

No. 805.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—  
29TH AND 30TH APRIL, 1930.

COURT OF APPEAL.—23RD, 24TH AND 27TH OCTOBER, 1930.

HOUSE OF LORDS.—24TH NOVEMBER, 1931.

THE SEAHAM HARBOUR DOCK COMPANY v. CROOK (H.M. INSPECTOR  
OF TAXES).<sup>(1)</sup>

*Income Tax—Grant from Unemployment Grants Committee—  
Whether revenue or capital—Whether annual profits or gains for  
Income Tax purposes.*

*A dock company contemplating an extension of its dock applied  
to the Unemployment Grants Committee for financial assistance.  
The Committee consented to sanction grants from time to time,  
as the work progressed and was paid for, equivalent to half the  
interest for two years (not exceeding an average rate of 5½ per cent.  
per annum) on approved expenditure met out of loans. Payments  
were made on this basis several times a year for some years. Assess-  
ments to Income Tax were made upon the company upon the footing  
that these payments were part of its annual profits or gains.*

*Held, that the payments were not annual profits or gains liable  
to Income Tax.*

CASE.

At a meeting of the General Commissioners of Income Tax for the Division of Easington Ward in the County of Durham held at Sunderland on the 1st day of March, 1929, The Seaham Harbour Dock Company (hereinafter called "the Company") by Mr. Cooper, solicitor, Mr. Dillon, a director of the Company and Mr. Turner, the secretary, appealed against the following assessments to Income Tax made upon the Company as dock owners, viz. :—

For the year ending

5th April, 1926...	Additional first assessment in the sum of ... ..	£191
5th April, 1927...	Additional first assessment in the sum of ... ..	£2,178
5th April, 1928...	First assessment in the sum of ... ..	£16,709
5th April, 1929...	First assessment in the sum of ... ..	£85,101

<sup>(1)</sup> Reported (C.A.) 47 T.L.R. 23 and (H.L.) 48 T.L.R. 91.

The first two assessments were made under Schedule A of the Income Tax Act, 1918.

The last two assessments were made under Case I of Schedule D of the Income Tax Act, 1918, consequent upon the transfer of docks, &c., from Schedule A to Schedule D effected as and from 5th April, 1927, by Section 28 of the Finance Act, 1926.

No question arises in this case as to the form of the assessments or as to the figures thereof. The sole question for the opinion of the Court is whether upon the evidence the Commissioners were entitled to find that a grant of money received by the Company in circumstances and upon the dates hereinafter set out was not capital but income and was a proper item to be credited to the incomings of the Company's trade when computing the profits thereof.

The facts are as follows :—

1. On 31st July, 1923, the Company obtained an Act of Parliament entitled The Seaham Harbour Dock Act, 1923, to enable them to extend their docks at Seaham Harbour; and the work thereon was commenced shortly after that date, the cost being estimated at £152,000.

2. Under the said Act the Company were allowed to raise, by the issue of debenture stock, the sum of £75,000 only.

3. The said sum of £75,000 was obtained from the Treasury under the Trade Facilities Act, 1921, and the Treasury took debenture stock for that amount.

4. Of the balance of the amount required for the dock extension, £50,000 was obtained by a loan from the Marquess of Londonderry and £25,000 by a loan from Londonderry Collieries, Limited. These amounts were in the nature of unsecured loans.

5. On 10th September, 1923, Mr. Dillon, on behalf of the Company, wrote to the Unemployment Grants Committee asking for assistance in carrying through the work of extending the docks; and on 6th November, 1923, the Unemployment Grants Committee replied to the effect that they were (*inter alia*) prepared to sanction a grant equivalent to half the interest at a rate not exceeding an average of  $5\frac{1}{2}$  per cent. per annum on approved expenditure met out of loans (not exceeding £152,000) for a period of two years from the date or dates on which the payments were made. Provision was also made for the payment of the grant by periodical remittances. Copies of these letters are annexed and may be referred to as part of this Case.

6. Applications for payment of the grant in respect of the work done, as certified by the engineer and auditors of the Company in conformity with the letter from the Unemployment Grants

Committee of 6th November, 1923, were made periodically by the Company and instalments of the grant were received by the Company from the Unemployment Grants Committee, also periodically as under :—

1924		£	s.	d.	£	s.	d.
September 8th	... ..	51	6	9			
November 17th	... ..	139	17	10			
				<hr/>	191	4	7
1925							
February 18th	... ..	51	6	9			
March 10th	... ..	226	19	7			
May 20th	... ..	514	5	10			
August 14th	... ..	278	6	4			
September 8th	... ..	326	0	3			
November 16th	... ..	781	5	9			
				<hr/>	2,178	4	6
1926							
February 23rd	... ..	886	9	1			
May 18th	... ..	869	14	6			
September 21st	... ..	835	2	4			
November 16th	... ..	729	16	8			
				<hr/>	3,321	2	7
1927							
March 1st	... ..	705	5	8			
May 17th	... ..	377	2	2			
August 16th	... ..	379	5	5			
November 18th	... ..	110	2	3			
				<hr/>	1,571	15	6
1928							
February 16th	... ..	97	2	11			
May 17th	... ..	21	13	6			
August 18th	... ..	97	2	11			
November 16th	... ..	21	13	6			
				<hr/>	237	12	10
				<hr/>	£7,500	0	0
				<hr/>			

7. The instalments of grant have always been credited to revenue in the accounts of the Company. Copies of the accounts for the years ending 31st December, 1924, 1925, 1926 and 1927, are annexed hereto and form part of this Case.<sup>(1)</sup>

8. Mr. Cooper, for the Company, contended :—

- (i) That the grant was made by a Government body and was capital. It was not specifically made for the purpose of meeting interest but was expressly made in respect of

<sup>(1)</sup> Not included in the present print.

expenditure and for the purpose of helping the Company through with its cost of construction.

