No. 544.—High Court of Justice (King's Bench Division).—27th March, 1924.

Court of Appeal.—21st November, 1924

House of Lords.—22nd January, 1926.

Hartland v. Diggines (H.M. Inspector of Taxes).[1]

Income Tax, Schedule E—Income Tax on employees' salaries voluntarily paid by company—Income Tax Act, 1842 (5 & 6 *Vict.*, *c.* 35), *Section* 146, *Schedule E—Income Tax Act*, 1853 (16 & 17 *Vict.*, *c.* 34), *Section* 2, *Schedule E.*

In accordance with its custom in the case of all its employees, the company by whom the Appellant was employed as an accountant, paid the Income Tax in respect of his salary, though it entered into no agreement, verbal or written, with him to do so. The sums so paid for Income Tax were allowed as a deduction in computing the company's profits for the purposes of assessment under Schedule D.

Held, *that, notwithstanding the absence of a contract, the Income Tax paid by the company in respect of the Appellant's salary was an emolument which accrued to him by virtue of his office under the company and was rightly included in the assessment made upon him under Schedule E.*

(1) Reported K.B.D., [1924] 2 K.B. 168, C.A., [1925] 1 K.B. 372, and H.L., [1926] A.C. 289.

CASE

Stated under the provisions of Section 59 of the Taxes Management Act, 1880, by the Commissioners of Income Tax on Public Offices or employments of profit in the City of London for the opinion of the King's Bench Division of the High Court of Justice.

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1. At a meeting of the Commissioners of Income Tax on Public Offices or employments of profit in the City of London held on the 13th day of June, 1921, at Gresham College, Basinghall Street, in the City of London, Harry Hartland of No. 138, Leadenhall Street (hereinafter called "the Appellant"), appealed against an assessment to Income Tax made upon him under Schedule E for the year ending on the 5th day of April, 1919, as follows :—

Sum assessed.	*Deductions.*	*Net Assessment.*	*Rate of Tax.*	*Duty.*
£ s. d.		£ s. d.		£ s. d.
580 5 0	Abatement £100 Life Insurance £46	434 5 0	3/-	65 2 9

2. The Appellant was throughout the year of assessment in the employ, as their accountant, of the New Zealand Shipping Company, Limited (hereinafter called "the Company"), whose office is situate at No. 138, Leadenhall Street, in the City of London.

3. The assessment appealed against included, in addition to the Appellant's salary of £500, a further sum of £80 5s. arising in the following way.

4. It has been the custom of the Company since 1912 to pay every year the Income Tax in respect of the salaries of all its employees, including the Appellant, and for the year of assessment the amount so paid is included in the working accounts of the Company under the heading "Income Tax: Staff" and has been allowed as a trade expense and deducted in arriving at the profits of the Company for the year of assessment. The sum of £80. 5s. is the sum so paid by the Company in respect of the salary of the Appellant.

5. The Company entered into no agreement either verbally or in writing with the Appellant as to the payment of Income Tax in respect of his salary but the Company has in fact paid and borne the Income Tax in respect of the Appellant's salary since 1912.

6. It was argued for the Appellant that the Income Tax was paid in respect of the office held by him in the Company and not on his behalf as an individual, and that the payment was not a money payment or a payment convertible into money, and formed no part of his salary or income, and was therefore not assessable under the Rules applicable to Schedule E. It was further argued

that even if it could be assumed that the Income Tax paid became part of the Appellant's income he was entitled to have it deducted under the words of the first Rule for charging the duties under Schedule E in Section 146 of the Income Tax Act, 1842, which are as follows: "after deducting the amount of "duties or other sums payable or chargeable on the same by "virtue of any Act of Parliament, where the same have been "really and bona fide paid and borne by the party to be charged," the duty being payable or chargeable by virtue of the Finance Act, 1918.

7. For the Inspector of Taxes it was contended that the Income Tax paid and borne by the Company was paid and borne on behalf of the Appellant in respect of the Appellant's salary and was income of the Appellant even if the payment was voluntary, that it was income that came to him by virtue of his office, and that the assessment was rightly made.

8. The following cases were referred to in the course of the arguments:—

Tennant v. *Smith*, 3 T.C. 158.

Herbert v. *McQuade*, 4 T.C. 489.

Samuel v. *Commissioners of Inland Revenue*(1), [1918] 2 K.B. 553.

