HIGH COURT OF JUSTICE (CHANCERY DIVISION)—
18TH AND 19TH DECEMBER, 1963

COURT OF APPEAL—3RD AND 4TH JUNE, 1964

HOUSE OF LORDS—9TH AND 10TH MARCH, AND
8TH APRIL, 1965

Laidler

v.

Perry (H.M. Inspector of Taxes)[1]

Morgan

v.

Perry (H.M. Inspector of Taxes)

Income Tax, Schedule E—Christmas gift voucher—Whether assessable—Income Tax Act, 1952 (15 & 16 *Geo.* VI & 1 *Eliz.* II, *c.* 10), *Section* 156; *Finance Act*, 1956 (4 & 5 *Eliz.* II, *c.* 54), *Second Schedule, Paragraph* 1(1).

It was the practice of a group of companies to give every Christmas to staff employees (who included the Appellants) and staff pensioners a gift voucher to be used at the shop of their choice for the purchase of goods up to the value of £10. *Vouchers were given to all staff employees without regard to their rate of remuneration, personal circumstances or personality or the way in which they had carried out their duties. The directors of the parent company considered that this policy helped to maintain a feeling of happiness among the staff and so was likely to be of advantage to the group.*

On appeal against additional assessments to Income Tax under Schedule E for the years 1955–56 *to* 1960–61 *inclusive in amounts of* £10, *the Appellants contended* (inter alia) *that the vouchers did not represent rewards for services but were personal gifts, and were therefore not assessable as emoluments of their employments. The Special Commissioners found that the vouchers were made available in return for services and confirmed the assessments.*

Held, *that the Commissioners were well entitled to come to their decision.*

CASES

(1) *Laidler* v. *Perry* (*H.M. Inspector of Taxes*)

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

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[1] Reported (C.A.) [1965] Ch. 192; [1964] 3 W.L.R 709; 108 S.J. 480; [1964] 3 All E.R. 329; (H.L.) [1965] 2 W.L.R. 1172; 109 S.J. 316; [1965] 2 All E.R. 121; 236 L.T. Jo. 261.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 4th and 5th October, 1962, Dr Douglas Stewart Laidler (hereinafter called " the Appellant ") appealed against the following additional assessments to Income Tax made upon him under Schedule E:

Year	*Amount of assessment*
	£
1955–56	10
1956–57	10
1957–58	10
1958–59	10
1959–60	10
1960–61	10

2. The questions at issue in this appeal were:

(*a*) whether gift vouchers given to the Appellant by his employer each Christmas were emoluments of his employment assessable to Income Tax under Schedule E, Income Tax Act, 1952; and if so,

(*b*) the value of the said vouchers for the purpose of assessments under Schedule E;

(*c*) in the alternative, if he were not so assessable, whether the Appellant was assessable under Schedule E by virtue of the provisions of Sections 161 and 160, Income Tax Act, 1952, in respect of the cost to his employer of providing the said vouchers.

3. Evidence was given before us by: (*a*) the Appellant; (*b*) Mr U. Stewart, secretary of Goodlass Wall & Lead Industries, Ltd, and director and secretary of Associated Lead Manufacturers, Ltd; (*c*) Mr R. A. Cookson, a managing director of Goodlass Wall & Lead Industries, Ltd, and a director of Associated Lead Manufacturers, Ltd; (*d*) Mr J. A. Morgan, the chief cost accountant of Associated Lead Manufacturers, Ltd.

The facts found by us are set out in paragraphs 4 to 9 inclusive below.

This appeal was heard at the same time as an appeal by Mr J. A. Morgan, in respect of which we have stated a Case for the opinion of the High Court under the name John Allen Morgan *v.* William Arthur Perry (H.M. Inspector of Taxes) and the facts found by us in paragraph 4 of that Case may be taken to be facts found by us in this Case.

4. Goodlass Wall & Lead Industries, Ltd, hereinafter called " the parent company " is the parent company of a group of trading companies, one of which is Associated Lead Manufacturers, Ltd. The business now carried on by Associated Lead Manufacturers, Ltd resulted from the merging of a number of family businesses with long histories (several going back to the 18th century, one to 1704). Descendants of the original families were working in the businesses before the merger and continued in the company down to and throughout the period covered by this Case. There was a long history in these family businesses of giving gifts in kind to the staff at Christmas. The expression " staff " in this Case refers to clerical, executive, technical and administrative workers, including full-time executive directors; in effect it denotes " white collar " workers. Manual workers were entertained at Christmas festivities.

[The remainder of paragraph 4, and paragraphs 5 to 12, are quoted verbatim by Pennycuick, J., in the Chancery Division at pages 355–357, *post*.]

13. 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, 1952, Section 64, which Case we have stated and do sign accordingly.

14. The question of law for the opinion of the High Court is whether, on the facts found by us as set out in this Case, the decision to be found in paragraph 12 above was correct.

W. E. Bradley
G. R. East
} Commissioners for the Special Purposes of the Income Tax Acts

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

4th June, 1963.

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(2) *Morgan* v. *Perry* (*H.M. Inspector of Taxes*)

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 4th and 5th October, 1962, John Allen Morgan (hereinafter called " the Appellant ") appealed against the following additional assessments to Income Tax made upon him under Schedule E:

Year	*Amount of assessment*
	£
1955–56	10
1956–57	10
1957–58	10
1958–59	10
1959–60	10
1960–61	10

2. The questions at issue in the appeal were whether gift vouchers given to the Appellant by his employer each Christmas were emoluments of his employment assessable to Income Tax under Schedule E, Income Tax Act, 1952, and, if so, the value of the said vouchers for the purposes of assessments under that Schedule.

