NO. 1245—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
13TH AND 14TH JANUARY AND 18TH FEBRUARY, 1942

COURT OF APPEAL—6TH, 7TH AND 18TH MAY, 1942

HOUSE OF LORDS—10TH, 11TH AND 14TH DECEMBER, 1942,
AND 11TH FEBRUARY, 1943

WALES (H.M. INSPECTOR OF TAXES) *v.* TILLEY[1]

Income Tax, Schedule E—Emoluments of office—Payment by company to its managing director in consideration of the relinquishment of rights under service agreement.

A limited company agreed in June, 1937, *to pay the Respondent as its managing director a fixed salary of* £6,000 *per annum, and undertook, in the event of his ceasing to be managing director, to pay him a pension of* £4,000 *per annum for* 10 *years following such cessation. On 6th April,* 1938, *a new agreement was concluded whereby the Respondent agreed to release the company from its obligation to pay the pension, and to continue to serve as managing director at a reduced salary of* £2,000 *per annum; in consideration therefor, the company agreed to pay him* £40,000 *by two equal instalments on 6th April,* 1938, *and 6th April,* 1939.

The Respondent appealed against an assessment to Income Tax made upon him under Schedule E for the year 1939–40 *in the sum of* £40,000, *and the Special Commissioners held that the payment was not made as remuneration for services rendered or to be rendered to the company, but in commutation of its liability to pay the pension and the bigger salary; and that the payment was not income in his hands.*

Held, *that so much of each payment of* £20,000 *in the years* 1938–39 *and* 1939–40 *as represented a sum paid in compromise of reduction of salary was assessable to Income Tax under Schedule E* (Prendergast *v.* Cameron, 23 T.C. 122, *followed*), *but so much as represented capitalisation of pension was not so assessable* (Hunter *v.* Dewhurst, 16 T.C. 605, *followed*). *The case was remitted to the Special Commissioners to apportion the two payments accordingly.*

CASE

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

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 26th February, 1941, Vernon James Tilley (hereinafter called " the Respondent ") appealed against an assessment to Income Tax made upon him under Schedule E for the year 1939–40 in the sum of £40,000.

The assessment was an additional assessment and related to a sum of £40,000, half of which was received by the Respondent in the course of the year 1938–39 and the other half during the year 1939–40. The question at issue was whether the Respondent was assessable in respect of this sum of £40,000 as being remuneration from the office which he held.

2. In September, 1917, the Respondent (who gave evidence before us) was appointed a director of Stevenson & Howell, Ltd. (hereinafter called " the

[1] Reported (K.B.) [1942] 1 All E.R. 455; (C.A.) [1942] 2 K.B. 169; (H.L.) [1943] A.C. 386.

" company "), a large public company engaged in manufacture. He received at the commencement £100 a year as directors' fees. He was also one of the technical advisors of the company, and received a salary in this capacity.

3. In 1921 the Respondent, who is a Fellow of the Institute of Chemistry, invented a secret process relating to a particular solvent, and arranged for the company to benefit. On 19th December, 1921, the company entered into an agreement with the Respondent, a copy of which is annexed hereto, marked "A", and forms part of this Case(1).

The agreement (hereinafter referred to as " the 1921 agreement ") recites that the company has requested the Respondent to grant them the exclusive use of the secret process, and that he has agreed to do so upon the terms set forth. Clauses 1 and 2 are as follows:—

" 1. The said Vernon James Tilley will divulge to the Managing Director " of the Company the said secret process and will hand to such Managing " Director the formula in connection therewith and will also give from time " to time such information with regard to such secret process as the said " Managing Director shall reasonably require.

" 2. The Company shall during the continuance of this Agreement pay to " the said Vernon James Tilley the sum of One Shilling upon every pound of " the new solvent manufactured by the said secret process and used by " the Company."

4. In November, 1929, the then managing director of the company was minded to retire, and the Respondent was appointed one of the joint managing directors, the other being Ronald W. Stevenson. On this appointment being made, the Respondent received £300 a year as director plus a salary of £1,800 a year. He has ever since been one of the joint managing directors with remuneration in the form of fees and salary. The salary was later increased to £2,000 and the directors' fees rose by stages to £500 and then £660.

5. The amounts received by the Respondent under the 1921 agreement relating to the secret process were as follows in the several years shown:—

Year ended 5th April.		*Year ended 5th April.*	
1932	£3,312	1935	£4,320
1933	£3,408	1936	£4,203
1934	£3,936	1937	£4,026

These sums, while designated in a document to be referred to in the next paragraph of this Case as " royalties ", were also at times called " Special " Commission ". For Income Tax purposes they were treated as forming part of the Respondent's income assessable under Schedule E.

6. The Respondent, who was not a large shareholder in the company, holding only 1,800 ordinary shares out of 142,500 issued, was troubled by (among other things) the absence from the 1921 agreement of any obligation on the company to manufacture the product in question. On 10th December, 1936, the 1921 agreement was supplemented by an agreement " that for the " purpose of verifying the amount of royalties payable by the Company the " Cash Books of the Company containing particulars of the within mentioned " solvent used by the Company shall at any time if required be produced for " the inspection of the within named Vernon James Tilley his Executors " Administrators or Assigns or his or their agent who shall be at liberty to " make copies or extracts therefrom."

7. In June, 1937, the Respondent discussed with the other joint managing director the question of a fresh agreement relating to the secret

(1) Not included in the present print.

process. He was moved to do so, partly because there was no guarantee by the company to go on using the process, and partly because he desired to make provision for himself and his family for the future.

On 28th June, 1937, the company entered into a new agreement with the Respondent (hereinafter referred to as " the 1937 agreement "), a copy of which is annexed hereto, marked " B ", and forms part of this Case(1).

The 1937 agreement recites, *inter alia*, that it has been agreed between the parties that the payments under the 1921 agreement shall cease as and from 31st March, 1937, and that the Respondent " is at present serving the " Company as a Managing Director at a salary of £2,000 per annum."

Clauses 1, 2 and 3 of the 1937 agreement are in the following terms:—

" 1. The liability of the Company to pay to Mr. Tilley the sums referred " to in Clause 2 of the above recited agreement dated 19th December, 1921, " shall cease and determine as on the 31st March, 1937, without prejudice " however to the liability of the Company to pay to Mr. Tilley all sums " accruing due under the said Clause 2 prior to that date.

