Calcutta High Court
Re Rogers Pyatt Shellac & Co. vs Secretary Of State For India on 28 May, 1924
Equivalent citations: (1925) ILR 52 Cal 1
Author: Chatterjea
Bench: Chatterjea, Mukerji, Chotzner
JUDGMENT Chatterjea, J.

1. What is meant by the words "business connection" in Section 41?

2. The expression is not defined, but it must mean doing business through a broker or agent or some such person.

3. The Advocate-General (Mr. S. R. Das) and the Standing Counsel (Mr. B. L. Mitter), for the Secretary of State. English decisions would hardly be of any assistance to the Court, for the simple reason that the scheme of the English Acts was entirely different from that of the Indian Acts. The Madras decision in Board of Revenue v. Madras Export Company (1922) I. L. R. 46 Mad. 360. was based on the supposition that the law is the same in England and in India. The Indian Act, though to some extent modelled on English statute, materially differs from the latter in several matters. The English Act, as was pointed out in Colquhoun v. Brooks (1889) 14 App. Cas. 493., imposes a territorial limit with regard to income chargeable to income-tax---either (2) that from which taxable income is derived must be situate in the United Kingdom, or (2) the person taxed must be resident there. The Indian Acts of 1918 and 1922, on the other hand, make the Acts applicable to all income from whatever source it is derived or arises or is# received in British India or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India. In the English statute, the place of residence of the person to be taxed is the basis of assessment, whereas it is not so under the Indian Acts-It is also clear, under Section 3(2), that this Act may apply to incomes not actually accruing, arising or received in British India, apart from the question of the residence of the assessee, whereas under the English statute, such income is only assessable if the assessee is resident within the United Kingdom. The scheme of the English statute is, therefore, totally different, from that of the Indian Act, and I would refer your Lordships to the observations to this effect of Rahim C. J. in Board of Revenue, Madras v. Ramanadhan Chetty (1919) I. L. R. 43 Mad. 75, 86.

4. The Indian Income Tax Act of 1886 (II of 1886), which was the main Act before the Act of 1918, has been practically recast by the new Act. In that Act of 1886, there was no provision at all similar to Section 3(1), second part and Sections 33(1) of the Act of 1918. Section 21 of the Act of 1886, which refers to the method of charging a person not resident in British India, has been wholly recast in the Act of 1918.

5. Having regard to the material differences between the English and the Indian Acts, great care must be exercised in applying to Indian cases decisions based on the language of the English statute, in construing an amendment or modification of an Indian statute, care should be taken to avoid the tendency to presume that such amendment or modification was intended to reproduce the English law as existing at the time of such amendment or modification. The plain meaning of the words of

the Indian statute must in all cases be taken as a guide to a correct interpretation: see Ramdas Vithaldas Durbar v. Amerchand & Co. (1916) I. L. R. 40 Bom. 630., Krishna Ayyangar v. Nallaperumal Pillai (1919) I. L. R. 43 Mad. 55., Board of Revenue v. Ramanadhan Chetty (1919) I. L. R. 43 Mad. 75, 86. and In the matter of A. John & Co. (1920) I. L. R. 43 All. 139, 150. Section 3 (1) of the Act of 1918 was intended deliberately to change the previous law regarding the application of the Indian Income Tax Act and to make it applicable to income, which, though not actually accruing, arising or received in British India, is deemed under the' provisions of the Act to accrue or arise or to be received in British India. There can be no doubt as to the plain meaning of the words used in Section 3(7), and English decisions based on Section 31 (2) of the English Finance Act 2 of 1915 can have no application in the interpretation of that Section. The Section in the English Act provides that "a non-resident" person shall be chargeable in respect of any profits or gains, arising whether directly or indirectly through or from any branch, factories, agency, receivership or management and shall be so chargeable under Section 41 of the Income Tax Act of 1842, in the name of the branch, factor, agent, receiver or manager. The all-important words deemed to accrue or arise or to be received, etc." do not occur in that Section and it is difficult to understand bow the learned Judges of the Madras High Court (1) relied upon English decisions based on this Section in interpreting Section 3 (2) and Section 33(2) of the Indian Act of 1918. As was pointed out by Rahim C.J. (1), the expression "deemed to arise" refers to cases set out in the Act itself. There are Section 6 (2) regarding salaries, Section 10 (3) regarding professional earnings and Section 33(7) regarding business earnings. It is, therefore, clear that the Act applies to incomes dealt with by Sections 6 (2), 10 (3) and 33 (2). Stress has been laid by the Madras High Court on the fact that Section 33(2) is under Chapter IV, which is headed "special cases" and they are of opinion that this is merely a "machinery" Section and in this view, they seem to have been considerably influenced by the decision of the House of Lords in Smidth v. Greenwood [1922] 1 A. C. 417. The heading of the chapter, by itself, does not convey any indication as to whether the Sections in that chapter are "machinery" or "charging" Sections. In its plain meaning, it refers to the Sections as dealing with other than ordinary cases, and the Sections in that chapter must be read in order to ascertain whether a particular Section is in its plain meaning, a charging or a machinery Section, or both. As already pointed out, the interpretation of Section 31(2) of the English Act by the House of Lords has no application to Section 33 (1) of the Indian Act. The first portion of Section 33 (1) of the Indian Act is clearly a charging Section, it expressly directs that such income shall be chargeable to income-tax and I fail to understand how these words can be referred to as merely creating a machinery. The last portions of the Section are no doubt referable to the machinery for charging the income. Section 33 (1) is therefore, both a charging and a machinery Section. In any case, the Section clearly and in plain words provides that the income therein mentioned is chargeable to income-tax.

6. Next, on the question of the business connection. The words "through or from any business connection in British India" are very wide and would cover the income sought to be charged with income-tax in this case. Questions of justice or equity in charging such income has no bearing in the construction of a statute, when the meaning is plain and clear. The observations of the learned Judges of the Madras High Court that Section 5 of the Act is the charging Section and controls Section 33 (1) are not tenable. Section 5 purports to give the heads of certain classes of income as chargeable to income-tax and does not purport to deal with incomes which are, under this Act, deemed to be income- under the different heads and, as such, chargeable to income-tax. Section 5

(7) refers to salaries and Section 6(1) deals with the different kinds of salaries which are chargeable; and Section 6 (2) provides that any income chargeable under that head if paid in British India shall be so chargeable if paid in any part of India, e.g., in any Native State, by Government. Similarly 5 (v) refers to professional earnings; Section 10 refers to different professional earnings which are chargeable; and Section 10(3) provides that professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be income chargeable under that head. Similarly Section 5 (1) refers to income derived from business. Section 9 (1) deals also with this and the manner in which such income is to be assessed, and Section 33 (1), in effect makes income derived through or from any business, connection in British India chargeable to the tax.

