No. 949—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—8TH MARCH, 1934

COURT OF APPEAL—4TH MAY, 1934

HOUSE OF LORDS—1ST MARCH, 1935

RYE & EYRE *v.* COMMISSIONERS OF INLAND REVENUE[1]

Income Tax, Schedule D—Copyright royalties—Play produced in London—Royalties transmitted by producer's solicitors to author resident abroad—Whether solicitors persons "by or through" whom payment made—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *General Rule* 21; *Finance Act*, 1927 (17 & 18 *Geo.* V, *c.* 10), *Sections* 25 *and* 26.

The Appellants acted as solicitors for a client who was about to form a company to produce in the United Kingdom a play written by an author whose usual place of abode was not within the United Kingdom. Pending the formation of the company the client negotiated with the author's agent an agreement for a licence for the performance of the play on payment of copyright royalties. On the signature of the agreement a sum became payable in advance on account of royalties and the Appellants, on their client's instructions, remitted this sum to the author's agent in Paris. No deduction for Income Tax was made from the payment.

The production of the play resulted in a loss to the company and no further sums were paid or payable to the author on account of royalties.

The Appellants were assessed to Income Tax, Schedule D, by reference to Sections 25 *and* 26 *of the Finance Act*, 1927, *on the amount of the payment made to the author. They appealed, contending that they were not liable to account to the Revenue for the tax on the sum in question. The Special Commissioners confirmed the assessment.*

Held, *that the Appellants were persons "through whom", if not "by whom", the payment of the royalty was made and that they were accordingly chargeable to Income Tax in respect thereof.*

CASE

Stated under the Finance Act, 1927, Section 25, the Income Tax Act, 1918, Rule 21 of the General Rules applicable to all Schedules, as amended by the Finance Act, 1927, Section 26,

(1) Reported (K.B. & C.A.) [1934] 2 K.B. 270; (H.L.) [1935] A.C. 274.

and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 24th November, 1932, for the purpose of hearing appeals, Messrs. Rye & Eyre, Solicitors, of 13, Golden Square, London, hereinafter called the Appellants, appealed against an assessment to Income Tax in the sum of £300 for the year ending 5th April, 1931, made upon them under the provisions of Section 26 of the Finance Act, 1927, as extended by Section 25 of the Finance Act, 1927, in respect of a payment made to M. Sacha Guitry on account of copyright royalties.

2. In June, 1930, a Mr. Lionel Barton was proposing to form a company with the object of producing in London an English version of a play called " Desire " written by M. Guitry. The company was registered on 3rd July, 1930, under the name of the Long Acre Syndicate Limited. Pending its formation, Mr. Barton negotiated with Mr. F. Howell, M. Guitry's Agent, an Agreement for a Licence for the performance of the play on payment of royalties, one of the terms of the Agreement being that on its signing the sum of £300 should be paid in advance on account of the royalties thereinafter stipulated. A copy of the agreement is annexed hereto, marked " A ", and forms part of this Case(1).

3. On 23rd June, 1930, Mr. Barton called upon the Appellants, who acted as solicitors for him and, from and after its incorporation, for the company, which was then about to be formed, and instructed them to forward the Agreement in duplicate to Mr. Howell and out of moneys which had been placed in their hands on account of the then proposed company (but of which the said Mr. Barton had the disposition on the 23rd June, 1930) to pay the sum of £300 in accordance with the above-mentioned provision of the Agreement.

4. Accordingly on the same date the Appellants forwarded the Agreement in duplicate to Mr. Howell, together with their cheque for £300, accompanied by a covering letter in the following terms :—

" 13, Golden Square, W.1.
" 23rd June 1930.

" Dear Sir,

" Mr. Sacha Guitry & Mr. Lionel H. Barton.
" ' Desire.'
" Long Acre Syndicate.

" On the instructions of Mr. Barton, we enclose the two " parts of the Agreement, one of which has been executed " by him, together with our cheque for £300 (the amount of

(1) Not included in the present print.

