## Garforth (H.M. Inspector of Taxes) *v.* Newsmith Stainless Ltd.[1]

*P.A.Y.E.—Bonuses credited to directors' current accounts with employing company—Payment would have been made to directors if demanded—Whether crediting of bonuses to current accounts in these circumstances "payment" for purposes of P.A.Y.E.—S* 204(1), *Income and Corporation Taxes Act* 1970—*Regn* 6, *Income Tax (Employments) Regulations* 1973. B

Two directors of a company were its controlling shareholders. Bonuses were credited to their current accounts with the Company but not fully drawn out; payment of the sums standing to their credit in their current accounts C would have been made if demanded. The Inspector made a determination under regn 29, Income Tax (Employments) Regulations 1973, on the basis that the bonuses had been paid in full within the meaning of s 204(1), Income and Corporation Taxes Act 1970 and regn 6, Income Tax (Employments) Regulations 1973. The Special Commissioners held that the crediting of the bonuses to the current accounts in these circumstances did not in itself con- D stitute payment within s 204(1) and regn 6.

The Chancery Division, allowing the appeal, held that the placing of money unreservedly at the disposal of the directors as part of their current accounts with the company was equivalent to payment.

*Dictum* of Rowlatt J. in *Commissioners of Inland Revenue* v. *Doncaster* 8 TC 623, at page 631, applied. E

### CASE

Stated under the Taxes Management Act 1970, s 56, 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 F Income Tax Acts held on 15 July 1976 Newsmith Stainless Ltd. (hereinafter called "the Company") appealed against a determination under regn 29 of the Income Tax (Employments) Regulations 1973 (1973 SI 334) that income tax for the year 1974–75 in the amount of £44,850.60 was due from the Company as employer.

2. Shortly stated the question for our decision was whether—under s 204 G of the Income and Corporation Taxes Act 1970 and the Income Tax (Employments) Regulations 1973, regns 6, 7 and 26—the Company was liable to pay to the Collector of Taxes within 14 days of the end of every month, or at all, tax in respect of emoluments which had been voted but not paid by the employer Company in the circumstances set out below.

3. The following witness gave evidence before us: Eric Booth (Mr. H Booth), Fellow of the Institute of Chartered Accountants and partner in Messrs Milne Booth & Co., who were the Company's auditors.

4. The following documents were proved or admitted before us:

(*a*) Copy directors' current accounts for year ended 5 April 1975.

(*b*) Letter dated 15 July 1975 from Messrs Milne Booth & Co. to H.M. Inspector of Taxes. I

(1) Reported [1979] 1 WLR 409; [1979] 2 All ER 73; [1979] STC 129; 122 SJ 828.

(*c*) Photostat of assessment—form P380B stamped 9 January 1976.

Copies of the above are not annexed hereto as exhibits but are available for inspection by the Court if required.

5. As a result of the evidence both oral and documentary adduced before us we find the following facts proved or admitted:

(*a*) During the tax year 1974–75 the Company's directors and controlling shareholders were Mr. R. G. Smith and Mr. J. Newton, ("the directors") and in 1974 each of them was voted a bonus of £6,000 for the year ended 31 December 1973 and a further bonus of £25,000 for the year ended 31 December 1974. Each of them was paid a salary and the sum of £7,500 which was paid by cheque on 11 March 1975 as part of their respective bonuses. Monthly deductions of tax from their salary payments were made and accounted for in the usual way under P.A.Y.E. The above facts were reflected in the directors' current accounts for the year in question as follows:

*Mr. R. G. Smith*

| 1974 | | £ | 1974 | | £ |
|---|---|---|---|---|---|
| 31 Dec | Transfer taxation reserve | 4,658.80 | 6 April | Balance b/fwd | 1,411.29 |
| | | | 31 Dec | Bonus per a/cs to 31.12.73 | 6,000.00 |
| 1975 | | | 31 Dec | Bonus per a/cs to 31.12.74 | 25,000.00 |
| 11 March | Cheque | 7,500.00 | | | |
| 6 April 1974 to 5 April 1975 | Salary withdrawal | 3,800.84 | 6 April 1974 to 5 April 1975 | Salary | 5,238.29 |
| ,, | Transfer P.A.Y.E. account | 1,437.45 | | | |
| 5 April | Balance carried forward | 20,252.49 | | | |
| | | 37,649.58 | | | 37,649.58 |

