

1967/2

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 14 of 1964

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

RATTAN SINGH
s/o Nagina Singh Appellant

- and -

THE COMMISSIONER OF
INCOME TAX Respondent

RECORD OF PROCEEDINGS

VOLUME I

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CLASS MARK

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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
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LONDON, W.C.1.

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

RATTAN SINGH
s/o Nagina Singh Appellant

- and -

THE COMMISSIONER OF
INCOME TAX Respondent

RECORD OF PROCEEDINGS

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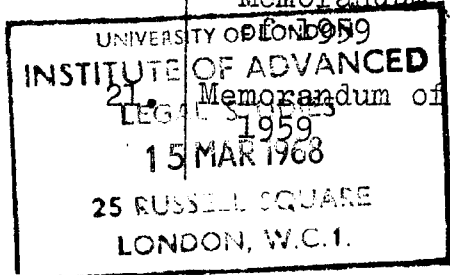
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E X H I B I T S

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Tax (Included in Bundle of
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IN THE PRIVY COUNCIL

No. 14 of 1964

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

RATTAN SINGH
s/o Nagina Singh Appellant

- and -

THE COMMISSIONER OF
INCOME TAX Respondent

10

RECORD OF PROCEEDINGS

No. 1

Notice confirming Assessment
for the year 1946

File No. 22433A

EAST AFRICAN INCOME TAX DEPARTMENT

No. 1

INCOME TAX

NOTICE

(Section 77 and 78 of the East African (Management)
Act, 1952)

Notice con-
firming the
Assessment
for the year
1946
4th December
1958

Year of Income 1946

Assessment No. B90011

20

To :-
Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI.

Sir,

With reference to your objection to the
assessment made upon you for the above-mentioned
year of income

No. 1

Notice con-
firming the
Assessment
for the year
1946
4th December
1958
(Continued)

1. I hereby give you notice that I confirm the assessment as I am not prepared to amend it in accordance with your objection.

2. If you wish to appeal against this decision you are entitled to appeal either -

(a) to the Local Committee on giving me notice in writing within thirty days of the date of the service of this Notice. This Notice must be accompanied by a memorandum of appeal signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee;
or

10

(b) to a Judge on giving me notice in writing within sixty days of the date of the service of this Notice in which case you must within seventy-five days from the date of the service of this Notice present a memorandum of appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

20

3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due Notice owing to absence from the Colony, sickness or other reasonable cause.

30

4. If no appeals is made, the tax which was in dispute amounting to Shs.28,692/- is payable on or before the THIRD day of FEBRUARY 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

I am, Sir,
Your Obedient servant.
sdL B. C. Thomas
Regional Commissioner of Income Tax.

No. 1

Notice confirming the Assessment for the year 1946
4th December 1948
(Continued)

No. 2

10 Notice confirming the Assessment for the year 1947

File No. 22433A

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX

NOTICE

(Section 77 and 78 of the East African (Management) Act, 1952)

Year of Income 1947

Assessment No. B90012

4th December, 1958

No. 2

Notice confirming the Assessment for the year 1947
4th December 1958
1958

To:-

20 Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI.

Sir,

With reference to your objection to the assessment made upon you for the above-mentioned year of income:-

I hereby give you notice that I confirm the assessment as I am not prepared to amend it in accordance with your objection.

30 2. If you wish to appeal against this decision you are entitled to appeal either -

(a) to the Local Committee on giving me notice in writing within thirty days

3.

No. 2

Notice con-
firming the
Assessment
for the year
1947
4th December
1958
(Continued)

of the date of the service of this Notice. This Notice must be accompanied by a memorandum of appeal signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee;
or

10

(b) to a Judge on giving me notice in writing within sixty days of the date of the service of this Notice in which case you must within seventy-five days from the date of the service of this Notice present a memorandum of appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

20

3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due Notice owing to absence from the Colony, sickness or other reasonable cause.

4. If no appeals is made, the tax which was in dispute amounting to Sh.143,697/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

30

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

I am Sir,
Your Obedient servant,
sd. B.C. Thomas
Regional Commissioner of Income Tax.

40

No. 3

Notice confirming the Assessment
for the year 1948

File No. 22433A

EAST AFRICAN INCOME TAX DEPARTMENT

No. 3

INCOME TAX

NOTICE.

(Section 77 and 78 of the East African (Management)
Act, 1952).

Notice con-
firming the
Assessment
for the
year 1948
4th December
1958

10 Year of Income 1948 Assessment No. B90013
4th December, 1958

To :-
Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI

Sir,

With reference to your objection to the
assessment made upon you for the above-mentioned year
of income :-

- 20 I hereby give you notice that I confirm the
assessment as I am not prepared to amend it
in accordance with your objection.
2. If you wish to appeal against this decision
you are entitled to appeal :-
- (a) to the Local Committee on giving me
notice in writing within thirty days
of the date of the service of this
Notice. This Notice must be
30 accompanied by a Memorandum of Appeal
signed by you or your agent setting
forth concisely and under distinct
heads the grounds of appeal, the facts
upon which is based and referring to
any documentary or other evidence which
you propose to adduce to the Local
Committee;
or

No. 3
Notice confirming the
Assessment
for the
year 1948
4th December
1958
(Continued)

(b) to a Judge on giving me notice in writing within sixty days of the service of this notice in which case you must within seventy five days from the date of the service of this Notice present a Memorandum of appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due Notice owing to absence from the Colony, sickness or other reasonable cause. 10

4. If no appeals is made, the tax which was in dispute amounting to Shs. 86,299/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 percent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified. 20

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

I am, Sir,
Your Obedient servant,
sd: B.C. Thomas.
Regional Commissioner of Income Tax.

No. 4

Notice confirming the Assessment
for the year 1949 30

No. 4
Notice confirming the
Assessment
for the year
1949
4th December
1958

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX

NOTICE

(Section 77 and 78 of the East African (Management) Act, 1952)

Year of Income 1949

Assessment No. B90014

4th December, 1958.

No. 4

To :-
Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI.

Notice con-
firming the
Assessment
for the year
1949
4th December
1958
(Continued)

Sir,

With reference to your objection to the assessment made upon you for the above-mentioned year of income :-

10 I hereby give you notice that I confirm the assessment as I am not prepared to amend it in accordance with your objection.

2. If you wish to appeal against this decision you are entitled to appeal either :-

20 (a) to the Local Committee on giving me notice in writing within thirty days of the date of the service of this Notice. This Notice must be accompanied by a Memorandum of Appeal signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee ;

30 or
(b) to a Judge on giving me notice in writing within sixty days of the service of this notice in which case you must within seventy five days from the date of the service of this Notice present a Memorandum of Appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

40 3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due Notice owing to absence from the Colony, sickness or other reasonable cause.

No. 4
Notice confirming the
Assessment
for the year
1949
4th December
1958
(Continued)

4. If no appeals is made, the tax which was in dispute amounting to Shs.125,156/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

10

I am Sir,
Your Obedient Servant,
sd. B. C. Thomas.
Regional Commissioner of Income Tax.

No. 5

Notice confirming the Assessment
for the year 1950

No. 5

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX

NOTICE

20

Notice confirming the
Assessment
for the year
1950
4th December
1958
1958

(Section 77 and 78 of the East African (Management) Act, 1952).

Year of Income 1950

Assessment No. B90015

4th December, 1958

To:-
Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI.

Sir,

With reference to your objection to the assessment made upon you for the above-mentioned year of income :-

30

I hereby give you notice that I confirm the assessment as I am not prepared to amend it in accordance with your objection.

2. If you wish to appeal against this decision you are entitled to appeal either :-

No. 5

Notice confirming the Assessment for the year 1950
4th December 1958
(Continued)

10

(a) to the Local Committee on giving me notice in writing within thirty days of the date of the service of this Notice. This Notice must be accompanied by a Memorandum of Appeal signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee;

or

20

(b) to a Judge on giving me notice in writing within sixty days of the service of this Notice in which case you must within seventy five days from the day of the service of this Notice present a Memorandum of Appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

30

3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due Notice owing to absence from the Colony, sickness or other reasonable cause.

4. If no appeals is made, the tax which was in dispute amounting to Shs.140,882/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

40

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

I am Sir,
Your Obedient servant
sd. B. C. Thomas
Regional Commissioner of Income Tax.

No. 6

Notice confirming the Assessment
for the year 1951

File No. 22433A

No. 6

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX

NOTICE

Notice con-
firming the
Assessment
for the year
1951
4th December
1958

(Section 77 and 78 of the East African (Management)
Act, 1952)

Year of Income 1951

Assessment No. B90017

10

4th December, 1958

To :-

Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI

Sir,

With reference to your objection to the
assessment made upon you for the above-mentioned
year of income :-

I hereby give you notice that I confirm the
assessment as I am not prepared to amend it
in accordance with your objection.

20

2. If you wish to appeal against this decision
you are entitled to appeal either :-

(a) to the Local Committee on giving me
notice in writing within thirty days
of the date of the service of this
Notice. This Notice must be accompanied
by a Memorandum of Appeal signed by
you or your agent setting forth
concisely and under distinct heads the
grounds of appeal, the facts upon which
is based and referring to any
documentary or other evidence which you
propose to adduce to the Local
Committee;

30

or
(b) to a Judge on giving me notice in
writing within sixty days of the service
of this Notice in which case you must

within seventy five days from the date of the service of this Notice present a Memorandum of Appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court.

No. 6

Notice confirming the Assessment for the year 1951
4th December 1958
(Continued)

10 3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to absence from the Colony, sickness or other reasonable cause.

20 4. If no appeals is made, the tax which was in dispute amounting to Shs.90,701/- is payable on or before the THIRD day of FEBRUARY 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

I am Sir,
Your Obedient servant,
sd: B. C. Thomas
Regional Commissioner of Income Tax.

No. 7

30 Notice confirming the Assessment for the year 1952

File No. 22433A

EAST AFRICAN INCOME TAX DEPARTMENT

No. 7

INCOME TAX

NOTICE

(Section 77 and 78 of the East African (Management) Act, 1952).

Notice confirming the Assessment for the year 1952
4th December 1958

Assessment No. B90016

4th December, 1958.

No. 7

Year of Income 1952

Notice con-
firming the
Assessment
for the year
1952

4th December
1958

(Continued)

To:-

Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI

Sir,

With reference to your objection to the
assessment made upon you for the above-mentioned
year of income :-

I hereby give you notice that I confirm the
assessment as I am not prepared to amend it
in accordance with your objection.

10

2. If you wish to appeal against this decision
you are entitled to appeal either :-

(a) to the Local Committee on giving me
notice in writing within thirty days
of the date of the service of this
Notice. This Notice must be
accompanied by a Memorandum of Appeal
signed by you or your agent setting
forth concisely and under distinct
heads the grounds of appeal, the facts
upon which is based and referring to
any documentary or other evidence which
you propose to adduce to the Local
Committee;

20

or

(b) to a Judge on giving me notice in
writing within sixty days of the service
of this Notice in which case you must
within seventy five days from the date
of the service of this Notice present a
Memorandum of Appeal to the Registrar of
the Supreme Court. Your attention is
drawn to the appropriate Rules of Court.

30

3. Notice of appeal cannot be accepted after the
lapse of the period of thirty and sixty days set out
in 2(a) and (b) above unless you are able to satisfy
the Local Committee or the Judge that you were
prevented from giving due notice owing to absence
from the Colony, sickness or other reasonable
cause.

40

4. If no appeals is made, the tax which was in dispute amounting to Shs.409,918/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

5. Will you please quote the file number, year and assessment number when making payment of the above amount.

10.

I am Sir,
Your Obedient servant,
sd. B. C. Thomas
Regional Commissioner of Income Tax.

No. 8

Notice confirming the Assessment
for the year 1953

File No. 22433A

EAST AFRICAN INCOME TAX DEPARTMENT

20

INCOME TAX

NOTICE

(Section 77 and 78 of the East African (Management) Act, 1952)

Year of Income 1953

Assessment No. B90018

To:-

4th December 1958

Rattan Singh s/o Nagina Singh,
P.O. Box 1047,
NAIROBI

Dear Sir,

30

With reference to your objection to the assessment made upon you for the above-mentioned year of income:-

I hereby give you notice that I confirm the assessment as I am not prepared to amend it in accordance with your objection.

No. 7

Notice con-
firming the
Assessment
for the year
1952
4th December
1958
(Continued)

No. 8

Notice con-
firming the
Assessment
for the year
1953
4th December
1958

No. 8

Notice con-
firming the
Assessment
for the year
1953
4th December
1958
(Continued)

2. If you wish to appeal against this decision you are entitled to appeal either :-

- (a) to the Local Committee on giving me notice in writing within thirty days of the date of the service of this Notice. This Notice must be accompanied by a Memorandum of Appeal signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee; 10
- or
- (b) to a Judge on giving me notice in writing within sixty days of the service of this Notice in which case you must within seventy five days from the date of the service of this Notice present a Memorandum of Appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court. 20

3. Notice of appeal cannot be accepted after the lapse of the period of thirty and sixty days set out in 2(a) and (b) above unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to the absence from the Colony, sickness or other reasonable cause. 30

4. If no appeals is made, the tax which was in dispute amounting to Shs.274,655/- is payable on or before the THIRD day of FEBRUARY, 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The remainder of the tax, which was not in dispute, if still unpaid, remains payable on the due date previously notified.

5. Will you please quote the file number, year and assessment number when making payment of the above amount. 40

I am Sir,
Your Obedient servant,
sd: B. C. Thomas.
Regional Commissioner of Income Tax.

No. 9

Notice of intention to Appeal

P.O. Box 1047,
NAIROBI.

31st January, 1959.

NOTICE OF INTENTION TO APPEAL

The Commissioner of Income Tax,
E.A. High Commission Building,
NAIROBI

10 Sir,

Assessment No. B Year of Income 195
RATTANSINGH S/O NAGINA SINGH : Your Notice
of Refusal to amend of 4.12.1958

20 TAKE NOTICE that I RATTAN SINGH above named
intend to appeal against your Assessment above
specified, in respect of which you have sent a
Notice of Refusal to amend dated the 4th day of
December, 1958 - which appeal will be lodged within
the statutory period for being heard by a Judge
of H.M. Supreme Court of Kenya.

Yours faithfully,
sd: Rattan Singh

RATTAN SINGH.

No. 10

Memorandum of Appeal

No. 4 of 1959.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT
NAIROBI

INCOME TAX APPEAL NUMBER 4 OF 1959

30 YEAR OF ASSESSMENT 1947 ASSESSMENT NO. B.90011

No. 9

Notice of
intention
to Appeal
31st January
1959

In the Supreme
Court

No. 10

Memorandum of
Appeal
No.4 of 1959
14th February
1959

In the Supreme Court

RATTAN SINGH S/O NAGINA SINGH

APPELLANT

v e r s u s

No. 10
Memorandum of Appeal
No.4 of 1959
14th February 1959
(Continued)

THE COMMISSIONER OF INCOME TAX
PURPORTING TO ACT THROUGH A.H. DOBBIE
REGIONAL COMMISSIONER OF INCOME TAX

RESPONDENT

(Appeals - including above - from Assessments Numbers B. 90011-18) for the year of Assessment 1947 to 1951 inclusive and for years of income 1951 to 1953 inclusive)

MEMORANDUM OF APPEAL

10

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment(s) referred to above BEGS TO APPEAL pursuant to Notice(s) of Refusal to amend the same, dated the 4th day of December, 1958 (annexed hereto) - having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :

1. The Assessments appealed against are excessive in that they wrongly include a sum by way of penalties, the addition of which is not justified either in law or in fact. 20
2. The Assessments for the years of income 1947 to 1951 inclusive - purport to be made in contravention of the provisions of Section 8 of the Income Tax Ordinance, Cap.254 of Laws of Kenya.
- 2A. The inclusion of penalties in the Assessments for the years of Assessment 1947 to 1951 inclusive is wrong in law because the Assessments were made more than six years after the expiration of such years. 30
3. If, contrary to the submissions set out above, penalties are chargeable for all or any of the years in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he has in fact done.
4. The alleged additional income shown on the said Assessments is founded on wrong calculations and incorrect principles of law and is 40

excessive, and the penalty computations based thereon are consequently also excessive. The said calculations are wrong for the following amongst other reasons :-

In the Supreme Court

No. 10

Memorandum of Appeal
No.4 of 1959
14th February 1959

(Continued)

- 10 (a) The "estimated profits" for 1946 of Shs.30,000/- represents guesswork by the Commissioner and is grossly excessive.
- (b) The adjustment of work in progress in 1947 of Shillings.91,207/65 cents involves tax being charged on gross turnover and without any allowance for the cost of earning the amount involved.
- (c) The figure of "estimated profits" of Shillings.33,792,35 cents for the year is also guesswork and excessive.
- (d) The 10,000 shillings estimated charge for African wages in 1948 has been wrongfully disallowed by the Commissioner.
- 20 (e) The stock adjustments made by the Commissioner are unjustified.
- (f) The Commissioner has wrongly added back legal expenses.
- (g) The Commissioner has wrongly added to the profits sums in respect of "cash overdrawn".
- (h) The Commissioner has wrongly included in the 1951 profits Shillings.30,000 loaned to Appellant by his wife.
- 30 (i) The Commissioner has wrongly included in 1952 profits the Shs. 30,000 lodged in Indian Bank Account.
- (j) The Commissioner has not allowed sufficient deduction in respect of Motor expenses.
- (k) Excessive sums have been added to the profits in respect of the costs of Parklands Plot and Crogan Road plot, and for demolishing the house at Intiazali Road.

In the Supreme Court

No. 10

Memorandum of Appeal
No.4 of 1959
14th February 1959
(Continued)

- (l) The Commissioner has wrongly included the profit on the sale of Crogan Road Building.
- (m) The Commissioner has made excessive adjustments in respect of drawings,/"round sum debits to contracts" and "round sum creditors unexplained".
- (n) The Commissioner has wrongly included a sum of Shillings.21,800/- "retention money - Moshi" for 1953. 10
- (o) The Commissioner has wrongly included rents not received.
- (p) The Commissioner has wrongly included a sum for rents in respect of Crogan Road stores.
- (q) The Commissioner has wrongly added back the whole of the medical expenses.
- (r) The Commissioner has wrongly added back a sum in respect of alleged repairs to relatives' property. 20

5. The Assessments for the years 1947 and 1948 are misconceived in so far as they relate to income derived from the estate of the Appellant's late father.

WHEREFORE THE appellant prays that this Appeal be allowed with costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just.

DATED at NAIROBI this 14th day of February, 1959. 30

Filed by:-

G. R. MANDAVIA,
ADVOCATE,
AFRICA HOUSE,
GOVERNMENT ROAD,
NAIROBI.

Sd: G. R. MANDAVIA

ADVOCATE FOR THE APPELLANT.

No. 11

In the Supreme Court

Statement of Facts
accompanying Memorandum of Appeal

No. 11

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

Statement of
Facts
accompanying
Memorandum
of Appeal
Nos. 4 to 11
of 1959
14th February,
1959

Nos. 4 to 11 of 1958

INCOME TAX APPEAL NUMBER
4 to 11 of 1959
(Consolidated)

10 RATTAN SINGH S/O NAGINA SINCH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX }
PURPORTED TO ACT THROUGH A.H. }
DOBBIE, REGIONAL COMMISSIONER }
OF INCOME TAX } RESPONDENT

(Appeals from Assessments for Years of
Assessment 1947 to 1951 inclusive and
for Years of Income 1951 to 1953 inclusive).

20 APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY MEMO. OF
APPEAL

1. The Appellant's father, Mistry Nagina Singh carried on business as/a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January, 1946, and until his father's death on 11th January, 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for letters of Administration on the 22nd January, 1946 - which were duly granted on the 14th February, 1947. Since that time and until after the end of the last year of income with which these appeals are concerned the Appellant has been carrying on the said business on his own account.

2. At all relevant times the accounts of the business were audited by one R. M. Nanda, a practising Accounts and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the

In the Supreme Court

No. 11
Statement of
Facts
accompanying
Memorandum
of Appeal
Nos. 4 to 11
of 1959
14th February
1959
(Continued)

Appellant, Mr. Nanda is not likely to return to the Colony in the near future.

3. On the 28th February, 1956, Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:-
- (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits? 10
- (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?
4. The Appellant made enquiries into the position and on the 18th, April, 1956, a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout. 20 30
5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accounts of Nairobi, to undertake a full investigation into his affairs, and on the 15th November, 1956, Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January, 1948 to 31st December, 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January, 1940 to 31st December, 1953, and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957. 40

In the Supreme
Court

No. 11

Statement of
Facts
accompanying
Memorandum
of Appeal
Nos. 4 to 11
of 1959
14th February
1959
(Continued)

6. On the 17th April, 1958, the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953 inclusive. These figures were wrongly excessive and many of the considerations set out in the Accountants' report were implicitly rejected without any reason or explanation being given.
- 10 7. On the 3rd May, 1958, the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.
- On the 9th May, 1958 a Mr. D. C. Thomas, Senior Investigation Officer replied to the effect that Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December, 1953. He added that if the Appellant had any
- 20 representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May, 1958, otherwise Assessments would be issued and collection of the tax due would proceed.
8. The Assessments under appeal were then made and dated 21st May, 1958. In each case, penalties amounting to almost exactly 60 per cent of the maximum penalties exigible were added to the Assessments. In the two largest years,
- 30 namely the years of income 1952 and 1953, this resulted in the total tax payable being much greater than the gross income for those years. The total tax claimed for the other years is greater than the total gross income for that period.
9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.
- 40 10. On the 17th November, 1958, further representations were made to the Commissioner of Income Tax.
11. On the 28th November, 1958, these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December, 1958, Notices of refusal to amend the

In the Supreme Court

No. 11

Statement of Facts accompanying Memorandum of Appeal Nos. 4 to 11 of 1959 14th February 1959 (Continued)

Assessments were made and signed by Mr. R.C. Thomas, Regional Commissioner of Income Tax.

Dated at Nairobi this 14th day of February 1959

sd: G. R. MANDAVIA

ADVOCATE FOR APPELLANT.

NAIROBI.

Filed by :-

G. R. MANDAVIA, ADVOCATE, NAIROBI.

No. 12

No. 12

Respondent's Statement of Facts, Appeal No. 6 of 1959

Respondent's Statement of Facts

10

IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI

CIVIL APPEAL NO. 6 of 1959

RATTAN SINGH S/O NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

STATEMENT OF FACTS OF RESPONDENT

1. The Appellant appeals against Assessment No. 90013 an additional assessment for the year of income 1948, following the issue of a Notice of Refusal given on behalf of the Respondent to amend the said assessment.

20

2. The Appellant has carried on business on his own account as a contractor in Nairobi since the death of his father, Mistry Nagina Singh, on the 11th January, 1946. Until his father's death the Appellant was employed in his father's business which was begun in 1935. The Appellant was his father's sole heir, Letters of Administration being granted to him on the 14th February 1947.

30

3. At all relevant times the accounts of the business were audited by R. M. Nanda, a practising Accountant and Auditor of Nairobi. One, Sheikh Mohamed Shaffie, was responsible for bookkeeping and accounts of the business until the end of 1948 (as is admitted in paragraph 4 of the Appellant's Statement of Facts).

In the Supreme Court

No. 12

Respondent's Statement of Facts, Appeal No.6 of 1959
(Continued)

10

4. The Appellant regularly made returns of his income for tax purposes. Details of the returns of income made, total income returned, total income first assessed and total income now assessed are as follows:

<u>Year of Income</u>	<u>Date</u>	<u>Returns made</u>	<u>Total Income returned</u>	<u>Total Income First Assessed</u>	<u>Total Income now Assessed</u>
		£	£	£	£
20	1946	16.9.1949	1,168-4-0	1,138-0-0	3,385-0-0
	1947	4.4.1949	867-3-0	845-0-0	8,135-0-0
	1948	26.3.1950	887-0-0	779-0-0	6,053-0-0
	1949	26.3.1950	938-0-0	692-0-0	7,449-0-0
	1950	4.2.1952	1,621-0-0	1,622-0-0	8,100-0-0
	1951	13.4.1952	1,244-0-0	1,125-0-0	5,424-0-0
	1952	23.7.1954	3,888-0-0	3,753-0-0	14,566-0-0
	1953	26.11.1954	3,402-0-0	3,418-0-0	10,914-0-0
			£ 14,015-7-0	£13,372-0-0	£ 64,026-0-0

30

5. On the 28th February 1956, Messrs. Hyde, Easterbrook and Field, of the Investigation Branch of the East African Income Tax Department, had an interview with the Appellant's son, Surjit Singh, acting as agent for the Appellant, at which the Appellant, though invited to attend, was not present, and stated that they required the Appellant, though not immediately, to answer the following questions:-

In the Supreme Court

No. 12

Respondent's Statement of Facts, Appeal No.6 of 1959 (Continued)

- (i) Have the accounts of all years which you have sent to the Income Tax Department included all your business transactions and correctly shown your full business profits?
- (ii) Have the Income Tax Returns which you have made for all years included the correct amounts of your total income from all sources?

- At an interview which took place on the 21st March 1956, between Messrs. Hyde and Easterbrook of the Investigation Branch and the Appellant, the Appellant twice stated that his returns and accounts been correct. 10
6. At a further interview which took place between the same persons on the following day, the Appellant admitted that his accounts and returns had not been correct.
7. At an interview held on the 18th April 1956, between the Appellant's son, Surjit Singh and S.M. Shaffie, acting as agents for the Appellant, but at which the Appellant did not attend, S. M. Shaffie gave particulars of rents which had not been returned in the Appellant's Income Tax Returns amounting to Sh.26400 per annum. Details were also given on behalf of the Appellant by Shaffie of two properties owned and built by the Appellant at a cost of Sh.133,000. The said properties were situated in the 6th Avenue, Parklands, and Grogan Road Nairobi, and their existence had not been disclosed. Shaffie also stated on behalf of the Appellant that the only other item which the Appellant had omitted from his accounts related to profit attributed to the year 1953 on a building contract at Moshi. 20 30
8. The amount of additional income disclosed as a result of the interview of the 18th April, 1956, has been computed at £9,437 which compares with the total additional income disclosed by Messrs. Thian and Bellman's second report of £21,568 (see paragraph 13 below). It is evident in the light of this report that the disclosures made on 18th April, 1956 were far from complete. 40

In the Supreme
Court

No. 12

Respondent's
Statement of
Facts, Appeal
No.6 of 1959
(Continued)

9. In May 1956, the Appellant appointed Messrs. Thian & Bellman, Incorporated Accounts of Nairobi, to undertake a full investigation into his affairs. Their first report dated 15th November 1956, was received by the Respondent on or about the 12th December, 1956. The report covered the period from 1st January 1948 to the 31st December, 1953. The total additional income disclosed by this report on behalf of the Appellant over the years in question which had not been shown in the returns of income made by the Appellant was £7,701.
10. In a letter of the 17th December 1956 addressed to the Respondent, Messrs. Thian & Bellman forwarded a certificate signed by the Appellant to the effect that he had made a full disclosure of the banking accounts held by him and also of his other assets and sources of income.
11. At an interview at which Messrs. Easterbrook and Hyde, of the Investigation Branch, were present on the 1st March 1957 the Appellant admitted that he had had an account with the Bank of Baroda Limited of Mombasa and an account with the National Bank of India Ltd., Amritsar, which he had not disclosed.
12. The report of Messrs. Thian & Bellman dated 15th November 1956, which had not covered the period 1st January 1940 to 31st December, 1947, was not satisfactory to the Investigation Branch since it was prepared almost without audit and without adequate investigation.
13. On the 22nd March 1957, Messrs. Thian & Bellman were therefore instructed to carry out a further investigation and prepare a comprehensive report. Their second report dated the 7th October, 1957, which covered the period 1st January 1940 to 31st December 1953 was received by the Investigation Branch on the 24th October, 1957. The said report disclosed on behalf of the Appellant the total income of the Appellant for the period 1946 to 1953 inclusive as £35,583 which was £21,568 more than the income which had been included in the Appellant's returns of income, namely £14,015 (see paragraph 4).

In the Supreme Court

No. 12

Respondent's Statement of Facts, Appeal No.6 of 1959 (Continued)

14. The second report having been carefully examined by the investigation Branch was discussed by them with representatives of the Appellant, including Mr. Thian, on no less than nine separate occasions between the months of January and April 1958.

15. On the 15th April 1958, the Investigation Branch forwarded to Messrs. Thian & Bellman, as agents for the Appellant:

(a) Computations showing their calculation of business income for tax purposes for the years of Income 1946 to 1953 totalling £64,026. 10

(b) A Schedule showing total income for income tax purposes for the years of income 1940 to 1953 inclusive at £98,494.

The figures on which the computations and schedule were based had been verbally agreed between the Investigation Branch and Mr. Thian on behalf of the Appellant. 20

16. Every item in the Investigation Branch computations and Schedule referred to in the preceding paragraph had been fully explained and ample opportunity was given for them to be queried before the letter of the 15th April 1958 was written. The assessments now under appeal were made in the figures appearing from those computations.

17. Messrs. Thian and Bellman, on behalf of the Appellant, thereupon undertake negotiations with the Investigation Branch with a view to reducing the figures of income computed. In a letter to the Respondent of the 3rd May 1958, which was signed both by Mr. Thian and the Appellant, a fair assessment of the Appellant's total income for the period 1940 to 1953 was put at £55,000. No annual distribution of this figure was suggested. The figure of £55,000 put forward compares with a total income of only £15,455 originally declared by the Appellant for the same period. 30 40

18. On the 9th May, 1958, Mr. B.C. Thomas, a Senior Investigation Officer, sent a letter to Mr. Thian, as agent for the Appellant, stating that the

Respondent, having considered the case, was prepared to remit part of the additional tax exigible in the exercise of his powers under Section 40 (2) of the East African Income Tax (Management) Act, 1952, and to accept £65,000 in payment of income tax and additional tax for the period to 31st December, 1953.

In the Supreme
Court

No. 12

Respondent's
Statement of
Facts, Appeal
No.6 of 1959
(Continued)

- 10 19. Since the proposal contained in the said letter of the 9th May, 1958, was not accepted, additional assessments were duly made for the years of income 1946 to 1953 inclusive, (see paragraph 4 above) for a total assessable income of £64,026 allocated according to the computations attached to the letter of the 15th April 1958, referred to in paragraph 15 above. Income tax and additional tax arising under these assessments total £65,000. No assessments have been raised in respect of the years of income 1940 to 1945 inclusive.
- 20 20. In a letter of the 19th June 1958, to the Respondent, the Appellant objected to the said assessments and submitted that his total income for the eight years from 1946 to 1953 was only £27,977 and should be assessed accordingly. The Appellant also admitted that he had been negligent and that the Respondent was entitled to penalise him. The Respondent does not admit the Appellant's assessments of his total worth as being £61,655 as quoted in the said letter but contends that the true valuation of his total worth is in the region of £100,000. The total of the Appellant's assets in India have not been disclosed.
- 30 21. Between June and November 1958 representations were made on behalf of the Appellant by his advisers to the Respondent with a view to obtaining an amendment of the assessments. The said representatives were, however, not accepted by the Respondent and on 4th December 1958, formal Notices of Refusal signed by Mr. B.C. Thomas, as a Regional Commissioner of Income Tax, were posted to the Appellant.
- 40 22. Notice of Intention to Appeal to the High Court was received by the Respondent on the 3rd January 1959.

In the Supreme Court 23. At the hearing of this Appeal the Respondent will, if necessary, produce oral and documentary evidence in support of the foregoing Statement of Facts and other relevant matters.

No. 12

Respondent's
Statement of
Facts, Appeal
No.6 of 1959
(Continued)

sd. B.A.K. La Champion
for LEGAL SECRETARY
EAST AFRICA HIGH COMMISSION
(Advocate for the Respondent).

Filed by :

The Legal Secretary,
E. A. High Commissioner,
P.O. Box 30005,
NAIROBI.

10

To be served on :-
G. R. Mandavia Esq.,
Advocate for the Appellant,
Africa House, Government Road,
P.O. Box 759,
NAIROBI.

No. 13

No. 13

20

Memorandum
of Appeal
No.4 of 1959
4th June 1960

Memorandum of Appeal
No. 4 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 4 of 1959

YEAR OF ASSESSMENT 1947

ASSESSMENT NO. B.90011

RATTAN SINGH s/o NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

MEMORANDUM OF APPEAL

30

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same, dated the 4th day of December, 1958 (annexed hereto)

having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :-

In the Supreme Court

No. 13

Memorandum
of Appeal
No.4 of 1959
4th June 1960
(Continued)

1. The Assessment appealed against is excessive in that it wrongly included a sum by way of penalty, the addition of which is not justified in law or in fact.
- 10 2. The Assessment purports to be made in contravention of the provisions of Section 8 of the Income Tax Ordinance, Cap.254 of Laws of Kenya.
- 2A. The inclusion of an additional sum by way of penalty is wrong in law because the Assessment was made more than six years after the end of the year of assessment.
3. If, contrary to the submissions set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the
20 circumstances, have remitted either the whole or a greater part of the additional tax than he had in fact done.
4. The alleged additional income shown on the said Assessment is founded on wrong calculations and incorrect principles of law and is excessive, and the penalty computation based thereon is consequently also excessive. The said
30 calculations are wrong for the following amongst other reasons :-
 - (a) The "estimated profits" of Shs. 30,000/- represents guesswork by the Commissioner and is grossly excessive.
 - (b) The Commissioner has wrongly included rents not received.
5. The Assessment is misconceived in so far as it relates to income derived from the estate of the Appellant's late father.

40 WHEREFORE THE APPELLANT prays that this Appeal be allowed with Costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises

In the Supreme Court

as may be just.

No. 13

DATED at NAIROBI THIS 4th DAY OF June, 1960.

Sgd. M. Kean

Memorandum of Appeal No.4 of 1959 4th June 1960 (Continued)

SIRLEY & KEAN ADVOCATES FOR THE APPELLANT

Filed by:- Sirley & Kean Advocates, Princes House, Government Road, Nairobi.

10

No. 14

No. 14

Statement of Facts accompanying Memorandum of Appeal, No.4 of 1959 4th June 1960

Statement of Facts accompanying Memorandum of Appeal, No. 4 of 1959

INCOME TAX APPEAL NUMBER 4 OF 1959

RATTAN SINGH S/O NAGINA SINGH APPELLANT

versus

THE COMMISSIONER OF INCOME TAX RESPONDENT

(Appeal from Assessment for Year of Assessment 1947)

20

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY MEMO OF APPEAL

- 1. The Appellant's father, Mistry Nagina Singh carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd January 1946 - which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account.

In the Supreme
Court

No. 14

Statement of
Facts
accompanying
Memorandum
of Appeal,
No.4 of 1959
4th June 1960
(Continued)

2. At all relevant times the accounts of the business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future.
- 10 3. On the 28th February 1956 Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:-
- (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits?
- 20 (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?
4. The Appellant made enquiries into the position and on the 18th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounts to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout.
- 30
- 40 5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi, to undertake a full investigation into his affairs, and on the 15th November, 1956, Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January, 1948 to 31st December, 1953.

In the Supreme Court

No. 14

Statement of Facts accompanying Memorandum of Appeal No. 4 of 1959 4th June 1960
(Continued)

- A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957.
6. On the 17th April 1959 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953 inclusive. These figures were grossly excessive and many of the considerations set out in the Accountants' reports were implicitly rejected without any reason or explanation being given. 10
7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.
- On the 9th May 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December 1953. He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May/1958 otherwise Assessment would be issued and collection of the tax due would proceed. 20 30
8. The Assessment under appeal was then made and dated 21st May 1958. A penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the other years is greater than the total gross income for that period.
9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay. 40
10. On the 17th November, 1958 further representations were made to the Commissioner of Income Tax.

11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of refusal to amend the Assessment was made and signed by Mr. B.C. Thomas, Regional Commissioner of Income Tax.

In the Supreme Court

No. 14

Statement of Facts accompanying Memorandum of Appeal No.4 of 1959 4th June 1960 (Continued)

Dated at Nairobi this 4th day of June, 1960.

Sgd. M. Kean
SIRLEY & KEAN
(Advocate for the Appellant)

10

Filed by Sirley & Kean,
Advocates,
Princes' House,
Government Road,
Nairobi.

No. 15

No. 15

Memorandum of Appeal, No. 5 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

Memorandum of Appeal No.5 of 1959 4th June 1960

20

INCOME TAX APPEAL NO. 5 of 1959.

YEAR OF ASSESSMENT 1948

ASSESSMENT NO. B.90012

RATTAN SINGH s/o NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

MEMORANDUM OF APPEAL

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same, dated the 4th day of December 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :-

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1. The Assessment appealed against is excessive in that it wrongly included a sum by way of penalty, the addition of which is not justified

In the Supreme
Court

No. 15

Memorandum
of Appeal
No. 5 of 1959
4th June 1960
(Continued)

- in law or in fact.
2. The assessment purports to be made in contravention of the provisions of Section 8 of the Income Tax Ordinance, Cap.254 of Laws of Kenya.
 - 2A. The inclusion of an additional sum by way of penalty is wrong in law because the Assessment was made more than six years after the end of the year of assessment.
 3. If, contrary to the submissions set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he has in fact done. 10
 4. The alleged additional income shown on the said Assessment is founded on wrong calculations and incorrect principles of law and is excessive, the penalty computation based thereon is consequently also excessive. The said calculations are wrong for the following amongst other reasons :- 20
 - (a) The adjustment of work in progress of Shillings 91,207.65 cents involves tax being charged on gross turnover and without any allowance for the cost of earning the amount involved.
 - (b) The figure of "estimated profits" of Shillings 33,792.35 cents is guesswork and excessive. 30
 - (c) The Commissioner has wrongly included rents not received.
 5. The assessment is misconceived in so far as it relates to income derived from the estate of the Appellant's late father.

WHEREFORE THE APPELLANT prays that this Appeal be allowed with Costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just. 40

DATED at Nairobi this 4th day of June, 1960

In the Supreme Court

Sgd. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT

No. 15

Filed by :-

Memorandum
of Appeal
No.5 of 1959
4th June 1960
(Continued)

Sirley & Kean,
Advocates,
Princes House,
Government Road,
Nairobi.

10

No. 16

No. 16

Statement of Facts accompanying
Memorandum of Appeal, No. 5 of 1959

Statement of
Facts
accompanying
Memorandum
of Appeal
No.5 of 1959
4th June 1960

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 5 of 1959

RATTAN SINGH s/o NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX RESPONDENT.

20 (Appeal from Assessment for Year of Assessment
1948)

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

- 30 1. The Appellant's father, Mistry Nagina Singh carried on business as a contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on the 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd January 1946 - which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account.

In the Supreme Court

No. 16

Statement of Facts accompanying Memorandum of Appeal No. 5 of 1959 4th June 1960 (Continued)

2. At all relevant times the accounts of the business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi, and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future.
3. On the 28th February 1956, Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:
 - (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits? 10
 - (ii) Have the Income Tax returns that you have made for all years included the correct amounts of your total income from all sources? 20
4. The Appellant made enquiries into the position and on the 18th April, 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout. 30 40
5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi, to undertake a full investigation into his affairs, and on the 15th November, 1956 Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January, 1948 to 31st December

1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957.

In the Supreme Court

No. 16

Statement of Facts accompanying Memorandum of Appeal No.5 of 1959 4th June 1960
(Continued)

- 10 6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953. These figures were grossly excessive and many of the considerations set out in the Accountants' reports were implicitly rejected without any reason or explanation being given.
- 20 7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.
- 30 On the 9th May 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of Income tax and additional tax for the period to 31st December 1953. He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May 1958, otherwise Assessments would be issued and collection of the tax due would proceed.
8. The Assessment under appeal was then made and dated 21st May 1958. A penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the eight years is greater than the total gross income for that period.
9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.
- 40 10. On the 17th November 1958 further representations were made to the Commissioner of Income Tax.
11. On the 28th November/1958 these representations were rejected without any discussion of or indeed reference to their merits and on the

In the Supreme Court

No. 16

Statement of Facts accompanying Memorandum of Appeal No.5 of 1959 4th June 1960 (Continued)

4th December 1958 a Notice of refusal to amend the Assessment was made and signed by Mr. B.C. Thomas, Regional Commissioner of Income Tax.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT

Filed by:

Sirley & Kean
Advocates,
Princes' House,
Government Road,
NAIROBI.

10

No. 17

Memorandum of Appeal No.6 of 1959 4th June 1960

No. 17

Memorandum of Appeal, No.6 of 1959

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 6 of 1959

YEAR OF ASSESSMENT 1949

ASSESSMENT NO. B.90013

RATTAN SINGH S/O NAGINA SINGH

APPELLANT

20

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

MEMORANDUM OF APPEAL

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same dated the 4th day of December 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The Principal grounds of appeal are set forth below - namely :-

1. The assessment appealed against is excessive in that it wrongly included a sum by way of penalty the addition of which is not justified in law or in fact.

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2. The assessment purports to be made in contra-
vention of the provisions of Section 8 of the
Income Tax Ordinance, Cap.254 of the Laws of
Kenya.

2A. The inclusion of an additional sum by way of
penalty is wrong in law because the Assessment
was made more than six years after the end
of the year of assessment.

10 3. If, contrary to the submissions set out above,
an additional sum by way of penalty was
chargeable for the year in question, the
Commissioner should, having regard to all the
circumstances, have remitted either the whole
or a greater part of the additional tax than
he has in fact done.

20 4. The alleged additional income shown on the said
Assessment is founded on wrong calculations and
incorrect principles of law and is excessive,
the penalty computation based thereon is
consequently also excessive. The said
calculations are wrong for the following
amongst other reasons:-

(a) The 10,000 Shillings estimated charge for
African wages in 1948 has been wrongfully
disallowed by the Commissioner.

(b) the Commissioner has wrongly added back
legal expenses.

(c) The Commissioner has not allowed sufficient
deduction in respect of motor expenses.

30 (d) The Commissioner has made excessive
adjustments in respect of drawings,
"round sum debits to contracts" and
"round sum creditors unexplained".

(e) The Commissioner has wrongly included
rents not received.

(f) The Commissioner has wrongly added back
the whole of the medical expenses.

40 (g) The Commissioner has wrongly added back a
sum in respect of alleged repairs to
relatives' property.

In the Supreme Court

No. 17

Memorandum
of Appeal
No. 6 of 1959
4th June 1960
(Continued)

WHEREFORE THE APPELLANT prays that this Appeal be allowed with costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

Filed by :-

10

Sirley & Kean,
Advocates,
Princes House,
Government Road,
Nairobi.

No. 18

Statement of
Facts
accompanying
Memorandum
of Appeal
No. 6 of 1959
4th June 1960

No. 18

Statement of Facts accompanying
Memorandum of Appeal, No. 6 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

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INCOME TAX APPEAL NO. 6 of 1959

RATTAN SINGH S/O NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONERS OF INCOME TAX RESPONDENT

(Appeal from assessment for Year of Assessment
1949)

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

1. The Appellant's father, Mistry Nagina Singh carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir

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and he applied for Letters of Administration on the 23rd January 1946 - which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account.

In the Supreme Court

No. 18

Statement of Facts accompanying Memorandum of Appeal No.6 of 1959 4th June 1960 (Continued)

- 10 2. At all relevant times the accounts of the business were audited by one R. M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future.
- 20 3. On the 28th February 1956 Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department, stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:
- (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits?
- (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?
- 30
- 40 4. The Appellant made enquiries into the position and on the 10th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures

In the Supreme Court

No. 18

Statement of Facts accompanying Memorandum of Appeal No.6 of 1959 4th June 1960 (Continued)

and the Appellant has been co-operative with the Revenue Authorities throughout.

5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi, to undertake a full investigation into his affairs, and on the 15th February 1956 Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January 1948 to 31st December, 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957.

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6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953 inclusive. These figures were grossly excessive and many of the considerations set out in the Accountants' report were implicitly rejected without any reason or explanation being given.

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7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's schedules and suggested a method by which the matter could be settled.

On the 9th May 1958 a Mr. D.B. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December 1953. He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May 1958, otherwise Assessments would be issued and collection of the tax due would proceed.

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8. The assessment under appeal was then made and dated 21st May 1958. A Penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the eight years is greater than the total gross income for that period.

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9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.

In the Supreme Court

No. 18

10. On the 17th November 1958 further representations were made to the Commissioner of Income Tax.

Statement of Facts accompanying Memorandum of Appeal No.6 of 1959 4th June 1960 (Continued)

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11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of refusal to amend the assessment was made and signed by Mr. B.C. Thomas, Regional Commissioner of Income Tax.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

Filed by :-

20

Sirley & Kean,
Advocates,
Princes House,
Government Road,
Nairobi.

No. 19

Memorandum of Appeal, No. 7 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 7 OF 1959

No. 19
Memorandum
of Appeal
No.7 of 1959
4th June 1960

YEAR OF ASSESSMENT 1950

ASSESSMENT NO. B.90014

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RATTAN SINGH S/O NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

MEMORANDUM OF APPEAL

No. 19
Memorandum
of Appeal
No.7 of 1959
4th June 1960
(Continued)

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same, dated the 4th of December 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing with the time allowed. The Principal grounds of appeal are set below - namely :-

1. The Additional Assessment appealed against is excessive in that it wrongly includes a sum by way of penalty, the addition of which is not justified either in law or in fact. 10
2. The additional Assessment purports to be made in contravention of the provisions of Section 8 of the Income Tax Ordinance Cap.254 of the Laws of Kenya.
- 2A. The inclusion of an additional sum by way of penalty is wrong in law because the Assessment was made more than six years after the end of the year of assessment. 20
3. If, contrary to the submissions set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he has in fact done.
4. The alleged additional income shown on the said Assessment is founded on wrong calculations and incorrect principles of law and is excessive, the penalty computation based thereon is consequently also excessive. The said calculations are wrong for the following amongst other reasons - namely :- 30
 - (a) The stock adjustments made by the Commissioner are unjustified.
 - (b) The Commissioner has wrongly added back legal expenses.
 - (c) Excessive sums have been added to the profits in respect of the cost of Parklands Plot. 40

- (d) The Commissioner has made excessive adjustments in respect of drawings and "round sum debits to contracts".
- (e) The Commissioner has wrongly included rents not received.
- (f) The Commissioner has wrongly added back the whole of the medical expenses.
- (g) The Commissioner has wrongly added back a sum in respect of alleged repairs to relatives' property.

In the Supreme Court

No. 19
Memorandum
of Appeal
No.7 of 1959
4th June 1960
(Continued)

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WHEREFORE THE APPELLANT prays that this Appeal be allowed with costs, and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as be just.

DATED at Nairobi this 4th day of June, 1960.

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

20 Filed by :-

Sirley & Kean,
Advocates,
Princes House,
Government Road,
NAIROBI.

No. 20

Statement of Facts accompanying
Memorandum of Appeal, No.7 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 7 OF 1959

RATTAN SINGH S/O NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX RESPONDENT

No. 20

Statement of
Facts
accompanying
Memorandum
of Appeal
No.7 of 1959
4th June 1960

30

In the Supreme Court

(Appeal from assessment for Year of Assessment 1950)

No. 20

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

Statement of Facts accompanying Memorandum of Appeal No. 7 of 1959 4th June 1960 (Continued)

1. The Appellant's father, Mistry Nagina Singh carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd January 1946 - which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account. 10
2. At all relevant times the accounts of the business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future. 20
3. On the 28th February 1956 Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department, stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:- 30
 - (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits?
 - (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources. 40

- 10 4. The Appellant made enquiries into the position and on the 18th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout.
- 20 5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi, to undertake a full investigation into his affairs, and on the 15th November 1956, Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January 1948 to 31st December, 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957.
- 30 6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953 inclusive. These figures were grossly excessive and many of the considerations set out in the Accountants' reports were implicitly rejected without any reason or explanation being given.
- 40 7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.

On the 9th May, 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period 31st December, 1953.

In the Supreme Court

No. 20

Statement of Facts accompanying Memorandum of Appeal No. 7 of 1959 4th June 1960 (Continued)

He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May 1958, otherwise Assessments would be issued and collection of the tax due would proceed.

8. The Assessment under appeal was then made and dated 21st May 1958. A Penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the either years is greater than the total gross income for that period. 10
9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.
10. On the 17th November 1958 further representations were made to the Commissioner of Income Tax.
11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of refusal to amend the Assessment was made and signed by Mr. B.C. Thomas, Regional Commissioner of Income Tax. 20

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
Sirley & Kean
Advocates for the Appellant.

Filed by :-

Sirley & Kean,
Advocates,
Princes House,
Government Road,
NAIROBI.

No. 21

Memorandum of Appeal No. 9 of 1959 4th June 1960

No. 21

Memorandum of Appeal No. 9 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 9 OF 1959

In the Supreme
Court

YEAR OF INCOME 1951

ASSESSMENT NO. B.90016

No. 21

RATTAN SINGH s/o NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

Memorandum
of Appeal
No. 9 of 1959
4th June 1960
(Continued)

MEMORANDUM OF APPEAL

10 THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same, dated 4th day of December 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :-

1. The additional Assessment appealed against is excessive in that it wrongly includes a sum by way of penalty, the addition of which is not justified either in law or in fact.
- 20 2. If, contrary to the submission set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he had in fact done.
- 30 3. The alleged additional income shown on the said Assessment is founded on wrong calculations and incorrect principles of law and is excessive, the penalty computation based thereon is consequently also excessive. The said calculations are wrong for the following amongst other reasons :-
 - (a) The stock adjustments made by the Commissioner are unjustified.
 - (b) The Commissioner has wrongly added back legal expenses.
 - (c) The Commissioner has wrongly added to the profits sums in respect of "cash overdrawn".

In the Supreme Court

No. 21

Memorandum of Appeal
No. 9 of 1959
4th June 1960
(Continued)

- (d) The Commissioner has wrongly included in the 1951 profits Shillings 30,000 loaned to the Appellant by his wife.
- (e) Excessive sums have been added to the profits in respect of the cost for demolishing the house at Intiazali Road.
- (f) The Commissioner has not allowed sufficient deduction in respect of motor expenses.
- (g) The Commissioner has made excessive adjustments in respect of drawings, "round sum debits to contracts" and "round sum creditors unexplained". 10
- (h) The Commissioner has wrongly included rents not received.
- (i) The Commissioner has wrongly included a sum for rents in respect of Grogan Road Stores.
- (j) The Commissioner has wrongly added back the whole of the medical expenses. 20
- (k) The Commissioner has wrongly added back a sum in respect of alleged repairs to relatives' property.

WHEREFORE THE APPELLANT prays that this Appeal be allowed with costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

30

Filed by :-

Sirley & Kean,
Advocates,
Princes House,
Government Road,
NAIROBI.

No. 22

In the Supreme
Court

Statement of Facts accompanying
Memorandum of Appeal, No. 9 of 1959

No. 22

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

Statement of
Facts
accompanying
Memorandum
of Appeal
No. 9 of 1959
4th June 1960

INCOME TAX APPEAL NO. 9 of 1959

RATTAN SINGH S/O NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX RESPONDENT

10 (Appeal from Assessment for year of Assessment
1951).

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

1. The Appellant's father, Mistry Nagina Singh carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on the 11th January 1946 the Appellant was employed by his father in the business. 20 The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd January 1946 which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account.
2. At all relevant times the accounts of the 30 business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future.
3. On the 28th February 1956 Messrs. Hyde, 40 Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required

In the Supreme
Court

No. 22

Statement of
Facts
accompanying
Memorandum
of Appeal
No. 9 of 1959
4th June 1960
(Continued)

from the Appellant, though not immediately,
answers to the following questions :-

- (i) Have the accounts of all years which you sent the income Tax Department included all your business transactions and correctly showed your full business profits?
- (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?

10

4. The Appellant made enquiries into the position and on the 18th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout.
5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi to undertake a full investigation into his affairs, and on the 15th November, 1956, Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January, 1948 to 31st December 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information was forwarded to the Commissioner on the 7th October, 1957.
6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953. These figures were grossly excessive and many of the considerations set out in the Accountants' reports were

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implicitly rejected without any reason or explanation being given.

In the Supreme Court

7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.

No. 22

Statement of Facts accompanying Memorandum of Appeal No. 9 of 1959 4th June 1960 (Continued)

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On the 9th May, 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December 1953.

He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May 1958, otherwise Assessments would be issued and collection of the tax due would proceed.

20

8. The Assessment under appeal was then made and dated 21st May 1958. A penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the eight years is greater than the total gross income for that period.

9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.

30

10. On the 17th November 1958 further representations were made to the Commissioner of Income Tax.

11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of refusal to amend the Assessment was made and signed by Mr. D.C. Thomas, Regional Commissioner of Income Tax.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT

40

Filed by :
Sirley & Kean, Advocates,
Princes' House, Government Road,
NAIROBI.

In the Supreme
Court

No. 23

Memorandum of Appeal No. 10 of 1959

No. 23

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

Memorandum
of Appeal
No.10 of 1959
4th June 1960

INCOME TAX APPEAL NO. 10 OF 1959

YEAR OF INCOME 1952

ASSESSMENT NO. B.90017

RATTAN SINGH S/O NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

MEMORANDUM OF APPEAL

10

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to Notice of Refusal to amend the same, dated the 4th day of Decenber 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :-

1. The additional Assessment appealed against is excessive in that it wrongly includes a sum by way of penalty, the addition of which is not justified in law or in fact. 20
2. If, contrary to the submission set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he has in fact done.
3. The alleged additional income shown on the said assessment is founded on wrong calculations and incorrect principles of law and is excessive the penalty computation based thereon is consequently also excessive. The said calculations are wrong for the following amongst other grounds : 30
 - (a) The stock adjustments made by the Commissioner are unjustified.

- (b) The Commissioner has wrongly added back legal expenses.
- (c) The Commissioner has wrongly added to the profits sums in respect of "cash overdrawn".
- (d) The Commissioner has wrongly included Shs. 30,000 lodged in Indian Bank Account.
- (e) The Commissioner has not allowed sufficient deduction in respect of motor expenses.
- (f) The Commissioner has made excessive adjustments in respect of drawings and "round sum debits to contracts" and "creditors unexplained".
- (g) The Commissioner has wrongly included rents not received.
- (h) The Commissioner has wrongly included a sum for rents in respect of Grogan Road stores.
- (i) The Commissioner has wrongly added back the whole of the medical expenses.
- (j) The Commissioner has wrongly added back a sum in respect of alleged repairs to relatives' property.

In the Supreme Court

No. 23

Memorandum
of Appeal
No.10 of 1959
4th June 1960
(Continued)

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WHEREFORE THE APPELLANT prays that this appeal be allowed with costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

Filed by:-

Sirley & Kean,
Advocates,
Princes House,
Government Road,
Nairobi.

55.

In the Supreme
Court

No. 24

No. 24

Statement of Facts accompanying
Memorandum of Appeal, No. 10 of 1959

Statement of
Facts
accompanying
Memorandum
of Appeal
No.10 of 1959
4th June 1960

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 10 OF 1959

RATTAN SINGH s/o NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX RESPONDENT

(Appeal from Assessment for year of Assessment 1952) 10

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

1. The Appellant's father, Mistry Nagina Singh, carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on the 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd January 1946 - which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this Appeal is concerned the Appellant has been carrying on the said business on his own account. 20
2. At all relevant times the accounts of the business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future. 30
3. On the 28th February 1958 Messrs. Hyde Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required from the Appellant though not immediately, answers to the following questions:- 40

- (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profits?
- (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?
- 10 4. The Appellant made enquiries into the position and on the 18th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who has been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout.
- 20
5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi, to undertake a full investigation into his affairs, and on the 15th November, 1956 Messrs. Thian & Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January, 1948 to 31st December 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October, 1957.
- 30
6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax purposes for the years 1940 to 1953. These figures were grossly excessive and many of the considerations set out in the Accountants' reports were implicitly rejected without any reason or explanation being given.
- 40

In the Supreme Court

No. 24

Statement of Facts accompanying Memorandum of Appeal No. 10 of 1959 4th June 1960 (Continued)

7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's schedule and suggested a method by which the matter could be settled.

On the 9th May 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December 1953. He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May, 1958, otherwise Assessments would be issued and collection of the tax due would proceed.

10

8. The Assessment under appeal was then made and dated 21st May 1958. A penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax claimed for the either years is greater than the total gross income for that period.

20

9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.

10. On the 17th November 1958 further representations were made to the Commissioner of Income Tax.

11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of Refusal to amend the Assessment was made and signed by Mr. D.C. Thomas, Regional Commissioner of Income Tax.

30

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

Filed by:-

Sirley & Kean,
Advocates,
Princes House, Government Road,
Nairobi.

40

No. 25

In the Supreme
Court

Memorandum of Appeal No. 11 of 1959

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

INCOME TAX APPEAL NO. 11 of 1959

No. 25

Memorandum of
Appeal
No. 11 of 1959
4th June 1960

YEAR OF INCOME 1953

ASSESSMENT NO. B.90018

RATTAN SINGH S/O NAGINA SINGH

APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX

RESPONDENT

10

MEMORANDUM OF APPEAL

THE APPELLANT ABOVE NAMED being aggrieved by the Assessment referred to above BEGS TO APPEAL pursuant to a Notice of Refusal to amend the same dated the 4th day of December 1958 (annexed hereto) having given to the Commissioner the requisite Notice of Appeal in writing within the time allowed. The principal grounds of appeal are set forth below - namely :-

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1. The Additional Assessment appealed against is excessive in that it wrongly includes a sum by way of penalty, the addition of which is not justified either in law or in fact.

2. If, contrary to the submission set out above, an additional sum by way of penalty was chargeable for the year in question, the Commissioner should, having regard to all the circumstances, have remitted either the whole or a greater part of the additional tax than he had in fact done.

30

3. The alleged additional income shown on the said Assessment is founded on wrong calculations and incorrect principles of law and is excessive, the penalty computation based thereon is consequently also excessive. The said calculations are wrong for the following amongst other grounds :-

(a) The stock adjustments made by the Commissioner are unjustified.

In the Supreme Court

No. 25

Memorandum of Appeal No. 11 of 1959 4th June 1960 (Continued)

- (b) The Commissioner had wrongly added back legal expenses.
- (c) The Commissioner has not allowed sufficient deduction in respect of motor expenses.
- (d) Excessive sums have been added to profits in respect of the cost of Parklands Plot.
- (e) The Commissioner has wrongly included the profit on the sale of Grogan Road Building. 10
- (f) The Commissioner has made excessive adjustments in respect of drawings "round sum debits to contracts" and "round sum creditors unexplained".
- (g) The Commissioner has wrongly included a sum of Shillings 21,800/- "retention money-Moshi" for 1953.
- (h) The Commissioner has wrongly included a sum for rents in respect of Grogan Road stores. 20
- (i) The Commissioner has wrongly added back the whole of the medical expenses.
- (j) The Commissioner has wrongly added back a sum in respect of alleged repairs to relatives' property.

WHEREFORE THE APPELLANT Prays that this appeal be allowed with costs and that the Assessment appealed against be annulled, set aside and/or reduced and that such further or other order be made in the premises as may be just. 30

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN
ADVOCATES FOR THE APPELLANT.

Filed by :-

Sirley & Kean,
Advocates,
Princes House, Government Road,
Nairobi.

No. 26

In the Supreme Court

Statement of Facts accompanying
Memorandum of Appeal No. 11 of 1959

No. 26

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

Statement of
Facts
accompanying
Memorandum
of Appeal
No.11 of 1959
4th June 1960

INCOME TAX APPEAL NO. 11 OF 1959

RATTAN SINGH S/O NAGINA SINGH APPELLANT

v e r s u s

THE COMMISSIONER OF INCOME TAX RESPONDENT

10 (Appeal from Assessment for the Year of Income
1953)

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY
MEMO OF APPEAL

- 20 1. The Appellant's father, Mistry Nagina Singh carried on business as a Contractor in Nairobi from the year 1935 or thereabouts, until his death in January 1946 and until his father's death on 11th January 1946 the Appellant was employed by his father in the business. The Appellant was Mistry Nagina Singh's sole heir and he applied for Letters of Administration on the 22nd day of January 1946 which were duly granted on the 14th February 1947. Since that time and until after the end of the year with which this appeal is concerned the Appellant has been carrying on the said business on his own account.
- 30 2. At all relevant times the accounts of the business were audited by one R.M. Nanda, a practising Accountant and Auditor of Nairobi and the Appellant relied on the figures he produced. The said Mr. Nanda has now left the Colony, and according to information received by the Appellant, Mr. Nanda is not likely to return to the Colony in the near future.
- 40 3. On the 28th February 1956 Messrs. Hyde, Easterbrook and Field of the Investigation Branch of the East African Income Tax Department stated at an interview that they required from the Appellant, though not immediately, answers to the following questions:-

In the Supreme
Court

No. 26

Statement of
Facts
accompanying
Memorandum
of Appeal
No. 11 of 1959
4th June 1960
(Continued)

- (i) Have the accounts of all years which you have sent the Income Tax Department included all your business transactions and correctly showed your full business profit?
- (ii) Have the Income Tax Returns that you have made for all years included the correct amounts of your total income from all sources?
4. The Appellant made enquiries into the position and on the 18th April 1956 a second interview took place at which Messrs. Hyde and Easterbrook of the Investigation Branch, Mr. Surjit Singh a son of the Appellant, and Sheikh Mohamed Shaffie (who had been responsible for the bookkeeping and accounts of the business until the end of 1948) were present. At this interview Mr. Shaffie on the Appellant's behalf stated that certain rents had not been declared in the Appellant's Income Tax Returns and that certain other adjustments were necessary. The information given at this time amounted to a full disclosure, subject to the agreement of figures and the Appellant has been co-operative with the Revenue Authorities throughout. 10
5. The Appellant forthwith appointed Messrs. Thian & Bellman, Incorporated Accountants of Nairobi to undertake a full investigation into his affairs, and on the 15th November 1956 Messrs. Thian and Bellman duly forwarded to the Commissioner of Income Tax a report covering the period 1st January 1948 to 31st December 1953. A discussion of various aspects of the report ensued and a further report covering the period 1st January 1940 to 31st December 1953 and containing certain additional information, was forwarded to the Commissioner on the 7th October 1957. 20
6. On the 17th April 1958 the Commissioner forwarded certain Schedules purporting to set out the Appellant's total income for Income Tax Purposes for the years 1940 to 1953 inclusive. These figures were grossly excessive and many of the considerations set out in the Accountants' report were implicitly rejected without any reason or explanation 40

being given.

In the Supreme
Court

No. 26

Statement of
Facts
accompanying
Memorandum
of Appeal
No. 11 of 1959
4th June 1960
(Continued)

7. On the 3rd May 1958 the Appellant forwarded a reasoned criticism of many of the items in the Commissioner's Schedules and suggested a method by which the matter could be settled.

10 On the 9th May, 1958 a Mr. D.C. Thomas, senior Investigation Officer replied to the effect that the Commissioner was prepared to remit part of the additional tax exigible and to accept £65,000 in payment of income tax and additional tax for the period to 31st December 1953. He added that if the Appellant had any representations to make regarding the date of the payment of the sum he would be pleased to receive them before the 20th May, 1958, otherwise assessment would be issued and collection of the tax due would proceed.

- 20 8. The Assessment under appeal was then made and dated 21st May, 1958. A penalty amounting to almost exactly 60 per cent of the maximum exigible was added to the Assessment. The total tax payable is much greater than the gross income for the year. The total tax claimed for the eight years is greater than the total gross income for that period.

9. The total sum claimed is considerably in excess of the total present resources of the Appellant and he is unable to pay.

- 30 10. On the 17th November 1950 further representations were made to the Commissioner of Income Tax.

11. On the 28th November 1958 these representations were rejected without any discussion of or indeed reference to their merits and on the 4th December 1958 a Notice of refusal to amend the Assessment was made and signed by Mr. D.C. Thomas, Regional Commissioner of Income Tax.

DATED at Nairobi this 4th day of June 1960

Sgd. M. Kean
SIRLEY & KEAN

40 ADVOCATES FOR THE APPELLANT.

Filed by:-
Sirley & Kean, Advocates,
Princes House, Government Road,
Nairobi.

In the Supreme
Court

No. 27

No. 27

Amendment to Appeals
Nos. 4,5,6,7 and 8 of 1959

Amendment to
Appeals Nos.
4,5,6,7, and 8
of 1959
(admitted
23rd March
1961)

AMENDMENT TO APPEALS FOR THE YEAR :

1946: 1947: 1948: 1949: 1950.

No fraud or wilful default was committed by or on behalf of the Appellant, and he should not therefore have been assessed under Section 72 (Proviso(a)) of the East African Income Tax (Management) Act, 1952.

10

No. 28

No. 28

Amendment to
Appeals Nos.
4,5,6,7,8,9,
10 and 11
of 1959
(Admitted
23rd March
1961)

Amendment to Appeals
Nos. 4,5,6,7,8,9,10 and 11 of 1959

AMENDMENT TO APPEALS FOR THE YEAR:

1946: 1947: 1948: 1949: 1950: 1951:

1952: 1953:

The assessment is excessive in that a comparison of the Appellant's total worth on 11th January, 1946, with his total worth on the 31st December, 1953, with the addition of the Appellant's expenditure over the period in question, shows that throughout such period the Appellant has been over-assessed.

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No. 29

No. 29

Amendment to
Appeals Nos.
4,5,6,7,8,9,
10 and 11
of 1959
(Admitted
23rd March
1961)

Amendment to Appeals
Nos. 4,5,6,7,8,9,10 and 11 of 1959

AMENDMENT TO APPEALS FOR THE YEAR :

1946: 1947: 1948: 1949: 1950: 1951:

1952: 1953:

The Omission in relation to business profits in the Appellant's return were not due to any fraud or gross

30

or wilful neglect and so much of the additional tax as relates to these omissions should be omitted.

In the Supreme Court

No. 29

Amendment to Appeals Nos. 4,5,6,7,8,9,10 and 11 of 1959 (Admitted 23rd March 1961)
(Continued)

No. 30

Amendment to Appeals Nos. 4,5,6,7,8,9,10 and 11 of 1959

AMENDMENT TO APPEALS FOR THE YEAR :

1946: 1947: 1948: 1949: 1950: 1951:

1952: 1953:

No. 30

Amendment to Appeals Nos. 4,5,6,7,8,9,10 and 11 of 1959 (Admitted 23rd March 1961)
1961

10 The assessment is excessive in that it wrongly includes a sum of money received by way of rents which belonged not to the Appellant but to his son Gian Singh.

No. 31

Amendment to Appeals

AMENDMENT TO APPEALS

20 The assessment is excessive in that it wrongly included a sum of Shs.80,000/- which was obtained by the sale of a property in Grogan Road, Nairobi which was a capital transaction.

No. 31

Amendment to Appeals (Admitted 23rd March 1961)
1961

In the Supreme Court

No. 32

No. 32

Amendment to Appeals
Nos. 4,5,6,7,8, and 10 of 1959.

Amendment to Appeals Nos. 4,5,6,7,8 & 10 of 1959 (Admitted 23rd March 1961)

AMENDMENT TO APPEALS FOR THE YEAR:

1946: 1947: 1948: 1949: 1950: 1951:

The assessment is excessive in that it discloses a percentage profit in relation to turnover greater than the Appellant could have earned.

No. 33

No. 33

Proceedings
6th June 1960

Proceedings

10

IN HER MAJESTY'S SUPREME COURT
OF KENYA AT NAIROBI

CIVIL APPEALS 4 to 11 of 1959

RATTAN SINGH

APPELLANT

v e r s u s

THE COMMISSIONER FOR INCOME TAX RESPONDENT

BEFORE the Honourable Mr. Justice MAYERS.

6th June, 1960 - 10.40 a.m.

DINGLE FOOT, Q.C. (with him Rowland) for the Appellant.

NEWBOLD, Q.C. (with him Summerfield) for Commissioner of Income Tax.

20

MR. DINGLE FOOT: These are 8 appeals against additional assessments in the years 1946 to 1953 inclusive. The total amount claimed including penalties at 60% is £65,000.

JUDGE: Are you seeking an order for consolidation?

MR. DINGLE FOOT: Yes, my Lord. I should say that originally one notice of appeal was filed in relation to all eight assessments.

JUDGE: They are separate memoranda of Appeal?

In the Supreme
Court

MR. DINGLE FOOT: Yes, my Lord. I have them here;
I will put them in.

No. 33

JUDGE: What do you say, Mr. Newbold?

Proceedings
6th June 1960
(Continued)

MR. NEWBOLD: In relation to the application to put
in the separate memoranda, I would agree;
this whole issue is fused into one, and I think
it would save everyone's time if the various
appeals were consolidated.

10 JUDGE: Civil Appeals 4 to 10 inclusive of 1959
are ordered to be consolidated.

MR. DINGLE FOOT: I put in the revised Memorandum
of Appeal. My client Rattan Singh is a
building contractor. He came to this country
from India at the age of 11, and during the
early 1940's he worked for his father, Nagina
Singh, who was also a building contractor.
In 1946, Nagina Singh died and Rattan Singh
succeeded to the business. My Lord, he
20 inherited the business. He also had a bank
account of his own, about Shs.90,000/-, and he
inherited certain properties. At the same time,
he had about £15,000, or the equivalent of
£15,000, on deposit in two banks in India:
the Imperial Bank of India at Jullundur, and
the National Bank of India at Amritsar. Mr.
Rattan Singh continued in business under the
style of Nagina Singh on his own account until
1955, when he entered into partnership
30 with 3 of his 4 sons: Gian Singh, who was/
the eldest son, born in 1931; Baghan Singh born in
1934; and Surjit Singh, born in 1937. There
is a fourth son, Inderjest Singh, who was a
minor and did not become a partner at that
time.

40 From 1946 until 1955, the appellant
employed an accountant named Nanda. All the
books of the firm were sent to Nanda at the end
of each year in December, and Nanda prepared
the tax returns. Mr. Rattan Singh did not
prepare his own returns. As he will tell your
Lordship, he sent the returns in blank and left
them for Nanda to fill in. He did not keep his
own books; he left them to his clerical staff,
and from 1954 onwards the books were in charge
of his son Surjit Singh. Mr. Rattan Singh

In the Supreme Court

No. 33

Proceedings
6th June 1960
(Continued)

concerned himself with the practical side of the business. If your Lordship will go to the correspondence, you will see how this dispute began.

JUDGE: This is agreed?

MR. DINGLE FOOT: Yes, my Lord.

(Correspondence - Exhibit 1).

Perhaps I should say this, that there is not here an agreed bundle: there are quite a number of letters between the parties which do not appear in this bundle.

10

On 24th December, 1954, Mr. Blake of the East African Income Tax Department writes: (Reads). Then he sent a reminder on 4th February, and the reply came on 4th March. Mr. Rattan Singh writes acknowledging receipt of the letter, apologising for the delay. He says: "I would like to mention here..... by me since 1951". The condition was that originally the whole family had lived in other premises in Road. They moved. The position had been that in 1947 Mr. Rattan Singh acquired two plots in Grogan Road and he proceeded to build on one of them a house for himself and his family, and in 1950 they left the premises where they had been and they migrated to Grogan Road. There was another plot on which there was another building about which your Lordship will hear later.

20

Then on 14th April Mr. Rawlings writes from the East African Income Tax Department: (Reads letter No. 4). And then there is a further letter saying Mr. Rattan Singh is away in India (letter No.5), and the reply comes in letter No.6 on 23rd December, 1955, and Rattan Singh gives the information which was asked for. He says: (Reads). The following year Mr. Rattan Singh was invited to call at Gill House for an interview with representatives of the Inland Revenue. That was on 28th February. On that day Mr. Rattan Singh had to proceed to Nanyuki. Mr. Surjit Singh Mr. Oulton, who was an accountant, attended the interview. They both had a meeting there with a Mr. Hyde, Mr. Field and Mr. Easterbrook. This was the first of a very long series of interviews which took place

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40

at Gill House, and I do not propose to read all the documents to your Lordship, but to summarise or rather to refer to certain passages in them.

In the Supreme Court

No. 33

Proceedings
6th June 1960
(Continued)

JUDGE: What about document No. 7. How did that come into existence?

MR. DINGLE FOOT: I think it is really out of order. I have not come to that yet. I was dealing with the matter in chronological order.

10 JUDGE: In what year did Surjit Singh go to the Income Tax?

MR. DINGLE FOOT: In 1956, the beginning. What happened on this occasion was that this interview took place. Mr. Surjit Singh said that he had kept the books since 1954.

20 If your Lordship will turn to p.2 - the first interview on 28th February. Your Lordship will see that the customary warning is given about taxpayers who are guilty of irregularities, and then in the second page, 4th para. Mr. Hyde said: (Reads). The narrative is continued in the document you were looking at a few moments ago headed "28th February, 1956 - 9.30 a.m." I will read the first two paragraphs and summarise the rest of it. (Reads). Pausing there. We have had enquiries made by the Nairobi Police. The Police did infer that a complaint was made of theft in these premises in January, 1956.

30 JUDGE: Have they confirmed whether he gave to the Police a statement of the articles stolen?

MR. DINGLE FOOT: Perhaps I could ascertain that and inform your Lordship later. Then the two investigating Officers proceeded to look through the premises; they went through the books and papers which they found there. They were handed over and they were able to see whatever they wished. They then left.

40 The next meeting took place on 21st March, 1956, and on 21st March Mr. Rattan Singh himself (inaudible). He was accompanied by Mr. Shaffie, who appears a good deal in these records. Mr. Shaffie assisted Mr. Rattan Singh to keep the books. I will summarise it. Mr. Shaffie attended and also Mr. Thian of the firm

In the Supreme
Court

No. 33

Proceedings
6th June 1960
(Continued)

of Thian and Bellman, Chartered Accountants. Two questions were put to Mr. Rattan Singh. The first is, Do the accounts of all years sent to the Income Tax Department, including all your business transactions, correctly show your full figures? And the second question, Have the income tax returns which you have made for all the years included the correct amounts of your total income from all sources? Mr. Rattan Singh, speaking through the interpreter Mr. Shaffie, said: "He himself did not keep the books....." Then there was some further discussion, and it was arranged that Mr. Rattan Singh should take the questions away and should come for a further interview next day.

10

A further interview took place on 22nd March. Mr. Rattan Singh again came accompanied by Mr. Shaffie. Mr. Shaffie said that they had considered the position and that Mr. Rattan Singh was now prepared to answer the questions and that the answer to each question was No.

20

Then there was some discussion about engaging a professional accountant. Mr. Rattan Singh was anxious that the work should be done by Mr. Shaffie. Mr. Rattan Singh agreed that he would engage Mr. Thian. Then Mr. Rattan Singh in fact answered in writing the questions which had been put to him. He answered each question No; he signed it, and that was witnessed by Mr. Shaffie.

30

Then the next interview took place on 18th April. It is a very long interview and I do not propose to read the whole of it, but it was attended by Mr. Surjeet Singh and Mr. Shaffie, and also by Mr. Hyde and Mr. Easterbrook. I was proposing to read page 2 (Reads). Then there was further discussion and your Lordship will see that there was disclosure of this information of various properties which were owned by Mr. Rattan Singh. Then, after that, Mr. Thian was appointed to act for Mr. Rattan Singh and to draw up a statement on his behalf, and that appears in the next document which is dated 25th May. Again I do not propose to read more than a sentence or two of this; it is an interview which had been arranged to enable Mr. Thian to inform the Branch that he had been appointed by Mr. Rattan Singh to investigate his affairs

40

and to submit a report to the Branch. There are only two passages to which I wish to refer: they are on the second page, third paragraph. (Reads).

In the Supreme
Court

No. 33

Proceedings
6th June 1960
(Continued)

10 This was in 1956, and some time in 1956
Mr. Nanda the accountant who had prepared the
various returns left for India. So far as
anyone is aware, Mr. Nanda has never returned.
All our efforts to trace him have been
unavailing. That has meant that throughout not
only my client but the representatives of the
Commissioner as well have been labouring under
two difficulties: firstly, Mr. Nanda is
missing, and he was the person responsible for
preparing the returns; and secondly, the ledger
is missing. There has been, I regret to say,
a further misfortune in this case. My client
went to another solicitor, Mr. Mandavia, in
the first place and they lodged the books with
20 Mr. Mandavia, including two cash books. The
first cash book was from 1947 to October, 1952
and the rest was from November until the end
of 1953, - the second cash book. There came a
stage when my clients decided to change their
solicitor, and Mr. Mandavia was asked to return
the books. The second cash book has never been
returned - that was November 1952 to November
1953.

30 JUDGE: Has any explanation of its non-return been
given?

40 MR. DINGLE FOOT: Mr. Mandavia says that he has not
had it. My clients have no doubt that this
book was in existence; it has been seen.
Proceedings have been taken for the return of
this book. Undoubtedly that has created a
further delay in this case. We are left simply
with the one cash book and with various bank
statements, and your Lordship will appreciate
that in these circumstances it is a matter of
extreme difficulty to arrive at any exact
figure in relation to a particular year. We
agree the amount of the turnover from the cash
book, but the profits are of course a very
different matter. The profits which were made
must very largely be a matter of inference. The
Commissioner has made one inference here. Our
submission will be that that is an excessive
inference - extremely excessive. I think I
should tell your Lordship now what the

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difference between us is.

JUDGE: You are faced with a difficulty in view of the loss of this book. As I understand the law, I have got to accept the Commissioner's assessment unless and until you prove it to be wrong.

MR. DINGLE FOOT: So far as my client is concerned, the onus is upon me and I have to discharge that onus. I was bound to indicate the way I was about to attempt that task. I shall have to come to it in greater detail, but in my submission this is not a unique case at all; there have been many cases where records are not available at the material time. But the practice in such cases is to compare statements of worth and see what the taxpayer was worth at the beginning of the relevant period and then to see what he was worth at the end of the period. Subtract one from the other and also take into account his living expenses and any special expenditure there may be; that must be added, of course, and you arrive in that way at a total sum showing his taxable income over the whole period. I shall be calling evidence about this, and my evidence will be that this is a perfectly competent method of assessment, and, applying that method, my submission will be that it is impossible for Mr. Rattan Singh to have received between 1946 and 1953 an income of the dimensions suggested by the Commissioner. In round figures, the Commissioner contends that the income which Mr. Rattan Singh received during these eight years was £64,000 as compared with actual returns of £14,000. Applying the method of assessment which I have just indicated in brief outline, our case will be that the correct figure was, in round figures, £23,000. That is on the assumption that the rents for the Culsaar Street property should have been returned in Mr. Rattan Singh's.....

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JUDGE: That is supposed to have belonged to his son?

MR. DINGLE FOOT: Yes. That is a matter which your Lordship will have to decide. If that is assumed, then the correct figure would be just under £18,000. Your Lordship will see that there is a wide difference between the parties here. If your Lordship accepts the evidence which I

shall be calling in support of the method of calculation which I suggest is a valid method, then in my submission I have discharged the onus which lies upon me, because I should have been able to show that the figures put forward by the Commissioner are impossible.

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10 Perhaps I should mention one other matter which your Lordship will have to decide and this again concerns the issue whether the correct figure is £23,000 or just under £18,000. One other matter to be taken into account is the position regarding the second plot in Grogan Road. The position was that Mr. Rattan Singh and his family constructed premises on the second plot. On the first plot they built a house for their own accommodation, but they built a second plot and they built intending to let the premises to various tenants. When the building came to be completed, they found that 20 they needed ready money and they therefore sold the building for approximately Shs.80,000/-. Now the question is whether that is a revenue or a capital transaction. However that may be and whatever view your Lordship may take on the subsidiary issues, there is this very wide discrepancy, and I shall seek to satisfy your Lordship that Mr. Rattan Singh could not possibly have earned an income of the size that the Commissioner suggests. But I will turn to 30 that in greater detail later and will now resume the narrative.

Messrs. Thian and Bellman produced a report in November, 1956. I am not proposing to trouble your Lordship with it, but in this report they estimated that between 1948 and 1953 there had been undisclosed income to the extent of £7,701. The Commissioner was not prepared to accept that report. In January, 1957, 40 Mr. Rattan Singh was served with an Order to produce his books and documents, and then there was a further interview on 1st March, 1957. There were of course a number of other interviews, but I will not trouble your Lordship with them. I think I can summarise. Mr. Rattan Singh on this occasion was asked about his bank accounts. I will tell your Lordship at once that at first he said that he had no other bank accounts. Then he was

pressed by Mr. Easterbrook, and he admitted that he had had a bank account with the bank of Baroda at their Mombasa Branch. He further admitted that he had had an account with the National Bank of India at their Amritsar Branch. Thereafter on 22nd March, 1957, Messrs. Thian and Bellman were instructed to carry out a fresh investigation. The results of that were received in a second report in October, 1957, and they estimated the income of Mr. Rattan Singh from 1946 to 1953 at a total of £30,100. My attention has been drawn to the fact that that actual figure appears to refer to 1948 to 1953.

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Then there were a series of interviews in January, February and March of 1958, and there are a few to which I would like to refer on 8th April, 1958, between Thian and Mr. Easterbrook. I should have explained that the interviews which had taken place in January, February and March were interviews at which the second report had been discussed between Mr. Thian and Mr. Easterbrook and the other representatives. If your Lordship will go to the 8th April, at the bottom of the page, third paragraph : (Reads).

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Now if your Lordship will go to the interview of 18th April. This is the interview where Mr. Easterbrook informed Mr. Rattan Singh of the conclusions he had reached. (Reads). Of course, the view your Lordship will take of that interview will depend upon the decision which your Lordship will arrive at as to the correct method of assessment in this case. If the figures which I am suggesting are in any way correct, it follows that the figures put to Mr. Rattan Singh on this occasion were fantastically high.

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If your Lordship will now go back to the bundle of correspondence and to a letter written by Mr. Bellman on 30th April (document 13) to Mr. Easterbrook; it begins: (Reads). I have read that passage for this purpose: in the earlier part of the paragraph the writer says that in respect of the earlier years agreement could only be reached on a give and take basis. Then there is a further letter from Mr. Thian to the Commissioner which is dated 3rd May. It reads. (Reads). In that letter he gets out 17 items. It is perhaps worth observing that

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10 Mr. Thian by a quite different method has arrived at very much the same result, because we say that this was approximately a figure of worth - a figure which Mr. Rattan Singh was worth at the end of 1953. Mr. Thian continues: (Reads remainder of letter). That letter was written on 3rd May, and it does not appear in the bundle; but on 9th May the Commissioner offered to accept in full settlement £65,000 tax with penalties at the rate of 60%.

20 In June - 19th June - Mr. Rattan Singh writes (15 in the bundle of correspondence) and he refers to the eight assessments. He writes: (Reads). What Mr. Rattan Singh is suggesting is the same method of assessment which I am submitting should be adopted here. The Commissioner continued on his remorseless way. The grounds of appeal were sent on 30th September, and on 4th December Mr. Thomas on behalf of the Inland Revenue issued notices of refusal: that is the procedure contemplated under section 74 of the 1952 Act. Notice of appeal was then filed on 31st December. 30th December was the day upon which the new Act came into operation. Therefore the point does arise as to whether your Lordship is concerned in this case with the 1952 Act or the 1958 Act. The 1952 Act differs in certain important respects from the 1958 Act. If your Lordship will go to the 1952 Act.....

30 JUDGE: What I have in mind is this. I may have got my dates muddled; if I have not, surely the new Act was in force at the time when you filed your notice of appeal?

MR. DINGLE FOOT: Yes.

JUDGE: If that is so, could you come within the transitional provisions?

40 MR. DINGLE FOOT: I submit yes, my Lord. I was going to indicate what the difference is and then come to the question of whether I can bring myself within the transitional provisions. The first material section is section 40. (Reads). If your Lordship will now turn to Section 71 and 72. Section 71 is the ordinary procedure where a person delivers a return or does not, whichever the case may be, and 72 deals with additional assessments. (Reads). The words

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with which your Lordship may be concerned are the words, "for the purpose of making good to the revenue of the Territories any loss of tax attributable to fraud or wilful default". (Reads section 74 and sub-section (4)). That is the next step - notice of refusal. Then one comes to section 78. (Reads). Under that Act a Judge has a complete discretion to make any order he wishes in place of the decision of the Commissioner. The position is very different under the 1958 Act. If you will look at the corresponding provision of the 1958 Act - it is section 101: (Reads). (Reads also sub-section (5)). This is a very Draconian piece of legislation. The citizen is placed at the complete mercy of the legislature. When one has legislation of this sort I am submitting that the legislation ought to be strictly interpreted, and if there be any ambiguity, it ought to be resolved in favour of the subject.

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Then one comes to the 5th Schedule. (Reads). The question which your Lordship is invited to consider is whether I can bring myself within that provision.

JUDGE: You have to show that legal proceedings are pending even before a notice of appeal has been served?

MR. DINGLE FOOT: Yes.

JUDGE: Whether it is right or wrong I do not know, but 5 years ago I decided that a notice of appeal was not a step in the proceeding but a condition precedent to the proceedings. It may be wrong - it was never taken to the Court of Appeal.

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MR. DINGLE FOOT: I do not know to what extent your Lordship is bound by your decision.

JUDGE: It has some persuasive authority with me.

MR. DINGLE FOOT: My submission on the procedure is this. One has to go back to section 74(2) and (4) of the 1952 Act. In the proviso to sub-section (4) one has the words, "...provided also.....". Then in order to find the next step in the proceedings one goes to section 48, "Any person being aggrieved...".

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The question is when legal proceedings begin to pend. Legal proceedings are pending when a party takes a step to set the law in motion.

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JUDGE: Are proceedings pending in a criminal case between sentence and the filing of a notice of appeal?

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10 MR. DINGLE FOOT: With respect, no, because here is a provision which says in the first place that you may object to the assessment that is made. You enter your objection, and then you get a notice of refusal, and it is at that stage that your right to appeal arises. Here is the procedure which is laid down which every citizen is entitled to go through. One is dealing here with legal proceedings, and legal proceedings arise whenever the law is set in motion.

20 JUDGE: You would go so far as to say that in an income tax matter a legal proceeding is pending when the income taxpayer receives a notice of refusal of his objection, even though when he receives that notice of refusal he says: "Well, I really cannot afford to take this any further?"

MR. DINGLE FOOT: He may say that; He could discontinue his appeal.

30 JUDGE: Would you say that even on receipt of the notice of refusal the income tax payer has no intention of going any further there is legal proceeding pending?

40 MR. DINGLE FOOT: Within the time laid down by Statute. Up to that time it is for him to decide whether he wants to appeal or not. If I am right in my submission, there will be two consequences. In the first place the question of penalties are entirely within your Lordship's discretion under the 1952 Act. The Commissioner took the view here that a 60% penalty was . One does not know how that figure is arrived at, but clearly it must have been based on the view he took as to the amount of income which was undeclared. According to his view, the actual income was £64,000 over the 8 years compared with a declared income of just over £14,000; that is to say that there was a discrepancy in his view

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of not less than £50,000. If I can satisfy your Lordship at a later stage that that figure was excessive and that the discrepancy is very considerably less, then of course not only would it affect the amount of tax, but it will affect the rate of penalty as well. One would suppose that a smaller rate would be appropriate if there was a smaller discrepancy.

My second submission is this, that under section 72 penalties cannot be imposed more than 7 years back. I am basing myself there on the words of the proviso - the words of section 72, proviso A: (Reads). That is the only purpose for which we can go back more than 7 years, and in my submission that excludes the imposition of penalties more than 7 years back. I appreciate of course that your Lordship must consider the words of Section 40(3). (Reads). But here in section 72 is a later section and there would appear to be some conflict or ambiguity here, and if there is an ambiguity it ought to be resolved in favour of the taxpayer. Unless that be so, it is difficult to see what can be contended by the words in section 72: "for the purpose of making good.....any loss tax". These words would be quite otiose if I am wrong.

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Court adjourns at 12.55 p.m.

C.A. S. 4/59 to 11/59 Rattan Singh v The Commissioner of Income Tax

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Monday, 6th June, 1960 at 2.20 p.m.

ADDRESS BY MR. DINGLE FOOT (Cont'd)

My Lord, since Your Lordship adjourned I have had the benefit of being able to look at Your Lordship's decision in Case No. 43. and My Lord, in my respectful submission, it does not really touch the present case. My Lord, has Your Lordship a copy of Your Lordship's Judgement, it is 196 in Volume 2 Part 3 of East African Tax Cases. Page 196 reads, "This is an appeal by the Commissioners of Income Tax.....declined to comment". And then Your Lordship dealt with right of consent and exemption of time which

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is immaterial here, and then I think the material part is the third paragraph on 197, "Mr. Chohan who appears for the correspondentbut a condition precedent to the Appeal". My Lord, I think this is the passage.

