

No. 297.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—11th December, 1906.

COURT OF APPEAL.—3rd July, 1907.

HOUSE OF LORDS.—12th and 16th November and 10th December, 1908.

COOPER (Surveyor of Taxes) v. BLAKISTON.⁽¹⁾

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Income Tax, Schedule E.—“Easter Offerings” given to a Vicar by parishioners and others in response to an appeal made by the Bishop and supported by the Churchwardens. The Offerings are mainly received through collections in Church, the residue consisting of sums sent to the Churchwardens or directly to the Vicar.

Held, that the Offerings are assessable to Income Tax.

APPELLANT'S⁽²⁾ CASE.

1. This is an Appeal from an Order of the Court of Appeal, dated the 3rd July, 1907, allowing the appeal of the above-named Respondent from an Order of the King's Bench Division dated the 11th December, 1906. Such last-mentioned Order was made upon a case that was, at the request of the

⁽¹⁾ Reported 1909 A.C. 104.

⁽²⁾ For convenience of reference the case has been titled “Cooper v. Blakiston,” but in the following pages “Appellant” is to be understood as referring to the Vicar and “Respondent” to the Surveyor.

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above-named Respondent, stated by the Commissioners for General Purposes of the Income Tax Acts for the Division of Lower Pevensey, Sussex, pursuant to the Taxes Management Act, 1880, Section 59.

2. The question raised by the Appeal is whether, upon the true construction of the Income Tax Acts, the Appellant is properly chargeable with Income Tax for the year ending the 5th April, 1906, under Schedule E of the said Acts, upon a sum of £56, which was received by him at or about Easter, 1905, in the circumstances hereinafter stated. The Appellant (who is the Vicar of the Parish of East Grinstead) contends that he is not chargeable with Income Tax upon the said sum. The Respondent contends that the Appellant is so chargeable.

3. The Appellant is and has for over 30 years been Vicar of the Parish of East Grinstead, in the County of Sussex and Diocese of Chichester.

4. In March, 1905, a letter was received by the Churchwardens of the Diocese of Chichester, including those of East Grinstead, from the Bishop of Chichester. The letter was as follows:—

The Palace, Chichester,
March, 1905.

Gentlemen,

Allow me to recommend to your favourable notice the laudable practice of making freewill offerings at Easter to the Parochial Clergy, who are seldom sufficiently endowed.

I learn with sincere satisfaction that in response to the appeal made by me last year there has been a marked increase both in the number and the amount of the offerings made.

The total sum received by the Clergy in 1904 in this Diocese was £9,249, an increase of £593 on the previous year, and it is encouraging to find that in Rural as well as in Urban Districts such offerings are now generally made.

It is admitted on all hands that the Clergy as a body are miserably underpaid, and this is especially the case with those who hold livings depending mainly for income on land and tithes, both being much depressed below their former value, and great hardships are often suffered by those of the Clergy who possess little or no private means. In these circumstances it becomes the duty, as well as the privilege, of the laity to do what they can to rectify or mitigate hardship by freewill personal gifts made to those who are labouring amongst them in the Master's cause, and experience has abundantly shown that Church-people welcome an opportunity of acknowledging this

duty and privilege, and that not grudgingly or of necessity, but as cheerful givers. Now, as it is obvious that the Clergy cannot themselves take action in the matter, I ask the Churchwardens to be kind enough to take such steps as are necessary, and my request is that the collections in Church on Easter Day shall be devoted to the personal use of the Incumbent, and this as a personal, non-official, freewill gift, due notice of this being, of course, given beforehand to the parishioners, so that all such gifts may be given on this express understanding.

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I am ever yours,
Very faithfully,

ERNEST R. CICESTR.

5. Upon receipt of such letter the Churchwardens of East Grinstead (who are hereinafter called the Churchwardens) met together and considered the Bishop's suggestions, and decided to make the appeal hereinafter mentioned; and they accordingly placed in the pews of the church on the Sunday before Easter (the 16th April) and on Easter Day (the 23rd April) notices in the following form, viz. :—

St. Swithin's Church,
East Grinstead.

With the sanction of the Bishop of the Diocese and to meet the wishes of the congregation, the collections to be made on Easter Sunday, together with any further sums that may be sent to us, will be handed to Mr. Blakiston for his personal use as a freewill offering to him personally, and all sums given in the collection or sent to us afterwards will be given and sent on that understanding only.

H. EDMUND MATHEWS,
W. H. DIXON,

Churchwardens.

The "Mr. Blakiston" referred to in the notice was the Appellant.

6. The following announcement was made by the Appellant in Church on Easter Sunday: "By the desire of the Bishop, and with the concurrence of the Churchwardens, the collections on Easter Day will be given to the Vicar as a freewill offering."

