No. 617.—High Court of Justice (King's Bench Division).—4th March, 1926.

Court of Appeal.—12th and 13th May, 1926.

House of Lords.—4th, 5th and 24th May, 1927.

Reed (H.M. Inspector of Taxes) *v.* Seymour.[1]

Income Tax, Schedule E—Professional cricketer—Proceeds of benefit match—Whether profits of employment or gift.

The Committee of a Cricket Club in the exercise of their absolute discretion granted a benefit match to a professional cricketer in their service. The proceeds of the match, together with certain public subscriptions, were invested in the names of the Trustees of the Club and the income therefrom paid to the beneficiary in accordance with the rules of the Club. Subsequently the investments were realised and the proceeds paid over to the beneficiary who applied them with the approval of the Trustees in purchasing a farm.

An assessment to Income Tax, Schedule E, was made upon him in respect of the proceeds of the benefit match other than the said public subscriptions, but this was discharged by the General Commissioners on appeal.

Held, *that the award of the proceeds of the benefit match to the cricketer was not a profit accruing to him in respect of his office or employment, but was in the nature of a personal gift and not assessable to Income Tax.*

Case.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts held on the twenty-third day of October, One thousand nine hundred and twenty-four, at Tunbridge Wells for the purpose of hearing appeals, James Seymour,

(1) Reported K.B.D., [1926] 1 K.B. 588; C.A., [1927] 1 K.B. 90; and H.L., [1927] A.C. 554.

Professional Cricketer (hereinafter called " the Respondent ") appealed against an assessment made upon him under Schedule E of the Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), in the sum of £939 16*s.* 0*d.* for the year 1920–21.

2. The following facts were admitted or proved :—

(*a*) The Respondent is a professional cricketer in the employment of the Kent County Cricket Club.

(*b*) During the year 1920 a match under the direction of the Kent County Cricket Club was played at Canterbury for the benefit of the Respondent and the net proceeds derived therefrom amounted to £939 16*s.* 11*d.* as shewn in the following account :—

	£	*s.*	*d.*
Gate money	1,568	3	0
Less Entertainment Tax, Ground and other expenses and Insurance	628	6	1
	£939	16	11

(*c*) A professional cricketer in the service of the Kent County Cricket Club is granted a benefit on the express understanding that he shall allow the proceeds of the benefit to be invested in the names of the Trustees of the Club during the pleasure of the Committee. The income derived from the proceeds invested is paid to the beneficiary. The invested sum has, however, always eventually been handed over to the professional cricketer when his career as a cricketer is over, or when he finds an investment (such as a share in a business or farm) of which the Trustees approve. The following is an extract from the Regulations for the Staff of the Kent County Cricket Club bearing on the point and in force at the time when the above-mentioned match was played :—

KENT COUNTY CRICKET CLUB.

Extract from
Regulations for the Staff.

Benefits and Tours.

" The Committee reserve to themselves an absolute and " unfettered discretion as regards Benefit Matches, " the collection of subscriptions in connection with " such matches, and dealing with the net proceeds " of such matches in any way they may think desirable " in the interest of the beneficiare. The Committee " also reserve the like discretion in regard to granting " permission to any player to go on winter tour and " in regard to dealing with remuneration receivable " by him on account of such tour."

(*d*) The net proceeds derived from the benefit match above mentioned together with certain other sums obtained by public subscriptions were invested by the Kent County Cricket Club during the year 1920 in the purchase of the following investments :—

Investment.	*Purchase Price.* £	*s.*	*d.*
£800 Corporation of London 5 per cent. Stock	672	2	0
£1,622 6*s.* 5*d.* Local Loans, 3 per cent. Stock	820	6	7
	£1,492	8	7

(*e*) Dividends on the above-mentioned investments were received by the Kent County Cricket Club less Income Tax deducted and were paid to the Respondent in the following amounts by cheques drawn by the Kent County Cricket Club on the dates mentioned, viz :—

	£	*s.*	*d.*
October 21st, 1921, Dividends on Corporation of London 5 per cent.	28	0	0
Local Loans 3 per cent. ...	27	8	6
	£55	8	6
October 21st, 1922, Dividends on Corporation of London 5 per cent.	29	0	0
Local Loans 3 per cent. ...	35	5	8
	£64	5	8
October 21st, 1923, Dividends on same Stocks	£67	12	2

(*f*) Certificates of deduction of Income Tax from the above-mentioned dividends were furnished to the Respondent by the Secretary to the Kent County Cricket Club and the Respondent preferred claims for repayment of Income Tax for the years 1921–22, 1922–23 and 1923–24 upon which claims he declared that the dividends on the above-mentioned investments formed part of his income for each of the years mentioned.

(*g*) During the year 1923 the above-mentioned investments were realised and the proceeds thereof amounting with the addition of certain other monies to £1,914 14*s.* 5*d.* were paid by the Kent County Cricket Club to the Respondent in two sums as follows :—

£1,492 0*s.* 0*d.* on 30th November, 1923.

£422 14*s.* 5*d.* on 10th December, 1923.

The benefit monies so realised were applied by the Respondent, with the approval of the Trustees of the Club, to the purchase of a farm.

The sole point at issue between the Respondent and the Crown is whether the Respondent is assessable under the Income Tax Acts in respect of the net proceeds amounting to £939 16*s*. 0*d*. derived from the benefit match above mentioned. The Respondent does not dispute that the net proceeds amounting to £939 16*s*. 0*d*. were actually realised from the benefit match in question, or that the whole of this amount has since been paid to him by the Kent County Cricket Club and it is not contended by the Crown that there is a liability to assessment in respect of that portion of the benefit monies paid to the Respondent which was obtained by public subscription.

3. It was contended by the Respondent :—

(*a*) That the net proceeds of £939 16*s*. 0*d*. derived from the benefit match above mentioned were in fact received by him from the funds of the general public and not from the funds of his employers, and that they were therefore not an emolument or profit appurtenant to his employment.

(*b*) That the net proceeds of £939 16*s*. 0*d*. awarded to him as above mentioned were a donation or gift and not assessable to Income Tax.

4. It was contended by the Inspector of Taxes (*inter alia*) :—

(*a*) That the profit amounting to £939 16*s*. 0*d*. derived from the benefit match in question had been awarded by the Kent County Cricket Club to the Respondent for services rendered by him as a professional cricketer in their employment.

(*b*) That the above-mentioned award of £939 16*s*. 0*d*. was a perquisite or profit accruing to the Respondent from, and by reason of, his employment as a professional cricketer.

(*c*) That the Respondent was assessable under Schedule E of the Income Tax Act, 1918, in respect of the sum of £939 16*s*. 0*d*. above mentioned.

(*d*) Alternatively that the said sum of £939 16*s*. 0*d*. was other annual profits or gains of the Respondent not charged under Schedule A, B, C, or E and not specially exempted from tax and that the Respondent was assessable in respect thereof under Schedule D 1 (*b*) of the Income Tax Act, 1918.

5. We, the Commissioners who heard the appeal, after due consideration of the facts and arguments submitted to us, were of the opinion that the contentions of the Respondent were correct. We therefore discharged the assessment. Whereupon the Inspector of Taxes expressed his dissatisfaction with the determination of the Commissioners as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to Section 149 of the Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), which Case we have stated and do sign accordingly.

6. There is no dispute as to the correctness of the amount or of the basis of computation of the said assessment, and the sole question for the opinion of the Court is whether the said sum of £939 16*s*. 0*d*. is a profit from the said employment of the Respondent within the meaning of Rule 1 of the Rules applicable to Schedule E or alternatively is an annual profit or gain of the Respondent within the meaning of Schedule D 1 (*b*).

CHARLES W. POWELL,
WM. MEWBURN,
J. WATSON,
J. BROMHEAD MATTHEWS,
FRANK D. DRAPER,
CHARLES W. CURSON,
} Commissioners.

Dated this 3rd day of July, One thousand nine hundred and twenty-five.

The case came before Rowlatt, *J*., in the King's Bench Division on the 4th March, 1926, when judgment was given against the Crown, with costs.

The Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. W. Monckton for the Respondent.

JUDGMENT.

Rowlatt, J.—These cases are always difficult to decide, and not the less so because it is very difficult in my judgment to draw a line between questions of law and questions of fact.

