

Wright Vs. Boyce (inspector of Taxes).

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Court : Kolkata

Decided On : Jun-18-1958

Reported in : [1959]36ITR504(Cal)

Appellant : Wright

Respondent : Boyce (inspector of Taxes).

Judgement :

The following case not referred to in the judgment was cited in argument : Calvart v. Wainwright.

JENKINS L.J. This is an appeal from a judgment of Vaisy J. dated March 6, 1958, whereby he upheld a decision of the special commissioners in favour of the Crown to the effect that the taxpayer, Joseph Wright, was taxable under Schedule E on certain voluntary payments made to him at Christmas in each of the seven years 1948/49 to 1954/55.

The taxpayer was employed as a professional hunt servant. He had been a hunt servant all his life and, in 1946, he was appointed huntsman to the Bathurst Hunt. He remained there from 1946 to 1952 or thereabouts and he then went from the Bathurst Hunt to the Woodland Pytchely Hunt. In his capacity as huntsman successively with these two hunts he was the senior member of the hunt staff and occupied a responsible position. It is important to observe that the taxpayer was engaged in the case of each hunt by the master and not by any body which could

be said to be representative of the hunt as such. In each case the constitution of the hunt (as described in the case stated) may be said to have been nebulous in the extreme. As cases of this kind turn very much on the particular facts, it will be necessary for me to quote at some length from the stated case, but, before I do that, I might perhaps indicate the points upon which Mr. Magnus for the taxpayer especially relied.

The payments in dispute were voluntary payments and, as I have said, the huntsman was employed by the master. The payments came from persons who can be succinctly described as followers or supporters of the hunt.

Mr. Magnuss main point which he put in the forefront of his argument were these : the taxpayer had no contractual title to the payments, that is to say, there was nothing in the terms of his engagements which said he would be entitled to receive and retain presents of money made to him by followers or supporters of the hunt at Christmas time; secondly, there is the point that, both with the Bathurst and with the Woodland Pytchely, the taxpayer was engaged as huntsman by the master at a weekly wage; and further, not only was there no contract about the presents of money at Christmas but nothing was said about them on the occasion of the taxpayers engagement in either case. Then, as I have already said, the payments were made by persons other than the taxpayers employer; they were, in fact, made by the followers and supporters of the hunt and were purely voluntary payments inasmuch as the persons making them were under no legal obligation to do so.

Then, said Mr. Magnus, the taxpayer was well known in the district because of his employment as huntsman, and the he had many personal friends in the area. The importance of that, said Mr. Magnus is that it makes it possible to account for the voluntary payments made as having been made from motives of personal regard for the taxpayer. Then Mr. Magnus pointed out that there was no organized collection, there were no circulars and there was no solicitation of any kind with respect to these voluntary payments at Christmas and, finally, said Mr. Magnus, what was given by each donor was given purely spontaneously as a mere present.

As against these point I should mention that (as will appear from the case) there was - and is - a well established practice in most hunts in this country, and in the Bathurst and Wood and Pytchely hunts in particular, to make present of money to the huntsman at Christmas and presents of money in this case were made regularly each year. I am not saying that the payers were necessarily always the same person; but the subvention was regularly made : the making of the payments took place every single Christmas during his employments and at the first Christmas just as at the last.

I should next to the case. Paragraph 3 shows that both in the case of the Bathurst Hunt and the Woodland Pychely Hunt the taxpayer was engaged by the master.

'4. The appellant (who had been a hunt servant since boyhood) was engaged as huntsman of the Bathurst Hunt in 1946 by the then master. He was engaged orally, at an interview, when he was told what his wages and other terms of his employment would be; nothing was said about tips or Christmas presents. In 1952 he was engaged as huntsman of the Woodland Pytchley Hunt by one of the joint masters, Captain Goddard Jackson; this engagement also oral : Captain Goddard Jackson told him the wages and other terms of the employment, and nothing was said about tips or Christmas presents.