" 2. In consideration of the premises the Company hereby agree to pay to " Mr. Tilley as Managing Director of the Company a salary of £4,000 per " annum additional to the salary of £2,000 above recited and to any other " emoluments to which Mr. Tilley may be otherwise entitled as such Managing " Director.

" 3. In the event of Mr. Tilley ceasing from any cause whatsoever to " be Managing Director of the Company the Company agrees to pay to him " as and from the date of cessation a pension of £4,000 per annum for ten " years reckoned from the same date."

8. Early in 1938 the directors of the company suggested to the Respondent a modification of the 1937 agreement. They wished that the company should be relieved from the obligation to pay a 10-year pension and the aforesaid increase in salary. The Respondent's accountants went into the question of a reasonable sum for release from this liability, and eventually it was agreed that £40,000 should be paid in two sums of £20,000 each on 6th April, 1938, and 6th April, 1939.

The company entered into an agreement to this effect on 6th April, 1938. A copy of this agreement (hereinafter referred to as " the 1938 agreement ") is annexed hereto, marked " C ", and forms part of this Case(1). Clauses 1, 2 and 3 of the 1938 agreement are in the following terms:—

" 1. Mr. Tilley hereby releases the Company from its obligations under " Clause 3 of the said Agreement to pay to him a pension of Four thousand " pounds per annum for ten years from the date of his ceasing to be Managing " Director of the Company.

" 2. Mr. Tilley hereby agrees to serve the Company as Managing Director " as from the date of these presents at a reduced salary of Two thousand " pounds per annum.

" 3. In consideration of the premises the Company will pay to Mr. Tilley " the sum of Forty thousand pounds by two equal instalments the first of which " shall be paid on the sixth day of April One thousand nine hundred and " thirty-eight and the second on the sixth day of April One thousand nine " hundred and thirty-nine."

9. Neither the agreement of 1938, nor those of 1937 and 1921, contain any provision that the Respondent should serve the company for any particular period.

(1) Not included in the present print.

10. A copy of the company's printed accounts for the year 1938 is attached hereto, marked " D "[1].

11. It was contended on behalf of the Respondent:—

(1) That he received the sum of £40,000, not for continuing to serve the company as a managing director, but as compensation for giving up his right, under the 1937 agreement, to receive future income in the shape of a pension and an increased salary.

(2) That the sum in question was not remuneration for services rendered or to be rendered under the contract of employment, and was not received from the contract of employment.

(3) That the Respondent was not liable to be assessed in respect of any part of the sum of £40,000 either under Schedule E, or under any other Schedule, of the Income Tax Acts,

(4) That in any event the assessment was excessive.

12. It was contended on behalf of the Crown:—

(1) That the payment of £40,000 arose out of the Respondent's office as a managing director of the company and that it was an emolument in the nature of income and not of capital.

(2) That the said payment of £40,000 was made by the company in order to secure the continuance of the Respondent in his office at a reduced salary.

(3) That the said payment of £40,000 was remuneration in one sum in place of remuneration in a smaller sum spread over a number of future years.

(4) That the Respondent was assessable to Income Tax under Schedule E in respect of the said payment of £40,000 as an emolument of his office of managing director.

13. We, the Commissioners who heard the appeal, held on the facts and documents before us that the payment of £40,000 was not made to the Respondent as remuneration for services rendered or to be rendered by him in his office as a managing director of the company. It was a payment in commutation of the company's liability under the 1937 agreement to pay to him a pension on his ceasing to hold the office and an increase of salary during the continuance of his tenure. It was not income in the hands of the Respondent. We accordingly discharged the assessment.

14. The Appellant immediately after the determination of the appeal declared to us his dissatisfaction therewith 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 the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

G. R. HAMILTON,
H. H. C. GRAHAM,
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99 High Holborn,
London, W.C.1.

3rd July, 1941.

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[1] Not included in the present print.

The case came before Lawrence, J., in the King's Bench Division on 13th and 14th January, 1942, when judgment was reserved. On 18th February, 1942, judgment was given in favour of the Crown.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills, appeared as Counsel for the Crown, and Mr. Terence Donovan for Mr. Tilley.

JUDGMENT

Lawrence, J.—The question in this case is whether a sum of £40,000 paid to the Respondent under an agreement of 6th April, 1938, is assessable under Schedule E as being profits arising from the office of managing director of a certain company.

Under an agreement of 28th June, 1937, the company had agreed to pay the Respondent, as managing director, £6,000 a year, and £4,000 a year as a pension for 10 years after he ceased to be managing director. By the 1938 agreement the Respondent released the company from the obligation to pay the pension and agreed to serve as managing director at a reduced salary of £2,000 per annum, and in consideration of these stipulations the company agreed to pay the Respondent, by two equal instalments, the sum in question of £40,000.

The Special Commissioners have held: " That the payment of £40,000 " was not made to the Respondent as remuneration for services rendered or " to be rendered by him in his office as a managing director of the company. " It was a payment in commutation of the company's liability under the 1937 " agreement to pay to him a pension on his ceasing to hold the office and an " increase of salary during the continuance of his tenure. It was not income " in the hands of the Respondent."

Mr. Donovan for the Respondent, contends that the 1938 agreement is in substitution for the 1937 agreement; that the payment is to get rid of the company's contingent liability to pay the pension and cannot, therefore, be regarded as remuneration for services in the office; that it is not a profit from the office but is a capital receipt, and he relied upon the case of *Hunter* v. *Dewhurst*, 16 T.C. 605. I am unable to agree with the Commissioners' decision or with M. Donovan's argument.

Both in form and in substance the payment was made in consideration both of the release from the company's obligation to pay the pension and the Respondent's agreement to serve at a reduced salary of £2,000 per annum without any pension rights. It is therefore, in my opinion, impossible to say that the payment was not a profit from the office.

Dewhurst's case is, I think, distinguishable from the present case, even if it is treated as laying down the principle that a sum of money agreed to be paid to an office holder in consideration of the release from a contingent liability to pay him another sum stipulated for in his original contract of service is not taxable; for, in the present case, it is expressly agreed in clause 2 of the 1938 agreement that the sum in question is in consideration of the Respondent's agreement to serve at a reduced salary, and such a sum is, in my opinion, clearly profit from the office. Part of the £40,000 was no doubt payable in commutation of the 10-year pension, but as that pension would have been assessable under Schedule E by virtue of Section 17 of the Finance Act, 1932, in my opinion the sum payable in commutation thereof is assessable under Schedule E. If it were not so, any prospective pensioner could, by agreement with the prospective payer of the pension, defeat the Crown's right to Income Tax under Schedule E and the Finance Act, 1932.

