HIGH COURT OF JUSTICE (CHANCERY DIVISION)—
7TH, 10TH AND 11TH JULY 1967

COURT OF APPEAL—7TH, 8TH AND 9TH MAY 1968

HOUSE OF LORDS—3RD, 4TH AND 5TH FEBRUARY AND
12TH MARCH 1969

Heaton (H.M. Inspector of Taxes) *v.* Bell[1]

Income tax, Schedule E—Emoluments of employment—Valuation of perquisite—Car loan scheme—Reduction in weekly wage consequent on loan of car by employer—Whether gross wage reduced—Whether benefit convertible into money.

Under a scheme operated by the Respondent's employer for employees earning under £2,000 a year, such employees whose applications were approved enjoyed the use of a car provided by the employer, on condition that it should be driven only by the employee, and accepted an "amended wage basis" consisting of a "weekly wage reduction". For any week in which an employee was absent sick and received no wage no other adjustment was made for the use of the car. The amount of the reduction depended on the type and age of the car; there was a general increase in April 1962 owing to increased costs. Employees could leave the scheme on giving 14 days' notice.

The Respondent joined the scheme in 1961; in the year 1963–64 his weekly wage reduction was £2 10s., increased to £2 18s. on his being lent a new car. The employer took the reduction into account in arriving at his taxable gross wage for P.A.Y.E. purposes.

The Respondent was assessed to income tax under Schedule E for the year 1963–64 on the footing that the amount of the reduction was part of his emoluments. On appeal, he contended (1) that his gross wage was reduced, and (2) that he could not turn his benefit under the scheme into money. For the Crown it was contended that the Respondent's emoluments were his gross wages before any deduction for the use of the car; alternatively, that he could turn his benefit into pecuniary account by surrendering his rights under the scheme and reverting to his former wage. The Special Commissioners accepted both the Respondent's contentions.

Held, (1) (*Lord Reid dissenting*) *that the sums payable by the Respondent under the scheme were an agreed deduction from his gross wages; in the alternative,* (2) (*Lords Hodson and Upjohn dissenting*) *that his free use of*

---

(1) Reported (Ch.D.) [1968] 1 W.L.R. 263; 111 S.J. 586; [1968] 1 All E.R. 857; (C.A.) [1968] 1 W.L.R. 1385; [1968] 2 All E.R. 1156; (H.L.) [1970] A.C. 728; [1969] 2 W.L.R. 735; 113 S.J. 245; [1969] 2 All E.R. 70.

the car was a perquisite which could be turned into money by surrendering it ; A
(3) *(by Lords Morris and Diplock) that the requirement of two weeks' notice for leaving the scheme did not affect the value of the perquisite.*

CASE

Stated under the Income Tax Act 1952, s. 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice. B

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 1st March 1966 Ralph Garland Bell (hereinafter called " the Respondent ") appealed against an assessment made upon him under Schedule E, Income Tax Act 1952, for the year 1963–64 in the sum of £1,532 (less agreed expenses of £11 and superannuation payments of £7). The question for our determination was whether or not sums of £2 10*s.* per C week up to 31st May 1963 and £2 18*s.* thereafter, being the amount of car loan scheme adjustments, as hereinafter described, were correctly included in computing the amount of the emoluments of the Respondent from his employment within the meaning of para. 1 of Schedule E of the Income Tax Act 1952.

2. The following witnesses gave evidence before us: the Respondent ; D Peter Bernard Stephens, B.A., F.C.A., the secretary of John Waddington Ltd. (hereinafter called " the company ").

3. The following documents were produced and admitted in evidence before us and are attached to and form part of this Case :—

A. Copy of the Respondent's application form to join the scheme(1).

B. Copy of the memorandum of terms of service, signed by the Respon- E dent on 3rd March 1961(2).

C. Copy of the company's summary of Craftsman's Car Service in respect of the Respondent(2).

D. Copy from company's " Motor Cars (Craftsmen) " file in respect of Austin car 3248 RO and Morris car 330 RAR(1).

E. Copy of the Respondent's payslip from the company for the week F ending 5th June 1964(3).

F. Copy of the Respondent's payslip from the company for the week ending 13th December 1963, and also for week ending 8th November 1963(1).

The facts found by us are set out in paras. 4 to 11 below.

4. The Respondent was at all material times employed by the company G as a machine minder in the lithographic department.

(1) Not included in the present print. (2) *See* page 230 *post*. (3) *See* page 217 *post*.

A 5. In 1954 the company decided to introduce a voluntary car loan scheme for the benefit of certain employees who earned less than £2,000 a year and who were not directors of the company. The managing director wrote to each employee who was eligible to join in the scheme as follows :

" Dear Mr.

In view of the keen competition which is developing both at home
B and overseas I am most anxious to obtain the highest production possible through the simple economies of :

(*a*) Running the machines to the maximum amount of time and speed.

(*b*) Prevention of wastage.

(*c*) Concentration on the job in hand, and all the other efforts which can be made to greater efficiency.

C I believe that a motor car is of great assistance when people live at some distance from their work and occasionally have to work unusual hours, also a motor car enables a man to have more recreation. Therefore, I have evolved a scheme whereby a craftsman may run a car, if he so desires, at most reasonable terms.

Motoring is not enjoyable unless it is trouble-free and safe. Only
D new cars (up to two years old) can give this assurance and safety. So my scheme concerns new cars only. At the end of two years the Company will trade the car (or cars) for new ones.

This scheme will enable the craftsman to travel to and from his work with speed and comfort and will also enable him, with his family, to make the most of his leisure hours.

E The literature enclosed is Private and Confidential and the Agreement which will be necessary for you to sign is made as simple as possible. From the original four-page document of here-to-fores, etc., I have whittled it down to a short paragraph which both of us can understand.

In starting this scheme (which I hope will shortly include not only
F craftsmen, but others) I am laying myself open to all manner of criticism from all manner of quarters. All kinds of objections have already been raised but steadily, one by one, I have overcome them.

It has been suggested that this scheme will create jealousies. A man with no family may be able to afford to come into the scheme where perhaps a man with four children could not.

G My reply to that was that the man with four children was indeed fortunate. I would sooner have four kiddies than forty cars. But children grow up rapidly, all too rapidly, and the scheme will still be available when the pocket permits.

An application form is enclosed and subject to all things being satisfactory the application will be accepted.

H Afterward, the delivery of the car should take a matter of a few weeks only.

In conclusion, I hope this scheme will be a success and will prove of advantage to you, your family and the Company.

Yours sincerely,

Managing Director."

The following documents were enclosed with the letter: A

(*a*) " Private and Confidential.

Waddingtons' Craftsmen's Car Loan Service.
Conditions.

1. John Waddington, Limited will loan a new car (Ford Popular—Austin A30—Ford Anglia or Morris 8.) selected by the proposed user.

2. John Waddington, Limited will pay full comprehensive Insurance for each year of the service. (£15 per annum). B

3. John Waddington, Limited will pay the Road Tax for each year of the service (£12 10s. per annum).

4. John Waddington, Limited will arrange for the decarbonizing of the car during the second year.

5. The user will sign a simple agreement. C

6. An amended wage basis will come into operation if the application is accepted.

7. The user will provide his own petrol, oil, grease and other incidentals.

8. The user will provide for cleaning and running maintenance.

9. If the car is under repair for maintenance or following an accident the amended wage basis will still apply. D

10. Completion of application form does not mean acceptance by the Company. They reserve full discretion on each application.

John Waddington, Limited."

(*b*) A memorandum of terms of service to be signed by an employee who wished to join the scheme (para. 6 below). E

(*c*) An application form to be filled in and signed by an employee who wished to join the scheme (para. 6 below).

When in 1954 the scheme was finally settled, a meeting was arranged for all the company's employees concerned to hear the details of how the scheme would operate.

6. The Respondent attended the meeting of employees in 1954 when the scheme was introduced, but did not join the scheme until 1961. In the meantime the Respondent did not attend any further meetings in connection with the scheme, but all relevant information was circulated to the employees and detailed information could be obtained if desired. On 10th February 1961 the Respondent signed an application form to join the scheme. A copy of the Respondent's application form is annexed hereto, marked " A ", and forms part of this Case[1]. The Respondent selected an Austin A40 De Luxe car, and on 3rd March 1961 signed a " Memorandum of Terms of Service ". F G

(1) Not included in the present print.

A copy of the Respondent's memorandum of terms of service is annexed hereto, marked " B ", and forms part of this Case(1).

On 30th May 1961 Mr. H. D. Brearley, the officer of the company in charge of the scheme, wrote to Mr. Stephens, the secretary of the company, as follows:

" Craftsmen's Car Service.

The Austin A.40 De luxe car Reg. No. 3248 RO recently delivered has been allocated to Mr. R. Bell of the Litho Department.

Mr. Bell is a newcomer on the scheme and I am sending with this letter his signed agreement form and his completed application form fully approved.

He would like to take the car away today at 5.15 p.m. and if you will let me have the usual note saying that the car is insured, I will see that it is handed over to him."

On the same day, 30th May 1961, Mr. Stephens wrote to Mrs. Nicholson of the company's wages office, as follows:

" Dear Mrs. Nicholson,

A new car has been made available to the following person(s). Will you please arrange the necessary weekly wage reduction.

Craftsmen :—R. Shields, Litho/Poster Dept., Leeds, Clock No. 268.

R. Bell, Litho Dept., Leeds., Clock No.

On and from :—Pay day Friday, 2nd June, 1961.

Yours sincerely,"

The " necessary weekly wage reduction " made in respect of the Respondent's Austin A40 car, registered no. 3248 RO, was £2 9*s.*, first applied on pay day Friday 2nd June 1961.

The Austin car was handed over to the Respondent on 30th May 1961.

The company made a summary giving details of each of the cars supplied and the weekly wage reductions of some of its employees under the craftsmen's car scheme.

A copy of the company's summary in respect of the Respondent from 10th February 1961 to 5th June 1964 is annexed hereto, marked " C ", and forms part of this Case(2).

The company also kept a register of the cars supplied to craftsmen, and an extract showing details of the Austin car no. 3248 RO is annexed hereto, marked " D ", and forms part of this Case(3).

(1) *See* page 230 *post*. (2) *See* page 230 *post*.
(3) Not included in the present print.

7. On 26th February 1962 Mr. Brearley wrote to all the employees in the scheme as follows : A

"*John Waddington Limited, Leeds, to*

26th February 1962.

Dear ,

Craftsmen's Car Service

Since writing my letter of the 15th January, I have very carefully surveyed the costs relating to cars. B

The present wage adjustments have remained the same since the beginning of the scheme and since that time costs have risen in many different ways—the cost of the car, the cost of insurance and now the tax. The very fact that the tax has risen from £12 10*s.* to £15 per year means 1*s.* per week on every car, but this is trifling compared with other increases. C

The higher costs coupled with the greater difficulty of obtaining the right price when we sell returned cars as second-hand cars makes it imperative for a heavy increase of 8*s.* to 10*s.* per week.

This is a very steep rise, but the car you are already running will be at a slightly less rate because of the cheaper purchase price of the car. Unfortunately a new car will have to stand the full increase and you must bear this in mind when you are thinking of changing. D

There are two Schedules attached, the first one which you will refer to now and the second which you will have to refer to if and when you are wanting a new car.

As promised I am giving you one month's notice, and the change will take place as from 1st April 1962 when cars already on the road by Monday, 26th February will be according to Schedule No. 1 and any cars delivered and handed over after this date will be as Schedule No. 2. E

Yours sincerely,

H. D. Brearley."

The effect of this alteration in the rate on the Respondent's weekly wage reduction was to increase the amount to £2 14*s.* 6*d.* from 1st April 1962. On 1st June 1962, the Austin car being one year old, the Respondent's wage reduction was amended to £2 10*s.* The memorandum from the secretarial department to the wages office effecting this change read as follows : F

"Adjustment to Craftsman's wages.

Name :	R. Bell	Clock No.	G
Department :	Litho	Whether in scheme already: yes.	
Adjustment required: with effect from pay week ended:	£2 10*s.* 0*d.* 1st June 1962.		

8. At the end of May 1963, the Austin being two years old, the Respondent arranged with Mr. Brearley to exchange it for a Morris 1100 De Luxe, reg. no. 330 RAR (an extract from the register giving details of this car is in exhibit D[1]). The Respondent signed an amendment to his memorandum of terms of service (exhibit B[1]) to cover the Morris car. The Respondent's wage reduction was amended to £2 18*s.* The memorandum from the secretarial department effecting this change is *mutatis mutandis* the same as that mentioned in para. 7. H I

(1) Not included in the present print.

A 9. Each employee of the company received a weekly payslip showing the wages to which he was entitled. The Respondent's payslip for the week ending 5th June 1964 was taken as an example of the manner in which the company calculated the wages of its employees. The figures for that week were set out thereon as follows:

" 1.	Flat Rate 43 hours			£22	6 7
B 2.	Overtime Premium 2·0625 hours			1	5 7
3.	Cost of Living Bonus				11 8
4.	Shift Premium			4	9 4
5.	Bonus			4	12 8
6.	Spray or Hair Money				3 4
7.	Holiday Pay				
C 8.				2	13 6
	Taxable Gross Wage			£30	15 8
	Standard Deductions	£1	17 0		
	Graduated Pension Contribution ...		7 8		
	P.A.Y.E.	2	3 0		
				4	7 8
D	Net Wage			£26	8 0"

A copy of the Respondent's payslip for the week ending 5th June 1964, is annexed hereto, marked " E ", and forms part of this Case[1].

The Respondent's weekly wage reduction under the scheme is shown in the payslip as £2 13*s.* 6*d.*, item 8, which was the only deduction in arriving at the taxable gross wage, items 2 to 6 being additions to the flat rate of E £22 6*s.* 7*d.* for 43 hours' work. The wage reduction had been amended to this figure on the car becoming one year old in a manner as described in paras. 7 and 8 above.

The Respondent was paid the flat rate per hour which was standard for his classification. The overtime premium was calculated at one and a quarter times the flat rate. The cost of living bonus was fixed each January. F The shift premium was paid for shift work and was calculated on the basis of the flat rate. The bonus figure was calculated on production figures but came in one week later than the flat rate of wages.

10. Whenever an employee was absent through sickness and received no wage no deduction was made for the use of the car, because the agreement between the company and the employee under the scheme was that G the employee should accept a reduced wage. If there was no wage it could not be reduced, and no adjustment of any kind was made under the scheme. The Respondent's payslip for the week ending 13th December 1963, when the Respondent was absent through sickness, was in the same form as exhibit " E ", but with an entry only for one item (no. 5), being a bonus of £2 8*s.* 10*d.* which related to the previous week. No wage reduction was made under the H scheme, and the taxable gross wage was shown as £2 8*s.* 10*d.* The payslip for the week ending 8th November 1963 shows similarly no reduction where there was no wage.

(1) Not included in the present print.

Copies of the Respondent's payslips for the weeks ending 13th December 1963 and 8th November 1963 are annexed hereto, marked "F", and form part of this Case[1].

11. In his evidence the Respondent stated that, if he had ever been asked whether the company supplied him with a car at a rent deducted from his wage, he would have said that he had accepted instead a lower wage and a car free. He admitted that he had probably made a rough estimate of what it would cost to obtain the use of a car, but added that his main concern had been to see whether he could afford to run a car. The Respondent did not agree that in order to check his wages he would have to calculate the wage he would have received if he had not joined the scheme and then make a deduction for the car. As the figures were all set out on the payslip, all that he had to do was to check the arithmetic.

The Respondent understood the last two lines of the memorandum of terms of service to mean that the agreement could be cancelled by either party giving 14 days' notice, and that if it were cancelled he would receive his former wage without any deduction.

12. It was contended on behalf of the Respondent:

(*a*) that the company had given the Respondent a choice between receiving his wages in money only or wages in money of a reduced amount and the use of a car; the Respondent agreed to enter the scheme, whereby he obtained the use of a car and suffered a reduction in his monetary wage;

(*b*) that the Respondent was not an employee who came within the provisions of s. 163, Income Tax Act 1952;

(*c*) that the Respondent under the terms of the scheme was precluded from allowing anyone else to make use of the car except in an emergency, so that while the Respondent remained in the scheme the use of the car could not be turned into money;

(*d*) that even if the use of the car had a monetary value, then the amount chargeable to tax was what the Respondent as employee could get for it, which was nil, and not the cost of the scheme to the company;

(*e*) that the appeal should succeed and the assessment be reduced to the agreed figure of £1,385.

13. It was contended on behalf of H.M. Inspector of Taxes:

(*a*) that, on authority, as the deduction in arriving at the net wage paid to the Respondent was variable and the net wage could not be arrived at until the gross wage had been determined, the Respondent's emoluments were the gross wages before any deduction for the use of the car;

(*b*) that in any event the Respondent's emoluments were to be arrived at before taking into account the deduction for the use of the car;

(*c*) that, in the alternative, if the true wage was a net wage plus the use of the car, then the use of the car was money's worth because the Respondent could surrender his rights under the contract and by this revert to his former wage and turn the benefit into pecuniary account;

(*d*) that the appeal should be dismissed and the assessment confirmed.

---

(1) Not included in he present print.

A 14. At the hearing of the appeal the following cases were referred to: *Tennant* v. *Smith*(1) 3 T.C. 158; *Cordy* v. *Gordon*(2) 9 T.C. 304; *Machon* v. *McLoughlin* (1926) 11 T.C. 83; *Duke of Westminster* v. *Commissioners of Inland Revenue*(3) 19 T.C. 490; *Potts' Executors* v. *Commissioners of Inland Revenue*(4) 32 T.C. 211; *Bridges* v. *Bearsley*(5) 37 T.C. 289; *Abbott* v. *Philbin*(6) 39 T.C. 82; *Wilkins* v. *Rogerson*(7) 39 T.C. 344.

B 15. We, the Commissioners who heard the appeal, after considering all the evidence, both oral and documentary, and the arguments, gave the following decision.

We have to construe the agreement between the Respondent Mr. Bell and the company.

The Respondent had come into the car scheme, and we have to decide C what his wages were.

Under item 6 of the company's "Conditions of the Scheme" (para. 5(*a*) above), "An amended wage basis will come into operation if the application is accepted." This in itself does not help us much in determining what was the true wage, but in an extract from the company's record headed "Craftsmen's Car Scheme" under the Respondent's name (exhibit C(8)) D the words "wage reduction" appear on each relevant line, and in an extract from the company's record headed "Motor Cars (Craftsmen)" (exhibit D(8)) the word "Reduction" appears under item 8. Also in the memorandum dated 30th May 1961 from the secretary of the company to Mrs. Nicholson of the wages office (para. 6 above) there appears "Will you please arrange the necessary weekly wage reduction".