3. This appeal was heard at the same time as an appeal by Dr D. S. Laidler against certain Income Tax assessments under Schedule E made upon him. We have stated a Case for the opinion of the High Court under the name Douglas Stewart Laidler *v.* William Arthur Perry (H.M. Inspector of Taxes) and the facts found by us in paragraphs 4 to 9 inclusive of that Case may be taken to be the facts found by us in this Case.

4. The Appellant was employed by Associated Lead Manufacturers, Ltd, as a chief cost accountant. From 1939 to 1944 inclusive he was in the Army, during which time his wife was paid an allowance by the company, and he

himself when on leave was handed personally a National Savings Certificate voucher as a Christmas gift each year. He returned to the company from the Army in 1945, and received National Savings Certificate vouchers as Christmas gifts in that year and in 1946. In 1947 he received the special cash bonus paid at Christmas to all members of the staff amounting to one month's salary. In 1948, and each year since, he had received at Christmas time gift vouchers for £10. In February, 1948, on passing the final examination of the Institute of Costs and Works Accountants, he received from the company a monetary bonus of £25, which was paid to him less tax. Up to and including 1958 the Appellant was employed in Cheshire and the gift vouchers given to him were available to be spent in local shops chosen by him. In 1959 and 1960 the Appellant was employed in London and in those years he selected vouchers to be spent at the Army & Navy Stores, a shop where he would not normally make purchases. The Appellant used the vouchers given to him either to buy for his household, or for himself, goods which he would not normally buy. While the Appellant had a lively expectation each year that vouchers would be given to him at Christmas he did not count on them coming to him as a matter of course. The Appellant regarded the gift vouchers as Christmas gifts and distinct from bonuses which were rewards for effort.

5. It was contended on behalf of the Appellant that the vouchers given to him in the relevant years were not given to him as a reward for services, but as gifts made as a gesture of Christmas goodwill and personal friendliness towards him, and as such were not emoluments from his employment assessable to Income Tax under Schedule E; and that if the vouchers were emoluments so assessable, the amount to be assessed was something less than their face value of £10.

6. It was contended by H.M. Inspector of Taxes that the said vouchers constituted emoluments from the Appellant's employment assessable under Schedule E and that the amount so assessable in each year was the face value of the voucher, namely £10.

7. We, the Commissioners who heard the appeal, took time to consider our decision and gave it in writing on 29th October, 1962, as follows:

For the reasons given in our decision in the appeal of Dr. D. S. Laidler we confirm the Schedule E assessments in the sum of £10 for all years.

8. 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, 1952, Section 64, which Case we have stated and do sign accordingly.

9. The question of law for the opinion of the High Court is whether, on the facts found by us as set out in this Case, the decision to be found in paragraph 7 above was correct.

W. E. Bradley
G. R. East } Commissioners for the Special Purposes of the Income Tax Acts

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

4th June, 1963.

The cases came before Pennycuick, J., in the Chancery Division on 18th and 19th December, 1963, when judgment was given in favour of the Crown, with costs.

Mr H. H. Monroe, Q.C., and Mr Stewart T. Bates appeared as Counsel for the taxpayers, and Mr John Foster, Q.C., and Mr J. Raymond Phillips for the Crown.

Pennycuick, J.—This is an appeal by Dr Douglas Stewart Laidler against a decision of the Special Commissioners whereby they confirmed assessments upon him under Schedule E for the years 1955–56 to 1960–61 inclusive. The question is whether there should be included in the remuneration of the Appellant for each of these years a sum of £10 representing the value of a voucher given to him by his employers' parent company at Christmas.

Dr Laidler was throughout the relevant years a salaried employee of Associated Lead Manufacturers, Ltd, to which I will refer as " the company ", a subsidiary of Goodlass Wall & Lead Industries, Ltd, to which I will refer as " the parent company ". The company represented a merger of a number of family businesses; there was a long history in these businesses of giving gifts in kind to their staff at Christmas. The facts are succinctly set out in the Case Stated and I will read them from the Case.

> " With the formation of the group by the amalgamation and taking over of many companies, the parent company decided that all the companies which were members of the group should continue with the provision of Christmas presents to their staff. The directors of the group followed this policy because the distribution of personal presents at Christmas time was one of several measures which help to maintain a feeling of happiness among the staff and to foster a spirit of personal relationship between the management and staff; the directors believing that a contented staff was a good thing in itself and likely to be of advantage to the group.
>
> 5. So far as remuneration is concerned, the junior employees of the parent company and its subsidiaries, e.g., typists and clerks, are paid the normal wages for such staff in the areas where they are employed. The remuneration paid to senior staff compares favourably with salaries paid by other employers for comparable work. Especially good work is remunerated by monetary bonuses. All salaries are reviewed annually. When staff are engaged and their conditions of employment laid down, no mention is made of the prospect of their receiving a Christmas present.
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> 6. In the case of Associated Lead Manufacturers, Ltd, the staff were given presents in kind, for example, a turkey, up to Christmas, 1938. In 1939 with the outbreak of war it was found impossible to give presents in kind and the staff were given National Savings Certificate vouchers each Christmas. This practice was continued until 1946. In December, 1947, the directors of the parent company resolved to pay a special cash bonus to each member of the staff as a participation in the group's exceptional earnings during 1946 and 1947. The amount of the payment was fixed at one-twelfth of the 1947 salary, and the payment was accompanied in all cases by a letter signed by the chairman making clear its exceptional nature.
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> 7. In 1948 the directors of the parent company gave consideration to restoring the pre-war practice of giving Christmas presents. On 21st October, 1948, the directors resolved that Christmas gifts to the staff of all members of the group, amounting to £10 each, should be given. It was left to the managing director of the parent company to determine the form in which the gifts would be made and it was agreed that they should be accompanied by a letter from the chairman of the directors of the parent company. Following this resolution the officer responsible for paying salaries in each area in which staff were employed was instructed to ascertain from each member of the staff the shop in which he or she would like to spend a voucher for £10. When the personal wishes of the staff were known vouchers for £10 were purchased and sent to all the staff accompanied by a personal letter of good wishes from the chairman. The giving of gift vouchers was intended to restore the pre-war practice of giving presents in kind but to do so in a way which would overcome the difficulties arising from the post-war shortage of seasonable goods and the increased size of the group. On 5th November, 1949, the directors of the parent company resolved that Christmas gifts should be given to the staff on the same scale as in 1948. Since 1949 the giving of

