VOL. XXX—PART IV

No. 1404—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
30TH APRIL, 1ST, 2ND, 3RD AND 16TH MAY, 1946

COURT OF APPEAL—6TH, 7TH AND 8TH NOVEMBER AND
9TH DECEMBER, 1946

HOUSE OF LORDS—14TH, 15TH AND 16TH APRIL AND 13TH MAY, 1948

CONGREVE AND CONGREVE *v.* COMMISSIONERS OF INLAND REVENUE[1]

Income Tax and Sur-tax—Avoidance of tax by transfer of assets abroad—Transfer by individual ordinarily resident in United Kingdom—Transfer by a third party—Transfer by a company in which an individual resident in the United Kingdom has a controlling interest—Transfer to United Kingdom company of which control subsequently removed abroad —"Associated operations"—"Power to enjoy income"—Finance Act, 1936 (26 *Geo.* V & 1 *Edw.* VIII, *c.* 34), *Section* 18 *and Second Schedule, Paragraph* 6; *Finance Act,* 1938 (1 & 2 *Geo.* VI, *c.* 46), *Section* 28.

The first named Appellant, Mrs. C, was the only child of G, an American citizen who had built up a substantial business in the United Kingdom. During the material period this business was carried on by a United Kingdom trading company, Humphreys & Glasgow, Ltd., with an issued capital of 100,000 *shares. In* 1927 *G held* 93,000 *of these shares. Mrs. C was born in London but on attaining her majority she confirmed her American citizenship. In* 1935 *she married Mr. C, the second Appellant, who was domiciled in Eire. At all material times both Appellants were ordinarily resident in the United Kingdom.*

From 1932 *onwards a series of transactions was carried out involving the creation of three Canadian and four United Kingdom investment companies; in outline these transactions are described in the following subparagraphs* (1) *to* (9).

(1) *In* 1932 *G gave to his daughter, Mrs. C, the whole issued share capital of an American corporation to which he had earlier transferred* 60,000 *shares in Humphreys & Glasgow, Ltd. Later in* 1932 *the* 60,000 *shares were transferred to a Canadian investment company (Humphreys & Glasgow (Canada)) which also acquired a further* 5,000 *shares from Mrs. C. In exchange for both transfers the Canadian company issued to Mrs. C redeemable debentures and all its shares (except* 5 *qualification shares held by Canadian directors). In* 1936 *this company purchased*

(1) Reported (K.B.) [1946] 2 All E.R. 170; (C.A.) [1947] 1 All E.R. 168; (H.L.) [1948] L.J. 1229.

from G for cash his remaining (28,000) *shares in Humphreys & Glasgow, Ltd.* (*see* (5) *below*). *The whole of the Canadian company's income was accumulated in a bank in London where the redeemable debentures were repayable on demand.*

(2) *In* 1932 *and again in* 1936 *Mrs. C sold a number of her American and Canadian investments to a* (*second*) *Canadian investment company* (*Rockbridge*) *in exchange for all its shares* (*except* 5 *directors' qualification shares*) *and redeemable debentures. The whole of the company's income was accumulated.*

(3) *In* 1933 *Humphreys & Glasgow, Ltd. transferred to a* (*third*) *Canadian investment company* (*Humglas*) *in which it held all the shares* (*except* 5 *qualification shares*), *its foreign investments in exchange for* $1,290,000 *redeemable debentures of the company.*

(4) *On* 16*th July*, 1936, *Section* 18 *of the Finance Act*, 1936, *became law.*

In the course of 1936 *the first and second Canadian companies —see* (1) *and* (2) *above—were wound up and the* 65,000 *shares in Humphreys & Glasgow, Ltd. and her American and Canadian investments were transferred to Mrs. C in specie.*

(5) *On* 18*th November*, 1936, *a United Kingdom investment company* (*Margreve*) *was incorporated and acquired for cash*

(a) *from the first Canadian company—see* (1) *above—prior to its dissolution, the* 28,000 *shares purchased from G,*

(b) *from Mrs. C,* 17,000 *shares in Humphreys & Glasgow, Ltd., and a number of her foreign investments.*

By October, 1937, *Mrs. C owned all the shares of Margreve.*

(6) *On* 30*th July*, 1937, *the Finance Act*, 1937, *became law. By Section* 19 *thereof a new tax called National Defence Contribution was levied on trades and businesses, including the holding of investments, carried on in the United Kingdom.*

On 21*st October*, 1937, *Margreve distributed a capital bonus of* £350,000 *out of its share premium reserve and Mrs. C became entitled to this sum in redeemable debentures. On the same day she renounced* £215,000 *of the debentures in favour of a* (*second*) *United Kingdom investment company* (*Seventy Three*), *which had been incorporated a few days earlier, and received in exchange* £430,000 *redeemable debentures of that company, issued at a discount of* 50 *per cent. and repayable at a premium of* 20 *per cent.*

(7) *In the same month* (*October*) *a* (*third*) *United Kingdom investment company* (*Marglas*) *was formed. Margreve immediately thereafter entered into an arrangement with Marglas which had the result that*

(a) *Margreve held only foreign investments, and*

(b) *Marglas held the* 45,000 *shares of Humphreys & Glasgow, Ltd.*

In the course of the transaction £135,000 *debentures, the balance of the* £350,000 *Margreve debentures—see* (6) *above—were redeemed. Mrs. C acquired the entire share capital of Marglas.*

(8) *The first and second United Kingdom investment companies (Margreve and Seventy Three), within a few days of the transactions referred to above, adopted new articles of association under which the control of each company was transferred abroad. The control of the third United Kingdom company remained unaltered until 22nd August,* 1940, *when it went into liquidation, but up to June,* 1945, *it had not been finally dissolved.*

(9) *In December,* 1937, *Humphreys & Glasgow, Ltd. sold its debentures in the (third) Canadian company—referred to in* (3) *above—to another (fourth) United Kingdom investment company (Glow), which was incorporated for the purpose, and received in exchange* £515,000 *redeemable debentures issued at a discount of* 50 *per cent. and repayable at a premium of* 20 *per cent. A few days later Glow adopted new articles of association vesting control of the company abroad.*

At all material times Mrs. C was the controlling shareholder of Humphreys & Glasgow, Ltd.

An assessment to Sur-tax for the year 1935-36 *was made on the first Appellant, and assessments to Sur-tax for the years* 1935-36 *to* 1940-41, *inclusive, and to Income Tax for the years* 1936-37 *to* 1940-41, *inclusive, were made on the second Appellant (her husband) under the provisions of Section* 18 *of the Finance Act,* 1936, *and Paragraph* 6 *of the Second Schedule to that Act, and Section* 28 *of the Finance Act,* 1938, *on the basis that all the foregoing transactions were transfers of assets or associated operations within the meaning of Section* 18, *and that the Appellants had power to enjoy the whole income of the foreign companies concerned. On appeal to the Special Commissioners it was contended on behalf of the Appellants that the transfers made to the first and second Canadian investment companies by the first Appellant in* 1932 *were not made for the purpose of avoiding liability to tax; that none of the subsequent transactions were transfers or associated operations within the meaning of Section* 18; *that the removals abroad of the control of the two United Kingdom companies, Margreve and Seventy Three, were not associated operations related to any transfer of assets, and that in any event the Appellants were only liable on such income of the transferee companies as arose from the assets transferred or from assets acquired as a result of associated operations related to those assets. The Special Commissioners dismissed the appeal.*

In the House of Lords it was not disputed by the Appellants that the transactions together constituted one inter-connected series or that the avoidance of liability to taxation was the purpose or one of the purposes of the transactions.

Held, *that the provisions of Section* 18 *of the Finance Act,* 1936, *apply* :—

(a) *where there has been a transfer such as is described in the introductory words of the Section and an individual has by means of such transfer, either alone or in conjunction with associated operations, acquired rights by virtue of which he has power to enjoy income of a person resident or domiciled abroad, irrespective of whether the transfer was made by the individual who acquired those rights or by another person, and*

(b) *where a transfer of assets was made to a person who, at the time of the transfer, was resident in the United Kingdom but who, at*

the time when the relevant income arose, was resident or domiciled out of the United Kingdom.

CASE

Stated under the Income Tax Act, 1918, Section 149, and the Finance Act, 1927, Section 42 (7), and Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on 21st October, 1942, 2nd, 3rd, 4th November, 1942, and 27th September, 1944, Mrs. M. G. Glasgow Congreve and A. C. Congreve (hereinafter called "Mrs. Congreve" and "Mr. Congreve", respectively) appealed against the following assessments :—

Mrs. Congreve against an assessment to Sur-tax in the sum of £15,059 for the year ending 5th April, 1936.

Mr. Congreve against assessments to Sur-tax in the sums of £17,281, £26,314, £40,061, £70,066, £117,803 and £97,866 for the years ending 5th April, 1936, to 5th April, 1941, inclusive.

Mr. Congreve against assessments to Income Tax in the sums of £10,000, £20,000, £40,000, £60,000 and £60,000 for the years ending 5th April, 1937, to 5th April, 1941, inclusive.

2. All the above assessments are raised under the provisions of the Finance Act, 1936, Section 18, and Paragraph 6 of the Second Schedule to that Act, and Section 28 of the Finance Act, 1938. The appeals raise the question whether the said assessments were correctly made by reason of the matters hereinafter set out.

The following table sets out the respective dates of registration, the full names and the short labels of the several English, Canadian and American companies hereinafter mentioned :—

17th June, 1912.	Humphreys & Glasgow, Ltd., an English company	hereinafter called	Humphreys & Glasgow (England)
29th December, 1927.	International Gas Processes Corporation, an American company	„	International Gas
21st April, 1932.	Humphreys & Glasgow (Canada), Ltd., a Canadian company	„	Humphreys & Glasgow (Canada)
5th May, 1932.	Rockbridge, Ltd., a Canadian company	„	Rockbridge
29th November, 1933.	Humglas, Ltd., a Canadian company	„	Humglas
18th November, 1936.	Margreve, Ltd., an English company	„	Margreve
15th October, 1937.	73 Investment Trust Ltd., an English company	„	Seventy Three
18th October, 1937.	Marglas, Ltd., an English company	„	Marglas
29th November, 1937.	Glow Investment Trust, Ltd., an English company	„	Glow

3. Mr. Glasgow, the father of Mrs. Congreve, was born about 79 years ago in the United States of America of American parents. He is, and always has been, an American citizen domiciled in one of the United States.

In 1901 Mr. Glasgow married an American lady, Miss Margaret Branch. She is still living.

Mr. Glasgow came to England in 1892 and (except during the last war) resided in England from that time until September, 1939, when he gave up his residence in England and returned to America with Mrs. Glasgow. They have not been back since.

Shortly after coming to England in 1892, Mr. Glasgow entered into a partnership with another American, Dr. Humphreys. They carried on business in England under the firm name of Humphreys & Glasgow. Their business was the designing and supplying of plant for the production of carburetted water gas. Mr. Glasgow became the sole owner of the business and in 1912 he sold it to Humphreys & Glasgow (England). Mr. Glasgow became the owner of the bulk of the shares, and until December, 1927, owned a little over 93,000 shares out of 100,000 issued, the remainder being held by several employee directors of the company. Transactions thereafter relating to the said 93,000 shares are referred to in the following paragraphs.

Throughout the whole of the time when Mr. Glasgow was living in England he made frequent journeys to the United States and Canada, usually twice a year. Latterly he used to spend the winter months in Florida on account of his and Mrs. Glasgow's health.

Mr. and Mrs. Glasgow had only one child, Margaret Gholson Glasgow, now Mrs. Congreve.

4. Mrs. Congreve was born in London, where she resided with her parents, accompanying them on their trips to the United States of America. From 1914 to 1919 she lived entirely in America.

Upon reaching her majority, Mrs. Congreve took active steps to confirm her American citizenship and domicile, and exercised her vote in New York City, although she continued to reside in the United Kingdom.

On 30th July, 1935, Mrs. Congreve was married to Mr. Congreve. Mr. Congreve was ordinarily resident in the United Kingdom at all material times: as was later agreed (see paragraph 21 of this Case) he was at all material times domiciled in Eire.

From time to time Mrs. Congreve has received by way of gift from her father or her mother substantial American investments and she has also received substantial legacies from American relatives.

Mrs. Congreve has been a director of Humphreys & Glasgow (England) since September, 1939.

The said assessment to Sur-tax made upon her for the year ending 5th April, 1936, is in respect of her income from 6th April, 1935, to 30th July, 1935, the date of her marriage to Mr. Congreve.

5. Humphreys & Glasgow (England) was incorporated in England on 17th June, 1912, with an authorised share capital of 100,000 shares of £1 each. It acquired from Mr. Glasgow the business then owned by him of Humphreys & Glasgow.

The shareholdings in Humphreys & Glasgow (England) were, in consequence of the matters hereinafter set out, held on the respective material dates as follows :—

Name	*January,* 1929	*May,* 1933	16*th July,* 1937
Mr. Glasgow	28,083	28,083	—
International Gas	60,000	—	—
Humphreys & Glasgow (Canada)	—	65,000	—
Mrs. Congreve	5,000	—	48,083
Mr. Congreve	—	—	3,000
Margreve	—	—	17,000
Consolidated Nominees	—	—	28,000
Other shareholders	6,917	6,917	3,917
	100,000	100,000	100,000

The voting power of the shares was one vote per share.

As appears from paragraphs 6 and 7 hereof, Mrs. Congreve held from 16th April, 1932, the whole of the issued capital of International Gas, and in May, 1933, all the shares in Humphreys & Glasgow (Canada). As appears from paragraph 10 hereof Mrs. Congreve was on 16th July, 1937, the owner of all the issued shares of Margreve, save 50 ordinary which she purchased in October, 1937; the issued capital of Margreve being at that time £105,000 of which £100,000 was in preference shares and £5,000 in ordinary shares.

The 28,000 shares held by Consolidated Nominees were so registered at that date. In fact they had been purchased by Margreve on 23rd November, 1936, from Humphreys & Glasgow (Canada) (see paragraph 10 hereof).

It will be seen, therefore, that Mrs. Congreve held at all material times directly or indirectly the controlling majority of the shares in Humphreys & Glasgow (England).

In 1933 Humphreys & Glasgow (England) sold its foreign investments to Humglas (referred to later in paragraph 9 hereof) receiving in exchange 995 out of 1,000 shares of no par value in Humglas, Ltd. and its class "A" debentures of the nominal value of $1,290,000.

Mr. Glasgow was the chairman and managing director of Humphreys & Glasgow (England) from the date of its incorporation until 30th September, 1939, when he resigned his managing directorship as from that date. He continued as chairman without remuneration. Mr. and Mrs. Congreve have respectively been directors of Humphreys & Glasgow (England) from 2nd December, 1936, and 11th September, 1939.