- (ii) That the term "equivalent to half the interest" was only a method of calculation for arriving at the amount of grant to be paid.
- (iii) That there was no trading and no revenue at that time and that there were no profits or gains in carrying on a business or trade and, as no trade was being carried on, that there could be no revenue and that the grant was a capital payment only and not taxable income.
- (iv) That the case of *Pretoria-Pietersburg Railway Company, Limited v. Elwood* (6 T.C. 508, 98 L.T. 741, and 95 L.T. 468) on which H.M. Inspector of Taxes had previously by letter intimated his intention to rely was distinguishable.

9. H.M. Inspector of Taxes contended (*inter alia*):—

- (i) That the subsidy was in the nature of revenue and was not a capital receipt.
- (ii) That it was an annually recurring receipt to meet an annually recurring expenditure.
- (iii) That it was a proper item to be credited to the incomings of the Appellants' trade in the material years when computing the profits thereof.
- (iv) That the assessments were correct and should be confirmed.

10. The following cases were quoted:—

*Pretoria-Pietersburg Railway Company v. Elwood* (*supra*).  
*Blake v. Imperial Brazilian Railway*, 2 T.C. 58.  
*Nizam's Guaranteed State Railway Company v. Wyatt*,  
 2 T.C. 584, L.R. 24 Q.B.D. 548.

11. We, the Commissioners who heard the appeal, after considering the facts and arguments put before us were of the opinion that the grant was revenue and was taxable income of the Company.

Mr. Cooper, on behalf of the Company, thereupon expressed dissatisfaction with the decision as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court which Case we have stated and do sign accordingly.

Dated this 7th day of December, 1929.

ROBERT H. GAYNER.

(Mr. T. H. Patterson, the other Commissioner who heard the appeal, has died since the hearing.)

(Copy.)

The Secretary,  
Unemployment Grants Committee,  
23, Buckingham Gate,  
London, S.W.1.

10th September, 1923.

Dear Sir,

The Seaham Harbour Dock Company contemplate an extension of the Dock in order to cope with increasing trade.

Lord Londonderry is sinking a new Colliery at Seaham Harbour for which he is finding the whole of the capital himself, but he will not be drawing coal there for five years.

The cost of the dock extension is approximately £150,000, and the work will take eighteen months to complete. It is estimated that about 300 men will be employed, so that about £4,000 per month would be spent in wages here and about £4,000 on material which would involve the payment of wages elsewhere.

The Dock Company have obtained Parliamentary power to increase their existing Debenture issue by about £75,000, but this is only half the sum required.

The Government wish to provide employment during the coming winter, and I venture to submit that this is a case in which they could save the payment of doles and keep men employed on useful work which would create fresh employment when the extensions are completed.

The necessary particulars are before the Trades Facilities Department, but it is a case in which we would have to ask for special consideration as the Dock Company can only offer £75,000 of Debentures as security, the balance of the amount required being in the nature of an uncovered loan.

The Dock Company up to the outbreak of war paid a moderate dividend on its Ordinary Shares, as well as its Preference interest and Debenture interest. The war, however, greatly injured its earning capacity, and after the war it met with a great disaster owing to the dock gates being blown in by a gale, and by this means a loss was incurred of about £130,000. The Dock is now earning reasonable profits, and assuming that the present rate of profit is maintained we should have a balance at the credit of Profit and Loss at the end of this year of about £10,000.

In addition to absorbing the unemployed in our own immediate area we would be able to absorb unemployed from Sunderland which is only six miles distant, where owing to the slackness of the shipbuilding trade there is a vast amount of unemployment at the present time.

I write therefore to ask whether your Department can assist the Dock Company to carry through the work now rather than delay it until the time comes when it is absolutely needed and I suggest to you that by doing so you would be adding a valuable

asset to the Country's resources, and would be saving approximately £400 to £500 a week of doles while keeping men usefully employed.

Believe me,

Yours faithfully,

(Sgd.) M. DILLON,

Director,

Seaham Harbour Dock Company.

(Copy.)

Unemployment Grants Committee,  
23, Buckingham Gate,  
London, S.W.1,  
6th November, 1923.

Ref. P. 4.

Sir,

I am directed by the Unemployment Grants Committee to state that they have given careful consideration to the application by your Company for State assistance in connection with the extension of the South Dock Seaham Harbour and provision of new coaling staiths on west side of extension and contingent works including sewer diversions, cliff protection works, railway approaches and retaining walls.

As a result I am directed to state that the Committee are prepared to sanction grant equivalent to half the interest at a rate not exceeding an average up to  $5\frac{1}{2}$  per cent. per annum on approved expenditure met out of loan (not exceeding £152,000) for a period of two years from the date or dates on which the payments are made.

The Committee will be glad if you will be good enough to state the amounts of the various tenders received for the work, together with the reason for the acceptance of the tender selected.

The Committee will also require to be informed of the terms on which the capital will be raised for the work.

As regards the accounting procedure, the Committee propose to ask you to furnish three-monthly statements of expenditure and to pay grant in respect of six months' interest on the certified expenditure at the end of six months after the mean date of the period in which the expenditure was incurred, *e.g.*, if £10,000 is spent from 1st January to 31st March grant, equivalent to half the interest on £10,000 for six months, would be paid on or about the middle of August, and thereafter at half-yearly intervals.