E Rowlatt J. in *Machon* v. *McLoughlin* 11 T.C. 83, at page 90, said:

> "But what has been done? I have to find out whether the true way of looking at it is that he is paid a gross wage and has to pay something back or that he is only paid a net wage. That was Lord Justice Vaughan Williams' test in *Bell* v. *Gribble*, 4 T.C. 522(9) and that is the test I have to apply. As I pointed out before, it may be a question of words. F In every case you have to see whether it is a question of words. I do not think there is very much to show that it is not a question of words."

On the facts of this case it seems to us that the wage is what it is said to be on the payslip dated 5th June 1964 (exhibit E(8)), namely the taxable gross wage, that is to say, the sum of the items 1 to 6 less item 8.

On this basis we have to consider whether the use of the car is money's G worth. We have to bear in mind the cases of *Tennant* v. *Smith* 3 T.C. 158 and *Wilkins* v. *Rogerson* 39 T.C. 344, the latter being the case of the suit from Montague Burton Ltd. Now here we think that the position is distinguishable from the case of *Abbott* v. *Philbin* 39 T.C. 82. The use of the company's car is not an option, and we think that the question is whether the Respondent in having the use of the car has money's worth.

H From the memorandum of terms of service (exhibit B(8)) the Respondent was not to permit anyone else but himself to drive or use the car except in an emergency. In these circumstances the use of the car is not in our view money's worth. Accordingly, we hold that the appeal succeeds in principle, and as the figures have been agreed between the parties we reduce the 1963–64 assessment on the Respondent to £1,385.

---

(1) [1892] A.C. 150. (2) [1925] 2 K.B. 276. (3) [1936] A.C. 1.
(4) [1951] A.C. 443. (5) [1957] 1 W.L.R. 674. (6) [1961] A.C. 352. (7) [1961] Ch. 133.
(8) Not included in the present print. (9) [1903] 1 K.B. 517.

16. The Inspector of Taxes immediately after the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law, and on 28th March 1966 required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act 1952, s. 64, which Case we have stated and do sign accordingly.

17. The question of law for the opinion of the High Court is whether, on the evidence hereinbefore set out, we were right in law to decide as we did.

H. G. Watson
G. R. East
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94-99 High Holborn,
London, W.C.1.

31st January 1967.

The case came before Ungoed-Thomas J. in the Chancery Division on 7th, 10th and 11th July 1967, when judgment was given in favour of the Crown, with costs.

Desmond Miller Q.C. and *J. Raymond Phillips* for the Crown.

G. B. Graham Q.C. and *T. H. Walton* for the taxpayer.

The following cases were cited in argument in addition to those referred to in the judgment:—*Edwards* v. *Roberts* (1935) 19 T.C. 618; *Perkins' Executor* v. *Commissioners of Inland Revenue* (1928) 13 T.C. 851; *Tennant* v. *Smith* 3 T.C. 158; [1892] A.C. 50.

Ungoed-Thomas J.—This is an appeal to determine the "perquisites and profits" of the Respondent, Mr. Bell, within the Schedule E meaning of "emoluments". The assessment is for the year 1963–64, and during the whole of that period he held the same job as an employee of John Waddington Ltd., with whom he worked as a machine minder. He was entitled to a weekly wage assessed on the basic rate with various additions, in the way which is usual amongst wage-earners in this country.

In 1954 the company introduced what was referred to as a voluntary car loan scheme. It is a scheme which may not commend itself to taxpayers who are not in a position to have the tax advantages which it is claimed that this scheme produces. Under this scheme the company bought a car which it thereafter owned. It treated it as a business asset, and by doing so obtained the tax advantage of a capital allowance applicable to business assets. The company paid for the licence and comprehensive insurance for the car, but Mr. Bell was responsible for paying the maintenance and running costs. He was under an obligation to drive the car himself only, and not to let anyone else drive it. Because of his having the advantage of this car loan scheme which he joined, a subtraction was made in respect of his wages. In the early days, the subtraction was £2 10*s.* a week, but it varied thereafter, partly because he substituted

A a better car in place of the original car which he had under the scheme, and partly because of the increased costs, to which the company in some of their documents refer, of running the car loan scheme.

Two questions arise in this case. The first is: is this subtraction of £2 10*s.* or so a reduction in computing the gross wage, before arriving at the gross wage; or is it a deduction from the gross wage after arriving at the B gross wage? If it is a reduction in calculating the gross wage, then it is not part of the emoluments; but if it is a deduction from the gross wage it is part of it and therefore of the emoluments. The second question arises in the alternative, on the assumption that this £2 10*s.* was not part of the gross wage. It is: is the car arrangement a benefit included in "perquisites and profits" within the definition of "emoluments" for the purposes of Schedule E as C defined in paragraph 1(1) of Schedule 2 to the Finance Act 1956? Then, as a subsidiary to that, there is the further question whether the proper valuation, if it is a benefit capable of being valued, is £2 10*s.* (or the increased amount substituted thereafter as I have indicated). The Commissioners decided both questions against the Crown.

Before coming to a consideration of the facts of this case, I shall first D refer briefly to a couple of cases from amongst those to which I was referred in the course of argument. It will be convenient to take the extracts I propose to quote from these cases irrespective of whether they are concerned exclusively with one or both of these two questions, as they are, to a considerable extent, intertwined. The first quotation comes from a decision of Channell J., *Smyth* v. *Stretton* (1904) 5 T.C. 36, at page 43:

E "Now, that case is quite clear, a case where a man has a salary from his office, which is what the Lord Justice puts(1), and by agreement with somebody else, I presume his father-in-law, has bound himself to set apart a certain portion of that salary year by year and save it and invest it for the benefit of his wife and children, that case is quite clear; it still is income, and he has contracted with somebody else to apply it F in a particular way."

So that an agreement between an employee and an employer that his salary should be applied in a particular way does not preclude its being salary. Then, at page 42, Channell J. says:

"I agree with what Mr. Danckwerts says, you must look at the substance of it and not the words; but at the same time, I do not say G that you must disregard the words."

Then in the Case Stated is a quotation from Rowlatt J. in *Machon* v. *McLoughlin*(2), which says:

"I have to find out whether the true way of looking at it is that he is paid a gross wage and has to pay something back or that he is only paid a net wage. That was Lord Justice Vaughan Williams' test in *Bell* v. H *Gribble* 4 T.C. 522, and that is the test I have to apply. As I pointed out before, it may be a question of words. In every case you have to see whether it is a question of words. I do not think there is very much to show that it is not a question of words."

Taken out of context, I found those quotations confusing. However, when they are read in context the meaning is perfectly clear. What has to I be found out is whether the true way of looking at it is that the employee is

(1) Bell *v.* Gribble 4 T.C. 522, at p. 536; [1903] 1 K.B. 517. (2) (1926) 11 T.C. 83, at p. 90.

(Ungoed-Thomas J.)

paid a gross wage and, having become entitled to that gross wage, has then to pay something back; and then Rowlatt J. adds, "or that he is only paid a net wage", meaning by that that the figure which is subtracted enters into the calculation of what he is obtaining as a wage, which is the same as appears in the documents of this case not under the description "net wage" but under the description "taxable gross wage". With regard to the phrase, "it may be a question of words", this is a matter which has to be approached with caution and with an understanding of the background against which Rowlatt J. made his observation. It is true that in a sense it may be a matter of words. To take the illustration which Rowlatt J. gave, where the question was whether the wage-earner was paid £200 gross wage and then had £50 deducted from it, or whether the £50 was subtracted before arriving at the gross wage, in each case what would be received is the figure of £150. If one puts oneself in mathematical blinkers and excludes all other considerations, then, of course, the answer is mathematically the same in the end—namely, £150. But of course the rights of the parties are fundamentally different in the two cases. In the one case, there is a contract for a gross wage from which the £50 has been subtracted before arriving at the gross wage, whereas in the second case there is a contract for a gross wage from which the £50 has not been deducted, and there is a second, separate, contract for the deduction of £50 from that gross wage. In one case you have one contract varied, in the other case you have two contracts. You have separate rights and liabilities and separate relationships between the parties arising in the case of both contracts by reason of the words used. Do not let us underestimate the importance of words. Words are the means by which we communicate; by which, to a very large extent, we govern our relationships; by which contracts are made and rights and liabilities are governed. Words used in one way may have an entirely separate operation from different words differently used, although the mathematical result at the end of the day may be the same. Words are themselves matters of substance, because they themselves form the contractual rights and liabilities which can arise by reason of them.

The second case to which I wish to refer is *Machon* v. *McLoughlin*, 11 T.C. 83, at page 89, where Rowlatt J. says:

> "If the person is paid a wage with some advantage thrown in, you cannot add the advantage to the wage for the purpose of taxation unless that advantage can be turned into money. That is one proposition. But when you have a person paid a wage with the necessity—the contractual necessity if you like—to expend that wage in a particular way, then he must pay tax upon the gross wage, and no question of alienability or inalienability arises."

There, the first sentence of the quotation bears upon the second alternative question which I indicated as arising in this case, and the third sentence in the quotation bears upon the first question that I indicated. That passage was approved by Warrington L.J. in the Court of Appeal, who, speaking of the facts in that case(1), said that the resolution which changed the method of calculating the gross wage

> "was intended to make the change in substance the difference between an allowance in kind and remunerating the staff on a cash basis, and that there is, both from the point of view of the employer and of the employee, a very substantial difference between the two systems."

(1) 11 T.C. 83, at p. 96.

(Ungoed-Thomas J.)

In this case the £2 10*s.* was, as appears from what I have already said, an extraneous item introduced into the calculation of the amount paid to Mr. Bell, and, in the method by which the calculation was made, introduced so that, on the face of the documents and on the face of the case, it would be clear that it was before arriving at the taxable gross wage. The other items in the calculation, apart from the basic wage, are items calculated on the basis of the basic wage or additional payments which quite clearly and properly come within the calculation of the gross wage. But the £2 10*s.* in this case is a subtraction of an entirely different nature, which is *sui generis* in relation to the rest of the wage calculation. The question has arisen whether an item of this kind must in its nature be something that cannot be regarded as entering into the calculation of the wage at all, and must therefore of necessity be a deduction after arriving at the gross wage and not a reduction in the process of calculating its amount. This, it seems to me, is one of the elements that has to be taken into consideration in deciding whether or not what the parties did, on a true construction of the documents and a true understanding of the arrangements that they made, was the creation of one contract varied so as to provide for the £2 10*s.* entering into the calculation of the gross wage, or whether it was two contracts giving rise to two separate sets of rights and liabilities and two separate sets of remedies, in which there was one contract for the wage and a separate contract to provide the car on loan for a payment to be deducted from the wage earned. It cannot of itself, so it seems to me, by its nature, exclude this question. It seems to me to be an element to be considered in answering that question.

I come now from these rather general considerations to the more detailed provisions of this case. It is pointed out very forcibly that the emoluments which Mr. Bell had before he joined the scheme were perfectly clear, and amounted to a sum from which there was no subtraction of £2 10*s.* or any other figure in respect of the car. It was also pointed out with force that the emoluments would be calculated in precisely the same way the moment he ceased to belong to the scheme, and that his colleagues, whose wages were calculated in the same way as his, had their wages without the subtraction of the £2 10*s.* for the car. Even over and above that, by 14 days' notice he could, under the scheme, terminate his membership of the scheme and again receive his wage without any subtraction in respect of it. Those are what I might almost call circumstantial considerations, and they do not go directly to answering the question whether in this case there was this subtraction before or after arriving at what was included in the gross wage.

It is said for Mr. Bell that, as he, under his service contract with the company, received a remuneration without subtraction for the car, then it must be shown that there was some variation in this remuneration and in the contract for service and this remuneration to provide for this subtraction before arriving at the gross wage. That submission appears to me to be correct. It is then said that the evidence in this case does not show that there was such a variation—and we are now at the nub of the case on the first issue.

The company sent to its employees a letter outlining the car loan scheme. It there referred to it as " a scheme whereby a craftsman may run a car, if he so desires, at most reasonable terms ". It refers to it as a scheme which may be taken advantage of " when the pocket permits ". It was suggested that those phrases, " at most reasonable terms " and " when the pocket permits ", were more consonant with an agreement to pay out of the gross wage after

(Ungoed-Thomas J.)

it had been calculated than before it had been calculated, but for my part I cannot attach any substantial weight to these phrases.

Enclosed with that letter was a document headed " Conditions ". Condition 5 provided: " The user will sign a simple agreement." In fact, there was no inter-party agreement consisting of one document between two parties to which there were signatures, but there was an application form, so headed, signed by Mr. Bell. Nothing in that application form throws any light upon either of the questions that have to be decided in this case. It was simply a straightforward application to join the scheme without reference to the wage at all. Condition 6 reads: " An amended wage basis will come into operation if the application is accepted." The Commissioners said (and rightly so in my view) that this reference " in itself does not help us much in determining what was the true wage ", but it does contain the reference to " An amended wage basis " coming into operation. So it contemplates that somehow or other the wage basis is going to be affected, and the wage basis—and I emphasise the word " basis "—could hardly have been affected without affecting the calculation of the gross wage itself. But in itself, of course, this condition does not establish that the wage basis was affected. In due course this condition will have to be read in conjunction with what was actually done, and what was actually done will have to be considered in the light of this forecasting observation in condition 6, which I have just read. Condition 9 provides that: " If the car is under repair for maintenance or following an accident the amended wage basis will still apply." Again we have a reference to " amended wage basis ". On the other hand, the car, when it is under repair for maintenance or following an accident, is not available for the wage-earner's use, and to that extent may be thought to be rather more consonant with a deduction from the gross wage than with a reduction in the process of calculating it.

There was a further letter to the employees some time later, referred to in para. 7 of the Case Stated, when the management wrote to the employees saying that because of high costs it was imperative to raise the amount paid in respect of the cars loaned to the employees, and saying, " this is a very steep rise ". Those phrases, again, have been relied on to indicate a deduction rather than a reduction. There is also a reference to " the present wage adjustments " in the same letter, which is certainly more consonant with a wage reduction than a wage deduction.

Then there was a memorandum of terms of service, which was signed by Mr. Bell. That makes no reference at all to the wage position, but provides: " Either of us may cancel my obligation and authority to use the car on 14 days' notice ". That becomes relevant on the second question which I shall have to consider, but with regard to the first question, which I am now considering, it makes no reference whatsoever to wages.

There are, in addition, three documents which refer to " wage reductions". The first was exhibit C to the Case Stated, which is headed " Craftsmen's Car Scheme ", followed by the name of Mr. Bell. That gives the substance of the arrangements between himself and the company at the time, and their history. It there refers to the £2 10*s.* and so on, which I have mentioned, as " wage reductions ". Then there is another document headed " Motor Cars ", which gives the history of the motor cars which Mr. Bell had from time to time. Again, that refers to the " reduction ", followed by the amount of £2 10*s.* and so on, which I have mentioned in this case. There was also a letter written to an employee in the company's wages office by the secretary of the company, asking her: " Will you please arrange the necessary weekly reduc-

A tion " in the case of Mr. Bell and another man. These three documents are internal company documents, and cannot properly be relied on as establishing any wage variation as between Mr. Bell and the company, and I leave them out of consideration in arriving at my conclusion.

This leaves the payslip, which is document E exhibited to the Case Stated. The payslip is headed by Mr. Bell's name. Then, underneath, there are the B calculations of Mr. Bell's wage. This was a weekly payslip, the first column of which is headed " Calculations ", and opposite that there appears in another column the corresponding figures. Under the heading " Calculations ", the first item is " Flat Rate ", and the figures £22 6*s.* 7*d.* The second is " Overtime Premium ", the third " Cost of Living Bonus ", and so on. These items, when added up, amount in this particular week to £33 9*s.* 2*d.* Then, C still under the heading " Calculation ", and not distinguished from the rest of the calculations in any way, is item no. 8. There, there is no entry of what this calculation is in respect of, but opposite it appears the figure of £2 13*s.* 6*d.*, which was the current figure in respect of the car loan. There is nothing to distinguish that item or that figure from the earlier items and the earlier figures. Underneath that is " Taxable Gross Wage ", and opposite D is what would appear at a casual glance in the ordinary way to be an addition of all the previous figures. However, when they are worked out, it is found that the £2 13*s.* 6*d.*, which looks as though it should be an addition with all the others, is in fact a deduction, because the taxable gross wage is £30 15*s.* 8*d.* The figures, excluding the figure of £2 13*s.* 6*d.*, total £33 9*s.* 2*d.*, showing that the £2 13*s.* 6*d.* is a deduction. Then, underneath the taxable E gross wage there are the following items: " Standard Deductions ", " Graduated Pension Contribution " and " P.A.Y.E.", with figures appearing opposite them. When the figures for these items are added up, they amount to £4 7*s.* 8*d.*, which is then deducted from the £30 15*s.* 8*d.*, arriving at a net wage of £26 8*s.*

It is said for the taxpayer that this document shows that the £2 13*s.* 6*d.* F is a figure which enters into the computation of the taxable gross wage, £30 15*s.* 8*d.* Although entering into it by way of subtraction, it nevertheless does enter into it ; and therefore it is a reduction in arriving at the taxable gross wage and not a deduction from the taxable gross wage after it has been arrived at. The Crown points out, with considerable force, that what provided this £2 13*s.* 6*d.* was Mr. Bell's services to the company, because G it is made by way of subtraction for what he was paid for those services ; but that, of course, is not decisive against the taxpayer. Then it says that there is no variation of the structure of the basic wage ; that the items based upon it—that is, all the other items except the £2 13*s.* 6*d.*—are unaffected by the £2 13*s.* 6*d.*, so there is no variation in the wage structure. But again this is not a decisive consideration.

H In para. 10 of the Case Stated the Commissioners say:

> " Whenever an employee was absent through sickness and received no wage no deduction was made for the use of the car, because the agreement between the company and the employee under the scheme was that the employee should accept a reduced wage."

So there was no deduction and there was no subtraction. There were no I means at all by which Mr. Bell was made in any way liable in respect of the car loan except by way of subtraction when he earned sufficient to cover the amount subtracted. This, to my mind, is a strong consideration, because there was no liability at all here apart from a liability involving subtraction from the wage. In other words, here is a strong indication that what we

(Ungoed-Thomas J.)

have is not two contracts—one contract with regard to the wage and a separate independent contract giving rise to separate rights and liabilities but resulting in a deduction from that wage. Then it was suggested that it may be that the company did not press for payment in any week in which nothing was earned; but for my part I do not see why, if that were the explanation, they should not have recouped themselves, in weeks where money was earned, in respect of payments for the car loan scheme not made in weeks where wages were not earned.

The Commissioners say, in para. 11:

> "In his evidence the Respondent stated that, if he had ever been asked whether the Company supplied him with a car at a rent deducted from his wage, he would have said that he had accepted instead a lower wage and a car free."

So that, as far as the Respondent is concerned, at any rate, for what it is worth, he obviously did not consider himself liable for payment in respect of the car in a week where a wage was not earned. This is at least consistent with the *prima facie* impression which is given by the fact that subtraction in respect of the car was only made in weeks where wages were earned to the extent to which those wages could cover the subtraction.