On 1st December, 1937, Humphreys & Glasgow (England) sold the said Humglas debentures to Glow (hereinafter referred to in paragraph 13) for £257,500 payable in cash.

On 1st December, 1937, Humphreys & Glasgow (England) acquired for £257,500 debentures issued by Glow of the nominal amount of £515,000. Humphreys & Glasgow (England) still holds these Glow debentures which are repayable at a premium of 20 per cent.

At the date of the hearing before us, Mrs. Congreve owned 93,455 of the 100,000 issued shares of Humphreys & Glasgow (England).

6. International Gas was incorporated in the State of Delaware on 29th December, 1927.

By offer dated 9th December, 1927, made by Mr. Glasgow and accepted on 31st December, 1927, by the board of International Gas, the latter

acquired 60,000 shares of Humphreys & Glasgow (England) from Mr. Glasgow in exchange for 11,116 shares of stock of International Gas of $100 each, being the whole of its issued capital.

On 16th April, 1932, Mr. Glasgow, while in America, made a gift to his daughter of these 11,116 shares.

By offer dated 22nd April, 1932, made by Humphreys & Glasgow (Canada) and accepted by letter dated 25th April, 1932, International Gas sold to Humphreys & Glasgow (Canada), Ltd. its 60,000 shares of Humphreys & Glasgow (England) together with cash of approximately $3,400 (U.S.A.) which it then owned. The purchase moneys were satisfied by the issue of 995 shares of no par value of Humphreys & Glasgow (Canada) together with 424 series "A" redeemable sterling demand debentures of £500 each (total par value £212,000), part of a total authorised issue of £230,000 par value. The said debentures were non-interest bearing payable on demand at the Dominion Bank, Ltd., King William Street, London, to which all the dividends of Humphreys & Glasgow (England) were directed to be paid. The said debentures bore interest at 6 per cent. per annum from and after demand for repayment. The said purchase was completed on 29th April, 1932.

On or about 27th April, 1932, International Gas went into liquidation, so that when the assets of International Gas were sold to Humphreys & Glasgow (Canada), Ltd., Miss Glasgow (now Mrs. Congreve) was the sole shareholder of International Gas, and, by direction of that corporation, the shares of Humphreys & Glasgow (Canada), Ltd. were allotted direct to Miss Glasgow. The aforesaid debentures also became Miss Glasgow's property.

International Gas had received dividends annually on its 60,000 shares of Humphreys & Glasgow (England).

7. Humphreys & Glasgow (Canada) was incorporated by Dominion of Canada charter on 21st April, 1932, with a share capital of 1,000 shares of no par value, and a Canadian directorate which received no directors' fees.

The income of Humphreys & Glasgow (Canada) came solely from the shares of Humphreys & Glasgow (England) immediately hereinafter referred to.

No dividends were paid by Humphreys & Glasgow (Canada), the whole of its income being accumulated at the afore-mentioned branch of the Dominion Bank in London. At this bank the debentures issued to Mrs. Congreve were repayable on demand.

It acquired from International Gas the 60,000 shares in Humphreys & Glasgow (England) in consideration of the issue of the 995 shares and the £212,000 debentures referred to in paragraph 6 hereof.

On 1st May, 1932, Miss Glasgow sold to Humphreys & Glasgow (Canada) 5,000 shares in Humphreys & Glasgow (England) which she previously held in her own right. They had been given to her by her father. The consideration for this sale was the issue to Miss Glasgow of further debentures in Humphreys & Glasgow (Canada) of £18,000 which made up the total authorised issue of £230,000.

On 23rd March, 1936, Humphreys & Glasgow (Canada) agreed to buy from Mr. Glasgow 28,000 shares of Humphreys & Glasgow (England) at a price to be fixed by valuation. This was subsequently fixed at £3 5*s*. 0*d*. per share ex dividend. These 28,000 shares were sub-sold by Humphreys & Glasgow (Canada) to Margreve, as mentioned in paragraph 10 hereof.

On 16th July, 1936, Section 18 of the Finance Act, 1936, became law.

In November, 1936, Humphreys & Glasgow (Canada) applied for a surrender of its charter, and the 65,000 shares, including the said 5,000 shares, of Humphreys & Glasgow (England) held by it were transferred to Mrs. Congreve on a distribution in specie of the assets in the winding up. These 5,000 shares have remained in her possession ever since. The date of the actual dissolution of Humphreys & Glasgow (Canada) was 13th October, 1937.

8. Rockbridge was incorporated by Dominion of Canada charter on 5th May, 1932, with a capital of 1,000 shares of no par value, 995 of which were issued (as hereinafter mentioned) to Miss Glasgow or her nominees. The remaining 5 shares went to Canadian directors who received no directors' fees.

On 5th May, 1932, Miss Glasgow sold to this company a number of her investments in American and/or Canadian undertakings. The consideration was the issue of the said 995 shares and series "A" debentures of the nominal value of £99,000, consisting of 165 at £500 each and 165 at £100 each. All these debentures, like the Humphreys & Glasgow (Canada) debentures, were non-interest bearing payable on demand at the Dominion Bank, Ltd., King William Street, London, and bore interest at 6 per cent. per annum from the date of the demand for repayment.

No dividends were paid by Rockbridge — the whole of its income being accumulated — but in December, 1935, Rockbridge redeemed £22,000 of its debentures, and, in order to do this without selling securities, it borrowed $47,000 (U.S.A.) from Mrs. Congreve which was subsequently repaid to her on 15th January, 1936.

On 15th January, 1936, Mrs. Congreve sold to Rockbridge further foreign securities, the purchase money being satisfied by the issue to her of £27,000 series "B" debentures of Rockbridge, which were in exactly the same form as the afore-mentioned existing series "A" debentures.

On or about 20th June, 1936, Rockbridge agreed to transfer all its assets, namely, the American and/or Canadian investments, to Mrs. Congreve in satisfaction of the rights attaching to the debentures of Rockbridge held by her.

Rockbridge also covenanted that on or after 20th June, 1936, it would carry on no business save to wind up and surrender its charter. On 27th November, 1936, Mrs. Congreve transferred the said investments to Margreve (see paragraph 10 hereof).

9. Humglas was incorporated in Canada on 29th November, 1933, with an authorised share capital of 1,000 shares of no par value.

The whole of its share capital was taken up by Humphreys & Glasgow (England) except 5 qualification shares which were held by the directors in Canada.

Humglas acquired from Humphreys & Glasgow (England) a number of foreign investments. The result of this transaction was that Humphreys & Glasgow (England) no longer remained liable to Income Tax on income arising from the said foreign investments, nor did Humglas pay United Kingdom Income Tax on these investments as it was resident abroad. The purchase money was paid by the issue of $1,290,000 class "A" debentures. These debentures were non-interest bearing payable on demand, but carried interest at 6 per cent. per annum from the date of demand for repayment.

On 1st December, 1937, as appears in paragraph 13 hereof, these debentures were sold by Humphreys & Glasgow (England) to Glow in consideration of an issue of £515,000 debentures at 50 per cent. discount.

Humglas is now and always has been controlled by its board in Canada. Its directors are all resident in Canada or U.S.A. No dividends were ever paid by Humglas.

Both at the time of the incorporation of Humglas and at the time of the sale of its debentures to Glow, Mrs. Congreve held directly or indirectly a controlling interest in Humphreys & Glasgow (England) (see shareholdings in paragraph 5 hereof).

10. Margreve was registered in England on 18th November, 1936. The original capital of £1,100 was divided into 1,000 3 per cent. cumulative preference shares and 100 ordinary shares of £1 each. The preference shares took the whole of the surplus assets on a winding up.

Margreve made the following purchases :—

From Mrs. Congreve, on 23rd November, 1936, for £56,666 13*s.* 4*d.* payable in cash, 17,000 shares of £1 each in Humphreys & Glasgow (England). These 17,000 shares were part of the 65,000 shares which passed to Mrs. Congreve on the winding up of Humphreys & Glasgow (Canada).

From Humphreys & Glasgow (Canada), on 23rd November, 1936, for £93,333 6*s.* 8*d.* (i.e., at £3 6*s.* 8*d.* a share) payable in cash, 28,000 shares of £1 each in Humphreys & Glasgow (England). These 28,000 shares did not form part of the 65,000 shares acquired by Humphreys & Glasgow (Canada) as hereinbefore set out. They belonged to Mr. A. G. Glasgow, who on 23rd March, 1936, had agreed to sell them to Humphreys & Glasgow (Canada) at a price which was subsequently fixed at £3 5*s.* 0*d.* per share. Margreve took a transfer direct from Mr. Glasgow, but the payment was made to Humphreys & Glasgow (Canada).

From Mrs. Congreve, on 27th November, 1936, a number of securities (the American and/or Canadian investments derived from Rockbridge and some other foreign investments), the price to be market value. These securities were ultimately valued at £232,283 2*s.* 7*d.*, which price was paid in cash to Mrs. Congreve by Margreve.

On 23rd November, 1936, the capital of Margreve was increased by the creation of a further 99,000 3 per cent. cumulative preference shares.

On 27th November, 1936, Margreve allotted to Mrs. Congreve 10,000 3 per cent. cumulative preference shares at the price of £5 per share payable in cash, payable 10*s.* per share down and £4 10*s.* 0*d.* per share before 31st December, 1936.

On the same date it was arranged that Mrs. Congreve should take up a further 30,000 of the preference shares of Margreve at £5 per share payable, as to £91,000 by U.S.A. dollars in New York at the current rate of exchange, and, as to the balance of £59,000, in sterling in London.

On 3rd December, 1936, Mrs. Congreve took up for cash at par 50 ordinary shares of Margreve, such shares being allotted to the trustees of a charitable trust entered into by Mrs. Congreve.

On 8th December, 1936, the capital of Margreve was increased by the creation of 4,900 ordinary shares. This made the nominal capital of Margreve £105,000, of which £100,000 was in preference shares and £5,000 in ordinary shares.

On 25th January, 1937, Mrs. Congreve took up a further 8,000 3 per cent. preference shares in Margreve at £5 per share payable in cash.

On 16th March, 1937, Mrs. Congreve took up a further 40,000 3 per cent. preference shares of Margreve at £5 per share payable in cash.

On 14th April, 1937, Mrs. Congreve took up a further 11,998 3 per cent. preference shares of Margreve at £5 per share payable in cash. This, with the two signatory shares held for her, made her the owner of all the 100,000 3 per cent. preference shares of Margreve.

On 30th July, 1937, the Finance Act, 1937, became law. By Section 19 thereof a new tax called National Defence Contribution was levied on trades and businesses, including the holding of investments, carried on in the United Kingdom.

In October, 1937, the 50 ordinary shares which had been allotted to the trustees of her charitable trust were purchased by Mrs. Congreve for £500. This made Mrs. Congreve the beneficial owner of all the issued preference and ordinary capital of Margreve.

At an extraordinary general meeting of Margreve held on 21st October, 1937, resolutions were passed giving effect to the following :—

(i) The directors were authorised to create a series of 70 debentures of £5,000 each, as per their recommendation.

(ii) The special rights and privileges attached to the 100,000 3 per cent. cumulative preference shares (including any arrears of dividend accrued on those shares) were cancelled and extinguished and the said preference shares, whether issued or not issued, were converted into and became ordinary shares ranking *pari passu* in all respects with the existing 5,000 ordinary shares of £1 each.

At this meeting of Margreve it was also resolved to capitalise the sum of £350,000, being part of the sum standing to the credit of share premium reserve, and that a bonus of £350,000 be declared and such bonus applied, on behalf of the persons who on 21st October, 1937, were the holders of the ordinary shares in the capital of Margreve, in paying up in full £350,000 debentures of Margreve, carrying interest as from the date of issue at the rate of 6 per cent. per annum payable half-yearly in advance.

At a board meeting of Margreve held on 21st October, 1937, after the extraordinary general meeting, the directors capitalised the sum of £350,000 aforesaid and distributed the same, as a special capital bonus, amongst the holders of the ordinary shares and applied the said £350,000 in paying up in full the amount payable on 70 debentures of £5,000 each, mentioned above.

As at this time Mrs. Congreve owned all the issued ordinary share capital of Margreve, the whole of the said capital bonus was payable to her and the whole of the said 70 debentures were issued to her, payment for the latter being satisfied by the said bonus moneys.

Up to this time Mrs. Congreve had been a director of Margreve but on 25th October, 1937, she resigned her directorship.

At the board meeting of Margreve held on 25th October, 1937, there was produced an allotment letter in respect of £215,000 out of the £350,000 debentures duly renounced in favour of Seventy Three (hereinafter referred to in paragraph 11), which renunciation was accepted and in accordance therewith the name of Seventy Three was entered on the register as the holder of such £215,000 nominal value debentures. The

remaining £135,000 nominal value debentures were duly registered in the name of Mrs. Congreve.

At this board meeting it was also reported that Margreve had sold its 45,000 ordinary shares of £1 each in Humphreys & Glasgow (England), on which it had received the July, 1937, dividend, to Marglas (hereinafter referred to in paragraph 12); and Margreve was thus left holding assets solely in the form of foreign shares and securities.

At this meeting of the board of Margreve on 25th October, 1937, it was resolved that the payment of the first half-year's interest in advance on the £135,000 debentures, registered in the name of Mrs. Congreve, be fixed for this date (viz., 25th October, 1937), and the appropriate cheque for such interest, less tax, was drawn. The aforesaid interest of some £10,000 exhausted the income of Margreve received between April and October, 1937.

It was further resolved that the fixing of the date for the payment of the first half-year's interest on the £215,000 debentures registered in the name of Seventy Three be left over for the time being.

At an extraordinary general meeting of Margreve held on 25th October, 1937, a special resolution was passed whereby new articles of association were approved and adopted in substitution for and to the exclusion of existing articles and regulations.

These new articles provided, *inter alia*:—

(i) That the number of directors should not be less than two nor more than five (the maximum number was subsequently increased to six on 5th April, 1938, by ordinary resolution), and that not more than two of the directors, for the time being, shall be resident in the United Kingdom.

(ii) That no meeting of the directors be held in the United Kingdom.

(iii) That general meetings held only outside the United Kingdom should be competent to pass any resolution binding upon or affecting the directors, or any of them, or the business or affairs of the company conducted by the directors, and that all general meetings should be held at such time and place outside the United Kingdom as may be determined by the directors.

A meeting of the directors of Margreve, who at this time were Mr. E. C. Mengel, Mr. E. F. Crawley (both of London) and Mr. W. T. Scarborough of Jersey, was held in the Channel Islands on 26th October, 1937. At that meeting Mr. Denys P. Richardson and Mr. N. W. Gaudion (both resident in the Channel Islands) were appointed additional directors.

At the same meeting of the board of Margreve it was also resolved that the date for the payment of the first half-year's interest in advance on the £215,000 debentures, registered in the name of Seventy Three, be fixed for that day and an appropriate cheque for such interest in favour of Seventy Three was signed and paid.