'5. In each year when the appellant was huntsman to the Bathurst Hunt and the Woodland Pytchely Hunt he received present of cash at or about Christmas time. Some of the presents come to him from persons with whom he had come into contact in his capacity as a hunt servant earlier in his career, but who had no connection with the hunt to which he was huntsman at the time the presents were given. These, however, were few in number, and most of the presents of cash given to the appellant at Christmas came from persons with whom he was at the time in contact in his capacity as huntsman. Such persons with whom mostly be people who regularly rode with the hunt, but would also include persons who only occasionally rode, and persons who did not ride but had an interest in the hunt. Many of these were personal friends of the appellant, who, in his capacity as huntsman, had become a personality of some note to a wide circle of people in the district, not only to people who hunt, but also to people who voluntarily assist in the

work of the kennels, to farmers, and to people who attend meets on foot. He also got presents in kind from farmers.

'6. It is a widespread custom in hunts in most part of the country (including the Bathurst and Woodland Pytchley Hunts) for the followers of the hunt to give the huntsman presents of cash at Christmas time, and the usual occasion for the gifts is the meet on Boxing Day. The custom is one of long standing and will known to people who hunt, and soon becomes known to people who take up hunting. There is no compulsion on followers of the hunt to give such present nor (in the case of the Bathurst and Woodland Pytchley Hunts) was any form of circular or reminder given to followers about it or any organized collection or cap, either on Boxing Day or at any other time. There is no conventional amount to give; a person would give a larger amount if he liked or respected the appellant, or a smaller one or one at all if he disliked him. About half of the persons riding at the Boxing Day meet would give the appellant a present (whether several members of the same family only); some people (particularly those who could not attend the Boxing Day meet) give the appellant a present before or after Boxing Day; if, however, there is no meet on Boxing Day the appellant does not receive any presents. For example, in one year when hunting was stopped by frost from October of February and in another year when the appellant was prevented by illness from hunting during the Christmas season he received very few presents of cash.'

I can omit paragraphs 7 and 8. The commissioners expressed their decision in these terms : '9. - (1) We, the commissioners who heard the appeal, found on consideration of the evidence before us that (with the exception of the gifts referred to in sub-paragraph (2) below) the sums of money in question came to the appellant because he was employed as huntsman and accrued to him by virtue of that employment. In coming to his conclusion we did not overlook the fact that in the case of many of the said sums the giver was influenced to some extent by personal regard for the appellant, but we found that such personal regard had its origin in the way in which the appellant personally performed his duties as huntsman.

'(2) We held that the appeal failed in principle, but we directed that in arriving at the amount assessable there should be excluded from assessment the amount of any gifts which came from persons who had no connection with the hunt with which the appellant was employed in each of the relevant years.' The appeals against the assessments were disposed of on that basis. There was an adjustment made in respect on the payments referred to in subparagraph (2) of paragraph 9.

Those are the facts and the question is whether on those facts the payments, voluntarily made at Christmas to the taxpayer by followers and supporters of and, I should add, persons interested in, the hunt, were profits of his employment within the meaning of Schedule E. I do not think it is necessary to refer to the statutory provisions because I think it is not open to doubt that the expression 'profits of his employment' sufficiently conveys the purport of Schedule E for the purpose of this case.

This, as will have been observed, is one of those cases where it is sought to tax payments made voluntarily on the part of the persons who made them. It is, of course, well settled that payments may be taxable in the hands of the hands of the recipient as profits of an office or employment although they are voluntarily made by the persons making them; even so they may be profits of the employment if, from the standpoint of the recipient of the recipient, they accrue to him by virtue of his employment.

I am anxious to avoid much citation of authority, this being a topic which has already occupied a great deal of space in the reports. But I should refer to what was said by Collins M. R. in *Herbert v. McQuade*. After reference to another case (*Inland Revenue v. Strang* he says : 'Now that judgment, whether or not the particular facts justified it, is certainly an affirmation of a principle of law, that a payment may be liable to income tax although it is voluntary on the part of the persons who made it, and that the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office; if it does, it does not matter whether it was voluntary or whether it was compulsory on the part of the persons who paid. That seems to me to be the test; and if we once get to this - that the money has come to, or accrued to, a person by virtue of his office - it

seems to me that the liability to income tax is not negated merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it.'