The Crown, however, brought forward another material consideration. They rightly and forcibly pointed out that the car payments fluctuated, and that if these were to be included as deductions in arriving at the gross wage we would be faced with the situation in which the gross wage fluctuated in accordance with the fluctuation for the car payment; and they submit that this is not a realistic situation to be expected in respect of wages. The case of *Machon* v. *McLoughlin*[1], from which I have already quoted, was a case in which payments for lodging and dinners were subtracted in respect of the employee's wage. Rowlatt J. said[2]:

> "I think you have the element here that I had in *Cordy* v. *Gordon*[3]. One element was that he had to bear, out of the advantage he got, the varying cost of living. I have here the consideration that if the man sleeps out, as he may have permission to do, either permanently or, I suppose, temporarily, he does not suffer a deduction for board. He can certainly have meals out; then he deducts a value, upon a scale, of those odd meals from the counter amount which he has to allow in reduction of his pay. Therefore if the Respondent is right and if the Commissioners are right in a case like this, this man's salary varies according to whether he sleeps in or whether he sleeps out, whether he dines in or whether he dines out. I think that is a very unreasonable view. If he dines in, according to the Respondent he dines free of Income Tax; if he dines out he dines subject to Income Tax. I do not think that is the right view."

Here, however, the variation was a variation made by a further contract, and not a variation provided for within the terms of the original contract. Where, of course, you have a variation provided for within the terms of a contract, it is a proper matter to be taken into consideration in construing that contract within whose terms the variation operates. The variation in the amount of £2 10*s.* was made by a new contract, and as long as that variation by agreement held that sum remained the same. For instance, in exhibit B, to which I have already referred, the "Memorandum of Terms of Service", it is provided, in words endorsed upon it, that, instead of the motor car which he was to have under the original memorandum, "I am to make use of

(1) 11 T.C. 83. (2) *Ibid.*, at p. 90. (3) 9 T.C. 304; [1925] 2 K.B. 276.

A Motor Car " number so-and-so, " instead of Motor Car " number so-and-so, " as from 31st May, 1963 ". As long as that memorandum continued as so varied, and therefore constituted the contract between the parties, the price remained precisely the same. So I am not myself impressed by this argument, and I consider the situation in *Machon* v. *McLoughlin*[1] distinguishable from the situation in this case.

B In particular the reference in the condition, originally mentioned in the letter introducing the scheme to the employees, to " an amended wage basis " coming into operation, and the fact that in the inter-party payslip the only provision for payment was accordingly made by way of subtraction from wages without any provision for payment even in respect of a week when no wage was earned, seem to me, despite the impressive considerations which C have been urged on behalf of the Crown, to establish that the true view of this transaction is that there was one contract for payment of the wage less an amount to be calculated in arriving at that wage, and not two contracts, one for the payment of the wage and an entirely separate contract for the deduction of an amount from that wage after it had been calculated.

That brings me to the second alternative: is the car loan a benefit D included in the " perquisites and profits " within the definition of " emoluments ", and what is the valuation of that benefit if it can be properly valued? Two objections were raised by the taxpayer to the Crown's claim under this second question. The Crown accepts that for a profit or perquisite to be subject to taxation as an emolument it must be a profit or perquisite which is money or money's worth : it must either be money or something which can E be converted into money. It is said, further, that in this case on 14 days' notice this advantage could be converted into money by the employee at any time by his simply giving notice under the scheme ending it, thus having his wage restored to its original amount instead of having the subtraction of £2 10*s.* or so in respect of the car.

Section 156 of the Income Tax Act 1952 provides : " Tax . . . shall be F charged " under Case I of Schedule E on " emoluments for the year of assessment " ; and the Finance Act 1956, Sch. 2, para. 1, provides, *inter alia*: " The expression ' emoluments ' shall include all salaries, fees, wages, perquisites and profits whatsoever." The contention put forward before me by the Crown was the contention which they put forward before the Commissioners, in para. 13(*c*) of the Case Stated :

G > " that . . . if the true wage was a net wage plus the use of the car, then the use of the car was money's worth because the Respondent could surrender his rights under the contract and by this revert to his former wage and turn the benefit into pecuniary account ".

The Commissioners' observations were :

> " From the memorandum of terms of service . . . the Respondent H was not to permit anyone else but himself to drive or use the car except in an emergency. In these circumstances the use of the car is not in our view money's worth."

That was not directed to the contention put forward by the Crown. The Commissioners arrived at their conclusion, without dealing with the Crown's contention, on a basis which, as I understand it, was not put before them by the I Crown, nor put before me by the Crown; but the basis on which they arrived at their conclusion in that appeal has been relied on in argument by the taxpayer before me.

(1) 11 T.C. 83.

(Ungoed-Thomas J.)

I come now to this contention, on which there is no express decision, at any rate directed specifically to it. The taxpayer, whilst accepting that to be taxable the perquisite must be money or money's worth convertible into money, puts his case in two ways. It is said, first, that the documents we are dealing with here, particularly the Case, show that the employee was paid weekly, that the car could not be turned into money in any one week, and that therefore in any one week there was here no money's worth because the car loan could not be turned into money in that week. The short answer to that is that the assessment is made upon "emoluments . . . for the year of assessment". The relevance of the perquisite is that it is contained in the definition of "emoluments", so we are dealing with "perquisites for the year of assessment". Therefore, the taxpayer could, after 14 days' notice in the year, turn it into money if it could be turned into money at all.

So I come to the second contention, and here there was a rather interesting recondite submission. It was that to give notice terminating the car loan scheme would not be to convert the perquisite of the car loan into money, but would be to abolish or terminate the scheme altogether and to substitute for it the payment of a wage and restore the pre-scheme position. But what we are concerned with is the valuation of the perquisite, and only the valuation (and I emphasise the word "valuation") of the perquisite; and the need to value the perquisite is only to ascertain that it could be converted into money's worth. What is the money's worth into which it can be converted is merely for the purpose of valuing the perquisite. If it cannot be converted into money's worth, it does not cease to be a perquisite but it ceases to be a perquisite upon which a money value can be put, and therefore cannot be a perquisite in respect of which a poundage can be added for income tax purposes. Therefore, on this analysis, if all we are concerned about is the valuation of the perquisite, it presupposes the existence of the perquisite, and it is no answer to say that getting rid of the car and the car loan scheme gets rid of the perquisite altogether. So, indeed, in the Burton tailor scheme(1), the value of the suit and of the advantage that it gave was assessed on the value which it would fetch in the market, although of course disposing of it in the market would be getting rid of the perquisite which it constituted.

Thus, the only question here is what is the valuation of this perquisite, presupposing the existence of the perquisite? We find that on 14 days' notice the employee can obtain at least the sum which is subtracted in his wage slip in respect of the car loan scheme. He cannot do that for the first 14 days, and therefore for 14 days in the year he cannot achieve this valuation. But in principle, subject to that observation with regard to the 14 days, it seems perfectly clear to me that this is convertible into money's worth, and the money's worth into which it is certainly convertible is the amount which is subtracted in respect of the gross wage for the car loan.

With regard to the 14 days, it has been canvassed whether this is a matter which should go back to the Commissioners or whether I should decide here and now what course should be taken. However, the parties have wisely agreed, having regard to the amount involved, that it would be utterly unjustifiable to refer this back to the Commissioners. The only valuation which I have before me is the amount which has been subtracted in the pay-slip. I have no indication whatsoever of what the value might be in respect of the 14 days when the car cannot be returned to the employers, and therefore I consider the 14 days should be completely omitted in making the

(1) *See* Wilkins *v.* Rogerson 39 T.C. 344; [1961] Ch. 133.

appropriate calculation in respect of the emoluments in this year. In respect of the other fifty weeks of the year, it seems to me that the amount to be taken into consideration as the value of the car would be the weekly amount deducted in respect of the car, as appearing in Mr. Bell's payslip.

The result, in that event, is that the Crown succeeds on the second issue to the extent I have indicated, whilst failing on the first issue.

Miller Q.C.—I ask that the appeal be allowed with costs. I trust there will be a direction that the matter be remitted to the Commissioners for them to adjust the assessment for the year 1963–64 expressly on the footing that the fifty-week period of participation in the year shall be charged under Schedule E on the reduced basis set out in the Case Stated.

Graham Q.C.—I agree, my Lord.

Ungoed-Thomas J.—Then it is ordered accordingly.

Both parties having appealed against the above decision, the case came before the Court of Appeal (Danckwerts, Salmon and Fenton Atkinson L.JJ.) on 7th, 8th and 9th May 1968, when judgment was given unanimously against the Crown, with costs.

Desmond Miller Q.C. and *J. Raymond Phillips Q.C. for the Crown.*

G. B. Graham Q.C. and *T. H. Walton* for the taxpayer.

The following cases were cited in argument in addition to those referred to in the judgments:—*Daly* v. *Commissioners of Inland Revenue* 18 T.C. 641 ; 1934 S.C. 444 ; *Smyth* v. *Stretton* (1904) 5 T.C. 36 ; *Parkins* v. *Warwick* (1943) 25 T.C. 419 ; *Barclays Bank Ltd.* v. *Naylor* 39 T.C. 256 ; [1961] Ch. 7.

Danckwerts L.J.—This is an appeal from the judgment of Ungoed-Thomas J. dated 11th July 1967, by which he affirmed the decision of the Special Commissioners of Income Tax, given at a hearing on 1st March 1966, on one point and disagreed with them on the second point.

The question arises in regard to the use of a motor-car which the taxpayer's employers allowed him to have on certain terms and conditions. Mr. Bell, the taxpayer, was a machine minder in the lithographic department of John Waddington Ltd., and he earned a substantial wage, because, as is stated by the Commissioners in the Case, he was assessed under Schedule E of the Income Tax Act 1952 for the year 1963–64 in the sum of £1,532 (less agreed expenses of £11 and superannuation payments of £7). Then, as a result of the freedom from taxation of the sums which he paid in respect of the use of the motor-car, he was reduced to a figure of £1,385. He was paid a weekly wage on the basis of so much an hour, and overtime at the rate of time and a quarter, and he had a bonus and certain other things.

The first and main question is whether the sum which he had to pay or to allow for, or which was otherwise dealt with in respect of the use of the motor-car, which varied from about £2 9*s.* a week to a larger sum at various times of his employment, was to be taken as part of the calculations which resulted in the amount of his total wage: that is to say, whether it was a

(Danckwerts L.J.)

reduction of his gross wage for taxation purposes, or whether it was a deduction from his wages, made after the wage had been ascertained. That was the first point in the case. The other point is whether his perquisite or profit was capable of being evaluated and was taxable as part of the emoluments which he had.

I must turn now to the Case Stated. I can start with para. 4: [His Lordship then read or summarised paras. 4 to 11 of the Case Stated, at pages 212–8 *ante*, and continued:]

I now turn to the exhibits or annexures. I do not think I need bother with A. Exhibit B reads:

> "Memorandum of Terms of Service. During my service with you as Lithographer and the carrying out of the various duties you properly assign to me, I am to make use of motor car No. 3248 RO for the more efficient discharge of my duties. I am not to permit anyone other than myself to drive or use the car except in an emergency. I am to pay for maintenance and running. I agree to keep the car clean and in good condition and to hold it ready for inspection at any time. You have generously agreed to licence and insure the car and to pay for decarbonisation when necessary. Either of us may cancel my obligation and authority to use the car on 14 days' notice. Dated 3rd March, 1961", and that is signed by the employee.

Then exhibit C has the heading:

> "John Waddington, Limited. Craftsmen's Car Scheme. Ralph Garland Bell, Litho Machine Minder, of 19 Howard Avenue, Halton, Leeds, 15. Signed Application Form 10th February, 1961. Signed Memorandum of Terms of Service 3rd March, 1961. New Austin A40 de luxe car 3248 RO handed over to R.G.B. on Tuesday, 30th May, 1961."

Then there come certain things which, though these are statements in documents of the employers, seem to me to have some relevance:

> "Wage reduction 49*s.* per week first applied pay day Friday, 2nd June, 1961"; ditto ditto "increased to 54*s.* 6*d.* per week on pay day Friday, 6th April, 1962 (General increase)"; ditto ditto "changed to 50*s.* per week on pay day Friday, 1st June, 1962"; ditto ditto "changed to 45*s.* 6*d.* per week on pay day Friday, 7th June, 1963. R.G.B. handed in 3248 RO and collected new Morris 1100 de luxe 330 RAR on Friday, 31st May, 1963. Wage reduction changed to 58*s.* per week on Friday, 7th June, 1963; wage reduction changed to 53*s.* 6*d.* per week on Friday, 5th June, 1964."

Then there are certain things on exhibit D, but I do not think anything turns on D. It merely records the sale of the Austin on 27th June, 1963. I do not find anything much on exhibit D except that the words "Reduction (1st Yr.) (2nd Yr.) (3rd Yr.) (4th Yr.)" appear and seem to me consistent with the other documents in the Case.

Those being the facts, I can pass by the contentions, the cases which were referred to, and the reference to the statement by Rowlatt J. in *Machon* v. *McLoughlin* (1926) 11 T.C. 83, which I do not propose to refer to.

I come to para. 15, where the conclusions of the Special Commissioners appear:

> "On the facts of this case it seems to us that the wage is what it is said to be on the payslip dated 5th June 1964 (exhibit E), namely, the

A taxable gross wage, that is to say, the sum of the items 1 to 6, less item 8. On this basis we have to consider whether the use of the car is money's worth. We have to bear in mind the cases of *Tennant* v. *Smith*[1] 3 T.C. 158 and *Wilkins* v. *Rogerson*[2] 39 T.C. 344, the latter being the case of the suit from Montague Burton Ltd. Now here we think that the position is distinguishable from *Abbott* v. *Philbin*[3] 39 T.C. 82", which was the B case where an employee had an option to obtain shares. "The use of the company's car is not an option and we think that the question is whether the Respondent in having the use of the car has money's worth. From the memorandum of terms of service (exhibit B) the Respondent was not to permit anyone else but himself to drive or use the car except in an emergency. In these circumstances the use of the car is not in our C view money's worth. Accordingly, we hold that the appeal succeeds in principle, and, as the figures have been agreed between the parties, we reduce the 1963–64 assessment on the Respondent to £1,385."

That is the decision of the Special Commissioners.

The case came before Ungoed-Thomas J. and it is reported at [1968] 1 W.L.R. 263. As I have indicated, Ungoed-Thomas J. affirmed the decision D of the Commissioners on one point. He held that it was a reduction in reaching the assessable wage of the taxpayer and was not a deduction from his wage after it had been ascertained. That, I think, states shortly the effect of the question decided, and the effect of the Commissioners' and the learned Judge's decisions. I will read one paragraph from the learned Judge's judgment, at page 279[4]:

E "In particular the reference in the condition, originally mentioned in the letter introducing the scheme to the employees, to 'an amended wage basis' coming into operation, and the fact that, in the inter-party pay slip the only provision for payment was accordingly made by way of subtraction from wages without any provision for payment even in respect of a week when no wage was earned, seem to me, despite the F impressive considerations which have been urged on behalf of the Crown, to establish that the true view of this transaction is that there was one contract for payment of the wage less an amount to be calculated in arriving at that wage and not two contracts, one for the payment of the wage and an entirely separate contract for the deduction of an amount from that wage after it had been calculated."

G That seems to me to be a correct view. It seems to me that all the documents show, in the course of events between the parties, that there was an alteration from the wage structure when the taxpayer took advantage of the scheme and obtained the use of this car. That being so, the first question naturally must fall, I think, to be decided against the contention of the Crown, in that it is a reduction in the wage receivable by the taxpayer, and there- H fore was not to be taken into consideration as a part of his gross wages out of which he made a payment by way of deduction which then, in that case, forms part of his taxable wage.

But the second question, as it seems to me, gives considerably more trouble. Much of the relevant statutory provision applicable to the case is set out by the learned Judge, at page 279[4]:

I "Section 156, Income Tax Act, 1952, provides: 'Tax . . . shall be charged' under Case I, on 'emoluments for the year of assessment'; and

(1) [1892] A.C. 150. (2) [1961] Ch. 133. (3) [1961] A.C. 352. (4) *See* page 227 *ante*.

(Danckwerts L.J.)

the Finance Act, 1956, Schedule 2, paragraph 1, provides, inter alia: 'The expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever.' The contention put forward before me by the Crown was a contention which was put forward before the commissioners, in paragraph 13 (c): 'that . . . if the true wage was a net wage plus the use of the car, then the use of the car was money's worth because the taxpayer could surrender his rights under the contract and by this revert to his former wage and turn the benefit into pecuniary account.' The commissioners' observations were: 'From the memorandum of terms of service . . . the taxpayer was not to permit anyone else but himself to drive or use the car except in an emergency. In these circumstances the use of the car is not in our view money's worth.'"

Now I want to make a few observations with regard to that. If one considers the plain and strong terms by which the taxpayer had use of this car, he could not get money by selling it. He could not sell it, because in fact it was the property of the company which brought about the scheme, and which thereby got a capital allowance of some sort under the rules relating to tax; he could not let it out on hire. He could not make money in that way any more than there was any way in which he could pass the use of the car, or part with possession of the car at all. The point was made that he might perhaps undertake to drive people about the country, or something of that sort; but I think that on a proper construction of the terms on which the car was presented to him he was not entitled to do that. He should entirely use it for his own family purposes, and therefore it was not a case where the car was to be used for work purposes, or anything of that sort. He simply had the benefit of the use of the car; of course it might save him, it is quite true, some expenses such as bus fares perhaps and shoe leather and that sort of thing, but I do not think that was really the basis on which the value of the car could be based in money terms. Our trouble is really whether it was possible to assess the value to this employee of the opportunity to use the car.

I will read on, because the learned Judge accepted, I think, that contention, just recently raised on behalf of the Crown, and reached what seems to me a very odd conclusion. He said[1]:

> "That was not directed to the contention put forward by the Crown. The commissioners arrived at their conclusion, without dealing with the Crown's contention, on a basis which, as I understand it, was not put before them by the Crown, nor put before me by the Crown. The taxpayer whilst also accepting that, to be taxable, the perquisite must be money or money's worth convertible into money, puts his case in two ways. It is said, first, that the documents we are dealing with here, particularly the case, show that the employee was paid weekly, that the car could not be turned into money in any one week, and that, therefore, in any one week there was here no money's worth because the car loan could not be turned into money in that week. The short answer to that" —says the learned Judge—"is that the assessment is made upon 'emoluments . . . for the year of assessment.' The relevance of the perquisite is that it is contained in the definition of 'emoluments', so we are dealing with 'perquisites for the year of assessment'. Therefore, the taxpayer could, after 14 days' notice in the year, turn it into money, if it could be turned into money at all."

(1) *See* page 227 *ante*.

