

Privy Council Appeal No. 79 of 1923.

The St. Lucia Usines and Estates Company, Limited - - *Appellants.*

v.

The Colonial Treasurer of St. Lucia - - - *Respondent.*

FROM

THE ROYAL COURT OF ST. LUCIA.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH FEBRUARY, 1924.

Present at the Hearing :

LORD ATKINSON.
LORD WRENBURY.
LORD DARLING.

[*Delivered by* LORD WRENBURY.]

The question is whether under the Income Tax Ordinance, 1910, of Saint Lucia the Saint Lucia Usines Co. were in the year 1921 liable to be assessed for Income Tax in respect of the year ending on the 31st December, 1921. The material facts are few. The Company had for some years down to and including the year 1920 owned estates and carried on business in Saint Lucia and duly paid Income Tax down to the end of the year 1920. In 1920 it sold all its estates in the island and since the end of 1920 it has not resided and has not carried on any business there. Under the deed of sale of one of the properties a sum of £64,379 0s. 11*d.*, part of the purchase price of £117,879 0s. 11*d.*, was left unpaid and was secured by "Vendor's Privilege" and by a covenant on the part of the purchaser to pay on the 30th November, 1921 that sum with interest at 6 per cent. from the 19th November, 1920. The obligation of the purchaser under that covenant was not met. No interest was paid in 1921. The Company obtained a judgment and the interest was subsequently paid. In this state of facts the judgment under appeal is one under which the

Company is held liable for £2,848 13s. for Income Tax in respect of the year 1921 and £292 0s. 8d. for fines for default in payment.

In stating the machinery of the Income Tax Ordinance their Lordships will for clearness refer to the year 1921, but the same is, of course, true for any other year.

Income Tax is an annual tax on income derived from any source (Section 3, (1)), and is due and payable in respect of the year in which it is assessed (Section 6). In February, 1921, a person liable to pay Income Tax in respect of the year 1921 had to make a return of his whole income for the year ended on the 30th September, 1920, in the form in the Second Schedule (Section 15). That form uses the words "my income from all sources during the year ended 30th September, 1920." The Ordinance calls it "a return of his income" (Section 15 (1) and (4)). This return is the basis of an assessment to be made upon him for Income Tax for the year 1921. The Income Tax is due and payable on or before the 31st July, 1921, "in respect of the year ending on the" 31st December, 1921 (Section 6). The Tax is imposed upon a person whom the Ordinance calls the "person liable to pay Income Tax" (Section 15 (1), Section 20). It is imposed upon the person in respect of his income (*see e.g.*, Section 4 (1) (a) *ad finem*, Section 18 (1) (2) (4)) and is a tax "in respect of the year ending on" the 31st December, 1921 (Section 6).

On or before the 1st June, 1921, the Treasurer is to insert in the Gazette a notice to the effect that Income Tax for the year ending the 31st December, 1921, is due and payable on the 31st July, 1921 (Section 31). During August he is to receive all taxes remaining unpaid after the 31st July (Section 32) and on or before the 15th August he is to give notice in the Gazette that warrants will be issued for recovery of taxes and fines remaining unpaid after the 31st August (Section 33).

The outcome of all this is that a person liable to pay Income Tax in respect of the year 1921 has to return his income for the period September, 1919, to September, 1920; is under Section 6 liable to pay Income Tax in respect of the year 1921 and the measure of the income in respect of which he is liable is his whole income from September, 1919, to September, 1920.

The next step is to ascertain who is the person liable to pay Income Tax in respect of the year 1921. The answer is to be found in Section 3. Section 3 enacts that "every person receiving income or to whom income shall accrue shall in respect of such income pay an annual Income Tax" at certain defined rates. By Section 4 (1) "The income in respect of which Income Tax is imposed shall include" (a) certain income arising or accruing to any person residing in the Colony (b), certain income arising or accruing to a person not residing in the Colony but derived from profits of property in the Colony or from profession or trade carried on in the Colony, and (c) income arising or accruing to any person residing in the Colony derived from a source in or out of the Colony and income arising or accruing to a person not residing

in the Colony derived from a source in the Colony, with a proviso that "in respect of income derived from sources out of the Colony only so much of such income as is received in this Colony shall be chargeable with Income Tax." The word "received" here is of some importance with reference to something which follows.