" royalties payable in advance under clause 3) and should
" be glad if you would kindly return the other part to us
" signed by Mr. Guitry as early as possible, as the play is
" billed for production at the New Theatre on the 2nd July.

" Yours faithfully,

" RYE & EYRE.

" F. Howell, Esq.,
" 6, Rue de la Paix,
" Paris."

5. The cheque for £300, which was drawn payable to Mr. Howell, was cashed in due course. The production of the play resulted in a loss to the company and, in the events which happened, no further sums were paid or payable to M. Guitry on account of royalties in respect of the performance of the play.

6. When the question of Income Tax was subsequently raised by the Revenue authorities the Appellants endeavoured to persuade Mr. Barton, M. Guitry and Mr. Howell to pay the tax, but their efforts to this end have not been successful.

7. Copies of the Appellants' cash account with Mr. Barton from 23rd June to 4th July, 1930, the company's profit and loss account for the period from 3rd July to 10th September, 1930, and the company's balance sheet as at 10th September, 1930, are attached hereto, marked " B ", and form part of this Case(1).

8. It was not disputed that M. Guitry's usual place of abode was not within the United Kingdom, and that the sum of £300 paid to him was a payment on account of royalties paid in respect of a copyright of which M. Guitry was the owner.

9. It was contended on behalf of the Appellants :

(*a*) that the Appellants were not persons by or through whom any payment giving rise to liability to tax was made;

(*b*) that they were not liable to account to the Revenue for Income Tax on the sum of £300 paid to M. Guitry; and

(*c*) that the assessment should be discharged.

10. It was contended on behalf of the Crown :

(*a*) that the Appellants were persons through whom the sum of £300 had been paid to M. Guitry on account of copyright royalties;

(*b*) that, as such, they were chargeable to Income Tax in respect of such payment under Rule 21 of the Rules applicable to All Schedules of the Income Tax Act, 1918, as amended by Section 26 of the Finance Act, 1927, and applied to copyright royalties by Section 25 of the last-mentioned Act;

(*c*) that the assessment ought to be confirmed.

(1) Not included in the present print.

11. We, the Commissioners who heard the appeal, held that the Appellants were chargeable to Income Tax as persons through whom the payment in question was made, and we confirmed the assessment.

12. The Appellants, immediately after the determination of the appeal, declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1927, Section 26, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON,
J. JACOB,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
8th June, 1933.

The case came before Finlay, *J.*, in the King's Bench Division on the 8th March, 1934, when judgment was given in favour of the Crown, with costs.

Mr. Cyril King appeared as Counsel for the Appellants and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Finlay, J.—I am of opinion that the decision of the Special Commissioners in this case was correct. I do not propose to decide, as indeed I cannot decide, and the Special Commissioners could not decide, anything except the matter which arises. What was before the Special Commissioners, and what is now before me, was this.

It was an appeal against an assessment to Income Tax which had been made upon some solicitors in London, Messrs. Rye & Eyre, under the provisions of Section 26 of the Finance Act, 1927, in respect to a payment made to a French author, M. Sacha Guitry. The way the matter arose was this. There were apparently negotiations for the production of a play by M. Guitry in London and a syndicate was formed for the purpose of producing that play. Messrs. Rye & Eyre, the Appellants, acted as solicitors in the matter. There was an agreement and arrangements were made for a company to be formed. It was arranged that, in respect of royalties, M. Guitry was to receive £300. What was done is made quite clear in a letter, which is set out in the Case, of the 23rd June, 1930, from Messrs. Rye & Eyre to a gentleman in Paris, Mr.

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Howell, who was, I suppose, a business agent of M. Guitry. That letter is this : " Dear Sir, *Mr. Sacha Guitry and Mr. Lionel* " *H. Barton. 'Desire'. Long Acre Syndicate.* On the instruc- " tions of Mr. Barton, we enclose the two parts of the Agreement, " one of which has been executed by him, together with our cheque " for £300 (the amount of royalties payable in advance under " clause 3) and should be glad if you would kindly return the other " part to us signed by Mr. Guitry as early as possible, as the play " is billed for production at the New Theatre on the 2nd July." That cheque was drawn payable to the agent and it was cashed in due course. An assessment has been made in respect of that £300 upon Messrs. Rye & Eyre and what it is necessary to ascertain is whether that assessment is right.

