

HIGH COURT OF JUSTICE (CHANCERY DIVISION)—15, 16 AND 17 NOVEMBER 1988 A

COURT OF APPEAL—13 AND 14 NOVEMBER AND 6 DECEMBER 1989 B

HOUSE OF LORDS—16, 17 AND 21 JANUARY AND 7 FEBRUARY 1991 C

**Shilton v. Wilmshurst (H.M. Inspector of Taxes)<sup>(1)</sup>** D

*Income tax—Schedule E—Lump sum payment by football club to induce its employee to join a new club—Whether an emolument from the employment with the new club—Income and Corporation Taxes Act 1970, ss 181 and 183(1).*

The taxpayer had contracted to play football for Nottingham Forest Football Club (“Nottingham Forest”) until 31 July 1983, after which date he would have been able to sign with any club without that club having to pay any compensation to Nottingham Forest. In or about July 1982 Nottingham Forest received an offer from Southampton Football Club (“Southampton”) for the transfer of the taxpayer to Southampton for £325,000. Once the taxpayer had agreed the terms of his employment with Southampton, Nottingham Forest agreed to pay him £75,000 if he agreed to his transfer to Southampton. The taxpayer entered into his new contract with Southampton on 13 August 1982 and on 19 August 1982 the Board of Nottingham Forest agreed to pay him the £75,000 which was duly paid shortly thereafter. E

The taxpayer was assessed to income tax under Sch E for the year 1982–83 on the footing that the £75,000 was an emolument of his employment with Southampton Football Club. The taxpayer contended that the payment was compensation for the loss of rights he enjoyed under his existing contract with Nottingham Forest and so was not taxable under s 181. G

The General Commissioners held that the payment was an inducement to the taxpayer to play football for Southampton and as such was an emolument flowing from that service which he was to render to Southampton, and was therefore taxable under s 181. The taxpayer appealed. H

The Chancery Division, allowing the appeal, held that although the Commissioners were entitled to find that the payment to the Appellant was not compensation for the loss of rights he enjoyed under his existing contract but was an inducement to him to contract to play football for Southampton, they were wrong in law to find that the payment was an emolument from his employment with Southampton because a payment by a third party can only I

<sup>(1)</sup> Reported (ChD) [1989] 1 WLR 179; [1988] STC 868; (CA) [1990] 1 WLR 373; [1990] STC 55; (HL) [1991] 1 AC 684; [1991] 3 All ER 148; [1991] STC 88.

A be an emolument from the employment where the payer has an interest direct or indirect in the performance of the contract of employment. The payment was not therefore an emolument from the employment within s 181. The Crown appealed.

B The Court of Appeal, dismissing the Crown's appeal held:—

(1) that in order to be taxable an emolument must be referable to the performance of services under the contract; and

C (2) that payments attributable solely to the creation of the contract of employment irrespective of the services to be rendered under it are not assessable.

The Crown appealed.

D *Held*, in the House of Lords, allowing the Crown's appeal:

(1) s 181 is not confined to emoluments from the employer but comprehends emoluments provided by the third party;

E (2) s 181 applies first to an emolument which is paid as a reward for past services and as an inducement to continue to perform services and, secondly, to an emolument which is paid as an inducement to enter into a contract of employment and to perform services in the future; an emolument "from employment" therefore means an emolument "from being or becoming an employee";

F (3) the authorities are concerned to distinguish in each case between an emolument which is derived "from being or becoming an employee" on the one hand and an emolument which is attributable to something else on the other hand, e.g. to a desire to relieve distress or to provide assistance to a home buyer;

G (4) there is nothing in s 181 or the authorities to justify the inference that an "emolument from the employment" only applies to an emolument provided by a person who has an interest in the performance by the employee of the services which he becomes bound to perform when he enters into the contract of employment;

H (5) the £80,000 paid by Southampton and the £75,000 paid by Nottingham Forest were indistinguishable; those emoluments were paid for the same purpose and had the same effect, namely as an inducement to the taxpayer to agree to become an employee of Southampton.

I *Dictum* of Megarry J. in *Pritchard v. Arundale* 47 TC 680 disapproved. *Glantré Engineering Ltd. v. Goodhand* 56 TC 165; [1983] 1 All ER 542 approved.

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Stated under the Taxes Management Act 1970, s 56 by the Commissioners for the General Purposes of the Income Tax for the Division of South Nottinghamshire for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of South Nottinghamshire held on 13 February 1985 Peter Leslie Shilton of "Whiteoaks" 103 Chilworth Road Southampton Hampshire ("the Appellant") appealed against an assessment to income tax under Sch E made for him for the year 1982-83 in the sum of £183,238.

