No. 248.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—11th August, 1899.

COURT OF APPEAL.—21st and 22nd November, 1900.

HOUSE OF LORDS.—17th February, 3rd and 6th March, and 16th May, 1902.

---

# GRESHAM LIFE ASSURANCE SOCIETY, LTD., v. BISHOP (Surveyor of Taxes).

---

*Income Tax, Schedule D, Case IV.—Proprietary Life Insurance Company established in England carries on business abroad, and re-invests abroad moneys, including interest, received abroad ;*

*interest received abroad is not remitted to England, but is included in the Company's yearly statement of accounts and in the triennial valuation, on which the profits of the Company are estimated.*

Held, *that interest so received abroad and applied or re-invested abroad is not "received" in the United Kingdom within the meaning of Case IV. of Schedule D.*

---

## CASE.

1. At a meeting of the Commissioners of Income Tax for the City of London held at the Guildhall Buildings in the said City on the 12th April, 1894, the Gresham Life Assurance Society, Limited, appealed against the assessment by way of further charge on £143,483 7*s.* 3*d.* made upon the Society for the year ending the 5th April, 1893, in respect of profits arising from interest, dividends, and rents which had not been taxed at their source. For the purposes of this case, the word "interest" hereinafter used includes dividends and rents. The Appellants had already been assessed to and had paid income tax on £6,516 12*s.* 9*d.* assessed in respect of such interest, dividends, and rents. A copy of the further assessment appears in the Schedule hereto.

2. The Gresham Life Assurance Society, Limited, carries on the business of life assurance and of selling or granting annuities pursuant to the provisions of a deed of settlement dated the 3rd July, 1848, as modified by a deed dated 17th July, 1893, copies of which may be referred to as part of this Case.

3. The Registered and Head Office of the Society is in London, where the directors and shareholders meet and whence the affairs of the Company are managed.

### PART I.

4. There are certain countries in which the Society does no business of the any kind, but the Society has funds invested in various securities in those countries. The interest on those securities is either (*a*) reinvested in those countries upon securities there, or (*b*) remitted direct to other foreign countries for investment in those countries, (*c*) remitted to Great Britain.

5. There are certain countries in which the Society carries on business of life insurance by means of local agents or managers. The Society has funds invested in various securities in those countries. By the laws of some of those countries the Society is obliged to keep invested in securities within those countries respectively, a sum to answer liabilities on its policies and other engagements in those countries respectively. No part of the money so compulsorily invested can be removed until the liability in respect of the said policies and engagements has run off. The

GRESHAM LIFE SOCIETY v. BISHOP.

interest on the investments whether compulsory or not is either (*d*) reinvested in those countries upon securities there, (*e*) applied in estalishment and other expenses in the countries where the interest is earned (*f*) remitted direct to other foreign countries for investment, (*g*) remitted direct to other foreign countries for the general purposes of the Appellants, or (*h*) remitted to Great Britain.

6. It is essential for the purposes of the Appellants as an Insurance Company that the greater portion of the premiums received by them should be invested in interest-bearing securities and that from time to time the interest accruing thereon should also be invested, and the investments mentioned in paragraphs 4 and 5 are accordingly made for that purpose. The said investments are made in the course of and for the purposes of the business of the Society as an Insurance Company, and the total amount of such investments is taken into account in arriving at the profits of the Society.

7. All interest capitalised abroad by reinvestment in the event of the winding-up of the Society or the discontinuance of the Society's operations in any particular country form part of the assets of the Society available for the fulfilment of the Society's obligations.

8. The Society contended before thz Commissioners that under the 4th Case, s. 100 of 5 & 6 Vic. c. 35, only such part of the said interest as was received in Great Britain during the year of account was assessable to tax, and that the interest applied as in (*a*) (*b*) (*d*) (*e*) (*f*) and (*g*) was exempt from tax.

9. Upon the above facts it was contended on behalf of the Crown that on the facts there should be no reduction of the assessment, and that there was a constructive remittance of the interest, and they quoted the cases of the *Scottish Mortgage Company of New Mexico* v. *McKelvie*(1) and *Norwich Union Fire Insurance Company* v. *Magee*.(2)

The Commissioners declined to reduce the assessment.

PART 2.

