

No. 852.—COURT OF SESSION, SCOTLAND (FIRST DIVISION).—  
15TH NOVEMBER, 1932

THE COMMISSIONERS OF INLAND REVENUE v. COMBE

*Income Tax—Residence—Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), General Rules applicable to Schedules A, B, C, D and E, Rule 3.*

*Prior to 24th April, 1926, the Respondent was resident and ordinarily resident in the United Kingdom. On that date, he left the United Kingdom to enter the employment of a financial firm in New York. The employment was in the nature of an apprenticeship, with a view to his becoming a European representative of the firm.*

*During each of the years 1926–27, 1927–28 and 1928–29, he visited the United Kingdom on his employers' business. He was not a householder in the United Kingdom, nor had he a fixed place of abode there, but he resided at hotels during his visits.*

*On appeal, the General Commissioners decided that in each of the three years he was not resident in the United Kingdom.*

*Held, that there was evidence on which the Commissioners could come to their finding of fact that the Respondent was not resident in the United Kingdom.*

CASE

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the County of Edinburgh, held on the 29th day of May, 1930, for the purpose of hearing appeals, Captain E. P. Combe (hereinafter called the Respondent), through his accountant, Mr. Alan G. Simson, C.A., appealed against the following assessments made on him under Schedule E of the Income Tax Act, 1918 :—

Year 1926–27 as broker	...	£472 10s.
„ 1927–28 „	...	£514
„ 1928–29 „	...	£550

I. The following facts were admitted or proved :—

- (1) Prior to 24th April, 1926, the Respondent was a person resident and ordinarily resident in the United Kingdom. On the 24th April, 1926, he left the United Kingdom for the purpose of taking up employment as a broker with

Messrs. Clark, Dodge & Co., of 57 Wall Street, New York, at a salary of 2,500 dollars per annum. The employment was in the nature of an apprenticeship, during which he was to learn the business with a view to becoming a European representative of the firm. The employment began on 3rd May, 1926, and the assessments appealed against are in respect of the amount of the Respondent's salary. The £472 10s., on which he was assessed for 1926-27, was the equivalent in English currency of the proportion of the salary of 2,500 dollars applicable to the period from 3rd May, 1926, to 5th April, 1927. The £514, on which he was assessed for 1927-28, was the equivalent in English currency of 2,500 dollars. The £550, on which he was assessed for 1928-29, was an estimated amount.

- (2) There was no written contract of service or fixed agreement between the Respondent and Messrs. Clark, Dodge & Co. He did not enter the United States under the Immigration Quota system and, therefore, could not remain in that country for a period of twelve consecutive months.
- (3) Subsequently to his having taken up duty in the New York office of his employers, the Respondent made visits to the United Kingdom on his employers' business, returning to the New York office when the business which occasioned the visit had been transacted. During these visits he resided at hotels. He was not a householder in the United Kingdom and had no fixed place of abode there.
- (4) The time spent by the Respondent in the United Kingdom in the years in question was as follows :—
- |   |             |
|---|-------------|
| 1926-27.                                  |             |
| From 6th April, 1926 to 24th April, 1926  | } 52 days.  |
| „ 4th March, 1927, to 5th April, 1927     |             |
| 1927-28.                                  |             |
| From 6th April, 1927, to 14th May, 1927   | } 175 days. |
| „ 22nd Nov., 1927, to 5th April, 1928     |             |
| 1928-29.                                  |             |
| From 6th April, 1928, to 28th April, 1928 | } 181 days. |
| „ 10th Oct., 1928, to 12th Oct., 1928     |             |
| „ 21st Oct., 1928, to 23rd Jan., 1929     |             |
| „ 3rd Feb., 1929, to 5th April, 1929      |             |
- (5) The Respondent returned to this country from the United States on 10th October, 1928, and did not again visit the United States during the years under appeal. On

12th October, 1928, he went to France on his employers' business and returned to the United Kingdom on 21st October, 1928. On 23rd January, 1929, he again went to France for the same purpose and returned to the United Kingdom on 3rd February, 1929. From the latter date to 5th April, 1929, he was in the United Kingdom.

- (6) On 20th May, 1929, the Respondent's accountant wrote to the Chief Inspector (Claims Branch), Edinburgh, that " Captain Combe states that his apprenticeship in " the United States can now be considered as finished " and that he is now a European representative of the " banking firm of Clark, Dodge & Company of New " York."
- (7) During the period which the Respondent spent in the United Kingdom his salary was credited to his account with Clark, Dodge & Co. and was drawn by him as he required it. He did not draw anything from the account while in the United Kingdom.
- (8) No question arises as to figures.