2. Shortly stated, the questions for our decision were:

(i) whether the sum of £75,000 included in the assessment mentioned in para 1 above, was properly charged to tax under Sch E by virtue of s 181(1)1 and s 183(1) Income and Corporation Taxes Act 70;

(ii) if it was not so properly charged to tax, whether it was properly chargeable to tax under Sch E by virtue of s 187 Income and Corporation Taxes Act 1970.

It was agreed between the parties that, in the event of our finding that the payment of £75,000 was properly charged tax under s 181(1)1 Income and Corporation Taxes Act 1970, the above mentioned assessment under Sch E should be determined in the sum of £184,381. It was also agreed between the parties that in the event of our finding that the payment of £75,000 was properly chargeable to tax under s 187 Income and Corporation Taxes Act 1970 then the relief in s 188(3) and Sch 8 Income and Corporation Taxes Act 1970 were available to the Appellant.

3. The Appellant was represented by Mr. Terrance Morris of J.H. Trease & Co. Chartered Accountants. Oral evidence was given by the Appellant, by Mr. Brian Clough ("Mr. Clough") Manager of Nottingham Forest Football Club Ltd., by Mr. Kenneth Smales Secretary of Nottingham Forest Football Club Ltd. and by Mr. Jonathan Roy Holmes ("Mr. Holmes") personal adviser to the Appellant. The case for the Revenue was conducted by the Respondent.

4. The following documents were proved or admitted before us:—

(i) A statement of facts agreed between the parties.

(ii) Calculations of the tax liability showing the position both with and without the relief claimed by the Appellant.

(iii) Letters from Nottingham Forest Football Club Ltd. to the Respondent dated 27 August 1982, 28 September 1982, 21 December 1982, 27 January 1983, 31 March 1983.

(iv) Copy Football League contracts between the Appellant and Nottingham Forest Football Club Ltd. dated 28 September 1979 and between the Appellant and Southampton Football Club Ltd. dated 13 August 1982.

A (v) A copy of an extract from the Football League regulations showing Regulation No. 54.

5. As a result of the evidence both oral and documentary adduced before us we found the following facts were proved or admitted:—

B (a) The Appellant was employed as a footballer by Nottingham Forest Football Club Ltd. ("Nottingham Forest") during the period September 1977 to August 1982 his final contract with Nottingham Forest being dated 28 September 1979 (exhibit iv) which contract would have remained in force until its expiry on 31 July 1983.

C (b) In or about July 1982 the manager of Nottingham Forest received an offer from Southampton Football Club ("Southampton") for the transfer of the Appellant from Nottingham Forest to Southampton at a transfer fee of £325,000 and this fee was agreed between the two clubs subject to terms being agreed between the Appellant and Southampton.

D (c) On his return from holiday the Appellant was informed by the manager of Southampton that a transfer fee had been agreed and the Appellant indicated that he would be interested in moving from Nottingham to Southampton if the terms were right. It was indicated to the Appellant by Mr. Clough that should he agree terms for his employment with Southampton, Nottingham Forest might be willing to make a payment to him for consenting to a transfer.

E (d) The Appellant agreed the terms of his contract with Southampton with the aid of Mr. Holmes and following that agreement reached a verbal agreement with Mr. Clough that Nottingham Forest would pay him £75,000 if he agreed to his transfer to Southampton.

F (e) The Appellant entered into his new contract with Southampton on 13 August 1982 and at a Board Meeting of Nottingham Forest held on 19 August 1982 the payment of £75,000 by Nottingham Forest to the Appellant was agreed and shortly thereafter the Appellant received this sum after deduction of income tax at source under PAYE regulations.

G (f) If the Appellant had decided to remain with Nottingham Forest he would, due to his age and length of service with Nottingham Forest, have been a free agent at the end of his contract in July 1983 and if he had then moved to another club Nottingham Forest would not have received any transfer fee at all so that the deal was attractive to Nottingham Forest. The deal was also attractive to the Appellant as quite apart from his wish to move, his new contract with Southampton gave him security for four years and the terms of his employment were an improvement on the terms he was currently enjoying with Nottingham Forest and included (*inter alia*) a signing-on fee of £80,000 payable to him by four annual instalments by Southampton.

H (g) At the time the deal was negotiated between Nottingham Forest and Southampton there was some pressure on Nottingham Forest to raise money by the sale of players and to reduce their wage bill.