(Lawrence, J.)

The pension is income within the meaning of the Income Tax Acts, and a sum paid in commutation of the pension in such circumstances as the present appears to me to be income in accordance with the reasoning in such cases as *Short Bros., Ltd.* v. *Commissioners of Inland Revenue,* 12 T.C. 955.

I am, however, of opinion that there must be two assessments for the years 1938–39 and 1939–40, in each of which years the sum of £20,000 was payable to the Respondent, and not one assessment on £40,000 as was made in the assessment appealed against, since a person, to whom income can by no possibility become payable in a particular year, is not, in my opinion, liable to Income Tax and Sur-tax in respect of that year in respect of that sum.

The case must therefore go back to the Commissioners to make the necessary assessments; and I think, subject to what you say, there should be no Order as to costs.

Mr. Donovan.—If your Lordship pleases.

Mr. Hills.—My Lord, I do not know that it is a matter of very great importance; but, after all, for all practical purposes the appeal is allowed.

Lawrence, J.—Yes it is; but, at the same time, if I am right about the assessment being two assessments, it must make a considerable difference and therefore I thought it right to make no Order as to costs.

Mr. Hills.—I leave that to your Lordship.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Greene, M.R., and MacKinnon and Goddard, L.JJ.) on 6th and 7th May, 1942, when judgment was reserved. On 18th May, 1942, judgment was given in favour of the Crown (MacKinnon, L.J., doubting, in so far as the payments included any sum in respect of commutation of pension), confirming the decision of the Court below.

Mr. J. Millard Tucker, K.C., and Mr. Terence Donovan appeared as Counsel for Mr. Tilley, and the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lord Greene, M.R.—By an agreement of 28th June, 1937, the remuneration which the Appellant had been receiving as managing director of his company was increased from £2,000 to £6,000 a year, and in the event of his ceasing from any cause whatsoever to be managing director, the company agreed to pay him as and from the date of cessation a pension of £4,000 a year for ten years reckoned from the same date. There was no agreement between the parties as to the period for which the Appellant should serve and his tenure of office could have been, as it still can be, terminated by either party at any time on whatever may be reasonable notice. The language of the clause relating to the pension is obscure and questions might have arisen whether the pension was payable after the death of the Appellant if he were to die during his service or after its cessation.

By clause 1 of the agreement of 6th April, 1938, the Appellant released the company from its obligation to pay him the pension. Clauses 2 and 3 were as follows: " 2. Mr. Tilley hereby agrees to serve the Company as " Managing Director as from the date of these presents at a reduced salary " of Two thousand pounds per annum. 3. In consideration of the premises " the Company will pay to Mr. Tilley the sum of Forty thousand pounds

(Lord Greene, M.R.)

" by two equal instalments the first of which shall be paid on the sixth day " of April One thousand nine hundred and thirty-eight ".

The Special Commissioners discharged an assessment made under Schedule E in respect of the sum of £40,000 payable under the 1938 agreement, holding that it was a payment in commutation of the company's liability under the 1937 agreement to pay pension and increased salary and that it was not income in the hands of the Appellant. Lawrence, J., reversed this decision, holding that the payment was expressly made in consideration of the Appellant's agreement to serve at a reduced salary. Part of the £40,000 he considered to be payable in commutation of the pension, but he held that as the pension would have been assessable under Schedule E, a sum payable in commutation of it would also be assessable under the same Schedule. As will be seen, I agree with the conclusion of Lawrence, J., but I respectfully dissent from his view that a sum paid in commutation of a pension is necessarily assessable under Schedule E. The case of *Short Bros., Ltd.* v. *Commissioners of Inland Revenue,* 12 T.C. 955, cited by Lawrence, J., does not, in my opinion, support his proposition. Indeed, the Attorney-General, on behalf of the Crown, did not attempt to support this part of the reasoning of Lawrence, J. He preferred to argue that the pension was deferred remuneration and that the acceptance during the service of a sum in commutation of it was the acceptance of present, in place of deferred, remuneration.

If the agreement of 1938 had dealt with nothing but the Appellant's salary as managing director, reducing the annual amount and providing for payment of a lump sum in consideration of his acceptance of the reduction, there would, in my opinion, have been no difficulty in the case. If a man agrees to serve in consideration of a lump sum and no periodical salary or a small periodical salary, that lump sum is just as much remuneration and taxable as such as a periodical salary or a larger periodical salary would have been—*Prendergast* v. *Cameron,* 23 T.C. 122. Indeed, the only real argument that was presented on behalf of the Appellant on this aspect of the case consisted of an endeavour to draw a distinction between a lump sum paid at the beginning of the service and a sum paid, as in the present case, in consideration of an agreement to continue to serve for a reduced salary. There is no substance in this distinction. If a man who is serving at a salary of £1,000 a year agrees to serve for a reduced salary in consideration of a lump sum, he is merely commuting his salary and a sum so accepted in commutation of salary can in its nature be nothing but salary. The commutation merely substitutes one form of remuneration for another. It is in effect remuneration payable in advance and it is quite fallacious to speak of it as a capital payment. Indeed, I am unable to understand how a sum paid as remuneration can ever be capital in the sense that it escapes taxation, since remuneration as such is the subject-matter of tax under Schedule E, whatever form it takes. The analogy of cases such as the sale by an annuitant of his annuity for a lump sum is a false one, since the quality of remuneration is absent from the payment.