II. It was contended on behalf of the Respondent :

- (1) That in the years 1926-27, 1927-28 and 1928-29 he was not resident in the United Kingdom.
- (2) That in the years 1926-27, 1927-28 and 1928-29 his ordinary residence was not in the United Kingdom in the sense of Rule 3 of the General Rules applicable to Schedules A, B, C, D and E.
- (3) That his employment not having been an employment of profit within the United Kingdom, he was not liable to assessment under Schedule E.

III. H.M. Inspector of Taxes (Mr. P. Rogers), on behalf of the Crown, contended :

- (1) That the Respondent was resident in the United Kingdom in the years in question.
- (2) That his absences from the United Kingdom were for the purpose only of occasional residence abroad.
- (3) That he was properly assessed in respect of his employment with Clark, Dodge & Co.

IV. The Commissioners, after due consideration of the facts and arguments submitted to them, found in fact that the first and second contentions of the Respondent for each of the said three years had been proved and found in fact and in law that the third contention of the Respondent was well-founded, and sustained the appeal.

V. Whereupon, the Inspector of Taxes expressed his dissatisfaction with the determination of the Commissioners as being erroneous in point of law and having duly required them to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VI. The question of law for the opinion of the Court is whether the Respondent was properly assessed to Income Tax for the years in question.

T. M. MURRAY,  
L. B. BELL,  
HERBERT W. HALDANE, } Commissioners.

LESLIE M. BALFOUR-MELVILLE,  
Clerk to Commissioners.

Edinburgh,  
6th June, 1932.

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The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Morison) on the 15th November, 1932, when judgment was given unanimously against the Crown, with expenses.

The Solicitor-General (Mr. W. G. Normand, K.C.), Mr. T. B. Simpson and Mr. R. P. Morison appeared as Counsel for the Crown and Mr. J. R. Dickson, K.C., and Mr. M. G. Fisher for the Respondent.

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#### I.—INTERLOCUTOR

EDINBURGH, 15th November, 1932.—The Lords having considered the Stated Case and having heard Counsel for the parties, Answer the Question of Law in the Case in the Negative, Affirm the determination of the Commissioners and Decern; Find the Respondent entitled to the expenses of the Stated Case on Appeal and remit the account of said expenses to the Auditor to tax and to report.

(Signed) J. A. CLYDE, I.P.D.

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#### OPINIONS.

**The Lord President (Clyde).**—This is an appeal by a British subject against assessments to Income Tax under Schedule E (as extended by Section 18 (1) of the Finance Act, 1922) for the years ending 5th April, 1927, 1928 and 1929. Prior to 24th April, 1926, his "ordinary residence"—within the meaning of Rule 3

**(The Lord President (Clyde).)**

of the General Rules applicable to Schedules A, B, C, D and E—was admittedly in the United Kingdom. But, on that date, he left the United Kingdom to commence employment as an apprentice broker under a New York financial firm, and the income in respect of which he has been assessed to Income Tax consists of the salary paid to him by his employers in New York during the three years in question.

Rule 3 (above referred to) provides that a “ British subject “ whose ordinary residence has been in the United Kingdom shall “ be assessed and charged to tax, notwithstanding that at the time “ the assessment or charge is made he may have left the United “ Kingdom, if he has so left the United Kingdom for the purpose “ only of occasional residence abroad.” It is contended for the Inland Revenue that the purpose for which the British subject in this case left the United Kingdom was that of occasional residence in the United States. If this contention is sound, the British subject is assessable to Income Tax on the salary received by him. The General Commissioners have negatived this contention. In so far as the correct interpretation of the expression “ occasional “ residence ” is in dispute, the question in the case is one of law ; but, beyond that, it is a pure question of fact on which the Commissioners are final so long as the matters of fact before them were such as could reasonably warrant their conclusion.

In *Reid v. Inland Revenue*, 1926 S.C. 589<sup>(1)</sup>, the meaning of the expression “ ordinarily resident ” as occurring in Section 46 (1) of the Income Tax Act, 1918, was considered and explained ; and in two later cases which came before the House of Lords (*Levene v. Commissioners of Inland Revenue*, [1927] 2 K.B. 38, affirmed [1928] A.C. 217<sup>(2)</sup>, and *Inland Revenue Commissioners v. Lysaght*, [1927] 2 K.B. 55, reversed [1928] A.C. 234<sup>(3)</sup>), the meaning of the word “ resident ” occurring in Rule 2 (d) of the Rules applicable to Schedule C—as well as the meaning of the expression “ ordinarily resident ” occurring in Section 46 (1)—was similarly considered. The views expressed in this Court and in the House of Lords disclose no conflict of opinion. The expression with which the present case is concerned is different, namely, “ occasional “ residence ”, but I think the opinions which were expressed in the cases referred to, and which formed the grounds of judgment therein, leave very little, if any, room for dispute in the present case.