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JUDGE: This is the passage I had in mind yes.

10 MR. FOOT: "But a condition precedent to the Appeal.....the appeal was inaugurated".

Now, My Lord, in my respectful submission, that really does not touch the present case.

20 Now, My Lord, what Your Lordship was concerned with there was a specific rule which said that after the notice of appeal had been given under the provision of sub-section 2. then there is a particular time prescribed for the next step in the proceedings. Section 78. covers the giving of notice and so forth and then the rule says specifically that you have got to have as the next step, which is to prefer appeal within 75 days, and Your Lordship was really concerned here with the meaning of the word "prefer". One does not prefer an appeal merely by giving notice at an earlier stage in the proceedings; in other words, this rule is concerned simply with the conduct of appeals, but where Your Lordship goes to the schedule here, Your Lordship was concerned with something quite different. Your Lordship is concerned with the term "legal procedures" and whether they may be said to be pending.

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40 Now, My Lord, there is not very much authority on this, but there are two cases which in a different context the matter has been considered. In relation to the criminal law, there is a passage which may be of some assistance in Re Vexatious Actions Act 1896, 1915 iKB at Page 21. My Lord, I have a copy here. I do not think anything turns on the facts of the case. What was in issue is simply that under the Vexatious Actions Acts steps may be taken to prevent a vexatious litigant from litigating again without the permission of the Attorney General. There is just one passage here which I was proposing to site in the Judgment

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of Lord Justice Kennedy at Page 33. The question was whether legal proceedings here included criminal proceedings as well as civil proceedings. The Court of Appeal held that although a vexatious litigant might be restrained from this procedure, from introducing any civil actions, the Act did not mean that he lost his rights under the criminal law. At Page 33, Lord Justice Kennedy said this, "I proceed first to consider the context.....in respect of the offence". So the Lord Justice is citing Archbold there.

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It is my submission that proceedings begin and proceedings are then pending, legal proceedings are pending, whenever in any way the law is set in motion. Where you have a statutory procedure and somebody comes along and sets the law in motion then there are pending proceedings. It is not essential that the law has to take its course. Somebody takes the first step and then draws back; the litigant may issue a writ and may do no more in the matter, legal proceedings are pending, once he has done so.

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My Lord, there is one other authority, I don't know whether it is of very much assistance, but I site it because it is the one other authority in which the term "legal proceedings" is considered. The case is Runson & Company v Syme & Company 20 Times Law Reports, Page 625. On this occasion I am afraid I have been unable to obtain another copy. This was a charter party bill of lading and part of the headnote reads, "The expression legal proceedings in Section 496....." and the argument which was addressed to the Court was that legal proceedings means an action in Court and not proceedings by arbitration. This is a question where someone had invoked the arbitration clause and the question was whether this was the correct tribunal, but My Lord, the Lord Chief Justice said this, "Section 496 of the Merchant Shipping Act.....the rights of a ship owner".

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JUDGE: Are not we concerned here primarily with the meaning of the word "pending"?

10 MR. FOOT: Yes, My Lord, I appreciate that. I merely draw Your Lordship's attention to these two because they are the only two in which the term "legal proceedings" are mentioned. If it is any form of legal process then of course it does affect the meaning of the word "pending". If legal proceedings only means the actual hearing in a court of law, of course, then would be a narrower construction, and then of course, it may be said that no proceedings are pending until the Court itself is, so to speak, set in motion, but My Lord, where you have a statutory procedure expressly laid down, and it is provided that before you reach the Court of Appeal, you must go through, or you may go through, certain steps then you are setting the law in motion, and legal proceedings are pending.

20 My Lord, another way of approaching the matter is this, that "legal proceedings" has never been exhaustively defined, but it means something wider than an action in Court between two or more parties.

30 JUDGE: But doesn't it involve an adjudication of some sort as to the rights, or rather that legal proceedings, proceedings which have as their objective the obtaining of adjudication as to the legal rights of the parties, is the Commissioner in determining whether to accede to an objection or to refuse to accede to an objection, engaged on an adjudication on the rights of the parties, or rather what I might term, engaged upon a Ministerial Act.

40 MR. FOOT: I would submit that he is really of course combining two things. He has not got to consider simply what is convenient to the Department to do; he must apply his mind in the same way as a Judge applies his mind as to what is the fair and right thing to do having regard to the law, and having regard may be of the conduct of behaviour inside his Department. He has got to arrive at a formal adjudication. In the first place he has got to apply his mind when he gets the objection, and the objection, so to speak, the protest the taxpayer sends in has got to be considered, and the adjudication of course is the refusal or otherwise. In this case he refused it. That is a formal adjudication

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and he, the Commissioner, is really the first Court in this matter.

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JUDGE: You know, Mr. Foot, the difficulty that I am faced with I think is this. Can it be said that a person who is in a sense - this is very loosely put - in a sense a party to any proceedings, can ever be called upon to adjudicate in these proceedings. You see in a sense the Commissioner of Income Tax is a party to all Income Tax Proceedings; can it be said that when he refuses to entertain the objections of the tax payer he had adjudicated upon those objections?

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MR. FOOT: I would submit, ~~yes~~ My Lord. It is rather, and in this respect that you are combining the two rules. First of all you must realise this, that if the Commissioner was simply in the position of an ordinary party to the arbitration, then there would be no question of any appeal, you would have simply the Commissioner, it might be as plaintiffs saying, "I claim so much tax", and the tax payer would be opposing it, and the matter would come before the Court of first instance. Now here it is expressly provided that you have a decision from which there should be an appeal, that it is contemplated that there must be some form of proceedings.

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JUDGE: But the appeal is not in form of lodging an appeal from a refusal to amend, but it is an appeal from the original assessment. Suppose the Commissioner amended in part, the tax payer can still go to the Court and say, "I am dissatisfied with this amendment, true the Commissioner has reduced the assessment by £X, but I say that is not sufficient". I am appealing against the assessment. Is the original assessment then the stage at which proceedings are instituted?

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MR. FOOT: First of all you get the assessment. Another possible view is this, that it is provided that if the tax payer does not like an assessment.

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JUDGE: Does any tax payer like any assessment, Mr. Foot?

10 MR. FOOT: My Lord, I have not met one. I suppose
you might like a nil assessment. You have the
assessment in the first place which is a form
of claim. Then there is statutory provision
which says that the tax payer may within a
certain time after the assessment appeal against
the assessment, and you have periods of time.
Are these an indication of formal legal proceed-
ings? You may within 30 days proceed to raise
objection, as my client did in his letter of
17th June in this case. Thereafter it is for
the Commissioner to adjudicate on the matter.
He has to consider - he cannot just dismiss
out of hand - he has to consider objections that
are put before him and decide whether there is
any substance in them or not. Whichever he does
that is the next step in the proceedings. He
has got to come to a decision. From that
20 decision there is an appeal. Now, My Lord, that
process there is a clear indication of legal
proceedings.

30 JUDGE: I think, Mr. Foot, that the appeal is not
from the Commissioner's decision, but the appeal
is an appeal, the right of which arises whether
there is dissatisfaction with the Commissioner's
decision or not, but is an appeal from the
assessment. In other words if the decision of
the Commissioner were partly in favour of the
tax payer, the tax payer would nonetheless say,
"I appeal against my assessment" because the
assessment is the matter which is the subject of
appeal not the decision. This is not so where
the Commissioner appeals from a decision of the
Local Committee, or from a decision of this
Court, but the tax payer, as I understand it,
appeals from the assessment and not from the
decision of the Commissioner.

40 MR. FOOT: My Lord, if one looks at the Section,
Section 74, "By registered post the notice
.....in relation thereto". That does
sound very very much like exercising judicial
function, he is given in this respect the
position of a Court to require attendance of
witnesses and to hear evidence on oath. Then,
My Lord, one goes on to 4. "Any person
assessed.....Section 74". So that
you do not simply get your assessment and then
appeal, you go through the procedure under
Section 74; you get your assessment, you then go

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back to the Commissioner and say, "I object to this, I think it is too much". The Commissioner can if he wishes call witnesses before him: he can call for any information which may enable him to make a decision, and it is only at that stage, it is only at the stage where the Commissioner has at any rate had opportunity of considering objections put before him, that you go up a further step to the Court of Appeal.

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JUDGE: I agree that there can be no appeal unless there is failure to agree, but when there is an appeal, the appeal is against the assessment not against the refusal to amend or the refusal to agree.

MR. FOOT: I appreciate that, My Lord. Certainly it may very well be but of course the whole legal process starts with the assessment. I am perfectly willing to go as far as that you get your assessment, and then you have procedure laid down; you have formal adjudication by the Commissioner and obviously he is expected to perform something in the nature of a tribunal function. Thereafter the tax payer has got a further right of appeal.

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JUDGE: Are the provisions of Section 75. and 76. more than to adopt the language of, shall I say the word, of industrial unrest, the conciliation machinery which are antecedent to a right of appeal.

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MR. FOOT: With respect, My Lord, I would have thought this was very very different from conciliation machinery. You have something in the nature of virtually a tribunal, which is a form of arbitration, in which parties come to see if they can arrive at some form of compromise. This is quite different from where you have some specific procedure laid down.

JUDGE: To appeal with a view to arriving at an agreement.

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MR. FOOT: The tax payer has two rights so to speak in this matter. First of all he has the right to have the matter re-considered, that is the first thing. If that right does not avail then he can go up on appeal before the Local Committee or

before the Judge; that is the second right, but it is all part of one continuous process which is laid down by the statute.

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10 Now, My Lord, I have made part of this submission, but I would ask Your Lordship to consider what the effect would be if I am wrong, because of course Your Lordship will see the difference, the very startling difference between the 1952 Act and the 1958 Act. Under the 1958 Act, once you have been assessed, unless the Commissioner takes mercy on you, or unless you can show that the amounts are themselves excessive, you have no possible redress and no appeal. My Lord, that used not to be so under the 1952 Act. Suppose this is what happened in this case, the maximum penalties have not been assessed, there have been heavy penalties but not the maximum. Supposing that under the old Act the tax payer were assessed to the maximum penalties, the whole amount of tax due and 300 per cent over and above that, and that happened shortly before the 1958 Act comes into effect. Then he issues his - he objects to the assessment but he does not get to the appellate stage before the 1958 Act comes into effect. What happens then? He has been deprived of a right of appeal which existed at the time when he was assessed. My Lord, he comes under a different Act and the only way in which the 1958 Act is more merciful to the tax payer is that it only provides double instead of triple penalties. So you have the two systems; the earlier system under which you might be assessed triple penalties but you had a right of appeal and the Court could interfere with the rate of penalty, and you have the new system under which the tax payer was only rated double penalties but he has no right of appeal. What happens to the unfortunate tax payer? He is assessed triple penalties but he is deprived of the remedy which the old Act gave to him. He then goes up and is told, "Oh no, under the new Act you have no right of going to a Court and asking that the penalties should be reduced". Now it may be so. Your Lordship might be constrained to arrive at that conclusion, but in my respectful submission, it is a conclusion that a Court would struggle very hard against, that you would retain the penalty but take away the right of appeal. It is very difficult to

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suppose that is what any legislature ever intended. The tax payer is having to carry a penalty which has now become illegal under the new Act. He has to pay three times over and his only remedy is taken away. In my respectful submission, that is the sort of consideration which has to be borne in mind when Your Lordship is constructing the words in the Fifth Schedule to the 1958 Act, and My Lord, it is perfectly possible in my submission, to give the words "pending legal proceedings" their wider construction. My Lord, I invite Your Lordship to do so because only by doing so is it possible to avoid a manifest **injustice**; an injustice, My Lord, which even the most stony-hearted draughtsman can hardly have contemplated or intended.

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My Lord, My Learned Junior points out that under the old Act under Section 78(1) there was 60 days to appeal; under the new Act under Section 111(1) there are only 45 days after date of service. So you might get in that way the right of appeal taken away by the new Act if I am wrong.

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JUDGE: That puts me in a somewhat difficult position because in a judgment which I would have delivered on Monday I was inclined to a different view.

MR. FOOT: My Lord, I did not know that the ground has already been trodden.

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JUDGE: Nonetheless the conclusion which I arrive at in one may presumably affect the conclusion I arrive at in the other, whichever is the correct way of approach.

MR. FOOT: My Lord, I have made my submission.

JUDGE: Is the question of the meaning of the term "pending" going to be gone into because I am inclined to think that there are some authorities which might be of some assistance to this problem.

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MR. FOOT: I don't know of any other authorities.

JUDGE: I thought there was something on the pendency of proceedings, and I think there is something as to whether proceedings are pending between the termination of a hearing on an action in England or a suit in this Colony, and the filing of an appeal. I think that is so; I seem to recollect that I had to consider the matter in relation to the registration of title to land in those circumstances some years ago.

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10 MR. FOOT: My Lord, I submit this; assume for a moment that proceedings, whatever they mean by legal proceedings, and approach it in this way, and I have already submitted that it is not
20 necessary to give the legal proceedings their narrower connotation. You may not ever end up in Court, it may be a Bankruptcy Notice, something of that sort, but you are taking a step for which the law provides. Now from that
30 moment I would submit that legal proceedings must necessarily be said to be pending. If you have an action, if you take a step and this is contemplated, provided for by statute law, and that step may, even if it does not necessarily lead to some adjudication, then the proceedings are pending.

30 My Lord, one does not derive very much assistance from the sort of case that Your Lordship has in mind, because I think what Your Lordship is thinking of is where you have the decision of one Court and then the Notice of Appeal is lodged, and then you have a gap, and it might then be said of course that the appeal was not pending until the Notice of Appeal had been lodged.

JUDGE: That is the sort of case I had in mind.

40 MR. FOOT: There is authority for that, and therefore if one was talking about pending appeal, certainly you could have a gap between the decision of the Court of first instance and lodging of Notice of Appeal, and I think I would agree, but it is an entirely different matter when you are talking about legal proceedings. Legal proceedings are taken - I quote again the passage from Archbold - when you take any step, when you arrest the criminal, when you apply for information, when you do anything from which further legal consequences may follow.

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JUDGE: But are not all the acts which Archbold recites as being the commencement of criminal proceedings, acts which could be classified under a common heading, acts having as their object the determination of the legal rights of the parties.

MR. FOOT: Certainly, My Lord.

JUDGE: Perhaps I will amend that. Having as their object the determination by a Court of the legal rights of the parties. One does not have someone arrested with a view to withdrawing the charge. At the time of the arrest one intends to have the matter determined by a Court.

10

MR. FOOT: Not necessarily by a Court in the narrower sense.

JUDGE: Yes, well it may be dismissed at a preliminary inquiry, something of that sort.

MR. FOOT: On determination of the rights of the person concerned by a tribunal. Supposing one had for instance the sort of procedure with which we are all very familiar. The sort of procedure that you have for instance under the various Social Insurance Acts in the United Kingdom. You have there a complete system under the Industrial Injuries Act by which you go as the person who is disabled or who has been injured. He first of all gets the decision of an Inspector. If he is dissatisfied, he goes before a Local tribunal, and if he is not satisfied, he goes up before a still higher tribunal. These are not Courts of Law in the narrower sense. They are a separate system of jurisdiction which has been created especially for this particular purpose. I would submit that they are legal proceedings. They are proceedings at which the rights of the party or parties are determined, and My Lord, indeed there is some analogy there between the Officer of the Ministry of Labour and the man who is unemployed who gets his decision. You have here your whole system of tribunals, your right of appeal, your rights of hearing, and all the rest, and that can clearly be a legal proceeding.

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30

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Take the case of a disability pension; a soldier is wounded in the World War, and he has claimed for a pension. He goes before the local tribunal and then he goes to a higher tribunal. My Lord, nowadays he can go to a Judge; until recently it was not so, but the law provided for this form of adjudication and those would have been legal proceedings.

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10 Put it in another way. Supposing here one got rid of the Court of Appeal altogether, supposing that the legislature had taken a startling view indeed in 1958, supposing they had not been content with depriving H.M. Judges of the right of hearing such appeals, and had said we are going to abolish right of appeal; what the tax payer can do is to go to the Commissioner and ask the Commissioner to consider his case, and the Commissioner will make the final adjudication. There would still have been legal proceedings. They might have been a very unsatisfactory form of proceedings I don't know, but legal proceedings nonetheless even though they may have been proceedings which would stop at a very early stage.

JUDGE: But even assuming that you are right, Mr. Foot, so far, that the proceedings before the Commissioner are to be regarded as legal proceedings, are those proceedings pending after he has given notice of his refusal to amend, or does that put an end to these proceedings and are fresh proceedings commenced by the filing of a Notice of Appeal, as the case may be.

MR. FOOT: There would not be an appeal.

JUDGE: My recollection is of quite 5 or 6 years ago, that when I went into the matter before I came to the conclusion, again whether rightly or wrongly I don't know, that an appeal was not, and throwing my mind back I think the question was from part of the suit - I am not certain of the matter. I think Mr. Kean was appearing in that case, am I right, Mr. Kean.

MR. KEAN: Yes, My Lord, and the question was whether an appeal was part of an action.

MR. FOOT: I just put forward the proposition that even if the Court of Appeal had been entirely bunged out - if I may use such an expression -

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from any right to adjudicate any matters of this sort, you would still have a legal proceeding.

JUDGE: But would it be a pending legal proceeding during the period of the giving of the adjudication in the Court and the taking of a step to set in motion the law.

MR. FOOT: It is a pending legal proceeding in the sense that you have the right to take a further step.

10

JUDGE: But then you almost always have that because if you get a judgment with which you are dissatisfied you can appeal against it out of time if you get leave. Is the true position then that every legal proceeding once commenced continues to pend as long as the parties continue to exist, because they may find some ground to have the original judgment set aside or have leave to appeal against it out of time.

MR. FOOT: It does not always continue to pend because when one reaches the court of last resort; it is pending until then. It may be I suppose it might be a very nice argument as to whether it was pending when the time has expired but the Court has power to continue the period of time. Where the laws had laid down these specific steps to be taken, complete with times within which they are to be taken, then it is straining the Law a long way to say that these are not pending legal proceedings.

20

30

My Lord, that is really my submission about that. I have just been handed an authority on this. The case which My Learned Junior has handed to me is the case of Smith and Williams 1922, 1KB page 158 and the headnote reads, "The respondent successfully appealed....." In the Judgment of Mr. Justice Sankey at bottom of 161, Section 57 of themay be proceeded against. At Page 162. "The notice is the initiation of the proceedingswith the notice in writing to the Commissioner".

40

JUDGE: That is the notice requiring them to state their case, that would look as if what happened before the Commissioner is what I call antecedent proceedings. Is that authority in your favour, Mr. Foot?

MR. FOOT: It goes on, "I am unable to accede
.....continued"

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JUDGE: I should have thought at first sight if
anything that that case was an authority
against you.

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10 MR. FOOT: With respect, no, My Lord, I would
submit the view that is being put forward, but
I think that it said that the proceedings are
only pending when the notice of appeal is
lodged. Either they pend at that stage, or
they pend at some earlier stage. Now if the
statute provides for an earlier procedure
through which you can go before you reach the
stage of filing your notice of appeal, then
you have pending legal proceedings.

JUDGE: Under the Management Act then in force in
England where there not proceedings anterior
to the case stated, proceedings by way of appeal
to the Commissioners, were there not?

20 MR. FOOT: My Lord, I am looking at the section,
"immediately upon the determination of any
appeal.....for the opinion of the High
Court".

30 JUDGE: In other words, there has previously been
proceedings before the Commissioners; it is/as a
result of dissatisfaction of those proceedings
that an application for a case stated is made.
According to that judgment it would seem that
the application to state a case commenced the
proceedings with which they were there
concerned. The former proceedings were to be
regarded presumably as separate and distinct
proceedings.

40 MR. FOOT: No, My Lord, the issue did not arise. As
I read this case, the issue did not arise which
Your Lordship has now to consider, as to whether
there would have been proceedings at an earlier
stage, whether there would be legal proceedings
pending at an earlier stage. What was sought
to be argued here was simply the issue that
you had to lodge your case before an appeal was
said to be pending. All Mr. Justice Sankey did
decide was not that you can go back to the
earlier stage when you give notice to the
Commissioners to produce case stated; he was
not called upon to decide whether the

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proceedings were pending.

JUDGE: Even at this stage. In other words you maintain that it would have been perfectly proper for him to have said proceedings were pending as and from when steps were taken to institute the appeal to the General Commissioners.

MR. FOOT: It would be perfectly proper for him to have said that. All he was saying was this; you may have pending proceedings even before the Court itself was seized of the matter. The Court of Appeal have no interest in the matter until Notice of Appeal is lodged. Whenever you take initial steps then your legal proceedings are pending in the Court above.

10

JUDGE: That was so in the case with which Mr. Justice Sankey was concerned because the step to get the case stated necessarily to be taken, was the lodging of the notice requiring the Commissioners to state a case. Whether it is equally true to say that an appeal is instituted in this jurisdiction by the giving to the Commissioner of the statutory notice of intention to appeal is another matter. Anyhow I am not concerned to decide this as far as I can see.

20

MR. FOOT: My Lord, here is the tax payer. The tax payer is told you must, you will have imposed upon you, these penalties have been made, and he is told you have the right of appeal within 30 days to the Committee, or within 60 days to the Judge. My Lord, if I am wrong about this then it means that that right of appeal which it was intended that he should have, has been taken away. It may be different or rather less terrible form of appeal has been substituted for it, but the right of appeal which has been given, that has been removed, if I am wrong. I respectfully submit that there is so startling a state of affairs that unless Your Lordship is constrained by the terms of the Section, it would be wrong that these are not pending legal proceedings.

30

40

My Lord, that is my submission about that. Of course, Your Lordship is not called upon to

decide it at this stage of the case; and then, My Lord, there is just one other submission I desire to make on the law, before I come to the facts of the case. Suppose I am wrong and the statute to be applied is the 1958 Act and not the 1952 Act. My Lord, then I go back to Section 101, and My Lord, Section 101, 1(b) provides that, "any person who omits..... with respect of his total income". Then there is provision in sub-section 5. "where any appeal.....shall be remedied".

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I have two submissions to make about that section. As Your Lordship has already seen - I am not sure whether Your Lordship has seen this - but it is provided that where there is an appeal to a Judge, it is in Section 112, "The onus of proving.....shall be on the person appealing". My Lord, that only goes in my submission to/es the amount of the assessment. My Lord, if the issue arising as to whether there has been fraud or gross neglect, in my submission, that sub-section, paragraph (c), Section 113 has no application. The onus showing that in relation to any particular year of assessment there was an omission which was due to fraud or gross neglect, it rests upon the party alleging it.

30

40

My Lord, that is my first submission, and My Lord, secondly, Section 101, 1(b) refers to the omission of an amount which should have been included therein; the omission of an amount where the omission is due to fraud or gross neglect. Now, My Lord, you may have a case, and indeed you have a case here, where the tax payer has two separate sources of income, and you may have omissions in respect of each source of income. In such a case in my submission, it is necessary to look at each omission. It does not follow that they can be aggregated together. My Lord, if I might give a fanciful example. Supposing you had a case of a professional man earning say a substantial income. Supposing he had some entirely subsidiary occupation; if he occasionally wrote an article for a newspaper or gave a broadcast, for which he received some comparatively insignificant sum, then he would have two sources of income. Let us suppose he makes a mistake by pure inadvertance he makes an

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error, which is not due to fraud or gross neglect, he may include £1,000 in one year instead of another; he makes that mistake without any fraud or gross neglect, in relation to his professional income. Then a very much smaller sum is due to him for this entirely different occupation which he follows in his spare time, and he omits to return that, then it may be that that omission is due to fraud or gross neglect. I submit that that small sum would not infect the whole, and that the Court would need to consider separately these two omissions. I do not say that this problem will arise here, but it is a submission which I may have to make in relation to this case.

10

I come now to the particular grounds of appeal here. My Lord, I have already indicated to Your Lordship the nature of the principle argument on which I desire to address the Court. My Lord, I shall be calling expert evidence; I shall be calling Mr. Cook, senior partner in the firm of Cook, Sutton & Co. Now, My Lord, he has drawn up a report.

20

JUDGE: Is this going in by consent?

MR. NEWBOLD: Not by consent, My Lord, most definitely not.

JUDGE: If it is not going in by consent I had better not look at it.

MR. NEWBOLD: This is a document which Mr. Foot first informed me of on Friday by telephone and he said I would have it on Saturday. I never got it but I understand it was delivered to My Learned Junior about 12.30 on Saturday, and this morning My Learned Friend has very kindly given me an amended version of it.

30

JUDGE: I think it would be undesirable for me to look at this, unless you have an opportunity during the adjournment of looking at it. If it is going in by consent then I could look at it.

40

MR. FOOT: Of course I am proposing to call Mr. Cook to give evidence as to his conclusions.

MR. NEWBOLD: My Learned Friend has said he is going to call Mr. Cook and he is perfectly entitled to do so, but if he is going to call Mr. Cook, well quite obviously Mr. Cook is going to say what is in the report. In those circumstances I will have no objection to My Learned Friend referring to the report in his opening address so long as it is clearly understood that I do not accept anything in it.

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10 JUDGE: Very well.

MR. FOOT: Perhaps I might summarise it. I have already indicated what is the nature of the argument that I intend to put forward, and My Lord, we start with an opening figure in 1946 of Sh.785,000/-. My Lord, that is made up - I shall be calling evidence about this - but that is made up of "properties to the total of Sh. 326,225/-.....Sh. 201,384/-." My Lord, then there is cash at Bank Sh. 277,572/- deduct Sundry Creditors..... net working capital Sh.128,225/-" and we arrive at a figure of Sh. 731,738/-.

20

My Lord, I don't know whether it would be convenient for Your Lordship to have a copy before you since I am going to prove it. My Lord, there is Schedule A to which I have just referred, and My Lord, there is a note at the bottom of Schedule A saying that "Sh.53,745/12 has been added to this figure..... and we do not understand the reason for the difference".

30

If Your Lordship will look at the report, the report reads, "When we were asked to prepare a report.....conclusions". Then they arrive at the figure which I have already given Your Lordship. ".....work in progress at that date.....for tax purposes". Then Your Lordship sees they set out the figures. "That leaves a net income..... overhead expenses as follow". Then they add back the overhead expenses. "This figure.....are as follows". Then they give the turnover for each of the years. ".....in the following proportions". Then they give proportions in which they divide them, and My Lord, as I understand this, they have not taken an exact percentage each year, and they have weighted the figures to some extent

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in relation to a particular year, because the years differ a good deal. Some years are much more profitable years for contractors than for other years. For instance for a reason well known, the year 1953 was an extremely bad year for building contractors, because of labour difficulties arising from the Emergency. Because of that then they have not taken a precise percentage for each year but have weighted them.

10

Now My Lord, I shall be calling Mr. Cook to give evidence on this, and I shall be calling Mr. Blackhall. My submission will be that this is a matter of expert - here is expert evidence arriving at a conclusion by a well recognised method, a method which might very well be followed in this case; indeed it was the method which Mr. Rattan Singh invited the tax authorities to adopt in his letter of the 19th June 1958.

20

If I am right in this part of my case, if Your Lordship accepts the evidence which will be given in this instance, of course it is more than sufficient to discharge the onus that lies upon me. It is quite clear that if these figures are right or anything near right, that the assessments are not only excessive, they are grossly excessive, My Lord, and of course it would be necessary in that event to proceed any further. But, My Lord, even supposing that I am not right, or even supposing that Your Lordship had a hesitation in accepting this evidence, even so, I shall submit that the assessments arrived at by the Department are clearly excessive as one can see by looking at the figures upon which they are based.

30

My Lord, there are two sets of figures; these are the Inland Revenue figures and they are attached to the document in the bundle. I will hand Your Lordship up a copy. Now, My Lord, dealing with the largest sums first.

40

JUDGE: Is it desirable to enter upon these at this time?

MR. FOOT: I shall be content to leave it till tomorrow, My Lord.

COURT ADJOURNED at 4.0 p.m.

C.A.A.S. 4/59 to 11/59 Rattan Singh v The Commissioner
of Income Tax

In the Supreme
Court

Tuesday, 7th June 1960 at 9.55 a.m.

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ADDRESS BY MR. DINGLE FOOT (Contd)

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10 My Lord, when the Court rose yesterday I
put in the report, and My Lord, I was about to
approach the matter in a different way. I
was going to ask Your Lordship to look at the
computations which have been made by the Inland
Revenue themselves. When they arrived at their
final figure they supplied us with tables of
figures showing how their assessments were
arrived at.

20 Now, My Lord, I am going to ask Your
Lordship to look at certain of these figures.
These are the Commissioner's own figures. Your
Lordship sees first of all for the year 1946,
and Your Lordship sees that there are no figures
given until you come to the estimated profits
which are estimated at Sh.30,000/-. Now
presumably as I understand it, that is arrived
at simply by looking at the turnover and then
making a guess at the profit made on the
turnover. Turnover was Sh.150,000 in that year,
so apparently they are estimating 20% of
net profit. My Lord, I invite Your Lordship,
when Your Lordship has heard the evidence, to
arrive at the conclusion that my client
30 certainly never made 20% profit on turnover;
that is a purely hypothetical figure not based
on any actual figures at all.

40 My Lord, next I come to 1947. Your
Lordship sees in 1947 there are two figures given.
There is Work in Progress adjustment
Sh.91,270/65 which is debited in the following
year, and then at the bottom there is another
figure Estimated Profit Sh.33,793/35 Cts. Now
in arriving at that figure of 33,792/35 they
have used the same method of computation as in
the earlier year.

JUDGE: You mean a fixed percentage on turnover.

MR. FOOT: Yes My Lord.

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JUDGE: Am I going to have any evidence as to what is the standard rate of profit in this trade in this country, or what was the usual profit at that time.

MR. FOOT: My Lord, I shall be calling evidence. My Lord, this figure represents again a percentage, but in addition was the figure of Sh.91,270/- which was included for Stock Adjustment. That cannot be right in my submission; you can use the one method or you can use the other, you cannot combine the two. If this figure of Sh 91,270/- was to be brought into account in this particular year, then it should be added to the total, it should have been added to the turnover figure and then of course the calculation as to the possible rate or profit could have been made on the combined total.

10

JUDGE: What they have done you say is they have taken the turnover, they have computed profit on turnover, they have then added not 20% of the 91,000/- but the whole 91,000/-.

20

MR. FOOT: The whole 91,000/-.

JUDGE: Yes, I follow. In other words, they have treated the whole 91,000/- as if it were profit.

MR. FOOT: Yes, My Lord.

Now, My Lord, if your Lordship would look at the figures for the later years, you will see at the top balance per Account and Rents deducted. Those figures are I understand, were the figures arrived at by Mr. Thian, and then having reached the total of the third line, they proceed to make various additions, and Your Lordship will see very substantial additions are made for legal expenses. Now, My Lord, all the legal expenses I am instructed incurred by my client were in connection with business. My submission would be therefore that all legal expenses were properly incurred and that they ought not to be added here.

30

40

Then there is a small item in a very large matter for medical expenses. Your Lordship sees Sh 500/- in 1948, then Sh 1,280/- in 1951, Now what happened is this, that my clients

employed a large number of African Workers and they entered into an arrangement whereby they provided medical attention for their workmen. If any worker was sick or met with an accident they paid for his treatment. They also paid for their own, and these sums cover the total not only for the medical attention to Mr. Rattan Singh himself and his family, but also his employees. My Lord, it did not prove possible to separate the items and to show precisely how much represented medical attention to Mr. Rattan Singh and his family and how much for his employees. What the Inland Revenue have done here is to add the whole amount.

10

JUDGE: Surely it would have been possible to have arrived at some sort of approximation. I mean on the basis, I don't know, assume that the appellant employed approximately 100 Africans, presumably he would spend more on 100 Africans than on the members of his family, subject to the qualification of course that in some particular year one member of his family may have had a baby or something of that sort; that expenditure could surely have been separated.

20

MR. FOOT: It did not prove possible without a minute investigation conducted by the Accountants.

JUDGE: I know you could not have the exact figures, but surely the appellant knows whether any member of his family had an illness which was of such a nature as to entail heavy medical expenditure during any particular year.

30

MR. FOOT: We put it to the Inland Revenue, we suggested that something should be allowed. Of course, the difficulty might well be due to this, my client is a building contractor, he might not necessarily employ a constant body of men.

40

JUDGE: He could not possibly be expected to say that I spent so much on medical expenditure for a particular labourer, it may even be that he could not say I spent so much on medical expenditure for my labour in general for a particular year, but surely he could say this; during the year 1948 my eldest child broke his leg and had to go to hospital and in that way a

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rough approximation could have been arrived at.

MR. FOOT: I should have thought it might have been done. My complaint is that in spite of these very lengthy discussions the Revenue refused point blank.

JUDGE: It is very difficult for the Revenue to make an estimate as to that sort of thing unless they had been given figures by the appellant.

MR. FOOT: I will take instructions on that point, My Lord. My submission is that the whole has been charged up; the whole should not be charged up. 10

JUDGE: Quite obviously if he did spend money on his employees' health service, presumably he is entitled to deduct those.

MR. FOOT: Going further down this list of figures one finds next Work in Progress adjustment, third figure down, and that is for all the years 1949 to 1953, a figure of 11,000/-. I beg your pardon, My Lord, 11,000/- is Stock adjustment and that is split evenly over five years. In my submission that is an entirely arbitrary figure. 20

JUDGE: What is it supposed to represent.

MR. FOOT: What it represents as I understand the matter is this; that a figure was reached for stock adjustment at the end of 1953, the appellant's figure of 140,000/-, the Revenue insisted on adding an additional 55,000/- and then having added it, they split it over these 5 years in this way. 30

JUDGE: Now, Mr. Foot, I do not know anything about Accounts unfortunately, but what occurs to me is this; if this stock adjustment means, as I understand it to mean, that a figure is credited to each year in respect of the stock on hand at the end of the preceding year, am I right so far?

MR. FOOT: Yes, My Lord. 40

JUDGE: If that is so, how can it be a proper figure
100.

to be added to the profit all through the period because presumably it is the same 11,000 worth of lumber of materials. I agree the actual materials have been exhausted but they have been replaced and I should not have thought it was an addition to profit each year.

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MR. FOOT: I respectfully agree, my Lord.

10 JUDGE: I do not profess to understand Accounts very clearly but nonetheless I should have thought that is not a matter which takes some understanding. If I start in 1946 with 11,000/- worth of timber in my yard and at the end of the period I have 11,000/- worth on hand, that is a figure that should be added once and once only; however perhaps the Accountants will explain it when they come.

20 MR. FOOT: There are a number of figures here which in my submission really call for explanation, but a lot of these figures are not really based on anything at all; they represent a pure flight of Departmental fancy.

30 My Lord, one comes to another figure, you have a figure here - before I come to that, perhaps I might make another comment on this aspect of the matter. You have a Work in Progress adjustment at the end of the year, and if that is charged in one year, as I understand it, it should be debited in the next year. Stock adjustment, if it is charged in one year, it should be debited in the next year as indeed the records have been done in 1947 and 1948. They added this 55,000 over the years; by doing that they brought up the total of stock adjustment to 195,000; Stock and Work in Progress total of 195,000/-, but they refused to deduct that in the following year 1954. In 1954 if they had made a deduction then a loss would have been shown and he would not have been assessed to any tax at all, so that it follows that the Revenue are there again having it both ways.

40 Now, My Lord, I come to another figure, the figure which is given for Drawings Adjustments.

JUDGE: Before you go to Drawings Adjustments, I am rather interested in the cost of demolishing Intiasali Road house. I should have thought

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that could not possibly have been a profit.

MR. FOOT: I suppose, My Lord, it might be said that he used the materials in building something else.

JUDGE: But hardly cost of demolishing the house, it may be sale of materials from the house or use of the materials.

MR. FOOT: Then, My Lord, there is the figure which is called Drawings Adjustments estimated, which is a very substantial figure, in 1949 9,000, 13,000 in the following year. That seems to me to be completely mysterious what that represents. Whatever the amount I say you have these mysterious figures and I have been unable to discover what they are supposed to represent or why they have been brought into these calculations at all.

10

JUDGE: I just don't understand some of these things; for instance am I right in thinking that the African wages estimate for 1948 was 4,000/- and in 1949 is 16,000/-.

20

MR. FOOT: That is the African wages.

JUDGE: If that is so, I assume.

MR. NEWBOLD: My Lord, the African wages is 10,000 and it is only for one year.

JUDGE: There were no African wages again until 1951.

MR. NEWBOLD: There are no African wages at all.

MR. FOOT: It is only in one year. What happened is that they were not prepared to agree the estimate that we gave and they arrived at this figure.

30

JUDGE: Of 10,000/- in one year and no figure for the other years.

MR. FOOT: No figure for the other years at all.

JUDGE: I should have thought that a building contractor must have employed some labourers in all the years of carrying on business.

MR. FOOT: This was something they were not prepared to allow and therefore they added this figure. I assume that what they are saying is that we over-stated the figure for African wages.

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10 Then, My Lord, I come to two particular items. Your Lordship sees that there is cash lodged in the name of Ranjit Kaur and that is 30,000/-. Now, My Lord, it will appear in evidence that Ranjit Kaur is Mr. Rattan Singh's wife. From time to time Mr. Rattan Singh over a longer period of years used to give his wife some sums of money which she kept in cash until she had finally accumulated a total of 30,000/-, and My Lord, in 1951, at the end of 1951, she advanced this money to the business, and as Your Lordship sees, and indeed appears here, the money was lodged in her name. Now, My Lord, that of course will be a matter of evidence.
20 If Your Lordship accepts the evidence, and there can in my submission be no possible dispute about that figure, it cannot possibly represent an addition to the profits for 1951.

30 Now there is a further figure of 30,000/- in the following year. As Your Lordship will see that is recorded as Cash lodged in Indian Bank Account. Now, My Lord, that is explained in this way. In June 1952, Mr. Rattan Singh's mother died. Shortly before her death, she handed over to Mr. Rattan Singh a sum of 30,000/- which had been entrusted to her by her husband for the wedding of Mr. Rattan Singh's eldest son, Gian Singh. Now, My Lord, that was transmitted in August by Mr. Rattan Singh to the National Bank of India at Amritsar.

40 Now, My Lord, there was produced to the Revenue, and it is included in Mr. Thian's second report, a letter dated 13th August from Mr. Rattan Singh to the Manager of the Bank of Amritsar. My Lord, he says he is in receipt of the letter of the 8th of this month from the Manager, he says "That the amount of..... at the end of the year". He does write, though I concede straight away that it does not quite tally with his recollection that he received the money through his mother, but when he is writing to the Bank he says that it does represent money contributed by his father for the marriage expenses of his son.

Your Lordship then sees the way in which the final figures are arrived at in the next sheet. First the schedule of total income; they have put in first of all salary which Mr. Rattan Singh drew, they say he drew before 1946 when he was employed by his father. Then there is a figure for Rents banked and Rents not banked in 1941 to 1945. These are all the earlier years with which your Lordship is not concerned.

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JUDGE: Then why are we looking at them?

MR. FOOT: Then at the bottom the profits which have been already assessed, the two lines above that you see again there is a figure given for each year, 77,255 for each year, and that is under the heading of Assets not accounted for. There again there is I submit an arbitrary and a wholly unexplicable figure, but Your Lordship will see that these final Accounts are made up on the earlier Accounts, from the first argument, that is the computations of business income. I do say that these are in very large part entirely arbitrary figures. I do not know whether we are going to have the advantage of hearing evidence from Mr. Easterbrook or any of his colleagues, but it will be a matter of interest if so, to find out how some of these figures were arrived at.

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JUDGE: Are you going to give me any guidance, Mr. Foot, as to the standard of proof which is required before you can discharge the burden upon you of showing that the assessment is wrong. Is it good enough for you to establish that there is a preponderance of probability that it is wrong, or must you establish it is wrong beyond reasonable doubt, or is there still in law a burden of proof on you to establish that there is a probability.

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MR. FOOT: My Lord, this is a civil matter; we are not dealing with a criminal case, and therefore it is not incumbent upon me to discharge that onus beyond reasonable doubt. The onus has been laid upon me, and if I can show there is a balance of probabilities in my favour that is sufficient.

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JUDGE: Very well.

MR. FOOT: What it really comes to I submit is this. If I can show Your Lordship by either method of approach; I am employing two entirely different methods of approach, either on the basis of the report or by my refusal of the Revenue figures here, that there is a prima facie case in my favour, that the computations of the Revenue are wrong, then I would submit that the onus would shift at that stage and it would then be incumbent on the Revenue to justify their figures; it cannot be higher than it would be in ordinary civil proceedings.

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(Continued)

Now, My Lord, there is another way in which one can approach this. As I have said yesterday, of course the probability of contracting in Nairobi varied a good deal from year to year, and of course, Your Lordship will recall that the Emergency in Kenya was declared in October of 1952, and in 1952, after October, and during the year 1953, Africans were detained, Your Lordship will remember, under Emergency powers in considerable numbers. My Lord, that necessarily had an effect upon building contractors in Nairobi. I shall be calling evidence generally about this, and My Lord, it had its effect in this way. Firstly it was more difficult to get labour, and secondly, that the labour which could be secured was very often inferior.

And, My Lord, in my submission, it is quite clear here that Mr. Rattan Singh made a loss in 1953. My Lord, he certainly could have not made the profit which is attributed to him here of 151,000/-, and if Your Lordship will look again at the first document, you will see how the Revenue arrive at that figure. My Lord, you will see that Mr. Thian estimates at any rate that there was a business loss of Sh 2500/10, then lower they make a number of additions. The 11,000/- then 16,000/- cost of Parklands plot. My Lord, then they give profit on sale of Grogan Road building, I will come to that in a moment, they put in there 80,000/-. Then you have the Drawings adjustment of 17,500/-. It is extremely difficult - gradually they build up this figure of 151,500/-. Even if one omits the 80,000/- even so, it would appear from these figures that Mr. Rattan Singh made a profit in 1953. When Your Lordship has heard all the evidence I will invite Your Lordship to

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7th June 1960
(Continued)

arrive at the conclusion that they could not possibly have made a profit in that year.

I come to this matter of the Grogan Road Building; that has been included in income, actually it was a capital transaction. What happened was this, as I told Your Lordship yesterday, my client acquired two sites in Grogan Road in 1947. He built on one in 1950 and he went into occupation, and as regards the second plot, he built on it in later years. It was completed in 1953 and he intended to let out the premises to a number of tenants, premises, shops, as well as dwelling houses, and his intention was to do with these premises what he did with the Parklands premises, he intended to draw rents. What happened was that shortly after he completed this building before in fact any tenants had gone in, he secured a contract for building and he needed ready cash for what is described here as "retention money". In order to raise that money for that and I understand for another contract as well, he needed to raise ready money, and therefore, he decided that he would sell these premises in Grogan Road. That of course again will be a matter of evidence, but if Your Lordship accepts that evidence, it would in my submission be a capital transaction. I submit there is an authority direct to the point which is Harvey v Caullcott. Mr. Caullcott was an Inspector of Taxes, and I think it would be sufficient if I simply read the headnote. 35 Tax Cases at Page 159. "H. a builder obtained in 1927.....and were not assessable to Income Tax". I submit that this is the point here and it is precisely a similar situation.

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There is only one other matter with which I need deal, and that is the position of Gian Singh. My Lord, I shall be calling Gian Singh himself. My Lord, this property was conveyed to him in 1942. It does appear from the Deed that was drawn up that the settlor was Mr. Rattan Singh. My Lord, my evidence will be that in fact the settlor was the father, Nagina Singh; he settles property upon his grandson. How it came that in the deed the settlor was expressed to be Mr. Rattan Singh I do not know;

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the advocate who was responsible for drawing up the deed has no recollection of the instructions he received, and here again, therefore, it will be a matter as to whether Your Lordship accepts the evidence or not. But this is the property in Gulzaar Street with a rental of 12,960/- per annum, because it makes this difference that if the settlor was Mr. Rattan Singh himself, then under Section 24 of the 1952 Act the rents from this property would need to be included in Mr. Rattan Singh's Return of Income, but if on the other hand, the settlor was the grandfather, Nagina Singh, the position would in my submission be different.

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Proceedings
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(Continued)

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My Lord, I said once that these rents have not been paid over to Mr. Gian Singh, but he was educated in the United Kingdom and his education was paid for, and his view and his father's view of the matter was that his education was being paid for out of the revenue from this property in Gulzaar Street.

My Lord, it is important in my submission to bear one matter in mind in this case. That is about my client and his family; they are a joint undivided Hindu family governed by the Mitaksharia law, and therefore, they do follow the practice of keeping all their income and property together. Now, My Lord, of course this makes a difference because here is a substantial sum which has been included in the Revenue estimates and we say that ought not to be included at all.

Now, My Lord, that completes my opening in this case. My Lord, apart from the two subsidiary issues as to Gian Singh and the Gulzaar Street property, and as to the Grogan Road sale, it really turns on these two matters. If Your Lordship accepts the assessments put forward in the report yesterday, then it follows quite clearly that the Commissioner must be wrong. Even if Your Lordship is not satisfied about that, I submit that merely upon examination of these figures that these cannot be right, and if that be so, that Your Lordship is satisfied that these estimates are excessive, that is, in my submission, the burden I have to discharge about figures, then of course it is necessary to find some other basis of assessment and that would bring us back to the basis of assessment set out in Mr. Cook's report.

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(Continued)

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My Lord, I call Mr. Rattan Singh. My Lord, Mr. Rattan Singh would prefer to give his evidence through an interpreter.

JUDGE: Very well.

APPELLANT'S EVIDENCE

No. 34

Rattan Singh

MR. RATTAN SINGH. duly sworn

EXAMINATION BY MR. DINGLE FOOT

- Q. What are your full names? A. Rattan Singh, son of Nagina Singh. 10
- Q. Mr. Rattan Singh, how old are you? A. 46 years.
- Q. I think you were born in India were you not? A. Yes, that is true.
- Q. And in which year did you come to this country? A. Either in 1925 or in 1926 one of the two.
- Q. So you were then 11 or 12 years old? A. 11 years.
- Q. And did your father, Mr. Nagina Singh, carry on business in Nairobi as a building contractor? A. Yes Sir. 20
- Q. And I think that when you grew up you worked for him did you not? A. I was working for him.
- Q. And I think he died in 1946 did he, or 1945? A. He died in the year 1946.
- Q. And before his death did he present you with any property? A. After his death.
- Q. Not before he died? A. Before his death he transferred two plots to my name. 30
- Q. Where were they? A. One was in Swamp Road and the second was in Salisbury Lane.

Q. Did he make any other transfer of property to anyone? A. One plot was transferred by him to the name of my son.

Q. Which son was that? A. My oldest son, by name, Gian Singh.

Q. And can you say where was that property?
A. Gulzaar Street.

10 MR. NEWBOLD: I would make a formal objection that under the Indian Evidence Act the witness cannot vary the terms of a written document.

JUDGE: Assuming that you are right has he done so as yet?

MR. NEWBOLD: No, that is why I was waiting for the mention of the name Gulzaar Street; that is why I stated then that he cannot give evidence as to the details of the plot.

MR. NEWBOLD: I am looking at Section 91 and 92.

20 MR. FOOT: My Lord, has Your Lordship got a copy? Section 91 imposes the prohibition and then Section 92 states, "When the terms of any such contract.....as to the matter". In my respectful submission even though the settlor is expressed to be Rattan Singh, if there was an agreement with the grandfather, Nagina Singh, whereby he in fact provided the funds that would, I submit, constitute a separate oral agreement.

30 JUDGE: Under what proviso do you come then, within the meaning of proviso 3, Mr. Foot, to Section 92?

MR. FOOT: I don't know whether I bring myself under proviso 3. I have had to try to bring myself within proviso 2.

JUDGE: It is extremely difficult for me to form a view as to the validity or otherwise of this objection when I have not got the settlement before me.

40 MR. FOOT: My Lord, I was just about to put it before Your Lordship. It does open with these words, "It is hereby expressly declared.....
.....who is at present a minor".

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(Continued)

I shall put this in.

JUDGE: I should have thought if you were entitled to give this evidence at all, you are entitled to give it under proviso 1. as being evidence of a mistake in the document.

MR. FOOT: My Lord, I am much obliged to Your Lordship, and I do respectfully submit that I can bring myself within proviso 1. because this is a mistake in fact.

JUDGE: I should have thought it was a mistake in fact as to the description of the parties and the real question seems to me who was the owner of the Gulzaar Street plot prior to the execution of this agreement, and that is a matter which is capable of being clearly established. If the plot was not this gentleman's he could not have given it whatever the document may say. If it was his, whatever the document may say, his father could not have given it. What we really want to do is to see the title to the plot. It is a registered title I presume.

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MR. FOOT: I believe so, My Lord.

JUDGE: Well all you have got to do is to look at the certificate and that is the end of the matter.

MR. FOOT: I am very much obliged, My Lord.

JUDGE: Do you wish to be heard further on that, Mr. Newbold.

MR. NEWBOLD: Nothing except that the document specifically says that Mr. Rattan Singh provided the money for the property.

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JUDGE: The evidence at the moment is that before Mr. Nagina Singh's death he gave the plot; nothing was said of his giving money to purchase the plot.

MR. NEWBOLD: It is the purchase of a transfer from the original owner of the property who was on the deed by either Rattan Singh or Nagina Singh, to Gian Singh, and the last clause provides specifically that Rattan Singh provided the money for the purchase. In my submission

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here is a formal document under seal setting out the circumstances, and under no circumstances, can evidence be given to vary the terms of that document.

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(Continued)

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JUDGE: Technically, of course, Mr. Newbold, your objection is premature. "When the terms of any such contract or grant have been reduced to a formal document have been proved" that is by the production of the document; no oral evidence can be given at this stage.

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MR. NEWBOLD: My Lord, I am quite prepared to wait until later, but I did not want it to be said by My Learned Friend that I allowed Mr. Rattan Singh to give evidence that his father had given this Gulzaar Street property to his son and not object to it.

JUDGE: In any event Section 92. does not apply in this case at all. Section 92. applies only to executed evidence as between the parties to the agreement.

MR. NEWBOLD: Section 91. is relevant.

MR. FOOT: Perhaps I can put it this way to the witness before asking him to look at the document. Who provided the money for the purchase of the property in Gulzaar Street?
A. My father paid.

MR. NEWBOLD: Again I submit Your Lordship that is contrary to the terms of the written document.

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JUDGE: Section 91. of the Indian Evidence Act precludes the giving of any evidence of the terms of certain contracts to which the Section relates other than the document itself or secondary evidence thereof where secondary evidence is admissible. Here Mr. Foot is not seeking to give evidence of the terms of any contract but rather as to the identity of the parties to the transaction.

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MR. NEWBOLD: Your Lordship has also noted my objection to the last question directed by My Learned Friend to the witness as being contrary in my submission to Section 92. of the Indian Evidence Act as it is oral evidence seeking to vary specific terms of the document. My Learned Friend has put in the document and I

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presume it will be marked as Exhibit 3.

JUDGE: In my view Section 92 has nothing to do with the matter for two distinct reasons (a) the Section only operates to exclude the giving of oral evidence as to any agreement or statement at variance with the contents of any document which has been proved under Section 91 of the Act, and the document has not yet been proved; and (b) the Section only excludes evidence as to an oral agreement and settlement between the parties to the written agreement and here, if, as I anticipate, the appellant's father was not a party to the conveyance to Gian Singh, evidence that he provided the money for the purchase of the plot which was allegedly given to Gian Singh, is not evidence as to an oral agreement between the parties to the document. Go on, Mr. Foot.

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MR. FOOT: Since that time have you regarded the income from the plot at Gulsaar Street as being your income or your son's income? A. Gian Singh's, I have been drawing this income as of Gian Singh.

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Q. How has the income in fact been paid over to him? A. That income has not yet been paid to him.

Q. But did he go to England for his education? A. Yes Sir.

Q. And did you transmit funds to England? A. Yes Sir.

Q. And for how many years was he in England? A. About 6½ years.

Q. Now I want you to come to another matter?

EXAMINATION BY COURT

JUDGE: What was the rentals from the Gulzaar Street premises? A. I don't recollect correctly but it was between 11 to 1200/- a month.

Q. And about what did it cost you to keep your son in England? A. After every second month I used to remit 2,000/- to him.

JUDGE: The evidence is as I understand it, that the rentals were somewhere in the neighbourhood of between 12,000/- and 13,000/- per annum and the expenses of keeping his son in England were around about 12,000/-.

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Rattan Singh Examination
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(Continued)

- 10 MR. FOOT: Mr. Rattan Singh, I want you to look first of all at this document. My Lord, it is Schedule A. attached to the report, and Mr. Rattan Singh, you see that that is a statement of your worth at the 11th January, 1946. Now, Mr. Rattan Singh, you already have had an opportunity of looking at that statement have you not? A. Yes Sir, it is true.
- Q. And so far as your recollection goes is that a correct statement of all your assets on 11th January of 1946? A. Yes Sir.
- Q. It shows, just look at that top figure if you will. You will see that property 326,225/-? A. Yes Sir.
- 20 Q. Just tell My Lord, does that cover properties in Kenya or properties in India and Kenya as well? A. It includes the property bought in India and in Kenya.
- Q. You see that under "Cash at Bank" it says "Deduct Sundry Creditors 89,307/-? A. Yes.
- Q. Now have you seen a list of creditors in this statement? A. Yes I have seen it.
- Q. And does that list include yourself? A. I don't remember.
- 30 Q. Perhaps you had better look at the list and just look at the names at the bottom of the list, from the last six names on the list?
- MR. NEWBOLD: May I ask what list this is. Is it the list attached to the Estate Duty Affidavit?
- MR. FOOT: I have taken instructions and I understand it was the list provided for Estate Duty purposes. Just look at the last six names on the list? A. Yes I have seen them.
- 40 Q. Do you see the name of Gian Singh? A. Yes it is there.

In the Supreme Court

Q. What amount is he a creditor for?
A. Sh. 1612/77 Cts.

Appellant's Evidence

JUDGE: I think we can forget the cents in a case of these amounts; I think we might even forget the odd shillings.

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Rattan Singh Examination
7th June 1960
(Continued)

MR. FOOT: Does your own name appear next? A. Yes my name is there.

Q. And for what amount are you a creditor?
A. Sh.38,678/85.

Q. What is the next name? A. Bhajan Singh. 10

Q. That is your second son? A. Yes Sir.

Q. What amount is he a creditor? A. Sh. 4,800/-.

Q. And what is the next name? A. Surjit Singh.

Q. Another of your sons? A. Yes Sir, he is my third son.

Q. And the amount? A. Sh. 4,550/-.

Q. What is the next name? A. Inderjit Singh.

JUDGE: Is he your fourth son? A. Yes Sir.

MR. FOOT: And for what amount is he a creditor?
A. 3928/-.

20

Q. And what is the last name on the list?
A. Basant Kaur.

Q. Who is that? A. She was my mother.

Q. What was the amount? A. 175/-.

JUDGE: If I might interpose for one moment how old was Mr. Inderjit Singh at this time?

MR. FOOT: In the year 1946?

JUDGE: Yes.

WITNESS: At present he is 18 years.

EXAMINATION BY COURT

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Rattan Singh
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(Continued)

JUDGE: So he was 4 years of age at that time, and had he independent property of his own to enable him to become a creditor of his father at the age of 4? A. No, but his grandfather gave him this property; not the property but this amount.

10 Q. How did he give it to him? A. It is only shown in the books; I don't know, it is the Accountant who must be knowing this, his name is Nanda and he prepared those Accounts.

Q. And your third son, Sirjit Singh, how old was he at the time? A. I don't remember; he is at present in the Court but I don't remember what was his age at that time.

Q. About what was his age? A. About 10 or 11 years.

20 Q. And can you account for this debt which was due to him by his father? A. No I cannot say anything to that effect.

Q. And the debt of Sh 38,000/- which was due to you, how did that arise? A. That amount is not paid to me; it is only shown in the list here.

JUDGE: Go on, Mr. Foot.

MR. FOOT: Have any of these amounts been paid can you say? A. Not a single amount has been paid out of these amounts shown on the list.

30 Q. You say that these amounts are creditors? A. Yes they appear in the Accounts and they are calculated and have been shown by the Accountant.

Q. Tell me who made - can you say what was the source of these amounts, who gave the money to your sons? A. It appears that these amounts are shown in the books but they were never paid.

40 JUDGE: What you are being asked is this as I understand it. Can you explain why these amounts should have been shown in the books. In other words, do you know what transactions give rise

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Rattan Singh Examination
7th June 1960
(Continued)

to these debts? A. I don't know.

MR. FOOT: From whom, you see however it was done, from whom did the money come? A. I don't know even that.

MR. FOOT: Just let me have the document a moment.

JUDGE: There was at that time I believe, Mr. Foot, in this Colony a liability in respect of death duties which no longer exists.

MR. FOOT: It is really a matter of comment. Perhaps I might at this stage make this comment. Looking at these figures, you see the various figures which is given and monies attributed at any rate to each of the sons, 4800/- to Bhajan Singh; 4550/- to Surjit Singh; 3928/- to Interjit Singh, but Gian Singh is only credited with 1612/-, a much smaller amount, but Your Lordship will recollect that other provision had been made for Gian Singh.

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JUDGE: Provision which was out of all proportion to the provision made for the sons according to this list.

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MR. FOOT: Because he was the eldest son and he was I think the only one who went to England for his education.

JUDGE: He had not gone there in 1946.

MR. FOOT: No he went in 1949. Now, Mr. Rattan Singh I want you.

MR. NEWBOLD: My Lord, this list has been put in the witness's hand; I am informed it was the list attached to the Estate Duty Affidavit, in those circumstances, I would ask that the whole document goes in.

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JUDGE: Have you got the Revenue Affidavit, Mr. Foot?

MR. FOOT: I don't know.

MR. NEWBOLD: I have a certified copy of the Estate Duty affidavit.

MR. FOOT: If we have it, certainly I will produce the whole document. I want you to look at the

next schedule of the report, that is Schedule B. Now that shows there your statement of worth in 1957? A. Yes Sir.

In the Supreme Court

Q. And it shows a total of Sh 986,228/-. A. Yes.

Appellant's Evidence

Q. Now have you examined that document? A. Yes.

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Q. And is that in your view a correct statement?
A. Yes Sir.

Rattan Singh Examination
7th June 1960
(Continued)

Q. All of your assets in 1957?

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JUDGE: That unfortunately is not attached to the copy which has been given to me; I only have Schedule A not Schedule B.

MR. FOOT: I am so sorry, My Lord. You have examined that document have you not, Mr. Rattan Singh? A. Yes Sir.

Q. And does that disclose all your assets at the 31st December 1957? A. Yes Sir.

20

Q. And then will you look at the next document, the next schedule. Mr. Rattan Singh, does that show your estimated Household Expenses and Personal Expenditure from 1946 to 1957 - this is Schedule C? A. Yes it shows the household expenses.

Q. And have you examined that document? A. Yes Sir.

Q. And does that document correctly show your household and personal expenses for the whole period from 1946 to 1957? A. Yes Sir.

30

Q. Perhaps you might just tell us generally - don't bother about that document - what you estimate to be your household expenditure? A. About 900/-.

JUDGE: Per what, year, month, week? A. Monthly.

MR. FOOT: Now tell us this, after your father died where did you live with your family? A. In Imtiazali Street.

Q. And how long did you continue to live there?
A. Up to the end of 1950.

Q. And when did you acquire the plots in Grogan Road?
A. In 1947.

In the Supreme Court

Q. How many plots did you acquire? A. Two plots.

Appellant's Evidence

Q. I think you built a house for your own occupation on the first plot? A. Yes Sir.

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Q. When did you move in? A. In 1951 I moved in.

Rattan Singh Examination
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(Continued)

Q. What happened to your former house in Imtiazali Street? A. That was occupied by my mother and my uncle after I had moved in.

Q. And what happened to it eventually? A. After the death of my mother that building was demolished. 10

Q. About when? A. In 1955.

Q. Now you proceeded to build did you not on the other plot in Grogan Road? A. Yes I proceeded.

Q. And what sort of premises did you erect there? A. On the ground floor there ^{were} were three shops, and on the first floor there were five rooms and there were cells underground.

JUDGE: What? A. Underground rooms, stores, My Lord. 20

MR. FOOT: Mr. Rattan Singh, when you started building on this second plot in Grogan Road, what did you intend to do with the completed premises? A. I had the intention of letting it out.

Q. Letting it out to one tenant or more than one tenant? A. At that time it was not in my mind as to how many tenants were to occupy the premises. 30

Q. But you were going to let it? A. Yes it is true.

Q. Now, Mr. Rattan Singh, why didn't you let it in the end? A. Then I was given two jobs and I needed a deposit to be kept in respect of those two jobs and I sold these premises.

Q. What were the two jobs for which you needed the deposit. A. One was the National Bank of

India at Moshi and the second was the premises of the County Council.

In the Supreme Court

JUDGE: Where? A. In Nairobi next to the Lag. Co. building.

Appellant's Evidence

MR. FOOT: And they needed a deposit did they for those contracts? A. Yes Sir.

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MR. FOOT: Your Lordship will have observed in the Income Tax computations that there is reference to retention money in Moshi.

Rattan Singh Examination
7th June 1960
(Continued)

10 JUDGE: I thought retention money meant that money payable to the contractors was not paid until after a specific period of time, so that the person for whom the house is built has money in hand for any repairs needed to the house as a result of the contractor's work.

MR. FOOT: What was the purpose of this deposit
A. It was one of the terms of the tender that if the job is given then a certain amount of cash was to be deposited.

20 Q. Deposited where? A. Deposited with the Architect.

JUDGE: For retention money in revenue.

MR. FOOT: For what purpose was that? A. This is sort of a security, Sir, whether the contractor would carry out the job.

Q. And when did it become repayable? A. On the completion of the job the deposit was refunded.

30 Q. I don't know if you can remember, Mr. Rattan Singh, what were the amounts which had to be deposited in respect of these two contracts?
A. 60,000/- was in respect of the National Bank at Moshi and 80,000/- was in respect of the County Council building.

Q. And I think you told My Lord that you obtained this money by the sale of the Grogan Road property? A. Yes Sir.

Q. Mr. Rattan Singh, your ordinary business is that of a building contractor is it not? A. Yes Sir.

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Appellant's Evidence

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Rattan Singh Examination
7th June 1960
(Continued)

Q. Do you normally build on sites of your own?
A. Yes.

Q. How many sites have you built on? A. Altogether three plots, two in Grogan Road and one at Parkland Avenue 6.

Q. Are they the only plots of your own on which you have built? A. Yes Sir.

Q. Otherwise has your building consisted of building as a contractor on other plots, other land? A. Yes Sir it is true. 10

Q. You have told us about three properties, two in Grogan Road and one in Parklands; is this the only building that you have sold of those three? A. One was property at Grogan Road which I sold at that time, and one property which was at 6 Parkland Avenue that I have sold last month because I was being pressed by the Bank, and as a result of that, I had to sell property, this in 6 Parkland Avenue.

Q. Perhaps you can tell My Lord why it was, or was there any special reason why you were being pressed by the Bank. A. Because I had a debt of 700,000/- to pay. 20

Q. To whom? A. To the Bank, and I was being pressed by the Bank to pay these debts.

Q. Now, Mr. Rattan Singh, come to something else, when did your mother die? A. In 1952.

Q. Which month? A. I think in June.

Q. Now shortly before she died did she give you anything. A. Yes she gave me. 30

Q. And what did she give you? A. 30,000/- in cash.

Q. Did she explain what that money was? A. She told me that was the money which was to be spent on the marriage of my eldest son, and this was the money which she wanted to spend on his marriage herself during her lifetime, but since she died it was her wish that the money should be spent on the wedding of the eldest son.

Q. Did she say who provided that money? A. Yes In the Supreme
she told me it was provided by my father. Court

Q. What did you do with the money? A. I sent Appellant's
that money to one Bank at Amritsar with a Evidence
letter.

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Q. Can you say whether that is a copy of the letter Rattan Singh
that you wrote; just look at that letter there? Examination
(Letter handed to witness) A. Yes this is 7th June 1960
copy of the letter. (Continued)

10 Q. Actually I think it was not the letter that you
sent at the time, this is the letter you wrote
later on was it not? A. Yes.

Q. You see "amount of 20,000 rupees remitted in
my letter of 21st July 1952", you sent the
money in July? A. Yes Sir.

Q. I want you to go back a little?

JUDGE: Is that letter being tendered or not?

MR. FOOT: It was part of the report, I was
proposing to have a copy made.

20 JUDGE: Very well.

MR. FOOT: Did your wife - perhaps you had better
tell us her name, your wife's name? A. Ranjit
Keur.

Q. Did she accumulate any money? A. Yes, she
accumulated some money.

Q. How did she obtain that money? A. The money
which I used to give her for her expenses, she
used to save some of that money, and thus she
accumulated some money.

30 Q. Over a short period or a long period? A. Over
a long period.

JUDGE: How many years? A. About 12 to 15 years.

MR. FOOT: How did she keep that money? A. She
was keeping either in her bag or a cupboard,
she was keeping it private.

Q. She kept it in your house? A. Yes Sir.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Examination
7th June 1960
(Continued)

- Q. In cash? A. Yes Sir in cash.
- Q. What did she do with the money eventually?
A. She gave that money to me.
- Q. And do you remember when? A. I don't remember exactly what year.
- Q. How much was it? A. 30,000/-
- Q. And when she gave the money to you what happened? A. I deposited this money in the Bank in her name.
- Q. Now, Mr. Rattan Singh, I just want you to tell us about your business arrangements. Did you yourself keep any books, the books of your firm, or did someone else keep them? A. I did not keep the books of my firm myself but those were kept by another person. 10
- Q. Who kept your books? A. There were other clerks, one was Mr. Shaffie.
- Q. And when did your son Surjit Singh come into the business? A. For the last four years.
- Q. When he came into the business did he have anything to do with keeping the books? A. Then he kept the books when he came into the business he started keeping those books. 20
- Q. You say he started four years ago, didn't he start a little earlier than four years ago?
A. Not before.
- JUDGE: Mr. Foot, I don't know whether you wish to desire an application for the matter to be held in public because someone is in the gallery; however they are going now. 30
- MR. FOOT: The damage is done now, My Lord. Mr. Shaffie kept the books until Mr. Surjit Singh came on the scene is that right? A. Yes it is true.
- Q. I think it is common ground between My Learned Friend and myself that Mr. Surjit Singh in fact started to keep the books in the middle of 1954. So you yourself did not keep the books at all? A. I did not keep the books myself.

Q. Did you ever look at them? A. No I didn't.

In the Supreme
Court

Q. Then what did you do about your tax returns?

A. First these were sent by Nanda, he was sending those returns first Sir.

Appellant's
Evidence

Q. Do you know whether or not books were supplied to him for the purpose of making out returns?

A. As far as my recollection goes the books were supplied to him for the purpose of making these returns.

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Rattan Singh
Examination
7th June 1960
(Continued)

10 Q. Now you signed the returns did you not?

A. Yes.

Q. Did you sign them after they had been made out or did you sign them otherwise? A. He used to send these returns blank to me with his clerk and he made me sign and return to his office.

Q. Did you see the returns after he had filled them in? A. No I did not see them after they were filled in.

20 Q. When did you first know that there had been irregularities in your tax returns? A. When I first received a letter from the Income Tax Department, that was the first occasion I came to know of these irregularities.

JUDGE: Mr. Rattan Singh, do you read and write English? A. I have got very limited knowledge of English; I can only fill the cards of my labour.

30 MR. FOOT: Mr. Rattan Singh, do you remember one occasion when you had an interview with the Officers of the Inland Revenue and you were asked about your Bank Accounts? A. Yes I do remember.

Q. And you gave information as to two Accounts that you had not previously disclosed? A. First they did not ask me about the Banks, they only asked about Bank Accounts.

Q. Is it correct that you did inform them of two Accounts? A. Yes it is true.

40 Q. Of which you had not informed them before? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Examination
7th June 1960
(Continued)

- Q. Now have you now disclosed all your Bank Accounts. A. Yes, I have disclosed now.
- Q. And have you made a complete disclosure of all the information in your possession? A. Yes Sir, I have disclosed every information that is in my possession.
- Q. There is just one other matter I want to ask you about, perhaps two others. Are you able to say - I don't know if you can or not - are you able to say what sort of percentage on turnover you have been able to make as a profit? A. It is roughly not more than 4 - 5% 10
- Q. Have you ever made 20% at any time? A. No it cannot be 20%.
- Q. Now can you tell us whether the years vary for contractors, where some years are good years and others are bad years? A. Two years from 1947 to 1948 were good for the contractors because at that time there was a permit system. 20
- Q. 1947 and 1948? A. Yes Sir, 1947 and 1948.
- Q. Now were the later years as good as that? A. No the following years were not as good as 1947 and 1948.
- Q. Can you tell us anything about the year 1946, was that a good year or not? A. I cannot say anything about the year of 1946; my father died in the year 1946 and I was not keeping good health, so I did not take much trouble. 30
- Q. Can you tell us anything about 1952 and 1953? A. The business in 1952 to 1953 was good but it became bad due to the Emergency which started in 1952 and we suffered loss in those two years.
- Q. What effect did the Emergency have on building contractors? A. There was trouble over the labours; we could not get the African labourers in Emergency time.
- Q. And when you could get labour what was it like? A. The labour which we could get in Emergency was not a good one, it was a poor labour and 40

we had to pay more. We had to pay three times more.

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Q. And these conditions affected all contractors in Nairobi? A. Yes Sir.

Appellant's Evidence

Q. I don't know whether you can tell us this, Mr. Rattan Singh, you received rents from various properties did you not? A. Yes.

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Q. Can you say whether all those rents were recorded in your books or not? A. All the rents which I used to receive from these properties were recorded in the books.

Rattan Singh Examination
7th June 1960
(Continued)

10

MR. FOOT: Thank you my Lord.

JUDGE: Yes Mr. Newbold, or would you rather we adjourned now?

MR. NEWBOLD: No, Your Lordship, because I think this case is going to last very long indeed.

JUDGE: Very well.

CROSS-EXAMINATION BY MR. NEWBOLD

Cross-
Examination

20

MR. NEWBOLD: Mr. Rattan Singh, when were you married to your wife? A. I think in the year 1923 or 1924.

Q. And how old were you then? A. I was 10 years at the time of marriage.

Q. You were 10 years at time of marriage; when did you first start giving your wife money for household expenses? A. In 1929.

Q. And where were you getting your money from? A. I used to get this money from my father.

30

Q. For what, was it a salary that he gave you? A. It was not paid to me by way of a salary but just expenses.

JUDGE: Where was your wife then, was she in Kenya or in India. A. My wife came into this Colony in 1931.

JUDGE: So in 1929 when you started giving her money

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for household expenses she was in India while you were in Kenya? A. Yes Sir.

Appellant's Evidence

No. 34

Rattan Singh Cross-Examination 7th June 1960 (Continued)

MR. NEWBOLD: Let us go to the year 1940, how much were you earning in 1940? A. In 1940, I was working for the firm but I was not being paid.

Q. Did you receive any money at all? A. I used to get between 10/- to 20/- but that is not wage.

Q. A month, a day, a year? A. Monthly.

Q. Was that the only money that you received. A. Yes. 10

Q. How much money did you give your wife for the household expenses? A. I was not giving but my father used to give to my mother and to my wife.

Q. And how much did your father give to your wife for your household expenses? A. I cannot say, I do not know.

Q. When did you first start giving money to your wife for your household expenses? A. When my father died, after the death of my father. 20

Q. Which was 1946? A. Yes Sir.

Q. And how much money did you give to your wife for household expenses? A. It was not a fixed amount and it not kept in writing; sometimes 200/-, sometimes 300/-.

Q. A day, a month, a year? A. Sometimes after a week, sometimes fortnightly, when my wife used to ask money.

Q. So do I understand that you were giving to your wife for household expenses 200 - 300/- a week or a fortnight? A. When she used to demand money for household expenses I used to give her. 30

Q. I want to know how much it was broadly you were giving a month? A. I have not kept any account to that effect.

Q. Were you giving her more than £600 a year? A. I have not kept any accounts but it is in the books. 40

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

- Q. It is in the books what you were giving to your wife? A. That amount had been credited to my account.
- Q. I am asking Mr. Rattan Singh did he give his wife for household expenses more than about £600 a year? A. I have not kept any account to this effect whether the household expenses which I used to give to my wife amounted to £600 or more; I have not kept any account.
- 10 Q. Could they have amounted to £2,000 a year? A. No it cannot be so much, it cannot be so much.
- Q. Your household consisted of yourself, your wife, your mother and four children. A. Yes Sir.
- Q. Mr. Rattan Singh, do you seriously say, now that your affairs are being examined, that you cannot tell His Lordship how much money you gave to your wife for the household expenses? A. No I don't remember.
- 20 Q. If you do not know how much money you gave to your wife, how can you say in evidence that these drawings figures were correct? A. I had to rely on the Accounts which had been submitted and they are correct; I take them as correct.
- Q. Have you ever signed any Accounts yourself? A. I used to sign these accounts.
- Q. I don't mean the Returns, I mean the accounts themselves; did you sign the Accounts themselves? A. No I did not sign any Accounts myself, but what I thought you meant was the Returns; I used to sign Returns.
- 30 Q. There were Accounts attached to the Returns, the Accounts of the business showing Trading, Profit and Loss Account and Balance Sheet, did you sign these? A. The Accountant made me sign these Accounts.
- Q. How do you mean that he made you sign these Accounts? A. He used to ask me to sign them and I used to sign.
- 40 Q. You signed, and what did you mean to convey by

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Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

your signature? A. I was asked, I was under obligation to sign these Accounts and I used to sign.

Q. You say that in 1951 your wife gave you 30,000/- to deposit as a loan to the business?
A. Yes Sir.

Q. Which she had accumulated out of, as I understood you, the money given to her by you for expenses? A. Yes Sir it is true.

Q. Very well, now you remember being interviewed on a number of occasions by Income Tax Officers? A. Yes I do remember. 10

Q. Do you remember Mr. Thian making a report, who was employed by you? A. Yes I do remember that.

Q. Do you remember Mr. Bellman questioning you?
A. Yes.

Q. And Mr. Bellman was the other Accountant employed by yourself? A. Yes.

Q. Did you say in answer to a typewritten question that your wife had neither income nor property?
A. I don't remember. 20

Q. Very well. May it please Your Lordship, I am putting in a document; it is attached to the letter of the 7th December, and it is a series of questions and answers from Bellman who was employed by the appellant - 7th December, 1956, it is a photostat. (Document handed to witness). Is that your signature?
A. Yes it bears my signature. 30

Q. It also bears the signature of Mr. Bellman?
A. Yes.

Q. And Mr. Shaffie? A. Yes Sir.

Q. Will you look at Question No. 8.

JUDGE: Document number? What is this?

MR. NEWBOLD: I don't think it is given a number, it is photostat copy which is attached to the documents which I put in, on the 17th December, 1956.

MR. FOOT: About halfway through the bundle of correspondence, My Lord, it is the fifth letter in the bundle the covering letter and the questionnaire follows.

JUDGE: Yes.

MR. NEWBOLD: Will you look at Question No. 8. that is, "Has your wife any income or property in her own right". What is your answer?

A. Yes, I see the question and answer.

- 10 Q. What was your answer? A. No, she had no income or property.
- Q. If she had no income or property where did the 30,000/- come from? A. That 30,000/- came in her possession out of the money which my father used to give to my mother and my wife.
- Q. How do you know that? A. I used to ask my wife what amount she was getting and she used to tell me in reply that sometimes she received 500/- and another occasion she received
- 20 1,000/-.
- Q. So you knew your wife had some money then? A. I knew she had money but I didn't know how much money she had.
- Q. When you were asked the question "Has your wife any income or property in her own right" why did you answer No? A. By income I understand is the amount which is realised out of the property, but not out of the amount which was given to my wife by my father.
- 30 Q. "Income or property"? A. From income what I understand is interest received or any rent received from the property; that is my understanding about the word income.
- Q. Look at the certificate you signed there; it also is attached to the same photostat. Do you see that you signed a certificate, "I hereby certify that I made a complete disclosure to you of (a) all banking accounts whether current or deposit, business or private, in my name or in that of my wife or in that of any other name in which I am or have been interested
- 40during the period from 1st January, 1940, to 31st December, 1955". Did you

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(Continued)

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(Continued)

sign that certificate? A. Yes I do remember signing this certificate.

Q. Was it true? A. Yes.

Q. You had disclosed all bank accounts at that date? A. Yes I disclosed.

Q. Very Well. Now did you have an interview with Mr. Easterbrook on the 1st March, 1957?
A. Yes.

Q. Did he then put to you certain questions?
A. He might have asked me.

10

Q. Among them, did he ask you whether you had now or at any time a Bank Account with the Bank of Baroda, Mombasa Branch? A. Yes, he asked me this question.

Q. Had you disclosed that account? A. At that time I asked my clerk if he had shown this in the books of account, and my clerk replied that he will have a look in the books, and then he will give me a reply, and the following day I told him that yes we had an account at the Baroda Bank.

20

JUDGE: But surely without asking the clerk you knew if you had that account or not. Surely the witness knew whether he had an account at the Bank of Baroda at Mombasa without asking his clerk.

MR. FOOT: I think the witness said that he asked the clerk whether he had disclosed it.

JUDGE: I thought the witness said he asked his clerk whether they had an account at the Bank of Baroda.

30

MR. FOOT: No My Lord, the witness didn't say that he himself was unaware of that account.

JUDGE: In that case that is why I want to know why he asked the clerk anything? A. Yes I knew.

JUDGE: You knew of it? A. When I asked, "Why they are asking me, have not you shown this in the books or not?"

JUDGE: I see.

In the Supreme
Court

MR. NEWBOLD: Were you also asked whether you had an account with the N. B. I. at Amritsar?

A. He didn't mention particularly the word Amritsar, but he only asked Bank Accounts, he mentioned the word "Bank Accounts".

Appellant's
Evidence

No. 34

10 Q. When you signed that certificate - it was on the 14th of December 1956, wasn't it - now you there certify that you had disclosed all banking accounts? A. From that I meant the place in which our business was run. From that I did not understand that it referred to other documents in India.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

Q. But you did understand it referred to accounts in East Africa? A. Yes I understand.

Q. Why did you not then disclose this account with the Bank of Baroda in Mombasa? A. I had asked the clerk, it was a mistake why we did not show this.

20 Q. Then so far as you are mistaken when you are signing this certificate, is it a false certificate? A. It was not a false certificate.

Q. You said Gian Singh was entitled to his own income? A. Yes the thing which was in his own name he was entitled to the income from that property.

30 Q. From when? A. It was in his name from the beginning, but I don't know what is the law about it.

Q. Did you think it was his money? A. Yes.

Q. And you thought it was his money from when? A. After the death of my father when I had the bond I thought it was his right.

Q. From the death of your father? A. Yes.

Q. So you knew he had income? A. Yes.

Q. Did you sign returns in which you claim an allowance for your son, Gian Singh? A. I don't know, it was completed by another, I don't know.

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Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

Q. Are you saying that you did not know you were claiming an allowance for your son? A. What I was saying was that I don't know about these details. The Accountant used to make me sign on the blank returns.

Q. Are you saying that you did not know you were claiming an allowance for your son? A. I said I did not know.

Q. You did not know you were claiming an allowance for your son? A. I did not know. 10

Q. You did not know that in your return you said your son had no income? A. I asked my auditor Mr. Nanda and he said No.

Q. You asked the auditor, Mr. Nanda, and he said No? A. He asked me to say no, he told me to say no.

Q. He told you to say no? A. The letter was received and I asked him to reply.

Q. If I understand you correctly, when you filled in your return showing that your child had no income, you did so because your Accountant asked you to do so, but you knew you were doing so? A. No mention was made whether my son had any income or not. All the correspondence was conducted by Mr. Nanda. Whenever I used to receive the letters I used to pass it on to Mr. Nanda who replied because he knew all about the Accounts. 20

Q. What was the last occasion on which Mr. Nanda made up your return? A. I think up to the end of 1953. 30

Q. So that Mr. Nanda did not make it up to 1954? A. I think so he didn't make for 1954.

Q. Will you look at your Return of Income in November 1954 for the year 1953. Is this your Return made in November 1954? (Document handed to witness)?

JUDGE: Exhibit A.

MR. NEWBOLD: It is one of the exhibits in the photostated copy. 40

WITNESS: This was made by Nanda.

In the Supreme
Court

MR. NEWBOLD: In November 1954: A. This is 31st
December, 1953.

Appellant's
Evidence

Q. Yes, but it was signed by you in November 1954?
A. It was made in 1953, and I signed in 1953.

No. 34

Q. Do you seriously say, Mr. Rattan Singh, that
you made your Return of Income...

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

JUDGE: Can he read enough English to understand
these documents Mr. Newbold. He says he can
only read and write a little English; it may
be that he might not understand these documents.
Could the date be pointed out to him and perhaps
he might be able to read that.

10

MR. NEWBOLD: Could you show him the date on which
he made this Return 6th November, 1954.

CLERK: I have shown him this dated 6th November
1954.

MR. NEWBOLD: Is that the date on which you signed
it? A. I don't remember, I might have
signed it before this date.

20

Q. Will you look at the end of the document and you
see against Gian Singh and all the sons that they
have no income? A. These particulars were
typed after I had put my signature. I signed
these papers when they were blank.

MR. NEWBOLD: Very well.

JUDGE: Just one minute, Mr. Newbold. Mr. Rattan
Singh, are you asking me to believe that you
signed your Income Tax Returns in blank and
never asked your Accountant what he put in your
Returns? A. The only thing I used to ask
him was if the particulars were correct
according to the books and he used to say yes,
and even now Mr. Bellman who is our Accountant
at present, he sends these Returns to my son
and then I sign and return to him and he fills
in particulars.

30

JUDGE: Well I think it will be in your own
interests for you to pay a little more attention
to your own affairs of importance in future.

40

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Cross-Examination 7th June 1960 (Continued)

MR. NEWBOLD: Is this your Return for the year of Income 1954? (Document handed to witness). A. Yes.

Q. Do you see in your claim for allowances for the two sons, one is Inderjit and the other is Gian, is that correct? A. Yes I can see the names.

Q. Do you see against Inderjit the statement that he has income of £180 from Nagina Singh? Do you see that? A. I don't know where this income has come.

Q. Do you see income of £180 or some figure. A. Yes.

Q. Do you see against Gian as amount of income he has, No? A. Yes.

Q. Can you explain that? A. I cannot give any explanation.

MR. NEWBOLD: This is not among the photostated copies, My Lord, because it is the subsequent year.

JUDGE: Exhibit A. Then. That might be a convenient time, Mr. Newbold.

MR. NEWBOLD: As Your Lordship pleases.

COURT ADJOURNED AT 1.5 P.M.

2.15 p.m. Tuesday, 7th June, 1960

MR. RATTAN SINGH.

Cross-examination by MR. NEWBOLD (Continued)

Witness warned still on oath.

Q. This morning you told my Learned Friend that you sold the Grogan Road house in order to obtain money for two deposits? A. Yes.

Q. Shs. 60,000/- from Moshi? A. Yes.

Q. And Shs.80,000/- for the Nairobi County Council? A. Yes.

Q. That makes a total of Shs.140,000/-. A. Yes

Q. You sold the Grogan Road House for Shs.193,000/-? A. Yes.

In the Supreme Court

Q. Did you use all the money that you got to pay the deposit of this Shs.140,000/-. A. Then it changed over in this way, the Nairobi Branch of the National Bank of India told the National Bank Moshi that I had my bank account at Nairobi, so no security was required for N.B.I., Moshi.

Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

10 Q. So you did not deposit Shs.60,000/- for Moshi? A. No.

Q. The Shs.80,000/- was for the Nairobi County Council? A. That Shs.80,000/- was not deposited. It so happened that when we for deposit and deposit was not kept for 4 to 5 months and by that time the building had started.....

Q. You did not deposit either the Shs.60,000/- or the Shs.80,000/-? A. That is true.

20 Q. When did you sell this property? A. In 1953.

Q. When in 1953? A. I do not know the month.

Q. Was it the beginning or the end of 1953? A. I sold this property in 1953, but I do not remember whether it was the middle or beginning of 1953.

Q. When did you start the Moshi Job? A. In 1953.

Q. When in 1953? A. In the middle of the year - I think June - but I do not remember.

30 Q. When did you start the Nairobi County Council job? A. I do not remember the date, but it was more or less the same period.

Q. About the middle of the year? A. I do not remember the exact date, but it was in 1953.

Q. Did you sell the property before you started these two jobs, or after? A. I think before the beginning of these two jobs.

Q. And at the time you sold it you say you were selling it because you wanted the money to

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Court

Appellant's
Evidence

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Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

deposit for Shs.140,000/- . A. Yes.

Q. Did you get cash of Shs.193,000/- for the property? A. No, I did not get it in cash.

Q. How much did you get in cash? A. To start with I was given a cheque for Shs.25,000/- and Shs.68,000/- was paid when the deal was completed.

Q. In fact you left Shs.100,000/- on mortgage? A. He asked that he did not have this Shs.100,000/- and he will pay me afterwards, and I agreed to it. 10

Q. You left it on mortgage? A. No, it was not mortgaged.

Q. When did he pay you the Shs.100,000/-? A. One year after.

JUDGE: Free of interest? A. Free of interest.

Was he a close friend of yours, the purchaser? A. He was not a close friend.

Was he a relation of yours? A. No.

Had you ever had business dealings with him before? A. No. 20

Did you owe him any sort of debt of gratitude? A. Nothing.

You still say you left him with Shs.100,000/- of your money, free of interest, for about one year? A. This was one of the clauses of the agreement under which the property was sold that Shs.100,000/- was to be paid one year after.

How much did you need to meet the deposits which led you to selling the building? A. At that time there was no fixed limit as to the amount. 30

Did you not know what sum you were going to be required to deposit? A. Shs.140,000/-.

So because you had to raise Shs.140,000/- you were obliged to sell this property, and you sold it for Shs.193,000/-? A. Yes, sir.

But in fact you only derived Shs.93,000/- from the sale of it to apply to these deposits which you had to meet? A. Yes.

In the Supreme Court

So you were still short of Shs.51,000/- to meet these deposits? A. Yes, sir.

Appellant's Evidence

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Where did you expect to get that Shs.51,000/-?

A. I had deposit the deeds of one of my buildings in Blenheim Road with the Bank in order to raise this difference, if it was needed, but that was not required.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

10

MR. NEWBOLD: During the course of this same year, 1953, did you transmit money to India? A. I do not remember - it must be in the documents.

Q. I suggest that on 21st February you sent Shs.15,000/- to India? A. Yes.

Q. I suggest to you that on 18th March you sent Shs.15,000/- to India? A. Yes, that is correct.

20 Q. I suggest that you sent to India also Shs.600/- on 31st December? A. Yes.

Q. During the course of this year I suggest that you sent to India over Shs.30,000/-? A. I wish to state that two drafts of Shs.15,000/- each are not mine; they are of another person.

30 Q. I suggest that those figures were prepared by your Accountant to show your drawings from your business? A. I still maintain that two drafts each of 15,000/- were in respect of another man; they were not mine.

Q. Did you ever at any time prior to going into this box tell any member of the Income Tax Department or anyone else connected with your affairs that you proposed to rent the Grogan Road building? A. In the beginning it was my intention to let that building out.

40 JUDGE: Try and answer the question. The question is simply, Have you ever told any member of the Income Tax Department that you intended to let the Grogan Road Building? A. A question may have been put to me and I have told them the plan.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Cross-Examination
7th June 1960
(Continued)

Can you remember if you did or did not do so?
A. I do not remember.

Q. You know that the Department were saying that you were liable to tax in respect of the sale?
A. I was told by my accountant, Mr. Thian, that there was no tax on it.

Q. You knew the Department was saying that there was tax on it? A. I did not notice.

Q. You knew it when you got the assessment?
A. I only knew this when I received the assessment and I was told by my clerk. I did not contest any member of the Income Tax Department because they were not listening to me. 10

Q. Did you not know about this when you got the letter of 15th April, 1958, showing the amount of Shs.80,000/-? A. When the assessment was received I was told by the Clerk that so much was the assessment.

Q. This is before the assessment when you got the schedule of figures? A. Yes. 20

Q. Did you tell anybody this? A. I told Mr. Thian, and he said, "Don't worry - I will have this washed out".

Q. Did you sign every single balance sheet attached to Mr. Thian's first report? A. Yes.

Q. They were signed after they were prepared.
A. Yes.

Q. And did you mean by signing them to state that they were correct? A. I did not know whether these balance sheets were correct or wrong. I trusted the accountant they were correct. 30

Q. Did you mean when you signed them to convey the impression that they were correct? A. Mr. Thian made me believe that these were the correct balance sheets.