The real difficulty in the case arises by the introduction into the agreement of the provisions relating to the pension. If the agreement had merely provided for the surrender of the pension in consideration of a present payment with no reference to or connection with present or future services, I do not think that the sum received would have been taxable under Schedule E, since it would not have been remuneration or salary for services. It would have been nothing more nor less than commutation of a pension and a pension is in itself a distinct taxable subject-matter. It was admitted by the Attorney-General that a sum received in commutation of a pension effected after the termination of the service is not taxable. But he maintained that the case

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is different where the commutation takes place during the continuance of the service and that a sum paid then must necessarily be regarded as remuneration for services rendered and to be rendered. I do not think that this view is correct. It would, of course, be possible for an employee to agree to give up his future pension rights in consideration of a present addition to his salary and in that case the addition would be remuneration and taxable as such notwithstanding that it originated in a surrender of pension rights. The question whether a sum received in consideration of the surrender of future pension rights is or is not remuneration must, as it appears to me, depend upon the true construction of the agreement by which the transaction is effected. If the sum received is by way of an addition to remuneration, in the form either of an increase in periodical salary or of a lump sum, it is taxable; if it is not so received, but is merely paid by way of commutation of a future pension without reference to or connection with the service, it would not, I think, be taxable.

The same result would, I think, have followed in the present case if the agreement had been framed in two distinct parts, one an agreement to serve at a reduced salary in consideration of £x, the other an agreement to give up the pension rights in consideration of £y. In that case the sum £y could not, as it appears to me, have been described as remuneration for services.

It was argued on behalf of the Appellant that if the whole £40,000 does not escape taxation, it ought to be regarded as referable in part to the acceptance of a reduced salary and in part to a commutation of future pension rights and apportioned accordingly. I was impressed by this argument, but on consideration I am unable to accept it. The question, as I see it, turns upon the actual language of the agreement. The parties themselves have made no attempt to apportion the £40,000, no doubt because of the practical difficulty of doing so when the commencing date of the pension was unascertainable and an actuarial valuation accordingly impossible. Instead, they have chosen to treat the £40,000 as an indivisible sum paid " in consideration of the premises ". The consideration is thus agreed to be an entire non-severable consideration, the whole of which is referable to the agreement to serve at a reduced salary just as much as to the agreement to give up the pension rights. It may well be that an apportionment might properly be made if, for example, a lump sum were paid in consideration of an agreement to serve and of the sale of a piece of land by the employee to his employer. In such a case the land would be capable of valuation and the parties must be presumed to have known it and the agreement for sale would have no connection with the agreement to serve. But here one of the considerations for the entire sum is expressed to be the agreement to serve, and as the parties have so agreed I do not think that an apportionment is permissible since it would involve re-writing the contract.

It was argued by Mr. Tucker on behalf of the Appellant that the present case is covered by the decision in *Hunter* v. *Dewhurst,* 16 T.C. 605. I did not obtain any real assistance from the elaborate discussion of that decision which took place before us. It was a very special case and the contract did not contain the peculiarities of the contract in the present case to which I have referred. As I have said, this case, in my opinion, falls to be decided on the terms of the bargain which the parties have themselves made, which is, in essential respects, different to that in *Dewhurst's* case, and Mr. Tucker's argument that the facts of the present case are in all essentials indistinguishable from those in *Dewhurst's* case is one that I cannot accept.

I would dismiss the appeal.

MacKinnon, L.J.—Lawrence, J., has held that the Appellant is liable to pay Income Tax under Schedule E of the Income Tax Act, 1918, upon the £20,000 paid to him by the company on 6th April, 1938, and upon the £20,000 so paid on 6th April, 1939. In other words, each of these sums was an " annuity, pension, or stipend . . . in respect of . . . salaries, fees, wages, " perquisites or profits . . . for the year of assessment ".

The Stated Case sets out the agreements of 19th December, 1921, and of 28th June, 1937. I need only remark of the latter that it is obvious that the provision in it for the payment of £4,000 a year for ten years from the date of Mr. Tilley's ceasing to be a director involves a nice question of construction, namely, what, if any, are the rights of his executors or administrators if Mr. Tilley should die (*a*) while he is still managing director, or (*b*) after he has ceased to be managing director, but when only some of the annual sums of £4,000 have been paid?

The 1938 agreement provided (1) that the company should be released from the obligation to pay the £4,000 a year " pension " for ten years; (2) that Mr. Tilley should serve the company as managing director at a salary of £2,000 a year instead of £6,000—no period for such service is fixed, so presumably it would be for a reasonable time; and (3) that the company should pay him £20,000 on 6th April, 1938, and £20,000 on 6th April, 1939. The date " 6th April " is perhaps not without significance in a case about Income Tax.

The problem is whether these two sums of £20,000 are taxable in the two years of receipt under Schedule E. If I were not assisted, or embarrassed, by decisions of the House of Lords which are reported, I should think the answer was " Yes ", as was held by Lawrence, J.

Each £20,000 must have been paid partly in consideration of Mr. Tilley accepting for the future £2,000 a year salary in place of the £6,000 a year he was entitled to under the 1937 agreement, and partly in consideration of his releasing the company from the obligation under that agreement to pay him £4,000 a year for ten years.

As regards the first sort of consideration, if a servant were entitled to £10 a week, and on 6th April he agrees, in consideration of £520 paid down to serve for a year for nothing, the £520 would pretty clearly be an annual receipt within Schedule E. So if a servant has an annual salary of £2,000 and, in consideration of £20,000 paid down he agrees to serve for ten years for nothing; and if, as here, he is entitled to be paid £6,000 a year for an unspecified time, and in consideration of £x paid down he agrees to serve for a reasonable time for £2,000 a year instead of £6,000 a year, I should think the £x would be in the same position.

So far as each £20,000 was in consideration for the surrender or abolition of the right to the " pension " *in futuro,* the position may not be so clear. No doubt if a man had, under an endowment policy, a right to be paid £x a year by an insurance company, and he sold or surrendered this right to the insurance company for a lump sum, that lump sum would not be taxable under Schedule E. But why would it not be so? Not, I think, from any characterisation of the sum as " capital " rather than " income ", but because the annual sum he was to receive, and was surrendering, was not " an annuity, stipend or pension in respect of salaries, fees, wages or profits ". And that being so the lump sum received by way of commutation could not be within that category. The question, as I see it, is whether the so-called " pension " *is* within that category, i.e., payment by way of salary or wages for services rendered. If it is, then I should think the lump sum payable *in praesenti* for its satisfaction is also within that category.

(MacKinnon, L.J.)

If the 1937 agreement had remained in force, and the ten sums of £4,000 had been paid, I should think each of them, in its year of receipt, would be taxable under Schedule E as an " annuity, stipend, or pension in respect of " salaries, fees, wages or profits ". Each would be in effect deferred remuneration for services rendered in the past. And, if that be so, I should think that the lump sum agreed to be paid in advance in satisfaction or commutation of such deferred remuneration would also be within Schedule E.

