COURT OF APPEAL—5 AND 6 OCTOBER 1981

Rolfe (H.M. Inspector of Taxes) *v*. Nagel[1]

B

Income tax—Diamond broker—Schedule D, Case I—Whether payment received as compensation for losing client assessable as profit of trade—Income and Corporation Taxes Act 1970, *ss* 108(1)(*a*)(i) *and* 109(2).

N was a diamond broker. He lobbied the Diamond Trading Corporation with a view to a client becoming an "active client" and so able to purchase C diamonds from them. N pursued the client's interests over three years without payment. He expected that when the client became an "active client" he would receive commissions on the client's diamond purchases.

Before the client became an "active client" he became a client of other brokers. N was aggrieved and claimed compensation against those brokers. An arbitrator was appointed whose award, by which the parties agreed to be D bound (although it was accepted that N had no legal right to compensation), was that N should receive £15,000 from the other brokers.

N appealed against an assessment under Schedule D Case I, and the General Commissioners held that the sum of £15,000 did not form part of his profits as a diamond broker. They made no findings as to why it was paid. The Crown appealed.

E The High Court remitted the case to the General Commissioners to make further findings. Their findings are set out in the judgment[2]. The Court, allowing the Crown's appeal, held that the payment was part of N's profits or gains from his trade, being a sum paid to him as compensation for unremunerated work or for loss of anticipated profit.

Held, in the Court of Appeal, affirming the Chancery Division, that, F contrary to the General Commissioners' decision, it was an inevitable conclusion from the facts that the payment, which was neither unexpected nor unsolicited, was compensation either for work done or for loss of future prospects and was therefore taxable.

CASE

G Stated under the Taxes Management Act 1970, s 56, by the Commissioners for the General Purposes of the Income Tax for the Division of Holborn London for the opinion of the High Court.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of Holborn in the County of Greater London held

[1] Reported (Ch D) [1980] STC 585; (CA) [1982] STC 53. [2] Page 597 *post*.

on 19 February 1976 William Nagel (hereinafter called "Mr. Nagel") appealed against an assessment to income tax in the sum of £12,000 made upon him under Case I of Schedule D in respect of his profits as a diamond merchant broker for the year 1969–70. A

2. The question for our determination was whether a sum of £15,000 paid by Hennig and Co. Ltd. ("Hennig") to Mr. Nagel was a receipt to be taken into account in computing the profits or gains of Mr. Nagel for the year ended 5 April 1969. B

3. Mr. Nagel and Anthony Lionel Sober, partner in Messrs. Lubbock Fine & Co., chartered accountants, gave evidence before us.

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

(*a*) Mr. Nagel's balance sheet and revenue account for the year ended 5 April 1969. C

(*b*) Blank Diamond Trading Corporation ("D.T.C.") "Appointment of Broker" form.

(*c*) Letter of 13 November 1967 from Mr. Louis Glick to Mr. Nagel.

(*d*) Letter of 16 November 1967 from Mr. D. H. H. Turner of the D.T.C. to Mr. Nagel.

(*e*) Letter of 12 December 1967 from Mr. Louis Glick to Mr. Nagel. D

(*f*) Letter of 27 December 1967 from Mr. Nagel to Mr. Louis Glick.

(*g*) Letter of 16 February 1968 from Mr. Nagel to Hennig.

(*h*) Letter of 19 February 1968 from Mr. Nagel to Mr. Benjamin Bonas.

The above documents are attached to and form part of this Case[1].

5. The following facts were admitted or proved:

(A) Mr. Nagel is a diamond merchant broker. He is a sole trader and taxed as such under Case I of Schedule D. E

(B) Mr. Nagel makes up his trading accounts to 5 April each year and during the year ended 5 April 1969 he received the sum of £15,000 from another diamond broker, Hennig, of 1 Charterhouse Street, London E.C.1.

(C) The circumstances leading up to this payment are best understood against the background of a description of how the "Diamond Trade" operates. (1) In order to buy diamonds from the D.T.C. and its associated companies a person has to be accepted by the D.T.C. The D.T.C. will only accept a buyer if he is represented by a recognised diamond merchant broker. There are only seven or eight recognised brokers, of whom Mr. Nagel is one and Hennig is another. (2) Buyers can be classified as "potential clients" and "active clients". F There are only some 200 "active clients" in total. Only "active clients" can purchase diamonds through the D.T.C. (3) A prospective buyer has first to get a recognised broker to act for him, with a view to arranging his eventual acceptance by the D.T.C. as an "active client". If the broker agrees to represent the prospective buyer it is customary for a standard "Appointment of Broker" form to be completed by the prospective buyer and for this form to be lodged with the D.T.C. Annexed hereto as document (*b*) is a copy of a standard "Appointment of Broker" form. Once he has appointed a recognised broker G H

[1] Not included in the present print.

A the prospective purchaser can be classified as a "potential client". (4) The role of the broker is to nurse the "potential client" towards acceptance as an "active client" by the D.T.C. In essence it is a matter of extensive lobbying by the broker before the relevant D.T.C. committee. It may take a number of years for a "potential client" to be accepted as an "active client" and indeed this may never be achieved. On average only very few "active clients" are accepted B by the D.T.C. each year. The broker receives nothing unless and until the "potential client" is accepted as an "active client" and as such purchases diamonds through the D.T.C. Thereafter the broker receives a commission on purchases. (5) Very occasionally a "potential client" will change his broker. The "potential client" is free to do this although he must as a matter of courtesy obtain the consent of his "original" broker. Consent would invariably be C forthcoming—indeed the "original" broker has no option—but in practice a change of brokers is a rare occurrence, not least because the D.T.C. does not approve of such changes which must be notified to the D.T.C.