The facts in the present case are these. The British subject left the United Kingdom for the purpose of serving a three years' apprenticeship under a New York employer. It was obviously an inseparable incident of the accomplishment of this purpose that his residence should be, largely at any rate, in New York during

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(<sup>1</sup>) 10 T.C. 673.

(<sup>2</sup>) 13 T.C. 486.

(<sup>3</sup>) 13 T.C. 511.

**(The Lord President (Clyde).)**

the three years; but, for two reasons, his residence there was not, and could not be, continuous throughout that time. In the first place, he did not enter the United States under the Immigration Quota system, and for that reason he could not remain there for twelve months consecutively; in the second place, the object of his apprenticeship was to qualify him to act as European representative of the New York firm (a position which he now holds), and his employment accordingly made it necessary for him to visit Europe, and especially the United Kingdom, from time to time, after the first year of his apprenticeship, on his employer's business. On these visits, he lived in hotels. Throughout the three years he had no house and no fixed place of abode in the United Kingdom. In the first of the three years, he was in the United Kingdom less than two months in all; in the second, his visits to this country covered five and a half months in all; and in the third, barely six months in all.

I should say that "occasional residence" is residence taken up or happening as passing opportunity requires, in one case, or admits, in another, and contrasts with the residence, or ordinary residence, of a person who—within the meaning explained in the cases above referred to—is "resident" or "ordinarily resident" in some place or country.

If that is right, how is it possible in the present case to say that the General Commissioners have misdirected themselves? They had ample grounds for coming to the conclusion that the British subject's departure from this country on the 24th April, 1926, was not for the purpose of taking up an occasional residence in the United States. It was in the United States that his three years' apprenticeship had to be served—none the less so because it was an incident of his service that he had to execute his employer's commissions from time to time in this country, or elsewhere in Europe. Using a popular expression, I should say that the British subject's business and residential headquarters were permanently in New York throughout the three years. It is impossible, in these circumstances, to say that the General Commissioners had before them no evidence on which they could reasonably hold that this British subject did not leave this country for the purpose of *occasional* residence abroad. If so, we must answer the question put to us in the negative.

**Lord Sands.**—I am of the same opinion. It is clear on the authorities that what we have to determine is not whether the Commissioners have taken a view which commends itself to us as the view which we ourselves would have taken, but whether or not the view they have taken is one that could reasonably be taken. Now, I do not think that we could affirm, in the present case, that their determination is unreasonable; and I am confirmed in that view by what your Lordship in the chair has just remarked—that

**(Lord Sands.)**

your Lordship inclines to think that your Lordship would have come to the same conclusion yourself. I confess that, if the circumstances of the first year had been the same as those of the other two, I might have had some difficulty in holding that the determination was not unreasonable. A man is resident permanently in this country and he goes to America for certain purposes, but he remains—in the case, I suppose, of the first year being the same as the others—for a half of each year in this country. Now, I think it would be somewhat difficult to hold that there was any break in his residence in this country. But that is not consonant with what happened here. There was a distinct break. Any residence in the first year in this country was what might have been accounted for by simply not very prolonged holidays. Now, after that break did he resume residence, or are we to consider the period of three years as a *unum quid* during which he was stationed in America at his headquarters under an apprenticeship for three years? The Commissioners have taken the view that the matter should be so regarded that he is not to be treated as ordinarily resident in this country, and I do not think it possible for us to disturb that.

**Lord Blackburn.**—I concur. I think it is impossible to hold that the Commissioners misdirected themselves in any way whatever; and that there is ample evidence to justify them in what they determined.

**Lord Morison.**—I am of the same opinion. I wish to add that I think, however, that the Respondent was fortunate in escaping chargeability to Income Tax for the last of the three years. The facts seem to me to show that the Respondent's residence in this country was, during that year, substantially different, both in character and duration, from that of the two preceding years; but the other view of the Respondent's residence in this country, the view taken by the Commissioners, I cannot see to be an unreasonable one, and I think that as the whole subject matter in an appeal in this case turns upon a question of fact, we must affirm the view the Commissioners have taken. I therefore think the question should be answered in the negative.

[Agents :—Solicitor of Inland Revenue, Edinburgh; Mackenzie & Kermack, W.S.]

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