No. 706.—COURT OF SESSION, SCOTLAND (FIRST DIVISION).—
28TH NOVEMBER, 1928.

THE COMMISSIONERS OF INLAND REVENUE v. WILLIAMSON.(1)

Income Tax—Separate reliefs to partners—What constitutes a partnership—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 20.

The Respondent and his sons for several years leased and worked a farm jointly, but without any deed of partnership. The Respondent had supplied the capital, he conducted all buying and selling and he controlled the bank account, which was in his

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(1) Not reported.

name. He made no regular payments to his sons but supplied them, on request, with such monies as were necessary for their requirements. No record of these disbursements or of the financial results of the working of the farm was kept.

It was stated, however, that there was a partnership at will in the carrying on of the farm, which might be terminated, in which case an accounting between the parties would be demanded.

The Respondent appealed against additional assessments to Income Tax (Schedule B) in respect of the farm, raised on the footing that he alone was assessable. The General Commissioners allowed the appeal, holding that a partnership had been proved to have existed during the years in question.

Held, *that the facts did not justify the inference that a partnership had existed.*

CASE.

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Upper Ward of Lanarkshire, held at Lanark on the 26th day of March, 1928, George Williamson, senior (hereinafter called the Respondent), farmer, Gilkerscleugh Mains, Crawfordjohn, appealed against additional assessments made on him under Schedule B of the Income Tax Acts, 1918, for the years 1921–22, 1922–23, 1923–24, 1924–25, 1925–26, 1926–27 and 1927–28, on the respective sums of £634, £313, £344, £341 15*s.*, £348 10*s.*, £348 10*s.* and £348 10*s.*, in respect of Gilkerscleugh Mains Farm.

I. The following facts were admitted or proved :—

1. The Respondent carried on a farm at Carluke for his own behoof down to Martinmas, 1918, under a lease which was in his own name. In March, 1919, he and his three sons John, George and Peter, took a lease of the farm of Gilkerscleugh Mains, signing the lease as joint tenants. The Respondent supplied the capital for the taking over of the sheep stock, &c., to the value of £2,000 or thereby. He executed no deed of gift in favour of his sons, and there is no deed of co-partnery between them. The Respondent's three sons are all of full age.

2. In 1925, when the ownership of the farm changed hands, the Respondent and his three sons entered into a further lease with the new proprietor, continuing their joint tenancy from year to year. They are rated as occupiers of the farm.

3. The bank account through which the proceeds of the farm transactions are passed has always been in the name of the Respondent alone, and operated solely by him and deposit receipts

by the bank for sums which were admittedly the proceeds of the farm profits have always been taken in his name. All buying and selling have been done by him, and the farm transactions carried on in his name alone. The sons have applied themselves to the practical working of the farm.

4. No business books have been kept to record the farm transactions or the results thereof. No wages were paid by the Respondent to his sons, but the Respondent has, from time to time, handed over to them on their request, such sums of money as were necessary to meet their requirements. No record of such disbursements has been kept.

5. In 1924 the Respondent's eldest son, John, took on lease in his own name, the farm of Broomhill, near Beattock, and the stock and capital for the plenishing of this farm were provided out of the profits from the working of Gilkerscleugh Mains Farm. In his Income Tax returns John has treated the profits from Broomhill as his own, and the farm as being carried on for his own behoof, and he has not accounted to the others for any profits made by him, and they have not returned any income from this source in their Income Tax returns.

6. The Respondent and his sons, George and Peter, attended the hearing of the appeal, and stated that the stock and other assets on the farm of Gilkerscleugh Mains belong, and had, during the period of the leases, belonged to the Respondent and his three sons in equal shares; that the profits were divisible into four equal shares; and that there was a partnership at will in the carrying on of the farm, which could be brought to an end by any of the partners on reasonable notice, and that, on such termination, an accounting would be demanded. They also stated that the capital assets and profits of Broomhill Farm belonged to the parties in the same proportion; that John did not dispute that he was liable to account to them for their shares, and that there was a partnership at will in the carrying on of that farm also which could be put an end to by any of them on reasonable notice, and an accounting demanded. John did not attend the hearing of the appeal, and no evidence was obtained from him.