A The last observation, I think, is the one which is correct: it could not be turned into money at all. I think that the statement that it could be turned into money by terminating the use of the car is based, with due respect to the learned Judge, upon a complete fallacy. When you determine the use of the car you give up the car: you no longer have that perquisite of the car; you simply have not got the car any more. It passes out of the picture, B and what happens is that the wage which the taxpayer was originally entitled to will be based on the ordinary terms of service which will come from the company concerned. That does not seem to me to be converting the use of the car into money, but it is a parting with the car: he has the car no more, and, of course, he cannot pass any relevant consideration, as far as I can see. I find myself quite unable to accept that reasoning by the learned C Judge for the purposes of this case.

There was discussion in this case whether it might not be right to take into consideration that the value of the perquisite of the use of the car might be said to be money's worth in that it should be fixed by regard to the money which was paid by the employers. There was the case of *Wilkins* v. *Rogerson* [1961] Ch. 133; 39 T.C. 344, in which I was the Judge of first instance(1) D and I was affirmed by the Court of Appeal. It concerned a claim by which a particular company provided suits for their employees from Montague Burton Ltd., well known in that line. The suits which were provided cost the employers £14 15*s*., and the question was whether the employee was assessable on that sum of £14 15*s*. or not. The decision of myself and the Court of Appeal was: Not so; the amount of the benefit he got was its value if he E had turned the suit into money. It was apparently agreed or established that when he got the suit it would then become a secondhand suit and he could sell it for £5, and accordingly he was to be assessed upon that £5 figure, but not upon the price of £14 15*s*. Of course that case does not involve really the same sort of considerations as the present case at all, because, not being able to sell or hire out or do anything else in any other way with the F car, you could not get any figure approaching or in any way relating to the amount that it cost. In the course of argument when the case came before me I said this:

> "Well, possibly, if you could not find any other standard, the amount of the value of the perquisite which the employee had must be judged by the amount which has been spent on it by his employers."

G That was rather echoed, I think, in the Court of Appeal by Lord Evershed M.R.

Then there was another case which has been discussed, *Nicoll* v. *Austin* (1935) 19 T.C. 531, in which the managing director of a company was occupying a house with amenities such as a very good garden and so on. It was the intention of his company that he should live there; he found it H expensive to keep up, and the company, regarding it as a matter of prestige that he, the managing director, should occupy that house and garden, agreed to reimburse him for the money he had to spend in keeping it up in that way. I think the true situation was put by Donovan L.J. in *Wilkins* v. *Rogerson*(2) [1961] Ch. 133, at pages 146–7, where he pointed out that the proper method of calculating the taxable amount in *Nicoll* v. *Austin* was not on the amount I which was paid by the employers but the amount of the liabilities of the managing director which was reimbursed by the company of which he was managing director.

---

(1) [1960] Ch. 437. (2) 39 T.C. 344, at p. 354.

(Danckwerts L.J.)

Be that as it may, it would be very difficult to evaluate what was the money's worth, if any, of the car to the employee in the present case if that standard was to be applied. It seems to me in the first place quite clear that it was not the amount which the employee was charged with. It must be the payments which were made for the benefit of the employee by the company. That would not be the capital amount which would be spent on the perquisite in question, but it could possibly be interest on that sum ; it would no doubt be the payments for insurance and road tax, and decarbonising, and perhaps interest on the capital expenditure by the company. That would be not only difficult to assess but it seems to me it would also mean that the case would have to be remitted to the Special Commissioners to find the amount.

But in the end a case was mentioned by Salmon L.J. which, it seems to me at any rate, renders that mode of assessing the value not admissible for the purposes of this case. That is *Abbott* v. *Philbin* 39 T.C. 82 (H.L.), and I would refer to this passage in the speech of Lord Radcliffe, at page 124:

> " The difficulty in dealing with this point lies wholly in relating words used by several members of the House in *Tennant* v. *Smith*[1] apparently of general import, to circumstances that they were not dealing with. The benefit of a right of occupation of part of bank premises which the occupier could only enjoy for the service of the bank is not very like the benefit of an option to take up freely transferable shares at a fixed price. The basis of the Crown's claim in *Tennant* v. *Smith* was really to tax the bank manager on expenditure which he was saved, not on any money that he got, or could get, while tax on the full annual value of the premises was taken from the bank itself. It was not, however, the view of the House that profits or perquisites, to be taxable, could consist only of money paid. It was accepted that they could include objects or things of value received, payments in kind, so long as they were —' capable of being turned into money ' [Lord Halsbury, L.C.] . . . ' money—or that which can be turned to pecuniary account ' [Lord Watson], . . . ' money payment or payments convertible into money ' [Lord Macnaghten], . . . ' That which could be converted into money ' [Lord Hannen]. I think that it has been generally assumed that this decision does impose a limitation upon the taxability of benefits in kind which are of a personal nature, in that it is not enough to say that they have a value to which there can be assigned a monetary equivalent. If they are by their nature incapable of being turned into money by the recipient they are not taxable, even though they are in any ordinary sense of the word of value to him. It is obvious that this conception raises many attendant uncertainties which are not, so far as I know, cleared up except where some particular class of benefit in kind has offended the eye of the Legislature and has been dealt with by special legislation. Must the inconvertibility arise from the nature of the thing itself, or can it be imposed merely by contractual stipulation? Does it matter that the circumstances are such that conversion into money is a practical, though not a theoretical, impossibility ; or, on the other hand, that conversion, though forbidden, is the most probable assumption? I do not think that the decision of this case can go very far, if any distance, to clear up such points as these. I think that the Crown are right in saying that a line has to be drawn somewhere between convertible and non-convertible benefits and that somehow we have to put a general meaning on the not very

(1) 3 T.C. 158.

A precise language used in *Tennant* v. *Smith.* What I do not think, however, is that a non-assignable option to take up freely assignable shares lies on that side of the line which contains untaxable benefits in kind."

I should say that the other Law Lords in the case which I have just been citing took very much the same view as Lord Radcliffe.

B That seems to me to dispose of the second point in this case. I find it impossible to say that the benefits obtained from the use of this car can be turned into money, and that they can be evaluated. In those circumstances they fall on the other side of the line referred to by Lord Radcliffe, and they are not taxable. It seems to me that the Special Commissioners reached the right conclusion on this point as well as on the first point, and that the learned C Judge, I am afraid, was wrong in his decision in reversing that determination.

It seems to me that the appeal succeeds on the second point. The first point was rightly decided both by the Special Commissioners and the learned Judge, but on the second point the learned Judge was wrong, and the appeal must be allowed in favour of the taxpayer on that point.

Salmon L.J.—I agree, and add only a few words since we are differing D from the learned Judge. The first point seems to me to come to this: was the taxpayer's remuneration £X a week, from which the employers retained £Y in respect of the use of the car which they put at his disposal, or was the taxpayer's remuneration £X minus £Y a week, plus the use of the car? In other words, did the element in respect of the use of the car constitute a deduction from, or a reduction in, his wages? If it was a deduction from E his wages it is undoubtedly taxable.

I agree with my Lord that on the documents there is an inescapable inference that the £Y to which I have referred was in truth a reduction in his wages. When the letter was written by the managing director in 1954 to all the employees, including the present taxpayer, offering them participation in the scheme to which my Lord has referred, it made it quite plain that it was F a condition of the scheme that if the employee joined his wages would be varied. The words of the circular letter were: "An amended wage basis will come into operation if the application is accepted." The taxpayer did apply to join the scheme, by the notice which he served some seven years later, on 10th February 1961. Presumably he was then agreeing to an amended wage basis. It is permissible to observe, although I do not think much G importance can be attached to it, that in the employers' internal documents what I call the £Y element is in every document referred to as a reduction in wages. But what is more important than the internal documents is the payslip for 5th June 1964, which we have seen, and which I think it is fair to assume is a typical sample of the payslips the taxpayer received week by week after he joined the scheme. This shows elements of remuneration in the H first seven items, which add up in this particular week to £33 9*s.* 2*d.*, but that figure is reduced by the £Y element, which in this week was £2 13*s.* 6*d.*, so that the taxable gross wage is shown as the difference between the two. Then there are shown "Standard Deductions", "Graduated Pension Contribution" and "P.A.Y.E." and the net wage was £26 8*s.* Week after week this man accepted payslips in that form, having signed an application to join the scheme I which involved his wage basis being reassessed. I think it is quite impossible, in those circumstances, to decide the first point in any other way than that in which it was decided by the Commissioners and the learned Judge.

(Salmon L.J.)

The next point that arises is this: is the element of the taxpayer's remuneration which consists of the use of the car taxable? That depends upon whether it was a "perquisite" within the meaning of that word in Schedule 2 to the Finance Act 1956. I should have thought, applying common sense (which is perhaps an uncertain guide in this branch of the law), that it was clearly a perquisite. There is no doubt but that it was money's worth. It has been argued, however, that it is only a perquisite within the meaning of the Act if it is not only money's worth but also something which is convertible into money. I am bound to say that this to me is a strange concept which may lead to strange results. I can imagine a case where an employer might pay a man a very small money wage, or indeed no remuneration in money, but supply him with a house and a motor car, clothes, food and drink, perhaps, to a value of approaching £2,000 a year, and write into into the contract of employment a clause that the man should not sell or turn any of these things into money, which probably in any event he would not intend to do. It would seem that in those circumstances he would be in the fortunate position of not having to pay income tax.

The doctrine that no form of remuneration is taxable unless it is something which is money or money's worth and convertible into money stems from the case of *Tennant* v. *Smith*[1] which was decided in the House of Lords as long ago as 1892. There are dicta in the speeches of the distinguished members of the House in that case which clearly lay down the doctrine. *Tennant* v. *Smith,* however, is quite obviously distinguishable from cases such as the present. The bank manager in that case did not occupy the house at the bank as any part of his remuneration. He was required to live in the house as part of his terms of service; all that he gained from this was the incidental benefit that it may have saved him some rent.

I confess that I tried hard at one stage of this appeal to find some way of adhering to what seemed to me to be reality, and holding that the use of the car was a perquisite which was certainly money's worth, and ought to be taxed, although it was not convertible into money. It is quite obvious, however, from what was said by the House of Lords in 1959 in *Abbott* v. *Philbin*[2] that such a finding is impossible. However distinguishable *Tennant* v. *Smith* may be from cases such as the present, *Abbott* v. *Philbin* makes it plain that it has for years been recognised that the principles laid down in *Tennant* v. *Smith* are of general application, and, in particular, that they do apply to cases such as the one which we are now considering. It is certainly far too late for the Court of Appeal, at any rate, to do anything about it.

Since, therefore, what I have called the £Y element is not taxable unless it is convertible into money, the third point is: is the Judge's finding that it is convertible into money supportable? He took the view that this use of the car was convertible into money, because the taxpayer could give up the use of the car on 14 days' notice. Strangely, in my view, he thought that this perquisite should be taxable only for 50 weeks of the year but not for 52 weeks of the year, because of the 14 days' notice. This is an approach which I am bound to say I am quite unable to understand, but since no one has sought to support it in this Court, I need not deal with it.

At one stage I was in no way troubled by this point that the use of the car was convertible into money. It seemed to me that it was plainly wrong, and then learned Counsel for the Crown did put a doubt in my mind, but I

(1) 3 T.C. 158. (2) 39 T.C. 82.

A come back to my original view, with some reluctance. I do not think it is possible to say that this taxpayer could have converted the use of the car into money. He had the use of the car and he could give it up. He did not receive anything but the use of the car. If he gave up the use of the car it is true to say that there would have been another variation in his contract of employment and his weekly remuneration in money would have gone up by B £Y. I cannot, however, agree that in any true sense of the word he could convert the use of the car into money, and therefore I concur in allowing the appeal.

Fenton Atkinson L.J.—I would only add a word or two on the questions arising from this case. The first question, as I see it, is this: is this a case where Mr. Bell's wage was reduced by agreement, as he contends, or is it a C case where Mr. Bell was applying a part of his gross wage in a particular way, as the Crown say? In my view there is the clearest evidence to support the view of the Special Commissioners and the learned Judge that this was the case of a reduction of the gross wage by agreement, and I have nothing to add on that point to what my Lords have said.

The second question is whether the use of the car was a perquisite within D paragraph 1 of Schedule 2 to the Finance Act 1956. On this question I agree with the view of the Special Commissioners and am unable to accept the learned Judge's view. I reach that conclusion the more readily as it seemed to me that Mr. Desmond Miller in this Court scarcely sought to support the judgment of the Court below. The perquisite which the Crown contends must be treated as a part of the emoluments, as I see it, is the use of the car for so E long as the taxpayer enjoyed that use.

Apart from authority, I myself would be led astray into thinking that the use of the car represented money's worth to the user. He at least reckoned that it was worth either £2 10*s.* or £2 15*s.* a week. But the authorities establish beyond all argument that for a perquisite to become taxable it must be money's worth in the sense that it may be converted into money, and on F the terms of the agreement between the employers and Mr. Bell it is quite clear—and both sides agree—that the use of this car could not in any way be converted into money. For myself, I cannot see that the fact that Mr. Bell could terminate his agreement for the use of the car, and thereafter enter into a fresh agreement for a higher wage, is relevant in deciding whether the use of the car was convertible into money. As to the main argument that G Mr. Desmond Miller addressed to us on this second point, it seemed to me that he was really repeating the argument that Mr. Hilary Magnus advanced to the Court of Appeal in *Wilkins* v. *Rogerson*[1], according to Lord Evershed M.R.'s note of the argument:

> "I say that where the employee accepts an offer from his employer to spend money on his behalf, then he is chargeable on the money spent, H and not on the value of the thing bought for him."

That argument was expressly rejected by the Court of Appeal in that case.

I agree this appeal must be allowed on the second point.

Graham Q.C.—My Lords, I ask that the appeal be allowed with costs here and below.

Danckwerts L.J.—I think that is right, is it not?

(1) 39 T.C. 344, at p. 352.

Miller Q.C.—My Lord, may I ask your Lordships for leave to appeal to the House of Lords, if my clients should be so advised on consideration of your Lordships' judgments?

Danckwerts L.J.—No, Mr. Miller. We feel that the House of Lords have already decided the matter of principle, and we think that if you want to go to the House of Lords you will have to ask the Appeal Committee.

Miller Q.C.—I am much obliged, my Lord.

The Crown having been granted leave by the Appeal Committee of the House of Lords to appeal against the above decision, the case came before the House of Lords (Lords Reid, Morris of Borth-y-Gest, Hodson, Upjohn and Diplock) on 3rd, 4th and 5th February 1969, when judgment was reserved. On 12th March 1969 judgment was given unanimously in favour of the Crown.

(1)*Desmond Miller Q.C., J. Raymond Phillips Q.C.* and *Patrick Medd* for the Crown. The ultimate question for determination in this appeal is what were the emoluments of the Respondent from his employment with John Waddington Ltd. for the year 1963–64? The charge to tax under Schedule E falls on emoluments, which, by definition, include perquisites.

On the Crown's view the car that the Respondent received from his employers is a perquisite chargeable under Schedule E. If that be wrong, and the true legal position is that in 1961 there was a variation in the original contract of employment entered into between the Respondent and his employers in 1948 so that there has always been in existence only one contract between the parties, then by the variation in 1961 there were four main terms imported into it: (i) the employee to receive wages from which his employers retained by way of deduction the stated sum for the weekly hire of the car; (ii) the employee could hire the motor car of his choice from among the models available; (iii) the employee to have the right reserved to him to increase his wages to the basic level on giving 14 days' notice; (iv) if the employee exercised the right under (iii) the car was to be returned to the company. It follows that on the true interpretation of the agreement the emoluments of the Respondent chargeable under Schedule E were the gross value of his wages before deduction of any sum in respect of his right to participate in the car loan scheme.

In the alternative, in any event, if there was a varied contract, that varied contract as a whole with its terms and conditions was the perquisite, and this could always be turned into money by the Respondent reverting to his old terms of employment.

The Court of Appeal held that throughout there was no variation of the Respondent's basic wage structure, but that is wrong, for from 1961 onwards there was a deduction from the Respondent's wages in respect of the same amount of work as he had done before that date. Further, the Court of Appeal was wrong in holding that the perquisite was the use of the car.

(1) Argument reported by J. A. Griffiths, Esq., Barrister-at-Law.

A As to the definition of "perquisite," see the Shorter Oxford English Dictionary: "1 *Law.* Property acquired otherwise than by inheritance . . . 3. [the one applicable here] Any casual emolument in addition to salary or wages". The definition of "emolument" is: "Profit or gain from station, office or employment . . ."

The judgments of the Court of Appeal seem to proceed on the footing B that the *dicta* of this House in *Tennant* v. *Smith* 3 T.C. 158; [1892] A.C. 150 in respect of what constitutes a perquisite were absolute. It is therefore necessary to examine that case to ascertain what was material to the actual decision there. A bank manager as part of his duties acted as a "night watchman" of the bank premises. The House indicated clearly that it took the view that the bank manager had a representative occupation and as a C representative of the occupier he could not be chargeable in respect of Schedule A tax—the only person who could be was the employer. *Lady Miller* v. *Commissioners of Inland Revenue* 15 T.C. 25; [1930] A.C. 222 contains an authoritative exposition of the scope of *Tennant* v. *Smith,* most of the observations in which were purely *obiter.*

Abbott v. *Philbin* 39 T.C. 82; [1961] A.C. 352 was principally cited by D the Court of Appeal for the observations of Lord Radcliffe, but the Crown relies upon it for the proposition that the House there paid attention to the totality of the contract as being the perquisite in question.

If the perquisite is capable of being turned to pecuniary account it is assessable under Schedule E. Suppose that Waddingtons had informed the Respondent that he was at liberty to fill up his car with petrol at the E company's pump whenever he chose or that he was to send his petrol bills monthly to the company's secretary for payment, on the authorities as they stand, these two situations would have different fiscal results. Contrast *Wilkins* v. *Rogerson* 39 T.C. 344; [1961] Ch. 133 with *Nicoll* v. *Austin* (1935) 19 T.C. 531 and *Hartland* v. *Diggines* 10 T.C. 247; [1926] A.C. 289.

As to the effect of the arrangement between the company and the Res- F pondent, see *Smyth* v. *Stretton* (1904) 5 T.C. 36, where Channell J. said, at page 42:

> ". . . you must look at the substance of it and not the words . . ." Thus, ". . . a sum receivable by way of salary or wages is not the less salary or wages taxable because for some reason or another the person who receives it has not got the full right to apply it just as he likes."

G The Special Commissioners placed reliance on some observations of Rowlatt J. in *Machon* v. *McLoughlin* (1926) 11 T.C. 83, 90, but the words used by the parties in the memorandum of terms of service do not assist the Respondent here.

In *Ede* v. *Wilson* (1945) 26 T.C. 381 there was a tie on the disposition of shares which the respondents had the privilege of subscribing for at their H par value; nevertheless it was held that the shares were assessable under Schedule E since they were capable of being turned into money—the shares had value. In ascertaining the value, however, one cannot take into account the personal attributes of the person who takes the benefit, that is, the test is objective, not subjective. The instances given by Wrottesley J. in *Ede* v. *Wilson* are therefore wrong.