I (h) The negotiations for the transfer of the Appellant had three components.

Firstly, an agreement between the two Clubs as to the amount of the transfer fee which was agreed before the matter was specifically mentioned to the Appellant. A

Secondly, the agreement of the Appellant to move as he could not be forced to do so during the continuance of his existing contract with Nottingham Forest, which in turn depended on the Appellant agreeing terms for his employment with Southampton. B

Thirdly, the negotiations between the Appellant and Nottingham Forest for any payment to be made by that club to him.

(i) Although there were three parts to the negotiations these parts should be looked at as a whole as if agreement had not been reached between the appropriate parties on each part, then the whole would have failed. C

(j) The payment by Nottingham Forest to the Appellant was an inducement to him to play football for Southampton and as such an emolument flowing from that service which he was to render to Southampton. D

6. It was contended on behalf of the Appellant:

(a) That the payment of £75,000 by Nottingham to the Appellant was not outside the scope of Sch E Income and Corporation Taxes Act 1970 only by virtue of the fact that it is deemed to be a Sch E emolument under s 187 Income and Corporation Taxes Act 1970. E

(b) That the Respondent will say that the payment of £75,000 to the Appellant falls within s 181 Income and Corporation Taxes Act not as an emolument of his employment by Nottingham Forest but as an emolument of his employment by Southampton notwithstanding the payment was made by Nottingham Forest. F

(c) That it was for the Respondent to prove that the payment to the Appellant fell within the charging sections of Sch E and not for the Appellant to prove that the payment to him was outside them and that it could not fall within s 181 as it was not an emolument from the Appellant's employment by Southampton. G

(d) The House of Lords decision in the case of *Hochstrasser v. Mayes*<sup>(1)</sup> shows that not every payment made to an employee is an emolument from that employment. Each case turned on its own particular facts and that to be a profit arising from an employment a payment must be made in reference to the service the employee renders by virtue of that employment and it must be in the nature of a reward for services past present or future. H

(e) The judgment of Walton J. in the recent case of *Donnelly v. Williamson*<sup>(2)</sup> (which demonstrates the *Hochstrasser v. Mayes* principle still holds good) was quoted by reference to testing whether a payment was an emolument, namely was it received as remuneration or reward for acting as or being an employee. In this case the payment was made by Nottingham Forest not as remuneration or reward for being an employee of that Club I

(1) 38 TC 673; [1960] AC 376.

(2) 54 TC 636; [1982] STC 88.

A or being an employee of Southampton but to obtain his agreement to the transfer of his Football League registration.

(f) The correspondence referred to at exhibit (iii) shows clearly that it was the intention of Nottingham Forest to make an *ex gratia* payment to Mr. Shilton in consideration of his agreeing to be transferred to Southampton as without such agreement Nottingham Forest could not receive the transfer fee from Southampton.

(g) That the Appellant had an open mind about the possibility of his transfer to Southampton. After another year with Nottingham Forest he could either stay with that Club or move to any other club and whatever his decision he would be able to command a substantial signing-on fee. However the terms offered by Southampton of a four year contract improved remuneration and a signing-on fee of £80,000 were attractive to him.

(h) There was no particular significance in the figure of £75,000.

(i) That as the payment was made by Nottingham Forest and not by Southampton it was not an emolument of his employment with Southampton but was a termination payment under a verbal agreement to terminate his contract with Nottingham Forest and consequently was within s 187 Income and Corporation Taxes Act 1970 and the relevant relief should be available accordingly.

(j) The case of *Henley v. Murray*<sup>(1)</sup> shows that a payment not made under a contract but in consideration of its termination is not taxable as an emolument of that employment.

(k) The payment was not a reward for past services to Nottingham Forest as there was no provision for such payment under the Appellant's service contract with that club but arose by virtue of the collateral transaction between Nottingham Forest and Southampton.

(l) Under the Football League's regulations a player's registration with the Football League could only be transferred by the mutual consent of the Club and the player and if there were such consent then any agreement between the Club and the player will be deemed to be terminated so that the Appellant's agreement with Nottingham Forest was terminated on 13 August 1982 when his registration was transferred to Southampton by agreement.

(m) The onus was upon the Respondent to prove that the payment fell within s 181 and that the Respondent had failed to do this.

(n) It could not be said that the payment made by Nottingham Forest was by reference to the services that the Appellant was to render to Southampton by virtue of his employment by that Club as such services were being rewarded more than adequately by the terms of his contract with Southampton including a substantial signing-on fee.