Hudson v. *Gribble*, *Bell* v. *Gribble*(2), [1903] 1 K.B. 517.

The Commissioners were of opinion that the appeal failed and they confirmed the assessment.

The Appellant thereupon expressed dissatisfaction with the finding of the Commissioners as being erroneous in point of law, and required them to state a Case for the opinion of the High Court of Justice, which we have stated and do sign accordingly.

There is no question of figures, the only question for the Court being whether, in arriving at the assessment appealed against, there had been rightly included the sum of £80 5s. above referred to.

JOHN C. BELL, BT.,
MAURICE JENKS,
GEORGE H. HEILBUTH,
Commissioners of Income Tax on Public Offices or employments of profit in the City of London.

COPLEY D. HEWITT,
Clerk to the said Commissioners,
Gresham College,
Basinghall Street, E.C.2.

16th May, 1923.

(1) 7 T.C. 277. (2) 4 T.C. 522.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 27th March, 1924, when judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. Edwardes Jones appeared as Counsel for the Appellant, and the Solicitor-General (Sir Henry Slesser, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—This Case is stated for the consideration of the Court upon the question whether the Appellant is liable to Income Tax upon the footing of a larger sum than the sum which he received in cash from his employers, the excess being represented by the sum of £80 5*s.* which the New Zealand Shipping Company are taken to have paid as Income Tax on his salary reckoned at £500. It appears very arguable, to say the least of it, as to whether this gentleman ought not to have been assessed not under Schedule E but under Schedule D, in which case he would have come before a different set of Commissioners. But that point is not raised before me. It could have been taken and pressed by various means of procedure, but that point is not taken before me, and it is my duty to decide whether this addition can be made to the assessment assuming in other respects there is nothing wrong with it.

In the first place, it was indicated in argument by Mr. Latter that this was not money's worth, and the case of *Tennant* v. *Smith* (3 T.C. 158), the bank manager's residential quarters case, was glanced at, but, as far as that point is concerned, I feel no difficulty at all. This is money's worth just as much as it was money's worth in *Scott* v. *North British Railway Company*(1) ([1923] A.C. 37), which for this purpose exhibits no difference from this case.

The simple question before me is whether this sum is an emolument accrued to him by virtue of his office within the meaning of Schedule E. There has been a recent case of *Scott* v. *The North British Railway Company*(1) in the House of Lords. In that case the railway officer had by contract a salary which was to be paid free of tax, and it was held that the effect of that was that his real salary was a sum which, after the deduction of tax from it, would leave the sum which was expressed to be payable to him as salary free of tax, and, speaking with all due respect, I should have thought that was extremely clear. In this case there is not any contract. When I look at *Scott's* case I do not think it touches this point. I do not think it is right to say, as Mr. Latter said, that the argument in that case did not proceed upon the basis that there was a contract, because it

(1) 8 T.C. 332.

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started from that basis. On the other hand, I do not think I can accept what the Solicitor-General said, that it is quite clear that the House of Lords intended to decide this point as well as the point immediately before them. I do not think they did. I think I have to face this point not covered by any decision. The question is whether this is a payment in respect of the employment of the Appellant. I am bound to say I must hold that it is. It would be giving quite a wrong value to the facts if I were to look upon this as if it were in the same position as a payment which might be made by a charitable friend to another because he had a small salary and a large family, and I cannot possibly look upon the facts in that light. I must look at this as an emolument given to him in his position as an officer of the Company, and, in those circumstances, all difficulty disappears. The appeal must be dismissed with costs.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Pollock, *M.R.*, and Warrington and Scrutton, *L.JJ.*) on the 21st November, 1924, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. Edwardes Jones appeared as Counsel for the Appellant, and Sir Henry Slesser, K.C., and Mr. R. P. Hills for the Crown.

JUDGMENT.

Pollock, M.R.—This is an appeal from a decision of Mr. Justice Rowlatt, given upon the 27th March of this year, and the question which has to be decided upon the Case is a point which in one shape or another has been before the Courts not infrequently in the last few years. It appears that the Appellant, Harry Hartland, is employed as the accountant of the New Zealand Shipping Company, Limited, who have an office in the City of London, and he receives a salary from the New Zealand Shipping Company of £500 a year. It appears, from what we have been told, that in one year, if not in more, the Company have been able to give, and have given, a bonus to their employees. I do not say more than that, except to mention it, because it may be a source from which a correction may be given to the figures which are before us. But the Company, for the purpose of assisting their staff, and, indeed, of increasing their salaries, have since 1912 adopted the custom of paying the Income Tax in respect of the salaries of all those employees, including the Appellant; and when the Company have so paid the Income Tax in respect of the salaries of their employees they have sought and been allowed to deduct from their Income Tax returns the sums which they have paid, and they have put in

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their working accounts these sums they have paid, under the heading : " Income Tax : Staff."

