

Jonas v. Bamford (H.M. Inspector of Taxes) (1)

B *Income tax—Back duty—Assessments within date—Onus of proof not shifted where appeal opened by Crown on in-date as well as out-of-date years—Taxpayer controlling director and shareholder of company—May be inferred to have received undisclosed remuneration—All information refused for subsequent years—Presumption of continuity—Taxes Management Act 1970 (c. 9), s. 50(6).*

C The Appellant was at all material times a director of and the principal shareholder in a trading company, which voted him remuneration annually in general meeting. He had no other known sources of income apart from betting. He was able to do what he wished with the company, and it was established that he had procured it to commit irregularities, including lending him the money to buy its shares. Its accounts were given unqualified certificates by the auditors.

D As a result of a back duty investigation assessments to income tax under Schedule E for the years 1957–58 to 1964–65 were made on the Appellant on the footing that he had received undisclosed remuneration from the company. The assessment for 1957–58 was made out of time on the grounds of wilful default but the other assessments were made within the normal time limit. The Appellant explained increases in his wealth up to and including August 1961 by reference to betting winnings, but, on advice, declined to furnish any information for subsequent periods. Capital statements were prepared by the Inspector of
E Taxes for the period to August 1961, and assessments of £5,000 were made for each of the years 1962–63 to 1964–65.

On appeal before the Special Commissioners, the Inspector opened the case in relation to all the assessments. The accounts of the company were not produced, and no evidence was led as to its turnover or profits. The Appellant contended (a) that, since the Crown admitted that there was no evidence that its shareholders and directors had consented to the withdrawal of the sums in question (aggregating £19,559) in addition to the remuneration regularly voted to him, the presumption of regularity in the conduct of the company's affairs had not been rebutted and those amounts could not constitute remuneration assessable under Schedule E; (b) that the Commissioners should accept that the Appellant could reasonably have made, and did make, betting winnings as
G alleged; (c) that, as assessments under Schedule E on his remuneration for 1960–61 and 1961–62 had already been made and settled by agreement, those assessments had become *res judicata* and no further assessments could be made for those years; (d) that there was no discovery for any year; (e) that there was no wilful default for 1957–58. The Commissioners found that wilful default had not been established for 1957–58 but that the Appellant had not discharged the
H onus on him to displace the assessments for the subsequent years, and they confirmed those assessments in the amounts in which they were originally made.

I In the High Court the Appellant contended further (i) that by opening his case on all the years the Inspector had assumed the onus of proving the Crown's case as respects the assessments made within the normal time limit as well as the assessment for 1957–58; (ii) that the appeals against those assessments were

(1) Reported [1973] S.T.C. 519.

conducted contrary to natural justice, in that the Crown's admission that there was no evidence that the shareholders and directors of the company had consented to the withdrawal of the sums in question by the Appellant misled his representative into not arguing that they had been wrongfully diverted and he remained accountable to the company therefor; (iii) that any agreement for him to receive those sums as remuneration without deduction of tax under the Income Tax (Employments) Regulations was void for illegality; (iv) that on the figures the accretions to the Appellant's wealth could all be explained away; (v) that there was at any rate no discovery and no unexplained intake of moneys for the years for which the Appellant had refused information. A B

Held, (1) that the manner in which the Inspector opened the case before the Commissioners did not shift the statutory onus on the taxpayer of showing that the assessments made within the normal time limit were excessive; (2) that there had been no failure of natural justice, since the absence of evidence of consent of the shareholders and directors was neutral in effect and the Appellant could have led evidence on the point if he wished to persuade the Commissioners to reach a conclusion in his favour; (3) that, despite the absence of evidence that the moneys were abstracted rightfully from the company, it was a legitimate inference from the finding that he was able to do what he liked with the company that he had *carte blanche* to fix his own remuneration; (4) that there had been a discovery; (5) that the contention that the settlement by agreement of the first assessments for 1960-61 and 1961-62 precluded further assessments for those years rested on a failure to understand the scope of the doctrine of *res judicata*; (6) that failure to apply the Income Tax (Employments) Regulations did not prevent the sums from being remuneration; (7) that the argument on figures proceeded on an impermissible approach to the Commissioners' findings, and the onus on the Appellant had not been discharged; (8) as regards the years for which the Appellant had refused to give any information, that once the Inspector had discovered that he had had undeclared income the usual presumption of continuity applied. C D E

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CASE

Stated under the Taxes Management Act 1970, s. 56, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts starting on 14 February 1972 and continuing over thirteen days Mr. Joseph Jonas (hereinafter called "Mr. Jonas") appealed against the following assessments made upon him to income tax, Schedule E, which were further to the original assessments for the corresponding fiscal years as set out hereunder: G

Year of assessment	Original assessment £	Further assessment under appeal £	H
1957-58	2,115	3,000	
1958-59	3,080	920	
1959-60	3,580	1,000	
1960-61	2,595	1,000	
1961-62	3,340	1,000	I
1962-63	3,385	5,000	
1963-64	3,340	5,000	
1964-65	4,996	5,000	

A The assessments in column 2, being original assessments, had been made upon Mr. Jonas in respect of his and his wife's remuneration from a company, Baker Sportwear Ltd. ("Baker"). At the same time Mr. Jonas appealed against assessments to surtax made upon him, which were consequential upon the income tax assessments set out above.

B 2. (1) The said income tax assessment for 1957-58 was made on 10 October 1969 under the provisions of the proviso to s. 47(1) of the Income Tax Act 1952, and was made with the leave of a General Commissioner for the City of London duly given on the application of an Inspector of Taxes under s. 6(1) of the Income Tax Management Act 1964.

(2) The income tax assessments for all years other than 1957-58 were made within the normal six-year time limit.

C 3. Shortly stated, the question for our determination was whether Mr. Jonas had assessable income over and above the remuneration from Baker covered by the first assessments referred to in para. 1 above.

4. (1) The following witnesses gave evidence before us:

Mr. R. H. Gregory, who was Inspector of Taxes, City 16 District, until 10 February 1964, and dealt (*inter alia*) with the affairs of Baker;

D Mr. A. D. Billingham, who was Inspector of Taxes, City 16 District, from February 1964 onwards and also dealt with the affairs of Baker;

Mr. G. A. Spencer, Senior Inspector of Taxes at the Inland Revenue Enquiry Branch;

Mr. J. Sirett, of Epsom, racehorse trainer, who is Mr. Jonas's father-in-law;

E Mr. V. L. Passer F.C.A., a partner in the firm of Passer, Sadie & Co, chartered accountants, who were auditors of Baker from 1957 to 1961;

Mr. M. A. Braham, a partner in the firm of Wallace Cash & Co, chartered accountants, who were auditors of Baker from 1962 onwards;

Mr. L. Pyzer, a partner in the firm of Spiro & Steele, solicitors, who is Mr. Jonas's solicitor;

F Mr. S. Howard, who was employed by Baker as its bookkeeper from October 1959 until December 1971;

Mrs. Sarah Jonas, Mr. Jonas's mother;

Mrs. Carol Jonas, Mr. Jonas's wife;

Mr. J. Jonas, the Appellant.

G (2) The following documents were admitted or proved; such of them as are not annexed hereto as exhibits are available for the use of the Court if required.

A bundle of correspondence and other documents (exhibit A).

An agreement dated 13 July 1956 between Baker, Mr. Jonas and Mrs. Marie Jonas.

An agreement dated 13 July 1956 between Mr. Jonas and Mrs. Marie Jonas.

H A schedule prepared by Mr. Spencer relating to Mr. Jonas's financial position for the six years ended 31 August 1955 to 1961, with five pages of supporting statements (exhibit B).

A further schedule amending exhibit B in the light of evidence led at the hearing (exhibit C).

Details of a credit in Mr. Jonas's account of £899 3s. 5d.

I Returns of income signed by Mr. Jonas for the years 1957-58 to 1965-66

A bundle of correspondence of February to August 1956 leading up to the two above mentioned agreements of 13 July 1956. A

A statement produced by Mr. Braham setting out figures relating to betting by Mr. Jonas (exhibit D).

Analysis of drawing by Mr. Jonas from his bank account, September 1955 to August 1956.

One sheet from Mr. Jonas's bank account, 13 June to 9 August 1957. B

(3) Exhibits B and C are hereinafter together called "the schedules".

(4) At the commencement of the hearing it was agreed that the Inspector of Taxes would open the appeal in relation to all the assessments before us. The Inspector of Taxes having closed his case, evidence was led and argument addressed to us on behalf of Mr. Jonas. Subsequently we heard argument on behalf of the Inspector of Taxes in reply. C

(5) From the evidence, oral and documentary, we found the facts set out in paras. 5 to 20 below.