The first thing to look at is Rule 21, which says this : " Upon " payment of any interest of money, annuity, or other annual " payment charged with tax under Schedule D, or of any royalty " or other sum paid in respect of the user of a patent, not payable, " or not wholly payable, out of profits or gains brought into charge, " the person by or through whom any such payment is made shall " deduct thereout a sum representing the amount of the tax thereon " at the rate of tax in force at the time of payment." Then one has to look at Section 25 of the Finance Act, 1927, a Section designed to stop a very obvious hole in the collection of tax. That Section says this : " Where the usual place of abode of the owner of a " copyright is not within the United Kingdom, Rule 21 of the " General Rules shall apply to any payment of or on account of " any royalties or sums paid periodically for or in respect of that " copyright as it applies to annual payments not payable out of " profits or gains brought into charge." Then Section 26 effects an amendment of Rule 21 by substitution of a new paragraph for the paragraph (2) which had been in that Rule. The substitution is a little important, and it is this : " Where any such payment as " aforesaid is made by or through any person, that person shall " forthwith deliver to the Commissioners of Inland Revenue, for " the use of the Special Commissioners, an account of the payment, " or of so much thereof as is not made out of profits or gains " brought into charge, and of the tax deducted out of the payment or " out of that part thereof, and the Special Commissioners shall " assess and charge the payment of which an account is so delivered " on that person." It appears to me to be abundantly clear what is the object of those provisions. The liability to tax was in existence previously, but it is perfectly obvious that until that amendment of the law there was a serious difficulty of collection. The recipient could be effectively assessed only if he or an agent of his could be found in this country. That, obviously, might be difficult. That position was dealt with by an alteration and improvement of machinery of the collection of the tax and it is an alteration and

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improvement of machinery and nothing else. It is an improvement in the method of collection. It does not, which I suppose is the test, increase the ambit of the tax. It makes it more easy to collect the tax within the ambit already laid down.

So far the matter appears to me to be reasonably plain. The only other Section which I think it is fair to refer to—I am not going to read it, for it is rather long—is Section 18 of the Finance Act, 1930. I do not think it has a direct bearing on the point before me, but I agree with an observation that Mr. Hills made about it, that Sub-section (3) of that Section rather supports his argument.

In these circumstances, and on the facts of this case, what the Special Commissioners have decided is that the assessment was properly made and properly made because, as they themselves say, the Appellants were chargeable to Income Tax as persons through whom the payment in question was made. Accordingly, they confirmed the assessment and, as I have already indicated, I think they were right in so confirming it.

The matter is not really one which admits of any very lengthy statement. What one has to consider is whether this payment was made " by or through "—either will do, but " through " is the one principally relied upon—Messrs. Rye & Eyre. The argument put with his usual skill by Mr. Cyril King was that " by " has reference to the actual payer of money; " through " has reference, and has reference only, to an agent of the recipient. In that connection he relied upon Section 18 of the Finance Act, 1930. In my view that Section does not help him. I do not doubt that the word "through" would cover an agent of a recipient, but I see no reason at all to restrict it to that. My difficulty (and it is a difficulty which I felt from the first reading of the Case) has been to give a construction to the words " by or through whom the " payment is made ", which would not, on the facts of this case, cover the Appellants here. After all one has to give a fair construction to the words, and I am unable to give any construction to the words which would not cover the Appellants. I am unable to accept the argument of Mr. King simply because it seems to me impossible to say that the word " through " can be cut down in the way he suggested, or can be cut down so far as to refer, and refer only, to an agent for a recipient. After all we can only say that " by or through whom the payment is made " means what it says. It seems to me when one looks at the facts here that, without deciding any case not before me, without saying anything about cases where mere messengers, or banks, who may know nothing of what they are doing, are referred to, Messrs. Rye & Eyre, on the facts of this case, were the persons

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" by or through whom " this payment was made and that they are accordingly liable to be assessed as the Special Commissioners decided. This appeal must be dismissed.

