HIGH COURT OF JUSTICE—18TH AND 20TH DECEMBER, 1951

COURT OF APPEAL—12TH AND 13TH MAY, 1952

HOUSE OF LORDS—2ND, 3RD, 4TH MARCH, AND 20TH APRIL, 1953

Thomas

v.

Marshall (H.M. Inspector of Taxes)

Marshall (H.M. Inspector of Taxes)

v.

Thomas[1]

Income Tax—Transfer of assets—Absolute gifts to unmarried minor children—Finance Act, 1936 (26 *Geo.* V, & 1 *Edw.* VIII, *c.* 34), *Section* 21.

The Appellant had two children born in 1933 *and* 1936 *respectively. In* 1933 *he opened a Post Office Savings Bank account for the older, and in* 1936 *a similar account for the younger, child. He made payments into these accounts from time to time and in addition in* 1945 *he gave each child* £1,000 *in* 3 *per cent. Defence Bonds. Both the sums paid into the bank accounts and the bonds were absolute and unconditional gifts.*

The interest on the bank accounts and on the bonds was treated for Income Tax purposes as the income of the Appellant, and he appealed to the General Commissioners against the assessments made upon him for the years 1942-43 *to* 1949-50 *inclusive, contending that an absolute transfer of assets was not a settlement within the meaning of Section* 21 *of the Finance Act,* 1936, *and that the decision in* Hood Barrs *v.* Commissioners of Inland Revenue, 27 T.C. 385, *was overruled by the decision in* Vestey *v.* Commissioners of Inland Revenue, 31 T.C. 1. *Alternatively, he contended that if the transfers of assets were settlements within the meaning of Section* 21, *each deposit in the Post Office Savings Bank constituted a separate settlement, so that the exemption given by Section* 21 (4) *of the Finance Act,* 1936, *applied where the income of each such settlement did not exceed* £5.

It was contended on behalf of the Crown that the transfers were settlements to which Section 21 *applied; that the decision in the* Hood Barrs *case had not been overruled by the decision in the* Vestey *case; and that the exemption granted by Section* 21 (4) *applied only when the aggregate income of all the settlements falling within Section* 21 *did not exceed* £5.

The Commissioners held that the present case was governed by the decision in Hood Barrs *v.* Commissioners of Inland Revenue *and that the exemption granted by Section* 21 (4) *of the Finance Act,* 1936, *applied to each separate settlement where the income did not exceed* £5. *Both sides demanded a Case.*

Held, *that the transfers were settlements within the meaning of Section* 21 *and that the exemption granted by Section* 21 (4) *applied only when the aggregate income of all the settlements was below* £5.

(1) Reported [1952] 1 All E.R. 173; 96 S.J. 59; 1952 1 T.L.R. 155; [1952] 2 All E.R. 32; 96 S.J. 326; 1952 1 T.L.R. 1419; [1953] 1 All E.R. 1102; 97 S.J. 316.

CASE

Stated by the Commissioners for the General Purpose of the Income Tax for the Division of the Tower of London pursuant to the provisions of Section 149 of the Income Tax Act, 1918, for the opinion of the High Court of Justice.

1. At meetings of the said Commissioners held at Broad Street House, Old Broad Street, in the City of London upon 11th January and 19th January, 1951, David Cardigan Thomas (hereinafter called "the Appellant") appealed against assessments made upon him under Case III of Schedule D. Income Tax Act, 1918, as under:—

1942-43	£12
1943-44	£14
1944-45	£19
1945-46	£45
1946-47	£106
1947-48	£116
1948-49	£255
1949-50	£260

the grounds of the appeal being that, apart from adjustments of figures, agreed to be necessary, there should be excluded from the said assessments the income set out below, being interest upon two Post Office Savings Bank accounts (exclusive of interest upon interest) and interest upon two holdings of £1,000 each of 3 per cent. Defence Bonds, namely:

1942-43	£10
1943-44	£10
1944-45	£15
1945-46	£38
1946-47	£100
1947-48	£110
1948-49	£100
1949-50	£92

which said sums had been treated as the income of the Appellent by virtue of the provisions of Section 21 of the Finance Act, 1936.

2. The Appellant is the father of two children, a son, Michael David Thomas, (hereinafter referred to as "Michael") born upon 8th September, 1933, and a daughter Heather Thomas, (hereinafter referred to as "Heather") born upon 1st February, 1936.

3. Upon 20th December, 1933, a Post Office Savings Bank account was opened by or upon behalf of the Appellant in the name of Michael with a deposit of £50, and upon 28th May, 1936, another Post Office Savings Bank account was similarly opened by or on behalf of the Appellant in the name of Heather with a deposit of £50. Thereafter, other payments were from time to time made by the Appellant to both accounts. On 4th December, 1939, from each of the said accounts there was withdrawn a sum of £375 being the purchase price of 500 National Savings Certificates bought for and in the names of each of the said children. Upon 28th April, 1947, the sum of £100 was withdrawn from Michael's account being money required for and expended upon maintenance and education, including a visit to the continent which eventually occurred in 1948. Upon 16th April, 1947, a similar sum for the same purposes was withdrawn from Heather's said account. Upon 4th July, 1947, a further sum of £260 8*s.* 7*d.* was withdrawn from Michael's account which was used to defray the cost of purchases made

by or on behalf of and for the benefit of Michael whilst on the same day a withdrawal of £257 12*s.* 2*d.* was made from Heather's account which was used for similar purposes. At 31st December, 1948, the balance to the credit of Michael's said account was £844 9*s.* whilst that to the credit of Heather's account upon the same date was £844 8*s.* 3*d.* A copy of each child's Post Office Savings Bank account is attached to and forms part of this Case(1).

4. In addition to the deposits by the Appellant to the credit of the two Post Office Savings Bank accounts above-mentioned, upon 24th November, 1945, the Appellant purchased £1,000 3 per cent. Defence Bonds for Michael and a like amount of the same bonds for Heather. These sums were provided by the Appellant out of repayments to him of money previously advanced by him to his sister. The interest upon the said bonds was not credited to the children's Post Office Savings Bank accounts. The bonds were purchased by the Appellant in the children's names and were donated absolutely and unconditionally to them.

5. All the amounts paid into the children's Savings Bank accounts represent absolute and unconditional gifts to Michael and Heather respectively; further under the Post Office regulations, money deposited in a Savings Bank account opened in the name of a child under seven years of age cannot except in certain special circumstances be withdrawn before the child reaches that age and, thereafter, only that child can make withdrawals.

6. The Appellant gave evidence before us to the above effect which we accepted and we therefore find as facts the matters herebefore set forth.

7. By the provisions of Section 21 of the Finance Act, 1936, it was enacted (*inter alia*) as follows:

> "(1) Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.
>
> . . . (9) In this section—
>
> . . . (*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;"

By Part IV of Finance Act, 1938, further provisions relating to settlements were enacted and by Section 41 (4) of that Act it was provided:

> "(4) For the purposes of this Part of this Act—
>
> . . . (*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, or arrangement . . ."

The definitions of "settlement" in Section 21 of the Finance Act, 1936, and for the purposes of Part IV of the Finance Act, 1938, are therefore identical save for the omission in the latter of the expression "transfer of assets".

8. It was contended on behalf of the Appellant—

(*a*) that an absolute and unconditional transfer of assets is not a "settlement" within the meaning of Section 21 of Finance Act, 1936;

(*b*) (i) that the word "settlement" has the same meaning throughout the Income Tax Acts and (ii) that the meanings as given in Subsection (9) (*b*) of Section 21 of the Finance Act, 1936, and

(1) Not included in the present print.

Sub-section (4) (*b*) of Section 41 of the Finance Act, 1938, cannot be construed literally but must be taken as indicating the methods by which a Settlement can be created and (iii) that the omission of the expression " transfer of assets " from the later definition was in consonance with this interpretation as being unnecessary ;

(*c*) that the decision of the Court of Appeal in *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C. 385, where absolute transfers of shares by a father to his children were held to constitute settlements for the purposes of Section 21 as being " transfers of assets ", must be deemed to be inconsistent with *Chamberlain* v. *Commissioners of Inland Revenue,* 25 T.C. 317 at p. 331, where Lord Macmillan agreed with Lord Moncrieff's opinion expressed in *Commissioners of Inland Revenue* v. *Morton,* 24 T.C. 259 at p. 269, to the effect that to constitute a settlement there must be a charging by the settlor of certain property of his with rights in favour of others and to have been overruled when the said opinions were endorsed in the House of Lords in *Vestey* v. *Commissioners of Inland Revenue,* 31 T.C. 1, in the speeches of Lord Normand (at p. 88), Lord Morton of Henryton (at pp. 107-8) and Lord Reid (at p. 120);

(*d*) that " income " for the purposes of Section 21 of Finance Act, 1936, is limited to income originating from the settlor and no such income so originated in the present case ;

(*e*) that the said Section 21 has application only to income and not to capital ;

(*f*) that by the provisions of Sub-section 3 (*b*) of the said Section 21 payments of capital are exempted from the provisions of Sub-section (1) of the said Section.