The present Respondent was a professional cricketer of the Kent County Cricket Club, and in the year 1920 the Club granted him a benefit. A match under their jurisdiction, as the Case found, was played at Canterbury for the benefit of the Respondent, and the net proceeds, as the Case states later, together with certain other sums obtained by public subscriptions, were invested by the Committee and dealt with as I will mention in a moment. One of the Regulations of the Club was that : " The " Committee reserve to themselves an absolute and unfettered " discretion as regards Benefit Matches, the collection of sub- " scriptions in connection with such matches, and dealing with " the net proceeds in any way they may think desirable in the " interest of the beneficiaire." Therefore it was a voluntary act entirely on the part of the Club to grant the benefit match and to encourage, as I suppose they did, the collection of subscriptions collateral to the match. Some subscriptions were collected in connection with the match, as the Case states, and were invested with the proceeds of the match. There may have been other subscriptions which were outside and never came under the

(Rowlatt, J.)

control of the Committee at all. Therefore the Committee were at liberty either to give him a benefit or not to give him a benefit, and to ask for subscriptions in connection with it or not to ask for them, and they had a completely free hand, when they got the money from those two sources, as to what they would do with it, subject to this, that it appears they ought to deal with it according to their own discretion in the interest of the beneficiary. They invested the gate money, and they invested so much of the subscriptions as came to their hands, in trustee securities, and for two years they paid him the interest, on which, of course, he paid Income Tax in the usual way by deduction, or got it back. Then he is assessed to Income Tax, and after the assessment apparently he retired from his profession, and these sums were employed by the Trustees in buying a farm which he wanted. Then the appeal came before the Commissioners, and the assessment did not extend to so much of the money as represented subscriptions, but only to so much as represented gate money. Under those circumstances it seems to me that the Inspector had two facts in the appeal which he was fortunate to have. I do not think either of them affects the case, but he was perhaps fortunate to have them. In the first place the money had actually been handed over before the appeal was heard, which makes the case look much better, of course, although what had to be decided was, whether the money was handed over or not, whether in 1920 a tax attached to these moneys. Secondly, by limiting his claim to the amount of the gate money and excluding the amount of the subscriptions, it may have been thought that the edge of criticism was just a little bit blunted. But it seems to me now that one has to decide this difficult question with regard to the position in 1920, and I frankly cannot see that there is any difference at all between the gate money and the subscriptions. The question is whether these were profits and gains made by this man in respect of his office. Of course the cases show quite clearly that payments may be voluntary payments, may not be made by the persons for whom he immediately works, but may be made by strangers, and so on. The question in every case is whether it is earned in his office or is in the nature of a donation to him personally, perhaps not unconnected with the circumstance that he has served in the office—which, as Lord Justice Younger said(1), is a *sine qua non*—perhaps arising out of the circumstance that he served in that office and people had acquired an admiration for him in respect of that office. But is it in the nature of a personal gift, or is it remuneration? I take it that is the question.

Now the argument for him is that this is simply a testimonial, and it is a testimonial which ought to be considered as a personal gift and not as remuneration, and what is referred to is

(1) In Cowan *v.* Seymour, 7 T.C. 372, at p. 384.

(Rowlatt, J.)

the language of Lord Loreburn, the Lord Chancellor, in *Cooper* v. *Blakiston*, 5 T.C. 347, at page 355, that is to say, one of the Easter offerings cases. The Lord Chancellor says: " Where a " sum of money is given to an incumbent substantially in respect " of his services as incumbent, it accrues to him by reason of his " office. Here the sum of money was given in respect of those " services. Had it been a gift of an exceptional kind, such as a " testimonial, or a contribution for a specific purpose, as to " provide for a holiday, or a subscription peculiarly due to the " personal qualities of the particular clergyman, it might not " have been a voluntary payment for services, but a mere " present." Therefore the Lord Chancellor is saying that if it had been a gift of an exceptional kind such as a testimonial, it might not have been a voluntary payment, but a mere present. It seems to me that this is a testimonial, of which it must be properly said that it is a mere present. I think that there are a good many circumstances which lead me to that conclusion, which is the conclusion the Commissioners have come to, because that is what it amounts to. To begin with, this is a very large sum, and certainly of an exceptional kind in that respect; it is also exceptional in that it only happened once in a career. It was a very large sum. This sum was about £2,000 altogether, and the man's earnings would only be £200 or £300 a year. It is not that he is deserving of further wages, or that anybody thinks he is underpaid. It is because here he is, a professional of a well known Club, a hero in a very great many people's eyes, a valiant cricketer, and so on, and this quite exceptional sum, an endowment really, is got together for him. Now I do not say that that is conclusive at all. It makes it look like a capital sum, if I may use the expression, but of course I am not deciding it upon that ground, because a man may earn as income in the year what clearly he will treat as a capital sum when he has got it. I do not decide it upon those grounds, but that is one of the things to look at when you are asking whether this is really an increment of his earnings or a gift. It is a very large and exceptional sum, given on quite an exceptional occasion. That is one thing. There is another thing. He was not to get it. When the Committee said: " You may have a benefit and " a collection in connection with it ", it was clear from the regulations that he was not to finger the money, but they were to have it and to invest it at their own discretion, though for his benefit, and they did invest it and keep it till he retired, and then they bought a farm with it. Now that again by itself does not decide the case, because a man may perfectly well devote by agreement to a trust of this kind, money which he undoubtedly is going to receive by way of annual profits, as Lord Justice Mathew pointed out in the case of *Bell* v. *Gribble*[1]. So I do not say that that decides it, but I do think that is another

(1) 4 T.C. 522.

(Rowlatt, J.)

circumstance which you can look at to say, is it really his earnings, or is it something exceptional in the nature of a gift? There is a third thing, and that is the subscriptions. As I said just now, the Inspector has not brought in the subscriptions, for some unknown reason. He seemed to shy at the subscriptions, but I think they are precisely the same. The benefit is just a form of appealing to the public. Come to this match, it is " Seymour's Benefit "—and so on, and they enjoy a day's cricket and they enjoy it all the more because it is " Seymour's Benefit." There are those three circumstances in the case; the largeness of the sum, the circumstance that it is liable to this trust, and the circumstance that it is coupled with subscriptions. The idea is that it will be a means of his providing for himself when his time as a cricketer is over, and so on. All those things seem to me to point to the conclusion that this is not—I will not say an annual profit or gain, unless everybody will kindly understand what I mean by annual—that it is not an income profit or gain at all, it is really a donation, a testimonial of an exceptional kind, and a mere present, such as the Lord Chancellor is pointing out in his judgment in the case of *Cooper* v. *Blakiston*.(1)

Therefore, under those circumstances, I think the Respondent is entitled to retain his decision. If it is a question of fact I have not differed from the Commissioners on the question of fact. If it is a question of law, I think they are right in law. The appeal will be dismissed with costs.

The Crown having appealed against this decision the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Warrington and Sargant, *L.JJ.*) on the 12th and 13th May, 1926. On the latter day judgment was delivered in favour of the Crown with costs (Sargant, *L.J.*, dissenting), reversing the decision of the Court below.

The Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. W. Monckton for the Respondent.

JUDGMENT.

Lord Hanworth, M.R.—In this case we have to decide a point which is in its nature difficult, and not less so because it wears an appearance of hardship in each particular case.

By the Income Tax Act of 1918, Schedule E, a man who is in enjoyment of an employment of profit is taxed in respect of the employment of profit, and " tax under this Schedule shall be " annually charged on every person exercising an employment of

(1) 5 T.C. 347.

(Lord Hanworth, M.R.)

" profit mentioned in this Schedule in respect of all salaries, fees, " wages, perquisites or profits whatsoever therefrom." That word " therefrom " is a slight variation from the old Section which stood before the Consolidating Act of 1918 came into force, the words previously being " profits by reason of his office." We have now to consider as taxable " profit whatsoever " from the office which is an employment of profit.

A number of cases have been decided upon these words and on the question of the chargeability of persons holding an employment of profit. The sums that are received in the course of that employment of profit of course vary very largely in their nature, but in the case of *Herbert* v. *McQuade*(1), [1902] 2 K.B. 631, Lord Collins, then Master of the Rolls, at page 649 laid down what is the test as to whether a payment falls to be charged or not. " Now that judgment," he says, " is certainly " an affirmation of a principle of law that a payment may be " liable to Income Tax although it is voluntary on the part of the " persons who made it, and that the test is whether, from the " standpoint of the person who receives it, it accrues to him in " virtue of his office; if it does, it does not matter whether it " was voluntary or whether it was compulsory on the part of the " persons who paid it." The test, therefore, shortly put is: Does the sum accrue to the subject in virtue of his office? If it does, it is taxable.

That test has received very remarkable testimony of approval. It is approved in *Cowan* v. *Seymour*(2) by Lord Justice Atkin and the other members of the Court, and it also received approval from Lord Justice Cozens Hardy in *Poynting* v. *Faulkner*(3), and, indeed, in no case that I know of has that test been in any way altered or varied, still less differed from.