10. The amount of the surplus funds of the Society divisible as profits is ascertained by actuarial valuation once in every three years. All the investments mentioned in paragraphs 4 and 5 are made in the course of and for the purposes of the business of the Society, and the total amount of such investments is taken into account in arriving at the profits of the Society. The amount of the Society's profits for the year of account so ascertained was £17,342 3*s*. 0*d*. The Society is willing to pay tax upon this sum, and contended before the Commissioners that

(1) 2. T.C., page 172. (2) 3 T.C., page 457.

if the total of the interest on the Society's investments in the year of account exceeds the profits of that year, the excess is not taxable and the assessment should be reduced accordingly. The Society, therefore, claimed to have its assessable income reduced to £17,342 3*s.* 0*d.*

11. It was contended on behalf of the Crown that on the facts the assessment should stand, and that even if the Society's profits as ascertained at the actuarial valuation were less in amount than their untaxed interest, such untaxed interest is properly assessable as such without deduction, and quoted the case of *Clerical and Medical, &c., Society* v. *Carter*.(1)

12. The Commissioners confirmed the assessment, whereupon the Society expressed dissatisfaction and required a Case to be stated for the opinion of the High Court of Justice upon the above contentions, which the Commissioners state and sign accordingly.

The questions for the opinion of the Court are—

1. Whether the interest described in 4 and 5 (*a*) (*b*) (*d*) (*e*) (*f*) and (*g*) respectively is liable to taxation ?

If the Court should decide in favour of the Appellants with respect to any of the classes of interest described in 4 and 5 (*a*) (*b*) (*d*) (*e*) (*f*) or (*g*), the assessment is to be remitted to the Commissioners to be amended accordingly.

2. Whether the assessment is to be reduced to £17,342 3*s.* 0*d.*, the amount of profits of the Society ?

If the Court should decide in favour of the Appellants on the second question, the assessment is to be reduced to that amount.

SYDNEY H. WATERLOW,<br>
H. MORLEY,<br>
GEO. H. CHAMBERS,<br>
D. P. SELLAR,<br>
W. D. POWLES,<br>
ALBERT G. SANDEMAN,<br>
EDWARD T. NORRIS,<br>
A. H. BAKER,

} Commissioners of Taxes for the City of London.

THOMAS HEWITT,<br>
Counsel and Clerk to the Commissioners.

The Guildhall Buildings, E.C.,<br>
5th May, 1898.

(1) 2. T.C., page 437.

GRESHAM LIFE SOCIETY v. BISHOP.

SUPPLEMENTAL STATEMENT.

Agreed between the solicitors for the appellants and the solicitor of Inland Revenue on behalf of the respondent, in pursuance of the directions of the Queen's Bench Division (Grantham and Kennedy, J.J.) of 24th March, 1899.

1. The Gresham Life Assurance Society, Limited, has not been charged to income tax under Schedule D. in respect of profits for the year ended 5th April, 1893, except in respect of the interest dividend of 5 per cent. on the paid-up capital payable under clause 109 of the Deed of Settlement out of the profits of the Company. Such year is hereinafter referred to as the "year of assessment."

2. The Society has a subscribed capital of £100,000, divided into 20,000 shares of £5 each, and interest is annually paid to the shareholders on the amount paid up thereon. The profits of the Society are divisible among the shareholders, and participating policy-holders or otherwise applied in the manner indicated in the Deed of Settlement and the Laws and Regulations of the Company, but (except as above mentioned in paragraph 1 and afterwards mentioned in paragraph 4 hereof) no such profits were divisible or divided during the year of assessment. The said Deed Laws and Regulations form part of this Case.

3. The sole and complete management and control of all the affairs, operations and business of the Society subject to the laws of the various countries in which the Society carries on its business, both in and out of the United Kingdom were and are alike, subject to the control of general meetings of the shareholders, vested in and exercised by the Board of Directors at the head office in London, where the meetings of the Directors and the shareholders are held, and dividends and division of profits declared and made, and dividends are payable.

4. The printed accounts (revenue accounts and balance sheets &c.) are made up annually and show the nature and extent of the entire business and financial operations carried on by the Society both in the United Kingdom and abroad, and as one entire and indivisible business. The profits are ascertained by actuarial valuation once in three years. Interest amounting to £1,085 12*s*. 0*d*. was paid during the year of assessment to the shareholders at the rate of £5 per cent. per annum on the total amount of their paid-up capital. Such interest was paid out of profits as above mentioned.

