nature. I asked Mr. Pennycuick what was his submission as to the law which should guide the court in construing provisions which appeared to be oppressive and unreasonable. His answer was that if there were any ambiguity the court would prefer that construction which did not lead to an oppressive and unreasonable conclusion, but if the words were clear, then they had to be given full effect whether or not that effect was unreasonable or oppressive. He submitted that there was no ambiguity in this case.

Bearing this in mind and also the fact that the respondent was not represented, I have tried to formulate an argument implicit in the words of the section. I remind myself that the effect of the decision of this House in *Attorney-General v. Till* [17] was to rewrite this section in the sense: "A person who neglects to deliver any return or who delivers a return which is not correct is liable to the penalty." As the section can look to the future, can the words creating the penalty be extended distributively and respectively so that the penalty becomes the sum of £20 and treble the whole tax which he ought to be charged under this Act where he neglects to deliver a return, and in the case of an incorrect return, the sum of £20 and treble the tax on the amount which would have escaped taxation if the incorrect return made by the respondent had formed the basis of assessment? I cannot give this meaning to the words. So to do would entail the making of an artificial assessment on the basis of the return, the making of the true assessment and the subtracting of the one from the other. I do not pause to speculate on the hypothetical difficulties of policy and procedure which might arise. I am content to say that to add the necessary words would, in my opinion, be legislation and not construction.

I also tried to consider whether, on the assumption of an ambiguity, I could gain assistance from the fact that the element of treble tax was attached to penalties after proceedings in court, by section 23 (2) of the Finance Act, 1923 , which also changed the penalty for abettors of fraud in what is now section 48 of the Income Tax Act, 1952 . Again I could find nothing to drive me to a recondite secondary meaning. I cannot ignore the fact that ***763** a multiplier of the tax with which he ought to be charged was made a constituent of the penalty for the equivalent of this offence by section 118 of the Act of 1805. I cannot believe that, in the year of Trafalgar and Austerlitz, Parliament was considering such a refinement as the present argument entails. The more, however, I consider

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the piecemeal additions of the last 150 years, the more glad I am of the assurance of the Attorney-General that the penalties are being reconsidered.

Moreover, although the present point was not argued, it was assumed that "treble the tax which he ought to be charged under this Act" meant treble the whole tax for the relevant year by two members of the Court of Appeal [18] and by Lord Atkinson in *Attorney-General v. Till,* [19] by Rowlatt J. in *Attorney-General v. Johnstone,* [20] inferentially by the Court of Session in *Lord Advocate v. M'Laren* [21] and by the High Court and Supreme Court of what was then the Saorstat Eireann in the unreported case of *Attorney-General v. White.* [22] It is impossible, in my view, to give the words a different meaning in that part of the subsection which applies to proceedings before the commissioners from that which applies to proceedings in court, although in the case of the commissioners it is a maximum and not a fixed penalty.

I have, therefore, come to the conclusion that the words must bear their ordinary meaning and that this appeal must be allowed.

At the request of the Revenue there will be no order for costs.

LORD REID.

My Lords, if the appellants, the Commissioners of Inland Revenue, are right in their main contention, any taxpayer who makes a mistake in his annual income tax return and has not discovered and rectified it must, if he is sued, be subjected by the court to a penalty of £20 and treble the whole tax which he ought to be charged for the year; that penalty is in addition to the tax which he normally has to pay. It does not matter how innocent the mistake may have been or how large the penalty may be, the court has no power to modify or reduce the penalty, although such a penalty, with the modern rates of income tax, would be ruinous to most taxpayers with moderate or large incomes. The commissioners maintain that the only remedy lies with them, and that it is for them in their sole and unfettered discretion (unless the Treasury choose to interfere) to determine ***764** what they think would be a proper penalty in each case and to reduce the penalty imposed by the court accordingly.

The commissioners have, in fact, exercised this power for a long time, and it is no doubt a tribute to the way in which they have exercised their discretion that this appears to be the first time that the extent of their power has been challenged in court, and that it has been possible to delay for so long the revision of the penalty provisions in the Income Tax Acts, although the need for such revision had long been evident.

The incongruities and anomalies in these penalty provisions have a very long history. Some had their origins in the Income Tax Acts of 1799, 1803 and 1806, and even in the Act of 1842 there were already serious anomalies. But in those days the rate of tax was low and penalties based on

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the total amount of tax payable were probably not oppressive. and this is not the only chapter of the law in which ill-conceived provisions introduced by temporary Acts with limited application have long survived without any radical revision and have to be applied in circumstances very different from those which existed at their origin.

This case turns on the proper construction of section 25 (3) of the Income Tax Act, 1952 . [His Lordship read the subsection and continued:]

In a somewhat similar provision in the Act of 1799 the penalty was simply £20. Then, after some amendments, the Act of 1842, section 55, provided: "And be it enacted, that if any person who ought by this Act to deliver any list, declaration or statement as aforesaid shall refuse or neglect so to do within the time limited in such notice, or shall under any pretence wilfully delay the delivery thereof, and if information thereof shall be given, and the proceedings thereupon shall be had, before the commissioners acting in the execution of this Act, every such person shall forfeit any sum not exceeding £20, and treble the duty at which such person ought to be charged by virtue of this Act, such penalty to be recovered as any penalty contained in this Act is by law recoverable, and the increased duty to be added to the assessment, ...; and every person who shall be prosecuted for any such offence by action or information in any of Her Majesty's courts, and who shall not have been assessed in treble the duty as aforesaid, shall forfeit the sum of £50."

In the Act, as printed by the Queen's Printer, there is a comma after £20 in the passage "shall forfeit any sum not exceeding twenty pounds, and treble the duty. ..." An argument was *765 submitted that this comma showed that "not exceeding" only governed "£20" and did not apply to "and treble the duty," so that the General Commissioners only had power to reduce the £20 and had no power to reduce that part of the penalty which consisted of treble duty. But before 1850 there was no punctuation in the manuscript copy of an Act which received the Royal Assent, and it does not appear that the printers had any statutory authority to insert punctuation thereafter. So even if punctuation in more modern Acts can be looked at (which is very doubtful), I do not think that one can have any regard to punctuation in older Acts. and omitting the comma I would hold that the whole of the penalty was subject to modification under the Act of 1842. There is now no comma in section 25 (3) (b) and, in my view, if proceedings are now taken before the General Commissioners they are entitled to reduce the penalty of treble tax.