*Mr. J. Newton*

| 1974 | | £ | 1974 | | £ |
|---|---|---|---|---|---|
| 31 Dec | Transfer taxation reserve | 4,602.60 | 6 April | Balance b/fwd | 406.00 |
| | | | 31 Dec | Bonus per a/cs to 31.12.73 | 6,000.00 |
| 1975 | | | | | |
| 11 March | Cheque | 7,500.00 | 31 Dec | Bonus per a/cs to 31.12.74 | 25,000.00 |
| 6 April 1974 to 5 April 1975 | Salary withdrawal | 3,945.69 | 6 April 1974 to 5 April 1975 | Salary | 5,238.29 |
| ,, | Transfer P.A.Y.E. account | 1,292.60 | | | |
| 5 April | Balance carried forward | 19,303.40 | | | |
| | | 36,644.29 | | | 36,644.29 |

(*b*) Mr. Booth, who had personally supervised the audits of the Company's accounts, explained to us the above directors' current accounts. It was within his knowledge that the total of the bonuses (£62,000) had been fully allowed against the corporation tax assessment; that there had been two annual general meetings of the Company during the same fiscal year (which accounted for the two bonuses to each director); and that owing to an error (which was later corrected) no P.A.Y.E. deductions had been made by the Company in respect of the amounts of £7,500 drawn by the directors.

(*c*) Payment of the sums standing to the credit of the directors' current accounts would have been made had the directors demanded payment from the Company.

(*d*) On 9 January 1976 H.M. Inspector of Taxes made a formal determination of tax payable by the Company as employer by way of form P380B, the material part of which read:

> "By virtue of Regulation 29 of the Income Tax (Employments) Regulations 1973 (S.I. 1973 No. 334) I hereby determine that to the best of my judgment the tax due from you, being an employer, under Regulation 26 of the Income Tax (Employments) Regulations 1973 and not paid to the Collector of Taxes nor certified by him in pursuance of Regulations 27, 30 or 32 of those Regulations for the above year was £44,850.60 as shown in column 7 of the following statement."

The computation set out P.A.Y.E. deductions payable on the footing that the totals of the bonuses had been paid and gave credit for deductions paid or certified on salaries or parts of the bonuses. Under regn 29(2) of the said regulations the above determination operated as an assessment.

6. It was contended on behalf of the Inspector of Taxes that:

(*a*) the crediting of a bonus to an account on which an employee was free to draw was payment of the bonus within the meaning of s 204(1), Income and Corporation Taxes Act 1970 and regn 6 of the Income Tax (Employments) Regulations 1973;

(*b*) on the evidence, the directors were free to draw on their accounts;

(*c*) it was irrelevant that, for the benefit of the Company, the directors had chosen not to withdraw the full amount of their bonuses;

(*d*) the appeal should be dismissed and the determination confirmed.

7. It was contended on behalf of the Company that:

(*a*) neither director could draw out any part of his bonus at will;

(*b*) until either director had been paid out by the Company he remained an unsecured creditor;

(*c*) no tax was therefore deductible in respect of that part of either bonus which had not in fact been paid out of the current accounts;

(*d*) the appeal should be upheld and the assessment reduced accordingly.

8. The following cases were cited to us: *Commissioners of Inland Revenue* v. *Doncaster* (1924) 8 TC 623; *Rhokana Corporation, Ltd.* v. *Commissioners of Inland Revenue* 21 TC 552; [1938] AC 380; *Paton* v. *Commissioners of Inland Revenue* 21 TC 626; [1938] AC 341; *Cross* v. *London & Provincial Trust, Ltd.* 21 TC 705; [1938] 1 KB 792.

9. We, the Commissioners who heard the appeal, gave our decision immediately as follows:

We have arrived at a decision, and we preface it with the observation that both parties agree we have sufficient evidence before us. We will not repeat details of the assessment or of the documents, but it is important that we direct our attention to the new question as put by Mr. Koenigsberger which, he says, we have to determine. We have been referred to the statutory law and the authorities by both Mr. Koenigsberger and Mr. Tillson. The short, sharp point is highlighted by the distinction between sums credited to an employee's bank account, which, it is common ground, would be a payment, contrasted with, as in this case, a credit to an account in the Company's books of the sums in question, but which in fact did not all get into the pockets of the persons entitled to them under the vote. The point is not capable of elaboration. We think Mr. Koenigsberger distinguished this case from the authorities put forward by Mr. Tillson. *Paton's* case[1] cited by Mr. Koenigsberger, although not going all the way, does say that book entries did not in a layman's language amount to payment. Regulation 6 of the Income Tax (Employments) Regulations 1973 and the other regulations seem to us to indicate, and we so hold on the facts of this case, that the payment was not one which the Statute envisages.