On the other side it has been said in *Poynting* v. *Faulkner*, in 5 Tax Cases at page 157, that in considering whether a person receives a sum in the course of or as one of the profits of the office or whether he receives it from his personal qualities only, it is fair to say that " the object is that the person who is fit " to discharge properly the functions of a minister to a particular " congregation should receive an adequate return for his " services in that charge. . . . There may be other balancing " circumstances which would make the personal qualifications of " the minister so predominant over considerations for the con- " gregation that, in a particular case, if you had a series of facts " pointing all that way, they might suffice to turn the balance in " the direction of making it a purely personal gift to the minister, " and not part of the stipend in return for the services to be " rendered by him." I have quoted that passage on the other side because I think it may be added to the test laid down by Lord Collins. If, in fact, he does receive it while he is employed

(1) 4 T.C. 489, at p. 500. (2) 7 T.C. 372. (3) 5 T.C. 145.

(Lord Hanworth, M.R.)

and in the course of his employment it would be chargeable unless there are considerations pointing in the direction of making it a purely personal gift and not part of the stipend in return for the services to be rendered by him. Perhaps lastly I may say that in these cases, as in all other Income Tax cases, one has to regard the substance of the matter. In the case before the House of Lords in *Blakiston* v. *Cooper*(1), Lord Loreburn used the word " substantial " and again applied the test—what you choose to call it matters little; the point is, what was it in reality? With those cases to guide me I approach the facts in the present case.

James Seymour, the Respondent, is a cricketer of standing and position and some celebrity. He was employed as a professional cricketer by the Kent County Cricket Club, and he received a salary. After he had been in their employ for some years, with the approval and under the auspices of the County Club, a match was played at Canterbury for what is known as the benefit of the Respondent. The result of that match was that a large sum—over £1,500—was received as gate money. The match was played under the auspices and I may add the directions of the County Cricket Club, and from that sum fell to be deducted the expenses of the Entertainment Tax, the insurance—I suppose against a wet day—and a number of other expenses which totalled to the large sum of £628, leaving a sum of £939 which was the net sum payable to James Seymour. One of the Regulations which apply to the employment of the staff is: " The Committee reserve to themselves an absolute " and unfettered discretion as regards Benefit Matches, the " collection of subscriptions in connection with such matches, " and dealing with the net proceeds of such matches in any way " they may think desirable in the interest of the beneficiare." Those last words connote the fact that the money has to be handed over eventually to the cricketer and it is found in the Case that the Committee of the Club assist the beneficiary by devoting the proceeds to the benefit of the cricketer with due discretion. It is further found in the Case: " The income " derived from the proceeds invested is paid to the beneficiary. " The invested sum has, however, always eventually been " handed over to the professional cricketer when his career as a " cricketer is over, or when he finds an investment (such as a " share in a business or farm) of which the Trustees approve ", and that the whole of this sum which was realised has since been paid to him by the County Club. He has utilised the sum or some portion of it in the purchase of a farm. The whole scheme of allowing a benefit and taking care of the proceeds until a suitable investment is found is adopted by the Committee in order that the full advantage may be obtained by the beneficiary

(1) 5 T.C. 347.

(Lord Hanworth, M.R.)

in the most prudent manner of providing for him when his cricketing days are done, or when he wishes for any part of the year to devote himself to some business or employment which may inure to his benefit.

Upon those facts it was contended on behalf of the Respondent that the net proceeds derived from the benefit match were in fact received by him from the funds of the general public and not from the funds of his employers and, therefore, they were not an emolument or profit appurtenant to his employment.

It appears to me that that contention, if accepted, as I understand it was, by the Commissioners, carries the Respondent no distance at all, because applying the test in *Herbert* v. *McQuade*[1], it does not matter whether the sum was voluntary or whether it was compulsory on the part of the persons who paid it. That finding, therefore, if accepted, does not in any way relieve the Respondent from the charge to tax. Then it was contended—and this contention was also accepted—that the net proceeds were a donation or gift. But again that does not answer the question because the donation or gift may have been received *virtute officii* as in the case of the Easter offerings which have been given to the incumbents of benefices and which have been declared in the cases which have been cited to us to be taxable. It appears, therefore, that those two contentions are not sufficient to render the Respondent immune from tax, and one has to come back to consider what is the substance of the matter. At the time when the benefit was given there were some subscriptions sent in by the public, but the Crown have not contended that there was a liability to assessment in respect of that portion of the benefit monies obtained by public subscription, because, as I understand, the Crown recognise the distinction which may be found in the particular cases, and they hold that with regard to subscriptions they may be dealt with or considered to fall outside the sum chargeable, because in respect of them there were facts pointing in one direction which made it purely a personal gift to the recipient. The distinction which is drawn between the subscriptions and the proceeds of the benefit match seems neatly to illustrate the line which is to be drawn between sums which fall on one side or the other, but after recounting the facts as I have done and giving consideration to the substance of the matter and bearing in mind the Regulations which I have read, it appears to me that this sum of £939 cannot be considered to be an extraneous addition to Seymour's wages or a fortuitous donation, but an addition arranged by and through his employers at a time when they held that a benefit match should be allowed to him and contemplated as a possibility in the course of his employment in the very terms which regulated the employment of their staff and of the Respondent among them.

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(1) 4 T.C. 489.

(Lord Hanworth, M.R.)

For these reasons it appears to me that this sum of £939 falls within the principle which has been laid down in *Herbert* v. *McQuade*(1), and the other cases, and it is taxable just as any other sums are taxable which are received in the course of employment and are profits arising therefrom.

For these reasons it appears to me the learned Judge's judgment cannot stand and the appeal must be allowed with costs.

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

In the year of assessment, 1920–21, the Respondent, a professional cricketer in the service of the Kent County Cricket Club became, by virtue of the Regulations of the Club—the Regulations between the Club and its staff—and of the exercise in his favour of a certain discretion given to the Club by those Regulations, entitled to have the net proceeds of the gate money of a match which was played for his benefit applied for purposes exclusively in his interest and for his benefit. As a matter of fact the money in question was actually paid to him, and speaking for myself, I think that the effect of those Regulations is according to well-known principles of law to create an absolute ownership in the man in whose favour the benefit match is held, and for this reason it seems to me to fall within the principle that if a trust is declared for purposes which are exclusively for the benefit of a particular individual and there is no trust for other people in respect of monies not so applied, that this is in effect a trust for the man absolutely and it would be impossible to impose on that absolute interest any restraint upon alienation or anything which would in any way restrict his absolute ownership thereof, the important fact, of course, being that, as I have already said, there is no trust for anyone else either as to any portion not applied for the man's benefit under the discretion given to the Club nor is there any trust over in case the sum should by virtue of any alienation, voluntary or involuntary, become payable to any other person.

Now, the circumstances and the facts were these. The man was, as I have said, a professional cricketer in the service of the Club. He was, of course, in receipt of a salary, though the amount of that salary is not found by the special Case. The Regulations which are entitled " Regulations for the Staff " contain this provision : " The Committee reserve to themselves " an absolute and unfettered discretion as regards Benefit " Matches, the collection of subscriptions in connection with " such matches, and dealing with the net proceeds of such " matches in any way they may think desirable in the interest " of the beneficiare." It seems to me plain from those Regulations that when a man enters the service of the Club he has the expectation that if the Club think fit they will at some time or

(1) 4 T.C. 489.

(Warrington, L.J.)

another allow him to take the net proceeds of one or more—probably one—benefit match. Now, in fact, this particular match took place in the year 1920–21, the year of assessment. The total gate money was £1,568 3*s.* 0*d.*; from that was deducted £628 6*s.* 1*d.* for Entertainment Tax, ground and other expenses and insurance, leaving a net balance of £939 16*s.* 11*d.*, and after an interim investment of the funds, the income of which was paid to the taxpayer, ultimately in the year 1923 those investments were realised and the proceeds were paid to the Respondent, the taxpayer. Now, under those circumstances is that sum, the net proceeds of the gate money—for the question is confined to that—chargeable with tax in the year of assessment? The law on this subject was laid down as I venture to think once for all in the judgment of Lord Collins, Master of the Rolls, in *Herbert* v. *McQuade*(1), [1902] 2 K.B. 631. Now, there are two passages in the judgment of the Master of the Rolls which I think it is desirable to refer to. After stating generally the circumstances of that particular case which it is unnecessary now to go into, the learned Master of the Rolls says this(2): "If, as the Respondent contended, it was in fact a "gift personal to himself, I do not think that it would fall "within Schedule E; if, on the other hand, it accrued to him by "virtue of his office of incumbent, the Respondent himself could "hardly dispute his liability." And then later on in the famous passage on page 649(3) he states what he thinks is the proper test to apply in such cases. After referring to a judgment in the Scottish Court, he proceeds in these terms: "Now, that judg-"ment, whether or not the particular facts justified it, is "certainly an affirmation of a principle of law that a payment "may be liable to Income Tax although it is voluntary on the "part of the persons who made it, and that the test is whether, "from the standpoint of the person who receives it, it accrues to "him in virtue of his office; if it does, it does not matter whether "it was voluntary or whether it was compulsory on the part of "the persons who paid it." That seems to me to be the test and if we once get to this that the money has come to or accrued to a person by virtue of his office it seems to me that the liability to Income Tax is not negatived wholly by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it.