In 1842, if the matter was taken before a court there was a fixed penalty of £50: with the low rates of tax then in force £50 was presumably thought at least comparable with £20 plus treble tax. Under the Act of 1918, section 107 , the penalty which a court could impose was still only £50, but the rise in the rates of income tax made that an inadequate penalty in many cases, and the provision which now appears in section 25 (3) (a) was introduced by the Finance Act, 1923, s. 23 (2) .

Before dealing with the crucial question in this case, the proper construction of section 25 (3) (a), there are several matters which it may be convenient to deal with at this stage. The appellants submitted that this subsection is governed by section 25 (2) , so that it only applies if the return or other statement was not true and correct to the best of the judgment and belief of the person

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making it. We were informed that the commissioners never take action under this section unless they think that the declaration required by subsection (2) was not truly made, but I can find no basis in law for it being a defence to an action to prove that the return or statement was made to the best of the judgment and belief of the defendant. The offence is not delivering a true and correct return, and if, in fact, it is not true and correct, the penalty follows as a matter of course.

Then it was said that whatever be the true meaning of "the tax which he ought to be charged under this Act," it cannot include either surtax or tax deducted at source by those who pay dividends, etc. It is not necessary to decide those matters in this case, and I will only say, particularly with regard to surtax, that ***766** I am not convinced that these are excluded, and that in any revision of this and other provisions this ought to be made clear.

In determining the proper construction of section 25 (3) one must bear in mind that the subsection applies to other things as well as a return of the taxpayer's own income it applies to any list, etc., which he is required to deliver under a number of other sections. Under section 21 he may be required in certain cases to make a return of another person's income and to submit to being charged to tax in respect of it. Under section 22 he must render a statement of money received by him on behalf of another person. Under section 23 he must deliver a list of lodgers and inmates of his dwelling-house. and section 30 applies the provisions of section 25 to lists of employees (section 27), and commissions (section 28), and interest paid to others (section 29).

I do not propose to examine the other penalty provisions in the Act of 1952. It is no doubt true that every Act should be read as a whole, but that is, I think, because one assumes that in drafting one clause of a Bill the draftsman had in mind the language and substance of other clauses, and attributes to Parliament a comprehension of the whole Act. But where, as here, quite incongruous provisions are lumped together and it is impossible to suppose that anyone, draftsman or Parliament, ever considered one of these sections in light of another, I think that it would be just as misleading to base conclusions on the different language of different sections as it is to base conclusions on the different language of sections in different Acts. As an example of incongruity I need only refer to the admitted fact that the penalty in sections dealing expressly with fraud is less than the penalty under section 25 (if the appellants' construction of section 25 is right) for errors which may only be due to mistake.

I can now state what I understand to be the rival contentions as to the meaning of section 25 (3). The appellants contend that "treble the tax which he ought to be charged under this Act" means treble his whole liability to income tax for the year in question (less surtax and tax deducted at source, as I have already explained). It is not so easy to state the contrary contention briefly and accurately. Unfortunately, the respondent was not represented in this House. That was due to no fault of the appellants, and the Attorney-General very properly drew your Lordships' attention to points on which counsel for the respondent might have relied, but that is not altogether an adequate substitute for an argument for the respondent.

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Broadly, the contention is that it cannot have been intended *767 that that which would have been chargeable in any event on the inaccurate return which was sent in should enter into the computation of the penalty, that the penalty must have been intended to have some relation to the offence, and that the tax which he ought to be charged must be the additional tax which he ought to be charged by reason of the discovery of the true state of affairs. Otherwise the penalty will often be grossly and extravagantly disproportionate to the offences. A man might be properly chargeable to £5,000 tax on his actual return and properly chargeable to £5,100 tax on the correct return. If the appellants are right the penalty would be £15,320: if the other view is right it would only be £320. and even more extravagant cases could arise when the taxpayer's omission was not in respect of his own income. If he fails to return a correct list of lodgers or employees or money collected for or interest paid to others the penalty would have no relation to that failure - it would be treble his own income tax, although he had made a correct return of his own income and paid the full tax due on it. and an even more difficult case might arise under section 21: under that section he is chargeable both in respect of his own income and in respect of income belonging to another. If one of the returns which he makes is inaccurate is the penalty treble the whole tax which he ought to be charged, that is, the tax on both his own and the other income, or can something be read in, even if the appellants are right, so as to base the penalty on something less than the whole tax which he ought to be charged under the Act?

Difficulties and extravagant results of this kind caused Diplock J. and the Court of Appeal to search for an interpretation which would yield a more just result. What we must look for is the intention of Parliament, and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the appellants' contention. But we can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament.

The Court of Appeal found it possible to adopt a secondary meaning for the crucial words. Their conclusion appears to be summed up in a sentence [23] : "So, as a matter of English, it seems *768 to us at least a legitimate interpretation of the phrase 'tax which he ought to be charged' to limit its significance to that amount of tax with which, at the relevant point of time, the taxpayer ought to be charged, but with which he has not been charged by reason of his defective return: in other words, the tax appropriate to the undisclosed income."

I agree with the Court of Appeal that if it is possible to infer the meaning which they attach to these words that should be done. One is entitled and indeed bound to assume that Parliament intends to act reasonably, and therefore to prefer a reasonable interpretation of a statutory provision if there is any choice. But I regret that I am unable to agree that this case leaves me with any choice. When I look at the way in which the provisions of section 25 (3) (a) were brought into the Income Tax Acts, and at the way in which those provisions must be applied in circumstances other than those contemplated by the Court of Appeal, I find myself unable to hold that the crucial words are capable of the interpretation which they have adopted.

