

A NOTE FROM THE CONSULTING EDITOR

When a decision is made *per incuriam*, it is made in ignorance of some relevant statute or authority. Before writing my article I *had* read s.65(5). I cannot believe that anyone should suppose I could have been so unprofessional as not to have done. No doubt, therefore, Richard Bramwell is using the expression in an untechnical and humorous sense. I had also re-read some of the "wealth of authority about these provisions".¹ They warn us that they are not to be construed at a glance. As Lord Radcliffe said in *Thomson v Moyse* 39 TC 291 at 335:

"... these four sub-heads, as they have been called, should be treated as illustrations (no doubt intended to form a comprehensive list of illustrations) of the way in which, when foreign income is transmitted to this country, the transmission can be effected and the sterling sums obtained. These sub-heads, which are not at all very clearly phrased should accordingly be construed according to their general sense and without too much nicety of language ... I draw attention to this because one or two of the authorities have treated these and other words with more semantic scruple than is appropriate to the context ..."

The more I study tax law, the more I hesitate to ascribe to the words of a taxing statute what I may at first glance take to be their ordinary and natural meaning. Courts have so often, on close inspection, discovered rather different meanings. In this case, I respectfully consider that the Court would hold s.65(5) to have quite a different effect from that supposed by my learned friend. A closely reasoned reply, supported by an analysis of the cases, will be needed. This I intend to write for the next issue of this Review.

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¹ Per Lord Reid in *Thomson v Moyse* 39 TC 291 at 329, where he points out that "at first sight" it would seem that the provisions are satisfied, but agrees that "obviously the case cannot be disposed of as easily as that" on account of the wealth of authority.