5. (1) Throughout the period material to this appeal Mr. Jonas was director of and principal shareholder in Baker, which carried on business near Hanover Square in the District of St. George, London, of manufacturing garments for sale wholesale. D

(2) The issued capital of Baker was 2,000 £1 shares; during the period under review Mr. Jonas owned 1,940 shares and Mrs. Marie Jonas 50. The said 1,940 shares were bought in 1947; they cost Mr. Jonas over £13,000, which he borrowed from Baker itself, and they were then registered in the name of Mrs. Marie Jonas.

(3) In 1956 the marriage between Mr. Jonas and Mrs. Marie Jonas was breaking up, and there was a dispute as to the ownership of the said 1,940 shares, and there was also a question of financial provision for Mrs. Marie Jonas. These matters were settled by two agreements made on 13 July 1956, as under: E

(a) By the first agreement, Mr. Jonas agreed to pay Mrs. Marie Jonas £10,000, as to £2,500 at once and as to the balance by equal monthly payments of £208 6s. 8d., and Mrs. Marie Jonas agreed to transfer the 1,940 shares to him; the said shares were deposited as security, with a blank transfer. F

(b) By the other agreement Baker agreed to employ Mrs. Marie Jonas as a consultant during the joint lives of herself and Mr. Jonas at a remuneration of £25 per week, Mr. Jonas joining the agreement as surety for due payment of such remuneration. G

As will appear later, one of the questions in issue was the source of part of the £10,000 which Mr. Jonas had to pay under the said first agreement.

6. (1) At all material times Baker was under the effective control of Mr. Jonas. The conduct of the business required him to travel periodically to Lyons (to see suppliers of materials), to Paris, Rome, and other places (to visit dress shows) and to New York (with a view to establishing an agency there). He also travelled extensively in the United Kingdom. The business mileage of the company car during the material period was estimated at 7,500 miles per annum. Mr. Jonas did not drive and had never driven a car. H

(2) Baker's accounts were not produced to us and no evidence was led as to its turnover or profits. The auditors gave unqualified certificates and there was a normal system of stock recording which included records of incoming and outgoing commodities. These records were reconcilible with purchase and sales invoices and stock-in-hand. I

A (3) Under Baker's articles, directors' remuneration was voted at annual
general meeting. None of the witnesses called on behalf of the Inspector of
Taxes had examined the articles of association of Baker or the procedure for
fixing the remuneration of directors. The other directors, apart from Mr. Jonas,
were (for a time) a Miss Drew, who was also secretary, and was an employee of
Baker; at a later stage (we were not told when) she was replaced as director
B and secretary by a Mr. Hardy, an employee of Passer, Sadie & Co., the auditors
of Baker. Mrs. Marie Jonas was also a director at some time, but we were not
told when her directorship ceased. Mr. Passer, of Passer, Sadie & Co., and
Mrs. Marie Jonas were related to each other.

(4) Mr. Jonas was at all material times able to do what he wished with
Baker. In particular, he was able: (a) to procure the company to lend him the
C money to buy the said 1,940 Baker shares, debiting the loan to his loan account
(J. Jonas loan account); (b) to procure the company to enter into the second
agreement referred to in para. 5(3) (b) above; (c) to procure the company to
open in its books a loan account in the name of his brother (J. M. Jonas loan
account); when he paid money into the company or drew it out, he instructed
D the bookkeeper to credit or debit it to his (J. Jonas) loan account or the J. M.
Jonas loan account as suited his convenience. We were unable to ascertain
whether in fact Mr. J. M. Jonas had any interest in this account and eventually
it was agreed that the two loan accounts should be treated as one.

(5) On 25 June 1957 another company (N. Jonas & Sons Ltd.) drew a
cheque for £1,000 which it recorded in its ledger in the account of Baker.
Mr. Jonas paid this into his private bank account, and on 27 June paid £1,000
E to Baker, which was credited to J. M. Jonas loan account. On 1 July he paid
N. Jonas & Sons Ltd. £1,000 in cash and the corresponding receipt was shown
in its cash book as emanating from him. There was no adequate explanation
of this transaction, nor was it explained to our satisfaction where Mr. Jonas
obtained the £1,000 cash. About this time he was receiving money from his
mother (*vide* para. 14 below), but this he said he used to buy a ring, purchased
F on 11 July.

(6) Mr. Jonas (who did not himself drive) habitually used Baker's car for
his private purposes and took lunches on Baker's premises, sometimes at Baker's
expense. This escaped the notice of the auditors and consequently no income
tax assessment in respect of such benefits in kind were made.

7. The marriage between Mr. Jonas and Mrs. Marie Jonas was dissolved
G in 1957, and on 28 August 1957 he married his present wife Mrs. Carol Jonas.
Mrs. Jonas had previously been employed by Baker and had lived at home
with her parents. She had some modest savings of her own at the date of her
marriage amounting to a few hundred pounds. Mrs. Jonas continued in employ-
ment full-time either with Baker or Marjon Couture Ltd., an associated
company, during the relevant period, attending daily; she sometimes accom-
H panied Mr. Jonas on business visits abroad.

8. The only sources of income disclosed in Mr. Jonas's income tax returns
for the relevant years (apart from the annual value of a residence acquired late
in 1960) were his director's fees from Baker and Mrs. Jonas's salary.

9. In 1962 the Inspector of Taxes started enquiries into Mr. Jonas's
financial affairs, the enquiries being directed to increases in his wealth over the
I years 1956 to 1961 which could not be explained by his known sources of
income or money. The enquiry was very protracted, as pieces of information
were produced at intervals, sometimes conflicting and often only giving rise to
further enquiries. For example, the final explanation (which we accepted) of
the origin of over half of the £10,000 referred to in para. 5(3)(a) above was

first put forward only in May 1967. Substantially the enquiry as recorded in exhibit A consisted of six interviews, at four of which Mr. Jonas was present, with one substantial exchange of letters in between each. The Inspector's first letter took ten months to answer, and his second six months. A

The enquiry was initiated by Mr. Gregory, who interviewed Mr. Jonas on 5 September 1962. The enquiry was in its initial stages, and Mr. Gregory agreed that he did not feel (as he put it) that he had a "back duty case" on his hands at the time. Shortly afterwards Mr. Billingham succeeded Mr. Gregory. B
Subsequently Mr. Spencer assumed responsibility for the enquiry.

10. Up to 1967 the enquiry had been directed to Mr. Jonas's financial position from August 1955 to August 1961, and the estimated assessments for the years up to and including 1961-62 had been made (except the year 1957-58—see para. 2(1) above). On 10 August 1967 the Inspector asked for information for subsequent years up to 1967. On legal advice Mr. Jonas declined to give any information for those years, and the assessments under appeal for 1962-63, 1963-64 and 1964-65 were made in the sum of £5,000 each year. Notice of appeal against those assessments was duly given to the Inspector of Taxes on the grounds that "the amounts assessed are estimated and excessive and incorrect in law as there has been no discovery within the terms of Section 41, Income Tax Act 1952." C D

11. (1) The explanations offered of the increase in Mr. Jonas's wealth in the six years to 31 August 1961 (apart from a variety of matters which, after evidence had been adduced at the hearing, were accepted by the Crown) were: (a) cash wedding presents; (b) gifts from Mrs. Sarah Jonas, Mr. Jonas's mother; (c) gains from betting on racehorses; (d) amounts of disbursements on general living expenses and personal expenditure, which was a material matter in dispute because they entered into the calculation of the amounts to be explained; (e) certain small sums paid to jockeys. E

(2) The amounts to be explained were calculated by Mr. Spencer from such information as was available to him before the hearing, and were set out in a schedule (exhibit B). There was no dispute as to the principles on which this was drawn up. After evidence had been heard, the Crown considered certain adjustments necessary, which are set out in exhibit C. The amounts in question, as set out in exhibit C, and the income tax years to which it was agreed that they should be related, were: F

Year to 31.8.56 £3,709

Year to 31.8.57 £6,563 income tax year 1957-58 G

Year to 31.8.58 £2,593 income tax year 1958-59

Year to 31.8.59 £2,917 income tax year 1959-60

Year to 31.8.60 £2,267 income tax year 1960-61

Year to 31.8.61 £1,510 income tax year 1961-62

The year to 31.8.56 was not directly material to any assessment before us.

(3) The bank statements of Mr. Jonas ceased to contain any printed narrative of disbursements on and after 1 April 1960 because of a permanent change in practice on the part of the bank. H

(4) The calculation of the amounts to be explained per exhibit B took in certain then unexplained cheque and cash lodgments in the private bank account of Mr. Jonas amounting over the six years to £15,260 (*vide* the last line of schedule 1 to exhibit B). The cheque lodgments amounted to approximately £12,000 and the cash lodgments to approximately £3,000. At the hearing it was established that certain of such cheque lodgments were betting wins; these amounted to £1,232 and are shown on the sixth line of exhibit C. I

- A (5) No reliable estimate of cash in hand at each yearly rest was possible. Mr. Jonas had informed Mr. Gregory at the interview on 5 September 1962 that cash in hand varied between £50 and £3,000 during the material period. Accordingly no figures of cash in hand are recorded at yearly rests in the global cash account. The figures of £500 and £1,000 introduced respectively into the schedule, exhibit B, at the beginning and end of the period covered by the
- B schedules are figures estimated by Mr. Jonas in September 1963.