At the same meeting of the board of Margreve it was resolved to repay at par £135,000 debentures of this company held by Mrs. Congreve, of which she had given notice of demand for payment.

Subsequent to 26th October, 1937, all directors' meetings and general meetings were held in and the company's business transacted wholly from the Channel Islands to the date upon which they were occupied by the enemy in June, 1940.

This happening for the moment brought the company's activities to a standstill, inasmuch as the provisions of the articles prevented any meetings of the directors being held in Great Britain.

On 1st August, 1940, a board meeting was held in Douglas, Isle of Man, at which three persons resident in the Isle of Man were appointed directors in the place of the three previous persons who were resident, at the time of their appointment, in the Channel Islands.

Office accommodation was secured at 50 Athol Street, Douglas, Isle of Man, at which address all the subsequent meetings of the board and the general meetings of the shareholders have been held, and the whole of the company's business conducted therefrom.

The banking account of Margreve was transferred by the Westminster Bank, Ltd. from their Channel Islands branch to their branch in Douglas, Isle of Man, at which branch the account has been held since 1st August, 1940. Margreve has never paid a dividend.

11. Seventy Three was incorporated in England on 15th October, 1937, with a nominal capital of £1,000 divided into 1,000 shares of £1 each.

Only 19 shares of Seventy Three have at any time been issued, one each of which is held by 19 persons, employees of Humphreys & Glasgow (England), in their own right, each of whom paid for his own share out of his own money.

At the first meeting of the directors of Seventy Three held in London on 21st October, 1937, it was resolved to create £430,000 worth of debentures, namely, a series of 86 of £5,000 each, repayable at a premium of 20 per cent. The debenture holders had options to require repayment on demand in various currencies at fixed rates. These debentures were applied for on that day at 50 per cent. discount by Mrs. Congreve, who paid a cheque for £215,000 being payment in full therefor.

At that meeting of the board of Seventy Three there was purchased from Mrs. Congreve £215,000 nominal 6 per cent. debentures of Margreve, Ltd., the same being paid for in cash at par.

An extraordinary general meeting was held in London on 25th October, 1937, at which all the shareholders were present, and new articles of association were approved and adopted. These new articles provided, *inter alia* :—

(i) That the number of directors should not be less than two nor more than five (the maximum number was subsequently increased to six on 5th April, 1938, by ordinary resolution), and that not more than two of the directors, for the time being, shall be resident in the United Kingdom.

(ii) That no meeting of the directors be held in the United Kingdom.

(iii) That general meetings held only outside the United Kingdom should be competent to pass any resolution binding upon or affecting the directors, or any of them, or the business or affairs of the company conducted by the directors, and that all general meetings should be held at such time and place outside the United Kingdom as may be determined by the directors.

At a board meeting held on 26th October, 1937, in the Channel Islands, three directors resident in the Channel Islands were appointed to the board, which then consisted of Messrs. E. G. Richardson and H. S.

Cheetham both of London, and additional directors, namely, Mr. W. T. Scarborough, Mr. D. P. Richardson and Mr. N. W. Gaudion, all resident in the Channel Islands.

Subsequent to 26th October, 1937, all directors' meetings and general meetings were held in and the business transacted wholly from the Channel Islands to the date upon which they were occupied by the enemy in June, 1940.

This happening for the moment brought the activities to a standstill, inasmuch as the provisions of the articles prevented any meetings of the directors being held in Great Britain.

On 1st August, 1940, a board meeting was held in Douglas, Isle of Man, at which three persons resident in the Isle of Man were appointed directors in the place of the three previous persons who were resident, at the time of their appointment, in the Channel Islands.

Office accommodation was secured at 50 Athol Street, Douglas, Isle of Man, at which address all the subsequent meetings of the board and the general meetings of the shareholders have been held, and the whole of the company's business conducted therefrom.

The banking account of Seventy Three was transferred by the Westminster Bank, Ltd. from their Channel Islands branch to their branch in Douglas, Isle of Man, at which branch the account has been held since 1st August, 1940.

Seventy Three has paid regular dividends which are substantial in percentage but did not involve much money, owing to the small share capital. They were as follows :—

April,	1939.....	£1	7*s.*	6*d.*	gross per share	
„	1940.....	£1	10*s.*	0*d.*	„	„ „
„	1941.....	£2	0*s.*	0*d.*	„	„ „
July,	1942.....	£2	0*s.*	0*d.*	„	„ „

Save for these dividends no distribution of the income of Seventy Three was ever made. The income has been accumulated in banking accounts in the name of Mrs. Congreve as custodian.

12. On 18th October, 1937, Marglas was formed in England with a nominal share capital of £400 divided into 400 shares of £1 each, of which 50 were 5 per cent. non-cumulative preference shares of £1 each and 350 ordinary shares of £1 each. The company did not issue a prospectus but a statement in lieu of prospectus was duly filed.

Margreve applied for and took up 350 ordinary shares of Marglas at the price of £386 per share payable in full in cash on acceptance, i.e., £135,100. Seven only of the preference shares were issued and these to employees of Humphreys & Glasgow (England).

On 21st October, 1937, Marglas agreed to purchase from Margreve the 45,000 fully paid shares in Humphreys & Glasgow (England) for £135,000 payable in cash (see paragraph 10 hereof).

The entire share capital of Marglas was afterwards acquired by Mrs. Congreve. She paid Margreve, Ltd. £135,000 for the ordinary shares and bought the 7 issued preference shares for par or thereabouts.

Marglas went into voluntary liquidation on or about 22nd August, 1940. The company has not yet been finally dissolved.

13. Glow was incorporated in England on 29th November, 1937, with an authorised capital of £1,000 all in ordinary shares of £1 each.

On 1st December, 1937, Glow agreed to allot 19 of its shares to 19 persons, some of whom were employees of Humphreys & Glasgow (England).

On 1st December, 1937, Glow agreed to acquire for £257,500 the Humglas debentures owned by Humphreys & Glasgow (England), which had subscribed in cash for the debentures issued by Glow.

On 1st December, 1937, it was agreed to create and issue to Humphreys & Glasgow (England) at a discount of 50 per cent. debentures of a nominal amount of £515,000. The company was not entitled to repay the principal moneys secured by the debentures prior to 21st October, 1957, but the holders could at any time by not less than 10 days' notice require the company to pay off the whole of the principal moneys thereby secured with a premium of 20 per cent. After failure to pay such principal the company was required to pay interest at 6 per cent. on the principal moneys until the date of actual payment. The debentures contained options to the registered holders to require payment of the principal moneys and interest in certain foreign currencies at fixed rates of exchange.

No interest on the Humglas debentures has ever been paid but, from and after the transfer of the Humglas debentures to Glow, compensation was paid for not demanding repayment of the debentures. Glow had no other source of income.

On 3rd December, 1937, the company, as in the cases of Margreve and Seventy Three, adopted new articles vesting its control abroad, the control being moved first to the Channel Islands and then in August, 1940, to the Isle of Man.

Glow has paid dividends as follows :—

April,	1939.....	£1	7*s.* 6*d.*	gross	per	share
„	1940.....	£1	10*s.* 0*d.*	„	„	„
„	1941.....	£2	0*s.* 0*d.*	„	„	„
July,	1942.....	£2	0*s.* 0*d.*	„	„	„

Save for these dividends no distribution of the income of Glow was ever made; the income has been accumulated in banking accounts abroad in the name of Humphreys & Glasgow (England) as custodian.

14. The following documents were produced in evidence at the hearing and are annexed hereto and form part of this Case [1]:—

(1) A statutory declaration relating to the minutes of the board of directors of Humphreys & Glasgow (Canada), Ltd., marked "A".

(2) A statutory declaration relating to the minutes of the board of directors of Rockbridge, Ltd., marked "B".

(3) Accounts of Humphreys & Glasgow (Canada) for the years ending 1935 and 1936, marked "C" and "D", respectively.

(4) Accounts of Rockbridge for same years, marked "E" and "F", respectively.

(5) Copy of a letter dated 9th August, 1938, from Messrs. Spain Bros. & Co. to the Clerk to the Special Commissioners of Income Tax, marked "G".

15. Mrs. Congreve gave evidence at the hearing, which we accepted, as follows :—

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[1] Not included in the present print.

She knew nothing about any of the said transactions, everything was done by her father, she merely signed documents when asked to do so.

16. Mr. E. G. Richardson gave evidence at the hearing, which we accepted, as follows :—

He was a certified public accountant in the employment of Spain Bros. & Co.; he dealt with private accounts and taxation matters of Mr. and Mrs. Congreve.

He had been a director of Margreve for two years and of Seventy Three and Glow shortly after their incorporation. His firm audited the accounts of Humphreys & Glasgow (England), Margreve, Seventy Three and Glow. All his firm's correspondence with the Revenue concerning the taxation matters of the Appellants and the aforesaid companies bore his initials.

All dividends payable on the 65,000 shares of Humphreys & Glasgow (England) were paid direct to the credit of International Gas at the Dominion Bank, King William Street, London, and all debentures of Humphreys & Glasgow (Canada) were payable on demand at the same bank.

For the purposes of Section 21 of the Finance Act, 1922, Spain Bros. & Co. had contended on behalf of Margreve that, as from the date on which it became controlled from abroad, the " total income " of Margreve consisted in its dividends from United Kingdom shares, and such part of its income from foreign shares as was remitted to the United Kingdom. This contention was accepted by the Special Commissioners.

It had also been contended that Margreve was not liable to the National Defence Contribution from the time when it became controlled from abroad, and with regard to its income from 6th April, 1937, to 25th October, 1937, it was claimed to off-set the payment of £10,000 debenture interest.

An appeal was taken to the General Commissioners, the Crown contending that Margreve was only entitled to the rateable proportion for the 5 days from 21st October, 1937, to 25th October, 1937. The 21st October was the date when the debentures were created and 25th October the date when control was transferred abroad. The decision was given in favour of the Crown.

As director of Glow and Seventy Three he was aware that some of the 19 shareholders were employees of Humphreys & Glasgow (England), but could not say as to the rest.

The £430,000 debentures created by Seventy Three were repayable at a premium of 20 per cent. on demand. Mrs. Congreve applied for the whole of this issue at 50 per cent. discount and with the money Seventy Three purchased £215,000 debentures of Margreve from Mrs. Congreve.

Practically the only income of Seventy Three was the interest on the Margreve 6 per cent. debentures, which was payable in advance.

17. It was admitted on behalf of the Appellants that they did not claim the benefit of the proviso to Sub-section (1) of Section 18 of the Finance Act, 1936, either in its original or amended form, in respect of any of the afore-mentioned transfers of shares or debentures made by or to any of the afore-mentioned companies in 1936 and 1937. It was further conceded on behalf of the Appellants that, if the whole of the transactions herein before set out going back to the transactions in 1932 were to be

treated as one inter-connected series, the said proviso could not be invoked in respect of the transfers to Humphreys & Glasgow (Canada) and Rockbridge. It was admitted on behalf of the Appellants that the benefit of the proviso could not be invoked in respect of Humglas.

18. At the aforesaid meetings in October and November, 1942 (see paragraph 1 above), it was contended on behalf of the Appellants:—

(1) that the avoidance of liability to taxation was neither the purpose nor one of the purposes for which Mrs. Congreve (then Miss Glasgow) effected either of the following transfers, that is to say, (i) the transfer on 1st May, 1932, of 5,000 shares in Humphreys & Glasgow (England) to Humphreys & Glasgow (Canada), and (ii) the transfer on 5th May, 1932, of various American and Canadian investments to Rockbridge;

(2) that none of the transactions or operations subsequent to the said transfers of May, 1932, were so related to the said transfers as to constitute such subsequent transactions or operations "associated operations" related to the said transfers of May, 1932, within the meaning of Section 18 of the Finance Act, 1936, or Section 28 of the Finance Act, 1938;

(3) that the said transfers of May, 1932, were not "associated operations" in relation to any subsequent transfers;

(4) that as, at the time when Mrs. Congreve made transfers of assets to Margreve and Seventy Three, neither of those companies was a person resident or domiciled out of the United Kingdom, such transfers of assets were not transfers to which the provisions of either Section 18 of the Finance Act, 1936, or Section 28 of the Finance Act, 1938, applied;

(5) that the changes of residence of Margreve and Seventy Three, resulting from the removal of the seat of control of these companies from the United Kingdom, were not "associated operations" related to any transfers of assets, and

(6) that in any event the liabilities of the Appellants under the said Sections were measurable by reference not to the whole of the respective incomes of the various companies to which transfers had been made, directly or indirectly, but only to such parts of the income of those companies as arose from the assets so transferred to them or from assets acquired by the companies as a result of associated operations related to such transferred assets.

19. It was contended on behalf of the Respondents:—

(1) that by reason of transfers and/or associated operations Mrs. Congreve had power to enjoy the income of the following companies:—

(*a*) Humphreys & Glasgow (Canada)
(*b*) Rockbridge
(*c*) Humglas
(*d*) Margreve
(*e*) Seventy Three
(*f*) Marglas
(*g*) Glow

(2) that all the transactions, whether transfers or associated operations, were so linked up as to form one series; it was admitted that, with regard to the companies (*c*) to (*g*) above, no claim was put forward to the benefit of the proviso, either under the Finance Act, 1936, or in its amended form in the Finance Act, 1938, accordingly the benefit of the proviso could not be claimed in respect of any of the transactions;

(3) that with regard to the transfers to Humphreys & Glasgow (Canada) and Rockbridge, there was no satisfactory evidence that the transfer and/or any associated operations were effected mainly for some purpose other than the purpose of avoiding liability to taxation and, with regard to the years covered by the Finance Act, 1938, there was no satisfactory evidence that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected;

(4) that the change of the place of residence of Margreve, Seventy Three and Glow by the removal of control abroad was an associated operation within the meaning of Section 18 of the Finance Act, 1936;

(5) that accordingly the whole of the income of the companies mentioned in paragraph 19 (1) above ought to be deemed to be Mrs. Congreve's income up to the time of her marriage and the income of her husband after they were married;

(6) that the assessments were correct in principle and should be confirmed.

20. We, the Commissioners who heard the appeal, gave our decision as follows.

The first point we have to consider is whether the proviso to Subsection (1), Section 18, of the Finance Act, 1936, can be invoked in favour of Mrs. Congreve in respect of the transfers made by her in 1932 to Humphreys & Glasgow (Canada) and Rockbridge. We were asked to treat these transfers as separable and independent from later transfers in respect of which it was conceded that the proviso could not be prayed in aid; it was also conceded that, if the whole of the transfers and associated operations fell to be treated as one inter-connected series, the said proviso could not be invoked in favour of Mrs. Congreve in respect of the transfers to Humphreys & Glasgow (Canada) and Rockbridge, irrespective of the purpose for which those transfers were effected.

