

VOL. X.—PART V.

No. 546.—HIGH COURT OF JUSTICE, NORTHERN IRELAND (KING'S BENCH DIVISION).—11TH NOVEMBER AND 10TH DECEMBER, 1924.

COURT OF APPEAL, NORTHERN IRELAND.—26TH AND 27TH JANUARY, 1925.

HOUSE OF LORDS.—4TH AND 5TH FEBRUARY, 1926.

EDWARDS (H.M. INSPECTOR OF TAXES) v. THE " OLD BUSH-MILLS " DISTILLERY COMPANY, LIMITED (IN LIQUIDATION).⁽¹⁾

Income Tax—Sale of stocks by liquidator—Whether trading or realisation of capital—Res judicata—Effect of decision of Recorder (Northern Ireland)—Stated Case—Remission by High Court to Commissioners—Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), Sections 149, 195, and 196, and Schedule D, Case I.

In July and August, 1920, the shareholders of a company carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to the 31st March, 1921, but not after, and pending the sale of the business he sold the company's stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years.

An assessment to Income Tax was made upon the company for the year 1921–22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Commissioners on appeal on the ground that an assessment on the company for the preceding year had been discharged by the Recorder on appeal to him under Section 196 of the Income Tax Act, 1918, from the determination of the Special Commissioners, and that they were bound to follow this decision.

A Case for the opinion of the High Court as regards the 1921–22 appeal having been stated by the Special Commissioners on the demand of the Crown, the King's Bench Division of Northern Ireland held that the Commissioners were not bound by the decision of the Recorder for the previous year, but declined to

⁽¹⁾ Not reported.

deal with the question of the company's liability on the Case as stated, and remitted the Case to the Commissioners to "proceed thereon according to law." No direction was, however, given that the Case should be returned to the High Court for decision, and in the circumstances the Crown entered an appeal against the Order of the King's Bench Division.

The Court of Appeal of Northern Ireland agreed with the King's Bench Division, but varied the form of the Order and remitted the Case to the Special Commissioners with the direction that they should find as a fact whether the profits in the year 1921-22 arose (a) from the carrying on of the company's trade, or (b) from realisation sales and capital transactions incidental to the winding up of the business, and should then affirm or discharge the assessment according to law. The Crown appealed to the House of Lords.

Held, in the House of Lords,

- (1) that the Special Commissioners were not bound, by the decision of the Recorder regarding the 1920-21 appeal, to discharge the 1921-22 assessment;
- (2) that the findings of fact in the Case Stated were insufficient to enable the question of law involved to be determined; and
- (3) that under Section 149 of the Income Tax Act, 1918, it is within the discretion of the High Court to remit a Case to the Commissioners for re-hearing and decision without requiring that it be amended and returned for the decision of the Court itself, and that the exercise of such discretion should not be interfered with.

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice in Northern Ireland.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Belfast on the 13th December, 1922, for the purpose of hearing appeals, the "Old Bushmills" Distillery Company, Limited (hereinafter called "the Company") appealed against an assessment to Income Tax (Schedule D) in the sum of £18,149, less an allowance of £667 in respect of wear and tear of machinery and plant, for the year ending 5th April, 1922, made upon the Company by the Special Commissioners under the provisions of the Income Tax Acts.

2. The Company whose registered office is at 22 and 23, Great Tower Street, in the City of London, is a Limited Com-

pany and was incorporated on the 15th August, 1896, under the provisions of the Companies Acts, 1862 to 1890, with a nominal capital of £110,000, divided into 70,000 5 per cent. £1 Preference Shares and 40,000 £1 Ordinary Shares. The objects for which the Company was formed as set out in its Memorandum of Association include the following:—

- (b) " The carrying on in all their branches, in any part of
 " the world, of the trades or businesses of Wine and
 " Spirit Merchants, Rectifiers, Compounders, Dis-
 " tillers, Brewers, Hop and Grain Merchants, Millers,
 " Maltsters, Methylated Spirit Makers, Aerated and
 " Mineral and other Water Manufacturers, and
 " Licensed Victuallers, and to buy, sell, manipulate,
 " and deal (both wholesale and retail) in commodities
 " of all kinds which can conveniently be dealt in by the
 " Company in connection with any of its objects, and
 " to carry on any other businesses, whether manu-
 " facturing or otherwise, which can be conveniently
 " carried on in connection with any of the Company's
 " objects."