The effect has been that the Company have been allowed a deduction in respect of the increases of salary paid to their staff, measured by the amount of Income Tax for which their staff would have been liable; and the question is whether or not a member of the staff, Mr. Hartland, is to be treated as having received and being liable, not merely in respect of the actual salary, or salary plus bonus that he has received, but, in addition to salary and bonus, in respect of the amount which has been paid to the Income Tax Commissioners on his behalf in respect of the amount for which he was liable.

It is said by Mr. Edwardes Jones—who, in the absence of his leader, has put the matter fully before us and dealt with all the cases—that so far as Mr. Hartland was concerned, the sum paid to the Income Tax Commissioners in respect of the salary which he earns is a sum voluntarily paid by the Company and is no concern really of his, and does not fall to be taxed as part of his salary, or fall within any of the words which impose and charge liability upon him.

It appears that Mr. Hartland is charged under Schedule E, that is, the Schedule which deals with holders of offices. The description of " offices " is contained in the Third Rule of Schedule E (Income Tax Act, 1842), and includes any office or employment for profit held under any public corporation, or under any company, whether corporate or not corporate. Prima facie, therefore, it was right to assess Mr. Hartland under Schedule E, because he was an accountant to a limited company—the New Zealand Shipping Company, Limited. Under Schedule E, the persons who are charged by it are required to pay taxes in respect of salaries, fees, wages, perquisites or profits whatsoever accruing by reason of such office; and the word " perquisites," if it is necessary to amplify it—because the words I have read are very wide : " profits whatsoever accruing by reason of such " office "—is by the Fourth Rule " deemed to be such . . . as " arise from fees or other emoluments."

It is said by the Crown, therefore, that Mr. Hartland is liable to be assessed in respect not only of his salary or profits whatsoever, but also of perquisites and profits that arise from fees or other emoluments. It seems to me that the words are so wide that they include the sum which is in question in the present case, namely, the sum which has been paid by the Company to the Revenue to discharge Mr. Hartland's liability to Income Tax.

It has been claimed by the Revenue in a number of cases that the sum which is used to discharge the liability to Income Tax ought to be added to the salary received by the person on

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whom the duty is charged, in order to ascertain what his actual earnings, or wages, or receipts have been in any particular year. It has been put that he has received x, the amount of salary, and y, the measure of immunity from Income Tax, which he has been spared from paying because it has been paid by his master, or from some other source. But, taking those two symbols, what he has in fact received is $x + y$.

Now, the matter came up for discussion in the case of the *Attorney-General* v. *Ashton Gas Company*, [1904] 2 Ch. 621. The point that there arose was whether a gas company, which was prevented by its Special Act from dividing a larger dividend than that fixed under the Act, could pay the full sum named in the Act and at the same time pay in addition the Income Tax payable upon the sum divided. It was held that in calculating the rate of dividend the Income Tax payable in respect of the sum divided ought to be included. Lord Wrenbury—as Mr. Justice Buckley then—put it in this way, that if the payment is made direct from the company to the Revenue in respect of the sum paid as dividend, a shareholder gets more than a 10 per cent. dividend—I am reading at page 623—" In other " words, he receives 10 per cent., and an indemnity against a " liability to pay part of it to the Revenue, or allow a deduction " by the company of such part as the company has paid to the " Revenue for Income Tax." The reasoning of Mr. Justice Buckley—and the actual words were approved by Lord Justice Cozens-Hardy and Lord Justice Romer—is that the immunity is to be treated, as I think Mr. Justice Buckley had contended, as in the nature of a receipt, or deemed to be a receipt by the shareholder. That is the first case to which I need refer.

Afterwards, the matter was discussed in a number of other cases, and in the case of *Sir Marcus Samuel*[1] it was determined that, where certain dividends were paid tax free, in order to ascertain the amount that had been received by the shareholder, you must add to the amount of the actual dividend the amount of the Income Tax paid by the company in respect of that dividend, and the sum received by the shareholder was the sum total of those two amounts.