7. Questions relating to comity of nations should not be taken into consideration where the meanings of the words are plain. Section 33 (1), however, does not in any way affect the comity of nations. See the observations of Lord Herchell in Colquhoun v. Brooks (1889) 14 App. Cas. 493, 503. on a similar point, as also of Lord Macnaghten.

8. Mr. Langford James, in reply. The Company are not really carrying on business in India. They are Only purchasing through an agent. The Act of 1918 did not intend to vary the principles. Refers to the Indian Income Tax Act of 1922 and to Sulley v. Attorney-General (1860) 5 H. & N. 711; 157 E. R. 1364.

Cur. adv. vult.

Chatterjea, J.

9. This is a case stated by the Commissioner of Income Tax, Bengal, under the provisions of Section 66 of Act XI of 1902 and Section 51 of Act VII of 1918.

10. The Rogers Pyatt Shellac Company is incorporated in the United States of America with its head quarters in the City of New York. The Company have a branch office in Calcutta to buy gum, shellac and other Indian products, and a factory at Wyndhamganj in the United Provinces. No sales are conducted in India by the Company; their transactions are limited to the purchase of shellac and other goods, some of which are purchased on account of a certain gramophone company which pay the company a fixed percentage on the purchase plus expense while the balance is sold in the open market.

11. Income Tax was assessed for the year 1921-22 as also super-tax, and the tax was paid under protest on the 6th May, 1922.

12. They were similarly assessed for the year 1922-23 and the tax was paid on the 29th March, 1923, with a notice that "they shall in all probability appeal against the assessment." On the 27th June they made an appeal to the Assistant Commissioner of Income Tax against the assessment, and for refund of the amounts paid for income-tax and super-tax respectively for the year 1921-22. A similar petition was made with regard to the assessment for the next year. The Commissioner of Income Tax on the 13th October, 1923, however, confirmed the assessments. Thereafter the Commissioner

of Income Tax, at the instance of the Company, made a reference under Section 66 of Act XI of 1922 and Section 51 of Act VII of 1918 as stated above.

13. The reference was made under Act VII of 1918, as well as under Act XI of 1922, the reason being that the income-tax for 1921-22 was assessed and levied under Act VII of 1918, and that for 1922-23 under the new Act XI of 1922. The provisions of the two Acts are, generally speaking, similar with certain exceptions.

14. Section 3 (1) of Act VII of 1918 lays down "save" as hereinafter provided, this Act shall apply to all "income from whatever source it is derived if it "accrues or arises or is received in British India or is under the provisions of this Act deemed to accrue "or arise or to be received in British India". By Section A, certain classes of income are chargeable to income-tax, and they include "(iv) income derived from business".

15. Section 4 of Act XI of 1922 is similar to Section 3 of Act VII of 1918, except that it says that the Act shall apply to all income, profits or gains as described or comprised in Section 6. There is a Sub-section (2) added to Section 1 of the Act of 1922 which was not in the Act of 1918, which will be referred to later. Section 6 of Act XI of 1922 is also similar to Section 5 of Act VII of 1918, only that the word "heads" is used in, the former instead of "classes" in the latter, and the item (iv) is described as "business" instead of "income derived from business" as in Act VII of 1918. Reading Sections 4 and 6 of Act XI of 1922 (Sections 3 and 5 of Act VIT of 1918) together, all income derived from "business" (1) accruing, arising or received in British India or (2) deemed under the provisions of the Act to accrue or arise or to be received in British India is taxable income.

16. Now it is admitted that no part of the Company's income accrued, arose or was received in British India. Section 33 (1) of the Act, however, provides that, in the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection in British India, shall be deemed to be income accruing or arising within British India and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed, for all the purposes of this. Act, the assessee in respect of such income-tax. The contention of the Government is that although the income neither actually accrued, arose, nor was-received, in British India, such income, as laid down in Section 33 (1) shall be deemed to be income accruing or arising within British India as it accrued or arose whether directly or indirectly through or from business connection in British India. In other words,, the charging Section (Section 3) was enlarged by the provisions of Section 33 (2). On the other hand it is contended on behalf of the Company that Section 33(1) is merely what is called a "machinery" Section enacted for the purpose of laying down the mode in which the tax is to be levied in the case of a nonresident person and providing that in such a case his agent is to be deemed to be the assessee in respect of the income-tax.

17. Now Sections 3 and 5 of the Act appear in Chapter I, which is headed "taxable income". Section 5 as stated above, enumerates the classes of income chargeable to income-tax, the "(iv)" class being "income derived from business". Chapter IV of the Act headed "liability in special cases" contains a group of sections which provide that in the case of minors, lunatics, etc., or person whose properties

are managed by others, such as the Court of Wards, Administrator-General, etc., the income-tax would be levied and recoverable from the guardian, trustee, the Court of Wards, etc., as the case may be. There is no doubt that Sections 31 and 32 are "machinery" Sections. Then comes Section 33 (2), the latter part of which lays down that a non-resident person shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for the purposes of the Act, the assessee in respect of such income-tax. This part of Section 33 (i), therefore, also is a "machinery" Section. The question is, "whether the first part of the section is also a machinery section or a charging section. As already pointed out, Section 3 provides that such income not only accruing, arising or received in British India, but also income which under the provisions of the Act is "deemed to accrue or arise or to be received in British India," is taxable income. The first part of Section 33 (1) lays down that income arising or accruing to a person residing out of British India, whether directly or indirectly, through or from any business connection in British India shall be deemed to be income accruing or arising within British India. Taking the language literally, it seems that income accruing or arising to a non-resident person in certain cases, though not actually accruing or arising within British India shall be deemed to be income accruing or arising within British India, and reading Section 33 (1) together with Sections 3 and 5, such income is liable to tax. This, no doubt, would extend far beyond what is recognised in England or had been recognised in British India previous to Act VII of 1918, as the territorial limit of taxation of income derived from business.

18. On behalf of the Company we have been referred to certain English cases and a case in the Madras High Court: The Board of Revenue v. The Madras Export Company (1922) I. L. R. 46 Mad. 360.