There is an almost equally well-worn passage from the judgment of Stirling L.J. : 'I think that a profit accrues by reason of an office when it comes to the holder of an office as such - in that capacity - and without the fulfillment of any further or other condition on his part; and what we have to determine is whether the sum in question does so come to the holder of this office.'

In *Seymour v. Reed* Viscount Cave L.C. made some observations which are often quoted and it will be necessary for me to read part of that passage. Viscount Cave said : '... and it must now (I think) be taken as settled that they' - that is to say, the relevant words of rule 1 of Schedule E of the Income Tax Act - 'include all payment made to the holder of an office or employment as such - that is to say, by way of remuneration for his services, even though such payments may be voluntary - but that they do not include a mere gift or present (such as a testimonial) which is made to him on personal grounds and not by way of payment for his services. The question to be answered is, as Rowlatt J. put it, Is it in the end a personal gift or is it remuneration? If the latter, it is subject to the tax; if the former, it is not.'

Mr. Magnus, who said all that could possibly be said for the taxpayer in his interesting argument, dealt with the matter, in effect, in this way. He referred us at the outset to the well-known cases of *Herbert v. McQuade* and *Blakiston v. Cooper*. *Herbert v. McQuade*, relating to the clergy sustentation fund for augmentation of the stipends of clergy and *Blakiston v. Cooper*, being concerned with the customary Easter offerings made for the benefit of the vicar of a parish. In both those cases the sums received by the clergymen concerned were held to be taxable notwithstanding that the contributions to the funds from which they were derived were voluntarily made by the persons making them. That, according to Mr. Magnus, is the background, if I may so describe it, of the principle that the question whether a payment of his employment depends on whether a payment voluntarily made is taxable in the hands of the recipient as profits of his employment depends on whether from the standpoint of the recipient it comes to

him in that capacity.

Mr. Magnus said that this principle presented no difficulty in its application to cases such as these clergy cases because in each of those cases there was a definite machinery of collection and organization which really made it quite plain in what capacity the sum was received by the clergyman once it had found its way into the fund in question. Again, said Mr. Magnus, no difficulty arises where as in *Moorhouse v. Dooland*, the contract of service itself provides a right for the employee to receive and retain the voluntary payments in question. But, Mr. Magnus went on to point out, in this case there was no machinery or organisation of collection at all; there is the bare fact that the taxpayer, during the relevant years of assessment, held the office or employment of huntsman first to one hunt and then to another; there is the bare fact that payments were voluntarily made to him at Christmas by followers and supporters of, and persons interested in, the hunt in question.

In a case such as that, said Mr. Magnus, it is plain that one must look and see why the payment was made because, until that has been found out, it is impossible to answer the question whether it was received by the recipient as holder of the relevant office or employment. Mr. Magnus has shown us references to the intention of the donors in some of the reported cases. He pointed out in particular that in *Seymour v. Reed*, all turned on an inference as to the intention of the donors who, in fact, were the people who had paid gate money to witness the benefit match. Applying that view of the matter to the present case, Mr. Magnus said that the Crown had not established its claim to tax, for, as there was no machinery of collection and no fund to identify or earmark the payments, as and when they were paid into the fund as made for a particular purpose, there was nothing here to show what the intention of the donors was.

Mr. Magnuss sheet-anchor was really *Seymour v. Reed*, and he said that the facts here (to put the matter at its lowest) were wholly consistent with the view that this was a *Seymour v. Reed* case, that is to say, that the voluntary payments were made not to the taxpayer in his capacity as the holder of the employment of huntsman but to 'Joe Wright' the man, in recognition of his skill and daring and so

forth in carrying out his duties as huntsman. In Mr. Magnuss submission, once that is made good, then it follows from *Seymour v. Reed*, that the amounts are not taxable.