Q. Did Mr. Thian get all the information to draw up these balance sheets from you and from your books and from your staff? A. Yes, I told 40

Mr. Thian that I knew nothing about the books and that he should get this information from my staff.

In the Supreme Court

Q. Did Mr. Thian not ask you any questions?

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A. He did not ask me many questions. He asked me only one or two questions.

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10 Q. Do you suggest that Mr. Thian, employed by you to draw up your Accounts, only asked you one or two questions? A. Since I had given him all the books, then I said that it was up to the staff who were writing the books to answer any questions.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

Q. Mr. Thian worked for a long time on your books?
A. Yes.

20 Q. Now in reply to my Learned Friend when he put to you Schedule "C" - that is the drawings schedule - you said that these figures are correct? A. He prepared those figures and told me that those figures were correct and that I should sign them. I Signed them.

Q. Do you know what that is, Mr. Rattan Singh?
A. I do not know what it is. (Schedule "C" shown to witness).

Q. When you said this morning that this shows your estimated household and personal expenses for 1946 to 1957, you did not know what you were talking about? A. I can see the figures there, but I do not know where the figures have been obtained.

30 Q. You can read English? A. I can read very little.

Q. You can read the first item? A. I cannot understand what it means.

Q. What does the first item mean? A. I cannot understand. I was told by the interpreter that household food means expenses for the house.

Q. And the next item - what does it mean? A. I do not know what it is.

40 Q. Can you understand the various figures? A. I cannot understand those figures.

In the Supreme Court

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Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

- Q. So that when you said in relation to this Schedule and Schedules A and B that they were correct you did not know what? A. I did not know, I was told that they were correct and I accepted them.
- Q. Now this Schedule is a schedule which purports to show the amount that you have drawn out of the business in each year? A. Yes.
- Q. Do you know what it purports to represent? A. I do not know what it purports to show. 10
- Q. Whatever this purports to show, in 1946 it appears to me that you are supposed/only to have drawn 11,800/- odd - Is that correct? A. I cannot say whether it is correct or not.
- Q. In the year 1947 it shows that you were supposed to have drawn Shs.11900/- - Is that correct? A. I do not know.
- Q. Did you know whether you spent more money than that? A. I do not know.
- Q. In 1948 it shows a sum of Shs.18,400/- odd - Is that the only amount you spent in 1948? A. I do not remember. 20
- Q. Can I take it from what you have said in relation to the first three years that it will be the same answer for all the other years? A. Since I do not know, what shall I say.
- Q. Turn to Schedule B. - that is a statement of your worth on 31st December, 1957. It shows that on that day you were supposed to have been worth Shs.986,000/- odd - Is that correct? A. I do not know. 30
- Q. It shows that your interest in the partnership was Shs.33,000/-? A. Which partnership?
- Q. I do not know, but that is what it says. Were you in partnership on 31st December, 1957? A. Yes, I was.
- Q. And who were your partners? A. My sons.
- Q. How many? A. Three.
- Q. So that there were four partners altogether.

A. Yes.

In the Supreme
Court

Q. And were you equal partners? A. Yes.

Q. And the partnership started in 1954? A. I do not remember the year.

Appellant's
Evidence

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Q. And were each of you entitled to one-fourth of the total assets of the partnership? A. Yes.

Q. Had you given away your three-quarter share in this business to your sons? A. No, Nothing has been given out; everything is in the partnership.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

10

Q. Had you given three-quarters of your share of the business to your sons? A. I have given them shares.

Q. Schedule A, which purports to be your statement of worth at 11th January, 1946 - you cannot say whether that is accurate? A. Since I do not know, I cannot say.

Q. There is an account showing an amount in the National Bank of India, Nairobi, of Shs.46,000/-? A. Yes.

20

Q. Had you ever previously disclosed that? A. Yes.

Q. To whom? A. I told Mr. Thian and my clerk.

Q. How much assets did you inherit from your father? A. I do not know.

Q. You swore an estate duty affidavit? A. My clerk filled in all the particulars and I was made to sign.

30

Q. Do I understand you to say that you filled in numerous returns and swore to certain documents but now you say that you did not know what was in them? A. When the estate duty return was completed, I was told by my clerk Mr. Shaffie that it was correct. I signed it and I told him to send it on.

Q. Did you know how much you swore in that affidavit as being the value of the estate? A. No it is a long time ago - I do not remember.

In the Supreme Court

Q. Did you have an insurance policy on your life.
A. Yes.

Appellant's Evidence

Q. Do you remember what the premium was?
A. No.

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Q. I suggest that in that year it was approximately Shs.1,046/-?
A. If it is in the books, yes.

Rattan Singh Cross-Examination 7th June 1960 (Continued)

Q. Did you pay that money out of your own pocket?
A. No, it was paid out of the business.

Q. Did it go through the books of the business?
A. Yes.

10

Q. Would it be surprising if the books did not disclose it?
A. It must be in the books. You can ask the clerk. Since a cheque was given, it must be there in the books.

Q. Did you claim that amount as a deduction in your income tax returns?
A. I do not know; that is a question which only the auditor can answer. They might have put the question to him and he might have said yes. He is the one who can reply to that question.

20

Q. Did you claim it in your income tax return?

MR. DINGLE FOOT: My learned friend was putting to the witness that there was no mention of those items in the books. I am instructed that there are no books for 1946. My friend says that there is a schedule of drawings prepared by Mr. Thian. That is not quite the same thing.

JUDGE: Perhaps you can direct your questions to some other year, Mr. Newbold.

30

MR. NEWBOLD: There are no books for 1946 and 1947. There is a schedule of drawings for each of those years and the amount is not in there. It is merely to show an expenditure which is not in the drawings.

Q. I will turn to a later date, let us say 1950; did you keep an income tax return for the year of income 1950 and is that your income tax return for 1950?
A. Yes.

40

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Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

Q. Will you turn to the last item over the page. Do you see that you claim Shs.1,618/- as being expenditure for a life assurance on yourself?
A. It was filled in by the auditors.

Q. Did you in that year have a life insurance policy? A. Yes, I had.

Q. Are you sure? A. Yes.

Q. Will you be able to produce that policy?
A. It so happens that I only paid two premiums; the third premium was not paid for; and then the partition of India took place and so we do not know what happened. A clerk in the National Bank of India, Mr. John, gave me the policy and told me that I would get the necessary documents from Lahore.

10

JUDGE: You are being asked, Have you got the policy in your possession now and whether it is still valid? A. I have not got it in my possession at the present time.

20

Do you know where the actual policy is? A. I did not receive it. I do not know where it is now. Due to the partition trouble, I did not receive it.

Q. Is this your return for the year of income 1951? (Shown to witness). A. Yes.

Q. You claim there for expenditure of Shs.1,618/-?
A. Yes.

Q. Did you have any life insurance in that year?
A. These particulars were filled in by the auditor and he filled it in as he filled in the previous year.

30

Q. Will you answer the question. Did you have that policy in that year and did you pay that premium? A. I do not remember.

Q. Turning to the year of income 1952 - Is that your return of income for the year 1952?
A. Yes.

Q. Do you say that you claimed there as having paid a premium of Shs.1,618/- for insurance?
A. This item has been shown as it was shown previously.

40

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

- Q. Did you have an insurance policy in that year and did you pay that premium? A. I do not know.
- Q. Mr. Rattan Singh, I am putting it to you that you were making false claims for an allowance in respect of insurance which you never paid in any of those years? A. I am sure there must be a receipt in respect of the premiums. It cannot be incorrect.
- Q. Are you still insured with the Bharat Insurance Co., Ltd.? A. Yes. 10
- Q. You are still paying premiums? A. I am.
- Q. Have you always had the same policy? A. As I have already stated, I did not get the documents in respect of the first policy, but I received documents in respect of the second policy.
- Q. And the second policy/^{started} from when? A. I think the last 3 or 4 years.
- Q. During the years 1946 to 1953, did you spend any money on education of your children? A. Yes, all the children were receiving education. 20
- Q. And how much did it cost you each year? A. I do not remember.
- Q. Have you any idea at all? A. I have not worked it out.
- Q. In the written answers which you gave to Col. Bellman on 17th December, did you say in answer to question 3: "During the same 10 years..... so incurred". (Reads). A. Yes. 30
- Q. Was that correct? A. This figure was written out by Mr. Bellman. It was shown to me and I was told it was correct. Since the figure had been taken from the books, I accepted it as correct.
- Q. Do you see in relation to B. Singh the sum of £480? A. It must have been taken from the books.

In the Supreme Court

Appellant's Evidence

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Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

Q. Would that be what you had spent on the education of the child? A. Yes. If it is taken from the books it must be the same.

Q. And the same thing for Surjeet Singh? A. Yes.

Q. And the same thing for Inderjeet Singh? A. Yes.

10 Q. So that, apart from the expenses of Gian in England, these sons of yours cost you £1,545 in education? A. Yes.

Q. Where did they go to school? A. In Nairobi.

Q. Did you pay for the fees out of your own pocket? A. On certain occasions I was paying the fees out of my pocket; on other occasions I was paying the fees out of the office.

Q. Have you transmitted during the course of the years 1946 to 1953 a considerable sum of money to India? A. Whatever I have remitted is in the books.

20 Q. Have you transferred to India during the course of these years a considerable sum of money? A. Whatever is in the books I have remitted.

Q. Mr. Rattan Singh, please answer the question. During the years 1946 to 1953, did you transmit to India a considerable sum of money? A. Whatever I have remitted is shown in the books and that is all.

30 JUDGE: Do try and answer the question. Quite apart from whether it is shown in the books, did you in fact transfer to India a large sum of money between 1946 and 1953? A. I have not remitted anything besides the items which appear in the books.

Do you know what the items that appear in the books are? A. Whatever items I have remitted they are in the books.

40 Do they add up to a large sum of money? A. I do not think it will be a considerable amount, but it might add up to Shs.100,000/-.

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Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

- Q. In your answers to Col. Bellman on 17th December, which I put to you earlier, you said: "I do not regard£500 a year....." (Reads). A. I still maintain that whatever has been remitted is in the books, and nothing more than those items have been remitted.
- Q. Would you regard a remission of over £2,000 as a small sum? A. It is not a difference in this was.....
- Q. Do you recall remitting the sum of Shs.45,263/- and 70 cents in cash to India on 7th February, 1949? A. What has been sent through the bank it is there. 10
- Q. Do you recall remitting that sum? A. It is a period 13 to 14 years and I do not remember all these things, but since these things are in the books I maintain they are correct.
- Q. I know it is 13 to 14 years ago, but these affairs have been very carefully gone into with you, have they not? A. The amount which has been remitted I do not challenge. 20
- JUDGE: Do you remember sending Shs.45,000/- to India? A. Whatever amounts have been remitted by me I did not take, because all these amounts are sent through bank drafts.
- Q. Cash drafts? A. I think these drafts, if they were in the name of anyone, must be in my own name.
- Q. Did you remit money to India in those years? A. Yes. 30
- Q. On a number of occasions? A. Yes.
- Q. When you remitted the money, did you produce the cash to the bank? A. Yes, the cash was presented at the bank and the bank made out the draft.
- Q. Where did you get the cash from? A. What was drawn from the bank through a cheque.
- Q. Do you say that the amounts you remitted to India were paid for out of cheques drawn on the bank? A. Yes. 40

Q. Therefore your bank account would show it?
A. Yes.

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Court

Q. Did you ever produce to the bank to pay for a draft to India any money which you had not drawn through the bank? A. No.

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Evidence

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Q. Never? A. Never.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

10 Q. Do I understand you to say that you never at any time remitted any sum of money to India unless you had first drawn that sum from the bank by cheque? A. Yes, that is correct.

Q. The amount of Shs.30,000/- remitted to the Lombard City Bank - Did you draw a cheque for that figure? A. Yes.

Q. And your Bank statement would show it? A. Yes, it must show it.

Q. The amount of Shs.30,000/- remitted to Amritsar - Did you draw a cheque for that? A. The bank statement will show that.

20 Q. That you drew a cheque for the amount that you then handed in to pay for the draft? A. Yes.

Q. Do you remember Mr. Thian, Mr. Easterbrook talking to you about various figures which appear in the books as being the figures of creditors? A. Yes, they must have told me.

Q. Do you remember your saying that these amounts were owed by you to these people named? A. Yes.

30 Q. Do you remember Mr. Easterbrook telling you that unless you produced a statement from the people that you owed them this money, he would add back all figures which were in round sums? A. The clerk has already given.....

Q. Do you remember Mr. Easterbrook saying to you that he required a statement from those creditors that you owed them this money? A. At that time we were three: myself, my son and Mr. Shaffie, and I told them to give proof to him.

40 Q. JUDGE: Mr. Rattan Singh, Mr. Newbold, at the present rate, will be here for at least another two weeks before he finishes his cross-

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Court

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Evidence

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Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

examination. We shall have to get on much faster. Do try to answer his questions. Later on, if there is anything which has not been made clear, Mr. Foot will clear up any ambiguities in his re-examination; but for the time being just endeavour to answer the questions asked and we will get on much faster.

Q. Did you ever produce that statement? A. I did produce the statement. 10

Q. You produced a statement that you owed them money? A. My clerk gave these statements.

JUDGE: Gave those statements to whom?

MR. NEWBOLD: I think he is trying to say that the clerk gave a statement saying that these debts were in fact due by Mr. Singh, not that the clerk obtained statements from various persons and gave them to the income tax.

Q. Were those statements ever produced to the Income Tax Department? A. Whatever questions were asked by Mr. Easterbrook those questions were answered. 20

JUDGE: Listen and try and answer the question. Did Mr. Easterbrook tell you to produce statements from the people to whom you said you owed money showing that you owed that money? A. Yes, those statements were given.

Q. Do you know that yourself? A. It is not within my own personal knowledge.

Q. Were you not asked on 2 or 3 occasions to produce those statements? A. I did not give accounts personally. 30

Q. Did you ever see them? A. I told the clerk.....

Q. I put it to you that these statement were never produced? A. I do not remember.

Q. Were you asked to produce a break-down of the medical expenses showing how much was attributable to your family and how much was attributable to your staff? A. These things were put to all three of us, not to me personally. 40

We were three when these questions were put to us.

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JUDGE: They were your affairs that were being enquired into? A. Whatever was asked for it was replied to.

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Q. Did you ever produce to the Income Tax Department a break-down of these medical expenses?

A. No, I did not give accounts personally.

Rattan Singh
Cross-
Examination
7th June 1960
(Continued)

10 Q. Did your son have a serious operation in 1951?
A. Yes, my son is there; you can ask him, but I do not know.

Q. Do you mean to say you do/^{not} know whether your son had a serious operation in 1951? A. It was not in 1951.

COURT ADJOURNS at 3.55 p.m.

9.45 a.m. 8th June, 1960

20 MR. DINGLE FOOT: My Lord, before my learned friend resumes his cross-examination, I have a suggestion to put forward which should have the effect of expediting and possibly simplifying these proceedings. My learned friend cross-examined Mr. Rattan Singh yesterday as to Schedules A and B attached to the Bellman report. As far as A and B are concerned, what Mr. Rattan Singh said in fact was that these were simply Accountants figures and he was not able to speak to them of his own knowledge. There can be very little dispute about these figures because they are all figures that are capable of exact ascertainment by reference to documents. If I have to prove them in some other way, it means that I will have to put in bank statements and other documents, and the time of the Court has to be taken up in going through and extracting various figures from the cash book. The suggestion I would make is this, that if the two accountants Mr. Easterbrook and Mr. Cook spent a little time together, assisted by junior counsel, it might be possible to agree on at any rate some of the figures in Schedules A and B. That would save a good deal of time and leave my friend perfectly free to argue that this is not a proper method of computation; but since the figures must be a matter for exact ascertainment, I submit that

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(Continued)

would be the most convenient course.

JUDGE: What do you say, Mr. Newbold?

MR. NEWBOLD: My learned friend spoke to me a moment ago about this. As for me I know Mr. Thian is the only person who has gone into the figures of the appellant. As far as that first Schedule is concerned, the statement of worth at 11th January, there is a figure set out by Mr. Thian in his second report. Mr. Cook's figure differs from Mr. Thian's. Mr. Thian spent many months on these accounts, and then Mr. Bellman also had some contact with these accounts, and now at the last moment - I think on Friday - I was told for the first time that Mr. Cook is now in the picture. If my learned friend thinks that it will serve any useful purpose, I am prepared to try.

10

JUDGE: What you are being invited to do is this: to discontinue your cross-examination of the appellant in relation to the figures in these statements and leave that matter to be settled as between the accountants, or possibly to be determined in the light of subsequent examination or cross-examination of the accountants in the event of their failing to agree.

20

MR. NEWBOLD: I am perfectly prepared to do that.

JUDGE: I am not seeking to influence the parties either way. What you are asking Mr. Newbold to do, Mr. Foot, is to discontinue a particular line of cross-examination of a particular witness in the hope that cross-examination of any other witness in relation to that aspect of the matter will become unnecessary.

30

MR. DINGLE FOOT: I understood that my learned friend really completed that part of his cross-examination.

MR. NEWBOLD: Not quite, but I was prepared, in the light of Mr. Rattan Singh's answers, to direct very few questions to actual figures.

MR. DINGLE FOOT: I should not object to his completing his cross-examination, but apart from any questions I may have to put to Rattan Singh, I should have to ask the Court to examine the statements in order to arrive at those figures

40

which one would have supposed to be capable of exact ascertainment. Therefore, I would respectfully suggest that the attempt should be made.

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Examination
8th June 1960
(Continued)

JUDGE: I do not see that there is any harm in the attempt being made.

10 MR. NEWBOLD: One of the difficulties is that the first statement relates to the position as at 11th January, 1946. Mr. Thian has said that for the years 1946 and 1947 there are few, if any books, so that it is a matter for conjecture as to what was Mr. Rattan Singh's capital worth as at that date. There is one item which should be capable of ascertainment and that is the amount of his inheritance. Rightly or wrongly, in the course of the discussions with Mr. Thian, it was suggested that the estate duty affidavit did not disclose all the assets which came to Mr. Rattan Singh; 20 Furthermore, there was the doubt, which at any rate as far as we are concerned has never been resolved, as to what Mr. Rattan Singh's assets were in India. I have spoken to my junior and to Mr. Easterbrook and they say that they think little purpose would be served by such a meeting, but I am prepared to accede to any request that he may make.

30 JUDGE: I think the most obvious course is for the meeting to take place: it can do no harm; it may shorten the hearing, on the other hand, it may not.

MR. DINGLE FOOT: It may be that there will not be complete agreement, but there are certain figures which would be agreed, and that being so we could remove a certain amount of the area of controversy.

40 JUDGE: I think it had better go on that basis. I am recording that although you do not think that any useful purpose will be served, I think it would be a good thing to take place.

MR. NEWBOLD: Yes, my Lord.

JUDGE: I direct that Mr. Foot be allowed to have Mr. Rattan Singh recalled for further re-examination should anything happen as a result of the meeting. In other words, you need not

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touch on the figures at present.

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Witness warned still on oath.

MR. RATTAN SINGH (Cross-examination continued)

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Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

Q. Mr. Rattan Singh, your learned counsel in his opening said that in 1951 an arrangement was arrived at whereby you paid the medical expenses of your labour. Who did you enter into this arrangement with? A. I do not remember; it might be Mr. Thian, but I do not remember.

10

JUDGE: He obviously does not understand the question. Will you please repeat it.

Q. Did you enter into an arrangement whereby you agreed to pay the medical expenses for the labour? A. I do not remember.

Q. Do you remember what the year was? A. I do not remember.

Q. Yesterday my learned friend said in his opening that all the legal expenses had been incurred on behalf of the business. What legal expenses were incurred by the business? A. By Legal expenses I mean expenses which were incurred in defending the suits which were filed against the business.

20

Q. Who filed those suits? A. The suits were filed on behalf of our business by our advocates.

Q. Who did you file the suits against? A. One was Mr. Ker.

Q. When did you file that suit? A. I do not remember; there were so many other people against whom suits were filed. I do not remember the year.

30

Q. The books would show these expenses - how they came about? A. Those expenses must have been entered in the books by the clerk after he had received statements from the advocates.

Q. Do you know that you were asked to produce evidence as to how these legal expenses were incurred? A. I told Mr. Thian to reply to

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any query raised in this connection.

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Court

Q. Did you not know that you were asked to produce a statement showing how these expenses were incurred? A. It was up to the auditor to satisfy.....

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Evidence

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Q. Please answer my question. Did you not know that you were asked to produce statements showing how the expenses were incurred?
A. Yes, I was asked.

Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

10 Q. And you knew/^{that} you were told that if you could satisfy the Commissioner that they were incurred by the business they would be allowed?
A. Yes, I know I was told this. Upon this, I told my auditors to find out all the expenses from the books and show them to the Commissioner of Income Tax.

Q. Did you have any dispute with any member of your family? A. Once there was a dispute.

Q. About the inheritance? A. Yes.

20 Q. Did you also, apart from the dispute, incur legal expenses in relation to the inheritance?
A. Yes.

Q. Where were they paid from? A. They were paid out of the business.

Q. Did these figures for legal expenses include those expenses? A. Yes.

30 Q. Do you know whether you or your accountant, or anyone acting on your behalf, has ever produced to the Department a break-down of those figures? A. Everything is in the books.

Q. Your stock: you had a pretty big business, had you not? A. It was not a very big business.

Q. What stock did you carry, roughly? A. We were not keeping anything in stock, but whenever the work was to be started we used to purchase the materials and stock it for the erection of the premises.

40 Q. You had large contracts for large buildings?
A. The contracts were neither big nor small; they were normal contracts.

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Rattan Singh
Cross-
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8th June 1960
(Continued)

Q. Can you give any idea as to the maximum amount of stock which you were carrying at any time?

A. The stock did not exceed Shs.5,000/-.
By that I mean that as soon as we buy things such as materials, cement, etc., we start utilizing it at the same time.

Q. You say the stock never exceeded more than Shs.5,000/-? A. Yes.

Q. Do you know that in your accounts as signed by yourself and produced by Mr. Thian there is a statement that the stocks at the end of each of the years 1948 to 1953 stood at exactly the same figure of Shs.20,000/-? A. This figure of Shs. 20,000/- was shown by the auditors on his own account; he did not consult me about this amount.

10

Q. Do you recall a meeting at which you were present with Mr. Thian when Mr. Thian refused to continue with your accounts unless you disclosed everything? A. Yes, he said that on one occasion. I told him that since I have given him all the books, all the bank statements, then what else is there which I have not disclosed to you.

20

Q. In evidence yesterday you said that when your father died certain creditors of the estate had never been paid? A. Yes.

Q. Dealing with yourself, you said that the estate owed you Shs.38,678/-? For What? A. This amount was taken out from the list which was prepared by Mr. Nanda in which he had shown all the outstandings.

30

Q. JUDGE: You were asked a very simple question. Why was this owed to you? A. I cannot say anything about that; it was taken out from the books.

MR. DINGLE FOOT: I hesitate to interrupt, but I have been informed that the sense in which the question was put to the witness through the interpreter was, why did Mr. Rattan Singh owe so much money to other people.

40

JUDGE: If that is so, there is only one answer and that one answer is to discharge the

interpreter and start all over again. It has been quite clearly laid down by the Court of Appeal for Eastern Africa that where the interpretation is called into question, it is not proper to begin with a new interpreter from that point where the interpretation is first challenged, but that the whole matter must be begun de novo.

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8th June 1960
(Continued)

MR. DINGLE FOOT: I do not want to do that.

10 JUDGE: Mr. Newbold's question was this: Can you explain how it was that at your father's death your father owed you the sum of Shs.38,600/-?

WITNESS: I cannot give any reason for that.

MR. NEWBOLD: Can you give any reason why the estate owed your 4 children and your wife sums of money? A. I cannot give any reason for that.

20 Q. Do you know what was the total amount of inheritance which you received from your father?
A. I do not remember off hand, but whatever is written in the books I have referred to that figure.

Q. Mr. Rattan Singh, do you ever take a meal at the Salisbury Hotel? A. I have never taken meals at the Salisbury Hotel or any hotel in Nairobi. Since I am not taking mutton, so I am not taking meals at any hotels in Nairobi.

JUDGE: Is the hotel strictly confined to mutton?

30 INTERPRETER: He says he is a vegetarian.

Q. Do you ever entertain Ladies in any restaurant? A. I have never entertained ladies at any restaurant.

Q. Have you ever advanced money to any ladies?
A. No.

Q. Do you know a Mrs. Taylor? A. I have never heard this name.

Q. Do you know anything about a school of dancing?
A. I have never heard this name.

In the Supreme Court Q.

Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

This deed which was put in whereby Gulzaar Street was transferred to Gian Singh contains a clause as follows (Clause 3). (Reads). Is that correct or not? A. Whatever is written in the deed is correct; but the amount was paid by my father, I did not pay. I signed. My father told me to go to the office of Mr. Anand and sign it. And Mr. Anand was asked to come and give his evidence in Court as to who paid this amount and his reply was that there was no records in his office. 10

JUDGE: Can you remember how it was paid? Was it paid in cash or by cheque? A. Since it was not paid by me, I do not remember how it was paid.

Q. So you are saying that what is written is not correct? A. I agree that whatever is written in the deed is correct - I accept it. I did not read it; I was just told to sign it, and I signed it. 20

Q. You said yesterday that all your rental income was put into the books? A. Yes, sir.

Q. Did you put in the books the rental income from Grogan Road for the years 1951, 1952 and 1953? A. Since the receipts are made out in respect of the rents, so these receipts must have been entered in the books. Since I am not writing the books myself, whenever rent is received my clerk is asked to prepare a receipt and enter the receipt in the books. 30

Q. I am instructed that these rentals were never in the books?

JUDGE: Which premises are you referring to, Mr. Newbold? A. Grogan Road.

The house in which he lived? A. Yes.

I think it should be put to him.

Q. Did you live in a house which you built in Grogan Road? A. Yes.

Q. Where there are shops below? A. Yes, Sir.

Q. Did you let these to people? A. Yes. 40

Q. Did you receive rentals from the tenants?
A. I received rent only from one or two tenants, rent in respect of the other tenants was never received by me.

In the Supreme
Court

Appellant's
Evidence

Q. Do you know whether any rental which you received from those shops in Grogan Road were ever put into the books for the years 1951, 1952 and 1953? A. You must refer to the books - they are in the books.

No. 34

Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

10 Q. When you said yesterday that all the rentals are put in the books, you did not know - is that right? A. Whenever any rent is received in the office it is entered in the books.

Q. JUDGE: Mr. Newbold, is it desirable to pursue the question of the rental value of the premises? A. That has been assessed and it has also been agreed that it does not form part of Mr. Cook's report. The net annual value is not in dispute. It certainly is not a ground
20 of appeal.

What I had in mind was this. Has any allowance been made for it in the schedules which purport to set out his household expenses and various other expenses? A. There would not be an allowance there.

Has it been included in his household expenses?
A. No, I don't think so, because it was owned by himself and he would not be paying any rental for it.

30 Presumably in calculating what his annual expenditure was, it would be necessary to have regard, for income tax purposes, to the value of the portion of Grogan Road in which he lived?
A. That has been included in a separate item in the assessment.

Q. Mr. Rattan Singh, did you and the members of your family use the motor cars of the business?
A. Yes.

Q. On your private affairs? A. No.

40 Q. You mean to say that neither you nor any member of your family used a motor car to take a run in the park? A. Others are using but I am not.

In the Supreme Court JUDGE: Others of your family? A. My sons are using the motor car.

Appellant's Evidence

No. 34

Rattan Singh Cross-Examination 8th June 1960 (Continued)

Q. And the expenses of running the car were paid for out of the business? A. Yes. In February, 1953, there were no other vehicles except one pickup and three lorries; one was broken and in third-class condition.

Q. Did you repair any house belonging to your sister? A. There were repairs amounting to 200/- on one occasion.

10

Q. Do you remember a meeting at Mr. Easterbrook's office on 6th March, 1958, with Surjeet Singh and Shaffie? A. A meeting might have taken place.

Q. And Mr. Easterbrook was asking you to explain various figures? A. Yes.

Q. In particular the item of Shs.30,000/-? A. Yes.

Q. Which was supposed to have been deposited by your wife? A. Yes.

20

Q. And Shs.30,000/- supposed to have been deposited by yourself for Gian Singh? A. Yes.

Q. Do you remember Mr. Shaffie making certain statements and Mr. Easterbrook said, "If these statements are correct you had in your possession on 31st December, 1950, about Shs.120,000/- in cash which had not been disclosed"? A. Yes.

Q. Did you have that figure in cash in your possession? A. I did not have that amount in my possession.

30

Q. Was Mr. Shaffie's statement incorrect? A. I think you had better ask Mr. Shaffie.

Q. I am talking about what you have? A. My reply is that I have nothing.

Q. Nothing in cash in your possession on 31st December, 1950? A. Whatever cash was there it was in the bank, but it was not with me.

- Q. You had no cash at all in your possession on 31st December, 1950? A. I had no cash.
- Q. Did you ever keep any sums of cash in your possession, let us say exceeding Shs.2,000/-? A. Not more than 2,000 to 4,000/-, sometimes in cash.
- Q. You never had any more? A. Not more than that; if we wanted more, we would draw from the bank.
- 10 Q. If therefore you transmitted money to India sums like Shs.30,000/- and you did not pay for it by cheque, where did you get the money from? A. It must have been taken out of the bank.
- Q. You said to my friend that the business was bad in 1953. A. What I meant was that the rates were not good.
- Q. Did you make a good profit that year? A. No.
- 20 Q. You made a return of income in relation to each year and you were assessed on the income returned? A. Yes.
- Q. And you paid the tax at which you were assessed? A. Yes.
- Q. And it was only afterwards that the Investigation Branch started to ask you questions? A. Yes.
- Q. Do you remember how much you returned for the year of income 1953. You returned income for that year of £3,402? A. Yes.
- 30 Q. And do you see in the accounts which you signed that you made not a profit from the business of Shs.58,578/-? A. This was prepared by Nanda.
- Q. And signed by yourself? A. He made me sign it.
- Q. And you paid tax on them. A. Yes.
- Q. Do you mean to say that you did not know whether you made a loss or a profit in the year? A. It was the accountant who prepared these

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Cross-Examination 8th June 1960 (Continued)

accounts from the books, and he was in a better position to know all about this - whether there was a profit or a loss.

Q. Do you mean to say that you did not know whether you were making a profit or a loss in the year? A. I did not know.

JUDGE: Did you ever ask Mr. Nanda how the business was doing, whether it was making a profit or making a loss? A. I never asked him this question.

10

Did you ever ask your clerks whether the business was making a profit or a loss? A. No, I did not ask such question.

So the position is that for a period of 7 or more years you carried on business but never enquired of the people in charge of the financial side of your operations whether you were making a profit or a loss? A. He was telling me that everything which is coming into the business is in the banks.

20

Would you try and answer my question. Is it correct that for about 7 years you made no enquiries of the auditors or of the clerks who were responsible for the financial side of your operations as to whether your business was running at a profit or at a loss? A. I did not ask such question.

Did you know during that period of 7 years whether your business was running at a profit or a loss? A. The only thing I knew was that the business was not running in loss.

30

Q. I am instructed that at a meeting at which Mr. Thian, and Mr. Easterbrook were present, you were discussing your estate duty affidavit, and Mr. Thian in your presence said that you had sworn a false estate duty affidavit? A. He might have said so.

Q. Is it true? A. I am telling that he might have said so.

Q. Is it correct that you swore to a false estate duty affidavit? A. I was told that the amount which was given to me was correct, and on that

40

amount I swore that affidavit, because I did not prepare the accounts.

In the Supreme Court

Q. You have said that you did not know the figures? A. Yes.

Appellant's Evidence

Q. You did not give any statement to Mr. Cook as to these figures? A. Yes.

No. 34

Q. You mention that in 1953 you had to pay greater wages? A. Yes, it is true.

Rattan Singh
Cross-
Examination
8th June 1960
(Continued)

10 Q. Is there not a standing clause in ordinary contracts that the person on whose behalf you are erecting a building pays any increase in labour? A. No, it is not so.

Q. You have not such a clause in your contracts? A. It was not in my contract.

Q. You have a contract with the Royal Technical College of East Africa? A. Yes.

Q. And you had one before? A. No, it was not before.

20 Q. Is that clause in the contract? A. I do not know because that contract was signed when I was in India. My partner signed that contract.

Q. You had a contract for the Nairobi County Council. Was that clause in the contract? A. It was not in the contract.

Re-examined by MR. DINGLE FOOT:

Q. Mr. Rattan Singh, you were asked yesterday about your family history? A. Yes.

Re-
Examination

Q. And you said that you were 10 years old at the time of your marriage. A. Yes.

30 Q. Is yours a Hindu family. A. Yes, Sir.

Q. And are you governed by Mitskabari law? A. Yes.

Q. I think under that law you have a system of undivided families? A. Yes.

Q. And is it normal for all the property belonging to the family to be held together? A. Yes Sir.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Re-Examination 8th June 1960 (Continued)

- Q. And it is administered by one member of the family who is the Karta? A. Yes, sir.
- Q. Are you the Karta? A. Yes, Sir.
- Q. But it is possible, is it not, for a member of a joint undivided family to have self-acquired property in addition to his share in the family property? A. Yes.
- Q. You were also asked one or two questions about the meals that you ate? A. Yes.
- Q. Can you tell my Lord, you say you do not eat meat - you are a vegetarian? A. Yes. 10
- Q. And is the same thing true of the other members of your family? A. All the members of my family are vegetarian.
- Q. Can you say whether at home they drink any alcohol? A. No one is drinking alcohol in the family in the house.
- Q. You were asked a number of questions about the books and returns? A. Yes.
- Q. And you said that they were all made up by Mr. Nanda? A. Yes. 20
- Q. When did you last see Mr. Nanda? A. I think in 1953.
- Q. Have you had any communication with him since then? A. Yes.
- Q. When was that? A. At the time I received the first letter regarding this investigation.
- Q. Is that the only one? A. Yes, that was the last time I talked to him.
- Q. Have you been able to obtain any assistance from Mr. Nanda in the course of these discussions with the Inland Revenue? A. I could not get any assistance from Mr. Nanda. 30
- Q. You were asked about two remittances that were made to India each of Shs.15,100/-. A. Yes.

Q. You told my Lord that that did not represent your own money? A. Yes, it is true.

In the Supreme Court

Q. To whom did these sums belong? A. One amount belonged to Chanan Singh, and other amount belonged to Fakir Singh.

Appellant's Evidence

No. 34

Q. Can you say that how this money came to be in your hands? A. Those amounts were given to me by them in cash.

Rattan Singh
Re-
Examination
8th June 1960
(Continued)

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Q. Did they come from India in the first place? A. They came from India on permit.

Q. Did they work for you for a time? A. Yes.

Q. And how long did they work for you? A. For a period of 5 years approximately.

Q. What were the years? A. I do not remember the years, but they came on permit which was valid for 4 years, and then it was extended for another one year and after that period they return to India.

20

Q. And you say they were working for you during the period they were here? A. Yes.

Q. And did they not offer any money to you. A. Yes.

Q. What were the sums which they entrusted to you? A. Each one of them entrusted to me Shs.15,000/-.

30

Q. Was it Shs.15,000/- exactly, or might it have been little more or less? A. It was Shs. 15,150/-, because the idea behind it was to have R.10,000 and they paid 150/- extra to cover the commission charges.

Q. What were you to do with the money? A. They requested me to remit these amounts to India.

Q. And did you do so? A. I did so.

Q. Did you transmit it to your own account? A. Yes, sir.

Q. At which bank, A. Imperial Bank, Jullundur.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Re-Examination 8th June 1960 (Continued)

- Q. Can you tell us whether any of that money has since been paid over to either of these gentlemen? A. Yes.
- Q. How did that happen? A. The house which I had purchased in Delhi - the rent of that house is being received by these two gentlemen.
- Q. When did you make that arrangement with them? A. In 1956.
- Q. Was that when you went to India? A. I went to India in 1955. 10
- Q. Did you see them there when you went to India? A. Yes.
- Q. Was it during the course of that visit that you made an arrangement about the rents of the house at Delhi? A. Yes, Sir.
- Q. You were asked about certain insurance premiums which were claimed in your tax returns? A. Yes.
- Q. And you were asked about the premium - I think it was Shs.1,618/-. It was put to you that you claimed for these premiums in 1950, 1951 and 1952? A. Yes. 20
- Q. Did you at any time have an insurance policy with the Bharat Insurance Company, that is a Delhi Company? A. Formerly it was at Lahore, now it is at Delhi.
- Q. And did you at any time have a policy with the Bharat Insurance Co. on which you paid this annual premium of Shs.1,618/-? A. Yes, I had taken the policy from the Bharat Insurance Co., but I did not receive the documents. 30
Yesterday I tried to find the receipt from my office, but could not.
- Q. I ask you to look at your cash book for February 1949, at an entry underlined in pencil. (shown to witness). What is that entry? A. Bharat Insurance Co. - the amount is Shs.1,618/-.
- Q. If you will go back to March, 1948, the second entry is 5th March, 1948? A. Yes. 40

Q. There is a similar entry in respect of the Bharat Insurance Co.? A. Yes, sir.

In the Supreme Court

Q. So that you paid premium on this policy in 1948 and 1949? A. Yes, sir.

Appellant's Evidence

Q. What happened about this insurance policy?
A. Since I was not in possession of any documents about this insurance policy, I suggested my clerk to make enquiries in this connection, but he did not make any enquiries.

No. 34

Rattan Singh
Re-
Examination
8th June 1960
(Continued)

10 Q. So far as you know, were any further premiums paid on this policy? A. I do not know, but in connection with a new policy three premiums have been made.

Q. With whom was the new policy - which Company?
A. That is also the Bharat Insurance Co.

20 Q. Now you were asked yesterday about your household expenses. Can you give the Court an estimate of household expenses each month? A. A rough estimate may be between Shs.900/- and Shs.1,000/- but I have not kept any precise account.

Q. Do you remember answering certain questions put to you by Mr. Bellman? A. Yes.

Q. And did you tell Mr. Bellman that you would give him a written answer saying that you estimated your household expenses at £600 a year?
A. Yes.

Q. I think that you have discussed with your sons certain figures, have you not? A. Yes.

30 Q. Look at those figures, first of all for the year 1946, what is the first entry there? A. The first entry is £360 in respect of food.

Q. What is the next one? A. The second item is £48 in respect of water and light.

Q. The next item? A. The next item is £12 for education.

Q. What is the next item? A. That is £5 for rates.

Q. Next? A. £60 for car.

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh
Re-
Examination

- Q. Next? A. £50 for clothing.
- Q. Next item? A. £50 - general.
- Q. What is the total? A. £585.
- Q. I think there is a similar calculation for each of the next 7 years? A. Yes.
- Q. What is the total for 1947? A. £598.
- Q. 1948? A. £618
- Q. 1949? A. £265
- Q. 1950? A. £616
- Q. 1951? A. £632
- Q. 1952? A. £661
- Q. 1953? A. £638
- Q. Can you tell my Lord why it is that the figure for 1949 is so much lower? A. At that time my son had gone to England and my wife and I had gone to India.
- Q. So you were not here for the whole of the year? A. I stayed in India for 4 months.
- Q. You were asked about medical expenses. Can you give any sort of indication as to what proportion of the amounts spent on medical expenses was for your workers and what proportion was for your family? A. I cannot.
- Q. Can you say whether the greater part of it would be for the workers or the greater part for the family? A. I think the greater part of the expenses was in respect of labour.
- Q. Could you give an indication as to the number of workmen whom you employed? A. I cannot tell off-hand; it must be in the muster roll.
- Q. I don't want the exact number. Did it vary from time to time, the number you employed? A. Yes, it varied from time to time.

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In the Supreme
Court

Appellant's
Evidence

No. 34

Rattan Singh
Re-
Examination
8th June 1960
(Continued)

- Q. What would be the greatest number that you would employ? A. There were 100 Africans and 30 to 40 Asians.
- Q. That would be the maximum number? A. Yes, sir.
- Q. Would you look at the muster roll book. (Shown). Look at the month of July, 1951. Does that show the number of Africans employed in July, 1951? A. This shows the number of employees as 87.
- 10 Q. Now look at February 1953. How many were employed? A. 52.
- Q. If you look back to January it is a smaller number? A. 39.
- Q. Were all these workers all covered by this arrangement for medical attention?
A. Yes, sir.
- Cash book put in as Exhibit 5.
Muster Rolls put in as Exhibit 6(1), (2) and (3).
- 20 Q. You were asked about legal expenses and you said that suits were filed on behalf of your business by your Advocates. A. Yes, sir.
- Q. Can you remember who your Advocates were?
A. One was Mr. Kean; the second was Mr. C. R. Mandavia; the third was Mr. Khanna.
- Q. Did Mr. Khanna do much work for you during 1947 and 1953? A. Yes, sir.
- 30 Q. And was that all in connection with your business? A. Yes, sir.
- Q. Would you look at that document? (Shown).
A. Yes, I see the name of Messrs. Khanna.
- Q. Does that give particulars of the fees charged to you for professional services by Messrs. Khanna beginning in 1943 and continuing up to the end of 1953? A. Yes.
- Q. Can you say whether all that work was in respect of your business. A. Yes, business

In the Supreme Court

Appellant's Evidence

No. 34

Rattan Singh Re-Examination 8th June 1960 (Continued)

as well as private.

Q. What private litigation was involved?
A. It was a dispute which I had with my stepmother.

Q. Apart from that dispute, did you have any other private litigation? A. No, sir, I did not have any other private litigation.

Fees list put in as Exhibit 7.

JUDGE: Have you been through this list, Mr. Foot. 10

MR. FOOT: I have not been through it in detail.

JUDGE: I see that there are certain items in respect of a criminal appeal, there are certain items in respect of transfer of property and there is one item in relation to some assessment case, which I assume to be under the Rent Restriction Ordinance. I do not know whether that can be regarded as litigation in the course of his business. 20

MR. FOOT: I would have thought that the assessment for the purpose of the Rent Restriction Ordinance is in connection with his income from rents. He has two sources of income: He is a business man and a landlord, and I would submit that he is entitled to charge anything that he necessarily incurs. 30

JUDGE: It merely refers to an assessment case.

MR. FOOT: I will put it to the witness.

Q. Can you remember any proceedings before the Rent Control Board?
A. Yes.

In the Supreme
Court

Appellant's
Evidence

No. 34

Rattan Singh
Re-
Examination
8th June 1960
(Continued)

Q. What were those proceedings - what can you recall about them? A. It was in connection with the rent of property in 6th Parkland Avenue. The tenant who was first occupying those premises was paying rent Shs.900/- monthly, and then he took this method of rent to the Rent Control Board.

10 (To Judge): Your Lordship drew attention to a criminal appeal. You will see that is an item which is wrongly debited. That is a credit to him. My junior has added up these sums; they come to a total of Shs.32,018/-.

MR. NEWBOLD: Your Lordship, it makes my task quite impossible when for the first time things of this nature are produced in re-examination.

20 JUDGE: It cannot be helped. Mr. Foot is entitled to elicit these facts in re-examination to show that it was a perfectly proper claim.

MR. NEWBOLD: I challenge it in this way, you were asked to produce these accounts to the Inland Revenue and you never did.

MR. FOOT: My instructions are that this document was shown to the Inland Revenue.

30 JUDGE: Whether it was or was not, it seems to be perfectly proper for the course to be adopted which has in fact been adopted.

Q. I want you to look at two references here on page 6 and page 7 where an "X" has been put. There are two references to an agreed fee with reference to Bassan Kaur?
A. Yes.

40 Q. There is an item on p. 6 of 8/- and another item by cheque re costs c.c. 742/51 - Bassan Kaur 160/-. How did that litigation end? A. The opposite party appealed against the decision of this case and their appeal was dismissed.

In the Supreme Court

Q. You were successful in that litigation?
A. Yes.

Appellant's Evidence

No. 34

Q. Do you remember drafting some grounds of appeal yourself or signing some grounds of appeal on 29th September, 1958?
A. Yes sir.

Rattan Singh Re-Examination 8th June 1960 (Continued)

Q. I suppose you had some assistance in drawing it up? A. Mr. Shaffie and Mr. Bellman prepared these grounds and asked me to sign, and I signed.

10

Q. I think it was forwarded to Mr. Bachgaard, who was then acting for you. A. Yes, sir.

Q. So that document was read through to you? Did you read it yourself before signing it. A. I do not know how to read English; it was not read by me, they read it.

Q. They read it to you? A. Yes.

20

Q. Do you remember it containing this passage: "Profit on sale Grogan Road building?
A. Actually I did not want to sell this property; it was sold only for the reason that I had no money to start. Moshi National Bank of India building contract which had been awarded to me during that month"?
A. Yes sir.

Q. (Continues reading) : "As the profit on Moshi contract"
Is that correct?
A. Yes, sir.

30

Q. You were asked about the Shs. 30,000/- that you remitted to India which had been given to you by your mother. Did you tell Mr. Thian about that?
A. Yes.

Gian Singh

Appellant's
Evidence

GIAN SINGH, sworn

No. 35

Examined by MR. DINGLE FOOT:

Gian Singh
Examination
8th June, 1960

- 10 Q. Is your name Gian Singh? A. Yes.
- Q. Are you the eldest son of the last witness?
A. Yes.
- Q. Do you live in the same house with him?
A. Yes.
- Q. I think that you are an architect by
profession? A. Yes.
- Q. When were you born? A. 25th August, 1931.
- Q. And do you remember your grandfather Nagina
Singh? A. Yes, quite well.
- Q. Can you say what the relations were between
you? A. Our relations were very close.
- 20 Q. Did you assist him at one time in his
business? A. Yes, quite a bit.
- Q. Where did you go to school? A. In Nairobi,
when I was about 4 years old.
- Q. The Gulzaar Street property - I think you
assisted your father in building that
property? A. Yes.
- 30 Q. What was your understanding of the destination
of the property after it was built? A. During
the course of the construction my grandfather
intimated that the building was purchased for
me and when it was erected it would be for
myself.
- Q. Were there certain drawings in connection with
the building? A. Yes.
- Q. Can you identify this (shown) as the drawing
used in the building of the Gulzaar Street
property? A. Yes.

In the Supreme Q.
Court

Appellant's
Evidence

No. 35

Gian Singh
Examination
8th June, 1960
(Continued)

- Q. Drawing put in as Exhibit 8.
- Q. What has been your understanding regarding the rents in Gulzaar Street? A. I have never thought of the property in connection with rents.
- Q. Do you regard the property as belonging to yourself? A. The simple fact is that it is in my name; that is all it means to me. 10
- Q. Apart from the receipt of rents, as far as you were concerned you thought the property was your own? A. Not in a monetary gain way - only as far as the name went.
- Q. We know of course that your education was paid for? A. Yes.
- Q. You went to England in which year? A. In September, 1949.
- Q. How long did you stay? A. I came back in March, 1955. 20
- Q. Can you tell us what remittances you received during the time you were in the U.K.? A. In the beginning it was not too much, about £40; and then when I went to London it went up to £50; between £40 and £50.
- Q. Will you look at Schedule C. (Shown). The first figure is Shs.2006/- in 1949? A. Correct.
- Q. For 1950 Shs.10,701/-? Yes. 30
- Q. That would be approximately right? A. Yes.
- Q. 1951, Shs.10,029/-? A. Yes.
- Q. 1952, Shs.8,016/-? A. Yes, I never used to get a monthly allowance. I need to write and say when I was in need of money.
- Q. In 1953, Shs.10,027/-? A. Yes.
- Q. So far as your memory goes, those sums are about right? A. They are approximately right.

Q. When did you become a partner in your father's firm? A. 1955 - October.

In the Supreme Court

Q. Will you say why the partnership ended?
A. It conflicted with my profession and I had to withdraw from the firm.

Appellant's Evidence

No. 35

Gian Singh
Examination
8th June, 1960
(Continued)

Cross-examined by MR. NEWBOLD.

Cross-examination

Q. You said that you became a partner in your father's firm in 1955? A. Yes.

10 Q. Did you understand that a portion of the assets were simply transferred to your name?
A. Correct.

Q. What share did you have? A. I am not acquainted with the figures, but I was told a certain sum was due to me from the rentals received from the property.

Q. Did you ever receive it? A. No.

Q. Were you ever in fact a partner? A. Yes.

Q. You never received any money? A. No.

20 Q. You never paid any sums of money? A. Not out of my pocket.

Q. What is your share in the partnership?
A. I do not know.

Q. When you retired from the partnership, did any body pay you any sum of money for your share? A. No.

Q. Did any further transaction take place.
A. No.

30 Q. No, if I understand you correctly, you became a partner without any transactions taking place, without paying any money, without knowing what your share was. You never while you were a partner received anything, and when you left the partnership no document was signed and nobody paid you anything? A. That is correct.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh cross-examination 8th June, 1960 (Continued)

Q. This drawing: I understood you to say it was used in the erection of the building in Gulzaar Street? A. This is a drawing produced from the original.

Q. When was the original produced? A. Before the building was erected.

Q. When was that? A. About 1942.

Q. That was before the building was erected? A. The drawing would have to be prepared before the building was erected.

10

Q. Is that a drawing of the erection of the building? A. This is a check of the original indicating additions and alterations.

Q. When was that document produced - what year? A. There is a date on the drawing.

Q. Look at the left hand side? A. That would indicate 1948.

Q. Do I understand you to say that this was used in the erection of the original building in 1941, but now is it not correct that that plan was produced for the first time in 1948? A. That is correct.

20

Q. Which was after your grandfather had died? A. Correct.

Q. I understand it was produced in order to satisfy the Court that this plot had been given to you by your grandfather. Is that why it was produced? A. Naturally, this drawing was overlooked.

JUDGE: Does the title appear on the original drawing? A. It would appear.

30

Q. The title appears on the original drawing in 1941? A. It might appear; I have not seen one.

Q. You have not seen it. Why do you say the title would appear on the original drawing? A. Because when my grandfather handed it to me I naturally concluded that it would have my name on it.

Q. JUDGE: Do you know or don't you? A. I don't.

In the Supreme
Court

Is that drawing still in existence?

A. I could try to trace it.

Appellant's
Evidence

Perhaps you will try and bring it here to-morrow. What about the drawing from which this was a re-production?

A. It was from the original.

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Will you look for that too?

Gian Singh
Cross-
examination
8th June, 1960
(Continued)

10

Q. Mr. Gian Singh, did you have an interview with Mr. Easterbrook on one occasion? A. Yes.

Q. When he spoke to you about your income and your assets? A. I do not recollect the terms of the interview.

Q. What was he interviewing you about? A. Generally in connection with the partnership.

Q. Did he not ask you what property you had? A. Not that I can recollect.

20

Q. But he asked you what income you had? A. I cannot remember.

Q. What was he asking you? A. He was not interviewing me directly; he was talking to the other people who were being interviewed.

Q. He did not speak to you about this property in Gulzaar Street? A. I cannot recollect.

Q. Do you recall at any time having told Mr. Easterbrook that you know anything about this property? A. No.

30

Q. You do not recall Mr. Easterbrook talking to you at all about this property? A. No.

Q. As far as you can recall, he was asking you only about your partnership assets? A. That is correct.

Q. When you returned, did you enter into any employment? A. Not immediately.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh Cross-examination 8th June, 1960 (Continued)

- Q. Subsequently? A. Yes.
- Q. When was that? A. In September, 1955.
- Q. With whom? A. With a firm of architects, Jackson & Hill.
- Q. In September, 1955? A. Yes.
- Q. Between March, 1955 and September, 1955, were you employed at all? A. I was looking after my father's business.
- Q. Did you receive any money? A. I just took what I needed, but not in the form of salary; it was mainly confined to my out of pocket expenses. 10
- Q. When you were employed in September, 1955, what was your salary? A. £60 a month.
- Q. Is that the salary which you continued to receive thereafter? A. I was given a rise.
- Q. Are you still employed by Jackson & Hill?
A. No.
- Q. Have you ever invested any money with a Mrs. Taylor in the form of dancing licence? 20
A. Yes.
- Q. Did you in fact provide the money for the opening of this school? A. No.
- Q. How much money did you provide? A. Not more than £10.
- Q. That is all the money you paid to Mrs. Taylor?
A. Yes.
- Q. £10? A. Yes.
- Q. Is it correct that all the money you have given would be £10? A. At one time, yes. 30
- Q. How many times have you given her money?
A. I was taking dancing lessons for a number of months.

Q. At £10 a lesson? A. The fees were, I think, about £6 for a course of lessons.

In the Supreme Court

Q. How many courses of lessons did you have?
A. I cannot remember, but they were spread over a period of about a year to 15 months.

Appellant's Evidence

No. 35

Q. I suggest that you were entertaining a lot of people at restaurants and things of that sort?
A. It is possible.

Gian Singh
Cross-
examination
8th June, 1960
(Continued)

10 Q. I suggest that you expended considerable sums of money on entertainment? A. Not more than that I earned from my job.

Q. Would it be incorrect to say that the money you received in England you assumed was your father's money? A. No.

Q. So would it be correct to say that you assumed it was your father's money? A. Yes.

20 JUDGE: When did you first become aware that the Gulzaar Street premises had been placed in your name? A. Ever since I was 10 or 11 years old.

Q. When you were answering my learned friend you said that you never thought of it, the Gulzaar Street money, as mine. It was mine as far as the name went? A. Correct.

Q. What did you mean by that? A. Obviously the property created a certain amount of rent collected by my father, but I have never looked upon that money as mine personally.

Q. It is a family system? A. Yes.

30 JUDGE: What about your salary as an architect? Does that go into the family too? A. Not at the moment. I did make an offer to my father when I took this employment.

And you live at home? A. Yes.

You have no living expenses; your £60 is entirely your own? A. Quite correct.

Q. You still live at home? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh
Cross-examination
8th June, 1960
(Continued)

- Q. You have a car? A. Yes.
- Q. How long you had a car? A. Since I came back from England.
- Q. What sort of car? A. A Pontiac.
- Q. Which you received on your return from England in 1955? A. Yes.
- Q. Did you pay for it? A. No.
- Q. Have you still got that car? A. No.
- Q. Have you got another car now? A. Yes.
- Q. What sort of car? A. A Chevrolet. 10
- Q. Did you pay for that? A. No.
- Q. Apart from the Pontiac and the Chevrolet, have you any other car? A. Yes, a Chevrolet again.
- Q. If I understand you correctly, between the middle of 1955 and the middle of 1960 you have had 3 cars, all new? A. Correct.
- Q. The Pontiac and 2 Chevrolets? A. Yes. Correction there: 3 Chevrolets.
- Q. None of which you paid? A. No. 20
- Q. Do you know the approximate value of these Chevrolets? A. Every time I changed my car I bought a model of the previous year when it was almost on the shelf, which meant that I had to pay very little to change that car for a new one.
- Q. Your father paid for those cars? A. Correct.
- Q. Do you know where he paid from? A. From the firm's account.
- Q. Do you recall the price of the Pontiac? A. I think it was in the region of £1,300. 30
- Q. Do you know how much was paid for the first Chevrolet?

- Q. JUDGE: Was that a trade in? A. Yes.
- What happened to the Pontiac? A. It was involved in an accident.
- Q. Have you no idea of the cost of the Pontiac?
A. About £1,200.
- Q. Or more? A. Not very much more.
- Q. And the subsequent Chevrolet was a new one?
A. Yes.
- Q. Do you know the price of that? A. Again about £1,250.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh
Cross-
examination
8th June, 1960
(Continued)

10

JUDGE: Did you have to pay for that? A. I sold my previous car and paid the money I received for it into Motor Mart, and the remainder was added from the firm to pay for the new Car.

The third car was a trade in? A. Yes.

What happened to the Pontiac after the accident - who got the insurance money?
A. We still have the car.

- 20 Q. Your brother Surjeet Singh also has a car?
A. Yes.
- Q. And he has had a car ever since you have been here? A. Yes.
- Q. What sort of car has he got now? A. A Ford.
- Q. Do you recall when he got that? A. About May.
- Q. Before that he had what? A. A Ford (Consul)?
- Q. Before the Ford Consul what did he have?
A. A Ford Zodiac.
- Q. Before the Ford Zodiac? A. A Ford Zephyr.
- 30 Q. He had all those cars since you returned in 1955? A. Correct.

In the Supreme Court

Q. Before that what did he have?
A. A Pickup.

Appellant's Evidence

Q. By Pickup you mean a station wagon?
A. A small truck.

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Q. Were all these vehicles provided by your father for his children? A. Correct.

Gian Singh Cross-examination 8th June, 1960 (Continued)

Q. Did you have a car before you went to England? A. No.

Q. Have you ever had meals at the Salisbury Hotel?
A. I might have had. 10

Q. May I suggest that you have had on a number of occasions?
A. It is possible.

Q. I suggest that you too a party there?
A. It is possible.

Q. I suggest that the bill very often was £30 a night?
A. That is incorrect.

Q. I assume that the party you did take were not male parties - there were ladies present?
A. It is possible.

Q. May I suggest that there were a number of European ladies present?
A. It is possible. 20

Q. I suggest that you were living at a very high rate indeed and you have been for a long time?
A. That would not be correct.

Q. Do you say that your father has never provided you with money since you came back here?
A. He might have done in the form of gifts of £5 or £10 - but nothing substantial.

Q. Do you know anything about the figures involved in this case?
A. No. 30

Q. So that, apart from the question of this property in Gulzaar Street, you are unable to help us in this matter?
A. That is correct.

Court adjourns at 12.45 p.m.

C.A.S.4/59 to 11/59 Rattan Singh v The Commissioner
of Income Tax

In the Supreme
Court.

Wednesday, June 8th, 1960, at 2.15 p.m.

Appellant's
Evidence

RE-EXAMINATION OF MR. GIAN SINGH (Cont'd)
BY MR. FOOT.

No. 35

Witness warned still on same oath.

Gian Singh
Re-
examination
8th June, 1960

- 10 MR. FOOT: You were cross-examined before lunch by
My Learned Friend and you were asked some
questions about your partnership, do you
remember? A. Correct.
- Q. And you said you didn't receive any money
while you were in partnership? A. Correct.
- Q. You didn't receive any salary? A. Correct.
- Q. And you said that you did not pay anything, nor
indeed was any document drawn up and you
retired from the partnership? A. Correct.
- Q. Did you hear your father give evidence this
morning? A. Yes.
- 20 Q. When he said that you were all members of an
undivided Hindu family? A. Correct.
- Q. And what was the arrangement if you needed
money, what did you do if you wanted money?
A. Before I take this employment I used to go
up to my father and ask for it and since then.
- Q. I am talking about earlier? A. I used to go
up to my father and take money from him.
- Q. When you needed it? When I needed it.
- Q. Did your brothers do the same? A. Yes.
- 30 Q. And they were all drawings were they on the
family property? A. Correct.
- Q. Can you say whether that is a common arrange-
ment in an undivided Hindu family? A. It
certainly is the arrangement in our house.
- Q. It is certainly the arrangement in your family?
A. And it complies with Hindu laws.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh
Re-
examination
8th June, 1960
(Continued)

Q. I don't know whether you can say whether it is common among other Hindu families?
A. It is generally accepted.

JUDGE: This may give rise to the interesting question whether people who are living in such an undivided family can at the same time be within the contemplation of law, partners in a business, all of the partners of which are members of that undivided family, but if there is no account taken of the profits attributable to each member of the family, can it be said that they are carrying on business in partnership within the contemplation of English Law. 10

MR. FOOT: I respectfully agree, My Lord, it might create the most difficult legal problems. We are dealing here with a period after the years with which Your Lordship is concerned in this case; the partnership was not gone into until 1955. 20

JUDGE: Then why are we going into it?

MR. FOOT: Perhaps Your Lordship might have to decide.

JUDGE: Not if I can possibly avoid it, Mr. Foot.

MR. FOOT: You were asked about an occasion when you attended for a meeting with Mr. Easterbrook, remember? A. Yes.

Q. And you attended with your father and each of your three brothers and Mr. Thian, Mr. Easterbrook, Mr. Field and Mr. Hammond? 30
A. Correct.

Q. On the 6th February, 1958, and it was suggested to you that nothing was said then at that interview about your title to the Gulzaar Street property or the rents arising therefrom? Has Your Lordship got the document - it is in front of you it is 6th February, 1958. There are two references to you, Mr. Gian Singh, the first one is in Paragraph 3. My Lord, it is the written document after the typed document, there are two pages of manuscript, it is headed "Information received, matters agreed and disagreed during interview held 2.30 p.m. 6th February 1958." Your 40

Lordship will see Paragraph 3. "Gian Singh went to England in September 1949. When he was in England he received money from his father. He assumed his father was sending his own money, i.e. father's money. Gian had no knowledge of any money in the business." That was correct? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 35

10 Q. If Your Lordship will go over the page in paragraph 10. "Thian will supply a reconciliation of the rents..... with balances and rents due" I don't know if you have any recollection, there was a mention at this interview of the rents that were due to you. I don't know if you can remember that?
A. I cannot remember that.

Gian Singh
Re-
examination
8th June, 1960
(Continued)

JUDGE: Have you considered Paragraph 3 Mr. Foot, on the typewritten portion of that document.

20 MR. FOOT: I had not, but My Lord, there appears to have been there seems different views at different times.

JUDGE: That may be.

MR. FOOT: Even so.

JUDGE: The importance of that passage from my standpoint is this. That that would appear to render it quite clear that at that interview it was stated that the property was Gian Singh's property; that would appear quite clear.

MR. FOOT: Oh yes.

30 JUDGE: My recollection is that this gentleman had no recollection of it having been mentioned at that interview.

40 MR. FOOT: My Lord, what was put in cross-examination was - it was I think suggested to the witness that at the interview he had been asked some questions, and that he had said nothing to indicate that he had any settled property. That was I think the effect of the cross-examination put to him by My Learned Friend, and it does appear quite clearly that on these two occasions this question of settled property was mentioned.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh
Re-examination
8th June, 1960
(Continued)

MR. NEWBOLD: My Lord, if I may say something. I never said that the question of settled property was not mentioned. Time and time again it was mentioned and it was supposed to be Gian Singh's. That I think has never been disputed; the question was whether in fact it was Gian Singh's.

MR. FOOT: I am sorry, I may have misunderstood My Learned Friend's cross-examination.

JUDGE: So did I, Mr. Foot, so did I.

10

MR. NEWBOLD: Mr. Gian Singh never said that the money was provided by his father. No one has ever disputed that the property is in Gian Singh's name. The point was it was supposed to be provided by Rattan Singh in which event Section 24 applies.

MR. FOOT: You were asked about motorcars, did you have any motorcar before you went away?

A. No.

Q. That was in 1949? A. Correct.

20

Q. Can you remember what car if any the family possessed at that time? A. I remember there was a truck, a pick-up truck.

Q. In 1949? A. Yes and there was a saloon car that was purchased.

Q. For what purpose was that used? A. It was never in running order to tell you the truth.

Q. It was never in running order? A. No.

Q. What did the family do for transport? A. They mostly used the truck.

30

Q. You were asked about the cars that you, and at least one of your brothers had, are those cars used simply for pleasure or in connection with the business? A. They were used in connection with the business as well as for pleasure.

MR. FOOT: Thank you. Before Colonel Bellman gives evidence I wonder if I might mention one other matter. There was the question of the drawings put in this morning, and the question was raised as to the original drawing. My Lord, the drawing we have not ascertained is in the possession of the City Council, and it is recorded that the name Gian Singh does appear there and it is dated 6th August, 1941. It would require an Order of the Court to bring it here.

In the Supreme Court

Appellant's Evidence

No. 35

Gian Singh
Re-
examination
8th June, 1960
(Continued)

JUDGE: Do you want such an Order, Mr. Newbold?

MR. NEWBOLD: No I don't think so, My Lord.

JUDGE: We can take it then that the name of Gian Singh appeared on that drawing.

MR. NEWBOLD: No, My Lord, I should like the original examined, but I will do that without an Order. If it should transpire that there should be any reason that the drawing should be brought here, then My Learned Friend and I can then ask Your Lordship for an Order.

JUDGE: Most certainly.

NO. 36

John Francis Bellman

No. 36

JOHN FRANCIS BELLMAN, duly sworn

John Francis
Bellman
Examination
8th June, 1960

EXAMINED BY MR. FOOT:

MR. FOOT: What is your full name? A. John Francis Bellman.

Q. You are I think a Chartered Accountant?
A. Yes, qualified 1920.

Q. How long have been in practice in Nairobi?
A. 5 years.

Q. I think you were formerly a partner in Thian, Bellman & Co.? A. Three years Sir.

Q. Mr. Bellman, I will ask you to deal with one

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
Bellman
Examination
8th June, 1960
(Continued)

particular matter; you I think came into these negotiations at rather a late stage? A. 1954 onwards I came into the picture.

Q. Was it you who assisted Mr. Rattan Singh to draw up the Return for the year 1954? A. Yes 1954 onwards.

JUDGE: I must have misheard, my note is he had been in practice in Nairobi for 5 years.

MR. FOOT: Yes, three with Thian, Bellman and two with Cook, Suttan & Co. 10

JUDGE: We are now in 1960.

WITNESS: I didn't come into the picture until 1957; all this work on Rattan Singh was done in 1957 but it was for the year of Income 1954.

JUDGE: I see.

MR. FOOT: Have you got that document there?
A. I have got a copy of the Income Tax Return for 1954 for Rattan Singh which was dispatched to the Income Tax Authorities on the 3rd May, 1958. 20

Q. There is an entry there, if you look at that, relating to Gian Singh, is there not?
A. Under the Childrens' Allowances, "Inderjit Singh, Gian Singh boarding fees £164, studies fully maintained for the year and has no income of his own."

Q. Can you explain why that statement appeared that he had no income of his own? A. Yes Sir, quite clearly the Income Tax Authorities following on 1953 would not allow him to show any income to Gian Singh for his rents until 1956, so that Gian did not get the benefit of the rents; therefore in my opinion he was quite entitled to the allowance for maintaining the child. 30

Q. Had you maintained to the Income Tax Authorities that Gian Singh's income should be allowed?

In the Supreme Court

A. I was of the opinion and I am still of the opinion that Gian Singh should have the rents.

Appellant's Evidence

Q. You had already represented that in your view?

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A. I represented that on the 28th April, 1958, when I was there with Surjit Singh.

John Francis Bellman
Examination
8th June, 1960
(Continued)

10

Q. But the Income Tax Authorities would not have it? A. They would not allow Gian Singh's rents to be brought into his income, but it had to go to Rattan Singh, and as it was done in 1953, I felt I had to follow the same procedure in 1954.

Q. It was for that reason that you filled in the Income Tax form in that way? A. Without doubt.

20

Q. Why was that particular figure put in - I think it was £160? A. It was given to me by the father. He said that it was approximate, although he allowed £500 I think he said boarding costs were about £164; the heading actually reads 'Boarding Fees' - the figure was given to me by his father, Mr. Rattan Singh.

Q. Now you were advising Mr. Rattan Singh at this stage? A. I was Sir.

30

Q. Had he any particular understanding of the accounting side of his business? A. If I might put it bluntly, not very strong Sir, but he relied very largely on his younger son, Surjit Singh, who had a very full knowledge of Accounts.

40

Q. Did you write a letter specifically mentioning the 1954 Return? A. Yes, I sent it on the 3rd May, "With reference to my visit to your office on 1st May, 1958.....
ITLK for 1954 and this is now enclosed and no doubt I will receive the assessment in due course."

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960

CROSS-EXAMINED BY MR. NEWBOLD.

MR. NEWBOLD: Mr. Bellman, when you say the Income Authorities did not allow you to show Gian Singh's property separately, do you mean the Income Tax Authorities said that the amount was assessable on Rattan Singh? A. Assessable on Rattan Singh, yes.

Q. There was nothing to prevent you showing that as Gian's income no matter how the Authorities might assess it? A. I following the precedent of 1953. 10

Q. Yes, but at no time did any member of the Income Tax Department say that you could not fill in in this claim the rents due to Gian Singh? A. They said it was Rattan Singh's income not Gian Singh's, therefore it was included in Rattan Singh's income for 1953 and 1954.

Q. It was assessable on Rattan Singh? A. Yes.

Q. There was never any question of telling you you could not put it in that claim under Gian Singh? A. It was not to be deemed Gian Singh's income, that is the point I am getting at. 20

Q. I see. You were a partner in the firm of Thian, Bellman & Co.? A. I was Sir.

Q. It was that firm which was employed to investigate Mr. Rattan Singh's Accounts, employed by Mr. Rattan Singh? A. That is correct Sir.

Q. And to make a report to the Income Tax Authorities with the objection of showing his income for the years under review? A. That is correct Sir. 30

Q. I suppose as a partner in the firm that you were aware generally of the position? A. Very meagrely Sir, I came into that one interview with Rattan Singh and I think Surjit Singh when Thian was away, and I took notes, but generally speaking, I had nothing whatever to do with the investigation prior to 1953. 40

- Q. Mr. Thian was suppose to investigate? A. He did the entire work.
- Q. Mr. Thian is in Nairobi is he? A. Oh yes.
- Q. At some stage you came into the picture after Mr. Thian had made his report? A. If I might put it in this way. Thian was the Income Tax and Company Law and formation of companies and that sort of work, and I was the audit side, so that when Rattan Singh wanted the books audited for 1954 onwards I naturally took on the work.
- Q. When was the first interview in relation to the years under review in this case? A. I had one interview when Thian was away in England or absent from the office and Easterbrook wanted something urgently.
- Q. On the 13th December 1956? A. I think it was; if I could see the questions and answers I could confirm it straight away.
- Q. Here is a copy of an interview between yourself and Mr. Easterbrook? A. I had one in my own office when I asked certain questions Sir.
- Q. Before that you had a discussion with Mr. Easterbrook on this matter on I think it was 13th December? A. I agree although I must say I was really only on behalf of my partner at the time.
- Q. That was after the report had been made. Do you remember that Mr. Easterbrook discussed with you that he was a little disturbed about the form of the report? A. Yes it is coming back to me now, and I repeated the case to Thian when he came back.
- Q. And in particular what was worrying him was the details of the drawings? A. Particularly the drawings and particularly the breakdown year by year.
- Q. In this you said, "During the course of the discussions..... cash transactions." Do you remember saying that? A. Cash as opposed to Bank; in my last 4 years I have been dealing with that from the muster rolls.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

I have had to depend on the actual rolls for all actual cash expenditure and built it up for each year rather than day by day in the Cash Book.

- Q. There were no records of day by day entries in the Cash Book? A. No Sir.
- Q. Would you agree with me that the result of such a system could be - could be -, I don't say was - could be that cash can be paid by a debtor, never entered in the books, utilised by Mr. Rattan Singh and never in any way whatsoever be disclosed? A. The possibility exists, but on the other hand the type of work carried out is not of such a nature that I would normally expect a debtor to pay in cash, but it might be, there is a possibility, but I would put it the other way, there is a bigger possibility of omitting getting a receipt for payment made. 10
- Q. Where, however, you don't enter your cash transactions, it leaves it open to the picture of income being completely incorrect one way or the other? A. I think he has come to my conclusion about the importance of that factor because I keep on telling him about it, but even up to this 1959 year I have not still had the entries made in the Cash Book. I cannot do more; it is in my report to the Income Tax Authorities under Section 81 and 82. 20
- Q. That leaves it quite open to the Return of Income being inaccurate based on such records as you have being inaccurate one way or other other, isn't that so? A. The possibility is there, no doubt at all. 30
- Q. In fact as a Chartered Accountant - you must have had quite a considerable amount of experience? A. I am satisfied that I have got a considerable amount of experience.
- Q. You will agree with me that one of the easiest ways of depressing your income is not to enter cash transactions? A. I agree one hundred per cent. In this case, however, in this type of business dealing with rather large contracts, normally they would be paid by cheque. Rattan Singh hardly ever carried out any private work, 40

and therefore, I should think the probability of cash payments, except for rents, is very remote.

In the Supreme Court

- Q. As far as any of the major transactions are concerned, it is not the type of business in which transactions would be paid for by cash?
A. I would doubt it; not in my time anyhow.

Appellant's Evidence

No. 36

- 10 Q. You were in from 1954 onwards? A. Yes, I didn't come into it till 1957, so 1954 was the first year, though I would not give much as to the accuracy of the Accounts.

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

- Q. When you came into the picture Mr. Rattan Singh was a contractor in quite a big way? A. Yes and a very worried man.

- Q. You cannot tell of your own knowledge of the kind of business he was doing in 1946 to 1948?
A. I can only presume it was the same one. I think it was two or three Government contracts which presumably carried a very small percentage of profit.

- 20 Q. You have said that you would stress the importance of the muster rolls, have you made sure that the muster rolls are right?
A. I have the muster rolls complete from 1954 onwards.

- Q. If these muster rolls are not correct then it is quite obvious is it not that there can be no accurate statement of the amount of expenditure?
A. Are you referring to labour.

- 30 Q. Labour? A. Behind the muster rolls are the Work Books. As an Accountant I check one or two months of the Work Books, therefore, I am normally satisfied that the muster rolls as presented to me and as entered in my Accounts are correct.

- Q. Except the money on labour which was not on the muster rolls? A. You have got to pay on Work Books.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

Q. And if no Work Books were produced to you what would you say then? A. I would comment very severely. In my percentage check I did not find any omission or discover any omission from my Work Books.

Q. From 1954 onwards? A. Yes, 1954 might be a bit hopeless, but after that it was what I thought it should be.

Q. In Mr. Thian's report, the muster rolls for the period from 1948 to 1953, a period of six years, show a deficiency as respects the expenditure alleged to be on labour of £22,000 odd. In other words, he is supposed to have expended a sum of £22,000 more than is shown in the muster rolls, £23,000? A. Well Sir, I am not concerned with that period, there is a possibility that muster rolls are not complete.

10

Q. It is a possibility a very large possibility, but would you agree that the fact that a figure of that magnitude is not shown in the muster rolls makes you cast a little doubt upon the figures in relation to expenditure on labour? A. Again I know nothing for this period. Were the muster rolls complete for this period, if they were not, how can you prove any justification for facts.

20

Q. That is exactly what I hoped you would say. How can you say that these figures bear any relation to the facts. When on top of that there is a difference of nearly £1500 of expenditure for which there is no record at all in the Cash Book, would you say that in the light of that, it would be extremely difficult to arrive with any degree of certainty at the amount of income? A. My Lord, may I appeal to you. Should I be heckled with these questions about 1946 to 1953 when I know nothing about them.

30

JUDGE: I think you are being asked as an Accountant of experience to answer questions of a general nature. I think the proposal Mr. Newbold has put to you is that if the books of a concern, whether you have audited them or not, over a period show a deficiency or rather unbalanced to the extent of £23,000, would you be able to

40

place any reliance on those books? A. Is not it correct that the Cash Book for 1947 or even 1948 is not there, therefore how can you get any figures to work on at all.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

MR. NEWBOLD: I am not I hope heckling. Why are you required to be heckled by me on this matter. I resent that remark, Mr. Bellman.

WITNESS: I am sorry.

10 MR. FOOT: If My Learned Friend to going to cross-examine and put questions in this way and ask questions about £22,000 that is not put to Mr. Rattan Singh, then he should make it clear that he is putting hypothetical questions. If My Learned Friend is saying that the muster rolls are complete and there is a deficiency that is one thing, but if he is not prepared to show that, he must make clear the basus on which his questions are put.

20 JUDGE: All Mr. Newbold has said is assuming that the books are unbalanced by £22,000, that is, they show drawings of £23,000 I think it is, which have not been accounted for, can any reliance be put on those books.

MR. NEWBOLD: The witness has said that he was a partner in Thian And Bellman and that his firm was employed to investigate this figure of £23,000. That appears in a report submitted to the Income Tax Authorities by Thian & Bellman.

30 JUDGE: I don't think, Mr. Newbold, you can expect one partner in a firm of Accountants necessarily to know the details of assessments which have been dealt with by his partner.

40 MR. NEWBOLD: I am instructed, Mr. Bellman, that you signed the letter forwarding the report? A. Again I signed possibly, I cannot remember, because Thian at that time was ill, or rather was in various places, and the Income Tax Authorities were in a hurry to get the report, and I felt justified in forwarding it.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

- MR. NEWBOLD: Having regard to what My Learned Friend has said why were these figures not put to Mr. Rattan Singh. I certainly was given to understand that there would appear to be no point in putting figures to him, and I understood My Learned Friend to say, "Let us leave it to the Accountants" and I was perfectly agreeable. These figures are taken from the report of Thian & Bellman. Although you did not work on it yourself, it is a report submitted by a firm of which you were a partner, and actually I understand submitted by yourself while Mr. Thian was away? 10
- A. I know something about it, but if I might make a suggestion. As I know Thian is in town would not it be more sensible, would not you get better results from him rather than from me.
- MR. NEWBOLD: I would entirely agree and that is why I would like to know why Mr. Thian is not here? A. I am sorry I was abrupt to you but I do think this is Mr. Thian's responsibility. 20
- MR. NEWBOLD: Apparently Mr. Thian, although he is in Nairobi, he has not been called, and the last adjournment was on the basis that he would be called because he was not here. Because Mr. Thian is not being called by his client I have no alternative but to ask you these questions.
- WITNESS: To the best of my ability I will answer them. 30
- MR. NEWBOLD: Thank you, obviously you cannot do better.
- WITNESS: If I could have a copy of the report (copy handed to witness) Are you reading first report.
- MR. NEWBOLD: The first report yes, on the years 1948 to 1953. Now the question which I think I asked you originally about muster rolls appears in that report on pages 4 and 5. You see that is a comparison apparently between the amounts entered up in the Cash Books and Figures as shown in the muster rolls? 40
- A. Yes the first two years.

- Q. Over the page at page 5. you see the words "Balance unaccounted for 439,546/-"? A. Yes.
- Q. Which is £22 - £23,000? A. But there are no muster rolls.
- Q. There are no muster rolls because they have been put in this Court and questions have been asked of Mr. Rattan Singh on them? A. Surely the explanation is - what years are these.
- 10 Q. Take it from me the first figure is for the year 1948/49. A. There were no African muster rolls included at all.
- Q. None at all. A. No Asians later on.
- Q. No Asians in 1953 and 1953. A. If you took an average of the Asians and Africans, the total Asians and total Africans, you are going a long way towards 400,000/- odd.
- Q. Yes you could get 400,000/- in a number of ways. Does that not show that there was a difference in the Cash Book showing expenditure from the muster rolls, of between £22 - £23,000 over those six years? A. Because the muster rolls were absent for two years for the Africans and two years for the Asians surely.
- 20 Q. Exactly. Does that not show that there is this difference between the expenditure entered up in the Cash Book, and the labour as shown in the muster rolls of between £22 - £23,000? A. I qualify that, muster rolls available, Sir.
- 30 Q. They are here in Court. A. All of them.
- Q. I think so, A. No Sir, I think that is where the doubt arises.
- 30 Q. Is that not shown in that report, whether it is accurate or not is a different matter? A. Surely it is shown in the report; the first two years there is no item cash value against the Africans, and the last two years there is no figure against the Asians.

JUDGE: Surely what it amounts to is this, and this alone. If you have not got muster rolls for two years, you cannot show how much was paid for labour for those two years? A. No, not correctly, but certainly in my years, there was one monthly cheque drawn for wages for

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
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(Continued)

In the Supreme Court

Appellant's Evidence

No. 36

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Cross-examination
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(Continued)

Africans and one for Asians, and I could see from his Cash Book, I could always arrive at the correct figure and support it by the muster rolls afterwards.

JUDGE: If there were no muster rolls you could not say any sum shown in the Cash Book was for wages. If I was to go and Draw money to pay the wages of my servant, and in fact I have not got a servant, you cannot say what I have used the money for? A. No, but may I quote the case of Dunkirk where all the documents were lost. I was the Unit Paymaster at the time and we had heavy unvouched for expenditure. 10

JUDGE: I think in those circumstances a certain elasticity of accounting might be understandable.

MR. NEWBOLD: What I am trying to show is the position, is that not so, that expenditure was shown in the Cash Book which was not supported by the muster rolls over these six years to the extent of £23,000? A. That is undoubtedly correct. 20

Q. That is what I asked about half an hour ago. If you turn back to Page 3. of the report. The paragraph starts "In 1948"? A. Yes.

Q. It says, "In 1948 since no expenditure..... making a total of 29,000/-" And then it continues, "These allocations are of course purely arbitrary.....owing to lack of any other information". Do you see that? A. I do Sir. 30

Q. As far as the allocation of African wages of 10,000/- is concerned, does that not mean that apart from the cash expenditure for that year not being supported by the muster rolls, in addition an amount of 10000/- has been allocated arbitrarily to cash although not even shown in cash expenditure? A. I can give no explanation of it.

Q. Does it not also mean that a sum of 7,000/- odd has been allocated by Mr. Thian for travelling expenses, which are not supported in any way whatsoever by vouchers or any other documents? A. The facts appear to be so. 40

Q. When you saw Mr. Easterbrook on the 13th December following the sending in of this report Mr. Easterbrook said that he was a little worried about the form of the report, of the drawings etc. and you were asked to look in the matter. Mr. Thian was away? A. He was only away at the time of the interview, I am speaking from memory, he was back in a few days and he dealt with the question after that.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

10 Q. This is a copy of the note of the interview of the 13th December. Has Your Lordship got it?

JUDGE: Yes.

MR. NEWBOLD: At the bottom of the first page, you see there the following, "Easterbrook told Bellman.....held at Gill House." Do you remember discussing the question of capital worth with yearly rests? A. Very clearly and I told Thian about it.

20 Q. Down at the bottom of Page 2. do you see the last two questions, "During the course of a discussion.....completely omitted from business records." Do you remember that? A. I do, Sir.

Q. And you would agree would you - in fact you have already agreed - that later on at that interview Mr. Surjit Singh and Mr. Shaffie arrived, didn't they? A. That is correct, Sir, that is 3. and 5.

30 Q. There had been some earlier discussion about the fact that a certificate of full disclosure had not been transmitted with the report? A. So I gather, Sir.

40 Q. And when Mr. Surjit Singh and Mr. Shaffie arrived there was further discussion as to whether Mr. Rattan Singh would then submit a certificate of full disclosure. Do you recall Mr. Shaffie then saying that the report showed all business and personal income? You will find it on the last paragraph of page 3, "Shaffie then said emphatically..... by any person"? A. That was stated by Shaffie, correct.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

- Q. Did you know that he had specific full authority to speak for Rattan Singh?
A. I realised that he was in his confidence.
- Q. "Shaffie then said that.....was lying there untouched." You realised following that interview that Mr. Easterbrook was a little disturbed, shall we say about Mr. Rattan Singh's Accounts? A. Yes Sir.
- Q. And for that reason I take it that you took every step to ensure that when this certificate of full disclosure was sent it would be read with the report? That that report and the certificate should be as full and complete as lay within your power and the power of your firm? A. I went through it very carefully with Mr. Rattan Singh and Mr. Shaffie. Each question I went through and I said, "Do you understand the question, and do you understand the answer", with the Certificate before he signed it. 10 20
- Q. As a result of that on the 17th December, 1956, was a letter sent containing this certificate of full disclosure and containing answers to questions asked by you? A. Yes Sir.
- Q. Now, Mr. Bellman, you have seen the letter from your firm forwarding a certificate of full disclosure? A. I do Sir.
- Q. Together with the answers to the questions which you had carefully prepared. You said you went through this document most carefully with Mr. Rattan Singh, the certificate of full disclosure? A. I did, Sir. 30
- Q. You yourself? A. I personally did this.
- Q. As far as you are concerned, are you quite satisfied that Mr. Rattan Singh knew that he was supposed to make a full disclosure of everything stated therein, and as far as you were concerned, you thought he had? A. I made it very clear to him of the importance of it, and to the best of my knowledge and belief he made a full statement. 40

Q. And is it still to the best of your knowledge and belief a full statement? A. Frankly, I don't know what has transpired since. This is really the last thing that I did.

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Appellant's Evidence

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Q. You told us Mr. Rattan Singh could have been in no doubt whatsoever as to what was required of him? A. Not a shadow of doubt.

John Francis Bellman

Cross-examination

8th June, 1960
(Continued)

10 Q. If therefore Mr. Rattan Singh did not disclose fully all his monies, bank accounts and assets, there could be no question of Mr. Rattan Singh having not understood the position?
A. Except possibly the language question Sir.

JUDGE: How did you conduct your conversations with him? A. In English, My Lord, with Shaffie in attendance, and he conversed in Gujrate I presume it was, every now and again to Mr. Rattan Singh.

20 Q. The question that you asked were designed to show Mr. Rattan Singh's capital worth at the 11th January, 1946, and at the end of the period in question, which was 1955, I think? A. 1953 I think, it refers to 1955 in the covering letter.

Q. What you were seeking to see was Mr. Rattan Singh's capital worth immediately after the death of his father? A. That is so, Sir.

30 Q. On the 11th January, 1946. Now that is what you were seeking to obtain. Did you obtain to your satisfaction figures of his capital worth on that date? A. I had at that time access to the Estate Duty Account.

40 Q. Were you and are you satisfied that his capital worth on that date is the figure stated in these answers? A. I must be a little cagey there, Sir, because I did not check. As stated I was still only in an acting capacity, but remember the Estate Duty Account did not include India and therefore, there was no question of a tie-up, but from my knowledge of the Estate Duty Account, I think the answers he gave me were correct as far as the position as at the 11th January, 1946, were concerned.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

Q. You put to him the amount which he is supposed to have inherited in accordance with the Estate Duty Affidavit? A. That is right, 200 odd thousand.

Q. And you asked him whether he also had assets in India? A. Correct, "he answered that he had.....rupees".

Q. Which in terms of shillings is about 320 thousand? A. 207,000/-.

Q. So that from the inheritance point of view, he inherited about 470,000/-? A. That is right, Sir, Yes. 10

Q. He also had property in Salisbury Road worth 16,000/-? A. Yes Sir, if I remember aright, that was in the Estate Duty Account, as far as I remember.

Q. Would that be correct, weren't Salisbury Road and Swamp Road his own, and therefore not in the Estate Duty Account. A. I think you are right, Sir. 20

Q. He also had Salisbury Road for 16,000 and Swamp Road for 10,000, and he had a bank balance of 45,000/-? A. £4500.

Q. Now are those figures what you understood from Mr. Rattan Singh to be his capital worth on that date, 11th January, 1956? A. That is so, Sir.

Q. Now those figures total 316,000/-? A. About 386,000/-.

JUDGE: How much? A. My Lord, I make it 386,000/- at a rough guess. I make it £19000. 30

MR. NEWBOLD: Are you satisfied, were you satisfied at that time that that represented his capital worth at that date? A. I can only go by what he stated.

Q. As far as lay within your power you were seeking to be satisfied, were you satisfied? A. I was satisfied as far as information was available.

Q. Then we turn to the position at the end of 1955 I think it is, which appears at Page 3. The words are "you now have", can you recall what 40

moment of time the words "you now have" relate to? As the statement goes up to the 31st December, 1955, I can only presume that it was the position up to 1955. I was just wondering if there were any items that would give us a clue to it. I think it is up to 1955. You see "property acquired in 1955 of 145,000" therefore, I think you can presume with certainty it is up to the 31st December, 1955.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(continued)

10 Q. The capital worth of Mr. Rattan Singh as at that date; capital of Gian Singh; property acquired on the death of father; property acquired before death, property since death, property in India, making a total of 956,000/-, is that correct? A. That is correct, to the best of my knowledge, Sir.

20 Q. So that, as far as you could ascertain to your satisfaction, is his capital worth as at that time? A. I knew of nothing more, and in the course of my subsequent investigations, nothing came to light to make me think that anything was wrong with those figures.

Q. Having arrived at that position to your satisfaction.

30 JUDGE: Just one minute, Mr. Newbold. Colonel, in determining the capital worth at December, 31st, 1955, did you have any regard to possible variations in value of assets between 1946 and 1955? A. Referring to land and property, My Lord.

Q. He had no investments so far as I am aware? A. No I did not because after all he was presumably not a speculative builder, he is building property for resale as such apart from his residence.

40 Q. What I have in mind is this. The purpose of determining the capital worth was in reality to ascertain if there had been any increase in capital worth over the period was it not? A. Yes My Lord.

