Privy Council Appeal No. 13 of 1971

Sir Neville Ashenheim – – – – – – – *Appellant*

v.

The Commissioner of Income Tax – – – – *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JUNE 1972

Present at the Hearing:
LORD WILBERFORCE
LORD DIPLOCK
LORD CROSS OF CHELSEA
LORD KILBRANDON
SIR VICTOR WINDEYER

(*Majority Judgment delivered by* LORD CROSS OF CHELSEA)

This appeal raises the question whether the salary received by the appellant Sir Neville Ashenheim as the ambassador of Jamaica to the United States of America from September 1962 to March 1967 was subject to Jamaican income tax. By a decision given on 22nd July 1968 the Income Tax Appeal Board allowed an appeal by the appellant against an assessment made on him by the respondent the Commissioner of Income Tax in respect of his salary for the year 1963 but by an order dated 31st October 1968 Parnell J. allowed an appeal by the respondent against the decision of the Board and the appellant's appeal against that order was dismissed by the Court of Appeal (Eccleston J. A., Fox J. A. and Smith J. A.) on 9th October 1970.

The appellant was appointed ambassador by the Governor-General of Jamaica by letter dated 9th August 1962 which stated that his salary would be £3,500 a year and that he would in addition be entitled to the allowances and facilities therein mentioned. While ambassador he lived in a house in Washington owned by the Jamaican Government. In 1963 he visited Jamaica twice—in May for special purposes at the request of his Government and in December partly for official and partly for private purposes. During these visits he lived in a house at Kingston which belonged to him and on which he paid the rates but which was occupied—with his permission—by his two adult bachelor sons and his mother-in-law. His salary less income tax was paid to him monthly by cheque which he paid into his account with a Bank in Washington. No part of it was remitted by him to Jamaica. From time to time he protested to the Ministry of External Affairs against the deductions made for income tax but without success.

The assessment in question was made under the Income Tax Law, No. 59 of 1954, as amended. But in order to construe the law as it stood at the date of the assessment it is their Lordships think necessary to have in mind some of the provisions of the earlier income tax legislation. From 1919 to 1954 income tax was charged by the Income Tax Law (Chapter 156) of 1919 s. 4(1) and (2) which was in the following terms:

"4.—(1) Income tax shall be payable in respect of the following incomes:

(*a*) income arising or accruing to any person residing in this Island and derived from the annual profits or gains from any kind of property whatever whether situate in this Island or elsewhere, or derived from the annual profits or gains from any profession, business, trade, adventure, or concern in the nature of a trade, employment or vocation, whether the same shall be respectively carried on in this Island or elsewhere;

(*b*) income arising or accruing to any person not residing in this Island, whether a subject of Her Majesty or not, and derived from the annual profits or gains from any kind of property whatever in this Island, or derived from the annual profits or gains from any profession, business, trade, adventure or concern in the nature of a trade, employment or vocation carried on within this Island:

Provided that this paragraph shall not apply in respect of any profits derived by a person ordinarily resident in the United States of America under a contract made in the United States of America with the Government of the United States of America in connection with the construction, maintenance, operation or defence of the United States bases;

(*c*) income arising or accruing to any person, whether residing in this Island or not, and derived from any public office or employment of profit or from any pension payable out of the public revenue of this Island:

Provided that such income shall not include any deduction or abatement from salary or any contribution made under the Pensions Law, or under the Pensions (Civil Service Widows and Orphans) Law, or any Law substituted therefor;

(*d*) income arising or accruing to any person residing in this Island and derived from any pension received from any source whatever in or out of this Island; and generally;

(*e*) income arising or accruing to any person residing in this Island and derived from any source whatever in or out of this Island, and income arising or accruing to any person not residing in this Island, whether a subject of Her Majesty or not, and derived from any source whatever in this Island.

(2) Any person who satisfies the Assessment Committee that he is not domiciled in this Island, or that, being a British subject, he is not ordinarily resident in this Island, shall in respect of income derived from sources out of this Island be chargeable with income tax only on such income as is received in this Island."