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vouchers for £10 has continued each year without formal resolutions by the board of directors of the parent company. In each year the vouchers have been accompanied by a letter of good wishes from the chairman of the parent company. These letters have also referred to the choice of a personal gift by the recipients of the vouchers and carried a reference to the staff's good work and/or encouragement for the future. A bundle of letters issued between the years 1956 and 1961 inclusive, marked 'A', is attached to and forms part of this Case.

8. Each year just before Christmas the officer responsible for paying the staff of Associated Lead Manufacturers, Ltd, has circulated to each member of the staff a form announcing the proposal to make a present of gift vouchers at Christmas and asking the recipient to mark on the form the shop or shops at which he wishes to spend the vouchers. If preferred, tokens for books and/or gramophone records could be chosen. Staff who have been employed for longer than ten months have been given vouchers for £10, regardless of their rate of remuneration, which may vary between £4 10*s*. per week to £2,000 per annum and upwards. Staff employed for less than ten months have been given vouchers for something less than £10, the amount being broadly related to their length of service but again regardless of their rate of remuneration. The vouchers were given to all staff employees without any regard to their personal circumstances, their personality or to the way in which they had carried out their duties. They were also given to all staff pensioners of the company, but not to the manual workers of the group (who in 1960 numbered about 4,000 in the United Kingdom), whatever the length of their service. The manual workers participated in a Christmas dinner in the canteen. At Christmas, 1960, some 2,300 individuals (including 150 to 200 staff pensioners) received gifts of vouchers. The circular issued to the staff in 1960, marked 'B', is attached to and forms part of this Case. Each voucher issued could be exchanged for goods to the value shown thereon at the store named on the voucher. Every year many letters were received from recipients of the vouchers expressing their appreciation of the gifts made and reciprocating the good wishes conveyed in the letters sent with the gift vouchers. A bundle of such letters extracted from the group's files, marked 'C', is attached to and forms part of this Case.

9. The Appellant was employed as research manager by Associated Lead Manufacturers, Ltd. His employment was agreed to be one to which Chapter II of Part VI of the Income Tax Act, 1952, applied. In addition to his salary, he has received in each year since and including 1955 a cash bonus under the practice referred to in paragraph 5 of this Case, which was paid to him after deduction of tax under the P.A.Y.E. Regulations. In the years 1955 to 1960 inclusive he received each Christmas a voucher for £10 to be spent at his choice at Harrods, Ltd, a shop where he would not normally make purchases. Each year he used the voucher to purchase for his own use goods which he would not have bought for himself in the ordinary way. He had on one occasion offered the vouchers to his wife for her use, but she had insisted that he should use them himself as they were a personal gift to him. The Appellant regarded the annual giving of vouchers as a charming Christmas gesture by his employer and different from the bonuses which were a reward for effort. While each year he hoped for the continuation of the practice, he did not expect it as a matter of right.

10. It was contended on behalf of the Appellant that: (i) the vouchers given to him in the relevant years were not given to him as a reward for services but as gifts made as a gesture of Christmas goodwill and as such were not emoluments from his employment assessable to Income Tax under Schedule E; (ii) if the vouchers were emoluments so assessa le the amount to be assessed was something less than their face value of £10; and (iii) the vouchers being gifts of the nature set out in sub-paragraph (i) above were not assessable by virtue of the provisions of Sections 161 and 160, Income Tax Act, 1952.

11. It was contended by H.M. Inspector of Taxes that: (i) the said vouchers constituted emoluments from the Appellant's employment assessable under Schedule E; (ii) the amount so assessable in each year was the face value of the voucher namely £10; (iii) in the alternative, the vouchers were benefits or facilities provided by his employer for the Appellant and accordingly the cost thereof, viz. £10, was assessable upon him under Schedule E by virtue of the provisions of Sections 161 and 160, Income Tax Act, 1952.

12. We, the Commissioners who heard the appeal, took time to consider our decision and gave it in writing on 29th September, 1962, as follows:

(1) The first question for decision is whether the Appellant is assessable under Schedule E in respect of vouchers given to him annually at Christmas. As we understand the

authorities, the value of the vouchers is so assessable only if they represent ' money's worth ' which was made available to the Appellant in return for acting as or being an employee, i.e., as a reward for his services.

(2) The practice of giving vouchers to all the staff to whom the scheme applied was preceded by a longstanding pre-war habit of giving a present in kind to the staff each Christmas—a practice which prevailed for many years in several of the companies now embodied in the group. The voucher scheme is an attempt to ensure that each member of the staff is enabled to enjoy a present of his own choice. In approving the scheme the directors who dealt with the matter were prompted by a desire to preserve and foster the good relations existing between the directors and staff—relations which were both cherished in themselves and regarded as likely to yield returns in connection with the trade of the group. There are facts which suggest that the vouchers were something quite distinct from ordinary remuneration for services rendered as an employee. For example, apart from newcomers everyone on the staff, regardless of responsibility or performance of duties, received a flat rate of £10. Moreover, the salaries paid by the group compared favourably with salaries paid by other employers for comparable work. On the other hand, the organisation involved in the issue of vouchers to some 2,300 staff, the repetition of the gifts on the same basis year by year over a long period and the fact that they were given to everyone on the staff irrespective of personal circumstances suggest that the vouchers sent out at Christmas were amounts in ' money's worth ' similar to annual payments customarily and regularly made then for acting as an employee. After reviewing all the evidence and the arguments based on the many authorities cited to us we hold that the vouchers were made available in return for services rather than as gifts not constituting a reward for services. Having reached this conclusion it is not necessary for us to consider the alternative argument addressed to us by reference to Section 161, Income Tax Act, 1952.