We uphold the appeal in principal and adjourn the hearing for final determination of the assessments.

10. Figures were agreed between the parties on 21 February 1977 and on 3 March 1977 we adjusted the determination by reducing it to £6,667.26.

11. The Appellant, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and on 4 March 1977 required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s 56, which Case we have stated and do sign accordingly.

12. The question of law for the opinion of the Court is whether our decision was erroneous in point of law.

B. James
J. G. Lewis
} Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House,
94–99 High Holborn,
London, WC1V 6LQ

25 November 1977

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The case came before Walton J. in the Chancery Division on 21 November 1978, when judgment was given in favour of the Crown, with costs.

*Brian Davenport* for the Crown.

*C. W. Koenigsberger* for the taxpayer.

*Kelsall Parsons & Co.* v. *Commissioners of Inland Revenue* 21 TC 608; 1938 SC 238 was cited in argument in addition to the cases referred to in the judgment.

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(1) 21 TC 226.

**Walton J.**—This case raises the short but difficult point as to precisely what is meant by the word "payment" in s 204(1) of the Income and Corporation Taxes Act 1970, being the first section in Chapter III of that Part of the 1970 Act dealing with the P.A.Y.E. system. It provides:

> "On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made."

I said a moment or so ago that the question was as to the meaning of the word "payment", but I think that probably that is putting the matter too high. The real question is whether the circumstances disclosed in this case, which are circumstances of a commonly recurring nature, fall within that word. It is not, I think, necessary, or perhaps even possible, to give an exhaustive definition of the word "payment".

The facts as found by the Special Commissioners are very short, they are set out very succinctly in the Case Stated and I shall take the facts from the Case accordingly. During the tax year 1974–75, the directors of the Respondent Company, Newsmith Stainless Ltd., were a Mr. Smith and a Mr. Newton, who are called "the directors"; and they were also the controlling shareholders. In 1974 each of them was voted a bonus of £6,000 for the year ended 31 December 1973 and a further bonus of £25,000 for the year ended 31 December 1974. Each of them was paid a salary and the sum of £7,500, which was paid by cheque on 11 March 1975, as part of their respective bonuses. Monthly deductions of tax from their salary payments were made and accounted for in the usual way under P.A.Y.E. Then the Case sets out the particulars of the two directors' current accounts for the years in question, and I think the only matters to note are that the salary and the two bonuses are credited to the accounts, and that there are debited to the accounts moneys for taxation reserve, moneys taken out, salary withdrawals, transfers to P.A.Y.E. account and so on. The Case Stated then goes on:

> "(*b*) Mr. Booth, who had personally supervised the audits of the Company's accounts, explained to us the above directors' current accounts. It was within his knowledge that the total of the bonuses (£62,000) had been fully allowed against the corporation tax assessment; that there had been two annual general meetings of the Company during the same fiscal year (which accounted for the two bonuses to each director); and that owing to an error (which was later corrected) no P.A.Y.E. deductions had been made by the Company in respect of the amounts of £7,500 drawn by the directors. (*c*) Payment of the sums standing to the credit of the directors' current accounts would have been made had the directors demanded payment from the Respondent. (*d*) On 9 January 1976 H.M. Inspector of Taxes made a formal determination of tax payable by the Company as employer", the form stating: " 'By virtue of' " the relevant regulation " 'I hereby determine that to the best of my judgment the tax due from you, being an employer, under Regulation 26 of the Income Tax (Employments) Regulations 1973 and not paid to the Collector of Taxes nor certified by him in pursuance of Regulations 27, 30 or 32 of those Regulations for the above year was £44,850.60 as shown in column 7 of the following statement.' The computation set out P.A.Y.E. deductions payable on the

A footing that the totals of the bonuses had been paid and gave credit for deductions paid or certified on salaries or parts of the bonuses. Under regn 29(2) . . . the above determination operated as an assessment."