(D) The circumstances leading up to the payment of £15,000 by Hennig to Mr. Nagel were as follows: (1) In 1964 or thereabouts a Mr. Louis Glick ("Mr. Glick") appointed Mr. Nagel as his broker. Mr. Glick signed the D standard "Appointment of Broker" form referred to in sub-para (C)(3) above. Thereafter, as explained above, Mr. Glick was a "potential client". (2) Mr. Nagel worked diligently on behalf of Mr. Glick with a view to obtaining his acceptancy by the D.T.C. as an "active client". Then in November 1967, entirely unexpectedly, Mr. Glick informed Mr. Nagel that he wished to appoint Hennig as his broker in place of Mr. Nagel. Annexed hereto as documents E (*c*), (*d*), (*e*) and (*f*) is the relevant correspondence. (3) As stated above, Mr. Nagel was powerless to prevent this. He did however feel somewhat aggrieved and accordingly approached Mr. V. Prins and Mr. G. Rothschild (the senior directors in Hennig) to discuss the matter. Mr. Prins and Mr. Rothschild, as well as being business competitors of Mr. Nagel, had been long standing friends of his. (4) Accordingly, Mr. Nagel and Messrs. Prins and F Rothschild (on behalf of Hennig) agreed to explain the entire position to a Mr. Bonas, another broker well-known to all of them, and to invite Mr. Bonas to decide how in fairness the matter should be resolved. Both Mr. Nagel and Hennig agreed to be bound by whatever "decision" Mr. Bonas reached, although it was accepted on both sides that Mr. Bonas's "arbitration" was to be an entirely informal one and that Mr. Nagel had no legal claim (but only a G moral claim) to any sort of compensation. There is provision for arbitration under the London Diamond Club rules. However, Mr. Nagel would not have been entitled to formal compensation and in any event (having regard to his status as a broker (as opposed to a trader)) Mr. Nagel would not have been willing for this matter to have been the subject of a formal arbitration. (5) Mr. Bonas's "decision" was that whenever Mr. Glick, or any of the firms with H which he was or might be in the future associated, was or were accepted by the D.T.C. as an active client or as active clients, Mr. Nagel was to receive £15,000 immediately from Hennig in lieu of damages. (See documents (*g*) and (*h*). The reference in document (*g*) to "D.T.C. Client Scaldia (Belgium)" concerns an entirely different matter that is not relevant to the present proceedings.)

(E) In accordance with the "decision" of Mr. Bonas Mr. Glick having been I accepted by the D.T.C., Hennig paid £15,000 to Mr. Nagel in February 1969 or thereabouts.

6. It was contended on behalf of Mr. Nagel that:—

(*a*) the sum of £15,000 to which Mr. Nagel had no right or claim in law, did not comprise part of the annual profits or gains accruing to Mr. Nagel from his trade;

(*b*) the decisions in *Walker* v. *Carnaby Harrower, Barham & Pykett* 46 TC 561 and *Simpson* v. *John Reynolds & Co. (Insurances) Ltd.* 49 TC 693 cover the present case, and the decision in *Scott* v. *Ricketts* 44 TC 303 supports submission 1 above; A

(*c*) the decision in *Commissioners of Inland Revenue* v. *Falkirk Ice Rink Ltd.* 51 TC 42 is distinguishable;

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

7. The Inspector contended that:—

(*a*) the sum of £15,000 arose to Mr. Nagel from his trade as a diamond merchant broker;

(*b*) it was a payment made in lieu of commission;

(*c*) it was accordingly an annual profit assessable to income tax under Case I Schedule D. C

8. There were referred to us the following cases:—*Blackburn* v. *Close Bros., Ltd.* 39 TC 164; *Fleming* v. *Bellow Machine Co., Ltd.* 42 TC 308; [1965] 1 WLR 873; *Scott* v. *Ricketts* 44 TC 303; [1967] 1 WLR 828; *Walker* v. *Carnaby Harrower, Barham & Pykett* 46 TC 561; [1970] 1 WLR 276; *Simpson* v. *John Reynolds & Co.(Insurances) Ltd.* 49 TC 693; [1975] 1 WLR 617; *Commissioners of Inland Revenue* v. *Falkirk Ice Rink Ltd.* 51 TC 42; 1975 SLT 245. D

9. We, the Commissioners who heard the appeal, having considered all the contentions, find as facts that Mr. Nagel had no right or claim enforceable in law to the sum of £15,000 that he received from Hennig and that this was a gratuitous payment, and that there was no trading relationship between Mr. Nagel and Hennig. The sum of £15,000 did not comprise part of the annual profits or gains arising or accruing to Mr. Nagel from his trade. We accordingly allowed this appeal. E

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

11. The question in law for the opinion of the Court is whether there was evidence upon which we could have properly come to our decision and whether on that evidence our determination of the appeal was correct in law.

15 February 1977

The case was heard in the Chancery Division before Browne-Wilkinson J. on 30 June and 1 July 1980 when the judgment was given in favour of the Crown, with costs. G

C. H. McCall for the Crown.

H. C. Flesch for the taxpayer.

A The following cases were cited in argument in addition to those referred to in the judgment:—*Ellis* v. *Lucas* 43 TC 276; [1967] Ch 858; *Wiseburgh* v. *Domville* 36 TC 527; [1956] 1 WLR 312; *Commissioners of Inland Revenue* v. *Falkirk Ice Rink Ltd.* 51 TC 42; [1975] STC 434; *Anglo-French Exploration Co., Ltd.* v. *Clayson* 36 TC 545; [1956] 1 WLR 325.

B **Browne-Wilkinson J.**—This is an appeal by the Crown from the General Commissioners relating to an assessment to income tax in the sum of £12,000 made on the taxpayer, Mr. Nagel, under Case I of Schedule D in respect of his profits as a diamond merchant broker. The General Commissioners held in favour of Mr. Nagel and set aside the assessment.

The background to trading as a diamond merchant broker is fully set out C in the Case Stated, and I will read it from para 5(C) of that Case:

> "In order to buy diamonds from the D.T.C."—that is, the Diamond Trading Corporation—"and its associated companies a person has to be accepted by the D.T.C. The D.T.C. will only accept a buyer if he is represented by a recognised diamond merchant broker. There are only seven or eight recognised brokers, of whom Mr. Nagel is one and D Hennig"—that is, Hennig & Co. Ltd.—"are another. . . . Buyers can be classified as 'potential clients' and 'active clients'. There are only some 200 'active clients' in total. Only 'active clients' can purchase diamonds through the D.T.C. . . . A prospective buyer has first to get a recognised broker to act for him, with a view to arranging his eventual acceptance by the D.T.C. as an 'active client'. If the broker agrees to represent the E prospective buyer it is customary for a standard 'Appointment of Broker' form to be completed by the prospective buyer and for this form to be lodged with the D.T.C. . . . Once he has appointed a recognised broker the prospective purchaser can be classified as a 'potential client'. . . . The role of the broker is to nurse the 'potential client' towards acceptance as an 'active client' by the D.T.C. In essence it is a matter of extensive lobbying F by the broker before the relevant D.T.C. committee. It may take a number of years for a 'potential client' to be accepted as an 'active client' and indeed this may never be achieved. On average only very few 'active clients' are accepted by the D.T.C. each year. The broker receives nothing unless and until the 'potential client' is accepted as an 'active client' and as such purchases diamonds through the D.T.C. Thereafter the broker G receives a commission on purchases."