On the evidence as a whole and having regard to the language of Section 18, we are quite unable to divorce the transfers to Humphreys & Glasgow (Canada) and Rockbridge from the subsequent transations. We hold that one inter-connected series of transactions took place, and it has not been shewn to our satisfaction that any of the transfers and associated operations, referred to in this Case, were effected mainly for some purpose other than the purpose of avoiding liability to taxation or, as regards assessments for later years, that such purpose was not the purpose or one of the purposes.

If this part of our decision be correct it covers all points raised in respect of the said proviso. As, however, we were strongly pressed, at the hearing of the appeal, to grant an adjournment to enable Mr. Glasgow to give evidence before us, we consider it desirable to consider what would be the position on the assumption that the transfers to the two said companies could be segregated from the rest. In normal cases of this kind the attendance of the person primarily responsible for the various transactions is desirable, if not essential, to give evidence where any question arises under the said proviso. We have no doubt that Mr. Glasgow was such a person. In this case we are in the fortunate position of being in possession of the expressed purposes for which the various transactions were effected; these are contained in the letter dated 9th August, 1938, written by Messrs. Spain Bros. to the Clerk to the Special Commissioners of Income Tax on the instructions of Mr. Glasgow and

referred to in paragraph 14 above. We consider it unlikely that Mr. Glasgow would, at the present stage, advance new and other purposes. We take these as the purposes put forward and it becomes our duty to test them, as it would be our duty to test any expressed purposes, in the light of all the circumstances of the case. It is clear to our minds that a most careful regard was paid throughout to the incidence of taxation and any changes brought about therein by the Legislature. It is also clear that Mrs. Congreve could obtain, in certain cases, the whole of the capital assets of some of the companies concerned by representing debentures she held for repayment at a London bank without the consent or approval of anyone. We do not reject the expressed objects as having no place in the transactions, but this power of Mrs. Congreve's alone would appear to defeat them.

We were informed that Mr. Glasgow was 79 years of age. It is improbable that he would be able to journey from America, where he is residing at the present, in order to give evidence before us during the war. At the conclusion of hostilities transport facilities may well be difficult and Mr. Glasgow might feel disinclined to make the journey. Any adjournment granted would, in all likelihood, be for a considerable time. In our opinion the facts of the present case speak for themselves as to the main purpose and on these facts as a whole we came to the conclusion that no injustice would be done in refusing the application for an adjournment.

The next point we have to deal with relates to Margreve and Seventy Three. Both these companies were resident in the United Kingdom when the transfers were made to them, and it was subsequently that they became resident abroad. It was argued, under these circumstances, that Section 18 did not apply. We were unable to accept this contention. We hold that the language of the Section is wide enough to cover the case, and that the change of residence by removal of control of two companies abroad is an associated operation within the meaning of Sub-section (2).

In our opinion Mrs. Congreve, who must be taken to have been a willing party to the transactions, was the only person entitled to benefit as the result of the whole of the transfers and associated operations; this being so, we do not consider it necessary that the transactions should all have been effected by her personally in order to fall within the mischief of the Section. We hold that every transaction dating from the transfers made to Humphreys & Glasgow (Canada) and Rockbridge in 1932 was either a transfer or associated operation within the meaning of the Section.

The last point we have to consider relates to the question of the income of the foreign companies.

It was argued that, if liability was held to exist under the Section, such liability did not extend to the whole of such income, but only to that part which was referable to the assets which had been transferred either alone or in conjunction with associated operations.

In our opinion Mrs. Congreve had power to enjoy the income of all the foreign companies concerned within the meaning of the Section, she alone could benefit as the result of the transactions. We hold that the whole of the income of these companies should be brought into assessment, and that the appeals fail on all the grounds before us.

21. A further hearing took place, as appears in paragraph 1 of this Case, on 27th September, 1944. In the interim Mr. Congreve (who had made his return of income for the years 1935-36 to 1940-41 on the basis of being domiciled in the United Kingdom) had been advised that he had

at all material times been domiciled in Eire, and Mrs. Congreve (who had throughout been regarded as not domiciled in the United Kingdom up to the date of her marriage) had been advised that from the date of her marriage her domicile was in Eire. Representations were accordingly made to the Commissioners of Inland Revenue on 25th March, 1943, who, after consideration of the facts, signified their assent to the view that neither Mr. nor Mrs. Congreve was at any material time domiciled in the United Kingdom. The question for our determination on the further hearing, therefore, was the basis on which, in the light of the facts relating to the domicile of Mr. and Mrs. Congreve, the liability to Income Tax and Sur-tax for the several years under the provisions of the Finance Act, 1936, Section 18, and the Second Schedule to said Act, should be computed.

22. It was contended on behalf of the Appellants :—

(*a*) that Sub-section (1) of Section 18 of the Finance Act, 1936, although it defines the income to which the provisions of the Section apply, does not prescribe the manner in which the amount of such income is to be computed for the purposes of assessment;

(*b*) that the computation of the amount of an assessment upon income to which the provisions of the said Section 18 apply is governed by Paragraph 4 of the Second Schedule to the Finance Act, 1936;

(*c*) That the effect of the conjoint operation of the said Paragraph 4, Rule 2 of Case IV of Schedule D, and Rules 2 and 3 of Case V of Schedule D of the Income Tax Act, 1918, is that, in the case of an individual not domiciled in the United Kingdom, income arising abroad, although within the scope of the said Section 18, is to be computed by reference to the sums received in the United Kingdom;

(*d*) that, in the case of an individual, the "tax chargeable", which under Paragraph 1 of the Second Schedule to the Finance Act, 1936, is to be charged under Case VI of Schedule D, is the tax computed as aforesaid;

(*e*) that in the light of the preamble to Section 18 of the Finance Act, 1936, and in the absence of express provisions to the contrary, the Section must be construed to impose a charge of tax only to the extent to which tax would otherwise be avoided by means of transfers of assets, and not to impose a charge in excess of that which would have been made had no such transfers taken place;

(*f*) that the contentions under heads (*a*) to (*d*) above are consistent with such a construction of the Section.

23. It was contended on behalf of the Respondents :—

(*a*) that Section 18 of the Finance Act, 1936, relates in terms to individuals ordinarily resident in the United Kingdom, without any distinction of domicile, and the absence of any such distinction in the case of such individuals concerned in the transfers of assets is enforced, and shown to be deliberate, by the express reference to domicile in the case of the transferees;

(*b*) that, as regards Sub-section (1) of the Section, the criterion of liability is "power to enjoy income" as defined in Sub-section (3) of the Section, irrespective of the actual receipt in the United Kingdom of any such income;

(*c*) that the Section is not limited to the charge of tax which would have been incurred under other provisions of the Income Tax Acts but for the transfers of assets, and that this is shown by, *inter alia*, the

words in Sub-section (1), "whether it would or would not have been "chargeable to income tax apart from the provisions of this section", and also by the provisions of Sub-section (1A) which relate to the receipt, or title to receipt, of a capital sum, and clearly bring into charge amounts which would not have been chargeable had no transfer of assets taken place;

(*d*) that the provisions of Paragraph 1 of the Second Schedule to the Finance Act, 1936, are charging provisions, and direct that income of whatever nature falling within Section 18 of the Act is to be charged under Schedule D and not any other Schedule, and under the Rules as to computation in Case VI of Schedule D and not under the Rules in any other Case;

(*e*) that Paragraphs 2 and 3 of the Second Schedule are only consonant with Paragraph 1, if it be so read, and that Paragraph 4 merely applied general provisions of the Income Tax Acts, so far as applicable and subject to any necessary modifications.

24. We, the Commissioners, gave our decision as follows :—

The individuals with whose liability to tax Section 18 of the Finance Act, 1936, is concerned are "individuals ordinarily resident in the United "Kingdom", and, as to such individuals, no distinction is made by reference to domicile.

We are unable to regard anything in the Section as implying that the liability thereunder is to be limited, either generally to the amount of tax which would otherwise be avoided, or, in the case of a person not domiciled in the United Kingdom, to tax on amounts received in the United Kingdom.

Paragraph 1 of the Second Schedule to the Finance Act, 1936, which has effect under Sub-section (6) of Section 18, provides that "tax charge-"able at the standard rate by virtue of that section shall be charged under "Case VI of Schedule D". In our opinion this is a specific direction requiring the liability to be computed under Case VI; the measure of liability is found here, and not in Paragraph 4, which applies the general provisions of the Income Tax Acts relating to charge, assessment, collection and recovery, etc., "so far as they are applicable and subject to any necessary "modifications."

The appeal fails on this point, and we determine the several Income Tax and Sur-tax assessments in the following figures which have been agreed on the basis of our decision :—

		Sur-tax	*Income Tax*
Mrs. Glasgow Congreve	1935-36	£11,220	—
Mr. Congreve	1935-36	£13,265	—
" "	1936-37	£24,406	£11,861
" "	1937-38	£38,813	£22,084
" "	1938-39	£36,977	£16,792
" "	1939-40	£70,289	£27,901
" "	1940-41	£48,058	£23,204

The above figures of assessment are without prejudice to any such Dominion Income Tax relief as may be admissible.

25. The Appellants immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, and the

Finance Act, 1927, Section 42 (7), and Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

R. COKE,
G. R. HAMILTON,
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99 High Holborn,
London, W.C.1.

14th June, 1945.

The case came before Wrottesley, J., in the King's Bench Division on 30th April and 1st, 2nd and 3rd May, 1946, when judgment was reserved. On 16th May, 1946, judgment was given substantially against the Crown, with costs.

Mr. J. Millard Tucker, K.C., and Mr. F. Heyworth Talbot appeared as Counsel for the Appellants, and Mr. D. L. Jenkins, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Wrottesley, J.—This Case contains first the narrative of Mr. Glasgow's life in this country. He was an American citizen domiciled in the United States, who carried on a successful business in this country which he finally sold to Humphreys & Glasgow (England), an English limited company. I use throughout the same short labels as the Commissioners use in the Case to describe the various companies concerned. Mr. Glasgow had one child, now Mrs. Congreve. She was born in London, spent a good deal of her childhood in America and confirmed her American citizenship and domicile when she came of age. In 1935 she married Mr. Congreve, who is domiciled in Southern Ireland or Eire.

The rest of the Case sets out a large number of transactions of a complicated nature, the great bulk of which were without doubt transactions entered into in order that Mrs. Congreve might escape the incidence of Income Tax and Sur-tax; and the questions which arise are whether three sets of assessments, namely, (1) against Mrs. Congreve before her marriage for Sur-tax in the sum of £15,059 for the year ending 5th April, 1936; (2) against Mr. Congreve for Sur-tax in the sums of £17,281, £26,314, £40,061, £70,066, £117,803 and £97,866 for the years ending 5th April, 1936, to 5th April, 1941, inclusive; (3) against Mr. Congreve for Income Tax in the sums of £10,000, £20,000, £40,000, £60,000 and £60,000 for the years ending 5th April, 1937, to 5th April, 1941, inclusive, are properly made.

All these assessments are made under the provisions of Section 18 of the Finance Act, 1936, and Paragraph 6 of the Second Schedule, as amended by Section 28 of the Finance Act, 1938. All the transactions are set out sufficiently clearly in the Case, and I shall not endeavour to paraphrase the account of them given by the Commissioners. In the result the Commissioners found that Mrs. Congreve was an individual who had by means of a transfer in conjunction with associated operations acquired rights by virtue of which she had, within the meaning of Section 18, power to enjoy the income covered by the assessments, which was income payable to persons resident or domiciled out of the United Kingdom.

(Wrottesley, J.)

The first point I will deal with is whether the Commissioners were right in not granting an adjournment to enable Mr. Glasgow to give evidence before them. Mr. Glasgow was 79 years of age, and it was at the time of the hearing improbable that he would be able to make the journey to this country from America. Bearing in mind that Counsel was not in a position, even at the hearing of the appeal, to undertake that Mr. Glasgow would make the journey, and also that no application was made to take Mr. Glasgow's evidence in America, and looking at the material which the Commissioners had before them, I find it quite impossible to say that the Commissioners wrongly exercised what was undoubtedly their discretion.

I pass now to the more important points in the case, namely, whether the complicated transactions, or some of them, fall within Section 18 of the Finance Act, 1936. Given the nature of the transactions, this must depend on the correct interpretation of the language of the Section. As it happens, this Section contains something in the nature of a preamble, for it opens with a statement as to the purpose of the Section, and the Court is, therefore, not left to ascertain the purpose of the Section by a consideration of the language of the operative part merely. The Court knows in advance what the purpose is. If, therefore, any question should arise as to whether the language of the Section applies to any particular transaction, and if this question is not clearly answered in the operative part of the Section, the Court may properly resort to the expressed intention to see if this affords any help. It is therefore desirable to see how far the language of the preamble itself is clear; there is no preamble to the preamble, and the language of this introductory part of the Section must, therefore, be construed according to its plain ordinary meaning, if it has one. The words are: "For the purpose of preventing the avoiding by individuals ordinarily "resident in the United Kingdom of liability to income tax by means of "transfers of assets by virtue or in consequence whereof, either alone or "in conjunction with associated operations, income becomes payable to "persons resident or domiciled out of the United Kingdom, it is hereby en-"acted as follows".

We have, therefore, to look for an individual who is ordinarily resident in the United Kingdom and avoiding liability to Income Tax. There cannot, I think, be two opinions as to what "avoiding" means. Where what is to be avoided is a liability, it must mean to evade, or to keep out of the way of, whether it be as in Richard III, "The censures of the carping "world", or anything else unpleasant that might befall a man, such as a tax. At this stage, therefore, the Legislature has clearly in mind an individual who is evading liability to Income Tax, and not a person who is, through no effort of his own, not in the road and so not likely to be affected by a tax. Nor is it all and every such evasion that is aimed at by the Section. The individual must be evading it by a certain means, and that means is a transfer of assets of a particular kind; it must be a transfer by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons outside the United Kingdom. At any rate there must be a transfer, and the first point which I have to decide is whether the target of the Section includes a person who makes no transfer at all whether personally or through an agent. It seems to me that the language in which the purpose of the Section is described is clear and unmistakable; it contemplates an individual bent on evading tax and doing so by transferring assets so as to bring it about that the income from them becomes payable to persons out of the United Kingdom.

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It may do this simply or it may do it only by being conjoined with associated operations, that is to say, operations of any kind effected by any person in relation to any of the assets transferred or representing the assets transferred or the income from them. The Respondents, the Commissioners of Inland Revenue, contend that even the preamble of the Section is not so limited and includes the case of a transfer which is made neither by nor on behalf of the individual; and it certainly is true that it is not stated in so many words that the individual avoiding the tax must make the transfer. But looking at the words and reading them as a whole and in their ordinary and commonsense meaning, they appear to deal with the plain and straightforward case of an individual bent on evading tax and doing so by means of a transfer. The Section does not deal with the case of an individual who escapes tax because of a transfer which some other person makes. The use of the words " by means of " fits this interpretation. These words mean, it was agreed in argument, a means to an end, and so import purpose; and that must mean purpose on the part of the person who is avoiding liability to Income Tax. This phrase is to be contrasted with such phrases as " by virtue of " and " in consequence " whereof ", both of which tend to negative, or make unnecessary, intention or purpose, and both of which are used in that sense in the very passage.