I The valuation of a perquisite is a task for a tribunal of fact. In the present case doubtless the proper value is the value in the market of hiring

a car of this nature. But the Revenue here did not choose to require evidence of the cost in the open market but were content to take the Respondent's own estimate of the value to him of the perquisite.

Reference was also made to *Cordy* v. *Gordon* 9 T.C. 304 ; [1925] 2 K.B. 276.

J. Raymond Phillips Q.C. following. As to the question of perquisite, it is necessary to distinguish between two quite separate issues: (1) whether there is a perquisite ; (2) if there is a perquisite what is its value if it is not cash.

The decision in *Wilkins* v. *Rogerson* 39 T.C. 344 was wrong. The Crown should have argued there : (1) the test in *Tennant* v. *Smith* 3 T.C. 158 of convertibility is not of universal application ; (2) the value of the perquisite is the money value that can be put upon it. The test is : what is the perquisite worth in the taxpayer's hands?

It would not be right to regard the tests laid down in *Tennant* v. *Smith* as a substitute for the words in the Statute, which the cases subsequent to that decision on this topic show has happened hitherto. Reliance is placed on the following propositions :

(1) The test of whether the profit can be turned to pecuniary account is wrong as a test of a perquisite if it is intended to be of universal application. It does not cover *Hartland* v. *Diggines* 10 T.C. 247, *Nicoll* v. *Austin* 19 T.C. 531 or *Ede* v. *Wilson* 26 T.C. 381. Indeed, if it is a universal test then *Nicoll* v. *Austin* was wrongly decided. (2) Either there is no test of general application and one turns to see what is the sensible solution in any given case ; or (3) the test is whether it is reasonably possible to put a monetary value on the benefit which the employee has received. If it is so possible then it is a perquisite. It is the monetary value to the taxpayer, and not its realisable value, that is material.

George Graham Q.C. and *T. H. Walton* for the taxpayer. The first question for determination is the nature of the arrangement reached between the employers and the Respondent. Was it an agreement that he should be entitled to the same wage as previously but the company was entitled to retain part of it for the hire of a car, or was it to be reduced because of a benefit in kind thrown in? If the House come to a conclusion contrary to that of the Special Commissioners, Ungoed-Thomas J. and the Court of Appeal that is an end of this case.

All the difficulties on this part of the case arise from the failure of the company and its employees to make plain the nature of the arrangement between them. It is first necessary to consider the offer that was made. The " wage basis " does not necessarily mean the basic wage. The offer does not pretend to compute the total amount of an employee's remuneration. Conditions 6 and 9 of the document headed " Waddington's Craftsmen's Car Loan Service " are wholly inconsistent with the arrangement resulting in a deduction from, rather than a reduction in, an employee's wage.

If the true agreement had been that the Respondent was entitled to the same wage as previously but that he had agreed that £2 13*s.* 6*d.* was to be deducted, then this sum should have been deducted after ascertainment of the net wage. It should have appeared on the payslip below the entries for " Standard deductions, Graduated pension contribution, P.A.Y.E." Here there was a reduction in wages, and the payslip indicates that this was the arrangement. The present case is precisely analogous to that where an

A employer says to one of his young employees, "As you are going on holiday I will give you £25 or, alternatively, you can have my car for that fortnight." There is no element of hire in such an offer. So here, the company reduce the Respondent's wage by £2 13*s.* 6*d.* and loan him a car.

If the Courts below were correct in their answer to the first question, then the second question is whether a charge to income tax can be imposed B on the benefit in kind which the Respondent enjoyed.

As to the principles to be applied, so far as *Tennant* v. *Smith* 3 T.C. 158 is concerned, what was there stated to the effect that a perquisite can be charged with tax only to the extent that it can be turned into money is part of the ratio decidendi and not obiter dicta. These statements were approved by four members of this House in *Abbott* v. *Philbin* 39 T.C. 82, and binding C authority or not they ought to be adopted or followed on their merits, for in *Tennant* v. *Smith* it was realised that if any wider test be adopted it would lead the law into a morass.

It is to be observed that *Tennant* v. *Smith* could have been decided on the narrow ground that the agent of the bank was required to live in the bank house as part of his duties, but the House chose to decide the matter D on the wider ground that the privilege of free residence was not a "perquisite or profit" within Schedule E since that expression was confined to benefits which are capable of being turned into money, nor was it an emolument under Schedule D. Where the House has chosen to rest its decision on a broad ground, that ground is established notwithstanding that the same conclusion might have been reached on a narrower ground.

E Reference is made in some of the speeches to the word "payable". The history of this word in respect of Schedule E is curious. It is to be found for present purposes in r. 4 of the Rules applicable to Schedule E in the Income Tax Act 1842. That rule remained unaltered until the Income Tax Act 1918, which was expressed to be a consolidating Act. But r. 4 of the Rules applicable to Schedule E in that Act, in reproducing r. 4 of Schedule E F of the earlier Act, omits the phrase "payable either by the Crown or the subject". By Sch. 3 to the Finance Act 1922, r. 4 of the rules applicable to Schedule E in the Act of 1918 was expressly repealed. Insofar as the decision in *Tennant* v. *Smith* 3 T.C. 158 is based on the word "payable", it would be surprising if the general principle there laid down should be overturned either because of the omission of the above-cited phrase in a con- G solidating Act or because of the repeal of the rule containing that omission itself.

The primary meaning of "perquisite" is a money perquisite and nothing more, but this House in *Tennant* v. *Smith*, having extended its meaning to include that which can be turned into money, was very wise to state that that was the extent of its ambit, for any extension of the concept H of a perquisite beyond that which is a vehicle of putting money into the taxpayer's pocket cannot be valued.

It is pertinent to observe that the valuations, which may be difficult to make, required under s. 7(5) of the Finance Act 1894 for estate duty purposes are perfectly logical and consonant with the principle of *Tennant* v. *Smith*. It is true that provision was made by s. 23 of the Income Tax Act 1842 for the I appointment of Special Commissioners for the purposes of the Income Tax Acts, but if Parliament had envisaged that a perquisite should be valued one would have expected Parliament to have given guidance in respect thereof as was done in relation to valuations for estate duty under s. 7(5) of the Finance Act 1894.

Doubtless a luncheon voucher marked " three shillings " would fetch say 2*s*. 9*d*. in the open market, but suppose a business house has a canteen it is plain that an employee could not nominate a friend to have lunch in his place, and therefore how can the lunch be valued if an employee prefers to bring sandwiches? A

As to *Wilkins* v. *Rogerson* 39 T.C. 344, the taxpayer is taxed on what he receives. If the taxpayer does not want the new suit and does not accept it he is not taxable at all in respect of it. This shows that the contention that the taxpayer is assessed on the *right* to receive the perquisite is wrong. To revert to the lunch illustration, suppose a firm offers a salary plus 5*s*. a day for food or the right to lunch in the firm's canteen on giving 14 days' notice. If an employee accepts the canteen offer and subsequently adopts the salary plus 5*s*. a day scheme, the employee is not assessable in respect of the canteen offer because he cannot turn the perquisite into money but only into the consumption of food. B C

Wilkins v. *Rogerson* was correctly decided on the correct basis, namely, that the perquisite was the suit in so far as it could be turned into money, that is, sold as a second-hand suit. If the Court of Appeal were wrong and the perquisite was the *offer* or *right* to receive a suit from Montague Burton, then for the Crown to have succeeded there the offer should have been in the form, " You the employee or anyone you nominate can obtain a suit ", for that is a taxable perquisite because the right can be sold. But if the offer is, " You the employee and you alone can obtain a suit ", then if the perquisite is the offer there is nothing to be assessed for the right cannot be sold. D E

Ede v. *Wilson* 26 T.C. 381 is precisely the case that *Wilkins* v. *Rogerson* would have been if the facts in the latter case had been that the suit was given on condition that it was not to be sold for a year after receipt. Despite the condition the suit is saleable at once, as were the shares in *Ede* v. *Wilson,* albeit the sale might lead to the employee's dismissal.

As to *Hartland* v. *Diggines* 10 T.C. 247, it is not an exception to the principle of *Tennant* v. *Smith* 3 T.C. 158. There, there was a money payment—a profit—rather than a perquisite. The payment of a debt is a profit. It is plainly distinguishable from the present case. F

In *Abbott* v. *Philbin* 39 T.C. 82 there is nothing which casts any doubt on the essential principle established by *Tennant* v. *Smith.*

Nicoll v. *Austin* 19 T.C. 531 is akin to *Hartland* v. *Diggines.* In both these cases the benefit was the discharge of a liability resting on the employee. G

The Crown have contended that the benefit here was the entirety of the contract. That cannot be so. The contract of employment cannot itself be the salary, wages, perquisite or profit ; it is but the source of the same. The question is: what is the relevant benefit, perquisite or profit that was provided by the contract that was supplemental to the taxpayer's contract of employment? H

The benefit is described in a document misleadingly entitled " Memorandum of terms of service ", which is in fact a memorandum of the terms on which the car may be used. The memorandum gave the employee a restricted use for an unlimited period until terminated by 14 days' notice. The bargain was that until either party gave to the other 14 days' notice the Respondent was to receive a lesser wage and use of the car, but after the expiration of the period of notice the Respondent was entitled to a higher wage. I

If the Respondent gives up his use of the car he is not turning the benefit into money, for he has had the benefit by enjoying the use of the car. By returning the car the benefit thereupon ceases. His higher wage will be taxed as usual under the P.A.Y.E. system. The extra wages that he thereby receives are received in exchange for the *future* benefits he *would* have received from the use of the car.

Desmond Miller Q.C. replied.

Lord Reid—My Lords, the question of general importance in this case relates to the proper method of taxing perquisites. The Respondent is a craftsman. His employers introduced a scheme under which they provided private cars for certain classes of their employees at moderate cost to them. A man who took advantage of the scheme, which was optional, could use the car to travel to and from his work, but he was under no obligation to do so ; and he could use the car otherwise in any way he chose provided that he drove it himself. We are not concerned with the effect of this scheme on the tax position of the employers. The Respondent is assessed to income tax under Schedule E, and the question which the Special Commissioners had to determine was whether sums of £2 10*s.* per week, and later of £2 18*s.* per week, " being the amount of car loan scheme adjustments ", were correctly included in computing the amount of his emoluments. The Commissioners held that " the use of the car is not in our view money's worth " and that therefore these sums were not part of the Respondent's emoluments. Their decision was reversed by Ungoed-Thomas J. but restored by the Court of Appeal.

The first question to be decided is the true construction of the agreement made between the Respondent and his employers when he came into the scheme. This agreement is not embodied in any document, and its terms must be inferred from what the parties said and did. The Crown says that there was no variation of the existing wage, and that the Respondent merely authorised his employers to deduct from that wage the weekly sum which he had to pay them for the use of the car which they provided. If that is right then no question as to perquisites arises. It is well settled that a taxpayer's liability to tax on his emoluments is not diminished by the fact that he has authorised his employer to make a deduction from his wages or salary before paying it to him and to apply the part deducted in an agreed manner. What he chooses to do with the wage or salary to which he is entitled is of no moment. But the Respondent says that that is not what the parties agreed. He says that he agreed to accept a reduced wage and that, as a counterpart, his employers agreed to give him the use of a car. If that is right then he became entitled to two things: first, the reduced wage, and, secondly, the use of the car. Then the question arises whether the use of the car was a perquisite within the meaning of the Income Tax Acts so that he had to pay tax in respect of it. All the learned Judges in the Courts below have held that this was what was agreed. But they differed as to whether the right to use the car was a taxable perquisite ; Ungoed-Thomas J. held that it was, but the Court of Appeal held that it was not.

The only documents we have which were made before the agreement are a letter from the managing director setting out the conditions of the scheme, an application by the Respondent to join the scheme, dated 10th February 1961, and a so-called " Memorandum of Terms of Service " signed by the Respondent on 3rd March 1961. On or about that date the Respondent

(Lord Reid)

selected an Austin A40 De Luxe car and it was handed over to him on 30th May 1961. The employers' cashier was then told to make "the necessary weekly wage reduction", and when the Respondent received his next weekly wage, on 2nd June, this was incorporated in the pay slip which he then signed. We do not have that pay slip, but another of 5th June 1964 is admittedly in the same form and in my view that clearly shows that both parties were proceeding on the assumption that their agreement was in the form for which the Respondent now contends. His former wage had been made up of a number of elements, including flat rate, overtime and bonuses. That was his taxable wage, and in order to reach the net wage which he received in cash it was necessary to deduct various items including P.A.Y.E. tax. If the Crown is right, the taxable wage remained the same after the Respondent came into the scheme, and the payment for the use of the car should have appeared as one of the deductions made from it. But if the Respondent is right and he agreed to forgo a part of his old wage and accept a smaller wage, then the sum which he agreed to forgo was an element in calculating the new wage and must be taken into account in calculating what was now his gross or taxable wage. The pay slip shows that this is what was done. For the week in question the amount which he had agreed to forgo in respect of his right to use the car was taken into account before reaching the taxable gross wage. If the parties had thought that the agreement meant what the Crown now says it means, the taxable gross wage would have been larger and the deduction for P.A.Y.E. would therefore also have been larger. And all the other evidence corroborates the fact that throughout the parties acted on the assumption that the agreement regarding the use of the car was in the form for which the Respondent now contends.

One might think that, where an agreement is not in writing but has to be spelled out of facts and circumstances, it ought to be relevant to take into account the actions of the parties after the date of the agreement. But I shall accept the view that as yet that is not the law, for in this case a consideration of what occurred before the date of the agreement leads me to the same conclusion. The most important indication of what was intended was condition 6 appended to the managing director's offer: "an amended wage basis will come into operation if the application is accepted". I do not see how this can be reconciled with the Crown's contention that under the agreement made by the acceptance of the Respondent's application the wage was to remain exactly the same. If the agreement was that there should be an "amended wage basis", then it seems to me that an amendment of the wage basis must result in a different wage, for the "wage basis" must mean the basis on which the amount of the wage was calculated. The only other documents are the application form, which throws no light on the matter, and the "Memorandum of Terms of Service". It is true that the contents of this document do not assist, but, if the Crown is right and the agreement as to the use of the car had nothing to do with the terms of service, I find it difficult to account for this heading. It seems to me to be an indication that before the agreement was made the parties thought that it would affect the terms of service. And there is one other matter to be considered. Normally, if the employee agrees that the employer is to deduct part of his wage and apply it in an agreed way, that means that the employer will pay the part deducted to some third person or into some fund. But here, if this was an agreement to deduct part of the Respondent's wage, the employer simply put the part deducted back into his own pocket. It seems to me a very artificial

A conception that the employer first puts the wage on the table and then simply takes part of it back again. It is a much more natural interpretation to say that the parties agreed that the employer should pay a smaller wage. I am therefore of opinion that in this matter the Court of Appeal were right.

If that is right then after the agreement was made the Respondent was entitled to two things, the reduced wage and the right to use the car. It is B then necessary to consider whether that right was taxable. If it was, it could only be because it was a "perquisite" within the meaning of the Income Tax Acts. Perquisites have been taxable at least since the Income Tax Act 1842, and it is necessary to examine the legislation to see what is meant by a "perquisite". I shall examine the Income Tax Act 1918, where the relevant provisions were in substantially the same form as in the 1842 Act, because C since 1918 there have been two alterations, neither of which can possibly have been intended to introduce a fundamental change of the meaning of "perquisite". One was a repeal in 1922 consequent on the abolition of the three years average, and the other was an alteration of phraseology made in the 1952 consolidation.

Schedule E of the 1918 Act provided that tax should be charged in certain D matters "for every twenty shillings of the annual amount thereof", and one goes to the Rules applicable to Schedule E for particulars. Rule 1 provides for tax under this Schedule "in respect of all salaries, fees, wages, perquisites or profits. . . ." "Perquisites" is not defined, but Rule 4 provides:

> "(1) Perquisites may be estimated either on the profits of the preceding year or on the average for one year of the amount of the profits E thereof in the three preceding years. . . . (3) Perquisites shall be deemed to be such profits as arise in the course of exercising an office or employment from fees or other emoluments."

Income tax is a tax on income and income means money income. The words "profits" and "gains" are used throughout the legislation in reference to sums of money. And the passage which I have quoted appears to me to F indicate that "perquisites" here must mean money perquisites, if "profits" means money profits. There is no provision for the valuation in money of other kinds of advantages which one might call perquisites. In 1842 income tax was at the rate of a few pence in the pound, "fringe benefits" were unknown, for there was no incentive to create them, and it appears to me to be clear that there was no intention to saddle the Commissioners with the G difficult and at that time unprofitable task of putting a money value on advantages arising out of the employment which did not sound in money. But the division between money and that which can readily be used to produce money is thin. A cheque is not money, but it would be absurd to suppose that payment by cheque instead of in legal tender could make any difference. And it would be almost equally absurd to suppose that a H transfer of shares, which can immediately be sold to produce money, should not be regarded as a money perquisite. This was recognised in the leading case of *Tennant* v. *Smith* 3 T.C. 158; [1892] A.C. 150. Lord Halsbury L.C., having said that the Act refers to money payments, used the phrase "capable of being turned into money"(1). Lord Watson referred to things a person "can dispose of to his advantage"(2) and further referred to "money or that I which can be turned to pecuniary account". Lord Macnaghten referred to "money payments or payments convertible into money"(3); and he pointed

(1) 3 T.C., at p. 164. (2) *Ibid.*, at p. 167. (3) *Ibid.*, at p. 170.

(Lord Reid)

out that the tax is " on what comes in—on actual receipts . . . not on what saves his pocket but on what goes into his pocket "[1]. The Crown says all this was *obiter,* and possibly it was. But its authority has been recognised for three quarters of a century ; it was recognised by this House in *Abbott* v. *Philbin*[2] 39 T.C. 82 ; and even if I had doubts about it, which I have not, I would think it must stand.

The Crown argues that " perquisites " has a meaning wider than money perquisites, and that tax is assessable on the value of the perquisite and not merely on the money which the recipient could get by dealing with it. " Value " is an elusive word: it may mean market value, it may mean value in money to the owner, or it may have other meanings like the value of the work necessary to produce it, or even sentimental value. No one suggests that here it means sentimental value, and I do not think that the Crown argued that it means cost of production—for that may have no relation to the present value of the thing or right to anybody. And the Crown rightly declined to argue that it means value to the owner, for that was expressly disapproved in *Tennant's* case[3] and would often be almost impossible to assess. I think that in the end counsel argued for market value. If the recipient of the perquisite could immediately sell or assign it, that is the same thing as the money equivalent approved in *Tennant's* case. But what if he could not? A good example is to be found in *Wilkins* v. *Rogerson* 39 T.C. 344 ; [1961] Ch. 133. There the perquisite was the right to get a suit of clothes without payment from a particular tailor—or it may have been the suit of clothes itself. The recipient could not sell or assign the right to get the suit: if he had been entitled to do that, the money equivalent would have been almost as much as the tailor's price. But he could sell the suit once he got it: but then it would only have a secondhand value, in that case about a third of the tailor's price. The Court of Appeal held that he could not be assessed to tax on the tailor's price, or on the value of the suit to him, but only on the secondhand value. The Crown argued that that case was wrongly decided. In my opinion the decision was right.