Q. What you had in mind was, in the absence of satisfactory Accounts, arriving at an estimate of his income on the assumption that the increase in capital worth between 1946 and 1955 represented saving from income, is that not correct? A. That is the way I worked it out.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

- Q. And you could arrive at income by taking the gross sum of savings and by adding to that a reasonable allowance in respect of personal expenditure? A. That is correct.
- Q. If this is so, was it not of importance to know whether there had been any change in the value of his real property between 1946 and 1955? A. Well at this stage I would not consider that the increase in value of the property should have any bearing on the point 10 at all.
- Q. But that would nonetheless be important in determining to what extent any increase in his capital worth was attributable to saving from income. In other words, if I buy a house for £5,000 in 1946 and over the next nine years I save £500 my Capital worth would appear to have gone up by £500 and no more, but if during that period real property doubles in value, and on your second estimate you estimate my capital worth at £10,500, it would be wholly wrong to take the increase due to my savings as being £5,500. That is what I am getting at. In other words, did you re-value his real property for the purpose of ascertaining his capital worth in 1956, or did you take as the same value? A. As far as I remember I took it as the same value. I think it would be correct for this purpose. The only difference is where a property like I think the house in Grogan Road was sold, and possibly the value derived from that sale should be adjusted as capital profit and not revenue profit, but I presume adjustments have been made for the Grogan Road Property; I think that is the only property that has been sold. 20
- MR. NEWBOLD: Now you did these Accounts for the years of income 1956 and 1957, did you not? A. I did, Sir, Yes. 30
- Q. During those years did his capital worth appreciate? A. Well remember, Sir, in 1956 you have got the partnership question. In 1956 on the 1st January his balance was 161,317.24, and at the end of the year it was 113,522 showing a drop of 28,000. 40
- Q. So that at the beginning of 1956 his balance on capital account was 161,000? A. 161,317.24, that remember, Sir, does not include profit.

Q. And at the end of the year it was? A. 113552.36 In the Supreme Court

Q. Now was this due to the creation of a partnership in respect of which he was paid nothing?
A. No Sir at the beginning of that period the partnership existed because the other three sons all had credit balances. If I may say so, Sir, the 28,000 drop is almost entirely due to payment of Income Tax.

Appellant's
Evidence

No. 36

John Francis
Bellman
Cross-
examination
8th June, 1960
(Continued)

10 Q. The assets of the business had they increased, that is personal income I mean? A. It is the partnership at that stage. The fixed assets - I had on this occasion to do four years together for Income Tax - but the value on the 1st January, 1954, was 39,495, and at the end of December, 1956, 99755. I don't know whether that is quite what you want - I could work it back for 1956 if you wanted it; I was not prepared for this sort of question. I could get the figures by tomorrow; on the other hand I think Mr. Cook is working on certain figures now. The actual addition during 1956 was 66,180.38.

20

Q. There was an increase in his capital worth of 66,000/- during? A. 1956, the business not the individual.

Q. Of his business: A. That consisted of four motorcars and a Peugeot.

30

Q. Apart from that that does not include profits? A. No Sir, at this stage the Balance Sheet had no profit in it at all.

Q. For 1957 was there an increase in his capital worth? A. No. no profits in 1956. In 1957 we bring in some property, the purchase of land at Eastleigh.

Q. The increase of capital worth? A. There was an increase to the partnership of 182,203/-.

40

Q. Which was the partnership's? A. And mainly due to building at Nakuru of 89,000/- and buildings of 90,000/-, making total increase of 182,203/-.

Q. During those two years there was an increase of capital worth in the partnership of about 250,000/-?.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Cross-examination
8th June, 1960
(Continued)

JUDGE: Which years are these.

MR. NEWBOLD: 1956 and 1957. A. 240,000/- roughly, Sir.

Q. That was after Mr. Rattan Singh's personal capital had been reduced as a result of the creation of the partnership. The partnership reduced his capital account? A. No.

Q. Didn't it? A. You see the partnership started on the 1st September.

EXAMINATION BY THE COURT

10

JUDGE: Look at it from this stand point. I have a business the capital value of which is 30000/-. On the 1st September I decide to take into that partnership my two sons as equal partners, they paying nothing into the partnership assets in respect of their admission to the partnership. From then on does not my share in the partnership capital sink to 10,000/- have not I given away 20,000/- in effect? A. I am sorry I have not got the 1955 Accounts here.

20

Q. Never mind about the Accounts; would you try and answer the question which I asked you? A. I beg your pardon, My Lord, did you ask me a question.

Q. I was under the impression I asked you a question. I will repeat it. If I am the sole proprietor of a business the fixed assets of which, exclusive of Goodwill, are worth 30,000/- I then take into that partnership my two sons as equal partners, they contributing nothing to the partnership assets upon admission, does not my capital automatically fall in value to 10,000/-? A. Yes, My Lord, in this case the three sons of course and the capital is divided by the four, one taking each quarter share.

30

Q. So the appellant's personal capital worth fell - I won't say by exactly a quarter because he had other factors which did not fall within the business - fell appreciably consequent upon the creation of this partnership? A. Yes My Lord.

40

MR. NEWBOLD: Turn back to page 3., after question 9. after you had arrived at the capital worth position on the 11th January, then then added what you estimated certain figures as being trading profit for 10 years amounting to 506,000/-? A. Correct Sir.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
Bellman
Cross-
examination
8th June, 1960
(Continued)

10 Q. And the profit from the sale of Grogan Road - let us forget for the moment whether it is a capital profit or a revenue profit - amounting to 193,000/- and your got 1,286,000/-?
A. Correct Sir.

Q. Turn the page, now having ascertained his capital worth at the 31st December, 1955, and added household expenses, school fees etc. during the years, you got a total of 1,174,000/-?
A. Correct Sir.

20 Q. That left 100,000/- unaccounted for, or over the period, £500 per annum of income unaccounted for. Did you ask Mr. Rattan Singh how he accounted for it? A. Well Sir, it seemed to be extremely small and I said to him, "Have you any suggestions" Answer. No..... of income and capital".

Q. Do I take from that, that arriving at income by this process of capital worth at two dates and deducting expenditure in the meantime, is a system which if it is £500 a year out would not surprise in the slightest? A. It seems quite reasonable to be that amount out.

30 Q. In other words, Colonel Bellman, if you are seeking to arrive at income - quite apart from assessable income for Income Tax purpose - if you are seeking to arrive at accurate, or reasonably accurate figures, of income over a period of years, through the comparison of capital worth at the beginning and end of a period, you must know with a very great degree of certainty the initial capital worth, the final capital worth, and above all, the expenditure during the
40 period, would you agree with that? A. I would agree with that, but if I might say so, I don't think this particular method was intended at that time to come before the Court as such. Obviously you have got to go over the figures very much more carefully.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
Bellman
Cross-
examination
8th June, 1960
(Continued)

Q. If you were going to seek to arrive with any degree of accuracy at income over the entire period between two given periods of time, you must know within a great degree of accuracy the opening capital worth, the closing capital worth, and above all, the expenditure during that period: A. I quite agree, Sir, and I think if you put that question to Mr. Cook tomorrow, he will have some pretty good figures for you.

10

Q. And of course, as I understand you have already said, you cannot tell your business expenditure, quite apart from your personal expenditure, with any degree of accuracy, if your books are not properly kept?
A. That is perfectly correct, Sir.

Q. Now having made the first report, and your giving the matter some attention, you know that Mr. Thian produced a second report?
A. I believe so, Sir, yes.

20

Q. I assume that you conveyed to Mr. Thian the importance of accuracy? A. Most certainly, I showed him this letter and my questions and answers to Mr. Rattan Singh, and quite frankly, from that point onwards, I know nothing about it; I am sorry to have to say so.

Q. Do you not know that Mr. Thian worked very carefully on those figures:? A. I know he made a second report but that one I never sent; I don't know what he said in that, Sir.

30

COURT ADJOURNED AT 3.55 P.M.

C.A.S.4/59 to 11/59 Rattan Singh v The Commissioner
of Income Tax

In the Supreme
Court

Thursday, 9th June, 1960, at 9.40 a.m.

Appellant's
Evidence

RE-EXAMINATION OF COLONEL BELLMAN BY MR. FOOT.

No. 36

Witness reminded he is still on same oath.

John Francis
Bellman
Re-
examination
9th June, 1960

MR. FOOT: Colonel Bellman, you were asked
yesterday about the muster rolls? A. I was
Sir.

10 Q. And you referred to certain periods when
apparently records were not available? A. That
is correct.

Q. I then want you to look at the muster rolls
which have been put in?

CLERK: Exhibit 6, My Lord.

MR. FOOT: Those are the muster rolls which have
been produced; would you just look at them
and tell me what periods they cover? A. You
wish me to go through each month.

20 Q. Can you tell us, I would like to know when they
start? A. The Indian one that starts on
the period starting February 1948.

EXAMINATION BY THE COURT

JUDGE: When does it end? A. And it appears
to end in November, 1951, My Lord.

30 Q. And the African, what period do the African
rolls cover? A. The African one, My Lord,
starts in July 1952, and one book appears to
end in October 1955, but there is another
African book which starts in November 1950 and
ends in June 1952.

Q. So would it be right to say there is muster
rolls for Africans commencing in November 1950
and running down to October, 1955? A. My Lord,
assuming each month is here.

MR. FOOT: Could you just look through, Colonel
Bellman? A. Yes, My Lord, this book is
complete from November 1950 to June 1952.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman

Re-examination
9th June, 1960
(Continued)

Q. That is the African muster roll? A. That is the African one.

Q. Have you looked at the other to see if they are complete? A. Yes, the other African one appears to be complete from July 1952 to October 1955, Sir.

Q. And the third books? A. And the Indian book appears to be complete from February 1948 to November 1951 inclusive.

Q. I am not quite sure, Colonel Bellman, would those books or some of them be the books which you checked? A. No, Sir, I did no checking or action on them on this period.

10

Q. Those books were not books you saw which you checked? A. I only saw a portion of them when they affected the period 1954 onwards.

Q. Those were the ones you checked? A. Yes 1954 onwards.

JUDGE: Part of the African one would have come within your period, is that not so? A. Yes Sir, from 1st January 1954, and you will see my little green ticks on the books, if necessary.

20

MR. FOOT: And you said yesterday that you were satisfied that you had got the muster rolls correct? A. For my period, from the 1st January 1954 to the end of 1959.

Q. That would cover part of the period covered by those books? A. It would Sir.

30

Q. You said, you referred just now to green ticks, are all the green ticks which appear there your ticks? A. The green and sometimes red, Sir, I used green one year and red the next. I am confident that these are the books I had at the time of the audit.

Q. I want you to come to something different. You were asked about the interview which you attended on the 13th December, 1956, when you met Mr. Easterbrook, and when Mr. Surjit Singh and Mr. Shaffie arrived after the beginning of that meeting? A. I remember.

40

Q. Have you a copy of the photostat? A. Not at the moment, if I could refresh my memory. (Witness handed original copy of note of interview) I have it now, Sir.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman
Re-examination
9th June, 1960
(Continued)

10 Q. Now I want you to look at the fourth paragraph of the first page, part of which was put to you yesterday in cross-examination. Now just look at that paragraph, "Easterbrook told Bellman he was somewhat perturbed at the form.....qualified in any way." Just take the first part of that statement, "Neither did the figures attempt, in any way attempt to place before the Branch Rattan Singh's total capital worth." Was Mr. Easterbrook do you remember suggesting that that was one way in which income was being assessed? A. He definitely wished each year to be segregated for the purpose of the Income Tax.

20 Q. He was meaning total capital worth? A. No Sir only yearly income.

Q. "Neither did the figures attempt to place before the Branch any details at all of Rattan Singh's total capital worth".

MR. NEWBOLD: "With yearly rests." A. That the yearly rests were the most paramount and the opening and final value of the Estate would come afterwards surely Sir.

30 MR. FOOT: I am only asking what was discussed? A. As far as I remember, he was asking specifically for it by yearly rests.

Q. But he was asking for a total capital worth? A. At the end he was, Sir, Yes.

Q. And following that, four days later, you asked Mr. Rattan Singh to give answers to specific specific questions? A. On behalf of Mr. Thian I did, Sir, yes.

40 Q. Can you say whether there was any sort of connection between this request that Mr. Easterbrook made and the questionnaire which you asked to be filled up? A. Yes Sir, I felt it was my duty at that stage to attempt to do something in the valuing of the estate

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
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Re-
examination
9th June, 1960
(Continued)

at the beginning and the end of the periods, but the question of yearly rests was a question of re-opening and re-assessing everything on which I could do nothing.

- Q. What was the purpose of the questionnaire which you addressed to Mr. Rattan Singh?
A. The purpose was to elicit from Mr. Rattan Singh that there was no shadow of doubt that no portion of his property had at that date not been disclosed. 10
- Q. What would you need in order to calculate the total capital worth with yearly rests, what information? A. Well, Sir, I should certainly require a complete set of books with definite information regarding opening and closing each year, figures of stock, work in progress, debtors and creditors.
- Q. A complete set of books? A. In order to be satisfied that I would produce anything like an account. 20

EXAMINATION BY THE COURT

- JUDGE: Does that apply only to estimates of capital worth with yearly rests, or does it apply equally to estimates of capital worth over a period of years in respect of any period? A. I deal with the Accounts from 1954 onwards, and it was about 1956 or 1957 that I obtained correct figures of Work in Progress and Stocks but I do feel that details of Debtors and Creditors right away from the 1st January 1954..... 30
- Q. Very interesting, but try to answer my question. You have told Mr. Foot that to enable you to calculate capital worth with annual rests, you would require a complete set of books, is that correct? A. That is correct.
- Q. Now I have asked you would the same answer apply if you were vouching capital worth not with annual rests but over a period of years? A. Not to the same extent, Sir; I should only require an opening Statement of Affairs and a closing Statement of Affairs, again assuming the figures were available on each occasion. 40

Q. Can you explain to me the difference because it would seem to me, not being an Accountant, that the only difference is this, in relation to the extent of the period? A. That is so, My Lord.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis
Bellman
Re-
examination
9th June, 1960
(Continued)

10 Q. If that is so, would not the same principle apply, that to enable you to calculate capital worth over a period of years you would have to have a complete set of books; you compute it for one year why not for seven years? A. Because in this connection we are dealing with the Income Tax assessment year by year, with no doubt penalties affecting certain years, and it was for that reason Mr. Easterbrook wanted yearly rests, but from the point of view of a man's estate that is easily ascertainable by taking the net assets at the opening of the period and allowing for drawings, the position at the end of the period.

20

Q. Does not that apply irrespective of what the period is? A. No My Lord, because in the last year your profits or losses are affected by the state of your debtors and creditors and the state of your stocks and work in progress, whereas at the beginning and the end the difference between the two, allowing for drawings, is very clearly the amount you have accumulated during the period in question.

30

MR. FOOT: Just one other matter I want to ask you about, you were put certain questions yesterday, I think it was by My Lord, about the effect of entering into a partnership. Now I just want to put to you a hypothetical case and hear what your answer is. Assuming that you have a father, Mr. A. and he has a business, his assets consist of £30,000 in cash. Supposing then he takes two sons, B. and C. into partnership, and supposing in the first month they make a profit of £3. Start with £30,000 put in by father, after inception of partnership they make a profit of £3; now what would be the respective holding of the partners then? A. The new entrants would be £1 each and the original shareholder would be a figure of £30,000, the original figure, plus £1.

40

In the Supreme Court

Q. It would make no difference to his capital worth? A. No Sir.

Appellant's Evidence

EXAMINATION BY THE COURT

No. 36

John Francis Bellman
Re-examination
9th June, 1960
(Continued)

JUDGE: I am afraid I don't follow that? A. The case was put to me that Mr. A. started business with £30,000, he took in two partners, and after a month's trading they had £3 profit between them. I was then asked what would be the position of the three partners at the end of the period where they made £3 profit, and I said it would be divisible £1 to each, leaving the original owner's £30,000 intact.

10

Q. Would it be the £30,000 of the original owner after they were taken into partnership as equal partners: Surely if I take someone into partnership as an equal partner he becomes a co-owner in equal shares in all the partnership property? If there were a dissolution of the partnership at that point would he not become entitled to one-third?
A. Only, My Lord, if they brought in an equivalent figure of Goodwill at the date of partnership.

20

Q. They are taken in as equal partners? A. To share profits but not capital.

Q. Nothing was said to that effect at all so far as I recollect the evidence. Can you imagine a partnership in which some of the partners had no right in relation to the partnership assets; that they only had rights in relation to the partnership profits? A. I would again repeat, if I might say so, that if a partnership commences and it is wished to purchase the capital and the new entrants bring in no capital at all, then the question of Goodwill arises and they are possibly debited with their share of the Goodwill which is credited to the original owner.

30

40

Q. What I am really seeking to find out is what would the legal position be in such a case if there had been a dissolution, would not each of the partners have been entitled to one-third of the partnership assets? A. My Lord, they would not produce any cash to come into the business, therefore, had they ended say one day after they started their capital would be nil.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman

Re-examination
9th June, 1960
(Continued)

10 Q. So would they have been notionally given one-third of the partnership assets by the act of association as partners? A. Well, My Lord, I would have liked notice of this question because unfortunately I have not got the year here, I think 1956, when the partnership started, but my memory is that no amount was debited to the incoming partners, the original capital of Rattan Singh remained constant.

20 Q. But can it remain constant, whatever is put into the books, can that effect the realities of the situation? A. As they do not put cash in, therefore the position of Rattan Singh at the opening of the partnership is that it is his worth and he still retains it.

30 Q. How can he retain the partnership assets in view of what I have always regarded as established principle; it may be that Mr. Foot will correct me, that the assets of any partner are the property, not of an individual partner although they may have been provided by him in the first place, but they are the property of the aggregate of the partners as tenants in common in their partnership shares. That is what I have always understood to be the rule? A. Well, My Lord, I am sorry I cannot really give a very fine answer to the question without looking at the Accounts and the books and seeing how the capital I think at the 1st August 1956 was cleared.

40 Q. Very well, go on Mr. Newbold. A. Possibly if this question was asked of the next witness, Mr. Cook, he might know how.

Q. Colonel Bellman, did you ever see a Partnership Deed? A. Yes I saw one.

In the Supreme Court

Appellant's Evidence

No. 36

John Francis Bellman Re-examination 9th June, 1960 (Continued)

Q. You saw one? A. Yes My Lord.

MR. ROWLAND: My Lord, I am now calling Mr. Cook. Perhaps I might crave Your Lordship's indulgence in two respects, one is that he is suffering from two bouts of thrombosis and is very exhausted after a little while.

JUDGE: He would like to sit down, most certainly.

MR. ROWLAND: The second point is that Mr. Cook has only been called to answer on the general principles of accounting, and not on certain points of detail which in fact have been largely prepared by his partner, who has resided here all the time. I propose, subject to anything Your Lordship says, to put to his partner the matters of great detail; of course, I cannot shut out any questions being asked, but I just want you to know that I do intend to call the other partner.

10

NO. 37

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No. 37

Mr. Goodman Tolfourd-Cook

Mr. Goodman Tolfourd-Cook Examination 9th June, 1960

MR. GOODMAN TOLFOURD-COOK, duly sworn:-

EXAMINATION-IN-CHIEF BY MR. ROWLAND

MR. ROWLAND: What is your full name: A. Goodman Tolfourd-Cook.

Q. And you are a partner in the firm of Cook, Sutton & Co.? A. That is so.

Q. What are your professional qualifications? A. Fellow of the Institute of Chartered Accountants and Associate of the Institute of Taxation.

30

Q. When were you qualified as Chartered Accountant? A. 1933.

Q. Have you had any considerable experience of back duty cases? A. Since roughly 1930.

Q. Both in this country and the United Kingdom? A. Basically in the U.K.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

Q. Would you say you had a wide experience or slight? A. Unfortunately a wide experience.

Q. And have you negotiated with the Revenue on many occasions? A. Many thousands of occasions.

10 Q. And did you make a report which is dated 6th June and which is before His Lordship of which this is a copy? A. Yes indeed - I believe the report itself was the 3rd was it not.

Q. To which there were certain schedules attached? A. Yes.

Q. And have you also seen a copy of some adjustments which appear to have been made by the Inland Revenue in this case in arriving at the assessment? A. Yes I have.

Q. Have you had an opportunity of studying them? A. Yes I have.

20 Q. Is that a copy of the report you produced? (Copy handed to witness) A. Yes, without the schedules.

JUDGE: Exhibit what, what number?

CLERK: Exhibit B.

MR. ROWLAND: I will give you the schedules A, B. and C. which are attached to that report? (Copies handed to witness). A. Yes these appear to be the correct schedules.

30 Q. Will you tell His Lordship the principles on which you composed the report, first, is the method you adopted one commonly adopted or not in cases of this kind? A. Yes the method that I have adopted is one that I invariably adopt in the U.K.

40 Q. Is that method referred to in books on back duty or is some other method referred to? A. Well there are many methods but the basic principle is to try and ascertain the worth at the beginning and at the end and annually, and then see how the accumulated worth was accumulated, and that is the basis upon which we have worked.

In the Supreme Q.
Court

Appellant's
Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

This report of yours is originally based on a 12 year period and then you deducted the income attributable to the last four years, why have you done it like that rather than doing it every year? A. It is impossible to do it every year. If you do it every year, you must have not only a record of receipts and payments, you must have a factual record of debtors and creditors, and you must also have some sound basis for your Stock and Work in Progress. Those latter two I prefer to describe merely as Work in Progress because it is customary for architects to take into account in their certificate the value of the materials on the site and therefore it is only chance where the materials lay, but in this case that documentation is not available until you get to the end of 1953, but the Revenue did not accept the documentation at that time. It is not really until 1957 that the Revenue accepted that documentation, and because of that, I felt any prior cessation for accounting periods would be ancillary, but if I could finish with the period which prima facie at least was satisfactory to the Revenue, then at least I had not got disputes at the end of the period; I might have during the period but not at the end of the period and that is why I wanted the statement of worth accurately.

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30

JUDGE: And at the beginning too presumably?

A. Yes, at the beginning but I can only accept what is available by way of the Estate Duty affidavit at the beginning.

MR. ROWLAND: As far as the beginning of the period is concerned, you can get at that from actual statements, bank statements and other details is that so? A. That is so.

Q. Was there so far as you know any dispute between the taxpayer did the Revenue as to the Stock at the beginning of 1946? A. I have not heard so.

40

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

- Q. Now as to the end of 1953, was there a dispute so far as you know as to the value of Stock between the Revenue and the taxpayer? A. I gather they rejected Accounts for the purpose of tax assessments because they were not satisfied as to the accuracy of the Debtors and Work in Progress.
- 10 Q. Do you know what figure the Revenue have based - in computing the 1953 profits do you know that figure for Stock and Work in Progress the Revenue have adopted? A. Not off hand, I don't know if my partner will tell you; I wouldn't have that detail.
- Q. Perhaps I will ask your partner when he comes?
A. Yes.
- Q. Schedule A. to your report contains a list of the assets and liabilities so far as you are aware at the beginning of January 1946, is that right? A. That is so.
- 20 Q. And Schedule B. Shows a similar list at the end of December 1957? A. That is so.
- Q. Now I think that certain items in that are not in dispute, I am not quite sure which ones have been agreed. May I say this, first of all properties, properties at the beginning and properties at the end? A. Where there has been no change in property the figure is the same at the end as it is at the beginning.
- 30 Q. I think the opening figure is 326,000, is it not? A. That is so.
- Q. Provided it is 326,000 as far as those properties are concerned at the end, or provided any properties which are sold are taken out at cost, it does not matter whether that figure of 326,000 is correct or not?
A. Not in the list.
- Q. Because you are only showing here the difference in worth? A. That is so.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

- Q. I think you or your firm have compared each of those assets with Bank Accounts or other appropriate information? A. That is so.
- Q. There is I think doubt about one item only, 30,000/- deposit? A. Can you make that a little clearer; what item is in doubt, 30,000/- are you referring to that, we received two items of the same date.
- Q. One is to convert from rupees to shillings 154,500 State Bank? A. Yes. 10
- Q. That represents just over 100,000 rupees? A. That is so, 103 actually.
- Q. We have clear evidence of the deposit received, 170,000? A. Yes.
- Q. We have clear evidence that there was a deposit made at any rate by the April of 1946 of just over 30,000/-? A. That is so. May I just add a point there, in this figure there is an error of 700 rupees which is 1,050/-. 20
- Q. How does that arise. A. It was thought to be interest but it is not interest, and it should be in this opening figure; an extra 700 rupees on the figure you are talking about now.
- Q. That 1,000/- what effect would it have? A. By decreasing my calculations of accumulated worth.
- Q. So it is an error in favour of the Revenue? A. That is so. 30
- Q. I think the properties - I am not sure the extent in which they agree. I think it may be that the properties at the end, do you know if they agree with the Revenue or not? Have they been agreed or not? A. I am not personally aware of any disagreement, but my partner could answer that one.
- Q. Have the figures in Schedule B. also been examined with the relevant documents, bank accounts etc.? A. Yes. 40

- Q. And to the best of your knowledge they are correct? A. Yes, the Revenue are raising a minor point on the legal costs on the acquisition of plot 415 at Mombasa, but we are talking in very small sums.
- 10 Q. That Mr. Cook, that would not affect would it your opening or your closing figure of assets? A. Well, yes, it would it should throw up Schedule B. slightly to the extent of those costs. It is customary to capitalise legal costs on acquisition so that would be a point against the taxpayer and in favour of the Revenue.
- Q. Have you any idea how much is involved? A. No, but it cannot be very much; the purchase price is only £750.
- 20 Q. In Schedule C. would you look at the first line in Schedule C. and say how you arrived at those figures? A. Well my partner has dealt with this, but the principle has been to take the living expenses as reported to us by the taxpayer. He has itemised those under the various headings in which one normally categorises one's household expenditure and we have accepted them.
- 30 Q. You see some other items below, now why have you picked out those particular items? A. Because they are obviously personal expenditure which having been expended would affect the decrease over the period, the accumulation of wealth.
- Q. Now in negotiations, in cases of back duty is it, what is the normal procedure so far as you are aware in dealing with drawings? A. The schedule you have before you is common to all back duty investigations.
- 40 Q. And would it be normal to ask the Revenue whether they agree them, or to suggest amendments or not? A. Yes, the normal procedure is for the taxpayer or his representative to submit a schedule. The Revenue examine it - it is seldom that agreement is reached on the first occasion, and the parties sit down and hammer an agreement.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

Q. In this instance the Revenue - if the Revenue were to suggest alternative figures for drawings for instance, say household expenses we term it, might not you consider it reasonable to agree? A. It would depend on the extent of the variation, but providing, if their figures were not entirely at variance and one could argue the point with the taxpayer, the answer would be to accept perhaps a compromise; invariably there is a compromise settlement.

10

Q. They must be a matter of estimate? A. Absolutely, it depends on the taxpayer to keep a record of personal expenses.

Q. In all back duty cases must there always be an iota of estimation? A. It is almost impossible to avoid it.

Q. Is it normal in most cases, it is possible to arrive at some kind of agreement or does one normally have to go to appeal? A. In 30 years I have only gone to appeal on the point of principal; I have never gone to appeal on the question of living expenses.

20

Q. The agreement of living expenses, is that a matter which requires goodwill and reasonable commonsense on both sides?

JUDGE: Are not attributing the unknown to the Department in their general estimation.

MR. ROWLAND: I think that common experience is that the Inland Revenue have got a fair idea of what living expenses are, and they put it to Accountants and agreement is reached. Is another type of comment which the Revenue might make on Schedule C, which occurs to you, and which you might consider it reasonable to agree? A. I am sorry I don't fully understand the question.

30

Q. I don't want to lead you on it. That this drawing schedule is based on estimated actual expenditure? A. It is a combination of estimated plus actual.

40

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

- Q. Is it true that certain actual expenditure might be incurred and yet not be allowable for Income Tax purposes? A. Oh very certainly.
- 10 Q. I think there has been the question of legal charges which has already been raised in this case? A. I think I can put it in this way, it is normal having reached this stage then to make an adjustment of profits for items which commercially one would assume was a true deduction, but under the Income Tax Acts are disallowed, and you would have further adjustments which are not shown on the schedule.
- 20 Q. In fact would you look at the schedules produced by the Revenue on which their assessments are based. Starting I think at the third or fourth, fifth or sixth lines of that typescript, if you look at that expenditure I think it is - do you know where that expenditure comes from? A. I gather it comes out of the Thian report - I call it Thian report because I don't think that Colonel Bellman had very much to do with it.
- Q. Would those be figures shown in the Profit and Loss Account which he drew up? A. They should be incurred in the year.
- Q. Does that show that legal expenses have been added back by the Revenue? A. That is so.
- 30 Q. And insofar as legal expenses or medical expenses which have been passed through the books ought to be added back, that would be adjusted on your schedule? A. Certainly.
- Q. I think there is only one more point about your schedule, you have put at the - will you turn to page 4. of your report? A. Yes.
- 40 Q. In the second table there you show "Year calculated" which should be "Income calculated as above". That is second table, the middle column of figures? A. Yes.
- Q. Now the next on the left of that column there is a note of the total income returned

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman Tolfourd-Cook Examination 9th June, 1960 (Continued)

by the taxpayer, and on the right, Income assessed. Dealing with that second and third columns the phraseology, are you comparing like absolutely with like?
A. I would not like to give you an answer: that particular point was incorporated in the schedule but was prepared by my partner.

- Q. Just a point of principle, would an adjustment for annual value come into your calculations, for the house you live in, the annual value, would that come into your calculations? 10
A. From the point of view of returning one's income.
- Q. Would, in that total figure of 17,644, does it purport to include any amount in respect of any amount assessable in respect of living in one's own house? A. My partner could answer that, but I don't think so.
- Q. You don't think so? A. I don't think so.
- Q. If one added those figures - assuming it is not in there already - then that is an exact comparison with regard to property? A. Yes. 20
- Q. Are you or are you not satisfied whether your figures give a reasonable view of the taxpayer's income over the period? A. Yes.
- Q. Now will you turn to the schedule prepared by the Revenue which supports that statement, would you look at that first item 91,000 in 1947? A. Yes.
- Q. Does that appear to be property? 30

JUDGE: Which schedule is this?

MR. ROWLAND: This, My Lord, is the schedule which was forwarded with the letter to the Revenue; it is two sheets.

JUDGE: The letter of the 15th April, which of two sheets?

MR. ROWLAND: It is headed IB 471. Do you see in 1947 a figure of 91,207? A. Yes I do.

In the Supreme
Court

Appellant's
Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

Q. And do you see in 1948 the same figure?
A. Yes.

Q. Now does that purport to be a Work in
Progress adjustment? A. Yes it is how it
is described.

Q. Taking 1948 alone, if that were true Work in
Progress at that time, would it be correct
to put that figure in there? A. Where.

Q. In 1948? A. Yes as a credit which it is.

10 Q. Does it follow that it should be a similar
entry in 1947? A. No, quite wrong.

Q. Would you now look at this schedule. This,
My Lord, is a schedule showing the first
attempt of the Revenue to compute the Income
Tax; it is an early edition of the one in
front of your Lordship now. Put that in as
an exhibit.

MR. NEWBOLD: It is already in, it is attached to
the letter of the 8th April, 1958.

20 MR. ROWLAND: In 1947, will you look at the
figures there, 91,000 Stock or Work in
Progress, and at the bottom a round figure
of 70,000? A. That is so.

Q. In 1946, there is a figure of 30,000?
A. That is so.

Q. Do you know how those round figures were
computed? A. No idea.

30 Q. Assuming for the moment, we have no evidence
about this, assuming those figures were based
on turnover, a percentage of turnover, so the
70,000 is a certain percentage of turnover,
would it be right to put in an adjustment
of 91,000 for Stock in Trade? A. No, you
stand like to like. If you are going to take
a percentage on turnover, you must take a
percentage of Work in Progress to get the
true turnover.

Q. It is not like to like? A. No, you are
adding gross to net.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

- Q. Have you compared the figures which you have produced according to your report with those produced by Mr. Thian? A. My Partner had prepared a rough approximation reconciliation.
- Q. I will not put it to you then. Can you say what basic difference in principle there is between the method Mr. Thian adopted and that which you have adopted which might lead to a difference? A. The whole basic principle is wrong. He has taken in estimated figures for I think Debtors, certainly Work in Progress, and checking on the report there is no justification other than think of a figure, double it and divide it by three, for the figure he has put in to the actual figure. If you cannot put actual you are creating confusion and in fact misleading to put them in. 10
- Q. Have you reason to think that Mr. Thian may have found items in the Cash Book which he could not explain? A. Undoubtedly he has. 20
- Q. Do you know how he treated all of those items? A. As far as I can see by examining his report and the schedules, what I cannot prove to be business must be private - a fallacious argument.
- Q. Were there found sums in the Cash Book which were drawn? A. Yes.
- Q. And has it been assumed by Mr. Thian that every one of those amounts must have been private drawings or unexplained drawings? A. I cannot answer you to say every one; I can say that certainly many have been classed as drawings. 30
- Q. Is it possible that amounts drawn in round sums "By Trader" could be used for trade purposes? A. It invariably is.
- Q. If the trader in fact used part of the money he had drawn for trade purposes, but failed to make an entry afterwards, what effect would that have on the profits? A. It would inflate the profits if you are going to charge sums to personal expenditure. 40

Q. Do you remember the total amount for the 8 years of difference between your figures and Thian's figures? A. No, I don't.

In the Supreme Court

Q. Have you seen this list of comparisons, is it your document? A. Yes I would accept this.

Appellant's Evidence

No. 37

MR. ROWLAND: My Lord, it was comparison which our Friends asked us to compute yesterday.

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

10 MR. NEWBOLD: I hesitate to deny a statement of that sort, but I regret I have to, I cannot accept My Learned Friend's statement that we asked him to prepare a document of comparisons. If he is speaking about something which happened last night after the Court had risen it was to say what basis was there of accepting any statement of Mr. Cook's based on a variation in comparison.

JUDGE: Have you seen this document before?

MR. NEWBOLD: No, I have not.

20 JUDGE: Well I propose to rise for a quarter of an hour to enable you to look at it.

MR. ROWLAND: I apologise to My Learned Friend if I in any way put that matter wrongly. All this is is a list which can be checked straightway from the figures; it is only set out conveniently on a sheet of paper, it is merely another edition of the figures in front of Your Lordship.

MR. NEWBOLD: I ask you to produce the thing to me.

30 JUDGE: Would you like to see it now?

MR. NEWBOLD: It can go in, is it immaterial.

CLERK: Exhibit 9.

MR. NEWBOLD: May I have a copy at any rate.

MR. ROWLAND: On the second column, you will see a figure of 462,000 does that come from your report? A. Yes it does.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Examination
9th June, 1960
(Continued)

Q. Below, do you see 70,000, 24,000, 38,000 loss and 30,000, does that come from page 2, of your report, and do you see total 548,000? A. Yes.

Q. Would you look at the document of 13th April, which is the Revenue document showing how their computations are based? A. I have two documents here with no dates on them.

Q. It is the one for 1947, 129,000, would you look at the top line of that? A. Yes.

10

Q. Do you see "approximately 166,000"? A. Yes.

Q. Do you see that in the first column against 1948?

JUDGE: Which schedule is this?

MR. ROWLAND: It is the one of the 13th April, My Lord, the schedule on which the Revenue computations is based; that is the Revenue computations of business profits. On top line there is a figure of 166,000 approximately? A. Yes.

20

Q. Which is described as "Balance as Accounts"? A. Yes.

Q. Do you see in the first column of this sheet I have just handed you, 166,000 against 1948? A. Yes.

Q. And for 1949 80,000? A. Yes.

Q. And 36,000 for 1950? A. Yes.

Q. And then loss of 30,000? A. Yes, by the way no 1950 is typed in.

Q. Do those figures for 1948 to 1950 inclusive coincide with the top line approximately, to the nearest thousand? A. Yes.

30

MR. ROWLAND: My Lord, the other items for 1946 and 1947 come from the first report of Mr. Thian, which I think is before Your Lordship. It is second report dated 7th October, 1957. On page 9. of that report is a figure of 15,000 approximately near the bottom, My Lord. That was Mr. Thian's estimate of the 1946 profits; it is by itself about eight lines from the bottom, page 9. My Lord, and on page 13. there is a figure of 49,000, again near the bottom My Lord, "Estimated profit on contracts" about five lines, and then there is a figure of rentals of 38,000. The rents for 1946 are shown on page 10. and also are approximately 38,000. You see, look at this sheet again, Mr. Cook, against 1946 do you see a figure of 15,000? A. Yes.

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Appellant's Evidence

No. 37

Mr. Goodman
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Examination
9th June, 1960
(Continued)

10

Q. And rents 38,000? A. Yes.

20

Q. And 1947, 89,000? A. Yes.

Q. And rents, 38,000? A. Yes.

Q. And for 1954, 1955, 1956, 1957, the figures "67,000..... loss 30,000", where did those figures come from?
A. Out of Colonel Bellman's Account.

30

Q. The main difference, if you look at those figures and the figures on the right for 1955, 1956 and 1957, they are either identical or almost identical, is that right? A. Yes.

Q. There is a big difference in 1954? A. Yes.

Q. How does that come about? A. Well you have got the lodgment as I understand it of the Thian and Bellman Accounts and as estimated assessment put in, but I think my partner will tell you that any tests he had been able to make failed to justify that figure.

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Q. Could that figure be justified if the Stock and Work in Progress at the beginning of 1954 were very low? A. I would want notice of that question, My Lord, it would obviously be the lower 1953 were the greater would become the profits of 1954, but beyond that I would like you to refer to my partner.

Q. Would you look at - I will hand you the Trading and Profit and Loss Account for the year to 31st December, 1953, which was prepared by Thian, and the one for 31st December, 1954, and that was the Account which was rejected. Will you first look at the Accounts at the end of December 1953? A. Yes.

10

Q. Would you look at the closing figure for Stock and Work in Progress for 1953 and add the two together? A. 140,000/-.

Q. And now would you look at the opening figure for 1954? A. Yes.

20

Q. How much is that? A. 20,000/-, the Work in Progress is taken over to the credit side; you still have the same figure, 140,000/- but it is not clearly shown as that.

CLERK: Exhibit 10.

MR. ROWLAND: So that those amounts, the opening Stock and Work in Progress is the same as the closing in 1953? A. That is so.

Q. That must be so for accurate Accounts? A. Oh yes.

30

Q. Will you look at this document you looked at before, which is Income Tax computations of business income prepared by the Revenue, do you see the second set of additions, the second part of it? A. Yes.

Q. Do you see Stock adjustment there? A. Yes indeed.

Q. And running your eye along do you see five adjustments of 11,000 each? A. That is so.

40

JUDGE: Which sheet is this?

MR. ROWLAND: That is the long sheet, My Lord, the one dealing with business profits; I don't know whether we can find a shortened method of referring to it.

JUDGE: Stock Adjustment, is that it.

MR. ROWLAND: There is 11,000 for each of the following five years.

JUDGE: Yes, I see.

10 MR. ROWLAND: What do you make the total of those five adjustments? A. 55,000/-.

Q. By adding Stock, is that addition of Stock or deduction of Stock? A. Doesn't make any difference.

Q. Now the top line was based on Thian's figures is that right? A. That is so.

Q. And Thian, you have just told His Lordship, his Accounts showed Stock and Work in Progress of 140,000/-? A. That is so.

20 Q. Does this represent an addition to that figure or not? A. It must from an accounting angle.

EXAMINATION BY THE COURT

30 JUDGE: Now, Mr. Cook, what I am seeking to find out is this Am I right in thinking that the figure of 11,000/- in respect of Stock Adjustment is intended to show that at the end of the year 1949, there was on hand 11,000/- worth of timber, nails and other things which builders use? A. It was obviously intended to augment the figure shown in the Accounts.

Q. In respect of what? A. Builders' materials.

Q. And unless the 11,000/- worth of timber, nails, etc. which the Revenue assumed were in the possession of the appellant at the end of

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1948 were used up in the course of the following year, then there would still be 11,000/- worth to be shown in the following year? A. That is so.

Q. If however they were used up they would not be there. A. That is so.

Q. Have the Revenue in fact increased the amount, or rather, have the Revenue in fact acted on the assumption that at the end of each year, there was in the possession of the appellant 11,000/- worth of timber, nails, etc. which had not been shown in his Accounts? A. No, My Lord, it is an accumulation. It was 11,000/- in 1948, 22,000/- in 1950, 33,000/- in 1951, 44,000/- in 1952 and 55,000/- in 1953.

10

Q. In other words, for that assumption to be justified, the position would have had to be this. That at the end of 1947 Mr. Rattan Singh locked 11,000/- worth of timber and nails into a shed, threw away the key, and by the end of 1948 his building operation for the year 1948 had resulted in there being another 11,000/- worth of timber which he again locked away in a shed and did not use, and each he built up his reserve until his reserve of timber amounted to 55,000/- worth? A. That is the Revenue's theory.

20

MR. ROWLAND: If that 55,000/- extra Stock had been introduced in the 1954 Accounts, what effect would that have on the profits produced as shown in these Accounts? A. It would have increased the loss shown in the Accounts by 55,000/-, from 26,000/- to 81,000/-.

30

Q. Are you looking at the 1954 Accounts? A. Yes, it says Net Loss carried down, if I take net figure, I am ignoring Moshi.

Q. Oh, I see, is not Moshi a Branch? A. I have never quite understood Moshi; my partner knows more than I.

40

Q. If you take the net figure, what is the figure of profit and Loss? A. I would reduce a loss of 16,000/- approximately to a profit of 39,000/-.

Q. In fact in 1954 the assessments were based on a figure of 70,000/-? A. Yes.

In the Supreme Court

Q. Far higher than not lower than that shown in the Accounts? A. Yes, may I say that in addition to the figures you are quoting, there is Work in Progress Adjustment in 1953 of 16,000/- which would augment the loss I have just quoted.

Appellant's Evidence

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(Continued)

10 Q. Broadly speaking anyway, the amount of profits were greatly in excess of those shown in the Accounts? A. Vastly so.

Q. Reverting to this comparison of profits, does the total of the first column add up to 609,000? A. Yes.

Q. And the profits according to your calculations 548, not 584? A. Yes it should be, it has been transposed.

Q. What is the difference in pounds, roughly? A. £3,000.

20 Q. So Mr. Thian's figures were approximately £3,000 higher than yours for that period? A. Yes.

JUDGE: Which year is this?

MR. ROWLAND: The whole twelve years, My Lord. Would you look once again at this schedule of adjustments? A. Yes.

Q. Do you see anything to justify that stock adjustment? A. No, I don't, this never has been carried through.

30 Q. Go down to 1948, do you see a figure "African Wages 10,000" do you see anything to justify the addition of that amount? A. No, Not with Mr. Thian's drawings.

Q. Do you know where that figure came from? A. I would ask you to refer that to my partner.

Q. The drawings adjustment, do you see anything from your study of the Accounts to justify the drawings adjustment? A. No.

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Court

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Evidence

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(Continued)

- Q. Or the round sum, City Garage? A. No.
- Q. The round sum, debits to contracts, do you understand that item? A. Yes, no.
- Q. DO You understand it? A. Yes.
- Q. Do you consider is justified or not? A. No, I don't think it is justified.
- Q. And do you see retention money, Moshi, some additions for 1951/52, do you see anything to justify them? A. I would like that referred to my partner, I am not quite sure how this is dealt with in the Accounts. 10
- Q. Do you know the position about the round sum, Creditors Unexplained, near the bottom, three from the bottom? A. No, I don't know the details of those.
- Q. Do you know what it is supposed to represent? A. Oh, yes, from an accounting aspect the inference is that certain sums have been brought in as creditors which the Revenue are not prepared to accept, but if they are right then you must have a credit the following year which you have not got. Beyond that I would not like to comment except that the basic principle is right. 20
- Q. My Lord, the second schedule attached. Do you see the top line of that which says Estimated Rents, and then there is another line with three items of 8,000 Rents. Look at 1953 and run your eye down, do you see a figure of 8,000 for Rents? A. Yes. 30
- Q. And the line above that is also described as Rents? A. I have got to see if I am seeing straight.
- Q. Do you see the figure of 8,000? A. Yes I do, it appears to be Rents, Grogan Road is that right.
- Q. Yes, Looking at 1953 what is the total of those two figures for Rents? A. 64,300/75 etc.
- Q. Do you remember approximately what the rents were in any of the years? A. No, I don't. 40

Q. Would you look at your report, page 3. of your report? A. Yes.

In the Supreme Court

Q. Page 3. at the bottom you see Rents Received in 1953, 48,000? A. 48,417/- yes.

Appellant's Evidence

Q. If in fact 64,000/- has been received would that have provided additional money for living expenses? A. I would like that point referred to my partner, and the inference would be no.

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9th June, 1960
(Continued)

10 Q. If you show in your Cash Book Rents Received 48,000/- and you have in fact received 64,000/-? A. Yes.

Q. Then 16,000/- has gone into your pocket? A. Oh indeed yes.

Q. Do you see any adjustment on the first of those schedules to take account of that possibility? Do you see an adjustment of 16,000/-?

20 JUDGE: Is what you are suggesting, Mr. Rowland, that the household expenses should have been diminished by 16,000/- on the ground that they have added 16,000/- to the known income of the appellant, and they have also added the full estimated amount of his household expenses. In other words, if he had 16,000/- over on rent he would have used that in part payment of the household expenses shown?

30 MR. ROWLAND: Precisely, and that applies to the other years as well. There is one letter in the correspondence, the letter of the 3rd May, 1958, which I should like to show the witness. Do you see the first item there adding up to 463,000? A. Yes.

JUDGE: You know I still am completely at a loss to understand the statement that sums were received as an inheritance before Nagina Singh died?

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Appellant's Evidence

No. 37

Mr. Goodman
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9th June, 1960
(Continued)

MR. ROWLAND: That is a point I was going to ask the witness, can he conceive any circumstances in which a taxpayer can be taxed over the years 1940 to 1945 inclusive as income on amounts which he receives as a result of an inheritance in 1946? A. Yes, if it is a debit against the donor's personal account. In other words, it is possible for Rattan Singh, who is the son of the donor, to be given a gift which is in return for services rendered, which the father shows as being a debit to the son. In that case it would be taxable on the son, but if in the normal way, I would give my son a property it would not be taxable on him.

10

Q. This property is an inheritance; it is not property owned as a salary. It is not property in respect of salary, is there a distinction or not? A. There is a distinct distinction.

20

Q. If you inherit money? A. There is no tax liability.

Q. There is one point on which I would be glad if you would express your view to His Lordship, and that is this question of partnership. You heard My Learned Leader put to the last witness the position, the possible position of £30,000 partnership assets and a person then takes two sons into partnership, what effect do you say that has on the partnership position, what legal effect? A. I would need elaboration of the question.

30

EXAMINATION BY THE COURT

JUDGE: I would elaborate the question in this way. Would you agree that all partners are co-owners of all the partnership assets? A. No.

Q. You would not agree with that? A. I have a partnership in the U.K. in which neither of my partners have any interest in the capital, but they have a specific interest in the earnings of the practice; indeed I have the same position here in Nairobi.

40

Q. Do they have an interest in the losses if any? A. Certainly.

Q. How are losses defrayed ultimately, must not losses always be defrayed out of partnership assets? A. If any partner has a deficiency of assets the other partners must make good.

In the Supreme Court

Q. And by making good do they not contribute to the assets? A. Out of their personal assets, yes.

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10 Q. And when they so contribute does their contribution become part of the partnership assets? A. If I understood you correctly, My Lord, the position was this, that if there were losses in the practice or in the business, and the partner with no capital had nothing to meet them, then he would go into debit, which the partner who had assets would hope to recover in succeeding years, but if in fact continued losses were made then the partner with the assets would in the event bear them until finally the thing was wound up, and the partner with the assets took what was left in the settlement of the difference between his capital and the deficiencies, and the other partner who has no capital.

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(Continued)

20 MR. ROWLAND: Can I put another example to you. Suppose you have one partner with capital of £10,000. He says to his friend, "Come in as an equal partner and put up £2,000 in capital sharing profit equally", is that common or not? A. It is extremely common these days.

30 Q. What would the Balance Sheet be; the original partner had £10,000 in the partnership, assuming all cash, and the other partner brings along £2,000 cash? A. £12,000 allocated £10,000 to A. and £2,000 to B.

Q. If the dissolve having immediately formed their partnership, would they take out the £12,000 equally or would they? A. No.

40 Q. They would take it out in what proportions? A. In the proportions they have contributed, 10 and 2.

Q. They would share what was in the Capital Account? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman Tolfourd-Cook Examination 9th June, 1960 (Continued)

Q. So you have Capital Account £12,000 and £10,000 Capital Account A. and £2,000 Capital Account B.? A. Yes.

Q. They trade for a short period and they lose £2,000 what would the position be then? A. They are sharing equally.

Q. Yes? A. A. Takes out £9,000 and B. Takes out £1,000.

Q. The capital would have gone down by £2,000 and the loss would be contributed £1,000 each, which would bring one down to £9,000 and the other to £1,000, and if they dissolved then that is the answer you get? A. Indeed that is the whole basis of partnership law. 10

Q. I think there is only one other short matter. In the correspondence of Colonel Bellman, there is a letter of 13th December, 1956, do you see paragraph 9. on page 3? A. Yes.

Q. What was Colonel Bellman really trying to do there; put it in another way? 20

JUDGE: What did Colonel Bellman appear to be trying to do?

MR. ROWLAND: Do you see a list of assets? A. Yes I do.

Q. At a particular date? A. Yes.

Q. And the comparison between those assets at that date and an earlier date: A. Yes, I don't know what the later date is. 30

JUDGE: Which page is this? A. On Page 3. the first date is 11th January, 1946, but I am not sure what "you now have" means.

MR. ROWLAND: Let us assume that it means at the time of that note, "now" must mean 1956 or thereabouts, there are two dates mentioned 1946 and now? A. That is true.

Q. Look over the page and do you see a reference to living expenses? A. Yes indeed, 120,000/-.

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Appellant's Evidence

No. 37

Mr. Goodman
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9th June, 1960
(Continued)

- Q. Would you say that the method of working out those figures was comparable in any way to what you did in your report. Is the method comparable? A. Yes.
- Q. What was the conclusion at the bottom, what was the difference? A. It comes to the conclusion that the parts of income not accounted for as £500 per annum.
- 10 Q. Multiply that by eight years, what figure do you get? A. £4,000.
- Q. Look at the bottom of your report, no doubt this is purely coincidence, would you compare the figure of 14,000 at the bottom?
A. Which figure.
- Q. "Total Income returned and income calculated as above 17,600", what is the difference between these two figures roughly?
A. 3,600.
- 20 Q. 3,600 roughly. Are you aware at any time whether the Revenue followed up Colonel Bellman's computation of undisclosed income computed in that manner? A. I have no idea.

JUDGE: Yes, Mr. Newbold.

CROSS-EXAMINATION OF MR. COOK BY MR. NEWBOLD

- MR. NEWBOLD: This report that you have produced, is it your report? A. It is my firm's report.
- Q. Can you speak to it. A. Not in detail.
- 30 Q. Not in detail, did you prepare it? A. No my partner did.
- Q. So that in fact if I understand you correctly you had nothing to do with this report?
A. Only the overall direction.
- Q. Are you prepared to accept, or do you say to His Lordship that the statements, the schedules attached to that report are correct?
A. Well my partner must answer that point.

Cross-examination

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
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(Continued)

Q. I understood you to produce it. Do you say that you personally are not prepared to accept that those figures are correct? A. If you say am I aware if there are any errors in it the answer is no.

Q. Are you prepared to say that those figures are correct? A. No, my partner must do that.

Q. I am asking you? A. My answer is no.

Q. There is a certain amount of confusion and I want to get this quite clear. I was handed on Saturday a report dated the 3rd June with certain figures, a report dated 3rd June sent by Cook, Sutton & Co. showing the income calculated as above as £25,000, is that the report which you have produced, £25,852.2.0. on the last page, page 4?

10

JUDGE: What is the date of the report which you have now produced, surely that is the answer?

MR. NEWBOLD: This report I have here is dated 3rd June.

20

JUDGE: What is the date of the report on which your evidence is based A. 6th June.

MR. NEWBOLD: The report is 6th June? A. Yes.

JUDGE: So your evidence relates to a report of the 6th June not to a report of the 3rd June, is that correct? A. I know nothing of a report of the 3rd June.

JUDGE: What I am proposing to do is to rise now for 10 minutes so that Mr. Newbold may have an opportunity of comparing the report of the 3rd June with the report of the 6th June and see whether it has any material difference.

30

MR. NEWBOLD: I have compared it, but I understand that, I understood him to say to My Learned Friend who had mentioned 6th June, Mr. Cook said the report is dated 3rd June. I think Your Lordship will find Mr. Cook said that. I have two reports both dated 3rd June, both by Cook, Sutton & Co. and I want to know which is which.

40

MR. FOOT: The witness said the report is dated the 6th June.

In the Supreme Court

JUDGE: Shorthand Writer, look up your note please.

Appellant's Evidence

SHORTHAND WRITER: "Q. And did you make a report which is dated 6th June and which is before His Lordship of which this is a copy?

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A. Yes indeed - I believe the report itself was the 3rd was it not."

Mr. Goodman
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examination
9th June, 1960
(Continued)

10 JUDGE: I think it is now agreed that there are two reports, both of which originally had the date 3rd June, but one of which was changed to the 6th June.

20 MR. FOOT: We did send a report of the 6th June with a covering letter in which we said, "We would be obliged if you would substitute this report for the one forwarded to you on the 3rd June" and the changes set out are indicated in covering letter. I think the main change is of course that the list of creditors which we had not sent at the time the first report was prepared, the list of creditors of the Estate.

JUDGE: Go on, Mr. Newbold.

MR. NEWBOLD: As I understand the position at the moment, Mr. Cook, from your evidence, is that you are not prepared to state to His Lordship that these figures set out in the schedules to the report which is accepted, are correct?
A. No, My Lord, I believe they are correct.

30 Q. On what do you base that belief? A. On the fact that a partner of mine has prepared them.

Q. Is Mr. Bellman a partner of yours? A. He is now.

Q. Is the person who prepared all this report a partner of yours now? A. Yes.

Q. Are you prepared to accept Mr. Bellman's figures just as much as this other person?
A. That depends on when they were prepared.

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Appellant's Evidence

No. 37

Mr. Goodman
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examination
9th June, 1960
(Continued)

- Q. You are prepared, if I understand you correctly, to accept the figures, any figures which your partner has prepared, your present partner? A. In the absence of knowing they are wrong, yes.
- Q. How can you know if they are wrong? A. I have checked a number of them.
- Q. How can you know if they are wrong? A. Well I cannot, that is why I am not prepared to say that I am satisfied with the figures in the report. 10
- Q. I think the answer to my question is that I only know if they are wrong if I go through the books myself? A. That is true.
- Q. Have you been through the books yourself? A. No I have not.
- Q. So that in fact your evidence which has been given here today is entirely unrelated to anything you have seen in the books? A. Not entirely, no. 20
- Q. On anything you have seen in the books? A. Not entirely, no.
- Q. Would it strike you as strange, Mr. Cook, that your partner should make a report dated 3rd June with completely different figures of income from another report dated 3rd June; which of those would you accept? A. Before you understand that you must discover the background as to how the first report was prepared. As I understand it, new information had come to light that certain creditors had been treated as normal creditors were in fact creditors who had never been paid. That would mean an increase in the capital worth, which would mean a re-computation of the total increase, which would affect the work in the beginning. 30
- Q. Would you have been prepared to accept the figures in your partner's first report with as much degree of certainty as you are accepting the figures in the second report? A. Yes, if there was nothing to prove to me that they were erroneous. 40

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Appellant's Evidence

No. 37

Mr. Goodman
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examination
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(Continued)

Q. Schedule A. on which you have been asked questions, purports to set out Mr. Rattan Singh's capital worth on the 11th January, 1946?

JUDGE: Schedule A. to what?

MR. NEWBOLD: Schedule A. to this report.

JUDGE: His first report?

MR. NEWBOLD: To the report which he says is not his but his firm's? A. Yes.

10 Q. As I understand it that while you cannot say to His Lordship that that report is correct, you are prepared to accept that that figure of 731,738/17 cts., a figure in great detail, is the correct figure for Mr. Rattan Singh's worth at that date? A. Is that so.

JUDGE: Well, is that so? A. You are looking at the wrong schedule; you are looking at the schedule which must have been attached to the first report.

20 MR. NEWBOLD: I am looking at a figure which is still attached to the second report; at any rate the copy that was given to me.

JUDGE: And the copy given to me, 731,738/17 Cts. A. I can only say if that is the figure you have the legal representatives have given you the wrong one. The creditors' figure has been reduced from 89,000 I think to 39,000, and it is on that that I have given evidence, not on the schedule you have.

30 JUDGE: Would you like to adjourn for ten minutes now to sort it out?

MR. NEWBOLD: If your Lordship pleases.

COURT ADJOURNED AT 11.55 A.M.

COURT RESUMED AT 12.15 P.M.

JUDGE: Have you sorted out your difficulties?

MR. FOOT: I hope so, my Lord.

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Mr. Goodman
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(Continued)

JUDGE: And it will not be necessary for the witness to give his evidence again?

MR. FOOT: No, My Lord. I do apologise to Your Lordship and My Learned Friend for the confusion which has arisen. The position is that on the 3rd June the original report was sent. Then it was discovered that there were these additional creditors, which obviously made a difference, and therefore, the adjusted report was sent on the 6th June, and although Schedules B. and C. to the adjusted report were precisely the same, there had to be an alteration in Schedule A. Confusion appears to have arisen in this way; unfortunately the report which was handed to Your Lordship was the original report and not the adjusted report. My files appear quite clearly because the report of the 6th June, the adjusted report was sent with a covering letter. My Lord, I don't know if your Lordship has seen that?

10

20

JUDGE: No, I have not seen this letter at all.

MR. FOOT: My Lord, I am very sorry, I think probably I should have read it to Your Lordship in opening. Your Lordship sees what the letter contains; it refers to the list of creditors which had come to light after the first report, and then there is reference to "(b) figures of Stock and Work in Progress was too high..... (d) they have adjusted rents due to Gian Singh." Now, My Lord, unfortunately in Your Lordship's bundle Your Lordship was handed the original report and the original schedules. We have now taken the liberty of adding to Your Lordship's bundle the second report, which is the report produced by this witness and the second Schedule A.

30

JUDGE: These are the figures, 185,129.

MR. FOOT: Yes, My Lord.

40

JUDGE: Very well. Yes, Mr. Newbold.

MR. NEWBOLD: I am looking at a document which has the figure Sh 784,479/29 Cts. Is that the

capital worth according to this report as at the 11th January, 1946, of Mr. Rattan Singh?

A. Yes.

Q. Can you say that of your own knowledge?

A. We have checked these figures, and subject to one adjustment which I mentioned earlier this morning, the trifling adjustment of another 81/- or 98/- which we found yesterday afternoon; that we had incorrectly slightly miscalculated the conversion of the rupees to shillings wrongly.

JUDGE: I don't think that you are answering the question. Can you personally say that this sum accurately represents the appellant's capital worth on the 11th January; you personally as distinct from your firm?

A. Yes from information that has come to my firm, I have checked this and it is so; does that satisfy you.

20 MR. NEWBOLD: Have you checked the books:

A. No.

Q. Have you checked the Bank Statements?

A. Yes.

Q. All of them: A. Definitely yes.

Q. You have checked the opening bank statements?

A. Yes, that is when we found the two errors that come to light.

Q. You have not checked the books but you have checked the opening Bank Statements. Have you checked the list of Debtors: A. No.

Q. Have you checked the properties: A. The properties are the same right through.

Q. Mr. Cook, have you checked the properties?

A. I checked it with the Estate Duty Accounts.

Q. Have you checked the properties?

JUDGE: With what, Mr. Newbold?

MR. NEWBOLD: Have you checked the properties with anything? A. With the Estate Duty Account.

In the Supreme Court

Appellant's Evidence

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Mr. Goodman
Tolfourd-Cook
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examination
9th June, 1960
(Continued)

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Appellant's
Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Cross-
examination
9th June, 1960
(Continued)

- Q. You have? A. Yes.
- Q. Have you checked motor vehicles? A. Yes may I say that a good deal of this checking was done with Mr. Easterbrook yesterday afternoon.
- Q. I am asking if you have checked them against the books or against the Estate Duty Affidavit? A. Yes.
- Q. Now you say that you have checked properties against the Estate Duty affidavit? A. To the extent of those appearing there. 10
- Q. This item includes items which are not in the Estate Duty affidavit? A. Yes.
- Q. Are you personally satisfied therefore that that figure is a figure which represents the value of the properties on that date? A. If there were any variation of that figure it would be reflected in exactly the same figure at the end; we have taken Thian's figures. 20
- Q. Are you personally satisfied that that figure represents the value of the properties on that date? A. Neither I nor my firm have any reason to disbelieve them. I hope that answers your question; if I am evasive you must say so.
- Q. You have produced this report which you have said was not your report but the report of your firm, with certain figures. Do I take it that you have produced the reports with the object of His Lordship accepting those figures as accurate? A. Yes indeed. 30
- Q. Therefore I presume you tender the report on the basis that you are satisfied on the accuracy of those figures? A. Yes.
- Q. On every one of those figures that are in the report and the schedules attached to the report? A. I don't think I can go as far as that.
- Q. What is the value of the report? A. Of great value. 40

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(Continued)

10 Q. Can you tell me, you said you cannot go to extent that every one of those figures is accurate. Can you tell His Lordship which figures you do not think may be accurate, and therefore, we can then find out which you think are accurate? A. I would need to have the Estate Duty Affidavit before me to check what was in the affidavit. When I say I believe it to be right, those figures have gone from the beginning to the end, if there was an error in the beginning there is an equal error at the end, with no effect on the resultant calculation.

Q. From the beginning to the end? A. In a good many cases.

JUDGE: Mr. Newbold, perhaps you can short-circuit it. By whom was this report actually prepared? A. My partner.

JUDGE: What is his name? A. Mr. Blackhall.

20 JUDGE: Is he going to be a witness? A. Yes he is.

JUDGE: Surely the proper person to prove the details of the report is the person who prepared the report.

MR. NEWBOLD: With respect I would entirely agree so long as it is understood that Mr. Cook cannot give any evidence in relation to the accuracy of these figures and is giving evidence as to general principles.

30 JUDGE: The whole of his evidence so far as it is in the nature of details must be in the nature of hearsay, is that not so, Mr. Foot.

MR. FOOT: Yes, and if Your Lordship will recollect, My Learned Junior in calling this witness did indicate that he was going to call Mr. Cook to deal with general principles and that he was going to call Mr. Blackhall to deal with the actual figures.

0 JUDGE: Thank you, Mr. Cook, you may go now: you don't want Mr. Cook any more do you, Mr. Newbold?

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(Continued)

MR. NEWBOLD: Most certainly I do, My Lord, I have not started yet. You have said, Mr. Cook, that you personally checked the opening Bank Accounts? A. Yes, yesterday afternoon.

Q. Now apart from his difference in rupees which relates to which item? A. There are two items in the State Bank Jullunder City 154,500, there should be in fact another 700 rupees added. 1050/-, this item taken as interest which was subsequently found not to be so. State Bank Jullunder City, Cash at Bank 746/-, our assistant did in fact calculate $1\frac{1}{2}$ times slightly erroneously and I believe, speaking from memory, we have to add 98/- to that, but my partner will have the figures.

10

Q. Are you satisfied that those items include all the Bank Accounts on that date? A. As known to my firm, yes.

20

Q. That means, do I understand from your answer to that question, that so far as you know there may be other Accounts? A. No man who has control of Bank Accounts can be 100 per cent certain that no man has control of others.

Q. Therefore this statement of worth in relation to various assets is based on various information given to you or your firm as to what the position was? A. Yes.

Q. Who gave you that information? A. We collected it from a number of sources; I would prefer this to be put to my partner.

30

Q. You have also said that most of the items in Schedule A. have run right through and have been known from the beginning. Let us take the second Bank Account, Fixed Deposit Account, National Bank of India? A. I was referring to the properties when I made that statement.

Q. Oh, I see? A. The others have had substantial alterations.

40

Q. Let us deal with this particular Bank Account, when did this first come to light, when was the Department, if ever, first informed about this? A. May I ask that these questions be put to my partner; Mr. Rowland did make it clear that I was not answering detail.

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10 Q. Are you satisfied as far as you know that this statement includes all the Post Office Accounts of Mr. Rattan Singh on this date? A. To the extent that they have been reported to my firm, yes.

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(Continued)

Q. Do you know what this 884/77 represents?
A. It is two Accounts; we had the books.

Q. I assume that when your firm submits a report in relation to an Income Tax case, it has taken a reasonable degree of care to ensure that the report is as accurate as the firm can make it? A. We try to.

20 Q. Did you do that with the first report submitted on the 3rd June? A. I think that should be answered by my partner, but the answer I think is definitely yes.

30 Q. If a reasonable degree of care was taken to ensure that the figures were correct, can you give any explanation as to why on the same day another report should be submitted with different figures? A. As my partner found any error I think I will leave it to him to explain how he found it. Please don't think I am trying to throw the onus onto my partner, but I think it is only right that His Lordship should hear from the person who found the error how that error was found.

JUDGE: Possibly one of these days I may do so.

40 MR. NEWBOLD: As far as you are concerned, Mr. Cook, do you accept this Schedule C. as being the schedule of drawings, it is so headed, as all the drawings of Mr. Rattan Singh during this period? A. He says so, who am I to dispute him; he alone had the expenditure.

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(Continued)

Q. As far as you are concerned, have you taken, your individually, taken any pains or care whatsoever to check that figure of drawings against any of the books? A. No, I thought I made it quite clear that my partner had prepared the details.

Q. I am asking you - when your partner comes into the box, if ever, I will then have the pleasure of asking him - do I understand that this report produced by your firm, is designed to show - here are figures to show his capital worth at the 11th January, 1946, here are figures which show his capital worth at a subsequent period, and here are figures which show his drawings, estimated as far as his personal expenses are concerned, detailed as far as the others concerned, as being accurate, and therefore, they allow the Court to ascertain the total income over this period, is that the object of this report? A. That is so.

10

20

Q. Therefore, would you agree with me that above all the drawings schedule during this interim period would have to be carefully checked? A. Oh yes.

Q. Have you made any attempt to check it, you personally? A. No.

Q. You have accepted Mr. Rattan Singh's statement? A. My partner has prepared the schedule.

30

Q. Have you even bothered to check it against the drawings record in Thian's first report? A. Having seen Thian's first report, I would venture to say there is not very much point in checking it.

Q. Mr. Thian's report on drawings purported to be from the books? A. Yes.

Q. Did you bother to go to the books at all? A. No.

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Q. So that you think that your report, on which you do not bother to go to the books, is better than Mr. Thian's report, on which he has so bothered to go to the books?

A. That is for my partner to say.

Q. You would not say that generally, would you regard that as a good Accountancy principle?

A. It depends on who is taking the responsibility.

10 JUDGE: What the witness has said more than once is that I have done this, I have done that, my partner prepared the report; if you want to know whether this done or that was done, the proper person to ask is my partner.

MR. NEWBOLD: I am now asking him if this is a proper Accountancy principle. Would you regard that as a good Accountancy report?

A. How can I say if I have not prepared the details.

20 Q. I am not concerned with the details? A. Then I cannot answer.

Q. I am asking you whether it is good Accountancy practice and principle for a firm of Accountants to put forward a report showing a schedule of drawings, if they do not check that schedule against the books? A. I have not checked against the books; I said I have not checked personally.

30 Q. If that happens would it be good Accountancy? A. If what happens.

JUDGE: What Mr. Newbold is saying is this. Would you say that it was consistent with good Accountancy practice for a firm of Chartered Accountants to put forward a report, if the material contained in that report had not been checked by whoever prepared the report with the books upon which it purported to be a report? A. No, of course not.

40 MR. NEWBOLD: If therefore any report had been produced which had not in fact been checked, you, I take it from your answer, would regard that report as valueless? A. I would throw considerable doubt upon it.

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Mr. Goodman Tolfourd-Cook Cross-examination 9th June, 1960 (Continued)

Q. In this schedule of drawings - I am asking a hypothetical question - is not supported by the books in a large number of respects, would that throw considerable doubt upon the report as a whole? A. As there is a considerable period when there are I believe no record of drawings, I do not think you can refer to the books.

Q. I said if this schedule shows that it was prepared without reference to the books, and considerable sums were omitted, would that throw considerable doubt upon this report? A. It would throw doubt upon the resultant figures arising from it.

10

Q. The schedule of drawings during the interim period is an absolute essential part of this method which you have said is the normal method of ascertaining the gross amount of income over a period of years, isn't it? A. Yes.

Q. And unless that schedule is as accurate as it can be, the figure arrived at as to the alleged total income over the period is valueless? A. Not valueless, subject to adjustment.

20

Q. Adjustment based on what? A. Whatever is the final figure, and Your Lordship has to adjudicate on the estimated figures.

Q. Mr. Cook, will you agree with me that you may start at the beginning of a period with a capital worth of £100,000, have a five year period, end with a capital worth of £50,000 that is less than the opening amount, and nevertheless have an income yearly of £20,000? A. Certainly, why not.

30

Q. Therefore there is no real object in looking at the opening statement and the closing statement unless you know your drawings accurately in the meantime? A. How do you indicate what you know accurately of the drawings; it is an unknown factor in any case.

40

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(Continued)

- Q. You have spoken about it being the normal thing to do this sort of thing, and you were asked if you had considerable experience of back duty cases in the U.K. and East Africa; how many back duty cases have you had in East Africa? A. None, this is the first in East Africa, the whole of the rest were in the U.K.
- 10 Q. I suggest to you that it is not normal?
A. Oh, no.
- Q. Please let me finish - I would suggest that it is not normal in back duty cases to take as the means of ascertaining income over a period only a capital worth basis, but that basis is used to check figures? A. Nonsense.
- 20 Q. Do you say - and you are on oath and a member of a very high profession - do you say that the Inland Revenue Department in England, where there are books however inaccurate they are, do not go to the books but take a capital worth basis? A. Yes.
- Q. You say, yes? A. Yes I do, it depends entirely upon what records you have got. The more you have accurate records, the more you rely on them; the less accurate record you have, the less you rely on them.
- 30 Q. Where you have books have you bothered to find out, you said no. If there are books, in this case as from 1948, however inaccurate they are at any rate books, would you not expect any determination of the figures to be arrived at from the books, and a capital worth basis be used purely for the purpose of check? A. Would you mind putting that to me again, I think there are two questions there.
- Q. In this case there are books from 1948 to 1953? A. Yes.
- 40 Q. Would you not expect computations of income for that period to be made primarily from the books, and a capital worth statement to be used purely for the purpose of check? A. I am very doubtful as to how to answer you without confusing you. So far as reference to the

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books is concerned, my partner will have to tell you what is the general practice. So far as I am concerned, I would expect reference to be made to the books.

COURT ADJOURNED AT 12.45 P.M.

9th June, 1960, 2.15 p.m.

Witness warned still on oath.

MR. COOK (Cross-examination continued):

- Q. Mr. Cook, you examined the Schedule which sets out the method whereby the income tax authorities have arrived at their assessments? A. Yes. 10
- Q. Having done so, you will appreciate that that method was based upon Mr. Thian's two reports and the figures set out in those reports. So far as you are aware, is there any figure there other than the estimated figures for 1946 and 1947 which are not set out in Mr. Thian's report? A. I would not be too sure of that; I cannot recall any immediate payment. 20
- Q. I gather from the evidence which you gave that you do not place very much reliance on Mr. Thian's report? A. No.
- Q. Can I take it that you regard it as a more or less incompetent report? A. Partially so.
- Q. In order to arrive at such a judgment, I take it that you regard yourself as competent to pass such a judgment? A. I have looked through the report and there are certain things in it which I felt were wrong. He has made assumptions for which I think he has got no justification. 30
- Q. Would you agree that in order to condemn a qualified accountant in Court as at least partially incompetent, you would have to study the report very carefully yourself? A. My feeling is that he set about his task in the wrong way.

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(Continued)

Q. That caused you to condemn him as a partially incompetent? A. Yes, because as a result he came to a misleading conclusion.

Q. Would you dispute his figures? A. In part, yes.

Q. If you feel that you would dispute his figures in part, you must know which part you dispute? A. I can only talk in the general sense because.....

10 JUDGE: When you say you would dispute Mr. Thian's figures, do you mean that in the light of your personal investigations you challenge Thian's figures, or do you mean that accepting as accurate the figures which are set out in your firm's report would you challenge Thian's figures? A. The second part.

Not the first? A. No.

20 Q. Do you realise from a study of Mr. Thian's reports that they were based on figures set out in the books? A. I do not know where Mr. Thian got all his information.

Q. Does it not say to a large extent in the report where he got his information from? A. I am not sufficiently fully detailed on my memory to be able to answer that question. My reply is based upon the view of it and what my reaction was as I read it.

30 Q. Would you agree that if an accountant is appointed to investigate his clients affairs, ultimately the first thing to do would be to go and find out what books there are, and such as exist, to try to find out what they disclose? A. Yes, I think that is essential.

Q. Have you ascertained whether any member of your firm who is responsible for these figures has done so? A. No.

40 Q. Did you not think it your duty as a competent accountant to ascertain whether a report which is issued in your name had been arrived at after examination of the books? A. That is for my partner to answer.

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(Continued)

Q. I am asking you whether you do not think it was your duty to find out whether it had been done? A. If you ask me whether I have asked my partner whether he has examined the books I would say yes, but I cannot tell you what he has examined or what lists he has made.

Q. In effect, while you were yourself not able to speak to any of the figures in this report, you made enquiries generally as to where those figures came from? A. Yes. 10

Q. And you must have satisfied yourself that the figures would come from sources that would warrant you putting them forward as reasonably accurate? A. The figures will have come from various sources.

Q. My question is, Did you not think as a competent authority that it was up to you to ascertain that the figures had been arrived at from sources which would give a reasonable degree of accuracy? A. No, because I had not made the report; my partner made it. I have at no time said that I prepared this report. 20

Q. Unless my note is wrong, you tendered a report? A. That is true.

JUDGE: Who signed thereport? A. My partner signed it in the first instance, but I signed further copies of it.

(To Mr. Newbold): I wonder, Mr. Newbold whether this witness is qualified to give useful evidence or to give useful answers in cross-examination in relation to anything except general principles of accountancy; because he has repeated over and over again: So far as the figures in the report are concerned, I personally can take no responsibility for their accuracy and I can express no view as to their accuracy because the work was done by my partner. 30 40

MR. NEWBOLD: I will ask no further question of this witness except on general principles.

JUDGE: It would seem that his evidence on matters of a general nature may be extremely valuable, but his evidence on matters as to the particular figures would seem to be quite useless.

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Mr. Goodman
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(Continued)

10 Q. On general principles, Mr. Cook, you said it is your normal practice, or the normal practice for the taxpayer to submit a schedule of figures, then get together with the Revenue Department and hammer out an agreement?

A. Yes.

Q. I assume that that means that time must be given to the Revenue Department to examine the books? A. Yes.

Q. When were you first consulted in this matter?

A. I have no idea. It has been in and out of the office for a great deal of time. It is a legacy we have assumed - in-herited from the late, Thian, Bellman partnership.

20 Q. May I suggest that you first saw Mr. Easterbrook on 9th December, 1958?

A. That is when I personally saw him.

Q. And you asked him for a general review of the position? A. That is true.

Q. And he gave it you? A. Yes.

Q. And you expressed your appreciation of the summary of the case? A. Yes.

30 Q. You then told Mr. Easterbrook that you would inform him tomorrow of what course of action, if any, you, representing Rattan Singh, would take? A. Yes.

Q. Did you then see him on the next occasion on 15th December, 1958? A. I think I only saw him once, but I may well have seen him twice.

40 Q. On the first occasion do you remember asking him for a summary and he gave you that summary, and you said, I will discuss the matter with my client? A. That's right I think.

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Mr. Goodman Tolford-Cook Cross-examination 9th June, 1960 (Continued)

Q. I suggest that you saw him subsequently on 15th December? A. Yes.

Q. I suggest that you then said, Do you remember a question of a settlement which you were offering for £25,000? A. Yes.

Q. And do you remember that you said that your client was prepared to offer a settlement by paying £25,000 in addition to what he had already paid? A. I thought the £25,000 was to be inclusive, but I may be mistaken. 10

Q. Does this refresh your memory; Mr. Bellman was also present at that interview? A. He was.

Q. And when you made this offer to settle for £25,000 in addition to what had already been paid, did Mr. Bellman intervene and say, Oh no, it is £25,000 in all? A. I did not recall that the £25,000 in all was in accordance with.....

Q. You said, "Well, I must have misunderstood", and you were not prepared to put forward that figure of £25,000 in all? A. No. I do not recall that. 20

Q. Do you recall saying to Mr. Easterbrook: "I have to advise the client that there are no grounds of appeal which could be advanced in time to meet....." A. Yes. The position was this. I had acquired the practice of Thian, Bellman. Mr. Rattan Singh or his son had approached Col. Bellman and said they were grossly dissatisfied with the settlement. What could we do? Col. Bellman said he would have nothing to do with it and spoke to me as senior partner and said, "I Hope I have made the right decision". That was a matter of a few days before I left for the U.K. on 16th December, 1958. I went to see Mr. Easterbrook. Mr. Easterbrook said it was up to me to give notice of appeal but I must be prepared to conduct the appeal the following week, and at that interview I made it clear that in the time available it was quite impossible for me to tackle the case. I told Mr. Rattan Singh that we could do nothing for 30 40

him because there was insufficient time available and my firm withdrew from the whole case.

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Mr. Goodman
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(Continued)

Q. When did your firm become involved again?
A. I am not sure, but I think we saw a solicitor towards the end of January of this year.

10 Q. And as far as you know, has your firm been employed on this matter since January of this year? A. They have done an immense amount of work.

20 Q. You said the normal practice is for the taxpayer to submit accounts and hammer them out. Submitting accounts in the way in which these accounts were done would not leave any opportunity whatsoever of hammering out? A. The normal procedure is to send the schedules to the inspector with whatever covering letter is appropriate; it has often taken as long as 2 years.

Q. Is that exactly what happened in the case of Mr. Thian? A. It seems to have done so.

Q. He started in 1956 and he continued in it over 2 years until 1958? A. Correct.

Q. Submitting two reports and having an enormous number of discussions? A. Yes.

Q. I take it that whatever basis you adopt you have got to have certain figures at which to look? A. Indeed.

30 Q. One of the prime figures which are used by all accountants is contained in the bank statement? A. Certainly.

Q. And one of the most elementary jobs which has to be done is to ascertain what were the bank statements during that period, the remittances, the payment in, the drawings?
A. That is true.

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Mr. Goodman
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(Continued)

- Q. Did you ascertain whether remittances to the Indian banks tied up with drawings from the East African banks? A. I asked my junior partner and my answer is yes up to 31st December, 1957, and nothing new has transpired since 1953 to create doubt.
- Q. Do I understand that you were informed that all remittances to the Indian banks between 1946 and 1953 tie up with the drawings from the East African Banks? A. I tried to say that we had compiled all the bank statements but I believe in the last two cases they have got there by devious means. 10
- Q. You have mentioned earlier this document which you put in which purports to show the difference between the profits calculated by Mr. Thian and the profits calculated by your firm - Was that done by yourself? A. It was done by my assistant in my presence. 20
- Q. The first two years you have taken from Mr. Thian's second report? A. Yes.
- Q. The remaining years you have taken from what? A. From the schedules from which the revenue commenced - what we call computation adjustments.
- Q. Which is Mr. Thian's first report? A. I do not think so; I think it is the second report.
- Q. On general principles, having built up this gross amount of income over a period in order to arrive at an annual assessment you had got to allocate portions of the gross total to individual years. Were you concerned in this allocation? A. I was not concerned. The principle of ascertaining it was basically on my direction, but I was not involved in the actual allocation. 30
- Q. You laid down a general principle of ascertaining it? A. Yes. 40
- Q. What was that principle? A. That principle was to get a person to go through the contract

and information and try and discard.....
(inaudible) certain years as against other
years and weigh the various years so that the
year in which profitability was high would
carry a higher percentage of gross profit than
the year in which profitability might have
been very low.

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(Continued)

- Q. So you are not responsible for that figure? A. No.
- 10 Q. Do you know that there are very considerable variations between the first report dated 3rd June and the second report? A. I have never seen the first report, so I cannot say.
- Q. Look at the second report, on p.3. Having decided on the principle of allocating this amount and going to the extent of discussing the matter with an expert, I assume that any figures that you would put into any -
- 20 would be figures to which you would give due consideration? A. I assume that my partner has given consideration to those figures.
- Q. Would you be able to explain why there should be a difference in the figures between the first and second report? A. I would not be able to offer any explanation.
- Q. The figures for the 8 years read as follows; (Reads). A. Yes.
- 30 Q. Would you be surprised if on the same day a report on your firm on the same matter was given figures as follows: 25, 75, 50, 25, 45, 70, 110, 50? A. If the expert changed his opinion and it is only recently that that opinion was given, then we should fall into line with it. This was a matter upon which my partner and I had considerable correspondence.
- 40 Q. I understand from your evidence that as far as you are concerned you cannot say whether those figures are right or wrong? A. I have no idea.
- Q. As far as your firm is concerned? A. I would not like to say.

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Q. Did you give instructions to your staff here to go to documents published by the statistical office? A. My instructions from my office here were to go to a person of expert knowledge and I believe it was a qualified architect and I would expect him to go to such places.

Q. If you are unable to give any evidence about figures, then I take it that your statement in your examination-in-chief that you could show no reason to justify the various figures is based upon nothing at all? A. No. I would not say that. You are presumably referring to specific items in what we call the computation figures.

10

Q. You have said you saw no justification for adding back the figure of African wages, Shs.10,000/- for 1948. On what do you base that? A. In all these years 1941 to 1953 inclusive I have looked at the schedule of drawings prepared by Mr. Thian. I have looked to see what cash has been deducted in those drawings. It is not for me to say what a taxpayer spent or what he did not spend.....

20

Q. Do you know what that figure of Shs. 10,000 refers to? A. You will find that in one of Mr. Thian's reports.

JUDGE: What you are saying is this: I accept the appellant's instructions as to what he has spent. Those instructions are at variance with Thian's account; therefore Thian's accounts are in my view wrong? A. What other conclusion can I come to?

30

It entirely depends upon whether your client has told you the truth or not? A. Yes. If I may answer counsel. Every time you add back here whether it be under the heading of African wages or drawings those items which are in round sums are cash and if they add back it means that they have been deducted from Mr. Thian's amount and are additional monies available for the expenditure of the taxpayer. Mr. Thian has taken the line that anything that was not specifically wages, that he could

40

remember as wages, was drawings. We know that is wrong because we have muster rolls that are incomplete.

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(Continued)

JUDGE: You say your firm have seen all the bank statements? A. I understand so.

Have they seen the returned cheques?

A. I believe some, but I would not like to say all. I doubt whether all were available.

10 Why? A. I would be extremely surprised if all taxpayers cheque stubs were available.

Q. Did you know that Mr. Easterbrook and Mr. Thian had gone into great detail with the drawings over this period and arrived at agreement?
A. I believe they had.

20 Q. Would you not think it your duty as a competent accountant to determine why in this report you are departing from an accounting made by another accountant representing the taxpayer?
A. Your other accountant may not be as thorough.

Q. I take it - one has got to be blunt - that you regard Mr. Thian as incompetent? A. No, but I do say that one professional man will drive a hard bargain with the Inland Revenue and the other man will not.

30 Q. Despite the view which you have of Mr. Thian's figures in his report, you used his figures for certain purposes? A. I know we have had to use them on occasions.

Q. But why use those figures of Mr. Thian coming from a report which you regard as incompetent?
A. I did not discredit it.

40 Q. Why did you take those figures and base your report on them? A. My partner must answer that; but I believe that on occasions he has used Thian's figures when he has satisfied himself that they are likely to be nearer the truth, but that does not mean that we must swallow them hook, line and sinker.

In the Supreme Court

Appellant's Evidence

No. 37

Mr. Goodman
Tolfourd-Cook
Cross-
examination
9th June, 1960
(Continued)

JUDGE: Is your answer this, that to the best of your belief you or your firm have used Thian's figures where they agree with yours? A. Where we have been able reasonably to satisfy ourselves that they are right, my partner has accepted them.

Where they are wrong, you have used other figures? A. Yes.

- Q. When a firm of accountants produce a report they generally certify their report? 10
A. It depends - not necessarily.
- Q. When they do not certify it, what does that mean? A. Nothing. You can only certify a report when you are in a position to certify.
- Q. Could a qualified certificate be given?
A. Who would accept it?
- Q. Are not qualified certificates given by accountants? A. They dislike doing so. 20
- Q. Are you prepared to certify these figures?
A. The question of certification lies with my partner. I would not agree to a qualified agreement of these accounts.
- Q. Figures of this sort, which are of themselves based on estimates can never be given an unqualified certificate, but they can be given a qualified certificate. For your professional conscience, before you gave a certificate there would be so many qualifications on it that in the end it would be tantamount to saying, that is my guess? A. Yes. 30

Re-examined by MR. ROWLAND.

re-
examination

- Q. It is quite wrong for auditors to sign company balance sheets? A. Yes.
- Q. Does that necessarily involve that all the partners should read all the books? A. No.

Q. Is it considered proper to sign a report of work is done under the general supervision or in accordance with instructions of the partner?
A. Certainly.

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Appellant's Evidence

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Mr. Goodman
Tolfourd-Cook
Re-
examination
9th June, 1960
(Continued)

Q. Did you give such instructions in the present case to your junior partner with regard to the enquiries he was to make? A. Indeed I did; the whole matter has been conducted under my general direction.

10 Q. During most of the time that these investigations were being made where were you? A. Part of the time I was in East Africa on convalescent leave, a great deal of the time I was in the U.K.

20 JUDGE: I am not, Mr. Rowland, going to draw any inference adverse to the appellant's case from the inability of this witness to deal with matters in detail. I merely take the view that as he has not seen the books personally or checked the entries personally, he cannot give evidence of his own knowledge as to these matters.

MR. ROWLAND: I appreciate that, my Lord.

Q. You arrived back in the Colony when?
A. Sunday, lunchtime.

30 Q. What have you been doing since Sunday?
A. Reading a great deal of material and checking figures here and there calling for additional supporting schedules to check figures which had gone in.

Q. Did you see a copy of the report? A. Yes.

Q. Did you examine it? A. Afterwards.

Q. Was it drawn up in accordance with your general instructions? A. Yes.

Q. Do you think that is the right method of drawing up a report of this nature in a case of this kind? A. I think I would be hard pressed to remember a report in any other form.

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Mr. Goodman
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Q. Can you see any possible difference in principle between arriving at income from incomplete records in Kenya and in the U.K.?
A. Yes.

JUDGE: In both cases to arrive at income from incomplete records you have to rely upon the veracity as well as the accuracy of recollection of the persons whose accounts are the subject of investigation? A. That is very true.

10

Q. In arriving at the opening figure is that based on documents or on your questioning of the client? A. I would prefer it if you would put that to Mr. Blackhall, but a good deal is based on bank statements and documentation.

Q. What principle would you adopt - would you go to the actual document or would you rely on the statements of the appellant?

A. Wherever it is possible you never rely on your client; you always try to get independent evidence.

20

Q. And that would apply to the statement of assets at the beginning of the period and at the end? A. Yes.

Q. The other main point of your report is the question of drawings? A. Yes.

Q. They are set out in your report in Schedule C? A. Yes.

Q. To what extent are drawings in a case like that derived on the basis of your client's veracity and to what extent are they based on documentation? A. I think that question should be addressed to Mr. Blackhall. The items at the bottom are specifically proved and on the top line there are.....

30

Q. With regard to living expenses, if the figure for living expenses was regarded as too low by the Inland Revenue, would you consider their figure? A. Certainly, I would refer it back to the client.

40

Q. It must be a matter of guess work even for the most honest taxpayer? A. It is always a matter of give and take.

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Q. If that figure were unsatisfactory by the Inland Revenue, would it be possible, if you were given an alternative figure, to re-calculate the amount? A. A Matter of minutes.

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10 Q. There were I think something of the order of 28 recorded interviews. Do you think from what you know of the type of interview that during the course of 28 interviews it would be possible for the Revenue Authorities to form any kind of view as to what they think the living expenses ought to be? A. Frankly no.

Mr. Goodman
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(Continued)

20 Q. What they think it ought to be? A. There is nothing in the interviews to suggest that they seriously got down to living expenses and discussed the thing in the same way as I would discuss it: how much did you pay for meat and vegetables, and things of that kind.