The Committee are prepared to accept statements of the expenditure prepared by the Company's Chief Engineer and certified by the Company's professional Auditors, subject to any investigation

by the Accountant General of the Ministry of Health, who is Accounting Officer for the Committee, that he may consider necessary. If a certificate by the Auditor cannot be given before the due date of payment, 10 per cent. of the grant would be withheld pending audit.

I am, Sir,

Your obedient servant,

(Sgd.) T. P. MORRIS,

Assistant Secretary.

The Secretary,  
Seaham Harbour Dock Company,  
Seaham Harbour,  
County Durham.

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The case came before Rowlatt, *J.*, in the King's Bench Division on the 29th and 30th April, 1930, and on the latter date judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. C. L. King appeared as Counsel for the Company and the Solicitor-General (Sir J. Melville, K.C.) and Mr. R. P. Hills for the Crown.

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#### JUDGMENT.

**Rowlatt, J.**—This is a case of some difficulty inasmuch as it, to some extent, breaks new ground. The question is whether the Appellants, a Dock Company, are bound to bring in as part of their receipts on revenue account certain sums of money which were granted to them by the Government, speaking generally, for the purpose of aiding them in providing employment. The grant was made under the circumstances set forth in the Case, and in the shape of letters which are appended to the Case, which I will not read. It was authorised apparently by the clause which appears under "Unclassified Services" in the Appropriation Act; the clause running as follows: "For grants to local authorities, etc."—and this Dock Company comes in under the "etc.," I suppose—"in the United Kingdom for assistance in carrying out approved schemes of useful work to relieve unemployment." Looking at that, one cannot help feeling that that rather seems to contemplate the handing over of public money to be expended as a capital expenditure, and for a capital expenditure by way of capital in employing labour in producing permanent works or something of that kind, and it does seem a little odd that the money should be expended through a channel and in a shape which makes the sum appropriated not spent as to twenty shillings in the £ in assistance for carrying out approved schemes, but for replenishing still further the receipts of that Department of the Government which receives Income Tax; but I do not think that it is for me to enquire at all into that aspect of the case. What I have to look at and to determine

(Rowlatt, J.)

is, to put it shortly, what this Dock Company receive these payments for. Now they actually made this arrangement with the Unemployment Grants Committee without saying whether they were to have the money free of Income Tax or apparently considering the bearing of the Income Tax Acts upon this transaction. Apparently this part of the country is inhabited by persons so unsophisticated that they enter into transactions without thinking of the Income Tax Acts, whereas everybody who does anything ought to think, how are the Income Tax Acts going to affect, or will they affect at all, this transaction which I am entering into? However, there it is. There has been some discussion upon the question as to whether this money could have been, after the arrangement was made, exacted or demanded; whether any or whatever form of suit applied does not matter, but whether the Company acquired a right to demand it as of right, or whether it became a gift or was a gift in the first instance. In the first instance, one would think it would look very much like a gift, but, of course, that does not really touch the matter we have to consider here. Mr. Lattar, I think rightly, said if it is a question of asking whether a sum is interest or an annuity, or something of that kind, it does become material to see whether it is granted gratuitously or whether it is exigible as of right, because interest or an annual sum which is paid really benevolently each time is merely an allowance and not taxable at all. That is right enough when you consider interest, but, as has been pointed out many times, when you are considering the earnings of a trade or the earnings of an office, it is immaterial whether the payer is compellable to pay the money. The point is: Is it received for the services rendered by the officer or by the trader? What I said in the case of *Chibbett*<sup>(1)</sup> was referred to. I do not like referring to my own decision, but perhaps it could be shortly put, roughly but fairly accurately: Was it paid and received as a matter of business? That is about what it comes to. In this case I should think that this was clearly paid and received as a matter of business so far as that part of the case is concerned. Was it a capital payment? That has been argued. I do not think this can be treated as a capital payment; it was not so calculated; I do not think anybody thought of it in that respect. It really was an amount calculated as part of the interest charges involved in making a capital expenditure. It was  $2\frac{1}{2}$  per cent.; the value of the money, of course, was considered in arriving at it, the annual value of the capital sum, and what was given was for two years  $2\frac{1}{2}$  per cent. of the money which the Company was going to have to find. That is about what it comes to. It seems to me that that was not interest of money, of course, because there was no money foreborne to bear the interest, but it was a sum in the nature of revenue, or,

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(1) *Chibbett* (H.M. Inspector of Taxes) v. Joseph Robinson & Sons, 9 T.C. 48.



(Rowlatt, J.)

as Lord Justice Fletcher Moulton<sup>(1)</sup> put it in the case of the *Pretoria-Pietersburg Railway Company, Limited*, "a subsidy of the nature of revenue." That brings us really only to the threshold of the matter, because what Mr. Latter has argued is: "Well, it was not a subsidy earned in the carrying on of the trade; it was a subsidy earned by taking measures and expending capital in preparation for the carrying on of the trade of a Dock Company." I think so far that is right; that is the position. But it was a receipt in respect of the being out of money, having made capital expenditure, and although that is not normally a receipt which is the result of a Dock Company's operations—because that is to load and unload ships in docks—under the very particular and special circumstances of this case this extraordinarily does become, in my judgment, a novel form of annual receipt arising out of what the Dock Company does as a trading money-making concern. It gets this annual sum by something that it is doing in the carrying out of its powers as a Dock Company, and although it is anomalous to the last degree, here we do have this receipt so earned, and under those circumstances I think subject to one more observation, that it properly comes in, not as interest taxable *per se*—that has not been contended for—but as an item received which must be brought into the revenue account. The last point that Mr. Latter takes is this one. He says: "Where is its proper niche in the Schedules to the Income Tax Acts? It is not interest; it is not contended that it is interest; then it must be receipts or profits of a trade, and the trade of the Company here is to carry on a dock, and that is all there is, and this is something they have got outside their trade." I think that really is the same question over again. Normally there is no such thing as a receipt of this kind, but in these special circumstances and anomalously this money-making trading corporation has been enabled to get this sum, which I think is an annual profit or gain—I will not step aside to discuss the word "annual"—within the meaning of the Income Tax Acts. Therefore, I think this appeal, although I feel the difficulty of it, must be dismissed with costs.