Now did this money come to the Respondent by virtue of his office? Looking at the Regulations, I am satisfied that from that alone one must come to the conclusion that it did come to him by virtue of his office. It is something which obviously was contemplated as a possibility amongst the terms under which he was serving the Kent County Cricket Club, but more than that it seems to me that this came to him not merely by virtue of his

(1) 4 T.C. 489. (2) *Ibid.* at p. 493. (3) *Ibid.* at p. 500.

(Warrington, L.J.)

office, because it was something which he might expect to get from his office, but it came to him from his employers, when one comes to think of what really happened. If this match had been held without the exercise by the Club of their discretion in this man's favour by making it a benefit match, the gate money would have been the property of the Club and would have gone into their coffers. It is quite true that the gate money which would have been taken at the match if it had not been a benefit match may have been less in amount, but that seems to be quite immaterial. They were under no obligation to give the benefit. They were under no obligation to give him any portion of the gate money that day, and it seems to me by making a match a benefit match it was their act which gave him the right to receive this gate money. That seems to me to be one extremely important and perhaps the most important factor of all, and it is that fact which distinguishes the gate money from the subscriptions which were gathered outside. As regards those subscriptions, the Club never had any interest in them at all. They were, as it seems to me quite properly treated by the Crown as falling on the other side of the line, and as donations purely personal given by outsiders to the man for whose benefit they were given.

That seems to me to be the crucial point in this case that this was money given to him by the will of his employers, and in a manner contemplated by the actual terms of his employment as shown by the Regulations. But then it is said that one must look at it in another way, and great reliance is placed upon the case of *Cowan* v. *Seymour*(1), [1920] 1 K.B. 500. In my opinion that case was distinguished from the present case by two facts. First the employment in the present case had not terminated. The man became entitled to this money in the year 1920, and as far as appears by the Case he is still in the service of the Club, and he certainly was in service with the Club so late as 1923 when the money was paid over. That is one point on which *Cowan* v. *Seymour* is distinguishable. The other point on which it is distinguishable is that in that case the money was paid, not by the employer, but by persons other than the employer, for whose benefit it was conceived the man in question had been acting, the facts being these : The question arose on the voluntary liquidation of a company. The taxpayer was appointed the liquidator in that voluntary liquidation and, as liquidator, he was acting in the name of and on behalf of the company; but when the liquidation was concluded there was a surplus of assets over liabilities and that surplus belonged not to the company who were his employers but to the shareholders, and it was by a vote of the shareholders that that money was paid over to its liquidator. The Master of the Rolls, Lord

(1) 7 T.C. 372.

(Warrington, L.J.)

Sterndale, in giving his judgment in favour of the taxpayer in that case and finding that it was a purely voluntary testimonial or donation by the shareholders to him lays stress on those two facts. What he says is this(1) : " Looking at those facts as so " stated I find, as I have said, the very important factor of the " office having terminated, and the other almost equally " important factor that the payment was made, not by the " employer but by other persons, though in this case perhaps " that is not quite so important, as there is a close connection " between the employer, the company, and the persons who " gave the money." Now in this case that connection does not exist. There is no close connection between the Club, who are the employers, and the public who give the money. There is no connection at all. The public are quite independent of the Club. The learned Judge has rested his judgment in favour of the Respondent on three circumstances. The three circumstances are these : The largeness of the sum ; the circumstance that it is liable to this trust ; and the circumstance that it is coupled with subscriptions. With all deference to the learned Judge I cannot for myself see that any of those circumstances is in the least material to the question we have to determine, namely, whether this sum came to him, as the wording is in the Act, " from his employment." How does the largeness of the sum affect that question? It is a large sum in comparison with his salary I agree. I admit that. Although the Case does not state what the amount of his salary is, it is £250. But how can that have any bearing on the question of whether the sum comes to him, having regard to the other facts, from his employment?

The second circumstance which the learned Judge refers to is that it is liable to this trust. I quite admit, if it be necessary to admit it (though I think it would be contrary to the law), that this is a trust for certain purposes which do not involve an absolute right of the Respondent to receive the money. Even so, I cannot understand how the fact that it is subject to that trust makes whatever he gets out of it any the less derived from his employment. As a matter of fact of course he received the whole of it and for the reasons which I have already stated I think he was entitled to receive the whole of it.

The third circumstance is that it is coupled with subscriptions. If that has any materiality at all it seems to me that the result of that is to distinguish this particular sum of money now in question from the amounts given by subscriptions, and to emphasise the fact that the one sum is derived from the employment and the other sum is not. With all deference to the learned Judge I cannot see, speaking for myself, that any of those circumstances ought to have led him to the conclusion at which

(1) 7 T.C. at p. 380.

(Warrington, L.J.)

he arrived that it was a mere donation or testimonial to this man from persons with whom he had made himself popular or who were favourable to him.

I think the appeal must be allowed and that the Crown is entitled to tax the taxpayer in respect of this sum of money as in the year of assessment, namely, 1920–21.

Sargant, L.J.—In this case I have the misfortune to differ from the other two members of the Court and to consider that the judgment of the learned Judge ought to be affirmed. My difference is not a difference as regards the law at all, but it is a difference as to the application of the particular facts of this Case to what I conceive to be the settled rule of law. I accept altogether the test that was laid down by the then Master of the Rolls in the case of *Herbert* v. *McQuade*(1), that you have to consider whether the sum in question accrues to the subject in virtue of his office; but in considering that you have to take into account what was said by Lord Justice Stirling on page 650. He says this(2): "I think that a profit accrues by reason of an "office when it comes to the holder of an office as such—in that "capacity—and without the fulfilment of any further or other "condition on his part; and what we have to determine is "whether the sum in question does so come to the holder of this "office." We have to consider whether this comes to Mr. Seymour merely as a member of the Kent County Eleven or whether it comes to him by way of a personal gift in recognition of the brilliance of his performances in the past. The learned Judge put it, in a sentence which has been accepted by the Crown as a correct statement of the law, in these terms: "Is it in the "end"—that is of course after weighing all the circumstances—"a personal gift, or is it remuneration?" The case in favour of the Crown has been rested mainly upon this, that there is a usual or settled practice of the Cricket Club, as shown by the statement in paragraph 2 (*c*) of the Case, and in the extracts which have been printed of the Regulations, as to benefits given to the staff—a settled practice to show that there is some claim or title on the part of the cricketer to expect and receive a donation of this kind. But in my judgment these Regulations merely show that a benefit is given on occasions sufficiently numerous, when the whole number of cricketers who receive them is considered, to render it advisable that there should be some ordinary or usual practice of the Club with regard to them. It would be a pity if, on each individual occasion, the Club had to consider and to formulate the conditions on which a gift should be made. I do not think that those Regulations show or indicate whether the proceeds of the benefit are in fact received or accrue to the recipient as part of his emolument or as a mere personal gift, and

(1) 4 T.C. 489. (2) *Ibid.* at p. 501.

(Sargant, L.J.)

the Regulations do make this at any rate perfectly clear, that whether a particular cricketer shall receive a benefit or not is absolutely and entirely in the discretion of the Club, and does not in any way follow necessarily from the fact that he has played in the County Eleven. It seems to me that those indications on which the Crown has relied are certainly not conclusive to show that the monies derived from the benefit are by way of extra remuneration and are not by way of a personal gift to the recipient.