Mr. Edwardes Jones puts his case in this way: that it may be that, where a man has actually received something paid over to him, you ought to add that amount to his salary; or, if the relation between the person who pays direct to the Revenue and the man on whose behalf it is paid is such that there is a contract between them, it may be that the sum paid is to be treated as between the two parties who have the relation of employer and employed, or shareholder and company, and the like, as a receipt by the employee, or by the shareholder, because

[1] Sir Marcus Samuel, Bart. v. Commissioners of Inland Revenue, 7 T.C. 277.

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the payment is being made by some person with whom there was a contractual, or a statutory, or other right, some relation which would justify the person who pays direct in so doing as against the person for whom he paid it. But he argues that in the present case Mr. Hartland did not receive any money, and the Company were not entitled to pay the money. If they like to make a voluntary payment, well and good, they may do that; but, as between the Company employing him and himself, the Company were not entitled to make any payment.

Now, how far the question of the right to pay, or the right to demand the sum paid (if not paid direct to the Revenue) goes, has been discussed in a number of cases. A subject may be made liable and charged to Income Tax in respect of contributions which are paid over to him, although not on any legal basis. Thus in *Blakiston* v. *Cooper*(1), [1909] A.C. 104, it was held that "voluntary Easter offerings of money given as a freewill gift to "the incumbent of a benefice as such for his personal use are "... assessable to Income Tax as profits accruing to him "'by reason of his office' under Schedule E." It does not, therefore, finally determine the point to say that the money which was paid on behalf of Mr. Hartland was a freewill offering on the part of the Company for him. He may still be responsible to the Revenue in respect of that.

There are other cases which deal with voluntary sums paid to a person *virtute officii*. *Herbert* v. *McQuade*(2), [1902] 2 K.B. 631, is another illustration; a sum was paid from the Queen Victoria Clergy Sustentation Fund to the incumbent of a benefice, and it was held that the sums paid were within the words "perquisites or profits accruing by reason of his office."

The voluntary nature, therefore, does not, in my mind, determine the question that is before us, and no strong argument can in my opinion be made to differentiate the voluntary nature of the payment made, having regard to the two cases that I have referred to, namely, *Blakiston* v. *Cooper* and *Herbert* v. *McQuade*.

But it is said by Mr. Edwardes Jones that the Company, if they wanted to deduct, or if Mr. Hartland is to be charged with the increased sum paid to the Revenue, must have made that payment under some contract to which he was a party. After carefully looking at the case of the *North British Railway Company* v. *Scott*(3), [1923] A.C. 37, I am of the opinion that that contention is not sound. In the case of the *North British Railway Company* v. *Scott*, the Railway Company had been assessed to Income Tax in respect of the offices and employments of profit held under the Company. They had agreed with their

(1) 5 T.C. 347. (2) 4 T.C. 489. (3) 8 T.C. 382.

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officers not to exact from them severally the sum which they had had to pay to the Revenue in respect of those salaries. The Income Tax authorities claimed that the fact that the sums paid by the Railway Company were not deducted from the salary in effect increased the salaries of the officers of the Railway Company, and hence the salaries received by them must be deemed to be not only the actual salaries paid into their hands, but also the sum paid on their behalf to the Revenue. The House of Lords held that that contention was correct.

Mr. Edwardes Jones answers that case at the outset by saying that in the particular case of a railway company there is a provision in Section 6 of the Act of 1860, which makes the railway company the hand or source to pay to the Revenue the tax upon the salaries of the officers employed by the railway company. But I think Section 6 goes further and imposes the liability upon the railway company. The words are: "The said "assessment shall be deemed to be and shall be an assessment "upon the company and paid, collected, and levied accordingly." No doubt the Revenue were glad to have the system under which they could collect *en bloc* from the railway company the total sum which would have been charged upon the employees of the railway company individually. But Section 6 imposes upon the railway company the actual liability to pay the sum, and in the latter portion of Section 6 it is provided that "it shall be "lawful for the company to deduct and retain out of the . . . "salary of each such officer the duty so charged in respect of "his profits and gains." In the case as argued before the Court of Session, Lord Mackenzie points out that that which goes to the Revenue is money or money's worth; and I think it is quite clear that the noble Lords who took part in the decision in the House of Lords in the case of *North British Railway Company* v. *Scott*(1) did not intend to make any distinction such as suggested by Mr. Edwardes Jones, that the position of the employee was in any way altered, whether or not the sum was paid on his behalf by a contract with his employer, or under statute, as in the case of a railway company, or merely voluntarily, as it is said it was paid in this case.