12. For the proper understanding of certain of our findings it is necessary to say something of certain witnesses. Mrs. Jonas was an impressive witness on matters as to which she had direct knowledge; although she gave informative evidence as to racing generally and her own small bets, she offered no direct evidence concerning Mr. Jonas's betting transactions. Mrs. Sarah Jonas, a
- C lady of 83, Polish by birth, was a fair witness; her evidence was at some points vague but we accepted the gist of it. Mr. Sirett (Mr. Jonas's father) gave evidence which we accepted in its entirety. Mr. Jonas was, as a witness, very confused and no part of his evidence carried conviction. Part of it was, however, corroborated, and in approaching the whole of his evidence we kept in mind the possibility that he might not be doing himself justice, and we approached the
- D statements he had made at interviews in the same way.

13. *Cash wedding presents.* Mr. and Mrs. Jonas were married in August 1957; a wedding reception was held at the Dorchester Hotel, and about 60 guests were present. They were starting married life in a very small flat in Weymouth Street in London, where Mr. Jonas had lived before the marriage. We accepted the evidence of Mrs. Jonas that they received, between them, several
- E gifts of cheques or cash, totalling about £1,000; the cheques were placed in Mr. Jonas's bank account, while the cash was probably mostly spent on ordinary (not special) items of expenditure, as very little was needed for extra furnishings at the flat.

14. *Gifts from Mrs. Sarah Jonas.* Mrs. Sarah Jonas came to England with her husband in 1914; her husband, who died in 1942, had a business (N. Jonas & Sons Ltd.) which was apparently prosperous. After her husband's death Mrs. Sarah Jonas was principal shareholder in N. Jonas & Sons Ltd.; in 1951 she gave her shares to her sons, Sidney and Jack, who managed thereafter. She had saved all her life, keeping cash in a safe in her house, where she lived with an unmarried son. She desired to help Mr. Jonas in the financial arrangements necessary to secure a dissolution of his marriage with Mrs. Marie Jonas,
- G and gave him money, in cash, from time to time to this end, and also gave him money for the purpose of buying two rings to give to Mrs. Carol Jonas, one (in June 1957) costing about £1,000 and the other (in August 1957) about £500. The total was about £5,500. It was material to ascertain how much of this was given in each year; there was a great deal of confusing evidence about this and our conclusions thereon are set out in our decision in para. 23 below.

- H 15. *General living expenses and personal expenditure.*

(1) The cash drawings of Mr. and Mrs. Jonas, taken together, were:

1956	1957	1958	1959	1960	1961
£1,061	£549	£970	£876	£931	£857

- I Exhibit B shows simply an estimated £500 a year for cash housekeeping; after argument apparently designed to show that this figure was too high the above figures were established of cash actually drawn, and their makeup appears in exhibit C.

(2) Cheque expenditure of Mr. and Mrs. Jonas, so far as not specifically taken into account in the schedules (exhibits B and C) as being known to be for some particular purpose therein indicated, was:

	1956	1957	1958	1959	1960	1961
Mr. Jonas	£1,521	£759	£735	£1,081	£3,082	£2,744
Mrs. Jonas	—	—	£61	£118	£202	£1,623

Exceptional medical expenditure was incurred during 1956 by Mr. Jonas in connection with a breakdown in the health of Mrs. Marie Jonas.

(3) It was part of Mr. Jonas's case that a large slice of these cash and cheque spendings went on losing bets on horses; as it was claimed that there were considerable overall gains on betting, the amounts of such losing bets would disappear from the calculation of the amount to be explained. It was suggested that such cash and cheque expenditure on losing bets might have amounted in the first three years to at least £1,500, and in the last three years to at least £3,000. The material bearing on the amount of betting gains and losses is in para. 16 below; in this paragraph we are concerned with a contention that ordinary expenditure other than betting would not have amounted to sums of the size indicated by the figures in sub-paras. (1) and (2) above.

(4) (a) Before and after his marriage Mr. Jonas lived in a small flat in Weymouth Street until January 1961, when he moved to a fair-sized house at Epsom; his first child was born in February 1961 and his second in 1963.

(b) Household expenses at Weymouth Street were comparatively modest, amounting in 1957 to around £20 a week. We were given no indication of household expenses at Epsom, where (according to Mr. Jonas's tax returns) a handyman, nanny and a maid were employed. Mrs. Jonas was able to borrow garments from Marjon Couture Ltd. when needed, such garments being returned to Marjon and subsequently sold. When Mr. Jonas was overseas on business or travelling on business in the U.K. his expenses were met by Baker.

(c) Mr. Jonas did not drive or keep a car. Baker's car was available for private travelling. Until he moved to Epsom he generally spent weekends with his father-in-law, who lived there and kept two cars, or with Mr. Jonas's mother in London.

(d) He attended 50 to 100 race meetings a year, always in the members' enclosure, and was a member of at least four racecourses. He frequently attended race meetings with his father-in-law, and on these occasions invariably travelled to such meetings in a car owned by his father-in-law. He would not put a figure, when pressed to do so, to what a day's racing cost (excluding betting) beyond saying "very little—sometimes nothing".

(e) He gave no details of expenses of moving to Epsom, and gave no indication of what expenses he ordinarily incurred apart from household expenses. Initially he made use of furniture previously in use at Weymouth Street. There was delay in furnishing some of the rooms at Epsom.

(5) As indicated in our decision in para. 23 below, we found on the evidence that it was reasonable to take the cash drawings as having been spent on private expenditure other than betting. As to the cheque drawings in question, we found it not proved that any part of them was not spent on private expenditure other than betting. In view of the absence of any narrative in the bank statements after 1 April 1960 such statements furnished no assistance in identifying drawings from the bank after that date.

A 16. *Betting.*

(1) Throughout the material period Mr. Jonas regularly attended race meetings and placed bets, principally in the summer months. The only persons named as those with or through whom he placed bets were H. Singerman, bookmaker, the Racecourse Betting Control Board, Tote Investors Ltd. and Mr. R. Sirett.

B (2) Mr. Sirett is a trainer of racehorses at Epsom and is the father of Mrs. Jonas. Mr. Sirett himself placed bets on horses; he had the knowledge to form an opinion whether a particular horse was well on the day of running and likely to do well over the particular distance in the particular conditions. If Mr. Sirett was backing a horse he would tell Mr. Jonas; if Mr. Jonas wished to back it also (as he generally would) Mr. Sirett would place a bet for both of them. This procedure was adopted because better odds were obtained and because Mr. Jonas relied upon the judgment of Mr. Sirett. These bets were by credit, as Mr. Sirett never placed cash bets. He settled with Mr. Jonas once a week by cheque, Mr. Jonas either receiving a cheque from Mr. Sirett if he was a net winner, or paying Mr. Sirett a cheque if he (Mr. Jonas) was a net loser. The cheque payments by Mr. Jonas to Mr. Sirett and by Mr. Sirett to Mr. Jonas reflected adjustments for the cost of upkeep of Mrs. Jonas's racehorses which Mr. Sirett trained—(vide sub-para. (4) below).

C (3) Mr. Sirett was a successful trainer; in 1957 he had 15 horses training and 18 wins; in 1958 11 horses and 7 wins; 1959 12 horses and 4 wins; 1960 11 horses and 7 wins and 1961 14 horses and 8 wins. He and Mr. Jonas backed all these winners and (as Mr. Sirett put it) "lots of losers in between". When E Mr. Jonas placed bets on horses trained by Mr. Sirett or owned by Mrs. Jonas (vide sub-para. (4) below), his stakes were higher than those he ordinarily risked.

(4) From 1959 onwards Mrs. Jonas owned two, and later three, racehorses which were trained by Mr. Sirett and ran in her name. One of these horses (Bingo) was very successful. It was bought from Mr. Sirett in September 1958 and its first running season under Mrs. Jonas's colours was 1959. It ran about 20 races in three years, being first four times (once at 100 to 8) and was second or third six times.

F (5) Mr. Sirett gave no details of his cheque transactions with Mr. Jonas; his accounts were kept by his wife, who wrote all cheques and who did not give evidence. He recalled an occasion where he and Mr. Jonas each won between £900 and £1,200 in one day when Bingo won, and another occasion when they won between £1,000 and £2,000 each. On his own personal betting he said (and we accepted it); "I should think I come out the winner. There have been years when I came out the loser"; and as regards Mr. Jonas's betting through him (which we also accepted): "I would think it likely that over the years he" (Mr. Jonas) "has won from me."