The question for me on appeal from the Special Commissioners is whether the assessments are accurate or whether they are not; and, there being here no question on the figures, the matter really is in a very short compass: For the B purpose of s 204(1) is the crediting of the two directors' current accounts with their bonuses equivalent to payment or not? I think the case really involves much more the question of mechanics than ultimate liability, because Mr. Koenigsberger, who appeared for the Company (and not, of course, strictly for the directors), accepted what appears to me to be the true position, although Mr. Davenport was rather reluctant to accept it; namely, that at the end of the C tax year a proper assessment could have been made upon the directors in respect of the whole of their remuneration, including bonuses, and to the extent to which P.A.Y.E. deductions had not then been made there would then have been a full assessment upon the sums so paid. Indeed, it seems to me that if the Company is one in which quite arbitrary bonuses of this sort of amount can suddenly be added to the remuneration of the two directors, assessments at the D end of the year will almost inevitably follow, because I cannot imagine that the P.A.Y.E. coding system, ingenious and effective though it is, can digest such additions in the course of a year without some discomfort. But however that may be, the question for me is as I have stated it.

Before the Special Commissioners the contentions on behalf of the Inspector of Taxes were, first of all, that the crediting of a bonus to an account E on which an employee was free to draw was payment of the bonus within the meaning of s 204(1); secondly, that on the evidence the directors were free to draw on their accounts—and that, of course, was established, being found as a fact by the Special Commissioners—thirdly, that it was irrelevant that, for the benefit of the Company, the directors had chosen not to withdraw the full amount of their bonuses; and, fourthly, that consequently the appeal of the F taxpayer against the assessment should be dismissed and the determination confirmed. The contentions on behalf of the Company were, first of all, that neither director could draw out any part of his bonus at will; and so far as that contention is concerned I can find nothing in the Case Stated to support it. Secondly, that until either director had been paid out by the Company he remained an unsecured creditor; thirdly, that no tax was therefore deductible G in respect of that part of either bonus which had not in fact been paid out of the current accounts; and, lastly, that in consequence the appeal should be upheld and the assessment reduced accordingly.

The Commissioners, with commendable brevity, came to the following conclusion:

H "We have arrived at a decision, and we preface it with the observation that both parties agree we have sufficient evidence before us. We will not repeat details of the assessment or of the documents, but it is important that we direct our attention to the new question as put by Mr. Koenigsberger which, he says, we have to determine. We have been referred to the statutory law and the authorities by both Mr. Koenigsberger and Mr. Tillson", who then appeared for the Crown. "The short, sharp point is I highlighted by the distinction between sums credited to an employee's bank account, which, it is common ground, would be a payment, contrasted with, as in this case, a credit to an account in the Company's books

**(Walton J.)**

of the sums in question, but which in fact did not all get into the pockets of the persons entitled to them under the vote. The point is not capable of elaboration. We think Mr. Koenigsberger distinguished this case from the authorities put forward by Mr. Tillson. *Paton's* case(1) cited by Mr. Koenigsberger, although not going all the way, does say that book entries did not in a layman's language amount to payment. Regulation 6 of the Income Tax (Employments) Regulations 1973 and the other regulations seem to us to indicate, and we so hold on the facts of this case, that the payment was not one which the Statute envisages. We uphold the appeal in principle and adjourn the hearing for final determination of the assessments."

Now there can be no doubt at all, I think—and if authority for this is wanted it is to be found in the judgment of Jenkins L.J. in Re *Vestey's Settlement*(2) [1950] 2 All ER 891, at page 901—that the word "payment" is a word which has no one settled meaning but which takes its colour very much from the context in which it is found. I think that, although it is fair to Mr. Koenigsberger to say that in front of me he did not in any way rely upon it, I should deal with the Special Commissioners' reliance upon *Paton's* case. *Paton's* case 21 TC 626 is the very well-known case which decided what is really a blinding glimpse of the obvious; namely, that if a mortgagor does not pay the interest due under his mortgage and the mortgagee in consequence adds the amount which he should have paid to the principal of the mortgage, as in general he will under the terms of his contract be entitled to do, the mortgagor has not paid that interest. It is a matter which is scarcely capable of elaboration or argument, but in that sort of case one has only to ask: What has the mortgagor, the person who is said to make the payment, done to make the payment? The answer is that he has done absolutely nothing, and it is because he has done absolutely nothing that the mortgagee is then entitled to add the interest to the capital. Therefore, it is quite clear that the mortgagor has not made the payment of interest. He has not paid the interest because he has done absolutely nothing. That being the case, it appears to me that *Paton's* case sheds no light whatsoever (either for or against, of course) upon the question whether what took place in the present case was a payment. It is concerned with a totally different subject-matter—totally different, and one in which the person alleged to make the payment did absolutely nothing. What Mr. Koenigsberger did seek to rely upon as a definition of "payment" in the context of a distribution by a company was a sentence or two from the judgment of Rowlatt J. in the well-known case of *Commissioners of Inland Revenue* v. *Blott*(3) 8 TC 101 which went to the House of Lords. At page 112 Rowlatt J. indeed said this:

> "A dividend for the year is annual for this purpose though only paid once. What I do lay stress on is that one has to look for a 'payment'. Now I do not think that there is a payment of a dividend to a shareholder unless a part of the profits of the company is thereby liberated to him in the sense that the company parts with it and he takes it."

At first blush one has Rowlatt J. saying that there is no payment of a dividend unless the company parts with it (by which I think he must be intending to say that the company gives it up, no longer has it under its control in any way at all) and he—that is, the shareholder—takes it. But, of course, if I may say so, this is a totally wrong use of authority. It is no use extracting from any case a mere

(1) Paton (as Fenton's Trustee) *v.* Commissioners of Inland Revenue 21 TC 626; [1938] AC 341.
(2) [1951] Ch 209. (3) [1921] 2 AC 171.

A sentence or two without putting those sentences in their context; and the context in *Blott's* case(1) was that profits were being capitalised, were being turned into additional shares, were being used to pay up the shares in full, so that at the end of the day what the shareholder received was shares and not money. Now it so happens that the manner in which that was done was that first of all there was a declaration of a bonus out of the undivided profits and B if it had stayed at that stage then the shareholder might be said to have received a dividend out of the company. But it did not stay there. By the same resolution the money was capitalised and turned into shares, and what the shareholder received at the end of the day was shares and not capital. Under those circumstances, it is only too easy to see why Rowlatt J. in the passage that I have quoted, lays stress upon a part of the profits of the company being liberated to C the shareholder in the sense that the company parts with it and he takes it. From first to last in that case there was never any question of the shareholder receiving anything but shares at the end of the day and the mere mechanics involved by means of the declaration of a bonus were not sufficient to give to the shareholder the money represented by the bonus. So, once again, I do not think that that case is of any assistance at all, because it was directed to an D entirely different point and entirely different circumstances.

I therefore come back to the question whether, on the facts of the present case, there was "payment" to the directors. The argument really is, on the one hand, that all that happened was that the balances in the directors' loan accounts with the Company were increased without them getting anything out of it unless and until they withdrew their money from the Company and, on the E other hand, that the money was placed unreservedly at their disposal, they could have had it at any moment they chose, and that amounts to payment. As between those two contrasting views, I have no hesitation at all in saying that, in my judgment, when money is placed unreservedly at the disposal of directors by a company that is equivalent to payment; and I think I am entitled to derive support for that view from the judgment of the same Rowlatt J. F in *Commissioners of Inland Revenue* v. *Doncaster* 8 TC 623. What happened in that case is set out neatly in the headnote:

> "On the 27th March, 1919, the company passed a resolution authorising the directors to distribute" a fund which had been built up out of profits "among the ordinary shareholders 'as a funded debt payable at the option of the directors in cash or in fully paid preference shares at par' G and four days later the directors resolved to pay the Fund in cash and to credit the amount to which each shareholder (director) was entitled to his loan account with the company, but no special arrangement was made as to interest on the amounts so credited or for their redemption by the company. The directors' loan accounts were used for crediting their fees, dividends and interest, and they were in the habit of withdrawing varying H amounts therefrom from time to time. Interest was allowed on these accounts at 5 per cent. up to 1st April, 1917, and thereafter at 6 per cent. Held, that the Dividend Equalisation Fund was receivable by the directors as income on the passing of the resolutions in March, 1919, and that the Respondent's share of the Fund was therefore properly included in computing his total income for Super-tax purposes for the year 1919–20";

I and, not surprisingly in view of the fact that the other case had not been reported very long before, *Commissioners of Inland Revenue* v. *Blott* was cited to

(1) 8 TC 101.