(3) The Appellant, in common with every other member of the staff, could select his vouchers so that they could be spent at a store chosen by him from a number of stores selling a wide variety of merchandise suitable for most tastes. In these circumstances it seems to us, and we so find, that the vouchers he received were worth not appreciably less than their face value of £10.

(4) In the result we confirm the Schedule E assessments in the sum of £10 for all years."

The relevant charging Section in the Income Tax Act, 1952, is Section 156[1] :

" The Schedule referred to in this Act as Schedule E is as follows—Schedule E—1. Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom which fall under one, or more than one, of the following Cases . . .'

I will not read them out.

The broad principle of law to be applied was stated by Jenkins, L.J., in *Moorhouse* v. *Dooland*, 36 T.C. 1, at page 22, in these terms :

" The test of liability to tax on a voluntary payment made to the holder of an office or employment is whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office or employment, or in other words, by way of remuneration for his services."

This principle was applied to Christmas presents received by a hunt servant in *Wright* v. *Boyce*, 38 T.C. 160. The principle was re-stated in the House of Lords in *Hochstrasser* v. *Mayes*, 38 T.C. 673. I will read only two short passages. At page 705, Viscount Simonds :

" Upjohn, J., before whom the matter first came, after a review of the relevant case law, expressed himself thus in a passage which appears to me to sum up the law in a manner which cannot be improved upon[2]: ' In my judgment ', he said, ' the authorities show this, that it is a question to be answered in the light of the particular facts of every case whether or not a particular payment is or is not a profit arising from the employment. Disregarding entirely contracts for full consideration in money or money's worth and personal presents, in my judgment not every payment made to an employee is necessarily made to him as a profit arising from his employment. Indeed, in my judgment, the authorities show that to be a profit arising from the employment the payment must be made in reference to the services the employee renders by virtue of his office, and it must be something in the nature of a reward for services past, present or future.' In this passage the single word ' past ' may be open to question, but apart from that it appears to me to be entirely accurate."

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[1] As amended by Section 10(1), Finance Act, 1956. [2] 38 T.C., at p. 685.

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Lower down on the same page,

> " . . . if in such cases as these the issue turns, as I think it does, upon whether the fact of employment is the *causa causans* or only the *sine qua non* of benefit, which perhaps is only to give the natural meaning to the word ' therefrom ' in the Statute, it must often be difficult to draw the line and say on which side of it a particular case falls."

Then, Lord Radcliffe, at page 707[1],

> " For my part I think that their meaning "

—that is, the meaning of the words in the Statute—

> " is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it is has been paid to him in return for acting as or being an employee."

Where an employer, or as here the parent company of the employer, makes payments to every member of a group of employees in such circumstances that the employment is clearly a *causa sine qua non* of the payments, it is for the Commissioners to determine on the particular facts found by them whether or not the payments represent a reward for the services of the employees. It is the duty of the Court to review the decision of the Commissioners and to reverse it if, and only if, the conclusion is not a reasonable one upon the particular facts.

In the present case Mr Monroe, for the Appellant, does not contend that there is any general rule to the effect that Christmas presents paid by employer to employees do not represent a reward for services. He points out, however, that it depends on the particular facts whether presents are to be treated as a reward for services. He contends that there is an antithesis between presents which are a reward for services and those which are an expression of social or human relationship and that, on the particular facts in the present case, the payments fall within the latter category. I am not persuaded that there exists this clearly defined antithesis between a reward for services and an expression of social or human relationship. I should have thought that viewed, as they must be, from the point of view of the employee, Christmas presents might well represent a reward for services, notwithstanding that the reward carried with it an expression of human or social goodwill. The proper question, I think, is simply that posed in the House of Lords by Viscount Simonds and Lord Radcliffe. The antithesis of a payment which is a reward for services is a payment which is not a reward for services. It is tempting to give examples of the latter type of payment, but I think I had better not do so. Perhaps I should observe that Mr Monroe does not contend that the requirement that the payments must be looked at from the point of view of the employee imports a purely subjective test, i.e., what does the employee think is the nature of the payments? To return to this case, the presents were made regularly over a number of years by the parent company to all employees of the company in certain grades irrespective of their personal circumstances. It seems to me that these facts amply justify the conclusion to which the Commissioners have come unless there are other facts which lead decisively to the opposite conclusion. To adopt the words of Jenkins, L.J., in *Wright* v. *Boyce*[2], at page 172, the parent company's practice in making these payments represents a regular subvention every Christmas.

Mr Monroe has listed eleven facts which, upon his contention, do lead decisively to the opposite conclusion. The points are as follows. (1) The

[1] 38 T.C. [2] 38 T.C. 160.

vouchers are at a flat rate of £10. (2) The employees' salaries compare favourably with those paid by other employers. (3) Specially good work is remunerated by a monetary bonus. (4) The prospect of receiving Christmas gifts is not mentioned to employees when their terms of employment are arranged. (5) The vouchers are given in continuance of a long-established practice of giving Christmas presents. (6) Vouchers are allocated to one or other shop in accordance with the personal wishes of the recipient. (7) The vouchers are accompanied by a personal letter from the director. (8) The vouchers are also given to staff pensioners. (9) The vouchers are regarded by the recipients as personal gifts. (10) Christmas presents are not expected as a matter of right or taken for granted. (11) Many employees send letters of thanks. I have endeavoured to give due weight to all these considerations, but I have reached the clear conclusion that, although they represent circumstances to be taken into account by the Commissioners, they do not singly or collectively render the Commissioners' conclusion one which could not reasonably be drawn. I hope I shall not be thought discourteous to Mr Monroe's admirable argument if I do not go into the various points in further detail.