I emphasise the last part of that finding; namely, that the work done by the broker for a potential client is done without remuneration until the potential client is accepted by the D.T.C. as an actual client.

In this case, in 1964 a Mr. Glick appointed Mr. Nagel as his broker. The Case finds that Mr. Nagel worked diligently on behalf of Mr. Glick with a view H to obtaining his acceptances by the D.T.C. as an actual client; but in November 1967 Mr. Glick wished to appoint other brokers, Hennig, in place of Mr. Nagel. Mr. Nagel was upset about this, but, as he was required to do, he agreed. However, he approached the principals of Hennig, who were friends of his. Mr. Nagel agreed with them, on behalf of Hennig, that the matter should be explained to a Mr. Bonas, who is another broker well known to all of them,

and that Mr. Bonas should be invited to decide how in fairness the matter should be resolved. The Case continues:

> "Both Mr. Nagel and Hennig agreed to be bound by whatever 'decision' Mr. Bonas reached, although it was accepted on both sides that Mr. Bonas's 'arbitration' was to be an entirely informal one and that Mr. Nagel had no legal claim (but only a moral claim) to any sort of compensation. There is provision for arbitration under the London Diamond Club rules. However, Mr. Nagel would not have been entitled to formal compensation and in any event (having regard to his status as a broker (as opposed to a trader)) Mr. Nagel would not have been willing for this matter to have been the subject of a formal arbitration. . . . Mr. Bonas's 'decision' was that whenever Mr. Glick, or any of the firms with which he was or might be in future associated, was or were accepted by the D.T.C. as an active client or as active clients, Mr. Nagel was to receive £15,000 immediately from Hennig in lieu of damages."

That decision led to Mr. Nagel writing to Hennig on 16 February 1968 as follows:

> "I am pleased that our unfortunate misunderstandings have been amicably resolved with the help of our colleague, Benjamin Bonas. In our mutual desire to reach an amicable settlement both yourselves and myself decided to accept any Benjamin Bonas decision while realising fully well that any decision arrived at in such a way would necessarily have to be in the nature of a compromise between ourselves. Consequently, in accordance with the Bonas decision, I want to confirm hereby that my firm and your firm have agreed to the following terms of our newly-found understanding—in the interest of the trade and of brokers in general: 1. Whenever Louis Glick, or any of the firms with which he is or may be in future associated, are accepted by the D.T.C. as active clients, I am to receive from your firm immediately the amount of £15,000 in lieu of damages. 2. As far as D.T.C. client" (and then another two companies are mentioned) "are concerned or any firms he is or may be associated with in future are concerned, I am to get from your firm half of any commissions received by yourselves for the next 10 years starting from and including this February 1968. 3. Our above settlement is to remain confidential and if asked by anyone about our past disputes both yourselves and I are only to state that we have reached an amicable solution. 4. In view of the above settlement both yourselves and I will not discuss in future old matters that were in dispute";

and then the letter goes on to other matters. One year later, in February 1969, Mr. Glick was accepted as an actual client by the D.T.C., and Hennig paid Mr. Nagel £15,000. That payment was entered in Mr. Nagel's trading accounts (in the balance sheet) as "Amount received by way of compensatory damages". The Crown claim that the £15,000 was taxable under Case I of Schedule D as an annual profit or gain arising from Mr. Nagel's trade. Mr. Nagel contended that the payment was a voluntary one and that the decisions in *Walker* v. *Carnaby Harrower, Barham & Pykett*(1) 46 TC 561, and *Simpson* v. *John Reynolds & Co. (Insurances) Ltd.*(2) 49 TC 693, covered his case.

The Commissioners found as follows:

> "Mr. Nagel had no right or claim enforceable in law to the sum of £15,000 that he received from Hennig and that this was a gratuitous

(1) [1970] 1 WLR 276. (2) [1975] 1 WLR 617.

A payment, and that there was no trading relationship between Mr. Nagel and Hennig. The sum of £15,000 did not comprise part of the annual profits or gains arising or accruing to Mr. Nagel from his trade. We accordingly allowed this appeal."

The Commissioners' decision was given as long ago as February 1976. Since that date there have been two reported decisions on the question whether B voluntary payments are taxable, both of them of great importance to this case. In *McGowan* v. *Brown and Cousins*(1) [1977] STC 342, a firm of estate agents had been employed in the acquisition of a development site. For this they had been paid a fee, but the fee was found to be inadequate remuneration for the work they had done. The agents had acted in the expectation and hope that when the development was complete they would subsequently be C employed as agents to sell it off. However, the original developers sold the whole development to another developer, C. Ltd., who used other agents to sell off the development. The original agents felt aggrieved and asked for and were given an *ex gratia* payment by C. Ltd. Templeman J. held that the *ex gratia* payment was taxable, since it was attributable to, and compensation for, work done by the agents in acquiring the site. After reviewing the cases on the D matter, Templeman J. said this, on page 348h(2):

"As a result of all the authorities it seems to me that the broad line of distinction, so far as taxability on this kind of voluntary gift is concerned, is a distinction which takes its origin in the question of whether the payment is attributable to specific work carried out by the recipient. If work is carried out then the payment, although voluntary, is made because E payment has been earned. If the payment does not relate to specific past work, then the payment is made, not because payment has been earned by work, but because the payment is intended for a deserving recipient. If the payment relates to work then although the recipient may not be legally entitled yet if he has a moral claim the payment is a receipt by him and a profit of his trade. When the payment is earned by work, which has not F been paid for or has not been adequately paid for, then the payment has the quality of an income receipt liable to tax. On the other hand, if payment is not earned but is deserved, it is not income. If the recipient has been paid in full for past work, but the person making the gift wishes to acknowledge the past conduct of the recipient or to give some token of regret at the termination of a business association and to acknowledge the G fact that this termination of business association will not be entirely welcome to the recipient either for financial or other reasons, the payment is not earned but it is deserved. It is not taxable."