**(Walton J.)**

Rowlatt J. but he had no difficulty at all in distinguishing his own decision. In the course of dealing with the case in front of him he said this(1):

> "Pursuant to that"—that is to say, the resolution to which I have already referred—"it was carried to what is called a loan account, which really was a current account which each Director kept with the Company, into which the Directors' fees and ordinary dividends went, which he drew upon for his personal and everyday expenses, I suppose—it simply went into that loan account. I can conceive nothing more complete in the way of payment. It was simply putting it to the credit of what is equivalent to a banking account. Those loans were money in the hands of the Company belonging to the shareholder as an individual. The loan accounts had been treated as ordinary debts of the Company in all the balance sheets and now this Equalisation of Dividend Fund disappears from the balance sheet as a separate liability and goes to swell the amount of the liability represented by the loan accounts."

I think I must accept that the words "I can conceive nothing more complete in the way of payment" are strictly *obiter*, but they are an *obiter* of a very great Revenue Judge, Rowlatt J., who more perhaps than any other Revenue Judge knew the Income Tax Acts backwards. But it seems to me that it accords with the realities of the situation. If moneys are placed by one person unreservedly (and I think that for present purposes I do not have to go very deeply into that qualification, for the simple reason that, as has already been noted, it was found as a fact by the Special Commissioners that payment of the sums standing to the credit of the current accounts would have been made had the directors demanded payment from the Company, so there is no question here of any fetter whatsoever) at the disposal of any other person, that, I think, must be equivalent to payment. Mr. Koenigsberger has said: But supposing, before the directors actually chose to draw their money out, the Company had gone into liquidation, what would the position be then? It seems to me that the answer to that is really the same answer as would be given in the case of a director taking the money out and putting it into a bank which later went into liquidation. Where a director chooses to leave his money seems to me to be a matter entirely of his own choice. If, of course, it is not a matter entirely of his own choice—if, for some reason, the money was not placed unreservedly at his disposal—then I think that very different considerations would arise. After all, if the company were to put money into the account with a note on it saying that it is to be paid out only as and when the board of directors decide, or as and when the company in general meeting passes a resolution to that effect, or some other qualification of that nature, then the money would not be unreservedly at the disposal of the director, he could not do with it what he liked, and we would be a long way away from payment. But that is not the position here. If a director had thought that his money would have been safer in the bank than in the Company, he could have demanded payment and the payment would have been forthcoming.

That, I think, is really the only real point that can be made against the equation of what happened here with payment. Various parallels were offered in argument on the one side and knocked down on the other. It was said that, supposing the employer was actually a bank, what would the situation be then? It must be, must it not, it is said, following the way in which the matter was put by the Special Commissioners, that if the money were credited to an employee's bank account that would be a payment because that was common

(1) 8 TC 623 at p 631.

A ground, and if the employer was a bank then it must be a payment in that case, so that there cannot be any objection to crediting an account with one's employer being equivalent to payment. I do not express any opinion upon any of those arguments because it seems to me that they are really beside the point. It seems to me that the simple point is that the moneys were unreservedly at the disposal of the directors from the time that the bonus was declared or, if B it be later, from the time when the moneys were credited to the accounts of the directors.

The only other point which is perhaps just worthy of mention, although I think it is a point which does not really have very much force, is that Mr. Koenigsberger said: Supposing that the cheque for the money is not forthcoming when it should be—supposing, for example (we know not, because there are no C findings of fact), that the signatures of the two directors are required and one of the directors refuses or neglects to sign the cheque—what then? Has there been payment? Because in order to get your money out you may have to start an action. You may have to start an action to get your legal rights in almost any sort of situation, but that does not alter the fact that you have your clear legal rights; and clearly, in the present case, since we are dealing with two D directors who were the controlling shareholders, if, the day following the declaration of the bonus, they had asked for their money to come out, they both of them would have got it.

Whatever may be the strict meaning of the word "payment"—whatever, indeed, may be the strict meaning of the word "payment" in s 204(1)—I am clearly of the opinion that the placing of the money unreservedly at the disposal E of the directors as part of their current accounts with the Company was equivalent, in the present case, to payment. Therefore, in my judgment the appeal of the Crown falls to be allowed.

*Appeal allowed, with costs.*

[Solicitors:—Solicitor of Inland Revenue; Lane & Co., Harrogate.]

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