As from 1st January 1955 income tax was charged under the Income Tax Law (No. 59) of 1954 s. 5 of which (replacing s. 4 of the earlier Law) was, as originally enacted, in the following terms:

"5.—Income tax shall, subject to the provisions of this Law, be payable by every person at the rate or rates specified hereafter for

each year of assessment in respect of all income, profits or gains respectively described hereunder—

(*a*) the annual profits or gains arising or accruing—

(i) to any person residing in the Island from any kind of property whatever, whether situate in the Island or elsewhere; and

(ii) to any person residing in the Island from any trade, business, profession, employment or vocation whether carried on in the Island or elsewhere; and

(iii) to any person whether a British subject or not, although not resident in the Island, from any property whatever in the Island, or from any trade, business, profession, employment or vocation exercised within the Island;

(*b*) profits or gains accruing in or derived from the Island or elsewhere, and whether received in the Island or not in respect of—

(i) dividends, discounts, interests, annuities, pensions or other annual sums;

(ii) rents, royalties, premiums and any other profits arising from property;

(iii) any employment, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise but not including the payment for any passage from or to the Island for the purpose of leave granted in respect of the employment;

(*c*) all emoluments, including all salaries, fees, wages and perquisites whatsoever, arising or accruing from any office or employment of profit exercised or carried on in the Island; and all annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit: Provided that the said emoluments shall not include emoluments of an office or employment of profit held by a person in the course of a trade, profession or business if either—

(i) any emoluments of that office or employment were taken into account in the case of that person in computing the profits or gains of that trade, profession or business for the purposes of income tax for the year of assessment;

or

(ii) the office or employment is such that the emoluments thereof would ordinarily be taken into account in computing the profits or gains of that trade, profession or business."

The following provisions of the 1954 Law are also relevant:

"6. (1) Subject to the provisions of this section, the statutory income of any person shall be the income of that person for the year immediately preceding the year of assessment: Provided that in respect of income arising from emoluments (as specified in paragraph (*c*) of section 5 of this Law) the statutory income shall be the income of that person for the year of assessment: . . ."

"8. For the purpose of ascertaining the chargeable income of any person, there shall be deducted all disbursements and expenses wholly and exclusively incurred by such person in acquiring the income—

(i) where the income arises from emoluments specified in paragraph (*c*) of section 5 of this Law, during the year of assessment; and

(ii) where the income arises from any other source, during such time as is provided for in section 6 of this Law, . . . "

" 15. (1) Any person who satisfies the Commissioner that he is not domiciled in this Island, or that being a Commonwealth citizen, he is not ordinarily resident in this Island, shall in respect of income derived from sources out of this Island be chargeable with income tax only on such income as is received in this Island."

" 60. (2) Income tax in respect of emoluments specified in paragraph (*c*) of section 5 of this Law shall, subject to and in accordance with the provisions of this Law and of the Regulations set forth in Part 1 of the First Schedule to this Law, be deducted or repaid by the person making the payment notwithstanding that when the payment is made no assessment has been made in respect of the emoluments: . . . "

The Income Tax Amendment Law 1958 amended section 5 (*b*) and (*c*) so as to make them read as follows:

" (*b*) profits or gains accruing in or derived from the Island or elsewhere, and whether received in the Island or not in respect of—

(i) dividends, discounts, interests, annuities, pensions or other annual sums;

(ii) rents, royalties, premiums and any other profits arising from property;

(iii) any employment or vocation;

(*c*) all emoluments, including all salaries, fees, wages and perquisites whatsoever, arising or accruing from any office or employment or profit exercised or carried on in the Island; and including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise; and all annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit;

Provided that—

(i) the said emoluments shall not include the payment for any passage from or to the Island for the purpose of leave granted in respect of the employment;

(ii) the said emoluments shall not include emoluments of an office or employment of profit held by a person in the course of a trade, profession or business if either—

(a) any emoluments of that office or employment were taken into account in the case of that person in computing the profits or gains of that trade, profession or business for the purposes of income tax for the year of assessment; or

(b) the office or employment is such that the emoluments thereof would ordinarily be taken into account in computing the profits or gains of that trade, profession or business;

(iii) the annual value of any quarters or residence shall, for the purposes of this paragraph, be determined by the Commissioner having regard to such regulations (if any) as may be prescribed by the Minister but, as regards any person, such annual value shall be deemed not to exceed ten per centum of the total emoluments (other than the value of the quarters or residence) paid or payable for the year of assessment to such person."