(o) It could not be said that the payment was made to the Appellant as remuneration or reward for acting as or being an employee of Southampton

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(1) 31 TC 351.

as there was nothing in his contract with that club entitling him to such payment. A

(p) Although the case of *Calvert v. Wainwright*<sup>(1)</sup> showed that payments by a third party could be part of the remuneration for services rendered to an employer the payment still had to be a reward for services and it could not be said that the payment in question in this case was a reward for such services to be rendered to Southampton. B

(q) The case of *Jarrold v. Boustead*<sup>(2)</sup> was not comparable with the present case as in that case the payment received by the taxpayer was in consideration of his giving up his amateur status, i.e., a payment for the permanent loss of amateur status. C

(r) In the case of *Glantre Engineering Ltd. v. Goodhand*<sup>(3)</sup> the payment was made to the taxpayer by his future employer, and not by a third party, as an inducement paid to him to enter into the employers service. By contrast in *Pritchard v. Arundale*<sup>(4)</sup> the transfer of shares to the taxpayer was by a third party and was not in the nature of a reward for future services but to compensate him for the loss of an established position. That case showed that the payment must be linked to the services not by mere words but by reality and the payment must flow from the employment concerned and not just the undertaking of that employment. D

(s) In summary, the payment of £75,000 by Nottingham Forest to the Appellant did not fall within s 181 for the following reasons: E

(i) It was not a reward for services to be rendered by the Appellant to Southampton F

(ii) It did not flow from his employment with that Club.

(iii) It was not made by reference to the services that the Appellant was to render to that Club.

(iv) It was not made by the employer to the employee but by a third party. G

(v) It was not an inducement for the Appellant to play for Southampton but even if it was it did not flow from such employment.

(vi) The correct interpretation was that the payment was made to the Appellant to obtain his consent to a transfer of his Football League registration to Southampton so that Nottingham Forest could receive a transfer fee from Southampton and was the consideration paid by Nottingham Forest for the Appellant's agreement to terminate his contract with that club. H

7. It was contended by H.M. Inspector of Taxes:— I

(i) That the payment of £75,000 was made to the Appellant to induce him to take up employment with Southampton Football Club Ltd.

(1) 27 TC 475.

(2) 41 TC 701.

(3) 56 TC 165.

(4) 47 TC 680.

A (ii) That the payment constituted an emolument from the Appellant's employment with Southampton Football Club Ltd.

(iii) That accordingly the assessment was properly made and should be determined in the sum of £184,381.

B 8. We were referred to the following authorities:—

C *Hochstrasser v. Mayes* 38 TC 673; *Donnelly v. Williamson* TC Leaflet 2868<sup>(1)</sup>; *Henley v. Murray* 31 TC 351; *Pritchard v. Arundale* 47 TC 680; *Glantre Engineering Ltd. v. Goodhand*<sup>(2)</sup> TC Leaflet 2910; *Calvert v. Wainwright* 27 TC 475; *Jarrold v. Boustead* 41 TC 701.

D 9. We, the Commissioners who heard the appeal decided on the evidence adduced including the agreed Statement of facts that the payment of £75,000 by Nottingham Forest to the Appellant was chargeable to tax under s 181 of the Income and Corporation Taxes Act 1970 as an emolument of his employment with Southampton and determined the assessment in the sum of £184,381 and declared that no relief was due under s 187 and para 7 and 7A Sch 8 of the Income and Corporation Taxes Act 1970.

E 10. The Appellant immediately after determination of the Appeal declared to us his dissatisfaction therewith as being erroneous in point of law and on 14 February 1985 required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970 s 56 which Case we have stated and do sign accordingly.

F 11. The question of law for the opinion of the Court is whether on the facts as found by us and set out in para 5<sup>(3)</sup> our decision as set out in para 9 is correct.

30 July 1986

G The case was heard in the Chancery Division before Morritt J. on 15 and 16 November 1988 when judgment was reserved. On 17 November 1988 judgment was given against the Crown, with costs.

H *Andrew Thornhill Q.C.* for the taxpayer.

*Alan Moses* for the Crown.

I The following cases were cited in argument in addition to the cases referred to in the judgment:— *Bird v. Martland* 56 TC 89; [1982] STC 603; *Furniss v. Dawson* 55 TC 324; [1984] AC 474; *Henley v. Murray* 31 TC 351; [1950] 1 All ER 908; *Odhams Press, Ltd. v. Cook* 23 TC 232; [1940] 3 All ER 15; *Wales v. Tilley* 25 TC 136; [1943] AC 386; *Yuill v. Wilson* 52 TC 674; [1980] 1 WLR 910.