It must, I think, be remembered that *Seymour v. Reed* was a case turning very much on its particular facts and it was, as I see it, a vital element in the case that the benefit match was held and the gate money was collected on the eve of the retirement of Seymour after a long and brilliant career as a county cricket playing cricket for the county of Kent. It was a 'once and for all' payment after very long service and after a long career spent in entertaining the public. It was made at the proper time for making a testimonial, that is to say, on the eve of the retirement of the person to whom it was being given. That was not so in the present case : these payments were made just as much at the first Christmas after the taxpayers assumption of the office or employment of huntsman as at the last.

As to the contention that the motives of the contributors of the voluntary payments shall be looked at (or the objects, perhaps one should say, that they had in view), I agree that, generally speaking, where there is no definitely determining factor, like a reference in the contract of employment of the person concerned, it is hardly possible to assess the quality of the payment without considering the position both of the payers and of the payee and it may well be that, where it is sought to tax a man on receipts of this general character, he can repel the claim to tax by proving that the persons who gave him the sums alleged to be taxable gave them to him on some entirely different account. But then I think the first test would still hold good : what was the quality of the payment from the point of view of the recipient ?

In the case put, from the point of view of the recipient the payment would have nothing to do with his employment at all; it would have been made for the wholly extraneous purpose I am postulating.

It is little to the purpose to multiply citations in cases of this kind, where all that can be done is to deduce from the authorities such general propositions as they lay down. I do not think the general propositions are really in dispute; the difficulty concerns their application to the facts of the particular case. I should now briefly attempt to do that.

First of all, I would observe the evidence as to the existence of a wide-spread custom in the hunts in most parts of the country, including the two hunts with which we are concerned, to give the huntsman presents of cash at Christmas time. Pausing there, it is reasonably plain, I think, that that custom is custom to make presents of cash at Christmas time to the person for the time being holding the office or employment of huntsman. It is the huntsman as such by virtue of his office or employment who is the object of the custom. Where a custom such as that exists, the usual occasion for the gifts being the meet on Boxing Day, and one finds people on Boxing Day making payments to the huntsman, I should have thought those payments must be taken *prima facie* to have been made in pursuance of the custom : if they were made in pursuance of the custom, then, *prima facie*, they were not payments to the taxpayer as an individual but, in accordance with custom, payments to the huntsman for the time being who, at that particular Christmas Day or Boxing Day happened to be the taxpayer. So that so far it appears to me that from the stand-point of the taxpayer the payments so received would be received by him in his capacity as huntsman or, in other words, by virtue of his office or employment as huntsman. It is important, further, to bear in mind that this custom produced a regular annual subvention (if I may use that expression) every Christmas from the date of the taxpayers engagement as huntsman to the Bathurst Hunt.

That appears to me really to exclude this case from the *Seymour v. Reed* class of case. I do not think any question of a testimonial or of admiration, respect or regard for the outstanding personal qualities of the taxpayer can well come into the matter. One does not, I apprehend, start giving testimonials to huntsmen so soon as they are engaged. The time when one would expect a testimonial is on the huntsmans retirement. I am far from saying that, if he did retire and on the eve of his retirement a testimonial be way of a collection of money was organized in his favour, that would necessarily be taxable, but the regular character of the subvention does, to my mind, strongly support the view that the payment is made to the holder of the office or employment as such and not to the particular individual holding it on personal grounds. The recurrent quality of the subvention, besides negating the idea of a testimonial, is also in itself, I think, an indication that the taxpayer received these payments by virtue of his office or employment.

I would add this : it appears to me to be clear that the taxpayers hope or expectation of payments pursuant to the custom was at all time a hope or expectation attached to the office or employment. He was in a position to hope for or expect the Christmas payments by virtue of his tenure of the office or employment of huntsman, and I should say again that from his point of view he got whatever he got under the custom by virtue of his tenure of the office or employment of huntsman. Of course, he had no legal title to receive any payment from anybody at Christmas. The matter depended on custom only, but it appears to me that he would have been not unreasonably aggrieved if, in fact, the custom had been discontinued. He might then quite legitimately have regarded his office or employment as huntsman to the hunt in question as having been docked of a customary profit.