The respondent's original contention was that s. 5 (*c*) applied to the appellant and as stated above tax was in fact deducted from his salary during his period of office as ambassador. But before the Appeal Board the respondent further contended that the appellant was resident in Jamaica in 1963 and that his salary was taxable under s. 5 (*a*) (ii) or alternatively that it was taxable either under (*a*) (iii) or (*b*) (iii). The appellant on the other hand contended that s. 5 (*c*) was the only provision under which salaries could be taxed and that that sub-paragraph did not apply because his employment was not exercised in Jamaica. Alternatively he contended that he was not resident in Jamaica in the relevant year. The Board by its decision given on 22nd July 1968 accepted the appellant's contention that salaries could only be taxed under subparagraph (*c*) and held that his employment was exercised outside Jamaica. In view of this decision it was not necessary for them to decide whether or not he was resident in Jamaica in 1963; but in fact by a supplementary decision given on 4th September 1968 the Board decided that he was so resident.

After the decision of the Board the respondent abandoned his contention that s. 5 (*c*) applied to the case. He also conceded that the word "employment" as used in (*a*) (ii) and (iii) was limited to self employment. He rested his case before Parnell J. and the Court of Appeal on the contention that in (*b*) (iii) the word included salaried employment. The appellant on the other hand contended that throughout (*a*) and (*b*) the word "employment" was confined to "self employment" and that (*b*) (iii) was added to (*a*) (ii) and (iii) so as to make it clear that the profits of "casual" self employment were covered. He also contended before the Court of Appeal that even if "employment" in (*b*) (iii) covered salaried employment the appellant's salary was not caught because he was the holder of an office.

Parnell J. and in the Court of Appeal Fox J. A. and Smith J. A. (with whose judgments Eccleston J. A. concurred) agreed in thinking that the respondent's concession that "employment" in (*a*) (ii) and (iii) was limited to self employment was justified but they also agreed in rejecting the contention that it was so limited in (*b*) (iii) and that that subparagraph was introduced to catch the profits of "casual" self employment. In reaching their conclusion the judges in the Court of Appeal relied to some extent on the fact that the appellant's salary would undoubtedly have been taxable under the 1954 Law in its original form. The Court of Appeal further rejected the appellant's contention that even if "employment" in (*b*) (iii) covered salaried employment it did not cover his case since he was the holder of an office.

An ambassador is, of course, the holder of an office, but it is equally true to say that the appellant while he was Jamaica's ambassador to the United States of America was in the employment of the Crown. His salary, therefore, answered, *prima facie*, the description of "profits or gains derived from the Island in respect of an employment". The appellant, however, argues that if section 5 is read as a whole it is clear that the word "employment" in subparagraphs (*a*) and (*b*) is confined to self employment as opposed to employment at a salary. The concession of the respondent, approved by the judges in the Courts below, that "employment" in s. 5 (*a*) is confined to self employment was based on some words used by Rowlatt J. in *Davies v. Braithwaite* [1931] 2 K. B. 628. What he then said was taken as authority for the proposition that the word "employment" if it is found coupled with the words "trade business profession and vocation" must be construed as limited to self employment. Their Lordships do not think that proposition is in fact well founded or that the judgment of Rowlatt J. is any authority for it. Until the passing of the Finance Act 1922