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The Act of 1952 is a consolidating Act, and one must presume that such an Act makes no substantial change in the previous law unless forced by the words of the Act to a contrary conclusion. Therefore, in interpreting a consolidating Act, it is proper to look at the earlier provisions which it consolidated. The previous law was contained in section 107 of the Income Tax Act, 1918 , and section 23 (2) of the Finance Act, 1923 , to which I have already referred. Section 107 gave the court no power to impose a treble tax penalty, and it did not require the General Commissioners to impose the maximum penalty; they could modify the penalty to any extent they might think just. The Attorney-General was unable to point to any provision in force before 1923 which required the maximum penalty to be imposed even in cases where there was no fraud: there were certain provisions imposing the maximum penalty if fraud was established. Section 23 (2) of the Act of 1923 is in the same terms as section 25 (3) (a) of the Act of 1952. If the appellants' construction is right, then Parliament imposed for the first time in 1923 an obligation to inflict the full treble tax penalty even on innocent though negligent offenders, and did this at a time when the rate of tax (then 4s. 6d.) made such a penalty oppressive in most cases.

It is so contrary to the practice of Parliament to commit in effect unlimited discretion to a branch of the executive as to the amount of penalties to be imposed on persons guilty of no more than negligence that I would not easily hold that this was made ***769** in 1923; but I am forced to the conclusion that this was then done, and it is idle to speculate whether Parliament, or, indeed, any member of Parliament, understood the full effect of the enactment. I refer to the appellants as a branch of the executive because section 1 of the Inland Revenue Regulations Act, 1890 (which does not appear to have been amended or repealed). provides that they "shall in the exercise of their duty be subject to the authority, direction, and control of the Treasury, and shall obey all orders and instructions which have been or may be issued to them in that behalf by the Treasury." It is proper to add that the present practice appears to be to confine such orders and instructions within narrow limits.

I find it impossible to hold that the words "not exceeding £20 and treble the tax which he ought to be charged under this Act" in section 107 (1) (a) of the Act of 1918 meant anything other than treble the whole tax which he ought to be charged for the relevant year. The argument for the more limited meaning adopted by the Court of Appeal is based almost entirely on the extravagant consequences which flow from giving the words in the present Act their natural meaning. But that argument loses almost all its force when applied to the Act of 1918. Under that Act the General Commissioners, an independent body, had full discretion to modify the penalty, and all that could then be said was that, owing to the increase in the rates of tax, the maximum penalty had become so high as to be extravagant in the great majority of cases. But there was no obligation under the Act of 1918 to inflict the maximum penalty in cases where it was disproportionate to the offence.

In 1923 the same words were inserted in section 107 (1) (b) but with the omission of the vital words "not exceeding." Why these words were omitted I do not know, but their omission creates the present difficulty. Normally, it would be impossible to hold that, when the same words as those already in one subsection are later inserted in another subsection of the same section, they can be

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given a meaning different from the meaning of the words which were there already. I do not find it possible in this case to hold either that the words in the original Act of 1918 had a limited meaning, or that they were given a limited meaning by the Act of 1923, or that after 1923 the same words in subsection (1) (a) and (b) had different meanings: I cannot avoid the conclusion that these words did not have a limited meaning before 1952 and that, therefore, they do not have a limited meaning now when they are reproduced in the consolidating Act of 1952.

***770**

My Lords, I have had an opportunity of reading the speech about to be delivered by my noble and learned friend, Lord Radcliffe. I am in general agreement with it, and, in particular, I agree with his account of the methods of tax administration, and of the way in which this case has been dealt with, so I need not add further to my own speech, already perhaps too long.

In my judgment, this appeal must be allowed.

LORD RADCLIFFE.

My Lords, in my opinion, we are bound to allow this appeal.

It has not been in dispute that in 1952 Mr. Hinchy committed a breach of the obligation imposed upon him by section 19 of the Income Tax Act, 1952 . He did not, when required so to do, deliver to the inspector of taxes a true and correct return of all the sources of his income, and of the amount derived from each source for the year preceding the year of assessment, 1952-53. In fact, the signed return which he did deliver on April 19, 1952, stated incorrectly that his income for the year 1951-52 from interest on bank deposits, including Post Office and other savings bank deposits, had been £18 6s., whereas his true income from that source had been £51 5s. 9d.

Further, it has not been in dispute that by virtue of section 25 (3) of the same Act he thereby forfeited, if proceeded against in a court of law, the sum of £20 and treble the "tax which he ought to be charged" under the Act. Such a forfeiture is imposed by the section upon anyone who "neglects or refuses to deliver, ... or wilfully makes delay in delivering, a true and correct ... return." It was decided by this House in *Attorney-General v. Till* [24] that a person who, though not failing to make a return at all, nevertheless makes an incorrect return is within the description that I have quoted above. I am bound to say, looking back, that I think that that decision might well have been otherwise and, if it had been, the problem that we are now faced with would not have arisen. But, since it went the way it did, we must now take it that Mr. Hinchy was a person who neglected to deliver a true and correct return.

The whole question, therefore, is what penalty is attached to his default by the words "the tax which he ought to be charged under this Act."

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The Revenue say that the meaning of these words is that the defaulter incurs, apart from the £20, a penalty of three times his *771 total income tax bill in respect of all sources of income directly assessable for the year in which the offence is committed. They say that this is the way in which the words have been understood and applied ever since they first appeared in an Income Tax Act (the first use of them in this context was in section 118 of the Income Tax Act of 1805); that whenever their import has been noticed judicially, as in *Attorney-General v. Till* [25] in the Court of Appeal, and in *Attorney-General v. Johnstone,* [26] the same meaning has been attributed to them; and that the Income Tax Codification Committee itself, which in the years before 1939 laboured with so much intelligence and devotion to no eventual result, clearly assumed this to be the correct meaning. All this, I think, is true; and these considerations are persuasive. But, having regard to the extreme severity which might attend such a penalty under present scales of taxation, and the fact that in this very case the Court of Appeal have found it possible to impute another and less onerous meaning to the words, I think it better to approach the question of construction without giving any weight to this consideration that, if the Court of Appeal are right, they have discovered in the phrase a significance that has long lain unobserved, and so lain after many persons, it is fair to suppose, have had cause to scrutinise them with somewhat anxious attention.

