CHENEY *v.* CONN (Inspector of Taxes).
SAME *v.* INLAND REVENUE COMMISSIONERS.

[CHANCERY DIVISION (Ungoed-Thomas, J.), July 3, 1967.]

Income Tax—Charge to tax—Application of proceeds in part for purposes allegedly contrary to convention ratified by the United Kingdom government—Whether assessment to tax invalidated—Allocation of proceeds of taxes to construction of nuclear weapon—Geneva Conventions Act, 1957 (5 & 6 *Eliz.* 2 c. 52), *preamble.*

International Law—Convention—Ratification by the executive—Implementation by statute—Conflict between convention and statute—Statute law prevailing—Geneva Conventions Act, 1957 (5 & 6 *Eliz.* 2 c. 52), *preamble.*

The appellant was assessed to income tax under Sch. D for the year 1964-65 and to surtax for 1963-64. Substantial parts of the receipts from the taxes for those years were allocated to the construction of nuclear weapons with the intention of using the weapons, should occasion arise. On the question whether the assessments on the appellant were invalidated by the proposed use of part of the taxes for a purpose allegedly in conflict with a Geneva Convention scheduled to the Geneva Conventions Act, 1957,

Held: the charge to tax, effected by virtue of s. 12* and s. 13 of the Finance Act 1964, and thus also the assessments to such tax, were not invalid for the following reasons—

(i) the long title of†, and the preamble to†, the Act of 1957 did not make the conventions scheduled to that Act part of the statute law of England, for the preamble showed that the Act of 1957 was passed with a view to subsequent ratification of the conventions by the executive, which had, therefore, such force as was derived from such ratification; accordingly, even if there were a conflict between a convention and s. 12 or s. 13 of the Finance Act 1964, the provisions of the Act of 1964, being unambiguous in terms, would prevail (see p. 782, letters E and F, post).

(ii) if the purposes for which the enactments of the Act of 1964 might be used included an unlawful purpose, the enactments were not thereby vitiated but any remedy must be directed to the invalidation of use for the unlawful purposes (see p. 782, letter G, post).

[As to international conventions requiring to be implemented by legislation to become law, see 7 HALSBURY'S LAWS (3rd Edn.) 5, para. 2; as to the Geneva Conventions, see 39 ibid., p. 42, para. 36.

As to the general charge to income tax, see 20 HALSBURY'S LAWS (3rd Edn.) 11, para. 4.

For the long title and preamble to the Geneva Conventions Act, 1957, see 37 HALSBURY'S STATUTES (2nd Edn.) 68; and for s. 12 and s. 13 of the Finance Act 1964, see 44 ibid., 450.]

Case referred to:

Collco Dealings, Ltd. v. *Inland Revenue Comrs.*, [1961] 1 All E.R. 762; [1962] A.C. 1; [1961] 2 W.L.R. 401; 39 Tax Cas. 509; 44 Digest (Repl.) 261, *867.*

Case Stated.

The taxpayer, Howard William Cheney, appealed to the Commissioners for the Special Purposes of the Income Tax Acts on July 20, 1965, against the following assessments: assessments to income tax made on him under Sch. D, s. 122 of the Income Tax Act, 1952, for the year 1964-65, in the sum of £3,375 less capital allowances of £2,500, and also against an assessment to surtax for the year 1963-64 in the sum of £9,859. The main contention on behalf of the

* Section 12 is set out at p. 780, letter G, post.

† The long title and preamble are set out at p. 782, letter A, post.

taxpayer before the commissioners was that the assessments were invalid in that a substantial part of the tax revenue (including the sums assessed on the taxpayer) was allocated to the construction of nuclear weapons, that it was the policy of Her Majesty's government that nuclear weapons might be used for retaliation, and that the use of nuclear weapons was contrary to international law, a substantial part of the relevant international law having been incorporated in the law of England by the Geneva Conventions Act, 1957. The Crown contended before the commissioners that the validity of the taxing Acts would not be affected by the use to which money representing tax charged was to be put.