ordinary salaried employments were taxed under Schedule D to the United Kingdom Income Tax Acts—(the wording of which is substantially the same as that of section 4 (1) (*a*) and (*b*) of the Jamaica Law of 1919 and section 5 (*a*) of the Law of 1954)—Schedule E being at that time confined to public offices and employments of a public character—see *Great Western Railway Co. v. Bater* [1922] 2 A. C. 1. By s. 18 of the Finance Act 1922 ordinary employments at a wage or salary became taxable under Schedule E and it was only in the light of that change that Rowlatt J. expressed the view that the word "employment" in Schedule D had taken on the limited meaning of self employment. As their Lordships see it if 5 (*a*) and (*b*) had stood alone it would have been clear that salaried employments exercised outside Jamaica by persons resident in Jamaica or whose salaries were derived from Jamaica were subject to Jamaican income tax and the appearance of the words "employment or vocation" in (*b*) (iii) as well as in (*a*) (ii) and (iii) would be readily explicable since without them the salary of a person not resident in Jamaica in the year of assessment and employed outside Jamaica would not be taxable even though it was derived from the Island or he was domiciled or ordinarily resident in the Island. But (*a*) and (*b*) do not stand alone and the strength of the appellant's case lies in the presence of (*c*). One argument advanced in this connection is, indeed, in their Lordships' view ill-founded. "If", it was said, "'employment' in (*a*) and (*b*) includes salaried employment then the Crown will be able to choose whether to tax an employee employed in Jamaica either under (*c*)—in which case he will pay tax by deduction in the year in which he receives it—or under (*a*) or (*b*)—in which case he will pay tax by direct assessment on a sum calculated by reference to his income for the preceding year. So if his salary in one year is higher than his salary in the next year the Crown could—if so minded—tax him under (*c*) in the first year and then change to (*a*) or (*b*) in the second year so as to continue to get the benefit of the higher salary." The answer to this argument lies in the terms of the proviso to s. 6 (1) which make it clear that in any case falling under (*c*) the taxable income is to be the amount of the salary for the year of assessment and that the Crown will not have any right to tax under (*a*) or (*b*). But the whole framework and the wording of (*c*) do undoubtedly tell against the view that the words "annual profits or gains arising from any employment" in (*a*) (ii) and (iii) and the words "profits or gains" accruing in respect of any "employment" in (*b*) (iii) were intended to cover salaries not covered by (*c*). (*c*) does not use the words "profits or gains" but the word "emoluments"; it does not refer simply to "employments" but to "emoluments accruing from any office or employment of profit"; and it contains detailed provisions for the ascertainment of the amount of the taxable emoluments. All this suggests that (*c*) is a comprehensive code for the taxing of salaries and that if any salary falls outside (*c*) it escapes the net altogether. This was how the matter struck the Appeal Board and their Lordships feel the force of the argument—though if "employment" in (*a*) (ii) and (iii) and in (*b*) (iii) means only "self employment" it becomes difficult to see why (*b*) (iii) was needed at all for their Lordships agree with the Court of Appeal that the suggestion that it was inserted to catch "casual employments" is most unplausible. Faced with a puzzle of this sort a Court is entitled to pay regard—as the Court of Appeal paid regard—to the history of the legislation and this in their Lordships' view tips the scale in favour of the respondent. The appellant's salary would have been taxable under the 1919 Law—either under 4 (1) (*c*) or 4 (1) (*e*). Again it would have been taxable under the 1954 Act as originally framed for the provisions which then followed the words "any employment" in (*b*) (iii) showed clearly that despite the presence of (*c*) they covered "salaried employment". The

appellant's case, therefore, involves the proposition that in passing the Amending Law in 1958 the Jamaican legislature intended to exempt persons in the position of the appellant from a liability to tax to which they were previously subject. There is, of course, no presumption against the legislature having had such an intention but their Lordships find it very difficult to suppose that if they had had it the Amending Law would have been framed as it was. If the Amending Law as well as transferring the words following the words "any employment" to (*c*) had gone on to delete paragraph (*b*)(iii) altogether it could have been argued with great force that the result was to limit the meaning of "employment" in (*a*)(ii) and (iii) in the manner suggested by Rowlatt J. in *Davies v. Braithwaite* (*supra*) with regard to similar words in Schedule D. But the legislature left the words "any employment" in (*b*)(iii) standing and added to them the words "or vocation". "Vocation" is like "employment" a word of wide import the earnings from which may well take the form of a salary. Their Lordships cannot believe that the meaning of the word "employment" in (*a*) and (*b*) which before the Amending Law of 1958 included salaried employment was changed by that Law so that the word came to mean only self employment. They therefore agree with the Court of Appeal that the appellant's salary was assessable to income tax. As stated above the Appeal Board held that in the year 1963 the appellant was "resident" in Jamaica. It is, of course, possible that in later years he was resident exclusively in Washington. Even so, however, his salary would be liable to tax under (*b*)(iii) because it was derived from Jamaica. The judgments below contain references to the appellant's domicile, to the terms of s. 15 and to the possible application to the Act of the principle laid down in *Colquhoun v. Brooks* [1889] 14 A. C. 493. As their Lordships see it none of these questions have any bearing on this case.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the respondent's costs of the appeal to the Board.