7. The Respondent and his three sons, during the years in question, treated the farm of Gilkerscleugh Mains in their Income Tax returns as being carried on by them in partnership, and assessments on that footing were made upon them. In the autumn of 1927, the Inspector called for evidence of the existence of a partnership, and, being of opinion that the evidence submitted was insufficient, the additional assessments now in question were made upon the Respondent in virtue of Section 125 of the Income Tax Act, 1918, upon the footing that he alone carried on the farm of Gilkerscleugh Mains.

II. It was contended by the Respondent that a partnership had been proved, and that the appeal should be sustained.

III. The Inspector of Taxes, Mr. W. A. Wash, on behalf of the Crown, contended that the facts proved did not constitute a partnership so as to come within the provisions of Section 20 of the Income Tax Act, 1918, and that, therefore, the assessments appealed against should be confirmed. Reference was made to the cases of *M'Kie* v. *Luck*, [1925] 9 T.C. 511; and *Dickenson* v. *Gross*, [1927] 11 T.C. 614.

IV. The Commissioners having heard the evidence and the contentions of the parties, by a majority held that a partnership was proved to have existed in carrying on Gilkerscleugh Mains Farm during the years in question, and sustained the appeal.

V. The Inspector of Taxes thereupon expressed dissatisfaction with the decision of the Commissioners as being erroneous in point of law, and having duly required them to state a case for the opinion of the Court of Session as the Court of Exchequer in Scotland, the same is hereby stated and signed accordingly.

VI. The question of law for the opinion of the Court is whether, on the facts admitted or proved, the Commissioners were entitled to hold that a partnership existed during the years in question.

C. J. EDMONDSTOUNE CRANSTOUN, } Commissioners for the General
G. W. WILTON, } Purposes of Income Tax.

Lanark.
9th October, 1928.

The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Morison) on the 28th November, 1928, when judgment was given unanimously in favour of the Crown, with expenses.

Mr. T. M. Cooper, K.C., and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. W. R. Walker for the Respondent.

I.—INTERLOCUTOR.

Edinburgh, 28th November 1928. The Lords having considered the Stated Case and heard Counsel for the parties, Answer the question of law in the case in the Negative and Decern; Find the Respondent liable to the Appellants in the expenses of the Stated Case and remit the account thereof when lodged to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

II.—OPINIONS.

The Lord President (Clyde).—My Lords, the question on which the justification of the additional assessments to Income Tax which have been laid on turns is the question whether there was a partnership between the father and his three sons in whose joint names the lease of Gilkerscleugh Farm was taken in 1919. The Commissioners have held that there was such a partnership. Prima facie that is a matter entirely of fact, and accordingly the only ground upon which we can consider it is whether there were materials of fact before them such as a reasonable tribunal, or such as a tribunal could reasonably accept as proving the existence of a partnership. No doubt the lease was in the joint names, as I have said, of the father and his three sons. That, of course, is vain to constitute a partnership between them. On the other hand, I do not think it is a circumstance which ought to be simply laid aside as having no weight along with others if there are other circumstances shewing that a partnership did exist. What is more to the point is that the whole capital for working this farm belonged to the Respondent; at least, did so in 1919. There is no record, memorandum, writing, formal or informal, of any kind to shew the existence of any contractual relation of any sort between the father and the sons. The bank account which was kept in connection with the farm was the Respondent's bank account and his alone; at least, it was never kept in any other name. It was never operated upon by anybody but him and the deposit receipts which were obtained from the bank for sums which were made out of the farm were all taken exclusively in his name. Nobody ever bought or sold a beast or an article of any kind for the farm except the Respondent. No transaction in connection with the farm was carried on except in his name and in his name alone. The sons did nothing at all except work on the farm. My Lords, add to that that not only have no business books been kept, but no record of any sort whatsoever has been kept during the nine years that this alleged partnership is supposed to have existed; no record of any kind of profits or losses, of shares for division—indeed, no accounts of any sort have been kept in relation to the farm transactions. The sons got no wages, but they did receive such sums as they asked for from time to time from the Respondent. It is true that at the inquiry before the Commissioners the father and two of the sons appeared and deponed that there did exist a partnership between them and another son John and that the profits were divisible into four equal shares. They seem to have deponed nothing about shares of capital if, indeed, the sons would allege—I don't know—that they had any shares in the capital, and that the partnership was a partnership at will and that if the partnership were terminated an accounting would be demanded.