As I understood it, the argument with regard to the present case was that we should value the right to use the car on the untrue assumption that the Respondent could assign his right to use the car to the highest bidder, and that if he did so the employers would not exercise their right to terminate this right on 14 days' notice ; but, as there was no evidence as to what anyone else would pay for the right, we should take the weekly sum which the Respondent was willing to forgo in wages as the best evidence of market value. I have no hesitation in rejecting that argument. Not only is it inconsistent with what I hold to be the true meaning of the Act and with the whole course of authority, but it could lead to most unfair results. Any right or property has different values for different people: if put up to auction, many people bid at first but one by one they drop out when the bids of others go beyond its value to them, and the highest bid, the market value, is the value to one alone of all the bidders. Why should a man who finds it only just worth while to accept an unassignable perquisite on favourable terms be taxed on something far above its value to him or what he would have been willing to pay for it? Parliament may see fit to make such an enactment in special cases, as it did in Part VI of the Income Tax Act 1952, but I am satisfied that that is not the meaning of the general provisions with regard to perquisites.

(1) 3 T.C. at p. 171. (2) [1961] A.C. 352. (3) 3 T.C. 158.

I am not sure whether in the end counsel supported the argument that the fact that the Respondent was willing to forgo a part of his wages to get the perquisite got rid of any difficulty in determining its value to him, and that therefore in this case he could be assessed on the value of the perquisite to him. But, if the general rule is that the value of a perquisite to the particular recipient is not a basis of assessment consonant with the provisions of the Act, it cannot, in my view, be right to make exception in cases where it is easy to prove that value. Just how easy must that proof be in order to take the case out of the general rule? In my judgment, the recipient of a perquisite other than a sum of money can be assessed, and can only be assessed, on the amount of money which he could have obtained by some lawful means by the use or in place of the perquisite. I say " by lawful means " because I can see no ground for the Revenue being entitled to disregard a genuine condition restricting the recipient's right to use or dispose of the perquisite. But, of course, if any restrictive condition is a sham or inserted simply to defeat the claims of the Revenue, it can be disregarded. So the question is—what could the Respondent have done to turn his right to use the car to pecuniary account? Admittedly he could not assign it, and he could not get money so long as he kept the right. But he could have surrendered the right, and if he had done so the agreement provided that his wage would be increased. So why should he not be taxed on the amount of increased wages which he had it in his power to get by making that surrender? The Respondent argues that there is a fundamental difference between assigning a right, on the one hand, and surrendering it, on the other, because in the one case the right continues to exist, whereas in the other it does not. I cannot see that this makes any difference. In both cases the result of the operation is that he no longer has the right but he has money instead. That seems to me to be well within the principle recognised in *Tennant's* case[1], and indeed within the words used in this House. By surrendering the right he has disposed of it to his advantage, he has turned it to pecuniary account, and as a result of the surrender money comes in and goes into his pocket.

So it appears to me that we must ask what money would have come in and gone into his pocket if he had surrendered his right to use the car? Under the agreement he had to give 14 days' notice if he wished to surrender his right to use the car. So when are we to suppose him to have given this notice? Each year of assessment stands by itself. In the present case the assessment is for the year 1963–64. If we suppose him to have given notice on the first day of that year of assessment, then he was only entitled to the increased wage for fifty weeks of that year of assessment. But if we suppose him to have given notice at an earlier date, he would have been entitled to the increased wage for the whole year. Unfortunately counsel for the Crown were extremely reluctant to argue the case on the basis that what is assessable is the money which he could have got by surrendering the perquisite, and no argument was submitted on this question. So I think that the only course open is to leave that point undecided and open to argument in future cases, and to restore the judgment of Ungoed-Thomas J., who held that the proper basis of assessment was the increase of wages to which the Respondent would have been entitled during the year of assessment if he had chosen to surrender his right to have the car on the first day of that year. I would allow this appeal and restore the Order of Ungoed-Thomas J.

---

(1) 3 T.C. 158.

Lord Morris of Borth-y-Gest—My Lords, the Respondent, who was employed by a company as a machine minder in their lithographic department, appealed against an assessment made upon him under Schedule E for the year 1963–64. He had been employed by the company for many years. In 1954 the company introduced a scheme under which they loaned motor cars to certain of their employees. Having known of the scheme since that year, the Respondent decided to join it in the year 1961. It is beyond question that financial consequences were to result for those employees who hired cars. In one way or another their financial position was to be affected.

The Respondent claimed that the assessment made upon him should be reduced by an amount which was the amount in fact referable to the hiring by him of his car. Thus, if it be assumed that by his work and labour and as the result of the application of agreed rates and terms he became entitled to receive in a week the sum of £33 9*s*. 2*d*., and if in that week the amount referable to the hire by him or loan to him of his car was £2 13*s*. 6*d*., he claimed that he was only liable to pay tax on £30 15*s*. 8*d*. (being £33 9*s*. 2*d*. less £2 13*s*. 6*d*.). He claimed that his taxable gross wage for the week would be £30 15*s*. 8*d*. He so claimed because he contended that, as from the date when he decided to join the scheme, he had agreed to take a reduced wage. The assessment made upon him was on the basis that (assuming the above figures) the £2 13*s*. 6*d*. was to be included in computing the amount of his emoluments from his employment within the meaning of para. 1 of Schedule E of the Income Tax Act 1952. For the year which is in question the actual sums referable to the loan of the car were, up to 31st May 1963, £2 10*s*. per week, and £2 18*s*. per week thereafter. In the assessment made upon the Respondent those weekly amounts were included in computing his emoluments.

It is necessary, in the first place, to decide as to the true interpretation of the agreement subsisting at the relevant time between the Respondent and his employers. When he joined the car loan scheme did he vary his terms of employment by agreeing to accept a reduced wage, or did he agree that from his wage there would be deducted such sum as represented the sum payable to him in respect of his hiring of a car? That there would be less money to take home week by week would follow in either event. But there would be rather more to take home week by week if the amounts referable to the car are excluded from the taxable income. I use the phrase "amounts referable to the car" so as not to prejudge the issue. There was, however, no suggestion that the car loan scheme was a benevolent scheme of the employers which was not to have any financial consequences for those employees who joined it. If there was a wage reduction, the reduction was of an amount decided upon because there was the hiring of the car. If there was a deduction from wages, the deduction was of the same amount. The only practical difference resulting from the view, on the one hand, that there was an agreement for a wage reduction and the view, on the other hand, that there was an agreement for a deduction from wages lies in the tax implications and consequences.

I turn, therefore, to consider on the facts as found what the true position was as between the Respondent and his employers. The quest must be to find the realities of the arrangements that were agreed. If (taking these figures merely to state the point) the Respondent, before he joined the scheme, had been entitled to receive in a week the gross wage of £33 9*s*. 2*d*. and if, when he hired a car, his employers wished to receive £2 13*s*. 6*d*. a week because the car was loaned to him, was the position thereafter that, for

A the same labour as before, rendered on the same terms as before, the Respondent was still entitled to receive a gross wage of £33 9*s.* 2*d.* and that from his gross pay or from his take-home pay there was to be deducted the amount of £2 13*s.* 6*d.*, or was the position thereafter that he agreed that his gross wage was to be £30 15*s.* 8*d.* and that he was to have the free use of a car? My Lords, I consider that the former position was the true one. B To describe the use of the car as being free seems to me to be trifling with words. There was nothing free about it. The letter written in 1954 by the managing director to each employee (a letter fully set out in the Case Stated) mentioned that a man with no family might be able to " afford " to come into the scheme where perhaps a man with four children could not. But most people can afford that which is free. So also the letter explained how the C scheme would be available " when the pocket permits ". The pocket readily permits that which makes no demands on it. It is true that the Stated Case records that the Respondent in his evidence said that, if he had ever been asked whether the company supplied him with a car at a rent deducted from his wage, he would have said that he had accepted instead a lower wage and a car free. But whether he would have said that or not, and D whether or not he derived some personal happiness in a belief that he was having a car free, the incidence of tax must depend upon what the state of affairs really is, rather than upon what someone can think it to be or can somehow state it to be.

In the letter which the managing director wrote to each employee the scheme was described as one evolved " whereby a craftsman may run a car, E if he so desires, at most reasonable terms ". It is difficult to understand how anyone could have thought that such language denoted the free loan of a car. To have the free use of a car would be to have it on terms that would be more than most reasonable. The scheme was a " Craftsmen's Car Loan Service ". The employers were to loan a new car of certain stated makes and they were to pay full comprehensive insurance and the road tax on the F car. Certain of the conditions are to be noted. Condition 5 was: " The user will sign a simple agreement." Condition 6 was: " An amended wage basis will come into operation if the application is accepted." Condition 9 was: " If the car is under repair for maintenance or following an accident the amended wage basis will still apply." When the Respondent decided to join the scheme he signed an application form (dated 2nd February 1961). G On that form he merely stated that he wished to join the scheme and he gave certain information. Nothing was set out as to his wages or as to payments. The Respondent selected the make of car that he wished to have and then signed the " simple agreement ". It was a printed form agreement presented to him by his employers. It was rather a remarkable document. It was in the following terms:

H

> " To: John Waddington, Limited, Leeds. Memorandum of Terms of Service. During my service with you as: Lithographer, and the carrying out of the various duties you properly assign to me, I am to make use of Motor Car No. 3248 RO for the more efficient discharge of my duties. I am not to permit anyone other than myself to drive or use the car except in an emergency. I am to pay for maintenance and I running. I agree to keep the car clean and in good condition and to hold it ready for inspection at any time. You have generously agreed to license and insure the Car and to pay for decarbonisation when necessary. Either of us may cancel my obligation and authority to use the car on 14 days' notice. Dated 3rd March 1961. *Signature* Ralph G. Bell."

(Lord Morris of Borth-y-Gest)

Though headed " Memorandum of Terms of Service ", it will be seen that it contains nothing about the terms of his employment. It does not mention his wage rate or the money entitlements which were to result from his work. The mention of service is in the opening sentence, in which were the words " during my service with you as Lithographer and the carrying out of the various duties you properly assign to me, I am to make use of Motor Car No. . . . " It is admitted, however, that it was wholly erroneous that the Respondent was to be under any obligation to use the car. The words " I am to make use " were not correct. The Respondent was under no duty to use and did not need to use the car during " the carrying out of the various duties " which his employers might assign to him. By the use of a car an employee might be aided in his travel to and from his work and might be enabled " with his family to make the most of his leisure hours ", but he owed no duty to use the car in any particular way. It was quite wrong, therefore, to state that either party could on 14 days' notice cancel the " obligation " of the Respondent to use the car. By signing the memorandum the Respondent was required to assent to the statement that his employers had " generously " agreed to license and insure the car. By a letter of 26th February 1962 (set out in the Case Stated) the officer of the company in charge of the scheme informed all the employees in the scheme that he had " carefully surveyed the costs relating to cars ". The letter contained the following paragraphs:

> " The present wage adjustments have remained the same since the beginning of the scheme and since that time costs have risen in many different ways—the cost of the car, the cost of insurance and now the tax. The very fact that the tax has risen from £12 10*s*. to £15 per year means 1*s*. per week on every car, but this is trifling compared with other increases.
>
> The higher costs coupled with the greater difficulty of obtaining the right price when we sell returned cars as second-hand cars makes it imperative for a heavy increase of 8*s*. to 10*s*. per week."

Not surprisingly, that was described as a " very steep rise ". Again, it is difficult to understand how anyone could possibly think that such language was used in reference to the free loan of a car. What was it that was being subject to the heavy increase of 8*s*. to 10*s*. per week? What was it that was subject to a " very steep rise "? In my view, it is impossible to resist the view that the increase was in the payment that was to be made for the hire of the car.

On behalf of the Respondent reference has been made to certain office documents of the company. They are purely internal documents. They show that when the Respondent joined the scheme and received a car on loan the wages office were asked to arrange " the necessary weekly wage reduction ". They show that the " heavy increase " imposed after the letter of 26th February 1962 was noted as involving the increase of the reduction. My Lords, I cannot think that the adoption of this phraseology can in any way mask the realities in regard to what was actually arranged. Nor do I think that realities could be cloaked merely by some future adroit change of selected words.

In my view, there can be no doubt that the Respondent obtained from his employers the right to use a car on terms which involved that he should pay to them whatever was from time to time an appropriate hire charge. As a matter of convenience, he agreed that his payment was to be set off or deducted week by week from the amount which by his labour he had earned

A and which his employers therefore owed him. To dress that up as a wage reduction seems to me to be fanciful. The terms and conditions relating to the method of computing the Respondent's earnings were in no way changed. If two craftsmen worked under precisely the same conditions so that they earned precisely the same amount, and if one joined the car loan scheme while the other did not, it would, in my view, be a mere delusion to treat B the former as having agreed to a wage reduction (being a wage reduction which was to vary from time to time according as to how the cost of hiring the car varied). In truth, there would have been an arranged and agreed deduction from wages. A deduction by any other name would be a payment just the same. To speak of a wage reduction increase brought about by new charges affecting a car the loan of which is free involves a measure of verbal C distortion which suggests tax adjustments rather than " wage adjustments ".

Reliance was placed upon two matters in support of the contention that there had been a wage " reduction " having the result that tax was only payable upon an agreed reduced wage. The first of these involved consideration of condition 6 which I have quoted above. The second involved consideration of the form and contents of the weekly pay slips which the D Respondent saw and signed. The two matters are considerably inter-related. Under condition 6 an amended wage basis was to come into operation if a craftsman loaned a car under the scheme. The words " wage basis " are somewhat ambiguous. They might denote the rate of pay which someone is to earn by his work. They might denote the way in which his pay is dealt with or adjusted before the amount is arrived at which the employed person E is to receive to take away. One thing is quite clear. Rates of pay and terms affecting what was to be the financial reward for work done were in no way altered if a craftsman joined the scheme. They were the same, other circumstances being equal, for those within and for those without the scheme. The " simple agreement " which was signed did not even purport to alter the terms of employment relating to the wage which one who signed was to F receive. It made no mention whatsoever of payment or of wages. So there was no agreement made which produced an " amended wage basis " in any sense which meant that gross earnings were to be less. Work done after joining the scheme was to earn the same reward as would have been earned by similar work done before joining the scheme. No different conclusion follows from a study of the form of the weekly pay slips referable to those who joined the G scheme. It appears that if someone became ill he received no wage. The Stated Case contains the statement that:

> " Whenever an employee was absent through sickness and received no wage no deduction was made for the use of the car, because the agreement between the company and the employee under the scheme was that the employee should accept a reduced wage."

H But the question whether there was an agreement for the acceptance of a reduced wage is the very question to be decided. If there was such an agreement for a reduced wage, then there could be no thought of a " deduction ". If, however, the terms of employment of someone who joined the scheme were, as a result of joining it, in no way affected, but if payment for the hire of a car was to be made by deduction from wages earned, and if the I employers were not going to pay wages to anyone absent through sickness, it would follow that there was no sum from which a deduction could be made. It appears to have been the position, however, that no charge for the hire of a car was carried forward: but this proves no more than that the

(Lord Morris of Borth-y-Gest)

employers decided that, as they paid no wage to someone who because of illness could not work, they would not during such period of illness exact payment from him in respect of his hire of a car.

The entries made on a weekly pay slip were somewhat revealing. The Respondent's pay slip for a particular week (actually the week ending 5th June 1964) was taken merely as an example of the manner in which the employers calculated the wages of their employees. The figures for that week were set out as follows:

" 1.	Flat Rate 43¼ hours		£22 6 7
2.	Overtime Premium 2·0625 hours		1 5 7
3.	Cost of Living Bonus		11 8
4.	Shift Premium		4 9 4
5.	Bonus		4 12 8
6.	Spray or Hair Money		3 4
7.	Holiday Pay		
8.			2 13 6
9.			
	Taxable Gross Wage		£30 15 8
	Standard Deductions	£1 17 0	
	Graduated Pension Contribution ...	7 8	
	P.A.Y.E.	2 3 0	
			4 7 8
	Net Wage		£26 8 0 "

It will be seen that items 1 to 6 all represent sums earned by work. A side-note shows that of the 43¼ hours worked 39 were to be paid at the ordinary rate, ¼ hour at a rate of 1¼, and 4 hours at a rate of 1½ times the ordinary rate. All this would be just the same whether the person concerned was or was not within the car loan scheme. So also in regard to the other named premium and bonus items. Anyone looking at the pay slip would be pardoned if he thought that, just as the first six items must be added together, so also should be added the un-named and un-described item of £2 13*s.* 6*d.* But the first six items when added together come to £33 9*s.* 2*d.* The sum of £2 13*s.* 6*d.* was in fact a subtraction or deduction. It is beyond all question that it was in fact the amount then currently referable to the car which at the time the Respondent was using and hiring. Conforming to the pattern of the employers' internal records, the amount was duly recorded in one document as a " reduction " ; in another was the entry " wage reduction changed to 53*s.* 6*d.* per week on Friday 5th June 1964 ". It may well be that one of the reasons why what at first glance would have seemed to be an item of addition of £2 13*s.* 6*d.* in arriving at the taxable gross wage was given no label and no description was that it would have been difficult to devise words which would not reveal it to be what it really was. In my view, the reality was that the £2 13*s.* 6*d.* (or such sum as related to any period in question) was an agreed deduction from the Respondent's wage and was the sum payable by him in respect of his participation in the car loan scheme.

The only " amended wage basis " that resulted and that the documents reveal was that a sum referable to the hiring of a car was retained by the employers as a deduction from the sums which were owing to the Respondent as his earnings for work that he had done. In my view, therefore, the question raised in the Stated Case, i.e., whether sums of £2 10*s.* per week up to 31st

A May 1963 and £2 18*s.* thereafter, being the amount of car loan scheme adjustments, were correctly included in computing the amount of the emoluments of the Respondent from his employment, should be answered in the affirmative.

For the reasons that I have set out, I consider that on a true interpretation of the contractual arrangements the position was that the monetary wage to B which the Respondent was entitled remained unaltered. When the Respondent joined the scheme he agreed that some part of the earnings to which, by his work, he had become entitled might be retained by his employers as the money consideration of his hire of a car. The assessment that was made upon him was therefore, in my view, correct. Had I been of the alternative view, that the Respondent agreed to take a reduced monetary wage during such C time as he had the free hire of a car, I would still have been of the view that the assessment made upon him was correct. On that basis the entitlement to use the car would, in my view, have been a perquisite to be included in the full amount of the Respondent's emoluments chargeable to tax.

