

*Privy Council Appeal No. 76 of 1921.*

The Gleaner Company, Limited - - - - - *Appellants*

v.

The Assessment Committee - - - - - *Respondents*

FROM

THE SUPREME COURT OF JAMAICA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 31ST MAY, 1922.

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*Present at the Hearing :*

LORD BUCKMASTER.

LORD SUMNER.

LORD PARMOOR.

[*Delivered by* LORD BUCKMASTER.]

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In 1919 income tax was imposed in the island of Jamaica by Statute No. 24 of 1919, which in many respects followed closely the provisions of the Income Tax Acts in this country. The present appeal raises a plain question of construction of this statute, and the point, though obvious, is destitute of authority.

The circumstances of the present case can be stated in a few sentences:—The appellant company carry on the business of newspaper proprietors in the island of Jamaica, and in 1920 they were assessed to income tax in respect of the income received by them in the course of their business during the previous year. In making a return for the purposes of this assessment they claimed an allowance of £1,000 (one thousand pounds) as an estimated provision for bad and doubtful debts, and this was disallowed, but upon inquiry as to the validity of the item it was ascertained that there were debts discovered to be bad in the year 1919 amounting to £408 13s. 6d., although no one of the debts had been incurred during that year, and the appellants consequently sought a deduction in respect of this sum. The Assessment Committee refused to allow the claim on the ground that the debts were no part of the current year's accounts, and an appeal from their

decision to the Chief Justice met with no success. At the request of the appellants, however, the Chief Justice stated a case for the opinion of the Full Court, who confirmed his judgment. From this decision the present appeal proceeds.

The question depends entirely upon an examination of the provisions of the statute, and especially upon the sections relating to the method upon which the returns for income tax are to be prepared. By Section 3 the word "income" is defined in these words :—

The expression "income" means net income—namely, the sum remaining after deducting the expenses, if any, of acquiring the income, including the necessary expenses actually paid in carrying on any business or trade, but not including personal living or family expenses.

Clause 4 then provides that after the commencement of the statute there shall be charged "an annual duty on the incomes of all persons called income tax."

Clause 5 enacts that income tax shall be payable in respect of, amongst other incomes, the income "derived from the annual profits or gains from any . . . trading adventure or concern in the nature of a trade."

Clause 10 is the critical clause in the present case, and it runs as follows :—

S. 10. No deduction in respect of income shall be allowed in respect of :—

- '(a) Any disbursements or expenses not being money wholly and exclusively laid out or expended in acquiring the income upon which income tax is payable ;
- '(b) Any capital withdrawn, or any sum employed or intended to be employed as capital ;
- '(c) Any capital employed in improvements ;
- '(d) Any debts, except bad debts, proved to be such to the satisfaction of the Assessment Committee, and doubtful debts to the extent that they are respectively estimated by the Assessment Committee to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof.'

Clause 14 provides that the tax shall be assessed in the year 1920 in respect of income derived during the year 1919.

Clause 19 requires a true account of income to be delivered to the Assistant Commissioner, and Clause 21 that, after such returns are made, the Assessment Committee shall assess the amount of income tax.

Clause 24 enables an appeal to be made against the assessment within thirty days.

Clause 30 enables the Assessment Committee, during the year of assessment or within two years afterwards, to make a further assessment if they discover that the amount assessed is less than that which ought to have been charged, and Clause 40 enables the Governor in Privy Council to remit the whole or any part of the income tax payable by any person if he is satisfied that it would be just and equitable to do so.

The Act of 1920—No. 39 of that year—provides by Section 24 that if the amount paid is in excess of the amount properly

chargeable, the person so paying may claim repayment within twelve months from the date of assessment. There are no further material provisions in the statutes.

The appellants contend that the true meaning of Section 10 is that debts may be deducted in the year in which they are found to be bad from the annual profits of that year, although the debt may have been long antecedently incurred, or, in other words, that for the purposes of the statute the actual calculation of the annual profits in any particular year involves allowance for debts included in former accounts as good or doubtful but discovered as bad in the year under consideration. Their lordships find themselves unable to accept this contention.

