

No. 755.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
30TH APRIL, 1930.

BENNETT v. OGSTON (H.M. INSPECTOR OF TAXES).⁽¹⁾

Income Tax, Schedule D, Case III—Instalments on moneylender's promissory notes—Whether such part of instalments falling due after the death of the lender as did not represent repayment of capital was assessable as interest under Case III—Trading profits—Cessation of business.

A moneylender made loans on promissory notes which provided for payment to him of monthly or more frequent instalments. Up to the date of his death he was assessed to Income Tax under Case I, Schedule D, in respect of the profits of this business, all instalments due and paid prior to his death being brought into the relative computations.

Instalments falling due after his death were collected by the administrator of his estate but it was not suggested that the administrator was at any time carrying on any trade.

Assessments to Income Tax were made on the administrator on the basis that so much of the instalments collected by him as did not represent repayment of capital was "interest of money" within the meaning of Rule 1, Case III, Schedule D, Income Tax Act, 1918. The administrator contended that the sums in question were not assessable as "interest of money" within the Income Tax Acts. The General Commissioners confirmed the assessments. The administrator appealed.

Held, that the sums in question were "interest" assessable under Case III.

CASE

Stated by the Commissioners for the General Purposes of the Income Tax Acts for the Parish of St. James in the City of Westminster under Section 149 of the Income Tax Act, 1918, for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Parish of St. James in the City of Westminster held at 187 Piccadilly in the City of Westminster on the 1st day of May, 1929, P. Bennett as Administrator of Harris

⁽¹⁾ Not reported.

Bennett deceased (hereinafter called "the Appellant") appealed against estimated assessments to Income Tax under Case III of Schedule D of the Income Tax Acts as follows:—

Assessment No. 15910	Year 1926-27.	£5,000	on untaxed interest.
„	17000 „	1927-28.	£5,000 do.
„	8434 „	1928-29.	£500 do.

2. The question for the determination of the Commissioners for General Purposes upon this appeal was whether certain amounts claimed to be assessed as interest included in the instalments payable by borrowers in repayment of loans made by the late Mr. Harris Bennett and collected by the Appellant was interest of money within the meaning of the words in Rule 1 of the Rules applicable to Case III of Schedule D and whether such amounts could be assessed under such Case,

3. The following facts were admitted between the parties:—

(a) The late Mr. Harris Bennett who died on the 23rd day of August, 1926, carried on for some years the business of a moneylender and Income Tax up to the date of his death on the profits of his business has been duly assessed under Case I of Schedule D and the full amounts of the instalments due and paid prior to his death have been brought into the relative computations. The late Mr. Harris Bennett prepared accounts of his business annually and such accounts formed the basis for arriving at his liability to tax under Case I of Schedule D. The amounts credited as receipts in such accounts consisted only of instalments due and paid in the period to which the account related. It was admitted that no part of the instalments received by the Appellant had been credited as a receipt in the accounts of the late Mr. Harris Bennett's business nor had any such instalments been taken into account in any computation for arriving at the late Mr. Bennett's liability under Case I of Schedule D. It was also admitted that all the amounts claimed to be assessed as interest to which the present appeal relates became due and were paid after the death of Mr. Harris Bennett.

(b) In all cases loans by the late Mr. Harris Bennett were made on Promissory Notes subject to repayment by instalments (monthly or more frequent) the total amount repayable being in each case more than the amount actually lent. Each instalment being as to part repayment of capital and as to the balance an amount claimed to be assessed as interest. A form of Promissory Note is attached to and forms part of this Case.

- (c) The Appellant as the Administrator of the Estate collected the instalments due for repayment after the death of the late Mr. Harris Bennett as and when they fell due.
- (d) No loans were renewed nor were any fresh loans made, but in some cases allowances were made for an early settlement.
- (e) The Administrator did not at any time carry on any trade.

4. In a few cases a charge had been made when the instalments had fallen into arrear and it was agreed without prejudice to the main question that the charges so made were subject to assessment to Income Tax.

5. It was contended on behalf of the Appellant (*inter alia*) :—

- (a) That that part of the instalments which is not repayment of capital is not interest of money within the Income Tax Acts.
- (b) That such part of the instalments is trading profit properly assessable under Case I of Schedule D.
- (c) That the assessments are wrong in principle.

6. It was contended by the Respondent on behalf of the Crown (*inter alia*) :—

- (a) That the " interest " included in the instalments collected by the Appellant accrued became due and was received after the date of death of Mr. Harris Bennett and was interest of money arising and chargeable under Rule 1 of the Rules applicable to Case III of Schedule D.
- (b) That the " interest " in question had never been included as a trading receipt in computing the balance of profits assessable under Case I of Schedule D.
- (c) That the assessments were correct in principle and should be confirmed.

7. The following Cases were referred to :—

<i>Cohan's Executors v. Commissioners of Inland Revenue</i>	12 T.C.	602.
<i>Coltness Iron Company v. Black</i>	1 ,,	287.
<i>Tennant v. Smith</i>	3 ,,	158.
<i>J. & R. O'Kane & Co. v. Commissioners of Inland Revenue</i>	12 ,,	303.
<i>Earl Howe v. Commissioners of Inland Revenue</i>	7 ,,	289.
<i>Schulze v. Bensted</i>	7 ,,	30.
<i>Commissioners of Inland Revenue v. Ballantine (Forrest's Judicial Factor)</i>	8 ,,	595.