<sup>(1)</sup> 54 TC 636.

<sup>(2)</sup> 56 TC 165.

<sup>(3)</sup> Page 81A/B-82D *ante*.



**Morritt J.**— This is an appeal by way of Case Stated by the taxpayer, Peter Leslie Shilton, from the decision of the General Commissioners for South Nottinghamshire made on 13 February 1985. Mr. Shilton had appealed against an assessment to income tax under Sch E made on him for the year 1982–83. That assessment included tax on the sum of £75,000 received by Mr. Shilton shortly after 19 August 1982 from Nottingham Forest Football Club.

The circumstances in which that payment came to be made are set out in the Case Stated. By a contract dated 28 September 1979 Mr. Shilton had contracted to play as a professional footballer for Nottingham Forest until 31 July 1983. By the rules of the Football League Mr. Shilton would be entitled from July 1983 to sign up with the club of his choice without that club being under any obligation to pay any compensation to the club he would be leaving, that is Nottingham Forest.

By July 1982 Nottingham Forest were under some pressure to raise money by the sale of players and to reduce their wage bill. In or about July 1982 the manager of Nottingham Forest received an offer from Southampton Football Club for the transfer of Mr. Shilton from Nottingham Forest to Southampton at a transfer fee of £325,000 subject to terms being agreed between Mr. Shilton and Southampton. This offer was accepted by Nottingham Forest.

On Mr. Shilton's return from holiday the manager of Southampton told him that a transfer fee had been agreed subject to Mr. Shilton and Southampton agreeing the terms of his new employment. Mr. Shilton indicated that he would be prepared to move if the terms were right. The manager of Nottingham Forest indicated to Mr. Shilton that should Mr. Shilton agree terms for his employment with Southampton Nottingham Forest might be willing to make a payment to Mr. Shilton for consenting to a transfer. Mr. Shilton agreed the terms of his employment with Southampton which included a signing-on fee of £80,000 and following that agreement agreed with the manager of Nottingham Forest that Nottingham Forest would pay Mr. Shilton £75,000 if he agreed to his transfer to Southampton. On 13 August 1982 Mr. Shilton entered into his new contract with Southampton and on 19 August 1982 the Board of Nottingham Forest agreed to pay Mr. Shilton the £75,000 which was duly paid shortly thereafter.

In their decision the General Commissioners recorded that the deal was attractive to Nottingham Forest because that club would receive a net sum of £250,000 whereas if Mr. Shilton left them the following year they would receive nothing. They also found as a fact that (and I quote from para 5(f) of the Case Stated)<sup>(1)</sup>:

“The deal was also attractive to the Appellant as quite apart from his wish to move, his new contract with Southampton gave him security for four years and the terms of his employment were an improvement on the terms he was currently enjoying with Nottingham Forest and included (*inter alia*) a signing-on fee of £80,000 payable to him by four annual instalments by Southampton.”

<sup>(1)</sup> Page 81H/I *ante*.

A After pointing out that the negotiations had three component parts the General Commissioners found as facts (and I quote from paras 5(i) and (j))(1):

B “Although there were three parts to the negotiations these parts should be looked at as a whole as if agreement had not been reached between the appropriate parties on each part, then the whole would have failed ... The payment by Nottingham Forest to the Appellant was an inducement to him to play football for Southampton and as such an emolument flowing from that service which he was to render to Southampton.”

C The conclusion of the General Commissioners set out in para 9 of the Case Stated was “that the payment of £75,000 by Nottingham Forest to the Appellant was chargeable to tax under s 181 of the Income and Corporation Taxes Act 1970 as an emolument of his employment with Southampton”. The question of law for me as set out in para 11 of the Case Stated is whether on the facts as found by the Commissioners and set out in para 5 D their decision as set out in para 9 is correct.

E Mr. Shilton’s contention on this appeal is that the words in para 5(j) “and as such an emolument flowing from that service which he was to render to Southampton” was a conclusion of law which was erroneous in that it did not follow from the facts previously found. The Revenue agree that it is a conclusion of law but contend that it was correct.

F Liability to tax under Sch E was at the time in question imposed by s 181(1) of the Income and Corporation Taxes Act 1970. So far as material it provided: “Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom which fall under one, or more than one, of the following Cases”. There is no dispute that Mr. Shilton came within Case I and that the sum of £75,000 was an emolument. It is also not disputed that if the sum of £75,000 is not taxable under s 181 it is taxable under s 187 but with different financial consequences because of the relief available under the latter section. The question in terms of the statute is therefore whether the sum of £75,000 is an “emolument therefrom”, that is to G say an emolument from Mr. Shilton’s employment by or with Southampton.