Mr Monroe accepts that the vouchers represent money's worth at their face value ; so no question on this point arises.

Upon the view which I have taken, the issue under Section 161 of the Income Tax Act does not arise, and I will say nothing about it.

I propose accordingly to dismiss this appeal.

Mr J. Raymond Phillips.—I ask, my Lord, that the appeal be dismissed with costs.

Pennycuick, J.—Yes.

Morgan v. *Perry* (*H.M. Inspector of Taxes*)

Pennycuick, J.—This appeal raises an identical issue in relation to another employee of the company, the only difference between him and Dr Laidler being that in his case no question under Section 161 will arise. I must accordingly dismiss this appeal too.

Mr Phillips.—A similar application for costs, my Lord, in this case.

Pennycuick, J.—Yes.

The taxpayers having appealed against the above decision, the cases came before the Court of Appeal (Lord Denning, M.R., and Danckwerts and Diplock, L.JJ.) on 3rd and 4th June, 1964, when judgment was given unanimously in favour of the Crown, with costs.

Mr F. Heyworth Talbot, Q.C., Mr H. H. Monroe, Q.C., and Mr Stewart T. Bates appeared as Counsel for the taxpayers, and Mr Hilary Magnus, Q.C., Mr J. Raymond Phillips and Mr Denis Henry for the Crown.

Lord Denning, M.R.—This case raises the question whether Christmas presents which are made by an employer to an employee are taxable in the hands of the employee. In the lead industry there are a number of family businesses with long histories. For many years they have made Christmas

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gifts in kind to the staff. Before the war they gave turkeys to the office workers. They entertained the manual workers at Christmas festivities. When the lead industry was formed into a big concern, the group followed the same policy through the individual companies. They did it so as to maintain a feeling of happiness among the staff and goodwill. During the war these gifts in kind could not be continued, and National Savings Certificates vouchers were given instead. After the war, in 1948, a resolution was passed by the directors that they would revert to gifts in kind but obtainable by the staff through vouchers from various shops. Each of the employees was allowed a voucher for £10 at Christmas time, which he could use at a shop of his choice and get an article as his Christmas gift. If he had not served ten months, he did not get a £10 voucher. The newcomers only got a voucher according to the number of months they had served. There were 2,300 people in the group who got a £10 voucher at Christmas.

Now the question arises whether each individual member of the staff is chargeable with tax under Schedule E in respect of his £10. We have two cases before us : Dr Laidler, who is on the research side and who earns more than £2,000 a year ; and Mr Morgan, who earns less than £2,000 a year. The question in each case is whether this money's worth of £10 a year can properly be said to be emoluments from the employment. " Emoluments therefrom " are the words of the Statute. Emoluments includes " all salaries, fees, wages, perquisites and profits whatsoever ".

Now we have been taken through the cases. It was urged before us by Mr Heyworth Talbot that the approach to these cases has been altered altogether by the recent case in the House of Lords of *Hochstrasser* v. *Mayes*[1]. [1960] A.C. 376. Mr Heyworth Talbot said that before that case the test in the courts was simply this : was it a personal gift, or was it remuneration for services? It was assumed that it must be one or the other. Whereas *Hochstrasser* v. *Mayes*, he said, showed that there was a third possibility. The employers there did not make a personal gift to the employee. They only made up to him his loss on selling his house. It was held not to be taxable. As I read the cases, however, including *Hochstrasser* v. *Mayes*, the one question in all these cases is this : was the payment made, or the money's worth given, to the employee as a reward or remuneration or in return for his services? If it was, it is taxable in his hands. That test explains the case of the Easter offerings[2] (which are by custom a return for the services of the parson), or the cricketer's benefit[3] (where a collection would be made for his benefit if he had scored more than fifty runs), and the case of the huntsman's tips (where money was collected for the huntsman on Boxing Day) : *see Wright* v. *Boyce*, 38 T.C. 160.

In this case the Commissioners made this finding :

> " The first question for decision is whether the Appellant is assessable under Schedule E in respect of vouchers given to him annually at Christmas. As we understand the authorities the value of the vouchers is so assessable only if they represent ' money's worth ' which was made available to the Appellant in return for acting as or being an employee, i.e., as a reward for his services."

—a test which they took from the very words of Lord Radcliffe's judgment in *Hochstrasser* v. *Mayes* at the bottom of page 391 and the top of page 392[4]. Having asked themselves that question they said :

> " After reviewing all the evidence and the arguments based on the many authorities cited to us we hold that the vouchers were made available in return for services rather than as gifts not constituting a reward for services."

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[1] 38 T.C. 673. [2] Cooper *v.* Blakiston, 5 T.C. 347.
[3] Moorhouse *v.* Dooland, 36 T.C. 1. [4] [1960] A.C.; 38 T.C., at p. 707.

That finding of the Commissioners can only be upset by this Court if it is a finding to which they could not have reasonably come. So I ask myself the question here. Was this finding unreasonable? Well, I put this case in the course of argument. Suppose it had been £100 a year given to all the staff of these companies each year at Christmas. In that case it would clearly be open to the Commissioners to find that it was a reward, a remuneration or a return for services rendered. But now suppose that, instead of £100, it was a box of chocolates or a bottle of whisky or £2, it might be merely a gesture of goodwill at Christmas without regard to services at all. So it is a question of degree. It seems to me that in this case, when you find that £10 a year was paid to each of the staff year after year, each of them must have come to expect the £10 as a regular thing which went with their service. It was, I think, open to the Commissioners to find that it was made in return for services. It is therefore taxable in the hands of the recipient. That is sufficient to decide both cases.