30 Q. Look at the Questionnaire dated 17th December, 1956. In paragraph 2 you say: (Reads). And then at the end - would you look at the last page, page 4, there is a summary: (Reads). If these figures were produced to the revenue, would that have enabled them to form, if they wished to, any view as to how that would fit in the statement of worth? A. Oh, certainly.

Q. Would it have given them the opportunity to cross-examine the appellant at subsequent interviews? A. He would have been subject to very severe cross-examination in England.

40 Q. If the Revenue had that information in their possession in 1956 and saw the appellant several times afterwards, could they have formed any view as to the living expenses? A. In the absence of cross-examination I would have felt they would have accepted this.

Q. No alternative figure has been put to you. If a figure were put to you which was acceptable to you.....

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Mr. Goodman
Tolfourd-Cook
Re-
examination
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(Continued)

MR. NEWBOLD: Having regard to my friend's last question, he said, No alternative figure was put to you. We only received this statement on Monday.....

JUDGE: For some time I think the appellant seemed to be under the impression that we were seeking to determine whether the Department was reasonable or unreasonable in their approach to proposals for a tax which was due. As I understand my task, it is not to determine whether the Department has been reasonable or unreasonable, but simply and solely to determine whether the evidence tendered on behalf of the appellant is such as to establish that there is preponderance of probability that the Department's figure is wrong. 10

- Q. I gather since you were here you have been checking a great number of figures? A. Yes. 20
- Q. Did you look at any of Thian's figures?
A. From the point of view of comparison, I looked at them from time to time.
- Q. Did you look at the figures for drawings he had compiled? A. Yes, I did. I do not remember the figures, but I do remember looking at them.
- Q. Did you study the schedule of drawings attached to the report? A. Yes.
- Q. What did you see which you thought might need adjusting? A. That there were a good many round figures from year to year which seemed to be in total vastly in excess of anything he might have spent on living expenses. 30
- Q. These round figures appear to have been added to his income by Mr. Thian? A. Undoubtedly.
- Q. Did you see any trace in your examination of the way Thian had dealt with it - of his attributing any of these round figures to undisclosed expenditure? A. As far as I can say, no. 40

Q. If there had been some undisclosed expenditure, what effect would that have on your figures as against Thian's figures? A. My figures would be lower than his.

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Q. You mean profits? A. Yes.

Q. Did you see anything in the report which had been submitted in your firm's name which you felt was wrong? A. Yes, one small error in the one year of turnover the profit figure was taken out up to August instead of December, but it is only a difference of under 3,000/-.
10

Mr. Goodman
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Re-
examination
9th June, 1960
(Continued)

NO. 38

No. 38

Anthony Marcus Blackhall

Anthony Marcus
Blackhall
Examination
9th June, 1960

ANTHONY MARCUS BLACKHALL, Sworn.

EXAMINED BY MR. ROWLAND:

Q. Your full names? A. Anthony Marcus Blackhall.

Q. Are you a partner in the firm of Cook? A. Yes.

Q. What are your professional qualifications?
A. Chartered Accountant.
20

Q. When did you qualify? A. May, 1952.

Q. Did you prepare the figures in these two reports? A. Yes I prepared those figures, naturally with the assistance of the subordinate staff and I had no reason to doubt that they were not sound and accurate.

Q. Did you yourself conduct any kind of investigation into the books and documents referring to Mr. Rattan Singh? A. Yes, but it must be understood that books were not available in 1946 and 1947, and no cash book was available in 1953 and part of 1952.
30

Q. Did you investigate the bank account? A. The bank accounts were investigated in detail and they were balanced and reconciled to each shilling.

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Anthony Marcus Blackhall Examination 9th June, 1960 (Continued)

- Q. And are you satisfied that the figures in Schedule A of the report are accurate?
A. Those figures can be readily documented, and we were in the process of documenting those figures with Mr. Easterbrook the other day, and I obviously am satisfied with those figures based on the documentation which was available.
- Q. There are certain figures in Schedule A which depend on bank accounts? A. Yes. 10
- Q. And there is an item marked "Private properties" and an item marked "Properties in Schedule B" ? A. Yes.
- Q. The value which was attached to these properties is not necessarily an accurate valuation at any particular time? A. We know the valuation in Schedule A. - we have taken that from the estate duty affidavit, and from the reports of Mr. Thian we know that valuation may be erroneous: it does not affect our calculations: we take the same valuation throughout. 20
- Q. Would the same be true of the securities?
A. It is there at the beginning and there at the end. The valuation is irrelevant.
- Q. I would like you to tell my Lord the reason for the changes which you made in the second report. With regard to the first adjustment marked A, do you remember in your first report making a qualification at the foot of Schedule A ? A. I do indeed. 30
- Q. And do you remember what the effect of what was? A. The purpose of the qualification was that a figure of Shs.89,000/- creditors did not make sense; but at that time I had no detail available to me and I naturally made a note of it.
- Q. Did you subsequently obtain a list of the alleged creditors attached to the estate duty affidavit? A. I did discover a list of the creditors after the submission of the original version of the report. 40

Q. Did you see amongst the creditors the people listed in para. A ? A. Yes, indeed.

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Q. Who are these people? A. Mr. Rattan Singh, Mr. Gian Singh, Mr. B. Singh, Mr. Surjeet Singh, Mr. Inderjeet Singh.

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10 Q. Why did you deduct this 53,000 ? A. We had originally treated them as trade creditors. It subsequently transpired that these items, being family obligations, had never been paid.

Anthony Marcus
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(Continued)

Q. If Rattan Singh had paid himself, would any alterations have been made in Schedule A ? A. No, obviously he has got to pay himself out of his own resources.

Q. If you brought him in as a creditor, how would you bring in a contra item? A. You would have to increase your assets, presumably.

20 Q. The adjustment in para. B. - why did you make that? A. The figures originally prepared were based on entries in the cash book subsequent to the period under review and purported to be receipts for contract income. We took out as turnover figures from a detailed analysis of Bank pass sheets and that gave us what we would call a cash turnover and we knew that cash turnover was not entirely satisfactory. My client informed me, and I accepted it as a reasonable basis, that architects do certify work within, say, one month from its conclusion and that nothing will come within that time. It is a reasonable assumption that work is outstanding at the end of the previous month.

30 Q. Am I right in my understanding of what you said that you start off for the purpose of arriving at turnover in taking the cash receipts? A. Yes, as known from the bank pass sheets.

40 Q. You said you adjusted that turnover by adding or deducting the January figures? A. Yes.

Q. Does the turnover form a very important part? A. Extremely important.

In the Supreme Court

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Anthony Marcus Blackhall Examination 9th June, 1960 (Continued)

- Q. Why do you say that? A. First of all in a case of this nature it is essential to ascertain what the income of the client is.
- Q. In the calculation of the report what effect has the different figure of turnover? A. It is merely an allocation of the profit over the period.
- Q. Does consideration of the turnover help you? A. It does.
- Q. What other factors, if any, should you take into account? A. You should take into account the general contingencies of the trade and any technical or professional advice that you can obtain, and also the documentation for the work that has been done. 10
- Q. Were those the principles you applied when you wrote the percentages which start with 30? A. Yes.
- Q. Look at the central figures (Shown). Are those figures directly proportionate to the turnover? A. 1950 is obviously directly proportionate; it has been taken more or less as a mean year. 20
- Q. What about the earlier years? A. The earlier years have been taken as good years.
- Q. Does that mean that you weighted it? A. Yes.
- Q. Did you also consult Mr. Rattan Singh about it? A. Mainly through Mr. Surjeet Singh and he contacted Mr. Rattan Singh and obtained his views and passed them through. 30
- Q. You weighted the earlier year or two up? A. Yes.
- Q. And the last two years are weighted down? A. Indeed they are. 1946 and 1947 were relatively boom years. Then things settled down a little. 1953 was a bad year because of the Emergency, and the latter part of 1952 was a thin year for building contractors.

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Anthony Marcus
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(Continued)

- Q. Supposing your estimate had been at fault to a substantial extent; supposing instead of 30 you had given 60, could you give us an idea how much that would affect the profit?
A. It would double up the ratio; it would double the profit for that year.
- Q. Something like 7,000? A. The difference would not be larger than 7,000.
- 10 Q. An alternative method of splitting the profit over the years would be to take the so-called statement of worth at the end of each year?
A. Yes.
- 20 Q. If you do not know the stock in trade at the end of 1947 or 1946 and you do not know the debtors and creditors - on the basis of guessing the stock, guessing the debtors and guessing the creditors - do you think on the turnover of 150,000 there is more risk? What sort of range of variation would be possible if you were wrong? A. When the turnover is small it is a normal assumption that the stock is not going to be large.
- Q. In 1946 the turnover was 150,000? A. Yes.
- Q. From what you have seen of the accounts, what sort of stock could there have been?
A. I would not accept more than £700.
- 30 Q. You remember what the figure was on the Revenue's view for total work in progress and stock at the end of 1953? A. Shs. 140,000/-.
- Q. And a figure of 55,000 was added by the Income Tax Department over a series of years?
A. Yes.
- Q. So the total stock would be 195,000? A. Yes.
- Q. Would you look at the turnover for 1953?
A. Shs. 740,000/-.
- Q. What proportion roughly? A. It is approximately more than a quarter.
- Q. Apply that to 1946? A. It is 36,000.

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Anthony Marcus Blackhall Examination 9th June, 1960 (Continued)

- Q. The stock, if it was smaller in 1946 could have been 30,000? A. Yes.
- Q. Or nothing or very little? A. Yes.
- Q. The difference then, if you try to compute profits on an annual statement of worth - the stock figure could vary between, for example, £10,000 and £30,000? A. Yes, it could indeed.
- Q. You might also be out on your estimation for creditors? A. Yes. 10
- Q. Do you know what the creditors were in 1946? A. No.
- Q. Could they be ascertained? A. Not at all readily.
- Q. Could the debtors be ascertained? A. One could make intelligent enquiries: That is what we have done.
- Q. Could you be wrong? A. One could be wrong.
- Q. What were the total debtors at the beginning of the year? A. I believe a very small figure in 1946. 20

Court adjourns at 4 p.m.

10th June, 1960 10th June, 1960 - 9.15 a.m.

Witness warned still on oath.

MR. BLACKHALL (Examination by Mr. Rowland continued):

- Q. When did you start your investigations?
A. We started the investigations in February and we continued very solidly into March. There is some hiatus for April, and we then continued again in May. 30
- Q. When you say February, do you mean early February or end of February, or middle?
A. It must have been early February shortly after we were consulted by Sirley & Kean.

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. What was your first step? A. My first step, naturally, was to look at what records were available and ascertain their value. For 1946 and 1947 we had bank pass sheets; we had no cash book. We have certain cheque stubs to guide us, but they were not complete. In January, 1948, the cash book, which is in Court, began, and I recollect it finishes in October, 1953.
- 10 Q. You are sure? A. I believe so, subject to review.
- Q. Will you look at the cash book? A. October, 1952 - carried forward to another book which I understand has been stolen.
- Q. It is not available? A. No.
- Q. For the period from 1st November, 1952 to the end of 1953, what records were there available? A. We took the bank pass sheets for those months.
- 20 Q. Do they appear to be complete or not? A. Yes.
- Q. Apart from the missing cash book, have you any reason to believe that the information you had at that time was the same as that available to Mr. Thian? A. We did have a ledger which was written up in the hand-writing of Mr. Thian; that was available to him and we did peruse that ledger. We did not have possession of the journal.
- 30 Q. Whose journal is that? A. The journal which probably was written by Mr. Thian.
- Q. This was a journal made up apparently by Mr. Thian? A. Apparently so.
- Q. Were there folio references to the journal? A. Yes, but no real detail.
- Q. In whose hand-writing were the references? A. I believe it to be Mr. Thian's hand-writing.

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

Q. Did you at any stage in your investigations try to check Mr. Thian's figures in any way?
A. We endeavoured to balance his ledger at the end of 1953.

Q. At what stage did you attempt to do it?
A. At the outset of our work.

Q. Did it balance? A. We did not succeed in balancing it. The next stage was to have a look at his accounts.

JUDGE: You said that you had, in the absence of the cash book, to rely upon bank statements? A. Yes.

10

Those bank statements merely show drawings and credits, not the purpose of the drawings? A. I would have to refer to my notes, but we have the cheque stubs for part of the period.

You said the cheque book stubs were not complete? A. They were not complete for certain periods.

20

Q. They were not complete in 1947. Were they complete in 1953? A. I cannot say without reference to my notes.

Q. Mr. Thian had made records in 1953? A. He had.

Q. And he had the cash book to help him?
A. Yes.

Q. You would not be able to say from that analysis of payments in 1953 that your balance differed from Mr. Thian's? A. No.

Q. Could you form a view as to his figures for earlier years? A. We could, yes, if we wished to do so.

30

Q. Did you look at his contract account in this ledger? A. I did indeed.

Q. For any particular year or for all years?
A. I looked at a few years; I did not look at all years. I looked at 1948 and traced his balance sheet, but it did not link up.

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Q. You could not link up his figures with the balance sheet? A. Not immediately.

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JUDGE: Could you do it at all? A. We made an initial attempt. We did not pursue the thing to its ultimate conclusion. If we had done so, one assumes it would have been possible that Mr. Thian must have arrived at the figure somehow.

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

10

Q. Did the total of the ledger agree with the total in his profit and loss account? A. It does not agree, to the best of my knowledge.

Q. In those circumstances, what did you do?
A. Having made that preliminary investigation, I formed the opinion that pursuing this ledger and pursuing Mr. Thian's work would not advance me greatly. That led to investigation into the cash book and we could not see from the cash book how Mr. Thian reconciled. We then proceeded to reconcile and cast the cash book.

20

Q. Did you check the entries in the cash book?
A. We worked from bank statements from 1946 and 1947, using the cash book as a source of information with regard to allocation of the items.

30

JUDGE: I do not follow this. As I understand your evidence, you worked from the bank statements for the years prior to the existence of the cash book? A. Yes.

How then could you use the cash book as a source for determining allocations?

A.the information is wrong in the cash book both by the original bookkeeper and by Mr. Thian.

40

You said you were working from bank statements for period when there was no cash book. Prior to 1948 you worked from

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Anthony Marcus
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10th June, 1960
(Continued)

bank statements?? A. Yes, We reconciled the cash books with the bank statements.

Q. Did you have a complete check or an incomplete check? A. We began at the beginning and went right through to the end in the light of the information available and that supplied by our client.

Q. Did you attempt to produce annual statements of worth corresponding to Mr. Thian's, or did you not? A. The first part of your question the answer is yes, we did produce annual statements of worth; the second part of the question, corresponding to Mr. Thian's: they did not correspond.

10

Q. It would be possible from Mr. Thian's accounts to reconcile your figures? A. We made that endeavour.

Q. Adjusting Mr. Thian's figures by reference to debtors and creditors and comparing them with your own, did you find they agreed? A. There was not a great difference, but year by year we had differences.

20

Q. Small differences or substantial differences? A. Some years the differences were substantial.

Q. Have you any idea of the figures? A. I have not the information before me.

Q. When you say substantial, would you say £400, £500, £700? A. Some years it could be £700: other years the difference could be £500.

30

Q. The maximum difference was £5,000? A. Yes.

JUDGE: As I understand you, you account for that difference because you did not attempt to make any estimate in relation to debtors or work in progress or creditors? A. We did not.

Well now, would you agree that to arrive at a correct statement of worth regard must be had to work in progress and to debtors and creditors? A. Yes.

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

10 In other words, would you agree that your statement of worth, based purely upon cash books and cash payments, would be less accurate than Mr. Thian's, which were based apparently on cash transactions and partly upon taking into account debtors and creditors and work in progress? A. It would be less accurate. We merely used the statements of worth for checking purposes: they are not incorporated in my report.

20 Q. I was asking you about a reconciliation purely on a cash basis. If you had Mr. Thian's estimated receipts in a particular year and you adjusted by his opening and closing creditors and by his opening and closing work in progress, should you not arrive at your figure? A. We should indeed.

Q. Did you make that attempt to reconcile it in that way? A. We endeavoured to.

Q. Was it in attempting that reconciliation that in one year you were as much as £5,000 out? A. That is true.

30 Q. If in that particular year you had adjusted your figures by reference to Mr. Thian's debtors and creditors and work in progress, would there be a difference between your result and Mr. Thian's result? A. Strictly speaking, there should not be a difference.

Q. Had Mr. Thian, in 1948 or 1949, any original information which was not available to you? A. Not to the best of my knowledge.

40 JUDGE: You told us that in respect of transactions which were not clear you had to obtain information from the appellant? A. Yes: allocation of items, names of suppliers, etc.

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Anthony Marcus
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(Continued)

Mr. Thian would have had to do likewise?
A. Yes; he made notes in his own
handwriting in the cash book, and we did
accept these notes.

So it may very well be that Mr. Thian
obtained one explanation and you
obtained another? A. There is that
possibility, but I do not think that the
difference arises there.

- Q. Will you look at the profit and loss account for the year 1948. You see the opening stock on the left-hand side? A. Yes. 10
- Q. Is that Shs.3,502/-? A. Yes.
- Q. The top figures for 1948 is Shs.165,980/-? A. I see that.
- Q. Is that identical with the figure for net profit arrived at by Mr. Thian? A. Yes.
- Q. Do you see further down in red type a figure Shs. 91,000/-? A. Yes.
- Q. Referred to as stock in trade? A. Work in progress. 20
- Q. That is an adjustment of Thian's account to bring in an opening figure for work in progress? A. Yes, he is reducing his profit.
- Q. So that the effect is exactly the same as if immediately under stock in hand 1st January, 1948, there had been this figure of Shs.91,000/- and the adjustment had not been made? A. That is so. 30
- JUDGE: The effect is to reduce the profit?
A. Yes.
- Q. Look at the closing figure of the trading and profit and loss account: Work in progress on the credit side, Shs.50,000/-? A. Yes.
- Q. And stock in hand, Shs.20,000/-? A. Yes.

Q. Are you aware of any information on which that might be based? A. One could divine it from the opening balance in 1949, on the rather arbitrary assumption that work done at the end of the year will be paid the subsequent month.

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Q. Were there any stock sheets? A. None to my knowledge; that is why a round sum is shown.

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

10

Q. Turning to the 1949 trading and profit and loss account. Stock in hand Shs.20,000/-?
A. Remains the same.

Q. And the work in progress, Shs.50,000/-?
A. Yes.

Q. And on the other side you see work in progress, Shs.15,000/-? A. Yes.

Q. And stock in hand, Shs.20,000/-? A. Yes.

20

Q. So far as you are aware, are there any stock records, or any other records, showing that the closing work in progress was Shs.15,000/-?
A. There are no records, to the best of my knowledge.

Q. Look at 1950. Look at the closing figure of work in progress, Shs.35,000/- and stock in hand, Shs.20,000/-? A. Yes.

JUDGE: Will you not have an opportunity of hearing Mr. Thian?

30

MR. NEWBOLD: I do not see why the Revenue should call him to produce figures to certify. This Mr. Thian is not a member of the Revenue Department. He produced those books on behalf of Mr. Rattan Singh and they were said to be correct. It is Mr. Rattan Singh's responsibility and he is entirely responsible for Mr. Thian. If my friend is disputing Mr. Thian's figures, I would have thought it only right for him to produce the figures.

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

MR. DINGLE FOOT: The responsibility for calling Mr. Thian on behalf of Mr. Rattan Singh is mine. As at present advised, I said I do not propose to call Mr. Thian. In answer to my learned friend, I would say it is abundantly clear that the figures in the top column on which the Revenue rely are Mr. Thian's figures, and what the Revenue have done here is to take Mr. Thian's figures as an opening figure for each year and add on a great many other items. Of course, it would have been open to the Revenue to agree with Mr. Thian, if they thought fit. Indeed, your Lordship has seen the letter in which a compromise figure has been suggested, and it is perfectly clear from the correspondence that all these figures have been arrived at as a matter of give and take. They were all compromise figures arrived at by some process between Mr. Thian and the Revenue. The Revenue decided that they would not accept the proposal put forward by Mr. Thian in settlement of this matter. Thereafter we made a fresh investigation and we found that our accountants arrived at a result which is different from that arrived at by Mr. Thian. In these circumstances, we are perfectly entitled to bring before your Lordship the fresh computations at which our present accountants arrived and any fresh evidence we can bring.

JUDGE: Quite.

MR. NEWBOLD: There is one matter which I must dispute. My Learned friend has said that the Revenue started upon Thian's figures and later did not accept them. It is quite clear that Mr. Thian agreed every single item; it is in the documents, in all the exhibits which have been tendered. It is not correct to say that we have not accepted Thian's figures. These figures have been accepted entirely by Mr. Thian, who at that time represented Mr. Rattan Singh, and if my memory serves me, when this case came on in January,

Mr. Thian was not present, and it was for that reason that an adjournment was asked for.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

MR. DINGLE FOOT: I do not agree. I said that one of the reasons why I asked for an adjournment was that I wished to take instructions. I did not say I was going to call him as a witness.

10 JUDGE: You are under no obligation to call any particular witness. I merely interrupted because I wanted to know if I was going to have an opportunity of hearing any answer that Mr. Thian might have to advance as to criticism of his figures. It certainly is not incumbent upon you to call him.

20 MR. DINGLE FOOT: Perhaps I was making too much of your Lordship's observation. But I must not be taken as agreeing with every single figure.....

30 JUDGE: Your case is that Mr. Thian's figures were wrong; the Revenue's case is that Mr. Thian's figures were right. I do not think it matters very much whether the Revenue agreed with Mr. Thian or not; but I should have thought it might have been a simpler method of dealing with the matter by adding up the monies shown by the contract ledger as having been payable under the contract and then deducted such sums as were properly deductible and arrive at a figure that way. It is not for me to seek to advise either appellant or the Revenue as to the manner in which they present their case.

40 MR. ROWLAND: The witness has said that the only ledger available is one which Mr. Thian compiled. I think the witness referred to a contract account.

Q. We were looking at the trading and profit and loss account for the year ended 31st December, 1950 and the opening figures for stock in hand - total Shs.35,000/-? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

Q. And closing figure, Shs. 55,000/-? A. Yes.

Q. Were any records which lead you to say that those figures right or wrong? A. First, the stock records were not fully available until 31st December, 1957. I regret that that statement was made rashly. 1957 is the first year when complete figures were available. Earlier years we did have a figure for stock.

Q. Which years are you referring to? A. My previous statement I discovered was grossly inaccurate, that 1957 was the first year that we had records of any of those items.

10

JUDGE: You did have some record of stock in previous years? A. I believe so.

Can you say whether these records supported Mr. Thian's conclusion as to the stock in hand at the end of any particular year? A. No, the first records came to light in 1954.

20

Q. In 1956 what records were there? A. There were some records of stock, but not work in progress.

Q. And 1955? A. I believe we had a stock record.

Q. In 1954? A. 20,000.

Q. What is the stock at the end of 1956?
A. 20,000.

Q. And 1951, the opening figure is 55,000?
A. Yes.

30

Q. Work in progress, 88,000? A. Yes.

Q. Is that supported by any information?
A. It is most unlikely; to the best of my knowledge there were no records that year.

Q. 1952: the opening figure, 88,000? A. Yes.

Q. Look at the figure on the other side: stock on hand 20,000? A. Yes.

Q. Look at the net profit at the foot, 190191?
A. Yes.

In the Supreme
Court

Q. Compare that with the figure at the top - is that figure identical? A. Yes.

Appellant's
Evidence

Q. Run your eye down the adjustments which the Revenue suggested for that year. Can you see any adjustment made for stock?
A. Shs. 11,000/-.

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Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

10 Q. Look at the work in progress at the end of 1952 - what is the figure there? A. Nil.

Q. Do you know anything about the trading?
A. I have got information.

20 Q. Will you tell us what that is? A. Mr. Rattan Singh was a building contractor, and I thought it appropriate to contact various sources such as the Public Works Department and the City Council to ascertain what work he had done for these bodies, and in the process of these approaches I did ascertain that Gorofino 3 had been constructed by Rattan Singh. I then, as an accountant, decided to find out what had happened to this Shs.1,300,000/- which the City Council had presumably paid to Mr. Rattan Singh. I then got hold of the cash book and endeavoured to identify the items which related to Gorofino 3. I discovered in the process that in 1951 a sum of 58,771 was first payment made on his contract. Numerous other payments were made, culminating at the end of 1953 and the total of my figure Shs.35,404/80 was entered in the first place in the cash book, and secondly, towards the end of 1953 appeared as creditors in the bank pass sheets.

30 JUDGE: Whose accounts were you investigating?
A. Rattan Singh, is the proprietor.

40 I was wondering if there was any possibility that these particular contracts with the City Council had been entered into not in the name of Nagina Singh but Rattan Singh?
A. A letter from the City Council refers

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

to Nagina Singh, Contractors. The figure they have shown is Shs.1,735,935/-. That has to be compared with the item in the cash book and one can find a difference of Shs.531/54 which has not been traced by me but which would easily be a variation on that large contract.

- Q. Does that mean that the original contract price was 1,300,000 approximately? A. Yes.
- Q. And that it would be undertaken during the years 1952 and 1953? A. It began in 1951 and finished in 1953. 10
- Q. Will you look at the accounts again - the total turnover is? A. Shs.1,492,000/-
- Q. Do you see any likelihood that if Mr. Rattan Singh was in the middle of a substantial contract of that nature the work in progress would have been nil and the stock on hand 20,000? A. If anyone had told me that, I would have said it was nonsense. One can assume that at least retention monies are there. 20
- Q. How much was received from this contract in 1953? A. About Shs.690,000/-.
- Q. If there had been a substantial stock with work in progress, what effect would that have had on the figures over 1952 and 1953? A. 1952 would go up and 1953 would descend.
- Q. In your view, could you place reliance on the accounts of 1952? A. In the light of my previous remarks, I could hardly place much reliance on them. 30
- Q. And on the accounts for 1953, could one place reliance on them? A. There again, if one is going to deduct what is added in 1952, then equally the 1953 accounts are going to be erroneous to the same extent.
- Q. Look at the balance sheet for 1952, Schedule B. attached. How much of these debtors appear to refer to contracts? A. Not one single item, as far as I can ascertain, with the exception of City Garage Shs.2,000/-. 40

Q. Do you see the total of 60,000 as sundry debtors in the balance sheet? A. Yes.

In the Supreme Court

Q. Look at Schedule A - you see the amount of trade creditors? A. Yes, Shs.23,000/-.

Appellant's Evidence

Q. Do you think it likely that where a contract of 1,300,000/- is being carried out that the trade creditors could be Shs.23,000/- the debtors Shs.2,000/- or Shs.3,000/- and the stock Shs.20,000/-? A. I should be extremely reluctant to accept that figure, unless I had very good and sound reasons for supporting it. On the face of it, it would appear to be erroneous.

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

10

Q. Will you look at the accounts for 1953. You see trading and profit and loss account? A. I do.

Q. The closing figure for stock in hand was Shs.120,000/-? A. Yes.

20

Q. Are there any stock records to support that figure? A. To the best of my knowledge there are none.

Q. Are there any records which would support the figure of Shs.195,000/-? A. Apart from my earlier remarks about receipts, there is no indication what the figure may be.

30

Q. Would you from your investigations place reliance on the accounts for 1953? A. I should be most hesitant; in fact, in normal circumstances I would be most emphatic and say no. What is vital is obviously the valuation of stock and work in progress.

Q. If there had been a substantial stock in relation to this Gorofino Estate contract, what effect would that have had on the figures for that year, 1953? A. It would reduce the figures.

Q. Would it increase the loss? A. the gross loss would be increased.

40

Q. Did you form any view as to whether accounts based on statements of worth for the years

In the Supreme Court

Appellant's Evidence

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Anthony Marcus
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Examination
10th June, 1960
(Continued)

- 1948, 1949, 1950, 1951 and 1952 could be prepared with reasonable accuracy? I formed the opinion that they could not be; they were merely useful for checking purposes.
- Q. Did you report that situation to anyone?
A. I reported to my senior partner.
- Q. How long ago? A. It must have been the third week in April or early part of May. I think the situation was reported on 7th May.
- Q. Did you correspond with him? A. We had copious correspondence. 10
- Q. Did you discuss the matter over the telephone? A. I did.
- Q. Did you start a further investigation?
A. Yes.
- Q. What did you start investigating then?
A. Having said to my senior partner that we could not get the profits for each year and that we must average, my senior partner said, "How are you going to average, my boy", that any average might be erroneous. 20
- Q. Had you any figure for stock or work in progress? A. Only those arbitrary figures.
- Q. And any proper figure for debtors and creditors? A. No.
- Q. When was the first point of time when you thought you had reasonably accurate figures?
A. December, 1957.
- Q. What form did your investigation take?
A. I had taken to draw up a statement of worth at December, 1957 based on the total assets of Rattan Singh, including his business assets. 30
- Q. What checking did you do? A. Having left 1953 behind and proceeded to 1952, I then looked to see what basis I could work on. I had audited balance sheets accepted by the Revenue for 1955, 1956 and 1957. 1954 was an audited balance sheet, but was not accepted by the Revenue. 40

Q. Did you check the bank accounts? A. The bank accounts referring to the business had already been checked and audited by Mr. Bellman. The bank accounts which did not relate to the business were checked.....

In the Supreme Court

Appellant's Evidence

Q. Up to what date? A. End of 1957.

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Q. Are you satisfied that there are no adjustments between the bank accounts which you have not adequately traced? A. I am satisfied.

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

10

Q. You are familiar with the making out of statements of worth? A. Yes.

Q. Do you appreciate what items have to be looked for? You understand the system? A. Yes.

Q. If you had seen something which required adjustment would you have made it? A. Yes, I would.

20

Q. And to the best of your ability have you prepared a statement of worth at the end of 1957? A. I have indeed.

Q. Have you done so at the beginning of 1946? A. I have.

Q. And are those figures set out in your report? A. They are set out in Schedule A, 1946 and Schedule B, 1957.

30

Q. Are you not satisfied whether those figures form a basis on which the income for the period can be computed? A. Those figures alone will have to be supplemented by Schedule C.

Q. Will you look at Schedule A. Will you produce the bank account on which that is based. (Bundle of bank statements and letters from the bank shown to witness). Do you see a letter from the State Bank of India? A. Yes.

Q. What does that say? A. It is a letter from them dated 11th September, 1957, which shows a fixed deposit receipt, R.73,700.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

Q. And do you see any other information with regard to the State Bank of India? A. A further R.309 which is to be added to that sum.

Q. When did that amount first appear? A. May, 1947.

JUDGE: Is any of this evidence?

MR. ROWLAND: Subject to the possibility of bringing bank officials from India, it is very difficult to see how a matter of this nature can be

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JUDGE: That may be so, but the difficulty of producing admissible evidence does not render it possible to prove a matter by inadmissible evidence. These documents can go in by consent and they can be treated as evidence by consent; but I do not want the witness to give a long account of all this if later on I am going to be told it is not evidence. I can only decide the matter on the evidence which is either legally admissible or which is specifically agreed to be treated as legally admissible, even though it is inadmissible. You see, the function of a Judge in this jurisdiction is not quite the same as that of a Judge sitting in England, because here we are charged by Statute to make enquiries independently of the evidence which is tendered before us with a view to arriving at the correct decision. In England, in a civil case, a Judge almost never exercises such powers as he may have in relation to supplementing the evidence for either party. In this jurisdiction, upon one view of the Civil Procedure Ordinance, it becomes the duty of the Judge, if there is something which he regards as an omission, to call evidence himself or to procure the production of documents which he thinks should have been produced. And therefore, while I do not desire to object or to do Mr. Newbold's work for him, I do not want to have to listen to

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a vast mass of material which is not evidence if later some objection is going to be taken to it.

In the Supreme Court

I think there is a decision of the Court of Appeal that it is the duty of the Judge to stop inadmissible evidence being tendered.

Appellant's Evidence

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10 MR. ROWLAND: The position is that all these figures with the exception of one have been checked and rejected by the Revenue. I am instructed that there was a disclosure of these bank accounts and that the bank accounts were made available to the Revenue. The position, as I understand it, is that these figures are largely agreed figures. There has been no dispute.

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

20 JUDGE: Are you objecting to these documents being treated as evidence or not, Mr. Newbold?

30 MR. NEWBOLD: Not if that is the only evidence of these accounts. If I may with respect mention something. Your Lordship, in trying these matters, may deal with it in accordance with the Appeal to the Supreme Court of Kenya Rules from the income tax standpoint. In the Appeal to the Supreme Court Rules there is a specific provision which would allow your Lordship to treat as evidence certain things which could not, according to normal law, be so treated. It would therefore be possible to treat certain documents as evidence, if your Lordship thought it was desirable. I would have no objection to these documents going in, but I do not see that they present the full picture, nor do I say that they necessarily disclose anything except the amount of the account in that particular branch at that particular date. Furthermore, I have not seen these documents, but I am informed that this letter which is written to the bank manager is itself a copy.

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In the Supreme
Court

Appellant's
Evidence

No. 38

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

JUDGE: May I see it? (Letter shown to Judge). You are not objecting to the admissibility of this document Mr. Newbold?

MR. NEWBOLD: I am not objecting to it, my Lord.

JUDGE: This may be treated as going in for what it is worth.

MR. NEWBOLD: Yes.

Examination by Mr. Rowland continued.

10

Q. Mr. Blackhall, do you produce a bank account relating to 1945, which is a figure of 73,000 - What is the name of the bank?
A. It is the Imperial Bank of India.

Q. Do you see a withdrawal in 1945?
A. Yes, R.703,701 and 1 anna.

Q. Are you sure? A. I mean R73,701.

Q. Is there any mark against that? A. The narration against that is "14th August, F.D.R. issued"; that stands for Fixed Deposit Receipt.

20

Q. Does that appear to be a transfer from current account to fixed deposit? A. Yes.

Q. What is the amount shown in the letter?
A. R.73,700.

Q. What amount have you taken as being Mr. Rattan Singh's assets for the purpose of Schedule A? A. For the purpose of Schedule A I have taken the sum of R.73,000. My partner has already stated earlier in evidence that that sum should be augmented by R.700. The original assumption was that that R.700 was interest accrued.

30

JUDGE: You know of the R.73,000? A. Yes.

How? A. From the letter.

Q. You now think it should be R.73,700 ?
A. Yes, because of a scrutiny of the current account.

In the Supreme Court

Q. Would the alteration of R.700 make any substantial difference to the calculations?
A. It would have reduced my figures by Shs.1,050/-.

Appellant's Evidence

No. 38

Q. Approximately £50 ? A. Yes.

Anthony Marcus
Blackhall
Examination
10th June, 1960.
(Continued)

10 Q. Spread over how many years? A. Over the 12 years under review.

Q. And making a difference of about £4 a year?
A. Yes.

Q. And would improve the position? A. Yes.

Q. You mentioned a figure of R. 30,309? A. Yes.

Q. What inference have you made with regard to that? A. We have taken that as being a fixed deposit receipt outstanding at the date of death of Nagina Singh.

20 Q. When did the amount first appear? A. It appears in the letter as issued on 22nd May, 1948.

Q. Is that shown there as issued or renewed?
A. There is a further paragraph in the letter which is dated 19th November, 1957, from the State Bank of India.

MR. NEWBOLD: The witness is reading out figures from the document which I agreed should go in, but I have nothing before me on which I can tie up anything.

30 JUDGE: It is apparently considered a waste of money in this Colony to provide copies of documents which are going to be used in litigation. I have had to comment on it more than once. Perhaps, Mr. Rowland, you can go back and get an answer to a question which you asked the witness, whether this sum of R.30,000 appears as a renewal or as a deposit; and the witness's answer was that he wanted to
40 read another paragraph in the letter.

In the Supreme
Court

Appellant's
Evidence

No. 38

Anthony Marcus
Blackhall
Examination
10th June, 1960
(continued)

MR. NEWBOLD: My friend has said that it was hoped that these would be agreed. I have never seen these documents and I am instructed that they were never tendered or shown in any way whatsoever to the Revenue before the beginning of this case.

Court adjourns at 11 a.m.

Court resumes at 11.15 a.m.

MR. DINGLE FOOT: My Lord, we have discovered the cause of the confusion. It appears that after the meeting on 1st March, Mr. Easterbrook put to Mr. Rattan Singh that there were certain undisclosed bank accounts. Thereafter on 9th bank accounts were handed over from an African bank account. On 15th March, an interview took place between Mr. Thian and Mr. Easterbrook and Mr. Hyde and there was handed over a notification from the Amritsar Bank. Then it was agreed that a fresh investigation should be conducted and that was the investigation which resulted in Mr. Thian's second report. In Mr. Thian's second report, in Schedule B, there does appear a reference to this particular fixed deposit. We are told that in fact these bank statements were not again asked for or seen by the Revenue. That is how this matter has arisen. As regards the examination which is now proceeding, all this witness is doing of course is to say how he arrived at the calculations in Schedules A and B with reference to certain documents. As regards copies, I can only express my regret and hope that my friends are provided with copies at the first available moment.

Examination by Mr. Rowland continued:

Q. Have you a photostat of one of those accounts? A. Yes.

JUDGE: I do not think the witness has yet answered the question as to whether, on the material before him, this sum of R.30,000 is shown as a renewal or an original deposit.

In the Supreme Court

Appellant's Evidence

MR. ROWLAND: My Lord, I think your Lordship will be able to follow the reply if you have copies of the letters.

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

10 Q. Do you see a reference to R.30,309 in that correspondence? A. Yes, I see a reference: date of issue 22nd May, 1948, R.30,309.

Q. Will you look at the copy of the current account? A. Yes.

Q. Do you see two items of interest? A. I do.

Q. What are the dates? A. The item, May 22nd, is the item of R. 309 and 6 annas.

Q. Of which year? A. 1947.

Q. Do you see another item of interest there - how much? A. R.760 and 3 annas.

20 Q. Will you look at your first reference to the item of R.73,000. What is the net amount of interest? A. R.760 and 3 annas.

Q. Does that correspond with the amount of interest you see in the current account? A. It does.

30 Q. And does the amount of interest in May 1947, R.309, bear any relation to any other figure you see? A. It bears interest at roughly 1% in relation to the fixed deposit of R.30,000.

Q. What did you deduce? A. I deduced that it would have been deposited not later than May, 1946 - one year's interest.

Q. Is there anything in the bank accounts between 1st January 1946 and May, 1946, to lead you to suggest that this R.30,000 was estimated from African assets? A. There was nothing to suggest that.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

Q. Was there anything to suggest that that account was opened between those four months?
A. Nothing to suggest that.

Q. If the amount is not deposited it might have been cash at that time? A. It may have been.

Q. In which case in what circumstances would it be right to bring it into Schedule A?
A. We had it being a reasonable inference that it was there at the date of death.

10

Q. Will you add the two deposit receipts together and convert it into shillings, and say the extent to which, if at all, it agreed with the figure in Schedule A?
A. The two together come to R.103,000.

Q. Look at Schedule A - National Bank of Amritsar, 87,613. Where did you get that from? A. From the balance of bank statements.

20

Q. Have you another bank statement? A. Current account of Jullunder City.

Q. Will you look at the account which shows the balance at 1st January, 1946 - what is the amount? A. R.563 and 10 annas.

Q. How much would that be in shillings? A. 844.

Q. Would you look at Schedule A - 746: a difference of £5? A. Yes.

Q. Any more bank accounts? A. The National Bank of India Amritsar.

30

Q. What is the document you have in front of you?
A. A copy of the bank statement.

Q. What is the balance shown at the end of 1945?
A. R. 58409 7 annas 7 pice.

Q. Are there any other entries that year? A. No.

Q. Could you convert that sum into shillings?
A. 87,613/-.

- 10
- Q. Is that the Shs.87,613/- referred to in Schedule A? A. It is.
- Q. Turn to the next bank account? A. It is the National Bank of India, Nairobi.
- Q. What document have you there? A. I have a bank statement from that bank.
- Q. Current account? A. Yes.
- Q. What is the balance at the beginning of 1946? A. The balance on 11th January is Shs.64,997/6.
- Q. Is the figure of Shs.64,997/6 set out in Schedule A? A. It is.
- Q. Turn to the next bank account? A. It is Barclays Bank (D.C.O.)
- Q. What is the amount of the balance? A. Shs.87,999/10.
- Q. Is that the amount which you have put in Schedule A? A. It is.
- 20
- Q. And the National Bank of India, Nairobi? A. That is contained in a letter dated 30th July, 1956, addressed to Messrs. Thian & Bellman, signed by the Manager.
- Q. What does it say? A. It reveals a fixed deposit receipt for Shs.46,000/- which was paid in on 23rd August, 1945.
- Q. Does it say that it was renewed at any date? A. It shows that it was subsequently renewed in 1947, 1948, 1949, 1950 and 1951.
- 30
- Q. In the same amount? A. Yes, interest being paid.
- Q. When was it withdrawn? A. On 30th August, 1951.
- Q. Have you traced that amount withdrawn into one of the other bank accounts? A. I have; it is the Nagina Singh Contractors account.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. Have you a copy of the estate duty affidavit? A. No.
- Q. What is that document? A. A share certificate from N.B.I. for two shares and a further certificate for 20 shares.
- Q. What are the dates? A. July, 1942 and March, 1942.
- Q. Have you put a figure in respect of these in Schedule A? A. The figure of 3,003.
- Q. Does that figure appear in Schedule B? A. It does. 10
- Q. Do you see in that estate duty affidavit a reference to a motor vehicle? A. I do.
- Q. What is the figure? A. Shs.11,400/-.
- Q. Is that the figure in Schedule A? A. It is.
- Q. Do you see a figure for plant and machinery? A. Yes.
- Q. How much? A. 1,500.
- Q. Is that in Schedule A? A. Yes. 20
- Q. Do you see a reference to cash in hand? A. Yes.
- Q. How much? A. Shs.525/35.
- Q. Do you see a reference to stock? A. Yes.
- Q. How much? A. Shs. 2,718/-.
- Q. Is there a figure for sundry debtors? A. Yes.
- Q. How much? A. Shs. 32,685.
- Q. Look at Schedule A - Post Office - Shs.684/-? A. That is from the Post Office Deposit Book. 30
- Q. What does the balance show? A. Shs.884/77.

- Q. Is that in Schedule A? A. Yes, as a balance forward.
- Q. Have you a figure for creditors attached to that? A. Yes, I have a list of creditors.
- Q. What is the total? A. Shs.84,347/33. That is a list at 31st December, 1945.
- Q. What is the amount of the creditors deducted against estate duty? A. Shs.89,347/37.
- 10 Q. The exact difference between those two figures is how much? A. Shs.5,000/-.
- Q. Do you know what that Shs.5,000/- is? A. No.
- Q. Would you say why your figure for sundry creditors on Schedule A differs from the figures you have just produced? A. There is a covering letter in our first report which explains the positions: it is in paragraph (a).
- 20 JUDGE: What is the explanation? A. The explanation is that certain sums were due to Mr. Rattan Singh as salary as at the date of his father's death and other members of his family which were not subsequently paid.
- Q. Would there be an alternative way of showing it? A. One could possibly increase the debtors.
- Q. Increase the assets in Schedule A? A. Yes, possibly that way.
- 30 Q. On what basis? A. It would not be good accounting, but you could do it that way, on the basis that at the date these amounts were due to him he has taken over credit from his father.
- Q. You are in fact making out a statement of worth? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. That leaves the properties. Mr. Cook has already given evidence on this matter. Would you tell me, assuming the same properties were there in 1946 and in 1957 and had not been improved to a material extent, would it be correct to put in the same figure at the beginning and at the end for your purposes? A. It would indeed.
- Q. Would it make any difference whether that represented the actual value at any particular time? A. It would not. 10
- Q. Could you tell me which properties were valued? A. Salisbury Lane, valued at Shs.16,000/-.
- Q. Was that property shown in the same value in Schedule B? A. Yes.
- Q. What is the next property? A. Swamp Road, Shs. 10,225/-.
- Q. And is that entered in as the same figure in 1957? A. Yes. 20
- Q. What is the next property? A. Blenheim Road, Shs.40,000 and a different plot number 209/2132, Shs.30,000/-.
- Q. And what is the next property? A. Street, Shs.20,000/-.
- Q. Was there any alteration to that? A. The building was demolished, I believe, in 1950, but the plot remains and the valuation of the plot remains as at that figure. It is still owned by Mr. Rattan Singh. 30
- Q. What is the next item? A. Property inherited in India, Shs.12,000/-.
- Q. What is your figure in Schedule B for property in India? A. The same figure. The original property is the same.
- Q. What is the next? A. Mombasa, Shs.5,000/-.
- Q. Look at the estate duty affidavit. What are the properties and the amounts against them? A. (Reads).

Q. What is the source of the other properties?
A. Salisbury Lane is said to be a gift from Rattan Singh's father in 1941; that is mentioned in Mr. Thian's second report.

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Q. And the other property? A. The other property is Swamp Road, again mentioned in Mr. Thian's report and is a gift from his father in 1942.

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Anthony Marcus
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Examination
10th June, 1960
(Continued)

10 Q. Does that cover all the properties? A. There is the property inherited in India to which the estate duty affidavit apparently does not refer, which again comes from Schedule B attached to Mr. Thian's report. The Shs.5,000/- is payment for a plot in Mombasa.

Q. Was there a further payment made in respect of that Mombasa plot? A. Shs.10,000/- in 1947.

20 Q. Your figure for properties in Schedule B is how much? A. Shs.629425/-.

Q. How do you reconcile those figures: You added Shs.10,000/- in respect of the Mombasa plot? A. Yes.

Q. In 1947 there is a figure for Mombasa Shs. 10,000/-? A. Yes.

Q. And Grogan Road Shs.41,500/-? A. Yes.

Q. Where does that come from? A. From our analysis of the cash.

30 Q. The next entry is the cost of building in Grogan Road, Shs.185,200/-? A. Yes.

Q. Where does that come from? A. It comes from this second report.

Q. That purports to show the cost of building in Grogan Road? A. Yes.

Q. And then in 1951 there is a further Shs.45,500/- added? A. I derived that from Mr. Thian's report.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. In 1953 there is a deduction in respect of Grogan Road of Shs.126,000/-? A. Yes.
- Q. What does that represent? A. That represents cost of the sale of the building which was sold for Shs.193,000/-.
- Q. How did you arrive at that figure? A. The figures are quoted in Mr. Thian's report, and it is the apportionment of the value of the part sold on Grogan Road.
- Q. Is that an appropriate adjustment? A. Yes. 10
- Q. What is this purchase of 147,000? A. I was informed by my client that the property was purchased for R.98,000 during 1955 in New Delhi.
- Q. R.98,000 were paid out of the bank account in India and you brought them in as a property ? A. Yes.
- Q. There is no trace of the R.98,000 coming to any other account? A. No.
- Q. Going to Schedule B, the top figure is 629,425? A. Yes. 20
- Q. The next item is securities? A. Yes, identical to Schedule A.
- Q. The next item, State Bank of India, Jullundur City. Did you get any record relating to that item? A. Those are fixed deposits, and if we can refer to the correspondence from the bank concerned, there is a letter dated 27th September, 1957. It says: (Reads). That is represented by a schedule which I have prepared in order to reconcile those bank accounts. The original fixed deposit is R.30,000. That is still there. A further original one, R.73,000, is still there, and an acquisition, which has come in later, of a further R.30,000 fixed deposit. 30
- Q. What is the total fixed deposits? A. R.133,000.

- Q. Is that shown in that letter? A. The total figure is shown as 145,000 but as I have started I have not brought into account accumulated interest.
- Q. Converting to shillings what is that? A. It is Shs. 199,500/-.
- Q. That is the figure in Schedule B? A. Yes.
- 10 Q. Will you explain why you excluded accumulated interest? A. As I understand it, this interest has accumulated in India and is not part of his income here.
- Q. From the point of view of your statement of worth, is it right to exclude it? A. I believe so, because we have to compute his income in East Africa.
- 20 Q. There is another figure, National Bank of India, Amritsar, shs. 87,613. Have you the bank account? A. That is evidenced by a letter from the National Overseas and Grindlays Bank quoting fixed deposit receipt reference which I have traced back as the original R.58,409 which was in a current account and has been transferred to deposit account in Amritsar and remains there. This is evidenced by a letter which I have dated January, 1958 from the National Bank of India, Amritsar.
- 30 Q. There is a Post Office Savings Account. Were there many entries? A. The entries consist solely of interest.
- Q. What about the other Post Office Saving Bank? A. That shows a balance of Shs.28/-.
- Q. What is the total balance for the end of 1957? A. Sh.31/-.
- Q. And adding Shs. 31/- to the other items, how much is the total? A. It should be Shs.1,247/-.
- Q. Is it right to include interest? A. It is included in East Africa.

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Appellant's Evidence

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Anthony Marcus
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(Continued)

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Court

Appellant's
Evidence

No. 38

Anthony Marcus
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Examination
10th June, 1960
(Continued)

- Q. It is subject to tax? A. Yes.
- Q. The cash at bank, Jullundur City? A. That shows a balance as at the end of December, 1957 of R.224.
- Q. Have you an account for the National Bank of India, Amritsar? A. Yes.
- Q. What is the balance on that? A. The balance as at the end of December, 31st December, 1957 is R.21,078.
- Q. Does that represent Shs. 31,617/-? A. It does. 10
- Q. Where did you get the last item in Schedule B. A. That is derived from the audited balance sheet presented for 1957 by Mr. Bellman, and is the balance of the capital account of Mr. Rattan Singh.
- Q. Was that a balance sheet which contained items of worth, work in progress and stock? A. Yes.
- Q. And so far as you are aware, were they accepted by the Revenue? A. Yes, to the best of my knowledge. 20
- Q. Schedule C in your report - was that prepared by you? A. Yes, with the assistance of my client.
- Q. Where did you get the figures from in the opening line? A. It was an estimate of personal expenditure made by Mr. Rattan Singh for household and food expenses.
- Q. Did he give that to you personally, or did you get it from some other source? A. The information was obtained by Mr. Thian and handed to me as being a statement made by Mr. Rattan Singh. 30
- Q. What about the other items? A. They are extracted from our analysis of cash.

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No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. Is there any objective test by which you can say exactly what should be put in there and what should not? A. I do not think there is an objective test which can be applied: you take into consideration the records that are available.
- 10 Q. Subject to human failing, the items which you have taken out of the accounts seem fairly reasonable as being appropriate adjustments? A. Yes; where I have erred, I have erred in favour of the Revenue.
- Q. While on that subject, I will ask you about two items of Shs.30,000/-. Look at the schedule attached to the letter of income tax computations, one in 1951 and one in 1952 which are added back? A. Yes.
- Q. One is cash lodged in an Indian bank account? A. Yes.
- 20 Q. Is that cash still there? A. That cash was subject to variations which have taken place, but the money in fact is still there.
- Q. Have you traced any variation in the account? A. Yes.
- Q. That particular Shs.30,000/-? A. Yes.
- 30 Q. If it were a fact that that Shs.30,000/- did not belong to Mr. Rattan Singh - supposing that it belonged to someone else - what would be the effect on Schedule B? A. If I had evidence which would enable me to give that adjustment, I would deduct that from Schedule B representing trust income which I had shown as Mr. Rattan Singh's trust worth.
- Q. Would that apply to the other 30,000? A. Yes.
- Q. Is the other 30,000 still there? A. Yes.
- Q. And it is included in the bank account at the end of 1957? A. It is.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination
10th June, 1960
(Continued)

Q. So if that 60,000 did not belong to Rattan Singh, would you exclude it from Schedule B?
A. Yes.

Q. That would make a difference to your final calculation? A. It would reduce the profit I have shown.

Q. Look at page 4 of the report. If this Shs.60,000/- to which I have referred in fact belonged to someone else, what effect would that have on this figure?
A. It would certainly reduce it by £3,000.

10

Q. Will you turn to your report and say what is the first item you would adjust if you were told that the amount in Schedule B, £3,000, belonged to someone else? A. The first thing I would alter would be the figure in paragraph 6 of the report, which is 986,000 total of worth.

JUDGE: You would reduce his total worth by £3,000? A. I should do if I accepted the trust theory.

20

Q. Tracing that figure through, that would reduce the income? A. Yes.

JUDGE: By how much? A. £3,000.

Over the whole period? A. Yes.

Q. Have you got your report in front of your?
A. Yes.

Q. Which is the second item? A. His net increase in worth is there shown as 201,100 and that figure would have to be reduced by 60,000.

30

Q. What is the next figure? A. The total income is affected by the same amount.

Q. Does Mr. Rattan Singh's work consist mainly of large contracts or small contracts?
A. Mainly large contracts. He does undertake domestic houses.

In the Supreme
Court

Appellant's
Evidence

No. 38

Anthony Marcus
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Examination
10th June, 1960
(Continued)

- Q. What sort of contracts? A. There is Gorofino 3; there is a further item, Indian Women Teachers Training College.
- Q. What is the value of that? A. Just under £20,000.
- Q. When did you get information about that particular contract? A. 25th May, I think.
- Q. Where from? A. From the Ministry of Works.
- 10 Q. Did you attempt to trace through the amount which the Ministry of Works said they had paid? A. I did.
- Q. Did you manage to trace it? A. Yes, to within a shilling or so.
- Q. A shilling more or less? A. The figure is quoted as £19,441; virtually it is the same figure.
- JUDGE: Before you leave the Teachers Training College, was that a contract for an agreed sum or was it on a cost plus basis? A. An agreed sum.
- 20 Q. Did you trace any other contracts? A. The Christain Science Society, Shs.48,000/-; the contract started in December, 1948 and was completed in 1949.
- Q. Where did you get that information from? A. From a firm of quantity surveyors.
- Q. Did you attempt to trace the money said to have been paid through Mr. Rattan Singh's books? A. I did.
- 30 Q. Did you find it there? A. Yes.
- Q. You did not tell us the date of the previous contract - the Teachers Training College? A. 2nd August, 1950, and the monies which have come in; 1950, £5,000; 1951, approximately £9,000; and a further balance of £3,500 in 1952.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. Have you traced any other contracts?
A. A small one for a Mr. S. Hill - Shs. 97,000/- in 1952.
- Q. Where did you get that information from?
A. That amount was obtained from a firm of quantity surveyors.
- Q. Have you traced the amounts that have been paid to Mr. Rattan Singh through the books?
A. Yes.
- Q. Have you traced any other contracts?
A. There is a contract in the City Park for the Nairobi City Council. 10
- Q. What is the value of the contract?
A. Shs.218,858/-.
- Q. Any other items? A. There is Gertrude's Garden.
- Q. Which firm? A. Cobb Archer.
- Q. What is the date of that contract?
A. It commenced in 1958, August, and finished in 1959. 20
- Q. What is the value? A. Shs. 133,394/-.
- Q. Have you traced that cash through? A. Yes.
- Q. From the enquiries you have made, have you found any reason to believe that the receipts of Mr. Rattan Singh were not passed through the cash book and bank accounts? A. I have no reason to believe that receipts were omitted.
- Q. Have you looked through a bank account which was disclosed at a later date, but was not originally disclosed? A. Can you identify that bank account? 30
- Q. The Mombasa account? A. This account was opened during the time when audited balance sheets were prepared.
- Q. Is it a private bank account? A. It is entered in the name of Rattan Singh in the Bank of Baroda, Mombasa, opened in 1954 or 1955.

Q. Is there a reference to a Mombasa branch?
A. Yes, the Bank of Baroda, Rattan Singh.

In the Supreme Court

Q. Have you looked at that account? A. I have not investigated the details.

Appellant's Evidence

Q. Is there anything in that account so far as you are aware which would suggest that undisclosed receipts were being extracted and being paid into a secret bank account?

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10

A. I would prefer not to answer that question because it was during the period when I accepted audited accounts for which I was not responsible.

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

Q. Have you examined the Amritsar bank account?
A. I have.

Q. Are there payments in it with regard to which there was concealment at this end?

20

A. The only items of which I am aware which have been received in India which have not been recorded in the Nairobi bank accounts are the two items referred to earlier of Shs.30,000/-.

Q. Were either of those paid into the Amritsar bank account? A. One was paid into the Jullundur City account; the other one was paid into one of the Asian bank accounts.

30

Q. Could you check that? A. I can see that these two items were paid into an Indian bank account, but I cannot say which. One of the items is 11th November, 1952, R.20,000; the other item constituted a fixed deposit, which of course has been taken into account by me.

Q. Is there anything from your examination of the Indian or other bank account in general which leads you as an experienced accountant to think that there was a fraud of the Revenue? A. There is nothing to indicate that to me, that a fraud has been committed, but I am not a legal expert.

40

JUDGE: What you are really being asked is this: in your opinion, do such accounts as you have seen suggest that the appellant was seeking to suppress some

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

portion of his income in such a manner that it did not appear in his accounts? A. During the period of my investigation the impression I got was that nothing was being withheld from me.

- Q. Did you see in the Indian bank account or the Mombasa bank account any items being surreptitiously entered? A. There was those two items of 30,000 which apparently came from nowhere. 10
- Q. Are you satisfied that all Mr. Rattan Singh's expenditure has been charged in his accounts? A. There is some lack of identity of items of expenditure, and the method we have adopted has resulted in all expenditure being charged in the accounts.
- Q. What in your view was Mr. Thian's method of computing drawings? A. As far as I could ascertain from Mr. Thian's list of drawings and ledger account, both items of expenditure were debited to Rattan Singh's account. 20

Court adjourns at 12.45 p.m.

C.A.S. 4/59 to 11/59 Rattan Singh v The Commissioner of Income Tax

Friday, 10th June, 1960 at 2.0 p.m.

EXAMINATION OF MR. BLACKHALL BY MR. ROWLAND

Witness reminded still on same oath.

- MR. ROWLAND: Mr. Blackhall, have you any reason to believe that Mr. Rattan Singh had any assets other than those shown in Schedule B. to your report? A. I have no reason to believe that he had additional assets. 30
- Q. Can you say roughly what proportion of the total turnover for these years is covered by the contract details of which you obtained information? A. Yes Sir, I will endeavour to dispose of that as quickly as possible. 1948 total turnover 595, I have contract income of 516. For 1949. 40

JUDGE: Thousand shillings? A. Thousand shillings, yes My Lord, I am speaking in thousands of shillings.

MR. ROWLAND: And 1949? A. 133,000 compared with 260, the first figure, My Lord, is the contract income.

JUDGE: Surely the first figure you gave in there was the total turnover; 595 was the total turnover, try to keep to the same order?
10 A. 595 is total turnover, total income 516. 1949 total turnover 260,000, contract income ascertained 133,000. I have not a copy of 1950/51. 1952, 47,000 compared with - my apologies I have to add to this, which gives a total of one million shillings roughly contract income ascertained.

JUDGE: Will you make some attempt to adhere to the same order. What we require first is that you give the total turnover then the contract income, or the contract income and then the total turnover, but not jumping from one to the other? A. Total turnover 20 1952, 1,380,000/- ascertained contract income for 1952 I have a total of 1,100,000/-.

MR. ROWLAND: And 1953? A. 1953.

Q. Turnover figure? A. Turnover 740,000.

Q. And contract figure? A. The ascertained contract income was higher than your 790,000 due to adjustment for the Debtors.

JUDGE: May I enquire how it is possible in any year in any circumstances for the contract income to be greater than the total turnover?
30 A. This is cash income that I have ascertained via all the contracts and I have adjusted for a Debtors' figure.

JUDGE: Doesn't total turnover include everything that come in from contracts? A. Yes, My Lord, but those figures that I have quoted from my report are adjusted turnover figures.

MR. ROWLAND: I think it would be impossible to have accurate figures because we don't know work in Progress and Stock.
40

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Appellant's Evidence

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Anthony Marcus Blackhall
Examination
10th June, 1960
(Continued)

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Appellant's Evidence

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Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

JUDGE: I cannot understand how in any year the contract income can exceed the total turnover.

MR. ROWLAND: My Lord, I think.....

JUDGE: Exactly what do you include in total turnovers Mr. Blackhall, what do you include in total turnover? A. Cash income plus adjustments.

JUDGE: From what sources? A. From the contracts.

10

JUDGE: Only from contracts? A. And any other ascertained income.

JUDGE: Rents from his properties and so on? A. No Sir, this is contract turnover we are dealing with, My Lord.

JUDGE: I must say I do not understand how you can have two figures if one is contract turnover and one is contract income.

MR. ROWLAND: In that figure of turnover you gave in 1953, what was the figure you gave here? A. Turnover figure.

20

Q. Yes, what is the amount? A. 740,000.

Q. Have you included in that amount, have you included an estimated figure for Debtors? A. I have, Sir.

Q. Can you find out what that is? A. 20,000/- in round figures.

Q. And have you included an opening figure for Debtors? A. No, there is no opening figure in 1952 for Debtors included.

30

JUDGE: I am afraid I don't understand these figures at all, because if the turnover figure includes turnover contracts, I don't see how contract income is actually bigger than turnover.

MR. ROWLAND: This is actual cash received but the other figure is adjustable.

JUDGE: Even so if contract income is cash received presumably the whole of contract income figures in the turnover.

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MR. ROWLAND: Not necessarily for that year because you can take away figures for Debtors and figures for Creditors.

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10 JUDGE: I see your point, but I think then the phrase "total turnover" was somewhat inappropriate, or that the phrase "contract income" was somewhat inappropriate.

Anthony Marcus
Blackhall
Examination
10th June, 1960
(Continued)

MR. ROWLAND: I think the witness said this morning that he obtained the turnover figures for the purpose of the report and they are approximate, and they were computed with reference to opening figures for Debtors and closing figures, but they may not be very right because there were no records of course? A. That is true, Sir.

20 Q. What is the actual difference between those two figures, contract income and turnover?
A. I see from my notes that I have included an item of 14,000/-, the total is 50,000/- - 57,000/-.

Q. Which figures are you now adjusting?
A. The rough estimate of contract income.

Q. What do you now say it is? A. The information which I had which has been a rough estimate of contract income based on contracts is 797.

30 Q. Will you tell My Lord how you got all this contract information? A. Well I merely went through the Cash Book and traced the payments.

Q. Where did you get the information about contracts? A. From the Ministry of Works, architects and so forth.

40 Q. Whom did you write to, who were approached?
A. Various firms of architects, Mr. Wheedle, a quantity surveyor, the Ministry of Works and the City Council.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Examination 10th June, 1960 (Continued)

- Q. Did you contact everyone you thought might be able to help? A. Yes, where the contracts appeared to be, Sir, they were the people who were approached.
- Q. Only one more question I want to put to you; that is with regard to the figure for drawings in Mr. Thian's Accounts, he put different figures for drawings in?
A. Yes Sir.
- Q. Different from those in Schedule C.? 10
A. Yes Sir.
- Q. What is the total difference between Mr. Thian's figures for drawings and your figures for drawings? A. 75,000/-.
- Q. And which is the greater? A. The figures submitted by Mr. Thian; the figure should be 70,000/-.
- Q. 70,000/-? A. Yes.
- Q. How many pounds? A. £3,500.
- Q. If you substitute Mr. Thian's drawings figures for Schedule C. what difference would that make for final computation in your report? A. It would increase final profits by £3,900. 20
- Q. Approximately how much, 17,000 what?
A. The original figure of £17,000 would become £21,000.
- Q. And what is the figure on which the Revenue have based their assessments - I think it is in the next column? A. Income assessed £64,000. 30

JUDGE: Yes Mr. Newbold.

CROSS-EXAMINATION OF MR. BLACKHALL BY MR. NEWBOLD.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 10th June, 1960

MR. NEWBOLD: Mr. Blackhall, are you responsible for the figures in this report? A. I am.

Q. Can you vouch for their accuracy?

A. To the best of my knowledge and belief they are as accurate as I can make them.

Q. What was the purpose of this report? A. It is an attempt to ascertain the taxable income of Mr. Rattan Singh for the years 1946 to 1955.

10

Q. Now turning to the last page of your report, page 4. there are three columns, the middle column of which is headed "Income calculation" and down the bottom.....

JUDGE: Is this the 3rd or the 6th?

MR. NEWBOLD: It is the 6th, may it please you, My Lord.

JUDGE: The report of the 3rd or 6th June?

MR. NEWBOLD: The report.

20 JUDGE: There were two reports.

MR. NEWBOLD: The second report.

JUDGE: That is the 6th June, and which paragraph do you want me to look at.

MR. NEWBOLD: Page 4. middle of the last set of figures.

JUDGE: Yes.

MR. NEWBOLD: Now that total reads 17,644 odd?
A. Yes it does.

30

Q. Is that what you put forward as being the total assessable income of the appellant during the years in question? A. Yes, reading my report as it stands and taking into consideration the content thereof, that is my figures that I put forward.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
10th June, 1960
(Continued)

- Q. What does that answer mean, do you say that these figures are not put forward or what? A. What that answer means is that we have made various adjustments for Gian Singh's rents, which might be subject to legal argument, and in putting forward those figures I have regard to the fact that I have not relied in that legal argument.
- Q. Do I understand you then to say that, excluding what you say is Gian Singh's income, that represents as accurately as you can put forward to this Court the assessable income of Mr. Rattan Singh over these years? A. I do, yes. 10
- Q. And it is for that reason that you prepared that last item, the last column of figures which is headed "Income assessed"? A. It is a comparison.
- Q. It is supposed to be comparing like with like? A. Well, of course, we have the note about Wear and Tear Allowances and so forth and the various adjustments there, but broadly it is comparing it like with like. 20
- Q. Have you included in that the net annual value of Mr. Rattan Singh's residence? A. I have not.
- Q. Why not? A. Because the preparation of these figures, the adjustment each year would be offset largely by his personal allowances. 30
- Q. Mr. Blackhall, what has personal allowances or anything else to do with net annual value? A. None.
- Q. Why did you give me that answer? A. I must have been momentarily confused.
- Q. My question before that is why have you not included net annual value? A. Well that was an obvious adjustment.
- Q. What do you mean by an adjustment?

JUDGE: In your experience is the net annual value of the house occupied by its owner a matter which is assessed for purposes of Income Tax? A. Yes.

JUDGE: Why didn't include it then? A. I didn't include it.

JUDGE: But why not? A. It is an adjustment which in preparing the same comparative claim I should have included.

10 MR. NEWBOLD: You have earlier told me that the whole object of this report, and in particular the object of those figures, was to put before the Court his total income during that period as accurately as you could ascertain it, having regard to all the circumstances? A. Yes Sir.

Q. Could you not have ascertained his net annual value with the greatest case? A. It would not be difficult.

20 Q. Why was it not included then? A. It was merely an omission.

Q. How many more omissions are there in this report? A. Well you see my energies have been devoted to ascertaining his trading income not to prepare information for Income Tax purposes.

30 Q. Do I understand that these are figures on which you place no reliance? A. I have stated in my report that I have ignored Wear and Tear throughout.

Q. Now I asked you why you had not included the net annual value, and your answer was because your attention had been directed to ascertaining his business income?
A. Yes Sir.

JUDGE: And the annual value of this assets.

MR. NEWBOLD: And the annual statements at the beginning and the end? A. Yes Sir.

40 Q. At the end of this report you end up with figures which purport to show to the Court the

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

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Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
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examination
10th June, 1960
(Continued)

total income which you are submitting, as a result of your investigations, should be assessable. You said that this is the purport of the object? A. Yes.

- Q. Why did you not include net annual value?
A. I have stated that in order to compare the right hand column with the centre column it is necessary to bring that figure in.
- Q. You already said you were comparing like with like, do you mean to say that this is an item which you know of but you omitted?
A. It was not omitted intentionally. 10
- Q. Did you know of it? A. It is, Sir, an obvious point.
- Q. Did you know of it? A. I knew he was residing in Grogan Road.
- Q. You knew he was assessable on his net annual value? A. Well it would have been a reasonable assumption to make that he would be assessable. 20
- Q. Is that what you are saying? A. I knew in preparing that report. I have not added on the net annual value, Sir, and that is the answer.
- Q. Are there any other things which you can think of now which you have not had regard to? A. As stated in the report, Item No. 4 page 3. "We have ignored Wear and Tear throughout.....Accounts." In any case Capital Allowances were quite small in comparison with other items. 30
- Q. Does that mean if you had not ignored it, it would have increased the capital worth at the end of the period? A. Not at all.
- Q. What does it mean? A. It means that Wear and Tear is to be compared with Depreciation on Commercial Accounts.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
10th June, 1960
(Continued)

Q. On commercial Accounts; are you not aware that Depreciation written off in commercial Accounts are not necessarily accepted for Income Tax purposes? A. Yes but I have stated in my report what I have done.

Q. But you have nevertheless put forward these figures as being his assessable income?
A. After having made that statement.

10 Q. Are there any other items which you have omitted? A. The possibility of disallowable items in the Accounts have not been accounted for; that is argument on Legal Expenses and so forth, on which it is matter of negotiation with the Revenue. What I have done is to allocate his income, which can only be rough and to some extent can only be - could not be penny accurate.

Q. I suggest it cannot be pound accurate?
A. I disagree with that statement.

20 Q. You disagree with that statement? A. Yes.

Q. You started off by saying it could not be accurate, it is rough, and then you say penny accuracy. How accurate, Mr. Blackhall, do you think these figures can be on that basis? A. Well they are the most accurate figures that one could prepare in the circumstances.

Q. How accurate do you think these figures are?
A. Well I cannot state a figure.

30 Q. You cannot state a figure? A. No.

JUDGE: Would you be prepared to express a percentage, would you say that in your view your middle column is accurate to within 50 per cent, or within 5 per cent of the true income of the appellant? A. The variation in my opinion must be less than 5 per cent, taking my report as it stands.

40 MR. NEWBOLD: What do you mean by that, "the variation must be less than 5 per cent taking my report as it stands." Do you mean that you cannot accept a variation of 5 per

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cent or more on those figures? A. Well we have already, the point has already been brought forward of Schedule C. and the living expenses of the appellant - this is a matter that I have had to rely to some extent on my client's statements; that is the only place where I can see variation could occur.

- Q. You have not answered His Lordship's question; can you say that you cannot see a variation of 5 per cent or more? A. Subject to the variation which might be produced by Schedule C. I cannot conceive of a greater variation. 10
- Q. Does that mean, Mr. Blackhall, that the whole basis of the accuracy of these figures depends entirely upon accurate drawings expenditure during the period? A. That is true, it must be true.
- Q. So that no matter how exact your opening statement of worth may be and your closing statement of worth may be, unless you have accurate drawings in the meantime, there is a possibility of a variation which may be astronomical? A. I disagree with the expression astronomical. 20
- Q. May I put this example to you, you may start off with a capital worth of £100,000? A. Yes Sir.
- Q. At the beginning of a period an absolutely accurate capital worth of £100,000 and at the end of the period in question you have an absolutely accurate capital worth of £50,000? A. Yes Sir. 30
- Q. Over a period of 10 years? A. Yes Sir.
- Q. With the result that your capital worth at the end may be less than at the beginning? A. True.
- Q. And you may nevertheless have an income for the year of £20,000, is that not true? A. He can. 40

Q. Is that not so? A. That is a possibility, a possibility.

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Q. And therefore in order to ascertain his income on this basis, one has to have an absolutely accurate figure of the drawings, otherwise you will be left with the impression that there was no income at all and the man was living on capital? A. No Sir, the accuracy is a question of degree, it must be in these cases.

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10

Q. Now you were saying that apart from the omission in relation to Wear and Tear, Depreciation, etc. and the possibility of disallowable expenditure for business purposes, there are no other omissions on this? A. Not to my knowledge.

Q. And you can think of none? A. No.

20

Q. When you speak of disallowable expenditure for Income Tax purposes, you mean this, do you not, that a business may charge in its books various expenditure which is perfectly proper from an accounting and commercial point of view, but it is not an allowable deduction for Income Tax purposes?
A. Yes Sir.

Q. No regard has been had to items of that character in these computations at all?
A. No, I wouldn't say no regard has been had at all; items of obvious personal expenditure have been allocated to Schedule C.

30

Q. Would items of obvious personal expenditure have been deducted for business purposes?
A. They might be if you had sufficient details.

Q. I am assuming that a business that is run properly with audited Accounts put in, would items of personal expenditure appear on those Accounts? A. With a proper conducted business items would not appear.

40

Q. Nevertheless would you not agree with me that a number of deductions made on preparing those figures from the accountancy point of view,

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(Continued)

and from the point of view of putting before the shareholders of the company, would not be allowed for Income Tax purposes?
A. Yes but those items are relatively small.

- Q. Would you not agree that there are a number of cases in which commercial Accounts are put forward with amounts properly deducted in the Accounts which are disallowable for Income Tax purposes? A. But these items are relatively small in relation to the profits concerned. 10
- Q. No regard has been had to them? A. I have had regard to the information before me; I wouldn't go on adding back items until I had good cause to do so.
- Q. Did you work on the basis that you entered as little income as possible unless you had precise information? A. I have put certain items which were to the disadvantage of my client because I had not documentary information to support the client's position to the extent of £3,000. 20
- Q. You are referring to the 60,000/-?
A. Yes I am.
- Q. This 17644 has been spread over the years in the proportions set out therein?
A. It has.
- Q. And they purport to give your considered opinion as to the assessable income in each of the relevant years? 30
A. Yes, they do.
- Q. That is based upon a number of factors including the factor for the division of the total income between the relevant years, as appears on page 3.? A. Yes.
- Q. Now you have said that in arriving at that factor you took expert advice? A. I did.
- Q. And you also utilised such knowledge as you had? A. On conditions in the trade and so forth. 40

Q. Did you find it an easy task? A. No it involved a considerable amount of thought.

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Q. And before you put any of these figures down you must have given it, as you say, a considerable amount of thought? A. Yes, I did.

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10 Q. Now among the elements to which you had regard in determining that factor, did you have regard at all to the statistical information published in relation to the building trade, published by official journals? A. No, I had various statistical information given to me by the expert who was consulted.

Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

20 Q. Were you aware that there is published by the East African Statistical Department a monthly bulletin and an annual bulletin, and which sets out figures on everything including the building trade? A. No I was not aware of that publication.

Q. And nobody told you about it? A. The professional expert did not refer to it but no doubt he had regard to it.

Q. Now you say that before putting those figures down you gave it a considerable amount of thought? A. I did.

30 Q. And the figures which you produced, which are included in the last report - the report which is referred to as the 6th June report - are 30, 72½, 70, 25, 45, 70, 100 and 30? A. Yes.

Q. Did you prepare an earlier report? A. This is an amended version.

Q. Did you prepare an earlier report? A. Yes Sir.

Q. Dated 3rd June? A. Yes Sir.

Q. Now in that report did you have different figures? A. Well due to the stock adjustment.

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Q. In that report did you have different figures? A. Yes I believe the adjustment was different.

Q. Were the figures, the relevant figures, 25, 75, 50, 25, 45, 70, 110 and 50?
A. I should like to see that report.

Q. Can you see that; this is your report.

JUDGE: What page?

MR. NEWBOLD: I don't know whether Your Lordship has it, it is the 3rd report, page 3. the figures on the first report as I understand it.

10

JUDGE: Is it the figure at the head of the page; are those the figures to which you are referring?

MR. NEWBOLD: The figures on page 3. in the middle of page 3. I don't think Your Lordship has this document.

JUDGE: I have a document which purports to be the report of the 3rd June, but my figures are 19, 57, 38.

20

MR. NEWBOLD: Beginning of factor, the factor applied in determining the allocation of total gross income in respect of each year?

JUDGE: Oh yes, 25, 75, 50.

MR. NEWBOLD: That is first report, now have you got it? A. I have not got a copy but I will accept your figures.

Q. Can you explain, Mr. Blackhall, why between the 3rd June, when as I understand it, you had already given the matter considerable thought before you put it down, and the 6th June, you should change those figures to such an extent? A. I repeat I must have a copy of the report. One part I can answer straightway and that was that further contract information came in which gave me an indication of the type of work carried on.

30

I also had opportunity, having prepared the report, to have second thoughts and to consult the position as revealed by the statements of worth that I had prepared for checking purposes.

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Q. One moment, you say you can give one of the answers straightway, and that is because further contract information came in?

A. Yes.

10 Q. And that you had regard to the revised statement of capital worth? A. I had regard, I then had an opportunity to have further regard to the statements of worth which I prepared throughout the period for checking purposes.

Q. Can you tell His Lordship what possible element the statements of worth at the beginning and end of this period could possibly have on the factor in relation to the period between the various years?

20 A. I am not referring to the statement of worth at the beginning and end.

Q. To what are you referring? A. I am referring to annual figures for the purpose of checking.

Q. Do I understand that you only got out those annual figures after the 3rd June? A. No I had the figures before.

30 Q. Well then why did those figures induce you to change those factors? A. Because I had further opportunity of checking against these figures.

Q. Because you had a further opportunity of checking against these figures? A. Yes Sir.

Q. And if you had a yet further opportunity do you think that you would change them again? A. No Sir, because my investigations have reached the state where they can be supported.

40 Q. Do I understand you from that answer to say that you made a report, which in turn was supplied to me, on the 3rd June, on which you had no reliance? A. That is not true at all.

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

Q. Had you checked it or not? A. I had checked it to the best of my knowledge.

Q. Why did you change it between the 3rd and 6th June? A. Because I had decided, perhaps wrongly, that any information that came to light before I came into this Court should be brought into consideration.

JUDGE: What was this contract information that you received? I am talking about the information relating to contract income which affected the distribution of the gross income received as between the years shown as being the years of receipt; that is the information that you received between the 3rd and 6th June? A. Information came in on the Friday and Saturday which I was able to peruse, mainly towards the earlier years, 1948 I think.

10

JUDGE: Go on please? A. I am sorry, My Lord, yes I had information relating to 1948 and a small amount of information relating to 1949.

20

MR. NEWBOLD: You say that contract information which came in on Friday and Saturday was an element in changing your mind? A. It was an element.

Q. What was that contract information?
A. It relates to details of the contracts that the individual concerned had undertaken.

Q. What was the total? A. I have here a total of 500,000/- which is larger than the year in question.

30

Q. As being contract income for what year?
A. For the year 1948.

Q. That was additional contract income which you obtained for the year? A. Additional information on the contract income.

Q. 500,000/- A. Yes.

Q. What was the amount of your previous information on the contract income in that year? A. Nil.

40

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(Continued)

Q. And having a nil figure for 1948 you nevertheless allocated to it a factor of 50 per cent? A. Yes.

Q. Is that correct, did you allocate 50 for the year 1948? A. If that is in the report I did.

Q. And having no information as to contract income at all? A. No.

10 Q. You allocated a factor of 50? A. Yes, assuming that the profitability would have been lower than the average.

Q. Mr. Blackhall, do you mean to say that having no - having regard in this to the contract income in determining these factors you now say you had no information in 1948 in relation to contract income at all, but yet you nevertheless allocated a factor of 50? A. Yes, I can only estimate on the information I had what relates to each year.

20 Q. Are the other factors estimated on the same sort of basis? A. They all have consideration to the turnover in the year, and consideration to the circumstances and rate of profitability of that turnover.

Q. At that time what contract income did you have for the year 1949? A. 1949 at what time.

30 Q. Before this additional information came in? A. Again in that year I had got some information, 73,000/-.

Q. 73,000/-? A. Yes.

40 Q. Do I understand the position that in the year in which you have no knowledge of contract income you allocate a factor of 50, and for the year in which you have knowledge of contract information you allocate a factor of 25? A. The answer is, of course, that the turnover for 1948 was 595,000, and in 1949 266,000. In other words, I have taken 1949 to be an average year.

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(Continued)

Q. You have taken 1949 as an average year?
A. Yes.

Q. Are you sure of that Mr. Blackhall?
A. I have allocated.

Q. Mr. Blackhall, you have just said you took 1949 as an average year, is that correct?
A. 1949 you say I allocated 25, are you speaking of my original report or my....

Q. I am speaking about your answer, you told me that you took 1949 as an average year, is that correct? A. Yes Sir it is correct.

10

Q. Now what results follow from that, what do you mean by that? A. Well I mean I am relating the income closely to the turnover, I am not applying a weighting figure.

Q. The turnover in that year was 266,000/- according to your figures? A. Yes Sir.

Q. Apart from the year 1946 it is considerably less than any other year? A. Yes it is less.

20

Q. Why do you then attribute to the year 1949 an average year? A. Do you mean average from the point of view of total profits.

Q. It was your word? A. I meant average year from the point of view of profitability of the contracts.

Q. You took 1949 as an average year from the point of view of profitability of the contracts? A. That is right, not an average year from the point of view of total profits by any means.

30

Q. An average year of the profitability of the contracts? A. That is true.

Q. In arriving at that assumption you must have known the average profitability in 1949?
A. Well yes, I relied on the professional advice I had.

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(Continued)

- Q. What percentage was given to you for 1949, or what percentage did you take? A. The information I had was not expressed as a percentage.
- Q. How can you arrive at - would you tell His Lordship how you arrive at the fact that 1949 was an average year of profitability?
A. In the light of the information that the professional expert gave and in his opinion of the conditions of the trade in that year.
- 10 Q. Mr. Blackhall, you have taken 1949 as a year of average profitability, now profitability assumes a percentage doesn't it? A. It assumes a percentage either expressed or not expressed.
- Q. Now in order to relate that to any other year you have to relate it as far as I am aware on a percentage basis do you not? A. You can do it in that manner.
- 20 Q. Did you do it in that manner? A. No I weighted the turnover - in fact I did not weight the turnover at all.
- Q. What, how did you arrive at this? A. How did I arrive at what.
- Q. At 1949 being an average year? A. The information I had from the professional expert.
- 30 Q. You have referred to it several times, but how did you arrive at it? A. I made an assumption that 1949 was an average year in relation to profitability.
- Q. On what factors? A. I had been told that fact by a person in the trade.
- Q. Do I understand that somebody came along to you and said, "Well 1949 was an average year for profitability" and it is on that and that alone that you have based these figures?
A. Not at all I began with turnover and weighted it, haven't I.
- 40

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

Q. You just said you had not weighted it? A. No, on the basis that profitability was average.

Q. Have you got any means which you can explain to His Lordship on how you arrived at 1949 as a year of average profitability?

A. No it is an assumption that I made on the information that is available.

Q. Are the other figures in your report based on a similar assumption? A. Not at all.

Q. Do I understand by your expression that you do not have a very high regard for this method of allocation? A. That is not true.

We have to arrive at total profits and then allocate them, and one can only do that, first of all, in the light of turnover, and secondly, having regard to conditions. Now it is often the case that a mass of information will give the same answer as a smaller quantity of information, and one has to allocate on some basis, and to do it arbitrarily may produce inaccuracies, but they produce less inaccuracies than Accounts which have been produced very often on an arranged basis, because we maintain total profits in the first place and we merely allocate them. We are merely asking you - we are not saying that it is the last word in efficiency at all, but we are saying that it is a fair and reasonably intelligent way, once having ascertained his income, which has been formerly ascertained, to break it up and spread it over certain years, in order to facilitate assessment of tax.

10

20

30

Q. You have said that you changed these figures between the 3rd and 6th June because of additional information in relation to the contract income which come in for the years 1948 and 1949, is that the only reason why you changed these figures? A. No, I had further regard to my statements of worth which gave me a rough guide of each year; this must give a rough indication of what profits they received.

40

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(Continued)

Q. You referred to the statements of worth. Now I understood that you had in fact calculated it, computed it, the statements of worth with annual rests, is that so?
A. For the period 1946 to 1953, yes Sir, after that date we had the Balance Sheets.

10 Q. Unless I express otherwise I am dealing with the period 1946 to 1950. When you have regard to those statements of worth with annual rests, how do they tie up with the present position as in your report? A. Do you wish me to run through the years in question.

Q. No just generally, how do they tie up?
A. They tie up reasonably well, reasonably well.

Q. The statement of worth assumed his statement of worth as at the end of 1946? A. That is true.

20 Q. This was the first attempt which you did before you decided to abandon it and to adopt the method now used? A. That is true.

Q. They were prepared I assume some time before May this year? A. Yes Sir.

Q. And they were prepared at the end of each year? A. That is true.

Q. Have you got the figure for the 31st December, 1953? A. I have Sir.

30 Q. How much was that? A. You are asking for the figure of statement of worth.

Q. Yes? A. Net worth figure.

Q. The statement of worth figure? A. That figure is 1,137,545/-.

Q. And the statement of worth figure of the 31st December, 1946, was what? A. 776,000/-.

Q. And had you got a figure at that time, the 11th January, 1946? A. Yes, 789,000/-.

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

- Q. You had that figure at that time? A. At what time.
- Q. At the time you were preparing these annual statements before May this year? A. Yes I think that figure that was my departure point.
- Q. And the amount which you then had was what? A. At what date.
- Q. When you started these annual rests? A. Oh I understand you. The figure I had originally was 731,000/- but I knew and I noted on the back of the original schedule that there was something wrong with the opening Creditors. I was able to ascertain later what the discrepancy was. 10
- Q. Returning to your report on page 4. you say that to these figures there has to be added, if it is so decided as a matter of law, the sum of £3,350? A. Yes that is the capital profit on Grogan Road. 20
- Q. That is what you describe as capital profit on Grogan Road? A. Subject to the question of law.
- Q. Do I understand it that these are your figures ascertaining the profit on the sale of Grogan Road - whether it is capital or revenue is irrelevant at the moment? A. They were originally put in by Mr. Thian and they appear to have been prepared from information which was reliable and I accepted such. 30
- Q. Mr. Blackhall, are you saying - this is your report - are you saying that those are the profit figures on the Grogan Road property? A. I am putting these figures forward.
- Q. You are putting those figures forward? A. Yes, Sir.
- Q. Now you are putting forward these figures as accurate figures showing the profit, whether it be revenue or capital profit, on Grogan Road. 40

From what did you derive that figure?

A. In the first instance the proceeds of the sale being 193,000/-, and secondly, an estimate of the cost of the building itself, which was 126,000/-.

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Q. An estimate of cost of building which was 126,000/-? A. Which was sold - taking one from the other you arrive at 67,000/-.

10 Q. I understood you earlier to say that you took that from Thian's figures, is that correct?
A. Yes, but Mr. Thian had information which was also available to me with regard to the value of the building originally constructed. Could I see Mr. Thian's second report (report handed to witness). This is evidently a different document from the one I was referring to.

20 Q. All I want to know is how did you arrive at that figure of £3,350? A. In 1950, two buildings on Grogan Road were completed. 85200 which was used for residence and a valuation of 100,000/- was placed on second plot which was sold. These figures were quoted in Thian's second report and have been accepted. I have taken cost being 100,000/- and that leaves cost of the plot which was acquired in 1947 - a proportion of the cost of the plot is the balance of the cost of the building.

30 Q. And you arrived at an estimated cost of this house of how much? A. 126,000/- including land.

Q. Being the cost of the building and the land?
A. Yes.

40 Q. And I assume that you checked those figures carefully, you looked at that estimate and checked it carefully, and I assume you checked the land figure? A. Well we knew the two plots had been purchased and the value of 26,000/- appeared reasonable.

Q. Which valuation? A. The plot.

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

Q. And therefore you took the cost of this plot of land as 126,000/- and you subtracted that from 193,000/-? A. That is true.

Q. And you arrived at? A. 67,000/-.

Q. Now are you satisfied with the accuracy of these figures? A. Yes.

Q. Are you as satisfied with the accuracy as you are with any other figures in this report? A. Oh no that is a different matter. My figures on my valuation at the beginning and end was not based on documentation. It has been of necessity on an estimate; it may be that 126,000/- is too high but by taking that valuation the Income Tax Department have the benefit of the doubt.

10

Q. Do you know that this is the price of the land on which both houses were built? A. These plots were bought in 1947, I didn't know that.

20

Q. Did you bother to check? A. I have no means of ascertaining.

JUDGE: Did it occur to you to ask Mr. Rattan Singh? A. No, My Lord, I accepted the previous figures because.....

JUDGE: What figures? A. Of Mr. Thian's and and put the figures forward after investigation, and that appeared reasonable as the valuation of the building and I accepted the same.

MR. NEWBOLD: You have Mr. Thian's certified report before you? A. No I have not; yes I have.

30

Q. And you have already referred to this report in arriving at these figures. Will you look on page 16? A. Yes.

Q. About three-quarters of the way down, do you see the paragraph, "Subject to the correctness..... cost of plots (2) 26,000/-"? A. Yes.