The Company having appealed against this decision, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 23rd, 24th and 27th October, 1930, and on the last mentioned date judgment was given unanimously against the Crown, with costs, reversing the decision of the Court below.

The Rt. Hon. Sir John Simon, K.C., Mr. A. M. Latter, K.C., and Mr. C. L. King appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, K.C.), the Solicitor-General (the Hon. R. Stafford Cripps, K.C.) and Mr. R. P. Hills for the Crown.

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<sup>(1)</sup> *Pretoria-Pietersburg Railway Company, Limited v. Elwood*  
6 T.C. 508 at p. 520.

## JUDGMENT.

**Lord Hanworth, M.R.**—We need not trouble you, Sir John.

This case depends very largely upon the facts and upon the construction of two letters. The Commissioners have found, upon considering the facts and the arguments, in favour of the Crown, and Mr. Justice Rowlatt has affirmed that decision. The subject, the Seaham Harbour Dock Company, appeal to this Court and they say that upon the true construction of the letters under which this matter arises there is no ground for the charge and assessment made upon them by the Crown. Therefore I shall go very carefully into the facts of this case in order to show how the point arises.

The Seaham Harbour Dock Company are a Company carrying on the business of a dock company. In 1923 they obtained an Act of Parliament enabling them to extend their docks at Seaham Harbour, and the work thereon was commenced shortly after that date, the cost of this new dock being estimated at £152,000. The Act that gave them power to build this new dock put them under a limit as to the amount which they could raise by the issue of debenture stock and that limit was £75,000. £75,000 in fact was raised. It so happens that it was raised by being obtained from the Treasury and the Treasury took the debenture stock, but it matters not from what source it was, the total sum that they could raise by debenture stock was raised. There was a further sum required for the dock extension. £50,000 was obtained from a person who had a large interest in the matter, and £25,000 by a loan from a colliery company. Adding all those together that meant that they had got £150,000, but they had not got the further sum which was necessary to enable them to start building.

Then they applied for assistance from the Unemployment Grants Committee, pointing out in their letter that if they could carry into effect this scheme of building the dock, which they had powers to do, it would provide a considerable amount of work at a time when employment was scarce. The letter was written on the 10th September of this same year, 1923, and closes with these words: "I write therefore to ask whether your Department can assist the Dock Company to carry through the work now rather than delay it until the time comes when it is absolutely needed and I suggest to you that by doing so you would be adding a valuable asset to the Country's resources, and would be saving approximately £400 to £500 a week of doles while keeping men usefully employed."

The letter, which I need not read in full, is one which points out the difficulties in which the Dock Company were in the matter of providing the capital for the purpose of this adventure or extension. There is in their letter not a single word about a guarantee or interest or anything of that kind. The reply on the 6th November, 1923, is one which contains the response to this application of the Seaham Harbour Dock Company. I will read

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one or two passages from it. "As a result I am directed to state that the Committee are prepared to sanction grant equivalent to half the interest at a rate not exceeding an average up to 5½ per cent. per annum on approved expenditure met out of loan (not exceeding £152,000) for a period of two years from the date or dates on which the payments are made." Now one must bear in mind that this is the response to the application of the Company, who were short of capital. The answer is: "We will sanction a grant of a certain sum which is equivalent to a sum which is to be reached by a formula." It is not said that they will provide the interest or that if the capital can be raised elsewhere the Unemployment Grants Committee will provide year by year the interest. What is said is that in response to this application for a further capital sum a grant will be sanctioned equivalent to a sum which is to be reached by the application of the formula. Then the paragraph goes on: "for a period of two years from the date or dates on which the payments are made." Exactly what that means I do not quite know, but to my mind it gives rise to the possibility of a claim that the sum should be repaid. I do not quite understand what other purpose it can stand for. Then the letter goes on: "The Committee will be glad if you will be good enough to state the amounts of the various tenders received for the work, together with the reason for the acceptance of the tender selected. The Committee will also require to be informed of the terms on which the capital will be raised for the work." Lastly, there are paragraphs which deal with the accounting procedure, and those are interpreted, or it is attempted to interpret those, as indicating that whatever sum was paid by the Unemployment Grants Committee, it was to be paid as a matter of interest on capital. I am not sure that that makes any difference but at any rate the upshot of these two letters is that certain sums were paid. Mr. Hills disclaims that there was any right to call for repayment at all and therefore they were paid over after their quantum had been ascertained by the application of this formula which is stated in the second paragraph.

The Commissioners have come to the conclusion upon that that the grant was revenue and was taxable income of the Company. It appears to us that that is a misreading of the effect of these letters. Put quite shortly, one is a letter: "Can you help us to complete the capital that we ask for?" and the reply is: "Yes, we will pay you a certain sum which is to be ascertained in a particular way." The construction to be put upon those letters is a matter of law, and if we find that the Commissioners have gone wrong on a point of law, however much we should respect the conclusion they reach and however much we recognise that the area of facts is entirely for their own estimation and conclusion, yet we are bound to hear the case and to consider whether or not a misinterpretation in law has been put upon the letters.