19. In Sulley v. Attorney-General (1860) 5 H. & N. 711; 157 E. R. 1364., an American "firm carried on a business in New York which consisted in the resale there of goods purchased on their account in England. One of the partners, who resided in Nottingham, transacted the business of the firm in England which consisted of purchasing and shipping goods for exportation, but no money was received in England except from New York for purchasing the goods. The profits arose on the sale of the goods at an increased price in America. It was held that the firm did not exercise its trade in the United Kingdom so as to subject it to income-tax.

Cockburn C.J.

20. observed "wherever a merchant is" established, in the course of his operations his dealings must extend over various places; he buys in "one place and sells in another. But he has one "principal place in which he may be said to trade, "viz., where his profits come home to him. That is "where he exercises his trade. It would be very inconvenient if this were otherwise. If a man were "liable to income-tax in every country in which his "agents are established, it would lead to great injustice. "The argument for the Crown must be carried to this "extent, that merely buying goods in this country is "a trade exercised here so as to subject the purchaser "of the goods to income-tax... " ...It would be most impolitic thus to "tax those who come here as customers. The subjects "of a foreign state, not resident here, cannot be made "amenable to our laws. How then are their profits "to be made amenable to the fiscal law? Simply by "the provision that whosoever carries on the business

"and receives the profits here shall be assessed. But "in the present case no profits are received by the "firm, or exist in this country."

21. A similar view was taken by the House of Lords in Grainger & Son v. Gough [1896] App. Cas. 325. where it was held that a foreign merchant who canvasses through agents in the United Kingdom for orders for the sale-of his merchandise to customers in the United Kingdom, does not exercise a trade in the United Kingdom within the meaning of the Income Tax Acts, so long as all contracts for the sale and all deliveries of the merchandise to customers are made in a foreign country. Lord Watson observed (at pages 340-341) "There may, in my opinion, be transactions by or on behalf of a "foreign merchant in this country so intimately con-"nected with his business abroad that without them "it could not be successfully carried on, which are "nevertheless insufficient to constitute an exercise "of his trade within the meaning of schedule D. In "illustration of that view, I may refer to Sulley v. "Attorney-General (1865) 5 H. &. N. 711; 157 E. R. 1364., which was decided in the "Exchequer Chamber by no less than six very eminent "Judges".

22. The statute under which the above cases were decided are the Income Tax Act, 1853, and the Income Tax Act, 1842. Chapter 34, Section 2, schedule D of Act 1853 imposes a duty "for and in respect of the annual "profits or gains arising or accruing to any person "whatever, whether a subject of Her Majesty or not, "although non-resident within the United Kingdom "from...any trade...exercised "within the United Kingdom," and Chapter 35, Section 41 of the Income Tax Act of 1842 provides "Any" person not resident in the United Kingdom whether a subject of Her Majesty or not shall be chargeable in the name of...any factor, agent or receiver, having the receipt of any profits or gains arising as herein mentioned...."

23. It will be seen that under the English Acts, it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts (VII of 1918 and XI of 1922), however, in the case of any person residing out of British India all profits or gains accruing or arising to such person whether directly or indirectly through or from any business connection in British India shall be deemed to be income accruing or arising within British India. There is no such provision in the English Acts, and that distinguishes the English Acts, and the cases decided thereunder from the Indian Acts.

24. In the case of Smidth & Co. v. Greenwood [1920] 3 K. B. 275., [on appeal [1921] 3 K. B. 583. and in the House of Lords [1922] 1 A. C. 417. the appellants were a Danish firm resident in Copenhagen manufacturing and dealing in cement-making and other similar machinery which they exported all over the world. They had an office in London in charge of a qualified engineer who was their whole-time servant. He received enquiries for machinery such as the firm could supply, sent to Denmark particulars of the work which the machinery was required to do, including samples of materials to be dealt with, and when the machinery was supplied he was available to give the English purchaser the benefit of his experience in erecting it. The contracts between the firm and their customers were made in Copenhagen and the goods were shipped f. o. b. Copenhagen. It was held by Rowlatt J. that the place where a trade was exercised Was the place where the transactions forming the alleged business were closed, in the case of a selling business by the sale of the commodity, and the profit thereby realised, and that therefore the firm exercised their trade in

Denmark, and that they could not in respect of the same profits and gains exercise their trade elsewhere.

25. The question, therefore, viz., whether the profits arose from the exercise of trade within the United Kingdom was the same as that decided in the other two cases cited above. But the provisions of Section 31 Sub-section (2) of the Finance Act (No. 2) of 1915 (5 & 6 Geo. V. c. 87) were also considered in Smidth & Co. v. Greenwood [1920] 3 K. B. 275. That Section runs as follows: "A non-resident person shall be chargeable in respect "of any profits or gains arising whether directly or "indirectly through or from any branch factorship, agency, receivership or management and shall be so "chargeable under Section 41 of the Income Tax Act, "1812, as amended by this Section in the name of the "branch factor, agent, receiver or manager."

Rowlatt J.

26. observed "The scope of this Section is not very clear, but I am not prepared to hold that its effect is to bring into taxation profits made by non-residents from a trade not exercised in the United Kingdom. To make an extension in the scheme of taxation of their magnitude and importance the Court is entitled to look for words of clear and "direct enactments In the Court of appeal [1921] 3 K. B. 583, 591., Lord Sterndate M. B. observed: Section 31 is only for the purpose of extending the operations of Section 41 of the Income Tax Act, 1842. That Section is not a charging section and only relates to the method of charging persons who are made chargeable under schedule D. The duties mentioned in that section are the duties charged by schedule D. It has been called only a machinery section, i.e., a Section which provides a method of carrying out the charge imposed by schedule D. I think this is its effect, and the expression 'machinery' has no doubt often been used, and is convenient, but I think it has also often been used in a wider sense than was intended by those who first used it, and may be fallacious, and I prefer not to use it. Section 31, Sub-section (1), I think clearly does nothing more than extend the method provided by Section 41 of carrying out the charge imposed by Schedule D; and it would be very strange if another Sub-Section of the same Section imposed an entirely new charge not within the schedule at all. I agree with Rowlatt J. that such a thing, if intended, should be carried out with the greatest clearness, and that if a reasonable meaning: can be given to the Sub-section without producing that effect such a meaning should be given. I think this meaning can be given to it by adopting the construction suggested by the respondents, namely that it merely points out or so to speak, sums up the effect of Section 41 of the Act of 1842 as extended by Section 31 of the Act of 1915, still keeping within the limits of the charge of Schedule "D." In the House of Lords [1922] 1 A. C. 417, 423., Lord Buckmaster referring to Section 31 (2) of the Finance Act of 1915 observed: The appellant argued that the effect of that Sub-section is to extend the operation, of Schedule D of the Act of 1853 and to render the respondents, liable to be assessed for income-tax, even though u upon the facts they did not exercise trade within the United Kingdom. I am unable to accept the argument that the Sub-section has that effect. It is, I think, important to remember the rule, which the Courts ought to obey, that, where it is desired to impose a new burden by way of taxation it is essential that this intention should be stated in plain terms. The Court cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the tax-payer. Sub-Section (2) here is at the best a Sub-section of an

extremely doubtful character, and I think there is very great weight in the argument that has been placed before your lordships by Sir William Finlay and Mr. Bremner that, as the original charging power of the earlier statutes was derived from their schedules if it were desired to affect and alter the operation of those schedules some clearer and better reference should have been made to their terms than the obscure and indirect reference that must be found in the "Section under consideration."