In *Murray* v. *Goodhews*(3) [1978] STC 207, the Court of Appeal had to consider whether an *ex gratia* payment made by a brewer to Goodhews at a time when the brewer was terminating the tenancies of a number of public- H houses was taxable. The Commissioners held that the payment was not a profit or gain arising from Goodhews' trade. The Court of Appeal held that the matter was a question of fact and that there were no grounds for interfering with the Commissioners' decision. Buckley L.J. again reviewed all the authorities, including *McGowan* v. *Brown and Cousins,* and, at page 213, said this(4):

I "In my opinion a perusal of these authorities leads to the conclusion that every case of a voluntary payment, and we are only concerned with cases of that kind in the present appeal, must be considered on its own

(1) 52 TC 8; [1977] 1 WLR 1403.
(2) 52 TC 8, at p 15.
(3) 52 TC 86; [1978] 1 WLR 499.
(4) 52 TC 86, at pp 108–9.

facts to ascertain the nature of the receipt in the recipient's hands. All relevant circumstances must be taken into account. These may include the purpose for which the payer makes the payment, or the terms, if any, on which it is made, as for example in the *Falkirk* case[1], where the payment was made for the purpose of its being applied in the recipient's business in the future; or it may be made by way of voluntarily supplementing the price paid for goods or services provided by the taxpayer in the course of his trade or business in the past, as in *Australia (Commonweath) Comr of Taxation* v. *Squatting Investment Co Ltd*[2] and *Severne* v. *Dadswell*[3] and *McGowan* v. *Brown and Cousins*[4]; or the payment may be merely in the nature of a testimonial or a solatium which, although it recognises the value of past services, is not paid specifically in respect of any of those services, or of expected future services, by the taxpayer to the payer, as in the case of *Chibbett* v. *Joseph Robinson & Sons*[5], *Walker* v. *Carnaby, Harrower, Barham & Pykett*[6] and *Simpson* v. *John Reynolds & Co (Insurances) Ltd.*[7]. I stress that it is the character of the receipt in the recipient's hands that is significant; the motive of the payer is only significant so far as it bears, if at all, on that character."

The Court of Appeal also emphasised that where, as in the Court of Appeal's decision in *Simpson* v. *Reynolds,* the Court had enumerated a number of features of the case, that enumeration must not be treated as laying down criteria for the decision of other cases.

Reverting now to the present case, it first came before me on Case Stated in March 1979. In opening the appeal, the Crown relied heavily on the *Brown and Cousins* case and contended that Mr. Nagel had received the £15,000 either as compensation for unremunerated work done for Mr. Glick or as compensation for loss of expectation of profits to be received when and if Mr. Glick became an actual client of D.T.C. Counsel for Mr. Nagel then submitted, and I ruled, that *Murray* v. *Goodhews*[8] showed that the question was one of fact and that there was no findings on the relevant facts. I therefore remitted the matter to the Commissioners for answers to the following questions: "Why, looking at the matter from the viewpoint of Mr. Nagel, was the payment of £15,000 made? Was it made (*a*) to compensate Mr. Nagel for the work that he had done for Mr. Glick in the period 1964 to 1967; (*b*) to compensate for the loss of profits in the future (other than compensation for (*a*)); (*c*) for any other reason?" The Commissioners have given answers to those questions as follows. They set out the question and then set out alternative (*a*), to which they give this answer: "There was no evidence that the £15,000 or any part of it was paid to compensate Mr. Nagel for work done for Mr. Glick." They then set out alternative (*b*) and answer: "There was no evidence that the £15,000 or any part of it was paid to compensate Mr. Nagel for loss of future profits." They then set out alternative (*c*) and answer: "The payment was an *ex gratia* payment not specifically in compensation for work done nor for future expectations nor any other reason save possibly to prevent a breakdown of good relations amongst diamond brokers who are a very small business community." The matter has now come back before me for decision and the argument has resolved principally around what effect, if any, is to be given to the Commissioners' replies. As will appear, the further answers are not altogether satisfactory and I shall have to make certain adverse comments on them. However, I should like to make it clear that I have every sympathy for the Commissioners. They had the difficult task of making findings, four years

[1] 51 TC 42. [2] [1954] AC 182. [3] 35 TC 649; [1954] 1 WLR 1204. [4] 52 TC 8.
[5] 9 TC 48. [6] 46 TC 561. [7] 49 TC 693. [8] 52 TC 86.

A after the date on which they heard the case, on issues which are very far from straightforward and clear of legal complication.

Mr. Nagel submits that although the answers to questions (*a*) and (*b*) are only to the effect that there was "no evidence" that the payment was compensation, answer (*c*) is a positive finding that it was not compensation either for past work or for loss of future profits, but was made solely to prevent B a breakdown of good relations among diamond brokers. The Crown, on the other hand, contend that the answers to questions (*a*) and (*b*) either refer to there being no oral evidence or, if they are meant to refer to the documentary evidence also, are manifestly incorrect since there are references in the documents to the payment being by way of "compensatory damages" or "in lieu of damages". These references, say the Crown, are some evidence that the C payment was compensation of some sort. As to answer (*c*), the Crown assert that the finding (if it be one) that the payment was not compensation must be wrong for the reasons already submitted, and that the finding that the payment was to prevent a breakdown of relations is at best a finding as to the motive of the payer, Hennig, and not a finding as to the character of the payment in the hands of the recipient, Mr. Nagel.

D In my judgment, the Crown's contentions are correct. If the Commissioners were giving their findings on all the evidence, both documentary and oral, the answers to questions (*a*) and (*b*) are plainly defective. First, they are not findings of fact but are statements of the evidence (or lack of evidence) given. Secondly, even as statements of the evidence they are defective since in my judgment there certainly was some evidence that the payments were E compensation for something and no-one has suggested what else Mr. Nagel could be compensated for other than past work which was not remunerated or loss of future profits. The evidence I have in mind is Mr. Nagel's own description of the payment as being "in lieu of damages", the entry in the balance sheet of the payment as being "compensatory damages", and the inferential finding of the Commissioners in para 5(D)(4) of the Case that F Mr. Nagel had a moral (as opposed to a legal) claim to some sort of compensation. However, I accept that the answers to questions (*a*) and (*b*) show that there was no oral evidence (beyond that reflected in the original Case Stated) relating to these questions. As to answer (*c*), I cannot accept it as a positive finding that there was no element of compensation in the payment. If, as I think, the Commissioners misdirected themselves in answering G questions (*a*) and (*b*), their answer on this point must have been given as a result of the same misdirection. Moreover, the Commissioners are only finding that the payment was not made "specifically" as compensation: they are not finding that there was no element of compensation in the payment. I therefore conclude that on the issues raised by the questions put to the Commissioners, there are no satisfactory findings except (1) that there was no oral evidence H relating to them and (2) that the motive of the payment was possibly to prevent a breakdown of good relations among diamond brokers.