Lord Dunedin, dealing with the matter says this, at page 41(2): "Most of the Appellants' argument was rested on the "fact that this was a company debt and not the official's debt; "and it was contended that the company could not be asked to "pay an assessment on an assessment. The fallacy of this "argument consists in ignoring the fact that, though this is a "company debt, the measure of that debt is not any liability "of the company, but is what would be the liability of the "official under Schedule E if that liability were not transferred "to the company by that Section."

(1) 8 T.C. 332. (2) *Ibid.*, at p. 338.

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But when Lord Atkinson came to deal with the matter, he put it in this way(1): "Whether the company avails itself or "not of the means provided by statute to enable it to recoup "itself for its outlay in paying the debts of its officers is its "own concern. Its action in that respect cannot, in my view, "affect prejudicially the rights of the Revenue." There are other passages in the argument to which I have referred, amplifying that view.

So we come back to this position, that Mr. Hartland is responsible to the Revenue to pay the tax in respect of his emoluments and salary and perquisites which he receives; and in effect what he has received he has received as stated in the *Ashton* case(2) and in the other cases—he has received a certain amount of money into his hands, and he has received an indemnity against any liability to pay any part of it to the Revenue. In effect, therefore, what he has received is the moneys paid into his hands, plus that immunity; and, as Lord Atkinson puts it, one has to look at the substance of the matter; it cannot be said that by any arrangement, or even by any want of arrangement, the position of the Revenue can be prejudicially affected. The substance of the matter is that the salary paid to Mr. Hartland is not all he has received. He has received money's worth to the extent of the sum which has been paid in respect of that salary to the Revenue.

I come, therefore, to the conclusion that the decision of Mr. Justice Rowlatt was right, and the appeal must be dismissed.

I want, however, to say a word or two more on the system rather than on the principle. I have stated my judgment on the principle applicable to the case, but the exact system by which the principle is applied is open to some observations. No doubt in the business of the City of London some working rules have got to be adopted between the Revenue and the companies, and I have little doubt that the Revenue is prepared to accommodate the companies if they ask for reasonable facilities. But it appears from the figures before us that an assessment has been made upon Mr. Hartland based upon an assessment of a previous year, an assessment which has no real contact with the facts of the existing year, but which was true in respect of the sums that he had received in a previous year, when his receipts had consisted of salary plus bonus plus money paid to the Revenue. It seems that some care ought to be exercised to ascertain what is the real sum to which the officer is assessable, for (as in the present case) there may be reasons, individual to the particular person, justifying his reducing his assessment. In the present case, Mr. Hartland was entitled to deduct a certain amount for premium paid to life assurance offices and the like; and it does not seem

(1) 8 T.C. 332, at p. 340. (2) Ashton Gas Company v. Atty.-Genl., [1904] 2 Ch. 621.

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right on the part of the Revenue that they should merely take a figure from the previous year and insert that as being the amount to which the officer is assessable or liable because it was a figure true in the previous year, though not true in the existing year of assessment. The facts as to the scheme and how it is exactly worked out are not before us, and I confine my observations, therefore, to saying that the matter is one which needs attention and care, because it is quite obvious that considerable mistakes may be made as between the Revenue and the particular official charged, and, more than that, as between the Revenue and the company. In the present case, the New Zealand Company were allowed to deduct as working expenses sums paid for and on behalf of their employees. If they have been allowed to deduct too large a sum, then the Revenue has lost the Income Tax on their profits; if, on the other hand, they have not been allowed to deduct enough, then the Company is entitled to further relief. I make these observations to show that the point has not escaped me, and that it is desirable that care should be exercised in working out the principle, although the principle itself is clear.

For the reasons I have given, the appeal must be dismissed, and dismissed with costs.

Warrington, L.J.—I am of the same opinion.

The Appellant is an officer in the employment of the New Zealand Shipping Company. That Company has for many years adopted the practice of paying the Income Tax chargeable on the salaries of each of its servants. It makes that payment voluntarily and without being under any obligation to the servant so to do; but it makes it in accordance with a practice which has been adopted for some considerable time, and, as I have said, makes the payment in respect of all its servants.