9. It was contended upon behalf of the Respondent—

(*a*) that the case had to be considered solely in relation to Section 21 of the Finance Act, 1936, in Sub-section (9) (*b*) of which the expression " settlement " for the purposes of the Section includes any " transfer of assets " ;

(*b*) that the deposits made by the Appellant to the credit of the children's Post Office Savings Bank accounts, and the purchases of Defence Bonds made by him upon their behalf, constituted " transfers of assets " and so " settlements " within the said definition ;

(*c*) that the Appellant was the settlor in relation to each settlement within the meaning of Section 21 (9) (*c*) of the Act ;

(*d*) that we were bound by the decision in *Hood Barrs* v. *Commissioners of Inland Revenue*[1] to decide this case in favour of the Revenue ;

(*e*) that the aforesaid cases of *Morton, Chamberlain* and *Vestey* relied upon by the Appellant were decisions upon the enactment relating to settlements contained in Part IV of Finance Act, 1938, and were of necessity governed by the separate definition of " settlement " in that Act ; and that the decision in *Vestey* did not overrule *Hood Barrs* v. *Commissioners of Inland Revenue.*

10. Upon the basis that the decision in *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C. 385, remained valid and applicable in principle

(1) 27 T.C. 385.

to the transfers of assets above-mentioned, whilst no difficulty would arise in connection with the interest upon the Defence Bonds it was otherwise with regard to the interest credited to the children's Post Office Savings Bank accounts and it remained to be considered how the provisions of Sub-section (1) of Section 21 of Finance Act, 1936, fell to be applied. By Sub-section (4) of the said Section it was provided:

> "(4) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) of this section for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of the foregoing provisions of this section, does not exceed five pounds."

It was common ground between the parties that the two Post Office Savings Bank accounts were not "settlements" within the meaning of the Section and also that each separate deposit to each account constituted a separate settlement.

11. For the Appellant it was contended that the exemption given by Sub-section (4) of Section 21 only applied where the aggregate of the income whether arising under one or more settlements, which fell to be treated as the income of the settlor under Section 21 (1) did not exceed £5.

12. For the Respondent it was contended that in Sub-section (4) the word "aggregate" only applied to the payments under a single settlement and that in Sub-section (1) the reference was to the provisions of a single settlement and not to the provisions of settlements in the plural with each settlement being possibly of different character.

13. We, the Commissioners who heard the Appeals gave our decision in writing as follows.

1. In *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C. 385, it was held by the Court of Appeal that absolute gifts of shares by a father to each of his infant and unmarried daughters were "transfers of assets" and so within the meaning of the expression "settlement" as expanded by Sub-section (9) (*b*) of Section 21 of Finance Act, 1936; and the main contention in the case before us is that this finding must be deemed to be over-ruled as the result of speeches made in the House of Lords in *Lord Vestey's Executors and Vestey* v. *Commissioners of Inland Revenue,* 31 T.C. 1. In the latter case, their Lordships were considering the expression "settlement" as expanded for the purposes of Part IV of Finance Act, 1938, by Section 41 (4) (*b*) of that Act, in which expression no mention is made of "transfer of assets". In none of the speeches of their Lordships was there in the *Vestey* case any reference either to the *Hood Barrs* case[1] or to the said Section 21 itself and we hold that in determining the case before us we are bound by the Court of Appeal decision in the latter case, and, although apart from this authority we should have had difficulty in so doing, we find that the absolute gifts by the Appellant to his infant and unmarried children by way of deposits in Savings Bank accounts and by way of purchases of Defence Bonds constituted "transfers of assets" which are "settlements" within the meaning of Section 21 of Finance Act, 1936.

2. Upon the assumption that the above finding is correct in law, the question remains as to how it is to be applied in the case before us to

(1) 27 T.C. 385.

the children's Savings Bank accounts. It was mutually agreed between the parties, and in this we concur, that as regards these accounts the " settlements " were not the accounts themselves but the transfers of assets represented by the deposits to their credit. Whereas, however, it was mutually agreed between the parties before us that each separate deposit represented a separate " settlement " we are unable to agree to an interpretation whereby a number of separate deposits and, hence, an equal number of separate " settlements " could be made upon the same day. Whilst, therefore, we are of opinion that separate deposits of substantial amount made to the same child's Savings Bank account by the same donor within a short period of time should be regarded as constituting a single " settlement ", in the absence of evidence to the contrary proving independence of origin, we think that in view of our further findings this treatment is only applicable to the deposits of £150 and £100 made to the credit of Michael's account upon 15th August and 5th October, 1945, and of the like amounts made to the credit of Heather's account upon 13th August and 25th October, 1945. These, we hold, should be regarded as constituting in each case a single " settlement " of £250.

3. With considerable hesitation we hold that the word " settlement " where it occurs in Sub-section (1) of Section 21 of Finance Act, 1936, should be interpreted by us as referring to a single settlement and that each such settlement is to be regarded separately for the purposes of the said Sub-section and that the provisions of Sub-section (1) (*b*) of Section 1 of the Interpretation Act, 1889, are inapplicable.

As regards the exemption conferred by Sub-section (4) of the said Section 21, with the like hesitation we consider that the word " settlement " is to be similarly interpreted and that the words " aggregate amount " contained therein refer to the aggregate amount of the income paid to or for the benefit of the child under each settlement regarded separately and not to the aggregate amount of the income so paid under all settlements for such child's benefit.

14. Both the parties 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 and sign a Case for the opinion of the High Court pursuant to the provisions of Section 149 of the Income Tax Act, 1918, which Case we have stated and do sign accordingly.

15. The questions of law for the opinion of the Court are:

(1) whether the decision of the Court of Appeal in *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C. 385, must be deemed to have been overruled by the House of Lords as the result of *Chamberlain* v. *Commissioners of Inland Revenue,* 25 T.C. 317, and *Vestey* v. *Commissioners of Inland Revenue,* 31 T.C. 1 ;

(2) whether every deposit in the Post Office Savings Bank constituted a separate settlement irrespective of the interval of time intervening between successive deposits, or whether several deposits made within a short period of time in favour of one person should be regarded as constituting a single settlement ;

(3) whether the exemption conferred by Sub-section (4) of Section 21 applies to the income of each settlement where the said income does

not exceed £5 for any year of assessment, or whether it applies only if the aggregate income, whether of one or more settlements, which falls to be treated as income of the settlor under Section 21 (1) does not exceed £5 for the year of assessment.

W. E. LOWETH
W. WONNACOTT
ARTHUR MAY
} Commissioners for the General Purposes of the Income Tax for the Division of the Tower of London.

Broad Street House,
Old Broad Street,
London, E.C.2.

6th July, 1951.

The case came before Donovan, J., in the High Court on 18th December, 1951, and on 20th December, 1951, judgment was given in favour of the Crown, with costs.

Mr. Charles Lawson appeared as Counsel for the taxpayer and Mr. John Pennycuick, K.C., and Mr. Reginald P. Hills for the Crown.

Donovan, J.—Mr. Thomas appealed to the General Commissioners for the Division of the Tower of London against assessments made on him under Case III of Schedule D for the years 1942–43 to 1949–50 inclusive, in varying amounts. Those assessments were in respect of interest paid on deposits in the Post Office Savings Bank and on 3 per cent. Defence Bonds. It was all treated as Mr. Thomas's income for Income Tax purposes.

Mr. Thomas has two infant and unmarried children, Michael and Heather. On 20th December, 1933, he put £50 in the Post Office Savings Bank in the name of Michael. On 28th May, 1936, he put £50 in the same bank for Heather. Thereafter he put further sums in the same bank for each of them. Various drawings were made from time to time and expended for the children's benefit. By 31st December, 1948, there was left in the bank £844 odd for Michael and £844 odd for Heather. The accounts are in their respective names. On 24th May, 1945, Mr. Thomas bought £1,000 3 per cent. Defence Bonds for each of Michael and Heather. These bonds were absolute gifts to the children by him, as were the sums he paid into the Post Office Savings Bank.

The Inspector of Taxes treated the interest on the moneys in the Post Office Savings Bank and the interest on bonds, both of which items of interest are not income of Mr. Thomas in fact, as nevertheless being his income for the purposes of Income Tax. This was done in purported obedience to Section 21 of the Finance Act, 1936. That Section, so far as material, provides as follows:

> "Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person."

Sub-section (9) provides:

> "In this section—(*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets".

It may be convenient here to say that in 1938 further legislation was enacted with a view to the prevention of tax avoidance by means of settlements, and Part IV of the Finance Act, 1938, contained the relevant provisions. Section 41 (4) (*b*) enacted that

> "For the purposes of this Part of this Act"—that is Part IV—"the expression 'settlement' includes any disposition, trust, covenant, agreement or arrangement".

The definitions of "settlement" in Section 21 of the Finance Act, 1936, and in Section 41 (4) (*b*) of the Finance Act, 1938, are therefore identical, save for the omission in the latter provision of the expression "transfer of assets".

Mr. Thomas resisted the Revenue's claim and said that outright gifts such as he made in this case are not "settlements" within the meaning of the definition contained in Section 21. In support of this contention he argued before the Commissioners to whom he appealed that the House of Lords has defined, in a sense favourable to him, the meaning of "settlement" for the purposes of Part IV of the Finance Act, 1938, and that it did so in two cases, namely, *Chamberlain* v. *Commissioners of Inland Revenue*, 25 T.C. 317, and *Vestey* v. *Commissioners of Inland Revenue*, 31 T.C. 1; and that these decisions are of equal application to the word "settlement" in Section 21 of the 1936 Act. The Commissioners decided against Mr. Thomas on these points, and he now appeals to this Court.

Before me, additional arguments were deployed with which I will try and deal.

The case of *Chamberlain*[1] did not call for a decision as to what constitutes a "settlement" within the expanded definition of that term contained in Section 41 (4) (*b*) of the Finance Act, 1938. The question at issue was what was the property comprised in the settlement. Lord Thankerton says this on page 329 of the Report:

> "I may premise that, in seeking the due application of Section 38 of the Finance Act of 1938, each case is apt to depend on its own facts, and other cases are not likely to be of material assistance. Further, it seems to me that, while the word 'settlement' is defined in the widest terms, the more crucial point is likely to be the determination of what the 'property comprised in the settlement' consists of in the particular case. The present case affords, in my opinion, a good illustration of this point, and the question may be thus stated. Did the property comprised in the settlement consist of the whole assets of Staffa, or is the property comprised in the settlement to be found separately comprised in each of the five deeds of settlement, the formation of Staffa being part of the arrangement conceived by the Appellant, whereby a convenient and profitable investment was made available for the moneys respectively settled under the five deeds of settlement?"