Now let me deal with what appear to be the indications that the money is a personal gift. In the first place it is one exceptional sum. I do not think it was suggested that a cricketer has ever received two benefits. It is one quite exceptional sum, quite disproportionate to any ordinary remuneration, and apparently if not actually on the termination of the service, at any rate in expectation of that termination. I think that appears from paragraph 2 (*c*) of the Case where it is said: "The invested sum has, however, always eventually been handed "over to the professional cricketer when his career as a "cricketer is over, or when he finds an investment." In this case it was not actually on the termination of the cricketer's career, fortunately, but it was no doubt in view of the services that he had long rendered to the Club and the expected termination of them at no very distant date. This seems to me to be a circumstance which points very strongly to the money being by way of personal recognition, a testimonial, and not remuneration. But very great stress was laid upon one circumstance by Lord Sterndale in the case which has been referred to of *Cowan* v. *Seymour*(1). On page 509 he quotes from Lord Dunedin in a Scottish case: "Lord Dunedin has said 'I confess I have never "'been able to see how it can possibly be said to be in respect of "'his office, when the whole reason it was given to him was "'that he was no longer in the office'." The learned Master of the Rolls developed that in a passage which is too long to quote, on the rest of the page, and at the beginning of page 510, and then he summed it up in this way: "In the present case I "should certainly say that on the undisputed facts of the case "the payment was not a payment for services rendered, in the "true sense, nor a profit which accrued to the Appellant by "reason of his office, but was very much more in the nature of "a testimonial to him for what he had done in the past, while "his office, which had then terminated, was in existence." So that this circumstance that the payment is made, if not absolutely on the termination of the office, in expectation of such a termination, is a very strong indication that the gift is a personal one and does not accrue to the recipient by virtue of his office.

(1) 7 T.C. 372, at pp. 379 and 380.

(Sargant, L.J.)

Then there is the question of the second point, the amalgamation of the subscriptions with the net receipts from the benefit match. The subscriptions, of course, are clearly personal gifts. The Crown has not ventured—however wide the net has been thrown, and however small the mesh of which the net now appears to consist—to say that the subscriptions, which were given of course by personal admirers of the cricketer in recognition of brilliant play in the past, were something given to him merely because of his being a member of the Eleven; and in the same way, it does seem to me that the same remark applies to the payments that were made by the general public when they flocked to the match in larger numbers because they desired to express their recognition of the claims of the individual. It is clear to my mind that the Club were as much bound towards the public to hand over to the recipient the net proceeds from the particular benefit match, or to hold them for his benefit, as they were bound to hold for his benefit the actual subscriptions made by the particular admirers of the cricketer. In each case there was a definite obligation on the Club to hold for the benefit of the cricketer sums which had been provided by the public, partly by means of subscriptions and partly by means of their flocking to his benefit match, for the very purpose of their being so handed over.

Then comes a third circumstance, that under the Regulations the money was not to be handed over to him directly, but was to be used for his personal benefit. Now I do not in the least dissent from what has been said by Lord Justice Warrington as to the effect in law of the impressing of a trust in favour of any individual. It may be, I think it probably is, the case that, although the Regulations provided that discretion of this sort was entrusted to the Committee, yet nevertheless Seymour, being the only possible beneficiary under the trust, could have demanded to have the monies paid to him at once. It may very well be so, but that seems to me to have no bearing at all upon the question as to the object with which the moneys were subscribed or arose from the match. The fact that this trust, even if ineffectual, purported to be declared is a clear indication that the object of the donors was to secure for the cricketer personally, and by way of personal advantage, the sums which were going to be used by the Committee of the Club under those Regulations. It is not because the trusts are effective that I attach importance to them, but because they indicate that what is desired is the personal benefit of this particular individual.

From all the circumstances of the case—and I have referred to the main circumstances (though I have not put them in the same language) which mainly influenced the learned Judge—the Commissioners drew a conclusion of fact, and I think that conclusion of fact was this: If one looks at paragraph 5 and paragraph 3 (*b*) of the Case one sees they drew the

(Sargant, L.J.)

conclusion of fact that the net proceeds of £939 16*s.* 0*d.* awarded to him as above mentioned were a donation or gift and not assessable to Income Tax—and I think by that they must have meant that it came to him by way of a personal present and not merely by virtue of his office; and the learned Judge has drawn the same conclusion, and I draw it also. It appears to me that the main, the substantial reason why these moneys were to be paid to Seymour was, not because he had been a mere member of the Eleven and as part of an addition to what was given to him by virtue of his office, but as a personal present by way of recognition of the pleasure that had been afforded to the patrons of the Club and the general public who had flocked to see the play, by the brilliance of the particular individual cricketer's play.

I should like to say this—it seems to me to compare small things with great—that really this is very much like the cases where large sums have been voted to successful Generals on the conclusion of a great war. In such cases those sums could never have come to them at all, of course, unless they had been in the Army and had been employed as Generals. But that is not conclusive. In such cases the vote is made to them by way of a personal present—individual recognition of the separate individual services which those particular persons have rendered; and in my view it would be wrong to say that such sums were sums coming by virtue of the office and were not sums by way of personal individual gift, recognition of special personal qualities, or testimonials to the individual. In such cases it seems to me that the personal equation is the decisive matter, and not the mere fact that the individual holds a particular office.

I want to say just a few words about the authorities, because it seems to me that here the Crown are really claiming something quite beyond anything that has ever been claimed by them in any decided case. Take those four cases cited to us, where the Crown was successful: *In re Strong*(1); *Herbert* v. *McQuade*(2); *Poynting* v. *Faulkner*(3); and *Blakiston* v. *Cooper*(4). All those were cases of systematic and recurrent augmentation of the remuneration of ministers of religion, by Christmas gifts, Easter offerings or augmentation funds. They were recurrent; they were made at times when the sums paid could be and no doubt were used by way of extra maintenance for those ministers of religion in addition to their regular salaries; and they were all cases in which it was found, after an examination of the facts, that the object was to benefit the office and not to benefit the particular individual. The sums were awarded to them, not after an inquiry into their particular personal need or otherwise; they were awarded to them quite irrespective of that, and that was considered a very important element in the determination of the case. But in the case of *Turton* v. *Cooper*, 5 T.C. 138, (which immediately preceded that case of *Poynting* v.

(1) 1 T.C. 207. (2) 4 T.C. 489. (3) 5 T.C. 145. (4) 5 T.C. 347.

(Sargant, L.J.)

Faulkner(1), and which was in no way dissented from in it, where there had been a gift to the curate, I think it was of £50, because he had done certain special work and because he was in very low water—I think the personal poverty was the main element in determining the gift in that case—it was held that the gift was not one which was taxable. Therefore it appears to me that, when you once get to a case where the personal element is the main reason of the gift, and the holding of the office is merely an occasion on which the gift can be made, in such cases it has been recognised that the liability to tax depends upon the circumstance that the gift was made, not to the individual as a personal present, but to the holder of the office. Again in *Blakiston* v. *Cooper*(2), which was a case where on all the facts the recipient was held taxable, Lord Loreburn points out quite clearly in the House of Lords in his judgment that a gift of an exceptional kind, such as a personal testimonial, is necessarily exempt from the general rule. *Blakiston* v. *Cooper* was, as I have said, a case where there was a recurrent augmentation, and therefore it was held that the sum in question was liable to Income Tax, but Lord Loreburn pointed out quite clearly that the decision did not apply to a case of an exceptional gift by way of testimonial or personal recognition.

Then, to mention again that case of *Cowan* v. *Seymour*(3), to which I have already referred quite shortly, there is there a very distinct recognition of the non-liability to tax where the gift is, as there, a gift at the termination of an office and in respect of some definite personal suitability or personal services of the recipient, apart from the mere holding by him of the office. It seems to me here that, although it is quite true that in this case the opportunity of making this gift to Seymour would not have arisen had he not been in the employment of the Kent County Cricket Club, yet the real reason why this gift was made to him was because of his personal position as a brilliant cricketer who was coming towards the termination of his career, and to whom it was thought suitable that some personal gift or testimonial should be rendered to the extent to which his personal admirers thought fit to render it; and in my judgment this is a case where the gift was not, as regards its main and substantial reason, a gift to him in virtue of his office, but a gift to him in respect of his special personal qualifications and by way of individual gift.

In my judgment, therefore, the appeal should be dismissed, but of course that has no effect.

Lord Hanworth, M.R.—The appeal will be allowed with costs and the assessment confirmed.

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(1) 5 T.C. 145. (2) 5 T.C. 347. (3) 7 T.C. 372.

Notice of appeal having been given against the decision in the Court of Appeal, the case was heard in the House of Lords before Viscount Cave, *L.C.*, Viscount Dunedin, and Lords Atkinson, Phillimore and Carson, on the 4th and 5th May, 1927, when judgment was reserved. On the 24th May, 1927, judgment was given against the Crown with costs (Lord Atkinson dissenting), reversing the decision of the Court of Appeal and restoring the decision of the King's Bench Division.

The Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. W. Monckton for the Appellant.

JUDGMENT.

Viscount Cave, L.C.—My Lords, in this case James Seymour, a professional cricketer, appeals against a judgment of the Court of Appeal in England by which, differing from the Commissioners for the General Purposes of Income Tax and from Mr. Justice Rowlatt, they held the Appellant liable for Income Tax in respect of the net proceeds of a benefit cricket match.

In the year 1920 the Appellant, who had been for many years in the employment of the Kent County Cricket Club at a salary and had played fine cricket, was allowed by the Club to have a benefit match, the match selected being the Kent *v.* Hampshire match played in the Canterbury week. The Club's Regulations for the staff contained the following provision: "Benefits and "Tours.—The Committee reserve to themselves an absolute and "unfettered discretion as regards Benefit Matches, the collection "of subscriptions in connection with such matches, and dealing "with the net proceeds of such matches in any way they may "think desirable in the interest of the beneficiare. The Committee "also reserve the like discretion in regard to granting permission "to any player to go on winter tour and in regard to dealing with "remuneration receivable by him on account of such tour." The gate money received at the match in question, less some expenses, amounted to £939 16*s.* 11*d.*, and this sum, together with other sums obtained by public subscription, was invested by the direction of the Committee in certain securities, of which the income (less tax) for the years 1921, 1922 and 1923, was paid to the Appellant. In the year 1923 the securities were realised and the proceeds, amounting (with the addition of certain other moneys) to £1,914 14*s.* 5*d.*, were paid to the Appellant with a view to their being applied, with the approval of the Committee, to the purchase of a farm. Thereupon the Respondent, the Inspector of Taxes, made an assessment upon the Appellant under Schedule E of the Income Tax Act, 1918, in the sum of £939 16*s.*, being the net gate money received from the benefit match, for the tax year 1920–21; and the question for your Lordships to determine is whether this assessment was valid.

(Viscount Cave.)

In considering this question, I will assume that the Appellant was assessable (if at all) under Schedule E of the Act. It would appear that in the year 1920–21 any assessment upon him must have been made, not under Schedule E, but under Schedule D (see *Great Western Railway* v. *Bater*(1), [1922] 2 A.C.1); but the law was altered by the Finance Act, 1922, and it has not been disputed that the assessment in the year 1923, if allowable at all, was properly made under Schedule E.

The question, therefore, is whether the sum of £939 16*s.* fell within the description, contained in Rule 1 of Schedule E, of "salaries, fees, wages, perquisites, or profits whatsoever there-"from" (i.e., from an office or employment of profit) "for the "year of assessment," so as to be liable to Income Tax under that Schedule. These words and the corresponding expressions contained in the earlier Statutes (which were not materially different) have been the subject of judicial interpretation in cases which have been cited to your Lordships; and it must now (I think) be taken as settled that they include all payments made to the holder of an office or employment as such—that is to say, by way of remuneration for his services, even though such payments may be voluntary—but that they do not include a mere gift or present (such as a testimonial) which is made to him on personal grounds and not by way of payment for his services. The question to be answered is, as Mr. Justice Rowlatt put it, "Is it in the end a "personal gift or is it remuneration?" If the latter, it is subject to the tax; if the former, it is not.

Applying this test, I do not doubt that in the present case the net proceeds of the benefit match should be regarded as a personal gift and not as income from the Appellant's employment. The terms of his employment did not entitle him to a benefit, though they provided that if a benefit were granted the Committee of the Club should have a voice in the application of the proceeds. A benefit is not usually given early in a cricketer's career, but rather towards its close, and in order to provide an endowment for him on retirement; and, except in a very special case, it is not granted more than once. Its purpose is not to encourage the cricketer to further exertions, but to express the gratitude of his employers and of the cricket-loving public for what he has already done and their appreciation of his personal qualities. It is usually associated, as in this case, with a public subscription; and, just as those subscriptions, which are the spontaneous gift of members of the public, are plainly not income or taxable as such, so the gate moneys taken at the benefit match, which may be regarded as the contribution of the Club to the subscription list, are (I think) in the same category. If the benefit had taken place after Seymour's retirement, no one would have sought to tax the proceeds

(1) 8 T.C. 231.

(Viscount Cave.)

as income ; and the circumstance that it was given before, but in contemplation of, retirement does not alter its quality. The whole sum—gate money and subscriptions alike—is a testimonial and not a perquisite. In the end, that is to say, when all the facts have been considered, it is not remuneration for services, but a personal gift.

I am of opinion that this appeal should succeed, and that the order of Mr. Justice Rowlatt should be restored with costs here and below, and I move your Lordships accordingly.

Viscount Dunedin.—My Lords, I concur in all that my Lord has said. I have had the advantage of reading the opinion which is about to be delivered by my noble friend, Lord Phillimore, and I concur entirely with his exposition and analysis of what are generally known as the Easter Offerings cases.

Personally I cannot help thinking that the whole trouble in this case has rather arisen from the fact that, although of course the controversy necessarily turned upon the particular words of Schedule E, yet, at the same time, I think it was a little forgotten to pay attention to the warning which I remember Lord Macnaghten gave us years ago when he said : " My Lords, I wish to " remind you that Income Tax is a tax upon income." When I think of this little nest egg—which, of course, paid Income Tax as an investment and which, now that it has taken the form of a farm, will pay Income Tax under Schedule A—being treated, the whole sum, as income, honestly, had it not been for the fact that honourable Judges, whose opinions I respect, have come to another conclusion, I would have thought the contention was quite preposterous. I therefore concur in the Motion which has been made.

Lord Atkinson.—My Lords, I regret that I am unable to concur with the judgment which has just been delivered by my noble friend on the Woolsack, the Lord Chancellor, and I further regret that I am unable to concur with the judgments, given and about to be given, of my other noble friends. In those circumstances, I must, of course, assume that the conclusions at which I have arrived are erroneous, though I cannot feel convinced of it. I have this consolation, however, that if I err, I err in good company, namely, in that of the Master of the Rolls and of Lord Justice Warrington, as he was when he delivered judgment in this case in the Court of Appeal.

In my view, this latter judgment, especially, appears to be sound, logical, sustained by the facts proved and consistent with the authorities cited in support of it. What has given me most trouble in the case is this—the bald, meagre and sketchy way in which the facts of the case have been stated.

It is rightly stated in the Case that the sole question for decision is whether the large sum of £939 16*s.* 11*d.* derived by Seymour, the professional cricketer, from the benefit match played

(Lord Atkinson.)

on the cricketing field of the Kent County Cricket Club, accrued to him, or came to him from his employment as the professional cricketer of this Club, or was a gift not earned by him by the discharge with special efficiency of his duties as professional cricketer to the Club, but independently of the discharge of those duties, unconnected with them, nor in any way springing from them. Accordingly, one would, I think, suppose that in order to determine this question, the first thing to be fully ascertained would be what were the terms upon which Seymour was hired ; what were his duties, what were the functions which he discharged upon the occasion of a benefit match being held ; did he himself play in it ? Did he in any way select the competing teams, or aid in the management of the fête, as it may well be styled ?

The only statement contained in the Case at all touching upon these matters is the following : " 2. (c) A professional cricketer in " the service of the Kent County Cricket Club is granted a benefit " on the express understanding that he shall allow the proceeds of " the benefit to be invested in the names of the Trustees of the " Club during the pleasure of the Committee. The income " derived from the proceeds invested is paid to the beneficiary. " The invested sum has, however, always eventually been handed " over to the professional cricketer when his career as a cricketer " is over, or when he finds an investment (such as a share in a " business or farm) of which the Trustees approve. The following " is an extract from the Regulations for the Staff of the Kent " County Cricket Club bearing on the point, actually in force when " the above-mentioned match was played." The Regulation is headed " Benefits and Tours " and runs thus : " The Committee " reserve to themselves an absolute and unfettered discretion as " regards Benefit Matches, the collection of subscriptions in " connection with such matches, and dealing with the net proceeds " of such matches in any way they may think desirable in the " interest of the beneficiare. The Committee also reserve the like " discretion in regard to granting permission to any player to go " on winter tour and in regard to dealing with remuneration " receivable by him on account of such tour." This Regulation may be fully adequate to protect the Committee from any legal obligation towards their professional cricketer being imposed upon the Club or the Committee in respect of the matters named, but it is quite inadequate to prevent that cricketer from having a hope or an expectation, or a formed belief that he had a chance if he discharged his duties well and to the satisfaction of his employers of being given the prize of a benefit match. For all that appears, he owed no duties to the Kent Club or to its Committee save those which sprang from his position of professional cricketer. If he got the reward of a benefit match by reason of the efficient discharge of those duties, it must, I think, in the absence of all evidence of the Committee being influenced by any other motive, object, or aim, be held that this reward accrued to

(Lord Atkinson.)

him by reason of the office or employment he held within the meaning of Schedule E of the Act of 1842, or came to him from that employment within the meaning of Schedule E, Rule 1, of the Income Tax Act of 1918.