The Company carried on the business of whiskey distilling at two distilleries, namely, the " Old Bushmills " Distillery and the Comber Distillery.

3. In February, 1920, the Directors of the Company received an offer from D. Gordon Dickson of 16, High Street, Belfast, to purchase all the fully paid Ordinary Shares of the Company at a price of £3 per share. This offer was communicated by the Company to the Ordinary Shareholders in a letter dated 24th February, 1920, which recommended acceptance of the offer.

A copy of this letter is annexed hereto and forms part of this Case.

4. A few days later a better offer of £3 10s. 0d. per share was received and the Directors so informed the shareholders in a letter dated 1st March, 1920, adding that they had decided to call an Extraordinary General Meeting of the Ordinary Shareholders to consider the matter.

A copy of this letter is annexed hereto and forms part of this Case.

5. On the 9th March, 1920, at an Extraordinary General Meeting of the Ordinary Shareholders of the Company, the following resolution was carried:—

- " That a Committee of Three of the Ordinary Share-
 " holders be appointed to confer with the Directors as to
 " the value of the assets of the Company, and report to a
 " further meeting of the Shareholders to be called later on."

This Committee's report was considered at a further meeting of the Shareholders held on the 13th April, 1920, when the

Shareholders decided that the question of a sale or otherwise of the Company's shares should be left in the hands of the Directors.

6. On the 30th June, 1920, the Company issued a letter to the Shareholders in the following terms :—

“ Dear Sir or Madam,

“ Referring to the Circulars of the 24th February and 2nd April last, a Meeting of the Shareholders was held on 9th March, 1920, at which a Committee was appointed for the purpose of conferring with your Board, with a view to valuing the Company's assets, and bringing in a Report which was duly presented at an adjourned Meeting held 13th April, 1920, and a Resolution was passed thereat that the question of a sale or otherwise of the Company's shares should be left in the hands of the Directors.

“ Since then your Board has given very careful consideration to the question, and they have now decided to call a Meeting of the Shareholders for the purpose of considering, and, if thought fit, passing a Resolution to wind up the Company's business, and after paying :—

“ 1. The Debentures,

“ 2. The General Creditors of the Company,

“ 3. The Preference Shareholders,

“ to divide the balance amongst the Ordinary Shareholders, after making provision for compensation to the Directors and Officials of the Company for the loss of their employment.

“ In arriving at the decision to recommend this course, your Directors are largely guided by the fact that at the Meeting held to discuss the offer made for the Ordinary Shares, a considerable number of the Shareholders were of opinion that the offers were inadequate and that more could be obtained by the Shareholders agreeing to wind up the Company.

“ Your Directors are of opinion that the present is an opportune time to realise the Company's assets, and they are confident that if their present recommendation be accepted, the Shareholders will receive at least as much per Share as the highest offer made.

“ Circulars calling an Extraordinary General Meeting of the Company to be held at the Central Hall, Belfast, on the 9th July, 1920, at noon, are enclosed herewith. Your Directors hope you will find it convenient to attend the Meeting, but if it is not possible for you to do so, if you approve of the Resolutions, you might please sign and return the enclosed form of proxy, in enclosed stamped addressed envelope, appointing your Directors as proxies to vote for you at the said Meeting.

“ Yours faithfully,

J. A. HALLIDAY, Secretary.”

7. At an Extraordinary General Meeting of the Company held on the 9th July, 1920, the following Resolutions were passed:—

- " (1) That in the event of the Shareholders deciding at the
 " Meeting now being held or any adjournment thereof
 " to wind up the Company voluntarily, it is hereby
 " resolved that it be an authority and instruction to
 " the Committee of Five Ordinary Shareholders to be
 " appointed to distribute out of the surplus assets,
 " after the Ordinary Shareholders will have been paid
 " not less than £3 10s. 0d. per share, the sum of
 " £25,000 amongst the Directors and certain Officials
 " for loss of office and service, in such proportions to
 " each individual Director and each Official as such
 " Committee or a majority thereof in their uncon-
 " trolled discretion shall decide. Provided that if
 " such remaining surplus assets fall short of £25,000,
 " this authority and instruction shall apply equally
 " to any smaller sum available. The decision of the
 " Committee of Five or a majority of them to be final
 " and binding on all parties. Three to form a
 " quorum."
- " (2) That the Company be wound up voluntarily and that
 " Thomas R. Burns, of 1 and 3, Donegall Square
 " South, Belfast, Chartered Accountant, be and is
 " hereby appointed Liquidator for the purpose of such
 " winding up."

