

No. 594.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
24TH NOVEMBER, 1926.

THE COMMISSIONERS OF INLAND REVENUE *v.* ZORAB.⁽¹⁾

Income Tax—Residence—Finance Act, 1923 (13 & 14 Geo. V, c. 14), Section 17.

The Respondent, a British subject born in Calcutta, had held from 1890 an appointment in the Public Works Department of the Indian Civil Service. Until 1920, with the exception of a period prior to 1890 spent in England for educational purposes, he had lived all his life in India, generally in hotels. In May, 1920, he left India on two years' furlough, retiring from the Service on the expiration thereof, and had not since returned to India, but had lived in hotels in this country, in Paris and in Belgium. The periods of time spent in this country up to the date of his appeal to the Special Commissioners were as follows :—

1st November, 1920, to 3rd October, 1921.

22nd July, 1922, to 20th January, 1923.

21st June, 1923, to 11th December, 1923.

21st May, 1924, to 18th October, 1924.

12th May, 1925, to 25th May, 1925 (the date of the appeal).

He had no business interests in this country, and the sole object of his visits was to see friends.

Under Section 17, Finance Act, 1923, the Respondent was assessed to Income Tax under Schedule E for the year 1924-25 in respect of a pension paid to him by the Bengal Government through the High Commissioner for India, but on appeal the Special Commissioners discharged the assessment, holding that the Respondent was not resident in the United Kingdom for the year in question.

Held, that there was evidence on which the Commissioners could come to their decision and that they had not misdirected themselves in law.

CASE

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

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 25th May, 1925, for the purpose of hearing appeals, J. Zorab (hereinafter called the Respondent) appealed against an assessment made upon him for

⁽¹⁾ Not reported.

the year 1924-25 to Income Tax under Schedule E, in respect of a pension paid to him by the Bengal Government through the High Commissioner for India.

2. The Respondent appeared in person and gave evidence to the following effect :—

- (a) He is a British subject, born in Calcutta, and had held from 1890 until recently an appointment in the Indian Civil Service (Public Works Department) from which he has now retired on pension ;
- (b) he has lived in India all his life until 1920, with the exception of a period before 1890 when he came to England for educational purposes ; he is a bachelor and has never been a householder either in India or elsewhere, having lived generally in hotels ;
- (c) in May, 1920; he left India on two years' furlough intending to retire from the Service when his furlough expired in 1922 ;
- (d) since he left India—to which country he has no intention of returning unless it be for short visits—he has spent the following periods of time in this country :—

From	to
1st November, 1920,	3rd October, 1921.
22nd July, 1922,	20th January, 1923.
21st June, 1923,	11th December, 1923.
21st May, 1924,	18th October, 1924.
12th May, 1925,	the date of the present appeal.

- (e) when in this country he stays at a hotel, usually at the same hotel ; when abroad he lives in Paris, usually at the same hotel ; he has also spent some time in Belgium. He has no business interests in this country and his visits have been made solely with the object of seeing his friends here ;
- (f) he stated that it was his practice to spend five or six months in each year in this country and the remainder of the year abroad, and that it was his intention so to continue.

3. On these facts the Respondent contended that he was now a person residing in the United Kingdom for the year 1924-25 and that he was therefore not liable to assessment to Income Tax in respect of his Indian pension.

4. It was contended on behalf of the Crown that the Respondent was residing in the United Kingdom for the year 1924-25 and was in this country in pursuance of his regular habits of life and therefore not " for some temporary purpose only " within

the meaning of Rule 2 of the Miscellaneous Rules of Schedule D. The following cases were referred to:—

- Cooper v. Cadwalader*⁽¹⁾, (1904) 12 Sc. L.T.R. 449;
Bayard Brown v. Burt⁽²⁾, (1911) 105 L.T. 420; 27 T.L.R. 363 and 572;
Pickles v. Foulsham⁽³⁾, [1925] A.C. 458;
Cesena Sulphur Co., Ltd. v. Nicholson, 1 T.C. 88;
Swedish Central Railway Co., Ltd. v. Thompson⁽⁴⁾, [1925] A.C. 495.

5. We, the Commissioners who heard the appeal, were of opinion that the Respondent was not residing in the United Kingdom for the year 1924–25 and we discharged the assessment.

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

<p>H. M. SANDERS, J. JACOB,</p>	}	<p>Commissioners for the Special Purposes of the Income Tax Acts.</p>
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York House,
23, Kingsway, W.C.2.
11th June, 1926.

The case came before Rowlatt, J., in the King's Bench Division on the 24th November, 1926, when judgment was given against the Crown, with costs.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. Cyril King for the Respondent.

JUDGMENT.

Rowlatt, J.—I need not trouble you, Mr. King.

I cannot interfere with the Commissioners here. I cannot say that they have gone wrong in law. Of course it is perfectly right to say that a man has not got to have a residence in the shape of a building to be resident in this country. That is quite clear. But I think that one has to consider not only the time that he is in this country but the nature of his visit and his connection with the country. I think the cases quite bear that out. Because the question to be solved is not whether he is resident for the five

⁽¹⁾ 5 T.C. 101.

⁽²⁾ 5 T.C. 667.

⁽³⁾ 9 T.C. 261.

⁽⁴⁾ 9 T.C. 342.

(Rowlatt, J.)

months he is here, but whether he is resident for the whole year during the time he is not here. So I think we must consider the nature of his connection with this country in every case. That was at the root of *Cadwalader's* case⁽¹⁾, because there the gentleman had an establishment in Scotland; he had a lease available to him in Scotland going on all the year. The spot that he visited for a few months of the year was the spot all the time, if one may use that expression. So that was an overwhelming case and the Scotch Court over-ruled the Commissioners. *Miss Reid's* case⁽²⁾ is the strongest case for the Crown. There the Commissioners had found residence and the Court did not disturb it. One cannot help thinking that that was a stronger case than this case. The lady had some connection with this country. Her furniture was stored and her banking account was kept here, and so on. They are small things, but things which must, I think, be taken into consideration. This gentleman seems to be a mere traveller. That is how the Commissioners have looked at it and I think they are entitled to look at it in that way without going wrong in law. He is a native of India, he has retired from his work there and he really travels in Europe. All that can be said about it is that in the course of his habitual travels he spends a considerable period every year in England. That is really all that can be said about it and I cannot see that the Commissioners were bound under those circumstances. They must be the judges of the significance of the length of time and other circumstances that bear upon it; and I cannot say, the question of fact being in the first instance for them, that they have even gone wrong in law and that I can impose upon them the contrary conclusion. I think that would be turning aside from my functions and, therefore, this appeal will be dismissed with costs.

(1) *Cooper v. Cadwalader*, 5 T.C. 101.

(2) *Reid v. Commissioners of Inland Revenue*, 10 T.C. 673.