Now the servant or officer is chargeable to Income Tax under Schedule E, and that tax is payable for all salaries, fees, wages, perquisites or profits whatsoever accruing by reason of such employments or pensions. The main question then is: Is the Income Tax on the salary which is paid by the Company a profit accruing by reason of his employment? If it is, then the Appellant is chargeable to Income Tax in respect of it under Schedule E.

It has been settled by a decision in the House of Lords that a mere voluntary payment, if it be made in respect of a man's office, and not to him as an individual independently of his office, may be a profit chargeable to Income Tax, notwithstanding its voluntary nature. That point was decided in the Easter offerings case, *Blakiston* v. *Cooper*(1), [1909] A.C. 104.

(1) 5 T.C. 347

(Warrington, L.J.)

That the payment of Income Tax by the employer is a profit of the office of the employee, has been decided by the case of the *North British Railway Co.* v. *Scott*, reported first at 8 T.C. 332, and afterwards in the House of Lords at [1923] A.C. 37. Taking those two principles together: first, that a voluntary payment may be a profit chargeable to Income Tax; and second, that the payment of Income Tax in respect of salary may be an additional profit of the office in respect of which the salary is paid, it seems to me that the case is conclusive against the Appellant. But I think the state of the authorities does not rest there; because in my judgment the decision in the House of Lords in the case, to which I have just referred, of the *North British Railway Company* v. *Scott*—when you look at the opinions expressed both by Lord Dunedin and by Lord Atkinson, who alone addressed the House on that subject, I think it is perfectly plain that they made it evident that to their minds there was no distinction, for their present purposes, between a payment made by the employer under contract with the servant, and a payment made by the employer voluntarily and without any contract with him, provided only that the payment were so made as to be an additional profit of the office.

What Lord Dunedin said was this—he was dealing there with the case of a railway which is assessed for purposes of collection on the salaries which are paid to its servants—in the case of this present company the servant is assessed directly, and that really makes no difference—that was the case they were dealing with, and Lord Dunedin in reference to that case said this(1): "And if the company chooses to deduct (in cases where "they have not as here bound themselves by contract not to "do so), it follows that the official's total emolument is the "conditioned salary of x pounds from which the Income Tax "was deducted. Then, if as here they elect not to deduct"—he says nothing about the contract there—"they are by their "action making it that the total emolument of the official is "not only the cash salary but also the sum necessary to maintain "that cash salary at its undiminished figure"; and that sum, of course, is the Income Tax on the cash salary.

Lord Atkinson puts it in this way(2): "I think the same "result"—that is, that the tax would be added to the salary —"would have followed even if the company, either from "benevolence or from any other motive, declined to set off the "amount they had paid for or on behalf of an officer in discharge "of that officer's statutory liability, because in truth the sum "paid by the company is not a sum outside of the officer's "salary or independent of it, but is part of it." In my judgment, that case covers both the branches which are raised by the particular case, the two questions being, first, Is the payment of

(1) 8 T.C. at p. 338. (2) *Ibid.*, at p. 339.

(Warrington, L.J.)

the Income Tax a profit of his office? I think that is now well settled, and therefore, prima facie, it is liable to Income Tax. Second, Is it relieved of that liability by the fact that the employer pays it voluntarily, and being under no legal liability so to do? It seems to me that both of those points are decided against the present Appellant.

I wish to add only this: It seems to me that what is to be added to the salary for the purpose of Income Tax is not some notional sum agreed between the company and the Revenue, nor the tax paid in a previous year, or anything like that; it is the actual sum which, in the actual year of assessment, would be payable by the servant but for the interposition of the employer. It is that which is to be added to the salary as part of the profits derived from his income.

I think the appeal fails and must be dismissed.

Scrutton, L.J.—The nominal Appellant in this case is Mr. Harry Hartland, an employee, an accountant, in the service of the New Zealand Shipping Company; but who is the real Appellant I do not quite understand. It does not seem to interest Mr. Hartland very much, because his Income Tax is paid for him by the Company, and no claim is made upon him. If it is the Company who is the Appellant, one effect of the Company succeeding in this appeal is that they will be able to deduct less as trade expenses, and will therefore have to pay Income Tax on more of their profits. I am not quite clear which of them is the real Appellant and why there is the appeal.