8. These Resolutions were confirmed at an Extraordinary General Meeting of the Company on the 5th August, 1920, and Mr. Thomas R. Burns was duly appointed Liquidator.

9. In pursuance of the Resolution to wind up the Company and distribute the proceeds among the shareholders, the Comber Distillery was sold by private treaty by the Liquidator on the 31st October, 1920, in its entirety, land, buildings, machinery, utensils, goodwill, and a portion of the stock. The Liquidator also from the commencement of the liquidation made endeavours to sell the " Old Bushmills " Distillery as a going concern by private treaty and entered into negotiations with several possible purchasers, but did not succeed in effecting a sale. The title to the Company's property was a somewhat involved one, and this, together with the fact that a purchase of additional land was in course of completion at the commencement of the winding up, delayed the preparation of conditions of sale for a public sale. In March, 1921, the " Old Bushmills " Distillery was publicly advertised for sale as a going concern, but no offer was received.

10. Meanwhile, in order that he might be in a position to offer the " Old Bushmills " Distillery for sale as a going concern, and knowing that the value of the asset would be depreciated if the distillery were closed, the Liquidator, in addition to selling the existing stocks, continued distilling operations at the " Old Bushmills " Distillery, though on a reduced scale. Between 20th November, 1920, and 31st March, 1921, there were distilled 58,152 gallons of spirit—the normal production being stated to us to have

been " anything up to 200,000 gallons." The spirit distilled as aforesaid in the winter of 1920-21 would not have been saleable as consumable whiskey for three years, but a small portion of it (1,520 gallons) was sold on 17th March, 1921, for other purposes. No whiskey was distilled during the Income Tax year 1921-22 or since.

11. Immediately from the time of his appointment the Liquidator endeavoured to sell the stocks of whiskey belonging to the Company but the difficulty of finding purchasers at any given time for more than a limited quantity of one brand of Irish whiskey caused the sales of the stocks of whiskey to extend over a period of more than two years. The Liquidator, however, continued to sell the stocks of whiskey with all possible expedition and at the time of the hearing of this appeal he had disposed of about nine-tenths of the whiskey which was held by the Company at the commencement of the winding up, and expected within the next three months to sell the remainder of the Company's assets, including any balance of whiskey then unsold. As the assets of the Company were sold the liabilities of the Company including Debentures of £75,000 were discharged, the Debentures being repaid on 13th August, 1920. After the discharge of these liabilities the Liquidator made the following repayments of capital to the Shareholders:—

		£	s.	d.
1921.				
Feb. 1.—	66,247 <i>Preference Shares of £1 each</i>	66,247	0	0
	39,487 <i>Ordinary Shares of £1 each</i> :			
Aug. 1.—	First Repayment of Capital at 20s. per share...	39,487	0	0
1922.				
Mar. 20.—	Second Repayment of Capital at 20s. per share	39,487	0	0
July 4.—	Third Repayment of Capital at 40s. per share	78,974	0	0
1923.				
Jan. 8.—	Fourth Repayment of Capital at 40s. per share	78,974	0	0
July 25.—	Fifth Repayment of Capital at 30s. per share...	59,230	10	0
		<hr/>		
		£362,399	10	0

The following table shows the sales of whiskey for the years indicated:—

Year ended 30th Sept.	Duty.	1. Bottled Whiskey Duty Paid (including Duty).		2. Bottled Whiskey in Bond.		3. Bulk Whiskey Duty Paid (including Duty).		4. Bulk Whiskey in Bond.	
		s.	d.	£	s.	£	s.	£	s.
		£	s.	d.	£	s.	d.	£	s.
1910	14 9	54,736	17 3	19,424	0 9	5,644	15 11	1,034	3 1
1911	do.	59,093	1 0	26,514	1 0	5,851	0 3	6,370	7 1
1912	do.	61,233	12 2	29,041	9 9	5,666	7 3	1,456	4 1
1913	do.	61,990	1 11	28,284	14 5	5,672	2 11	1,815	19 2
1914	do.	65,164	14 4	28,365	0 0	5,866	18 2	5,350	9 11
1915	do.	81,234	14 6	15,438	6 10	5,423	3 5	14,002	14 4
1916	do.	59,441	10 4	18,960	15 5	9,770	11 10	24,359	4 10
1917	do.	74,378	7 1	10,953	12 1	5,394	2 3	24,981	2 9
1918	30 0	72,571	14 1	13,649	2 4	24,533	17 2	21,625	14 6
1919	50 0	110,331	11 9	14,166	17 6	84,076	14 4	14,181	3 10
1920	72 6	184,999	17 10	12,215	12 2	52,088	4 7	116,234	2 1
1921	do.	260,803	14 1	23,932	12 0	8,277	19 2	118,203	9 2
1922	do.	237,669	0 8	6,568	3 6	3,939	7 1	165,777	3 1
6 months ended 24th Mar., 1923.	do.	101,309	6 2	9,203	19 0	2,002	9 0	127,470	4 9