**(Lord Hanworth, M.R.)**

The dock was commenced, but be it remembered it was an extension of a dock, and the dock would take some time to build, and we have set out here the sums which were paid over. They were paid over in the years 1924 to 1928, and they reached a total of exactly £7,500. They were paid according to this formula from time to time and were paid to the Dock Company for the purpose of this dock extension. I do not think it can be questioned for a moment that this extension of the docks was a capital outlay. The dock itself was not earning, or likely to earn, money for some time and if one had to estimate at all what was the type of work which they were engaged in, I think one might find some assistance from the decision of Mr. Justice Rowlatt in the case of *Ounsworth v. Vickers, Limited*<sup>(1)</sup>, which is reported in [1915] 3 K.B. at page 267, in which it was held that the expenditure for the purpose of making a deep water berth and enabling a channel to be deepened was a matter of capital expenditure, although in that case there were reasons why it could be attributed to the actual course of the business which was then being carried on by Messrs. Vickers. Here, however, we have a new extension undertaken under the powers of a fresh Act of Parliament, the capital provided from certain specified sources being a little short of what was required. The fact that it was short would have hindered and prevented the work being immediately undertaken. Therefore, in order to release the Company from the difficulties which prevented an immediate start of the undertaking it is agreed to grant to the Company sums which are to be paid over a period of time without recourse to the Company for repayment and in fact adding the amount of capital which enabled a start at once to be made.

When one has come to the conclusion that the facts are as I have stated, that the two documents before us must be interpreted in law as I have interpreted them, it seems to me that it is impossible on these facts to make a claim that these items paid over by the Unemployment Grants Committee should be included in revenue subject to Income Tax.

Some little assistance is found from the portions of the Income Tax Acts which apply. The four assessments complained of are assessments in the years 1926-27, when the matter had to be dealt with under Schedule A, for a Dock Company falls to be assessed under Schedule A, No. III, Rule 3. But, it was pointed out by Mr. Hills, in the subsequent Rule No. 8, those properties, including docks, "shall be assessed and charged in the manner herein mentioned according to the rules applicable to Schedule D, " so far as the same are consistent with the rules of this Number." In the year 1926 the Finance Act of that year made a change in Rule 3, which of course is one of the Rules in the Act of 1918,

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(1) 6 T.C. 671.

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and by Section 28 and the Schedule transferred subjects including docks straight into Schedule D. Therefore, in the years 1928 and 1929 the assessments were made upon the Company under Schedule D, and under Case I, which imposes the tax in respect of any trade not contained in any other Schedule.

The meaning, therefore, of those assessments, whether under Schedule A, to which one has to apply Rule 8 that I have already referred to, or under Schedule D, except in the variation made by the Finance Act, 1926, is that the tax is imposed in respect of a trade. What was the trade at that time which was being carried on by the Seaham Harbour Dock Company in respect of this dock extension? How does the sum then being expended, how does the contribution made to that expenditure, fall within the trade of the Dock Company? It is very difficult to find any ground or any basis for holding that it was a part of their trade. It is quite true that the instalments of the grant have been credited to revenue in the accounts of the Company, but as has been said many times in this Court and in the House of Lords, one has to look at the substance of the matter, and the accounts kept by the Company neither inure in their favour or against them if the true effect and substance of the matter grants them relief or imposes a liability.

We are, therefore, compelled to look at the substance of the matter and, it seems to me, Mr. Cooper, who appeared for the Company, was right when he made his claim: "(I) That the grant was made by a Government body and was capital. It was not specifically made for the purpose of meeting interest but was expressly made in respect of expenditure and for the purpose of helping the Company through with its cost of construction. (II) That the term 'equivalent to half the interest' was only a method of calculation for arriving at the amount of grant to be paid. (III) That there was no trading and no revenue at that time and that there were no profits or gains in carrying on a business or trade,"—to which these sums so obtained were allocated or to be allocated.

Some support of the view taken by the Crown is founded upon three cases. The first of them, *Blake v. Imperial Brazilian Railway* (2 T.C. 58), does not to my mind give any guidance upon the facts as I have expressed them and the conclusions which I have formed upon those facts. All that *Blake v. Imperial Brazilian Railway* said was this, that when they had received a certain sum under a guarantee made to them, the fact that they did not pay out the whole of that sum under the guarantee by way of interest but devoted it to the formation of a sinking fund did not alter the character of the receipt of the money. It is plain in Income Tax law that the allocation of a portion of a particular sum to any

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purpose does not alter the character of that sum before its destination is arranged or reached. In *Blake's* case the 7 per cent. as a whole was received for the purpose of interest, but part of that was deducted and devoted to the repayment of capital, and it was merely in accordance with the case of the *Mersey Docks and Harbour Board v. Lucas*<sup>(1)</sup>, one of the important cases in Income Tax law, to say that the devotion of that portion of the sum received to the particular purpose of a sinking fund did not prevent the sum received being a part of the receipts of the Company and so liable to the incidence of the tax.

Similarly the case, *Nizam's Guaranteed Railway Company v. Wyatt* (2 T.C. 584) was a case in which they had to consider what was the character of the sum part of which was applied to a sinking fund. It seems, following *Blake's* case, that there is nothing whatever to alter the reasoning always applicable in the *Mersey Docks and Harbour Board* case, that is to say, the distinction does not prevent the incidence of the tax upon a sum which is received on revenue account. In the course of the judgment Baron Pollock said this<sup>(2)</sup>: " ' It is true it is not spent ', as Mr. Justice Day said, ' by the Company themselves, or divided ' ' amongst their shareholders simply as interest or otherwise. " ' When once the thing is ascertained as being subject to Income " ' Tax it matters not what is done with it afterwards.' " Baron Pollock quotes those words of Mr. Justice Day with approval and that may be said to be the key note which enables one to decide both the case of *Nizam* and of *Blake*.