What, then, is to be done? I have considered giving a judgment setting out the relevant considerations and then remitting the matter again to the Commissioners for them to find the necessary facts. After all, it is the Commissioners, not the Court, who are the tribunal designated to find the I facts. But at the end of the day I am satisfied that on the basis of the evidence (which we now know to be the only evidence on the issues in question) there is only one possible answer which could properly be given, and therefore to remit the matter again would only be to incur further costs and delay. The question is whether the payment of £15,000 is an annual profit or gain arising from

Mr. Nagel's business as a diamond broker. One starts with the fact, not sufficient by itself, that the payment certainly related to that business, since the dispute which gave rise to the payment arose out of Mr. Nagel's dealings with his client, Mr. Glick, and with his business rivals, Hennig. Next, one has the fact that Mr. Nagel had worked without remuneration for a considerable period in the expectation that when Mr. Glick became an actual client of D.T.C. profits would be earned. When he lost Mr. Glick he was "aggrieved" and felt he had a "moral claim" to compensation. Compensation for what? In the absence of other evidence, the only possible conclusion is that his moral claim was to compensation either for past unremunerated work or for loss of anticipated profit in the future. This conclusion is strengthened by the fact that no payment at all was to be made by Hennig unless and until Mr. Glick became an actual client of D.T.C. and as a result thereof commission started to be earned. The *Brown and Cousins* case[1] in my judgment establishes that if the payment is compensation for otherwise unremunerated work it is taxable; it is earned, not just deserved. If, on the other hand, the compensation is for loss of anticipated profits, the principle enunciated by Diplock L.J. in *London & Thames Haven Oil Wharves Ltd.* v. *Attwooll*[2] 43 TC 491, at page 515, is in my judgment applicable; namely, that compensation for loss of a benefit which, if it had matured, would have been taxable, is itself taxable. It is true that that case was concerned with a legally enforceable right to compensation: but I can see no reason why the principle should not equally apply to an *ex gratia* payment of compensation. Next, the payment was solicited by Mr. Nagel, not unsolicited, as in the majority of cases in which voluntary payments have been held not to be taxable. Mr. Nagel made and pursued his claim against Hennig to informal arbitration. The subject-matter of the arbitration was Mr. Nagel's moral claim to compensation, and both sides agreed to abide by the decision. The decision having been given, Mr. Nagel wrote to Hennig confirming the "agreement" for a future contingent payment of £15,000 as part and parcel of a wider agreement covering a number of matters. If the payment of £15,000 is properly to be regarded as "voluntary" at all, it is as near as such a payment can possibly get to being a payment pursuant to an enforceable right. In my judgment, all these factors point very strongly to the receipt of the £15,000 by Mr. Nagel as being a taxable receipt of his business. The factors pointing the other way are said to be these. First, that the payment was not made by the customer, Mr. Glick, but by a business rival or associate, Hennig. But authority establishes that the critical question is the character of the payment in the hands of the recipient, not the identity of the payer; see, for example, the *Brown and Cousins* case, where the compensation was not paid by the client for whom the work had been done but by the developer who had purchased the development. Secondly, it is said that the fact that there was no continuing trading relationship between Mr. Nagel and Hennig is relevant. I agree that this is a factor to be taken into account.

Finally, it is said that the Commissioners' finding that the only possible reason for the payment was to prevent a breakdown of good relations shows decisively that the payment was not a trading receipt. I do not accept this submission. This finding relates not to the purpose of the payment but to the motive for making it. One asks, "How did the payment prevent a breakdown of good relations?" The only possible answer is that it was to meet Mr. Nagel's grievance by giving him the monetary compensation to which he considered he had a moral claim. The purpose of the payment was to compensate Mr. Nagel: the motive for so doing was to prevent a breakdown in good relations. The payer's motive is a consideration to be taken into account, but is not decisive.

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(1) 52 TC 8. (2) [1967] Ch 772.

A If my analysis of the relevant features of the case is correct, even if full weight is given to the two features which point the other way, the right answer seems to me inevitably to be that the receipt of the £15,000 by Mr. Nagel was a profit or gain arising to Mr. Nagel from his business as being compensation for unremunerated work or loss of anticipated profit. For the reasons I have sought to give, neither of the two features pointing the other way alters the clear nature B of the receipt in the hands of Mr. Nagel, which as the *Murray* v. *Goodhews*[1] decision shows is the decisive factor. No-one has suggested that if the receipt arose from Mr. Nagel's trade, it was other than an annual profit or gain taxable as income. I therefore hold that the receipt was taxable under Case I of Schedule D.

Finally, I should mention one point to demonstrate that it has not been C overlooked. The case has been treated throughout as raising the question whether a voluntary, *ex gratia* payment is taxable. The long line of cases culminating in *Murray* v. *Goodhews* are all cases where the recipient had no legally enforceable right to payment of the sum in question. I have some doubts whether, on analysis, this case raises that problem at all. Although originally Mr. Nagel had no right to compensation, he agreed with Hennig to refer this D matter and others to Mr. Bonas for decision, and both parties agreed to abide by that decision. Mr. Nagel then wrote the letter confirming the agreement of the parties that, at a future time in a particular event, a payment would be made. It seems to me at least arguable that when, one year later, the payment was made, it was made pursuant to a contractual obligation and is not properly to be regarded as "voluntary" at all. However, the Crown did not contend that E this, even if correct, would make any difference, and I need say no more about the matter.

I therefore allow the appeal.

Appeal allowed, with costs.

The taxpayer's appeal was heard in the Court of Appeal (Lawton, Fox and F Oliver L.JJ.) on 5 and 6 October 1981 when judgment was given in favour of the Crown, with costs.