5. The official Returns marked *a*, *b*, *c*, and *d* made pursuant to the Life Assurance Companies Act, 1870, including the revenue accounts and balance sheets of the Society for the periods ending 30th June, 1891, 31st December, 1892, and 31st December, 1893, and also including the valuation balance sheets, consolidated revenue accounts and statements for the

three years ending 30th June, 1891, and for the four and a half years ending 31st December, 1895, may be referred to as forming part of this statement.

6. A specimen of the form in use during the year of assessment for life insurance policies granted by the Society at their French branch (being similar to the forms of policy granted by the Society to and forms part of this Statement and is marked *e*. Under these policies and contracts, the claims and annuities payable thereunder are respectively payable and actually paid at the branches and agencies abroad, and no monies are remitted abroad from the United Kingdom specifically for that purpose, but monies would be remitted abroad to such countries if and when necessary to meet payments there made.

7. The agents or managers of the agencies and branches in the countries out of the United Kingdom in which the Society carries on the businees of life insurance and/or of selling or granting annuities from time to time account to the head office for all monies received and paid there by or on behalf of the Society, and render to the head office full accounts setting forth all transactions at the agencies and branches.

8. The receipts at the agencies and branches abroad include (inter alia) premiums received from policy-holders, payments for purchase of annuities and interest or dividends arising from foreign securities or investments. The payments at these agencies and branches include (inter alia) payments under policies on account of claims, payments on account of annuities, policy surrender values, bonuses, commissioners, management and office expenses. All receipts, payments and balances in hand at these agencies and branches are dealt with from time to time in the manner directed by means of special or general instructions by the Board of Directors from the head office in London, and are controlled by such Directors by means of such instructions, and are either invested abroad, applied towards payments abroad, or are otherwise dealt with or expended as may be required or directed by the Board of Directors in London.

9. All interests and dividends, including those the subject of the assessment appealed against, are included as money received by the Society in the revenue accounts and consolidated revenue accounts of the Society under the head of "Interest, dividends, and rents," and are taken into account in arriving at the amount of the life assurance and endowment funds and life annuity fund set out in the valuation balance sheets of the Society upon which the surpluses or profits are ascertained. The accounts are made out in the United Kingdom, and are accounts made out by the head office of the Society in the United Kingdom, and are by that head office rendered to the shareholders as accounts of all the Society's transactions and affairs which are all directed and controlled as before stated by the Directors from the head office in the United Kingdom.

10. The accounts of the Society are made out in the forms prescribed in the schedule to the Life Assurance Companies Act, 1870, and no distinction is made in the accounts of the Society with regard to receipts or expenditure, whether arising or made in the United Kingdom or abroad, but the whole receipts and expenditure at home and abroad are included together in one entire account in the revenue and other accounts and valuations of the Society.

11. If the interest and dividends in question and the premiums received abroad had not been retained abroad, or remitted from one foreign country or colony to another, the Society would have been obliged to send out from the United Kingdom to their foreign agencies and branches for the payment of claims and annuities, or discharge of other obligations, or for the payment of expenses, purposes of cumpolsory investment or otherwise, an amount sufficient for such purposes. By not remitting the interest, dividends and premiums in *forma specifica* to the United Kingdom, the Society saves the cost of the Exchange, expense and inconvenience which remittances in that form would involve. The Society allege (but the Crown does not accept the allegation as being the fact) that the premiums received abroad are sufficient to pay the annuities and claims payable abroad. If this allegation is material for any purposes of this Case, then the Case is to be remitted to the Commissioners for the ascertainment by them of the actual facts.

12. In paragraph 4 of the Case stated, the foreign countries described under (*b*) include those where the Society carries on no business as well as countries where the Society carries on business, and also countries by the laws of which a compulsory investment is required as indicated in paragraph 5 of the Case.

13. In paragraph 5 of the Case stated, the establishment and other expenses described under (*e*) include payment of claims under policies and annuities. The foreign countries referred to in (*f*) and (*g*) include countries where the Society carries on business as well as countries by the laws of which a compulsory investment is required. The general purposes referred to under (*g*) include payment of claims under policies and annuities.