27. The charging provisions of the English Income Tax Acts are to be found in the schedules, and schedule D of the English Act of 1842 (5 & 6 Vict. c. 35, which is similar to that of the English Act of 1918) provides that tax under that schedule shall be charged in respect of

(a) the annual profits or gains arising or accruing;

(i) to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere; and (it) to any person residing in Great Britain from any profession, trade, employment, or vocation. Whether the same shall be respectively carried on in Great Britain or elsewhere; and

(iii) to any person whatever whether a subject of Her Majesty or not, although not resident within Great Britain, from any property whatever in Great Britain or from any profession, trade, employment or vocation exercised within Great Britain.

28. Section 41 of the same Act provided as follows: "And be it enacted, that the trustee, guardian, tutor, "curator or committee of any person, being an infant "or married woman, lunatic, idiot or insane and "having the direction, control or management "of the property or concern of such, infant, married "woman, lunatic, idiot or insane person, whether such "infant, married woman, lunatic, idiot or insane "person shall reside in Great Britain or not shall be "chargeable to the said duties in like manner and to the "same amount as would be charged if such infant "were of full age or such married woman were sole, or "such lunatic, idiot or insane person were capable of "acting for himself, and any person or resident in "Great Britain whether a subject of Her Majesty or "not, shall be chargeable in the name of such trustee, "guardian, tutor, curator or committee, or of any "factor, agent or receiver having the receipt of any "profits or gains arising as herein mentioned, and "belonging to such person in the like manner and to "the like amount as would be charged if such person "wore resident in Great Britain and the actual receipt "thereof; and every such trustee, guardian, tutor, "curator, committee, agent or receiver shall be "answerable for the doing of all such acts. Matters "and things as shall be required to be done by virtue "of this Act in order to the assessing of any such "person to the duties granted by this Act, and paying "the same".

29. The Finance Act, (No. 2) 1915, 5 and 6 Geo. V. c. 8 Q, Section 31 lays down:

(1) Section 41 of the Income Tax, Act, 1842 "(which relates to the charge of income-tax in special "cases) shall so far as it relates to the taxation of non-"residents be extended,

(a) so as to make non-resident persons chargeable "to income-tax in the name of any branch or manager "as well as in the name of any factor, agent' or receiver "and

(b) so as to make non-resident persons so chargeable although the branch, factor, agent, receiver or "manager may not have the receipt of the profits or "gains of the non-resident.

(2) A non-resident person shall be chargeable in respect of any profits or gains arising whether directly or indirectly through or from any branch, factorship, agency, receivership or management and shall be so chargeable under Section 41 of the Income Tax Act, 18-12, as amended by this Section in the name of the branch, factor, agent, receiver or manager.

30. As pointed oat by Lord Sterndale M. R. in Smidth & Co. v. Greenwood [1921] 3 K. B. 583, 591., the duties mentioned in Section 31 (of the English. Finance Act, 1915) are the duties charged under schedule D (of the Income Tax Act of 1812) and the Sub-section (1) of Section 31 "does nothing more than extend the method provided by Section II of carrying out the charge imposed by schedule D, and it would be very strange if another Sub-section of the same Section [Sub-section (2)] imposed "an entirely new charge not within the schedule at all 4...such, a thing, if intended, should be carried out with the greatest Clearness, and that if a reasonable meaning can be given to the Sub-section without producing that effect, such a meaning should be given." It appears from the last part of schedule D of the Income Tax Act of 1812 that the profits or gains of a non-resident must arise from trade, etc., exercised within the United Kingdom and, as Lord Sterndale M. R. says, it merely points out or, so to speak, sums up the effect of Section 11 of the Act of 1842 as extended by Section 31 of the Act of 1915 still keeping within the limit of the charge of schedule D. In other words the liability to tax is controlled by schedule D under which it is essential that the profits should accrue or arise from trade, etc., exercised within the United Kingdom and that the territorial limits imposed by schedule D cannot be taken to have been induced unless by clear words to that effect. It is contended, by the learned Advocate-General that the Indian Income Tax Act, VII of 1918, does not recognise the territorial limit. Under Section 3 of that Act, income in certain cases, for purposes of the Act, shall be deemed to be profits accruing or arising or to be received in British India, which indicates that income in certain cases though not actually accruing, arising, nor received in British India, shall for the purposes of the Act be deemed to have accrued, arisen or been received in British India. The Indian Act therefore differs from the English Act in this respect. Although, therefore, Section 31 (1) of the Indian Act, VII of 1918, is similar to Section 31 of the English Finance Act, 1915, there is the distinction that in the former there are no such words as appear in the latter, viz., "shall be deemed to be income accruing, arising within British India".

31. The Madras High Court in the case of the Board of Revenue v. The Madras Export Company (1922) I. L. R. 46 Mad. 360., which in its facts is similar to the present case, has followed the English case of Smidth & Co. v. Greenwood [1920] 3 K. B. 275; [1921] 3 K. B. 583; [1922] 1 A. C. 417. It has held that Section 33 (1) of the Indian Income Tax Act did not create a new category of income which would be charged under the Act in addition to incomes mentioned under Section 5 as chargeable under the Act, but that Section 33 (1) merely 'provided a machinery by which non-resident foreigners (amongst others) trading in British India or having business connection in British India could be taxed an income derived by them in British India. But the learned Judges do not appear to

have noticed the difference between the Indian Act and the English Act in so far as the former lays down that certain profits though not arising or accruing in British India shall be deemed to arise or accrue in British India.