The commissioners decided that it was not relevant to the validity of the assessments to have regard to the purposes for which money representing the tax charged under the assessments was to be used. They determined the assessments on the basis of the figures agreed by the parties as follows: (i) as to income tax for the year 1964-65, at the sum of £3,662 less capital allowances of £2,786; and (ii) as to surtax for the year 1963-64, at £16,359. The taxpayer appealed by way of Case Stated to the High Court.

P. R. Pain, Q.C., and *I. Brownlie* for the taxpayer.

J. R. Phillips for the Crown.

UNGOED-THOMAS, J.: This is an appeal against an assessment under Sch. D for 1964-65, and also an assessment to surtax for 1963-64. Both these cases raise the same point. The submission is that the assessments are invalid because it is to be taken that what is collected will be, in part, applied in expenditure on the armed forces and devoted to the construction of nuclear weapons with the intention of using those weapons if certain circumstances should arise. It is conceded for the purposes of this case that a substantial part of the taxes for the years that I have mentioned was allocated to the construction of nuclear weapons. The issue therefore becomes whether the use of income tax and surtax for the construction of nuclear weapons, with the intention of using them should certain circumstances arise, invalidates the assessments.

The assessments were made under statute, and the relevant statute is the Finance Act 1964 s. 12—the Finance Act being based on the provisions of the Income Tax Act, 1952. Section 12 of the Act of 1964 provides:

> " Income tax for the year 1964-65 shall be charged at the standard rate of 7s. 9d. in the pound, and in the case of an individual whose total income exceeds £2,000 at such higher rates in respect of the excess as Parliament may hereafter determine."

It is accepted that the corresponding provision with regard to surtax (1) is, mutatis mutandis, to the same effect. The provision which I have just read is the provision under which the assessment to income tax in question was made. The provision is, first, of force statutorily; secondly, unambiguous; and, thirdly, limited to the raising of taxation and not to the purposes for which that taxation has to be applied or any such policy matters at all.

The ground on which it was argued that the use of this money for the construction of nuclear weapons is illegal is that such use conflicts primarily with Conventions incorporated in an Act of Parliament—and, so it was suggested, impliedly ratified by them—and also ratified by the Crown in the usual way; and also because, according to the Case Stated, it was contrary to international law. But the case as presented before me was rested primarily, at any rate, on a conflict between two statutes—namely, the statute which refers to the Geneva Conventions (viz., the Geneva Conventions Act, 1957) and the Finance Act 1964. Before coming to the Act of 1957 I shall deal first with the relationship of statute law to international law and international conventions.

First, international law is part of the law of the land, but it yields to statute.

(1) Viz., s. 13 of the Finance Act 1964.

A That is made clear by the case of *Collco Dealings, Ltd.* v. *Inland Revenue Comrs.* (2), where VISCOUNT SIMONDS (3) quoted with approval, and in accordance with the decision of the House of Lords in that case, MAXWELL ON THE INTERPRETATION OF STATUTES (10th Edn.) p. 148. I quote: " But if the statute is unambiguous, its provisions must be followed even if they are contrary to international law." It is therefore very understandable why the taxpayer in this case relies B primarily, at any rate, not on a conflict between international law in general and the statute, but on the conflict between the Act of 1957, and its reference to ratification, and another statute, the Finance Act 1964. Secondly, conventions which are ratified by an Act of Parliament are part of the law of the land; and, thirdly, conventions which are ratified, but not by an Act of Parliament, which would thereby give them statutory force, cannot prevail against a statute in C unambiguous terms. The law is thus stated in OPPENHEIM'S INTERNATIONAL LAW (8th Edn.) at p. 924:

> " The binding force of a treaty concerns in principle the contracting States only, and not their subjects. As international law is primarily a law between States only and exclusively, treaties can normally have effect upon States only. This rule can, as has been pointed out by the Permanent D Court of International Justice, be altered by the express or implied terms of the treaty, in which case its provisions become self-executory. Otherwise, if treaties contain provisions with regard to rights and duties of the subjects of the contracting States, their courts, officials, and the like, these States must take such steps as are necessary, according to their Municipal Law, to make these provisions binding upon their subjects, courts, officials and the E like."