14. The amount of the profits of the Society, if estimated under Case 1 of Schedule D., for the year of assessment on the average of the preceding years ending 30th June, 1891, would be £40,472.

15. Remittances on behalf of the Society of amounts representing interest, dividends or other moneys from one foreign country or colony to another colony or foreign country are not made *viâ* the United Kingdom, nor by means of securities (negotiable instruments or others) payable in the United Kingdom.

F C. Gore.
Devonshire & co.

19th June, 1899.

GRESHAM LIFE SOCIETY v. BISHOP.

In the King's Bench Division, 11th August, 1899, Darling, J., and Phillimore, J., read judgments of Gresham, J., and Kennedy, J., in which the case was not distinguished from that of the Universal Life Assurance Society. (1)

In the Court of Appeal, 22nd November, 1900, judgment was delivered in favour of the Surveyor.

The Case was argued in the House of Lords on the 17th, February, 3rd and 6th March, 1902.

*Sir Edward Clarke* (*Haldane, K.C.*, and *Stewart Smith* with him), for the Appellants.—In the case of the *Scottish Mortgage Company of New Mexico* v. *McKelvie*,(2) the Company had committed an illegality, and could not allege the illegality as the reason why the money had not been received in the United Kingdom. *Forbes* v. *Scottish Provident Institution*(3) is in point. Receipt on account is not sufficient to satisfy the section, which requires local receipt. *Standard Life Assurance Company* v. *Allan*.(4) The profits distributed in this country were distributed out of moneys in hand. Control by the directors does not imply receipt in this country.

In the second place, even if this interest is received in the United Kingdom, it is not profit liable to income tax. *Attorney General* v. *London County Council*.(5) A life insurance should be charged on its profits as shown at the valuation. *Clerical, Medical, and General Life Assurance Society* v. *Carter*(6) should be over-ruled. The interest should only be taken as an item in ascertaining gross profits.

*Haldane, K.C.*—This money cannot be received in England when the law of the country in which it is received requires it to be invested abroad. *Colquhoun* v. *Brooks*.(7) McKelvie's case rested on estoppel, and in that case the expenses of American management were allowed to be set off.

In support of Sir E. Clarke's second point—interest is an item of receipt, just as premiums are. Premiums are not taxable as annuities. Interest or annuities to be taxable muet be of the nature of income. Banks are not taxed on the interest, as such, of overdrafts, but are allowed to set off working expenses.

*The Attorney-General* (*The Solicitor-General*, *Danckwerts, K.C.*, and *Rowlatt* with him), for the respondent.—In answer to the second point, interest is a separate matter of taxation. What if an insurance company invested all its moneys in Consols taxed under Schedule C.? Or in land taxed under Schedule A.? How could the tax be got back

On the first point,—" Receipt in account " and " receipt " within the statute con only be distinguished if the statute is to

(1) 4 T.C., page 145. (2) 2 T.C., page 172. (3) 3. T.C., page 443.
(4) 4 T.C., page 446. (5) 4 T.C., page 265. (6) 2. T.C., page 457.
(7) 2 T.C., page 490.

GRESHAM LIFE SOCIETY *v.* BISHOP.

be read as requiring the remittance of bullion. [*The Lord Chancellor.*—Credit in account is not receipt in account.] How can this case be distinguished from cases in which a bill is sent and endorsed in London for payment abroad? Interest applied abroad has relieved the Company from a liability abroad and set free funds at home. [*Lord Shand.*—If this had been a case of debtor and creditor, it would have been a clear case. But it is a case of principal and agent.] The agent is discharged here. The money is applied under orders from home. Profits are divided based on these accounts. The accounting party is discharged here, where he would have to pay his debt There is more in this case than a mere notification of receipt as in *Forbes* v. *Scottish Provident Institution. Norwich Union Fire Insurance Company* v. *Magee*;(1) *Bartholemay Brewing Company* v. *Wyatt.*(2) Compare the decisions on the words "Paid in Cash" in sec. 25 of the Companies Act, 1867.

JUDGMENT.

The Lord Chancellor.