The case decided that only the property comprised in the five deeds was the "property comprised in the settlement".

In the course of his speech in the same case, Lord Macmillan said this on page 330 of the Report:

> "In order that the income of the Staffa Investment company may, under Section 38 (2) of the Finance Act, 1938, be treated as the income of the Appellant, that income must be shown to be income arising under a settlement made by the Appellant from property comprised in the settlement; it must further be shown that the settlement or some provision thereof is revocable or otherwise determinable, and that if such revocation or determination

(1) 25 T.C. 317.

(Donovan J.)

> should be effected the Appellant or his wife would become beneficially entitled to the whole or part of the settled property or to the whole or part of the income of the settled property. The term 'settlement' includes any disposition, trust, covenant, agreement or arrangement (Section 41 (4) (*b*)) and has thus a wider meaning than in the vocabulary of the strict conveyancer. The first and indeed the decisive question in the case is whether the Appellant made a settlement comprising the whole assets of the Staffa Investment company".

After stating the facts in the case, Lord Macmillan proceeded on page 331 to say this:

> "The contention of the Crown, which was upheld by the Special Commissioners and has been affirmed by Lawrence, J., and the Court of Appeal, is that the formation and structure of the Staffa Investment company, together with the sale agreement of 23rd December, 1935, the settlement of 10th March, 1936, and the four settlements of 7th December, 1936, 'constitute an arrangement and a settlement within Section 41 (4) (*b*), Finance Act, 1938'. Lawrence, J., in affirming the decision of the Special Commissioners, did not deliver a reasoned opinion as it was admitted before him that the case was governed by decision of the First Division of the Court of Session in the Scottish case of *Commissioners of Inland Revenue* v. *Morton*, 1941 S.C. 467; 24 T.C. 259. I find myself unable to agree with the Crown's contention. I accept the view that the statutory expansion of the term 'settlement', which includes an 'arrangement', justifies and indeed requires a broad application of Section 38 of the Act of 1938, but a settlement or arrangement to come within the Statute must still be of the type which the language of the Section contemplates. I agree with Lord Moncrieff that the settlement or arrangement must be one whereby the settlor charges certain property of his with rights in favour of others (*Commissioners of Inland Revenue* v. *Morton*)"(1).

Relying on these last words, the Appellant says they mean that only property charged with rights in favour of others is a settlement within the meaning of Section 21 of the Finance Act, 1936; and that therefore an out and out transfer is not such a settlement for the property so transferred and is not charged with rights in favour of others.

The validity of this argument depends in the first place upon what Lord Macmillan meant by the expression "charged with rights". If he meant what conveyancers usually mean by that term, then an absolute gift would be excluded. Lord Macmillan in fact went on, in my view, to explain what he meant by "charged with rights", for he proceeded thus on page 331(2):

> "It"

[that is, a settlement for the purposes of the Section]

> "must comprise certain property . . . it must confer the income of the comprised property on others, for it is the income so given to others that is to be treated as nevertheless the income of the settlor."

An out and out gift satisfies those conditions just as much as a gift conferring limited interests; and in view of this and of the circumstance that the case did not call for such a decision, I find it impossible to construe Lord Macmillan's words as laying down the proposition that the definition of "settlement" in the 1938 Act, as expanded, can be ignored and the word given the more restricted meaning that it usually bears. Lord Macmillan himself says that the expanded definition requires that the word "settlement" shall be given a meaning wider than the ordinary one. It is, I think, useful to point out that on page 334 Lord Romer said this in the same case:

> "Although, therefore, it may be possible to say, in view of Section 41 (4) (*b*) of the Finance Act, 1938, that on 10th March, 1936, there came into existence a compound settlement in the form of an arrangement consisting of the forming of Staffa the agreement for the sale to it of the 470 shares in Commercial

(1) 24 T.C. 259, at p. 269. (2) Of 25 T.C.

> Structures, Ltd., the trust deed of that date and the subscription by the trustees of 350 ordinary shares, the property comprised in that settlement consisted of nothing but the last-mentioned shares."

Here again, Lord Romer indicates the difference between the issue which arose in the *Chamberlain* case, and the one which arises in the case now before me.

I have already noticed that the definition of " settlement " contained in Section 21 of the Finance Act, 1936, includes the words " transfer of assets ", which do not appear in the definition contained in the 1938 Act which the House of Lords was considering in the *Chamberlain* case. But I do not found my decision on that, although the difference between the two definitions is there, for what it is worth. Each definition contains, however, the word " disposition " and what transfer of assets there could be which would not also be a disposition, I do not know.

The view I have just expressed regarding what was decided and not decided in the *Chamberlain* case[1] disposes of the argument by the taxpayer here that the House of Lords in *Vestey's* case, 31 T.C. 1, had endorsed what Lord Macmillan said in the former case. If my interpretation of Lord Macmillan's speech be right, that argument carries the matter no further. For *Vestey's* case, so far as here relevant, was also a decision on the 1938 Act, and again the House of Lords did not have to decide the exact meaning of the definition of " settlement " in that Act. Once more the question was what property was comprised in the settlement. In view of the expanded meaning given to the word " settlement " by the Statute it would be just as fallacious to conclude that once you determined that question you had also determined what the settlement was as it would be to conclude that once you knew what rooms were comprised in a house you knew precisely what the house was.

The Appellant argued that the words " disposition, trust, covenant " and so on in the expanded definition are simply indications by the Legislature of the ways in which a settlement, strictly so-called, can be effected. The language of the definition is wholly adverse to such a construction. Moreover it is not easy to picture the Legislature telling us that one of the ways in which you can make a strict settlement is by " an arrangement ". On the other hand there is sense, though little clarity, in the Legislature saying that an arrangement as a consequence of which a taxpayer diverts some of his income may be a settlement for the purposes of the Section.

Mr. Lawson next argued that Section 21 of the Finance Act, 1936, dealt only with the settlement of income ; for example, the settlement of an existing annuity. I can find no warrant in the language of the Section for holding that it does not cover the case where capital is settled and income from such capital is paid to or for the benefit of an infant and unmarried child of the settlor. The indications are the other way: see Sub-section (8), where a distinction is drawn between income and assets ; and the definition of " settlor " in Sub-section (9) containing a reference to " funds " provided for the purposes of the settlement, the word " funds " being obviously wide enough to cover capital.

Then it was said that in a case of an out and out transfer of assets the settlement is both created and terminated at the same moment and therefore no income can arise from any settlement to be caught by Section 21. The case was instanced of a father first making a parol trust of property

(1) 25 T.C. 317.

(Donovan, J.)

in favour absolutely of his child and then actually transferring the property to the child. The parol trust, it is said, would itself be a settlement within the definition of Section 21. A subsequent transfer would put an end to that settlement, leaving nothing. There was in fact no parol trust in the present case; but in any event I do not regard the argument as sound. I should have thought the transfer simply implemented the trust and in any event the two things can be considered together for the purposes of Section 21 as together constituting the settlement.

So far I have considered the matter independently of any authority directly bearing upon the taxpayer's contention. But the decision of the Court of Appeal in *Hood Barrs* v. *Commissioners of Inland Revenue*, 27 T.C. 385, a decision of the Court of Appeal given after the decision of the House of Lords in *Chamberlain's* case, is directly in point and binds me. No doubt in these circumstances it would have been easier simply to have said that: but, in deference to the vigour and the courage of Mr. Lawson's argument, I have considered the matter in the first place independently of that decision. I do not think the verdict in the Court of Appeal was in any way at variance with the decision of the House of Lords in *Chamberlain's* case[1] or with the passage from Lord Macmillan's speech on which reliance was placed. My reasons have already been given.

Finally, it was contended for the taxpayer that absurd results would follow if one treated any transfer of assets giving rise to income to a child as being within Section 21. Suppose a business was transferred by father to son: is that caught? Again, if stock is transferred absolutely, can it be said that income is "paid" to a child by virtue or in consequence of the settlement? It is *his* income already. And what about the case of a purchase for full consideration by a child from his father?

I agree that neither the transfer of a business nor a sale for full consideration is specifically exempt, but I refrain from indicating any views on the problems they present, for the case I am considering raises none of them. They have long been matters of interest and speculation and they had better be left to be dealt with if and when the occasion arises. As regards the argument based on the word "paid"—the decision in *Hood Barrs*[2] must be taken as negativing it. I think that the Commissioners were right in deciding against Mr. Thomas on the question whether Section 21 applied at all.

I now turn to the Crown's appeal. Sub-section (4) of Section 21 of the Finance Act, 1936, provides as follows:

> "Income paid to or for the benefit of a child of a settlor shall not be treated as provided in sub-section (1) of this section for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of the foregoing provisions of this section, does not exceed five pounds."