I would only add in regard to Dr Laidler (who was paid over £2,000), that if there was any doubt on this point it is clear to me that this would be a " benefit " within Section 161 of the Income Tax Act, 1952, which would be chargeable in his hands under the terms of that Section.

For these reasons I think the judgment of the learned Judge was right and I would dismiss the appeal.

Danckwerts, L.J.—I find myself compelled to agree. I have found this case an extremely difficult one. Of course, it is plain, as stated by Lord Denning, that in *Hochstrasser* v. *Mayes*, 38 T.C. 711, the question whether the sums or amounts in question are taxable or not depends upon whether they were a remuneration or reward or return for services in any sense of the word. Now my mind, under the skilful arguments of Counsel, has been teetering from time to time on the top of the dividing line. The very fact that that is so, I think, indicates that it must be a case in which we ought not to interfere with the decision of the Commissioners, because it indicates that there were circumstances and evidence which may justify their decision ; but on the whole I have come down on the line of taxability because, although there are considerations which were mentioned by Mr Monroe in his argument which certainly might indicate a contrary result, on the whole I think that the regularity of the payments indicates the quality of those payments. Consequently I also agree that the appeal must be dismissed.

Diplock, L.J.—I, too, agree, and the reason is that I think the Commissioners directed themselves correctly as to the law applicable, and they were in my view quite entitled to come to the conclusion which they did. I would only add this in deference to Mr Heyworth Talbot's argument ; that I am not persuaded that *Hochstrasser* v. *Mayes* represents any milestone in the law on this subject. I think it merely applies, to the circumstances of that particular case, the law which had been well-established in the earlier authorities.

Mr Hilary Magnus.—Will both appeals be dismissed with costs?

Lord Denning, M.R.—Yes, both with costs. I know what you are going to ask for.

Mr F. Heyworth Talbot.—Your Lordship sympathises with my hesitancy in making the application, but I am instructed to ask your Lordship for leave to appeal to the House of Lords should my clients after giving careful consideration to your Lordships' judgment feel disposed to carry it further. I make the application.

Lord Denning, M.R.—What do you say, Mr Magnus?

Mr Magnus.—In accordance with custom we would not wish to offer any observations on that application.

Lord Denning, M.R.—I expect that many people are affected, Mr Heyworth Talbot, so we shall give you leave to appeal.

The taxpayers having appealed against the above decision, the cases came before the House of Lords (Lords Reid, Morris of Borth-y-Gest, Hodson, Donovan and Pearson) on 9th and 10th March, 1965, when judgment was reserved. On 8th April, 1965, judgment was given unanimously in favour of the Crown, with costs.

Mr F. Heyworth Talbot, Q.C., Mr H. H. Monroe, Q.C., and Mr Stewart T. Bates appeared as Counsel for the taxpayers, and Mr Roy Borneman, Q.C., and Mr J. Raymond Phillips for the Crown.

Lord Reid.—My Lords, the Appellant appeals against additional assessments to Income Tax of £10 for each of the years 1955–56 to 1960–61. Each assessment of £10 is in respect of a voucher given to the Appellant by his employer at Christmas. He is research manager of Associated Lead Manufacturers, Ltd, a company formed by amalgamation of a number of old family businesses. It had been the custom of these businesses to make Christmas gifts in kind, such as turkeys, to members of their staffs and to provide entertainment for their manual workers and after amalgamation this custom was continued. When it became impossible during the last war to make gifts in kind, National Savings Certificates were given instead. After the war it was decided to give a voucher for £10 to each member of the staff, including ex-members drawing pensions, to be spent in shops of their choice. In 1960 about 2,300 vouchers for £10 were so given. Each year the gift is enclosed with a letter from the chairman sending Christmas greetings and expressing the thanks of the board for past services and their confidence that good relations with the staff would continue. Letters received in reply show that this was much appreciated.

The Appellant and other members of the staff are taxable under Schedule E of the Income Tax Act, 1952, as amended by the Finance Act, 1956, of which the leading provision in Section 156 is:

> " Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom . . . ",

and in the Second Schedule to the Finance Act, 1956, it is provided that

> " the expression ' emoluments ' shall include all salaries, fees, wages, perquisites and profits whatsoever."

It is not disputed that this definition is wide enough to include these vouchers, and it is not now disputed that, by reason of the very wide range of choice in spending them, each is worth its face value of £10. But Section 156 applies only to " emoluments *therefrom* ", i.e., from the office or employment of the recipient, and it is well settled that not every sum or other profit received by an employee from his employer in the course of his employment is to be regarded as arising from the employment. So the question in this case is whether these profits or emoluments of £10 did or did not arise from the Appellant's employment.

There is a wealth of authority on this matter, and various glosses on or paraphrases of the words in the Act appear in judicial opinions, including speeches in this House. No doubt they were helpful in the circumstances of the cases in which they were used, but in the end we must always return to the words in the Statute and answer the question—did this profit arise from the employment? The answer will be no if it arose from something else.

The Appellant largely based his case on opinions expressed in this House in *Hochstrasser* v. *Mayes*, [1960] A.C. 376; 38 T.C. 673. The respondent was employed by Imperial Chemical Industries. In accordance with a scheme set up by the company to facilitate movement of certain classes of employees from one place to another he entered into an agreement with them one term of which was that, if he bought a house and had to resell it later at a loss, the company would indemnify him. Then he bought a house for £1,850 and later sold it for £1,500. The company paid the difference, £350, and the respondent was assessed on this sum as an emolument from his employment. The Crown's argument was that money received by an employee as such must be a profit or emolument, except only insofar as he has given consideration in money or money's worth over and above his services. But the sum was held not to be taxable. Viscount Simonds quoted with approval a passage from the judgment of Upjohn, J., in which he said[1]:

> " Indeed, in my judgment, the authorities show that to be a profit arising from the employment the payment must be made in reference to the services the employee renders by virtue of his office, and it must be something in the nature of a reward for services past, present or future."