So much for the preamble, but it is truly said by the Respondents that these introductory words are not to be used to restrict the plain wording of the operative or charging words to be found in Sub-section (1). The opening words of this Sub-section are: " Where such an individual has by " means of any such transfer, either alone or in conjunction with associated " operations, acquired any rights . . ." Pausing there, it is seen that what I have called a preamble is more than a preamble; it is drawn in to explain and so to limit or expand the kind of transaction which is to be dealt with. For instance, the individual must be ordinarily resident in the United Kingdom, and the transfer must also be such as has been referred to in the preamble. The Respondents say that that only imports that it must be a transfer of assets by virtue or in consequence of which he has power to enjoy income of a person residing outside the United Kingdom, by whomsoever such a transfer is made. I do not think that this narrow meaning can be given to the use of the word " such ", but that the Section is intended to deal with uch transfers as are dealt with in the preamble. For the reasons that I have given, two characteristics attach to that kind of transfer. It must be made by a person avoiding liability to tax, and it must also bring it about that income becomes payable to persons outside the United Kingdom. This interpretation of the Section is that which commended itself to Macnaghten, J., first in *MacDonald* v. *Commissioners of Inland Revenue,* 23 T.C. 449, at page 456, and secondly in *Lord Howard de Walden* v. *Commissioners of Inland Revenue,* 25 T.C. 121, at page 128. It is true that in neither case was the contrary argued and the learned Judge, therefore, did not have to decide this point; nevertheless it shows the impact of these words on the mind of a learned Judge who is not unfamiliar with the language of taxing statutes. In point of fact I find a similar assumption as to the meaning, and by the same learned Judge, in the case of *Corbett's Executrices* v. *Commissioners of Inland Revenue,* 25 T.C. 305, at page 312, where he states the burden on the Crown as being " to establish " that the individual, being a person ordinarily resident in the United King- " dom, has made a transfer of assets ".

So far then the Section deals with transfers made by the individual by

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means of which he or she has acquired any rights. I may say that I do not accept the argument of the Appellants that the use of the word "acquired" strengthens the interpretation which I think is the right one, nor that it indicates that the individual has done something to put himself in possession of the rights. As used by lawyers the word "acquired" has long covered transactions of a purely passive nature and means little more than receiving.

To pass on, the rights in question are rights by virtue of which an individual has, within the meaning of the Section, power to enjoy any income of a person outside the United Kingdom. It is urged on behalf of the Crown that this is the test as to whether the Section applies. In other words all you have to do is to find a person ordinarily resident in the United Kingdom with power to enjoy income of a person outside the United Kingdom, then look and see if he got that power by a transfer. If he did, that is enough. The answer to this argument is that the Section might well have been drawn in this way and so as to effect this. If so it would have been simpler and more effective, both. But in that event the introductory words would have been unnecessary; and the Courts are not here to make the efforts of the Legislature to circumvent tax evasion more efficient than is provided by the language, particularly when that involves disregarding the ordinary plain language of the preamble, and the fact that that preamble is deliberately drawn into the fabric of the operative section. Here the Legislature has been careful to hedge about the operative section with words which indicate that the target is an individual who is trying to avoid tax by means of a particular course of conduct. It is not for the Courts to widen that target so as to include persons who have not evaded liability, at any rate by the means referred to.

That does not, however, conclude the matter. It is conceded by Mr. Tucker for the Appellants that a person who by an agent transfers his assets would not on that account escape the operation of the Section. I think that a person who, by owning all or practically all of the capital of an investment company, is able to bring about such a transfer as is referred to in the Section, is, for the purposes of such a Section, a person who has avoided tax by means of a transfer. At this point, then, I can adopt precisely the language used by Macnaghten, J., in *MacDonald* v. *Commissioners of Inland Revenue,* to which I have referred above. The words are: "It is to be observed that the Section has no application to any transfer of assets unless (1) it is a transfer made by an individual ordinarily resident in the United Kingdom, and (2) by virtue or in consequence of the transfer (either alone or in conjunction with associated operations) income becomes payable to persons resident or domiciled out of the United Kingdom.[1]"

Once this has been established it becomes necessary to see whether it is a transfer by which Mrs. Congreve has acquired any rights by virtue of which she has power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of Mrs. Congreve received by her in the United Kingdom, would be chargeable to Income Tax by deduction or otherwise. The meaning of the words "power to enjoy" is dealt with in great detail in Subsection (3), setting out five cases each of which amounts to "power to enjoy". It is unnecessary at this moment to consider what they are.

(1) 23 T.C., at p. 456.

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So far I have not dealt with the case of transactions consisting of transfers which operate in conjunction with associated operations to bring it about that income is payable to persons resident or domiciled out of the United Kingdom. In that connection there arises another question, namely, whether the Section applies to cases where Mrs. Congreve transferred shares to a company in the United Kingdom which, after the transfer, removed out of the United Kingdom. There is no doubt that the result of the transfer coupled with the removal was that income became payable in the manner described by the Section, but the Appellants say that in these cases it cannot be said that the income became payable to the person out of the United Kingdom by virtue or in consequence of the transfer.

The contention of the Crown is that in such a case the income becomes payable to the company out of the United Kingdom by virtue or in consequence of the transfer, and that therefore the Section applies. I confess I am quite unable to follow this argument. If language is to have any value at all, it seems to me clear that in such a case, whether the removal of the company took place eight months after the transfer or eight days, it is quite impossible to hold that, by virtue of the transfer or in consequence of it, income became payable to the company which moved abroad. The only effect of the transfer was to make income payable to the transferee company which was still resident and domiciled in the United Kingdom, and the income only became payable to a person out of the United Kingdom when the company moved out of the United Kingdom. Indeed it was, I suppose, to deal with manoeuvres of this kind that the words " in " conjunction with associated operations " were introduced into the Section. Unfortunately the definition of associated operations, which is exhaustive, is so drawn as not to include this particular manoeuvre. Wide though that definition is, it is confined to operations in relation to any of the assets transferred or assets representing the assets transferred or income therefrom, and I cannot see how the removal of the company, in whom the assets are vested, out of the United Kingdom can be so described.

That leaves another question, namely, the question of the income which is, when found to be the income of a person out of the United Kingdom which Mrs. Congreve has power to enjoy, to be deemed to be the income of Mrs. Congreve or her husband.

Now, in various instances related in the Case before the Court, Mrs. Congreve either herself transferred or caused an investment company in which she owned all or practically all the shares to transfer shares so that she obtained, in respect of a company abroad, power to enjoy its income in the sense in which that phrase is used in the Section.

It appears, for instance, in paragraph 6 of the Case that in April, 1932, Mr. Glasgow gave his daughter all the capital in International Gas, an American company. As this company owned 60,000 shares in Humphreys & Glasgow (England), the trading company, in this way Mrs. Congreve became indirectly the owner of the 60,000 shares. The International Gas sold these 60,000 shares to Humphreys & Glasgow (Canada), a Canadian company, for 995 shares and £212,000 worth of demand debentures which found their way into Mrs. Congreve's name, International Gas being wound up and disappearing. These debentures carried no interest until after demand for repayment. As a result Mrs. Congreve could allow dividends on the 60,000 shares to accumulate tax free in the hands of Humphreys & Glasgow (Canada) and recoup herself in this country by calling in these debentures. This is, therefore, an instance of

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a transfer by a company wholly owned and controlled by Mrs. Congreve, namely, International Gas, to a company resident abroad, by virtue of which income, namely, from the 60,000 shares, became payable to the Canadian company. It is also an instance of a transfer by means of which Mrs. Congreve acquired rights in virtue whereof she had power to enjoy the income from those 60,000 shares. The case therefore falls within paragraphs (*a*), (*b*), (*c*) and (*e*) of Sub-section (3), which are as follows: "(*a*) "the income is in fact so dealt with by any person as to be calculated, at "some point of time, and whether in the form of income or not, to inure "for the benefit of the individual; or (*b*) the receipt or accrual of the in- "come operates to increase the value to the individual of any assets held "by him or for his benefit; or (*c*) the individual receives or is entitled to "receive, at any time, any benefit provided or to be provided out of that "income or out of moneys which are or will be available for the purpose "by reason of the effect or successive effects of the associated operations "on that income and on any assets which directly or indirectly represent "that income; or . . . (*e*) the individual is able in any manner whatsoever, "and whether directly or indirectly, to control the application of the in- "come": within (*a*) because the income was accumulated so as to inure for her benefit; within (*b*) because if she allowed the income to accumulate her debentures and her shares became more valuable; within (*c*) because she could demand repayment of the debentures, and within (*e*) because of her power to control Humphreys & Glasgow (Canada).

In addition Mrs. Congreve, then Miss Glasgow, sold 5,000 shares, which her father had given to her, to Humphreys & Glasgow (Canada) for further debentures of the same kind of the face value of £18,000; here then was another transfer by Mrs. Congreve, and the Section applies.

Different considerations apply to a transaction in 1936, when Mr. Glasgow sold for value 28,000 shares in Humphreys & Glasgow (England) to Humphreys & Glasgow (Canada). These were sold on to Margreve.

I refer to the above facts only by way of illustration of the effect of the answers which I have given to the questions raised in argument. But the Crown lay claim to the right to tax the income, if any arose, from the 28,000 shares which Mrs. Congreve's father sold to Humphreys & Glasgow (Canada), and say that that income is within the Section. To test this we must look at the Section again. It was clearly income of a company resident or domiciled out of the United Kingdom, Humphreys & Glasgow (Canada). To take the simplest case, in the transfer by Mrs. Congreve of 5,000 shares to Humphreys & Glasgow (Canada) above referred to, the Crown claim that this transfer brings Mrs. Congreve within the Section. It clearly does, for she has by means of it acquired rights by virtue of which she has, within the meaning of the Section, power to enjoy "any" income of a company resident out of the United Kingdom. I take the word "any" here to mean "any part", but the Crown goes on to claim that all the income of the company therefore falls within the Section, including that which arose from the 28,000 shares sold by her father to the company.

The point arose and was argued in the case of *Lord Howard de Walden*[1], where it was contended for the taxpayer appellant that the Court should regard Sub-section (3) as merely expanding the meaning of

(1) 25 T.C. 121.

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the phrase "power to enjoy" so as to ensure that individuals who used circuitous complicated devices should be no better off than the individual who contented himself with a transfer of assets to a person abroad coupled with an order to accumulate the dividends for him indefinitely, and that it was not intended to measure the quantum of the income to be treated as the individual's income and so liable to tax.

It was pointed out, anyhow, in the argument addressed to the Court of Appeal, that the wider interpretation contended for by the Crown would lead to results which were capricious and even fantastic. If the income dealt with by the Section includes all the income which the person abroad has power to enjoy, the Section certainly appears to work capriciously and to produce very different results according to whether the case falls under one or other of the paragraphs. Thus paragraph (*a*) deals with cases where "the income is in fact so dealt with by any person as to be calculated, at "some point of time, and whether in the form of income or not, to inure "for the benefit of the individual", and would only result in the individual being taxed on the income arising from the assets transferred. That is a case within the express object of the Section and would prevent the avoidance referred to in the preamble. Case (*b*) would have the same effect if the company held only the transferred assets. But if the company were, for instance, an insurance company to which the individual had transferred his assets in return for promissory notes or non-interest bearing debentures, a remarkable result would follow. The income of the company which operates, to use the words of the paragraph, "to increase the value to "the individual of his assets", is not confined to that part of it which flows from the transferred assets but is the whole of the company's income. Case (*c*) is equally far-reaching, and goes far beyond the preamble to the Section, because the whole income of the person abroad is to be attributed to the individual instead of the part which she is entitled to receive as a benefit. Case (*d*), on the other hand, only applies where the individual has power to obtain for himself the beneficial enjoyment of the income and would apply, therefore, only to the income of the transferred assets. Case (*e*) is probably also so confined, for it is only as much of the income of the person abroad as the individual can control that is attributed to him.

It will be seen, therefore, that the use of Sub-section (3) to measure the quantum of the income to be attributed and so the tax to be paid by an individual who comes within the Section may produce results which are capricious in the sense that sometimes it affects only the income referable to the transferred assets, and sometimes it affects an income which bears no sort of relation to these assets, and might indeed be somebody else's income from which the individual could never benefit. Some of these results may fairly be called fantastic. It is true that arguments of this kind were dealt with in the case of *Lord Howard de Walden,* to which I have referred, when Lord Greene, M.R., expressed the view that the Courts would not shrink from such a result if necessary, as the whole Section must be regarded as an attempt by Parliament to end once for all the battle of manoeuvre between the Legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects(1). In that case the Court of Appeal had to deal with an English subject and a peer of Parliament who must have derived his wealth largely,

(1) 25 T.C., at p.134.

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if not entirely, from property in this country. Somewhat different considerations may be thought to apply to an American subject who remained such until she married a South Irishman domiciled in Eire, and who, for ought I know, in respect of a part of her income pays tax in the United States. In such a case retroactive action of a penal kind may seem to go some way beyond the preamble to the Section. In any event the decision of the Court of Appeal in that case left open, as it had to do, the question under debate, for the only income in question there was income from the transferred assets. It had not to deal with assets transferred by some other person.

Some guidance may be found in a matter of some difficulty in Sub-section (4). This Section seems to return to the declared object of the Section, and directs the Commissioners or the Court to look at "the sub-"stantial result and effect of the transfer and any associated operations," and all benefits which may at any time accrue to the individual as a result of the transfer and any operations are to be taken into account. Is this Sub-section only to be applied so as to make more tax exigible or is it also to be used so as to confine the Section to the mischief aimed at in the preamble, namely, the prevention of the avoidance of tax by means of transfers? If Sub-section (4) is, as its language clearly suggests, to be regarded as an overriding Sub-section, it may be thought to afford the real clue which will prevent the extravagant results which would flow from a literal reading of Sub-section (3), and its introduction into Sub-section (2). In order to ascertain quantum the Court is to look behind the literal interpretation and find the substantial result and effect of the transfer. On the other hand this Sub-section would also provide that an individual who, after making a transfer, employs colourable transactions to evade the operation of the Section, would nevertheless be caught.

I have come to the conclusion that Sub-section (4) deliberately authorises the Commissioners, and so the Court, to do this, whether the result is to prevent extravagant results in one direction or the other. On this view of the Section it is only the benefit which may at any time accrue to the individual as a result of the transfer and any associated operations that the individual can be said to have power to enjoy. Consequently it is only income referable to assets which Mrs. Congreve transferred herself or caused to be transferred, in the sense that I have referred to above, that is to be deemed to be her income for the purpose of the Income Tax Acts.