It is said in the Stated Case that it is agreed between the parties that the accounts in the Post Office Savings Bank were not a settlement within the meaning of Section 21. I suppose that means simply the relevant entries in the bank books, for it *is* agreed that each deposit by Mr. Thomas is a separate settlement within the meaning of the Section, assuming that he failed on his main point. Mr. Thomas contended that you must look at each settlement separately and ask, is the total income under that settlement in

(1) 25 T.C. 317. (2) 27 T.C. 385.

the year £5 or less? If so Section 21 does not apply. The Inspector of Taxes maintains that if there is more than one settlement on a child which comes within Section 21, then you look at all the income arising in the year under all the settlements to see whether the total is £5 or less. Section 21, I may recall, opens with these words:

> "Where, by virtue or in consequence of any settlement to which this section applies",

and it goes on to enact that other conditions being fulfilled the income paid to or for the benefit of a child shall be treated as the settlor's income. That means, obviously, the incomes which arises under "any" such settlement which is so paid or applied. So that if there were four settlements, each producing let us say, £1 of income in the year which was paid to or for the benefit of a child, all that £4 is caught by Sub-section (1) of Section 21. Now, however, comes Sub-section (4), and that speaks of the aggregate income which would but for the Sub-section itself be caught by Section 21. What is that except, in the example I have given, £4? Now, says Sub-section (4), since that aggregate interest is less than £5, Sub-section (1) shall not apply, All that seems perfectly clear, but Mr. Thomas says: "No; you take each settlement separately." In the example I have given, of course, it would make no difference if you did. But it would make a difference if instead of each settlement producing £1 it produced £4. I can see no warrant for this contention at all. The expression is

> "the aggregate amount of the income . . . which . . . would be so treated by virtue of the foregoing provisions of this section",

which means which would be treated as the settlor's income. In the case of more than one settlement, what can that mean except the aggregate of the income arising under them all? Otherwise the word "aggregate" is meaningless. I ought to say that I was told at the Bar that this was not Mr. Thomas's contention in the first place, but was suggested to him by the Clerk to the Commissioners. The Commissioners accepted it. I am afraid I must reject it.

In the result, the taxpayer's appeal in the first case is dismissed, and the Crown's appeal in the second case is allowed.

Mr. Hills.—In each case with costs?

Donovan, J.—Yes.

Mr. Lawson.—I do not know whether your Lordship would hear me on the question of the costs of the second appeal. As your Lordship indicated, this was an unfortunate legacy bequeathed to Mr. Thomas by the Clerk to the Commissioners. I do not know whether your Lordship, having regard to the fact that the first appeal has been dismissed with costs, would say that the costs occasioned by the second appeal might perhaps be limited in some way.

Donovan, J.—I do not think the total costs are likely to be much increased, but in any event I can do nothing, because although I feel a certain amount of sympathy with you, the contention was adopted and has been argued, and that is that. I do not think the penalty will be very great.

Mr. Lawson.—If your Lordship pleases.

An appeal having been entered against the above decision the case came before the Court of Appeal (Sir Raymond Evershed, M.R. and Birkett and Romer, L.JJ.) on 12th and 13th May, 1952, and on the latter date, judgment was given unanimously in favour of the Crown with costs.

Sir Andrew Clark, Q.C., and Mr. Charles Lawson appeared as Counsel for the taxpayer and Mr. John Pennycuick, Q.C., Mr. J. H. Stamp and Mr. Roderick Watson for the Crown.

Sir Raymond Evershed, M.R.—The short question raised by this appeal may be accurately stated thus: whether the facts of this case, which I will briefly relate in a moment, are such as to give rise to the existence of a "settlement" within the meaning of Section 21 of the Finance Act, 1936.

The facts to which I have alluded are these. In the years 1933 and 1936, the Appellant in this Court made over—I use for the moment a deliberately vague term—by way of absolute gifts to his two children, Michael and Heather, respectively, certain monies which he put into their names in the Post Office Savings Bank. The history of the two accounts which he thus created may be seen from the appendices attached to the Case, and I take, for present purposes as sufficient, the bank account of the boy, Michael. It opened with a deposit of £50. From time to time, thereafter, other sums were similarly put to the credit of the account by the Appellant. There were also, from time to time, credited in the account sums for interest. In the year 1939 there was a withdrawal from the account of £375, and that sum was utilised in the purchase, in the name of the boy, of £500 worth of National Savings Certificates. It also appears that from time to time there were other withdrawals, the sums withdrawn being expended for the boy's benefit or maintenance. The situation in the case of the daughter Heather's account was in all material respects, identical. By the end of the year 1948, the sums which stood to the credit of these two children in their respective accounts were, within a matter of a very few shillings and pence, the same, about £844. Finally in the year 1945 the Appellant purchased a sum of a thousand pounds' worth of 3 per cent. Defence Bonds for each of his two children in their respective names. In other words, the purchase of those bonds was, in fact, as it was intended to be, an absolute gift to them respectively of the bonds. I need only add that at all material dates these two children were infants.

The point which has arisen, and which is the subject of this appeal, is whether these gifts constitute settlements within the meaning of Section 21 of the 1936 Act: for the effect, it is conceded, if they do, is that the father, as the settlor, is liable to be assessed for Income Tax in respect of the interest or income which the subject-matter of the gifts produced. As a matter of machinery, I should add that that sum of Income Tax, if the father be liable for it, may, as I understand, be recouped out of the children's monies; but, for the purposes of assessment, the tax is levied upon the footing that the income in question was the settlor's, that is the father's income. That is the short point in the case.

Sir Andrew Clark, for the Appellant, has not sought in this Court to make any distinction between the gifts which I have described, either between the transfers of sums of money into the Post Office Savings Bank accounts, on the one hand, or the purchase of the Defence Bonds on the other; nor between the sums deposited in the Post Office Savings Bank and the purchase thereout in the children's names of the National Savings

Certificates. For the purposes of this case, either all these sums constitute the subject-matter of a "settlement" within the meaning of the Act, or none of them do. Further, Sir Andrew has conceded that, if the case of *Hood Barrs* v. *Commissioners of Inland Revenue,* decided in this Court in 1946 and reported in 27 T.C. 385, is still good law, then the result must be in this Court, as it was in the Court below, that we are bound by that case to decide this matter in favour of the Crown. But Sir Andrew's main point has been that, having regard particularly to the observations of the noble Lords in the later case of *Lord Vestey's Executors* v. *Commissioners of Inland Revenue,* 31 T.C. 1, the *Hood Barrs* case ought now to be regarded as no longer good authority or as binding in this Court.

The facts, so far as relevant, in the *Hood Barrs* case were that the Appellant had transferred to each of his two infant and unmarried daughters a block of shares as gifts of an absolute character without any restriction or consideration. It was argued in that case that the transfers, being in the nature of absolute out-and-out gifts, were not "settlements" within the comprehension of Section 21 of the 1936 Act. This Court held that they were and construed the Section, which is in point here, as covering the case of a gift such as I have described in the *Hood Barrs* case. From what I have already said, it is plain that no distinction in principle can be drawn between the nature and characteristics of the gifts in the *Hood Barrs* case and the nature and characteristics of the gifts in the present case. Therefore, before I deal further with the judgment of Lord Greene, M.R. in this Court in the *Hood Barrs* case, I will make some further references to the Section which is involved. Sub-section (1) of Section 21 is in these terms:

> "Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person."

I shall pass over Sub-section (2). Sub-section (3) allows certain reliefs in the case of what is there referred to as "an irrevocable settlement". I pass to Sub-section (9) which contains what may be described as an interpretation, perhaps a definition, perhaps an expansion, of the meanings of certain of the words used earlier in the Section. Sub-section (9) contains this provision:

> "In this section . . . (*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets".

It is not in doubt that, according to the ordinary acceptation of language, if a man transfers to somebody else, as Mr. Hood Barrs did in the *Hood Barrs* case, a block of shares by way of gift to that other person, then there has been a "transfer of assets". Accordingly, if the word "settlement" in the first Sub-section is to be treated as comprehending, by virtue of the language of Sub-section (9) (*b*), "transfers of assets", it seems to follow as night follows day that such a "transfer of assets" is a "settlement" to which the Section applies.

The argument presented in the *Hood Barrs* case, and presented also in this Court for our consideration if we should not hold ourselves bound by the *Hood Barrs* case, is in brief this. The expansion to be given to the word "settlement" by the effect of Sub-section (9) (*b*) is not such as to

(Sir Raymond Evershed, M.R.)

make the word "settlement" mean, and therefore necessarily cover, every transfer of assets. In other words, though Sir Andrew concedes that the effect of Sub-section (9) (*b*) is to enlarge the meaning which the word "settlement" might otherwise have, and particularly to enlarge it beyond the scope of what, as he says, the word would mean to a conveyancer, still the transactions which the word "settlement" are said to include must be such that they still retain in some way or in some degree the characteristics of a settlement, as that word would be understood by persons who have some accurate knowledge of the meaning of words in the English language. And he says also that this view is supported by other considerations to be derived from the Section itself—for example, the reference to an "irrevocable settlement" in Sub-section (3) which he argues is inappropriate to ordinary gifts.

It is not, perhaps, very easy to express the extent to which, on this view, that enlargement would go. I think it would be unkind to the argument to suggest that it is fairly to be paraphrased by saying that "settlement" includes transfer of assets provided that they are still something like a settlement, even though they are not, strictly speaking, a settlement at all. But the difficulty which that interpretation of Sub-section (9) (*b*) suggests is a real difficulty, and one which certainly has affected my mind in this matter, and would, if the question were *res integra* for us be a matter upon which I should certainly want to hear considerably more argument from Mr. Pennycuick on behalf of the Crown before I expressed a final conclusion. But as I have already indicated, my view is that the *Hood Barrs* case[1], which is a direct authority in this Court on the very Section with which we are concerned, is still to be regarded in this Court as a binding authority. If that is right, it follows, as Sir Andrew has conceded, that we must dismiss the appeal.

The way in which Sir Andrew has sought to circumvent that very considerable difficulty is this. Before the *Hood Barrs* case came to the Court of Appeal, a similar problem had arisen for consideration, not under this Act but under Section 38 of the Finance Act, 1938, in Scotland in the case which we have referred to as *Morton's* case—*Commissioners of Inland Revenue* v. *Morton*, reported at 24 T.C. 259. The Inner House of the Court of Session in Scotland decided that case in a way which may be said to be parallel to the decision which was reached in the *Hood Barrs* case. I put the matter in those terms in order to make clear that I do not forget—and I think, indeed, it is most important—that the decision was not on the 1936 Act at all, but on the 1938 Act. But one of the judges in the Court of Session, Lord Moncrieff, dissented from the opinion of the majority and, in the course of his dissent, he expressed a view which has been the real foundation of the argument which Sir Andrew would put forward, if, as I have said, this matter were *res integra* before us.