12. For the purpose of rendering certain portions of the stocks of whiskey saleable it was necessary for the Liquidator to purchase some whiskey for blending purposes, but such purchases were made solely for the purpose of rendering the Company's assets saleable. It was also necessary for the purpose of some of the sales of whiskey which he effected for the Liquidator to purchase bottles and cases and to incur certain general expenses. The amount of such purchases and expenses for the year ended 5th April, 1922, was for :—

	£	s.	d.
Whiskey	8,961	6	5
Bottles	5,418	12	8
Cases	2,894	9	5
General Expenses (including coal used for distilling in previous year) ...	3,726	16	1

Similar expenses had been incurred by the Liquidator in the purchase of whiskey bottles and cases in the previous year ending 5th April, 1921.

On the 12th January, 1921, the Liquidator redeemed in cash at par £70,000 1st Mortgage Debenture Stock created by the Company and secured by a Trust Deed dated 8th January, 1897.

The Preference Shareholders have received a return of their share capital in full and the Company's general creditors have also been paid in full.

13. On these facts which are not in dispute it was contended for the Company :—

That the sales of whiskey by the Liquidator during the year of assessment were capital transactions incident to the winding up of the Company and to the Liquidator's duty to realise its assets, and that no liability to assessment for Income Tax arose in respect of such sales.

14. It was contended by the Inspector of Taxes that the Liquidator as agent for the Company had carried on a trade continuously throughout the year of assessment and that the Company was liable to assessment to Income Tax under Schedule D, Case I, of the Income Tax Acts in respect of the profits arising from that trade.

15. Upon an appeal to the Special Commissioners against an assessment for the year ended 5th April, 1921, the Commissioners held that the Company was liable to assessment for Income Tax in respect of the sales made by the Liquidator during the year. This decision was reversed on appeal under the Income Tax Act, 1918, Section 196, by the Recorder for Belfast, whose decision was given as follows :—

" I am of opinion now and so hold that the transactions in question during the period August 5th, 1920, to April 5th, 1921, were capital transactions incident to the winding up of the business and that the amount realised was not income within the Income Tax code.

the possibility of further restrictive legislation, we have decided to recommend the Shareholders to accept the offer, which we are accepting on our own behalf in respect of our Shares, which represent a substantial proportion of the Ordinary Capital.

We enclose a form of acceptance of the offer, and if you decide to accept it, please sign the form in the presence of a witness, and return it to the Secretary of the Company, in the enclosed stamped addressed envelope, at your earliest convenience as the offer only remains open till the 5th March, 1920.

In the event of the required proportion accepting the offer, payment of the purchase money will at once be made against properly completed Transfers and Share Certificates.

By Order of the Board,
J. A. HALLIDAY, Secretary.

" B "

LETTER FROM THE RESPONDENT COMPANY TO THE ORDINARY
SHAREHOLDERS DATED 1ST MARCH, 1920.

THE " OLD BUSHMILLS " DISTILLERY COMPANY, LIMITED.
Chief Offices,
Hill Street,
Belfast.
1st March, 1920.

To The Ordinary Shareholders.

Dear Sir or Madam,

Referring to my letters to you of the 20th and 24th ultimo, I beg to inform you that my Directors have received a higher offer for the Ordinary Shares of the Company than that mentioned in my letter of the 24th ultimo, and, consequently, they have decided to call an Extraordinary General Meeting of the Ordinary Shareholders, to be held in Room No. 5, Central Hall, Rosemary Street, Belfast, on Tuesday, the 9th day of March, 1920, at 12 o'clock noon, for the purpose of considering the matter.