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- Q. Now why do you say that the profit on this land which you included in your report, and which, as I understood you earlier to say, the figures were as accurate as you could reasonably ascertain, included the cost of another plot which has got nothing to do with this? A. It was immediately adjacent, I wouldn't say it has nothing to do with it.
- 10 Q. What has it got to do with this? A. The plots are adjacent, that is the only connection between the two.
- Q. Is that the basis on which all these figures in this report are framed? A. Not at all, I have already said that the cost of the building 100,000/- is probably over-estimated.
- Q. I am talking about the 26,000/- which you allocated towards the land, was that figure spent on the land? A. Well I do know that two plots were bought in 1947, and the Grogan Road and Parklands were a composite figure.
- 20 Q. As a competent Accountant can you give to His Lordship any reason at all why you took that plain statement in front of you 26,000/- as the price of this land? A. This profit of 67,000/- has been put forward as given and checked by the previous Accountant, and we saw no reason to alter that figure.
- Q. Can you give to His Lordship any explanation as to why you put forward this profit based on an expenditure in relation to two plots? A. Well this is a question of the valuation of the balance of the property, and if the profit is wrong now it merely means that - if the profit is under-stated, in other words the cost is too high, then the valuation of the plot which remains to Mr. Rattan Singh has been shown too low, but he has not disposed of his whole property. It is the ultimate profit of the whole transaction which is not really ascertained until you sell the whole of the plot, the two buildings.
- 30 40 Q. Mr. Blackhall, have you had any experience at all in Accounts? A. Considerable.

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Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

- Q. Do you mean to say that in the course of this considerable experience you have never come across the position in property-dealing when you allocate a proportion to plots which have been sub-divided? A. Mr. Rattan Singh is not dealing with properties; I have accepted this give and take figure.
- Q. Is it not a fact - give and take or otherwise - Mr. Blackhall, that an ordinary average book-keeper, a book-keeper, could merely by looking at this document see that 26,000/- was not the price of the land? A. He may have reached that conclusion. 10
- Q. Have you submitted Accounts to the Income Tax Department in other cases which have been rejected? A. Not to my knowledge.
- Q. Do you realise that it is the most unusual thing for the Income Tax Department to reject the Accounts of a qualified Accountant? A. It is unusual. 20
- Q. And that has never happened to you? A. Not to my knowledge.
- Q. Now turning on the same page at the top of the page, you have set down Gian Singh's rents for each of the years? A. That is true.
- Q. Are you satisfied as to the accuracy of those figures? A. These figures are based on the information that I had with regard to the rents of the individual tenants of the property in Gulzaar Street and are the chargeable rents of the period. 30
- Q. Are you satisfied as to the accuracy of those figures? A. Yes.
- Q. Did you have any difficulty in ascertaining these figures? A. I obtained them from the schedule which Mr. Thian prepared from the tenants of the Gulzaar Street property.
- Q. You obtained them from Mr. Thian's schedule? A. Yes.
- Q. Did you check at all? A. In what manner. 40

- Q. In any manner? A. Well I had no documentation to check with.
- Q. Did you check in any manner? A. I had not the facilities to check.
- Q. Did you check in any manner? A. I took those figures from Mr. Thian's schedule.
- Q. Did you check in any manner? A. I didn't check.
- 10 Q. Why didn't you answer that earlier. You took Mr. Thian's figures without checking. Is the figure which we were dealing with earlier of £3,350 Mr. Thian's figure also, of profit on the Grogan Road property?
A. Well it is indeed.
- Q. Did you take that without any check? A. Well I gave due consideration.
- Q. Did you take that without any check? A. I accepted it after consideration.
- 20 Q. Did you take that without any check?
A. I checked the sale price and I accepted his cost of the building.
- Q. So you checked the sale price and accepted his cost of the building? A. Yes.
- Q. Against what did you check the sale price?
A. The statements made and put forward in the vouchers in this case.
- Q. In Thian's report? A. And also the figure is in the books.
- 30 Q. Did you check it against the books? A. Yes I had the details in the books.
- Q. And you checked it against the books? A. I had the details.
- Q. Did you check it? A. Yes.

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(Continued)

Q. And the figure in the books was? A. In the books the figure was payment during 1953 of 85,000/- and a balance forward as a debtor of 108,000/- as at 1st January, 1954.

Q. Did you ascertain the rental income of the other properties? A. With regard to the other properties, the rental income ascertained has been ascertained in relation to my cash analysis from 1946 onwards.

Q. Did you ascertain the income of the other properties? A. From the point of view of chargeable income no; I relied on cash income from the rents. 10

Q. Did you check the rental income from the other properties? A. I didn't check the rental income.

Q. Did you check Mr. Thian's figures? A. No.

Q. What figures did you check? A. I took the figures arising from my investigation of the cash receipts. 20

Q. You took the figures arising from your investigation of the cash receipts? A. Yes.

EXAMINATION BY THE COURT

JUDGE: So does that mean that you cannot exclude the possibility that the taxpayer may have pocketed one month's rental every month from each property? A. In cash.

Q. In cash? A. That possibility cannot be excluded.

Q. And you made no attempt to ascertain what were the actual rentals of the properties? You merely looked at the figures and say, Rent 100/- so I will take 100/-? A. The question of rent does not arise. I have taken the analysis of rent receipts as being rent income. 30

- Q. How does the question of rent not arise, will you explain to me what you mean by that. Is nor the rent that anyone receives from property part of his taxable income? A. Yes.
- Q. How can you say the question of rent does not arise? A. Did I say that, My Lord, I don't recollect that.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
10th June, 1960
(Continued)

JUDGE: Shorthand Writer, read back your note.

10 SHORTHAND WRITER: "A. The question of rent does not arise. I have taken the analysis of rent receipts as being rent income".

WITNESS: What I meant was that having regard to the collection of rents, we have taken the cash income as it is ascertained in the Accounts as being income for the period for rents on the basis that the rents should be assessed on rents received but at the end of the period.

20 Q. What, do you mean this, that you assume that the books were accurate? A. For the period 1946 to 1953 yes, My Lord.

Q. In relation to rents? A. Yes My Lord.

30 Q. You made no effort to ascertain what rents were really payable, you merely assumed that all tenants who had in fact paid had been entered in the books, is that it? A. Yes My Lord, but may I explain further that at the auditing period rent debtors were ascertained and therefore the position could be adjusted.

MR. NEWBOLD: You keep speaking of adjustments; nor did you ascertain whether the rentals from the Grogan Road property which was occupied by Mr. Rattan Singh ever went into books at all? A. No.

Q. Do you not know as a fact that that is what happened?

JUDGE: What do you mean?

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
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Cross-
examination
10th June, 1960
(Continued)

MR. NEWBOLD: Did you not know as a fact that the rental of the Grogan Road properties never went into the books? A. I didn't know that as a fact.

Q. Do you know that the Grogan Road properties was rented? A. They were rented.

Q. Did you ever see any rental in the books of the rental of those shops? A. I cannot recollect that I saw them entered or not.

Q. Would it not surprise you, having already given an answer to My Lord that you accepted the figures of the other properties in the books as accurate, would it not surprise you, knowing that these properties were rented, that there was nothing in the books about them? 10

JUDGE: Mr. Newbold, that really does not matter whether he was surprised or not, what I want to know is whether they were in the books or not? 20

MR. NEWBOLD: Were they in the books? A. I don't recollect them.

JUDGE: Have you the books in Court? A. I believe the Cash Book is here (Exhibit 5. handed to witness).

MR. NEWBOLD: For the year 1951 do you see any rental for Grogan Road? A. What are the names of the tenants.

MR. NEWBOLD: Well I don't know. A. They are in the report listed at the back. 30

Q. I am dealing with the Grogan Road Properties. It is the first report, schedules of rents that you are referring to, Schedule B. Do you see there any record of the Grogan Road property? A. I shall need to know the names of the tenants.

Q. Would you like to look at the record, have you got it? A. I have not got the report. (report handed to witness).

Q. Do you see Schedule B. to the report? A. I have rent here.

In the Supreme Court

Q. Do you see Schedule B. to the report? Yes.

Appellant's Evidence

Q. Do you see the properties listed? A. There are rents from Gulzaar Street in the books.

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Q. I am not talking about Gulzaar Street?
A. I am sorry. I understood you were.

Anthony Marcus
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examination
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(Continued)

10 JUDGE: I find it difficult to believe that you understood anything of the kind, because this all developed in cross-examination in relation to why you had charged the whole cost of the plot in Grogan Road as against the monies derived from the sale of Grogan Road. That was some considerable time ago, and since then, Mr. Newbold has I think without exception been directing his cross-examination to transactions concerning Grogan Road. However, disabuse your mind of the thought of Gulzaar Street and direct it instead to the
20 shops attached to Grogan Road.

MR. FOOT: I think Your Lordship will recollect that for a time My Learned Friend did go on to Gulzaar Street rents, and those are the rents in Gulzaar Street, My Lord.

MR. NEWBOLD: That is correct and then I came back to Grogan Road and said the shops at the bottom are rented.

30 JUDGE: "I know that premises at Grogan Road are rented. I cannot recollect if I saw any rentals re Grogan Road premises in the books."
A. If I may be excused, My Lord, I have been unfortunately a little confused on this issue; on the question of rents I had in mind Gulzaar Street, and the question re Grogan Road I answered in connection with Gulzaar Street.

40 JUDGE: You will remember that there were **two** adjacent plots on Grogan Road, one of those **plots** was sold and on the other plot the appellant had his house and below his house there were certain shops, and Mr. Newbold's enquiry as I understand it, is directed as to whether you say

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
10th June, 1960
(Continued)

any entries in the appellant's books referring to the receipt of rental from the shops under his residence? A. I have no recollection of any entries in the books.

JUDGE: Will you look now and see if there are any such entries? A. Such entries will be under the name of tenants; is the name of tenants there.

JUDGE: Perhaps, Mr. Newbold, as I gather that you will not conclude your cross-examination tonight, you can continue it now and he can look for it during the adjournment. 10

MR. NEWBOLD: May I refresh your mind a little, Mr. Blackhall, do you know that for the years of income 1951, 1952 and 1953, an estimated amount was added for the rental of the Grogan Road shops, or didn't you know that?

JUDGE: Added by whom.

MR. NEWBOLD: In the assessment? A. There was an estimated round figure on the document, on Mr. Thian's document which I do remember seeing. 20

Q. You do remember seeing, and I assume that as you were enquiring into that as a result your attention was at once directed to this estimated figure for rents, is that so?
A. I regret that my attention was not directed.

Q. And yet you have told His Lordship that you accepted the rental figure in the books in respect of the other properties from 1946 to 1953 as correct? A. I accepted them as rents received. 30

Q. Did you know, or did you at any time ascertain during the course of your enquiry, that some rental had been received by advocates?
A. No. I was not aware of that.

- Q. Have you never heard that? A. I was not aware of any material amounts of rents that may have been received by advocates.
- Q. Were you aware of any amounts of rent?
A. Received by advocates.
- Q. Yes? A. No.
- Q. Were you aware of any amounts of rent received by anyone else? A. Gian Singh I understand received some rents in later periods.
- 10 Q. Did they go through the books? A. They went through the books, yes.
- Q. You told His Lordship that you were unaware that any of these rents in relation to any of these properties were received by advocates, is that correct, I want to make that quite clear? A. Searching my mind there may have been a few hundred pounds I saw somewhere in the records where an advocate was referred to, but I do not recollect anything other than that.
- 20 Q. Do you know that it is quite a common thing for rents to be received by advocates?
A. I was not aware that they acted as rent collectors except in the case of arrears.
- Q. Would you mind answering my question; are you aware that it is common practice for rents to be collected by advocates, the answer is yes or no? A. If they are in arrear, yes.
- 30 Q. And that would show, if rental has been collected by advocates, the most elementary investigation of the rental income would have ascertained that would not it, Mr. Blackhall?
A. My difficulty....
- Q. Mr. Blackhall, if rents had been obtained by advocates the most elementary investigation of the rental position would have disclosed that, would it not? A. It would have disclosed that if facilities for the investigation had been shown.
- 40

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
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10th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 10th June, 1960 (Continued)

Q. What do you mean? A. I had no leases for this property; I asked for leases.

Q. Were any rents collected by advocates or not? A. As I have told you I was not aware of that practice.

Q. Did you bother to investigate in any way the rental income? A. I asked for leases which were not available. I was informed that no leases were available; if I had leases I would have checked them at the time.

10

Q. Mr. Blackhall, have you ever come across these properties in these streets which are rented? A. No I have not seen these actual properties in connection with the case, or if I have seen them I have not connected them with the case. I have not seen them physically.

Q. Have you ever dealt with cases in which properties are rented in that area? A. Not in that particular area.

20

Q. Where you have buildings rented in that street do you think there would be leases? A. You often have tenancy agreements or something in writing.

Q. You were told that, you have said that you asked for leases and you were told there were none in existence. What, will you tell His Lordship, did you do to ascertain the rental income? A. I took an analysis of the rents banked.

30

Q. And that is all, and that is all, is that correct? A. Not quite, the other aspect is that we go forward to the audited accounts when rent debtors are brought in.

Q. You go forward to the audited accounts of when? A. 1954, 1955 and 1956.

Q. And we are dealing with periods from 1946 to 1953 when you have already told my Lord that you have accepted the books as accurate. You said that your investigation began or concluded by asking for leases and you were told there were none, what else did you do?
A. I took rent income as cash.

In the Supreme Court

Appellant's Evidence

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Q. Do I understand from that that you did nothing else at all? A. That is true.

Anthony Marcus
Blackhall
Cross-
examination
10th June, 1960
(Continued)

10 Q. Let us go on to your second report, to the overhead expenses figures? A. Yes Sir.

JUDGE: Before you leave that point, Mr. Blackhall, I want you to look through whatever may in your judgment be the most appropriate books with a view to ascertaining whether in fact there were any entries relating to the rent of the Grogan Road premises, and I want you to be able to tell me that when we sit tomorrow and direct my attention to the particular entries which you happen to find. Go on Mr. Newbold.

20

MR. NEWBOLD: Turn to the overhead expenses which are utilised for the purpose of arriving at your net trading profits in the report. This appears at page 3. of your report?
A. Yes.

Q. Now dealing with 1953 first of all, where did you get that figure of 26,000/- from?
A. These overhead figures are obtained from Mr. Thian's Accounts; they are merely a method of allocation.

30

Q. Would it be correct to say that from 1948 to 1953 every one of those figures are from Mr. Thian's Accounts? A. That would be correct, yes.

Q. To the nearest one hundred shillings? A. They have been obtained from that source.

Q. Did you bother to check them? A. Well these figures are used merely for the allocation of profits.

40

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
10th June, 1960
(Continued)

- Q. Did you bother to check them? A. I took them from his Accounts.
- Q. Did you bother to check them? A. I didn't check them, no.
- Q. Where did you get the figure for the overhead expenses for 1946 and 1947 from? A. 1946 and 1947 were made from the books, and that has been taken as an estimate.
- Q. You now tell His Lordship that the figures of overhead expenses for 1946 and 1947 are taken as an estimate? A. Yes but. 10
- Q. Is that disclosed in the report? A. Well it is because you say "estimated gross profits".
- Q. And what do you say over the heading "overhead expenses"? A. You see no word "estimated".
- Q. Exactly; now on what basis did you estimate these figures? A. That the expenditure would rise, be higher than in 1946 and 1947, and therefore these figures of estimates in there - we had to put something in. 20
- Q. And you just put anything in? A. No we put what was a reasonable figure. It is only for allocation of profits, it is not ascertainable profits, it is merely to arrive back at a gross figure. We add on to the overhead expenses because we get a more accurate result by apportioning gross profits than apportioning net profits.
- Q. Is that not an essential link in the chain which results in these income figures put before My Lord? A. Not at all, only a method of allocation. 30
- Q. You say you estimated those two figures as being less than 1948 because they must be less? A. I didn't say they must be less, I said a reasonable assumption that they would be.
- Q. Would it be a reasonable assumption that they would be less than 1949? A. Not necessarily so. 40

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
10th June, 1960
(Continued)

- Q. Can you tell His Lordship why it is a reasonable assumption that they would be less than 1948 but not less than 1949?
A. Because 1948 was a more profitable year. What I have done in effect is to take an average for those two years. I have taken the average of 1948 and 1949, 28,800, I have taken 13,000 in one year and 15,000 in the other.
- 10 Q. That is why you took this estimate? A. Yes, that is my recollection.
- Q. Would it equally well be reasonable to relate it to turnover? A. What the overhead.
- Q. Yes? A. Not at all, Sir,.
- Q. Very well, we come to this position then, that your overhead expenses are taken as far as 1948 to 1953 are concerned, from Mr. Thian's figures without any check, and those for 1946 and 1947 are estimated by you without any indication on the report? A. Well I don't agree with that statement because the figures are round figures and an element of estimate is suggested there because the figures are round, and I don't think you can take out a single item and regard it in isolation; you have to regard it in its context. On the bottom of my page 3. of my report I say Rents received, I don't say Rents receivable, I don't purport to say those are the total.
- 20
- 30
- Q. If an advocate receives rents on behalf of his client which he applies for other disbursements, other debts due to him by the client, would you regard that as rents received by the client? A. Yes I would have to do so. Not rents received by the clients, but they would be rents receivable because he has not received them. I see what you are getting at - true, I agree.
- 40 Q. Turn over, those figures at the top of page 3. Now the turnover figures where do you get the turnover figures from? A. The turnover figures were obtained from an analysis of the Bank Accounts, mainly from the cash Account,

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
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examination
10th June, 1960
(Continued)

and they have been tested against contracts as you have heard in my other evidence.

They have of course been adjusted as I also gave in evidence by figures of opening and closing debtors.

Q. If I understood you correctly earlier on, you said that until 3rd June, you had no income, contract income figures for 1949, or was it 1948? A. Yes that is correct.

Q. 1948? A. Yes. 10

Q. If therefore your turnover is related to your income figures, or the income figures is an element in turnover, how did you arrive at that turnover figure for 1948? A. Well it is the cash income from the contracts adjusted by the debtors.

Q. But you had no information I understood you to say? A. I had the Cash Book and the Bank pass sheets for that year 1948.

Q. What about 1946 and 1947? A. 1946 and 1947 are obtained from an analysis of the Bank Accounts, and are produced by adjusting for the rents. In other words, the total income for those two years is essentially swollen by the rents received and in order to ascertain the turnover we had to adjust for the rents which had been received. 20

JUDGE: Would that be a convenient time for the adjustment? 30

MR. NEWBOLD: If Your Lordship pleases.

MR. ROWLAND: Would it be possible for the witness to have access to the Cash Books and possibly some other records.

JUDGE: Most certainly.

MR. FOOT: They might be released to him perhaps.

JUDGE: Yes they can be released to him.

COURT ADJOURNED AT 4.0 P.M.

RESUMED 9-40 a.m. - 13th June, 1960.

In the Supreme Court

ALL PRESENT AS BEFORE:

Appellant's Evidence

ANTHONY MARCUS BLACKHALL (WARNED STILL ON FORMER OATH)

No. 38

Cross-examined by Mr. Newbold:

Anthony Marcus
Blackhall
Cross-
examination
(Continued)

10

Q. Mr. Blackhall the two schedules to your report A and B are stated to be statement of work as at particular dates? A. Yes sir.

Q. Now what are these schedules supposed to represent? A. Statements of Mr. Rattan Singh's worth of wealth at the particular date.

13th June, 1960

Q. Do they include everything to dates in question? A. With the exception of personal chattels, yes sir.

20

Q. Now, do I understand you to say these schedules purported to represent his wealth in every form at a particular date, but there has been excluded personal chattels? A. Yes sir.

Q. Why? A. Well it is extremely difficult to take an inventory of a man's furniture and his wife's jewellery and that aspect was ignored by necessity and based on the conclusion that the variation between the two would not necessarily be large.

30

Q. Do you mean to say Mr. Blackhall you have prepared a document which purports to be a statement of worth and you have omitted from that personal chattels? A. Yes sir.

Q. Why? A. It is difficult to obtain an accurate valuation.

Q. Is there any note to that effect? A. No sir.

Q. Why not? A. Because the items are perfectly detailed.

Q. Perfectly detailed where? A. On the schedules.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

Q. Is there any note on these documents that you have omitted the personal chattels?
A. No.

Q. Why not? A. The assets are detailed.

Q. Why not? A. The assets are detailed.

Q. Do I understand you to say these documents are only a statement of worth of the detailed assets? A. They must be so sir.

Q. So that they are not statements of his worth at the respective dates? A. They are statements of his worth.

10

Q. Mr. Blackhall do not play with the position. You have told me that these purported to represent his total assets at the particular dates, now you say that they do not include his personal chattels. I ask you why not? Why is there no note? You say because the assets are detailed? A. Yes sir.

Q. Well it is one thing or the other, do these documents represent his total worth on these dates, or do they not? A. On the basis you put it they do not.

20

JUDGE: Mr. Blackhall I could see the difficulty and perhaps the unimportance of estimating the value of the Appellant's clothing shall I say, but, if during this period the Appellant had bought a steam yacht, for thirty or forty thousand pounds, it would apparently not have been included in this statement of worth of yours, even though the purchase of a personal asset of that nature might very well have appreciably affected his position, from the point of income tax; it would afford a pretty fair indication that he was earning a very large income.

30

WITNESS: That is not quite correct, My Lord, because an asset of that size would entail withdrawals from bank accounts, which have been scrutinised.

40

JUDGE: Not necessarily: as I understand it the Income Tax case is that the bank accounts, or at least the disclosed bank accounts, may not represent anything like his total income, or like the excess of his total income, from his total expenditure, as revealed by his books. The Income Tax case is that of hidden assets, or hidden revenue, which has never been brought to account. It may be that this case is wholly fallacious, that is another matter, but that being so, in an endeavour to determine what was the Appellant's income during the relevant period, was it not necessary to take into account all assets, the value of which was other than completely trivial?

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

10

WITNESS: Yes, My Lord.

JUDGE: That being so, at what level of expenditure did you draw the line?

20

WITNESS: My Lord, we took the assets as properties and bank accounts and other items revealed.

JUDGE: What about motor cars for instance?

A. Cars are in the business account and taken into account with motor vehicles and plant and machinery.....

JUDGE: Was there a stock book of the cars or something of that sort? A. No, the number of vehicles is not large.

30

JUDGE: It may none the less be appreciated, you see we have been told by Gian Singh of several cars having been given to him during the period. His version is that the cars were; one car was disposed of at the end of the year.....

MR. FOOT: Your Lordship is putting it to the witness during the period - I think Gian Singh's evidence referred to a later period.

40

JUDGE: I am only concerned with the three or four years of tax.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

MR. NEWBOLD: It does not fall within the period of the assessment, but My Learned Friend has brought in this period up to 31st December, 1957.

JUDGE: The details of Gian Singh's transaction perhaps do not matter very much, as we have been given a certain amount of evidence, what I want to know is at what value did Mr. Blackhall draw the line as warranting exclusion of consideration of any assets? 10

WITNESS: I did not, My Lord, place a value on the assets I merely proceeded on the basis of taking his properties as ascertained by me, as given to me by my client, and traced them through for the period. The question of placing a value on the assets, My Lord, does not enter into the matter, but it is perfectly true that no consideration was taken of the valuation of furniture or personal jewellery. 20

JUDGE: You said earlier I think, his personal chattels?

WITNESS: That was slightly inaccurate because motor vehicle is there, I meant furniture.

JUDGE: Did you itemise motor vehicles in the possession of the firm or of the business, or did you only say valuation of unspecified number of motor vehicles, of an unspecified type and of unspecified age? 30

WITNESS: No My Lord, there are details of worth prepared, of wear and tear computations, showing the movement of assets, which takes up assets in the business.

JUDGE: Go on Mr. Newbold.

Q. Do I understand you now to say this document - these documents do not show a statement of worth at these dates? A. Statement of worth, subject to the grounds which I have made in evidence. 40

Q. They show a statement of worth excluding jewellery and furniture? A. Yes sir.

In the Supreme Court

Q. Does it exclude anything else?

A. Not to my knowledge.

Appellant's Evidence

Q. Now, if I understand you correctly, you have said you did not include furniture and jewellery because it was difficult to arrive at a valuation, is that correct?

A. Yes sir.

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

10 Q. Why is it difficult to arrive at a valuation?

A. Because the market value of furniture and jewellery, is a matter which can ultimately only be tested by selling.

Q. Did you make any attempt to value these articles? A. No sir.

Q. Were you aware of their existence?

A. I assumed Mr. Rattan Singh had furniture and his wife presumably had jewellery.

20 Q. Were you aware of their existence? A. I was aware of the probability.

Q. Were you aware of their existence? Did you merely presume it? A. Yes.

Q. I ...

JUDGE: Surely it is not market value that is material for the purposes of a statement of worth, but the cost price.

JUDGE: I must draw attention to the fact that income tax appeals are required to be heard in private, unless the Appellant elects to have them heard in public.

30

COURT CLERK: It is a shorthand writer.

JUDGE: No order has been made for the shorthand note to constitute the official record of the case and in the absence of such an order, parties are relieved from the costs of the shorthand writer, but, of course, the shorthand note is not the official note. I do not know if you are prepared to agree....

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
13th June, 1960
(Continued)

MR. NEWBOLD: I am sure we both agree that the shorthand note should form part of the record in a case of this sort, with different figures and evidence going over many days. It would appear to be most desirable.

JUDGE: Do you agree Mr. Foot ?

MR. FOOT: I shall have to take instructions.

JUDGE: I do not know what the costs are likely to be, but I should not think they should be numerous. If instructions are taken between now and the end of the hearing I can make an order with retrospect.

10

Q. In answer to My Lord, you said the cost price is important, the market value is immaterial?
A. Yes.

Q. That being so, it is not correct, therefore, that the reason why you omitted these was because you had no means of ascertaining the market value? A. Yes sir, that is correct.

20

Q. If the market value is completely irrelevant, why did you omit.....
A. What I intended to convey was the market value was difficult to ascertain.

Q. What you intended to convey was the value - the value was difficult to ascertain, not the market value, but you went on in great detail by saying you could only obtain a market value by selling it. Why, if that is what you were attempting to convey, did you talk about selling it?
A. That was the idea in my mind at the moment of your question.

30

Q. Having got to the stage where you agree the market price is irrelevant, did you make any attempt to ascertain the cost price?
A. No sir.

Q. Why not? A. Because these personal chattels would depreciate with time, very rapidly, and the effect would not be large.

40

Q. What do you mean? Would you mind repeating it?

In the Supreme Court

JUDGE: Mr. Blackhall try and apply your mind. The whole purpose of computing this statement of worth was to ascertain in the absence of complete records, what the Appellant's income was, in respect of relevant years of assessment, was that not so? A. Yes, My Lord.

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

10 JUDGE: You sought to do that by starting with his capital wealth? A. Yes sir.

JUDGE: At the beginning of the period, endeavouring to ascertain his capital wealth at the end of the period, deducting and adding to any increase in capital wealth, during the period of his estimated expenditure, during the period, in as far as you could trace it? A. Yes.

20 JUDGE: The theory being that must represent his income? A. Yes.

JUDGE: If that is so, was it not of importance from the stand point of determining his income during the relevant years, to ascertain whether he had purchased assets, irrespective of how rapidly they might deteriorate, such as furniture and jewellery? A. His furniture and his jewellery would basically to the same at one period as another, they are personal articles of appeal.

30 JUDGE: Jewellery, unlike his suit, does not wear out and require to be replaced. Any jewellery which his wife possessed at the end of the period, which she had not possessed at the beginning of the period, unless inherited must have been bought out of his income, must it not? A. Yes, My Lord, any jewellery which his wife possessed, other than from her own income, purchased for her by Mr. Rattan Singh, must have come from his income.

40

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

JUDGE: Was that not a matter which should have been taken into account - assuming there was any such jewellery, but I have heard no evidence to that effect as yet - in determining his income during the relevant period? A. It was not considered so My Lord.

JUDGE: Why not? A. Because variation is taken to be immaterial, it is difficult to ascertain.

10

JUDGE: Did you make any effort to ascertain it? A. No, My Lord.

JUDGE: Go on Mr. Newbold.

Q. You have said you assumed that there were certain items of jewellery and furniture, did you make any enquiry at all? A. The matter was mentioned to my client sir.

Q. Did you make any enquiry at all into the matter? A. No.

Q. In preparing the statement of worth and the drawings I assume you went through the documents in this case most carefully? A. I did.

20

Q. You did? A. Yes.

Q. Do you recall seeing a letter from Mr. Thian dated 3rd May, 1958..... A. I do not recall it sir.

Q. This letter was referred to several times. I assume you saw that letter in the course of your enquiries. I think you have already answered questions on it to My Learned Friend Mr. Rowland when you were talking about the assets before. Do you recall seeing that letter? A. No, this letter is unfamiliar to me.

30

Q. So that letter was not among the documents which you considered? A. It was not among the documents that I was able to consider. To the best of my knowledge this is the first time I have seen this letter.

40

- Q. Do you see "it is agreed to the above, signed Singh" ? A. I do.
- Q. If you look at p.3 down at the bottom of p.3. you will see a list. Do you see it?
A. Yes sir.
- Q. That purports to be the list of Mr. Rattan Singh's capital worth at 31st December, 1953?
A. Yes sir.
- Q. Item No. 15, you will see jewellery? A. Yes.
- 10 Q. Sh 10,000/-? A. Yes sir.
- Q. Item No. 16 do you see household goods?
A. Yes.
- Q. Sh 2,000/-? A. Yes sir.
- Q. But you never saw this document before?
A. This is the first time, to my belief this is the first time I have cast my eyes on this particular document.
- 20 Q. Is this document on p.3. where Mr. Rattan Singh is dealing with the various figures on which he has been assessed and is saying his capital worth would not substantiate the figure of £98,000 under which he has been assessed or which he assumed that he would be assessed? A. That is what he is saying apparently.
- Q. And you have never seen that document?
A. It is true, I have not.
- 30 Q. What sort of investigation have you made into these affairs? A. I perused all the documents available to me.
- Q. While on this, I will touch on something else for a moment - schedule C - the schedule of drawings? A. Yes sir.
- 40 Q. This schedule C in as much as it contains items as small as Sh 60/-, I suppose you prepared after close examination of all personal drawings and personal expenditure, which might suitably be inserted in the schedule?
A. Prepared after examination of recorded personal expenditure.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

- Q. In as much as it includes years 1954, 1955, 1956 and 1957, I assume in arriving at the figures for these years, you had recorded all Mr. Rattan Singh's returns and the audited statements and accounts for those years? A. Oh Yes, indeed.
- Q. In 1954 did you see an item for jewellery of £ 300 expended in that year? A. There is no item for jewellery on my schedule. 10
- Q. I know there is no item for jewellery on your schedule. A. In the schedule of tax for audited accounts 1954.....
- Q. Do you say Mr. Blackhall that £330 was not spent in jewellery in 1954? A. I did not say that sir, I have accepted the audited accounts. I can see no £300 item for jewellery.
- Q. You were unaware it existed? A. Yes.
- Q. Very well, we will come back to schedule C later. Now, if I understand you correctly, you took this year 31st December, 1957, because A. Because we had certain figures for stock and work-in-progress. 20
- Q. These accounts were prepared by whom? A. Messrs. Thian & Bellman.
- Q. They gave these returns a clean certificate? A. They made a comment over property, otherwise it is a normal certificate.
- Q. What was the comment over property? A. The private property had not been included at that time in the balance sheet of Rattan Singh or Rattan Singh and Sons. 30
- Q. Had they prepared accounts, audited accounts with a clean certificate for the years 1954, 1955 and 1956 as well? A. 1956 is clean, 1955 is clean, 1954 is clean.
- Q. Looking at 1954 the opening capital of Mr. Rattan Singh in this business is given as... A. Sh 279,187/75. 40

- Q. There is a clean certificate by a partner in your firm, now, that Mr. Rattan Singh's interest in the partnership on the 31st December, 1953, is slightly under Sh 280,000/-, is that correct? A. Yes sir.
- Q. When a clean certificate is given Mr. Blackhall does that not mean the books have been audited? A. No, it depends on the form of the report sir.
- 10 Q. When that clean certificate in that form was given, does it not mean that the books have been audited and the auditors have obtained all the information which they think necessary and that the figures produce a true and fair view of the position? Is that not what that clean certificate means? A. Well sir, "We have compiled the foregoing from books and papers from Mr. Rattan Singh", what that entails is that they compiled accounts from books and papers, but they have not necessarily verified these books and papers, but it is a normal report.
- 20 Q. Could there be cleaner certificate? A. Yes, I think so. The expression "compiled the foregoing from books and papers" would be altered in the normal audited certificate.
- Q. These were accounts audited with a clean certificate, by the firm Thian & Bellman and in fact, as we have heard, and you know I think, by Mr. Bellman himself? A. Yes, Colonel Bellman says he has compiled the foregoing in the books and papers of Rattan Singh.
- 30 Q. It shows the capital interest of Rattan Singh at 31st December, 1958 is slightly under Sh 280,000/-? A. Yes sir.
- Q. Now you have chosen to take 31st December, 1957, because you say this is the first occasion on which you have an accurate stock and work in progress report? A. Yes sir.
- 40

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
13th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

Q. Let us deal with the interest in the partnership assets. On this document I have here, schedule B, I see the interest in partnership assets - Sh 330,732/55c ?
A. Yes sir.

Q. When did you prepare this document? A. On the 2nd and 3rd June, 1960.

Q. On the 2nd June, 1960 ? A. It was finally prepared.

Q. It was finally prepared on the 2nd June, 1960, that is very interesting. We will leave that for the moment, interest in partnership assets Sh 330,732/55. Do you say, today, that that was Mr. Rattan Singh's interest in the partnership assets at the 31st December, 1957? A. To the best of my knowledge, sir.

10

Q. Very well.

JUDGE: Do you say there has been a fall between the capital value of the Appellant's interest as certified by Mr. Thian - 279,233. Surely that question is capable of a simple answer (NO ANSWER).

20

JUDGE: Do you say the Appellant's capital interest in the partnership had fallen from 279,000 in 1953, to 33,000 odd in 1957? A. Yes My Lord.

Q. This figure of 23,000 is taken from where?
A. The balance sheet drawn up by Thian & Bellman.

30

Q. Would you look at Mr. Gian Singh's interest in the partnership as at the same time?
A. Yes sir.

Q. What does that show? A. 107,000.

Q. So Mr. Rattan Singh's interest was 33,000 and Mr. Gian Singh's interest is 107,000?
A. Yes sir.

Q. Now you prepared the account in the following year, 1958, did you not? A. Not I personally.

40

Q. Your firm? A. I believe so.

In the Supreme Court

Q. Was there any adjustment made respecting the years 1954 to 1957? A. I have no recollection of an adjustment.

Appellant's Evidence

JUDGE: Have you the figures before you Mr. Blackhall?

No. 38

WITNESS: 1958, no My Lord.

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

JUDGE: Are they in Court?

WITNESS: No My Lord.

10 Q. Do you know Mr. Blackhall that an adjustment was made in respect of the years 1954 to 1957? A. No Sir.

Q. Will you find them please? A. Yes sir.

Q. If an adjustment was made in respect of those years with the result the sum of Sh 86,000/- was credited to Mr. Rattan Singh, would that completely change this picture?
A. I cannot answer that until I have seen the adjustment sir.

20 Q. Would you like to look at this? Do you know whether this copy of the accounts sent to the Income Tax Department, for the year 1958, was prepared by your firm (handed to witness)?
A. The signature is familiar.

JUDGE: Would you try and answer the question that are asked you? A. To the best of my knowledge these were the accounts presented.

30 Q. Would you look at part of the document. It deals with the adjustment to Mr. Rattan Singh's interest in the partnership?
A. Yes.

Q. Do you see the figure Sh 86,000/- A. Yes.

Q. Is that not in respect of the adjustment for 1954 in 1957? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

Q. What do you understand by that? A. That with effect from 1958 they made some arrangement in the partnership affairs.

Q. And therefore what would Mr. Rattan Singh's interest in the partnership at the 31st December, 1957, be? A. It depends on the contract between the partners.

Q. Mr. Blackhall what do these figures show Mr. Rattan Singh's interest in the partnership at 31st December, 1957, to be? A. Without knowing the object of the adjustment and the basis and the details on which it is based I cannot answer that question. 10

Q. I am not concerned with the object of the adjustment of the contract between the partners, or anything else. All I am asking you is what does that show Mr. Rattan Singh's interest in the partnership at the 31st December, 1957, to be? A. That shows the figure of 99,351/7 cents. 20

Q. As at when? A. 31st December on the basis...

JUDGE: Is that document to be tendered in evidence?

MR. NEWBOLD: I am tendering it now.

(DOCUMENT PUT IN AS EXHIBIT C)

Q. Now, if that is so, why did you put in the figure 33,000? A. I was unaware there was an adjustment.

Q. Did you make any sort of enquiries? A. Oh yes, indeed, I traced through his capital account and enquired whether he had given anything away to his sons and the answer was no. My partner informed me the capital account was unaltered during the period. 30

Q. You asked whether he had given anything away to his sons and you were told no? A. Yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
13th June, 1960
(Continued)

- Q. You were told he did not give anything away to his sons? A. Any capital in the partnership.
- Q. You were told he did not give away any capital in the partnership to his sons? A. That is the information I had.
- 10 Q. Do you know how Mr. Gian Singh became a partner? A. Yes, he was the son of Mr. Rattan Singh and he was brought in as a junior partner by his father, with a share in the profits. I believe in 1955.
- Q. When an auditor is examining the accounts of a partnership does he normally require to see the partnership agreement or if there is no agreement, ascertain very carefully what the partnership was? A. It is normal sir.
- Q. Did you do so? A. I was not auditing the accounts, Sir.
- 20 Q. But you were presenting a certificate of Rattan Singh's capital worth, as at a particular date? A. Yes.
- Q. And you did not think it was your duty? A. I did not think it my duty. I asked for a copy of the partnership agreement and was informed there was no agreement.
- Q. And did you find out what was the partnership and how long it had lasted and between whom and who? A. I relied on the accounts and balance Sheet.
- 30 JUDGE: Who informed you that there was no partnership agreement? A. Mr. Surjeet Singh, who is a partner.
- JUDGE: You were investigating the Appellant's affairs? A. Yes My Lord.
- JUDGE: Did you think of asking him? A. No, My Lord, Mr. Surjeet Singh has always acted as a type of book-keeper for his father and as he was his father's partner I assumed he was speaking for his father in that matter, due to the language difficulty, My Lord.
- 40.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
13th June, 1960
(Continued)

JUDGE: Did you receive your instructions from the Appellant through an interpreter or not?
A. My instructions were given by Messrs. Sirley & Kean.

JUDGE: I may be hopelessly at fault in my recollection, but I thought that there was some evidence that there was a written partnership.

MR. NEWBOLD: I do not think so My Lord. I think there was some reference to partnership deeds, but not, as I recall, a written contract. 10

JUDGE: I do not know what other partnership deeds could have been referred to.

MR. FOOT: My recollection is imperfect in the matter, I am just taking instructions. I am instructed there were none.

Q. Turning to Schedule B, the item on the schedule, securities, three shares in the National Bank of India, Sh 3,003/-, what were those? A. They represented, I believe, a first share of 2 rupees, and two ordinary shares of 100 rupees, each in an Indian bank. 20

Q. I see the three shares in the National Bank of India. Would you like to produce them? Have you got them? A. I believe they are in the files.

JUDGE: Are three shares and three share certificates? A. Two share certificates, one for two shares and one for one. 30

JUDGE: Somewhere I have seen something about a share certificate for 20 shares. I do not know what has happened to the other 17.

JUDGE: I understand you to have said in evidence there were three shares in the National Bank of India, with two share certificates, one for one share and one for two shares. Now, are these the share certificates which are purported to be represented by this item: "Securities Sh 3003/-"? A. I believe so.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

- Q. What are these share certificates?
A. Twenty ordinary shares of 100 rupees, one ...
- Q. In what bank? A. In the National Bank of India.
- Q. And the other? A. Two deferred shares - one rupee each.
- Q. In what bank? A. In the National Bank of India.
- 10 Q. So I take it that what is written in this statement of worth is quite incorrect?
A. The narration appears to be incorrect.
- Q. Is that the type of work you produce Mr. Blackhall? A. No, Sir.
- Q. Then who produced this? A. It was produced from the original; draft was produced by my assistant. I checked it up with the other document, Mr. Thian's report, and that is where the misdescription arose.
- 20 Q. Who produced this? Who is responsible for this? A. My responsibility, I am responsible, I checked it.
- Q. That is the type of work you produce?
A. Yes sir.
- JUDGE: Did you see this figure - three shares in Mr. Thian's report? A. I believe so sir.
- Q. Did you see in Mr. Thian's report the figure in relation to one share and two twenty shares?
A. My recollection is not clear, how the figure arose. It is difficult to say.
- 30 Q. Would you like to look at Mr. Thian's report: I deferred share - 1 rupee each; 20 ordinary shares - 100 rupees each. That appears in Schedule B in Mr. Thian's second report?
A. Yes sir.
- Q. Now where do you get this figure from, of three shares? A. I did not obtain it from anywhere.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Cross-examination
13th June, 1960
(Continued)

Q. Are you asking the Court to rely on this document? A. Yes sir.

Q. Would you tell the Court where there are three shares in the National Bank of India? A. I have said, sir, in evidence, that these three shares, to the best of my knowledge, related to the same shares here. Why that should have been a misdescription is beyond me.

JUDGE: It is not an important misdescription. It is a misdescription as to the number of shares and as to the bank of which they were shares and you told us a few moments ago you checked the work of your assistant by whom these figures were prepared and one of the things was Mr. Thian's report and Mr. Thian's report shows quite clearly there were in fact not three shares, but twenty two shares in blocks of 1 - 1 - 20, so it could not have been very easy to have made a mistake in the light of information contained in Mr. Thian's report. Have you any other qualification or explanation to advance? A. The only explanation is that the amount concerned is the correct one.

10

20

JUDGE: That is not an explanation of why you should have got the figures wrong you know? A. Yes, there is no explanation.

JUDGE: Did you in fact check them by Mr. Thian's report at all, or did you leave the figures unchecked? A. I checked the figure.

30

JUDGE: With Mr. Thian's report? A. Yes.

Q. And you failed to observe the difference. Let us look at the Estate Duty Affidavit? A. They are not there.

JUDGE: There is no reference in the estate duty affidavit.

Q. They are not in the Estate Duty Affidavit at all are they? A. No sir.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

Q. Well where did you get the figure from and this bank from? This is a document on which you are asking the Court to rely? A. Details are entered in my working papers and amount coincided with the evidence I had and I accepted that and checked it.

JUDGE: Checked it from what? A. Mr. Thian's report.

10 JUDGE: I would find it easier to understand if you say "I am very sorry, I merely took the figures my assistant took down". We all perhaps leave things unchecked at times, under pressure of work? A. Although I took his narration, I did actually trace the item across, from the items available.

MR. NEWBOLD: Schedule B my Lord.

JUDGE: You merely checked the figure, not the ledger? A. Yes, My Lord.

20 JUDGE: If you merely checked the figure, how did you know what to write in? A. It was already written in. I did not write it in.

Q. Mr. Blackhall there have been so many changes to this schedule B, since I have got the copy, I would like now to go through Schedule B and find out what you say are the figures now, with all the changes, which you have given evidence as to. The first item is properties as at the 31st December, 1953, what is that figure now? A. Sh 482,425/-.

30 Q. There has been no change in that? A. No.

Q. New Delhi properties, purchased 1955?
A. No change.

Q. Securities - figures A. No change.

Q. Fixed deposit account - Bank of India
A. No change.

Q. National Bank of India Amritsar? A. No change.

Q. Post Office savings Bank? A. There is a small change there, due to the fact.....

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

- Q. I am not asking what it is due to. I would like to know what you say the figure should be? A. To give a precise figure I should need the book Sh 1270/- increase of Sh 279/- My Lord, by memory, without reference.
- Q. You have not even bothered to ascertain how much this figure should be precisely? A. The documents were not available.
- Q. Mr. Blackhall this is a document. This is a document produced in June this year in relation to Post Office Savings Bank as at the 31st December, 1957 and you say documents were not available? A. Documents were not available to myself or to my assistant. My assistant asked for the Post Office Savings book and procured that after the figures had been typed 10
- Q. Could you not, Mr. Blackhall have ascertained, obtained, with the very greatest of ease the position of Mr. Rattan Singh's Saving Bank Account at the 31st December, 1957? A. Yes sir. 20
- Q. Why did you not? A. The account is so small my assistant did not check on that.
- Q. You say that figure should be about A. If my memory serves me right, about another Sh 279/-.
- Q. Making a total A. Of 1280.
- Q. Now State Bank of Jullundur City, is there any change in that figure? A. No, no change. 30
- Q. National Bank of India, Amritsar, any change in that figure? A. No change.
- Q. Interest in partnership assets, is there any change in that figure? A. No change.

10 Q. Very well, do you still say - tell the Court that Schedule B represents accurately, Mr. Rattan Singh's worth as at 31st December, 1957, after you add Sh 279/-. A. I must, of course, state, as has been stated in evidence before, valuation of the Indian properties may be wrong. In giving this answer, when I say this represents an accurate statement of Mr. Rattan Singh's statement of worth, that qualification must be taken into effect.

Q. Do I understand you to say, subject to the addition of Sh 279/- and the uncertainty as to the value of Mr. Rattan Singh's properties, this schedule adequately and correctly represents Mr. Rattan Singh's worth as at that date? A. Yes sir, subject to the evidence presented by your good self this morning.

20 Q. This "good self" presented no evidence at all. A. These figures relating to 1957, you asked me if I had had an opportunity to see what these figures represented.

30 Q. You mean subject to the interest of the partnership assets not being an agreed figure and subject again to the addition of the worth of Mr. Rattan Singh's jewellery and household goods? A. One must, of course, take the addition at the beginning as well as the end.....

40 JUDGE: There was no addition at the beginning, would there not be an average assessment of his personal assets, including jewellery and furniture at the beginning and then everything, every increase in that figure which appeared in his final statement of worth, would represent acquisition of property, which as I say, in the absence of something - of an inheritance or something of that sort - would have come out of income earned during that period? A. Yes My Lord.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

JUDGE: I think you told us earlier that these schedules were completed on the 2nd and 3rd June?

A. Final schedules, yes My Lord.

JUDGE: Of this year?

A. Of this year.

JUDGE: In what year did your firm audit the books of Mr. Rattan Singh, for the year 1958?

A. I believe it would have been for the year 1959.

10

JUDGE: Can you recollect when it was they completed their audit?

NO ANSWER.

JUDGE: I do not mean the exact date, or even the exact month. Would it be before the 3rd June, 1960, or not?

A. Oh yes My Lord.

JUDGE: The 1958 audit? A. Yes.

JUDGE: Can you account for not having before you the adjustment in relation to the Appellant's capital when you prepared, which was noted in the audit of 1958, when you prepared your schedules on the 3rd June, of this year?
A. Yes, My Lord, I took the 1957 balance sheet as being the balance sheet for 1957.

20

JUDGE: And looked no further?

A. No, there was no necessity to go further. I had endeavoured to obtain the partnership agreement.

JUDGE: Who did the audit in 1958?

A. Colonel Bellman.

Q. You had no part in it?

A. No part whatsoever.

Q. These properties which are valued Sh 482,425/- are large properties?

A. I have the schedule of these properties here.

Q. Which of these properties are included in this figure?

A. The total 482,000 is the third figure up from the bottom of the page.

Q. Which of these properties are included?

A. Salisbury Lane - 16,000 -
Swamp Road - 10,225 -
Blenheim Road - 80,000.

Q. There is another 40,000?

A. Two 40,000 sir.
2131 - 40 thousand;
2132 - 40 thousand.
Imtasali Street - 20,000;
Sadler Street - 75,000
Property inherited in India 120,000.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-
examination
13th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-examination 13th June, 1960 (Continued)

Q. As per schedule B.
What do you mean by schedule B?
A. In the report.

Q. These are still properties which you have brought in to Schedule B to your report?
A. Yes.

Q. Do you know whether there has been any movement in the meantime?
A. Movements have been traced.

10

Q. Do you know whether there has been movement in the meantime?
A. I know the movements.

Q. Do I understand that movement has occurred?
A. Yes, sir, as revealed in the schedules sir.

Q. Do I understand this same figure of 120,000 which relates to the year 1946 is the figure which you have included for the year 1953?
A. Yes sir.

20

Q. Have there been movements.....
A. I thought you were referring to the whole property. You are referring to the property inherited in India?

Q. Yes. A. There is no movement.

Monday, 13th June, 1960. 11.00 a.m.

In the Supreme Court

Cross Examination of Anthony Marcus Blackhall
(Continued)

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross Examination
13th June 1960
(Continued)

Mr. Newbold: Did you know that?

A. I have no record apart from the acquisition of the new property.

Q. And part payment for the plot?

A. Yes Sir.

Q. Now what other properties are included in this figure of 482,000?

10 A. Two plots purchased in Grogan Road - Grogan Road and Parklands, 41,500.

Q. Would you mind going a little bit more slowly - where are they shown in the reconciliation?

A. Under 1947, item Grogan Road 41,500 and Mombasa 10,000.

Q. Making a total of 51?

A. 500 yes.

Q. That gives us a total at the end of December of 20 377,245. In 1950 comes the construction in Grogan Road, 185,200. The cost of the construction in Grogan Road?

A. Yes.

Q. Now what is that?

A. That is the valuation, two valuations shown, one placed by Sauvage and Scade on the building which is being occupied by Mr. Rattan Singh and the other of 100,000 placed by the client on the building which sold.

Q. Now the earlier figure of 41,500 for Grogan Road, 30 what does that refer to?

A. Cost of plots.

Q. Now my recollection is that the cost of the plots was £26,000?

A. Yes that figure of 41,500 relates to a plot at Parklands and a plot on Grogan Road.

Q. Now what is this about Parklands? This thing which is headed Grogan Road is not Grogan Road?

40. A. It is Grogan Road and it is also Parklands.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall

Cross Examination 13th June 1960

(Continued)

Q. It is headed Grogan Road, 41500?
A. Yes it is merely a reconcilliation of a figure of properties, it is not intended anything other than that.

Q. Do I understand you to say this figure of 41500 for Grogan Road is not correct, it should be for Grogan Road and Parklands?

A. Yes if you put it that way.

Q. Do you suggest any other way in which it could be put? 10

A. The item described as Grogan Road includes the item for the plot of Parklands.

JUDGE: Why?

A. It is merely a rough reconcilliation which is prepared and that detail was omitted.

JUDGE: What was the reason for the omission?

You see I see under item Grogan Road, 1947, Grogan Road 41,500 and Mombasa 10,000. Why didn't you write Grogan Road X, Parklands Y and Mombasa whatever it might be? 20

A. The other figures were omitted.

JUDGE: What was the reason for their omission, were they that unimportant?

A. In drawing up the total we put in brief details - in this case the details where brief...

JUDGE: Wasn't the object to produce a document which would enable the income tax authorities to satisfy themselves that their assessment of the appellant's income was excessive, wasn't that what you were seeking to do? 30

A. That is so.

JUDGE: Wasn't it of some importance to give them such information so that they could check through figures?

A. That is why this was prepared.

JUDGE: Wouldn't it have assisted them to know to what these items really related?

A. It would My Lord.

Mr. Newbold: How much was the Parklands element of this 41,500? 40

A. It is included in the 41,500, I can't quote you that figure sir.

Q. Why not?
A. I believe it to be approximately 17,000/-.

In the Supreme Court

JUDGE: What was the cost of the Grogan Road?
A. The plot My Lord?

Appellant's Evidence

JUDGE: Yes, the plot?
A. I have stated that the cost of the two plots was 41,500. I believe that the cost of Parklands was Sh.17,000/- and it follows that the balance, the difference, would be the cost.

No.38

Anthony Marcus Blackhall
Cross Examination
13th June 1960
(Continued)

10 JUDGE: I thought somewhat else you had taken into account in respect of the value of the plot sold, the whole value of two plots purchased and that was considerably in excess of 40,000?
A. 26,000 Ny Lord, was stated.

Mr. Newbold: 26,000 plus...
A. Gives you more than 41,000. The figure for Parklands would be 15,500.

20 Q. Are you sure of that?
A. Yes subject to correct valuation of 26,000 on Grogan Road.

Q. What on earth do you mean by that? I asked you whether you were sure that 15,500 was the figure for Parklands and you said 'yes subject to the correct valuation of 26,000 on Grogan Road.' What do you mean by that?
A. That I know the total cost is 41,500.

30 Mr. Newbold: Very well we will leave that for the time being. Where did you get these figures?
A. Taken by cash analysis and from figures obtained by Mr. Thian.

Q. Well we have got up to 1950, bring the total up to 562,925. then in 1951 we had the cost of Parklands buildings, making a total of 45,000. Where did you get that figure from?
A. That is the valuation of Sauvage and Scades.

Q. Then in 1953 you deduct Grogan Road?
A. Yes.

Q. Still at cost?
A. Yes Sir.

In the Supreme Court Q. 126,000?
A. Yes Sir.

Appellant's Evidence Q. When did you prepare this document?
A. The reconcilliation?

No.38 Q. Yes?
A. The reconcilliation was prepared on Monday 6th but prior to that I had balance sheets which traced these properties through.

Anthony Marcus Blackhall Cross Examination 13th June 1960 Q. Now you deduct sale at cost, 126,000, is that figure correct?
A. That sale at cost is an assumption, I believe it to be a fair assumption. 10

(Continued) A. The sale of cost of 126,000 is an assumption which you believe to be a fair assumption?
A. Of the cost.

Q. What do you mean by that Mr. Blackhall?

JUDGE: Was it in fact sold at cost or at some other price?
A. The two adjacent - one of the adjacent plots was sold at 190,000 and the other was retained for the personal occupation of the appellant and we have taken a profit of 167,000 as being a profit on the sale, consequently the balance will remain as the balance sheet of the building the appellant was occupying. 20

JUDGE: We are concerned with the building he has sold not the one he is occupying. Why did you relate it to something which he sold?
A. Because the cost is a mere assumption by the client.

JUDGE: Being a builder the client is probably fairly able to estimate the cost of a building which he put up himself?
A. Yes. 30

JUDGE: Why did you not have regard to the actual sale prices rather than the so called estimated sale at cost?
A. We did, we deducted from that sum 126,000/-.

JUDGE: I am afraid I don't understand that answer Mr. Newbold, could you try and get the witness to clarify it for me?

In the Supreme Court

Mr. Newbold: This sale of cost, sale at cost, is that intended to mean that that was the actual cost of the land and the building, the actual or estimated cost of the land and the building, quite apart from what it was sold for?
A. Yes, taking the land and building as a whole.

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross Examination 13th June 1960
(Continued)

10 Q. That is the amount which it cost Mr. Rattan Singh?
A. Yes.

JUDGE: The cost of Grogan Road shown is 190,000?
A. That is the total property without land. Cost of the construction of properties without the land.

20 JUDGE: And as you tell me that the cost of the land for the two properties amounted to how much?
A. 26,000/-.

Q. So the total cost of the two properties with the land would be 211,000/-?
A. Yes My Lord and 200/-.

JUDGE: We won't bother about the 200/-, that is a negligible sum in relation to some other items?
A. Yes.

30 JUDGE: You say 126,000 of that must be attributed to the building and the plot on which stands the building in which the appellant lives, is that correct?
A. Yes My Lord.

Mr. Newbold: Have you listened to His Lordship's question and you say 'yes'?
A. It is a fair valuation.

JUDGE: So that means that the valuation placed upon the property sold was only 85,000/-, is that correct?
A. Valuation placed on the property that was sold?

In the Supreme Court

Appellant's Evidence

No. 38
Anthony Marcus
Blackhall
Cross Examination
13th June
1960
(Continued)

JUDGE: Yes?
A. Valuation placed on the property that was sold was 126,000/- My Lord, proceeds of sale being 190,000 the difference being a profit of 64,000.

JUDGE: I still don't understand how two plots were bought-two plots at Grogan Road were bought, is that correct?
A. Yes My Lord.

JUDGE: The aggregate price of those plots was 26,000/-?
A. Yes. 10.

JUDGE: The aggregate cost of construction of the building was how much?
A. 185,200/-.

JUDGE: So the total cost of the two buildings was 211,000/-?
A. Yes My Lord.

JUDGE: One was sold for 193,000/- was it not?
A. Yes My Lord. One must deduct the profit. 20
Deducting the profit from ...

JUDGE: I am not concerned for the moment with what deductions ought to be made, only with the figures agreed to be received on the sale. One Grogan Road plot was sold for the aggregate price of 193,000/-?
A. Yes, My Lord.

JUDGE: Have you any figures in relation to the value of the-rather in relation to the cost of constructing the building of the plot that was sold?
A. Yes My Lord, 100,000. 30

JUDGE: And in relation to the cost of the building that was retained?
A. Yes My Lord.

JUDGE: And the building that remained?
A. Yes My Lord, 85,200. What we have done is reduce the value of the building retained by 32,000.

JUDGE: Why? That wasn't his capital assets?
A. Yes My Lord, but on the basis ...

JUDGE: I thought you were trying to ascertain his capital worth?

A. Yes.

In the Supreme Court

JUDGE: Why take it off the value of the building?

A. On the assumption that one of the premises has been sold and the value dropped.

Appellant's Evidence

No.38

JUDGE: Had you any justification in assuming that the better of the two properties has been sold?

A. Some justification.

Anthony Marcus
Blackhall
Cross Examination
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1960

10. JUDGE: What?

A. The area was slightly larger than the other.

(Continued)

JUDGE: I see, how much larger?

A. I have no details My Lord.

JUDGE: I see.

Mr. Newbold: So do I now understand you to say that Mr. Rattan Singh, this Schedule B showing Rattan Singh's worth at 31st December 1953 does not include any element whatsoever for the Grogan Road Property, the land of the Grogan Road property which he retained?

20

A. That apparently is the effect of it.

Q. And you think that that is a document on which you would ask the Court to place any reliance?

A. Oh yes Sir. As I have explained, unless the second building is realised, the total profit, the actual profit on the sale of the first is not ascertained.

30

Q. Would you be kind enough to speak, if you can, in a language which I can understand at any rate.

JUDGE: I should like to understand it too Mr. Newbold.

Mr. Newbold: Let us get right down to this. This document Schedule B. to your report purports to show Rattan Singh's worth at a particular date?

A. It does.

Q. Among the items listed or included in that total worth is property at Grogan Road in which he lived?

40

A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross Examination 13th June 1960
(Continued)

Q. That property comprises both the land and the building?
A. Yes.

Mr. Newbold: But you have not included in your statement any element of worth whatsoever in relation to land?
A. The assumption we have made ...

Q. Is that so or not?
A. Not necessarily Sir. I am sorry to be so dogmatic on this issue. What we have said in effect is that the 100,000 which was placed as a cost of Grogan Road has been by 13,000/-.

Q. Mr. Blackhall, the land for the two plots cost 126,000/- did it not?
A. Yes they did.

Q. You have deducted 126,000/- in order to arrive at the worth on the 31st December 1957?
A. I have indeed.

Q. 100,000/- is the cost of the building on the plot which was sold?
A. What we have said ...

Q. 100,000/- is the estimated cost of the building on the plot which was sold, is that so, or not?
A. Yes, but we have obviously taken it at 113,000.

Q. I am sorry, may it please Your Lordship, you have obviously taken it as 113,000?
A. Obviously yes we have taken it.

Q. Would you mind explaining it so that I can explain and understand it?
A. We have accepted the figure of 167,000 as a profit on the property, that figure has been accepted ...

JUDGE: I want you to try and forget a little about accountancy expressions. Am I correct in thinking in your schedules, as finally presented, you have included nothing as being the value of the land and buildings in which the appellant lives?
A. No Sir, not nothing for the land and buildings.

JUDGE: The land and buildings - what is the figure 85,000 the value of the land on which he lives, the land and buildings?

A. That is the value which we have taken of the land and buildings, yes my Lord.

In the Supreme Court

Appellant's Evidence

JUDGE: And as the land was presumably roughly half of the total land purchased by him in Grogan Road, the land would be roughly worth 11,000?

A. 13,000.

No.38

Anthony Marcus Blackhall
Cross Examination 13th June 1960

10 JUDGE: So the value of his buildings are 72,000?

A. Yes.

(Continued)

JUDGE: And what was the estimate?

A. Sauvage and Scade have estimated 85,000.

JUDGE: So you have taken 13,000 of the value of the building of the valuation by an independent valuer?

A. Because the competition value has put in an element of profit.

20 JUDGE: And I thought you said that was the estimated value of the buildings?

A. We have in fact knocked off 13,000/- My Lord.

JUDGE: And you have also knocked off the entire annual value for income tax purposes?

A. That is in relation to assessment for - not in relation to what it is worth.

JUDGE: Why?

A. We have not taken those figures into consideration.

30 JUDGE: And you have also disregarded any rentals from this property?

A. No my Lord.

JUDGE: Haven't you?

A. The rent on Grogan Road I have here if you wish to have them.

JUDGE: Have you them in your schedules?

A. I have them in my schedules. The shops below the property were apparently unoccupied.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

Mr. Newbold: Still dealing with this property I understand now that you knocked off 13,000/- off the Sauvage and Scade estimate of 85,000/- on the building in which Rattan Singh lives, is that correct?
A. That is correct sir.

Q. And I understand you to say earlier you had added 13,000 to the estimate of 100,000 - between the estimated value of the cost of the property and at which it was sold, is that correct? 10
A. Cost of the building.

Q. Cost of the building which was sold?
A. Yes but that has the same effect as taking it off the other ...

Q. You deducted 13,000 off of the estimated value for the building occupied by Rattan Singh and added 13,000 on the estimated value for the building sold?
A. The estimate of the building sold was taken at 126,000. 20

Q. Is it correct or not?
A. That is the value we have taken.

Q. Is it correct or not?
A. It is correct on the assumption that the building remaining is 172,000.

Q. Is it correct or not?
A. Could be correct Sir.

Q. Is it correct or not?
A. I can't give you a direct answer to that question. 30

Q. Is that what you said?
A. All I have said is that we have taken the cost of the building sold as 126,000, the whole of the building in respect of the valuation ...

Mr. Newbold: I understood you to say in reply to questions addressed by His Lordship you had deducted 13,000 from the estimate given by Sauvage and Scade from the estimate of the building retained by Mr. Rattan Singh, is that correct?
A. The building itself, yes that is the effect.

Q. Is that correct?
A. Yes, shown the total profit of the ...

In the Supreme
Court

Q. I also understood you to say earlier you had increased the estimate of 100,000 in relation to the building which was sold by 13,000/- is that correct?

Appellant's
Evidence

No.38

A. Yes it has the same effect, Sir.

Q. Is that correct?

Anthony Marcus
Blackhall

A. Well it is one building on the

Cross-Examina-
tion 13th June

10 Q. Is that correct?

1960

(Continued)

JUDGE: Did you or did you not increase the estimate of 100,000/- as being the value of the buildings on the plot that was sold by 13,000/-?

A. Yes My Lord.

Mr. Newbold: Therefore if you have reduced the estimate in relation to the building retained and increased the estimate of the building sold, in each case by 13,000/-, you have made a difference of 26,000/- is that correct?

20 A. The difference must be 13,000/-.

JUDGE: What Mr. Newbold means, I think, is this, do you agree that the effect of reducing the estimated value of the building retained and increasing the estimated cost of the buildings sold must be to diminish the appellants actual worth by 26,000/-?

A. No, my Lord because we retained one plot ...

JUDGE: Yes not let us take it by stages. We will forget for the moment that the appellant had any other assets at all. We take his assets as consisting of Plot A, Grogan Road, which is worth £1. The buildings on plot A at the estimated - as having cost £1. So plot A plus buildings is worth £2, is that correct?

30 A. Yes My Lord.

JUDGE: Now plot B is worth £1 and the buildings on Plot B are estimated to have cost £1, so the total value of Plot B is £2.

A. Yes.

40 JUDGE: Then the capital worth of the appellant on a particular date was £4 and no more, do you agree as to that?

A. Yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

JUDGE: If he sells Plot B for £3, his capital worth becomes £5?

A. Increased profit of £1.

JUDGE: Is his total capital worth £5?

A. Yes My Lord.

JUDGE: If however he having sold plot B for £3 you diminish the estimated cost of the buildings on Plot A which is retained, do you not automatically diminish his capital worth below £5 because his capital worth consists, after the sale of Plot B 10 of the money he received for Plot B plus the value of Plot A, is that not so?

A. Capital worth must include the money he has received.

JUDGE: Plus the value of Plot A?

A. Plus the value of Plot A, that is true.

Q. If you diminish the value of Plot A, you diminish his capital worth by £X?

A. Yes My Lord.

JUDGE: If you increased the estimated value of the buildings on the plot which he sold you correspondingly, as he has parted with them, diminish his capital worth? 20

A. Yes My Lord.

JUDGE: So now you would agree would you not with Mr. Newbold's proposal?

A. If you take these two facts into consideration you must say there is 26,000 deduction.

JUDGE: Go on Mr. Newbold.

Mr. Newbold: Still dealing with Grogan Road, but going back to 1947 on this schedule which has got only Grogan Road 41,500 but which you now say includes Parklands? 30

A. I understand so, yes.

Q. You have mentioned you think Parklands cost 17,000/-?

A. That was the sum that I had.

Q. The land record shows it as 17,500, will that refresh your memory?

A. That figure was in my memory. 40

Q. If you deduct 17,500 from 41,500 what figure do you get then?

A. 24,000.

In the Supreme Court

Q. Now is that what you say was the cost of Grogan Road?

A. That in effect must be the cost of Grogan Road.

Appellant's Evidence

No.38

Q. Is that what I understand this figure of 41,500 to include, Grogan Road at 24,000?

A. Yes Sir.

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

Q. Is that figure correct?

A. Yes Sir.

(Continued)

Q. It is?

On what information do you say that Grogan Road cost 24,000, cost Rattan Singh 24,000/-?

A. On the information that the two plots cost 41,500.

Mr. Newbold: That is Grogan Road and Parklands were 41,500?

A. and deducting the value of Parklands one arrives at 24,000/-

Q. Are you satisfied that it was the cost of Grogan Road?

A. That is the item I had recorded as the total cost of the two plots, therefore the balance must be the cost of Grogan Road.

Q. Are you now satisfied? And you tell His Lordship that Grogan Road is 24,000?

A. I have other information it cost 26,000.

Q. Is this figure of 41,500 wrong?

A. Not to my knowledge.

JUDGE: It is inconsistent with your other information?

A. Yes indeed My Lord there is a difference of £100.

Mr. Newbold: It is less than your other information leads you to believe should be the figure?

A. That is true Sir.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

- Q. It has the result of diminishing capital worth at the 31st December, 1957?
A. No Sir, because we have taken the valuation at 26,000 as a deduction at a later stage.
- Q. Do you say that as the figure of 41,500 is less than it should be it doesn't have the result of diminishing the capital worth?
A. Yes until you sell the property.
- Q. Would you explain to His Lordship how you arrive at that astounding statement? 10
A. The capital worth is obviously increased by any decrease in the assets acquired. Anything omitted shall we say in the assets acquired after a valuation is later taken at a higher figure the same assets when deducted is the cost of sale - that has the opposit effect.
- Q. Mr. Blackhall, have you got the document in front of you?
A. Yes Sir.
- Q. Do you see 'total as at 31st December 1953 - 482425?' 20
A. Yes.
- Q. If that figure of 41,500 is wrong and it should be more, whatever that more may be, one would think that more would be reflected equally to the exact same amount?
A. No sir.
- Q. Add 2,000 to that figure, what is the difference - add 2,000 to that figure of 41,500? 30
A. 43,500.
- Q. And then there is 10,000 - 53,500?
A. Yes.
- Q. With the result 359,375?
A. Yes that carries down to the figure of 608 which becomes 610.
- Mr. Newbold: Yes?
A. And then you have to take into account, you sell the property, the variation in the cost you have taken in ..

Q. Why? Why?
A. Because if you haven't got the whole cost in when you sell it ..

In the Supreme Court

Q. You have already deducted it. Did you not agree that if that figure is wrong, is less than it should be, it is a result?

Appellant's Evidence

No.38

A. It is a result.

Q. Then why didn't you say so. Therefore do I understand you now to say that this figure, properties of 482,425 is not correct?

Anthony Marcus
Blackhall
Cross-Examination
13th June
1960

10

A. The information on the cost of Grogan Road cannot be correct. £100..

(Continued)

Q. And in relation ..

Mr. Foot: Can he just finish his answer?

A. You add the £100 at the end.

Mr. Newbold: Now in relation to those properties which were included in Schedule A, you have taken them at the same cost, the same value in Schedule B?

20

A. Yes.

Q. Schedule B is at 31st December, 1957?

A. Yes.

Q. And Schedule A 11th January, 1946?

A. Yes Sir.

Q. That is a spread of almost 12 years isn't it?

A. Yes sir.

Q. Now what have you done about the repairs to the property during this considerable period of time or have you ignored them completely?

30

A. Repairs to the property have been included in the expenditure of Rattan Singh.

Q. Do I understand that Schedule C shows the extent of repairs to the property?

A. No Sir it is not shown.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

Q. Do you agree that either Schedule C should show that expenditure, or Schedule B should have a different value from that in Schedule A?

A. No Sir, we have not taken the notional annual value of the items.

Q. I am dealing with cost of repairs over a period of 12 years, where is that shown?

A. It is not shown in the schedule.

Q. Should it not be shown somewhere in those figures?

A. No.

10

Q. Why?

A. Because you have repairs on one hand and annual value on the other.

Mr. Newbold: Because what?

A. You have repairs stated and then you have annual value which is a notional income.

Q. What are you talking about Mr. Blackhall? And Mr. Blackhall, you start with a property in 1946 let us say worth £100?

A. Yes.

20

Q. How if you did nothing to that property, nothing at all, is it going to be worth £100 twelve years hence?

A. If you do nothing it will depreciate.

Q. It will depreciate. Therefore to maintain it at £100...?

A. ... you have to spend money.

Q. Therefore that expenditure has got to be included somewhere - where have you shown it?

A. If you add the expenditure one must deduct the depreciation.

30

Q. Where have you shown it?

A. It has gone through Ratton Singh's expenditure.

Q. Where have you shown it in schedule C?

A. Nowhere in Schedule C.

JUDGE: Have you shown it in any other schedule?

A. No My Lord. I have not shown it, it is the cost of properties.

40

Mr. Newbold: Should you not have shown it?

A. No it is merely the cost of maintaining these properties.

Q. Will you explain why you should not have shown it?

A. You have properties which have to be maintained in the same condition theoretically to the end, therefore such expenditure of maintaining the properties over that period is not an addition to the value of the property.

JUDGE: No it may not be an addition. Let us get back to the first principles. Is not the whole purpose of completing the capital worth of the appellant to determine so far as possible what was his income during the periods between the original and the final computation of capital worth?

A. Yes My Lord.

JUDGE: To arrive at his income during the intervening period of the capital worth you ascertained the total value of his assets at the beginning of the period and at the end of the period and you deduct the one figure from the other?

A. Yes.

JUDGE: To the figure thus obtained you add all the expenditure which he can be shown to have received, or all the income which he has received during that period, is that correct?

A. No My Lord with this calculation take the valuation at the end and the valuation at the beginning and then add back his personal expenditure to ascertain the property.

JUDGE: First you have got to ascertain his total income have you not?

A. By this method?

JUDGE: Yes, if in the course of ten years or so he has in fact expended money on repairs, whether the repairs are ultimately allowed as income deduction or not, must not the money so expended have come from his receipts during that period?

A. They must, My Lord, yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960

(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

JUDGE: Must they not be shown somewhere with a view to determining what income had been?

A. Well yes, My Lord, you determine that and then deduct that repairs account.

JUDGE: Possibly you must deduct them or such part as may be allowable for income tax purposes but ought that not to have been shown somewhere?

A. No My Lord.

JUDGE: Why not?

A. They are to be deducted in the long run, as it were, because if they are allowable for tax purposes and at ...

10

JUDGE: At this stage you are not determining what is allowable for tax purposes, what you are seeking to ascertain is that gross receipts between the beginning and the end of the relative period, isn't that so?

A. Yes My Lord.

JUDGE: If you have ascertained that you make all sorts of adjustments but first you must know how much he got?

A. Yes.

20

JUDGE: So ought you not have had regard to the cost of repairs?

A. To get the gross income, Yes My Lord.

JUDGE: Yes, have you done so?

A. No I have taken it on the basis of the net..

JUDGE: You have assumed that the money expended on the repairs would have been allowed as income tax deduction?

A. Yes and I also ignored the question of depreciation on the properties.

30

JUDGE: Or possible appreciation?

A. Yes but unless the appreciation is realised it should not be taken into consideration.

Mr. Newbold: And you have said you have not taken account of this because it would be allowable for income tax purposes, is that correct?

A. Yes Sir.

Q. Now have you got any knowledge whatsoever about preparing accounts for income tax purposes?

A. Considerable, sir.

In the Supreme Court

Q. The Grogan Road property of which we have heard so much, the house in which Mr. Ratton Singh and his family are living, would the cost of repairs of that be deductible for income tax purposes?

A. Yes.

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

(Continued)

10. Q. Mr. Blackhall you are on oath. You have said you have considerable knowledge of preparing accounts for income tax purpose. Do you say on oath that Mr. Ratton Singh's own personal houses, the cost of repairs are deductible?

A. He can make a claim.

Q. Do you say on oath that the cost of repairs to Mr. Rattan Singh's own house are deductible?

A. After taking into consideration the annual value of the property he is taxed on his gross annual value less an allowance for repairs.

20

Q. Do you know anything about accountancy or income tax work?

A. Yes.

Q. What would Mr. Rattan Singh be assessed on in relation to the house in which he lives?

A. The annual value of the property.

Q. What sort of annual value?

A. Gross annual value less his repairs allowance.

30

Q. What sort of annual value?

A. Less expenditure on repairs.

Q. What sort of annual value?

Do you really think that Mr. Blackhall?

When did you qualify?

A. 1952.

Q. And you are an accountant with considerable experience and that is what you say he could be taxed on. Do you still think so? Do you still think so?

40 A. He will receive an allowance, those repairs will be taken into consideration.

- In the Supreme Court
- Appellant's Evidence
- No.38
- Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)
- Q. Have you ever heard of ?
A. Gross annual value less arbitrary figure.
- Q. What is it taxed on?
A. He is taxed on his net annual value.
- Q. Do you know what that net arbitrary figure is?
A. One-quarter I believe.
- Q. Do you know what that arbitrary figure is supposed to represent?
A. Allowance for repairs.
- Q. In other words 25% of gross annual value is taken as being the estimated cost of repairs annually?
A. Estimated, yes, estimated. 10
- Mr. Newbold: Now if Mr. Blackhall, figures were included in here either in Schedule C in one form, or schedule B in another form, would cost of keeping the value of these premises at the same value be in schedule A, have you any idea at all of what the sum would be over this period of 12 years?
A. No. 20.
- Q. Do you agree, looking at the figure of 300, taking your own figure of 482,000/- that is would be considerable?
A. It might be but so would the natural depreciation of the value of the properties to offset that.
- Q. What are you talking about?
A. Well sir, what I am talking - we have taken these properties at the same value at the beginning and at the end. Monies have been spent to retain that same value, therefore how can we count in back the monies spent and retain the same value. 30
- Q. What are you taking about?
You have a property worth £100 in 1946. Twelve years afterwards that property will not be worth £100 quite apart from the market value, you could not bring it in at £100 because it is depreciating?
A. Right. 40

Q. It has depreciated any value you like, 20,50,70, any figure you like?

A. Yes.

In the Supreme Court

Q. So if you are dealing only with a statement of amount based on the cost in 1946 of the property of £100 if nothing is spent on it at the end of the period you must bring it in at 30 or 50 or 70, as the case may be, but Not £100?

A. The lower figure, yes.

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

(Continued)

Q. That is without regard to anything like market value?

A. It must go in at the lower figure, yes.

Q. You have brought it in at the same figure?

A. Yes.

Q. Now that is because in order to maintain it at the same figure expenditure has been incurred, is that not correct?

A. Expenditure yes has been incurred which will reduce its worth as the expenditure goes ..

Q. What are you talking about?

A. Carry on Sir.

Q. Have you shown that additional expenditure?

A. It has come in as a reduction on his cash and other assets.

Q. Where have you shown it on Schedule B or C?

A. It is not shown.

Q. Do you agree that expenditure must be shown in one form or another?

A. Yes.

Q. Fixed deposit accounts 109,500/-. Where did you get that figure from?

A. in 1957?

Q. Yes?

A. From the correspondence from the State Bank of India in the deposits.

Q. Now did you trace the deposits in Jullundur City Bank during period 1946-1957 against withdrawals in the East African Banks?

A. I did.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

- Q. Did you find debit entries in the East African Banks to correspond with every withdrawal, every entry in the Jullundur City Bank?
A. No Sir.
- Q. Could you ascertain whether some of the deposits in the Jullundur City Bank had come from any other accounts and there was no corresponding entry in the East African Bank?
A. In some instances, in two particular instances only. 10
- Q. You could not?
A. Yes.
- Q. Banked in Jullundur City?
A. One in the National Bank of India, Amritsar and one in Jullundur City.
- Q. Did you say you could trace the deposits of Jullundur City during this period and relate them to withdrawals in East African Banks in every case except one?
A. With the exception of rents received from Indian properties. 20
- Q. Did you say you could trace the deposits of Jullundur City during this period and relate them to withdrawals in East African Banks in every case except one?
A. Yes.
- Q. Now this one was on what date?
A. November 1952 I believe.
- Q. It was Sh. 30,000/-?
A. 20,000 rupees. 30
- Q. I don't care which one you deal with. There was no withdrawal from East African bank to correspond with that?
A. Yes Sir.
- Q. There was?
A. There was not.
- Q. Now Mr. Rattan Singh has stated on oath here that he never had any considerable sum of money in hand, never more than 24,000/- at the most. Where did you try to find out where this 30,000/- came from?
A. We had information on that which included 30,000/- introduced for the purpose of working.

- | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| | Q. You included it as cash introduced in the working of the business, for the working of the business? | In the Supreme Court |
| | A. treated it in the same way as Mr. Thian | Appellant's Evidence |
| | Q. Cash introduced by whom? | No.38 |
| | A. By Rattan Singh. | Anthony Marcus Blackhall |
| | Q. By Mr. Rattan Singh himself? | Cross-Examination 13th June 1960 |
| | A. Yes | <u>(Continued)</u> |
| 10 | Q. In order to do so I assume that you asked Mr. Rattan Singh questions about this? | |
| | A. Two items were discussed with, I believe, Mr. Surjit Singh, one item we are dealing with at the moment was discussed with Mr. Surjit Singh in the office, on Mr. Thian's report. | |
| | Q. My question, I think, was perfectly simple, did you ask Rattan Singh explanations in relation to this 30,000/-? | |
| | A. Yes Sir. | |
| 20 | Q. What explanations did he give you? | |
| | A. November 1952, well Sir, there are two items, I am not sure which explanation relates to this item, they are both identical sums of money... | |
| | Q. What are the two explanations? | |
| | A. It was held in trust for Channan and Fakir Singh and the other explanations contained in correspondence was that it represented a marriage settlement of his son. | |
| 30 | Q. Those were the two explanations given in relation to the two sums of 30,000/-? | |
| | A. Yes. | |
| | Q. Would it help you to recall at all if I suggest to you that the 30,000/- which is alleged to be expenditure on the marriage of the son was in the National Bank of India at Amritsar? | |
| | A. Yes I understood there were two items, yes. | |
| 40 | Q. If therefore, the marriage settlement is not this item then the explanation of this item is that it was money held in trust for Channan and Fakir Singh. | |

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

- Q. Did you pursue the matter further, how he had received it, when he paid back, and all the rest of it?
A. No Sir.
- Q. If it was money held in trust then it would be quite wrong to bring it into any account whatsoever as Rattan Singh's income and you as an accountant would not prepare any accounts to come out on your responsibility which disclose in Rattan Singh's income something which was not, would you?
A. If I had documentary evidence that the trust existed, yes. 10
- Q. Now is it correct that you have disbelieved Mr. Rattan Singh's explanation?
A. Not necessarily so.
- Q. Have you brought it into account in such a way as it is regarded as his own property?
A. Yes Sir.
- Q. Did you bother to check at all this question in 20 detail in relation to the trust, or alleged trust?
A. There were no details available.
- Q. Did you read Mr. Thian's report?
A. Yes Sir I read the explanation enumerated there.
- Q. Was Rattan Singh's explanation to you that the deposit, that the Jullundur City Bank was to repay amounts deposited on trust with them by these two persons?
A. Yes Sir. 30
- Q. And by transferring money he had repaid it?
A. No the second half of the explanation, the explanation I had that it was placed there for the purpose of paying these people, that he hadn't necessarily paid them.
- Q. It was placed for the purpose of paying the people in November, 1952, did you find out whether the people had ever been paid?
A. No Sir.

Q. Do you know that that is the same explanation as this 30,000/- which is given in Thian's second report?

A. Yes it is the same explanation.

Q. Do you know that explanation was subsequently disputed?

A. Yes I understand it was.

Q. What was the other explanation given for these Sh.30,000/-?

10 A. I don't know what the other explanation was.

Q. Did you hear Rattan Singh give evidence in the box?

A. No Sir.

Q. Well Rattan Singh in the box said that two items of 15,000/- each in 1953, supposed withdrawals, were items said to repay Fakir Singh and Channan Singh. If Rattan Singh did say that, Rattan Singh's explanation in relation to this 30,000/- must be wrong, the explanation which Rattan Singh gave you in relation to this Sh 30,000/- must be wrong?

20

A. The explanation he gave me was that these were the monies in trust which he was transferring to India and he then goes on to state that - yes Sir.

Q. Can you - you have disbelieved him and added it back as Mr. Rattan Singh's income?

30

A. I have not necessarily disbelieved him. I have put his worth based on the documentary information I had. If there were details of trust I would have taken them in.

Q. Where did you think Rattan Singh got that from?

A. If he got it from undisclosed income I brought it in.

Q. There is nothing in the books that you have seen which can show where that 30,000/- came from.

A. That is true.

40

Q. And does the same thing apply in relation to the Sh 30,000/- in the Amritsar Bank?

A. That is true.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960

(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examination
13th June
1960

(Continued)

Q. While we are dealing with figures of 30,000, do you also have this figure of 30,000 mentioned in relation to money introduced into the business by his wife?

A. Ranjit Kaur?

Q. Yes?

A. Yes Sir.

Q. Was any explanation given you as to where that came from?

A. From her private inheritance.

10

JUDGE: This is another 30,000?

Mr. Newbold: Another 30,000. But you must have examined Colonel Bellman's questions which were answered by Rattan Singh, didn't you?

A. No I had not examined those.

Q. Do you mean to say you have prepared this, these documents and not examined Colonel Bellman's series of questions and answers attached by Rattan Singh?

A. Yes.

20

Q. What do you mean by that, you have not examined them?

A. I have not.

Q. And you - you have taken it upon yourself Mr. Blackhall to submit to the Court figures for which you hold yourself responsible, of assets, total worth at two dates and intervening expenditure and you have not bothered to examine a document submitted by your present partner in relation to the same matter?

30

A. I perused all the documents which I understood to be available relating to the case.

JUDGE: I should have thought the answers of the appellant to the accountant who then had conduct of his negotiations on his behalf were manifestly of value in the preparation of your report or accounts?

A. Yes.

JUDGE: Why didn't you peruse the answers to Colonel Bellman's questionnaire?

40

A. I was unaware of this existence of that document.

Mr. Newbold: Why didn't you peruse the answers to Colonel Bellman's questionnaire, you were unaware of the existence of the document?

In the Supreme Court

A. When preparing these, yes.

Appellant's Evidence

Q. When did you first become aware of the existence of that document?

No.38

A. This morning.

10 Q. Do you seriously mean to tell His Lordship that you have been examining the affairs of Rattan Singh since January or February this year and have prepared statements which purport to show his income over the years 1946 - 1953 and it was this morning for the first time that you became aware of a series of questions and answers in relation to the same matter signed by your present partner?

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

(Continued)

A. Colonel Bellman?

Q. Yes?

A. That is so.

20 Q. What sort of investigation did you undertake?

A. Well I have given evidence to the effect that the records available to me were investigated.

JUDGE: Mr. Blackhall were you in Court when Colonel Bellman gave evidence?

A. During the latter part of his evidence.

JUDGE: Do you remember if, when you were in Court, he referred to this questionnaire at all?

A. Not when I was in Court My Lord.

30 Mr. Newbold: Well you say you became aware of it this morning have seen it?

A. No I have not seen it.

Q. So you haven't seen it until now. Have you seen the certificate of full disclosure?

A. The only documents in relation to the case I have seen were the ones put in by Mr. Thian not Colonel Bellman.

Q. Have you seen the certificate of full disclosure?

40 A. Not to my knowledge.

Q. Have you seen notes of interview?

A. I have seen some notes of interviews, yes.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

- Q. And you examined every document which was available to you? For the purposes of your report?
A. Yes.
- Q. And you say that the answers to Colonel Bellman's questions were not available to you?
A. I examined the documents which to my knowledge were available to me. Further documents which I was not aware of, they were for practical purposes, they were not available. 10
- JUDGE: Did you take any steps to ascertain from the advocates by whom you were instructed whether all the papers material to the income tax position of the appellant had been placed at your disposal?
A. I understand that I had them all, yes.
- Mr. Newbold: Dealing with this 30,000/- supposed to have been instructed into the business by the wife of Rattan Singh, did you ask Rattan Singh where this money had come from? 20
A. No I accepted the information on the previous report.
- Q. You accepted the information on the previous report - which previous report?
A. Mr. Thian's report.
- Q. You accepted the information - now which of Mr. Thian's reports.
A. The second one I believe, paragraphs (c) and (e) on page 17.
- Q. Mr. Blackhall do not confuse yourself, (c) and (e) on page 17 are the two 30,000/- debits with Jullundur City and Amritsar City, with which we have finished? 30
A. I am sorry.
- Q. I am talking about Sh30,000/- which is alleged to have been deposited by Ranjit Kaur?
A. I see from my notes that the Sh30,000/- banked on the 31st August - that is Ranjit Kaur page 17, paragraph (d).
- Q. Now you accepted the information given in this report? 40
A. Yes.

Q. What exactly was that information?
A. That the monies come from her private resources as I recall.

In the Supreme Court

Q. Would you like to look at the report?
A. Certainly.

Appellant's Evidence

No. 38

Q. Now where did you see there that the money came from her private resources?
A. The words "Loan from Ranjit Kaur", that was the explanation I had received.

Anthony Marcus
Blackhall
Cross-Examination
13th June
1960

(Continued)

10 JUDGE: What you are being asked is not what was the explanation given you of where the money which the appellant received came from but rather did you seek and if so were you given any explanation of where the appellant's wife got the money which she paid to the appellant?
A. I recall that the explanation that I had was that it was proceeds of her inheritance.

Mr. Newbold: Who gave you that explanation?
A. I do not recall now but the explanation was given to me.

20

Q. Do you recall the explanation quite clearly that it was the proceeds of her inheritance?
A. The explanation offered was it was her inheritance or her private property.

Q. Either inheritance or private property?
A. Yes, monies introduced from her own resources.

Q. And if Mr. Rattan Singh in written answers to Colonel Bellman said that Ranjit Kaur had neither income nor private property ..?
A. .. the two items are inconsistent.

30.

Q. Now there is still a further figure of Sh30,000/- which you came across, or didn't you.
A. May I see.

JUDGE: Is this another Sh. 30,000/-

Mr. Newbold: Another Sh.30,000/-

Q. There is supposed to be a figure of Sh.30,000/- which was a loan by Gian?
A. Gian Singh Kalsi I believe.

40 JUDGE: Who?
A. The name is Gian Singh Kalsi.

In the Supreme Court

Evidence

No. 38

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

Mr. Newbold: When was that introduced into the business, how does that arise?

A. I have not got a note of it in my working papers.

Q. Yes, in the year 1951 wasn't it?

A. 1951 introduced Sh. 30,000/-

Q. That was a deposit?

A. A deposit, yes.

Q. And what is the explanation for that deposit?

A. An advance made by Gian Singh to Rattan Singh subsequently repaid in 1952.

10

Q. An advance made by Gian Singh to Rattan Singh?

A. Yes.

Q. So that in 1951 Gian Singh is advancing to Rattan Singh Sh.30,000/- according to that?

A. According to schedule ...

20

Mr. Foot: Is My Learned Friend putting Gian Singh or Gian Singh Kalsi? It is rather important.

JUDGE: Do you know whether Gian Singh Kalsi was the son of the appellant, whose name we have had, so far, referred to as Gian Singh, or someone else?

A. I understand from Gian Singh who is the son of Rattan Singh that Gian Singh Kalsi is not the same person.

30

Mr. Newbold: This figure of Sh.30,000/- which was deposited in 1951 you understand was a deposit made by Kalsi, Gian Singh Kalsi?