The income that is to be returned is the net income after deducting the expenses of acquiring the same, and, but for Section 10, it might well be argued that in the case of a business, debts not actually received formed no part of the income at all, although, as is well known, the annual profits or gains of a trader are not properly measured by considering only the monies taken. There must, in every profit and loss account, be an examination of the debts and a careful distinction between those that are good, doubtful and bad. Sir George Jessel (when M.R.) said *in re Frank Mills Mining Company* (23 Ch.D., 52 at p. 57), in reference to business accounts, "You cannot properly put down a single debt as an asset without some consideration of the circumstances of the debtor."

This estimate should be made in every year of trading, and when it has been fixed the annual profits for that particular year are ascertained. It may well be that for purposes of prudence all the income so earned could not be wisely taken out of the business and enjoyed, for the estimates may be falsified by subsequent events. If in any year a loss falls upon a business owing to the fact that debts which, in former profit and loss accounts, had been regarded as good, had become, in the interval, irrecoverable and bad, this incident would mean that the former profit and loss accounts had in the event been inaccurately estimated, and that the monies then taken from the business on the assumption that the estimates were good had been drawn in excess of what the actual facts show on the true position was permissible. It is, in their Lordships' opinion, to determine under these considerations what allowances should be made that Clause 10 is directed. It provides, in the first place, that in making up the account there cannot be a deduction for "any debts." This can only mean that the trader is not at liberty to limit the "income" which he returns to the amount actually received, but must estimate the value of the debts that have accrued due to him in the year's trading. But the provision that so excludes him provides also that there should be exempted from this exclusion bad debts proved to be such to the satisfaction of the Assessment Committee and doubtful debts to the extent to which they are estimated by the Assessment Committee to be bad.

Their Lordships think that this exception must apply to the general provision as to the debts, and that as the debts which may not be deducted are debts that have accrued due to the taxpayer in the year's trading but have not been received, so the exception is out of that amount, and bad and doubtful debts are, consequently, bad or doubtful debts arising out of the year's trading and ascertained and determined to be bad or doubtful during that year. The contrary decision would involve the introduction into the clause of the statement that bad debts are to be deducted only in the year in which they are found to be bad, and yet, apart from bankruptcy or the disappearance of a creditor, it might be very difficult to ascertain the moment when this event was definitely determined. The matter can be better decided by considering that the same reasoning applies to doubtful debts; these also, to the extent to which they are bad, have to be estimated by the Assessment Committee, and, subject to the provisions to which reference has been made, under which the assessment may be appealed from or its effect varied, the assessment when made is final. If, therefore, debts decided to be doubtful in one year were found to be good at a later date, apart from the provisions of Clause 30, there are no means whatever of obtaining further income tax upon the amount, nor, if their value further diminish, could they be the subject of re-assessment. The investigation by the Assessment Committee of the debts is an investigation year by year, and when once they have been the subject of investigation, alteration is impossible except under the provisions of the sections relating to appeal and further assessment or the recovery of sums paid in excess. The reference to bankruptcy at the end of the sub-section which is relied upon by the appellants appears, in their Lordships' minds, to strengthen the opinion that they have formed, for it shows that the actual value of the debt does not wait to be measured by determining the exact sum that is in fact received in liquidation, but is to be the sum that it is reasonably expected might be received. Were the appellants' contention correct the actual sums received ought to be the amount included in the assessment in the year of receipt.

The other provisions of the section are said to show that the sub-clause D must be dealing with something of a capital nature. Their Lordships can find nothing to support that view merely from the fact that in other parts of the section capital items are dealt with.

Their Lordships have been referred to the practice of the Inland Revenue Authorities in this country under similar provisions, which appears to sanction the practice of permitting debts that are bad to be deducted in the year the loss is sustained. Their Lordships are unable to attach any weight to this practice. It may be due either to a misunderstanding of the statute, or it may be that if all the provisions of the various English Income Tax Acts were examined they might bear a different interpretation to those that are now before their Lordships; or again, the

convenience of administration may have suggested this form of relief. Their Lordships are unable to appreciate how the establishment of this practice, although it may be of long standing, can afford them assistance in the present dispute. It may, however, afford some explanation of why the particular point has never been taken in English Courts, although in one or two cases to which attention has been called it may have been relevant for discussion.

For these reasons their Lordships will humbly advise His Majesty that the judgments of the Chief Justice and the Full Court were right and that this appeal should be dismissed with costs.

In the Privy Council.

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THE GLEANER COMPANY, LIMITED

2.

THE ASSESSMENT COMMITTEE.

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DELIVERED BY LORD BUCKMASTER.

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