What, then, are the alternative readings which have been suggested? Diplock J., before whom this action came in the High Court, took the view that (1) the point of time at which there should be ascertained the amount of tax which a defendant "ought to be charged" was the date of the initiation of the proceedings for the penalty, and (2), if at that date there had been a correct assessment on the full chargeable income, there was no tax with which it could be said that the defendant ought to be charged and nothing, therefore, recoverable except £20. In my opinion this view is wrong in its initial assumption. The date at which any penalty incurred is to be ascertained must be the date when the offence is committed: assessment or payment after that cannot affect the liability. Otherwise, every time, an error being detected, a correct assessment is made in order to determine the true tax liability for the year, the penalty by way of multiplied tax automatically disappears. I agree with the learned Master *772 of the Rolls when he says in the judgment delivered in the Court of Appeal [27] : "We do not think that this can be right."

In the Court of Appeal itself a different interpretation prevailed. It was based on the general idea that, when there has been an incorrect return, the tax which the maker of it "ought to be charged" in treble is something which can be called the "excess tax." This is variously described as [28] "the tax which the taxpayer ought to be charged and was not charged because of his failure to make a true and correct statement of his income," and as [29] "that amount of tax with which, at the relevant point of time, the taxpayer ought to be charged but with which he has not been charged by reason of his defective return; in other words, the tax appropriate to the undisclosed income."

My Lords, I do not think that the words of section 25 (3) which are in question give any hint of an intention to measure the tax penalty by a computed excess of this sort. It can be done if an appropriate formula is used. Section 48 , for instance, does apply such a formula, where the conditions are such that an assessment, though an inadequate one, has been made. Again, section 49

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allows treble the excess tax where a false return of Schedule D income has led to under-assessment or would have led to it if undetected. But no such formula is used or indicated in the section that we have to consider. Moreover, there is another and fundamental obstacle to the introduction of this "excess tax" idea which the Court of Appeal judgment imports into the meaning of the section. Their definition depends essentially on the existence of a first incorrect assessment, such as they believed to have been made in this case, which assessment can then be compared with the corrected true assessment which emerges when the full facts are known. We were assured by the Attorney-General in the course of his argument that in this case there had been no such assessment for 1952-53, and, as this misunderstanding contributed to the Court of Appeal's view of the admissible interpretation of section 25 (3), I think it necessary to set out exactly what did apparently happen, because, so far as I can see, the order of events followed here is as likely as not to be typical of the order that will be observed in any other case of untrue or inaccurate returns.

In April, 1952, Mr. Hinchy made a return purporting to set out all the sources of his income for the year 1951-52, and of the amount derived from each source. This return would afford, of **773* course, valuable information for the purposes of the assessment to be made on him for the year 1952-53, though, in so far as the basis of assessment is the current year's income, not that of the preceding year, such a return can be informative only and there is no inherent connection between the figures it shows and the figures that should be used for the true assessment. It also affords, I suppose, a means of checking by its figures the assessments which have been made for the previous year on that year's current income.

No assessment for 1952-53 was ever made on Mr. Hinchy on the basis of his statement that his income (I include in this the income of his wife) from savings bank interest for 1951-52 had been £18 6s. The only assessment that was ever made on him for 1952-53 was made after the true figures had been established. There was then an assessment for each schedule, Schedule D and Schedule E, under which he derived assessable income, and these assessments have been put in evidence. The Schedule D assessment on "untaxed interest" is not intelligible unless the Schedule E assessment is first looked at.

The Schedule E assessment relates directly only to Mr. Hinchy's income from his employment in H.M. Customs and Excise. But, owing to the practice of "coding in" for the purpose of P.A.Y.E. deductions, two small items of income which really belonged to Schedule D were taken into account (see Part III of the assessment form) for the purpose of arriving at the code number appropriate to the operation of P.A.Y.E. By this means £21 of the savings bank interest and £19 of "excess rents" income were taken to reduce by £40 the £396 of allowances which would otherwise have been taken into account in allotting the P.A.Y.E. code number and, ultimately, in computing the Schedule E assessment. The result was that £21 of the untaxed interest was, in effect, taxed under Schedule E and recovered through P.A.Y.E.; and the deduction of £21 from the full amount of £51 "untaxed interest" in the Schedule D assessment is merely a recognition of this arrangement, designed to prevent the £21 from being taxed twice over. It does not mean that Mr. Hinchy's assessments, when they came to be made, were on anything less than the full sum of £51 for untaxed interest. Considering the way that the matter is dealt with in more than one letter in the

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correspondence exhibited, I do not wonder that the Court of Appeal took the facts to be otherwise. I still do not know why the figure of £21 was taken for the purpose of adjusting the P.A.Y.E. code number. It is quite possible *774 that it was related to the £18 6s. shown in the inaccurate return of April, 1952: but, even so, P.A.Y.E. is no more than provisional retention of tax. It is not assessment.

It appears, therefore, that in this case there was never any failure to charge the taxpayer with the true amount of his tax for the year or any inadequate lower assessment induced by his wrong return. There never was any sum, therefore, that could be computed by comparing the tax charged by such a first assessment with the total tax liability when ascertained, nor was there any figure attributable to an additional assessment. As I see no reason to suppose that what happened here represents an unlikely sequence of events, I am afraid that I regard the successive failures of Diplock J. and the Court of Appeal to find a maintainable interpretation of "treble the tax which he ought to be charged under this Act" that escapes the onus of trebling the whole tax bill for the year as a very strong indication that there are really no means of escape open. I do not wish, however, to accept this conclusion without giving some attention to another possible interpretation which is indicated by that phrase of the Court of Appeal, "the tax appropriate to the undisclosed income." Can one fairly regard the words of the section as enacting in some disguised way that the basis of computation is to be the difference between what would be the tax on the figures actually shown by a man in his return, whether or not there has been any assessment, and the tax on what he ought to have shown if he had made a full and correct return? This is a device applied by section 49 to certain cases, but it is noticeable that it there applies only to Schedule D income.