(*Dissenting Judgment prepared by* SIR VICTOR WINDEYER *with which* LORD WILBERFORCE *concurs.*)

I regret that I cannot concur in the conclusion that this appeal should be dismissed. I regret that I differ in what is no more than a troublesome question of the construction of ill-assorted statutory provisions. And I may add that there does not appear to me to be any sound reason, in policy or principle, for the legislature of Jamaica exempting from taxation the emoluments of his office that the appellant derived from Jamaica. But I recall Lord Halsbury's remarks in *Tennant v. Smith* [1892] A. C. 150 at p. 154: "It is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes." The statute here in question is the Income Tax Law of Jamaica (No. 59 of 1954, as amended in 1958). The tax that it imposes is imposed by section 5. I need not repeat its provisions. The essential fact is that the appellant carried out his duties as ambassador in the United States of America, the country to which he was accredited. His salary thus did not arise or accrue from an office or employment of profit exercised or carried on in Jamaica. It is therefore excluded from the charge imposed by paragraph (*c*) of section 5. The question is whether it is nevertheless caught by some other provision of that section.

It seems to me that the Courts in Jamaica construed the statute under the influence of a supposition that when it was enacted in its present form it was not meant so to change the law as to relieve anyone of a

liability to tax that would have existed when the law was in a form that it earlier had. Paragraph (*b*) (iii) was mainly relied upon by the respondent. The Court of Appeal, in affirming the decision of Parnell J., described it as a " sweeping up provision " designed, it was assumed, to bring to tax income that would not otherwise be caught in the tax-gatherer's net. But the effect of the statute must depend upon its language, not upon that of its forerunner; and not on any supposition of its purpose, except so far as that is revealed by its words or by other matters to which a court may properly have regard. And it is surely more probable that an amendment of a statute alters the law than that it leaves it unchanged?

I do not question that when words and phrases of an earlier enactment are repeated in a new statute dealing with the same subject matter they are, generally speaking, to be understood and applied as formerly they had been. But I am unable to accept the proposition that the repetition in an enactment of phrases used in an earlier enactment means that the legislature has approved and adopted particular meanings that a court had put upon them. That idea was deprecated by Lord Radcliffe in *Galloway v. Galloway* [1956] A. C. 299 at p. 320 and by Dixon C. J. in the High Court of Australia in *The Queen v. Reynhoudt* (1962) 107 C.L.R. 381 at p. 388. The meaning of words in a statute must often depend more upon lexicography and current usage than upon law reports. I am far from persuaded that the word " employment " in paragraph (*a*) (ii) of section 5 is to be read as denoting only instances of what was called " self-employment ", although that was conceded by the respondent. I hesitate to conclude that because in *Davies v. Braithwaite* [1931] 2 K. B. 628 the word " employment " was given that restricted meaning in Schedule D to the Income Tax Act of the United Kingdom it must be read in the same restricted sense in paragraph (*a*) of the Income Tax Law of Jamaica. The collocation of particular words may be the same; but the contexts differ. I am inclined to think that, notwithstanding what was said in argument about *noscitur a sociis* and *ejusdem generis* and the concession that was made, " employment " in paragraph (*a*) (ii) literally embraces all forms of employment for reward, whether as a servant working for a salary or wages or as an independent contractor working under an engagement for remuneration. Next, as to the words " any employment " in paragraph (*b*) (iii) of section 5: I see no reason to restrict the denotation that, considered by themselves, they have. Nor do I think that the addition of the words " or vocation " narrow this denotation. It seems to me to do no more than ensure that the profits and gains brought to charge include not only the remuneration for work done by a man which he was engaged by another man to do, but also the rewards of work done by a tradesman or artificer in making things, not to order but for sale to anyone who would buy them. For these reasons I think that paragraph (*b*) (iii) certainly, and paragraph (*a*) (ii) probably, would if standing alone aptly describe any kind of profits or gains from any kind of employment. But they do not stand alone. They stand in section 5 alongside paragraph (*c*). The section is a single enactment which must be read as a whole. I do not mean to say that the several parts are mutually exclusive, only that they must be so read that they stand together.