*The Lord Chancellor.*—My Lords, the question in this case seems to me to depend upon the actual words used by the Legislature, and I deprecate a construction which passes by the actual words and seeks to limit the words by what is supposed to be something equivalent to the language used by the Legislature. To put the matter shortly, the Legislature has provided that, besides the proper amount of taxation upon the balance of profits and gains by any person resident in this country, he must also pay upon the interest on any investment made in foreign countries, and that in calculating that amount, the actual amount received on such investments, no calculation or deduction is to be allowed in respect of the expenses of obtaining such investment, but the duty must be levied upon the actual amount received; but then this impost is only to be levied provided the money is received in this country.

Now, here the money has not actually been received in this country. It is to be observed that the Legislature has assumed by the distinction which it has made between the mode of ascertaining the amount payable generally upon the balance of gains and profits and the amount taxable in respect of the interest payable upon foreign investmeots, that it had ear-marked that sum and made it subject to distinct and peculiar incidents. The difficulty of identifying the actual sum is no limit on the enactment. The Legislature must be supposed to have contemplated the possibility of drawing a distinction between money received in this country and money accounted for or credited in account. If it were not for the difficulty of ear-marking money I should think no one would have any doubt that the money must be

(1) 3 T.C., page 457. (2) 3 T.C., page 213.

received in this country to bring it within the words of the statute. If it were not money but some commodity, say tobacco, which a trader carrying on business in London and Paris was accounting for to his London house, no one would say that though the Paris tobacco was credited in account as a set-off against some expense or something that the supposed London firm had to set-off against the same claim, and that as the London firm was paid by the Paris tobacco, therefore, the tobacco was liable to the import duty on tobacco because it was taken into account in the books of the London firm.

In no way that I can give any reasonable interpretation to has the money reached this country or been received in this country. It, like the tobacco in the case suggested, has not been imported, and if the Legislature had intended that bringing it into account was to be equivalent to its being received, it would have been easy to say so. It cannot be said that the use of artificial meaning to be attached to ordinary language is either unknown or unusual in legislation; and if it was intented to make this a special subject of taxation, to be taxed whenever and whereever an equivalent amount was credited or booked or in any other way recognised as having come under the dominion of the owner in this country, nothing could have been easier than to enact it in plain terms.

I decline to go beyond the words used, and I do not think this money was received in this country.

I do not think any amount of book-keeping or treatment of these assets, whereever they may be, will be equivalent to or the same thing as receiving the amount in this country. The words are simple, intelligible, and represent an ordinary and simple thing. I cannot think we ought to go beyond the words themselves, and I think this Judgment ought to be reversed.

Lord Macnaghten.

*Lord Macnaghten.*—My Lords, I am also of opinion that the Judgment of the Court of Appeal cannot be supported.

The question depends upon the meaning of the rule applicable to the fourth case of Schedule D. To my mind the language of the rule is so plain that it is difficult, if not impossible, to add anything which would make the meaning plainer.

The appellants are possessed of foreign securities. The duty to be charged in respect of interest arising from foreign securities is, according to the rule in question, to be computed on a sum not less than the full amount of the sums which have been or will be, received in the United Kingdom in the current year. I do not understand what is meant by constructive receipt in such a case as this, or how any sums can be said to have been received in the United Kingdom unless they have been brought to the United Kingdom, or unless there has been a remittance "payable in the United Kingdom," to borrow the language of the rule applicable to the fifth case. The circumstances that the

GRESHAM LIFE SOCIETY v. BISHOP.

Lord Macnaghten.

business of the Society is " one indivisible business," and that the Society in the statement of its affairs and in its dealings with its shareholders and customers takes into consideration its foreign assets and liabilities, seems to me to be immaterial to the present question. As my noble and learned friend Lord Robertson, when Lord President, observed in the case of the Provident Scottish Institution.(1) " Every man and every company having foreign or colonial investments of course knows of the interest arising from them, takes note of it, and enters it in any statement of affairs which may require to be made up." But that, as I think, and as the Lord President thought, is a very different thing from bringing the interest home—a very different thing from the receipt of the money here, either in specie or as represented by a remittance payable in this country.

The difficulty seems to have arisen from a misunderstanding or a misapplication of the Judgment in the New Mexican case. That was a very special case. Whether the decision was right or wrong it can have no bearing upon the question now before your Lordships. Speaking for myself, I think the decision was right. In that case, as it seems to me, in the transmission to, this country of money which the Company was free to distribute and the transmission to America by way of exchange of an equivalent amount which the Company was bound to re-invest, the Company acted as their own bankers, and did for themselves, by an entry in their books, what might have been done less conveniently and less economically by an ordinary bank or financial agent on their behalf.