In considering this alternative basis it is relevant to note what its features would be. The Respondent would voluntarily have agreed to forgo an amount D in money and in exchange would have the free use of a car. He would have agreed to take a reduced wage. He would be under no obligation to use the car, though he would be under the restriction that (except in an emergency) he was not to permit anyone other than himself to drive or use it. He would not be using the car in the performance of his duties. But the new agreement would be subject to unilateral alteration by either party to it. The employers E might decide (because of increased costs referable to the car) to reduce the Respondent's wage to a lower figure than that which he had previously agreed, or (if costs decreased or if a car was in its second year of hiring) the Respondent's wage might rise. Furthermore, the Respondent could at any time decide to cease to hire a car, and by giving two weeks' notice to this effect he could produce an increase of his wage. So also his employers, F whether he liked it or not, could end the hiring on two weeks' notice, and then his wage would automatically increase.

The question that arises is whether his participation in the car loan scheme would form part of his emoluments so as to come within the wording of the taxing Statute. Tax is chargeable on the "full amount" of the Respondent's emoluments. The expression "emoluments" includes all G salaries, fees, wages, perquisites and profits. The tax being a tax upon income—or, as Lord Macnaghten said in *Tennant* v. *Smith*(1) [1892] A.C. 150, at page 164, on what "comes in"—the word "amount" denotes that in order to be taxable a perquisite must either be a cash or money payment or must be money's worth or of money value in the sense that it can be turned to pecuniary account. This conception in regard to the nature of a taxable H perquisite was, in my view, revealed in earlier Acts. Thus, under the Income Tax Act 1918, in reference to the sums to be charged to tax under Schedule E, are the words "the annual amount thereof". In the Income Tax Act 1842, in reference to perquisites to be assessed, there occurs the word "payable". This denotes that the mere fact that a benefit in kind accrues does not mean that there is a perquisite which is taxable. In his speech in *Abbott* I v. *Philbin*(2) [1961] A.C. 352, Lord Radcliffe said, at page 378(3), that it had been generally assumed that the decision in *Tennant* v. *Smith* does impose a

(1) 3 T.C. 158, at p. 171. (2) 39 T.C. 82. (3) *Ibid.*, at pp. 124–5.

(Lord Morris of Borth-y-Gest)

limitation upon the taxability of benefits in kind which are of a personal nature: it is not enough to say that they have a value to which there can be assigned a monetary equivalent. Lord Radcliffe added:

> "If they are by their nature incapable of being turned into money by the recipient they are not taxable, even though they are in any ordinary sense of the word of value to him."

The "attendant uncertainties" which, as was pointed out, the conception raises need not in the present case be resolved.

It was clearly the view of the House in *Tennant* v. *Smith*(1) that, in order that they should be taxable, perquisites need not necessarily take the form of money payments. Lord Halsbury L.C., in coming to the conclusion that the then applicable taxing Act referred to money payments made to the person who received them, added(2): "though, of course, I do not deny that if substantial things of money value were capable of being turned into money they might for that purpose represent money's worth and be therefore taxable." He adopted the words of Lord Young(3) "that the thing sought to be taxed is not income unless it can be turned into money". In regard to the word "profits" Lord Watson considered(4) that in its ordinary acceptation it appeared to denote "something acquired which the acquirer becomes possessed of and can dispose of to his advantage—in other words, money—or that which can be turned to pecuniary account". In reference to Schedule E, Lord Macnaghten said(5) that it extended "only to money payments or payments convertible into money". Lord Field considered(6) that the residence of the Appellant upon bank premises, though rent free, "could not in any way be converted by him into money or money's worth". Lord Hannen considered(7) that different considerations would apply to the case of an agent who as part of his remuneration had a residence provided for him which he could let: "That which could be converted into money might reasonably be regarded as money".

My Lords, the principles enunciated in the passages to which I have referred were recognised in 1961 in the speeches in *Abbott* v. *Philbin*(8). That the principles can apply, not only in respect of objects or chattels or things of value received, but also in respect of certain rights received was, I think, recognised in both cases. In *Abbott* v. *Philbin* what was in question was an option or right to acquire shares at a fixed price. The majority considered that the grant of an option in the year 1954–55 was a profit or perquisite (arising from the Appellant's employment) of that year and that tax was exigible upon its monetary value, if any. The option was something which could "assuredly be turned to pecuniary account": see the speech of Lord Simonds(9) [1961] A.C. 352, at page 366. That was so, even though the option itself was not transferable. The option could be exercised and the acquired shares transferred. The test, said Lord Simonds, was whether it was something which was by its nature capable of being turned into money. In that case a sum of £20 was paid for the option. It was said that the Revenue authorities could easily have ascertained whether the option had any and what value. "If", said Lord Simonds, "it had no ascertainable value, then it was a perquisite of no value—a conclusion difficult to reach since £20 was paid for it". Lord Reid pointed out that the parties agreed that the option

(1) 3 T.C. 158. (2) *Ibid.*, at p. 164. (3) *Ibid.*, at p. 165.
(4) *Ibid.*, at p. 167. (5) *Ibid.*, at p. 170. (6) *Ibid.*, at p. 171.
(7) *Ibid.*, at p. 172. (8) 39 T.C. 82. (9) *Ibid.*, at p. 117.

(Lord Morris of Borth-y-Gest)

A was something which was within the words "perquisites or profits whatsoever". He said, at page 371[1]:

> "I agree that the question is whether this option was a right of a kind which could be turned to pecuniary account. I do not use these words as a definition but it is undesirable to invent a new phrase if an old one of high authority fits this case, and the parties agree that it
B does": and, at page 372: "It appears to me that if a right can be turned to pecuniary account that in itself is enough to make it a perquisite".

In reference to the option Lord Radcliffe, at page 379[2], said:

> "I think that the conferring of a right of this kind as an incident of service is a profit or perquisite which is taxable as such in the year of
C receipt, so long as the right itself can fairly be given a monetary value. . . ."

The principles laid down and recognised in the two cases in this House were, I think, correctly applied in *Wilkins* v. *Rogerson*[3] [1961] Ch. 133. The opportunity to acquire the suit of clothes (or overcoat or raincoat) could not be assigned or sold, but the suit when received could be sold. In that way the
D perquisite could be turned to pecuniary account, i.e., it could be turned into money.

How, then, should the well-established principles be applied if it be assumed that since 1961 the Respondent was employed on the terms that his wage was a reduced one but that he was to have the free use of a car? In my view, his free use of a car was a perquisite which represented money's
E worth and was taxable. It is true that his right to use the car could not be assigned (just as the option in *Abbott* v. *Philbin*[4] could not be transferred), but the right could be converted into money. The option in *Abbott* v. *Philbin* could be exercised, and the shares acquired by its exercise could then be sold. It was recognised that by such process the option was by its nature capable of being turned into money. In the present case the Respondent's right to
F use the car could be converted into money or was capable of being turned into money by a much simpler process. The Respondent could at any time (subject only to giving two weeks' notice), and without making any new contract, say to his employers that he relinquished in their favour his right to use the car and in exchange could require that an ascertained sum of money should be paid to him. His employers would be bound to accept the
G use of the car—which was all that the Respondent had a right to. They would then be bound to pay him a sum which (on the basis now being considered) was equal to the amount by which he had agreed that his wage was to be reduced. His employers, for their part, could at any time (subject only to giving two weeks' notice) require him to give up his right to use the car and require him to accept a sum of money in exchange. At all times
H and at any time since 1954 the Respondent was in a position to decide whether he would choose to have from his employers a particular and ascertained sum of money and no car, or whether he would choose not to have that particular and ascertained sum of money but to have a car. The fact that two weeks' notice of change of will was needed does not, in my view, alter the fact that the perquisite represented money's worth. At any time
I since 1961 the Respondent, after giving notice, could have had money rather than the use of a car. Accordingly, throughout the year of assessment the

(1) 39 T.C., 82, at p. 120. (2) *Ibid.*, at p. 125. (3) 39 T.C. 344. (4) 39 T.C., 82.

(Lord Morris of Borth-y-Gest)

Respondent could, had he so wished, have had the money equivalent into which his perquisite was convertible. The right to use the car, on the one hand, was alternative to and interchangeable with the right to the receipt of a definite sum of money on the other. For administrative convenience a period of two weeks was agreed to as being requisite for effecting the exchange of the one for the other: that did not, in my view, affect the circumstances that the perquisite represented money's worth of known amount.

For these reasons I am of the opinion that the assessment made upon the Respondent was correct, and accordingly I would allow the appeal.

Lord Hodson—My Lords, the Respondent, Mr. Bell, is a machine minder who has been employed by a company called John Waddington Ltd. since about the year 1948. In 1954 the company introduced a voluntary car loan scheme for the benefit of employees who earned less than £2,000 a year and were not directors of the company. Mr. Bell received an invitation to join the scheme and attended a meeting at which the scheme was discussed, but did not join it until 1961. Enclosed with the invitation was a list of conditions relating to the car loan service. These provided that the company would loan, insure and tax a car for each year of the service, that the user would sign a simple agreement and provide his own petrol, oil and running maintenance. Condition 6 reads: "An amended wage basis will come into operation if the application is accepted." Condition 9 reads: "If the car is under repair for maintenance or following an accident the amended wages basis will still apply." On 10th February 1961 the Respondent applied to join the scheme and on 3rd March 1961 he signed a form which reads as follows:

> "*To:* John Waddington Limited, Leeds. Memorandum of Terms of Service. During my service with you as: Lithographer, and the carrying out of the various duties you properly assign to me, I am to make use of Motor Car No. 3248 RO for the more efficient discharge of my duties. I am not to permit anyone other than myself to drive or use the car except in an emergency. I am to pay for maintenance and running. I agree to keep the car clean and in good condition and to hold it ready for inspection at any time. You have generously agreed to license and insure the Car and to pay for decarbonisation when necessary. Either of us may cancel my obligation and authority to use the car on 14 days' notice. *Dated* 3rd March 1961. *Signature* Ralph G. Bell."

There is no other evidence of the terms of the arrangement which the Respondent made with the company for the loan of the car, although there are internal office communications showing that, as from 2nd June 1961, when he received the car, sums described as "wage reductions" were subtracted from his wages each week. These items were fixed first at the rate of 49*s.* a week, increased to 54*s.* 6*d.* on 6th April 1962, changed to 50*s.* on 1st June 1962, to 58*s.* on 7th June 1963 and to 53*s.* on 5th June 1964.

The Respondent was assessed to income tax under Schedule E for the year 1963–64, and the question is whether the sums of £2 10*s.* a week up to 31st May 1963 and £2 18*s.* a week subsequently were correctly included in computing the amount of his emoluments within the meaning of para. 1 of Schedule E, "emoluments" by definition including all salaries, fees, wages, perquisites and profits whatsoever.

His wages were shown each week on a payslip, and his payslip for the week ending 5th June 1964 was taken as an example of the way in which the company calculated the wages of its employees. The payslip shows that the

(Lord Hodson)

wage is calculated in order to arrive at what is described as the taxable gross wage (which would be the figure on which P.A.Y.E. was calculated) by adding together items into which the weekly wage was split. This produces a total of £30 15*s.* 6*d.*, and excludes from the addition the £2 13*s.* 6*d.* attributable to the car loan scheme payments. If the sum of £2 13*s.* 6*d.* had not been excluded the total would have been £33 9*s.* 2*d.*, the total wage to which Mr. Bell was entitled had he not agreed to the application of the sum of £2 13*s.* 6*d.* under the car loan service scheme.

It is argued that the use of the phrase " an amended wage basis " in the conditions which the company put forward points to a reduction in wages during the operation of the scheme in the case of each individual rather than a deduction from his wages applied at his request in a particular manner. In my opinion, there was no change in the terms of the employment of the Respondent in any real sense at any time. During the operation of the scheme there was an allocation for the purposes of the scheme of wages already earned, and not, in my opinion, a fresh contract of employment at a reduced wage. This is no less true although the alteration is made through the employer by returning the money to him. The allocation is for the specific purpose of the scheme made at the request of the employee and is to be treated as a deduction from his gross wage. I do not think any other conclusion is to be drawn from the ambiguous phrase " amended wage basis ". The basis was not amended. It remained the same throughout. The variation which took place during the operation of the scheme was in the amount applied by the employee out of his wages.

I have referred to what I regard as the real facts of the case, for it appears that Ungoed-Thomas J. may have attached undue importance to the words " an amended wage basis will come into operation if the application is accepted ", as indicating that a different calculation of the gross wage itself would occur. In reaching his conclusion he cited a passage from a judgment of Rowlatt J. in *Machon* v. *McLoughlin* (1926) 11 T.C. 83 (at page 90) in which he said:

> " But what has been done? I have to find out whether the true way of looking at it is that he is paid a gross wage and has to pay something back or that he is only paid a net wage. That was Lord Justice Vaughan Williams' test in *Bell v. Gribble*[1], 4 T.C. 522, and that is the test I have to apply. As I pointed out before, it may be a question of words. I do not think there is very much to show that it is not a question of words."

Rowlatt J. made, as we all know, a great contribution to the law at a time when Revenue cases began to be numerous under the weight of increased taxation following upon war necessities. I cannot think that he could have meant to say anything to suggest that words could be used legitimately to obscure or to distort the facts. Indeed, here the words used by the parties are not of assistance to the Respondent. I have quoted in full the so-called " Memorandum of Terms of Service " which he signed. It is not very helpful and is to a large extent meaningless. There are no terms of employment mentioned in the memorandum. He was not bound to make use of the car for the more efficient discharge of his duties or under any obligation to use the car at all. There are no documents and no other facts which, to my mind, lend support to the case put forward by the Respondent that the wages to be assessed were other than his gross wages before deduction in respect of his participation in the car loan scheme.

---

(1) [1903] 1 K.B. 517.

(Lord Hodson)

This disposes of the matter, but I will add my opinion on the second point in the case, which depends on whether the benefit which the Respondent received in the form of the use of the car was a " perquisite ". It would at first impression appear to me to be an obvious perquisite. I have, however, been persuaded that the answer is not as simple as it seems. I am satisfied on consideration of the judgments in *Tennant* v. *Smith*(1) [1892] A.C. 150 and the whole tenor of the relevant legislation, that the teaching of that case, confirmed as it was by your Lordships' House as recently as 1961 in the case of *Abbott* v. *Philbin*(2) [1961] A.C. 352, compels me to the same conclusion as that reached by the Court of Appeal. Income tax being a tax on income, it follows that a perquisite is not taxable as income unless it is capable of being turned into money. It is this question which must be answered, and I cannot escape from the conclusion that the use of the motor car is not convertible into money, for it cannot be so converted in the ordinary sense of the word by sale or assignment to another: cf. *Wilkins* v. *Rogerson*(3) [1961] Ch. 113, where the suit of clothes was capable of being so converted and was, I think correctly, regarded as a perquisite. True that no further deduction would be made from the Respondent's wages after he had, by giving notice, terminated his agreement for the use of the car. I cannot, however, for that reason agree that, in any true sense, he could convert the use of the car into money. He could give it up, but that appears to me to be a different thing. I am in agreement with the unanimous judgment of the Court of Appeal on this point, but, for the reasons I have given, I would allow the appeal on the first ground put forward by the Crown, namely, that the emoluments of the Respondent taxable under Schedule E were his gross wage before deduction of any sum in respect of his right to participate in the car loan scheme.

Lord Upjohn—My Lords, the Respondent was at all material times employed by John Waddington Ltd. as a machine minder at wages of over £30 a week and he had no need for the use of a motor car in the course of his employment. But his employers had an excellent scheme called " Waddingtons' Craftsmen's Car Loan Service " whereby (and I am now using neutral language) an employee could, if he so wished—and it was entirely at his option—forgo part of his weekly wages in cash and have for his own private use a brand new motor car licensed and insured by his employers at their expense, but upon the terms that he alone drove it, except in an emergency, and he had to continue to suffer the diminution in his cash wages when it was off the road for repairs or after an accident. It is quite clear he had no right nor title to the car, so could not sell, mortgage, nor hire it out to others. This arrangement was determinable by employer or employee on giving 14 days' notice, when of course the employee would revert to his full wages in cash. The scheme was introduced in 1954.

The questions that arise upon this appeal are (1) whether, upon the true interpretation of the contractual arrangements made in 1961 between the Respondent and his employers, the monetary wage which the Respondent was entitled to remained unaltered, the Respondent agreeing that some part of it might be retained by his employer in consideration of his being entitled on certain defined terms to use a car provided by his employer—in which case admittedly the Respondent is taxable upon his gross wage and no further question arises—or (2) whether the monetary wage to which the Respondent would otherwise have been entitled was to be reduced during such time as he

(1) 3 T.C. 158. (2) 39 T.C. 82. (3) 39 T.C. 344.

A was entitled to use such car, and, if so, such entitlement constituted a perquisite or profit effectively charged to income tax under Schedule E.

The first question, upon which the Respondent has unanimous findings in his favour in the Courts below, depends upon an examination of the scanty documents, which, however, are set out in full in the report of the case before Ungoed-Thomas J. in [1968] 1 W.L.R. 263. The offer contained in this car B loan service contained among other conditions: " 6. An amended wage basis will come into operation if the application is accepted." In February 1961 the Respondent applied to enter the scheme and he was in due course accepted, and he drove away the car provided for him on 30th May 1961. On the same day an interdepartmental note went to the employer's wages office to make the necessary wage reduction, and on the next wage day, 2nd June 1961, his wages C were reduced by £2 9*s.*

The wages slip that he was accustomed to receive was quite a complex document, but all the argument was based on a much later slip, for the weekend of 5th June 1964, which was accepted by all parties as exemplary of the Respondent's wages slip. It is set out, [1968] 1 W.L.R. at page 268 B–E. It is quite clear that the exercise of this option to have the use of a motor D car in lieu of full wages had no effect upon the employment of the Respondent in the sense that, whether he had full wages or the use of a motor car, he performed precisely the same duties during precisely the same hours for a recompense at precisely the same rates as before, and that his gross wages, taking this example with all its complex features, amounted to £33 9*s.* 2*d.* From this, though for a reason unspecified in the slip, the amount of £2 13*s.* 6*d.* E due in respect of the operation of the car loan service was deducted. From this the usual tax deductions were made. This slip (I treat it as though delivered on 2nd June 1961) was no part of the contract between employer and employee ; that had been concluded when the Respondent drove away his car three days earlier ; it was merely the way in which the wages office regarded it, and that by itself is irrelevant. What does appear quite clearly is F that it was a deduction from, or reduction of (for there cannot be any real difference between the two phrases), the monetary wages which had already been plainly earned by the Respondent. The phrase in condition 6 " amended wage basis " taken by itself may be ambiguous ; but in this case I can have no doubt that it meant no more to the parties than that the monetary wage would have to be adjusted and each knew by how much, namely (taking G the example), £2 13*s.* 6*d.*

In my opinion, and with all respect to the judgments in the Courts below, I think it is clear that the legal result of the transaction between the parties was that the Respondent was agreeing to a retention or deduction or, if you like, reduction from the wages earned by him, and clearly due to him in cash, for the pleasure of having a motor car supplied to him for his personal use on H very advantageous terms. It was suggested that a decision upon these grounds could easily be circumvented by clever draftsmanship to make it clear that in fact the wage of the employee was reduced by £2 13*s.* 6*d.*, and that in lieu he received a perquisite. I am not quite sure what Rowlatt J. meant in *Machon* v. *McLoughlin* 11 T.C. 83, at page 90, when he said: " In every case you have to see whether it is a question of words ". Like Ungoed-Thomas J. I find I them confusing, though I think the learned Judge misapplied them. Of course you have to look at the real nature of the transaction and not merely at its substance. That was decided in your Lordships' House in *Commissioners of Inland Revenue* v. *Duke of Westminster*[1] [1936] A.C. 1. But having ascer-

(1) 19 T.C. 490.