One more point raised by the Appellants can be dealt with shortly. It was argued faintly that the whole object of Section 18 was to be curtailed owing to the provisions in Paragraph 4 of the Second Schedule, and that only income reaching this country was to be liable to tax. This would nullify the whole object of the Section. I cannot accede to this argument.

Those are the answers that I have given to the questions, and I think I have answered all the questions which were argued before me.

Mr. Talbot.—I think so, my Lord, with great respect.

Wrottesley, J.—It is a very complicated case, and I have only used the language dealing with the facts as an illustration, Mr. Stamp. I may have gone wrong in applying it to a particular set of facts, but I have only used it for the purposes of illustration.

Mr. Stamp.—I think your Lordship's judgment covers all the points, as far as I can see.

Wrottesley, J.—Yes, I think it does. Obviously the case will have to go back. There are three questions, as it appears to me. First, is it a condition precedent to the working of the Section that the transfer must be made by the lady? I have said "Yes", that it must be made by the lady or by one of the companies which appear here. I except from that, of course, as I indicated, the trading company, because she did not own the whole of that. The second question was this: Is the particular manoeuvre of a transfer to the company and its subsequently moving abroad covered by the Section? I think not, and I have said so. The third matter was: What are the assets?, and, for the reasons I have given, the assets are not the whole income of the foreign company, but that part which is referable to the transferred assets. Those are the three points. The two other points I have also answered against the Appellants.

Mr. Stamp.—There was a point raised by the Revenue officer instructing me, my Lord, which is now withdrawn because it is covered by your Lordship's last observation.

Wrottesley, J.—I see. Then I think I have answered every point which has been argued.

Mr. Stamp.—Yes, my Lord.

Wrottesley, J.—This Case was not framed with the usual string of questions, but I think I have covered everything which was argued.

Mr. Stamp.—Yes, my Lord. There is one point remaining and it is this. There will be tax to repay, and that has to be repaid with interest and the rate of interest has to be determined by the Court. The rate has been varied from time to time.

Wrottesley, J.—You have actually exacted the tax, have you?

Mr. Stamp.—Yes, my Lord, and the tax has been paid.

Wrottesley, J.—Then there will be something to go back.

Mr. Stamp.—Yes, my Lord, there will be some to repay.

Wrottesley, J.—I thought I detected a block of 28,000 shares, for instance.

Mr. Stamp.—There is none on that, my Lord.

Wrottesley, J.—I did not go through the facts on purpose, because I was not sure that I could without further argument. It will be necessary to apply the principles I have laid down to the facts, and I think the Commissioners will have to do that.

Mr. Stamp.—Yes, my Lord.

Wrottesley, J.—Now, as to the rate, what is the usual thing? I should think you could agree that with Mr. Talbot.

Mr. Stamp.—There was a rate of 3 per cent. in a case in the Court of Appeal in which I was concerned a week or two ago, and I should be quite content with that rate, my Lord.

Wrottesley, J.—If the Court of Appeal have fixed that within the last fortnight, I think that is good enough for me, is it not, Mr. Stamp?

Mr. Stamp.—Subject to this, my Lord, that the Government rate has actually gone up within the last fortnight.

Wrottesley, J.—Is it governed by the present rate?

Mr. Stamp.—It commonly follows the rate of the Government, and it has been varying between 3 per cent. and as high as 5 per cent. during the war.

Wrottesley, J.—What was the rate fixed by the Court of Appeal?

Mr. Stamp.—3 per cent., my Lord.

Mr. Talbot.—May I suggest that the fact that the Government rate has varied is really irrelevant. We have been out of our money for some time.

Wrottesley, J.—It rather puzzles me, Mr. Stamp, but I should have thought that the proper rate would be, perhaps, the average rate over the period during which you have held the money.

Mr. Stamp.—I think that would be a fair way of dealing with it, my Lord. I should be prepared to agree to my learned friend having 3 per cent.

Mr. Talbot.—I would be content with that, my Lord.

Wrottesley, J.—If that is so, and that was ordered by the Court of Appeal, I ought to allow that.

Mr. Talbot.—Then, my Lord, the appeal will be allowed with costs, and the case will be remitted to the Commissioners to adjust in accordance with your Lordship's judgment.

Wrottesley, J.—I think you have succeeded upon sufficient matters for you to have the costs, Mr. Talbot.

Mr. Talbot.—If your Lordship pleases.

Wrottesley, J.—I think so, Mr. Stamp, and in fact I am sure that must be right. There were three main points, and provided my decision is upheld there is no question but that the Appellants will have won in substance. Yes, I think you ought to have the costs, Mr. Talbot.

Mr. Talbot.—If your Lordship pleases.

Appeals having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Scott, Tucker and Cohen, L.JJ.) on 6th, 7th and 8th November, 1946, when judgment was reserved. On 9th December, 1946, judgment was given unanimously in favour of the Crown, with costs.

Mr. J. Millard Tucker, K.C., and Mr. F. Heyworth Talbot appeared as Counsel for the Appellants, and Mr. D. L. Jenkins, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Scott, L.J.—I will ask Cohen, L.J., to read the judgment of the Court.

Cohen, L.J.—This case raises the question of the liability of Mr. and Mrs. Congreve (hereinafter collectively referred to as "the Appellants") to Income Tax and Sur-tax under the provisions of Section 18 of the Finance Act, 1936, as amended by subsequent Finance Acts. The determination of the question involves the consideration of a large number of transactions which are clearly set out in the Case. As Mr. Tucker said at the outset of his address on behalf of the Appellants, the facts are not in dispute. We shall only refer to so much of those facts as is necessary to make clear the questions of law which now arise for decision, and shall refer to the various companies involved in the matter by the descriptions assigned to them in the Case and adopted by the learned Judge.

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Mrs. Congreve was the only child of a Mr. Glasgow, an American citizen, who resided in England from 1892 until 1939, when he gave up his residence in England and returned to America with his wife. He built up a most successful business which he sold in 1912 to an English company, Humphreys & Glasgow (England). By December, 1927, he had become the owner of a little over 93,000 shares out of the 100,000 issued shares of £1 each of the company. He was chairman and managing director of the company from the date of its incorporation until 30th September, 1939. It is, we think, a fair inference from the facts found that throughout the transactions with which we are concerned he was acting with the authority of his daughter who signed such documents as he advised her to sign.

Mrs. Congreve was born in England and has throughout been resident in England, although on coming of age she confirmed and has since retained her American citizenship. She married Mr. Congreve on 30th July, 1935. At a late stage in these proceedings it was ascertained that Mr. Congreve was domiciled in Eire, but he and his wife have at all material times been ordinarily resident in England.

Humphreys & Glasgow (England) was a trading concern. All the other companies concerned were merely investment companies, and it is plain from the facts found in the Case that every one of them was formed for the purpose of avoiding liability to Sur-tax. At all material times (*a*) Mrs. Congreve was directly or indirectly the controlling shareholder of Humphreys & Glasgow (England); (*b*) she owned all the issued share capital of Humphreys & Glasgow (Canada), and Rockbridge; (*c*) she owned all the issued share capital of Margreve, and, through Seventy Three, the outstanding debentures of Margreve; (*d*) through her holding of £430,000 debentures in Seventy Three, which had been issued at 50 per cent. discount and were repayable on demand at 20 per cent. premium, she was in a position within the meaning of the Section to enjoy the whole income of Seventy Three; (*e*) as the controlling shareholder of Humphreys & Glasgow (England), which held substantially the whole share capital of Humglas. and until 1st December, 1937, the whole of the class "A" debentures of Humglas, she was able to control Humglas and enjoy within the meaning of the Section the income of Humglas; (*f*) as the controlling shareholder of Humphreys & Glasgow (England), which held all the debentures of Glow, she was able to enjoy within the meaning of the Section the income of Glow.

We must add that Margreve, Seventy Three and Glow were incorporated in England, but that at the material dates the control of each of these companies had been vested abroad with the result that they had become resident outside the United Kingdom for the purpose of the Income Tax Acts. Humphreys & Glasgow (Canada) and Rockbridge were Canadian companies resident in Canada.

We now turn to Section 18 of the Finance Act, 1936, which, so far as material, is in the following terms: "For the purpose of preventing the "avoiding by individuals ordinarily resident in the United Kingdom of "liability to income tax by means of transfers of assets by virtue or in con-"sequence whereof, either alone or in conjunction with associated oper-"ations, income becomes payable to persons resident or domiciled out of "the United Kingdom, it is hereby enacted as follows:—(1) Where such an "individual has by means of any such transfer, either alone or in con-"junction with associated operations, acquired any rights by virtue of

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" which he has, within the meaning of this section, power to enjoy, whether " forthwith or in the future, any income of a person resident or domiciled " out of the United Kingdom which, if it were income of that individual " received by him in the United Kingdom, would be chargeable to income " tax by deduction or otherwise, that income shall, whether it would or " would not have been chargeable to income tax apart from the provisions " of this section, be deemed to be income of that individual for all the " purposes of the Income Tax Acts ".

In the Section in its original form there followed the following proviso: " Provided that this subsection shall not apply if the individual shows in " writing or otherwise to the satisfaction of the Special Commissioners that " the transfer and any associated operations were effected mainly for some " purpose other than the purpose of avoiding liability to taxation." By the Finance Act, 1938, Section 28(2), the proviso was repealed and the following provision substituted by Sub-section (1B): " The last two foregoing " subsections shall not apply if the individual shows in writing or otherwise " to the satisfaction of the Special Commissioners either—(*a*) that the pur- " pose of avoiding liability to taxation was not the purpose or one of the " purposes for which the transfer or associated operations or any of them " were effected; or (*b*) that the transfer and any associated operations were " bona fide commercial transactions and were not designed for the purpose " of avoiding liability to taxation." Sub-section (2) of Section 18 of the 1936 Act defines " associated operation " as follows: " For the purposes " of this section an associated operation means, in relation to any transfer, " an operation of any kind effected by any person in relation to any of the " assets transferred or any assets representing, whether directly or indirectly, " any of the assets transferred, or to the income arising from any such " assets, or to any assets representing, whether directly or indirectly, the " accumulations of income arising from any such assets."

Sub-section (3) of Section 18 of the 1936 Act supplies the test to be applied in deciding whether an individual ordinarily resident in the United Kingdom is to be deemed to enjoy income of a person resident or domiciled abroad. It was admitted that, if the Appellants were otherwise liable to tax, they must be deemed to have power to enjoy the income of the companies resident abroad with whom we are concerned. I need not, therefore, read this Sub-section. Sub-section (4) was relied on by the learned Judge in the Court below as supporting his decision on one aspect of the case, but Mr. Tucker in this Court said, and we think rightly, that it was not in point. I need not, therefore, pause to read it.

Sub-section (5) of Section 18, so far as material, is as follows: " For the " purposes of this section—(*a*) a reference to an individual shall be deemed " to include the wife or husband of the individual; (*b*) the expression " ' assets ' includes property or rights of any kind, and the expression " ' transfer,' in relation to rights includes the creation of those rights; (*c*) " the expression ' benefit ' includes a payment of any kind . . . (*e*) references " to assets representing any assets, income or accumulations of income in- " clude references to shares in or obligations of any company to which, or " obligations of any other person to whom, those assets, that income or " those accumulations are or have been transferred."

Sub-section (7) is as follows: " The provisions of this section shall " apply for the purposes of assessment to income tax for the year 1935-36 " and subsequent years, and shall apply in relation to transfers of assets

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" and associated operations whether carried out before or after the com-
" mencement of this Act: Provided that, for the year 1935-36, no income
" shall be charged to tax at the standard rate by virtue of the provisions of
" this section, but surtax shall be assessed and charged as if any income
" which would, but for this proviso, have been charged as aforesaid had
" in fact been so charged."

In pursuance of this Section Mrs. Congreve was assessed to Sur-tax for the financial year 1935-36, and Mr. Congreve was assessed in right of his wife to Income Tax for the five years beginning with the year 1936-37 and to Sur-tax for the six years beginning with the year 1935-36.

Before the Special Commissioners the Appellants sought to escape liability under the proviso to Sub-section (1) or under Sub-section (1B) which was substituted for that proviso, but the Commissioners rejected that contention. Their finding on this point was one of fact, and the Appellants did not seek to disturb it before the learned Judge or before us. The Appellants, however, raised three other points.

First, they contended that a transfer was not within the mischief of the Section unless it was a transfer by the individual whom it was sought to charge with tax or by his agent. Accordingly they said that they could not be taxed on the income of Humglas or of Glow since the only transfer of assets to Humglas was by Humphreys & Glasgow (England). Secondly, they argued that an individual ordinarily resident in the United Kingdom could not be charged with tax on the income of a person resident or domiciled outside the United Kingdom unless that person was so resident or domiciled at the date of the relevant transfer or associated operation. Accordingly they said that, as Margreve, Seventy Three and Glow were resident and domiciled in England at the date of the transfers to them respectively, Mr. Congreve could not be assessed to tax on the income of these companies. Thirdly, they contended that, in any event, their liabilities under the said Sections were measurable by reference not to the whole of the respective incomes of the various companies to which transfers had been made directly or indirectly, but only to such parts of the income of those companies as arose from the assets so transferred to them or from assets acquired by the companies as a result of associated operations related to such transferred assets.

The learned Judge decided in favour of the Appellants on the second and third points. On the first point he accepted the argument that the Section deals only with transfers made by the individual by means of which he or she acquired rights, but he held that a person who, by owning all or practically all of the capital of an investment company, is able to bring about such a transfer as is referred to in the Section, is a person who has avoided tax by means of a transfer(1). In the result he held that the Appellants were not liable to tax on the income of Humglas, Margreve, Seventy Three or Glow, and he allowed the appeal and remitted the case to the Commissioners to deal with in accordance with his judgment. From this Order the Crown appealed and the Appellants cross-appealed asking that the decision of the Special Commissioners be reversed on all points.