H (6) Mrs. Jonas also attends race meetings with her husband; she bets in small amounts and did not claim to be a substantial winner.

I (7) At the outset of the enquiry in September 1962 Mr. Jonas was aware that he would have to produce evidence of betting gains, and he produced a number of statements, vouchers and cheques. In particular, he produced evidence, accepted by the Crown, of cheque receipts from and payments to Mr. Sirett for the year ended 31 August 1960, but none for the year ended 31 August 1961. He gave no reason to us why he did not produce any such material in 1962.

(8) From the material so produced, Mr. Spencer calculated gains and losses as under (the detailed calculations being attached to exhibit B). A

1956	£55 loss
1957	£1,912 loss
1958	£505 loss
1959	£423 gain
	£1,520 loss
1960	£3,559 gain
1961	£465 gain
	£1,704 loss.

B

At the hearing a number of further cheques representing betting wins were produced, including now a number of cheques from Mr. Sirett relating to the year to August 1961, which were then taken into account by Mr. Spencer in his revised schedule, exhibit C. Before those adjustments were made these receipts came into the computation of the cash deficiencies shown in statement B of the schedules. These bring the adjusted net figures for vouched betting results to:

C

1956	£55 loss
1957	£1,747 loss
1958	£224 loss
1959	£1,097 loss
1960	£3,631 gain
1961	£525 loss.

D

(9) The year to August 1960 was a very good year for Bingo; £2,386 was won in prize money by Mrs. Jonas's horses; of the £3,631 net gains, about three quarters derived from transactions through Mr. Sirett. E

(10) The figures given in sub-para. (8) above, though referred to in argument as vouched betting results, included an estimated item; Mr. Spencer saw winning totalisator vouchers, but no losing tickets. He assumed that there were three losing tote tickets for every one winning ticket, and accordingly he brought into calculation assumed losing tote bets as under: F

1959	1960	1961
£1,080	£108	£213

(11) In the course of the enquiry Mr. Jonas and his advisers put at various times the following accounts of betting gains over the six years 1956 to 1961: (a) at the first interview in September 1962 Mr. Jonas stated that he did not always win, although he was in pocket on balance. He put no figure to it; (b) his accountant's letter of 12 September 1963 (at folio 8 of exhibit A) sets out figures showing a net gain of £3,987 on betting (i.e. £5,886, including £1,000 for the sale of a horse, £899 being a sweepstake win); (c) at the interview on 13 September 1966 (folio 31 of exhibit A) Mr. Jonas put the net gains over the six years at between £9,000 and £12,000; (d) in a letter dated 21 November 1966 (folio 42 of exhibit A) he put the net betting gains as being in the region of £7,000 and £9,000. H

(12) (a) In his evidence at the hearing Mr. Jonas took his stand on what he had stated in his said letter of 21 November 1966. Beyond saying that his real success began with the horse Bingo, he gave no particulars, beyond saying that he and Mr. Braham had worked out the figures together. When asked what would have been his cheque payments to bookmakers between April 1960 and April 1961 he said he did not know. I

A (b) Mr. Braham stated that the figures of £7,000 and £9,000 were arrived at by analysing Mr. Jonas's bank statements as best he could. On Mr. Jonas's instructions, all bank lodgments which were not remuneration and which were otherwise unidentified would be betting receipts unless they were capital receipts, and accordingly he treated them as betting gains. He produced a set of figures (exhibit D) resulting in an amount of £8,285 13s. 5d. purporting to be net gains over the said six year period. In this he had, in the years 1959, 1960 and 1961, taken the exact amounts shown as being unidentified bank lodgments in Mr. Spencer's schedule, exhibit B, (which he had only recently seen at the time when he compiled these figures) as being betting gains. He had also taken about half of the unidentified cheque payments of 1960 and 1961 as being betting losses. The result of applying his figures to the final year 1961 would be as follows:

	£	s.	d.
The amount to be explained in the schedule exhibit B was	3,716	14	0
This however took into calculation vouched betting gains and losses; excluding from calculation the net losses of	1,238	13	8
D The resulting amount is	2,478	0	4
Excluding from this a part of the unidentified cheque payments; which exhibit D takes to be payments on losing bets	1,357	1	4
We are left with an amount of	1,120	19	0
E Which would be explained by			
(a) net betting wins <i>per</i> exhibit D	1,020	19	0
(b) a sum of £100 referred to in para. 17(4) below	100	0	0

Thus exhibit D explained Mr. Spencer's original (unrevised) amount for 1961 to the last penny.

F (13) Mr. Howard, who was employed by Baker as a bookkeeper, dealt with the paying-in book relating to Mr. Jonas's private bank account between October 1959 and December 1971 when he ceased to be employed by Baker. Mr. Jonas did not attend his bank for the purpose of lodging cheques and cash. He frequently handed cheques or cash to Mr. Howard to pay in to Mr. Jonas's private account; Mr. Howard recorded details of the drawers of cheques on the counterfoils of the paying-in book, and he recalled paying in cheques from G Mr. Sirett and Mr. Singerman and Tote Investors Ltd. and the Racecourse Betting Control Board. He never asked the source of cash, but sometimes he was given cash after Mr. Jonas had to his knowledge attended a race meeting and was told it represented racecourse winnings. On such occasions he wrote "racecourse" on the counterfoils. No paying-in books were produced to us; when used up, the books with the counterfoils were stored away with Baker's H paying-in books, which were kept for at least six years.

17. The following matters had a bearing on the questions in issue for the six years covered by the schedules:

I (1) On a voyage to New York in the Queen Elizabeth in January 1960 Mr. Jonas twice won the daily sweepstake on the ship's run. He won about £1,700 of which £899 was banked (this figures in the schedule as a queried receipt). The rest was in U.S. dollars, and most of it was spent in New York or on a side trip to Jamaica. Mr. Jonas returned with about £200 in U.S. dollars from this source; he kept this and used it on his next visit to New York in 1962. This £200 did not figure in the schedules, and we concluded that it did not affect the position shown by the schedules, being still in hand in August 1961.

(2) In July 1956, when Mr. Jonas had to pay the first £2,500 to Mrs. Marie Jonas (*vide* para. 5(3) above), he borrowed £500 each from his brothers Sidney and Jack. These loans he repaid, but we could not ascertain when. A

(3) In addition to the £5,500 which Mrs. Sarah Jonas gave Mr. Jonas (para. 14 above) she also gave him, his wife and children cash presents on such occasions as birthdays. We had no particulars of these or what became of them.

(4) When racehorses win prize money, normally 10 per cent. is paid to the trainer and 10 per cent. to the jockey. This accounts for the amounts of £415 and £100 on the penultimate line of the schedule, exhibit B. Mr. Sirett did not receive his 10 per cent. as trainer of Mrs. Jonas's horses and an adjustment for this appears in the revised schedule, exhibit C. Mr. Sirett stated that the 10 per cent. for the jockey is normally dealt with by Weatherby. There was some dispute as to whether or not it had been taken care of in the Weatherby account summarised in exhibit B; if it were, it should not have figured in the penultimate line of the schedule. This question was not resolved to our satisfaction. B C

18. The contentions advanced on behalf of Mr. Jonas as the explanation of the disputed amounts shown in exhibit C, year by year, are set out here for convenience. D

	£	£	
1957 Amount to be explained		6,563	
excluding therefrom vouched betting losses taken into the calculation (as adjusted in exhibit C) and substituting estimated gains <i>per</i> exhibit D	1,747		
Cash wedding presents	347		
Gift from Mrs. Sarah Jonas	1,000		E
	2,900	5,994	
leaves a sum of		569	

which it was contended should be accounted for by overstatement of cash living expenses by about £500, or understatement of betting gains in exhibit D. Counsel urged that as 1957 was a successful year for horses trained by Mr. Sirett, we should take the gains to be considerably higher than shown in exhibit D. F

	£	£	
1958 Amount to be explained		2,593	
excluding therefrom vouched betting losses taken in, (as adjusted in exhibit C) and substituting estimated gains <i>per</i> exhibit D	224		
A sum representing savings at 28 August 1957 appertaining to Mrs. Jonas	198		G
Gift from Mrs. Sarah Jonas	500		
	750	1,672	
leaves a sum of		921	

which it was contended should be accounted for by further (unspecified) gifts from Mrs. Sarah Jonas and over statement of cash living expenses by £500 at least and further betting wins. H

	£	£	
1959 Amount to be explained		2,917	
excluding therefrom vouched betting losses and substituting estimated gains <i>per</i> exhibit D	1,097		
	2,409	3,506	I
leaves a surplus of		589	

	£	£
A 1960 Amount to be explained		2,267
substituting gains <i>per</i> exhibit D for vouched gains		
(as adjusted in exhibit C) accounts for	235	
and excluding cheque disbursements taken in		
exhibit D to be betting losses	1,652	
B and excluding disputed payments to jockeys	207	2,094
leaves a sum of		173

which it was contended should be accounted for by overstatement of cash living expenses.