(The Lord President (Clyde).)

My Lords, you do not constitute or create or prove a partnership by saying that there is one. The only proof that a partnership exists is proof of the relations of agency and of community in losses and profits and of the sharing in one form or another of the capital of the concern; the only proof of a partnership consists in proof of these things. No doubt the proof may be supplied by what in fact the persons alleging themselves to be partners have done during the currency of the alleged partnership. For instance, if they had treated the capital as if it were partnership capital or consistently with its being partnership capital, perhaps I should say, and if they had treated the profits or losses as partners would treat them, and in fact, if there are facts and circumstances to shew that their relations were those consistent with partnership, no doubt the thing can be proved; but I do not see for myself how it could be reasonable to accept such evidence as the three persons gave before the Commissioners as evidence of anything more than this, that they were bona fide under the impression—I shall assume that they were bona fide under the impression—that in carrying on the business of the farm they were, to use a cant expression, all in the same boat and with equal ultimate interests in it. That is not proof of partnership at all, and my opinion is that there was here presented to the Commissioners no evidence whatever on which they were entitled to infer the existence of a partnership or indeed, anything more than a kind of relationship which certainly used to be not uncommon, and I do not think is altogether extinct, among a father and his able-bodied sons conducting a farm together.

My Lords, if that is right, then the question ought to be answered in the negative.

Lord Sands.—My Lord, the only difficulty I feel in this case arises from the fact that three of the alleged partners here stated before the Commissioners that a partnership existed and the Commissioners have acted upon that evidence. Now, if I could think that these three witnesses appreciated partnership as a lawyer would appreciate it, its conditions and its incidence, it would be difficult to say that the Commissioners must be disturbed when they had proceeded upon that evidence. But as it seems to me, in the circumstances of the case, that evidence is perfectly consistent with the view that the father and sons looked upon this as a sort of business carried on in the joint family interests which, on the death of the father, would no doubt devolve upon the sons and be divisible among them, but a sort of general understanding of this kind does not create a partnership. Now, if we lay aside or refuse to attach conclusive importance to the evidence of the parties, then all the facts and circumstances of the case otherwise, except the matter of the lease, appear to be against and, indeed, almost exclusive of the idea of a partnership.

Lord Blackburn.—My Lord, I concur and have nothing to add.

Lord Morison.—My Lord, as I understand it, a partnership is the relation which subsists between persons carrying on a business in common with a view to profit. In this case three of the partners appeared before the Commissioners and told them that a partnership existed. When this statement is read in the light of the facts which the Commissioners find proved, I think it amounts only to a statement of the belief of these three persons. There is not a single fact in connection with the affairs of this farm business which suggests the existence of such an alleged partnership. Every fact found proved on the contrary goes to shew that the business was truly the business of the Respondent, and I think the question must be answered in the negative.

The Lord President (Clyde).—We answer it accordingly.

Mr. Cooper.—I ask for expenses.

The Lord President (Clyde).—Expenses.

[Agents :—The Solicitor of Inland Revenue, Edinburgh; Messrs. Weir and McGregor, for Mr. John T. Cockburn, Lanark.]