I return to the Section. As pointed out by the learned Judge: " This " Section contains something in the nature of a preamble, for it opens

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"with a statement as to the purpose of the Section, and the Court is, "therefore, not left to ascertain the purpose of the Section by a consid- "eration of the language of the operative part merely. The Court knows "in advance what the purpose is. If, therefore, any question should "arise as to whether the language of the Section applies to any particular "transaction, and if this question is not clearly answered in the operative "part of the Section, the Court may properly resort to the expressed in- "tention to see if this affords any help(1)." Indeed, the opening words are something more than a preamble, since by reason of the words "such "an individual" and "such a transfer" a Court construing the Section is bound to import into the operative part portions of the preamble. Making the necessary interpolations Sub-section (1) reads as follows: "Where an individual ordinarily resident in the United Kingdom has by "means of any transfer of assets by virtue or in consequence whereof, "either alone or in conjunction with associated operations, income becomes "payable to persons resident or domiciled out of the United Kingdom, "either alone or in conjunction with associated operations, acquired any "rights", etc. These are the only interpolations which are necessary to give effect to the word "such". But Mr. Tucker says that the wording of the preamble necessitates one further interpolation, namely, the addition after the words "transfer of assets" of the words "made by him". In support of this argument he relies mainly on the use in the preamble and in the operative portion of the phrase "by means of". This phrase, he says, in contrast to the phrases "by virtue of" and "in consequence of" which also appear both in the preamble and in Sub-section (1), means something active and, having regard to the expressed purpose of preventing the avoiding by individuals of liability to Income Tax, the activity which the Legislature had in mind must be activity by the individual whose liability to tax is under consideration. Mr. Tucker relied in further support of this construction on the proviso to Sub-section (1) (as it stood in the Act of 1936) whereby the Sub-section was excluded if the individual could satisfy the Commissioners that the transfer and any associated operations were effected mainly for some purpose other than the avoidance of tax. We do not think, however, that the proviso is really of any assistance to Mr. Tucker, since the language of the proviso would be equally appropriate if the transfer were by any person other than the individual concerned. Mr. Tucker further relied on Sub-section (2), which provides that: "For "the purposes of this section an associated operation means, in relation "to any transfer, an operation of any kind effected by any person in "relation to any of the assets transferred". He contended that the words "by any person" would be unnecessary if a transfer was within the mischief of the Section though not executed by the individual concerned as transferor. We are unable to agree with this contention. We think that the reason for the insertion of the words "by any person" is to make it clear that the associated operation might be effected by any person and need not be effected by the transferor whoever the transferor might be.

I return to Mr. Tucker's main argument. We do not think the words "by means of" connote activity by the individual concerned. According to the Shorter Oxford Dictionary the primary meaning of the words is "by "the instrumentality of a person or thing", and they are fully satisfied if the avoidance of tax is effected through the instrumentality of the transfer by whosoever it is executed. *A fortiori* is this the case if we take the

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secondary meaning given in that dictionary, "in consequence of, owing to". Nor do we think that the use of the phrase in the preamble in conjunction with the word "avoiding" compels us to interpolate something that is not there and read "by means of transfers of assets" as if it were "by "means of transfers of assets made by them". Moreover, we agree with the learned Judge that the Appellants' argument derives no support from the use of the word "acquired" in connection with the words "by means "of" in Sub-section (1), since, as he points out: "As used by lawyers the "word 'acquired' has long covered transactions of a purely passive nature "and means little more than receiving[1]." Indeed, that is the second ordinary meaning given in the Shorter Oxford Dictionary. In addition, it would be contrary to the expressed object of the Section if the words "means" and "acquired" were construed in the active sense for which the Appellants contend. It would put back on the Revenue the burden of proving affirmatively that the benefits to the taxpayer, resulting to him in fact through transfers and associated operations, had all been brought about by his own activities, whereas the Section is, in our opinion, plainly and successfully drafted with the intent of casting the burden of disproving tax avoidance on the taxpayer. For these reasons we agree on this point with the conclusion of the Commissioners.

But even if we were prepared to accede to the argument that the preamble connoted activity by the individual concerned, we think this condition would be fulfilled if the execution of the transfer were procured by the individual concerned, even though it was not actually executed by him or his agent. Mr. Tucker, in commenting on the judgment of the learned Judge in the Court below, said, and Mr. Jenkins agreed, that execution by a company could not be said to be execution by the individual, even though the individual owned all or practically all the shares in the company. We think, however, that the decision of the learned Judge can be upheld on the ground we have stated, since it is, we think, in the present case, a reasonable inference from the facts found that the execution and performance of the transfers and associated operations in question by all the companies concerned were procured by Mrs. Congreve acting through her agent Mr. Glasgow. We should have been prepared, if it had been necessary, on this alternative ground to uphold the decision of the Commissioners.

I turn now to the second point. Mr. Tucker said that, upon its true construction, the Section required that at the date of the execution of the transfer the transferee should be resident or domiciled outside the United Kingdom, and that the subsequent removal of the control abroad was not an associated operation, since it was not effected "in relation to any of the "assets transferred or any assets representing . . . any of the assets trans-"ferred, or to the income arising from any such assets, or to any assets "representing . . . the accumulations of income arising from any such "assets." We think this argument fails *in limine*, since it is, we think, reasonably clear that, upon the true construction of the preamble, the material date, so far as residence is concerned, is the date at which the income becomes payable and not the date of the transfer or associated operation. Having come to this conclusion we do not find it necessary to decide whether the removal of the control abroad was an associated operation. We think, however, that there was considerable force in Mr. Jenkins's argument that the removal abroad was an associated operation in relation to

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the assets transferred, since the effect of the removal was to alter the incidence of taxation under Case IV in relation to the income of the assets transferred.

I turn now to the third point. Having regard to our decision on the first point, I doubt whether it really arises but, since the case may go higher and the point was decided in the Court below and fully argued before us, we think it better to express our opinion on it. The contention was tentatively put forward by this Court in *Lord Howard de Walden* v. *Commissioners of Inland Revenue*, 25 T.C. 121; it was rejected by Counsel on both sides in that case, and we think it is obvious from the language of Lord Greene, M.R., in his judgment that he doubted whether it was tenable. In that case he said, at page 133: "An intermediate suggestion favoured by "neither side was to the effect that the only income of the non-resident "which is to be deemed to be income of the transferor is that part of the "income which is traceable to the assets transferred. No doubt, in the "majority of cases which, in practice, come within the scope of the Section, "the transferee will have been constituted, either individually as a trustee "or as a corporation, for the sole purpose of carrying out the transaction "and will have no other income. But cases might arise where the transferee selected was, for example, an existing corporation with very large "assets and income of its own and the income attributed to the assets "transferred might be a very small proportion of its total income. It cannot be supposed, argues Mr. Tucker, that the Legislature can have intended to produce such an extreme result as might be produced upon the "second of the three constructions since it would impose an entirely disproportionate penalty on the taxpayer; and rejecting the intermediate "view which, he said, could not be reconciled with the language used, he "arrived by a process of elimination at his own construction as being the "only possible one. We find it impossible to accept Mr. Tucker's argument. "If, as it seems to us, the language of the Section clearly does not limit "the income of the non-resident in respect of which the taxpayer is charged "to the actual benefit which he draws from the income of the non-resident "—a construction, be it observed, which would largely defeat the expressed "purpose of the Section—it is illegitimate to force upon that language a "strained construction merely because it may otherwise lead to a result "which to some minds may appear to be unjust. But even if the only "alternative to Mr. Tucker's construction is the second of the three constructions, we are not prepared to say that it is necessarily as unjust as he "contends. The Section is a penal one and its consequences whatever they "may be, are intended to be an effective deterrent which will put a stop "to practices which the Legislature considers to be against the public "interest. For years a battle of manoeuvre has been waged between the "Legislature and those who are minded to throw the burden of taxation off "their own shoulders on to those of their fellow subjects. In that battle "the Legislature has often been worsted by the skill, determination and "resourcefulness of its opponents, of whom the present Appellant has not "been the least successful. It would not shock us in the least to find that "the Legislature has determined to put an end to the struggle by imposing "the severest of penalties. It scarcely lies in the mouth of the taxpayer "who plays with fire to complain of burnt fingers. It is not, however, "necessary for us to choose between the second and third constructions. "We would rather defer that choice until a case which raises the issue can "be considered on its own facts." We agree with Mr. Tucker that Sub-

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section (3) is not dealing with quantum, but is merely defining the test to be applied in determining whether an individual has power to enjoy the income of a non-resident. To ascertain the quantum on which tax can be levied, one must return to Sub-section (1). Under that Sub-section the only question is: What income of the non-resident does the resident individual have power to enjoy by reason of the transfer either alone or in conjunction with associated operations ? It is that income which is deemed to be income of that individual for all purposes of the Income Tax Acts, and we find no justification in the language of the Section for an analysis of that income in order to ascertain the source from which the income arises. It may be, as was said by the learned Judge in the Court below, that the result may in some cases be capricious, but, as was said by Lord Greene, M.R., in the passage we have cited, it is illegitimate to force upon the language of the Section a strained construction merely because it may otherwise lead to a result which to some minds may appear unjust. The Section is a penal one, and if the penalty is considered to be too high, that is a matter for the Legislature and not for us.

One point was taken before us which is not dealt with by the learned Judge. It relates only to Humglas. It was said that the Appellants could not be liable to tax on the income of Humglas, since, at the date of the transfer by Humphreys & Glasgow (England) to Humglas, Mrs. Congreve was already the holder of her 65,000 shares in Humphreys & Glasgow (England), she acquired no rights by virtue of the transfer; such rights as she could enjoy she already possessed. Mr. Tucker admitted, however, that, if he was wrong on the first contention dealt with above, this argument would not be open to him. We need not, therefore, consider it.

For these reasons we think the appeal ought to be allowed and the cross-appeal dismissed. The Appellants must pay the costs here and below.

Mr. Talbot.—I am instructed, my Lords, to ask your Lordships for leave to appeal to the House of Lords in this case.

Scott, L.J.—Yes.

Mr. Talbot.—If your Lordship pleases.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon and Lords Porter, Simonds, Normand and Oaksey) on 14th, 15th and 16th April, 1948, when judgment was reserved. On 13th May, 1948, judgment was given unanimously in favour of the Crown, with costs.

Mr. J. Millard Tucker, K.C., and Mr. F. Heyworth Talbot appeared as Counsel for the Appellants, and the Solicitor-General (Sir Frank Soskice, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Simon.—My Lords, I have had the advantage of studying the draft of the speech which my noble and learned friend, Lord Simonds, is about to deliver as expressing his opinion in this complicated case. Agreeing with him as I do in the conclusion at which he arrives, and in the course of reasoning which leads to this conclusion, I find myself

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happily relieved from expounding my own opinion independently and at much greater length.

I move that the appeal be dismissed with costs.

Lord Porter.—My Lords, I also have had an opportunity of reading the speech about to be delivered by my noble and learned friend, Lord Simonds. Finding myself in complete agreement with the reasoning and the result I have not thought it necessary to express an opinion of my own.

Lord Simonds.—My Lords, the questions of law which your Lordships have to decide on this appeal are not difficult to state nor, as I think, are they difficult to answer, but the facts which give rise to them are of great complexity. I propose to refer only to such of them as are necessary to make intelligible the problems that have to be discussed. The whole of the facts will be found in the Case stated by the Commissioners for the Special Purposes of the Income Tax Acts upon which this appeal arises.

I find it convenient then first to state the questions of law, and I take them substantially as stated in the formal case of the Appellants. They are concerned wholly with the true construction of Section 18 of the Finance Act, 1936, which I will next state, and they are as follows:—

(1) Whether an individual can within the meaning of that Section be said to acquire rights "by means of" a transfer of assets if the transfer is effected neither by the individual nor by his or her agent but by a company the whole or the greater part of the share capital of which is held by or on behalf of that individual. In this question the stress is on the expression "by means of".

(2) Whether a transfer of assets to a company which at the time of transfer is neither resident nor domiciled out of the United Kingdom but which thereafter becomes resident out of the United Kingdom and receives income from the transferred assets, is within the meaning of the same Section a transfer "by virtue or "in consequence whereof, either alone or in conjunction with "associated operations, income becomes payable to" a person resident out of the United Kingdom. In this question the stress is on the expression "at the time of transfer".

(3) Whether the liability to tax under Section 18 in a case where assets have been transferred to a company resident out of the United Kingdom in such circumstances as to make tax exigible is measurable by reference to the whole income of that company from whatever source derived or by reference only to the income arising from the assets transferred or from other assets representing those assets.

Upon the first and second of these questions it is necessary to express an opinion; upon the third there is, in my view, no such necessity, for in this case, with which alone your Lordships are concerned, the result is the same to the taxpayer.

These being the questions, I now state the relevant parts of the Section:—

"18. For the purpose of preventing the avoiding by individuals "ordinarily resident in the United Kingdom of liability to income tax "by means of transfers of assets by virtue or in consequence whereof, "either alone or in conjunction with associated operations, income

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" becomes payable to persons resident or domiciled out of the United " Kingdom, it is hereby enacted as follows :—

" (1) Where such an individual has by means of any such " transfer, either alone or in conjunction with associated oper- " ations, acquired any rights by virtue of which he has, within " the meaning of this section, power to enjoy, whether forthwith " or in the future, any income of a person resident or domiciled " out of the United Kingdom which, if it were income of that " individual received by him in the United Kingdom, would " be chargeable to income tax by deduction or otherwise, that " income shall, whether it would or would not have been charge- " able to income tax apart from the provisions of this section, be " deemed to be income of that individual for all the purposes of " the Income Tax Acts:

" Provided that this subsection shall not apply if the individual " shows in writing or otherwise to the satisfaction of the Special " Commissioners that the transfer and any associated operations " were effected mainly for some purpose other than the purpose " of avoiding liability to taxation.

" (2) For the purposes of this section an associated operation " means, in relation to any transfer, an operation of any kind " effected by any person in relation to any of the assets transferred " or any assets representing, whether directly or indirectly, any of " the assets transferred, or to the income arising from any such " assets, or to any assets representing, whether directly or in- " directly, the accumulations of income arising from any such " assets.

" (3) An individual shall, for the purposes of this section, be " deemed to have power to enjoy income of a person resident or " domiciled out of the United Kingdom if—

" (*a*) the income is in fact so dealt with by any person as to " be calculated, at some point of time, and whether in the form " of income or not, to inure for the benefit of the individual; or

" (*b*) the receipt or accrual of the income operates to increase " the value to the individual of any assets held by him or for his " benefit; or

" (*c*) the individual receives or is entitled to receive, at any " time, any benefit provided or to be provided out of that income " or out of moneys which are or will be available for the purpose " by reason of the effect or successive effects of the associated " operations on that income and on any assets which directly or " indirectly represent that income; or

" (*d*) the individual has power, by means of the exercise of " any power of appointment or power of revocation or otherwise, " to obtain for himself, whether with or without the consent of " any other person, the beneficial enjoyment of the income or may, " in the event of the exercise of any power vested in any other " person, become entitled to the beneficial enjoyment of the " income; or

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"(*e*) the individual is able in any manner whatsoever, and "whether directly or indirectly, to control the application of the "income.

"(5) For the purposes of this section . . .

"(*e*) references to assets representing any assets, income or "accumulations of income include references to shares in or "obligations of any company to which, or obligations of any "other person to whom, those assets, that income or those "accumulations are or have been transferred.

"(7) The provisions of this section shall apply for the purpose "of assessment to income tax for the year 1935-36 and subse-"quent years, and shall apply in relation to transfers of assets "and associated operations whether carried out before or after "the commencement of this Act :

"Provided that, for the year 1935-36, no income shall be "charged to tax at the standard rate by virtue of the provisions "of this section, but surtax shall be assessed and charged as if "any income which would, but for this proviso, have been "charged as aforesaid had in fact been so charged."