The Section there under discussion also referred to settlements and the definition or interpretation Section in the 1938 Act closely corresponds to that with which we are concerned, there being, indeed, this difference and this difference only, that there is absent in the 1938 Act the words "transfer of assets". The other transactions which are included in Sub-section (9) (*b*) of Section 21 of the 1936 Act also find a place in Section 41 of the 1938 Act, but the words "transfer of assets" are not included.

(1) 27 T.C. 385.

(Sir Raymond Evershed, M.R.)

Lord Moncrieff, at the beginning of his judgment, said this (page 268 of the report)(1):

> "These deeds and arrangements would, however, appear to be included only in so far as they themselves effectively operate the settlement (seeing that this remains the dominant word) and not in respect of merely being resorted to as machinery to carry out a settlement which is self-contained . . ."

and so on. Then, later, he uses this language, on page 269:

> "As used in the statutory Sections which require construction, I interpret 'settlement' in accordance with a familiar use of the term at Common Law",

meaning thereby, as I follow it, the Common Law of Scotland,

> "as meaning a charging of the property of the settlor with rights constituted in favour of others."

Shortly after that judgment, in the case of *Chamberlain* v. *Commissioners of Inland Revenue,* 25 T.C. 317, a similar problem came before the House of Lords from the Court of Appeal in England. On that occasion, undoubtedly, the House of Lords preferred the conclusion of Lord Moncrieff to the conclusion of the majority of the Inner House in *Morton's* case(2) and they decided *Chamberlain's* case as Lord Moncrieff would have decided *Morton's* case. In the course of his speech in the *Chamberlain* case, Lord Macmillan made express reference to the second of the two passages of Lord Moncrieff's judgment, which I have read, though he did not, in fact, refer to the first passage and to the phrase that the word "settlement" remained "the dominant word". At page 331 of 25 T.C., Lord Macmillan said:

> "I accept the view that the statutory expansion of the term 'settlement', which includes an 'arrangement', justifies and indeed requires a broad application of Section 38 of the Act of 1938, but a settlement or arrangement to come within the Statute must still be of the type which the language of the Section contemplates. I agree with Lord Moncrieff that the settlement or arrangement must be one whereby the settlor charges certain property of his with rights in favour of others. It must comprise certain property which is the subject of the settlement; it must confer the income of the comprised property on others, for it is the income so given to others that is to be treated as nevertheless the income of the settlor."

When the *Hood Barrs*(3) case came before this Court, the Appellant in that case, Mr. Hood Barrs, by his Counsel, invoked the passage that I have read from Lord Macmillan's speech, and, indeed, the decision of the House in the *Chamberlain* case, in support of the view which is the same view as Sir Andrew wishes to put forward in this case, but it was rejected by the Court of Appeal. Lord Greene, M.R., in the course of his judgment, explained what he understood was the meaning and effect of the passages from Lord Macmillan's speech which I have just read. I do not desire to take up time by reading the whole of Lord Greene's judgment. I think it will suffice if I read one passage in it, which is to be found on page 401 in 27 T.C. He said:

> "I cannot find anything in any of the speeches,"—

those were the speeches in the *Chamberlain* case—

> "omitting for the moment the passage in the speech of Lord Macmillan which is relied upon, which lends any support to the suggestion that an interpretation clause is to be dealt with in the manner suggested by Serjeant Sullivan. On the contrary the language used appears to me to point in quite the opposite direction. The Section under consideration there was Section 38 of the Act of 1938, which used the same word 'settlement'."

(1) 24 T.C. (2) 24 T.C. 259. (3) 27 T.C. 385.

(Sir Raymond Evershed, M.R.)

He then referred to the interpretation clause, and he said:

> "It has not the phrase 'transfer of assets' in it as we have here. Lord Thankerton, with whose opinion the Lord Chancellor and Lord Atkin agreed, said: 'Further, it seems to me that, while the word "settlement" is defined in the widest terms, the more crucial point is likely to be the determination of what the "property comprised in the settlement" consists of in the particular case.'"

A little later, he said:

> "It is only from the speech of Lord Macmillan that any kind of support for Serjeant Sullivan's interpretation is sought to be extracted."

Then he refers to the passage which I have already read:

> "That has been read as though it meant this, that a settlement or arrangement to come within the statute must still be of the type which the word 'settlement' in the Section contemplates. With all respect I think it cannot mean that. If I may say so with the utmost respect, I cannot bring myself to believe that Lord Macmillan intended to make a suggestion as to the meaning and operation of such an interpretation clause so subversive as that which Serjeant Sullivan argues for. If by any chance that were the meaning of his words, I hope I shall not be thought disrespectful if I say that I would not, sitting in this Court, accept that as binding upon me."

Lord Greene goes on to conclude the case before him by saying that you must read the words of Sub-section (9) (*b*) in their ordinary sense, and the consequence of doing that is that you insert in Sub-section (1), as it were, after the word "settlement" by way of parenthesis "including any disposition", etc., etc. When you reach that stage, it follows that, the subject-matter in the *Hood Barrs* case[1] having been a "transfer of assets", it was decided upon those three words that the transaction was caught and the tax became exigible.

Sir Andrew has said that, whatever may have been the position when the *Hood Barrs* case was in this Court, the situation is fundamentally changed by the decision, to which I have already referred, of the House of Lords in the *Vestey* case[2]. For it is plain (he says) from that case, and the language of the speeches in the case, that the effect of the *Chamberlain* case[3] was to overrule the *Morton* case[4] and to adopt as authoritative the language of Lord Moncrieff of which Lord Macmillan himself had approved in the *Chamberlain* case. In other words, the *Vestey* case makes it no longer possible to treat the observations of Lord Macmillan as mere *dicta*, they have now the sanction of all the noble Lords who sat in the *Vestey* case and they are, therefore, binding authority as to the limited meaning or effect to be given to the so-called interpretation provisions of the Section of the 1938 Act. It is said that the result is to invalidate the basis upon which Lord Greene, M.R. was able to dispose of Serjeant Sullivan's argument and his references to the speech of Lord Macmillan.

I think it will suffice, for present purposes, if I illustrate the point by one reference, namely, a reference to the speech of Lord Normand in *Vestey's* case, at page 88 in 31 T.C. The citation is the more significant since Lord Normand was, at the time when the *Morton* case was decided, Lord President of the Court of Session and was a party to the majority decision, subsequently held to be erroneous. Lord Normand said this:

> "In *Chamberlain's* case, the Court of Appeal took the same view,"—

---

(1) 27 T.C. 385. (2) 31 T.C. 1. (3) 25 T.C. 317. (4) 24 T.C. 259.

that is the same view as had been taken in *Morton's* case—

> "as I read the judgment, as the majority of the Court of Session had taken in *Morton's* case, but this House reversed the decision and construed 'settlement' in relation to the words 'property comprised in the settlement' as Lord Moncrieff had construed it in *Morton's* case. Lord Macmillan indeed expressly adopted Lord Moncrieff's words above cited, which are the very pivot of his dissent. There were additional grounds on which the judgment of this House was based but the rule to be deduced from the case is that the property comprised in the settlement is that and that only in respect of which some beneficial right is created in favour of beneficiaries under the settlement."

Sir Andrew has made one more reference, and that is to the decision of the House of Lords in the *St. Aubyn* case, reported at [1952] A.C. 15. I say at once that that was an entirely different case and related to the construction of yet another of the numerous Finance Acts which, from time to time, receive the attention of the Court. The question there was whether there had been a transfer of property to a company within the meaning of the relevant section of the Finance Act, 1940. The use which Sir Andrew made of the case was to pray in aid the general observations of Lord Simonds in his speech which are to be found at page 32. The question was whether a man who paid money for the purchase of shares in a company transferred property to the company. "No one", said Lord Simonds,

> "lawyer, business man or man in the street, was ever heard to use such language to describe such an act and I decline to stretch the plain meaning of words in an Act of Parliament in order to comply with what is said to be its purpose"

and then he cited the famous words of Lord Wensleydale in In re *Micklethwait*, [1855] 11 Ex. 452.

Sir Andrew says that, by parity of reasoning, no one, lawyer or business man or man in the street could possibly be heard to describe as "settlements" such absolute gifts as were made by Mr. Thomas to his infant son and daughter in the present case. Persuasive though that argument is, it seems to me that it is quite impossible for this Court to say that Lord Greene, M.R., and the other members of this Court in the *Hood Barrs* case(1), misapprehended the real effect of the *Chamberlain* case(2), or that the *Vestey* case(3) and the *St. Aubyn* case(4), or the two of them together, must be treated as having, by inference, overruled the decision in the *Hood Barrs* case.

I point out, first, that the *Hood Barrs* case was not considered by the Lords in either of the two last-mentioned cases. Furthermore, it is to be borne in mind that those two last-mentioned cases were dealing with a different Act of Parliament from that with which we are concerned. I leave aside the *St. Aubyn* case, only observing that, vigorous as was Lord Simond's expression, two of his colleagues took a different view from him on the very point with which he was dealing, namely, whether there had been a transfer of property. The 1938 Finance Act, which was the subject-matter under discussion in the *Morton* case(5), the *Chamberlain* case, and the *Vestey* case, was an Act dealing with the situation where there had been a transaction consisting of the formation of a company, and a transfer of assets to the company so formed and the question was: Did the transferor, the so-called settlor, retain a beneficial interest of the character described in that statute?