But on the point raised, which is of some importance, I should have very considerable sympathy with the argument put forward by the Appellant, if it were not for two decisions of the House of Lords which appear to me to have settled the point. The point is this: Mr. Hartland is employed at a salary of £500 a year, but the New Zealand Shipping Company, in the words of the Case, have for some years made a custom of paying the Income Tax in respect of the salaries of all their employees, though they enter into no agreement, either verbal or in writing with the Appellant, as to the payment of the Income Tax in respect of his salary. Thereupon the Crown says: "The salary "upon which we propose to tax you, Mr. Harry Hartland, is "the salary you receive, £500, plus the Income Tax which the "Company is paying for you"; and Mr. Hartland, or the real Appellant, whoever he may be, objects to that, saying that Mr. Hartland does not receive anything additional to his salary; all that happens is that someone pays a debt of his, but he does not receive anything; and saying that even if he is taken as having received something, he has not received it by virtue of any contract, but as an act of grace or charity, and that such a sum cannot be added to his income.

(Scrutton, L.J.)

Now the first point, whether he has received a profit or emolument when all that has happened is that someone had paid a debt for him so that he has more money in that way, has, I think, been decided adversely to the contention of the Appellant; first of all indirectly by the two cases of the *Ashton Gas Company*(1), as to the payment of dividend free of Income Tax, and of *Sir Marcus Samuel*(2), also in the case of the payment of dividends free of Income Tax; and lastly by the decision of the House of Lords in the case of the *North British Railway Company* v. *Scott*(3), [1923] A.C. 37. The argument put forward by the Appellants' Counsel in the latter case was, I think, identical on this point with the argument which was put forward by Mr. Edwardes Jones, and I take the House of Lords to have decided that where what happens is that you receive a salary and your employer pays the Income Tax, the salary you in fact receive is the actual salary plus the amount of the Income Tax as properly calculated. Therefore the first point as to receipt seems to be decided by the decision of the House of Lords.

But I understand Mr. Edwardes Jones to say: That is all very well where you receive the benefit of the payment of Income Tax by virtue of a contract with your employer, but if you receive it as an act of grace from your employer, without any contract, that set of facts does not come within the decision of the House of Lords.

It appears to me that the second decision of the House of Lords which settles that point is the decision in *Blakiston's* case(4), [1909] A.C. 104, the case of the Easter offerings made to a clergyman purely voluntarily, no contract to pay them at all, but held by the House of Lords to be emoluments resulting from his office, though purely voluntary.

It seems to me that the facts in this case are clear, that it is because the Appellant is an employee of the Company that the Company pays his Income Tax, and that that is clearly an emolument relating to his office as accountant in the Company. The two decisions in the House of Lords, therefore, seem to bind me to hold that the Appellant must fail in this case.

As my brothers have said, I also wish to add that I am not at all satisfied with the apparent system which is pursued here. The Company makes some arrangement with the Inland Revenue —to which arrangement the Appellant is not a party—which results in the amount due in respect of this particular servant being assessed at £80 5s., which the Company are then allowed to take from their profits, as trade expenses, and avoid Income Tax on it. The Appellant seems to have nothing whatever to

(1) Ashton Gas Company v. Atty.-Genl., [1904] 2 Ch. 621. (2) Sir Marcus Samuel, Bart., v. Commissioners of Inland Revenue, 7 T.C. 277. (3) 8 T.C. 332. (4) 5 T.C. 347.

(Scrutton, L.J.)

do with the fixing of that amount; and what happened in this case was that £80 5s., said to be the sum so paid by the Company in respect of the salary of the Appellant as Income Tax, is added to the £500 and produces £580, and then duty is claimed on the Appellant for £65, whereas £80 has been added to his salary (according to the Case) in respect of Income Tax.

The explanation given by Sir Henry Slesser is, after inquiry, that there was some sum of bonus in the previous year. There is nothing about it in the Case. £80 5s. is stated to be the sum paid for Income Tax, and not Income Tax and bonus. But if that sum includes the bonus paid in the previous year, the previous year has nothing to do, under Schedule E, with the assessment of this year, and the whole system seems to be unsatisfactory.

But the Crown say that they are quite willing to look into the matter in this case, and I only suggest that they should not only look into the matter in this case but should devise a more satisfactory system for assessing these cases in future. As I understand, they have to add to the actual salary such a sum for Income Tax paid as, if deducted from the assessed income, would give the actual salary.