At p. 40 the law is stated thus:

> " Such treaties as affect the private rights and, generally, as require for their enforcement by English courts a modification of common law or of a statute must receive parliamentary assent through an enabling Act of F Parliament. To that extent binding treaties which are part of international law do not form part of the law of the land unless expressly made so by the legislature. That departure from the traditional common law rule is largely due to the fact that, according to British constitutional law, the conclusion and ratification of treaties are within the prerogative of the Crown, which would otherwise be in a position to legislate for the subject without obtaining G parliamentary assent."

It is, I may add, the Queen in Parliament and not the Queen independently of Parliament, acting as the executive through the cabinet, who makes what is law in this land.

In WADE AND PHILLIPS' CONSTITUTIONAL LAW (7th Edn.), at p. 274, after a passage in which it is pointed out that the term " convention " is used of multi- H lateral law-making treaties—and, of course, the Geneva Convention, ratified by the Act of 1957, comes within that description—there is this passage:

> " At first sight the treaty-making power appears to conflict with the constitutional principle that the Queen by prerogative cannot alter the law of the land, but the provisions of a treaty duly ratified do not by virtue of the treaty alone have the force of municipal law. The assent of Parlia- I ment must be obtained and the necessary legislation passed before a court of law can enforce the treaty, should it conflict with the existing law."

Then, more particularly, it is pointed out on p. 275 that: " treaties which, for their execution and application in the United Kingdom, require some addition to, or alteration of, the existing law " are treaties which involve legislation.

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(2) [1961] 1 All E.R. 762; [1962] A.C. 1.
(3) [1961] 1 All E.R. at p. 765; [1962] A.C. at p. 19.

Here, the legislation so relied on is, as I have indicated, the Geneva Conventions Act, 1957. The title and preamble of the Act of 1957 are as follows: A

> " An Act to enable effect to be given to certain international conventions done at Geneva on Aug. 12, 1949, and for purposes connected therewith. Whereas, with a view to the ratification by Her Majesty of the conventions set out in the schedules to this Act, it is expedient to make certain amendments in the law." B

What the Act of 1957 then does is to make certain specific amendments in the law by reference to particular provisions in the Geneva Conventions. There is no conflict whatsoever between the particular provisions included in those specific amendments and the Finance Act, 1964; nor have any of those specific amendments been relied on for that purpose. C

What has been relied on has been the combination of the title and the preamble, which I have read. It is said that the whole object of the Act of 1957 was, first, with a view to ratification by the Crown; and, secondly, with a view to giving effect to the Geneva Conventions. The ratification by the Crown might or might not have been made. If the ratification were made (as in fact, subsequently, it was made in this case), then, of course, the ratification would take effect, not by D reason of this Act of Parliament at all, but by reason of ratification by the executive. It would then have the consequences in law which ratification by the executive has, as contrasted with the effect it would have in law if it were ratified by law, embodied in statute and made by Parliament part of the law of this land. The title and the preamble relied on do not make the Geneva Conventions statute; and, therefore, except to the extent of the specific amendments to the law made E by the Act of 1957 itself, which I have mentioned and which have not been relied on for the purposes of this case—and which, indeed, appear hardly applicable to it at all—the Act of 1957 does not provide material which can be relied on as being in conflict with the Finance Act 1964 at all. It is conceded by the Crown for the purposes of this case, though not otherwise, that the ratification in fact took place; but it is clear that in so far as the ratification has taken place by executive action F and not by parliamentary action, it yields to statute. So even if there were a conflict between what is contained in the conventions ratified and the Finance Act 1964, the Finance Act 1964, unambiguous as it is, would prevail. Therefore, on this ground, apart from any other, the taxpayer's case, in my judgment, fails.