This, as I have said, would be my view, if there were no reported cases to assist, or perhaps embarrass, me. But there are two such cases, *Hunter* v. *Dewhurst*, 16 T.C., at page 637, and *Prendergast* v. *Cameron*, 23 T.C., at page 141. Both are decisions of the House of Lords. The former was decided by three votes to two; the latter was the unanimous decision of five noble Lords, of whom none were participants in the former.

So far as the two sums of £20,000 were paid in consideration of Mr. Tilley agreeing to serve for £2,000 a year in place of £6,000 a year, the decision in *Prendergast* v. *Cameron* seems clear authority that the amount so paid is taxable under Schedule E. It is to be observed that Cameron, like Tilley in this case, did not agree to serve for any fixed period of time.

But so far as the two sums of £20,000 in this case were paid in consideration of the surrender of the prospective right to the £4,000 a year pension, the decision in *Dewhurst* seems to me to make it very difficult, if not impossible, to hold that *that* part of the £20,000 is taxable under Schedule E, for I cannot think that there is any essential difference between the sum which Dewhurst would have been entitled to under article 109, and the sums which Tilley would have been entitled to under his 1937 agreement. Dewhurst would have got a lump sum and Tilley would have got ten annual payments. But I do not see how that difference can alter the nature of their respective gains; and if a prepayment in satisfaction of Dewhurst's prospective right was not within Schedule E, I have great difficulty in seeing how the prepayment in satisfaction of Tilley's prospective right can be.

If a single payment has been made for two sorts of consideration, one of which does make part of the sum taxable, while the other does not, the Commissioners would have to ascertain how much of the total sum fell within each category. Suppose, for example, a director received £10,000 from his company; it is found to have been paid under a resolution of the board " that " Mr. A. be paid £10,000 in satisfaction of his claims (*a*) for his fees for last " year as a director, and (*b*) in payment for his Patent No. — which he has " assigned to the company ". Obviously the Commissioners would have to analyse the £10,000 and find how much was payable under (*a*), and therefore was taxable.

In these circumstances I should be inclined to think that this case must go back to the Commissioners for them to find how much of the two sums of £20,000 was paid in consideration of the reduction of his salary (with a direction that the sum so found is taxable under Schedule E) and how much was paid in consideration of the surrender of his right to the £4,000 a year " pension " (which sum would not be so taxable). I realise that this would be a difficult problem, by reason of (*a*) the doubtful effect of Mr. Tilley's death, which I mentioned above, and (*b*) that the agreement of 1938 fixes no period for his service at the reduced salary. But if the law requires the Commissioners to ascertain a fact I doubt if the difficulty of performing their task can relieve them of the duty.

My own inclination, therefore, is to think that the case ought to be sent back to the Commissioners in this way. But I can pretend to no disappointment at finding that my brethren think that this view is incorrect, and that

(MacKinnon, L.J.)

this appeal should be dismissed, for that is the result I should certainly have arrived at upon my own view of the law if I were happily oblivious of the existence of *Dewhurst's* case(1) and free from the constraint of attempting loyally to follow it.

Goddard, L.J.—In my opinion, the question in this case depends for its solution on the true meaning and effect of the agreement of 6th April, 1938. It has now been decided by the House of Lords in *Prendergast* v. *Cameron*, 23 T.C. 122, that if a lump sum is paid to a director to induce him to continue to serve the company either for no salary or at a reduced rate of salary, that payment is a profit of his office and is taxable as income. It is as though, instead of agreeing to serve, say, for five years at £1,000 per annum he agreed to serve for five years for one payment of £5,000. If, however, a director is entitled to receive on the termination of his office a fixed sum or a pension and he compromises that right by acceptance of a smaller sum, then *Dewhurst's* case decides that the sum he receives is not income, nor, according to the view expressed by Lord Atkin in that case, is it to be regarded as received under or from the contract of employment—16 T.C., at page 645.

In the present case Mr. Tilley was, under the agreement of 28th June, 1937, entitled to a total salary of £6,000 while he served as managing director, and to a pension of £4,000 for ten years payable from the date when he ceased to hold his office. The agreement contained no provision as to the period for which he was to serve as managing director; the appointment could be determined by either side at any time, though presumably only upon reasonable notice. By the 1938 agreement Mr. Tilley, in consideration of £40,000, to be paid in two instalments, released the company from its obligation to pay him a pension and agreed to serve the company from the date of the agreement at a reduced salary of £2,000. Again, no period was fixed during which he was to serve. In my opinion, had the agreement been one under which Mr. Tilley agreed to commute his pension for £x and also to accept a reduced salary in consideration of a payment of a lump sum, on the authority of the cases above referred to, the result would have been that the sum representing the commutation of the pension would not have attracted tax, while that which represented or was taken in lieu of the larger salary would have been taxable. But that is not, in my opinion, the true result of the agreement. The consideration is entire, and Mr. Tilley covenants to continue to serve the company for £40,000, plus £2,000 a year, instead of £6,000 per annum plus the prospect of a pension. I am, therefore, unable to avoid the conclusion that the £40,000 was remuneration for serving as a director and I do not see that remuneration can ever be capital. There was, as it seems to me, a very good reason why the sum was not allocated partly to the reduction in salary and partly to the commutation of pension. As no one could say when the pension would be payable, it would be impossible to calculate its present value, apart, moreover, from the question that might arise on the construction of the clause granting the pension, whether, for instance, it would enure to the benefit of Mr. Tilley's estate if he died before ten years had elapsed or had died while he was still in office.

There is one point, however, on which I am not sure that I fully understand the judgment of Lawrence, J. If he meant that, whenever a pensioner commutes a pension, the sum received by way of commutation is taxable as income, as at present advised I do not agree with him, nor am I able to see that it makes any difference whether the commutation takes place before or after the pension has become payable. Schedule E charges pensions and annuities as specific things in addition to charging profits arising from office,

(1) 16 T.C. 605.