The Attorney-General.—It will be dismissed with costs?

Finlay, J.—Yes.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 4th May, 1934, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. R. P. Croom-Johnson, K.C., and Mr. P. B. Showan appeared as Counsel for the Appellants and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lord Hanworth, M.R.—We need not trouble you, Mr. Attorney.

This case is really quite a plain one. I should like really to say no more than that I associate myself with, and support the reasoning and the result arrived at by, Mr. Justice Finlay, but, in deference to the argument that has been presented, I will just say a few words. First of all, it must be remembered that an agent is a proper person in proper cases to be taxed; that is provided by Section 103(1): " Every person who, in whatever capacity, is " in receipt of any money or value, or of profits or gains arising " from any of the sources mentioned in this Act, of or belonging " to any other person who is chargeable in respect thereof, or who " would be so chargeable if he were resident in the United Kingdom " and not an incapacitated person, shall, whenever required to " do so by any general or particular notice, prepare and deliver ", and so on. Therefore every person who is dealing with property and money which is payable to a person who is chargeable in respect thereof, whether resident in this country or not, must bear in mind his duty to attend to and obey the Income Tax laws. In the present case the property that we have to deal with, the property from which this income arises, is definitely property in this country. It is copyright and that is property which is secured by the laws of this country to the owner of the copyright wherever he happens to be resident. In this case he was resident abroad, and the income was payable to him in respect of that property which the laws of this country gave to him. He had an agent and that money was remitted to him by the agent.

(1) Section 103, Income Tax Act, 1918.

(Lord Hanworth, M.R.)

Section 25 of the Finance Act, 1927, deals with the payment of Income Tax on certain sums payable in respect of copyright by deduction, and it is said that this particular payment was not within the Section because it was a payment down on the signing of the agreement, in respect and on account of the royalties which would accrue and were supposed to accrue in the course of the agreement, royalties which were dependent upon the weekly receipts when they came up to £1,000 and at a different rate when they rose beyond that. What are these royalties? They would be sums which would be paid according to the week's takings as the weeks periodically passed, and this sum of £300 was on account of royalties which were to be paid periodically. It seems to me to be exactly within the wording of Sub-section (1).

Lastly, let me add this, that we are not dealing at all with a case in which the territorial extent of the Income Tax Acts has to be considered. I am looking at the old case of *Colquhoun* v. *Brooks* and Lord Herschell's well-known judgment(1): "The "Income Tax Acts, however, themselves impose a territorial limit, "either that from which the taxable income is derived must be "situate in the United Kingdom or the person whose income is "to be taxed must be resident there. If the latter condition be "fulfilled, I think it is competent for the Legislature to determine "the measure of taxation to be applied in the case of a person so "resident. At the same time I am far from denying that if it "can be shewn that a particular interpretation of a taxing statute "would operate unreasonably in the case of a foreigner sojourning "in this country, it would afford a reason for adopting some other "interpretation if it were possible consistently with the ordinary "canons of construction." But here we are dealing with a taxable income derived from property which is situate in and is derived from the United Kingdom. We have not to think of any question of territorial limit because the source of the income upon which the charge falls is entirely within the territorial limits. Under those circumstances these further Sections which have been introduced and the alteration of Rule 21 are mere machinery, and it must be remembered that under Rule 19 of the General Rules there is an abundant justification given to the person who pays as against his principal to rely upon the deduction as money which has been paid for and on account of the principal. For these reasons, which I have only added out of courtesy to Mr. Croom-Johnson and to Mr. Showan, the appeal must be dismissed with costs.

Slesser, L.J.—I agree, and have nothing to add.

Romer, L.J.—I agree.