Lastly, there is the case of the *Pretoria-Pietersburg Railway Company v. Elwood* (6 T.C. 508). The facts of that case prevent it being of any value as a guide to the present case. A sum was paid there by the British Government in consequence of their undertaking to pay all arrears of interest due under the guarantee and they did pay this sum. Lord Justice Fletcher Moulton, who gave the judgment, says quite definitely<sup>(3)</sup>: " It is, therefore, in our " opinion, fundamentally incorrect to talk of the payment of " £97,000 as being part of the price of the Railway. It was a " liability under which the Government lay equally, whether or " not it elected to appropriate the Railway under Article 42 of the " Concession." In other words, it was a sum paid under a promise given during the South African War to the Railway Company, and it was a sum paid over to them in order that they should have the money to pay the interest and for no other purpose. Once one has got the facts of that case clearly in mind it is plain that it could

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(1) 2 T.C. 25.

(2) *Nizam's Guaranteed State Railway Co. v. Wyatt*, 2 T.C. 584 at p. 590.

(3) 6 T.C. at p. 523.

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not be contended that the sum received was a capital sum or the price of purchase; it must be put to revenue account and so induce the fall of the tax upon it.

Those three cases to my mind are really quite plain. They are appropriate to and govern cases in which the facts are analogous, but they have no bearing upon a case like the present, in which, interpreting the letters and the facts which are before us and applying the true rule of law to the construction of those letters, it appears that this sum was a sum paid out and out by the Unemployment Grants Committee for the purpose of adding to and completing the capital sum of which there was an insufficient subscription before it was received; and the mere mode of payment or method of accounting does not alter the character of the sums received; they were paid in order to advance a capital expenditure to be made by the Seaham Harbour Dock Company, and they cannot be brought within Case I of Schedule D, they cannot be said to be sums which were received in respect of trade and so taxable under Schedule A or Schedule D.

For these reasons it appears to me that the appeal must be allowed with costs here and below.

**Slessor, L.J.**—I agree. The learned judge in the Court below has said that this is a case of some difficulty inasmuch as to some extent it breaks new ground. With every respect to the learned judge, I do not think this is a case which breaks any new ground, if by new ground is meant that some new principle is sought here to be established; and despite the careful examination of the authorities bearing on this class of matter which have been cited to us by the learned Solicitor-General and Mr. Hills, when the case is really examined, there is no need here to go into any exhaustive question of authority; the matter has to be decided on the facts before us, which in this case are derived from the consideration of two letters.

The Commissioners have come to the conclusion that the grant was revenue. I think that when these letters come to be closely considered, it is clear that the grant in question was a grant of the capital expenditure and was not taxable as the Crown seek to make it.

The letter from the Seaham Harbour Dock Company, of 10th September, 1923, starts with these words: "The Seaham Harbour Dock Company contemplate an extension of the Dock in order to cope with increasing trade." The next paragraphs are devoted to the history, the number of men employed and the money expended, and the like. After having stated the sources from which they hope to get some of the money with which they will extend their dock, they seek in the last paragraph to obtain money from the Government, in these words: "I write, therefore to ask whether

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“ your Department can assist the Dock Company to carry through “ the work now rather than delay it.” So that the substance of their request is, first of all, to say they contemplate an extension of their dock, and then they go on to ask for money to assist in that extension. The Unemployment Grants Committee, in reply, on the 6th November, 1923, say: “ they have given careful consideration to the application by your Company for State assistance “ in connection with the extension of the South Dock Seaham “ Harbour and provision of new coaling staiths.” They say that they are prepared to sanction a grant, and there follows, as my Lord has said, a formula in which they describe the method by which they will calculate the grant. In that formula, unfortunately I think, in so far as I think it has largely promoted this litigation, they make a grant equivalent to half the interest at a certain rate.

It was contended before the Commissioners, and the same argument was addressed to Mr. Justice Rowlatt, that the term “ equivalent to half the interest,” was only a method of calculation for arriving at the amount of the grant to be paid. I think that is clearly correct, and that fact distinguishes this case from the cases of *Blake v. Imperial Brazilian Railway*, (2 T.C. 58), *Nizam's Guaranteed Railway Company v. Wyatt*, (2. T.C. 584), and *Pretoria-Pietersburg Railway Company v. Elwood*, (6. T.C. 508), which have been cited to us in argument.

There is one other paragraph which significantly begins: “ As “ regards the accounting procedure.” There they say they are going “ to ask you to furnish three monthly statements of expenditure and to pay grant ”—and there again follow the words “ in “ respect of six months' interest on the certified expenditure at “ the end of six months after the mean date of the period in which “ the expenditure was incurred, e.g., if £10,000 is spent,” and so forth. Again I think that is no more than an accounting procedure providing that statements of expenditure on which alone the grant becomes payable shall be made and limiting the amount of grant which will be paid.

Now if that is the correct view of these letters, it seems to me that determines this case; because it becomes no more than this: a grant for an extension of a dock which is in itself in respect of a capital expenditure. This Company does not trade in dock construction, it trades in docking; they are not dock engineers engaged in building docks, they are engaged in the utilisation of docks and they need this extension to cope with their trade.

That seems, to my mind, to conclude this case. I do not, with every respect, understand quite what the learned judge means when he says<sup>(1)</sup>: “ Was it a capital payment? That has been

(1) See p. 340 *ante*.