By Order of the Board,
J. A. HALLIDAY, Secretary.

The case was argued before the King's Bench Division of Northern Ireland (Henry, *C.J.*, and Brown, *J.*) on the 11th November, 1924, and was adjourned to the 10th December, 1924, when the Court held that the Special Commissioners were not bound by the decision of the Recorder for the previous year, and remitted the Case to the Commissioners to " proceed thereon according to law." The question of costs was reserved.

The Attorney-General for Northern Ireland (Rt. Hon. Richard Best, K.C., M.P.) and Mr. J. C. Davison appeared as

Counsel for the Crown, and Mr. A. B. Babington, K.C., Mr. E. S. Murphy, K.C., Mr. K. A. Pringle, K.C., and Mr. A. Black for the Respondent Company.

JUDGMENT.

Henry, C.J., delivered the judgment of the Court as follows :—

This was a Case stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts.

At an Extraordinary General Meeting of the " Old Bushmills " Distillery Company, Limited, held on the 9th July, 1920, a resolution was passed that the Company be wound up voluntarily. This resolution was confirmed at an Extraordinary General Meeting of the Company held on 5th August, 1920, and Mr. Thomas R. Burns was duly appointed Liquidator. The Company went on trading during the remainder of the financial year to 31st March, 1921. The Inspector of Taxes assessed them for the year 1920-21, and the Company appealed to the Special Commissioners, who held that the Company was liable for assessment for Income Tax in respect of sales made by the Liquidator during the year. The Company then appealed to the Recorder, who held that the transactions during the period referred to were capital transactions, incidental to the winding up of the business, and he reversed the decision of the Special Commissioners. For the financial year 1921-22, the year concerned in the present appeal, the Inspector of Taxes again made an assessment on the Company. The Company again appealed to the Special Commissioners, and the Special Commissioners decided that they were bound to follow the decision of the Recorder, and accordingly discharged the assessment. The matter now comes before us by way of Case Stated for our opinion.

The question for our decision is " whether the Commissioners for the Special Purposes of the Income Tax Acts were correct in discharging the assessment, or whether the Company is liable, and if so, to what extent, to assessment to Income Tax in respect of the profits arising from the said sales of whiskey effected by the Liquidator in the course of the winding up of the Company during the year ending 5th April, 1922."

We are of opinion that the Special Commissioners have stated this Case under the misapprehension that they were bound to follow the decision of the Recorder of Belfast against a like assessment of the Company for the year ending 5th April, 1921.

Accordingly we send the Case back to the Commissioners for the Special Purposes of the Income Tax Acts with a direction that they are not bound by the decision of the Recorder made for the previous year. We direct that they proceed according to law. They were wrong in discharging the assessment. We reserve the costs of both sides.

ORDER OF THE KING'S BENCH DIVISION IN NORTHERN IRELAND.

HIGH COURT OF JUSTICE IN NORTHERN IRELAND.

King's Bench Division.
(Revenue.)

Before the Right Honourable THE LORD CHIEF JUSTICE

AND

The Right Honourable Mr. JUSTICE BROWN.

Wednesday the 10th day of December, 1924.

Record No.

BETWEEN H. EDWARDS (H.M. Inspector of Taxes) *Appellant,*

AND

THE "OLD BUSHMILLS" DISTILLERY
COMPANY, LIMITED *Respondents.*

CASE STATED

by the Commissioners for the Special Purposes of the Income Tax Acts under the Income Tax Act, 1918.

The above Case Stated for the opinion of the King's Bench Division of the High Court of Justice in Northern Ireland upon an appeal to the said Commissioners against an Assessment to Income Tax (Schedule D.) in the sum of Eighteen thousand one hundred and forty-nine pounds less an allowance of Six hundred and sixty-seven pounds in respect of Wear and Tear of Machinery and Plant for the year ending 5th April, 1922, made upon the said Company, being called on for hearing on the 11th day of November, 1924, and being adjourned to this day.

WHEREUPON upon hearing Counsel for the Appellant, and for the Respondents; and upon reading the said Case Stated, and the documents therein referred to, wherein the question reserved for decision was as follows:—

"Whether we (i.e. the Commissioners for the Special Purposes of the Income Tax Acts) were correct in discharging the assessment, or whether the Company is liable, and, if so, to what extent, to assessment to Income Tax in respect of the profits arising from the said sales of whiskey effected by the Liquidator in the course of the winding-up of the Company during the year ending 5th April, 1922."