7. The Churchwardens duly paid to the Appellant the sum received by them in respect of the collections in Church on Easter Sunday, 1905, and such amount constituted the greater portion of the said sum of £56. The residue of such sum consisted in part of gifts by parishioners and others who were unable to attend the services on Easter Sunday, and in

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part of gifts by Nonconformists and other persons, some of whom only occasionally attended the Appellant's church, and a few, so far as is known, not at all. Some of the last-mentioned gifts were privately sent or handed to the Churchwardens, who paid the same over to the Appellant, and others were sent or handed to the Appellant personally. The said gifts were all made in response to the notices and appeals hereinbefore referred to.

8. In issuing the notices and appeals hereinbefore referred to the Churchwardens intended, and wished it to be clearly understood, that the contributions were to be a freewill gift to the Appellant personally. The Appellant had, in fact, no legal claim or right to call for any such contributions or collections. The people's Churchwarden gave evidence before the said Commissioners, and in the course of his evidence stated that the offerings were given to the Appellant in his personal character entirely on account of the personal regard in which he was held in the neighbourhood, and were not in the nature of payment for services; that the Appellant was bound to perform certain duties and was paid for such duties; that as the Appellant was so zealous, and on account of his popularity, a collection was made at Easter as a freewill offering for his personal use; that, if the Appellant ceased to be Vicar shortly before Easter, it would depend upon the popularity of his successor whether he would receive the offerings.

9. In each of the eight years prior to 1905 the Appellant received at Easter sums similar to the sum now in question and popularly known as Easter Offerings.

10. In the circumstances hereinbefore stated an assessment of £56 was made upon the Appellant under the Income Tax Act, 1853, Schedule E, in respect of the sum received by him at or about Easter, 1905, as hereinbefore stated, but upon Appeal by the Appellant herein the said Commissioners discharged such assessment. The Respondent thereupon required the said Commissioners to state a case for the opinion of the Court, which they accordingly did.

11. On the 11th December, 1906, the case was heard before Mr. Justice Bray, who gave Judgment in favour of the Appellant herein.

12. The Respondent herein appealed from the said Order of the 11th December, 1906, to the Court of Appeal (Lord Alverstone, Lord C.J., and Fletcher Moulton, and Buckley, L.J.J.). The Appeal was heard on the 3rd July, 1907, and the Court delivered Judgment allowing the Appeal and determining that the decision of the said Commissioners was erroneous.

13. The Appellant humbly submits that the Judgment of the Court of Appeal was erroneous, and that the Judgment of Mr. Justice Bray and the decision of the Commissioners were

correct, and that the Appeal should be allowed for the following (amongst other)

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REASONS:

- (1.) Because the said sum of £56 did not accrue to the Appellant in respect of any public office or employment of profit within the description of Schedule E of the Income Tax Act, 1842, Section 146, and Schedule E of the Income Tax Act, 1853.
- (2.) Because the said sum was not salary, fees, wages, perquisites, or profits accruing to the Appellant by reason of his office as Vicar of the Parish of East Grinstead.
- (3.) Because the said sum was not given to, or received by, the Appellant for the discharge of his duties as Vicar of the said Parish of East Grinstead.
- (4.) Because the said sum was a freewill offering, which was purely personal to the Appellant and was not made to him as or by reason of his holding the office of Vicar of the said Parish.
- (5.) Because the sums in question were contributed *pro hac vice* for the specific purpose of being given to the Appellant as an individual.
- (6.) Because the said sum was a voluntary gift, and was, moreover, made on, and with respect to, the occasion alone.
- (7.) Because the assessment set aside by the Commissioners was, on the facts stated in the Special Case, erroneous in law.
- (8.) Because the motive and purpose and substance of the gifts were charity.
- (9.) Because the Judgment of the Court of Appeal was erroneous and ought to be reversed.
- (10.) Because the Judgment of Mr. Justice Bray was, on the facts and in the circumstances of the case, correct and ought to be restored.
- (11.) Because the decision of the said Commissioners was, on the facts and in the circumstances of the case, correct.

W. O. DANCKWERTS.
J. AUSTEN CARTMELL.

RESPONDENT'S⁽¹⁾ CASE.

1. This in an Appeal from an Order of His Majesty's Court of Appeal (Lord Alverstone, C.J., Fletcher Moulton and Buckley L.J.J.), dated the 3rd day of July, 1907,

(1) See Note (*), p. 347.

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reversing a Judgment or Order of Bray, J. The Judgment or Order so reversed was in favour of the now Appellant, on a case stated by the Commissioners for General Purposes of the Income Tax Acts for the Division of Lower Pevensey in the County of Sussex.