I shall mention another limb to the taxpayer's argument; namely, that any unlawful purpose for which a statutory enactment may be made vitiates the G enforcement of that statute. As was pointed out for the Crown, if that argument were correct it would mean that the supremacy of Parliament would, in effect, be overruled. If the purpose for which a statute may be used is an invalid purpose, then such remedy as there may be must be directed to dealing with that purpose and not to invalidating the statute itself. What the statute itself enacts cannot be unlawful, because what the statute says and provides is itself the law, and the H highest form of law that is known to this country. It is the law which prevails over every other form of law, and it is not for the court to say that a parliamentary enactment, the highest law in this country, is illegal. The result therefore is that on this ground, also, the taxpayer's case fails.

I would merely add this: that references were made in the course of the attractive arguments that were put forward for the taxpayer to the fact that the I intention that taxation was to be applied to nuclear weapons had been amply demonstrated by parliamentary papers and other reliable means within Parliament itself. This, of course, is quite clear, and I have no hesitation in accepting it; but either that is part of statute, or otherwise part of the law of the land, or it is not. If it is part of a statute it is statute law and it has to be applied by this court. If it is not, then it has no statutory effect and does not affect what is done by statute, including the provisions of the Finance Act 1964 itself. But the true situation is that such declarations of policy do not have statutory effect, have not

the force of law at all, and therefore cannot affect a statute. The terms of the statute in this case are perfectly clear and are binding on the courts of this country.

Appeal dismissed.

Solicitors: *B. M. Birnberg & Co.* (for the taxpayer); *Solicitor of Inland Revenue.*

[*Reported by* F. A. AMIES, ESQ., *Barrister-at-Law.*]

BILLYACK *v.* LEYLAND CONSTRUCTION CO., LTD.

[QUEEN'S BENCH DIVISION (Edmund Davies, L.J., sitting as an additional judge), January 29, 30, 31, February 1, 2, 6, 1968.]

Building Contract—Certificate—Local authority's certificate of habitation—Contract provided that certificate should be conclusive evidence of completion of house—Whether certificate conclusive against liability for structural defects.

Building Contract—Construction—Ambiguity—Building to be built in workmanlike manner and in accordance with specification—Specification provided that excavation should be carried out in accordance with bye-laws and to satisfaction of local authority—Certificate given by local authority—Subsequent discovery of structural defects due to insufficient excavation for foundations—Whether liability of contractors in damages excluded by reason of certificate.

By a contract in writing dated Nov. 21, 1958, and made between the plaintiff and the defendant building contractors, the defendants agreed to build a dwelling-house for the plaintiff and " to build and complete [it] in a workmanlike manner and in accordance with the specification hereto annexed ". The specification provided that " the excavation, concreting . . . will be carried out in accordance with the bye-laws of the local authority and to their satisfaction ". Paragraph 19 of the bye-laws provided that " the foundation of every building should be so designed and constructed as to sustain the combined dead load of the building and imposed vertical and lateral loads . . .". Clause 2 of the contract provided that the plaintiff should pay the defendants half the price when the roof tiles were on " and the balance . . . on the issue of the certificate of habitation by the local authority which certificate shall be conclusive evidence of the completion of the said dwelling-house ". On Feb. 3, 1960, the local authority issued a certificate pursuant to cl. 2 to the effect that the certifier had examined the dwelling-house and " that the same has been constructed to the best of [his] knowledge and belief in accordance with (the deposited) plans and the bye-laws of the council and is fit for human habitation ". Structural defects developed later. These were caused, so the court found, by failure to carry the foundations of the house on the northwest side to a sufficient depth. In an action for damages the defendants contended, among other contentions, that the certificate was made conclusive evidence of the completion of the house in accordance with the contract and that thereafter no complaint could be maintained by the plaintiff.

Held: the plaintiff was entitled to recover damages because—

(i) cl. 2 of the contract did not bar the plaintiff's claim since the certificate thereunder was conclusive only that the house was completed and was not conclusive against complaints, such as complaints of defects in construction, otherwise open to the plaintiff (see p. 787, letter H, post).

(ii) there was some ambiguity in cl. 1 of the contract whether, having regard to the words quoted above from the specification, particularly " *and* to [the local authority's] satisfaction ", the approval of the local authority