H The approach to be adopted in respect of the word “therefrom”, whilst not putting a gloss on it, can be seen from a number of statements of high authority. *Hochstrasser v. Mayes* [1960] AC 376, concerned housing assistance provided by an employer for employees. The benefit received by the employee was held not to be taxable. At page 390 Viscount Simonds said(2):

I “I do not apologise for going back to the very words of the statute and ignoring explanatory words like ‘as such’, nor do I think it useful to examine whether an agreement under which payment is made is ‘collateral’. The question is one of substance, not form. I accept, as I am bound to do, that the test of taxability is whether from the standpoint of the person who receives it the profit accrues to him by virtue of his office.”

At page 391 Lord Radcliffe said(3):

(1) Page 82C/D *ante*.

(2) 38 TC 673, at page 706.

(3) *Ibid*, at page 707.

"The test to be applied is the same for all. It is contained in the statutory requirement that the payment, if it is to be the subject of assessment, must arise 'from' the office or employment. In the past several explanations have been offered by judges of eminence as to the significance of the word 'from' in this context. It has been said that the payment must have been made to the employee 'as such'. It has been said that it must have been made to him 'in his capacity of employee'. It has been said that it is assessable if paid 'by way of remuneration for his services', and said further that this is what is meant by payment to him 'as such'. These are all glosses, and they are all of value as illustrating the idea which is expressed by the words of the statute. But it is perhaps worth observing that they do not displace those words. For my part, I think that their meaning is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it has been paid to him in return for acting as or being an employee."

*Laidler v. Perry* [1966] AC 16, concerned Christmas vouchers given to employees by the employer which were found to be taxable. At page 30 Lord Reid said<sup>(1)</sup>:

"So the question in this case is whether these profits or emoluments of £10 did or did not arise from the appellant's employment. There is a wealth of authority on this matter and various glosses on or paraphrases of the words in the Act appear in judicial opinions, including speeches in this House. No doubt they were helpful in the circumstances of the cases in which they were used, but in the end we must always return to the words in the statute and answer the question—did this profit arise from the employment? The answer will be 'no' if it arose from something else."

Lord Donovan said at page 35(2):

"the appellant's argument is that these receipts of £10 each did not arise from his office or employment. The admitted facts are that the company disbursed these sums to 'help to maintain a feeling of happiness among the staff and to foster a spirit of personal relationship between management and staff'. In less roundabout language that simply means in order to maintain the quality of service given by the staff. Looked at in this way, the payments were an inducement to each recipient to go on working well."

Then later, at the foot of page 36, he said<sup>(3)</sup>:

"I think that in any event there was ample material to justify their conclusion that the payments arose from the appellant's office or employment as that conception was defined by my noble and learned friend, Lord Radcliffe, in *Hochstrasser v. Mayes*<sup>(4)</sup>."

In *Tyrer v. Smart* 52 TC 533, the Courts were concerned with a tender issue of shares. Shares were issued to employees at the minimum rather than the striking price. The resulting benefit was held to be taxable. At page 556 Lord Diplock said<sup>(5)</sup>:

<sup>(1)</sup> 42 TC 351, at pages 362/363.

<sup>(2)</sup> *Ibid.*, at page 366.

<sup>(3)</sup> *Ibid.*, at page 367.

<sup>(4)</sup> 38 TC 673.

<sup>(5)</sup> [1979] 1 WLR 113, at page 114.

A “The test to be applied is well established. It is whether the benefit represents a reward or return for the employee’s services, whether past, current or future, or whether it was bestowed upon him for some other reason”. Then later, at page 559, he said: “That seems to me a clear finding”, referring to the finding of the Commissioners, “that the offer was made as a reward for past (since he had to have served five years to qualify for the offer) and more particularly for future services and accordingly was made to him in return for acting as or being an employee.”