H. C. Flesch for the taxpayer.

C. H. McCall for the Crown.

The following cases were cited in argument in addition to those referred to in the judgment:—*Walker* v. *Carnaby Harrower, Barham & Pykett* 46 TC G 561; [1970] 1 WLR 276; *London and Thames Haven Oil Wharves Ltd.* v. *Attwooll* 43 TC 491; [1967] 2 WLR 743; *Commissioner of Taxation of the Commonweath of Australia* v. *Squatting Investment Co. Ltd.* [1954] AC 182.

Lawton L.J.—I will ask Fox L.J. to deliver the first judgment.

[1] 52 TC 86.

Fox L.J.—This is an appeal from a decision of Browne-Wilkinson J. that a sum of £15,000 received by the Appellant, Mr. Nagel, was a trading receipt for the purposes of Case I of Schedule D. The Judge reversed the determination of the General Commissioners. A

Mr. Nagel was at the material times a diamond merchant broker. He was a sole trader. In order to buy diamonds from the Diamond Trading Corporation ("D.T.C.") a person must first be accepted by the D.T.C. He will only be accepted if he is represented by a recognised diamond merchant broker. Mr. Nagel was such a broker. There are, it appears from the Case Stated, only seven or eight recognised brokers. Buyers are in the trade classified as "potential clients" or "active clients". There are only about 200 or so "active clients". Only active clients can purchase diamonds from the D.T.C. A person wishing to buy diamonds from the D.T.C. must, therefore, first of all, get a recognised broker to act for him, to secure his acceptance as an active buyer by the D.T.C. If a broker agrees to act for that purpose, the client generally signs an "appointment of broker" form, which is lodged with the D.T.C. That was in fact done in this case. The form merely contains some particulars regarding the client and the broker. Once a person has completed the form he becomes a "potential client". B C D

The Case Stated deals with the role of the broker as follows:

> "The role of the broker is to nurse the 'potential client' towards acceptance as an 'active client' by the D.T.C. In essence it is a matter of extensive lobbying by the broker before the relevant D.T.C. committee. It may take a number of years for a 'potential client' to be accepted as an 'active client' and indeed this may never be achieved. On average only very few 'active clients' are accepted by the D.T.C. each year. The broker receives nothing unless and until the 'potential client' is accepted as an 'active client' and as such purchases diamonds through the D.T.C. Thereafter the broker receives a commission on purchases." E

A "potential client" may change his broker, but the Commissioners point out that, as a matter of courtesy, he must first obtain the consent of his original broker. That in fact is a formality: consent in practice is not withheld. Changes of brokers are, however, fairly rare. The D.T.C. itself does not, it seems, approve of such changes. F

I come then to the findings of the Commissioners in the Case Stated as to the circumstances in which the £15,000 was paid to Mr. Nagel. In 1964 a Mr. Glick appointed Mr. Nagel to be his broker and became a "potential client". The Commissioners found that Mr. Nagel worked diligently on behalf of Mr. Glick with a view to obtaining his acceptance by the D.T.C. as an "active client". In November 1976 Mr. Glick informed Mr. Nagel that he wished to appoint brokers named Hennig in place of Mr. Nagel. Mr. Nagel could not object to that but (I quote from the Case Stated) he felt "somewhat aggrieved and accordingly approached Mr. V. Prins and Mr. G. Rothschild (the senior directors in Hennig) to discuss the matter". The upshot of that was that Mr. Nagel and Hennig agreed to put the matter to a Mr. Bonas, who was also a broker, and to ask him to decide how in fairness the matter should be resolved. Both sides agreed to be bound by the decision of Mr. Bonas. The Commissioners state that it was accepted that Mr. Nagel "had no legal claim (but only a moral claim) to compensation". Mr. Bonas considered the matter and decided that when Mr. Glick or any of his associated firms was or were accepted by the D.T.C. as an "active client" or clients, Mr. Nagel was to receive £15,000 immediately from Hennig "in lieu of damages". Mr. Glick was G H I

A subsequently accepted by the D.T.C. as an "active client". Hennig duly paid Mr. Nagel the sum of £15,000 in February 1969. It is the nature of that receipt which is in issue in this case.

The Commissioners, in paragraph 9 of the Case, state as follows:

> "We the Commissioners who heard the appeal, having considered all the contentions, find as facts that Mr. Nagel had no right or claim
> B enforceable in law to the sum of £15,000 that he received from Hennig and that this was a gratuitous payment, and that there was no trading relationship between Mr. Nagel and Hennig. The sum of £15,000 did not comprise part of the annual profits or gains arising or accruing to Mr. Nagel from his trade."

There are a number of matters in the documents annexed to the Case Stated to
C which I should now refer. (1) Mr. Nagel's balance sheet and revenue account for the year ended 5 April 1969 contains in the balance sheet the item "payment received by way of compensatory damages—£15,000". (2) Mr. Nagel in his letter of 16 February 1968 states (*inter alia*): "I am to receive from your firm . . . the amount of £15,000 in lieu of damages".

The Revenue appealed from the decision of the Commissioners. The
D matter first came before Browne-Wilkinson J. in March 1979, when he remitted the matter to the Commissioners for further consideration. They were required to answer further questions. Those questions were as follows:

> "Why looking at the matter from the viewpoint of Mr. Nagel was the payment of £15,000 made. In particular was it made (*a*) to compensate Mr. Nagel for the work that he had done for Mr. Glick in the period 1964
> E to 1967; (*b*) to compensate him for the loss of profits in the future (other than compensation for (*a*)); or (*c*) for any other reasons and if paid for more than one of the above reasons to consider whether it is possible for them to specify how much is to be ascribed to each reason and, if so, to determine the said amounts."

The Commissioners' answers to those questions were as follows: as to (*a*)
F "there was no evidence that the £15,000 or any part of it was paid to compensate Mr. Nagel for work done for Mr. Glick"; as to (*b*) "there was no evidence that the £15,000 or any part of it was paid to compensate Mr. Nagel for loss of future profits"; as to (*c*) "The payment was an *ex gratia* payment not specifically in compensation for work done nor for future expectations nor any other reason save possibly to prevent a breakdown of
G good relations amongst diamond brokers who are a very small business community."