I cannot find anything in the Case suggesting that the Club, or its Committee, had any motive, object or aim in giving the benefit of this match to Seymour, their officer, other than to reward him for the efficient discharge of the duties of his post.

It is here that the bald, incomplete and unsatisfactory provisions of paragraph 2 (*c*) of the Case Stated cause embarrassment. Surely it would have been easy to have ascertained from Seymour or the Committee, what, if any, was the agreement made with, or assurance given to, him as to the result of holding a benefit match, or whether it was the usual practice of the Club to permit any professional cricketer they had in their service to obtain this benefit if he discharged the duties of his post well, though admittedly it was a matter entirely in their discretion and they were not bound to do so. Suppose, for instance, that when Seymour was originally appointed, the Committee or Secretary of the Club said to him, "The Committee have absolute powers to "let you have the advantage of a benefit match or not just as they "please. Their discretion is absolute and unfettered, but if you "discharge the duties of your post to their entire satisfaction, "they may possibly be inclined to let you have the benefit of "such a match. They make no promise whatever to do so." It certainly would appear to me that if that remark or any equivalent remark had been made at the time suggested, it ought to be held that Seymour might naturally and reasonably anticipate that he would have a fair chance of obtaining the benefit of a match conferred upon him by his employers, if he discharged the duties of his post to their entire satisfaction. A grave injustice might be done to an employee or to his employer by the omission to elicit what took place when the employee was first engaged.

What were the precise conditions of his employment? Lord Justice Warrington deals with these points of view in a lengthy passage of his judgment at page 26 of the appendix (1). I quote it in full by reason of its importance, and because I thoroughly concur with it: "Now did this money come to the Respondent "by virtue of his office? Looking at the Regulations, I am "satisfied that from that alone one must come to the conclusion "that it did come to him by virtue of his office. It is something "which obviously was contemplated as a possibility amongst "the terms under which he was serving the Kent County Cricket "Club, but more than that it seems to me that this came to him "not merely by virtue of his office, because it was something

(1) Page 637 *ante*.

(Lord Atkinson.)

" which he might expect to get from his office, but it came to him " from his employers, when one comes to think of what really " happened. If this match had been held without the exercise " by the Club of their discretion in this man's favour by making " it a benefit match, the gate money would have been the property " of the Club and would have gone into their coffers. It is quite " true that the gate money which would have been taken at the " match if it had not been a benefit match may have been less in " amount, but that seems to be quite immaterial. They were " under no obligation to give the benefit. They were under no " obligation to give him any portion of the gate money that day, " and it seems to me by making a match a benefit match it was " their act which gave him the right to receive this gate money. " That seems to me to be one extremely important and perhaps " the most important factor of all, and it is that fact which " distinguishes the gate money from the subscriptions which " were gathered outside. As regards those subscriptions, the " Club never had any interest in them at all. They were, as it " seems to me, quite properly treated by the Crown as falling on " the other side of the line, and as donations purely personal " given by outsiders to the man for whose benefit they were given. " That seems to me to be the crucial point in this case, that this " was money given to him by the will of his employers and in a " manner contemplated by the actual terms of the employment as " shewn by the Regulations."

The fact that the giving of permission by the Committee of the Club to the holding of benefit matches is purely voluntary and discretionary is entirely immaterial. In *Herbert* v. *McQuade*, [1902] 2 K.B. 631, Sir Richard Henn-Collins, Master of the Rolls, as he then was, at page 649 of the case(1), quoted a passage from the judgment of Lord Curriehill, in a Scotch case to the following effect: " It is," said the learned Judge, " with some reluctance " that I have formed the opinion that the Commissioners are " wrong and that the Appellant is liable for Income Tax on the " £100 mentioned in the case. It is true that it is a voluntary " contribution by the parishioners, one which they are under no " obligation to make and which they may withdraw at any time, " but still it is a payment made to the Appellant as their clergy- " man and is received by the Appellant in respect of the discharge " of his duties of that office, which is one of public employment in " the sense of the Statutes." The Master of the Rolls, in commenting on this judgment, laid down a test in these words— " The test is whether from the standpoint of the person who " receives it "—(i.e. the payment)—" it accrues to him in virtue " of his office; if it does, it does not matter whether it was " voluntary or whether it was compulsory on the part of the " persons who paid it. That seems to me to be the test; and if

(1) 4 T.C. 489, at p. 500.

(Lord Atkinson.)

" we once get to this—that the money has come to, or accrued, " to a person by virtue of his office—it seems to me that the " liability to Income Tax is not negatived merely by reason of the " fact that there was no legal obligation on the part of the persons " who contributed the money to pay it."

This case of *Herbert* v. *McQuade* has often been approved of and followed. It may well be that there is nothing to prevent the Kent County Cricket Club from giving a handsome gift to their professional cricketer though they knew he was the worst cricketer that ever held a bat or bowled a ball, but these Regulations do not appear to me to contemplate such a case. A benefit match permitted in such a man's interest would naturally secure very little money either in the shape of subscriptions or gate money. A professional cricketer such as Seymour must have had some special merit to secure such a splendid prize as he obtained in this case. The money of both subscribers and of persons who passed the gate was rather lavishly given. It is difficult to imagine what special merit he could have had other than skill and efficiency in the game he was employed by his employer to play, and to teach. It is much to be regretted that Seymour was not examined, not only as to the terms of his employment, but also as to how he regarded this sum of £939 odd, and upon what ground he demanded a return of the Income Tax paid yearly by his trustees. According to the decision in *Herbert* v. *McQuade* it establishes that the test is whether from the standpoint of the person who receives the money it accrues to him in virtue of his office or employment.

The Master of the Rolls deals with this point in the following passage of his judgment at page 23 of the Appendix [1]. He said : " But after recounting the facts as I have done and giving " consideration to the substance of the matter and bearing in " mind the Regulations which I have read, it appears to me that " this sum of £939 cannot be considered to be an extraneous " addition to Seymour's wages or a fortuitous donation, but an " addition arranged by and through his employers at a time when " they considered that a benefit match should be allowed to him, " and was an addition contemplated as a possibility in the course " of his employment in the very terms which regulated the " employment of their staff and of the Respondent among them. " For these reasons it appears to me that this sum of £939 falls " within the principle which has been laid down in *Herbert* v. " *McQuade*, and the other cases, and is taxable just as any " other sums are taxable which are received in the course of " employment and are profits arising therefrom."

It is not disputed that the effect of these Regulations is, according to a well-known principle of law, to create in Seymour an absolute ownership in the fund vested in the appointed trustees.

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[1] Page 635 *ante*.

(Lord Atkinson.)

The mode in which the trustees discharged their trust affords an indication of how they and their beneficiary must have regarded the fund resulting from the benefit match. At page 3 of the Stated Case it is set forth that the net proceeds of the match, with certain other sums amounting on the whole to £1,492 8*s.* 7*d.* were, by the Kent County Cricket Club, invested in the purchase of the stocks named, that dividends from these investments were received by the County Club, less the Income Tax which was deducted, and were paid to Seymour by cheques drawn by the County Club in his favour on the 21st October, 1921, 21st October, 1922, and 21st October, 1923, for the respective amounts of £55 8*s.* 6*d.*, £64 5*s.* 8*d.* and £67 12*s.* 2*d.* At page 4 of the Case Stated it is set forth that certificates of the deductions of Income Tax from these sums were furnished to Seymour by the Kent County Cricket Club, and that he, Seymour, claimed for repayments of the Income Tax deducted on the sums above mentioned. *Herbert* v. *McQuade*(1) and the cases which followed it decided that it was the standpoint of the receiver of the money that determines the liability to Income Tax. It was essential then that it should be ascertained in what light Seymour regarded these dividends. He is not apparently asked a single question upon the subject.