I find it impossible to penetrate this disguise. With all respect to those who may think otherwise, the contents of even a completely full and correct return are no measure of the proper assessment of a man's income for the year in which he makes it. The assessing authority is not under so much as a presumptive duty to make an assessment according to the return: how could it be when, except for Schedule D, the basis of assessment is the current year, which is not dealt with by the return, not the past year, which is? Assessments can be made, even where there is no return. They can be made, whatever a return shows. The contents of a return can be queried and further, more reliable, information extracted. They can be cross-checked and the results amended in consequence of extraneous information available to the surveyor. In other words, the relationship of the figures of the return to the proper assessment of the year is so tenuous that *775 I do not find it possible to suppose that the "tax which he ought to be charged under this Act" can ever have been intended to mean the amount of tax which a person would escape if his inaccurate return were accepted as providing final figures for the purposes of assessment. The basic facts of the administration and collection of tax do not admit any reality to such a conception.

I come back, therefore, to the only construction which is, I believe, open to a court of law. When a man does what Mr. Hinchy did, sends in what is not a true and correct return, he commits an offence and the measure of his penalty must be ascertained as the situation is at that date. At that date he will neither have been assessed nor will he have paid any tax for the year except, it may be, some provisional deduction under P.A.Y.E. The question, what tax he ought to be charged under the Act seems to me to be, in these terms, a simple one. It is the sum of tax for which he

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will become liable for that year when assessment properly carried out under the Act has imposed liability upon him. It could not be anything else when the offence consists of failing or refusing to make a return at all, and I do not see how the meaning of the words can change if the offence takes the form of not making a full return.

I appreciate that the view to which the Court of Appeal felt entitled to come was largely encouraged by certain general considerations as to the result of accepting the Revenue's contention in cases of this kind. Personally, I do not find any of these considerations compulsive, in the sense that they can alter the meaning of the words that Parliament has used: but, as I am as well not altogether in agreement with the cogency of some of the things that have been said, I ought perhaps to make a brief allusion to them.

The first point made related to the way the Revenue's claim was computed, which was said to be inconsistent with its own construction of the section. It was said, for instance, that if the measure was the full tax payable by direct assessment in the year, tax levied by deduction being omitted, it was anomalous to include Schedule E tax collected under P.A.Y.E. This is not, I think, a valid criticism. Schedule E income remains liable to direct assessment at the instance either of the Revenue or of the taxpayer, though assessment can be dispensed with, and the P.A.Y.E. deductions are only provisional payments of tax in advance. In this respect income subject to P.A.Y.E. is quite different from, for instance, dividend income which is not directly assessable to income tax. Secondly, it was said that the treble **776* tax claimed on the savings bank interest had in fact been computed only on the undisclosed portion instead of on the whole. This criticism arises from a misunderstanding of the two assessments and the way they worked out, and I have already explained what the actual circumstances were. Lastly, the comment was made that, to be consistent, surtax ought to be included in the basic computation as well as income tax. Mr. Hinchy was not a surtax payer, so the point does not arise here. All that need be said is that, if it does have to be decided at any time, there are arguments for treating the assessment and collection of surtax as carrying their own history and their own penalties, and section 25 (3) as not including surtax in the "tax" to be computed. In any event the point has no bearing on what we have now to determine.

Secondly, it is, of course, very true that the penalty provision, as interpreted by the Revenue, may not only impose fines which for some taxpayers would require payment of tens of thousands of pounds but also presents striking anomalies when its effect is contrasted with the effect of other penalty sections in the same Act. I do not think it necessary to dwell upon these or to illustrate them, because the opportunities of doing so are almost inexhaustible. What I do not perceive, however, is how these considerations can alter the interpretation of the words used by the statute. If it is said that Parliament could not have intended to impose such onerous fines for breaches which in some cases may not be blameworthy in any degree, I can only point out that Parliament has imposed just the same penalty where the default is neglect to make any return at all, and yet none of the suggested interpretations of the section achieves any penalty short of treble the whole direct assessment in those cases where there has been neither return nor assessment. Personally, I do not see any marked distinction in degrees of blame between mere carelessness which results

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in not making a return and that form of carelessness which leads to a return being made which misleadingly appears to be complete when it is not.

Again, whatever we managed to say about the meaning of the words in this case, there is no doubt that section 18 of the Act would still impose a penalty of treble the whole tax when a person without just excuse fails to give a notice of his liability to tax; that paragraph 4 of the Sixth Schedule would impose what may be the still more onerous burden of treble the tax on all income from all sources, if there is fraud in claiming a relief; and that section 48, section 49 and section 441 would contain provisions *777 which in certain cases involve a charge of three times the full tax.

When it is said, therefore, that we ought to search for a more rational meaning of the words of section 25 (3) than that which is offered by the interpretation supported by the Revenue, I think that much depends upon what you regard as rational in this setting. Most of these penalty clauses have their origin in the Tax Acts of 1803-06, if not in the earlier Act of 1799. Income tax administration in those years was not the huge and efficient system to which we are now accustomed. If the purpose of Parliament at that time was, as I suspect, to impose heavy penalties for any kind of evasion, primarily as a deterrent, there is no reason for surprise that the various penalties are neither adjusted harmoniously to each other nor in themselves proportionate to degrees of blame or threatened losses of revenue. It was as "rational" to hit out blindly and heavily at anyone who was caught as to maintain savage and indiscriminate punishments under the criminal code until an effective police force had been established. What is more surprising is that, apart from the small changes made in the Finance Act, 1923 , nothing has been done by Parliament ever since to review the whole unsatisfactory set of penalty sections and remodel them in the light of conceptions appropriate to the present day. Such a review has been called for both in the Report of the Income Tax Codification Committee (see Cmd. 5131, paras. 173-183) and in the Final Report of the most recent Royal Commission on Income Tax (see Cmd. 9474, Part VII, cap. 33) , and the recommendation has no doubt reached the destination usually reserved for advice invited by governments from such committees.

LORD COHEN.

My Lords, I had commenced writing a full judgment in this case, but, before I had completed it, I had the privilege of reading the opinion which has just been expressed by my noble and learned friend, Lord Radcliffe. I agree so entirely with his conclusions and with the reasons he gives for thinking this appeal must be allowed that I shall only detain your Lordships long enough to say that I prefer not to express any opinion as to whether surtax enters into the calculation of treble tax until that point arises. I would allow the appeal.