AND it appearing to the Court that the sole ground for discharging the assessment was the belief of the said Commissioners that they were bound to follow the decision of the Recorder of Belfast upon an appeal under Section 196 of the Income Tax Act, 1918, against a like assessment of the Company for the year ending 5th April, 1921.

AND THE COURT BEING OF OPINION that this belief was erroneous, and that the said Commissioners were not so bound DOTH REFER the matter back to the said Commissioners to proceed thereon according to law.

THE COURT RESERVES the Costs of both parties to this argument.

(Signed) J. G. BREakey, Registrar.

The Crown having appealed against the Order of the King's Bench Division, the case was argued before the Court of Appeal of Northern Ireland (Moore and Andrews, *L.JJ.*) on the 26th and 27th January, 1925, when judgment was given against the Crown, with costs in that Court, (each side being ordered to pay its own costs in the King's Bench Division), but the Order of the King's Bench Division was varied.

The Attorney-General of Northern Ireland (Rt. Hon. Richard Best, K.C., M.P.) and Mr. J. C. Davison appeared as Counsel for the Crown, and Mr. A. B. Babington, K.C., Mr. E. S. Murphy, K.C., Mr. K. A. Pringle, K.C., and Mr. A. Black for the Respondent Company.

JUDGMENT.

Moore, L.J., delivered the judgment of the Court as follows :—

As to the question of liability of the Company, we cannot answer it as it is a question of law and depends on a conclusion of facts not yet found. On this we desire to say as little as possible, because in our opinion the Commissioners have not yet arrived at a conclusion of fact determining the case, and they must do so without any interference from us. The governing question is whether the profits in the year 1921–22 were annual profits from a trade, or profits not annual profits but from a realisation of capital. This is a pure question of fact. It is the Commissioner's duty to decide this according to the evidence, and, having done so, to affirm or discharge the assessment.

We can, however, give them this guidance, and this relates, like the King's Bench Order, to the first question which appears to be solely concerned with the effect of the Recorder's decision in 1920–21 on the position in 1920–21. In our opinion, the decision of the learned Recorder on a state of facts as of the year 1920–21 would not be binding as to a different and subsequent state of facts in the year 1921–22, and the Commissioners must arrive at their independent decision on those facts, whether it concurs with the Recorder's decision for the previous year or not.

In the main the Order of the King's Bench Division is correct, but to make our views more conveniently and clearly apparent as

(Moore, L.J.)

to the meaning of the expression "according to law," we have discharged it and substituted an amended Order of our own. Andrews, L.J., will read our amended Order.

It must be distinctly understood that once the Commissioners have heard and determined the matter according to law and made their discharge or confirmation of assessment as the case may be, nothing in our Order or in the present proceedings will prevent either party from exercising his rights under either Section 149 or 196, Income Tax Act, 1918.

We direct that each party abide his own costs in the King's Bench Division, and that the Inspector of Taxes do pay the Respondents' costs of this appeal.

ORDER OF THE COURT OF APPEAL IN NORTHERN IRELAND.

H.M. COURT OF APPEAL IN NORTHERN IRELAND.

Tuesday the 27th day of January, 1925.

RIGHT HONOURABLE LORD JUSTICE MOORE.

RIGHT HONOURABLE LORD JUSTICE ANDREWS.

BETWEEN H. EDWARDS (H.M. Inspector of Taxes) *Appellant,*

AND

THE "OLD BUSHMILLS" DISTILLERY
COMPANY LIMITED *Respondents.*

UPON MOTION pursuant to Notice, dated 29th day of December, 1924, on the 26th day of January, 1925, and on this date, made unto this Court by Counsel on behalf of the above-named Appellant, by way of Appeal from the Order of the King's Bench Divisional Court, dated the 10th day of December, 1924, made on the hearing of a Case Stated for the opinion of that Court by the Commissioners for the Special Purposes of the Income Tax Acts under the Income Tax Act, 1918, wherein it is recited that it appeared to the Court that the sole ground for discharging the Assessment in said case mentioned was the belief of the said Commissioners that they were bound to follow the decision of the Recorder of Belfast upon an Appeal under Section 196 of the Income Tax Act, 1918, against a like assessment of the Company for the year ending 5th April, 1921, and that the Court was of opinion said belief was erroneous.