From the foregoing it results that the person liable to pay Income Tax (Section 15 (1)) must be either a person residing in the Colony or a person not residing in the Colony but having income derived from a source in the Colony.

In the year 1921 the Company was not resident in the Colony. After 1920 it neither resided nor carried on trade in the Colony. It remains to inquire whether in the year 1921 it had income derived from a source in the Colony. If it had it was taxable "in respect of the year 1921" and the measure of its liability was the profit it made between September, 1919, and September, 1920, when it was trading in the Colony. But if it had not it was not taxable in respect of the year 1921.

In the year 1921 the Company derived no profit from a source in the Colony unless the interest on the above mentioned sum of £64,379 0s. 11*d.* was profit derived in that year or was income received or accrued in that year. The question to be answered is whether the Company was a person who within Section 3 (2) received income or to whom income accrued in that year in respect of this interest.

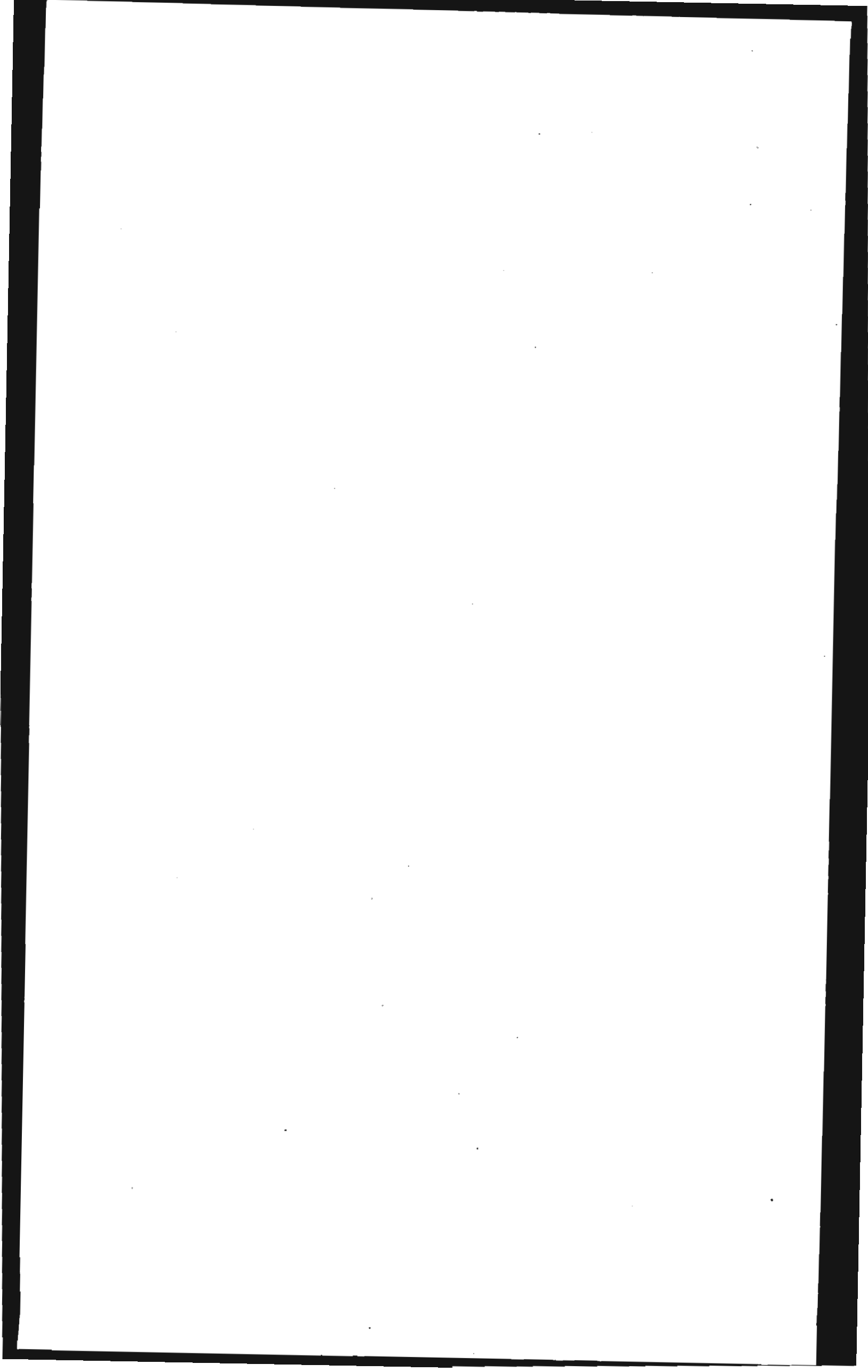
The words "arising or accruing" occur repeatedly in the Ordinance *e.g.* in Section 4 (1) (a) (b) (c) (d) and (e), coupled with the words "and derived from" or "or derived from." Sometimes the expression "derived from" is used alone, Section 5 (1) (a) (c) (g) (i) and (ii). The respondent contends that the above interest "accrued" to the Company in the year 1921, because it was payable in that year and none the less because it was not paid in that year. Their Lordships do not agree. The words "Income arising or accruing" are not equivalent to the words "Debts arising or accruing." To give them that meaning is to ignore the word "Income." The words mean "money arising or accruing by way of Income." There must be a coming in to satisfy the word Income. This is a sense which is assisted or confirmed by the word "received" in the proviso at the end of Section 4 (1). If the taxpayer be the holder of stock of a Foreign Government carrying say 5 per cent. interest, and the Government is that of a defaulting State which does not pay the interest, the taxpayer has neither received nor has there accrued to him any Income in respect of that stock. A debt has accrued to him but income has not. It does not follow that Income is confined to that which the taxpayer actually receives. Where Income Tax is deducted at the source the taxpayer never receives the sum deducted but it accrues to him. It is said, and truly, that a commercial company, in preparing its balance sheet and profit and loss account does not confine itself to its actual receipts—does not prepare a mere cash account—but values its book debts and its stock in trade and so