32. There are several matters, however, which have to be considered and which have been urged on behalf of the company. The first is the position of Section 33 in the Act. As stated above it comes under Chapter IY headed "liability in special cases". It is to be observed that Sections 31 and 32 dealing (with certain special cases (such as guardians of persons under disability, trustees, agents, or court of wards, etc.) merely lay down that the tax is to be levied upon and recoverable from certain persons, while Section 33 (1) provides that with regard to nonresident persons, income in certain cases shall be deemed to be income accruing or arising within British India. The provision would perhaps more appropriately come in after Section 4 (2) of the Act XI of 1922. which deals with the converse case. "Profits and gains of a business accruing or arising without British India to a person resident in British India shall be deemed to be profits and gains of the year in which they are received or brought into British India notwithstanding the fact that they did not so accrue or arise in that year provided that they are so received or brought in within three years of the end of the year in which they accrued or arose".

33. Section 3 of the Act VII of 1918 which comes under Chapter I headed "taxable income" expressly lays down that the Act shall apply not only to income accruing, arising or received in British India, but also to such income which under the provisions of this Act is "deemed to accrue, arise or to be received "in British India." That Section contemplates some provisions in the Act according to which income though not actually accruing or arising in British India shall be deemed to have so accrued or arisen, and if a Section in the subsequent part of the Act clearly lays down in what cases it shall be so deemed; such provisions must be taken as incorporated in Section 3 which deals with "taxable income" and the mere fact that such provision could have been?; more appropriately placed in some other part of the Act, cannot take away its effect, if the meaning of the provision is clear.

34. Sections 7 and 11 of Act XI of 1922 show that income arising' out of British India, may, in some cases, be doomed chargeable with tax. The first head of taxable income under Section 6 is "salaries" and Section 7 (2) lays down "Any income which would be" chargeable under this head if paid in British India "shall be deemed to be so chargeable if paid to a British subject or any servant to His Majesty in any part of India by Government or by a local authority established by the Governor-General in Council. The 5th head, is professional earnings and Section 11 (3) provides that professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head". It may be said, that Sections 7 and 11 appear under Chapter III headed "taxable income" and Sections 7 and 11 along with others lay down in detail what would come under the "heads" of income I to VI in Section 6. That is so, and we refer to those Sections merely as illustrations of cases in which, the income though not arising in British India shall be deemed to be chargeable with tax.

35. The next point for consideration is that Section 33 (1) speaks of profits or gains through or from any business connection in British India, whereas Section 5 merely mentions "income from business". If by the expression "business connection" in Section 33 (1) was meant something

different from "business" in Section 5, then it would be going beyond the "classes of income" which alone, according to Section 5, are chargeable to income-tax. Section 6 of Act XI of 1922 uses the word "heads" instead of "classes". The former expression seems to have been substituted to make it more comprehensive, we think the same-thing was meant by the two expressions "business" and "business connection" and for this reason. Even if Section 33(2) be taken as a "machinery" Section, as contended on behalf of the Company, the agent cannot be charged with income-tax, nor can the agent be deemed the assessee in respect of the income-tax, unless the principal is chargeable. The principal is chargeable with tax upon income from "business" and unless the expression "business connection" in Section 33 (2) was used in the same sense as "business" in Section 5, the principal cannot be charged and a fortiori the agent cannot be charged with the tax. The Section accordingly even as a machinery Section would be useless. The English Finance Act (No. 2) of 1915, Section 31 (2) uses the words "through or from any branch, factorship, "agency, receivership or management" and the comprehensive expression "business connection" was probably used in the Indian. Act to cover all those words. Then it is pointed out that the word "property" in Section 43 (1) (which was not in the previous Act VII of 1918) indicates that the Section could not but be a "machinery" Section. It is contended that the profits of "property" in British India must accrue or arise in British India, and the fact that the profits of "property" also shall in some cases be deemed to be profits accruing or arising in British India indicates that the Section was merely intended to provide for the method in which the tax was to be realised.

36. The word "property" seems to have been taken from the English Act, though the expression does not appear to have been considered in the English cases cited above. It is possible to conceive of cases where a property may be situate in British India and the profits 'thereof may accrue or arise out of British India.

37. The English Income-tax Acts lay down a territorial limit. The Indian Act II of 1886 followed the English Law, but in Act VII of 1918 and Act XI of 1922, the Indian Legislature appears to have gone beyond that limit. Whether that is politic and whether it contravenes the comity of nations, it is not for us to consider. We have to construe the Act and having regard to the essential difference in language between the English and the Indian Act upon the point under consideration, we are unable to follow the English authorities decided with reference to the English statutes, or the Madras case referred to above. We accordingly hold that the company are liable to pay income tax having regard to the provisions of Sections 33 (1) read with Sections 3 and 5 of Act VII of 1918 and Section 42 (1) read with Sections 4 and 6 of Act XI of 1922.

38. So far as the factory at Wyndhamganj is concerned it clearly comes within the Act. Admittedly there is a manufacturing branch of the company at that place, and under Section 2, Clause (3) of Act VII of 1918, "business" includes among other things any "manufacture". The income, therefore, from such manufacture would be income from "business," and as such taxable under Sections 3 and 5 of the Act.

39. We make no order as to costs.

Chotzner J.

40. I agree.

Mukerji J.

42. I have read the judgment just now delivered by my learned brother Chatterjea J. and I entirely agree in the conclusions he has arrived at. In view, however, of the importance of the questions involved I desire to make some further observations.

43. Before dealing with the cases decided under the English statutes to which our attention has been drawn, I propose first of all to deal with the relevant provisions of the Indian Acts. For this purpose, it is not very material to advert to the provisions of Act II of 1886 or the enactments which preceded the same or the subsequent amendments incorporated into the said Act by Act V of 1916 and Act XI of 1903. A perusal of the several enactments makes it clear that the Income Tax Act of 1918 (Act VII of 1918) effected a radical change in the scheme and scope of operation of this branch of law. The Act of 1918 professes to be a consolidating and amending statute; on any point specifically dealt with in the Act the law is to be ascertained by interpreting the language used in the statute in its natural meaning, uninfluenced by considerations derived from the previous state of the law: Administrator-General of Bengal v. Premlal Mullick (1895) I. L. R. 22 Calc. 788; L. R. 22 I. A. 107., Norendra Nath Sircar v. Kamalbasini Dasi (1896) I. L. R. 23 Calc. 563, 571-2; L. R. 23 I. A. 18, 26. and Ramdas Vithaldas Durbar v. Amerchand & Co. (1916) I. L. R. 40 Bom. 630, (636); L. R. 43 I. A. 164. Reference to the previous state of the law would be permissible for the purpose of aiding in the construction of a new statute if any provision therein is of doubtful import: Bank of England v. Vaglidno Bros. [1891] A. C. 107, 145., Robinson v. Canadian Pacific By. Co. [1892] A. C. 481, 487., Mersey Docks v. Cameron (1864) 11 H. L. C. 443, 480. I propose, therefore, to deal with the questions which arise on this reference primarily in the light of the provisions of Act VII of 1918. The question as to what change, if any, was effected by Act XI of 1922 will be considered later.