(Lord Upjohn)

tained the real nature of the transaction you cannot, in my opinion, disguise it by using camouflaged clothing. Here the whole essence of the employment of the employee was as a machine minder at a weekly wage. If he so wished he could have part of his wages applied in providing for his own personal use, quite unconnected with the affairs of the company, a motor car, and that use was terminable by employer or employee on short notice. Dress that up how you will, I hope a Court would not be deceived by the disguise.

For these reasons, I would allow this appeal upon the ground that the emoluments of the Respondent for the purposes of taxation under Schedule E were his gross wages before any deduction for his participation in the car loan service.

So, in my opinion, the second question does not arise, but as it has been the subject of some judicial conflict of opinion in the Courts below, I propose to make some observations upon it. Did the privilege of having this use of the car at clearly advantageous rates amount to a perquisite within the meaning of the word " perquisite " in the Income Tax Acts as part of the Respondent's taxable emoluments? My Lords, I think the officious bystander uninstructed in the law would say that for an employee to have the use of a brand new car licensed and insured for himself and his family, and not at all for the purposes of the employer, at a rate in the neighbourhood of £2 to £3 a week, would be a valuable perquisite if the employee liked to avail himself of it. But that is not the test ; the word " emolument " (of which the word " perquisite " is only an example) in the Income Tax Acts means an incoming in the sense of a money incoming ; a benefit such as the right, or indeed obligation (for in the case I am about to mention no difference was made between the two), to live in a house free was not an incoming merely because it relieved the taxpayer from the obligation he would in common sense otherwise be under of providing a roof over his head. All this was decided in your Lordships' House in *Tennant* v. *Smith*(1) [1892] A.C. 150, where it was pointed out, however, that profits or perquisites in kind readily convertible into money might be taxable as though they had been money received. This principle has been repeatedly approved, and quite recently in your Lordships' House in *Abbott* v. *Philbin*(2) [1961] A.C. 352. Lord Radcliffe, at pages 377-78(3) very conveniently collected together and approved the statements of their Lordships upon this point, so I will repeat these observations:

> " The basis of the Crown's claim in *Tennant* v. *Smith* was really to tax the bank manager on expenditure which he was saved, not on any money that he got or could get, while tax on the full annual value of the premises was taken from the bank itself. It was not, however, the view of the House that profits or perquisites, to be taxable, could consist only of money paid. It was accepted that they could include objects or things of value received, payments in kind, so long as they were [as was said by several law Lords] ' capable of being turned into money ' (Lord Halsbury L.C.), ' money—or that which can be turned to pecuniary account ' (Lord Watson), ' money payment or payments convertible into money ' (Lord Macnaghten), ' That which could be converted into money ' (Lord Hannen). I think that it has been generally assumed that this decision does impose a limitation upon the taxability of benefits in kind which are of a personal nature, in that it is not enough to say that they have a value to which there can be assigned a monetary equivalent. If they are by their nature incapable of being

(1) 3 T.C. 158. (2) 39 T.C. 82. (3) *Ibid.*, at pp. 124–5.

A turned into money by the recipient they are not taxable, even though they are in any ordinary sense of the word of value to him."

Lord Radcliffe went on to discuss some of the uncertainties which this decision raised, but in reference to circumstances so different from those before your Lordships that I do not think they are of assistance.

So is this perquisite a taxable perquisite? Of course you can sensibly B value it at £2 13*s.* 6*d.* per week, but that plainly is not the test: you must be able (and I care not what expression is used, for we are not now construing an Act of Parliament) to turn it into money. Ungoed-Thomas J. was of opinion that, as the Respondent could terminate the car loan scheme so far as he was concerned by giving 14 days' notice, he could convert the perquisite into money by receiving higher wages thereafter. My Lords, powerful reasons C were advanced by the Judges of the Court of Appeal for disagreeing with and overruling that reasoning. I agree with them. The Respondent could not turn the perquisite, which was no more than the personal use of the car, into money or anything which could be equated to money; all he could do would be to give up his perquisite and obtain higher wages. In my opinion, this personal unassignable right for use of the car was not equivalent D to money while it continued, and that surely must be the test.

So upon the second question I would have dismissed the appeal, but for the reasons I have given earlier I would allow the appeal upon the footing that the Respondent is properly assessable under Schedule E in respect of his gross wages before any deduction for the car hire.

Lord Diplock—My Lords, by the ingenious "car loan service" which E gives rise to this appeal the Respondent's employers, whom I will call "the company", were able to provide their employees with motor cars for their personal and private use at a very advantageous weekly rate of hire, the amount of which was debited to the employee's weekly wages. This they were able to do partly at the expense of the general body of taxpayers by deducting in the computation of their own profits for tax purposes the F initial and annual allowances for depreciation of cars so hired out to their employees. The propriety of such deductions is not, however, in issue in the present appeal. What is in issue is whether Mr. Bell, an employee who availed himself of the "car loan service", is entitled to exclude from his income assessable to income tax under Schedule E the weekly sum debited to his wages by the company for the use of the car supplied to him under G the scheme.

The Crown claim that this sum is chargeable to income tax because it is included in "the full amount of the emoluments" from his employment: see Income Tax Act 1952, s. 156, Schedule E, para. 1, and Finance Act 1956, Sch. 2, para. 1. The expression "emoluments" is so defined in the Finance Act 1956 as to include "all salaries, fees, wages, perquisites and H profits whatsoever", and the Crown advance, as alternative contentions, either that the sums debited to his weekly wages in respect of his use of the car were a part of his "wages" which were allocated to the discharge of a debt due by him to his employers under a contract of car-hire collateral to his contract of employment, or that the use of the car was a "perquisite" or "profit" from his employment in respect of which those sums are the I amount on which he is assessable to tax.

I agree with those of your Lordships who are of opinion that the only proper inference to be drawn from the facts and documents relating to Mr. Bell's participation in the "car loan service" which are disclosed in the Stated Case is that the agreement which he made with the company, collateral to his contract of employment with them, was that he should pay to the

(Lord Diplock)

company a weekly sum for hire of the car and that the company should deduct and retain that sum out of his weekly wages so long as he continued to hire the car from them. The only reference to the hire charge which is to be found in the formal documents relating to the "car loan service" is a provision in the conditions forwarded to him with an application form which reads: "An amended wage basis will come into operation if the application is accepted." This is an ambiguous expression, and the word "basis" is otiose if all it means is that the applicant's contract of employment will be varied by the substitution of a different wage from that which previously constituted the consideration for his services. The written documents issued by the company, and executed by them and Mr. Bell, which included, in addition to the conditions and the application form, a so-called "Memorandum of Terms of Service" incorporating what are conceded to be, in part at any rate, sham provisions, do not contain the full terms of the agreement between them, and in particular do not provide what the "amended wage basis" was to be. What they in fact agreed on this essential term can only be inferred from what they did in the performance of the agreement. The weekly payslips issued by the company to Mr. Bell thereafter, and receipted by him, disclose that he continued to be credited with flat rate wages, overtime and shift premiums and bonuses for the hours he worked at precisely the same rates as previously. These were, no doubt, those applicable to craftsmen of his grade under national or shop agreements. But he was debited with a weekly sum for the hire of the car, though no description of what it was appeared upon the payslip. When he was absent sick no deduction was made.

In my view, the overwhelming inference is that the true agreement between him and the company was that the wages constituting the consideration for his services under his contract of employment should remain unchanged but that the company should be entitled each week to recoup themselves out of his wages, but not from any other source, the amount of his liability to them under his collateral agreement for the hire of the car. This inference is not, in my view, weakened by the fact that this debit against the wages credited to him was made before arriving at a figure described as "taxable gross wage" and that the amount subsequently deducted for P.A.Y.E. is calculated on this latter figure. Whether or not both parties thought that Mr. Bell could escape liability for income tax upon the amount debited against his wages is *nihil ad rem aut regem*. What this appeal is about is whether they were right in so thinking. In my view, they were not.

But I should not wish to decide the present appeal upon this narrow ground of construction only. The alternative contention of the Crown, that the use of the car was a "perquisite" or "profit" from Mr. Bell's employment, and as such assessable to tax, attacks the substance of the transaction rather than its form, and in these days of multifarious "fringe benefits" in contracts of employment it is this contention which is the important one in this appeal. For the purpose of this part of my judgment I will therefore assume that the construction placed by my noble and learned friend Lord Reid upon the agreement between the company and Mr. Bell relating to the use of the car is right, and that, contrary to the view which I have so far expressed, Mr. Bell upon entering into the scheme agreed to serve his employers, for such period as they would afford him the free use of a car, at a wage less than his former wage by an agreed amount.

For my part, if it were permissible to confine myself to a consideration of the relevant words in the current Statutes (viz. the Income Tax Act 1952

(Lord Diplock)

A and the Finance Act 1956) by which income tax under Schedule E is currently charged, I should have little hesitation in deciding that the free use of a car for his own purposes provided to an employee by an employer by reason of his employment was a perquisite from that employment, and that the full amount of that perquisite on which tax is chargeable was the amount of money which the employee would have had to pay upon the open market B for a right to use a car on similar terms as to its user. I have no doubt that the man in the street would call the benefit of the use of the car, if not a " perquisite ", at any rate a " perk ". But it is, I fear, too late to read the relevant words of the current legislation in what I should regard as being their current acceptation. In *Tennant* v. *Smith* (1892) 3 T.C. 158 the House of Lords placed a judicial gloss upon the word " perquisite " appearing in C the corresponding sections of the Income Tax Act 1842 by confining it to actual money payments and to benefits in kind variously described by Lord Halsbury L.C.[1] as " capable of being turned into money ", by Lord Watson[2] as " that which can be turned to pecuniary account ", by Lord Macnaghten[3] as " payments convertible into money " and by Lord Hannen[4] as " that which could be converted into money ". Lord Halsbury and Lord Watson expressly D founded their conclusion upon the presence in the definition of " perquisite " in the Statute they were construing of the adjective " payable " qualifying the " perquisites " to be assessed under that Act. But Lord Macnaghten and Lord Hannen did not base their gloss upon the meaning of " perquisite " on this narrow ground. In the Income Tax Act 1918 the relevant sections were redrafted, and in the process the word " payable " disappeared, but this E professed to be a consolidation Act and the presumption is that the change in wording was not intended to give to the new enactment a meaning different from that of the enactment which it replaced. Further changes in drafting and arrangement which were made by subsequent legislation, including the Income Tax Act 1952 and the Finance Act 1956, which are applicable to the present appeal, have not, in my view, affected the meaning which the F word " perquisite " bore in the Income Tax Act 1918. I think that it must be accepted that " perquisite " in each of these subsequent Statutes still means what it meant in the Income Tax Act 1842.

The benefit in kind which it was contended in *Tennant* v. *Smith* was a " perquisite " arising in the course of the taxpayer's employment was the residence by a bank manager in a house on the bank's premises, in respect G of which it was conceded that his employers were liable to income tax under Schedule A, and in which he was required to reside by the terms of his contract of employment. His residence there thus formed part of the services which he undertook to render to his employers under his contract of employment, and not a benefit granted to him by them as a consideration for his services. Upon its facts *Tennant* v. *Smith* is thus clearly distinguishable H from the present case. Mr. Bell was under no duty to his employers to use the car provided for him under the car loan scheme. His use of it formed no part of the services rendered to his employers under his contract of employment. His right to use it was a benefit granted to him by them as a consideration for his services. Nevertheless, *Tennant* v. *Smith* was not decided, as in my view it might have been, upon this obvious ground which dis- I tinguishes it from the present case, but upon the ground that the benefit of residence in the bank house was not a " perquisite " because of its inconvertibility into money—a concept which each of their Lordships expressed in the slightly different words to which I have already referred.

(1) 3 T.C., at p. 164. (2) *Ibid.*, at p. 167. (3) *Ibid.*, at p. 170.
(4) *Ibid.*, at p. 172.

(Lord Diplock)

The judicial gloss placed on the expression "perquisite" in *Tennant* v. *Smith*[1] has been consistently accepted by the courts in subsequent cases, and in particular by your Lordships' House in *Abbott* v. *Philbin* 39 T.C. 82. It would not, in my view, be right after this lapse of time to challenge its correctness, but it is at least permissible to inquire what exactly does it mean. In any such inquiry one must strive to avoid the all too tempting error of construing the actual words used in the speeches of the individual Lords of Appeal to express the concept which they had in mind as if those words formed part of the Statute itself. What one is seeking are the characteristics of the taxable benefit in kind which are alluded to by those words. The underlying reason, as I think, for ascribing to the word "perquisite" in the Income Tax Acts a more restricted meaning than in ordinary speech is the simple notion that, since income is payable in money, Parliament cannot have intended to exact it from employees in respect of benefits in kind from which the employee cannot himself, by dealing with, forgoing or disposing of the benefit, raise money to pay the tax.

It was conceded on behalf of the Respondent that if Mr. Bell had been able to permit another person to use the car he might have raised money by hiring it out and the benefit would in that case possess the characteristics of a taxable perquisite. But it was contended that, since he had contracted with the company "not to permit anyone other than myself to drive or use the car except in an emergency", this means of raising money by dealing with the benefit was not open to him. This contention raises one of the questions which in *Abbott* v. *Philbin* Lord Radcliffe, 39 T.C., at page 125, specifically mentioned as left open by the decision in *Tennant* v. *Smith*: "must the inconvertibility arise from the nature of the thing itself, or can it be imposed merely by contractual stipulation?" It is not, I think, necessary to answer that question in the present appeal, which I am content to dispose of on simpler grounds, but it must not be supposed that I assent to the proposition that a benefit in kind can escape all charge to tax as a perquisite by limitations upon the employee's right to deal with it imposed by a contract, collateral to his contract of employment, into which he enters of his own volition.

By the terms of his agreement with the company under which he received the benefit in kind which the Crown seek to tax, viz., the free use of a car, Mr. Bell on giving two weeks' notice could surrender it, and upon doing so would become entitled to be paid by the company a new weekly wage greater by the agreed amount by which his former weekly wage had been reduced when he joined the car loan scheme. In this way, say the Crown, the benefit could be converted into money or turned to pecuniary account during the year of assesment—and this sounds remarkably like common sense. As such it commended itself to Ungoed-Thomas J. On the contrary, says the Respondent, when the notice expires the benefit vanishes. There is nothing left to be converted into money. It is an irrelevant coincidence that upon the disappearance of the benefit I become entitled to resume my employment at a higher money wage. This argument, although accepted as valid by the Court of Appeal, is altogether too subtle for me. It is really no more than a linguistic one about what "convertible into money" means; and had these words been used in the taxing Statute, we might have been driven to embark upon this sterile exercise. But they do not appear in any Statute. They are to be found in a lengthy speech of Lord Macnaghten in *Tennant* v. *Smith*, from which they have been often borrowed by Judges in later cases as a

(1) 3 T.C. 158.

(Lord Diplock)

A convenient way of alluding to one characteristic of a benefit in kind enjoyed by an employee by reason of his employment which was absent in the benefit under discussion in *Tennant's* case(1) but is requisite to render the benefit taxable. Their Lordships in *Tennant* v. *Smith* were not directing their minds to benefits in kind which an employee at his option could surrender or reject in favour of a money payment. I find nothing in their speeches to indicate that, B if Mr. Tennant had had an option instead of living in the bank house to live elsewhere and receive a higher salary, they would not have held that the benefit of free residence was chargeable to tax ; and in so far as their decision was based upon considerations of the general policy of the Income Tax Act 1842 I find nothing to suggest that they intended to exclude from " perquisites " chargeable to tax benefits in kind which enable the employee C to put money into his pocket by forgoing them even though he cannot otherwise deal with or dispose of them.

I accept, therefore, the contention of the Crown that the free use of a car for his own purposes under the company's car loan scheme was a " perquisite " from his employment in respect of which Mr. Bell was chargeable to Income Tax under Schedule E, because if he had chosen to forgo it D he could have received a higher money wage in its stead.

The remaining question is: What is the full amount of the perquisite on which he should be assessed? The Crown do not seek to assess it at a higher figure than that of the reduction in the weekly wage which he agreed to accept so long as he retained the use of the car. Accordingly, there is no evidence of any higher weekly sum which Mr. Bell would have to pay on the open E market for a right to use a car on similar terms. This makes it unnecessary to consider whether *Wilkins* v. *Rogerson* 39 T.C. 344 was rightly decided. The full amount of the perquisite was at least that sum of money which Mr. Bell could have received had he chosen to forgo the use of the car. Ungoed-Thomas J. reduced the assessment by excluding the amount of the reduction in Mr. Bell's weekly wage for the two weeks which would have elapsed F between his giving notice terminating the agreement for use of the car and his receiving the higher weekly wage. The ground on which he did this is not wholly clear, but the exclusion of a sum representing the reduction in wages for these two weeks has been justified before your Lordships' House on the ground that Mr. Bell, having entered into the agreement, could not have entitled himself to receive a higher wage in lieu of the use of the car during G this two-week period. For my part, I cannot accept this argument From 1954 onwards, when the car loan service was first introduced, Mr. Bell had the option either to forgo the benefit and accept a higher money wage instead or to accept the benefit and forgo the higher money wage. Until 1961 he chose to forgo the benefit and accept the higher money wage. He could have continued to do so. If he had, he could have received a higher money wage H throughout the whole period of the agreement. When an employee has chosen to accept a benefit in kind from his employer instead of money it does not lose its characteristic as a " perquisite " during the minimum period in any year of assessment for which by his previous choice he has committed himself to accept it. I would, therefore, assess the full annual amount of the benefit at the total amount of the higher wage which he would have received I during the year if he had not entered into the car loan scheme.

I would allow the appeal, and restore the judgment of Ungoed-Thomas J., with the variation that the value of the perquisite to be included in the assessment should be the full amount debited to the taxpayer's wages in respect of the use of the car during the respective years of assessment.

(1) 3 T.C. 158.

Questions put :

That the Order appealed from be reversed except as to costs, and that it be declared that for the purposes of income tax the Respondent's taxable wage was the gross weekly sum earned by him before deduction for the year 1963–64 of the amount payable to Waddingtons' Craftsmen's Car Loan Service.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue ; Biddle & Co., for Hepworth & Chadwick, Leeds.]