on and calculates its profits accordingly. From the practice of commerce and of accountants and from the necessity of the case this is so. But this is far from establishing that Income arises or accrues from (as above instanced) an investment which fails to pay the interest due. Counsel for the respondent sought to found an argument upon Section 11 and the words "income chargeable with Income Tax" in Section 18. No Income is chargeable with Income Tax under the Ordinance. It is a person that is chargeable in respect of his income. The words "Income chargeable with Income Tax" mean "Income in respect of which he is chargeable."

Being of the above opinion it follows that during the year 1921 no income arose or accrued to the Company from any source within the Colony. And the Company was not during the year resident in the Colony. It was therefore not assessable in respect of that year.

It is unnecessary to deal with the question which was considered below, but which has not been urged before this Board as to the words "final and conclusive" in Section 25. Inasmuch as in their Lordships' judgment the Company was in the year 1921 not assessable at all, it was not a person "required by the Ordinance to make and deliver a return," but was outside the Ordinance altogether, and action taken under the Ordinance cannot result in anything "final and conclusive" against the Company.

In their Lordships opinion this appeal succeeds. The order of the Acting Chief Justice must be discharged with costs here and below and the matter remitted to the Acting Magistrate with a declaration that the Company was not assessable in respect of the year 1921 and with a direction to him to deal with the summons in such manner as to give effect to that declaration. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

THE ST. LUCIA USINES AND ESTATES COMPANY,
LIMITED

2.

THE COLONIAL TREASURER OF ST. LUCIA.

DELIVERED BY LORD WRENBURY.

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