LORD KEITH OF AVONHOLM.

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My Lords, the judgment of the Court of Appeal would seem to have proceeded on a false premise, namely, that after the false return was made by the respondent *778 he was assessed on the return so made and that there was a balance of income undisclosed on which he had not been assessed. But that was not the position. The discovery by the Revenue of the undisclosed income was made after the return had been made and before any assessment was made. Mr. Hinchy was then assessed, after deduction of due allowances, on the full amount of income subject to assessment, including the Post Office Savings Bank interest which he had failed to disclose. Thereafter proceedings were taken for recovery of penalty in respect of the incorrect return. The Court of Appeal, in my opinion correctly, say that the offence is committed when the false return is received by the commissioners. The liability to penalty necessarily arises at the time of the offence. It is a case of a false return with which we are here concerned, and it will be convenient to set out the relevant and material dates. [His Lordship stated the facts and continued:]

On one view of the Court of Appeal's judgment it might appear that, if the true facts and sequence of events had been appreciated, they might have decided this case in favour of the Revenue. I quote only one passage from the judgment where they say [30] : "There remains the judge's interpretation of the relevant words (the third view above indicated), namely, that 'the tax which he ought to be charged' means what we have called the excess tax - that is, the tax which the taxpayer ought to be charged and was not charged because of his failure to make a true and correct statement of his income. Where there has been failure to make any return at all, the 'tax which he ought to be charged' will, of course, be the total of his tax liability for the relevant period. But where, as in the present case, the taxpayer's default lay in an understatement of one of his sources of income, then the tax which he ought to be charged will, on this interpretation, mean the tax which he ought to be charged (but was not charged by reason of his default) on the undisclosed income." It would seem clear from this passage that the court did not, as I have said, appreciate the true facts of the case. If the court had dealt with the true situation, I am not clear what result they would have reached. There is much in the train of thought in the judgment which suggests that they might still have held that the proper penalty was only £20 and treble tax on the amount which the taxpayer failed to disclose on his return. As the respondent was not *779 represented on the appeal, and no case was lodged on his behalf, it is only right that any point that can be advanced on his behalf should be considered. It is partly, I understand, because of the difficulties and uncertainty which the Revenue conceive this judgment has created for them in their enforcement of the penalty provisions of the Act that they have brought this appeal.

The claim here is made under section 25 (3) of the Income Tax Act, 1952 . The point in issue is a short one, namely, what is meant by the words in subsection (3), "treble the tax which he ought to be charged under this Act." There are a number of penalty sections under the Act, all of which were referred to in the course of the argument. They do not provide any coherent or intelligent code, and in the confines sometimes of even a single section apparent anomalies can be discovered. It will be convenient to consider these sections in three groups according to the variation of language by which the penalty is imposed.

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In the first group I place section 18 and section 25, omitting for the time being the sections to which section 25 applies; in the second group section 48 and section 49; and in the third group paragraph 4 of Schedule VI .

Section 18 and section 25 read as follows:

"18. - (1) It shall be the duty of every person who is chargeable to income tax for any year of assessment to give notice to the surveyor that he is so chargeable at or before the end of that year: Provided that no such notice need be given by any person as respects any year for which he has delivered a statement of his profits and gains in accordance with the provisions of this Act. (2) If any person, without reasonable excuse, fails to give such a notice as aforesaid, he shall - (a) if proceeded against by action in any court, forfeit the sum of twenty pounds and treble the tax which he ought to be charged under this Act; or (b) if proceeded against before the General Commissioners, forfeit a sum not exceeding twenty pounds and treble the tax which he ought to be charged under this Act, and where he is proceeded against before the General Commissioners, the penalty shall be recovered in the same manner as any other penalty under this Act, and the increased tax shall be added to the assessment."

"25. - (1) Any such lists, declarations, statements and returns as are provided for by the preceding provisions of this Chapter shall be in such form as the Commissioners of Inland Revenue shall prescribe, and in prescribing forms under this subsection the Commissioners shall have regard to the desirability of ***780** securing, so far as may be possible, that no person shall be required to make more than one return annually of the sources of his income and the amounts derived therefrom. (2) Any statement of annual value or profits or gains to be charged under Schedule A, Schedule B, Schedule D or Schedule E shall include a general declaration declaring the truth thereof and that the same is fully stated on every description of property, or profits or gains, included in the Act relating to the tax, and appertaining to the person returning the statement, estimated to the best of his judgment and belief, according to the provisions of this Act. (3) A person who neglects or refuses to deliver, within the time limited in any notice served on him, or wilfully makes delay in delivering, a true and correct list, declaration, statement or return which he is required under the preceding provisions of this Chapter to deliver shall - (a) if proceeded against by action in any court, forfeit the sum of twenty pounds and treble the tax which he ought to be charged under this Act; or (b) if proceeded against before the General Commissioners, forfeit a sum not exceeding twenty pounds and treble the tax which he ought to be charged under this Act, and where he is proceeded against before the General Commissioners, the penalty shall be recovered in the same manner as any other penalty under this Act, and the increased tax shall be added to the assessment. (4) The commissioners shall also proceed to assess or cause to be assessed every such person who makes default as aforesaid. (5) If any person who is required to deliver a list, declaration, statement or return on behalf of any other person delivers an imperfect list, declaration, statement or return and declares himself unable, within the time limited, to deliver a more perfect list, declaration, statement or return and states the reasons for his inability, he shall not, if the General Commissioners are satisfied with his explanation and grant further time for delivery, be liable to the penalty prescribed by this section if he delivers, within the further time

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granted, as perfect a list, declaration, statement or return as the nature of the case permits. (6) If a person delivers to any surveyor a list, declaration or statement on a form prepared for the purpose by direction of the Commissioners of Inland Revenue, he shall be deemed for the purposes of this section to have been required by a notice under the preceding provisions of this Chapter to prepare and deliver that list, declaration or statement, and the time limited for the delivery thereof shall be deemed for the purposes of this section to have **781* expired on the date of its delivery to the said surveyor. (7) Any list, declaration, statement or return required by the preceding provisions of this Chapter to be delivered to the surveyor shall be made available to the General, Additional or Special Commissioners and their respective clerks, and, whenever necessary, to the assessors for the preparation and making of assessments."