Later Viscount Simonds said[2]:

> " . . . if in such cases as these the issue turns, as I think it does, upon whether the fact of employment is the *causa causans*, or only the *sine qua non* of benefit, which perhaps is only to give the natural meaning to the word ' therefrom ' in the Statute, it must often be difficult to draw the line and say on which side of it a particular case falls."

With regard to the words of the Statute Lord Radcliffe said[3]:

> " For my part, I think that their meaning is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it has been paid to him in return for acting as or being an employee."

Later he said[4]:

> " In my opinion, such a payment is no more taxable as a profit from his employment than would be a payment out of a provident or distress fund set up by an employer for the benefit of employees whose personal circumstances might justify assistance."

In my judgment, what was said in that case cannot apply to the circumstances of the present case. The Commissioners have found as a fact the reason why these vouchers were given:

> " The directors of the group followed this policy because the distribution of personal presents at Christmas time was one of several measures which help to maintain a feeling of happiness among the staff and to foster a spirit of personal relationship between the management and staff; the directors believing that a contented staff was a good thing in itself and likely to be of advantage to the group."

The Appellant argues that this shows that these gifts were not rewards for services; it would have been derisory if not insulting to give £10 to a man in his high position as a reward for his services. I would accept that, but I think that, although the word " reward " has been used in many of the cases, it is not apt to include all the cases which can fall within the statutory words. To give

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[1] 38 T.C., at p. 685. [2] *Ibid.*, at p. 705. [3] *Ibid.*, at p. 707.
[4] *Ibid.*, at p. 708.

(Lord Reid)

only one instance, it is clear that a sum given to an employee in the hope or expectation that the gift will produce good service by him in future is taxable. But one can hardly be said to reward a man for something which he has not yet done and may never do.

The Appellant's argument is that these gifts were made not as rewards but to promote loyalty and good relations. That may be so. But each voucher must have been given to promote the loyalty of and good relations with the recipient. The case is quite different where, out of benevolence, a gift is made to an employee who is in difficulties. That may be justified as a payment which it is proper for a public company to make because indirectly it will benefit the company by showing that they are good employers. But the gift is not made merely because the donee is an employee. His employment is not the *causa causans*. Here it is. Vouchers are given to all members of the staff alike.

The real question appears to me to be whether these vouchers can be said to be mere personal gifts, inspired not by hope of some future *quid pro quo* from the donee but simply by personal goodwill appropriately signified at Christmas time. That is a question of fact, and in their decision the Commissioners say:

> " . . . we hold that the vouchers were made available in return for services rather than as gifts not constituting a reward for services."

The expressions " in return for services " and " reward for services " may not be very aptly chosen, but this finding does appear to me to negative mere personal gift, and it appears to me to be unassailable.

Whatever might be said if the gifts to the Appellant were considered in isolation, we must I think consider them in their context. Leaving pensioners aside, vouchers for £10 were given to over 2,000 members of the staff of whom some part-time employees received as little as £4 10s. per week. So the company spent over £20,000 in making these gifts at Christmas, 1960. And it is not suggested that the vouchers given to the Appellant can be put in a different category from those given to those part-time employees. I agree with Lord Denning, M.R., who, having said that if each voucher had been for £100 the case would be clear, continued[1]:

> " But now suppose that, instead of £100, it was a box of chocolates or a bottle of whisky or £2, it might be merely a gesture of goodwill at Christmas without regard to services at all. So it is a question of degree. It seems to me that in this case, when you find that £10 a year was paid to each of the staff year after year, each of them must have come to expect the £10 as a regular thing which went with their service."

I can find nothing in the facts found by the Commissioners to contradict their decision. Perhaps the most important is that set out in the passage I quoted earlier giving the reason why the directors decided to make these gifts; and that points to their object being to obtain beneficial results for the company in future. It is true that not only did the salaries paid compare favourably with those paid for comparable work elsewhere, but good work by particular employees (including the Appellant) was rewarded by bonuses independent of these vouchers: and that has in some cases been held to be an element telling in favour of the taxpayer. And it is possible that the gifts in kind in the old days could have been treated differently. But on balance I think that the Commissioners were well entitled to come to the decision which they made.

I do not think it necessary to deal with the other authorities cited or referred to in argument. In some it is said that one ought to look at the matter primarily from the point of view of the recipient, and that may well be right where the

[1] *See* page 361, *ante*.

donor is not the employer. But if one is looking for the *causa causans* of gifts made by the employer it must surely be right to see why he made the gifts. Other cases were about gifts made once and for all on special occasions, and there other arguments may be valid. But this is a case of gifts regularly made by the employer and I have only thought it necessary to direct my observations to that kind of case.

The Crown also founded on Section 161. That Section is in some respects a difficult one and, as it is not necessary to deal with it, I think it best not to express any opinion about it.

For the reasons which I have given I would dismiss this appeal, and costs must follow the event.