	£	£
C 1961 Amount to be explained		1,510
excluding therefrom vouched betting losses		
(adjusted in exhibit C)	525	
and substituting estimated gains <i>per</i> exhibit D	1,020	
and excluding cheque disbursements taken in		
exhibit D to be betting losses	1,357	2,902
D		
leaves a surplus of		1,392

It was contended that living expenditure during this period might have been overstated by a sum substantially in excess of £1,357.

E In para. 16(12)(b) above we recorded that by the aid of the figures in exhibit D the amount to be explained *per* Mr. Spencer's original figures in exhibit B (i.e. £3,716 14s.) could be explained to the last penny. Facts emerging at the hearing (which are not set out in detail herein, as being no longer in dispute and not directly material to the issues raised hereby) resulted in the amount in dispute being dropped, in exhibit C, to £1,510.

F 19. Mr. Braham stated that the first assessments to income tax made upon Mr. Jonas in respect of his salary for the years 1960-61 and 1961-62 were at some point amended and agreed, and payment of the income tax was made in accordance with the figures as varied. He did not say how this was done, nor did he say that such assessments had been appealed and such appeals determined in accordance with the formalities required by s. 510 of the Income Tax Act 1952. No papers relating to this were produced and the other witnesses had no recollection of the matter.

G 20. As stated in para. 10 above, Mr. Jonas declined, on legal advice, to give the Inspector of Taxes any details concerning his financial affairs for any period subsequent to August 1961, and none were given to us at the hearing. The only facts we could find as regards this subsequent period were:

- (1) The auditors gave clean certificates to Baker's accounts.
- (2) Mr. Jonas continued to attend race meetings.
- H (3) Mrs. Jonas continued to own racehorses.

I 21. (1) The Commissioners of Inland Revenue had issued a precept pursuant to s. 31 of the Income Tax Act 1952, with a view to obtaining access to the books and accounts and vouchers of Baker during the material period. These documents had been examined by the Enquiry Branch. Mr. Spencer informed us that the conclusion reached after the examination was to the effect that the records of Baker were well kept.

(2) The records of Baker had been subjected to audit by the purchase tax authorities from time to time. A

(3) Mr. Passer, who was responsible for the audit of Baker between 1957 and 1961, had made enquiries about the possible existence of an arrangement between the directors and the shareholders of Baker about the withdrawal of undisclosed remuneration from the company after learning that a suggestion of this nature was being made by the Inspector of Taxes. He also attended an interview at which Mrs. Marie Jonas and Mr. Spencer were present. Searching questions had been put to Mrs. Marie Jonas by Mr. Spencer during this interview about the affairs of Baker. B

(4) Nothing emerged from the audits and enquiries mentioned in this paragraph which resulted in any evidence being placed before us (a) as to errors or omissions in the audited accounts of Baker, or (b) as to consent on the part of Mr. Jonas's co-directors or the minority shareholders in Baker to the withdrawal by Mr. Jonas of remuneration from Baker beyond that shown in such audited accounts. In the course of argument before us it was agreed on behalf of the Inspector of Taxes that there was no evidence of such consent before us. C

22. It was contended on behalf of Mr. Jonas: D

(1) that there was a rebuttable presumption of regularity in that the remuneration paid to Mr. Jonas was fixed by Baker in general meeting, and that he had not received any consent to withdraw, and that he had not withdrawn, additional undisclosed remuneration from the company;

(2) that, in view of the formal concession made on behalf of the Inspector of Taxes that there was no evidence that the directors and shareholders of the company had consented to the withdrawal of sums amounting in the aggregate to £19,559 by Mr. Jonas from Baker in addition to the remuneration voted to him in accordance with the regulations of the company, it followed as a matter of law that the aggregate sum of £19,559 did not constitute remuneration from Baker which was assessable under Schedule E or from which Baker could deduct income tax in accordance with the P.A.Y.E. Regulations; E F

(3) that we should accept the explanations or possible explanations recorded in para. 18 above of the amounts in dispute as shown in exhibit C, and, in particular, that we should accept that Mr. Jonas could reasonably have made betting gains as indicated in exhibit D allowing however for the possibility of larger gains than are there shown in respect of 1957;

(4) that the explanations or possible explanations recorded in para. 18 above were corroborated and/or were consistent with the absence of any consent to the withdrawal and the absence of any withdrawal of any undisclosed remuneration from Baker; G

(5) that, as regards the years 1960-61 and 1961-62, it was a necessary inference that the first assessments had been appealed, and such assessments had been varied by agreement as provided by s. 50 of the Income Tax Act 1952 and/or by s. 224 of the Income Tax Act 1952 and by s. 510 of the Income Tax Act 1952, and, as regards all the assessments under appeal, there was no evidence of the Inspector having made a discovery of any new material primary facts to justify the raising of the additional assessments under appeal; H

(6) that there was no loss of income tax during the year 1957-58 which was attributable to wilful default and which justified the making of assessments under the proviso to s. 47(1) of the Income Tax Act 1952; I

(7) that all the assessments under appeal should be discharged.

A 23. It was contended on behalf of the Inspector of Taxes:

(1) that we should reject all the explanations put forward of the sums in dispute for each of the years 1957 to 1961, and, inasmuch as the only known source of income of Mr. Jonas was a Schedule E source, we should increase the Schedule E assessments for the years 1957-58 to 1961-62 to the amounts shown in exhibit C;

B (2) that there was no evidence that the first assessments for 1960-61 and 1961-62 were ever under appeal, and that in any event there was ample evidence that the Inspector had made a discovery relating to all years;

(3) that Mr. Jonas had not discharged the onus upon him to displace the assessments for 1962-63 and subsequent years and that we should confirm such assessments.

C 24. We, the Commissioners who heard the appeal, gave our decision at the conclusion of the hearing as under:

The assessments under appeal are	
Income tax, Schedule E	1957-58 to 1964-65
Surtax	for same years.

D The income tax and surtax assessments for 1957-58 were made outside the normal time limits, and the Crown contends that they are competent in that they were made to recover tax lost by wilful default. The surtax assessment for 1961-62 is in the same category.

E For all years up to and including 1961-62 the appeal has been argued on the basis of wealth, income and expenditure computations prepared by Mr. Spencer covering six years to 31 August 1961; it was common ground that the year (for example) to 31 August 1957 could be treated as the basis for 1957-58 assessment, and so on to 1961-62. This computation was revised in view of a great deal of detail produced for the first time at the hearing, such as is normally produced and agreed beforehand, and this has contributed to the length of the hearing.

F Mr. Spencer's revised computation shows for each year a sum, described as "Cash Deficiency" which the Crown say requires explanation; these sums are

	£
1956	3,709
1957	6,563
1958	2,593
1959	2,917
1960	2,267
1961	1,510

G The explanation offered of these sums embraces: cash gifts from Mrs. Sarah Jonas, wedding presents, amounts spent on general living expenses, gains from betting, and these we deal with in that order.

Cash gifts from Mrs. Sarah Jonas

H These were said to comprise, first, an amount of £5,500, and second, sums given at various times, such as birthdays, to Mr. and Mrs. Jonas or their daughter. These latter did not figure prominently in Mr. Jonas's case—we assume them to have been spent as received, and they cannot in any event have much impact on the matters before us.

The £5,500

We are satisfied on the evidence that Mr. Jonas received sums amounting in all to £5,500 as gifts from his mother. It is important to determine as precisely as possible how much of this was received in which years. The Crown, while disputing that the sums were paid, suggests £2,000 in 1956, £2,900 in 1957 and £750 in 1958, making £5,650 in all (£150 more than was claimed either by Mrs. Sarah Jonas herself or Mr. Jonas). This allocation was based on lodgments in a loan account with the company. Mr. Marcus Jones accepted this allocation—rather surprisingly, because the placing of £2,000 in 1956 is obviously prejudicial to Mr. Jonas in these appeals.

Mr. Jonas stated in evidence that his mother gave him £2,000 “right away”—i.e., in 1956. When we ourselves reminded him that he had several years ago told his accountants that his mother gave him £1,000 only in July 1956, and about £200 a month subsequently, he thought that what he then told his accountants was more likely to be correct than what he had said under stress in the witness stand.

The Crown’s allocation also takes in £1,000 in 1957 in respect of the transaction over the ring, and Mr. Marcus Jones also apparently accepted this—surprisingly again, as this is the year for which the Crown allege wilful default. Mr. Jonas’s evidence in cross examination was that his mother furnished £1,500, i.e., to pay for both rings in 1957.

Our conclusion is that the proper allocation of the £5,500 is: £1,000 to 1956, £1,500 plus £2,400 (i.e. £3,900) to 1957 and £600 to 1958.