THE COURT DID NOT ANSWER the questions submitted in said Case but referred same back to the said Commissioners to proceed according to law; and upon hearing Counsel for the Respondents, and upon reading the said Notice, Case Stated and Order thereon.

AND THIS COURT BEING ALSO OF OPINION that said belief was erroneous, and that the said Commissioners were not so bound

DOTH DISCHARGE the said Order of the said King's Bench Division AND DOTH ALSO decline to answer the questions submitted in the said Case Stated.

AND THIS COURT DOTH FURTHER REMIT the matter back to the said Commissioners with a direction that they should find as a matter of fact and wholly apart from said decision of the Recorder whether the profits in the year 1921-2 in respect of which Assessment was made arose :—

(a) From the carrying on of the trade,

or

(b) From realisation sales and capital transactions incidental to the winding up of the business ;

and that they should thereupon proceed to affirm or discharge the said Assessment according to law.

AND THIS COURT DOTH FURTHER ORDER that each party do abide his or their own Costs of the Case Stated in the King's Bench Division, and that the Appellant, the Inspector of Taxes, do pay to the Respondents their Costs of this Appeal, when taxed and ascertained.

(Signed) J. N. DAVIES,
Registrar.

The Crown having appealed against the Order of the Court of Appeal, the case was argued in the House of Lords before Viscount Cave, *L.C.*, Viscount Haldane, and Lords Atkinson, Shaw of Dunfermline and Sumner, on the 4th and 5th February, 1926. Judgment was delivered on the latter day unanimously dismissing the Crown's appeal, with costs.

The Attorney-General (Sir Douglas Hogg, *K.C.*, *M.P.*), Mr. R. P. Hills, and Mr. J. C. Davison appeared as Counsel for the Crown, and Mr. A. M. Latter, *K.C.*, Mr. E. S. Murphy, *K.C.*, and Mr. Arthur Black for the Respondent Company.

JUDGMENT.

Viscount Cave, L.C.—My Lords, the Respondents, the " Old Bushmills " Distillery Company, Limited, carried on a large distilling business in the North of Ireland, and in July and August, 1920, the shareholders passed resolutions for a voluntary winding up. With a view to realisation, the Liquidator did some distilling, but no distilling was done after the end of the tax year 1920-21. In the following tax year 1921-22 large sales of stock were effected. The Company was assessed to Income Tax for that year on the basis of the three preceding years, and on the footing that the Liquidator had carried on a trade in the year of assessment. On appeal to the Special Commissioners, those Commissioners discharged the assessment on the ground that an assessment for the preceding year had been discharged by

(Viscount Cave, L.C.)

the Recorder on appeal, and that they held themselves bound to follow that decision. The Commissioners stated a Case, in which they formulated the question for the decision of the High Court in these terms: "The question for the Court is whether we were correct in discharging the assessment, or whether the Company is liable, and, if so, to what extent, to assessment to Income Tax in respect of the profits arising from the said sales of whiskey effected by the Liquidator in the course of the winding up of the Company during the year ending 5th April, 1922." The High Court held that the Commissioners were not bound by the decision of the Recorder in respect of the previous tax year, and made an Order which contained a declaration to that effect, and referred the matter back to the Commissioners "to proceed thereon according to law." On appeal to the Court of Appeal of Northern Ireland, that Court agreed with the High Court, but varied the form of the Order and remitted the matter back to the Commissioners with a direction "that they should find as a matter of fact and wholly apart from the said decision of the Recorder whether the profits in the year 1921-22 in respect of which assessment was made arose (a) from the carrying on of the trade, or (b) from realisation sales and capital transactions incidental to the winding up of the business; and that they should thereupon proceed to affirm or discharge the said assessment according to law." The form of the Order is different, but the effect is substantially the same. The Inspector of Taxes has appealed to this House against that Order.

My Lords, I agree that the Commissioners were not bound, by the decision of the Recorder in respect of the year 1920-21, to discharge the assessment for the year 1921-22. The facts in the latter year may have been, and to some extent were, different, and I think that the Commissioners should have gone into the facts and arrived at their own conclusion. I agree also that the High Court could not, on the Case stated to them, determine the question of fact whether a trade was carried on in the year 1921-22. The Commissioners, under the belief that they were bound by the Recorder's decision, appear to me to have stopped short in their findings of fact, and the Case contains no finding on the material question—trade or no trade. I think that the High Court and the Court of Appeal were right in refusing to go into that question, and I do not doubt that your Lordships will take the same course.