<i>Armitage v. Moore</i>	4 T.C.	199.
<i>National Provident Institution v. Brown</i> ...	8 ,,	57.
<i>Wigmore v. Thomas Summerson & Sons Ltd.</i>	9 ,,	577.
<i>Leeds Permanent Benefit Building Society v. Mallandaine</i>	3 ,,	577.

8. We the Commissioners distinguished this case from the case of *Cohan's Executors v. Commissioners of Inland Revenue* and were of opinion that the "interest" included in the instalments was interest of money within the meaning of the words in Rule 1 of the Rules applicable to Case III of Schedule D. The amount of "interest" not yet having been ascertained it was agreed between the parties that the case should be remitted to us to fix the amounts of the assessments.

The Appellant thereupon expressed his dissatisfaction with the decision of the Commissioners as being erroneous in point of law and duly required us to state and sign a Case for the opinion of the High Court which we now state and sign accordingly.

DATED this 31st day of December, 1929. } Commissioners for Income
 (Sgd.) HENRY S. F. ALEXANDER, } Tax for the division of St.
 ,, ANTHONY G. GRINLING, } James' Westminster.

No. 21698.

£300.

July 9th 1926

I promise to pay to HARRIS BENNETT, or order at 23, Sackville Street, London, W.1, the sum of Three hundred pounds for value received by Twelve equal monthly instalments of Twenty five pounds each on the Ninth day of every month commencing on the 9th day of August 1926 and in case of default in payment of any instalment the whole amount or so much thereof as may remain unpaid to become due and payable forthwith together with interest at the rate of 1s. in the £ per month from maturity until paid.

(Signed) * * * * *
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The case came before Rowlatt, J., in the King's Bench Division on the 30th April, 1930, when judgment was given in favour of the Crown, with costs.

Mr. R. W. Needham, K.C., and Mr. H. Simmons appeared as Counsel for the Appellant and the Solicitor-General (Sir J. Melville, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—In this case the Appellant is the administrator of a deceased moneylender and, upon the occurrence of the death, the administrator came into possession of a number of moneylender's promissory notes in the form with which we are familiar, namely, providing for the payment of a number of instalments which would liquidate, both as regards the principal and interest, a sum of money advanced by the moneylender to the maker of the note. Each of these instalments is found in the Case to contain principal and interest and we know, of course, that it is so, and we are familiar with the way in which these instalments are broken up into principal and interest.

The question which I have to decide is whether the administrator is bound to pay Income Tax upon so much of these instalments as represents interest, the amount of which is not yet ascertained. It is to be observed that the interest on which it is contended he ought to pay Income Tax is not interest which represents the use of any capital money by the borrower during the lifetime of the deceased, but the question is raised as regards interest which represents the use by the borrower of money which remains unpaid, since the death of the deceased. That is the essence of the case.

When a trader or a follower of a profession or vocation dies or goes out of business—because Mr. Needham is quite right in saying the same observations apply here—and there remain to be collected sums owing for goods supplied during the existence of the business or for services rendered by the professional man during the course of his life or his business, there is no question of assessing those receipts to Income Tax; they are the receipts of the business while it lasted, they are arrears of that business, they represent money which was earned during the life of the business and are taken to be covered by the assessment made during the life of the business, whether that assessment was made on the basis of bookings or on the basis of receipts. But this is not that case; because here the interest in question is not the accrued earnings of the capital during the life of the deceased or the time the business was carried on; it is the earnings of the capital, or so much as is left of it since the death, and this interest has been earned over the time which has elapsed since the death. Under these circumstances the Crown say, why does it not bear Income Tax—money left as it is in the hands of the administrator for a future date, at interest, why is not the interest to pay the tax? The answer that is put forward is this. This moneylender during his life was not charged Income Tax upon the interest which he received from borrowers as such but interest which he received was treated as the receipts of the business under Case I., just as the interest of a banker which he receives on his overdrafts, together with the interest which he pays

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on his deposits, are both brought into his profits as a banker. Therefore, during his life that is the way it was treated. Mr. Needham says, that being so, he is taxed under Case I upon his trading in money, and in the last year of his life he paid Income Tax on a sum assessed as his profits which is to be taken to have included the profits of dealings by virtue of which he made the interest now in question.

That is how he puts it; but I do not think that is right. I think when you are dealing with what is interest and nothing but interest you cannot say it is in the nature of business, because it is payment by time for the use of money. When you are dealing with interest, it is true that under certain circumstances, in this case among others—the banker's case is another case but the Australian case is not so like it—though you may treat the interest as the mere receipts of a trade and not as interest itself, I think it is quite impossible to say that interest which has to be borne next year, although you may have to secure it by a dealing this year, can be treated as a profit of this year. I do not understand that; I do not think that is possible. I think when you deal with interest as a receipt of a trade you must deal with it year by year, and the interest, as it comes in in the year as a receipt from the trade, if you like. If the trade stops then the securities which are outstanding which bear interest become securities apart from the trade, and interest upon them must bear Income Tax.

That is how I regard this case, and I think the appeal must be dismissed with costs.

[Solicitors:—Mr. W. G. R. Saunders; the Solicitor of Inland Revenue.]