2. The question in issue is, whether the Appellant, who is and was during the year of assessment Vicar of East Grinstead, is taxable under Schedule E of the Income Tax Acts in respect of a sum of £56, which was paid to the Appellant as "Easter offerings" under circumstances which are more fully referred to hereafter.

3. The Sections of the Income Tax Acts which are immediately relevant to this case are Section 2, Schedule E of the Income Tax Act, 1853 (16 and 17 Vict. c. 34), under which the taxation is now imposed, and Section 146 of the Income Tax Act, 1842 (5 and 6 Vict. c. 35) Rules 1, 3, and 4.

4. By Section 2, Schedule E of the Act of 1853, duties are to be charged:

"For and in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by Her Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under the said Schedule (C)."

5. The Rules in the Act of 1842 are, under and by virtue of the provisions of Section 5 of the Act of 1853, rendered applicable. Rule 1 in Section 146, Schedule E of the Act, is, so far as material, in the following terms:—

"The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profit mentioned in the said Schedule (E), or to whom the annuities, pensions, or stipends mentioned in the same Schedule shall be payable, for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments, or pensions"

Rule 3 is, so far as material, as follows:—

"The said duties shall be paid on all public offices and employments of profit of the description hereinafter mentioned . . . (*videlicet*) . . . any office or employment of profit held under any ecclesiastical body, whether aggregate or sole, . . . and every other public office or employment of profit of a public nature."

Rule 4 is, so far as material, as follows:—

"The perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable either by the Crown or the subject, in the course of executing such offices or employments"

6. The facts, as found by the Commissioners, appear fully in the case stated,⁽¹⁾ to which reference is made. The following is a summary of the facts, as found, which are thought to be most material.

7. The sum of £56 was paid to, and received by, the Appellant, who has been Vicar of East Grinstead for about 30 years, and for eight years has received at Easter sums similar to the sum now in question and popularly known as Easter Offerings. Previously to the last eight years a sum was collected for some years for the Appellant at Easter time by means of a collecting book.

8. The greater part of the said sum was received through the collection made by the Churchwardens in the Parish Church on Easter Sunday, but part of such sum consisted of gifts by parishioners and others who were unable to attend the services that day, and other part of such sum consisted of gifts by Nonconformists and others persons, some of whom only attend the Appellant's church occasionally, and a few, so far as is known, not at all, some of the said gifts having been sent or handed to the Churchwardens privately and some to the Appellant personally. The said collections and gifts are popularly known as Easter Offerings, and were made in response to the notices and appeals hereinafter referred to.

9. In March, 1905, a letter was received by the Churchwardens of the Diocese of Chichester, including those of East Grinstead, from the then Bishop of Chichester, which was published in the Chichester Diocesan Gazette for April, 1905. [The text of the letter is given *ante*, pp. 348-9.]

10. The letter was immediately followed by this paragraph:—

“ Churchwardens in giving notice to the parishioners
“ of the offerings are recommended to use the following
“ well-considered form:—

“ With the sanction of the Bishop of the Diocese, and
“ to meet the wishes of the congregation, the collections
“ to be made on Easter Sunday, together with any
“ further sums that may be sent to us, will be handed
“ to Mr. _____ for his personal use as a freewill
“ offering to him personally, and all sums given in the
“ collection or sent to us afterwards will be given
“ and sent on that understanding only.”

11. Upon the receipt of this letter by the Churchwardens they met together and considered the Bishop's suggestions, and decided to make the appeal, and they accordingly placed in the pews of the Church on the Sunday before Easter and on Easter Day notices in the form which had been suggested by the Bishop.

(1) Omitted from the present print.

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12. The Churchwardens intended, and wished it to be understood, that the contributions were to be a freewill offering to the Appellant personally.

The Appellant had no legal claim or right to call for any such contributions or such collection.

13. In the April number of the East Grinstead Parish Magazine there appeared an extract from the Bishop's letter together with a copy of the notice placed in the pews as herebefore mentioned. The Appellant made the following announcement in Church on Easter Day: "By the desire of the Bishop, and with the concurrence of the Churchwardens, the collections on Easter Day will be given to the Vicar as a freewill offering."

14. Letters in reference to Easter offerings had been written by the Bishop in the eight years previous. Notices had for several years previously been issued by the Churchwardens.

It was admitted by the Appellant that in view of the question outstanding as to the liability of assessment to Income Tax of Easter offerings in the present and similar cases, the form of the Bishop's letter and of notices placed in the pews was modified in 1905. The object of this modification was to make it clear that in that year the sums in question were to be given to the Appellant for his personal use as a freewill offering to him personally.