C All these statements were recently considered by the Court of Appeal in *Hamblett v. Godfrey*<sup>(1)</sup> [1987] 1 WLR 357. That case concerned payments made in consideration of the surrender of rights by employees under a continuing contract of employment. The Commissioners had held that the payment “was not paid in return for her services and it lacked the element of remuneration which, in our judgment, is necessary to constitute a taxable emolument”. On appeal Knox J. considered this test to be too narrow, and on appeal the Court of Appeal agreed. After reviewing the authorities Purchas L.J. said at page 367<sup>(2)</sup>:

E “So, in my judgment, the approach that the court should take, and, indeed, that Knox J. did in fact take, is to consider the status of the payment and the context in which it was made. The payment was made to recognise the loss of rights. I am now going to paraphrase, I hope accurately, from the findings of the commissioners and the employers’ letter and other records. The rights, the loss of which was being recognised, were rights under the employment protection legislation, and the right to join a union or other trade protection association. Both those rights, in my judgment, are directly connected with the fact of the taxpayer’s employment. If the employment did not exist, there would be no need for the rights in the particular context in which the taxpayer found herself. So, I start from the position that those are rights directly connected with employment.”

F Then later on page 368 he said<sup>(3)</sup>:

G “There is no doubt in this case that the employment protection legislation goes directly to the employment of the taxpayer with the employer. The right to join a union, in my judgment, also falls directly to be considered as in connection with that employment, because without the employment there is no purpose in joining the union except for esoteric or personal reasons which are not relevant in this case. But I can again see a situation in which persons involved in particularly sensitive areas of government service might be required to abandon their right of freedom of speech. In such a case, it would clearly have to be considered on the facts involved in the individual case to see whether the abandonment of that fundamental right was in fact connected and arose upon the employment or not, and it would clearly differ from case to case.”

I Neill L.J. said at page 370, after referring to various authorities<sup>(4)</sup>:

(1) 59 TC 694.

(2) *Ibid*, at page 723E.

(3) *Ibid*, at page 724B.

(4) *Ibid*, at page 726G.

“Thus these passages, as well as those to which Purchas L.J. has already referred in greater detail, demonstrate to my mind that emoluments from employment are not restricted to payments made in return for the performance of services.” A

Then at a later stage on the same page he continued<sup>(1)</sup>:

“Accordingly, if I may adopt the language of Lord Radcliffe in the passage I have referred to”—that is in *Hochstrasser v. Mayes*<sup>(2)</sup>—“the payment to the taxpayer was made in return for her being and continuing to be an employee at G.C.H.Q., or to use the words of Viscount Simonds, ‘the payment accrued to the taxpayer by virtue of her employment’. But in the end I think it is right to base my decision on the wording of the statute. It is clearly not enough that the payment was received from the employer. The question is, was the payment an emolument from the employment? In other words, was the employment the source of the emolument?” B C

Finally, at the foot of page 370 he concludes:

“I have been driven to the conclusion that the source of the payment was the employment. It was paid because of the employment and because of the changes in the conditions of employment and for no other reason. It was referable to the employment and to nothing else.” D

The authorities clearly show that a payment made by a person to induce another to become his employee may, but does not necessarily, give rise to a liability to tax under Case I of Sch E. Thus in *Hose v. Warwick* 27 TC 459, a sum paid by the employer to an existing employee on taking up a new post with increased duties was not taxable because it was compensation for the loss of a personal asset in the form of a valuable business connection which the employee, in effect, sold to his employer. E F

Likewise in *Jarrold v. Boustead*<sup>(3)</sup> 41 TC 701, a sum paid as compensation for the permanent loss of a personal asset in the form of his amateur status was held not to be taxable.

But in *Glantre Engineering Ltd. v. Goodhand*<sup>(4)</sup> 56 TC 165, a sum of £10,000 paid by an employer to the employee to induce him to take up new employment which could not in fact be severed from the other benefits payable under the contract of employment was taxable notwithstanding that the employee was thereby giving up his self-employed status. G

In all those cases the payer was the employer and taxability depended on the purpose of the payment. But in this case the payer is Nottingham Forest, not Southampton. Again this fact is by no means conclusive as shown by the cases where, for example, tips paid by third parties to employees of another have been held to be taxable under Sch E. H

In *Pritchard v. Arundale*<sup>(5)</sup> 47 TC 680, the taxpayer was a self-employed chartered accountant and the senior partner of his firm. He was induced to take up employment with a company by the controlling shareholder transferring to him about 2 per cent. of the shares in the company. The shares were to be transferred forthwith though the taxpayer was not due to take up his I

<sup>(1)</sup> 59 TC 694, at page 727A.

<sup>(2)</sup> 38 TC 673.

<sup>(3)</sup> [1964] 3 All ER 76.

<sup>(4)</sup> [1983] 1 All ER 542.

<sup>(5)</sup> [1972] Ch 229.