A. Yes

Q. Did you ask for any explanation in relation to it?

A. I did.

40

In the Supreme
Court

Appellant's
Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

- Q. You did?
A. Yes
- Q. And what were you told?
A. This gentleman advanced
Sh.30,000/- to Mr. Rattan
Singh
10. Q. For what?
A. It was merely a friendly loan
which was repaid the subsequent
year.
- Q. Now when was it repaid?
A. 1952, I have not got the date.
- Q. Did you see it as an entry in the
books?
A. Either one item or several items
totalling Sh.30,500/-
20. Q. Did you see any entry in the
bank showing the payment of
Sh.30,000/- for this
purpose?
A. Yes I did
- Q. What date?
A. That I will have to consult my
papers.
- Q. When did you see the entry - in
1952?
A. Yes 1952.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

Q. You saw an entry in 1952 showing the repayment of the sum of money?

A. Yes, which was alleged to be the repayment of the sum of money, yes.

Q. To Gian Singh Kalsi?

A. Yes.

Q. Is there a cheque stub or anything like that?

A. There may have been, I didn't - I don't recall.

Q. You will be able to put your hands on it easily during the adjournment, and the bank statement?

10

A. If the bank statement is here I should be able to.

Q. Is there any entry in the books?

A. I believe there is an entry in the cash book, I would not commit myself to it.

Q. Would you like to bring all those books and have these entries available?

A. Yes.

20

Q. You were saying Mr. Blackhall that this figure of 199,500/- as appearing in the State Bank of Jullundur City is ascertainable from the records of that bank as at that date?

A. Yes.

Q. Does the same thing apply for the National Bank of India at Amritsar

A. Yes.

Q. Amounting to 87,613/-?

A. Yes.

30

Q. These amounts exclude the interest?

A. They do, they state so.

Q. In fact you have specifically stated so?

A. Yes.

Q. They are not therefore true statements of worth but they are statements of worth as prepared by you for income tax purposes?

A. One could say that in that respect, yes.

In the Supreme
Court

Appellant's
Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

- Q. On the basis you have decided that the interest on these accounts are not liable to tax?
A. On that basis, yes, that is why I made a note on the schedule.
- Q. That is perfectly fair, you have drawn attention to it. The Post Office Savings Bank has a figure of 1,001 but you say that it would be 1280?
A. Approximately, yes.
- 10 Q. How many accounts did that include?
A. Two accounts.
- Q. What are the totals? How do you arrive at the 1,001/-, where did you get that figure from?
A. Taken from the report of Mr. C.P. Thian and also - yes that is all, taken from the report.
- Q. I understand that you have disregarded Thian's reports but almost everything I have asked you have taken from the report?
20 A. We have disregarded Thian's accounts on items we could not accept but as to items of fact we accepted it from Thian's report.
- Q. Did you bother to check it?
A. We asked for the business bank books at the time.
- Q. Did you bother to check it?
A. No Sir.
- Q. JUDGE: Did you get the bank books?
A. We did obtain the bank books finally.
- 30 Mr. Newbold: When did you get the bank books?
A. Shortly after the schedule was prepared and submitted.
- Q. By what time, what time do you mean?
A. During the week immediately before the trial.
- Q. But I understood you to say earlier this schedule B had been finished in June?
A. In June, yes.
- Q. Now you say you get this figure of Sh1,001/- from Thian's report, would you like to look at Thian's report and say where you got it from?
40 A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

- Q. Very well, the first report or the second report?
A. The second I believe.
- Q. Well would you like to have my copy. Now where in that report did you see the figure of Sh 1,001/-. I assume you would not have put in a figure unless you had some grounds?
A. No we would not have known what the figure was unless we had grounds - I cannot see it here.
- Q. Well where did you get it from? 10
A. Either the report or the Estate Duty Affidavit.
- Q. The Estate Duty Affidavit is for what year?
A. Correction Sir...
- Q. That Estate Duty Affidavit is for what year?
A. 1946.
- Q. Would you expect to find in the Estate Duty Affidavit any figure for the year 1953 or indeed, as in this case, for the year 1957? 20.
A. No.
- Q. Where did you get this figure from?
A. It states in my notes here for the figure at the Post Office Savings Bank we relied throughout on C.P. Thian's report, his bank books and Mr.H's report were not available.
- Q. Where is the figure?
A. I can't trace it Sir.

JUDGE: Well perhaps you will trace it through the luncheon adjournment?

2 p.m. Gentlemen. 30

Court adjourns 12.50 p.m.

Resumed 2.0 p.m. - 13th June, 1960

ANTHONY MARCUS BLACKHALL (WARNED STILL ON FORMER OATH)

Cross-examination - Mr. Newbold.

- Q. Where did you get this figure of 1,001 from the Post Office Savings Bank? A. It was the valuation at 1953, by Mr. Thian, in his report-1,001.

Q. It was the valuation placed at 1953 by Mr. Thian ? A. Yes, sir.

In the Supreme Court

Q. And for the purpose of this document which you are presenting to the Court as statement at 31st December, 1957, you accepted the valuation of Post Office Savings account as at 31st December, 1953 ? A. Yes.

Appellant's Evidence

No.38

10 Q. Why ? A. Because there no opportunity to obtain a more accurate figure, although documentation had been requested and ultimately obtained.

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

Q. Is there anything on this schedule to show that this, which is in precise terms, 1,001 is a valuation at a period four years earlier than that at which it purports to report the position ? A. NO.

Q. Why not ? A. Because the amount is immaterial.

20 Q. Now do you know that there was 100,00/- put into the Post Office Savings Bank for these four years ? A. Because from 1954 to 1958 audited accounts were prepared in respect of the Nairobi bank account and the shown amounts scrutinised. Unless there is another bank account in existence, presumably no large sums can certainly have appeared in the Post Office Bank.

30 JUDGE: Might he not have obtained monies and opened another bank account, other than the Post Office Savings Account - he might have gone to the races or something... A. I did ask for documentation and ultimately got it, which proved myself to be wrong by a few hundred shillings. If it had been Sh 100,000/- I should have had to make a declaration.

JUDGE: Surely 1,001 was shown by Mr. Thian as the amount in the account in the 31st December, 1953, is that correct ? A. Yes sir.

40 JUDGE: If that is so, must you not have known that there was in fact more in the account in 1957, unless there had been withdrawals ? A. There should have been Post Office interest.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

JUDGE: Why did you not insist on having the document? A. I did ask for the document.

JUDGE: When? A. My assistant asked for the document I believe, two months before the date the reports were prepared.

JUDGE: Did there not come a time when you thought that you were warranted in saying the Appellant who was your client: "Unless we obtain the information which we have requested, we cannot proceed any further"? A. Yes, My Lord, but this was a small Post Office Savings Bank account. We did report to the Appellant's solicitors the basis on which we obtained the figures.

JUDGE: But the figures were intended not for the satisfaction of the Appellant's solicitors, but for the satisfaction of the Income Tax Department? A. Yes, My Lord.

JUDGE: And you in fact put in as a statement of what was in account, a figure which you must have known could only be right on the assumption that there had been withdrawals from that account subsequent to Mr. Thian's report? A. Sufficient withdrawals to balance the small sum of interest?

JUDGE: Yes. A. Yes.

JUDGE: For all you know to the contrary, that account might no longer have existed, the whole sum might have been withdrawn, isn't that so? A. Yes, My Lord, that is so.

JUDGE: The account might have been very considerably augmented by monies coming from some source of which you were unaware? A. That is a possibility. We merely reported to the Appellant's advocates on the basis of that valuation of that figure and called once more for documentation.

JUDGE: And not having received it, put in a report which on the face of it could only be accurate on the assumption that there had been no further deposits since Mr. Thian's report, a matter to which you had no knowledge at all and on the further assumption that there had been

some withdrawals, although withdrawals of small amounts? A. Very small amounts My Lord, but you see the increase by means of interest would be immaterial

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

JUDGE: How could it be, wouldn't the interest be part of his wealth? A. $2\frac{1}{2}\%$ on the thousand shillings.

10 JUDGE: Over four years. The Income Tax Figures are, I believe, intended to be exact, or as exact as the circumstances permit, are they not? A. As the circumstances permit My Lord.

JUDGE: What in the circumstances prevented your getting accurate information as to this particular account before you submitted your schedule? A. The documents were called for and not obtainable at the time of submission.

20 JUDGE: Could you not have made a note in relation to this item: "We have called for supporting documents, but have not been supplied with them", or said to your clients, before you put in the schedules: "We require this further information, because we have not been able to verify the facts in Mr. Thian's report and unless, and until, this information is available, we cannot complete our task"? A. Yes, but the amount of the account was not sufficiently material for us to refuse to submit.

30 JUDGE: For you to think it worthwhile to see your figures were accurate? A. Not quite My Lord.

JUDGE: Go on Mr. Newbold.

Q. This schedule of properties reconciliation which is schedule A and B to your report do not include those three properties stated to be owned by Gian Singh? A. If I might refer to my notes. It is true they do not include this.

40 Q. You understood, did you not, all these properties were repaired under the business? A. That was a reasonable assumption to make.

In the Supreme Court

Q. You were informed that was the position ?
A. I was not informed that was the position.

Appellant's Evidence

JUDGE: Did you assume that was the position ?
A. I can assume that.

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

Q. Will you agree that in these circumstances the expenditure on what is stated to be Mr. Gian Singh's property, during these twelve years, should appear on the schedule of drawings ?
A. No sir, I believe it does appear in the first place in the income schedule. 10

(Continued)

Q. Mr. Blackhall, Gulsaar Street, does not appear in Schedule A & B of your report. It must have been repaired over the period. The expenditure, therefore, on that, if it came out of Rattan Singh's pocket, is it a reasonable assumption to make, it should appear in your Schedule C ?
A. It does not appear in Schedule C. If such repairs have taken place, valuation should be placed on them, included in the drawings ... 20

Q. I am sorry to come back to this Sh1001/- but I am informed that no one has been able to find this figure of Sh 1001/- in this report ?
A. I believe it is in the main schedule, at the back of the report, in 1953.

JUDGE: Were you not asked to find it during the adjournement ?
A. Yes.

JUDGE: Did you find it ?
A. Yes My Lord.

MR. NEWBOLD: Would you like to borrow my copy ?
I am told it cannot be found. 30

JUDGE: Are the bank books here ? It might be worth seeing what they in fact show on the 31st December, 1953.

Q. What is the figure shown in Mr. Thian's report as at the 31st December, 1953 ?
A. The total amount 1,101. It looks like an error of my assistant

JUDGE: Mr. Thian's report ?
A. Yes.

JUDGE: You are now looking at Mr. Thian's report ?
A. Yes, My Lord, 1953, schedule behind p.18 of the report.

In the Supreme Court

JUDGE: Did you find that during the adjournment ?
A. I had available, My Lord ...

Appellant's Evidence

No. 38

JUDGE: Did I not ask you before the adjournment to look in Mr. Thian's report and find this figure ? A. Yes, I searched for it My Lord.

Anthony Mankins
Blackhall
Cross-Examination
13th June
1960

10 JUDGE: Did you find it ? A. Yes, My Lord, I found that figure.

(Continued)

JUDGE: In Mr. Thian's report ? A. I found it my Lord, in a report which I understood to be a direct copy of Mr. Thian's...

JUDGE: Did you search in Mr. Thian's report for it?
A. I had not got it with me My Lord.

JUDGE: Why not, it was available before you left Court was it not ? A. Yes My Lord.

20 JUDGE: And you did not find it ? You did not look in Mr. Thian's report ? A. I looked in the other report.

JUDGE: Were you not being cross-examined as to Mr. Thian's report ? A. Yes My Lord.

JUDGE: Would not Mr. Thian's report appear to have been the obvious place to have looked to verify the figure you have testified was taken from Mr. Thian's report ? A. Yes My Lord.

JUDGE: Which figure did you find in the report at which you in fact looked at during the adjournment ? A. A figure Sh 1,101/-.

30 JUDGE: Not Sh 1001/- ? A. No My Lord, it is quite evident my assistant took it from the other report, merely repetition of the figures in Mr. Thian's report.

JUDGE: It is not repetition, it is quite a different figure.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960

(Continued)

JUDGE: Whatever an accountant may do in his private practice, when he comes into Court and is cross-examined upon a particular sum and says what he believed to be the source from which he derived that sum, which is shown in a particular document and he is asked during the court adjournment to find that particular document, which he has assigned as being his source, and goes to some other document to check the figure, I fear he does not impress me very favourably with his carefulness. I put it no higher than that.

MR. NEWBOLD: I understood you to say, in answer to questions from me, after the adjournment that you had found that figure in Mr. Thian's report, that is why I led it.

JUDGE: May I see the Post Office Savings Bank books ?

Q. Are these the Post Office Savings Bank account from which you have now given the figure of approximately Sh 1,280/- ? A. That was given from memory without reference. I said.... 20

Q. Are these the Savings Bank Accounts ? A. Yes, the figures is less than I said.

Q. Did you make enquiries as to whether there were any other Savings Bank accounts ? A. I asked my clients to confirm that the schedule I prepared was complete.

Q. Did you ask whether there were any other Savings Bank accounts ? A. I asked sir, for all the Post Office Savings books there were and two were produced. 30

Q. For the purpose of Schedule B. You have chosen 31st December, 1957 ? A. Yes sir.

Q. For the year 1954, you already know audited accounts were put in ? A. Yes sir.

Q. Audited by a present partner of yours ? A. 1954?

Q. Yes ? A. Yes.

Q. Did the audited accounts show a loss of Sh 15,000/- audited ? A. Was it a loss or a profit, sir ? 40

Q A loss - I think I am correct. A. The amount is correct, it is a profit of Sh 15,834/- for the year.

In the Supreme Court

Q. Do you know that the profit as eventually agreed was Sh 70,000/- audited? A. Yes sir.

Appellant's Evidence

No.38

JUDGE: Agreed for that year? A. For Income Tax purposes.

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

10

Q. Now, for 1955, the audited accounts were put in showing a profit of roughly Sh 35,000/-? A. Profit to whom?

Q. To the business? A. To the business as a whole 35,000, yes.

Q. Do you know it was agreed for income tax purposes there was a profit of Sh 55,000/-? A. I do not recollect that figure sir - I saw the computations, but I accept your statement.

20

Q. Part of this difference is due to the addition back of certain items, such as personal drawings, motor-car, etc.... A. Drawings are adjusted in the accounts.

Q. Have you taken account in your schedule B of any of those adjusted drawings? A. Yes sir.

Q. You have - very well. In fact for that year, 1955, did the audited accounts contain anything for a Mombasa branch? A. I believe that - they did so - Mombasa - 1955. I do not know...

Q. These are accounts of the partnership as a whole are they? A. They are indeed.

30

Q. Do you know they opened a Mombasa Branch in 1955? A. I understand they did have...

Q. Do you see any reference to the profit or loss of the Mombasa branch in this account? A. I see reference on the 1956 account.

Q. I am asking you about the 1955 account? A. There is no reference on the 1955 account.

Q. Do you not think it is strange? A. In the absence of knowing what date they were operating in Mombasa, I am unable to comment on that.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

- Q. In the year 1956 were accounts put in and according to the account, a loss of Sh 176,000/- odd (Your Lordship will appreciate I am dealing with round figures) ? A. Yes, sir 171 odd.
- Q. You say 171. Do you know for Income Tax purposes there was loss of 119,000 ? A. I do not recollect that sir.
- Q. The account for the year 1957, did that show a profit of Sh 120,000/- odd ? A. Yes.
- Q. And you know for Income Tax purposes there was an agreed profit of Sh 112,000/- less than commercial profit ? A. I have not got the figure in mind. 10
- Q. In the year 1956, which resulted in commercial loss, according to the accounts, of 171,000 and an income tax loss of 119,000 that was a trading loss for that year, was it ? There is a profit for Mombasa brought in, which reduced the 171,000 to 150,000. That relates to the trading in Mombasa to which we were referring earlier. 20
- Q. We brought in two years trading ? A. That is apparent on the face of it.
- Q. Whatever the loss may be it is fairly appreciable, the loss in that year, over sh 100,000/- ? A. Yes.
- Q. Was that not a loss which related to the trading for the year 1956 ? A. Partially - part of it was trading Mombasa, presumably.
- Q. It relates to the loss - trading in 1955 and 1956 ? A. Yes. 30
- Q. Now, that loss must affect Mr. Rattan Singh's capital account in December, 1957 ? A. Oh yes.
- Q. And that in turn reduces Mr. Rattan Singh's capital worth at the end of 1957 ? A. Indeed yes.
- Q. But does that capital worth reduce that trading loss in 1955 and 1956 which you are using for the purpose of obtaining his income for the year

ending 1953 ? A. Only his deduction, from total of the profit, having got the total of the profits ...

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

Q. Have you any adjustment at all on any of these schedules, to take account of this loss, which occurred after the years in question, and which according to your document vitally affected.....
A. The loss occurred after ...

10 Q. The loss in 1955 and 1956 ? A. It was obviously taken into account when computing the profit...

JUDGE: Just one second Mr. Blackhall. I should be glad if you would elaborate that. My impression was that the taxpayer was under an obligation, in the year following each year of income, to make a return of his income during the preceeding year, is that correct ? A. Yes My Lord.

20 JUDGE: Now, assuming that books had been kept with meticulous correctness and were available in relation to the transaction conducted in the year 1953 and the taxpayer had made a full return, based upon the entries in these books, which had been duly audited, that return would properly have been made in the year 1954, would it not ? A. In respect of the year of income previously.

30 JUDGE: 1953, that is so, is it ? A. Yes income returns made in each year of income and they are issued in January of the year following.

JUDGE: So somewhere before the month of October, I think it is, in 1954, had the Appellant been in the fortunate position, his books had been kept with meticulous accuracy, he would have made a return, disclosing his income, in the year 1953 ? A. Yes My Lord.

40 JUDGE: Had he made such a return would it have been possible to take into account the loss which was made in 1955 and in 1956 ? A. Under the Income Tax.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

JUDGE: Assuming he had made a return in 1954, could any deduction have been made in respect of the loss which was made in the years 1955 and 1956 ? A. They are not sufficiently adjacent My Lord. He could only claim for a loss in 1954, against the 1953 income.

JUDGE: Will you explain to me just how it was in your view proper, in computing in 1959, or thereabouts, the Appellant's income in respect of the years anterior to the year 1954, to take into account a loss made in 1955 and 1956 ? A. Certainly, My Lord. The position is a familiar one. The accounts presented in 1954 showed a profit of 758 and were first rejected on the Revenue basis, it should be £6,000. After some negotiation that figure was reduced to £3,500. By further arrangement with Mr. Easterbrook that assessment was reduced from the proposed £6,000 (despite the fact the account showed a profit of 758) to an assessed £3,500. We also note that large figures of Stock and Work-in-Progress, carried forward in 1953 were not allowed, I believe, for tax purposes in 1954. If circumstances such as these arise, I would say it is only reasonable and equitable, from the point of view of taxpayers, the taxpayer, that he should be given the benefit of these carry forwards. If he is taxed on a large figure of stock in 1953, then should get relief in later years. If he does not get that relief, it is only equitable to average and give him the benefit of later losses.....

JUDGE: I must confess I never understand what people mean when they say that something is only equitable from the income tax stand-point. I understood that the principle was the taxpayer is obliged to return the whole of his income. He is given certain statutory deductions and it is perfectly proper that everything that could be deducted by Statute should be deducted, but I don't understand, how, if he makes a profit in one year he could seek to reduce the amount of the profit by reason of a loss incurred in some subsequent year, which is outside the statutory period, in relation to which he is permitted to deduct previous loss ? A. That is true, provided the profit in the one year is accurately and truly ascertained. If it is not accurately and truly ascertained, if that

Profit is reduced or a loss is produced, by taking everywhere valuation of stock and so forth, which are not proper valuations, it is only reasonable that proper profit and loss for 1953 shall be ascertained and the method of doing it in this case has been that of taking the commercial figures for the last 4 years, with the exception of 1954, where commercial figure was not accepted by the Revenue, and deducting from the total profits as ascertained for 12 years.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

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Q. You took commercial figures, except for the year 1954 and deducted it ? A. Yes.

Q. That is how you have taken account ? A. Yes.

Q. You have prepared this report had you not ? A. Yes sir.

Q. Will you turn to p.2 of your report ? Do you see the fourth paragraph, column of figures ? A. Yes.

20 Q. Being the figures for the years 1954 to 1955, 1956 and 1957 ? A. Yes.

Q. Now, if I understand your evidence correctly, those figures here are as follows, for the year 1954, as agreed with the Income Tax Department as being his profits for that year and for the other years the amounts set out of your commercial accounts ? A. Yes.

30 Q. Now, I understood you to say, in reply to me earlier on that your commercial account for the year 1955 showed a profit of Sh 35,000/- ? A. That is the total profit is it not, not the profit attributed to Rattan Singh.

Q. I follow, this figure attributable to Rattan Singh.. A. For 1955?

Q. For 1955 ? A. The figure 23,531 should be augmented.

Q. Did you give any evidence of that before ? A. I believe my partner may have given evidence on that ...

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

Q. Have you given any evidence of this before ?
A. No sir.

Q. As I understand it, up to this moment these figures are correct, now you say these figures are wrong this 23,531 should be augmented by what ?
A. 2941.

Q. Before we go any further, Mr. Blackhall are there any other figures in this report, in any of the schedules attached to it which you want to change ?
A. There is a small variation in the turnover figures which I think here again, I think my partner may have drawn attention to - the attention of the Court to that matter.

10

Q. Whose report is it ?
A. It is my report.

Q. Are there any other figures which you wish to change ? As I say there is a variation in the turn-over figures - 1946 and 1947 - and the reason for the variation is the estimated rents for these two years.

20

Q. Mr. Blackhall please give me the figures you want to change and then you are at perfect liberty to give the reason. What figures do you want to change ?
A. Turnover 1946 and 1947.

Q. Turnover 1946 is Sh 150,000/- do you wish to change that ?
A. It is a round figure sir.

Q. Do you wish to change or do you not ?
A. In view of this variation it would be more accurate, 155,000.

30

Q. Any other figure in this report ?
A. There is a variation in turnover in 1947.

Q. And ...

JUDGE: Variation in turnover for what ?
A. Increase of Sh 3,000/- which can be considered to bring the figures up to Sh 580,000/-. It does not affect the total income, merely an adjustment between turnover and rents.

Q. Are there any other figures in this report which you wish to change ?
A. No sir.

40

- Q. Do I now understand therefore that the turnover figures for 1946 are Sh 155,000/- and for 1947 Sh 580,000/- ? A. Round figures, sir.
- Q. Sh 48,585/- and so on ? A. Yes.
- Q. That column is typewritten is that correct ? A. Yes.
- Q. Have you got your letter - a copy of your letter - of the 6th June ? A. Yes sir.
- 10 Q. I now gather you do not wish to make the adjustment set out in paragraph D of that letter ? A. That adjustment has been made. It has been made in Court. There is a misunderstanding here sir, this letter dated 6th June, amends the original report submitted on the 3rd June and the report to which we have been referring embodies those amendments.
- Q. Mr. Blackhall I put specifically certain figures to you. I put the figure 155,000 for 1946 and 580,000 for 1947, both figures given by yourself in evidence a few moments ago and then I continue with the figures 595,000 as appears in my copy. Now you said these were the figure. I then asked you whether you no longer wished the amendments referred to in your letter of 6th June ? A. Paragraph D.
- 20 Q. Yes. The amendments have been taken into effect in paragraph D in the report of the 6th June. It says so in the first paragraph.
- Q. These figures which are in this report are the substitute figures ? A. Yes sir.
- 30 Q. Are there any other figures in this report that you wish to change ? A. None.
- Q. The figure on p.2. of your report for the year 1955 should be amended by adding the sum of Sh 2941/- ? A.. That is right sir.
- Q. Making a total roughly of Sh 26,500/- - p.2. of the report for the year 1955 ? A. Oh yes, sir.
- Q. Making a total of roughly Sh 26500/- ? A. Roughly Sh 26,500/- yes sir.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

- Q. And you say that was Mr. Rattan Singh's share of the profits ? A. Of the profits sir.
- Q. What was his share in terms of either a fraction or a percentage ? A. The partnership share was altered during the year, from the 1st September, 1955; Mr. Rattan Singh's profit was reduced, $\frac{1}{4}$, and his son to $\frac{3}{4}$ and that is reason for the original error in the figure 8 months was picked up instead of 12. He was still the proprietor until the 31st August then he takes his three sons in. Am I clear ? 10
- Q. The loss of Sh 37,000/- in 1956 is what ? A. That is his share of the loss for that year.
- Q. How much was the loss ? A. 150,000 nett.
- Q. If, Mr. Blackhall you were taking Mr. Rattan Singh's capital worth, capital interest of the partnership, as at 31st December, 1958, as opposed to 1957, would it, according to your accounts, your firm's accounts, have shown Mr. Rattan Singh had no interest at all in the partnership, and in fact the partnership money A. Without reference to the accounts I could not answer that. 20
- Q. I think they were put in ? A. Yes, they were put in as an exhibit. I think my answer must be that the adjustment made must be explained by my partner as he made the adjustment and not I. Whether it affects my report or not, I am unable to state.
- Q. Turning to Schedule A now. This purports to be a statement by Mr. Rattan Singh's wealth as at the 11th June, 1946 ? A. Yes sir. 30
- Q. Now his wealth as at that date comprises two sets of assets, his personal assets and the assets he inherited, is that correct ? A. Yes sir.
- Q. How much did you attribute to his personal assets ? A. Nil.
- Q. So do I understand from that answer that this statement of worth amounting to Sh 731,000/- odd was all inherited. Now I understand - 785 ... A. 785 there are items which are not in the Estate Duty Affidavit. 40

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960.

(Continued)

- Q. Mr. Blackhall will you please answer my question, do I understand from that the figure as it now stands that Sh 785,000/- is what you say Mr. Rattan Singh's - is what Mr. Rattan Singh inherited ? A. Yes sir.
- Q. Now that is something which is perfectly easy to check isn't it, because what he inherited must be contained in the Estate Duty Affidavit, unless a false affidavit has been sworn?
10 A. Not all these items are in the Estate Duty Affidavit.
- Q. How much does the Estate Duty Affidavit show ?
A. I cannot recollect, but it does not show the whole.
- Q. It was handed to you earlier ? A. I forget. Certain of those assets are not in the Estate Duty Affidavit. My recollection is coming to me now. As far as I can recollect, if I might explain the position, is that Rattan Singh, opened a bank account in his own name during the life of his father and certain bankings were made in that year and withdrawals, on his own behalf, or on behalf of his father's business, and this bank account which is shown on Schedule A, going to Rattan Singh's account, could be taken to be his private asset.
20
- Q. I asked you how much of this figure you attributed to Mr. Rattan Singh's personal wealth and you told me nil, is that correct or not ?
30 A. I think that must be incorrect. I regret answering the question in that manner, but I can only answer to the best of my ability and that involves thought and my recollection on the matter of Rattan Singh's history. There are certain things in his bank account, which is opened in his name before the death of his father.
- Q. Do you now say that this sum of Sh 785,000/- odd itself included some personal assets of Mr. Rattan Singh, which he had not inherited ?
40 A. It does include some, yes.
- Q. What is the amount of that personal asset ?
A. I cannot give you that answer I regret I believe certain business assets were banked in the Rattan Singh account.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

Q. But you have prepared this document, changed it and amended it as late as a week ago, produced it in evidence as being correct and so sworn and all I am now asking you is, how is it made up ? A. Yes sir, it is not always possible to break down figures.

Q. But it should be possible, Mr. Blackhall to determine how much is Mr. Rattan Singh's personal wealth and how much was inherited ? A. If one assumes his statement in the affidavit is accurate, yes, otherwise

10

Q. I am not asking you about the Estate Duty Affidavit as yet, I am asking you how much in this schedule, which you prepared, you attribute to Mr. Rattan Singh's personal worth? A. The amount of his bank account, in his own name, Barclays Bank, Rattan Singh account.

Q. Which account is that ? A. Fourth one down, after " Cash at Banks".

Q. Barclays Bank, Rattan Singh - 87,999 ? A. Sh 87,999 and 10 cents.

20

Q. Is that the total amount which you attributed to Mr. Rattan Singh's personal worth ? A. When preparing the schedules I did not identify the assets.

Q. Mr. Blackhall you show 11th January, 1946, for what reason ? A. The date of death.

Q. So as to bring in the amount inherited and the amount he owned personally, isn't that so ? A. That is true sir.

30

Q. Then how much was his personal assets at that date ? A. I did not devote my investigation to ascertaining what Mr. Rattan Singh's personal assets were.

JUDGE: Surely, Mr. Blackhall if Rattan Singh's wealth was derived from two sources and you have arrived at an estimate or a computation of Rattan Singh's total wealth, it must be then within your knowledge how much of that total came from each source ? A. Yes, the problem My Lord, is this, certain items of the

40

Estate Duty Affidavit, and which appear naturally as assets of Mr. Rattan Singh, may in effect, have been inherited from his father or may have been given to him during the life of his father.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

JUDGE: Did you ask Mr. Rattan Singh about these assets, how he got them? A. No, My Lord.

10 Q. You have before you the Estate Duty Affidavit, sworn by Mr. Rattan Singh, you had when you were preparing this - or I assume the Estate Duty Affidavit, sworn by Mr. Rattan Singh was before you? A. Sworn by Mr. Rattan Singh.

Q. Do you place any value upon an oath? A. Yes, certainly sir.

Q. Would you therefore assume that the Estate Duty Affidavit would show accurately what Mr. Rattan Singh had inherited? A. That is a normal assumption sir.

20 Q. Did you make it? A. Not necessarily, there are such things as - I forget the term - but it is quite possible to put in a provisional affidavit and then a supplementary affidavit.

Q. And there are also such things as fraud? A. Yes.

Q. I think you put in the Estate Duty Affidavit - would you like to look and see what Mr. Rattan Singh, according to that affidavit has inherited? A. Sh 200,000/-.

30 Q. And for the purpose of your revised schedule A, you have chosen to increase that by Sh 53,000/-? A. On evidence present, yes.

Q. So that you now say, according to your schedule A, that what the Estate Duty Affidavit shows, is that he inherited Sh253,000/- is that correct? A. Yes, it is included in the item creditors, sir.

Q. The Estate Duty Affidavit shows he inherited Sh 200,000/- odd? A. Yes sir.

40 Q. That amount is arrived at by deducting certain creditors? A. Yes sir.

At the Supreme Court MR. FOOTE: In East Africa ?

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

MR. NEWBOLD : Yes.

Q. You have added that "creditors" to the expenditure Sh 53,000/- ? A. Yes sir.

Q. Therefore, in preparing your schedule A you work first flush, on the assumption Mr. Rattan Singh inherited Sh 255,000/- is that correct ? A. Yes.

Q. Now, you have told us that you have now taken Sh 88,000/- in the bank as being Mr. Rattan Singh's personal worth at that time ? A. In addition to which, of course, there is the debt due to his father. You have led me to that conclusion, have you not, sir.

10

Q. Which debt are you talking about ? A. There is a debt included in the creditors to Rattan Singh, amounting to Sh 38,000, salary due to him.

JUDGE: I thought his evidence was he did not get a salary.

20

Q. He did not know what it was for, nor did he know what any of the amounts for those sums were, but I have already dealt with that Mr. Blackhall. If you do not understand please say so. The Estate Duty Affidavit shows Sh 200,000/- ? A. Yes sir.

Q. That figure is arrived at after deducting creditors which included Sh 53,000/- for Mr. Rattan Singh and his family ? A. Yes sir.

Q. You have added that to the Sh 53,000/- ? A. To the total worth to get to Mr. Rattan Singh's worth.

Q. So that as far as the Estate Duty Affidavit is concerned, Mr. Rattan Singh has inherited Sh 253,000/- ? A. No sir, it was a debt due to him by his father, before the death of his father.

Q. Have you not increased Mr. Blackhall, your schedule A from a total 731 to 785 - Sh 785,000/- ? A. I have indeed, that is

Rattan Singh's wealth but his father's wealth is reduced by the amount of his son. The amount for the salary due by the father, must be the personal property of the son.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

- Q. So that how much did Mr. Rattan Singh inherit according to your schedule ? A. He will have inherited the amount shown on the Estate Duty Affidavit, plus the amounts which may have been inadvertently omitted.
- 10 Q. Mr. Blackhall how much did you take? Did you take that figure from the Estate Duty Affidavit, as being inherited by Mr. Rattan Singh ? A. Yes, I took Estate Duty Affidavits.
- Q. Let us start from there. Now you took the Estate Duty Affidavits. How much did you take from that Affidavit for the purpose of your schedule ? A. 200,000.
- Q. What personal wealth of Mr. Rattan Singh did you take for the purpose of your schedule A ?
- 20 A. 87,000 bank account and the amount due to him by his father.
- Q. 53,000 ? A. Yes.
- Q. Do you know this bank account formed part of the business ? A. I have said that previously in evidence haven't I ?
- Q. Was it, or was it not, included in the figure 200,000 arrived at for duty purposes ? A. I should think so - it was not - the bank account included the National Bank of India.
- 30 Q. We have the position then that Mr. Rattan Singh has personal wealth of 87 or 88 in round figures - Sh 88,000/- - in the bank and how much owed to him ? A. By his father, according to the list 38,000 odd.
- Q. We have 88 and 38 makes a total of 126,000 odd doesn't it ? A. Yes.
- Q. Were there any other assets, personal assets of Mr. Rattan Singh ? A. Clothes and so forth; apart from assets of that nature
- 40 there were none others.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

- Q. Therefore, the whole of this 783,000 other than 126,000 must have been inherited A A. Yes, I believe that is the position.
- Q. That makes a total of roughly Sh 660,000/- ?
A. Yes.
- Q. In that schedule ? A. Yes.
- Q. You have treated as inherited, in the Estate Duty affidavit - 200,000 ? A. That is a fact.
- Q. Where did you get the rest from ? A. If I might refer to my notes. Do you wish me to run through the assets. 10
- Q. I wish you to tell me where you got the rest from, however, you chose to tell me is your concern ? A. Deposits accounts which I believe are not quoted on the Estate Duty Affidavit.
- Q. Let us total them up ? A. 210500 - 201384 deposit accounts.
- Q. Does the Post Office appear on the Estate Duty Affidavit? A. It does not appear - 201384 is the sum total there. 20
- Q. So that is Sh 201,000/- ? A. Yes sir.
- Q. But you still have to account for Sh 660,000/-
A. No sir, Sh 201,000/- plus Estate Duty Affidavit which comes to Sh 400,000/- which leaves a balance of Sh 385,000/-.
- Q. Where does that come from ? A. To start with the bank account, which appears in the Estate Duty Sh 64,997.06 c., National Bank, Nairobi and we now have to take out, National Bank, Amritsar, and Sundry Debtors and Barclay's Bank Rattan Singh account; that gives us 176,358, plus Estate Affidavit 200,000, plus any properties not quoted here and in addition to these figures which you have sir, one must add Salisbury Lane - 16,000 - Gift from father in 1941; 10,225 - Gift from Father 1952; properties inherited in India, 120,000; part payment of Mombasa plot, which again is not in the affidavit, which is a total of 528,000/- Sh. 528,000/- 30 40

Q. How much do you say was his personal wealth, at that date, 11th January. You said 126,000?
A. Based on two figures.

In the Supreme Court

Q. If you want to change it? A. We must change it. It is his total wealth and now you ask me to give you his personal as distinct from his father's and I can only extract it from my records.

Appellant's Evidence

No.38

10 JUDGE: Give us figure by figure - Salisbury Lane - inherited from Father, Sh 16,000? A. Gift from father in 1941, Salisbury Lane.

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

MR. NEWBOLD: I would like to understand what you are giving us. Are you giving us his personal wealth or his inherited wealth?

20 WITNESS: His personal wealth sir; Gift from Father Sh 16,000/- Salisbury Lane; Gift from Father, 1942 Swamp Road, L.H. 209 - 10225 - 10225. Part payment of Mombasa plot which can leave on one side as I am not sure whether it is his Father's payment or his own. I believe it to be his Father's payment. It is not in the Estate Duty Affidavit.

30 JUDGE: What Mr. Newbold is seeking, is details of figures, which in your view constituted the personal wealth of the Appellant on the 11th January, 1946 that is to say his aggregate wealth, exclusive of wealth which he acquired by inheritance from his Father. These are the figures which Mr. Newbold would like you to give him I understand.

Q. Would you give us item by item? A. The two properties - Salisbury Lane and Swamp Lane and further to that the bank account 87,999 shillings and 10 cents and salary due to him and his children of Sh 53,000/-.

Q. Due to him and his children? A. Certain amount alleged to be due to him and his children.

40 Q. You say salary due to him and his children is his personal wealth? A. No, one must exclude the children.

In the Supreme Court Q. And ...

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

JUDGE: We have not had the debt due to him ?
A. Sh 152,000/- I believe consists of the
four items, 16,000, 10225, Bank Account 87,999
and the debt due to him Sh 38,000/-.

Q. Therefore, starting off by saying you
attributed nil to his personal wealth, you
now say this schedule A attributes Sh 152,000/-
to his personal wealth, is that correct ?
A. Yes sir. 10

Q. Now, is that the final figure which you are
giving in evidence about his personal wealth,
or would you like to think about that again ?
A. Well sir, to the best of my knowledge
that is the final figure.

Q. Personal wealth at 11th January, Sh 152,000/-
total worth Sh 785,000/- which means that he
must have inherited Sh 633/- is that correct ?
A. Yes sir.

Q. How was that made up ? A. With the Estate
Duty Affidavit 200,497 we continued with the
property inherited in India, of 120,000. 20

Q. Would you detail that ? A. There are no
details. Include 5,000 part-payment,
Mombasa plot and on to that figure add the
bank accounts which do not appear on the
Estate Duty Affidavit, but which bear the
Father's name. If I could see the bank
accounts, as the bank accounts are not
identified in connection with the bank accounts 30
for the Father and son.

Q. You can see any documents you wish. All I ask
you to say is how much you attributed in
this schedule to inheritance and how was it
made up.

JUDGE: Let the witness see the documents relating
to the Indian Bank Accounts.

WITNESS: Some of these accounts indicate some may
be in the name of Rattan Singh and some may be
in the name of Mira Singh, assuming they are 40
all in the name of Rattan Singh.

JUDGE: Assuming they are all in the name of Rattan Singh, they were inherited from his father ?
A. That is right My Lord.

In the Supreme Court

JUDGE: Would you just look and see what accounts, which you referred to in the Revenue Affidavit are in the name of Rattan Singh's Father, which was, I believe Magina Singh s/o Hira Singh.

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examination 13th June
1960
(Continued)

10 WITNESS: Barclay's Bank My Lord, Sh 87,999/- is in the name of Rattan Singh s/o Magina Singh.

JUDGE: Accounts in the name of Rattan Singh presumably would not have been inherited from his father. That would form part of his personal wealth I should have thought unless there is evidence to the contrary. A father does not keep an account in his son's name, but the reverse is not unknown.

20 WITNESS: The account with the National Bank of India for the amount 64,997/6 is in the name of Magina Singh s/o Hira Singh - deceased.

JUDGE: In that case it would not have been a matter of inheritance if the account is in the name of someone deceased. You are looking at the original bank account ? A. Yes.

JUDGE: When was it opened ? A. It shows a balance December, 1945, I do not know when it was originally opened My Lord.

30 JUDGE: If the account is opened in the name of Nagina Singh, deceased, presumably it was opened after the death of Nagina Singh, in which event, it would seem at least to follow that it could not have passed by inheritance to the Appellant ? A. I asked. It was part of the deceased's estate.

JUDGE: Then why should the account be entitled "deceased" it should have Rattan Singh, over his personal representative. This is an Estate Account ? A. Yes.

40 JUDGE: Possibly representing Realisation of property or something of that sort ? A. Yes, Jullundur City Bank, Nagina Singh s/o Hira Singh and presumably part of his estate.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

JUDGE: What is the figure in the Jullundur City Bank on the 11th January, 1946 ? A. Equivalent of 746.

JUDGE: Less than Sh 1,000/-? A. Yes, My Lord. In 1946 this account does not indicate the name of the depositor, but in later years it is headed: " Rattan Singh s/o Nagina Singh". There is evidence to suggest 58,000 rupees - Sh 87,613/- was in effect inherited from Nagina Singh s/o Hira Singh, National Bank of India, Amritsar. There is a further account of Sh 46,000/- with the National Bank of India, Nairobi, for which I believe, there is an original letter from the bank. 10

JUDGE: How much is the amount ? A. Sh 46,000/-.

JUDGE: In whose name ? A. The letter states Hira Singh Estate of Nagina Singh.

MR. NEWBOLD: Is that amount included in the business assets or not ? A. It is personal asset of the Father. 20

JUDGE: None of this account was shown in the Revenue Affidavit ? A. No, My Lord.

Q. You are certain as to that ? A. When I reconcile these figures sir, I shall be able to given an - to give the answer more accurately.

Q. Surely all you have got to do to see if it is in the Revenue Affidavit, is to look at the Revenue Affidavit ? A. Yes, but if the two figures come together to my possible statement of worth, I shall be able to give my reply with more confidence. I arrive at the figure of 780,000 in round figures, making total assets of Rattan Singh. The amounts My Lord, being : National Bank of India, Amritsar - National Bank, Nairobi and Deposit Account with Jullundur National Bank of India - Post Office Accounts - Properties inherited in India! Deposit Sh 46,000/- with the National Bank of India, Nairobi, are not included in the Estate Duty Affidavit. 30 40

Q. What are not included in the Estate Duty Affidavit ? A. The items I have just listed.

Q. These items - would you read them out again, because you were mumbling to yourself. Would you read out the items you have just listed.
A. National Bank of India, Nairobi Sh 46,000/- deposited...

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

10 JUDGE: You have not mentioned that before. I do not know quite what you think you are doing Mr. Blackhall. The question as I have it recorded is this : You were asked first as I recollect, to give an account of his total assets and you said the Estate Duty, the total assets inherited from his Father, you started off by saying Estate Duty Affidavit originally was Sh 200,000/- property in India Sh 120,000/-, then you give part payment of Mombasa plot Sh 5,000/- then you go on, Bank Account Jullundur City was 746/-, National Bank of India 64,000 and National Bank of India 87,000. You have now added another Bank of India
20 Sh 46,000/-. That is in addition to the list you have just given ? A. And there are two fixed deposit receipts, City of Jullundur - totalling 154,500.

JUDGE: Inherited from his Father ? A. Yes sir.

JUDGE: I think that included two sums of 30,000 which were somewhat doubtful ? A. That is a later period of time, My Lord. Yes sir.

Q. What do they total ? A. Sh 680,981/-.

30 Q. Now you say that the accounts show that on the 11th January, 1946 there was a sum of Sh 154,500/- and fixed deposit account in Jullundur City ? A. Yes, two fixed deposit accounts.

Q. Would you like to look at these accounts again and see whether you can find any figures for that date ? A. Take these two fixed deposits in round sums, sir, on the evidence supplied they were there in January.

40 Q. We come to the stage when it was not one sum but two sums ? A. Yes.

Q. Are there two sums 75,000 rupees and 30,000 rupees ? A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 (Continued)

Q. Let us deal with the 73,000 rupees. What is your first record of an entry in relation to that ? A. A debit in Nagina Singh s/o Hira Singh's current account in 1945.

Q. 73,000 rupees ? A. Before the date of his death.

Q. And you have assumed, if I may so suggest, assumed naturally that 73,000 rupees was present at the date of death ? A. Yes sir, that is fixed deposit receipt. 10

Q. That 73,000 rupees would give you how much - how many thousand shillings ? A. Sh 109,500/-

Q. Now you have also added in 30,000 rupees ? A. Yes.

Q. What is the first record of that 30,000 rupees? A. Letter dated 19th November, 1957, from the bank, which is that item of 22nd May, 1958.

Q. Is that the very earliest record of this item? A. No, that could be related as being a re-issue on fixed deposit receipt, owing to the evidence of interest being agreed in May, 1947. 20

JUDGE: What you are being asked is, just look through these records, any records, you desire and tell Mr. Newbold when is the first date revealed by the records as being the date at which there was the sum of 30,000 rupees to the credit of the account of Nagina Singh s/o Hira Singh ? A. Yes, My Lord, there is a record of interest received from this fixed deposit receipt. 30

MR. NEWBOLD: Which fixed deposit receipt ? A. 30,000 rupees and from that we infer that it is fixed to his deposit receipt there in May, 1956. Unfortunately the bank record do not go back farther than 1957.

JUDGE: So there is no evidence to that deposit interest in January, 1946 ? A. There is no conclusive evidence.

JUDGE: There is no evidence at all is there ?
There is evidence that the account existed in
May, 1946 A. There is evidence of 1946,
My Lord, because interest arising from one
year...

In the Supreme
Court

Appellant's
Evidence

No.38

JUDGE: But there was no evidence it was in the
bank before May of 1946 ? A. No direct
evidence.

Anthony Marcus
Blackhall
Cross-Examina-
tion 13th June
1960
(Continued)

10 JUDGE: No evidence at all - of any sort. What
evidence is there ? A. There are no with-
drawals from January, 1946, onwards, to
indicate where this sum of money came from and
in the absence of a letter from the bank before
1947, one supposition is as accepted as
another.

20 Q. If I understand you correctly, quite apart from
this little uncertainty about the 30,000 rupees,
that is Sh 45,000/- isn't it ? A. Yes, but
the uncertainty is whether the money existed
before May, 1946, we knew it is the property
of Rattan Singh from effect, from May, 1956.

Q. You have accepted he inherited the sum of about
Sh 635,000/- ? A. Yes sir.

Q. Which includes accounts not shown on the Estate
Duty Affidavit ? A. That is true.

Q. Did you ask Mr. Rattan Singh how that came
about ? A. No.

Q. Did you think it your duty to ask him ? A. No.

30 Q. So in preparing the accounts, for a Court,
which are at variance, which are at variance
with the Estate Duty Affidavit, you, as an
accountant, did not think it necessary to ask
your client how that difference came about ?
A. No.

40 Q. You have added, for the purpose of Schedule A
the whole, as being Mr. Rattan Singh's
capital worth at the 11th January, the whole
of the Sh 53,000/- which appears as being owing
to himself and his family in the Estate Duty
Affidavit ? A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

- Q. Can you inform his Lordship why you added that as Mr. Rattan Singh's capital worth, amounts set out as being owing to his name ?
A. Information was present to me to the effect these amounts have never been paid.
- Q. Whether they have or have not been paid, whether they will or will not be paid, can you inform his Lordship why you should add to Mr. Rattan Singh's capital worth sums owing to his children ? A. As they have not been paid to date. 10
- Q. Whether they are paid or not ? A. Because the liability is no longer present and if the liability is no longer present
- Q. Did you find out the effect of putting these amounts in as creditors for the purpose of the Estate Duty Affidavit, was to depress the value of the Estate ? A. Obviously.
- Q. And for the purpose of Income Tax you have taken them out in order to increase Mr. Rattan Singh's capital worth ? A. That is the position is it. 20
- Q. Do you think that is fraud on the Revenue?
A. Not at all, it is just stated here exactly - all the detail is here.
- Q. I assume you asked Mr. Rattan Singh what these amounts were owing for ? A. Yes.
- Q. And what did he tell you ? A. The main items in respect of salary from his father.
- Q. Did he say in respect of salary for himself ? A. Sh 38,000 was his own. 30
- Q. Did he say that was for salary owing to him ?
A. That was how I understood it.
- Q. Have you any doubts as to what you understood by the answer ? A. Some doubts yes, but it was definitely owed to him by his Father.
- Q. What was the nature of your doubts ? A. As to whether the entire amount related to salary.

Q. Are you satisfied that a certain proportion of it related to salary and according to his answer .. A. According to the documents I have read.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 13th June 1960

(Continued)

10 Q. I am talking only about your questioning of Mr. Rattan Singh, as I understood when you answered me you said first of all Mr. Rattan Singh said it was for salary and now you have doubts as to whether he said the whole of it was for salary, is that the position or is it not ? A. Yes, that must be the position.

Q. What is the position, he told you the whole of it was for salary ? A. The position is that this item is stated on a list of balances prepared by Mr. Mandavia and it is also stated it relates to salary and Counsel I think, interviewed Mr. Rattan Singh and got the information these items had never been paid.

20 Q. Mr. Blackhall, will you please listen, You have told us in evidence you asked Mr. Rattan Singh what these were for, is that so ? A. That is not so, I regret My Lord, that is not so. I did not ask him what they were for. The information was documentary not from Rattan Singh.

Q. And ...

30 JUDGE: Did you understand Counsel's question to you, the question as to whether you had asked Mr. Rattan Singh what these monies were for ? A. Yes, My Lord.

JUDGE: You understood that question when you answered ? A. Yes, My Lord.

40 JUDGE: So, when you answered Counsel, you understood that he was enquiring whether you had asked Mr. Rattan Singh what these monies were for, and understanding that Counsel was enquiring as to whether you had asked Mr. Rattan Singh what those amounts were due for, you replied in the affirmative, is that correct ? A. It was a slip of memory, My Lord.

JUDGE: Is that correct ? A. I do, My Lord.

In the Supreme Court JUDGE: Why did you do that ? A. Because my memory did not serve me sufficiently well.

Appellant's Evidence JUDGE: Did you understand quite clearly that Counsel was not enquiring about what you might have gained from documents ? A. Not quite clearly.

No.38

Anthony Marcus Blackhall Cross-Examination 13th June 1960 MR. NEWBOLD: I would like you to appreciate that you are on oath, quite apart from your professional ethics ? A. Yes sir.

(Continued) MR. NEWBOLD: And appreciate the consequences which may follow ? A. Very much so. 10

Q. Do I now understand you, that you did not ask Mr. Rattan Singh about these alleged creditors and the Estate Duty Affidavit ?
A. I personally did not.

Q. You have added back, however, the sum of Sh 53,000/- in your Statement of Worth ?
A. Yes sir.

Q. On the ground that it - that these were amounts owing by the Estate to Mr. Rattan Singh ?
A. Yes, sir. 20

Q. Did you attempt in any way to check how these amounts arose ? A. Yes sir, I obtained a list of balances for the balance sheet in 1945, previous accounting, in which these items were written.

Q. You obtained an account of the balance sheet for 1945 and these items were included in the balance sheet ? A. The balance sheet of Gian Singh, contractors. 30

Q. And that balance sheet showed Mr. Rattan Singh and his children as creditors ? A. Yes sir. I obtained it from a list.

Q. Did the balance sheet show it or not ? A. The information I obtained was from a signed list.

Q. Mr. Blackhall the stage has now been reached where I suggest to you, be very precise in your language. You have said you obtained it from the balance sheet ...

JUDGE: He referred to a list before the balance sheet.

In the Supreme Court

Q. A list for a balance sheet, where is that list ?

Appellant's Evidence

A. Among my papers.

Q. Can you get it ? A. I believe Counsel may have it. I believe it is pinned to the letters from the bank.

No.38

JUDGE:

Anthony Marcus Blackhall
Cross-Examination 13th June 1960
(Continued)

10

Now will you endeavour to find that list during the adjournment and on this occasion please do not be content with finding some other documents which contain the information that you say you obtained from the list, because you recollect over the week-end you were asked to check something from Mr. Thian's report and you did not take the trouble, apparently, to check it from Mr. Thian's report at all, but checked it from some other document, which proved to be wrong. Now, on this occasion please go to the source which you refer to as the source of your information. That is the original list.

20

COURT ADJOURNED 4.15 p.m.

14th June, 1960. 9.15 a.m.

14th June, 1960

Cross Examination of Mr. Blackhall (continued)

JUDGE: Let the witness be warned he is still on oath

(Witness warned still on oath)

30

Mr. Newbold: Well Mr. Blackhall, I understand you are very anxious to get away today?

A. Yes.

Q. Well Mr. Blackhall please listen to my questions and if the answer is either 'yes' or 'no' or 'I don't know' or 'I don't remember' or I made a mistake', please say so.

40

Now yesterday you said, if I recall correctly that this list, that you obtained this list of creditors from the list attached to the balance sheet, is that so?

In the Supreme Court

A. I obtained the list of creditors from the list originally attached to the balance sheet.

Appellant's Evidence

Q. I understand that balance sheet was a 1945 balance sheet?

A. Yes Sir.

No.38

Q. You were going to look at that list?

A. I have it before me.

Anthony Marcus Blackhall

Cross-Examination 14th June 1960

Q. Now what does that list say?

A. With regard to Rattan Singh?

(Continued)

Q. Yes?

A. Rattan Singh personal account 38,678,85; Rhajan Singh 4800,00; Surjit Singh 4,550-00; Inderjit Singh 3,928,50; Basant Noor 175,00.

10

Q. I understand you said this was a list attached to the balance sheet for 1945 is that correct?

A. When I discovered the list it was not fixed to a balance sheet.

Q. Did you say this was a list attached to the balance sheet for the accounts for 1945?

A. I don't remember clearly Sir, I accept your statement.

20

Q. What list is this?

A. A list of creditors which I assume was on the basis of the balance sheet 1945 - that he had prepared in the process of drawing up a balance sheet for 1945.

Q. You assumed that it was prepared for the 1945 balance sheet?

A. Yes.

Q. Now will you look at the list please? What is the list headed?

30

A. "Estate of Nagina Singh deceased, Nairobi".

Q. Can you explain to His Lordship how a list headed "Estate of Nagina Singh deceased" he having died in 1946 you could assume was a list prepared for a balance sheet 1945?

A. It was dated 31.12.45.

Q. Was the list?

A. Yes the list was dated 31.1245. not the date of death.

- Q. Was that the list attached?
 A. I don't know - it was detached when I discovered it, It is marked A. It may be exhibit A.
- Q. You have already said that these amounts were owing for salary and then subsequently you said partly for salary and partly for other things and you got that information from the list. Is there anything in that list to show it is for salary?
 A. No, I did not say from the list, surely.
- Q. Where did you get that information from?
 A. From the interview notes.
- Q. Whose?
 A. Mr. Easterbrook.
- Q. Which notes?
 A. Notes dated 4th February, 1958, shall I quote them paragraph 3 ..
- Q. It is the manuscript from and it reads: "The creditors for Sh.39,248/85 in the name of Rattan Singh shown in the Estate Duty Affidavit ..."?
 A. Yes.
- Q. Now why did you say earlier this list was attached to the balance sheet ?
 A. That was the impression in my mind.
- Q. From what?
 A. Because it was dated December, 1945, which is the normal date one draws up a balance sheet.
- 30 JUDGE: Now would you possibly include in the balance sheet for the year 1945 items in respect of the estate of a gentlemen who didn't die until January 1946 ? A. The figure didn't agree, exactly.
- JUDGE: Isn't it headed "In the estate of so and so"?
 A. Yes.
- JUDGE: Now, if you were preparing the balance sheet could there be any entries relating to an estate of a person who did not die until 1946?
 A. Certain amounts would have proved and
- 40

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
 Cross-Examination
 14th June 1960

(Continued)

In the Supreme Court

would still be outstanding, the vast majority of them, eleven days after the date.

Appellant's Evidence

No. 38

Mr. Newbold: Now "represents undrawn salary by Rattan Singh that is the statement, that that particular sum represents undrawn salary?"
A. Yes.

Anthony Marcus Q.
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

Q. Now is there any reference at all to his children?

A. In the next paragraph I believe.

Q. "The figure in the report no.2 of page 8 of Sh. 31,820/- as cash in hand is the same figure but it must be increased to Sh.39,248/85. There was in fact no cash in hand. Rattan Singh recovered his money in the assets he acquired from his fathers estate. 10

4) The creditors in the names of Rattan Singh's sons in the Estate Duty Affidavit of Nagina Singh amounting to Sh.13,453.50 were not paid out to Rattan Singh. He retained the money. No creditors were carried forward. Agreed to tax Rattan Singh on this sum spread evenly over 1943, 1944, 1945". Now where did you see anything about salary? 20

A. The salary only relates to Rattan Singh.

Q. I understand you to say that the salary related to all the family?

A. I very much regret that was an erroneous remark.

Q. Can you explain to His Lordship why you added back to Rattan Singh's assets, amounts due to his children and to the deceased's wife? 30

A. I added back to the assets of his father Nagina Singh. I took Estate duty out of Nagina Singh which had liabilities deducted due to Rattan Singh and Rattan Singh's family, as is seen from the interview note, and from subsequent information that I received from counsel.

Q. From whom?

A. I received information for the preparation of this 40

Q. From whom?

A. From counsel before the preparation for Court.

Q. Mr. Blackhall do I understand that you were going to Counsel for your information?

A. No Sir.

Q. In relation to facts and figures?

A. No Sir not facts and figures.

Q. Did you go to Rattan Singh at all?

A. I did. Mr. Rattan Singh came into my office on one occasion over a question of bank accounts and I asked him.

10 Q. Do I understand from that answer you saw Rattan Singh on one occasion only over bank accounts over the whole of this investigation?

A. Yes I dealt through his son Surjit Singh.

Q. So you saw Rattan Singh on one occasion only over a question of bank accounts?

JUDGE: And Mr. Surjit Singh is how old now?

A. Well his precise age I don't know.

JUDGE: Approximately?

A. 23 or 24.

20 JUDGE: So in 1946, when the accounting period began, Surjit Singh was 10, is that correct?

A. Yes My Lord.

JUDGE: And in your experience is it usual for a boy of 10 to know details of his grandfather's estate?

A. No My Lord but Mr. Surjit Singh was acting as translator for his father.

30 JUDGE: But he could not have done very effective translation for a father who was not present at your interviews, you know? I don't see what his function as a translator could have had to do with his ability to give you information at interviews at which his father was not present?

A. No My Lord.

Mr. Newbold: Will you agree with me that is a highly complicated case with considerable dispute as to facts?

A. I will.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Q.
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

Q. And you were preparing a report showing the -
purporting to show the income of Rattan Singh
over a period when you say there were not
sufficient books to satisfy you and you say
Rattan Singh only once and then on a subject of
bank accounts only, is that the position?
A. Yes Sir.

Q. Can you explain to His Lordship in those
circumstances what value you suggest shall be
put upon this report?
A. Imense value.

10

Q. You have already indicated there was not
sufficient documentation to prepare accounts
satisfactorily?
A. Yes, Sir.

Q. Now you said that you spoke to Mr. Surjit Singh
- how many times did you speak to Surjit Singh?
Can you recall?
A. Not exactly.

Q. Once, twice, or a number of occasions?
A. I would say fairly - a number of occasions.

20

Q. Did you know Surjit Singh only started to keep
the books in 1954?
A. Yes.

Q. Which is after the period under review?
A. Yes.

Q. Do you know who kept the books before then?
A. I understand they were kept by Mr. Shaffi.

Q. On this subject?
A. Yes.

30

JUDGE: What do you mean by on this subject? Do
you mean in relation to the preparation of this
report?

Mr. Newbold: In preparation of this report.

Q. So that although Mr. Shaffi you knew was a
bookkeeper during the relative period you
never spoke to him at all for the purposes
of the preparation of this report?
A. Yes Sir.

Q. Do I therefore understand that this is the position in relation to an investigation in which you did not consider there were sufficient books, you spoke to the person whose income was being investigated once on a particular matter and you never spoke to the book-keeper at the relevant period at all?

A. Yes sir.

10 Q. You have said that you understood these amounts owing to the family were for salary?

A. I understand owing to Rattan Singh was for salary.

Q. You have said the amounts owing to the family was for the salary ...

Mr. Foot: He has already corrected it once - how many more times. The witness already said a few moments ago he regretted he was in error.

JUDGE: That is correct Mr. Newbold.

20 Mr. Newbold: Do you know the age of Mr. Inderjoot Singh at that time?

A. I don't know the precise age, no.

Q. Did you bother to ascertain what the precise age was?

A. That is information with regard to creditors.

Q. The answer is 'yes' or 'no'?

A. No.

30 Q. Why didn't you say so. Have you since ascertained that at this date, in the beginning of 1946 he was about four years old?

A. No. I understand these people were all infants - the sons.

Q. Now this figure of 87,000, nearly 88,000/- being Rattan Singh's account in Barclays Bank, which for the purposes of the preparation of Schedule A you have taken as Rattan Singh's personal assets, how do you know that it was his personal account?

40 A. I believe I have stated in evidence that this account was opened during the life of his father and it was somewhat involved with business transactions.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

- Q. Now in fact is this the account referred to by Mr. Thian in his second report as having been opened on March 14th, 1941?
A. I believe yes Sir.
- Q. Do you - the documentation you are talking about, do you see this:
"We are advised that the account was utilised entirely on behalf of the father and the firm, and that the purpose of it was twofold, (a) to enable the son to pay accounts in the absence of his father and (b) to train our client to operate an account with the bank and to take the responsibility thereof as part of his business experience".
Is that what you say in relation to the account?
A. I have seen that.
- Q. Did you also look at the withdrawals from that account set out in the report?
A. Withdrawals from the date of the period under review? 20
- Q. Yes?
A. I saw them.
- Q. Do you see that amounts paid out had been paid out on behalf of the business?
A. I have said so in evidence that this account was involved with his father's business.
- Q. Why did you take it as Rattan Singh's personal account?
A. I took a statement that the total worth of Rattan Singh including his father .. 30
- Q. You have said that this was part of the assets which you attributed to Rattan Singh personally on the 11th January?
A. What I said when you questioned me on the question of breakdown of personal assets and the assets of his father, this account I understood was mixed up in his father's business.
- JUDGE: Now Mr. Blackhall were you not asked yesterday afternoon I think it was, were you not asked to give a list of the assets which were included in your view in the appellants estate other than what is derived from his inheritance, I think that was the form of the question? A. Yes My Lord. 40

JUDGE: Did you account this man any matter other than this derived from his inheritance?

A. I did but in prior evidence I believe I did say I understood this Rattan Singh account was involved in the business. In other words it was involved, that his father's assets would possibly be included.

In the Supreme Court

Appellant's Evidence

No.38

10 Mr. Newbold: In prior evidence did you also say when you prepared Schedule A you attributed nil to Rattan Singh?

A. Yes I had that question without notice. When I prepared this statement of worth I prepared it for Rattan Singh for the amount of inheritance of his father. The question of division was never gone into.

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

20 Q. Do you seriously suggest as an accountant when you come to prepare a statement of worth of an individual as at a particular date, because of inheritance that you did not start to ascertain to your own satisfaction what his personal worth was at that date and what his inherited worth was on that day. Did you not do that?

A. It was not done. I was only concerned with the personal worth of Rattan Singh. The division between type of assets and another does not affect my calculations.

30 Q. Do you now therefore say that this account of nearly 88,000/- was not Mr. Rattan Singh's personal asset?

A. Not entirely.

Q. Therefore to the extent to which it is not entirely it has got to increase the amount inherited?

A. That is true, Sir.

40 Q. This figure of Sh 46,000/- appearing in Schedule A as an account, fixed deposit account in the National Bank of India, Nairobi, as far as you know?

A. As far as I know, yes.

Q. Had that account ever been disclosed to the revenue before you prepared and handed over Schedule A?

A. It is written in in manuscript, I believe in the photostat copy of Mr. Thian's report.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 14th June 1960 (Continued)

Q. Written in the manuscript copy of the photostat copy of Mr. Thian's report?

A. The manuscript has been made and then photographed I believe of 46,000.

Q. Which report is it?

A. The second report where the assets are detailed in the inheritance.

Q. Would you take a copy?

JUDGE: Have you got your copy there?

A. No My Lord.

10

JUDGE: Where is it?

A. I believe it must be with Counsel.

JUDGE: Perhaps your counsel will supply you with a copy which contains this entry.

A. It is written in in manuscript and then photographed.

JUDGE: Perhaps if all the documents were made available to the witness he might be able to find this document.

Mr. Foot: My Lord I very much regret this delay. A great deal of work has been done on this document, these documents. My Learned Friend tells me he has in fact seen this document.

20

JUDGE: Certainly we will continue then and perhaps the document can be looked for.

Mr. Foot: I apologise for the delay...

JUDGE: It is unfortunate where some documents bear endorsements and others don't.

Mr. Newbold: It is extremely unlikely that one copy bears an endorsement and not the other.

30

JUDGE: They may have been photographed on two occasions. If Mr. Roland has seen it that is the end of the matter.

Mr. Newbold: Mr. Blackhall I assume Estate Duty was paid on such amount as was included in this?

A. I put a remark on to that effect Sir.

Q. Is that an expenditure if it was paid which should have been included in your Schedule C?

A. On Estate Duty, yes Sir.

In the Supreme Court

Q. Did you include it in your Schedule C?

A. No Sir there is no record of it being paid to my knowledge.

Appellant's Evidence

No.38

Q. Did you make any enquiries about it?

A. No Sir.

Anthony Marcus Blackhall
Cross-Examination 14th June 1960

Q. Why not?

A. The matter did not come to mind.

(Continued)

Q. Do you agree that any Estate Duty payable on the estate would be an appreciable sum?

A. I do not know the rates in 1946.

Q. Do you think it would be an appreciable sum?

A. I cannot express an opinion on East African Duty.

Q. You have prepared Schedule C with details as little as Sh.60/-?

A. Yes where the details were available we put them in.

Q. And you did not bother to find out what the Estate Duty was on this estate or whether it has been paid?

A. I did not discover.

JUDGE: Did you try to discover?

A. No My Lord.

JUDGE: It seems to me that the function of an accountant in relation to matters of this nature is not merely to sit back in this room in an arm chair and wait for information to be given to him but to investigate matters which appear to merit an investigation with a view to ascertaining if information is available.

Mr. Newbold: Two days ago I think it was, Mr. Blackhall, you were asked by My Lord to find out whether the rents for Grogan Road had been entered in the books for the years 1950, 1951, 1953?

A. Yes Sir.

In the Supreme Court

Q. Where they entered in the books?

A. Certain of the rents were entered in the books.

Appellant's Affidavit

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Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

Mr. Foote: Before My Friend passes to that, we have discovered this document.

JUDGE: So far as I am concerned if Mr. Roland has seen the thing that is the end of the matter.

Mr. Roland: I saw what the witness is referring to. I don't express an opinion whether the figure is added before or after.

10

JUDGE: There is a photostatic copy of a document showing this figure of 46,000?

Mr. Foot: It has a reference and then written in pencil underneath is 46,000.

Witness: That is a photograph of the writing is it not?

Mr. Foot: Yes.

Mr. Newbold: I would like to make it clear, may it please Your Lordship that the document shown to me by My Learned Friend is not the photostat put in in the bundle which I put in earlier on, as the photostatic copies of documents which were in the Revenue possession.

20

JUDGE: Quite, this is merely a photostatic copy of a document which is in the possession of the appellants and presumably was prepared for the benefit of his advisers at the same time.

Mr. Newbold: My question was directed towards - had this account ever been disclosed to the Revenue as far as you knew?

30

A. Do you wish me to answer that question?

Q. Yes?

A. I do not know whether it had been disclosed.

Q. Now we are going back to the rents for Grogan Road. Did the books as they were in 1950, 1951, 1952 and 1953 disclose the rents for Grogan Road?

A. 1951 disclosed rents for Grogan Road.

- Q. How much?
A. June, 1951, United Dairies, 692/-
January 1952, 1925.
- Q. There was an entry in June 1951. Any other
entry in 1951?
A. Yes September 10, 1951 . S. Nehra.
- Q. Do you know when these entries were made?
A. They were made in the books at some time
prior to my investigation.
- 10 Q. That is all you can say?
A. Yes the dates are those quoted in the books.
They link up with the bankings.
- Q. There are two entries in 1951?
A. Yes.
- Q. How many entries in 1952?
A. Five in 1952.
- Q. How many entries in 1953?
A. None, but of course we have no cash book
for 1953.
- 20 Q. Talking about cash book and books available to you,
do you agree Mr. Thian had books available to
him? Which were not available to you?
A. Yes
- Q. And presumably he is therefore more capable by
reason of the additional information available to
him of preparing returns adequately than you
were?
A. He had a little more information, yes.
- 30 JUDGE: Before we leave this question of the Grogan
Road rentals, did you make any efforts to
ascertain why there should only be two entries
in 1951 and only five entries in 1952?
A. Yes My Lord.
- JUDGE: What effort did you make to ascertain those
facts?
A. I made enquiries as to what rents should
be paid and the answer I received was that they
did not know.
- 40 JUDGE: And you accepted that answer?
A. What other course could I have done.

In the Supreme
Court

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Evidence

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(Continued)

In the Supreme Court

Appellant's Evidence

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(Continued)

JUDGE: You could have asked to see Rattan Singh and asked him for one thing. You could have asked to see the book-keeper by whom the entries were made for another thing?
A. Yes, My Lord.

JUDGE: Why didn't you?
A. I didn't expect to receive any further information because the matters were all referred back to Mr. Shaffi as regards the payment of these rents and it was then presented to me.

10

JUDGE: Did you enquire if the shops had in fact been let for the entire year or not?
A. Yes My Lord I understood shops - the United Dairies had been let for the whole of 1951 but was vacated in 1953.

JUDGE: So it would be let for the whole of 1951 and 1952?
A. The rent was paid for 1951 subject to a ..

JUDGE: In one lump sum?
A. Two items, 692 and 1995, that was actually paid in 1952 in relation to 1951 ..

20

JUDGE: I am not talking about that, Let us try and clarify it. How many shops were there under Rattan Singh's house?
A. I understand there were four.

JUDGE: How many of those shops were rented out?
A. From 1951?

JUDGE: Yes?
A. Three, the fourth one was not let until 1953.

30

JUDGE: In relation to how many shops are there entries for in the books of Rattan Singh in respect of rental?
A. Three shops My Lord but it is possible that the rent in respect of the third shop, which was only let during 1953, came through the cash book.

JUDGE: I thought just now it was the fourth shop which was let in 1953?
A. Yes My Lord.

40

JUDGE: In relation to how many shops are there entries in respect of rental during the relevant period?

A. Three shops.

In the Supreme Court

Appellant's Evidence

No.38

JUDGE: No entry in relation to the fourth shop at all?

A. No My Lord.

Anthony Marcus
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tion 14th June
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(Continued)

JUDGE: So presumably if the fourth shop was let for part of the relevant period ..?

10 A.. All 1953 I understand.

JUDGE: That is within the relevant period is it not?

A. Yes.

JUDGE: Presumably if no rental is shown in the books as having been received from the fourth shop during the relevant period and in fact it was rented for part of the relevant period either the rent was never collected or your accounts are wrong, isn't that so?

20 A. No actually we have no cash book for 1953 we have brought in the income as recorded by the bank statement.

JUDGE: I thought you said there was no record in the books in relation to the letting of the fourth shop?

A. No specific record of the rent.

JUDGE: How did you know of the rental?

A. We did not know.

JUDGE: You didn't know any rental came in from that shop to the bank?

30 A. No My Lord.

JUDGE: Why did you say I would not be correct when I suggested either the rent was not collected in relation to the fourth shop or your accounts are necessarily wrong?

A. In so far as the cash received was taken, yes My Lord.

JUDGE: Let us continue, Will you explain to me when it was that you first became aware that all four shops were let for either the whole or some part of the relevant period? Was it before you put in this report? A. No My Lord.

40

In the Supreme Court

JUDGE: You only learned that after your report of the 6th June?

A. Yes My Lord.

Appellant's Evidence

JUDGE: When did you learn it?

A. On Friday My Lord.

No.38

JUDGE: How did you come to learn it?

Anthony Marcus
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tion 14th June
1960

A. Well, My Lord, these shops are described in the documents as Intasali Street and not Grogan Road and I discovered they were Grogan Road on Friday.

10

(Continued)

JUDGE: I thought they were distinct premises pulled down at some stage in Intasali Street?

A. They were.

JUDGE: Do you know Intasali Street?

A. No.

JUDGE: Do you know Grogan Road?

A. No.

JUDGE: Have you made any effort to find out?

A. No My Lord.

JUDGE: It seems somewhat surprising to be told that premises throughout have been referred to as Grogan Road premises are in fact in some street other than Grogan Road and were so referred to in the books?

20

A. No they were referred to in Mr. Thian's report as in Intasali Street when in fact they were in Grogan Road.

Mr. Foot: I don't know if I can assist you on this point. We have been enquiring into it. It does appear that tenants, actual tenants in Grogan Road may have been described in Intasali Road.

30

JUDGE: Why?

Mr. Foot: I don't know.

JUDGE: Someone can begin on the basis of this matter by finding out how far Intasali Street is in this matter.

Mr. Foot: I thought I could assist you at a later stage I thought that may be the explanation.

JUDGE: How far Intasali Street is from Grogan Road?

In the Supreme
Court

Mr. Foot: I am instructed it is about 400 yards.

JUDGE: If people misdescribe their property I suppose I have no cause for complaint. It may be a better shopping centre and attracts a higher rent, I don't know.

Appellant's
Evidence

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Mr. Foot: It may be more fashionable.

Anthony Marcus
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tion 14th June
1960

Mr. Newbold: Are these rents referred to in the books as from Intasali Street or Grogan Road?

(Continued)

10

A. Not either. They are referred to by the name of the tenant.

Q. When you prepared your report, you prepared it - you set out a list of the rents received for each year.

A. Rents received, yes.

Q. Did you check those amounts?

A. I checked them for cash - they derived from my cash analysis, they are cash rents received as far as I can ascertain, as far as can be ascertained.

20

Q. Those are cash rents received, what do you mean by that?

A. What I say Sir.

Q. Do you mean received in cash?

A. From the bank and cash accounts, yes.

Q. Do you mean they were received in cash?

A. Yes.

Q. And you mean that that amount was in the Bank ?

A. Not necessarily. There were a few cash rents in the bank but written in cash account.

30

Q. Where did you get those figures from?

A. From the analysis of the bank sheets and cash books available.

Q. Where did you get those figures from?

Now what did you get from the bank sheets?

A. From the bank sheets I got the amount of the allotments and the cash books the details. I should state for 1946 and 1947 when we had books we had to use that same figure and average

In the Supreme Court

Appellant's Evidence

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tion 14th June
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(Continued)

figure for rent, that is only a division of the income for that purpose.

Q. For 1946 and 1947 they are not accurate figures?
A. It has a word so against them in the report.

Q. Yes. I want to know where you got these figures from? You say from analysis of cash book and bank statements?
A. Yes Sir.

Mr. Newbold: Would the bank statements disclose in any form the rent received? 10
A. Well they would disclose the actual bankings.

Q. But they might be from anything at all might they not?
A. Yes, the details down in the cash book.

Q. Did you get these rental from the cash book?
A. Yes Sir.

Q. From anywhere else? 20
A. No Sir.

Q. These figures you swear are shown in the cash book?
A. With the exception of 1946 and 1947 and 1953 which is an analysis.

JUDGE: 1951 and 1952 are shown in the cash book are they?
A. Yes My Lord.

JUDGE: Can you point them out?

Mr. Newbold: Did you check them against the figures shown by Mr. Thian? 30
A. Roughly yes.

Q. Did you notice any difference?
A. Yes there are variations.

Q. What did you do to ascertain the reason for the variations?
A. I assumed these variations were the rent debtors.

Q. What did you do to ascertain the reason for the variations?
A. Nothing.

In the Supreme Court

JUDGE: Why not?

Appellant's Evidence

No.38

10

A. Well My Lord I was preparing these accounts in the first instance on a cash basis and then latterly on the basis of a statement of worth at the end period of which the rent debtors were brought in but I had no definite documentary information as to when the premises were occupied and when it was alleged rents were due. The figures obtained by Mr. Thian are estimated rents and show figures for annual rent which may have been on the aggregate.

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

Mr. Newbold: Now for the year 1953 you didn't have a cash book so how did you obtain that figure?

A. Analysis of the bank statements and paying in slips.

20

Q. The bank statements do not disclose what the source is?

A. The bank statements do not themselves but if you have the paying in slips you can break them down.

Q. Very well, did you have the paying in slips?

A. I shall have to refer to my notes on the subject. I believe I had them for the whole period.

30

Q. Did you have the paying in slips for 1953?

A. Yes I believe so.

Q. Did those paying in slips show the details of the rents received?

A. Yes they would need to do to obtain this figure.

Q. I am asking you whether they did not whether they would need to do?

A. I cannot recall.

Q. If they did not?

40

A. I believe they did but I cannot recall. I cannot see where else the figure would come from.

In the Supreme Court JUDGE: But surely the paying slips are still in existence are they not?
A. Yes.

Appellant's Evidence JUDGE: Then it should not be an impossible task to find them during the luncheon adjournment?
A. Yes, My Lord.

Anthony Marcus Blackhall Cross-Examination 14th June 1960 JUDGE: During the lunch adjournment will you look for paying in slips which show where the rents came from and the amounts?

(Continued) Mr. Newbold: And the total - this figure of 48,417/10Shs.

Q. Very well now Mr. Blackhall may we now turn to Schedule C. You have told my Learned Friend in your examination in chief that this presented, in your opinion, a fair view of the drawings over the period and indeed were in favour of the Revenue.

Mr. Foot: Before my Learned Friend proceeds, I don't know whether it would assist him at all - My Learned Friend has been looking through these documents I have one document where rent is written on it. My Lord, there is another one here, somebody has paid, the names of two tenants are given, R.S. Patel and R.B. Patel 137/50, rent for January 1953. 20

JUDGE: I think Mr. Newbold also stated he wanted the total amount.

Witness: The total amount My Lord, is written in my report.

Mr. Foot: I don't know if that will help.

JUDGE: I don't want anything more. Whether Mr. Newbold wants him to prove all this amount by paying in slips? 30

Mr. Newbold: I won't bother My Lord.

JUDGE: Very well you need **not** pursue your searches.

Mr. Newbold: In an answer in examination in chief you said this schedule presented a fair view of the drawings during the period and indeed was if anything infavourable to the Revenue..

Do you still say so?

A. When one takes into consideration the repairs on private property and property occupied and if it is ascertained the amount of the estate duty paid, yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

Mr. Newbold: Do I understand from your answer that the document as you prepared it and as presented to the Court does not contain a fair view?

10 A. It contains a fair view to the best of my knowledge. As I stated in evidence earlier, when I was questioned on schedules A, B and C I did mention I would anticipate a possible variation on schedule C.

Q. Well we won't go over what you have already said. You have brought in the year 1947, 1957, we have already had evidence in relation to the accounts for the year 1957. Do you know that in that year it was agreed that there should be added back £ 1100 in that year alone for the private use of cars?

20

A. No.

Q. Did you bother to find out?

A. Those are just adjustments on the income tax computations.

Q. They are adjustments for the private use of cars? Are they not? If that adjustment were made that means it has been agreed that £1100 of personal expenditure has been incurred?

30

A. Running expenses?

Q. Any form- running, purchase, it does not matter what personal expenditure has been incurred - should that not be included in your schedule of drawings?

A. No Sir not as such. It should be in the computation from those profits obtained.

Q. If 1100 is agreed to have been expended on personal running do you say it should not be in this schedule?

A. That is an income tax schedule Sir.

Q. Do you say it should not be in this schedule?

A. I say it should not be, it is an adjustment subsequent to it.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

Q. When you add back the sum for personal expenditure for income tax purposes does that not mean that you have incurred that expenditure for personal purposes?
A. It does not indeed.

Q. What is schedule C designed to show?
A. I identified cash items plus an estimate for food and household expenses.

Q. I see - what is schedule C designed to show? It is not therefore, if I understand your answer now, intended to show his personal drawings over the period which should be added to the difference in order to ascertain his income?
A. It does not purport to show adjustments for tax purposes.

10

Q. I am concerned about personal expenditure?
A. Yes Sir.

Q. Does it or does it not purport to show personal expenditure?
A. It does.

20

Q. If personal expenditure in 1953 to the extent of 100 - 1957, was spent on motor car expenses should it be in there?

JUDGE: You mean motor car expenses other than such expenses solely and exclusively incurred for the purposes of the **business**?

Mr. Newbold? Quite My Lord.

A. One must add it on to the profit expenditure.

30

Q. Has it been added on?
A. No Sir.

Q. Why not?
A I took the analysis of drawings for the audited adjusted - I didn't take into consideration the tax adjustments.

JUDGE: Didn't you purport to show what was on one schedule, what figure should have been assessed in the light of your figures, is that not so?

A. Yes My Lord.

40

JUDGE: So you were aware when you were preparing the report?
A. Yes My Lord.

In the Supreme Court

JUDGE: Yet you didn't think it proper to make additions or subtractions relative to the appellants income for the purpose of income tax?

Appellant's Evidence

No.38

A. I hadn't the information to identify the items.

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

10 Mr. Newbold: Throughout this entire schedule did you show any item which relates to expenditure for transport in any form, personal expenditure?
A. For Transport?

Q. Yes?

A. There is an item for transport included in the household expenses breakdown.

Q. You believe it was so?

A. Yes.

20 Q. Did you prepare these figures for food and household expenses?

A. They were obtained from my client.

Q. And were manuscript or not?

A. I have a copy of those details somewhere. They were obtained at an interview with my client and copied down.

Q. And you say they are included there?

A. 1946 and 1953. - 1946 to 1953.

Mr. Foot: I think this is the document to which the witness is referring.

A. Yes that is a copy of the document.

Mr. Foot: This was not exhibited but it was shown Mr. Rattan Singh.

JUDGE: This is the document you said you intended to prove through the accountant and you forgot to do so?

This will be Exhibit 12.

Mr. Newbold: That is prepared by who, do you know?

A. Information by Rattan Singh.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

- Q. Whose writing is that do you know? I am instructed it is Mr. Kean's writing, do you know that?
A. Now you remind me, yes.
- Q. Now that is a list of household expenses?
A. Household and other expenses, yes.
- Q. There was transport on it?
A. Car is mentioned, yes.
- Q. Where?
A. Third item up from the bottom. 10
- Q. For which year are you dealing with now?
A. 1946, the first year.
- Q. How much is allocated to car?
A. £60.
- Q. How much was the total estimated household expenses for 1946?
A. 11,700.
- Q. Shillings?
A. Yes shillings.
- Q. And for 1947?
A. 11,960/-. 20
- Q. Anything for the car?
A. Yes, another £60.
- Q. These lists contained items of food, water, light, education, rates, car, clothing and general?
A. Yes sir.
- Q. And the items for food in that list amount to about £300-350 a year is that correct?
A. That is right sir. 30
- Q. They vary slightly from year to year?
A. Yes Sir.
- Q. Do you know how many people were in Rattan Singh's household?
A. Not exactly Sir.

Q. Did you make any attempt to check those figures?
A. No Sir, my client was asked to make a careful estimate of his personal household expenses. I could not possibly ascertain what he ate or the manner in which he lived. I have stated on the schedule 'estimated household food expenses'.

In the Supreme Court

Appellant's Evidence

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Q. Did you make any attempt to check those figures - the answer is no?

A. No.

Anthony Marcus Blackhall

Cross-Examination 14th June 1960

(Continued)

Q. Did you hear Mr. Cook give evidence in the box?

A. Yes Sir.

Q. Did you hear him say that if you were preparing an estimate for personal expenditure you would have to ascertain the amount of meat, the particulars of vegetables and things of that sort?

A. I do recall something of that nature.

Q. You made no effort to check that?

A. No it would have been exceedingly difficult to ascertain that.

Q. In 1954 did the accounts show that £330 were spent for jewellery?

A. 6600/- - 1954, I have got no indication here of the jewellery Sir. I have the cash items drawn, a gentleman by the name of Jannadas. His account is shown as 4631. There is no 6000/- I am sure.

Q. Do you know it was agreed that that sum had been spent for jewellery?

A. No Sir.

Q. If it had been spent should it not be included in the schedule?

A. Yes unless - in these circumstances, yes.

Q. Now go back to 1957. Do the accounts show donations in the accounts themselves?

A. Well I will accept your statement.

Q. If there are donations should that not be added to this schedule?

A. Well Sir as I stated previously it is an adjustment on the tax figure.

In the Supreme Court

Q. If there are donations in any year should it not be added to this schedule?

A. Yes.

Appellant's Evidence

No.38

Q. Have you examined whether they were?

A. No Sir I relied on the analysis of drawings attached to the accounts.

Anthony Marcus Blackhall

Q. In 1946 did you know there were also donations?

A. They are in the account, 1630/-.

Cross-Examination 14th June 1960

Q. Should that not be added back to this schedule?

A. To ascertain total tax, yes, Sir.

10

(Continued)

Q. Is there also profit legally expended in that year amounting, I think, to 2317/-?

A. I have not got those details Sir.

JUDGE: 1956 is outside my period?

Mr. Newbold: 1954, 1955, 1956, 1957 are all outside the period, they have been brought in by reason of the schedule.

JUDGE: Surely I am concerned merely with the question of whether the appellant has shown that the assessment to tax in respect of year prior to 1954 was excessive.

20

Mr. Newbold: Perfectly true Your Lordship.

JUDGE: So the details of what you regard as errors in the accounts, in the schedule for the years subsequent to 1954, are irrelevant, although it may be the fact that this witness has constructed schedules, not having regard to matters not included which may serve the cast doubt upon his figures in relation to earlier years, but the details are irrelevant.

30

Mr. Newbold: It is not merely a question of throwing doubt upon the question of figures in the earlier years, but in order to arrive at the income for the years under dispute he has had to take two periods, which included years outside the dispute, and then add on to the difference the amounts set out in those subsequent years.

JUDGE: He has virtually endeavoured to work out an average income. I don't think the details of the particular entries had been, as you say, wrongly admitted, or all entries which ought to have been made but have not been made, I don't think those details affect me outside the relevant period but this is the period to which the appeals strictly refer.

In the Supreme Court

Appellant's Evidence

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Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

10 Mr. Newbold: Except that this total 414,000 I think, and that is a figure used in the report for the purpose of ascertaining the income for the year in question.

Q. Do you know that the accounts show expenses of private legal purpose?

A. These accounts are audited.

JUDGE: Will you try and answer the question?

A. I know the accounts show an amount of legal expenses, I do not know that they have been disallowed for tax purposes.

20 Mr. Newbold: Do you know the accounts show there has been an agreement, there should be added back a sum for personal medical expenses?

A. No Sir but they could easily be absorbed in the total household expenses.

Q. I suggest that the sum in this particular case was \$100. Do you know that in that year that motor expenses added back as personal expenses totalled 11,000/-?

Mr. Foot: What year?

30 Mr. Newbold: 1956?

A. No Sir.

Q. Did you bother to find out how much had been added back in that particular year?

A. I relied on the audited accounts and the breakdown in the drawings.

Q. Do you mean you shut your eyes to anything inconvenient?

A. I went to some trouble to take out the Indian expenditure in the drawn schedule.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

Mr. Newbold: Do I understand from your report that you have separated the property owned by Gian Singh from the other properties?

A. In respect of rent, yes.

Q. That is because, rightly or wrongly, your report was prepared on the basis that this property, Gulsaar Street, belonged to Gian Singh and therefore no income from it can be attributable to Rattan Singh is that correct?

A. Yes.

Q. And equally well I assume any expenditure of that money from Gulsaar Street cannot be attributed to Rattan Singh?

A. That is true Sir.

Q. Now will you look at your Schedule C. Now you see "Remitted to Gian Singh in U.K." for the years 1949, 1950, 1951, 1952 and 1953 various sums totalling over 40,000/-?

A. Yes.

Q. Are you saying that that money was spent from Rattan Singh's income or not?

A. I understand so.

JUDGE: Tell me, what happened to Gian Singh's rents though, did they wait in a bank awaiting Gian's return to them, in your view I mean?

A. They were taken into the account of Rattan Singh and then an adjustment was made, in I believe 19....

JUDGE: So you didn't understand that Gian's rents were being used to maintain Gian when he was in England?

A. No My Lord, they were treated as rents.

Mr. Newbold: Education expenses now, if I understand correctly, then the list which was in Mr. Gian's hands showing personal expenditure includes an element for education?

A. I believe so, yes.

11.0 a.m. 14th June, 1960

Cross-examination (continued)

Q. Would you look at the list and see how much expenditure for education is ? A. £12 in 1946.

- Q. How much in 1947 ? A. Fifteen. In the Supreme Court
- Q. And how much in 1948 ? A. Twenty. Appellant's Evidence
- Q. 1949 ? A. 1949 is fifteen and note Gian's trip to England and expenses there - 1949 is the trip to India - paid 3764 to Thomas Cook. No.38
- Q. In 1949 what was the figure for education as set out in that list ? A. Remittance to Gian, 2006 and tuition fees nil. Anthony Marcus Blackhall
Cross-Examination 14th June 1960
- 10 Q. Did you mention a figure earlier for education on that list for 1949 ? A. £15. (Continued)
- Q. 1950 how much ? A. Ten thousand to Gian Singh and nil under tuition.
- Q. There was nothing for education other than Gian's remittance to England ? A. That is true.
- Q. 1951 ? A. Sh200/- is shown, plus
- Q. Plus Gian ? A. Yes, £16.
- Q. And 1952 ? A. Remittance to Gian and that is all.
- 20 Q. No education ? A. No, plus Gian again.
- Q. 1953 ? A. No education.
- Q. Do you know that Mr. Rattan Singh, in the answers which he gave to Colonel Bellman, gave an estimate of education expenses for his children ? A. No sir.
- Q. The letter of the 17th December, 1956, which enclosed the certificate and the answers to the questions, it forms part of Exhibit two.