44. Reading Section 3 (1) find Section 5 of that Act it would appear quite clearly that the Legislature expressly enacted that, save as otherwise provided by the Act, all income, that is to say, salaries, interest on securities, income derived from house property, income derived from business, professional earnings and income derived from other sources is chargeable to income-tax, provided it accrues or arises or is received in British India, or is under the provisions of the Act, deemed to accrue or arise or to be received in British India.

45. The Section is divided into two parts: the first part deals with a reality, i.e., where the income accrues or arises or is received in British India; the second part deals with a legal fiction, i.e., where the income is deemed to accrue or arise or be received in British India. A close examination of the provisions of the Act discloses that the fiction does not purport to transform something unreal into real; the income is there, it has accrued, or arisen or been received; the fiction only fixes the place where it is to be deemed as having accrued, arisen or been received; and the fiction is resorted to in order to make some person-other than the beneficiary liable.

46. There is no provision in the Act under which income is deemed to be received in British India. There is only one provision and that is contained in Section 33(7) under which income is deemed to

accrue or arise in British India. Reading Sections 3 (1) and 33 (1) together it would appear that it is income which really accrue or arise or is secured in British India that is liable to tax; by a fiction some kinds of income which accrues or arises to a person not resident in British India is deemed to accrue or arise in British India (ignoring the aspect that it accrues or arises to a person outside British India) for the purpose of realising the same from an agent resident in British India. All these kinds of income, however, are such as may be said to have accrued or arisen at different places in British India by reason of its having been the direct or indirect result of some business connection there or outside British India where the ultimate transactions producing the profits or gains took place, but under the Act they are deemed to have accrued or arisen in British India so as to be taxable under the Act and recoverable by making some person in British India responsible for its payment. To appreciate correctly the exact significance of these Sections a detailed examination of some of the provisions of the Act is necessary.

47. First of all, turning to Section 3 (1) of the Act, we find the word "income" used there. Now what is income? The term is nowhere defined in the Act. The definitions of "agricultural income" and "total income" as contained in Section 2 afford very little assistance in determining what is meant by income. In the absence of a statutory definition we must take its ordinary dictionary meaning---"that which comes in as the periodical produce of one's work, business, lands or investments (considered in reference to its amount, and commonly expressed in terms of money); annual or periodical receipts accruing to a person or corporation" (Oxford Dictionary). The word clearly implies the idea of receipt, actual or constructive. The policy of the Act is to make the amount taxable when it is paid or received either actually or constructively. "Accrues," "arises" and "is received" are three different terms. So far as receiving of income is concerned, there can be no difficulty; it conveys a clear and definite meaning, and I can think of no expression which makes its meaning plainer than the word "receiving" itself. The words "accrue" and "arise" also are not defined in the Act. The ordinary dictionary meanings of these words have got to be taken as the meanings attaching to them. "Accruing" is synonymous with "arising" in the sense of springing as a natural growth or result. The three expressions "accrues," "arises" and "is received" having been used in the Section. Strictly speaking "accrues" should not be taken as synonymous with "arises," but in the distinct sense of growing or growing up by way of addition or increase or as an accession or advantage; while the word "arises" means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable. It is difficult to say that this distinction has been throughout maintained in the Act and perhaps the two words seem to denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases. It is clear, however, as pointed by Fry L. J. in Colquhoun v. Brooks (1886) 21 Q. B. D. 52, 59. [this part of the decision not having been affected by the reversal of the decision by the House of Lords (1889) 14 App. Cas. 493.], that both the words are used in contradistinction to the word "receive" and indicate a right to receive. They represent a stage anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate.

48. One other matter need be referred to in connection with the Section. What is sought to be taxed must be income and it cannot be taxed unless it has arrived at a stage when it can be called

"income." In order to determine whether it is taxable under the Act, the place it has accrued or has arisen or has been received has got to be ascertained. The Section l ignores the person and only takes into account the place where the income accrues, arises or is received. Income may accrue at one place, arise at another and be received at a third. Again it may accrue or arise in respect of or out of something situated at one place but accrue or arise to a person at a different place.

49. To apply the provisions of Sections 3 (2) and 5 aforesaid to concrete cases, six different classes of cases will have to be taken into account, viz., where the income accrues in British India, where it is deemed to accrue in British India, whore it arises in British India, where it is deemed to arise in British India, where it is received in British India and where it is deemed to be received in British India# Upon the plain meaning of the two Sections aforesaid in all. the above six classes of cases the income, provided it comes within one or other of the classes of income mentioned in Section 5 and is not otherwise saved or excepted by the Act, is chargeable to tax. Once an income is found to exist it will have to-be examined whether it has accrued or arisen or been received in British India. If so, it is chargeable. If not, the provisions of the Act will have to be looked, into to And whether there is any provision under which it is deemed to accrue or arise or to be received in British India.

50. Now of the six classes of cases aforesaid the last two may be dealt with in very few words. If the income is received in British India no matter wherever it may have arisen or accrued, that is to say, if it is received by a resident in British India from sources that lie outside, it is taxable. If it is income derived from an outside source and is received outside British India by a person resident in British India, it is chargeable if this receipt outside is deemed under the Act to be receipt within British India. The Act does not expressly say what income received by a person outside British India shall be deemed to be received in British India, so as to be chargeable to tax by the operation of Section 8 (1). So far as receipt outside British India is concerned there are two instances where such receipt has been made chargeable. The Act, by Section 10, Sub-section (3), has made provision for a particular caste of this nature by enacting that professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be income chargeable under the head of professional earnings. By Section 6, Sub-section (2), any income which would, be chargeable under the head of salaries if paid in British India shall be deemed to be so chargeable, if paid to a British subject or any subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor-General in Council. I have not been able to discover any other provision in the Act by which income which is received outside British India (and which neither accrues nor arises in British India nor is deemed by the Act to accrue or arise in British India) has been made chargeable. Both these cases, however, are cases where the imposition may be justified by the consideration that in one the income has accrued to a person who is ordinarily a resident of British India and in the other it has accrued or arisen to a British subject or a servant of His Majesty and has been paid out of the British Indian Exchequer and has so accrued or arisen in British India.