These answers are very strongly relied upon by Mr. Flesch for Mr. Nagel. He contends that they are findings which, read together, conclusively determine the matter in his favour. He contends that (*c*), read with (*a*) and (*b*), which refer to the absence of evidence on those particular points, is a finding of fact that the
H payment was not compensation either for past services or future loss but was possibly made to preserve good relations between brokers in a small business community. The Judge rejected that and I think that he was right to do so. Taken by themselves, the answers to (*a*) and (*b*) are not findings of fact; they are merely statements or assertions of the absence of evidence as to the specified matters. If they relate merely to the oral evidence they are incomplete
I statements of the entirety of the evidence, and if they relate to the documentary evidence as well as the oral evidence they are, I think, wrong and constitute a misdirection by the Commissioners.

The documentary evidence suggests that the payment *was* compensation. As to that, I refer to the matters which I have already mentioned, namely, (1) Mr. Nagel's balance sheet of his business for the year ended April 1969, which refers to the payment as being "by way of compensatory damages", and (2) the statement in Mr. Nagel's letter of February 1968 that the payment was "in lieu of damages". Stopping there, the payment, it seems to me, cannot have been compensation for anything except, and the damages cannot have been for anything other than, loss in respect of work done or for profits to be earned by Mr. Nagel.

In addition, I should mention the Commissioners' findings in paragraph 5(D)(4) of the Case that it was agreed between the parties that Mr. Nagel had a moral claim (as opposed to a claim in law) for compensation. Returning to question (*c*), if the Commissioners were intending to find that there was no element of compensation or damages in the payment, I think that the Judge was quite right in holding that the Commissioners misdirected themselves in answering question (*a*) and also question (*b*). And the answers which they gave to questions (*a*) and (*b*) must, it seems to me, have influenced the answer they gave to question (*c*). They cannot, it seems to me, have had in mind, in answering (*c*), the whole of the relevant evidence. That being so, it seems to me that the Judge was right in coming to the conclusion that (*c*) cannot be relied upon as a finding of fact by the Commissioners in relation to the matters which it contains. Further, the answer to (*c*), it seems to me, is extremely imprecise. Thus, the Commissioners say that the payment was not specifically in compensation. And the reference to "good relations" is prefaced by the word "possibly". I do not myself find it possible to read the vague and imprecise answer to (*c*) as being a positive finding of fact that the payment was not compensation. In my judgment, the answers given by the Commissioners to questions (*a*), (*b*) and (*c*) really add little or nothing to what is contained in the Case Stated itself. All that they do add is that there was no oral evidence as to why the payment was made and that possibly the payments were concerned with the preservation of good relations between brokers.

The question which the court has to decide is whether the receipt of the £15,000 is a receipt which, in the language of s 122 of the Income Tax Act 1952, is a profit or gain "arising or accruing . . . from a trade . . .". In pursuing that inquiry there are, I think, certain matters to be borne in mind. First, the case has to be determined on the facts found by the Commissioners. The circumstance, if it be the case, that one party or the other could have required the Commissioners to set forth the evidence upon which the facts or some particular fact was found, is, in my view, irrelevant. Neither party did so. The matter must, therefore, it seems to me, be determined upon such facts as we have set forth in the Case Stated. Secondly, if there are facts which would have justified the Commissioners' conclusion, the court is not entitled to interfere with that conclusion even though the court itself might have come to a different conclusion. Thirdly, the itemisation and comparison of facts in reported cases with the facts in the present case seem to me to be of limited value. In *Murray* v. *Goodhews*(1) 52 TC 86 at page 108, Buckley L.J. said this:

> "In my opinion a perusal of these authorities leads to the conclusion that every case of a voluntary payment, and we are only concerned with cases of that kind in the present appeal, must be considered on its own facts to ascertain the nature of the receipt in the recipient's hands. All relevant circumstances must be taken into account."

I take that statement as accurately representing the law.

(1) [1978] 1 WLR 499.

A Did, then, the £15,000 arise from Mr. Nagel's trade? The Commissioners held that it did not. One has to ask whether there were facts to support that. Or, to put it another way, in the language of Lord Radcliffe in *Edwards* v. *Bairstow*[1] is the only correct conclusion from the facts that the payment did arise from Mr. Nagel's trade? In my judgment, that is the only correct conclusion from the facts; there are, in the Case Stated or otherwise provided B by the Commissioners, no facts to support the contrary conclusion. It was a normal and important part of Mr. Nagel's trading activities to obtain the D.T.C.'s approval to the classification of a "potential client" as an "active client". "The role of the broker", say the Commissioners, "is to nurse the 'potential client' towards acceptance as an 'active client' by the D.T.C.". It was financially important, because once he had secured the client's acceptance C as an "active client" he (the broker) could start earning commission from the client's purchases. Mr. Nagel undoubtedly did a lot of work, over some two or three years, in the ordinary course of his trade, to get Mr. Glick accepted as an "active client". He was not paid for that. Mr. Glick ultimately was accepted, but Mr. Nagel lost the benefit of all his work, because Mr. Glick had, by then, transferred his custom to Hennig. Mr. Nagel felt aggrieved by that. He D complained to Hennig. Hennig agreed to an informal arbitration under which they would make Mr. Nagel a payment if the arbitrator, Mr. Bonas, so decided. Mr. Bonas did so decide. One asks, what can have been the reason for the payment? It can only, it seems to me, have been to recompense Mr. Nagel for the fact that he did much work to get Mr. Glick accepted by the D.T.C. but did not get the benefit of that work. Instead Hennig got it. What he did he did in E what seems to me, on the facts in the Case Stated, to be part of the ordinary work of a diamond merchant broker. If, in those circumstances, Mr. Nagel felt "aggrieved", felt that he had "a moral claim" to compensation (as was evidently common ground between him and Hennig), persuaded Hennig to agree to arbitration about it, described the resulting payment in his balance sheet as an "amount received by way of compensatory damages", and in a letter written to F Hennig in 1968 as being "in lieu of damages", it seems to me that the irresistible conclusion is that the payment was indeed compensation for the circumstance that, after all his work for Mr. Glick, the latter had transferred to Hennig. The payment seems to me to have been wholly related to Mr. Nagel's trade. It is, I think, linked inextricably to the trade by the fact that the payment was only to be made after Mr. Glick's acceptance as an "active client" by the D.T.C., G namely, in the very circumstances when Mr. Nagel would have expected, had Mr. Glick stayed with him, that he (Mr. Nagel) would have started to earn commission from Mr. Glick's activities in buying diamonds.