The provisions of subsection (2) of section 18 and subsection (3) of section 25 are in identical terms, apart from the introductory words indicating the nature of the offence struck at by the penalty provision. Section 18 deals with concealment of chargeability to tax for any year of assessment, a reference back to section 1 of the Act. The offence presumably will be committed if the potential taxpayer allows the year of assessment to run out without disclosing his chargeability. Section 25 relates to persons who are known to the surveyor of taxes and are required to make one or other of the returns in sections 19 to 23 of the Act, including persons required (section 19) to deliver true and correct returns of all sources of their income. I can see no ground for placing any different construction on the words "treble the tax which he ought to be charged under this Act" in subsection (3) of section 25 from the meaning they have in section 18; or for saying that they have one meaning where the taxpayer neglects or refuses to deliver any return within the stipulated time as required by the Act, and a different meaning when he wilfully makes delay in delivering a true and correct return of his income as similarly required. The decision of this House in *Attorney-General v. Till* [31] is binding authority that delivery of an incorrect return is breach of this requirement. The question of the construction of these words may to some extent be resolved, I think, by asking how is it to be ascertained what tax the defaulter ought to be charged under the Act. The only way, in my opinion, is through the machinery of assessment set up by the Act. The court cannot take upon itself this task. It was so held, I think rightly, in an unreported Irish case - *Attorney-General v. White* [32] - under corresponding income tax provisions in Ireland, judgments in which were made available to your Lordships. Can it be said that the words have an ambulatory meaning, so that, if the taxpayer makes an incorrect return, the tax which he ought to be charged under the Act is limited to tax on the amount of the undisclosed income? This is the view, I think, taken by the Court of Appeal. I find it impossible to put such a construction **782* on words which seem to me to be quite unambiguous. So limited the tax would be only part of the tax which he ought to be charged under the Act. It was conceded by the learned Attorney-General that the penalty is to be measured only by tax on income which is the subject of direct assessment, a concession which I am disposed to think could not be withheld. Income from which tax is deducted under Schedule D is not income charged to tax in the hands of the recipient. For is it contended for the Revenue that the tax to be charged includes surtax, for reasons which I do not find it necessary to examine. It may be noted also in passing that the non-fraudulent offender has a method of escape from the stringency of the penalties, under section 55 of the Act, which gives opportunity for rectification of returns and other relief.

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Sections 48 and 49 of the Act are as follows:

"48. - (1) Where a person who ought to be charged with tax, as directed by this Act, is not duly assessed and charged by reason that he has - (a) fraudulently changed his place of residence or fraudulently converted, or fraudulently released, assigned or conveyed any of his property; or (b) made and delivered any statement or schedule which is false or fraudulent; or (c) fraudulently converted any of his property, which was chargeable, by altering any security relating thereto or by fraudulently rendering it temporarily unproductive, in order not to be charged for the same or any part thereof; or (d) been guilty of any falsehood, wilful neglect, fraud, covin, art or contrivance whatsoever, such person shall, on proof thereof to the General Commissioners for the division in which he has been charged, or, if he has not been charged, then for any division in which he is chargeable, be assessed and charged treble the amount of the charge which ought to have been made upon him: Provided that, if any charge has been made, but that charge is less that the charge which ought to have been made, such person shall be assessed and charged, over and above the former charge, treble the amount of the difference between the charge which was made and the charge which ought to have been made, such amount to be added to the assessment. (2) A person who knowingly and wilfully aids, abets, assists, incites or induces another person to make or deliver a false or fraudulent account, statement, or declaration, of or concerning any profits or gains chargeable, or the yearly rent or value of any lands, tenements, hereditaments or heritages, or any matters affecting any such **783* rent or value, shall for every such offence forfeit the sum of five hundred pounds.

"49. - (1) If the Additional Commissioners or the General Commissioners - (a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person to be charged; or (b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time within the year of assessment or within three years after the expiration thereof, they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess. (2) If the person to be charged has neglected or refused to deliver a statement or schedule, the said commissioners may charge him in a sum not exceeding treble the amount of the tax with which, in their judgment, he ought to be charged, and such sum shall be added to the assessment and applied in the same manner as other increased charges are applied."

The proviso to subsection (1) of section 48 clearly limits the penalty to treble the tax on the amount of income undisclosed where a charge has already been made on the disclosed amount. There may be observed, however, several new features in the matter of penalty. There is no £20 penalty. There is no provision for proceedings for penalty in a court. The penalty is a fixed penalty of treble tax, not a maximum within which the commissioners have a discretion to operate. Lastly, if the fraud is discovered before any tax is imposed the penalty is treble tax. Only where tax has already

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been charged does the taxpayer escape with treble tax measured by what he has fraudulently concealed. It may be doubted whether this section shows any leniency to the fraudulent taxpayer as contrasted with the treatment accorded to a neglectful taxpayer under section 25. The restricted penalty imposed by the proviso, limited though it be by the amount fraudulently undisclosed, may be a very heavy penalty, as compared with a discretionary penalty that the commissioners are entitled to impose under section 25. Only in contrast with the penalty imposed by a court under section 25 can it be said that the fraudulent taxpayer who comes under the proviso may escape relatively lightly. That is undoubtedly an anomaly. But it **784* would seem to be no greater an anomaly than that accorded to two fraudulent taxpayers under section 48 itself, according as an assessment has already been made on one and not on the other, a difference in treatment which I confess I find it difficult to understand. Whatever anomalies exist between section 25 and section 48 these provide no ground for reading into section 25 (3) (a) the proviso of section 48 (1) , as the Court of Appeal in effect would seek to do, with the result incidentally of repeating in the case of neglectful taxpayers the anomaly already observed to exist as between fraudulent taxpayers. The reference in the section to "the charge which ought to have been made" as contrasted with the words "the tax which he ought to be charged" in section 25 (3) raises another question which seems to me to lead nowhere. It would, I think, make no real difference if the words of section 25 were substituted for the words in section 48 so far as the meaning of section 48 was concerned.