(Goddard, L.J.)

and if a commuted pension or annuity were taxable as income in the year that the sum was received, I cannot understand why it should make any difference whether the calculation and payment takes place while the pensioner is still in the service of the grantor or not. Nor does it seem to me to be right to say, as the Attorney-General submitted, that a pension must be deferred remuneration. Whether it is paid as a matter of contract or voluntarily it may be a reward for or an inducement to render long service. For instance, an employer may pay all his clerks of a certain grade £5 a week and be willing to pay no more. If he promises a pension of £2 a week after 30 years' service I do not see that this would be deferred pay, but if the pension were a term of their employment it would be an inducement to them to remain in his employment, or if paid voluntarily, a recognition of long and faithful service. I agree with the Master of the Rolls that the appeal should be dismissed.

Mr. Hills.—The appeal will be dismissed with costs?

Lord Greene, M.R.—Yes.

Mr. Tucker.—Would your Lordships allow me to make an application in this case for leave to appeal to the House of Lords?

Lord Greene, M.R.—Mr. Hills, there is a substantial sum of money involved and there is a difference of judicial opinion in this case. We think it is a proper case to give leave.

Mr. Hills.—If your Lordship pleases.

Lord Greene, M.R.—You can take your leave, Mr. Tucker.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon, L.C., and Lords Atkin, Thankerton, Russell of Killowen and Porter) on 10th, 11th and 14th December, 1942, when judgment was reserved. On 11th February, 1943, judgment was given unanimously allowing the appeal in part.

Mr. Raymond Needham, K.C., and Mr. Terence Donovan appeared as Counsel for Mr. Tilley, and the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Simon, L.C.—My Lords, the question in this case is whether two sums of £20,000 each which were paid to the Appellant by a company named Stevenson & Howell, Ltd., carrying on the business of manufacturing chemists, of which he was managing director, fall to be assessed for Income Tax under Schedule E as being profits from his employment as such director. The circumstances in which this question arises are very special, and, before a correct solution can be reached, it is necessary to refer to three agreements made at different dates between the company and the Appellant.

The first of these agreements is dated 19th December, 1921. It recites that the Appellant was the inventor of a secret process for the manufacture of a product to be used by the company in connection with its business. Under this agreement, the Appellant, who was already a director of the company, divulged to the then managing director his secret process, and the company contracted to pay to the Appellant a royalty of one shilling upon every pound weight of the new product manufactured under the secret process and used by the company.

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The next agreement to be referred to is dated 28th June, 1937. By that time Mr. Tilley had become managing director and was receiving a salary as such of £2,000 per annum. The agreement cancelled the arrangement of 1921 for the payment of the royalty and in consideration of this provided that the Appellant's salary as managing director should be raised to £6,000 per annum, and that, in the event of the Appellant ceasing from any cause whatsoever to be managing director of the company, the company would pay to him from the date of cessation a pension of £4,000 per annum for ten years from such date. As long as matters stood on the basis of the 1937 agreement, there can be no doubt that the Appellant's salary of £6,000 per annum was subject to Income Tax under Schedule E and that, when his service as managing director ceased, the pension of £4,000 per annum was equally liable to tax under the second limb of that Schedule. The agreement of 1937 ended with a paragraph providing that "the expression 'Mr. Tilley' includes, where the "context so permits, his personal representatives." As the Court of Appeal has pointed out, this makes the construction of the agreement, so far as it provides for " pension ", somewhat difficult, and, in view of the nature of the conclusion at which I would invite the House to arrive, it is desirable to indicate whether under the agreement the pension would in any case cease with the Appellant's death or whether it would be payable, in the event of his death, to his personal representatives until the period of ten years had elapsed. I think the second of these constructions is the correct one.

Lastly, there comes the agreement dated 6th April, 1938. It recites the provisions made the year before for a salary of £6,000 per annum as managing director and for a pension of £4,000 per annum for ten years on the Appellant ceasing to be managing director. The agreement then goes on to record that the company has requested the Appellant (1) to release it from the prospective obligation to pay the pension, and (2) to serve the company in future at a salary of £2,000 per annum. The agreement witnesses the Appellant's acceptance of these requests, and in consideration of this " the Company will pay to Mr. Tilley the sum of Forty thousand pounds " by two equal instalments the first of which shall be paid on the sixth day " of April One thousand nine hundred and thirty-eight and the second on " the sixth day of April One thousand nine hundred and thirty-nine."

It is evident, therefore, that the £40,000 on which the Crown seeks to levy Income Tax is paid in part as the price of compounding the pension, and in part in consideration of the reduction of the Appellant's annual salary from £6,000 to £2,000. I will postpone the consideration of any difficulty which might arise from the fact that the total of £40,000 is stated as a single sum and is not divided by the terms of the agreement into two parts allocated respectively to the compounding of the pension and the reduction of salary, and will first consider how far Schedule E would be applicable if the two matters were dealt with separately, £x being stated in the agreement as representing the value of the pension rights, and £y as being paid in return for the reduction of salary, so that the two sums added together, £x plus £y, amounted to the total of £40,000.

If it is legitimate to separate out the consideration in this way, it appears to me that there are two decisions of your Lordships' House which guide us to the conclusion at which we must arrive, one in connection with the pension problem and the other in connection with the payment in respect of the reduction of salary. As regards the commutation of pension, I cannot agree with Lawrence, J.'s view that, as the pension would have been assessable under Schedule E, therefore a sum payable in commutation of it would also be assessable under the same Schedule. I think that the Master of the