Lord Morris of Borth-y-Gest.—My Lords, in respect of his employment the Appellant was chargeable to tax on emoluments therefrom. In addition to his salary and to his bonuses he received in each of the years in question a voucher which was worth £10. I cannot doubt that those vouchers were emoluments within the definition of that expression. That being so, they were chargeable to tax if they were emoluments from his employment. While it is clear that the Appellant would not have received the vouchers had he not been a staff employee, the facts as found show that he only received the vouchers because he was a staff employee. He received them only in his capacity as a staff employee. The reason why the vouchers were distributed was that the directors wished to maintain a feeling of happiness among the staff and to foster a spirit of personal relationship between the management and staff. The directors believed that a contented staff was " a good thing in itself and likely to be of advantage to the group ". The Case finds that the " policy " of providing Christmas presents to the staff was followed as " one of several measures " to help to maintain and to foster the desired feelings of happiness and content. Christmas gave the occasion for the distribution of the vouchers, but on the facts as found the reasons for the distribution are to be found in the employer-employee relationship. The vouchers were not distributed to the staffworkers on any individual or personal grounds nor were there any special or particular reasons which were peculiar to any of them. Though the impulses of generosity and of kindly and seasonal goodwill were not lacking the facts as found show that there was manifested that form of gratitude which is " a lively sense of future favours ". The directors were planning for good and loyal future service so that the company would prosper and be advantaged. In the result the vouchers were distributed by the employers in their capacity as employers and because they were employers: they were received by the employees in their capacity as employees and because they were employees. In these circumstances the emoluments were from the employment.

I would dismiss the appeal.

Lord Hodson.—My Lords, the question is whether the Appellant is assessable under Schedule E in respect of vouchers given to him at Christmas by his employers. Section 156 of the Income Tax Act, 1952, provides:

> " Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom . . ."

In the Second Schedule to the Finance Act, 1956, it is provided that

> " the expression ' emoluments ' shall include all salaries, fees, wages, perquisites and profits whatsoever."

That the vouchers are emoluments is not denied but that they are " therefrom " in respect of any office or employment is disputed.

(Lord Hodson)

The Commissioners found that the vouchers were made available in return for services rather than as gifts not constituting a reward for services. In my opinion, there was ample evidence upon which they could reach this conclusion of fact and they directed themselves correctly according to the authorities.

The Appellant relied on a decision of your Lordships in *Hochstrasser* v. *Mayes*, 38 T.C. 673, as establishing that not every payment or benefit given to an employee by his employer is necessarily given to him as an emolument of his employment, for the relationship may be the *causa sine qua non* of the payment or benefit; but that of itself is not enough. It is only when the employment is the *causa causans* of the payment or benefit that tax liability exists. It is submitted that the only reasonable conclusion from the evidence must be that, although the employment of the Appellant was the *sine qua non*, it was not the *causa causans* of the gift of the vouchers, which did not constitute a reward for services but rather a gesture of Christmas goodwill.

I agree with the Court of Appeal in thinking that the *Hochstrasser* case marks no departure from the lines of existing authority. As between employer and employed the question is usually and conventionally put as Rowlatt, J., put it in *Reed* v. *Seymour*, 11 T.C., at page 630 (approved by Viscount Cave at page 646)—" is it in the nature of a personal gift, or is it remuneration? "

The *Hochstrasser* case depended on its own peculiar facts, there being a collateral arrangement between employer and employed quite outside their contracts of service to compensate the employees for any losses they might incur on selling their houses on transfer from one post to another. It was held that these payments were not made in reward for services and that they were not taxable.

In this case the vouchers of £10 each were given to each member of the staff including ex-members who drew pensions. They were regular gifts, not gifts of an exceptional kind to meet exceptional circumstances. In 1960 about 2,300 vouchers for £10 were so given. The fact that they were given at Christmas and accompanied in each case by appreciative letters from the chairman sending Christmas greetings on behalf of the company does not destroy their character as reward for services.

It is often said that payments such as these must be looked at from the standpoint of the recipients who treated them as Christmas presents. This is a useful guide in those cases where money is derived not from the employer direct but from some outside source—I have in mind the Easter offerings of the parish priest in *Cooper* v. *Blakiston*, 5 T.C. 347—but I should have thought that when the payment is made by the employer to the employee it is not irrelevant to look at the intention of the employer who pays the money. From whichever end one looks at these payments I find it impossible to say that the Special Commissioners reached an unreasonable conclusion.

I agree that the appeal be dismissed, and express no opinion on the alternative claim made under Section 161 of the Income Tax Act, 1952.

Lord Donovan.—My Lords, the Appellant's argument is that these receipts of £10 each did not arise from his office or employment. The admitted facts are that the company disbursed these sums to

> " help to maintain a feeling of happiness among the staff and to foster a spirit of personal relationship between management and staff."

In less roundabout language that simply means in order to maintain the quality of service given by the staff. Looked at in this way, the payments were an inducement to each recipient to go on working well; and none the less so in

the case of the Appellant than in the case of employees less exalted in position. It looks, of course, to be a very unreal inducement in the case of the Appellant, who was earning over £2,000 per annum; but though much play was made of this in argument the present appeal has clearly been brought as a test case with the rest of the 2,000 or so employees much in mind. If it is found that the general purpose of the company was to maintain the quality of the service it received, no distinction can be made because of Dr Laidler's rank and pay. Nor, indeed, is one suggested.

The other features of the case include the regularity of these payments year by year, the distinction made between those with very short service and the rest of the staff, and the repeated references to the services of the staff in the chairman's annual letters announcing the intention to make the payment. These remarks are not, of course, decisive. It might be that the chairman was doing no more than taking advantage of a suitable occasion to acknowledge good service. On the other hand, he might have been giving an explanation or a partial explanation why the payments were being made. If the Special Commissioners took the latter view I would not have differed from it. I think that in any event there was ample material to justify their conclusion that the payments arose from the Appellant's office or employment as that conception was defined by my noble and learned friend, Lord Radcliffe, in *Hochstrasser* v. *Mayes*[1].

I agree the appeal should be dismissed. In these circumstances I say nothing about the alternative claim made under Section 161 of the Income Tax Act, 1952.

Lord Pearson.—My Lords, I concur.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed, with costs.

The Contents have it.

[Solicitors:—Linklaters & Paines; Solicitor of Inland Revenue.]

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[1] 38 T.C. 673.

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