I should observe that it is not a case like *Simpson* v. *Reynolds*[2] 49 TC 693, where the payment came out of the blue. Mr. Nagel pressed his grievance and he plainly sought some recompense for it. It seems to me that what Mr. Nagel H was looking for, from start to finish, and what he ultimately received, was compensation for the loss of a trading benefit. Are there then any facts which could suggest the contrary conclusion? I think not. The circumstance that the payment was voluntary (as I will assume for present purposes to be the case) and that Hennig were not Mr. Nagel's clients, does not, it seems to me, really assist Mr. Nagel. A voluntary payment can be a trade receipt: see, for example, I *McGowan* v. *Brown and Cousins*[3] 52 TC 8. As to the identity of the payer, the question is the nature of the payment in the hands of the recipient: see *Murray* v. *Goodhews*[4]. In the *Brown and Cousins* case (where the payment was held to be taxable) the compensation was not paid by the person for whom the taxpayer did the work, it was paid by a third party who had taken over the

(1) 36 TC 207. (2) [1975] 1 WLR 617. (3) [1977] 1 WLR 1403. (4) 52 TC 86.

development. Then there is the statement by the Commissioners that the payment was not for any reason save possibly to prevent a breakdown of good relations between brokers. Mr. Flesch relies upon that. I agree with the Judge that this very vague finding, if it can be regarded as being a finding of any consequence at all, relates not to the purpose of the payment but the motive for making it. If the payment prevented, or was intended to prevent, a breakdown of good relations in the trade, the only reason on the facts for that, it seems to me, was because Mr. Nagel had a grievance about unremunerated work and the payment would or might assuage that grievance.

As the Judge put it on page 8 of the transcript of his judgment(1), "The purpose of the payment was to compensate Mr. Nagel: the motive for so doing was to prevent a breakdown in good relations". That the purpose was compensation seems to me, on the facts of this case, to be really quite plain. Mr. Flesch refers to the fact that Hennig were not in a trading relation with Mr. Nagel and I do not disregard that, but it does not seem to me to be, in the general context of the facts of this case, a matter of weight. In my view, that fact and the fact that the motive for the payment may have been the preservation of good relations within the trade do not constitute evidence of any weight in the context of the facts in favour of the view that the payment was not compensation for the loss of a trading benefit. In my view, there was no evidence to justifiy the Commissioners' conclusion on the facts as we have them before us in the Case Stated and the supplementary answers. It is said by Mr. Flesch that, if the payment was compensatory it cannot have been compensation for work done, because Mr. Nagel would not, in the ordinary course, have been paid for that work as such: his reward would be the future commission that he would receive. Mr. Flesch contends that it must have been a payment by way of compensation in respect of profits which Mr. Nagel might have earned in the future through Mr. Glick having become an "active client". Such a payment, says Mr. Flesch, is different from a voluntary payment in respect of past services which were not remunerated, or were not adequately remunerated, and does not attract tax under Case I of Schedule D. As to that contention, I come back to what seems to me to be the fundamental issue in the case: was this receipt a profit arising from Mr. Nagel's trade? For the reasons which I have indicated in this judgment, it seems to me that it quite plainly was. It was a voluntary payment but it was, in effect, earned. It was compensation not consolation. The payment, it seems to me, falls fully within the cases which have held voluntary payments to be taxable, of which *Brown and Cousins*(2) is a recent example. It is not, in my view, necessary, on the facts of this case, to enter into consideration of any distinction between payments for past work and payments in respect of anticipated future benefits.

In the circumstances, I would dismiss this appeal.

Oliver L.J.—I entirely agree. Substantially, Mr. Flesch's case rests entirely upon the premise that the answers given by the Commissioners to the three questions remitted to them constituted, when taken together, a substantive finding of fact that the payment in question did not constitute payment of compensation either for work done or for loss of future earnings. The learned judge found himself unable to accept that premise. I find myself similarly unable.

These three answers establish no facts at all, in my view, and they seem to me to add nothing relevant to what had gone before and to do nothing whatever to clarify the Case Stated, upon which the learned Judge found himself thrown

(1) Page 594 *ante*. (2) 52 TC 8.

A back and from which he had to draw such inferences as were open to him. For my part, I am unable to find any fault with the learned Judge's approach to the case or with any inferences which he drew. If one asks the question—and this is the question that has to be asked: does this payment arise or accrue to Mr. Nagel from the trade he carried on?—then, applying the principles which emerge from the cases, I can see only one answer, and that is the answer which B the learned Judge gave. Here is a trader, aggrieved by the unexpected loss of a client to another trader in the same field, making a complaint and actively pursuing compensation, which is finally paid to him by that other trader in accordance with an agreement to abide by the result of an informal reference to yet a third trader.

The case is, in my view, about as plain a case as there could be and, like my C Lord, I find the conclusion irresistible that the payment was a trading receipt and so taxable. In my judgment, the learned Judge plainly came to the right conclusion and I too would dismiss the appeal.

Lawton L.J.—I agree with both judgments and have only this to add. The principle of law applicable to this case seems to me to be summarised in the statement of Buckley L.J. in *Murray* v. *Goodhews*(1) 52 TC 86, where he said: D "I stress that it is the character of the receipt in the recipient's hands that is significant. The motive of the payer is only significant so far as it bears, if at all, upon that character". Mr. Nagel was probably the best witness as to what was the character of the money. He regarded it as compensatory damages. I ask the question: compensation for what? The answer to that is clear on the facts found by the General Commissioners and upon the documents annexed to the Case E Stated. Mr. Nagel received those compensatory damages because of the work he had done. What was the nature of that work? It could not be more clearly stated than in the letter which an official of the Diamond Trading Corporation sent to him dated 16 November 1967, which stated: "Our records show that you have done a great deal of work on this particular client's behalf". He had done the work because, as a diamond broker, it was part of his duty to introduce F prospective clients to the Diamond Trading Corporation and it was in respect of that work and the loss which he suffered as a result of the client taking his business elsewhere that Mr. Nagel was out of pocket.

The General Commissioners misdirected themselves, in my judgment, in paying attention to the motive of the payers, that is, Hennig's. They may well have made the payment in the interests of goodwill in the trade, but in the G hands of Mr. Nagel, the recipient, it was, as he himself described it, compensatory damages.

Appeal dismissed, with costs. Leave to appeal to the House of Lords refused.

[Solicitors:—Solicitor of Inland Revenue; Messrs Brecher & Co.]

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(1) [1978] 1 WLR 499.