Section 49 provides another variation of a penalty clause. It applies only to charges to tax under Schedule D. The words "not exceeding" reappear in this section. The penalty in the circumstances to which the provisions of the section apply is a sum not exceeding treble tax on the amount the taxpayer has omitted to return. Again there is no question of a £20 penalty.

Lastly, I come to paragraph 4 of Schedule VI. It runs as follows: "(1) A person who, in making a claim for or obtaining any relief to which this Schedule relates, or in obtaining any certificate as aforesaid - (a) is guilty of any fraud or contrivance; or (b) fraudulently conceals or untruly declares any income or any sum which he has charged against or deducted from, or was entitled to charge against or to deduct from, another person; or (c) fraudulently makes a second claim for the same cause, shall forfeit the sum of twenty pounds and treble the tax chargeable in respect of all the sources of his income as if such claim had not been allowed. (2) A person who knowingly and wilfully aids or abets any person in committing an offence under this paragraph shall forfeit the sum of £500."

Here your Lordships find a further variation of penalty in cases of fraudulent claims for relief, reflecting often relatively small results in the matter of tax liability. The penalty here is the severest of all. The £20 penalty makes its appearance again; treble tax is mandatory; and it is imposed "in respect of all the sources of his income as if such claim had not been allowed." It is thus not limited as in sections 18, 25 and 48 to income subject to direct assessment.
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I have referred to these sections because they all disclose in the circumstances to which they apply a variety of penalties which present no intelligible pattern and which, in relation to one another, seem

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often highly inequitable. Nor does the general power of mitigation vested in the Commissioners of Inland Revenue and the Treasury by section 500, in my opinion, really affect this result. The survey of these sections has, I think, this relevance to the subject-matter of this appeal. It shows that it is impossible to argue from one penalty section to another or to infer because of illogicalities between different sections, or inequitable results that may follow from a particular construction, that therefore the legislature cannot have meant what the words of section 25 (3) plainly say. I would add that these sections have an ancient lineage dating back more than 150 years and show very little essential change in that period. Section 25 (3) shows a greater number of changes evolved during that period, but in spite of opportunities thus afforded Parliament has not thought fit to make any substantial change, apart from quantum of penalty, in the form of language by which the penalty was imposed from at least 1805.

In conclusion, I would say a word about the effect of section 25 on certain sections of the Act to which it applies. These are notably sections 21 to 23 and 27 to 29 inclusive. The results in the view of the Court of Appeal were so startling as to play a large part in their reaching a construction of section 25 (3) that would enable them to escape the rigour of a literal construction of its words. For the reasons I have given I think, on any view of its effect on the sections in question, that escape would be impossible. But it is a question whether any talk of escape is necessary. In any case in which it was necessary to consider the matter I would wish to hear argument on two points. First, whether the impact of section 25 on sections like 21 and 22 affects tax on the income of any person other than the constituent in respect of whose income a return is made by a person in a representative or quasi-representative capacity. Secondly, whether when a return is made under such sections as 23, 27 or 29, which are not concerned with returns of income but with lists of names of persons who may be chargeable to tax in respect, inter alia, of payments made by the person responsible for the return, there is any basis for a penalty under section 25 other than that of the fixed penalty of £20. In other words, whether there is any income covered by the subject-matter of the return in respect of which it can be said that the person making the ***786** return "ought to be charged to tax under this Act." These are incidental matters which cropped up in the course of the argument before this House and which, on the view taken by the Court of Appeal of resulting personal chargeability, seem to have weighed heavily with the court. I say no more about these two questions which on any view can, in my opinion, have no effect on this case.

I agree that the appeal should be allowed.

Representation

Solicitor: Solicitor of Inland Revenue.

Appeal allowed. (F. C.)

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Footnotes

1 *[1909] 1 K.B. 694, 697, 699, 700, 702, 706 (C.A.); 25 T.L.R. 342* ; *[1910] A.C. 50, 54, 59-62, 70-72 (H.L); 26 T.L.R. 134* .
2 *(1926) 136 L.T. 31* , 32.
3 *[1910] A.C. 50* .
4 *(1930) Oct. 4, Hanna J.; (1931) March 8, Supreme Court (unrep.*).
5 *[1910] A.C. 50* .
6 *10 T.C. 758* .
7 *(1905)7 F. 990-991, 992-993, 994; 5 T.C. 110* , 112-113, 114-115, 116.
8 *[1909] 1 K.B. 649; [1910] A.C. 50* .
9 *[1934] A.C. 1, 11 (H.L.); 49 T.L.R. 566* .
10 *[1891] A.C. 531, 590-591 (H.L.); 7 T.L.R. 657* .
11 *[1910] A.C. 50* .
12 *[1959] 2 Q.B. 357, 377, 378; [1959] 3 W.L.R. 66; [1959] 2 All E.R. 512* .
13 *[1910] A.C. 444, 445; 26 T.L.R. 548* .
14 *[1959] 2 Q.B. 357, 378; [1959] 3 W.L.R. 60; [1959] 2 All E.R. 512* .
15 *[1959] 2 Q.B. 357, 378; [1959] 3 W.L.R. 60; [1959] 2 All E.R. 512* .
16 *[1910] A.C. 50, 52; 26 T.L.R. 134* .
17 *[1910] A.C. 50* .
18 *[1909] 1 K.B. 694; 25 T.L.R. 342* .
19 *[1910] A.C. 52* .
20 *(1926) 136 L.T. 31* , 32.
21 *(1905) 7 F. 984; 5 T.C. 110* .
22 *(1930) Oct. 5, Hanna J.; (1931) March 8, Supreme Court (unrep.*).
23 *[1959] 2 Q.B. 357* , 378.
24 *[1910] A.C. 50* .
25 *[1909] 1 K.B. 694* .
26 *136 L.T. 31* .
27 *[1959] 2 Q.B. 357* , 377.
28 *[1959] 2 Q.B. 357* , 377.
29 Ibid. 378.
30 *[1959] 2 Q.B. 357* , 377.
31 *[1910] A.C. 50* .
32 (1931) March 3, unrep.

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