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(1) 2 T.C. 490, at p. 499.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Lords Atkin, Tomlin, Russell of Killowen, Macmillan and Wright) on the 1st March, 1935, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. R. P. Croom-Johnson, K.C., and Mr. P. B. Showan appeared as Counsel for the Appellants and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lord Atkin.—My Lords, this appeal raises a simple question and one which I venture to think admits of only one answer. It has been answered in the same way by the Commissioners, by Mr. Justice Finlay and by the Court of Appeal, and I am bound to say that I agree with the answer which they have given. It is a case in which there was an agreement between a Mr. Barton in London and M. Sacha Guitry of Paris, by which Mr. Barton agreed to produce a play of M. Guitry's on terms that he was to pay certain royalties, and one of the terms of the agreement was that on the signing of the agreement he was to pay a sum of £300 " on account of the royalties hereinafter stipulated." Messrs. Rye and Eyre, the Appellants, who are solicitors, and who were acting as solicitors for Mr. Barton, having certain funds in their hands which Mr. Barton was in a position to direct them to apply for this particular purpose, were directed by him to pay the £300 on account of royalties to M. Guitry, which they proceeded to do at the time when they enclosed the agreement signed by their client.

It is now sought by the Crown to make them liable for Income Tax in respect of that sum, and the material paragraphs of the relevant Rules which it is contended make the solicitors liable are these. Rule 21 of the Rules applicable to all Schedules of the Income Tax Act, 1918, provides in Sub-section (1) as follows: " Upon payment of any interest of money, annuity, " or other annual payment charged with tax under Schedule D, " or of any royalty or other sum paid in respect of the user of a " patent, not payable, or not wholly payable, out of profits or " gains brought into charge, the person by or through whom any " such payment is made shall deduct thereout a sum representing " the amount of the tax thereon at the rate of tax in force at " the time of payment." Then further Sub-sections of the Rule go on to provide that he shall then be assessed on the sums which he has deducted or ought to have deducted.

It will be observed that the Rule is confined expressly to royalties or other sums paid " in respect of the user of a patent, " not payable, or not wholly payable, out of profits or gains

(Lord Atkin.)

" brought into charge "; and by Section 25 of the Finance Act, 1927, it was provided: " Where the usual place of abode of the " owner of a copyright is not within the United Kingdom,"—which is this case—" Rule 21 of the General Rules "—that is the Rule I have read—" shall apply to any payment of or on account " of any royalties or sums paid periodically for or in respect of " that copyright as it applies to annual payments not payable " out of profits or gains brought into charge." So that in respect of such a payment, you have not to consider the question of the payment being payable out of profits or gains brought into charge; there is an absolute obligation upon " the " person by or through whom any such payment is made " to deduct the sum representing Income Tax from that sum.

Now, were the Appellants in this case, Messrs. Rye and Eyre, " the person by or through whom any such payment is made "? I imagine that, on the plain meaning of those words, the words would be apt to describe either the principal or the agent—the principal by whom, or the agent through whom, the payment was made. I reserve any question as to whether or not in this particular case the solicitors could be said to be the persons " by " whom " the payment was made, but it seems to me obvious that the payment was made either by them or through them. And indeed the only other suggestion that was made in the case was that they were not the persons " through whom " the payment was made, because " through whom " means the person in consequence of whose instructions the payment was made, which seems to me to be entirely contrary to the plain meaning of the words, which appear to me to indicate agency.

My Lords, it appeared to the learned Judges below to be a very plain case, and, indeed, it so presents itself to my mind. I move your Lordships that this appeal be dismissed.

Lord Tomlin.—My Lords, I agree, and have nothing to add.

Lord Russell of Killowen.—My Lords, I agree.

Lord Macmillan.—My Lords, I also agree.

Lord Wright.—My Lords, I agree.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed against be affirmed and that this appeal be dismissed with costs.

The Contents have it.

[Solicitors :—Rye & Eyre; Solicitor of Inland Revenue.]