Wedding presents

We are satisfied that wedding presents in cash or cheques amounting to about £1,000 were received towards the end of 1957.

Before going on to say what we have to say about betting and living expenses, we wish to deal with the year 1957–58, this being one of the years in which the Crown have to show “wilful default”. The amount to be explained is £6,563, but this is arrived at after bringing in a betting loss of £1,747—a sum calculated on the scanty information Mr. Spencer had produced to him and a little more produced at the hearing. Assuming Mr. Jonas broke even on his betting in that year, we would find the following results: by excluding the betting loss of £1,747, the amount to be explained is reduced to £4,816.

This is explained by gifts of £3,900 from Mr. Jonas’s mother and £1,000 wedding gifts, making £4,900 in all—there is thus a margin of £84 which could have been betting losses or extra living expenses. In view of what we have to say later about betting, this seems to us reasonable, and accordingly we find (and so far as it is a matter of law, we hold) that wilful default has not been established as regards 1957–58, and the assessments for the year cannot stand. We would add, as regards this, that Mr. Jonas did, he says, borrow from his brothers in July 1956; this has been repaid and he must have found the money to repay it from somewhere, but we do not know when; it could have been in 1956 or 1958—all we can say is that it has not been established that he repaid it in the year to August 1957.

With 1957–58 out of the way, we can consider the following years up to and including 1961–62. As regards these years, it is for Mr. Jonas to discharge the onus on him to show that the assessments are incorrect. He has not done so. We have accepted, so far, £600 received from his mother in 1958, which makes only a small inroad in the amount to be explained for this year. The rest (apart from some small items) he attempts to explain by overstatement of living expenses and by betting gains.

A *Living expenses*

Mr. Marcus Jones mounted a strong attack on the level of living expenses estimated in Mr. Spencer's original schedule, endeavouring to show that it was pitched too high. We found it unconvincing, and indeed the only result was that Mr. Spencer examined the cash expenditure more closely and stepped up his original figures (which we ourselves considered generously low) to figures which

B appear to us, in view of all the evidence, to be reasonable.

Betting

The known betting results, for which receipts and payments were shown to the Inland Revenue or to us at the hearing, produced a gain of a few hundred pounds over 1958, 1959, 1960 and 1961; there were gains of over £3,500 in 1960 (the year in which Mrs. Carol Jonas's horse Bingo was winning, sometimes at very long odds), and losses in the other years. The records from which this result is derived are clearly incomplete. Mr. Jonas claims that over these four years he won about £7,500; and £8,285 over the whole six years. This claim is put forward on the assumption that any lodgment or withdrawal not identified as being for something else must be for betting, as Mr. Jonas says he has no other source to which they can be attributed.

D We note that the amount of money said by Mr. Jonas or his adviser to have come from betting over the six years has varied from time to time. On 12 September 1963 it was put at £5,886, including a sweepstake win and £1,000 on the sale of a horse—i.e. about £4,000 from betting on horses. On 13 September 1966 it was between £9,000 and £12,000. In November 1966 it was "in the region of £7,000 and £9,000". At the hearing a figure of £8,285 was put forward by

E Mr. Braham and Mr. Jonas in evidence. In his final address Mr. Marcus Jones put forward yet other amounts, suggesting, in the teeth of the evidence which he led, that we should infer the results for the first three years to have been much better than those put forward by Mr. Braham and Mr. Jonas himself in their evidence.

The success which Mr. Jonas claimed for his betting was said to be largely

F due to his association with Mr. Sirett; Mr. Sirett himself did not claim to be a substantial winner; he said, "I should think I come out the winner—there have been years when I come out the loser." Similarly, Mrs. Carol Jonas did not claim any great success, placing, however, only small stakes. Mr. Jonas stated in the interview of 13 September 1966 (the notes of which he signed) that his real success began after the purchase of Bingo. Bingo was bought from Mr.

G Sirett in September 1958 and was running in Mrs. Jonas's colours in 1959 and 1960. This statement is borne out by the large proved gains of 1960, stemming very largely from betting in association with Mr. Sirett. No precise information at all was produced of betting in association with Mr. Sirett in 1961, and we were not told why. Mr. Jonas and his accountant were clearly aware, when the District Inspector began enquiries in September 1962, that Mr. Jonas would

H have to furnish solid evidence regarding betting wins, and in the circumstances it is remarkable that information regarding the Sirett bets was produced for 1960 but not for 1961. (The only information produced at the early stage being a cheque for sale of a horse.) Mr. Sirett told us that Mrs. Sirett kept his accounts, and we received the impression that she kept them carefully. In the absence of any explanation, we cannot accept that Mr. Jonas, being alerted as early

I as September 1962, could not have produced at any rate some solid evidence of his transactions with his father-in-law in the year to 31 August 1961 if it would have helped him.

If we assume (but without deciding) that Mr. Jonas broke even on his betting except for his large wins in 1960, we reach this position year by year: A

	£	£	
1958 The amount to be explained:		2,593	
<i>less</i> adjusted betting loss to be excluded	224		
Gift from Mrs. Sarah Jonas	600	824	B
		1,769 remaining unexplained	

The income tax assessment for 1958-59 is £920.

1959 Amount to be explained:		2,917	
<i>less</i> adjusted betting loss	1,097	1,097	C
		1,820 remaining unexplained	

The income tax assessment for 1959-60 is £1,000 D

1960 Amount to be explained is £2,267 after taking in accepted betting gains of £3,631. In the absence of firm evidence we see no reason to make any upward adjustment to this figure, or to treat any of the bank payments (other than those taken in in arriving at it) as betting payments. The only adjustment we are left with is a suggested £208 in respect of jockeys; the evidence as to this was inconclusive and the difference between £2,267 and £2,059 does not much affect the broad question before us. E
The income tax assessment for 1960-61 is £1,000.

1961 Amount to be explained is £1,510. For this year we are not prepared to entertain the assumption that Mr. Jonas "broke even", bearing in mind that he has not given any adequate explanation of his failure to give any record of his transactions with his father-in-law, having been alerted to the necessity as early as September 1962—13 months after August 1961. The explanations offered of the £1,510, if accepted, would result in showing a very large surplus for the year; they were clearly tailored to fit the deficiency calculated by Mr. Spencer before the hearing (which was £3,717). In view of all the evidence we reject them. F
The income tax assessment for 1961-62 is £1,000. G

The income tax assessments are made under Schedule E, and the onus is on Mr. Jonas to displace them (the out-of-date year 1957-58 having been disposed of). His only known source of income, other than betting, is Baker Sportswear. His explanation of the amounts to be explained for the years up to 1961 is that they were in the main betting gains; he has not substantiated this, and we reject it. H

For the years 1962-63, 1963-64 and 1964-65 he has chosen not to offer any evidence whatsoever of his personal affairs, beyond stating that he had no sources of income other than betting and his remuneration shown in the accounts of Baker Sportswear which was covered by the first assessments to which those under appeal are additional.

The evidence was that the auditor gave a clear certificate to such accounts, but the accounts themselves were not produced to us and we have not seen them. In all the circumstances we cannot say he has discharged the onus on him to displace the assessments for these later years, and we find he has not. I

A It was contended that if the true explanations were that he had extracted funds from Baker Sportswear he would be accountable to the company, as it should be assumed (it was said) that he did it without authority. In the absence of evidence from his co-directors (one of whom was minority shareholder) we are not prepared to make this assumption.

B There was a further contention, relating to 1960–61 and 1961–62, that the first assessments were appealed and settled by agreement under s. 510 of the Income Tax Act 1952. We find it not established that there ever were appeals so settled; if there had been, however, we are unable to see how that would (in the words used by Mr. Marcus Jones) “sterilise” those years; there is ample evidence that the Inspector made a “discovery”.

C The conclusion we have reached is that we should confirm the income tax assessments for all years, other than that for 1957–58 which we discharge. We were asked by the Crown to increase those up to and including 1961–62 to the amounts requiring explanation. We have given careful consideration to this. To do so we would have to be positively satisfied that (for example) £2,917 was in fact the correct figure for 1959–60; in view of all the uncertainties surrounding the matter we are not so satisfied as regards any year, and further-
D more in view of all the circumstances (so far as we know them) we feel that substantial justice would be done to both sides if we confirm them.

25. Both Mr. Jonas and the Inspector of Taxes immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law, and in due course Mr. Jonas 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.
E The question of law for the opinion of the Court is whether on the facts recorded herein it was open to us to reach our conclusions set out in para. 24 hereof.

R. A. Furtado { Commissioners for the Special
N. F. Rowe { Purposes of the Income Tax Acts

F Turnstile House,
94–99 High Holborn,
London W.C.1
15 January 1973

The case came before Walton J. in the Chancery Division on 4, 5, 6 and 10 July 1973, when judgment was given in favour of the Crown, with costs.

G *Marcus Jones* for the taxpayer.
Patrick Medd Q.C. and *Harry Woolf* for the Crown.