51. To tarn then, to the first four classes of cases, for the sake of brevity and convenience, they may be dealt with as really of two kinds---the distinction between "accruing" and "arising" being left out of account for the moment. Taking the cases of a resident and a non-resident separately in connection, with the accruing or arising of income as aforesaid, the position is this: If income accrues or arises in British India either to a resident or a non-resident it is chargeable, for, as

already observed, Section 3 does not make any distinction, between residents add non-residents. In the case of a non-resident, such or so much of his income as arises or accrues to him whether directly or indirectly from any business connection in British India, is under Section 33 (1) to be deemed to accrue or arise in British India, and is so chargeable, under-the Indian Income-tax Act. It will be seen from the very nature of the cases contemplated by the Section that no income which does not represent profits or gains, not accruing or arising in point of fact within British India has been made chargeable by this Section, nor is a non-resident made liable by this Section, as he is already liable by reason of Section 3 of the Act. The profits or gains made chargeable are profits or gains which have accrued or arisen within British India. Section 33 (1), therefore, in my opinion, does not go beyond Section 3 in any respect: it really makes no income chargeable which is not chargeable under Section 3, it imposes no liability on a nonresident which is not imposed by Section 3, it merely explains what kind of income, in fact arising or accruing in British India to a person resident outside, is to be deemed as arising or accruing in British India for the purpose of the Act and provides for a method of realisation, namely, by assessing the agent and holding him liable for payment of the tax. It is interesting to note that whereas in Section 3 (1) it is the income that is charged to tax, in Section 33 (1) the "profits" or "gains" are deemed to be the income so liable, indicating that only so much of the income as represents the profits or gains derived under conditions specified in the Section are so deemed.

52. The Section, as I read it, only means that the nonresident assessee is to be made liable to tax for such profits or gains which accrue or arise to him directly or indirectly through or from any business connection, within British India. He may have received' the income outside British India, it may have accrued or arisen to him while he was outside British India but the same or such parts of it as may be taken to be "profits or gains accruing or arising through such connection is to be deemed as income accruing or arising in British India and so chargeable to tax. In my opinion in such cases it will have to be ascertained by the taxing authorities what profits or gains (out of the income made by such a person) accrued or arose to such person, directly or indirectly, through or from any business connection in British India. This to my mind is the plain interpretation of the statute. The accrual or arising of income to a person is different to my mind from the receipt of the income by him and the overlooking of this distinction in my opinion creates a confusion and makes the interpretation difficult.

53. The argument that Section 33 (1) is only a "machinery Section" and should be treated as a "charging Section" loses all its force in the light of this interpretation. As already observed, the charging Section in the Act is Section 3. Section 33 (1) does not mean to travel beyond Sections. Its position in Chapter IV is not altogether undeserved as it really imposes a liability on the agent as a special case. The drafting of the Section, however, is not free from defects.

54. We are not concerned with the policy of the Legislature or the question whether the statutes infringe any principles regarded sacred by the comity of nations. But at the same time I do not see how the above interpretation will lead to au unreasonableness or absurdity as it would only charge to tax profits or gains which may be attributable to business connection in British India. It is obvious that if they are attributable to such connection there is no reason why they should not be legitimately charged to tax. It is sufficient to say that the imposition of a tax under circumstances

such as these would not in any way militate against the well-known principle that the power of taxation of any State is, of necessity, limited to persons, property or business within its territorial jurisdiction.

55. This brings us to the next question as to what is meant by "business connection". By Section 4 of the Act, income derived from "business" is liable to tax. It has been argued that unless the income which is now sought to be charged amounts to income derived from business, it would not be chargeable under Section 3 (1), and that Section 33 (1) by enacting that profits and gains accruing or arising directly or indirectly through or from business connection with British India professes to make some thing chargeable which is not chargeable under Section 3 read with Section 5. The answer to this argument, however, is that Section 5, Clause (vi), includes "income from all other sources", and by Section 11 "income derived "from all other sources" include income and profits of every kind and from every source to which the Act applies if not included under any of the preceding heads, i.e (i) to (v). But even if it is argued that income derived from all other sources may not refer to income of this description---a question with regard to which I do not wish to pronounce any definite opinion---I do not see why profits and gains from business connection should not be included in the general expression, "income derived from business" which is used in Section 5. The expression, it must be admitted, is dangerously vague and it is much to be regretted that in a fiscal enactment a more precise expression has not been used. The meaning, however, does not admit of much doubt for the context shows that it is such gains or profits as may be calculated to have been made as being that part of the income of the non-resident which is attributable to the connection he has with a business in British India. The word "business" is one of large and indefinite import and connotes something which occupies attention and labour of a person for the purpose of profit. The word means almost anything which is an occupation or a duty requiring attention as distinguished from, sports or pleasure and is used in the sense of an occupation continuously carried on for the purpose of profits: Smith v. Anderson (1880) 15 Ch. D. 247, 258. Molls v. Miller (1884) 27 Ch. D. 71, 88., Commissioners of-Inland Revenue v. Marine Steam Turbine Company [1920] 1 K. B. 193. A concern by reason of which one can be said to have connection with such an occupation is business connection. Act XI of 1922 emphasises the distinction between 'income' and 'profits or gains ' by introducing 'profits or gains' in Section 4 which, is the charging Section corresponding to Section 3 of Act VII of 1918, and instead of the expression "classes of income" and. "income derived from business" in Section 5 of the latter Act speaks of "heads of income profits and gains," and "business" in Section 6. In Section 42 of Act XI of 1922 we find the words "business connection or property" in the place of the words "business connection" in the corresponding Section 33 (1) of Act VII of 1918. These amendments,, cast the net wider, by including profits or gains arising or accruing from property as well. It is not inconceivable as to how a non-resident can have profits or gains accrued to him through or from property in British India, e.g., if a property in British India is let out or the value of the property in British India is increased and pro fits or gains accrue or arise but accrue or arise to a nonresident, Section 42 (1) will bring these profits and gains within the Act; they being deemed to have accrued or arisen within British India. Such profits or gains accrue in British India where the property is situate, though they may acquire only a tangible shape where they are actually received. A further amendment in the shape of the introduction of: a Sub-section, viz, Sub-section (2), together with ah explanation as to what is or is not to be deemed to be received into British India is also noticeable.