15. The people's Churchwarden was called as a witness before the Commissioners. The substance of his evidence is set out in the case stated.⁽¹⁾

16. On the facts before them the Commissioners decided as a matter of law that the Easter offerings of £56 paid in 1905 to the Appellant, as above stated, were not assessable, and they discharged the assessment. This decision was affirmed by Bray, J., but was reversed by the Court of Appeal.

The Respondent humbly submits that the Order of the Court of Appeal was right, and should be affirmed for the following amongst other

REASONS:

1. Because the Appellant was assessable to Income Tax in respect of the sum of £56.
2. Because the said sum was a perquisite or profit accruing to the Appellant by reason of his office as Vicar, within the meaning of Rule 1 in Section 146 of the Income Tax Act, 1842.
3. Because the said sum was an emolument of office within the meaning of Rule 4 in Section 146 of the Income Tax Act, 1842.

(1) Omitted from the present print.

4. Because the said sum was given to the Appellant as Vicar of East Grinstead and received by him as such Vicar.
5. Because the said sum was given by the donors to the Appellant as their clergyman, and received in respect of the discharge of the duties of his office.
6. Because the fact that the offerings are made voluntarily and of the free will of the donors is, for purposes of Income Tax, immaterial.
7. Because the reasons given in the judgments of the Court of Appeal are well founded, and the decision of the Court of Appeal was right.

W. S. ROBSON.

S. T. EVANS.

WILLIAM FINLAY.

JUDGMENT.

The Lord Chancellor.—My Lords, I agree with the Court of Appeal. The only question is, whether or not a sum given by parishioners and others to the Vicar at Easter, 1905, is assessable to Income Tax as being "profits accruing" to him "by reason of such office."

In my opinion, where a sum of money is given to an Incumbent substantially in respect of his services as Incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present.

In this case, however, there was a continuity of annual payments apart from any special occasion or purpose, and the ground of the call for subscriptions was one common to all clergymen with insufficient stipends, urged by the Bishop on behalf of all alike. What you choose to call it matters little. The point is, what was it in reality?

It was natural, and in no way wrong, that all concerned should make this gift appear as like a mere present as they could. But they acted straightforwardly, as one would expect, and the real character of what was done appears clearly enough from the papers in which contributions were solicited.

Lord Ashbourne.—My Lords, the question in this case is a short one, and it naturally is of much interest to the Clergy and to many who are interested in their welfare.

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Are Easter offerings assessable to Income Tax as profits accruing by reason of the office of Vicar? The Court of Appeal unanimously held in the affirmative, being of opinion that they were made to the Vicar as Vicar.

These offerings had been made for several years to the Appellant, the Vicar of East Grinstead. They were made in response to a systematic appeal, initiated by the Bishop and supported by the Churchwardens, to induce collections to eke out slender stipends. People were urged, it is true, to subscribe as a personal, freewill gift, the contributions were wholly voluntary and the amount given was regulated entirely by the discretion of the subscribers. But in what character did the Appellant receive them? It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the Vicar as Vicar, and that they formed part of the profits accruing by reason of his office. The Bishop was naturally anxious to increase the scanty stipends of ill-paid Vicars. The whole machinery was ecclesiastical,—Bishops, Churchwardens, Church collections—and I am unable to see room for doubt that they were made for the Vicar, because he was the Vicar, and became, within the Statute, part of the profits which accrued to him by reason of his office. I can sympathise, with the Lord Chief Justice, in arriving at the conclusion, but I think that the Appeal should be dismissed.

Lord Robertson.—My Lords, I am clearly of opinion that this Judgment is right.

When the broader facts of the case are remembered, I confess that it savours of paradox to say that this money did not accrue to the Appellant by reason of his office of Vicar of East Grinstead. The cause of collecting the money was to supplement the legal income of the Vicar, and, while this is the ordinary history of Easter offerings, in the present instance the thing is set out in black and white in the Bishop's letter and the subsequent notices. The money is collected in Church (the offertory being part of the service), and is placed on the altar, the contributions of those unable to attend being handed to the Vicar or the Churchwardens.

As I have said, the Bishop's letter makes quite manifest what, without it, was sufficiently plain. It is, be it observed, a circular letter, and applies not to the Appellant alone, but to each and every Incumbent in the Diocese. Its avowed object is to make up to the clergy the fall in their official incomes. It bases the appeal on the Christian duty incumbent on the people. While written with every desire to protrude the personal element, with a view to the present question, the letter does not conceal, but on the contrary demonstrates,

that it is in virtue of his office that each clergyman is to take the offering which it was written to advocate.

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Lord Collins.—My Lords, I am of the same opinion.

Questions put.

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.