The following cases were cited in argument in addition to those referred to in the judgment:—*Woodrow v. Whalley* (1964) 42 T.C. 249; *Hoystead v. Commissioners of Taxation* [1926] A.C. 155; *Banning v. Wright* (1970) 48 T.C. 421 (C.A.); *Joseph Constantine Steamship Line Ltd. v. Imperial Smelting Corporation Ltd.* [1942] A.C. 154; *Royal Mutual Benefit Building Society v. Walker* (1968) 45 T.C. 171; *Ridge Securities Ltd. v. Commissioners of Inland Revenue* 44 T.C. 373; [1964] 1 W.L.R. 479; *Napier v. National Business Agency Ltd.* [1951] 2 All E.R. 264; *Hall v. Commissioners of Inland Revenue* (1926) 11 T.C. 24; *Curtis v. J. & G. Oldfield Ltd.* (1925) 9 T.C. 319; *Reg. v. Arthur* [1968] 1 Q.B. 810; *Brown v. Commissioners of Inland Revenue* 42 T.C. 42; [1965] A.C. 244; *Rex v. Kensington Commissioners* (ex parte *Aramayo*) 6 T.C. 613; [1916] 1 A.C. 215;

British Sugar Manufacturers Ltd. v. Harris 21 T.C. 528; [1938] 2 K.B. 220; *Disher v. Disher* [1965] P. 31; *Lack v. Doggett* (1970) 46 T.C. 497; *Commercial Structures Ltd. v. Briggs* (1948) 30 T.C. 477; *Southern v. A.B.* 18 T.C. 59; [1933] 1 K.B. 713. A

Walton J.—This is an appeal by the taxpayer against seven additional assessments under Schedule E in respect of remuneration alleged to have been obtained by him from a company known as Baker Sportswear Ltd. (“Baker”). There were originally eight such assessments, running from the fiscal year 1957–58 to 1964–65 inclusive; but the first was out of time and was discharged by the Special Commissioners on the ground of there being no fraud or wilful default on Mr. Jonas’s part in respect of that fiscal year, as demonstrated by the fact that it could not be shown that his capital worth had increased during that year to an extent not explicable by his declared remuneration and other sources or wealth. The Special Commissioners confirmed all the remaining assessments. I was informed that there are parallel surtax assessments for all the now remaining years of assessment save and except that for 1961–62, which was discharged by the Special Commissioners as (owing to the then change in the surtax threshold) the total amount of remuneration earned for that year would not attract surtax. I am, however, not concerned with these surtax assessments. B C D

Mr. Jonas was at all material times in complete effective control of Baker, and able to do what he wished with it. So much so that, in complete disregard and defiance of s. 54 of the Companies Act 1948, he procured it to lend him the money with which to buy 1,940 shares out of a nominal capital of £2,000 in 2,000 shares of £1 each, all of which were issued. The accounts of Baker were each year properly audited; the auditors found that its books were well kept, and gave clean certificates for the accounts for all material years. The initial assessments on Mr. Jonas under Schedule E were in respect of the amounts therein disclosed as having been paid to him by way of remuneration. The auditors had, however, failed to pick up that Mr. Jonas habitually used Baker’s car for private purposes and sometimes took lunches at Baker’s expense, so that no assessments in respect of benefits in kind were ever made. The Revenue authorities discovered that Mr. Jonas was living above his ostensible income and commenced an inquiry into his affairs accordingly. He produced a great deal of evidence in relation to the years 1957–58 to 1961–62 inclusive, but he has consistently refused to produce any evidence in relation to the last three years of assessment, 1962–3 to 1964–5 inclusive. The result of this investigation was that the Revenue became convinced that Mr. Jonas had a source of revenue which had not been disclosed to them. Mr. Jonas said that indeed he had: he made considerable gains on betting, and this was the explanation of his otherwise inexplicable increase in wealth. The Revenue were not convinced, and made the additional assessments accordingly. E F G H

In the end, this case is one which falls to be decided almost exclusively upon the question of onus. Where does the burden lie—upon the Crown to show that the taxpayer actually had the additional income which it says he had, or upon the taxpayer to show the contrary? It so happened in the present case that the earliest assessment was, as I have indicated, one made out of time, and hence the onus was quite clearly upon the Crown to show in the first instance that Mr. Jonas had been guilty of fraud or wilful default in relation to income arising in that year of assessment. In such circumstances the Crown has a choice: the Inspector of Taxes can either (i) assume onus throughout, and open his entire case relating to all the years of assessment together, or (ii) deal with I

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A the year or years in which the onus is upon the Crown, and, having dealt with those years, leave the taxpayer to take up the running in respect of the latter years, in respect of which the onus is upon him. This was clearly explained by Cross J. in *Amis v. Colls* (1960) 39 T.C. 148, at page 161.

Mr. Jones rightly appreciated that this was, as I have said, a case where onus is all-important, so he boldly argued that, by deliberately adopting the first of the two possible courses open to him, as set out above, the Inspector assumed the onus of proving the Crown's case not only in regard to the earliest of the assessments but also as regards those which were in time. He pointed out with force that the adoption of this procedure by the Inspector gave him the last word at the hearing before the Special Commissioners, and that he could obtain this advantage only if, indeed, the onus was on him. I do not feel able to accept this submission. I can well see that the adoption of the first procedure, as distinct from the second, may in some cases give the Inspector an advantage, but it is certainly not, in my view, an advantage bought at the expense of a shift of onus. It is an advantage bought at the expense of having to deploy the Crown's case first, so that one's opponent knows exactly and precisely what it is he will have to prove to discharge the onus which rests upon him. There are advantages and disadvantages either way; and whether on balance the Inspector gained or lost the advantage, in my view there was no shift of onus, which is imposed by Statute: Income Tax Act 1952, s. 52(5), now Taxes Management Act 1970, s. 50(6).

Allied with, although quite distinct from, the above point, Mr. Jones took the point (having given a notice to that effect pursuant to R.S.C. Ord. 91) that the appeals against all the assessments which were upheld were conducted contrary to natural justice. The point in issue here is this. The Crown's case was that, on an analysis of Mr. Jonas's expenditure and capital position year by year over the relevant years, it was obvious that he had another source of income. He sought to explain the additional funds which he clearly had enjoyed in a variety of ways, but principally through betting winnings, and there is no doubt that in one particular year, when a horse called Bingo belonging to his wife had a very good season, often winning at long odds, he did make considerable sums in this manner. The Crown's case was that it was impossible to explain Mr. Jonas's financial position in the way he sought to explain it, and that, as the only source of revenue known to the Crown was emoluments from Baker (with which company, it will be recalled, the Special Commissioners have expressly found that Mr. Jonas was in a position to do what he liked), such remuneration came from Baker, and they have assessed him under Schedule E accordingly. Now, from first to last there was no evidence that any of the other directors and/or shareholders in Baker had given their consent to that company paying Mr. Jonas any remuneration in addition to that which formed the subject of any original assessments upon him. In this state of affairs, the Case Stated records (in para. 21(4)) that:

"In the course of argument before us it was agreed on behalf of the Inspector of Taxes that there was no evidence of such consent"—i.e., "consent on the part of Mr. Jonas's co-directors or the minority shareholders in Baker to the withdrawal by Mr. Jonas of remuneration from Baker beyond that shown in such audited accounts"—"before us."

I Mr. Jones then contended that:

"in view of the formal concession made on behalf of the Inspector of Taxes that there was no evidence that the directors and shareholders of the company had consented to the withdrawal . . . if followed as a matter of law that the [withdrawals] did not constitute remuneration from Baker".

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En passant, I regard such a submission, inasmuch as it dubs the recognition of the purely factual situation of the state of the evidence by the Inspector as a "concession", as ill-founded, but I think nothing really turns on this. But, says Mr. Jones, in the result he was misled into not arguing the point that if moneys had been diverted from Baker to Mr. Jonas they had been diverted wrongfully and he remained accountable to Baker therefor, so that he could not be charged under Schedule E in respect of extra remuneration from Baker. I do not think there is anything in this contention. The onus was on the taxpayer to displace the assessment, and if the evidence was left, as it was, in the neutral position that there was no evidence of such consent as I have already mentioned, the taxpayer had clearly not discharged the onus which rested upon him. It would not have been difficult for him to give some evidence which, if not weakened or destroyed by cross-examination, might have led the Special Commissioners to a different conclusion. In view of their general view as to Mr. Jonas's reliability, his word might not have been of very much weight, but Mr. Jonas's second wife, who may have been a director (there is some evidence to suggest she was, and Mr. Jones so maintained, although the Special Commissioners do not list her as such), was called, and, as the Special Commissioners found, as to matters of which she had direct knowledge she was an impressive witness. A single question to her would have laid the foundation for the submission which Mr. Jones would like to make: but it was never put. If it had been, there would then doubtless have been a searching cross-examination as to how far she kept in day-to-day touch with the affairs of the company, and how far she gave her husband *carte blanche* to do what he liked with it.