(1) 27 T.C. 385. (2) 25 T.C. 317. (3) 31 T.C. 1. (4) [1952] A.C. 15.
(5) 24 T.C. 259.

(Sir Raymond Evershed, M.R.)

The 1936 Act which, as Sir Andrew pointed out, is, so to speak, a development of the law restricting the benefits to be derived from transactions of this kind, as found in Section 20 of the Finance Act, 1922, is dealing with a case in which, putting it quite generally, provision is being made by a parent for infant children. Parliament is directing its attention to taxing income, in certain circumstances, which would otherwise be available by a father for the maintenance or benefit of his infant children.

I have already referred to the circumstance that the words "transfer of assets" which formed the basis of the decision of the *Hood Barrs* case, and are equally the vital words in this case, are, in fact, absent from the corresponding Section 41 of the 1938 Act. Sir Andrew says that they add nothing whatever to the formula beginning "any disposition"; but I am not satisfied that this Court ought to say that, where there are additional words, they must be regarded as completely otiose. However that may be, as I say, the 1938 Act is dealing with a different subject-matter from that covered by the Act of 1936.

Moreover, the real question which fell to be determined in all these cases, *Morton's* case(1), *Chamberlain's* case(2) and *Vestey's* case(3), was not so much: Was there a settlement within the particular provisions of the Act in question?, but: What was the property comprised in the settlement?, and that is a somewhat different question. That emphasis is properly to be laid on that matter appears clearly, I think, from the language I have already quoted from the speech of Lord Normand in the *Vestey* case. I think, therefore, it would be wrong for this Court to say that, as it were, by a side wind, the validity of the *Hood Barrs*(4) decision has been destroyed or impeached by the observations of the noble Lords in the *Vestey* case.

I may add that, in 1951, there came before this Court the case of *Yates* v. *Starkey*(5), [1951] Ch., in which the question of the meaning of Section 21 of the Finance Act, 1936, this very section with which we are now concerned, was considered. Jenkins, L.J., specifically referred to the language of Lord Greene, M.R., in the *Hood Barrs* case and expressed his own concurrence with that language. It is true that the *Vestey* case was not cited, but Jenkins, L.J., expressed his own opinion as being in line with that of Lord Greene, and the other members of the Court, Hodson, L.J., and myself, agreed with Jenkins, L.J.'s conclusion. In view of *Yates* v. *Starkey*, it obviously would not be right for me to express any doubt about the correctness of Lord Greene's decision, or of its binding authority upon us. Indeed, I add this. I have indicated that the explanation of the formula with which we are concerned, the explanation Sir Andrew has said should be adopted, seems to me, at least, to involve that difficulty. It is easy, perhaps, if I may say so with great respect to Lord Moncrieff, to say that the word "settlement" is "the dominant word"; but what the real consequence of so saying is, to my mind, far less clear. Again (and I speak with the utmost respect for Lord Macmillan), I cannot think that, as applied in the Courts of England, his formula, his acceptance of Lord Moncrieff's language, can be exhaustive, or, indeed, entirely correct, if he thereby intended to define what alone constituted a "settlement" within the meaning of this Act or the 1938 Act.

Finally, I add this. The argument has proceeded, to some extent, on the view that Sub-section (9) (*b*) is not really a definition section as that phrase is commonly understood. I am again not entirely clear what the

(1) 24 T.C. 259. (2) 25 T.C. 317. (3) 31 T.C. 1. (4) 27 T.C. 385. (5) 32 T.C. 38.

effect of that, if it be right, will be, especially since it is conceded that the consequence of Sub-section (9) (*b*) is to expand the meaning of the word "settlement". It is, so far as I can see, tolerably clear that, in the *Chamberlain* case, the noble Lords treated that Sub-section as a definition section and referred to it as such. The passage which Lord Greene, M.R., cited from Lord Thankerton's judgment, I think, illustrates that point, and further reference can usefully be made to the speech of Lord Romer.

But I need not pursue the matter further. I have said what I have said out of respect to the argument of Sir Andrew Clark; but I agree with the judgment of Donovan, J., in this case in which the same reasoning as that which I have tried to express will be found.

My view is that Sir Andrew fails to make good his point that later events have in any way disabled the authority in this Court of *Hood Barrs* v. *Commissioners of Inland Revenue*[1]. Treating myself, therefore, as bound by that decision, in my opinion the inevitable result is that this appeal must be dismissed.

Birkett, L.J.—I agree with the judgment of the Master of the Rolls which has just been delivered, and, in view of the ground upon which the decision of this appeal today turns, I do not desire to add very many words. Indeed, the essential matters, for the purpose of our decision to-day, have been very fully and very completely stated already by the Master of the Rolls.

Nevertheless, I would like to add just one or two words. I hope it will not be thought improper if I say that I could have wished that these matters to-day might have been decided on their merits, untrammelled by any previous authority. I suppose that hope arises in very many cases, but I say it here because I have been much attracted by the force, as I think it to be, of the argument addressed to this Court by Sir Andrew Clark.

He stated, at the very outset of the appeal, what was the essential question which this Court had to determine. That was, in its simplest form: Is an out-and-out gift, made by a father to his children, a "settlement" within the meaning of Section 21 of the Finance Act, 1936, and Sub-section (9) (*b*) of the same section, which gives an enlarged meaning to the word "settlement"?

The facts in the case were never really in dispute. The General Commissioners found them without any equivocation or ambiguity. The monies paid into the Post Office Savings Bank accounts of the two young children, Michael and Heather, were out-and-out, absolute and unconditional gifts. Also the bestowal of the £1,000, 3 per cent. Defence Bonds equally was an unconditional and absolute gift.

Posing the question as Sir Andrew Clark stated it, it is: Is such a gift a "settlement" within the terms of Section 21 of the Act of 1936? Sir Andrew Clark says if it is, and is so held to be, then it is making use of the word "settlement" in a way that has never been used before and ought not to be used now.

I myself was greatly attracted by the language of Lord Simonds in his speech in the *St. Aubyn* case, part of which was quoted by my Lord,

(1) 27 T.C. 385.

(Birkett, L.J.)

and a further part of which I myself would like to quote, at page 32 of the report in [1952] A.C. After citing Lord Wensleydale, Lord Simonds said:

> "This is true doctrine which I must bear in mind as I listen to the constant refrain of learned counsel for the Crown that this or that is just the transaction at which this or that section is aimed. The question is not at what transaction the section is, according to some alleged general purpose, aimed but what transaction its language, according to its natural meaning, fairly and squarely hits."

In the argument which was addressed to us, in which Sir Andrew substituted the word "gift" in the section for the word "settlement", he stated that in that form it was really quite unworkable. I merely mention those matters to emphasise what I have ventured to say, that I could have wished that we had not been bound by the two authorities by which, I think, we are bound. *Hood Barrs* v. *Commissioners of Inland Revenue*(1) was decided in November, 1946; *Yates* v. *Starkey*(2) was decided in 1951. As my Lord has said, those two cases are binding upon us to-day. But one of the later cases cited by Sir Andrew Clark has caused me a considerable amount of misgiving. It is interesting to observe that in the *Hood Barrs* case, both *Morton's* case(3) and *Chamberlain's*(4) were dealt with at some length. The General Commissioners in the *Hood Barrs* case, at page 388 of the report in 27 T.C. say:

> ". . . we do not consider that the conclusion we have arrived at conflicts with the decision of the House of Lords in the case of *A. G. Chamberlain* v. *Commissioners of Inland Revenue* decided on 9th June, 1943. In that case settlements, within the generally accepted meaning of the term, were in existence and the question turned upon 'income arising under the settlement' and 'property comprised in the settlement' under the provisions of the Finance Act, 1938, Section 38, and the definition of settlement in Section 41 (4) (*b*) of that Act. In this definition the words 'or transfer of assets' do not occur. We are of opinion that this is of importance in view of Lord Macmillan's statement in the *Chamberlain* case, 'that the settlement or arrangement must be one whereby the settlor charges certain property of his with rights in favour of others(5).' In our view, Lord Macmillan was considering whether the various transactions constituted an arrangement and a settlement within the meaning of Section 38 and Section 41 (4) (*b*) of the Finance Act, 1938, having regard to the particular terms of the latter and the facts of the case. The inclusion of the words 'or transfer of assets' in Sub-section (9) (*b*), Section 21, of the Finance Act, 1936, in our view, puts an entirely different complexion on the matter."

Therefore, they are saying: we are dealing with a different statute, and Mr. Pennycuick emphasised the same point here.

Wrottesley, J., as he then was, also proceeded upon the same footing, because he said on page 393(6):

> "Similarly, I do not think that a discussion of the Finance Act, 1938, Section 38, can throw any light on the proper meaning of the word 'settlement' in the Act of 1936. For the purposes of that Section the expression 'settlement' was once more defined to include any disposition, trust, covenant, agreement or arrangement. Transfer of assets was, therefore, designedly omitted."

But, Lord Greene, M.R., at page 402, dealt with the same matter, and his language has already been quoted by my Lord to-day. It is true that *Morton's* case in 1941 and *Chamberlain's* case in 1943 were both considered in the *Hood Barrs* case in 1946. But, in 1949, Lord Normand in the *Vestey* case, dealing with *Morton's* case, said on page 88 in 31 T.C.

> "Lord Moncrieff dissented. He held that 'settlement' remained the dominant word and that a settlement meant 'the charging of the property of the settlor with rights constituted in favour of others'."

---

(1) 27 T.C. 385. (2) 32 T.C. 38. (3) 24 T.C. 259.
(4) 25 T.C. 317. (5) *Ibid.*, at p. 331. (6) 27 T.C.

Then he went on to deal with the *Chamberlain* case, and said:

> "There were additional grounds on which the judgment of this House was based but the rule to be deduced from the case is that the property comprised in the settlement is that and that only in respect of which some beneficial right is created in favour of beneficiaries under the settlement."