This being so, it is clear that the Case must go back to the Commissioners, and the only question is, on what terms? Section 149 of the Income Tax Act, 1918, provides two methods in which a Case may be sent back to the Commissioners. Under Sub-section (2), paragraph (a), of that Section the High Court may "remit the matter to the Commissioners with the opinion of the Court thereon, or may make such other order in relation to the matter as to the Court may seem fit." Under paragraph (b)

(Viscount Cave, L.C.)

of the same Sub-section there is an alternative course : the High Court " may cause the case to be sent back for amendment, and " thereupon the case shall be amended accordingly, and judgment " shall be delivered after it has been amended." Of these two courses I might myself have preferred the latter, because it would have secured the return of the case for the decision of the High Court itself ; but the Court in its discretion took the former course and referred the matter back to the Commissioners for consideration and decision, and it does not appear to me that your Lordships ought to interfere with that exercise of discretion by the Court. It has been suggested that if the Order stands the effect may be that the Commissioners may decide for the Crown, and that on appeal the Recorder may reverse that decision, and that the Crown will then have no means of questioning the Recorder's decision. As to whether that is so, I say nothing ; but if so, that is the effect of the Income Tax Act, and I do not think the House of Lords can go into a question of that kind. The Act must have such effect as it has.

In my opinion the Order of the Court of Appeal should stand, and I move your Lordships that this appeal be dismissed with costs.

Viscount Haldane.—My Lords, I concur. As regards Ireland, at all events, the question of the remedy of the subject against an assessment is prescribed by Sections 195 and 196 of the Income Tax Act, 1918. The Special Commissioners entertain the appeal in the first instance, " and their determination on any such " appeal shall be final and conclusive, unless the person assessed " requires that his appeal shall be re-heard as hereinafter provided "—that is, before the Recorder or the County Court Judge—" or unless, under the provisions of this Act, a case is " required to be stated for the opinion of the High Court," and the assessment, in default of these things, is to be final. Now if one goes back to Section 149, which is the Section which enables the subject to go to the Court, he can only go if he is dissatisfied with the determination of the Commissioners as being erroneous in point of law, and if he takes that view he may go to the Commissioners and require them to state a Case for the opinion of the Court, and then, if the High Court shall hear and determine any question or questions of law arising on the Case, and shall reverse, affirm, or amend the determination in respect of which the Case has been stated, they may remit the matter to the Commissioners with the opinion of the Court thereon, or may make such other Order in relation to the matter as to the Court may seem fit.

My Lords, in this case the Commissioners, having decided in one way in one year and having been reversed by the Recorder, the next year thought they were bound by the decision of the Recorder in the previous year, but, on appeal to the Court on the

(Viscount Haldane.)

point of law so raised, the Court said : " No, the Commissioners " were not bound by the decision of the Recorder in the previous " year, and they must determine the case on the footing that " they were free." It is said that, the facts being all set out, the Court ought to have expressed an opinion on them, which would have bound the Commissioners. My Lords, the Commissioners are dealing in this case with a subsequent year, and it may be that having been told that they were wrong in thinking they were bound by the decision of the Recorder in the previous year, they will require some further information before they come to a final decision. I do not know, but I think that the consideration that this is possible affords additional reason for holding strictly to the limitation prescribed by the Act, that it is only on a point of law that you can go to the Court. Now I am not satisfied myself that we have got all the materials required for the decision of the point of law which is said to arise, namely, that on the facts as found there had been trading. The Court in its discretion has referred the matter back to the Commissioners to re-hear, and I am of opinion that that was, whether the most convenient course or not, the safest course to take, and, as they have taken it, I am not prepared to disturb the decision of the Court below.

Lord Atkinson.—My Lords, I concur, for the reasons given by my noble friends who have preceded me.

Lord Shaw of Dunfermline.—My Lords, I concur with your Lordship on the Woolsack.

Lord Sumner.—My Lords, I concur in the motion proposed by the Lord Chancellor, for the reasons he has given.

Questions put :—

That the Order appealed from be discharged.

The Not Contents have it.

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

The Contents have it.