I think that the appeal must be allowed.

Lord Shand.

*Lord Shand.*—My Lords, I am also of opinion that the Appeal should be allowed. It is true that the appellants received the interest on their foreign securities by the hands of their agents abroad. But I think it is equally true that, as they left that interest where it was gained, it was never received in this country. When it was entered in the Company's balance sheet in order to the ascertainment of the profits of the year, it was so entered as estate which had not been received in England, but as property belonging to the Company which they acquired abroad, which had not been brought home or received here, but which was part of their foreign assets. Money or securities in that position was properly taken into account in the ascertainment of the year's profits, not because it had been received in England, but because although not so received it was part of assests of value which the Company had acquired and held abroad. In the Scottish case of the Investment Company of New Mexico, the *species facti* was different, for there the Company treated the money as received in this country, and merely saved themselves the expense of cross remittances. It appeared there that the Company was not entitled to divide the

(1) 3 T.C., page 456.

money earned abroad unless it was received as profits in this country. It was treated as so received merely to avoid the expense and inconvenience of cross remittances, money sent home and the same amount sent back by cross cheques or drafts. That was a material point in the decision of the case as showing that the money had been really received in this country.

Lord Brampton.

*Lord Brampton.*—My Lords, it is conceded that no part of the money in question was ever received in the United Kingdom in specie, or in any form known to the commercial world for the transmission of money from one country or place to another. But it was argued that if not actually it was "constructively" so received in the accounts of the Society. I confess I do not like that expression, nor do I quite understand what it means. If a "constructive" receipt is the same thing as an actual receipt, I see no reason for the use of the word "constructive" at all. If it means something differing from or short of an actual receipt, then it seems to me that a constructive receipt is not recognised by the Statute, which in using the word "received" alone, must be taken to have used it having regard to its ordinary acceptation.

The Master of the Rolls (Sir A. L. Smith) in his Judgment in the Court of Appeal, while stating that there must be "an actual receipt of the amount," added "but that receipt need not be in specie, it may be in account," and he then proceeded to deal with the accounts of the appellants set forth in the Appendix and to draw from them the inference that the appellants had actually received and dealt with these foreign dividends in the United Kingdom and had distributed them as having been so received. Now, I am not prepared to deny that accounts may be so worded as to contain admissions justifying such an inference, but I differ with the view he took that such admissions, or anything approaching them, are to be found in the accounts before your Lordships

Those accounts were framed partly to satisfy the requirements of the Life Insurance Companies Act, 1870 (33 & 34 Vict. c. 61), that at the end of each financial year a statement of the Company's revenue account and of its balance sheet in the forms contained in the first and second schedules should be furnished to the Board of Trade, and partly in obedience to Articles 77 and 78 of the Society's Deed of Settlement, directing books to be kept in which full entries shall be made of all matters which shall properly be the subject of debt or credit account, so that the financial state of the Company may at all times appear as accurately as circumstances will permit; and further directing balance sheets to be made up yearly and sent to every shareholder. The accounts before your Lordships profess to do no more than this, and no inference of fact can be drawn from them other than or in addition to those stated in them.

Gresham Life Society v. Bishop.

Lord Brampton.

In my opinion there is total absence of any evidence to justify a finding that the interest in question has ever been received in the United Kingdom.

For the Crown, the case of the *Scottish Mortgage Company of New Mexico* v. *The Commissioners of Inland Revenue* was much relied upon. I an not satisfied with the correctness of the Judgment in that case, but, assuming it to be sound it is distinguishable from the present Case, for in paragraph 13 of the printed Case before the Court of Session there was an admission that the amount charged with the income tax had been applied in payment of interest and dividends to debenture and shareholders in Glasgow. No similar admission was contained in the accounts in the Case before this House.

My Lords, I am of opinion with your Lordships that the Appeal should be allowed with costs.

Lord Lindley.