I venture to make these observations to emphasise my wish that a decision of the kind we are called upon to make, involving circumstances where fathers make out-and-out unconditional gifts of this kind to their children, might have been decided on the merits; but, having regard to the two decisions which have been cited to us to-day, I do not think this Court has any course that it can follow, other than to say that it is bound by these decisions, and, therefore, this appeal must be dismissed.

Romer, L.J.—I agree that this appeal must fail in this Court, and I do so because of the decision in the *Hood Barrs* case(1) which is, in my view, still binding upon us. In these circumstances, no useful purpose would be served by my expressing any opinion on the contention which has been advanced before us by Sir Andrew Clark, that an out-and-out gift is not within Section 21 of the Act of 1936 as being a "settlement". Perhaps, however, I may be permitted to say that, had the matter been *res integra,* I should have regarded that contention as one of considerable weight.

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

Sir Raymond Evershed, M.R.—That follows, Sir Andrew, does it not?

Sir Andrew Clark.—It follows, of course. I ask for leave to appeal to the House of Lords.

Sir Raymond Evershed, M.R.—What do you say, Mr. Stamp?

Mr. Stamp.—I do not think I can oppose that.

Sir Raymond Evershed, M.R.—We will give you leave.

Sir Andrew Clark.—Thank you, my Lord.

An appeal having been entered against the above decision the case came before the House of Lords (Lords Normand, Oaksey, Morton of Henryton, Reid and Cohen) on 2nd, 3rd and 4th March, 1953, when judgment was reserved. On 20th April, 1953, judgment was given unanimously in favour of the Crown, with costs.

Sir Andrew Clark, Q.C., and Mr. Charles Lawson appeared as Counsel for the taxpayer, and the Solicitor-General (Sir Reginald Manningham-Buller, Q.C.), Mr. John Pennycuick, Q.C., Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

Lord Normand.—My Lords, I have had the advantage of reading the Opinion about to be delivered by my noble and learned friend, Lord Morton of Henryton, and I agree with him that this appeal must be dismissed for the reasons given by him. He has quoted and commented upon certain observations made by me in *St. Aubyn* v. *Attorney-General,* [1952] A.C. 15. I must confess that I there used language of a breadth which lends itself to misunderstanding and that I ought to have expressly qualified my words in the manner which my noble and learned friend indicates.

(1) 27 T.C. 385.

Lord Morton of Henryton.—My Lords, my noble and learned friend, **Lord Oaksey,** has asked me to say that he concurs in the Opinion which I am about to deliver.

My Lords, the question which arises on this appeal is whether interest upon two Post Office Savings Bank accounts, one in the name of the Appellant's son Michael, and the other in the name of the Appellant's daughter Heather, and interest upon two holdings of £1,000 3 per cent. Defence Bonds, in the names of Michael and Heather respectively, ought to be treated, for all the purposes of the Income Tax Acts, as the income of the Appellant.

The relevant facts are fully set out in the Case Stated and may be summarised as follows:—

On 20th December, 1933, a Post Office Savings Bank account was opened by or on behalf of the Appellant in the name of Michael (born 8th September, 1933) with a deposit of £50, and on 28th May, 1936, another Post Office Savings Bank account was opened by or on behalf of the Appellant in the name of Heather (born 1st February, 1936) with a deposit of £50. Thereafter the Appellant paid further sums into the same bank for each of his children. Various sums were drawn from the accounts from time to time and were expended for the children's benefit. On 31st December, 1948, Michael's account was in credit £844 9*s.* and Heather's account was in credit £844 8*s.* 3*d.* In the year 1945 the Appellant bought £1,000 3 per cent. Defence Bonds for each of the two children. All the sums paid into the children's bank accounts, and the said Defence Bonds, were absolute and unconditional gifts made by the Appellant to his children.

The Inspector of Taxes treated the interest upon the two Savings Bank accounts, exclusive of interest upon interest, and the interest upon the two holdings of Defence Bonds as being income of the settlor for the purposes of the Income Tax Acts. This he did in reliance upon the terms of Section 21 of the Finance Act, 1936. That Section provides as follows:—

By Sub-section (1)—

> "Where, by virtue or in consequence of any settlement to which this section applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person."

By Sub-section (9)—

> "In this section—
>
> (*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;
>
> (*c*) the expression 'settlor', in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly. . . ."

Counsel for the Appellant sought to rely upon certain other sub-sections in the course of his argument, but I think it is unnecessary to set them out, as I understand that all your Lordships are of opinion that they throw no light upon the question which arises for decision.

For the sake of simplicity, I shall consider only the gifts to Michael, as the gifts to Heather stand on precisely the same footing.

Counsel for the Appellant does not seek to draw any distinction between the interest on the Bank account in Michael's name and the interest on the Defence Bonds bought in Michael's name, and it is common ground that if

the gifts of money and Defence Bonds were " settlements " within the meaning of Section 21 of the Finance Act, 1936, the Appellant was the settlor. It is also common ground that income was paid to Michael by virtue or in consequence of these gifts. Thus the only point for determination is: Were the absolute gifts in question " settlements " within the meaning of Section 21 of the Finance Act, 1936? This question has been answered in the affirmative successively by the Commissioners, by Donovan, J., and by the Court of Appeal.

My Lords, I too would answer this question in the affirmative. It is true that an absolute gift of money or of an investment would not ordinarily be described as a " settlement ", but it is expressly enacted that in Section 21 the expression " settlement " includes, *inter alia,*

> " Any . . . transfer of assets ".

For my part, I see no escape from the conclusion that the Appellant made a transfer of assets, in the ordinary meaning of that phrase, when he used his own money to make a payment into Michael's bank account and to purchase Defence Bonds in Michael's name. Sir Andrew Clark, for the Appellant, invited your Lordships to put a limited and special meaning upon this phrase. I shall shortly examine his arguments, but it should be said at once that the matter is by no means free from authority.

In *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C. 385, the Court of Appeal had to decide whether a gift of shares by a father to each of his two infant and unmarried daughters was a " settlement " within Section 21 of the Act of 1936. The Court unanimously held that it was, because it was a " transfer of assets ", and declined to give that phrase a limited meaning. That decision is not, of course, binding upon your Lordships' House, but in my view it was correct and is indistinguishable from the present case. It is, I think, unnecessary to consider the decision in *Yates* v. *Starkey,* [1951] Ch. 465(1), as the facts differed widely from the facts of the present case, but Jenkins, L.J. observed(2):

> " For their meaning. . . ."

—i.e. for the meaning of the words " settlement " and " settlor " in Section 21—

> ". . . I must go to the definitions provided by Sub-section (9), construe those definitions, and apply them according to their true construction, however remote from the ordinary conceptions of 'settlement' or 'settlor' the content of the definitions may in any given instance appear to be."

This observation, with which I agree, is particularly relevant to the argument presented by Sir Andrew Clark in the present case.

Sir Andrew, while conceding that each of the gifts now in question might be described as a transfer of assets, if this phrase were to be given its ordinary meaning, contended that as the word " settlement " was the only word used in the charging Sub-section (1), it was " the dominant word "; and that a transaction did not come within Section 21 unless it was " something in the nature of a settlement ". It follows, he said, that a transaction which might ordinarily be described as a transfer of assets did not come within Section 21, unless (*a*) it was accompanied by some restraint on alienation, such as would subject the transferee to some action at law or in equity if he attempted to alienate the subject of the gift, or (*b*) the income

(1) 32 T.C. 38. (2) 32 T.C. at p. 47.

(Lord Morton of Henryton.)

and the capital of the subject of the gift were given to different persons, or (*c*) the legal title and the equitable interest in the subject of the gift were conferred on different persons. In any one of these three cases, he said, and it may be in other cases, a transfer of assets would be something in the nature of a settlement, but an absolute and unconditional gift is the antithesis of a settlement and cannot be a " transfer of assets " within the meaning of Section 21.

My Lords, in the words used by Lord Greene, M.R., in *Hood Barrs* v. *Commissioners of Inland Revenue,* 27 T.C., at p. 402, this is a " subversive suggestion " as to the meaning and operation of such an interpretation clause as Sub-section (9) (*b*), and I cannot accept it. The object of the sub-section is, surely, to make it plain that in Section 21 the word " settlement " is to be enlarged to include other transactions which would not be regarded as " settlements " within the meaning which that word ordinarily bears. Its effect is that wherever the word " settlement " occurs in Section 21 one must read it as

> " settlement, disposition, trust, covenant, agreement, arrangement or transfer of assets ",

and if " by virtue or in consequence of " any of these transactions or deeds income is paid to or for the benefit of a child of the settlor, Section 21 comes into operation.

I can find no context here which should lead your Lordships to give, for instance, the words " transfer of assets " any meaning other than that which they ordinarily bear, or to infuse into them some flavour of the meaning ordinarily given to the word " settlement ". Further, Sir Andrew's contention, if it were accepted, would create grave uncertainty as to the precise content of each of the words used in Sub-section (9) (*b*). What, for instance, is a covenant " in the nature of a settlement "? And what is the difference between a " settlement ", in the ordinary meaning of that word and a trust " in the nature of a settlement ". Sir Andrew submits that uncertainty also results if an absolute gift is held to fall within Section 21, for it may be a matter of great difficulty to determine, in certain cases, whether income is paid to or for the benefit of a child of the settlor " by virtue or in consequence of " such a gift. For example, said Counsel, if a father gives his child a motor-car or jewellery, and the child sells the gift and invests the proceeds, is the income from the investment paid to the child " by virtue or in consequence of " the gift or is it paid to him or her in consequence of the sale of an asset which belonged absolutely to the child?