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Rolls is right when he says that the decision in *Short Bros., Ltd.* v. *Commissioners of Inland Revenue,* 12 T.C. 955, to which Lawrence, J., referred in this connection, does not support the learned Judge's proposition; and neither can I accept the contention contained in the Case for the Respondent (but not, as I understand, persisted in by the Attorney-General) that the pension under the agreement of 1937 was deferred remuneration and that the acceptance by the Appellant during his service of a sum in commutation of the pension amounted to the acceptance of a present remuneration instead. Neither the pension nor the sum paid to commute it constituted, in my opinion, profit from the office. If pension was paid after ceasing to hold the office, it would have been assessable under the head of " pension " in Schedule E and the first Rule applicable to that Schedule. I agree with the unanimous view of the members of the Court of Appeal that a pension is in itself a taxable subject-matter distinct from the profit of an office, and if an individual agrees to exchange his right to a pension for a lump sum, that sum is not taxable under Schedule E. This conclusion is in accordance with the views of the majority of the Law Lords when this House decided the case of *Hunter* v. *Dewhurst,* 16 T.C. 605. There an article of association of the company which had employed Commander Dewhurst provided that when a director died or resigned or ceased to hold his office for a cause not reflecting upon his conduct or competence, the company should pay to him or his representatives " by way of compensation for the loss of office " a sum equal to the total amount of his remuneration in the preceding five years. Commander Dewhurst subsequently agreed with the company, at a time when he was ceasing to be chairman but was remaining a director, that in lieu of his rights under this article he should be paid £10,000, while his remuneration as director was at the same time reduced to £250 per annum. Lord Warrington, Lord Atkin and Lord Thankerton held that the £10,000 was not a profit from his employment as director and did not represent salary, but was a sum of money paid down by the company to obtain a release from a contingent liability as distinguished from being remuneration under the contract of employment. Lord Thankerton emphasised the further point that the payment was not in the nature of income at all. It is true that the decision in *Dewhurst's* case was regarded and described as arising in very special circumstances, but I think the *ratio decidendi* is as I have described. Moreover, apart from previous authority, I should myself take the view that a lump sum paid to commute a pension is in the nature of a capital payment which is substituted for a series of recurrent and periodic sums which partake of the nature of income.

But can the same view be taken of an arrangement made between an employer and his servant under which, instead of the whole or part of a periodic salary, a single amount is paid and received in respect of the employment? Generally speaking, I think not. An " office or employment " of profit "—to use the actual phrase in Schedule E—necessarily involves service over a period of time during which the office is held or the employment continues. The ordinary way of remunerating the holder or the person employed is to make payments to him periodically, but I cannot think that such payments can escape the quality of income which is necessary to attract Income Tax because an arrangement is made to reduce for the future the annual payments while paying a lump sum down to represent the difference. My view seems to me to be supported by the decision of this House in *Prendergast* v. *Cameron,* 23 T.C. 122. In that case the respondent was a director of a company and was minded to resign his position and so obtain greater ease. His fellow directors, in the interests of the company's success, urged him not to do so and an agreement was made between the company

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and himself under which his salary was reduced from £1,500 to £400 per annum, but he also received £45,000. This House decided that the £45,000 was a profit from the respondent's directorship and was therefore assessable under Schedule E. I am not myself prepared to go so far as to say, as was said by the Master of the Rolls and Goddard, L.J., in the present case, that remuneration for service can never be capital in the sense which would put it outside Income Tax. It is worth pointing out that the word " remunera- " tion " does not occur in Schedule E at all and it is safer to use the words of the Statute. I prefer to limit myself to the case now under consideration, and to say that, whatever part of the £40,000 should be regarded as the equivalent of a drop in salary amounting to £4,000 a year, is within the charge on profits from the office of director.

There remains the question, which might otherwise have raised some difficulty, whether, when capitalisation of pension is not taxable and a sum paid in compromise of a reduction in salary is taxable, the £40,000 which is agreed between the parties to be the value of the two things together can be split up. We are relieved in the present case from deciding the point, for the Attorney-General agreed that the two sums of £20,000 each should be treated as apportionable if the House took the view that tax was due under one head but not under the other. Accordingly I move that these two assessments should be referred back to the Commissioners in order that they may determine, according to the best of their judgment, what would be a reasonable apportionment. So much of the two sums as should be taken as paid in substitution for the reduction of salary should be asssesed, in the appropriate years, for tax under Schedule E. The balance of the two sums which should be regarded as representing the purchase price of the annuity should escape taxation. I move accordingly. The Appellant should have his costs of the appeal to this House, and there should be no costs in the Court of Appeal on either side.

My Lords, I am authorised by my noble and learned friends **Lord Atkin** and **Lord Russell of Killowen** to say that they concur in the opinion which I have just delivered.

Lord Thankerton.—My Lords, the Crown claims that the sum of £40,000 paid to the Appellant in two instalments at a year's interval under the agreement of 6th April, 1938, is chargeable to Income Tax under Schedule E of the Income Tax Act of 1918, as paid to him in respect of his office of director and coming within the words of Rule 1 of Schedule E, that is, " all salaries, fees, wages, perquisites or profits whatsoever therefrom ".

My noble and learned friend on the Woolsack has made sufficient reference to the various agreements, and I agree that, in order to appreciate the two fold consideration in return for which the £40,000 was agreed to be paid, it is necessary to refer to the agreement of 28th June, 1937, the terms of which equally necessitate a reference to the earlier agreement of 19th December, 1921.

The Crown failed before the Special Commissioners, on the ground that the payment of £40,000 was not made to the present Appellant as remuneration for services rendered or to be rendered by him in his office as a managing director of the company. On appeal, by Stated Case, Lawrence, J., decided in favour of the Crown, holding that both in form and substance the payment was made in consideration both of the release from the company's obligation to pay the pension and the present Appellant's agreement to serve at a reduced salary of £2,000 per annum. As regards the latter element, the learned Judge held that it was clearly a profit from the office, and, as regards

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the ten-year pension, he held that, as the pension would have been assessable under Schedule E by virtue of Section 17 of the Finance Act, 1932, the sum payable in commutation thereof was assessable under Schedule E, and he based this finding on the decision in *Short Bros., Ltd.* v. *Commissioners of Inland Revenue*, 12 T.C. 955.

An appeal by the present Appellant to the Court of Appeal was dismissed, but partly on grounds materially different from those of Lawrence, J. All the learned Judges differed from his statement as to the assessability of a sum paid in commutation of a pension and the Master of the Rolls pointed out that the case of *Short Bros.* did not support the view of the learned Judge; further, all the learned Judges of the Court of Appeal were of opinion that, if the agreement of 1938 had expressly apportioned the consideration of £40,000 between clauses 1 and 2, the portion referable to clause 1, which released the pension obligation, would not have been chargeable to tax, but that the portion referable to clause 2, which contained the agreement to serve as managing director at a reduced salary, was chargeable to tax, as it fell directly within the decision of this House in *Prendergast* v. *Cameron*, [1940] A.C. 549; 23 T.C. 122. But the learned Judges—MacKinnon, L.J., doubting—held that, as the parties themselves had refrained from apportionment, an apportionment by the Court was not permissible. Goddard, L.J., appears to have further held that, in view of the conditions attached to the payment of the pension, it would be impracticable to make such an apportionment.