I return to Mr. Magnuss argument to the effect that each gift or payment must be considered individually and that it is impossible, in the circumstances of this case, to predicate of all of any of them that they were in respect of the taxpayers office or employment. I may have said this before but, as to that, it appears to me that when the custom is established and payment are shown to have been made by followers or supporters of the hunt at the time when payments pursuant to the custom are customarily made, there being no indication that the payments were made otherwise than in pursuance of the custom, then the payments must be taken to have been made in pursuance of the custom as a matter of prima facie proof. It might have been open then to the taxpayer to contest particular payments and say this or that payment was made on some other account, but I think a prima facie case has been made out, as I have said, when the custom has been proved and payment apparently made pursuant to the custom have been proved.

In my judgment, there was ample evidence on which the commissioners could come to the conclusion at which they arrived and, in my view, their conclusion is wholly correct as also is the conclusion of the judge who dismissed the appeal which was before him.

Mr. Magnus has criticized the findings of the special commissioners as regards subparagraph (1) of paragraph 9 on the ground that, after holding that the sum of

money in question came to the taxpayer because he was employed as huntsman and accrued to him by virtue of that employment, the commissioners go on to say : 'In coming to this conclusion we did not overlook the fact that in the case of many of the said sums the giver was influenced to some extent by personal regard for the appellant, but we found that such personal regard had its origin in the way in which the appellant personally performed his duties as huntsman.' Mr. Magnus uses that as indicating that if the special commissioners had appreciated the effect of these words they could not have included them appropriately unless they were going to told that this was, in effect, a Seymour v. Reed case for the motivation of the gift or payment in Seymour v. Reed was this very matter; it had its origin in the particular brilliant way in which Mr. Seymour personally had performed his duties as a professional cricketer.

That seems to me to be hypercritical. No doubt the payments made under the custom would vary in amount according to the view taken by the contributor of Mr. Wright as a huntsman and possibly as a man. If Mr. Wright was a popular character and liked by a given contributor might well make a more generous contribution than a man who happened to dislike Mr. Wright or to take a poor view of his ability as a huntsman; but these matters, as it seems to me, go to the quantum of the payments and not to their character.

Although I said earlier that I would cite few cases, I should refer in that connexion to what was said earlier that connexion to what was said by Lord Ashbourne in *Blakiston v. Cooper* : 'It was suggested that the offerings were made as personal gifts to the vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the vicar as vicar, and that they formed part of the profits accruing by reason of his office.'

Similarly, in the present case I would say with Lord Ashbourne in *Blakiston v. Cooper*, that if, as the special commissioners found, in many cases the giver was influenced to some extent by personal regard for the taxpayer, such reasons no doubt played their part, but I cannot doubt that the sums in question were given to the huntsman as huntsman, and I do not think anything is really added to the

finding by the words : 'but we found that such personal regard had its origin in the way in which the appellant personally performed his duties as huntsman.' That merely means that a person contributing in accordance with the custom might on that account increase the contribution given by him pursuant to the custom, or perhaps make up his mind to make such a contribution which possibly he would otherwise have omitted to do.

I have now, I think, dealt with the essential points taken in Mr. Magnuss very able and careful argument. I hope I have done justice to it, but, for the reasons I have endeavored to state, I have come to a clear conclusion that the decision of the special commissioners and the judgment of the judge in this case were right and, accordingly, that this appeal fails and should be dismissed.

SELLERS L.J. I agree. As I am so much of the same opinion as my Lord and as we are upholding the judge, I hope it will not be thought to be any disrespect to the interesting and sustained argument of Mr. Magnus if I add no further reasons of my own.

PEARCE L.J. I also agree and for the same reasons.

Appeal dismissed.

Solicitors : Withers & Co; Solicitor, Inland Revenue.

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