56. Turning now to the English statutes, in Colquhoun v. Brooks (1889) 14 App. Cas. 493, 503., Lord Herschell observed: "The Income Tax Acts themselves impose a territorial limit; either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there." This fundamental principle of the English statutes does not appear in the Act VII of 1918 or Act XI of 1922. The question of residence does not arise, nor any territorial limits are recognised by the charging Sections of the said Acts. Under the Income Tax Act, 1842 (5 and 6 Vic. C. 35), and the Income Tax Act, 1853 (16 and 17 Vic. C. 34), the duty is charged upon annual profits and gains in the nature of income from whatever source derived and is imposed under five schedules, A to E, inclusive, which are framed to include all such sources of income. Schedule D, the operation of which is limited to the classes of income not charged under any other schedule, charges to tax income "for and in respect" of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere and for and in respect of the annual profits or gains arising or accruing to any person residing in the United "Kingdom, from any profession, trade, employment or vocation whether the same shall be respectively carried oil in the United Kingdom or elsewhere. And for and in respect of the annual profits or gains arising or accruing to any person whatever, Whether a subject of Her Majesty or not although not resident within the United Kingdom, from any property whatever in the United Kingdom or any profession, trade, employment or vocation exercised within the "United Kingdom." In the case of a non-resident therefore, question would arise as to whether the profits or gains have arisen or accrued to him from any trade exercised within the United Kingdom. In Sulley v. Attorney-General (1860) 5 H. & N. 711; 157 E. R. 1364., it was held that wherever a merchant is established, in the course of his operations his dealings must extend over various places, he buys in one place and sells in another but he has no principal place in which he may be said to trade, viz., where his profits come home to him; and that is where he exercises his trade. In the Indian statute the question where the trade is exercised does not come in at ail. In Grainger & Son v. Gough [1896] App. Cas. 325., it was held that a foreign merchant who canvasses through agents in the United Kingdom for orders for the sale of his: merchandise to customers in the United Kingdom does not exercise a trade in the United Kingdom within the meaning of the Income Tax Acts, so long as ail contracts for the sale and all deliveries of the merchandise to: customers are made in a foreign country. Lord Herschell in that case observed that there is a broad distinction between trading with a country and carrying on a trade within a country. Lord Watson observed that there may be transactions by or on behalf of a foreign merchant in one country so intimately connected with his business abroad that without them it Cannot be sufficiently carried on, which are nevertheless insufficient to constitute an exercise of the trade within that country within the meaning of schedule D. Lord Watson further went on to observe referring to the case of Sulley v. Attorney-General (1860) 5 H. & N. 711; 157 E. R. 1364., as follows: "The learned Judges recognised the principle that purchasing of stock in this country with the view of trading in it elsewhere does not of itself 41 constitute an exercise of the trade in the United Kingdom, when that department of the business from which profits or gains are directly realised is carried on in another country." These observations indicate that profits or gains may accrue or arise to a non-resident or may be realised or received by him in respect of business in a country which does not amount to exercise of trade in that country, and that such profits or gains may arise directly or indirectly. The English statutes by using the words "from any trade exercised within the United Kingdom" left such profits or gains free, while the Indian-Acts-using a different phraseology in their charging Sections

included them. By the terms of Section 33 (1). of Act VII of 1918 and Section 42 (1) of Act XI of 1922 they are to be deemed to have accrued or arisen in British India for the purpose of making the resident agent responsible for the tax. Section 41 of the Act of 1842 may be read as follows: Any person not resident in the United Kingdom whether a subject of Her Majesty or not, shall be chargeable in the name of any factor, agent, or receiver having the receipts of any profits or gains arising as herein mentioned By Section 31, Sub-section (2) of the Finance Act (No. 2) of 1915: "A non-resident person shall be chargeable in respect of any profits or gains arising whether directly or indirectly, through or from any branch factorship, agency, receivership or management and shall be so chargeable under Section 41 of the Income Tax Act, 1842, as amended by this Section, in the name of the branch, factor, agent, receiver or manager". In Smidth & Co. v. Greenwood [1922] 1 A. C. 417., the House of Lords affirmed the decision of Rowlatt J. in Smidth & Co. v. Greenwood [1920] 3 K. B. 275. and of the Court of Appeal [1921] 3 K. B. 583. In that case it was held by the Court of Appeal that the Sub-section was not a charging Sub-section but that it merely summed up the effect of Section 41 of the Act of 1842 as extended by Sub-section (7) of Section 31 of the Act of 1915, still keeping within the limits of schedule D, and it was observed that to hold otherwise would be to hold that such an important alteration has been made in the basis of taxation as the abolition of the condition of exercise of trade within the United Kingdom before a person not there resident can be taxed. "To take the latter course," Lord Sterndale observed, "would be to violate the well-known canon of construction of taxing Acts that no one is to be taxed except by express words". The Indian law does not proceed upon the basis of such a condition but upon the taxability of the income regarded from the point of view of the place where it accrues, arises or is received or is deemed to accrue, arise or be received under the Act. I am unable to assent to the view taken by the Madras High Court in the case of the Board of Revenue v. The Madras Export Company (1922) I. L. R. 46 Mad. 360., for it seems to me that the learned Judges in that case proceeded upon the supposition that the Legislature intended no change from the earlier statutes which to a large extent were modelled on the English statutes. That there is now a substantial difference is clear, and has been recognised in the cases amongst others, of Board of Revenue v. Ramanadhan Chetty (1919) I. L. R. 43 Mad, 86., In re The Aurangabad Mills Ltd. (1921) I. L. R. 45 Bom. 1286. and In the Matter of A. John & Co. (1920) I. L. R. 43 All. 139.

57. An objection has been urged that to include income which did not arise or accrue in British India to a non-resident of British India would be to make not actual but "notional" income chargeable. The taxability of "notional" income is an idea not foreign to the Act, for by Section 8 of the Act bond fide annual value of property has been made assessable as-being income which has accrued to the property, though it may not have actually arisen from it. It is notional in the sense that its quantum has to be determined by calculation, but it is real in the sense that it has been actually accrued.

58. In my opinion, therefore, the answers to the questions submitted for our determination should be in the affirmative.

59. The question as to how the profits or gains attributable to business connection in British India have to be calculated or ascertained is not a matter within the scope of this reference. The Board of Inland Revenue in the exercise of the powers conferred by suction 59 of the Indian Income Tax Act (XI of 1922) have framed certain rules. Rule 33 runs as follows: In any case in which the Income Tax

Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India can not be ascertained, the amount of such income, profits or gains for the purpose of assessment to income-tax may be calculated on such percentage of the turn over so accruing or arising as the Income-tax Officer may consider to be reasonable, or an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income Tax Act), as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income Tax Officer may deem suitable". The rule is drawn from the English statutes and its sufficiency or validity is not a matter for our consideration in this Reference.