Accordingly, I do not consider that Mr. Jones has made out any want of natural justice. Indeed, I think that, as recorded in the Case Stated, he argued the only point which was open to him in the state in which he had chosen to leave the evidence, and doubtless argued it with the persistence which he habitually demonstrates. But the point is a troublesome one, and it has given me greater difficulty than anything else in this appeal. In the entire absence of evidence that the moneys in question were abstracted rightfully by Mr. Jonas from the company, can it be correct, nevertheless, to treat them as additional remuneration for Mr. Jonas, and not merely as sums for which he is accountable to the company (and upon which the company ought, if additional assessments are made, to pay tax)? I think the answer is in the affirmative. A very similar point was under consideration by Pennycuik J. in *Hudson v. Humbles* (1965) 42 T.C. 380, and he said, at page 387:

"The taxpayer knows the full facts, and the Revenue does not. In the nature of things, it must often be the case that, even if the Revenue can show a *prima facie* case that receipts have not been satisfactorily accounted for, it has no material upon which to set up a *prima facie* case for bringing the receipts in question under one or other source of income. On the other hand, it is always open to the taxpayer to challenge the assessment, not only on the ground that there has been no wilful default, but also on the ground that the receipts did not represent income from the particular source selected by the Revenue."

Wilful default is, of course, not here in issue, and there has been no challenge to the "particular source selected by the Revenue"—i.e., Baker—save in the sense that the taxpayer has sought to explain his otherwise unexplained wealth away.

(Walton J.)

A A very similar point was in issue in *Rose v. Humbles*(¹) [1972] 1 W.L.R. 33. Russell L.J. said this, at page 41(²):

“ . . . if the point had been taken the son might well have been cross-examined on the lines that the son and his mother recognised that the taxpayer had, so far as his fellow directors and shareholders were concerned, *carte blanche* in the affairs of the Aldersgate Company.”

B Sachs L.J. expressed his concurrence at page 44(³); and Stamp L.J. said, at page 50(⁴):

“ . . . one is in ignorance of any general authority which [the taxpayer] may have had from the other two shareholders in Aldersgate to fix his own remuneration. The articles of association of Aldersgate were not in evidence. For these reasons the point, involving a finding of fact or an inference drawn from the facts, that [the taxpayer] had no general authority, express or implied, to fix or retain his own remuneration is not . . . one which ought to be allowed to be taken on appeal.”

C

Curiously enough, in the present case also the taxpayer has not thought fit to put the articles of Baker in evidence. But what was established, as I have already noted, is that at all material times Mr. Jonas was able to do what he liked with

D Baker. From this I think it is a legitimate, if not irresistible, inference that he had authority to fix or retain his own remuneration, or, if you please, that he had *carte blanche* from his fellow shareholders and directors in the affairs of the company. Accordingly, I have come to the conclusion that in the state in which the taxpayer was content to leave the evidence he cannot complain of the assessment being made under Schedule E on the basis of remuneration

E from Baker rather than under some other Schedule.

The next point taken by Mr. Jones is that there was no discovery by the Inspector of Taxes, this being, of course, a prerequisite to the making of an additional assessment by virtue of what is now the Taxes Management Act 1970, s. 29(3), formerly the Income Tax Management Act 1964, s. 5(3). One can only marvel at the boldness of this assertion. There can be no doubt at all

F that the Inspector of Taxes discovered that Mr. Jonas was the possessor of resources which would not be explained by reference to known sources of capital and income. This is virtually the classic case of “discovery”. In law, indeed, very little is required to constitute a case of “discovery”: see *Cenlon Finance Co. Ltd. v. Ellwood*(⁵) 40 T.C. 176. Unlike Mrs. Jonas’s horse Bingo, this submission clearly suffers from grave difficulties of locomotion.

G Apart from the foregoing, Mr. Jones had two minor points and one major point. The first minor point was that the original assessments upon Mr. Jonas for the years 1960–61 and 1961–62 had been settled by him with the Inspector under the Income Tax Act 1952, with the consequences which such settlement involved; namely, that the assessments became *res judicata*. Consequently,

H says Mr. Jones, the Crown cannot now make any additional assessment in respect of the income now in question, although it was unknown to the Crown at the time. I have already dealt with this particular submission of Mr. Jones in the recent case of *Fen Farming Co. Ltd. v. Dunsford (No. 2)*(⁶), and I propose to say no more here except that in my opinion the submission rests upon a failure to understand the scope of the doctrine of *res judicata*.

(¹) 48 T.C. 103. (²) *Ibid.*, at p. 126E. (³) *Ibid.*, at p. 129C. (⁴) *Ibid.*, at p. 135B.
 (⁵) [1962] A.C. 782. (⁶) 49 T.C. 246, at p. 269; [1973] S.T.C. 484.

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The second minor submission by Mr. Jones was based on the submission that the whole situation was an illegal one, designed for tax evasion as distinct from avoidance, in that P.A.Y.E. procedures ought to have been applied if this really was remuneration from Baker, and tax deducted at source. Hence he said that any arrangement for Mr. Jonas to receive this additional remuneration without deduction of tax was void for illegality. This point seems to me to be hopeless. Income is none the less income, and taxable as such, even although it arises from activities which are wholly illegal: *Mann v. Nash* (1932) 16 T.C. 523.

Mr. Jones's major point was in relation to the figures. He submitted that, upon analysis, the so-called accretions to Mr. Jonas's wealth melted away, and at the end of the day there was nothing left which could not be explained away. The difficulty (and, in my view, the insuperable difficulty) in Mr. Jones's way is that he has to make various assumptions which either the Special Commissioners clearly did not make or, alternatively, are contrary to those which they did make. His method of approach is to take the minimum sum which the Commissioners say was wholly unexplained—namely, a sum of £7,158—and then to seek to explain this sum away by reference to various items dealt with, or not dealt with but mentioned, in the evidence. In my view, this is a wholly impermissible way to approach the findings of the Special Commissioners. By clear inference, they have not accepted as credits the various items which Mr. Jones would seek to persuade me are properly to be taken to be credits; or, put more accurately, they did not consider that the taxpayer had discharged the onus which lay upon him in the circumstances of showing that such items should indeed be taken as credits. This particularly relates to amounts which appear in Mr. Jonas's wife's account. There is no evidence that these came from Baker, says Mr. Jones, *ergo* they must be savings from her own salary, and hence (i) the family expenditure in the previous year must be reduced by this amount, and also (ii) there must be taken to be that much assets in hand in any current year. I have no doubt that this argument was urged upon the Special Commissioners—if it was not, the argument was certainly open to be urged upon them—and they have obviously rejected it as a pure question of fact. Similarly, Mr. Jones sought to place a figure of £200 upon "Mother's gifts", since there was some evidence that Mr. Jonas's mother made gifts to him, his wife and children at the usual conventional seasons of festivity. But he is once again forgetting that the onus falls upon the taxpayer to show that the Revenue's figure was wrong—an onus which is not discharged merely by showing that there may have been an explanation for the accretion in Mr. Jonas's wealth, not that there in fact was. Similarly, Mr. Jones sought to argue that a sum of £200, the residue of a couple of sweepstake wins admitted in Mr. Jonas's hands, was expended by him upon the affairs of the company; but there was not a scintilla of evidence that this was the case. It is equally fair to say there was not a scintilla of evidence in the contrary direction, but this is precisely why the onus is, in this case, of such vital importance. At the end of the day I should have been more than willing to follow Mr. Jones through all the figures if there had been anything concrete upon which to bite: but there was not, and at the end of the whole of Mr. Jones's financial wizardry the simple fact remains that he has not discharged the onus which lay upon the taxpayer of showing that the additional assessments were wrong.

It is convenient at this stage to notice that Mr. Jones said that *a fortiori* in connection with the three financial years 1962–63, 1963–64 and 1964–65 (being the years in relation to which Mr. Jonas has, on advice, refused to give the Inspector of Taxes any information) there was (a) no discovery by the Inspector

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- A** and (b) no evidence of any unexplained intake of moneys by Mr. Jonas. But, so far as the discovery point is concerned, once the Inspector comes to the conclusion that, on the facts which he has discovered, Mr. Jonas has additional income beyond that which he has so far declared to the Inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which
- B** is clearly on the taxpayer.

In my opinion, therefore, all Mr. Jones's attacks upon the decision of the Special Commissioners fail, and this appeal, in consequence, falls to be dismissed.

Woolf—With costs, my Lord?

Walton J.—Mr. Jones?

- C** **Jones**—My Lord, I do not think I can resist costs.

Walton J.—Appeal dismissed with costs.

[Solicitors:—Spiro & Steele; Solicitor of Inland Revenue.]