The proviso to Sub-section (1) has been amended by Section 28 of the Finance Act, 1938, but it is not necessary to refer to the amendment. So far as this appeal is concerned, the result is the same. It is a fact found by the Special Commissioners and no longsr disputed by the Appellants that the transactions to which I shall refer constituted one interconnected series and that the avoidance of liability to taxation was the purpose or one of the purposes of the transactions within the meaning of the Section.

I now turn to the relevant facts, and before doing so recall to your Lordships that in the preamble occurs the expression "by means of trans-"fers of assets" and in the first line of Sub-section (1) the expression "by "means of any such transfer". It is upon the meaning and effect to be given to those words that the answer to the first question hangs.

The Appellants are a Mr. and Mrs. Congreve, who were married on 30th July, 1935. Both of them have at all material times been ordinarily resident in England, though it appears that he is domiciled in Eire. She is the only child of Mr. A. G. Glasgow, a citizen of the United States of America, who resided in England from 1892 to 1939, when he gave up his residence in England and returned to America. She, though born in England, on coming of age confirmed and has since retained her American citizenship.

The subject of this appeal is certain assessments to tax, in the case of Mrs. Congreve an assessment to Sur-tax for the year ending 5th April, 1936, in the case of Mr. Congreve assessments to Sur-tax for the years ending 5th April, 1936, to 5th April, 1941, and to Income Tax for the years ending 5th April, 1937, to 5th April, 1941. The sums involved are very large and in every case the income assessed is income payable to companies resident out of the United Kingdom which is, according to the contention of the Respondents, to be deemed under Section 18 of the Finance Act, 1936, to be the income of the Appellants.

The companies in question, with their places and dates of incorporation and the short names by which they have been called in these pro-

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ceedings, are tabulated below, and it is convenient here to add, since it is relevant to the second question in this appeal, that Margreve, which was incorporated and at first resident in England, became a company resident out of the United Kingdom in or about the month of October, 1937 and so also a little later did Seventy Three and Glow.

Name	*Place of incorporation*	*Date of incorporation*	*Short designation*
Humphreys & Glasgow (Canada), Ltd.	Canada	21st April, 1932	"Humphreys & Glasgow (Canada)"
Rockbridge, Ltd.	Canada	5th May, 1932	"Rockbridge"
Humglas, Ltd.	Canada	29th November, 1933	"Humglas"
Margreve, Ltd.	England	18th November, 1936	"Margreve"
73 Investment Trust, Ltd.	England	15th October, 1937	"Seventy Three"
Marglas, Ltd.	England	18th October, 1937	"Marglas"
Glow Investment Trust, Ltd.	England	29th November, 1937	"Glow"

It is not disputed by the Appellants that one condition at least of liability to tax under the Section is satisfied, viz., that Mrs. Congreve acquired rights by virtue of which she had within the meaning of the Section power to enjoy income payable to the companies in question. It is, to use a neutral word, the way in which she acquired those rights that is important, and I will, by reference to a single case, test the first question that I have stated, whether the transfer of assets, upon which either alone or in conjunction with associated operations the liability is founded, must be (as the Appellants contend) a transfer effected by Mrs. Congreve or her agent or may be (as the Respondents contend) effected by anyone, father, friend, or company in which she has an interest great or small, so long as the result is reached that she has power to enjoy the relevant income.

In 1927 Mr. Glasgow, being the beneficial holder of rather more than 93,000 out of a total issued capital of 100,000 shares of £1 each in Humphreys & Glasgow, Ltd., a company incorporated in England, which I will call "Humphreys & Glasgow (England)", transferred to the International Gas Processes Corporation, a company incorporated in the State of Delaware, 60,000 of these shares in consideration of 11,116 shares of $100 each in the latter company, which I will call "International Gas". Shortly after he transferred 5,000 of his remaining shares in Humphreys & Glasgow (England) to Mrs. Congreve as a gift, and on 18th April, 1932, he transferred to her, again as a gift, his 11,116 shares of International Gas, which were in fact the whole of its issued capital.

I pause in the narrative to observe that at this stage the significant facts had already occurred and, had the provisions of the Finance Act, 1936, then been in force, the question now before the House would at once have become a live one. For it was Mr. Glasgow who transferred assets to what I will for brevity call a foreign company and it was Mrs. Congreve who had power to enjoy the income of that company. But some years had to pass and many complicated transactions take place before the question could be raised.

As appears from the table that I have set out, Humphreys & Glasgow

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(Canada) was incorporated in Canada on 21st April, 1932. Immediately after its incorporation it purchased from International Gas the 60,000 shares of Humphreys & Glasgow (England) in exchange for 995 of its 1,000 shares of no par value and £212,000 debentures. On 27th April, 1932, International Gas went into liquidation and distributed its assets in specie, so that Mrs. Congreve became possessed of the 995 shares and £212,000 debentures of Humphreyc & Glasgow (Canada). On 1st May, 1932, she sold to that company her holding of 5,000 shares in Humphreys & Glasgow (England) in exchange for a further £18,000 debentures. On 23rd March, 1936, Humphreys & Glasgow (Canada) purchased from Mr. Glasgow 28,000 shares in Humphreys & Glasgow (England). The effect of these transactions was that Humphreys & Glasgow (Canada) became the owner of 93,000 out of the 100,000 issued shares of Humphreys & Glasgow (England), while Mrs. Congreve was the beneficial owner of practically the whole of the issued share capital of Humphreys & Glasgow (Canada).

On 16th July, 1936, Section 18 of the Finance Act, 1936, became law.

In November, 1936, Humphreys & Glasgow (Canada) applied for a surrender of its charter, and its liquidation which then began was completed in October, 1937. But this was but one of a further series of transactions which I need not at present discuss, for your Lordships now have all the material necessary for the determination of the first question. The income payable to Humphreys & Glasgow (Canada) during the year of assessment 1935-36 was income that Mrs. Congreve had power to enjoy. Can she escape liability on the ground that her rights did not wholly or mainly spring from a transfer of assets effected by her ? She had herself transferred no more than 5,000 shares of Humphreys & Glasgow (England) to Humphreys & Glasgow (Canada); but as the result of transfers by others and of the other operations that I have mentioned she had power to enjoy the whole of the income of that company.

My Lords, on this question I agree at all points with the unanimous judgment of the Court of Appeal, which was delivered by Cohen, L. J. The preamble or introductory words of the Section which state its purpose do not, in my view, assist the contention, which was developed upon its operative words, that the avoidance by an individual of liability to tax must be achieved by means of a transfer of assets effected by that individual. They are, on the contrary, in the widest possible terms, and I do not know what better words could be used if the Legislature intended to define its purposes as covering a transfer of assets by A, by means of which B avoided liability to tax. When I turn to the operative words, I cannot reach any other conclusion. It was urged that in their context the words " by means of any such transfer " can mean only a transfer effected by the individual who avoids tax liability. It was said that they do not mean the same as " as a result of " or " by virtue or in consequence of ", and the immediate proximity of the latter phrase was referred to as pointing the contrast. My Lords, this is altogether too fine a distinction. The difference of language is sufficiently explained by the wish of the draftsman not to use the same expression twice. But it is to my mind clear, first, that in their ordinary grammatical sense the words " by means of " do not connote any personal activity on the part of the person who is said to enjoy or suffer something by those means, and, secondly, that in their present context it is not necessary or legitimate in order to give a limiting sense to the words to read them as if they were followed by such words

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as "effected by him". It was suggested in the course of the argument that other limiting words should be written in, such as "effected by him "or by his procurement", for it was reasonably apprehended that to read the Section as excluding a case where an individual did not himself transfer assets but procured their transfer by another would be to ignore the substance of the Legislature's intention. But I see no reason for any limiting words. The language of the Section is plain. If there has been such a transfer as is mentioned in the introductory words, and if an individual has by means of such transfer (either alone or in conjunction with associated operations) acquired the rights referred to in the Section, then the prescribed consequences follow. In the present case such a transfer was made, though not by Mrs. Congreve personally; she did acquire the rights in question; the assessment was therefore correctly made first on her and then on Mr. Congreve in her right.

I now turn to the second question, viz., whether the transfer of assets, upon which the liability to tax is founded, must (as the Appellants contend) be to a person resident or domiciled out of the United Kingdom at the time of transfer or whether (as the Respondents contend) it is sufficient that there should be (*a*) a transfer of assets to a person then resident within the United Kingdom and (*b*) the removal of that person to a place outside the United Kingdom and the subsequent receipt by him of income which (to put it shortly) the taxpayer has, within the meaning of the Section, power to enjoy. Again I shall be selective and state no more of the facts than is necessary to illustrate this problem.

It will be remembered that one amongst several companies which, having been incorporated and resident within the United Kingdom, afterwards became resident outside it, was Margreve, and I will take the case of this company as my text.

Margreve, which was incorporated on 18th November, 1936, with a capital of £1,100 divided into 1,000 3 per cent. preference shares and 100 ordinary shares of £1 each, on 23rd November, 1936, purchased from Humphreys & Glasgow (Canada) 28,000 shares in Humphreys & Glasgow (England) which it had acquired from Mr. Glasgow some months earlier. The purchase price was £93,333 6*s.* 8*d.* Thereupon Humphreys & Glasgow (Canada) went into liquidation and by way of distribution of its assets in specie transferred its remaining 65,000 shares in Humphreys & Glasgow (England) to Mrs. Congreve. She then sold 17,000 of these shares to Margreve for £56,666 13*s.* 4*d.* payable in cash and she also sold to Margreve substantial holdings of foreign investments for £232,283.

On 23rd November, 1936, the capital of Margreve was increased to £100,100 by the creation of a further 99,000 preference shares, and on 8th December, 1936, to £105,000 by the creation of a further 4,900 ordinary shares.

Mrs. Congreve had by 14th April, 1937, acquired in various amounts and at various times the whole of the preference shares of Margreve, paying a premium of £4 per share, except the two signatory shares which were held for her. She became, too, in October, 1937, the beneficial owner of 50 ordinary shares of the company. No other ordinary shares were issued. She was thus the beneficial owner of all the issued capital of the company at the date of the operations next referred to.

In October, 1937, pursuant to resolutions of the company or its board of directors, as the case might be, (1) 70 debentures of £5,000 each

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were created, (2) the special rights and privileges of the preference shares were cancelled and such shares were converted into ordinary shares, (3) £350,000 standing to the credit of the company's share premium reserve was capitalised and a bonus of £350,000 declared and applied on behalf of Mrs. Congreve as the holder of the ordinary shares of the company in paying in full for the £350,000 debentures, certain of which she renounced in favour of a company which has been called "Seventy Three". At about the same time Margreve sold its 45,000 shares of Humphreys & Glasgow (England) to Marglas. It was thus left with no other assets than foreign shares and securities and the time was ripe for the next move.

At an extraordinary general meeting of Margreve held on 25th October, 1937, a special resolution was passed whereby new articles of association were adopted in substitution for the existing ones, the purport and effect of which was to remove the residence of the company outside the United Kingdom. I do not pursue its history further except to say that thereafter, first in the Channel Islands and later in the Isle of Man, it had its residence outside the United Kingdom and there received income which Mrs. Congreve had power to enjoy. It is in respect of such income that assessments have been made which are in dispute in this case.

I have already indicated what is the question that arises here. It was decided by Wrottesley, J., in favour of the Appellants, but by the Court of Appeal in favour of the Respondents, who support their case by two contentions (*a*) that the Section upon its true construction comes into operation if and when "income arises to a person who has become resident or "domiciled out of the United Kingdom after a transfer to him of assets", and (*b*) that the "removal abroad of the control of Margreve (and other "companies) was an operation in relation to the assets of each company "and, therefore, was an associated operation within the said Section". I take these contentions from their formal reasons.

My Lords, I agree with the Court of Appeal in thinking that the Respondents are clearly right in their first contention. The transfer of assets aimed at by the Section is not expressed to be a transfer to a person resident or domiciled out of the United Kingdom. I should suppose that it is deliberately not so expressed, for I cannot think that so simple an expedient as the transfer of assets to a company resident in the United Kingdom and the immediate removal of that company outside it would not occur to the draftsman. For this reason the words "to persons resi-"dent or domiciled out of the United Kingdom" do not occur immediately after "transfers of assets" in the introductory words or after "any such "transfer" in the operative words, but at a later stage when, the transfer having been made and other associated operations, it may be, having taken place, the question arises in regard to any particular income whether the taxpayer has the power to enjoy income payable to persons resident out of the United Kingdom. In my opinion, therefore, the strict grammatical meaning of the Section conforms to what I should assume to be its general purpose, and I hold that in the case of Margreve, which I take as typical of those cases in which transfers were made to companies then resident in the United Kingdom, the assessments were rightly made.

Upon this question I would add that, even if the Respondents are wrong in their first contention, they are entitled to succeed upon their second. For the wide scope of the definition of "associated operation" in Section 18 (2) coupled with the provisions of Section 18 (5) (*e*) satisfies me

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that the removal of Margreve outside the United Kingdom is an associated operation within the Section.

I come to the third and last question. Here there is some confusion. The undisputed fact is that the whole of the income which has been assessed to Income Tax and Sur-tax in this case arises from assets which were transferred either by Mrs. Congreve or her father or companies which she controlled, or from assets which represented those assets. Nor is it disputed by Counsel for the Appellants that, if they fail on the other questions, upon this income at least tax is exigible. If so, that is the end of the matter, for your Lordships are concerned not with any abstract question of law but with the question whether particular assessments were rightly made. If and so far as the Court of Appeal has decided that the income payable to a person resident outside the United Kingdom is to be deemed to be the income of the resident taxpayer though it cannot be traced to any transferred assets, I do not think it necessary to express any view upon the decision. In *Lord Howard de Walden* v. *Commissioners of Inland Revenue*, 25 T.C. 121, where the same point was discussed, the Court of Appeal expressly refrained from deciding it, saying (at page 134): "In the present case it is sufficient to say that the Appellant is, in our "opinion, chargeable in respect of the entire income of the Canadian com- "panies the whole of which is to be traced to the assets originally trans- "ferred to them." I say the same of the case now before the House and must decline to embark upon the consideration of what appears to be at once a difficult and an unnecessary question.

It follows from the answers that I make in regard to assessments of tax in relation to typical cases that I have selected, that the Court of Appeal were, in my opinion, right in varying the Order of Wrottesley, J., and affirming the determination of the Commissioners for the Special Purposes of the Income Tax Acts. I would dismiss the appeal accordingly.

Lord Normand.—My Lords, I concur in the opinion which has just been delivered by my noble and learned friend, Lord Simonds.

Lord Oaksey.—My Lords, I concur.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors :—Slaughter & May; Solicitor of Inland Revenue.]

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