Further, it is obvious that in fixing the amount the actual employee ought to have some say in the matter. At present he has no say, and it has resulted in some curious figures.

I agree that the appeal should be dismissed.

Sir Henry Slesser.—There will be an adjustment of the actual liability.

Pollock, M.R.—It is not necessary to make an Order for it to go back. We had better leave it in this way: Appeal dismissed with costs, the actual figures to be settled on further reference to the Commissioners.

Sir Henry Slesser.—If your Lordships please.

Notice of appeal having been given against the decision of the Court of Appeal, the case came on for hearing in the House of Lords before Viscount Cave, *L.C.*, and Lords Atkinson, Shaw of Dunfermline, Sumner and Darling, on the 22nd January, 1926, when judgment was delivered unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. Edwardes Jones, K.C., appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C., M.P.), the Solicitor-General (Sir Thomas Inskip, K.C., M.P.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Viscount Cave, L.C.—My Lords, at first sight this appeal seemed to involve questions of a merely technical character and of trifling importance, and I confess that I was surprised that on a dispute involving a liability of something less than £20 the Appellant should not have been content with the decision of the High Court and of the Court of Appeal; but we are now informed that the appeal is a test case, and that possibly explains the matter. In any case it is necessary to deal with the points that have been raised.

My Lords, the facts are found in the Case stated by the Commissioners. It appears that the Appellant was throughout the year of assessment in the employ of a Shipping Company as their accountant and that his salary was £500 a year, but that it had been the custom of the Company since 1912 to pay every year the Income Tax in respect of the salaries of all its employees, including the Appellant, and that the amount so paid in respect of the Appellant's salary for the year preceding the year of assessment was £80 5s. 0d. The Company had entered into no agreement, either verbal or in writing, to pay Income Tax on the Appellant's salary, but in fact it had been paid year after year since the year 1912. On those facts the Appellant was assessed to Income Tax under Schedule E for the year ending in April, 1918, on a sum of £580 5s. 0d., being the £500, his regular salary, plus the £80 5s. 0d. representing the year's payment for Income Tax, and to that assessment he objects. No question is raised as to figures.

My Lords, the Income Tax Act, 1842, provides that the duty under Schedule E is to be payable " for all salaries, fees, wages, " perquisites or profits whatsoever accruing by reason of " the office held by the person to be charged; and by the Fourth Rule in Schedule E (Income Tax Act, 1842) " perquisites " are to be deemed to be " such profits of offices and employments as arise " from fees or other emoluments." The question therefore is whether the additional £80 5s. 0d. comes within the description of " profits," " perquisites " or " emoluments " in that Statute. If it does come within that description, it is plain that it is rightly added to the salary for the purpose of assessment. That appears from the case of *Samuel* v. *Commissioners of Inland Revenue*(1), [1918] 2 K.B. 553, relating to Super-tax, and the case of *The North British Railway* v. *Scott*(2), [1923] A.C. 37, and from other decisions.

But is it a profit, a perquisite, or an emolument? That the payment is voluntary makes no difference; that appears plainly from the case of *Blakiston* v. *Cooper*(3), [1909] A.C. 104. But it is said—and this is the main argument used on behalf of the Appellant—that the sum is not an emolument because it was not paid to the Appellant or at his request, although in fact it was

(1) 7 T.C. 277. (2) 8 T.C. 332. (3) 5 T.C. 347.

(Viscount Cave, L.C.)

paid regularly over a series of years. I do not agree with that argument. There was that continuity in payment to which reference was made in the case of *Blakiston* v. *Cooper*, and the effect of the payment was in practice and in fact to relieve the Appellant year after year from his liability for the payment of the tax. It is true that the Appellant did not receive cash in his hands, but he received money's worth year after year. This being so, I cannot resist the conclusion that the payment was in fact a part of his profits and emoluments as an officer of the Company for which he has been properly assessed to tax.

For these reasons I move your Lordships that this appeal be dismissed with costs.

Lord Atkinson.—My Lords, I agree.

Lord Shaw of Dunfermline.—My Lords, after reading the judgment of the learned Master of the Rolls I felt that the case of the Appellant was a hopeless case. I agree with that judgment, and also with the judgment which your Lordship has just delivered.

Lord Sumner.—My Lords, I agree.

Lord Darling.—My Lords, I agree.

Questions put:—

That the Order appealed from be reversed.

The Not Contents have it.

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

The Contents have it.