The emoluments of a regular employment in an office are aptly called " profits or gains ". I note in passing that the Oxford Dictionary defines " Emolument " as " Profit or gain arising from station, office or employment; dues, reward, remuneration, salary ": and " Perquisite " as " Any casual emolument in addition to salary or wages ". The words " office or employment " in paragraph (*c*) were the subject of some

consideration in the argument. An office was called by Blackstone " a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging ". Offices were, he said, in his time incorporeal hereditaments, " for a man may have an estate in them, either to him and his heirs, or for life, or for a term of years or during pleasure only . . . ": *Commentaries,* Vol. 2 p. 36. This concept of an office has lingered in language and in law; so that a man is ordinarily said to be appointed, or called, to an office—under the Crown or a corporation—as distinct from a man simply engaged for a task. Moreover, the word " employment " when coupled with " office " has historically a special sense. This is obsolete in common parlance today; but it is not unknown to the law. It was in ordinary use in the seventeenth century. An employment then connoted an official position in the public service, a place similar to an office. The *Oxford Dictionary* gives an illustration of this use from Clarendon's *History of the Rebellion.* I have come upon the word in that sense in nineteenth century statutes. One is the Act 46 Geo. III c. 82, dealing with fees payable in respect of certain " offices or employments ". Another is the Act 49 Geo. III c. 126. It prohibited the sale of " any offices, commissions, places or employment in any public department " as therein specified. Coming to modern times, the words " public office or employment of profit " in Schedule E to the Income Tax Act of the United Kingdom were considered by Rowlatt J. in *Davies v. Braithwaite* (*supra*). His Lordship said that " ' employment ' there means something analagous to an office ". That accords with the opinion that he had earlier expressed, which was quoted and approved by Lord Atkinson in *Great Western Railway Co. v. Bater* [1922] 2 A, C. 1 at p. 15. This may be the sense of the expression " employment of profit " in paragraph (*c*) of section 5. But, if so, it does not curtail the scope of the word " employment " elsewhere in the section. The expression " any employment " in paragraph (*b*) (iii) literally covers an employment by appointment to a place or position as well as all forms of contractual engagement for services. I may interpolate here that in *Bacon's Abridgment* under " Officer and Offices " it is said that " There is a difference between an office and an employment, every office being an employment; but there are employments which do not come within the denomination of offices." Whether or not the words " office or employment of profit " in paragraph (*c*) be read with old usage in mind, they clearly cover the situation of the appellant. He held the office of ambassador. It was an employment of profit under the Crown. And I entertain no doubt that it was an employment in the sense which the words " any employment " have in paragraph (*b*) (iii) of section 5. That, the respondent contends, is the end of the case. But is it?

Paragraph (*b*) (iii), unqualified by the presence of paragraph (*c*), would make the appellant's salary taxable. But that is not to the point if it be so qualified that, reading the section as a whole, the salary of the appellant's office is made not taxable. That I consider is the position, not because any special or limited meaning attaches to " employment " in either paragraph (*b*) or paragraph (*c*) but because, reading them together, it seems to me that paragraph (*c*) is a special provision, the implication and effect of which in excluding the emoluments of employments outside the Island is not displaced by the general terms of paragraph (*b*) (iii). I am not persuaded that anything is gained by calling paragraph (*b*) (iii) a " sweeping up " or " sweeping in " provision. A general description can sweep up and in to a class description things not otherwise specifically included in it. But I do not think that general terms can sweep up and sweep in anything that is otherwise specifically excluded, whether expressly or by necessary implication. The several paragraphs of section 5 are not, I think, mutually exclusive. Particular

gains and profits may be aptly described and denoted by more than one paragraph. But in my view that does not mean that a species of gains and profits that one paragraph actually exonerates from taxation, either expressly or by implication, can nevertheless be brought to tax by virtue of a genus described in an earlier paragraph. I could conclude by referring to the maxim *generalibus specialia derogant:* but it seems better that I sum up in English my opinion, that I have tried to express and explain. I do so as follows.

The appellant's salary and allowances in question were emoluments arising from an office and employment of profit. Such emoluments are only taxable if the office or employment be exercised or carried on in Jamaica. That condition was not fulfilled. The emoluments were not made taxable by the general provisions of s. 5 (*b*) (iii) or s. 5 (*a*) (ii) having been excluded therefrom by the special terms of s. 5 (*c*).

Therefore, without endorsing all the arguments of the appellant, I would have been of opinion that this appeal should be allowed; and the determination of the Income Tax Appeal Board of Jamaica, which I consider was soundly based, restored.

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In the Privy Council

SIR NEVILLE ASHENHEIM

v.

THE COMMISSIONER OF INCOME TAX

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