My Lords, I can find no force in this argument. It is true that difficulties may arise of the kind suggested by Counsel. In each case it will be for the Commissioners to make a finding as to whether the income in question was or was not paid to or for the benefit of the child " by virtue or in consequence of " the settlement. These are not difficulties in construing the Section but difficulties in applying it to the facts of particular cases. Their existence affords no reason for imparting uncertainty into the meaning of the words used in Sub-section (9) (*b*).

I must, however, refer to certain authorities relied on by Sir Andrew Clark as supporting his argument. He first referred to the cases of *Commissioners of Inland Revenue* v. *Morton*[1], [1941] S.C. 467, *Chamberlain* v. *Commissioners of Inland Revenue,* 25 T.C. 317 and *Lord Vestey's Executors* v. *Commissioners of Inland Revenue,* 31 T.C. 1. These were

(1) 24 T.C. 259.

all decisions as to the effect of Section 38 (2) of the Finance Act, 1938. That Section provided that if and so long as the terms of any settlement answered a particular description, any income arising under the settlement "from the property comprised in the settlement" should be treated as the income of the settlor, and the definition sub-section—Section 41 (4) (*b*)—is in substance the same as Section 21 (9) (*b*) of the Act of 1936, except that the words "or transfer of assets" are omitted. Sir Andrew does not rely upon the decisions in these cases, but he does rely upon certain observations which appear in the judgments.

My Lords, I can derive no assistance from any of these observations. They were very fully analysed by Sir Raymond Evershed, M.R., in his judgment in the present case. I agree with that analysis and I need not repeat it. It is to be noted that the observations in question were not directed to the Section now under consideration; further, in each of these cases it was unanimously held that there was a "settlement", within the meaning of Sections 38 and 41 (4) (*b*) of the Act of 1938, and the attention of the Court of Session in *Morton*'s case, and of this House in the cases of *Chamberlain* and *Vestey*, was directed to determining what was "the property comprised in the settlement".

Sir Andrew next sought support from the case of *St. Aubyn* v. *Attorney-General*, [1952] A.C. 15, and particularly from observations of Lord Simonds and Lord Normand as to the meaning of the words

> "Where a person dying after the commencement of this Act has made to a company to which this section applies a transfer of any property"

in Section 46 of the Finance Act, 1940. The majority of this House decided that in paying cash for 100,000 preference shares, for which he subscribed, the second Baron St. Levan did not "make a transfer of any property" to St. Aubyn Estates Ltd. within the meaning of Section 46.

Lord Simonds said, at page 32:

> "The first point arises on the subscription by Lord St. Levan for 100,000 preference shares. For these he paid cash according to the ordinary use of language. Did he then 'transfer property' to the company within the meaning of Section 46? My Lords, I have no hesitation in saying that the payment of cash to a company upon a subscription for shares is not a transfer of property to the company. No one, lawyer, business man or man in the street, was ever heard to use such language to describe such an act and I decline to stretch the plain meaning of words in an Act of Parliament in order to comply with what is said to be its purpose . . . . The question is not at what transaction the Section is, according to some alleged general purpose, aimed, but what transaction its language, according to its natural meaning, fairly and squarely hits. Applying this, the one and only proper test, I say that when Lord St. Levan paid for his shares he did not transfer property to the company."

Lord Normand said, at page 43:

> "The first point is whether Lord St. Levan, when he paid £100,000 for the preference shares in the company, made a transfer of property within the meaning of Section 46. My opinion is that 'transfer of property' are not the usual words which would be naturally selected to describe a payment of money, though it cannot be denied that money is property or that payment is a transfer. I think that if it had been intended to strike at money payments the simple words necessary to make that intention clear would have been added."

(Lord Morton of Henryton.)

The observations of Lord Simonds were clearly directed only to the section then under consideration and to the meaning of the words " transfer of any property " in the context wherein they then appeared. In my view they do not assist the Appellant in the present case. On the contrary, I think that the transaction in the present case is one which the phrase " transfer of assets " in the Section now under consideration " fairly and squarely hits ". It is no doubt possible to read Lord Normand's observations as referring generally to the meaning of the phrase " transfer of property ", but I feel sure that my noble and learned friend intended to deal only with the meaning and effect of the words " transfer of property " in Section 46 of the Finance Act, 1940, and to concur with the view of Lord Simonds that Lord St. Levan, in paying cash for preference shares, did not transfer property to the company within the meaning of the Section.

Finally, Sir Andrew referred to a series of decisions upon the meaning of the word " settlement " in Section 47 of the Bankruptcy Act, 1883. That Section provides as follows:—

> " 47.—(1) Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.
>
> (3) ' Settlement ' shall for the purposes of this section include any conveyance or transfer of property."

Section 168 provides—

> " In this Act, unless the context otherwise requires—
>
> ' Property ' includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in England or elsewhere; also, obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined ".

In In re *Player*, 15 Q.B.D. 682, it was held by a Divisional Court (Mathew, Cave and Wills, JJ.) that a gift of £650 made by the bankrupt to his son, in order to pay for the stock in trade necessary to enable the son to commence a business, was not a " settlement " within Section 47. Cave, J., after setting out the history of the earlier statutes dealing with this matter, said at p. 686:—

> " It is contended that by virtue of the interpretation clause in the Act of 1883, when applied to s. 47, every gift by a father to children, if followed within two years by a father's bankruptcy, is within that section, and that a son can be compelled to refund all moneys given to him within that period for his maintenance or advancement in life. It seems to me a very strong thing to say that a definition of ' property ' not to be found in the section itself which deals with this matter, but found in the interpretation clause applying to the whole Act, should have an effect going so much further than the legislature has gone before. I do not think it was intended that s. 47 should have that effect. One must look at the whole of the language of the section in applying that definition, and consider what is meant by ' settlement.' Although ' settlement ', by the 3rd sub-section ' shall for the purposes of this section include any conveyance or transfer of property ', yet I think the view of my brother Mathew is well founded, and that a settlement in the ordinary sense

> of the word is intended. The transaction must be in the nature of a settlement, though it may be effected by a conveyance or transfer. The end and purpose of the thing must be a settlement, that is, a disposition of property to be held for the enjoyment of some other person. Thus a purchase by the father of shares, which are registered in the son's name, and upon which the son receives the dividends, is within the statute. But where the gift is of money to be expended at once, the transaction is not, in my opinion, within s. 47 of the Act of 1883. It would not have been within the Act of 1849, and I do not feel bound by reason of the interpretation clause in the Act of 1883, the effect of which is, I think, restricted by the terms of s. 47 itself, to put a construction upon the words of that section which has never been put upon similar words before the Act of 1883 was passed, and which would bring about such serious and far-reaching consequences."

In In re *Vansittart*, [1893] 1 Q.B. 181, Vaughan Williams, J., adopted the reasoning just quoted, and held that a gift of jewellery by the bankrupt to his wife within two years of his bankruptcy was a " settlement " within Section 47 and therefore void against the trustee in the bankruptcy, because

> " the ' donor ' contemplated the retention by his wife of the present which he gave her."

In In re *Tankard*, [1899] 2 Q.B. 57, Wright, J., followed the two cases just cited, and in In re *Plummer*, [1900] 2 Q.B. 790, the Court of Appeal approved of all three cases. In the last-mentioned case Lord Alverstone, M.R., observed:

> " There are two lines of cases bearing upon the subject, which I will indicate as follows. If there is a gift by a father to a son of money or proceeds of property which can be traced, and the money or proceeds is or are intended to be retained or preserved as the property of the donee, that money or those proceeds will be property in ' settlement '. On the other hand, if there is a gift of money or proceeds, but it is not intended that the money or the proceeds shall be retained by the donee in the form of money, but shall be expended at once, that will not be a ' settlement '."

My Lords, I give full weight to the fact that in Section 47 of the Bankruptcy Act, 1883, the Legislature first used the word " settlement " and then defined it, in the same Section, as including any transfer of property, and I would not seek to draw any distinction between the phrase " transfer of property " and the phrase " transfer of assets " which occurs in Section 21 (9) of the Finance Act, 1936. To this extent, the two Sections resemble one another, and Sir Andrew Clark relies strongly upon the observation of Cave, J., in In re *Player*,(1) that to come within Section 47

> " the transaction must be in the nature of a settlement, though it may be effected by a conveyance or transfer."

I am content to assume in favour of the Appellant that the four cases on Section 47 just cited were all rightly decided, and that the observation just quoted puts a correct construction on Section 47. In my opinion, however, these cases do not help the Appellant. In none of them was it doubted that an absolute gift could be a " settlement " within Section 47, and in two of them such a gift was held to be a settlement. The Court, however, felt able to put some restriction upon the ordinary meaning of the words " transfer of property " by reason of the fact that the whole object of the Section, as appeared from its terms, was to make certain transactions void as against the trustee in bankruptcy; and it was thought that a transfer of money, which was to be at once expended and could not be traced, was not within the intendment of the Section. I can find no words in Section 21 of the

(1) 15 Q.B.D. 682.

(Lord Morton of Henryton.)

Finance Act, 1936, which should lead your Lordships to put a limited meaning upon the words " transfer of assets ", and if and so far as one can gather the intendment of Section 21 from its wording, I think it was intended to throw the net as widely as possible, and to sweep in all kinds of transactions which would not ordinarily be regarded as settlements, provided only that " by virtue or in consequence " thereof any income is paid to or for the benefit of a child of the settlor.

In my judgment the argument for the Appellant receives no countenance from the wording of Section 21 or from any of the authorities relied upon by Counsel. I would dismiss the Appeal with costs.

Lord Reid.—My Lords, I concur.

Lord Cohen.—My Lords, I also 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—Tyrell Lewis & Co. Solicitors of Inland Revenue.]

(21084) Wt. 2885—214 K44 9,53 D.L.