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“ argued. I do not think this can be treated as a capital payment ; “ it was not so calculated ; I do not think anybody thought of it in “ that respect.” The learned judge there, speaking of it as being “ not so calculated,” must, I think, be clearly referring to the letter which mentions the interest, and not to the mere calculation of the Company’s accounts ; because of course there is overwhelming authority, with which no one is more cognisant than the learned judge himself, to the effect that the mere way in which the Company keep their accounts, is not conclusive in the matter.

I do not think, therefore, understanding the learned judge to use those words in the sense that the Unemployment Grants Committee have not calculated the money as capital, that the learned judge has drawn the right inference from those letters. As my Lord has said, in our view it is no more and no less than a mere formula for ascertaining the amount of the grant.

Therefore I have come to the conclusion that this money must be treated as on capital account. If that is so, the learned Commissioners have come to the wrong conclusion on the interpretation of these letters, and that, to my mind, concludes this case. I do not think myself that this case is any authority for any other matters than the immediate matters which fall to be decided under it.

**Romer, L.J.**—I agree. Notwithstanding the arguments which have been addressed to us on behalf of the Crown, I am unable to bring myself to think that the payments made in this case were payments made on account of interest or revenue. In my opinion, in making these payments, the Unemployment Grants Committee were doing no more than they had been asked to do, namely, making contributions to the cost of constructing the new docks. It is true that the amount of the contributions was ascertained by reference to the interest paid by the Company on the money borrowed for the purpose of making that expenditure on the new docks ; but it will be observed that though the amount depended upon the rate of interest paid by the Company on its loans, it had no reference whatever to the amount actually paid or payable by the Company in respect of such interest.

Looking at the letter of the 6th November, 1923, it seems to me that what in effect the Unemployment Grants Committee agreed to do was to pay £5 10s. 0d. in respect of every £100 expended by the Company of the money borrowed upon the new dock, such payments to be made by four equal instalments at the expiration of six, twelve, eighteen and twenty-four months from the date of expenditure, with this proviso : that if it should turn out that the money borrowed, out of which the expenditure was made, had been borrowed at a rate of interest less than  $5\frac{1}{2}$  per cent., there should be a corresponding reduction in the contributions.

(Romer, L.J.)

But even if I should come to the conclusion, which I cannot, that these sums were truly sums paid by the Unemployment Grants Committee on account of interest, I still should fail to understand how it is possible to treat these sums as revenue got in carrying on the Company's trade, which, as has been pointed out, is the trade of working and running a dock, and not the trade of building docks.

For these reasons, I agree that the appeal should be allowed.

**Sir John Simon.**—The appeal will be allowed with costs here and below. The Order will be that the question in the Case will be answered in the negative and the assessments discharged. Then, following the usual practice, I ask for an Order that any tax paid under these assessments should be repaid with interest. Your Lordship remembers the Section; it is for the Court to say what the rate of interest should be.

**Lord Hanworth, M.R.**—These are only items which were included in the assessments; they were not separate assessments.

**Sir John Simon.**—I rather fancy at any rate in two cases they were; but, however that may be, I have paid away more money than I should otherwise have paid.

**Lord Hanworth, M.R.**—Yes, so I gather; but what we say is that these particular sums must be withdrawn from the assessments. The assessments made are £191, £2,178, £16,709 and £85,101. They can only be factors in those last two.

**Sir John Simon.**—Yes, I am obliged to your Lordship. Your Lordship is right; I was wrong. It really is, so much of the assessment as depends upon the sums in paragraph 6, are to be cancelled.

**Lord Hanworth, M.R.**—The Case says: "No question arises in this Case as to the form of the assessments or as to the figures thereof. The sole question for the opinion of the Court is whether upon the evidence the Commissioners were entitled to find that a grant of money received by the Company in circumstances and upon the dates hereinafter set out was not capital but income and was a proper item to be credited to the incomings of the Company's trade when computing the profits thereof." Then it says: "The facts are as follows." I should have thought it ought to go back to the Commissioners for adjustment consequent upon our decision.

**Mr. Hills.**—That is the usual form, my Lord; but my learned friend will certainly be entitled to any tax, if it has been paid, which ought not to have been paid, and to interest upon it. That is in accordance with the statute.

**Lord Hanworth, M.R.**—I think that is all you need, Sir John.

**Sir John Simon.**—I am content, except that the Court must order what the rate of interest is to be.

**Lord Hanworth, M.R.**—What do we order? By this time we must have ordered many times.

**Sir John Simon.**—Yes, your Lordship has often done it. It has been allowed at  $4\frac{1}{2}$  per cent., and it has been allowed at 5 per cent. I do not know the view of the Crown about it.

**Lord Hanworth, M.R.**—What do you say, Mr. Hills?

**Mr. Hills.**—One is always inclined to leave this to the Court, only reminding your Lordship that in recent years the rate of interest has gone down a little.

**Sir John Simon.**—If that is the case, it used to be 5 per cent.

**Lord Hanworth, M.R.**—What rate do you charge, Mr. Hills, on unpaid sums?

**Mr. Hills.**—Very unfortunately, my Lord, we have no power to charge any sums. In Excess Profits Duty, where there is power to charge, I am told  $4\frac{1}{2}$  per cent. has been charged against the taxpayer.

**Sir John Simon.**—That is a different statute. I am talking about Income Tax. My Lord, the passage is to be found in the red Dowell, at page 226.<sup>(1)</sup> It is at the bottom of Section 149: "Provided that, if the amount of the assessment is altered by the order or judgment of the High Court, then—(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the High Court may allow." Then if you will be good enough to turn over to page 228, there is a note at the bottom of the page on "Interest", which gives the history from the happy days when 3 per cent. was the amount. It is 3 per cent., 4 per cent.,  $3\frac{1}{2}$  per cent. In *Pole-Carew v. Craddock*<sup>(2)</sup>, interest at 5 per cent. was allowed. In December, 1925, Mr. Justice Rowlatt allowed—I do not know what it was. I will take my friend's information about it at once; he knows what the latest orders have been. I am not asking for anything exceptional.