*Lord Lindley.*—My Lords, this Appeal turns upon the answer to be given to a simple question of fact. Has a certain sum of money entered by the Gresham Society in its accounts as an asset been received in this country by the Society, or has it not ? If it has, the Appeal ought to be dismissed ; on the other hand, if it has not, the Appeal ought to be allowed

First, let us consider what is meant by the receipt of a sum of money

My Lords I agree with the Court of Appeal that a sum of money may be received in more ways than one *e.g.* by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass ; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a recipt within the meaning of the Statute which your Lordships have to interpret. But to constitute a receipt of anything there must be a person to receive and a person from whom he receives and something received by the former from the latter, and in this case that something must be a sum of money. A mere entry in an account which does not represent such a transaction does not prove any receipt, whatever else it may be worth.

Now, in this Case the Gresham Company's accounts and the statements in the Special Case clearly establish the fact that the sum of £143,483 sought to be charged with income tax consists of interest and dividends received abroad by the agents of the Company from persons abroad who have paid these agents. The Case and accounts do not state the exact mode in which the various sums making up the total of £143,483 were paid to the agents of the Company. The payment is admitted, and the receipt of that sum by the Company, through its agents, is not in dispute

But then comes the second question: Has that sum been received in this country by the Gresham Company? The special case clearly shows that it has not in fact been remitted to this country in any way whatever. Applying the test already suggested, no one here has received that sum; the agents who received it abroad still have it abroad, or have dealt with it otherwise than by sending it to the Company here. No account even is forthcoming to show that the sum has ever been treated as remitted here so as to justify the inference that in any commercial sense the sum has been received in the United Kingdom as distinguished from other countries.

What has been done and all that has been done is that the Gresham Company, in making up its accounts with a view to ascertain what profits it could divide in a particular year, entered on its asset side the sum of £143,483 as money received during the year. This was obviously right, for the object was not to ascertain the profit made in any particular country, but the profit made by the Company on all its transactions all over the world. The Company has paid duty on the profit so ascertained, and no question arises as to that. But when required to pay duty on the item of £143,483 on the ground that this sum is, made up of interest or dividend received in the United Kingdom the Company objects on the ground that it represents nothing of the sort. Nor does it, in truth.

The fact that the profits shown by the account have been divided amongst the shareholders of the Company does not carry the case any further. No part of the £143,483 has come over here or been in any sense received here, and then applied in payment of dividend. Some interest or dividends received abroad have been remitted here, and duty has been paid on them accordingly, but the special case shows plainly that no part of the £143,483 has been so remitted, either for the purpose of paying dividends or for any other purpose.

p. 465

My Lords, it must be assumed that the language used by the Legislature in laying down the rules to be observed in the various cases contained in the Income Tax Act, 1842, was carefully chosen, and that there was some good and sufficient reason for confining the duty on interest on foreign securities (mentioned in the fourth case falling under Schedule D) to sums which have been or will be received in Great Britain during the year for which the duty is payable. The locality of the receipt is made all important, and it is only by ignoring it or by introducing the expression "constructive receipt"—which may mean anything—that the claim of the Crown can be supported.

Schedule D in the Act of 1842 was re-cast in 1853, and was replaced by a new Schedule D; but the cases and rules in the Act of 1842 are applicable to the new Schedule: see sections 2 and 5 of the Income Tax Act, 1853.

GRESHAM LIFE SOCIETY v. BISHOP.

Lord Lindley.

My Lords, authorities have been referred, and especially the Scotch cases of McKelvie, Forbes, and the Standard Life Assurance Company. McKelvie's case was very peculiar. Money received by the Company's agents abroad was clearly and unmistakeably treated by the Company as remitted to and received by it here, and money here was treated by the Company as remitted abroad in exchange for it. The exchange was effected by a book entry, but that entry was the business mode of carrying out cross remittances which it would have been unbusiness-like and really childish to have effected in any other way. But thinking, as I do, that McKelvie's case may be properly upheld, I am not prepared to adopt it as a new starting point for further inferences. The language of the Statute is the true starting point on each case. Forbes' case and the Standard Life Assurance Company's case were both based on this sound principle, and were, in my opinion, both clearly rightly decided. The Court of Appeal, in my opinion, considered this case undistinguishable from McKelvie's, but I am unable so to regard it. Assuming them to be undistinguishable, it would, in my opinion, be more correct to overrule McKelvie's case than to decide the present Appeal in favour of the Crown.

In my opinion the Appeal should be allowed.

*Questions put :—*

That the Order appealed from be reversed.

*The Contents have it.*

That the respondents do pay to the appellants the cost both here and below.

*The Contents have it.*

---