The judgment of Lord Loreburn in *Blakiston* v. *Cooper*(2), [1909] A.C. 104, has been frequently referred to. The head-note fairly states what was the pith of the decision. It is there set forth that voluntary Easter offerings given as free gifts to the incumbent of a benefice as such for his personal use are, if given for the purpose of increasing his stipend, assessable to Income Tax as profit accruing to him by reason of his office under Schedule E, Income Tax Act, 1842. There was, I think, a disposition during the argument to treat Lord Loreburn's judgment as having laid down a test as to when Easter offerings of this kind would be properly assessable to Income Tax and when not. I doubt very much if Lord Loreburn intended to lay down any test of the kind. I doubt very much if the alleged test would have been workable, for he said(3): "Had it been a gift of an exceptional kind, such "as a testimonial or a contribution for a specific purpose, as to "provide for a holiday, or a subscription peculiarly due to the "personal qualities of the particular clergyman, it might not have "been a voluntary payment for services, but a mere present." In the present case no evidence was given to show that Seymour was possessed of anything beyond his skill in cricketing or the discharge of his professional duties to give him a claim to the benefit of a benefit match, but that skill he was hired to exercise and display in the performance of the duties of his post, and the money he thus secured accrued to him by reason of that, not as far as appears by reason of anything else. The judgment of

(1) 4 T.C. 489. (2) 5 T.C. 347. (3) *Ibid.* at p. 355.

(Lord Atkinson.)

Lord Robertson in *Blakiston* v. *Cooper*(1) is well worth a careful perusal on this point. He said, " When the broader facts of the " case are remembered, I confess that it savours of paradox to say " that this money did not accrue to the Appellant by reason of his " office of Vicar of East Grinstead. The cause of collecting the " money was to supplement the legal income of the Vicar, and, " while this is the ordinary history of Easter offerings, in the " present instance the thing is set out in black and white in the " Bishop's letter and the subsequent notices."

I think that when no reason is shown for the gift to an official such as Seymour of the large and substantial prize given to him through the medium of a benefit match, it must in reason be assumed that it was given to him for the efficient and satisfactory discharge of the duties he was employed to discharge, and if so that the reward which accrued to him came to him from his employment. I am therefore of opinion that the judgment of the Court of Appeal was right and should be affirmed and that this appeal should be dismissed with costs.

Lord Phillimore.—My Lords, the result of the assessment having been made upon the Appellant as a person holding an office or employment under Schedule E and not upon him in respect of his professional earnings under Schedule D has been to bring under your Lordships' notice two quite different classes of authorities : those which deal with a public officer receiving some emolument not from his employers (if indeed he has any) but from persons with whom he has official relations, and those which deal with an employee receiving from his employers some benefit other than and additional to his contractual salary.

The conditions of these two classes of case seem to me so different that very little assistance can be derived in one case from the decisions applicable to the other.

The reported cases dealing with a public officer which have been brought to your Lordships' notice are cases concerning ministers of religion. It is suggested that at any rate from these cases it can be deduced that a perquisite or profit of office is none the less a perquisite or profit because the emolument bestowed is voluntary. I doubt whether the analogy can even be carried so far. In these religious cases the offering may be voluntary, but it is not spontaneous.

In the Easter offering case (*Cooper* v. *Blakiston*, [1909] A.C. 104) the moral or religious duty to make the offering was inculcated by the Bishop, and, as pointed out in the judgment of your Lordships' House, ecclesiastical machinery was set in motion to procure it.

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(1) 5 T.C. at p. 356.

(Lord Phillimore.)

Nor does the matter rest here. For a portion of the collection definite legal acts were required to effect the purpose. The collection at the offertory in the Communion Service is provided for by rubric, and by another rubric this offertory is to be disposed of " to such pious and charitable uses, as the Minister and Church-" wardens shall think fit, wherein if they disagree, it shall be " disposed of as the Ordinary shall appoint."

Moreover, though the Easter offerings collected on the occasion in question were not the fruits of legal compulsion, they did represent and supersede in respect of some of the contributions a legal due. The rubric preceding the one I have just quoted, says as follows : " Yearly at Easter every Parishioner shall reckon with " the Parson, Vicar or Curate, or his or their Deputy or Deputies ; " and pay to them or him all Ecclesiastical Duties, accustomably " due, then and at that time to be paid."

Easter offerings or Easter dues are due of common right from the householder for every member of his family of 16 years of age and upwards.

True it is that the common law rate is 2*d*. per head only, though by custom it may be more.

It is, I believe, not uncommon—though at the moment I cannot think of an instance—and probably was more common when more offices were paid by fees than are so endowed now, that there should be a legal fee of small amount which it was usual to augment. Such fees of office are intended to be covered by the words of Schedule E as profits or perquisites. Easter offerings along with mortuaries and surplice fees are dealt with as part of the legal income of the clergy by the Tithes Commutation Acts, the first (6 and 7 William IV, chapter 71, section 90) providing that a parochial agreement shall not extend to their commutation, while a later Act (2 and 3 Victoria, chapter 62, section 9) allows them to be included in a parochial agreement. They are also dealt with in the New Parishes Act (6 and 7 Victoria, chapter 37, section 15).

The case of *Herbert* v. *McQuade*(1), [1901] 2 K.B. 761, has not the authority of your Lordships' House. But if it be taken to be law it was a case where though the particular incumbent had no title to the annual grant, the annual income of the fund had to be distributed among selected incumbents of his class. In that case, too, there was an element of periodicity.

In fact, in these cases of ministers of religion there is always, I think, some element of periodicity or recurrence which makes another distinction between them and the cases of a single gift by an employer or employers. If they be put aside, little is left in the way of authority on which the Crown can rely except that in the case of *Cowan* v. *Seymour*(2), [1920] 1 K.B. 500, the Court of

(1) 4 T.C. 489. (2) 7 T.C. 372.

(Lord Phillimore.)

Appeal thought it important to point out that the gift to the liquidator did not come from his employer, the incorporated company, but from the several shareholders who in combination made up the company.

My Lords, I do not feel compelled by any of these authorities to hold that an employer cannot make a solitary gift to his employee without rendering the gift liable to taxation under Schedule E. Nor do I think it matters that the gift is made during the period of service and not after its termination, or that it is made in respect of good, faithful and valuable service.

During the course of the argument, however, a subtler consideration seemed to emerge. It was suggested that the hope or chance of a benefit match was part of the inducement to a man to become a professional cricketer in the service of the Kent County Cricket Club, and I suppose it must be put as one of the terms under which he was engaged.

This line of argument is a departure from that hitherto put forward by the Crown. On the part of the Crown it has been accepted that the grant of the benefit match was voluntary; and the whole weight of the contention has been, that though voluntary, it was still a profit or perquisite.

Anyhow the materials for this contention are wanting. The Case stated by the Commissioners does not find any facts to support it. The contentions on behalf of Seymour were either that the money which he received came from the general public and not from his employers or that, if it came from his employers, it was to be treated as a donation or gift; and the Commissioners accepted these contentions.

If it had been otherwise, a number of facts ought to have been found which we have not before us. The Case would probably have stated the number of benefit matches which were usually held yearly, the number of professional cricketers in the service of the Club, the usual duration of the tenure of office, or at least the percentage of cricketers in the service of the Club who got benefit matches; and I think it would be defective if it did not state that the expectancy of such a benefit was part of the inducement to Seymour to take his post.

I am not sure that it would not be necessary to find further that this inducement was held out to him by his employers.

The Case does not, either in its narrative or in its extracts from the Regulations of the Club, show that there is any provision in the rules for granting benefit matches. All that it shows is that there are such matches of sufficient frequency to make it desirable to frame rules as to the distribution of the proceeds of such matches when they occur.

In my judgment this is a case of a plain gift not taxable as a profit or perquisite of employment, and I think that this appeal should be allowed.

Lord Carson.—My Lords, I concur with the Motion proposed by the Lord Chancellor.

In each case it is important that the words of the Rule should be kept prominently in mind. They are plain words, of no technical import, and, in my opinion, no previous authorities can assist, as each case must depend upon the particular facts proved.

In the present case the Commissioners were, in my opinion, fully entitled to decide as a question of fact that the sum in question was not wages or perquisites or profits accruing by reason of the employment of the Appellant. In fact the money was never, in my opinion, the money of the Club at all, but was subscribed by the public for the benefit of the Appellant.

Speaking for myself alone, although, of course, the Respondent was acting within his rights in the course this litigation has taken, I cannot help thinking that the case might well have been allowed to rest after the determination of the question by the Commissioners and Mr. Justice Rowlatt. Protracted litigation, whilst easy sailing for the Revenue, is a great burden on the subject in a case where, so far as I can see, no question of principle was involved. I hope the Appellant will be fully indemnified against costs.

Questions Put :—

That the Order appealed from be reversed.

The Contents have it.

That the Order of the Court of Appeal be set aside and the Order of Mr. Justice Rowlatt restored with costs here and below.

The Contents have it.