**Mr. Hills.**—I have not had any Order.

**Lord Hanworth, M.R.**—I should think, going back to those years,  $4\frac{1}{2}$  per cent. was right.

**Sir John Simon.**—If your Lordship pleases. Then my friend and I can adjust the Order, it being understood that it will be on such amount as has been found to be paid in excess.

<sup>(1)</sup> Income Tax Act, 1918, Section 149 (4).

<sup>(2)</sup> 7 T.C. 488.

**Lord Hanworth, M.R.**—It will be remitted to the Commissioners to adjust, and repayment of tax at  $4\frac{1}{2}$  per cent.

**Sir John Simon.**—Your Lordship will say the question in the Case to be answered in the negative and assessments remitted.

**Lord Hanworth, M.R.**—Yes.

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The Crown having appealed against this decision, the case came before the House of Lords (Lord Buckmaster, Lords Warrington of Clyffe, Atkin, Tomlin and Macmillan) on the 24th November, 1931, when judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.), the Solicitor-General (Sir T. H. Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. W. E. Tyldesley Jones, K.C., Mr. A. M. Latter, K.C., and Mr. C. L. King for the Company.

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#### JUDGMENT.

**Lord Buckmaster.**—My Lords, in September of 1923 the Seaham Harbour Dock Company were contemplating an extension of their dock. They had obtained Parliamentary power to increase their debenture issue by about £75,000, but they found that there was at least as much again that would be required to enable them to carry out their work. In those circumstances they wrote to the Unemployment Grants Committee asking that assistance might be rendered through the medium of that Committee, and, as a result of their application, the Unemployment Grants Committee wrote on the 6th November, 1923, a letter which has turned out to be one of the most critical matters in the present dispute. That letter, after stating that careful consideration had been given to the application for State assistance in connection with the extension of the harbour, continued in these words: "I am directed to state that the Committee are prepared to sanction grant equivalent to half the interest at a rate not exceeding an average up to  $5\frac{1}{2}$  per cent. per annum on approved expenditure met out of loan (not exceeding £152,000) for a period of two years from the date or dates on which the payments are made." I think that the £152,000 was arrived at by doubling the £75,000 and making possibly a little further allowance. At any rate, the whole point of the letter is that a grant is to be made on a basis that is to be determined by considering what is half the interest paid on the average for the loans for the execution of the work, with a limit of  $5\frac{1}{2}$  per cent. Moneys were accordingly paid by the Unemployment Grants Committee in pursuance of that letter, and it is sought now to include the receipt of those moneys as part of the revenue of the Dock Company for purposes of assessments to Income Tax.

**(Lord Buckmaster.)**

Now I do not myself think that the matter can be put more succinctly than it was put by Mr. Hills when he said: "Was this a trade receipt?", and my answer is most unhesitatingly: No. It appears to me that it was nothing whatever of the kind. It was a grant which was made by a government department with the idea that by its use men might be kept in employment, and it was paid to and received by the Dock Company without any special allocation to any particular part of their property, either capital or revenue, and was simply to enable them to carry out the work upon which they were engaged, with the idea that by so doing people might be employed. I find myself quite unable to see that it was a trade receipt, or that it bore any resemblance to a trade receipt. It appears to me to have been simply a grant made by the Government for the purposes which I have mentioned, and in those circumstances cannot be included in revenue for the purposes of tax.

**Lord Warrington of Clyffe.**—My Lords, I agree.

**Lord Atkin.**—My Lords, I agree. This sum was paid by the particular government department by authority which is derived from the annual Appropriation Act, and is covered by these words which I will read from the Appropriation Act of 1924, Schedule (B)—Part 14, Unclassified Services: "For grants to local authorities, etc., in Great Britain for assistance in carrying out approved schemes of useful work to relieve unemployment—£845,000." It would appear to me to be a remarkable proposition that Parliament assented to that sum being appropriated for that purpose, but intended, in certain events at any rate, only fifteen shillings in the pound to be appropriated for that purpose, five shillings in the pound of the full amount coming back in the way of Income Tax. I do not think that that was the effect. It appears to me that when these sums were granted and when they were received, they were received by the appropriate body not as part of their profits or gains or as a sum which went to make up the profits or gains of their trade. It is a receipt which is given for the express purpose which is named, and it has nothing to do with their trade in the sense in which you are considering the profits or gains of the trade. It appears to me, with respect, to be quite irrelevant whether the money, when received, is applied for capital purposes or is applied for revenue purposes; in neither case is the money properly said to be brought into a computation of the profits or gains of the trade.

My Lords, that seems to me to be quite sufficient to dispose of this case. I concur in the Motion which has been proposed.

**Lord Tomlin.**—My Lords, I also concur in the Motion proposed.

**Lord Macmillan.**—My Lords, I also concur. It seems to me to be sufficient for the disposal of this case to say that the moneys in question received by the Respondents from the Unemployment Grants Committee were not profits or gains of the trade carried on by the Dock Company within the meaning of the Income Tax Acts.

*Questions put:—*

That the Judgment appealed from be reversed.

*The Not Contents have it.*

That this appeal be dismissed with costs.

*The Contents have it.*

[Solicitors:—Gregory, Rowcliffe & Co., for Cooper & Jackson, Newcastle-upon-Tyne; Solicitor of Inland Revenue.]

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