My Lords, in common with all the learned Judges below, I have no doubt that, in so far as the payment of the £40,000 may be referable to the agreement to serve as managing director at a reduced salary, there is liability to tax, the decision in *Prendergast's* case being directly in point. It satisfies, in my opinion, the two tests, which are (i) whether it arose from the office of director within the meaning of Rule 1, and (ii) whether it is in the nature of income. I may add that I doubt whether the word "capital" is the exact antonym to the latter test. While I would agree that, according to common experience, any consideration given in return for services in the office of director is likely to be in the nature of income, I am not prepared to state dogmatically that it must in every conceivable case be so, whatever form it takes, as the learned Master of the Rolls and Goddard, L.J., appear to think. It is enough that there is no difficulty in the present case.

In so far as the payment of the £40,000 may be referable to the agreement to accept a sum in commutation of the liability to pay a pension, I have nothing to add to the view expressed by my noble and learned friend on the Woolsack. As in *Dewhurst's* case (16 T.C. 605), such payment did not arise from the office of director, but in spite of it. I also agree with the view expressed by my noble and learned friend on the question of apportionment. I would desire to note, on the question of practicability, referred to by Goddard, L.J., that the present Appellant's accountants appear to have provided the basis for the agreed sum of £40,000, as stated in paragraph 8 of the Stated Case. I concur in the motion proposed by my noble and learned friend.

Lord Porter.—My Lords, as MacKinnon, L.J., has pointed out, your Lordships are not without assistance when considering the problem which this matter presents. In *Hunter* v. *Dewhurst*, 16 T.C. 605, and *Prendergast* v. *Cameron*, [1940] A.C. 549: 23 T.C. 122, this House has at least discussed the question and, in my view, has decided it.

(Lord Porter.)

By the so-called " 1938 " agreement the Appellant received two sums of £20,000 each and in return gave two separate considerations: (i) He released the company from an obligation to pay a pension of £4,000 a year for ten years from his ceasing to be managing director; and (ii) he agreed to serve the company at a reduced salary of £2,000 (instead of as theretofore at £6,000 granted him by the 1937 agreement).

It was claimed for the Crown that both these two sums of £20,000 were taxable as a profit from the directorship, but that, even if the former was not so taxable, the commutating sums paid for each were so inextricably interwoven that it was not possible to ascertain how much was paid for the one and how much for the other, and that consequently the subject must pay on the whole. This was, as I understand it, the view of the majority of the Court of Appeal. MacKinnon, L.J., however, though he would himself have taken the view that each item would be severally taxable, held himself bound by the principles evolved in the two cases referred to above, and therefore considered that any sum paid in commutation of the pension was not taxable, whereas the sum paid as a consideration for the agreement to serve on as managing director at a reduced salary was taxable.

My Lords, I agree that this result follows if the remuneration can be apportioned between salary and pension. As I see it, your Lordships have so decided in the cases referred to above and are bound by authority so to hold.

The Attorney-General argued that this present case differed from *Hunter* v. *Dewhurst*(1) in that the sum paid in commutation of the pension rights was paid whilst the Appellant was still serving as a director and that the sum paid in commutation of a pension to a person so serving differed from that paid in respect of a pension already due to a director whose service had come to an end. I do not feel able to accede to this argument. In my view a sum received upon the sale or surrender of pension rights is not taxable under Schedule E because it is neither pension nor annuity and comes under no other heading of that Schedule.

It is in the headnotes to *Dewhurst's* case said to be exempt as being capital and not income. It is not, as I think, a pension or annuity, and therefore not income taxable under Schedule E; but I doubt if much assistance is to be obtained by making use of the antinomy between capital and income.

The Attorney-General sought to distinguish *Hunter* v. *Dewhurst* on the ground that in that case the pension was not deferred pay whereas in this case it was, and admitted that, if it were not, the Crown would have no claim to tax. Such a contention makes it necessary to determine the grounds upon which the pension was granted in the 1937 agreement. No special consideration is stated in that document: the granting of the pension apparently forms one of the general terms of the agreement under which the Appellant promises to give up his right to receive one shilling in respect of each pound of material manufactured under his secret process. Moreover, the pension is payable at any moment at which he may cease to be employed as managing director whatever the cause, and it is apparently payable to his personal representatives. I cannot think that such a provision represents deferred pay. It looks much more like a payment in lieu of the stipulated reward for revealing the secret process. But it is unnecessary to speculate. It is a sum paid for the release of an obligation to provide a pension and it is not shown to be given instead of deferred pay. If so, it is admittedly not subject to tax.

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(1) 16 T.C. 605.

(Lord Porter.)

Just as in my opinion it follows, from the reasoning in *Dewhurst's* case(1), that any part of the two sums of £20,000 which was paid in respect of the surrender of the pension rights is not subject to tax under Schedule E, so in consequence of the decision in the *Prendergast* case(2) the remaining part of that sum which was given in lieu of the surrendered payment of £4,000 as managing director is, I think, taxable as a profit from a public office.

It only remains, therefore, to see whether the sum attributable to the release of the pension can be separated from that payable for the reduction of salary. It was only faintly argued on behalf of the Crown that such a division was not possible; but it was said that there were no materials upon which such a calculation could be made inasmuch as the cessation of the salary and the commencement of the pension were dependent on many unascertainable matters, amongst others on the Appellant's choice of the time of his retirement. No doubt there are difficulties but the resultant figure seems no more incalculable than, say, the length of time during which an injured workman would have continued to earn wages had he not received his injury, a period difficult no doubt to ascertain, but one which has constantly to be estimated in dealing with cases of personal injury.

My Lords, I agree that this appeal should be allowed in part and in part dismissed, and concur in the Order suggested by the Lord Chancellor.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from and the judgment of Lawrence, J., be discharged, and that the two assessments be remitted to the Special Commissioners with a declaration that so much of the assessments as represents a sum paid in compromise of reduction of salary is assessable to Income Tax, but so much as represents capitalisation of pension is not so assessable, and with a direction to determine what would be a reasonable apportionment of the two sums of £20,000.

The Contents have it.

That the Respondent do pay to the Appellant his costs of the appeal to this House.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; R. G. Percival.]

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(1) 16 T.C. 605. (2) 23 T.C. 122.