JUDGE: Mr. Newbold, I think when we started our programme of early sittings, I was asked to rise for a short time at 11 o'clock, It is my recollection, I think you said the strain was almost intolerable. Shall we rise now for ten minutes ? Would that be convenient to you ? It may save time in the long run.

COURT ADJOURNS: 11.5 a.m.

(WITNESS INFORMED STILL ON FORMER OATH)

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 14th June 1960 (Continued)

Q. Mr. Blackhall, Mr. Rattan Singh, in answer to some questions put to him by Colonel Bellman said this;

" Q. During the same ten years you educated four sons. Could you give a rough idea of the expenditure so incurred?
A. Gian Singh - £225 for 1946 to 1948. He then went to the U.K. and expenses were borne out of his rents. Bhajan Singh, £480, Surjit Singh, £480, Inderjit Singh, £360. "

Did those figures for household expenses include sums that year? A. No sir.

Q. I understood you to say, Mr. Blackhall, in answer to My Learned Friend, in Examination in Chief, that you considered ten per cent of turnover a reasonable figure to utilise in order to ascertain the amount of stock, did you say that? A. I do not recollect that sir, ten per cent of turnover to ascertain stock? 20

Q. Yes. A. It could be as reasonable as any other but I do not recollect making that statement, but as far as arbitrary stock figure is concerned, it is as reasonable as any other.

Q. Can you suggest any which is more reasonable? If you have not got satisfactory records of stock and you intend to build up an estimate of value of stock in possession, what figure would you, as an accountant, take on turnover? A. I personally would prefer to work on the purchases and ascertain the purchases prior the year end. One could get a better figure that way, unless there is fairly good evidence of past experiences of accounts, which would give one an indication of what the ratio should be. 30

Q. Do I now understand you cannot give any figure, or you cannot suggest any figure, any percentage figure, in turnover, as being a 40

stable figure to utilise for the purpose of ascertaining the estimated amount of the stock ?
A. Any rough stock estimate must be something in the region of an intelligent guess.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960

(Continued)

- 10 JUDGE: I think what Mr. Newbold is asking in effect is, would you like to make an intelligent guess at what would be the appropriate figure ?
A. 10% would be fair. Subject to circumstances which would make that figure obviously wrong, that is merely on information of course.
- Q. Quite obviously an estimate may be wrong, up or down, but you do, as an accountant have to make estimates of a number of things, on a number of occasions ? A. Not on so many occasions as you suggest. What one normally does is to work from the records available, rather than estimates.
- 20 Q. You have, for the purpose of this report, made a number of estimates ? A. Yes, I made at least one, yes, several.
- Q. Now in answer to My Learned Friend, I understood you to say, to use the figure 190,000 or 193,000 or 95,000 when referring to the stock, to the turnover for 1953. I am afraid I did not get the note correctly ? A. What was it in relation to, sir.
- 30 Q. In relation to turnover of stock, amounts of stock that had been added back ? A. By the Income Tax.
- Q. Yes ? A. The amount of stock that was valued was 140,000, plus the addition on a flimsy schedule. Is that the matter to which you are referring sir.
- 40 Q. Now if you think that subject to any particular circumstances, ten per cent is, ten per cent of turnover is fair - is a fair figure to ascertain the stock; I understand from your report that your turnover for 1952 was Sh 1,380,000/-? A. Yes sir.
- Q. Is that a precise figure or an estimated figure?
A. It is rounded off, but is based on a precise figure and is adjusted by the estimated debtors.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
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Cross-Examina-
tion 14th June
1960

(Continued)

- Q. Well now, taking that figure, what would ten per cent of that be ? A. 138,000.
- Q. Do you know how much, for the purpose of this income tax assessment, the stock was taken to be in that year ? A. 1952?
- Q. 1952. A. No sir.
- Q. Do you know they started in 1948 with a figure of 28,000, as certified by the management ? A. Yes.
- Q. And they added 11,000 each year ? A. Yes. 10
- Q. So if you start with 20,000 in 1948 and you add 11,000 each year, what do you get up to in 1952 ? A. 44,000 plus 20, which is 64,000.
- Q. And 10% of your figure of turnover for that year is 138,000 less than half ? A. It does not mean to say that 138,000 is the correct figure of course.
- Q. Are you suggesting your figure 138,000 is not correct ? A. I did not say my figure sir, you have taken ten per cent of my turnover. 20
You asked me to give arbitrary percentage and I say it depends on the circumstances.
- Q. Would you agree the amount of stock added back that year is a half of what you have said would be a reasonable percentage in the absence of any precise information and particular circumstances ? A. Yes.
- Q. Now take the year 1953, your turnover is given as 740,000 ? A. Yes sir.
- Q. Ten per cent of that is what ? A. 74,000. 30
- Q. As far as Income tax calculations are concerned, they have suggested stock at that date should be 75,000 ? A. I understood that the total stock that has been brought in is 75,000, yes.
- Q. Do you see anything outrageous in that figure ? A. It could easily be outrageous.
- Q. And it just as easily could be correct ? A. Providing it is carried forward to the next year.

Q. Let us go back to the year as far as 1953 is concerned, you see nothing outrageous, it comes very close to your ten per cent. It is a little higher for the year 1952; it is about half of your ten per cent, based on your turnover figures. For the year 1951 your turnover figures are 700,000; ten per cent of that is 70,000? A. Yes.

In the Supreme Court

Appellant's Evidence

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10 Q. In that year how much do the assessments base as being the estimated holding of stock?
A. 1951?

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tion 14th June
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Q. 1951. A. 33,000, plus 20, 53.

(Continued)

Q. Again less than half ten per cent. 1950, 46,000 is ten percent of 460,000? A. Yes.

Q. How much is the stock in that year, for the purpose of Income Tax calculations? A. 42,000 These figures are very arbitrary; if it is allowed in the next year.

20 Q. Can you say that there is anything which surprises you in adding these figures of stock in the relevant years, having regard to the turnover? A. I understand that the total of the stock for 1953 is not carried forward until 1954.

Q. What has that got to do with these figures?
A. If you build up a stock figure it must, of necessity, be carried forward.

30 Q. Mr. Blackhall you do not propose to go into the years, 1954, 1955 and 1956, these years have been agreed for Income Tax purposes have they? A. Yes.

Q. We are dealing with the stock figures as added back for the purpose of Income Tax calculations for these years. Do you say there is anything outrageous in these stock figures add back?
A. The only thing is they are completely arbitrary.

40 Q. Quite, they are completely arbitrary, but was there any information as to the amounts of stock? Did you have any information? A. No sir.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 14th June 1960 (Continued)

Q. And you have already said that ten per cent by and large, normally, in the absence of special circumstances is a reasonable figure. Is there anything which you see unreasonable in the amounts added for stock ? A. Mr. Thian ...

Q. Will you answer my question ? A. No.

Q. I may be wrong, but I understood you to say that in answer to My Learned Friend, that in 1953, the total amount of stock was a quarter of the turnover ? A. Total stock and work in progress was it not.

10

Q. I am asking you, did you say anything about a quarter of the turnover in relation to stock ? A. That was stock and work in progress.

Q. For the purpose of that answer, did you add stock, as determined for income tax purposes, the purposes of this assessment and the work in progress and they related that figure to the turnover ? A. I would like to refer to Mr. Thian's accounts I think.

20

Q. I understood you to use the figure a quarter of a total ? A. Total stock and work in progress is Sh 195,000/- a quarter of the turnover is 180.

Q. And it is that combination which you have stated is a quarter of the turnover ? A. Yes.

Q. So, for the purpose of your comparison you have added stock and work in progress and related that to turnover ? A. Yes.

30

Q. Now, why have you done so ? A. Well, work in progress must have direct relation to the turnover.

Q. Why have you added work in progress to stock ? A. Well sir, these two items are of a similar nature. For instance, if cement is in the store, it is stock, if cement is on the site it becomes work in progress, so it is not easy to define ...

Q. Do you know whether the on-cost or direct cost method has been used? Do you know there are two methods? A. Yes sir.

In the Supreme Court

Q. Do you know the difference between them? NO ANSWER.

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Q. Do you know the difference between them? A. I do not recollect.

Anthony Marcus Blackhall
Cross-Examination 14th June 1960

JUDGE: You do not recollect? A. At the moment sir.

10 Q. When were you qualified? A. 1952.

(Continued)

Q. What would you expect to be included in the item work in progress? A. All the work which has been certified at the end of the accounting year, which has not been paid for.

Q. And that work would include what? A. It would include labour and so forth.

Q. It would include labour? A. Materials and various other things, such as allocation of the overheads and so forth.

20 Q. And ..

JUDGE: Do you want to modify your answer. I understood your answer to be that you regard as work in progress, work which has been certified for, but has not yet been paid for. A. I do want to modify it slightly; certified and not paid for becomes a debtor and the work in progress and not certified will be work in progress.

30 JUDGE: So your original answer you would like to withdraw. It was wholly inappropriate. If work has been certified for, it is not work in progress, the work has been completed? A. No, it becomes a debtor.

Q. Your answer is work in progress, is work in the process of being carried out? A. Yes My Lord.

JUDGE: It has not yet reached completion? A. Yes My Lord.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Cross-Examination 14th June 1960
(Continued)

- Q. When we are dealing with this question of stock, would you like to explain to his Lordship why you added work in progress to stock, in order to relate it to turnover A. Because the two items are of a similar nature.
- Q. Which two items ? A. Stock and work-in-progress.
- Q. Work-in-progress I think you have already said includes cost of labour ? A. On the direct cost basis, which includes the cost of labour and material... 10
- Q. And on the on-cost basis which also includes cost of labour ? A. Indeed, yes.
- Q. You remember the difference between them now ? A. Yes.
- Q. What is the difference ? A. On the on-cost basis you take into consideration your overhead charges.

JUDGE: You have just said from the direct cost basis work in progress includes cost of labour and the value of materials on the site, is that correct ? A. Yes, My Lord. 20

JUDGE: Surely all materials on the site which have not been used in the actual construction of the building are stock in hand ? A. I understand, My Lord, that materials on the site are often included in the certificate. That is my understanding of it. It is a technical matter....

JUDGE: What I am getting at is this, if I am right in thinking that the materials on the site which have not yet been used, form part of the stock in hand, then surely work, in the amount estimated, in relation to the work in progress, should not be added to the full amount of stock in hand, because there you are taking the value of the same thing twice over ? A. I could not agree more My Lord fact, there is a small stock, because materials are transferred on to the site and absorbed in work in progress and it could quite easily be these are on that basis. I was led to the conclusion that ten per cent was reasonable, but it may not be reasonable at all. 30 40

JUDGE: Ten per cent might be a reasonable figure in relation to stock in hand, but no figure can be reasonable if it is going to be counted twice part as what he has as stock in hand and part in estimated value of work in progress.

A. It will not be calculated twice, it will either be removed from stock

In the Supreme Court

Appellant's Evidence

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10 JUDGE: But can it be removed in the absence of records? A. In the absence of records you are taking an arbitrary figure in any event, My Lord.

Anthony Mason's
Blackhall
Cross-Examina-
tion 14th June
1960

(Continued)

Q. Did you make any enquiry at all into the stock held by Mr. Rattan Singh? A. It was not necessary, that was the object of going through to 1957 to get the stock figure.

Q. During the course of your investigation did you know the figure 20,000 was certified by the management, the exact same figure for each year?

20 JUDGE: As stock in hand?

MR. NEWBOLD: Yes.

WITNESS: Yes, it was obviously a round estimate.

30 Q. Would that not surprise you that the same stock precisely, should be certified in each year, over a large number of years? A. It could represent facts you know sir. Asian business men are not in the habit of tying up more money than they can avoid and they keep a small stock and material goes direct on to the site in order to collect the money.

Q. It could represent it? A. Yes, I must assume the fact in round figures, they have got around about one thousand pounds

Q. It could represent the fact the moon is made of green cheese? A. No sir, I think my proposition is quite fair.

40 Q. I do not know what your proposition is. You have added on this figure of Sh 120,000/- for work in progress and you do not know what it represents but will you agree with me on any system it would include an element of labour?
A. Oh yes.

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Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Cross-Examina-
tion 14th June
1960
(Continued)

- Q. You have chosen to add a figure which includes an element of labour to stock, in order to say that the income tax assessments resulted in the stock being taken as a quarter of the turnover ? A. Stock and work in progress.
- Q. Work in progress includes an element of labour you have chosen to add cost of stock to say stock on the income tax computations results in about a quarter of turnover is that so ? A. That is so. 10
- Q. Why have you done so ? A. Variation of labour and work in progress would not be so much as to make that proposition ridiculous. We are talking in round figures. You have £9,000 for the year and if you say work in progress represents say 1/10th for the year, there is £900 in the work in progress. On the total of Sh 200,000/- there is a possibility
- Q. Do you know Mr. Blackhall that there was difference between the cash book expenditure and labour and that shown in the muster rolls over the year 1948 to 1953; a difference of over £22,000 ? A. Yes sir. 20
- Q. It is not merely the amount expended on labour but the difference between expenditure as shown in the cash books and the labour as represented by the muster rolls. Does that not strike you as being a rather high figure ? A. Not at all sir, for the simple reason the muster rolls are not complete and if I might quote from my notes, there appears for six months 1951, January to June, a total in the muster rolls of Sh 117,594/97 and the wages in the cash book as taken into account amounted to Sh 97,261/15, so in one period of six months there was an excess in the muster rolls of £1,000, taking this arbitrary figure. That period for 8 years, it could reasonably be £1,000 either way. This was the only period, to the best of my knowledge, where the muster rolls were complete for a time. For 1951 we had one month missing.... 30 40
- Q. That is all very interesting Mr. Blackhall. Was there a difference, whether the muster rolls were missing or not, between the

expenditure as shown in the cash books and the labour as shown in the muster rolls ?

A. Available.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
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Cross-Examination
14th June
1960

(Continued)

Q. Over the years in question, 1948 to 1953, of over £22,000? A. Yes, there was a difference between the muster rolls available, not completed muster rolls.

10 Q. If there is any further explanation My Learned Friend can get it from you. Do you know, that in arriving at these assessments, in spite of that difference the Income Tax authorities, allowed it, as according to the cash books, in other words, they did not add back that difference? A. I know they did not add back that difference.

20 Q. You have mentioned to My Learned Friend, in answer to My Learned Friend, your comments on the Sh 10,000/- for African wages. Do you know how that Sh 10,000/- came to be added back? A. I believe it appears in Mr. Thian's ledger.

Q. Is this not the position, that quite apart from this difference between the cash book and the muster rolls, the cash book did not show the expenditure during the year 1948 of about Sh 29,000/-? A. I have got some figures on that. I think your figure could be reasonable, but I would have to refer to my notes.

30 Q. Do you know that Mr. Thian allocated alleged excess expenditure against the actual cash as follows: 12,000 to Mr. Rattan Singh's drawings, 10,000 to labour and 7,000 to travelling expenses? A. I did not know that allocation.

Q. Did you not read the report? A. I have read it through yes.

40 Q. Well you are commenting upon this figure of 10,000 and do you mean to say you never bothered to ascertain all the facts in relation to this figure of 10,000? Do you know how that figure of 10,000 arose? A. I believe that figure of 10,000 is debited in Mr. Rattan Singh's drawings account in addition to the Wages account.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall

Cross-Examination 14th June 1960
(Continued)

Q. Do you see anything wrong, Mr. Blackhall in adding back 10,000 to African wages, when there is nothing either in the cash book or in the muster rolls to support it? A. It depends whether the balance in the drawings account is reasonable. In fact that Sh 10,000/- has been debited to Rattan Singh's drawings account to arrive at the Sh 27,000/-. It is also contained in the wages account.

Q. It was according to Mr. Thian this deficiency of Sh 29,000 was to be allocated in three ways, partly to Drawings, partly to African Wages and partly to Travellings expenses, is that correct? A. Yes. 10

Q. Now two of these ways would have presumably... A. African wages and travelling expenses.

Q. He has allocated this unexplained figure in three ways and the Income Tax Authorities have said: "Oh no, we will let one of them be deductible it is absolutely unexplained and make two of them not deductible." 30

Do you see anything unreasonable in that? A. No sir, but I do not understand the entry in the book in respect of it. If I might have Mr. Thian's ledger.

Q. Now, round sum contracts, you have commented on that also I think. Do you know what these figures are supposed to represent? A. Various round sums for salaries and so on, debited to the contract accounts.

Q. Various round sums in the accounts as shown in the books, which were stated to be debited to contracts as expenditure on contracts, is that correct? A. That is what they purport to represent.

Q. And therefore, deductible in ascertaining Mr. Rattan Singh's income? A. No, not necessarily.

Q. If it was expenditure of contract? A. Yes.

Q. Now, do you know that Mr. Easterbrook said: "Well, unless you can satisfy me these expenses

were in fact incurred in the production of the income, they will be added back" ?

A. Yes, that is what I understood him to say.

Q. But you make no enquiries to ascertain whether these accounts did, in fact, had in fact, been expenditure in the production of the income ?

A. We took no round sums into account, we worked on the cash basis until the end of our period.

10 Q. I understood you to start your evidence by saying you had tried to arrive at a yearly ascertainment of income by going through the books and had found yourself unable to do so, is that correct ? A. Broadly yes sir.

Q. Now, in your attempt to arrive at the yearly ascertainment of income by going through the books, you never checked this matter ?

20 A. No sir, we worked on a different basis. We prepared our analysis and our statement of worth accordingly.

Q. Do you mean now to say you never tried to arrive at Mr. Rattan Singh's income from his books ? A. Yes, from the ledger written up by Mr. Thian, not from his books.

30 Q. Do I understand you to say that you never tried to arrive at Mr. Rattan Singh's income from his books ? A. You did not understand me to say that sir: we ascertained Mr. Rattan Singh's income on a first-hand basis, rather than a second-hand basis, in taking Mr. Thian's

JUDGE: How do you mean first-hand basis ? Tell me what you did ? A. By taking, as stated earlier, the bank pass books, cash books, pay-in slips and other evidence we needed, cheque stubs and other information that was available and building up our statement of worth every year, in the first instance, on a cash basis and thereby arriving at a Receipts and Payments account every year. Having done this we decided that as the valuation of 1953 of debtors, creditors and stock and work-in-progress, mainly stock and work-in-progress, had not been agreed, we decided, and I had instructions to that effect, to carry forward my investigation with the aid of the audited accounts to 1957. Thus the question of creditors did not arise in the years.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
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Cross-Examination
14th June
1960
(Continued)

- Q. Therefore do I understand you correctly, you never went to the books in order to try and arrive at Mr. Rattan Singh's income ?
A. I did not go to the ledger.
- Q. Could you possibly arrive at his income without going to the ledger ? A. Certainly.
- Q. You can ? A. Yes.
- Q. From the books ? A. From the records available.
- Q. Do you know that the Income Tax computations include an item called shortly " round sum of creditors " ? A. Yes sir. 10
- Q. These items have been added back ? A. Yes.sir.
- Q. Do you know what they represent ? A. They purport to represent round sum items paid to various individuals, debited in Mr. Thian's account and calculated in as creditors.
- Q. They are stated to be amounts owing by Mr. Rattan Singh to the persons named ? A. Yes.
- Q. Do you know Mr. Rattan Singh was asked to obtain a statement from the persons whom he said he owed to, that he owed money to them ? A. I do not recollect that. 20
- Q. Do you know that where these accounts were round sums, they were added back ? A. They are added back.
- Q. Would you consider it unreasonable to add back an item which appears in the books as creditors if the taxpayer did not produce proof that they were in fact creditors ? A. Yes sir, I would consider it unreasonable if corresponding credit was not given in the next year. 30
- Q. What has that got to do with the next year ? A. A creditor is essential to balance the figure

JUDGE: We are not concerned with figures, we are concerned with facts. Mr. Newbold has asked you whether you would consider it unreasonable for the Income Tax Authorities to refuse to

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accept a statement that monies were owed by the taxpayer to a particular person, if the taxpayer, when asked to produce a statement from the particular person that these monies were owing to him, failed to do so? A. That is not unreasonable.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus
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tion 14th June
1960

(Continued)

- 10 Q. Although what the reason is or otherwise, of the conduct of the Income Tax Authorities, I fail to see. I thought they were entitled to be as unreasonable as they like, so long as they are right in their assessments.
- Q. Going through these income tax assessments very quickly Mr. Blackhall, you being an accountant, brought in to represent the taxpayer, would it be correct to add back to the profits returned by a taxpayer, the amounts spent as donations? A. Yes.
- 20 Q. Would it be correct to add back legal expenses, other than those presumably for deduction? A. Other than those presumably for deduction yes.
- Q. You have mentioned I think to My Learned Friend in your Examination in Chief a reference to this figure of Sh 91,000/- which appears as work-in-progress and adjustment on the income tax computations? A. Yes.
- Q. Do you know what that represents? A. The work-in-progress in 1947 was considered to be too low and was increased.
- 30 Q. Is it not the position, Mr. Blackhall, that Sh 91,000/- was the amount received for 1948? A. Yes.
- Q. And it was then stated, as it related to work-in-progress in 1947, it should be taken out of the 1948 figures and thrown back into 1947? A. Yes.
- Q. Do you see anything unreasonable about that? A. Yes, indeed.
- 40 Q. What? A. Because the estimated profits as shown in the present turnover basis and the addition to the profits for 1947, by the addition of work-in-progress and also by the figure, in other words, Sh 9,000/- and not Sh 90,000/-, by bringing in work-in-progress, you merely adjust the turnover, do you not?

In the Supreme Court

Q. Do you know Sh 91,000 represents money received ? A. Yes, approximately.

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No.38

Q. If it was received in respect of work-in-progress, in 1947, would it be right to take it out of 1948, and throw it back into 1947 ? A. Yes, I am not disputing

Anthony Marcus Blackhall

Q. You are not disputing that figure ? A. No.

Cross-Examination 14th June 1960

Q. What are you disputing ? A. I am disputing the addition of 33,000 to 91. It should be 9,000 plus 33, making 42.

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(Continued)

JUDGE: I thought a minute ago you said it was not unreasonable for 91,000 received in 1948, in spite of work-in-progress in 1947, for that sum to be removed from the account of 1948 and taken back to 1947 accounts ? A. Yes, but if you add an actual figure for work-in-progress - providing the figure in 1947 was estimated on the present basis - on to a profits figure, calculated on that basis, the number is wrong. What one must do is to adjust the turnover first and then take ten per cent. I trust I am clear. It is true estimated profits come from Mr. Thian's report is it not ?

20

Q. You have estimated the turnover in 1947 at 630,000 ? A. Yes, not estimated, it is an actual figure.

30

Q. Actual turnover in 1947 ? A. No it is estimated 575.

Q. I think you amended it to 580 ? A. Yes.

Q. All of these figures in fact of turnover are they definite or are they estimated ? A. 1946 and 1947 are only estimated in relation to rent which is adjusted, the other years are the total of contract cash income, plus or minus, adjustment for debtors, opening and closing debtors in each of the years.

40

Q. Mr. Blackhall I understood you to say earlier that you could not prepare figures in relation each year because you did not have the figures of debtors and creditors, is that so ? A. We had no figures for creditors, we had estimates of debtors merely for the purpose of getting turnover figures.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

- Q. I understood you to say earlier you could not prepare figures because you had no actual figures for debtors and creditors ? A. Yes, that is true.
- Q. You have taken ? A. Estimated debtors ...
- Q. For the purpose of ascertaining the turnover ? A. Yes.
- 10 Q. Why could you not take exactly the same thing for the purpose of ascertaining his yearly income ? A. Because it would only take us half way. I would still have to estimate our stocks and creditors.
- Q. Is there anything here in the turnover which is not estimated ? A. They all contain estimated figure of debtors ...
- Q. Would you like to point to any figure in your entire report which is not estimated ? A. The figures of 1954 to 1957.
- 20 Q. The figures outside the period under review ? A. Yes, and the rents received.
- Q. These are the only figures not estimated - these figures for 1954 to 1957 - it was not taken from the commercial accounts ? A. 1954.
- Q. It was an agreed tax profit ? A. Yes.
- Q. 1955, 1956 and 1957 were taken from the commercial accounts ? A. Yes.
- Q. Which were not accepted for the purpose of income tax ? A. Yes, they were accepted subject to adjustment.
- 30 Q. You say rents received is the other figure which is precise, is that correct ? A. Yes, subject to those two years.
- Q. So we start now with the first two years, they are estimated ? A. They must be
- Q. And in fact Mr. Blackhall you changed your mind between the 3rd and 6th June, as to the amount of the estimate ? A. That is so.

In the Supreme Court Q.

Appellant's Evidence

No.38

Anthony Marcus
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1960
(Continued)

- Q. So that if I understand you correctly you could not prepare accounts for each year because it involved a lot of estimates but you have presented a figure of each, estimated other than the rents, for 1948 to 1953 and the amount of income for the four years outside of the review is that what you say ?
A. That broadly is the position.
- Q. Is it narrowly the position ? A. The turnover figures are estimated in relation to the debtors, otherwise are factual. 10
- Q. It ... A. It represents turnover income, subject to the adjustment for the debtors.
- Q. Could you swear in that box that you have obtained all the turnover income ?
A. Contract income I cannot swear, no.
- Q. Then why do you swear, because that is what you are doing, that the figures are factual ?
A. They are factual as far as they can be ascertained. 20
- Q. Did I understand you yesterday to say that until after the 3rd June, you had no figures at all for contract income for 1948 I think it was ? A. 1948, yes, I believe so.
- Q. Do you still say these figures are factual ?
A. In as far as they can be ascertained yes.
- Q. In so far as they can be ascertained. Do you suggest the information you have received is the only contract income that Mr. Rattan Singh received ? A. No, not at all. 30
- Q. Well, how could that be factual ? A. Because the contracts income was received from the contracts by means of cheque that Mr. Rattan Singh placed in his bank account and having carried out these tests, I have no reason to believe that contract income has been omitted.
- Q. You have prepared this report on the basis that Gulsaar Street property is Mr. Gian Singh's income, do the accounts and the end of 1957, or any other accounts show Mr. Gian Singh? Do the audited accounts at the end of 1957 show Mr. Gian Singh as creditor ?
A. He is not shown in the accounts as creditor. 40

- Q. The schedules attached to your report, were they prepared under the basis he was a creditor ? A. Creditor for whom.
- Q. That Mr. Rattan Singh was owing him money ? A. Mr. Rattan Singh was owing him money personally - not it did not.
- Q. But as far as you knew Mr. Rattan Singh had had that money ? A. Creditors being through the books of the partnership.
- 10 Q. You have given certain figures for Corefani as being contract income, would you mind giving these figures again. They relate to the year 1953... A. To the years 1951, 1952 and 1953.
- Q. I see. Have you got any details of contracts taken by Mr. Rattan Singh in 1953 ? A. Yes, there is one, Corefani and loan....
- Q. We are dealing with Corefani, 1953. What was the amount of the contract, do you know ? A. Total amount Sh 1335,404/-.
- 20 Q. For 1953 for Corefani ? A. Not for 1953, that is the total.
- Q. That ...
- JUDGE: You were asked about 1953 contract ? A. Sh 375,000/-.
- Q. Is that the amount received or the total amount of the contract ? A. Amount received in 1953.
- Q. 370,000 ? A. Yes 375,000.
- 30 Q. Do you know the amount of the contract ? A. The total amount is 1,335,000.
- JUDGE: You were asked what the amount of the contract was and your reply was the amount received in 1953 was a certain figure. A. That is the amount received in respect of that contract.
- JUDGE: What was the contract price for the work required to be done under contract entered into in the year 1953 ? A. That is the total figure I have given, it was entered into in 1951.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

In the Supreme Court MR. FOOT: I think the witness did say, it relates to the years 1951, 1952 and 1953.

Appellant's Evidence
No.38
Anthony Marcus Blackhall
Cross-Examination 14th June 1960
(Continued)

JUDGE: After he was asked particularly in relation to contracts entered into in the year 1953, at least that is what I understood. Were any contracts entered into in the year 1953 in relation to Corefani? A. That is all one contract My Lord.

JUDGE: Now Mr. Newbold, you have got your answer, Corefani was all one contract. 10

Q. Do you see a letter from Rattan Singh. Will you read the second paragraph "City Council Nairobi, African Housing Corefani".
A. "I give below the details of the contracts taken by me during the year 1953. He goes on to mention Bahati. City Council, Nairobi re: African Housing Bahati Sh 14496/-...

JUDGE: Will you read the paragraph you are being asked to read.

WITNESS: Cross Amount 14496; Actual work completed in 1953 Actual work completed in 1953 20
345368.00

Q. Now how does that compare, tie up with the figures you have given us? A. The first item "African Housing Bahati" comes in the item as payment in 1953.

Q. Figures of contract income? A. Yes.

Q. How much do you include in your figures, contract income for Bahati? A. 14,496.

Q. And how much does that say? A. Sh 14,496/- 30
"African Housing Corefani, Actual work completed 1953, 345,368. I believe the figure I have here is 375,747 - total 375,747 and 88 cents.

Q. But the total as returned by Mr. Rattan Singh was less? A. Yes, slightly yes, he may have had a variation not brought into the account.

Q. When is that letter? A. Dated 4th March, 1955.

Q. Is there - would there be any variation which he has not brought into account by that date, for work done in 1953? A. I do not think so.

MR. FOOT: This letter "3" in the bundle - Exhibit 1.

COURT ADJOURNS 12.35 p.m.

14th June 1960 2.10 p.m.

Witness warned still on oath

10 Re-examination of Mr. Blackhall (Continued)

Mr. Roland: When did you complete the first draft of the report?

A. I submitted the first report of the, I think it was the weekend of the 5th May or 7th May.

Q. I am referring to the report in this case?

A. To the - 3rd June.

20 Q. And when did you commence to compile that report?

A. On the report itself on the Wednesday of the week preceding the report itself.

Q. What do you mean, the week preceding?

A. The week preceding the 3rd, which I think is a Saturday.

Q. The Wednesday in that week?

A. Yes Sir, the Wednesday in that week.

30 Q. That would be about the 1st. Can you commensurate it with the time I arrived in the Colony?

A. Yes Sir, I made a start.

Q. I arrived on the Thursday. He says he started on the Wednesday and I arrived on the Thursday. So you had the whole of Wednesday, or part of Wednesday?

A. The whole of Wednesday.

Q. And the whole of Thursday?

A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Cross-Examination 14th June 1960

(Continued)

Re-examination

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Re-examination
14th June 1960
(Continued)

- Q. And the whole of Friday?
A. Yes, subject to normal interruptions that one gets in a busy practice, which are considerable.
- Q. And then you discovered some adjustments and set out a second report. When did you start that?
A. The second report was begun on the afternoon of the 3rd and I then worked through the Sunday until 1 a.m. on Monday morning to do the 10 second version.
- Q. Do you think that you had adequate time to get all the figures correct or have you had inadequate time?
A. I think it fair to say, Sir, that I had inadequate time for the - to get the figures correct.
- Q. The Post Office Savings Bank Books for instance, when did you get hold of these?
A. My assistant got hold of them sometime I believe, during the week preceding the issue of the report. 20
A. Few days before the Saturday, I don't know the exact date when he got hold of them and I naturally looked at them and the variation between that and the figure put in was so small that I naturally took no further action. Had it been large I would have taken further action.
- JUDGE: Can you tell me when was it you were first instructed in this matter?
That is in relation to this litigation, I am not referring to your instructions to audit accounts? 30
A. I have never received instructions to audit accounts.
- JUDGE: When were you or your firm first instructed to prepare accounts with a view to giving evidence in relation to this appellant at present before the Court?
A. Late January, early February My Lord.
- JUDGE: So since, at the latest the middle of February, you have known that you would be required to give evidence in these proceedings and to give evidence in relation to the 40

accuracy or otherwise of Mr. Thian's report and figures? Would that be correct?

A. Yes My Lord.

JUDGE: So you have had ever since the middle of February to arm yourself with whatever material you found to be necessary for your purpose?

A. Yes My Lord.

JUDGE: And what was it you started to do between the 3rd and 7th May, 5th and 7th?

A. We had a considerable amount of work between the months of February and March and early March we wrote to the advocates concerned and set out the work we embarked upon and requested confirmation or otherwise whether the direction of the work was what was required in the presentation of the appellant's case.

JUDGE: In answer to Mr. Roland's question as to when it was you started to prepare this first report you said 'I completed my report' you said '5th and 7th May' and then corrected it. What was that?

A. That was the instruction.

JUDGE: We submitted a report to them and they returned it to them and said would you direct your attention to particular aspects of the matter.

Mr. Roland: I think he explained it in examination in chief. On what basis was the original calculation you made, what was the basis?

A. On the basis of the complete analysis of the records available, after having looked at the records prepared by Mr. Thian and we prepared results for 1946-1953 on a cash basis and then averaged back for those years.

Q. Did you make out balance sheets for the end of each of the years?

A. Yes Sir.

Q. And did you have any basis which was satisfactory for preparing or including assets and liabilities in those balance sheets?

A. Which assets and liabilities.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Roland: Did you have any adequate records on which you could put in a figure?

A. No Sir, I have reported as such to persons instructing me.

Q. And did you have any accurate report on which you could put in a figure for debtors or creditors?

A. It was possible to estimate debtors, that could only be a rough estimate.

Q. How could you possibly estimate the debtors, could you tell His Lordship that? 10

A. Well discussing the matter with Mr. Surjit Singh and the practice, the current practice of his business, we decided to draw the line and take the subsequent months payments.

Q. Had you any means of knowing that the payments made in the subsequent month referred to debts outstanding at the end of the year?

A. We have no definite means but it was a reasonable inference to make - they were only estimates you see. 20

Q. If a debtor outstanding on the 31st December, could it be paid on the 1st February?

A. Very easily.

Q. Would you have included it?

A. In one particular instance where January was devoid of debtors, we did take in a February item.

Q. Did you report your results to your senior partner? 30

A. Yes.

Q. And did he discuss the accuracy of accounts prepared in that way?

A. Yes I had correspondence with him.

Q. And as a result of that correspondence what did you do?

A. I contacted the advocates and asked them to instruct a suitable expert and at the same time asked them to write letters, because I thought their letters might have more effect than mine, to various architects and public departments, for details of the contracts. 40

Q. Did you make a further investigation or not?
A. Oh yes, as instructed in the years 1954 to 1957.

In the Supreme Court

Q. How long did it take you to do that?
A. I have to get moving very quickly because I only had some three weeks to carry out that other investigation.

Appellant's Evidence

No.38

10 Q. When you completed your investigation was it then you started your first report?
A. Yes indeed.

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Q. I shall be coming to a number of points which have been put to you in cross examination and you gave evidence in chief on certain other matters with regard to that report?
A. Yes Sir.

20 Q. On the basis of what you said in chief and the basis of what my learned friend has put to you in cross-examination, do you think that certain adjustments should be made to the figures in that report?
A. Yes Sir.

Q. If your adjustments were made now would you be satisfied or not satisfied that the figures in the report would, as adjusted, represent the true position?
A. If adjustments were made now Sir, I would be perfectly satisfied that they represented the position.

30 Q. Will you look at your report and see what adjustments you require to be made?
And I will put certain things to you and ask if you think they should be made and ask you at the end if you think further adjustments should be made?
A. Yes Sir.

Q. Schedule A?
A. Yes.

40 Q. You have been asked about the figure of Sundry creditors?
A. Yes sir.

Q. Now do you remember, Mr. Blackhall, when you sent in your report on the 3rd June, putting it - putting in a note at the bottom of schedule A with regard to the figure of creditors?
A. I do indeed.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Does it read as follows :- do you remember what that note said?

A. It made two references if I recall correctly - I have not got the note here.

Q. If I read it out - "We have also adopted Mr. Thian's figures for creditors, again without prejudice, though these seem much too high as far as we can tell."

Do you remember putting that?

A. Very distinctly, the point being that those creditors amounted to something like six months credit. I put a note on that account, not at that time having had any information on the state of the creditors.

10

Q. Between the time you prepared your first report on the 3rd/4th June, did you find the list of creditors?

A. Yes I found it on the Saturday afternoon.

Q. As a result of that did you make an adjustment to the extent of 53,000/-?

A. Yes Sir.

20

Q. Now, of that 38,000/- referred to Rattan Singh?

A. Yes Sir.

Q. Now this was a statement of works as to Rattan Singh as at 11th January, 1946?

A. Of Rattan Singh.

Q. Yes?

A. Yes sir.

Q. If a figure is deducted in respect of 38,000/- owed to Rattan Singh, would it not be necessary. Would it be a correct statement of his worth to leave it like that?

A. No Sir because he owes money to himself, which is not a normal position that one expects. I suppose he could also show himself as a - show it on his own accounts, his father's estate, as a debtor and then deduct the amount due to him but that to my mind would be rather an absurd way of putting it.

30

40

Q. It is alright to deduct the 38,000/- if you bring it in as well?

A. That is what I am saying.

Mr. Rowland: Alternatively cancel it out?
A. Yes.

In the Supreme
Court

Q. That is what you did?
A. That is what I did.

Appellant's
Evidence

Q. With regard to the amounts owing to the other sons, or said to be owing to the other sons, what was the purpose of your statement of worth at the - what was the purpose of schedules A and B?

No.38

10 A. The purpose of schedules A and B was to ascertain what Rattan Singh, property Rattan Singh had at the 11th January, which was taken for convenience sake, as stated in my report, at 1st January, and compare it at first flush with his total worth at 31st December, 1957.

Anthony Marcus
Blackhall
Re-Examination
14th June 1960
(Continued)

Q. Would it be right to include in the opening figure a figure for creditors if you had reason to believe at the end of the period it was still outstanding as a creditor?

20 A. Not if one was going to ignore it at the end of the period as well. You could take it in both statements worth.

Q. Or exclude it from both?
A. Yes, that is what I am saying.

JUDGE: May I interrupt for one moment? I am not quite clear, but it seems to me that if monies are owing to Mr. Rattan Singh's children by Mr. Rattan Singh's father ..

30 A. Grandfather.

JUDGE: Rattan Singh's father, on the death of the father of Rattan Singh becomes successor to the estate and as such successor he is successor to the liabilities of the estate as well?

A. Very true.

JUDGE: That is correct?
A. Yes.

JUDGE: If that is so is it right to show the estate debts as part of Mr. Rattan Singh's assets?

40 A. Being pedantic My Lord, it is not right.

JUDGE: Then why did you do it?

A. I excluded it from schedule B therefore I had to exclude it from schedule A. I was

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

told and read in documents that these amounts hadn't been paid at the date of my investigation and there were no prospects of them being paid, secondly they had in effect, those creditors had been written back.

JUDGE: I don't understand how a debt which is owed by someone, or is owed from a particular source can ever become an asset in the hands of the person by whom it is owed or by whom - in whom is vested the fund against which it is charged. 10

Mr. Rowland: My Lord, is your lordship referring to ..

JUDGE: I am referring to the debts shown to the children which apparently were treated as assets of the father, included in his statement.

Mr. Rowland: Deduct from it.

JUDGE: Where?

Mr. Rowland: Deduct sundry creditors.

JUDGE: Yes.

Mr. Rowland: My Lord, the situation in the case of 20 a trade creditor for instance, if there were a trade creditor outstanding, as there were at the end of 1946, and there were cash left in the estate, one would have to allow for deduction of the creditors in computing the statement of worth.

JUDGE: Yes, very well, go on.

Mr. Rowland: Now I think, so far as I can recall, Mr. Blackhall, you spent about 1½ hours in splitting assets between profit assets and inherited assets? 30
A. Yes, endeavouring to do so.

Q. Does it make the slightest difference from the point of view of your report?
A. None at all. I was a little puzzled as to why I was asked to undergo that operation and I found it an extremely difficult operation to undergo in the witness box.

Q. Now it was put to you with regard to the list of sundry creditors that was never attached to the balance sheet?

A. Yes in cross examination I made some unguarded remark about balance sheets and attachments. I meant to say that I saw the list which was assembled related to a balance sheet, at the end of December, at the time.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

10 Q. Will you look at Mr. Nanda's balance sheet of 1945 and read out what you see against Sundry Creditors?

A. 84347/37.

Q. Compare that figure with the list of sundry creditors in front of you?

A. It is not in front of me but it is the same amount.

Q. Now you said in examination in chief that one of the fixed deposit accounts was a matter of inference?

20 A. Yes Sir.

Q. Relating to 30309?

A. Yes Sir.

Q. Have you looked - will you tell His Lordship what makes you infer that that was an asset in existence on the 11th January, 1946?

30 A. There is a letter which is dated 19th November, 1957 which has been issued by the State Bank of India to Messrs. Thian and Bellman and in the fourth paragraph, in response to an enquiry made by Thian and Bellman, in which the fixed deposit received is shown entered on the 22nd May, 1948 with the amount of interest 309 rupees added. By then in the process of checking generally saw the current account in the State Bank of Jullundur City there was further interest credited on the same date, same date and month in 1947 in which the sum of 309 rupees was taken to credit, being interest on fixed deposit account the inference being that that represented one year's interest and one could reasonably relate this fixed deposit back to 22nd May, 1946, the wrong date.

40 Q. What was the other amount, the figure of 73,000 odd, I think, same account?

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

A. Well there is a reference in the State Bank of India's letter dated 27th September but wrongly dated 22nd May 1951.

Mr. Rowland: I want the one in 1948, what is that figure, what is the exact amount referred to in that letter?

A. The first entry 73,700.

Q. Exactly 73,700?

A. That is the amount of the fixed deposit receipt, yes.

10

Q. What was the amount of the interest credited in 1947 on that amount?

A. If I can look at the bank sheet I can tell you the exact amount.

Q. Whilst a search is being made for that, have you got a letter in front of you referring to 46,000 deposit?

A. Yes Sir.

Q. You were asked whether you knew whether the Revenue had seen that figure, is that so?

A. I was Sir.

20

Q. Is that the National Bank of India, Nairobi?

A. National Bank of India, Nairobi, yes Sir.

Q. What is the date?

A. 13th July, 1956, addressed to Thian and Bellman.

Q. If that figure, if that amount was not disclosed as Revenue would it be the mistake of Rattan Singh or Messrs. Thian & Bellman?

A. One would assume it would be the mistake of Thian and Bellman, having had notice of the asset, it should have been included. The original letter was attached to the list which I had this morning - it is an exhibit.

30

Q. In fact have you traced that 46,000 through or not?

A. Yes.

Q. Where did it appear?

A. It is quoted in this letter, 31st August, 1951 and then repair and on that date it goes into the current account as a deposit.

40

JUDGE: I am not altogether clear that I understand this: the last two items in this letter are: "88/233, s. 46,000/-, Nagina Singh Contractors, date repaid 3.8.51., interest paid 460/- 89/215, Sh.46,000/-, Nagina Singh Contractors, date repaid 30.8.51."

Were there two deposits or one deposit?

A. One.

JUDGE: Why is it set out two times?

10

A. It is set out a number of times, a new receipt issued every year.

JUDGE: Presumably a year didn't elapse between 3rd August 1951 and the 30th August, 1951? Would you look at it and see if you can make sense of it?

A. I think the explanation to that My Lord, if I might present one ...

JUDGE: Have you seen this original document Mr. Newbold:

A. I have a copy of the letter here.

Witness: Do you wish me to offer an explanation My Lord.

JUDGE: At the moment I am awaiting Mr. Rowland to afford an opportunity of seeing the document. The only thing that surprises me is these last two entries, in respect of one of which interest was credited and in the other of which interest was not credited. Apparently the dates are the 3rd and 30th, they bear different numbers so it is not one deposit.

Mr. Rowland: I think they give a different number every time you get a new deposit receipt, apparently they normally last a year.

JUDGE: You are asking me to say it was received on the 3rd August, repaid on the 30th August and repaid again on the 30th.

Mr. Rowland: The custom apparently from one's inspection of the other ones that these deposit receipts normally last a year, then repaid, the fixed deposit period expires and that date is put down as repayment but it doesn't mean cash is handed over because it may be recalled. There are letters from the Indian ones addressed in the same way saying that a further deposit is to be made and treated as a repayment and re-issue.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

In the Supreme Court JUDGE: Accompanied by a new receipt?

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Yes My Lord, I think that is what happened. It would appear 460/- interest paid - why August is not clear, 18th May, 1960 the interest was paid then it was repaid, presumably recalled some time afterwards, after the deposit period, after the year expires, I think until it is formally recalled no interest is payable. That will certainly explain this that you get a gap of no 10 interest between 18th May and 3rd August. It seems to be recalled on the 3rd August and then you get a whole years interest until 3rd August, 1951.

JUDGE: Doesn't it purport to be repaid on the 3rd August?

Mr. Rowland: I think it purports..

JUDGE: Rather than the words entries repaid not renewed ..

Mr. Rowland: I don't think it was repaid. 20

JUDGE: I can't guess at what the bank means.

Mr. Rowland: Of course.

JUDGE: If the bank state they repaid the money on the 3rd August and they also say on the 30th August they repaid another sum, it rather suggests to one's mind there were two sums repayable on those dates.

Mr. Rowland: You see in the heading of 'amount' it doesn't say renewed or repaid or paid in, it simply says 'amount' and may be it should be date repaid or renewed. 30

JUDGE: If it was renewed on the 3rd August was it again renewed on the 30th August.

Mr. Rowland: It was paid out then and transferred into the current account on that day and no further interest credited.

JUDGE: I wish when people are preparing their cases for counsel, they would take trouble to see the appropriate evidence was available.

If the bank had made an error in saying something was repaid which was in fact renewed then it seems to me unfortunate that evidence was not taken on commission to obtain evidence to that effect.

In the Supreme Court

Appellant's Evidence

Mr. Rowland: Nairobi bank.

No.38

10 JUDGE: It is still more unfortunate that a witness has not been called to prove that. I am asked over and over again in this court to guess that people have meant something quite other than they have written. That is something within your knowledge as well, Mr. Foot. Some bank documents were wholly inaccurate in the sense they showed certain transactions had taken place when they could not have taken place on that date.

Anthony Marcus
Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Foot: My Lord I do recall that.

JUDGE: It is not the first time I have had this sort of thing happen.

20 Mr. Rowland: Reverting to Schedule A, the written description of the securities, do you agree with that?

A. Yes entirely.

Q. Doesn't affect the figures in any way?

A. Doesn't affect the figures whatsoever.

Q. One more adjustment, the figure of 746 put against the State Bank, Jullundur City ..?

A. Should be a few shillings more.

30 Q. Exactly how many?

A. The amount of rupees.

Q. It is only 98/-?

A. It is very small I know. I believe my partner gave evidence on it originally.

Q. Did you give evidence to the effect that that figure should be 844/-?

A. Yes sir.

Q. Now that is an addition of 98/-?

A. Yes Sir.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Re-Examination 14th June 1960 (Continued)

- Q. Now will you list, if you have a piece of paper, there?
A. Yes I have Sir.
- Q. Will you put that figure down in one column - 98/-. Now is that an adjustment in favour of the tax payer or the Revenue?
A. Payable to taxpayer.
- Q. Will if there are any further adjustments in favour of the tax payer will you put them under that figure and adjustments in favour of the Revenue in a separate column. 10
A. I have figure given in evidence that there is a figure of 700 rupees to be added to State Bank Jullundur City.
- Q. How many shillings?
A. 1050 in favour of the taxpayer.
- Q. Any other adjustment to schedule A?
A. No Sir.
- Q. Now will you look at reconcilliation or properties/with schedules A and B? 20
A. Yes Sir.
- Q. There was a figure for Grogan Road, 41,500?
A. Yes Sir.
- Q. What should that figure be?
A. That figure should be 43,500.
- Q. And is that a difference of 2,000/-?
A. It is Sir.
- Q. In favour of the Revenue?
A. Yes Sir.
- Q. Will you put that down on a separate list. 30
Now run your eye down there, 126,000?
A. Yes Sir.
- Q. Did that include two plots instead of one?
A. Yes Sir, in effect.
- Q. And what would the difference be if you excluded one plot?
A. 13,000.

- Q. And does that increase the total, the final total?
 A. It increases the final total Sir.
- Q. So the final total should be 13 plus 2, that is 15,000 more, is that right?
 A. That is right Sir.
- Q. Is that 13,000 in favour of Revenue?
 A. Not if the property, the profit on the property is held to be non taxable. It doesn't benefit the Revenue.
- 10 Q.. That is quite right, much obliged. Will you look at page 2 of your report, just before half way down?
 A. Yes Sir?
- Q. Do you see the difference 67,000/- representing surplus of the sale?
 A. Yes.
- Q. Should that figure now be 80,000/-. It refers to the sale of the Grogan Road property, it definitely arose in 1953.
- 20 Q. The Revenue say it should be 80,000 and I would be inclined to recommend my client to accept that. How does that affect any other figure on that page?
 A. Yes one has to increase the total net worth by 13,000.
- Q. No on that page? Does it affect the next figure down? Will you read it, the next paragraph?
 30 A. "Deducting this sum we arrive at a total taxable income for the 8 years as Sh 517,000/-!"
- Q. What sum?
 A. 80,000/-.
- Q. If you deduct that sum does it come to a different answer?
 A. No because the capital worth at the end has gone up and the revisions have gone up.
- Q. If you deduct, you say it should be - this sum refers to 67,000, if this sum becomes 80,000, does it affect the figure 462,000?

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
 Re-Examination
 14th June, 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall Re-Examination 14th June 1960 (Continued)

A. No sir because we have to make the alteration further up the page for the increase in capital worth of 13,000.

Mr. Rowland: It is a sort of balance sheet figure?

A. It is quite true.

Q. On the last page of your report, the last paragraph but one, do you see the figure of 33,350?

A. Yes Sir.

Q. Is that figure altered or not?

A. That is altered to 4,000.

10

Q. You say that the 13,000 doesn't affect the profit which has to be spread?

A. Yes Sir it does not.

Q. Now the next figure on page 1 is the figure for total private expenditure of Sh 414,000/-?

A. That is true, Sir.

Q. It is the bottom figure on the first page of the report?

A. Yes.

20

Q. Before I come to that I want to ask you a question about the other figures on pages - end of page 2 and page 3 of the report?

A. Yes.

Q. In the middle of page 2 you arrive at a figure of 462,000/-?

A. Yes.

Q. And that is said to be a total taxable income in 8 years?

A. Yes.

30

Q. Now subject to any comments or any alterations to that figure, as a result of the alterations in Schedule C, is that the figure you have to spread over the 8 years?

Is that the total taxable income? When you have ascertained that figure, does that figure represent the total taxable income?

A. It does Sir.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Q. How is there more than one way on which that could be spread?

A. No Sir, the thing to do is to calculate total gross profit for the year and spread over.

Q. Could it be divided in accordance with the turnover or not?

A. Not alone to get certain results in that manner.

10 Q. Could it be divided equally by **eight** or not?

A. No.

Q. That figure 462,000, do you see that appears again on page 4?

A. I do.

Q. Is that a coincidence or because it is the same figure?

A. It is no coincidence, it is the same figure, after making the necessary adjustments to the spread.

20 Q. Yes on page 4, My Lord, it is the total of the first column of the first page.

JUDGE: Total on page 4?

Mr. Rowland: Total of the first column on page 4, 462,042. If you altered your figures for the turnover, would that alter that figure at all?

A. Well Sir...

Q. Yes or no, would it alter it or not?

A. It depends what you mean in alteration in turnover.

30 Q. Any of these figures in page 3?

A. If they were varied amongst themselves it would make no difference to the total.

Q. Would it make any difference if the overhead expenses instead of 150,000 were 130,000, would it alter that figure of 462,000?

A. Yes.

Q. Supposing the rents received were different, would it alter that figure or not?

A. It would not.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

- Mr. Rowland: Would it alter that figure or not, if you varied the figures set out on page 3?
- A. It would not.
- Q. What then is the purpose of starting with 462,000 on page 2 and ending with exactly the same figure?
- A. To arrive as closely as possible at the net trading profits for the year under review in one case it is a loss.
- Q. As a result of your personal knowledge have you 10 any reason to believe that more has been allocated to any particular year, or less than that total?
- A. According to the calculations that I have made, to calculate, get a rough check on these estimates of profit, it would appear that 1946 has been understated by some 3,000/- under trading profit.
- Q. That is the figures on page 4?
- A. I am talking about the figures on page ... 20
- Q. Well will you look at the figures at the top of page 4 first total?
- A. Subject to any alterations in the total of the 462,000, apart from that, have you any reason to believe that the way you have spread the income over the years 1946-1953 gives an unfair result?
- A. I have no reason to believe it gives an unfair result.
- Q. What further alterations ought to be made to 30 this figure of 462,000?
- Will you look now at Schedule C?
- A. Yes Sir.
- Q. Looking at the top line of estimated living expenses have you any reason to believe that those figures are wrong, if so, which ones?
- A. Well I have some reason for the item identified as 'car & 60'.
- Q. I am talking about the top line?
- A. Yes Sir, the top line consists does it 40 not Sir...
- Q. Well it is your report?
- A. Well I have given evidence to the effect that the top line represents the breakdown presented by my client.

Mr. Rowland: Do you want to make any adjustment to these figures?

A. No Sir except for the year where items have been added back to personal - I would deduct the £50 and add the figure which has been agreed by the Revenue.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

10

Q. Now, motor cars, transport, we will deal with that now. I think it has been agreed that 1100 was added back in 1957 in the account and 550 is in 1956?

A. Yes Sir.

Q. That is in favour of the Revenue if you make that adjustment?

A. Yes, 1100 and 550.

Q. Will you put that in shillings? 33000/- I make it?

A. Yes.

20

Q. And was any transport included in the figure for household expenses for those two years?

A. Yes I understand so.

JUDGE: Which years?

Mr. Rowland: 1956 and 1957 My Lord.

Q. How much?

A. £50 each year.

Q. Is how much?

A. 2,400 shillings.

Q. Well your net, the net amount for transport is how much - 33,000 and ...?

A. 30600.

30

Q. In respect of transport do you say that an addition in favour of revenue should be paid, 30600?

A. Yes.

Q. Education, the figure of £1320 was given at one stage to Colonel Bellman, do you accept that figure?

A. I fear I must.

Q. How much has been put in for education in schedule C in its written form?

A. It would appear to be some 200/-.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Was anything included in the top line?

A. Oh yes, there was a small amount.

Q. How much?

A. It varies in each year. £12 or £15 if I recall rightly. I haven't got the details here, it has been taken as an exhibit.

Q. Add them up correctly?

A. £129.

Q. Is that 2,580/-?

A. It is.

10

Q. And the figure of £1320 in the way of shillings?

A. 26,400.

Q. Would you subtract one from the other?

A. 23,820.

Q. Would you add that to the adjustments to be made in favour of the Revenue?

A. Yes.

Q. Then there is the question of repairs. First of all the question of the repairs to rented property? Does any adjustment require to be made in respect of that?

20

A. Not in so far as the repairs on the rented property would be allowed for tax purposes.

Q. Would repairs be allowable against rents received or not?

A. Yes.

Q. All?

A. Not necessarily all, no.

JUDGE: Is that so in East Africa?

30

Or is this one of the respects in which the law of this country departs from that of England?

Mr. Rowland: I can't help Your Lordship on that point.

Q. Certain repairs, may it please Your Lordship, will be allowed as a deductible item. Structural alterations would not necessarily be..

JUDGE: In England you can get both.

In the Supreme
Court

Mr. Rowland: In your view does any adjustment require to be made in respect of these repairs, if so, will you put a figure to it?

Appellant's
Evidence

A. It is exceedingly difficult to define, Sir, one would have to take a shot in the dark.

No.38

Q. Would you take a shot in the dark?

A. Say 2,000/- a year.

Anthony Marcus
Blackhall
Re-Examination
14th June 1960
(Continued)

10 Q. That is 16,000/- - put that on your list. Now what about figures to his own house, I think we have a figure 200/- ...

A. With respect Sir we are dealing with a 12 year period, so it should be 24,000. 200/- has been added back by the Revenue.

Q. The figures for property, would you say 200/- per year.

A. That is reasonable.

Q. For 12 years that will be 2400/-?

A. Yes.

20 Q. Put that on your list, and repairs to his own premises are any of these included in living expenses:

A. No Sir.

Q. What approximately would be repairs allowance on a house of the net annual value of which appears to be £95?

A. Net annual value?

Q. Yes?

A. That would be approximately £32.

30 Q. In your experience does the repair allowance normally cover the actual repairs or not - can we use that as a fair figure to take?

A. Yes over a period of years.

Q. That is £32 for 12 years - 384 is that?

A. Yes Sir.

Q. How many shillings?

A. 7680/-

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Put that on your list, and the figure of 6500, would you put that on your list?

A. That is assuming no jewellery has been sold.

Q. Donations - look at list of Revenue adjustments, schedule of revenue adjustments?

A. Yes Sir.

Q. Are all donations necessarily disallowable or not?

A. To the best of my knowledge donations are not allowable, they certainly aren't in the U.K. and I don't believe they are here.

10

Q. Do you accept the figure for donations?

A. Well yes, I accept those figures.

Q. That is something in the order of 5,000/-, that only covers six years?

A. Yes.

Q. You have got to cover how many years?

A. Twelve.

20

Q. Well if we say 500/- a year for 6 years, that will be...?

JUDGE: It is 5,000/- over six, how many over 12 years?

A. 10,000.

Mr. Rowland: Now legal expenses - have you put in schedule C anything for legal expenses?

A. No Sir.

Q. My Lord, the letter of the 3rd May, 1958 does refer to legal expenses.

30

JUDGE: Yes I remember it.

Q. (Mr. Rowland) Will you look at paragraph 5 of the letter of the 5th May, 1958 and read out what it says about legal expenses?

A. Do you want the whole paragraph Sir.

Q. Well will you read it to yourself and see how much ought to be added back on to schedule C?

A. According to this letter Sh.7,500/-.

Mr. Rowland: Is that the amount of legal expenses which appears to be of a capital nature?

A. It appears to be, Yes.

Q. Will you add that back then, another 7,500? And the medical expenses, certain amounts have been added back?

A. Yes Sir.

Q. Do you know what these amounts of medical expenses relate to, is it all personal expenditure as far as you know, or not?

A. I do not know.

Q. Will you add the whole amount back, which is approximately 2,500 for six years, 5,000/-? And I think legal expenses you put down 7,500, that is on the information for six years. We are dealing with a 12 year period so will you put down another 7500?

Will you add that amount up?

Are there any other adjustments which you think ought to be made on any basis to schedule C?

A. The annual value of the premises he occupies.

Q. Is that an alteration to schedule C?

A. Not necessarily.

Q. Just dealing with schedule C at the moment?

A. We are working to...

Q. Could you just deal with schedule C - could - any further additions or alterations which you think ought to be made to schedule C?

A. The items in relation to remittances to Gian in the U.K., if they are paid from rents should be excluded.

Q. Will you add up your total and tell My Lord what the total is of the schedule C adjustments only?

A. 40,000/-.

Q. Exactly?

A. No not exactly, 40,770/-.

Q. Now is that the amount by which you think this ought to be added to schedule C?

A. Added to? - Deduct from..

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

In the Supreme Court Mr. Rowland: Will you add to it again?

A. Yes.

Appellant's Evidence

No.38

Anthony Marcus Blackhall Re-Examination 14th June 1960 (Continued)

Q. How much?

A. 40,779, as before.

Q. We will call out quickly what the figures are?

A. What are these figures spread over different years..

Q. We are at cross purposes. I want you to add up the adjustments you have already made to schedule C?

A. Yes Sir, 130080/- to schedule C.

10

Q. How going back to your report should that be added to the figure at the bottom of page 1 of the report?

A. Yes Sir.

Q. 130,000/- is how much? About £6,500?

A. About £6,500 yes, makes a total of 544,080-£27,000.

Q. You were writing down before the alterations to schedule A and the reconcilliation of properties, have you got that list before you?

A. Yes Sir.

20

Q. Would you put in as an adjustment in favour of revenue 130080?

A. Adjustments to the properties and to schedule A...

Q. You were making a list of the adjustments which you found - which you now wish to make in your report and in one column you are putting the adjustments in favour of Revenue and in another column those in favour of the tax payer. Would you add to the ones in favour of Revenue the figure you have just read out to schedule C?

A. 145,000 net.

30

Q. Now turn to page 2 of your report. Do you see the figures are as follows, 1954, 1955, 1956, 1957, 86,441?

A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus
Blackhall
Re-Examination
14th June 1960
(Continued)

Q. It was put to you in cross examination that there had been an alteration, retrospective alteration in 1958, do you know what that relates to?

A. Not in detail Sir. My partner has investigated that situation, I understand it amounts to about £70 of my schedule.

Q. Do you know what this adjustment relates to?

JUDGE: What is the year?

10 Mr. Rowland: 1958 My Lord.

JUDGE: Much obliged.

Mr. Rowland: Adjustment of 84,000/-?

A. Yes Sir.

Q. Do you know what that related to, that adjustment?

A. It relates to certain adjustments made by Colonel Bellman to bring into line I believe adjustments of income tax profits for the years prior to 1957 but my partner must answer that in detail, I don't know.

20

Q. Will you turn to schedule B?

A. Yes Sir.

Q. What alteration, if any, do you wish to make to schedule B?

A. I have to add a few shillings to the Post Office Savings Bank figure.

Q. Could you tell My Lord how many shillings?

A. Approximately 30/-.

JUDGE: I thought it was well over 100/-.

30 Mr. Rowland: 280/- I think?

A. I did quote 279/-.

Q. Call it 300/- in favour of Revenue, are there any other alterations?

A. The properties have already been adjusted. The adjustment in relation to 1958

Q. Do the amounts on schedule B include any amounts which did not or may not belong to Rattan Singh? A. Yes, which may not.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

- Q. What is the total?
A. 60,000/-
- Q. Are those the two items of 30,000/- referred to in evidence?
A. Yes Sir.
- Q. If an adjustment were made in respect of those would it be in favour of the Revenue or tax payer?
A. It would be in favour of the tax payer.
- Q. Do you know what the annual value of the properties was during these years? 10
A. I understand it to be 1900/-.
- Q. Would you look at page 4 on your report, the last table. That is the figure I understand was given in cross-examination? You can take it from me that the figure in the - for the last three years was 120, not 95?
A. Pounds?
- Q. Yes.
Looking at your last table there it says 'income calculated as above'? 20
A. Yes Sir.
- Q. 17644?
A. Yes Sir.
- Q. Could you say from the adjustment you have already mentioned approximately what that income calculated ought to be?
A. Taking into consideration the trust assets?
- Q. No taking it on the basis that the best possible point of view from the Revenue?
A. Well that is approximately £7,000 Sir. 30
- Q. Would that bring the total up to approximately something under £25,000?
A. It would indeed.
- Q. And if you include five years at £95 and three years at £120 would it bring the total to just over £25,000?
A. It would indeed. I bring it to 25,400 and some odd.

Mr. Rowland: Is the figure of income assessed, so far as you know, is there any alteration to be made to that figure?

A. No alteration to my knowledge.

Q. What about household furniture, have you - household goods - you have not included I think:

A. That is true Sir.

Q. Have you any reason to believe that any amount was spent on household goods?

10 A. There is a reasonable assumption to believe certain sums were spent.

Q. 2,000/- was mentioned in report by Colonel Bellman did you know that?

A. No Those figures did not come to my attention.

Q. Did you check the statement of worth at the end of 1953, approximately, with your calculations?

A. Yes Sir.

20 Q. I think you said to my Learned Friend, Mr. Newbold that the total of assets there you calculated was 1317,000?

A. 1137,000.

Q. Have you got details of that, how that is made up?

A. Yes Sir. I don't know whether I have got it in the witness box though, I had it in my file.

30 Q. What I would like to know first, is whether the adjustments which have been referred to already, affect these figures, what about properties?

A. There is an adjustment of the property.

Q. Is that the adjustment of the 13,000 and 2,000?

A. Yes.

Q. Should that be added?

A. 15,000 should be added, yes.

Q. Does that bring the total to 1152,545?

A. That is true.

40 Q. Do you see the figure there for stock in trade, work in progress 140,000?

A. Yes.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Yes:

A. Yes.

In the Supreme
Court

Q. Would you give the figure as quickly as you can?
Schedule A, affected 785,000?

A. Yes.

Appellant's
Evidence

No.38

Q. And the figure of worth 31.12.53. is how much?

A. 1137 originally - 1097.

Anthony Marcus
Blackhall

Q. What is the difference between these two?

A. 312,000.

Re-Examination
14th June 1960
(Continued)

10 Q. Would you have to add to that the drawings,
roughly what they were?

A. Originally 161, and we had to add on ...

Q. 160,000 for the moment?

A. 472.

Q. And what, according to your report was the
income for that eight years?

A. 472,000, that is the profits and the rents.

Q. Is that a difference of 10,000/-?

A. It is Sir.

20 Q. Could that be either increased or decreased
by altering the stock in trade?

A. It could indeed.

Q. Is it within the margin of error you might
expect?

A. Very much so.

Q. Did you make similar calculations for 1949?

A. I did.

Q. And did you find the figures approximately
reconciled?

30 A. Yes we did it for 1950, 1951 and 1952.

Q. And was there anything from your investigation
of those eight years which leads you to believe
one would substitute the figure of 64,000
assessable income?

A. £64,000?

Q. Pounds?

A. No I can't find anything which would entitle
me to do that.

In the Supreme Mr. Rowland: Now you were asked about wages?
Court A. Yes Sir.

Appellant's Q. Is there one year in respect of which the
Evidence muster rolls are almost complete?
A. Yes.

No.38

Anthony Marcus Q. Could you give details, how many - two books?
Blackhall One African, one Asian?
Re-Examination A. I have got eleven months of the year.

14th June 1960 Q.
(Continued)

Which?
A. I have got one African roll missing and
one Asian roll missing, I think. 10

Q. Will you check that please?
A. Right.

Q. Perhaps you would look at the muster rolls.
Would you look at 1951, both books and see
the extent to which they are complete?
A. Yes.

Q. Which one are you looking at?
A. I am looking at the Asians'

Q. How many months of 1951 have got? Does it
start with January? 20
A. Starts with January and finishes with
November.

Q. Can we take that as eleven months?
A. You can Sir.

Q. Will you look at the other book?
A. It starts with January and goes straight
through to December in this case.

Q. So you will have 12 months of one and eleven
months of the other?
A. 12 months of Africans. 30

Q. Is that the only year where the books overlap
to that degree?
A. Yes.

Q. Did you compare the total shown in the muster
rolls for those 23 months, 12 months in one
case and 11 months in the other, with the total
shown in the cash book for wages?
A. I did Sir, but I haven't got it.

Mr. Rowland: If you haven't got the total put it in general terms, was there anything in the difference between these totals to suggest that the muster rolls, if the extra month were there, they would not agree with the figures in the cash book, substantially?
A. There was nothing.

In the Supreme Court

Appellant's Evidence

No.38

10 Q. I think it is usual for an auditor to do a complete check or a token check of certain items?
A. Normally an accountant makes a test check to ascertain the position.

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Q. If making a test check or part check you find things are all right, do you form a conclusion as to what the conclusion might be in other parts of the period?
A. One can assume, if the test check is properly conducted, if the test is satisfactory, the whole will be

20 Q. Are you satisfied about the wages in 1951?
A. Yes Sir, satisfied.

Q. Turning to stock in trade and work in progress, I think it was put in cross-examination to you that the figure for 20,000/- which appears in 1946, 1947, 1948 etc. for stock in trade was all right, on the face of it?
A. It was put to me.

Q. Was that the figure put to the Revenue?
A. Mr. Thian put those figures, yes.

30 Q. No, the balance sheet submitted to the Revenue?
A. I don't recall the figure in Mr. Nanda's balance sheet.

Q. If you don't know we won't bother.
In valuing work in progress and stock in trade of a contractor is there one definite way of doing it or more than one way?
A. There are two accepted systems, the direct cost and the on cost method - there are devotees of both.

40 Q. What is stock, is it in the store or in building or both?
A. A contractor of this nature would treat his stock as being in store.

- Mr. Rowland: If he takes it out of store and to a site does it become work in progress?
A. Yes to the best of my knowledge on the subject.
- Q. If that is so, what relation does the stock have, if any, to it? Does it have a tendency - does it have a bearing on any other figure?
A. I would not say so. I would not say in relation to turnover. I said it should be related to purchases rather than turnover. 10
- Q. Supposing the alternative method is used and that is that the materials at the site are included as stock if they are not actually forming part of the partly constructed building?
A. Yes.
- Q. Is it or is it not pure chance that the 31st December in any particular year, materials on the site form part of the building, or not? 20
A. Pure chance - depends on the exigencies of the operations.
- Q. In that case it puts chance where the particular materials are treated as stock or work in progress?
A. Quite chance.
- Q. If you add the two figures together, stock and work in progress, take these together?
A. Yes.
- Q. Does that bear any relationship to the turnover 30 or not?
A. The work in progress might bear some relationship but not the stock figures.
- Q. More likely?
A. More likely.
- Q. If you take the two together ...
- JUDGE: Surely work in progress must vary constantly because you told me that you regarded as work in progress or work to be done, work which remained to be done, and which had not reached 40 such a stage in respect of which a certificate could be issued, is that correct?
A. Yes My Lord.
- JUDGE: If that is so, at the beginning of the year we assume that a contractor has so arranged affairs that he starts all contracts on the 1st January and completes them all on the 31st December?
A. Work in progress being only...

JUDGE: Should it become necessary to compute the value of the work in progress that figure will vary in relation to turnover throughout the year, would it not?

A. In relation to the turnover which is the rate of activity.

In the Supreme Court

Appellant's Evidence

No.38

JUDGE: It is possible to say there is necessarily any relation between work in progress and turnover?

10 A. There is some relation, yes, My Lord.

Anthony Marcus
Blackhall
Re-Examination
14th June 1960
(Continued)

JUDGE: Relation which can be expressed in arithmetical form. Obviously the relation, the more work has been done the smaller is the work in progress, is there any mathematical relation between the two things or can there be any mathematical relation because they must be constantly varying?

20 A. There is no mathematical relation and the normal method of valuation is to take the last certificate and calculate how many days were outstanding at the end of the year.

Mr. Rowland: Have we the information to do that in this case?

A. Not in the year under review. I believe that is what is being done now.

Q. You were asked at the end of your cross-examination about a letter which Mr. Rattan Singh wrote in early 1955 and asked to say whether it could be reconciled with the figures which you gave in examination in chief?

30 A. Yes.

Q. Do you say that it could not be reconciled as far as you could see?

A. The first reconciled exactly, the second one the receipts were larger than those shown in the letter, the receipts as recorded.

Q. Did you see the letter? Just look at the letter?

A. No. 3, yes.

40 Q. Will you check - can you check any of the items of cash received there against the records?

A. Yes Sir. I believe I have left my working paper behind. The first item 14,496 relating to the City Council is shown as having been received in the year 1953.

In the Supreme Court

Appellant's Evidence

No. 38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

Mr. Rowland: Rattan Singh was asked in that letter, or in that letter to which that letter is a reply, whether he undertook any contracts in 1953?

A. Yes.

Q. Do you know of a particular contract into which he entered in 1953?

A. Corefani 3, African Housing project known as Corefani 3. He entered into the contract in 1951 and engaged in it in 1953.

10

Q. Will you give full dates when the contract was given and when completed?

A. Commenced September 1951, date of contract completion March 1953, contract sum 1,339,576.75 (?)

Q. Was there any other contract that you know of with regard to Corefani?

A. Not that I am aware of.

Q. Do you see the figures 345,368?

A. Yes Sir.

20

Q. Have you ever seen this book?

A. I have seen the book.

Q. Who wrote this book up?

A. I believe a lot is in the handwriting of Mr. Thian.

JUDGE: What sort of book is that?

Mr. Rowland: The working book, including rents and various other information made up by Mr. Thian.

Q. Do you see on the left there is a reference to Cerefani?

A. Yes.

Q. What does it say?

A. Cerefani, it looks like a Roman 4.

Q. What do you think it says?

A. It must be Cerefani 3 because the items correspond.

Q. Would you read out what you think it is?

A. Cerefani 4.

Mr. Rowland: Would you add up the items you see under that figure?

A. 345,368.

Q. Is that the amount you see in the letter?

A. Yes.

Check each of those amounts which you have just added to see whether you have checked them into the cash book?

10 A. There are two items I can check straight away, 37,440 and 54,450, further one of 85,770, further item of 86,709 and an item of 80,999.

Q. That is all of them?

A. That is all.

Q. Do I understand you then to say that the whole of this which Rattan Singh says he received in his letter you have traced into the cash book.

Mr. Newbold: Which cash book?

20 Q. (Mr. Rowland): What have you checked that against?

A. Against my working sheet which was originally completed up from the cash book.

Q. Was there a cash book in 1953?

A. No these I built up from my working sheets.

Q. What did you compile your working sheets from?

A. The bank statements as given in evidence.

Q. The whole of this 345,868 you have checked with the bank statements?

30 A. That is what it implies.

Q. Does it mean that?

A. Yes.

Q. Is it possible there is some confusion between Corefani 3 and Cerefani 4?

A. There is a possibility, I have one item here not included in Cerefani 3 or 18,999. Oh I see it now in Cerefani 4, yes.

Mr. Rowland: No more questions my Lord.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

JUDGE: Now let us deal with this last matter first. Was a single contract given in respect of the building works at Cerefani, or were there a series of contracts spread over a number of years?

A. Well My Lord I only had the evidence of this letter before me.

Anthony Marcus Blackhall Re-Examination 14th June 1960 (Continued)

JUDGE: What does that say?

A. "With reference to your letter, I have much pleasure in enclosing.....10 above named contractor for this Council."

JUDGE: Yes, contracts in the plural?

A. Yes they itemised contracts, which I have taken in two plots, one Cerefani 3.

JUDGE: Is all this in the letter?

A. It is a schedule attached to the letter.

JUDGE: Doesn't Cerefani 3 suggest something other than a single contract?

A. It does suggest something other than a single contract.

20

JUDGE: Doesn't it suggest a series of contracts in relation to the Cerefani contract, whatever it may have been?

A. That is the reason for the assumption my Lord.

JUDGE: If that was so is it not an equally reasonable assumption that those contracts might have been so arranged as to provide for the expenditure of an equally, or roughly equal sum in a number of years? And - in other words if the total expenditure to be incurred under Cerefani 4 might well be the same as Cerefani 3, is that correct?

30

A. I cannot comment on that, My Lord, without more information.

JUDGE: Did it occur to you when you were preparing these accounts? Where someone writes 'I have obtained contracts from a particular local authority, one of these is entitled 'Cerefani 3', did it occur to you to enquire why he talked about Cerefani 4 rather than about a Cerefani 2?

40

A. No because it is a large contract for a relatively small contractor, one doesn't anticipate having another of a similar nature at the same time.

JUDGE: So you thought Corefani 3, you thought the 3 was merely surpluseage of some sort, there was no particular reason?

A. Presumably they have a 1 and a 2 issued at various times.

JUDGE: And from Mr. Thian's ledger it would appear there was also a Corefani 4?

A. That is how I read his writing.

JUDGE: That being so can you exclude the possibility that the sums payable which you have traced into the bank were paid under Corefani 4 and not under Corefani 3?

A. Well the reconciled total to an expenditure of 500/- ...

JUDGE: Yes but you are working from bank lodgment slips I gather?

A. Yes.

JUDGE: Don't you think that where your information is derived from bank lodgment slips, the amounts should have coincided exactly?

A. The question of variation, My Lord, in the sum ...

JUDGE? 500/- more was paid in than was shown as required by the contract or rents?

A. Yes My Lord.

JUDGE: So some payments never got into the bank?

A. There may be variations of these contracts My Lord.

JUDGE: In the way of diminutions have you ever heard of a building company, a building contract in which the sum which ultimately became payable was less than the sum which was expressed to be payable under the contract?

A. Yes My Lord in cases of question of maintenance settlement.

JUDGE: What has a maintenance settlement got to do with a building contract?

A. When building work is carried out it is normal to carry forward an item of 5%, 5% in some instances and 10% in others.

JUDGE: You mean retention money?

A. Yes for the maintenance period.

In the Supreme Court

Appellant's Evidence

No.38

Anthony Marcus Blackhall
Re-Examination
14th June 1960
(Continued)

In the Supreme Court

Appellant's Evidence

No.38

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JUDGE: Yes but do you think in relation to a contract of this size any variation which resulted as a result from only part of the retention money being used would have been only 500/-?

A. That is a possibility My Lord because the calculations are prepared by quantity surveyors.

JUDGE: Did it occur to you to make any enquiries from the City Council as to the realities of the situation?

10

A. No further enquiries, My Lord, No.

JUDGE: It didn't occur to you to ask if there had been any variations?

A. Corefani 4.

JUDGE: Or if any money had been paid in Corefani 4?

A. The request made under City Council of Nairobi was to give us variation under contracts.

JUDGE: What did it say?

A. "We have much pleasure in20 carried out for this Council."

JUDGE: May I see it - that letter.

They only give Corefani 3?

A. There are contracts below the schedule My Lord - oh, I understand you, yes.

JUDGE: And you didn't ask them whether there was any Corefani 4?

A. No My Lord.

JUDGE: Even though Mr. Thian's notes appear to refer to Corefani 4?

30

A. The item is not very clear, it could readily be a 3.

JUDGE: There is is there not a substantial difference between the figures shown by you in your report dated 3rd June, as the income calculated upon your basis and that shown by you in your report dated 6th June as to the income calculated upon your basis?

A. A difference caused by the variation of the creditors My Lord.

40

JUDGE: Of the creditors only?

A. Yes My Lord.

In the Supreme Court

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Re-Examination
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(Continued)

JUDGE: Not of the weighting?

A. I have altered the variations, I thought you were speaking of the total.

JUDGE: I am talking of the income year by year?

A. Yes there is a difference.

JUDGE: A considerable difference?

A. For the year by year allocations.

JUDGE: To what is that difference attributable?

A. It is attributable to a ...

10 JUDGE: Variations in the weighting is it not?

A. Yes My Lord.

JUDGE: And nothing else?

A. As I have stated the difference in the creditors and the variation in the weighting.

JUDGE: How did you arrive at your original weighting?

20 A. With the air of interviews I had with a practising architect and the information that I had sent to him, and obtained from Rattan Singh on the conditions in his own business and the conditions in the building trade generally.

JUDGE: No doubt that is very true but so far as the first part of the answer is concerned it could very well mean 'I asked a practising architect if he could lend me some blotting paper'.

What way did he aid you?

A. He gave me an indication of the profitability for the years.

30 JUDGE: Your weighting was based upon some architect's estimate of the ratio of profit to turnover for the various years?

A. In relation to this type of contractor, yes.

JUDGE: Did he vary that estimate between 3rd June and 6th June?

A. Yes, My Lord, I spoke to him, he had some more information, I spoke to him on the telephone on the morning of the 3rd June.

JUDGE: For how long?

40 A. 20 minutes My Lord.

In the Supreme Court

Appellant's Evidence

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JUDGE: I see and what was the nature of that information he had?

A. I was tied up and he saw my assistant with the additional contracts he had and sat down and reached the conclusion that the weightings that I had originally should be modified slightly.

Anthony Marcus Blackhall
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(Continued)

JUDGE: You told me that the weighting was arrived at - was determined by the ratio of profit to turnover in relation to particular types of contract?

10

A. Yes.

JUDGE: Were the contracts of which you first become aware about the 3rd June of a different type to the contracts you had previously been considering?

A. They were additional contracts.

JUDGE: Were they of a different type?

A. Yes My Lord, it is fair to say they were of a different type.

20

JUDGE: In what respect?

A. Earlier in point of time.

JUDGE: I am not concerned with anything other than factors that appear to arise from what you have said, and as I understood it you arrived at your weightings in the light of information from a practising architect as to the ratio borne by profit to turnover in relation to particular types of contract in relation to particular years, is that correct?

30

A. Yes Sir, and general conditions in the trade.

JUDGE: What general conditions?

A. Well Sir the architect went into matters of the price per foot for building and also the price which the Inland Revenue placed on their valuation. He took - after my first interview he put his thinking cap on and took those various factors into consideration and then assisted me on this problem.

JUDGE: Do you know whether we are going to have the pleasure of hearing this architect?

40

A. No My Lord, I don't.

JUDGE: I confess to finding some difficulty in understanding how you have arrived at these weightings? You see I don't follow you how variations in the cost of building could possibly be of any materiality which did not affect the ratio borne by overheads to profit. You see if the factors you say were taken into account were all taken into account. I think I am right in saying in that the weightings were determined by ratio borne by profit to turnover. What it amounts to is this, that your architect told you that in 1946 the average builder doing the same class of building that this appellant was doing made X% profit and in 1947 he made X-1% or X-2%?
A. That is what it amounted to, taking into consideration the type of work that we could ascertain the contractors were doing.

In the Supreme Court

Appellant's Evidence

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(Continued)

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JUDGE: Can you say what percentage he said was being made in any one of these particular years?
A. No My Lord.

JUDGE: Not in relation to a single year?
A. We didn't work on a percentage basis.

JUDGE: What basis?
A. Percentage turnover and how much it should be weighted.

30

JUDGE: If you didn't work on a percentage basis, you said if the turnover in one year was 1000, the weighting should be 8, 2000 - 18, 3000 - 20. An arbitrary figure representing the average profit in relation to contract of different size?
A. Yes, taking into consideration the contracts themselves taking into consideration as well as the period of time under review. This was arbitrary but I did have the benefit of the expert in making the calculation.

40

Mr. Rowland: I don't know whether Your Lordship has noticed there is no weightings attached three of the years at all, in 1949, 25 against 26 and in 1950 45 against ...

JUDGE: 25% represents the profit?

Mr. Rowland: No, My Lord, it is the weighting.

In the Supreme COURT JUDGE: What does it mean?

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(Continued)

Mr. Rowland: What it means is this, that of the profit could have been - one method of arriving at it would have been to divide the profit - instead of doing it in exactly that proportion, certain years in particular 1946, 1947, 1948 are given a higher weighting in proportion to the turnover, if Your Lordship will look at 1951 the turnover is 700,000 and the weighting attached to that is exactly 70, exactly 1/10,000th of it and that is true, approximately, of 1949 and 1950 but the other years, 1948 for instance, instead of being 49 and 47 the weighting up from 57 and 15 to 30 and in the last two years it has been weighted down. The question I was going to ask was whether the witness had obtained also the views of Mr. Rattan Singh on this question?
A. Yes Sir, I had obtained the views of Rattan Singh. 10 20

Mr. Newbold: I thought that the witness saw Rattan Singh on only one occasion and that was in connection with Bank statements.

JUDGE: Doubtless this was at this interview too.

Mr. Newbold: Do you remember Rattan Singh or Mr. Ogilvie, anything they said, influencing you in those early years?
A. Those early years were a period of relative boom conditions according to the expert, and I didn't argue with him, and we weighted the turnover for those years. 30

Q. And the last two years are weighted down. Do you remember what instructions, if any, were given you?
A. The main instructions were the conditions in the Colony. I did also know that the Thian's accounts had shown a loss, I believe in 1952, and that was a fair indication that it was not a good year and also my previous workings indicated what the relative profitability would be. 40

JUDGE: Did either Mr. Ogilvie or Rattan Singh at any time express to you what they regarded as the normal percentage profit?

A. Mr. Ogilvie, the point was discussed, he,

at the first interview he was prepared to commit himself but after further thought on the matter he was disinclined to commit himself to a figure.

In the Supreme Court

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(Continued)

JUDGE: What figure was he prepared to commit himself to at the first interview?

A. A percentage of 8% net, if I recall rightly My Lord.

10 JUDGE: Does the weighting in respect of any year work out at 8% net?

A. 8% net in the first year would give 12,000/- and the second year it would give ...

JUDGE: On the basis of the weighting what does it work out at?

A. If one takes 8% of the turnover on the first year the profit of 7,000 should be 12,000/-.

JUDGE: And what was the figure at which the income tax authorities assessed profit?

20 A. 30,000/-, I understand, on a basis of 10% net.

JUDGE: Very well, do you wish to ask any questions?

Mr. Rowland: I understand 30,000 is not based on 10%

A. 30,000 of Mr. Thian's figure. That is the revenue figure, 30,000/-.

Mr. Rowland: Mr. Thian's 10% was based on 10% of his ..?

A. The revenue, I believe, averaged a profit over the two years that it is up to Mr. Thian's calculation.

30 Q. The revenue figure is approximately 20%.

A. Yes, but they averaged over.

JUDGE: Very well.

Mr. Newbold: He said 1946, 1947 and 1948 were boom years. Whether he means by that that was the greatest amount of building in those years and if so whether he has checked?

JUDGE: Exactly what do you mean by saying those were boom years?

40 A. I took the information given me by the practising architect.

In the Supreme Court

Appellant's Evidence

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(Continued)

JUDGE: You didn't enquire whether there was a lot of building or a high rate of profit?
A. I believe he intended to mean those were years of a high rate of profit, was attainable.

Mr. Newbold: Would you be kind enough to ask, as the witness has referred to the third schedule, whether he was not aware the higher the entry in the third schedule, the cheaper the building?
A. That is one of the factors which the professional expert took into his consideration. 10

Mr. Newbold: And whether the witness is aware that the figures, 1946 of 8.3; 1947, 7.4; 1948, 6.6; 1949, 6.0; 1950, 5.80, getting progressively more expensive?
A. Building is getting progressively more expensive.

JUDGE: Were you aware of those factors?
A. I had not got them in my head.

JUDGE: I don't mean now, when you had your discussion with your adviser? 20
A. He took them into consideration, I did not.

JUDGE: On the telephone?
A. That was the initial interview, as it were, the interview was held, if I recall rightly, on the Wednesday evening.

JUDGE: Were these your weightings or your adviser's weightings?
Who said 'let us put the weighting of such and such a year at such and such a figure'?
A. I relied on the advice of the adviser 30
My Lord.

JUDGE: Did he say 'let us put the weighting of a particular year at 70 and that of another at 70½'?
A. No My Lord, I put the weightings in and asked him whether he felt it was unreasonable.

JUDGE: How did you arrive at that - just guess?
A. Well My Lord, an intelligent guess is all that one could call it, based on professional advice. 40

JUDGE: Which seems to have amounted to telling you they were boom years and not specifying what he meant and having told you that 8½% was the average profit for some years.

Very well, 9.15 Gentlemen, is that convenient -
I thought you said, Mr. Somerfield ...

In the Supreme
Court

Mr. Somerfield : That was on the assumption that
Mr. Easterbrook was ready to go into the box.

Appellant's
Evidence

JUDGE: Are any more witnesses being called?

No.38

10 Mr. Foot: There is a question of recalling Mr.
Rattan Singh. I don't suppose it will take
more than a few moments, and completing re-
examination. I have another witness and it is
conceivable I shall have a further witness,
Rattan Singh and one whom I think will be
very short.
One is a tenant.

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(Continued)

Mr. Newbold: I think we can trace that through
actually. He has further information to give
Your Lordship about the occupation of those
premises at the material time.

20 May we leave it like this - any additional
witnesses that my friend will call now can be
dealt with by Mr. Somerfield. If the stage
comes at which he closes his case and I am
still not here ...

30 JUDGE: Then I will rise. What it amounts to is
this: you don't want to be here during the
re-examination of Rattan Singh. You don't
mind being absent during the examination in
chief of any other witnesses that are going to
be called and they will be cross examined by
Mr. Somerfield, but should the appellant
complete his case you would like us to rise
until 11 o'clock.

Mr. Foot: I wonder whether it would be more
convenient for the Court to begin after 9.15.?

JUDGE: Very well 9.30 Gentlemen.

COURT ADJOURNS AT 5.P.M.

COURT RESUMED 9.40 a.m. - 15.6.60

15th June 1960

40 Mr. Foot - present.
Mr. Sumerfield - present.
Mr. Newbold - not present.
Mr. Rowland - not present.

MR. FOOT: I call Mr. Ogilvie.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 14 of 1964

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :

RATTAN SINGH
s/o Nagina Singh Appellant

- and

THE COMMISSIONER OF
INCOME TAX Respondent

RECORD OF PROCEEDINGS

VOLUME I

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