A employment until some four months later. The Commissioners concluded that the transfer of shares was compensation for loss of the taxpayer's established position and status and was not taxable because it was not in the nature of a reward for future services. In his judgment Megarry J. observed that the shares came from a third party so that little assistance could be derived from looking at the transaction from the point of view of the employer. He then proceeded at page 689<sup>(1)</sup>:

C “Second, to return, as always one must, to the language of the Statute, the payment must be an emolument ‘from’ the office or employment; and I do not think ‘from’ means ‘for’. In other words, the payment must be made in reference to the services rendered under the office or employment and as a reward for them, and so in that sense flow ‘from’ the office or employment; and this is not the same as a payment made ‘for’ undertaking the office or employment. I am not saying that merely because some benefit is, as it were, a premium or other initial payment in return for entering into a contract of employment it is not taxable. Remuneration for services is still remuneration for services, even if paid in a lump sum in advance. But whereas it will normally be very difficult to demonstrate that periodical payments made by an employer to an employee during the employment are anything but payments taxable under Schedule E, the fact that a payment is in the form of a lump sum paid at or before the commencement of the employment is a factor which, taken with other factors, may exclude Schedule E. If that Schedule is to apply, what the payments must relate to, and reward, is not the mere existence of a contract of service, nor merely entering into such a contract, but the services rendered or to be rendered under the contract.”

F In this case the Commissioners found as a fact that “The payment by Nottingham Forest to [Mr Shilton] was an inducement to him to play football for Southampton”. It is common ground that that means no more than an inducement to contract to play football for Southampton. It is plain from the Case Stated as a whole and in particular paras 5(f), 6(g) and 6(s)(vi) that it was not suggested that this payment was made in compensation for the loss of the possibility of a free transfer in July 1983 and that the Commissioners rejected the contention that it was compensation for the loss of the rights he enjoyed under his existing contract with Nottingham Forest. It was open to the Commissioners to reject that contention and there was evidence from which they could conclude as they did in the first part of para 5(j).

H Accordingly I reject the contentions advanced on behalf of Mr. Shilton that the first part of para 5(j) is reviewable on the basis of the test in *Edwards v. Bairstow*<sup>(2)</sup> or that the case should be remitted to the Commissioners to elucidate their findings.

I But there remains the question of law whether the conclusion expressed in para 5(j) that “as such” the payment was “an emolument flowing from that service which he was to render to Southampton” is correct. I have been pressed with the words of Lord Radcliffe in *Hochstrasser v. Mayes* and so often repeated that to be taxable the payment in question must be “for acting

(1) [1972] Ch 229, at pages 240/241.

(2) 36 TC 207.

as or being an employee". It is said that the payment by Nottingham Forest to Mr. Shilton could be so described. A

I observe first that those words were used in reference to a payment by an employer and not by a third party. Secondly Lord Radcliffe used the words in contrast to the earlier passage that "it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee". Thirdly Lord Radcliffe himself recognised that such words were no substitute for the words of the statute itself. The statute requires that the emolument should be "from" the office or employment. This requirement, as was pointed out by Megarry J. in *Pritchard v. Arundale* in the passage I have quoted, is not the same as a payment "for" the office or employment where the payment is made by a third party. B C

A payment by a third party may nevertheless be an emolument from the employment where the payer has an interest direct or indirect in the performance of the contract of employment either in the past as in the case of tips or in the future as in the *Pritchard v. Arundale* case itself. D

But in this case Nottingham Forest were only concerned that Mr. Shilton should enter into a contract of employment with Southampton in order that Nottingham Forest should obtain the agreed transfer fee from Southampton. Thereafter Nottingham Forest had no concern or interest direct or indirect in the performance of that contract. E

In my judgment in those circumstances the payment by Nottingham Forest to Mr. Shilton was not as the Commissioners concluded "an emolument flowing from that service which he was to render to Southampton", nor was it an emolument "from" his employment by or with Southampton within the meaning of s 181(1) of the Income and Corporation Taxes Act 1970. No doubt it was a payment that he would not have received unless he became an employee of Southampton, but as Lord Radcliffe pointed out that is not enough. F

Accordingly I will allow this appeal so far as liability to tax under s 181 of the Income and Corporation Taxes Act 1970 is concerned and consider with Counsel the proper form of my order. G

*Appeal allowed, with costs.*

H

The Crown's appeal was heard in the Court of Appeal (Sir Nicolas Browne-Wilkinson V.-C., Staughton and Beldam L.J.J.) on 13 and 14 November 1989 when judgment was reserved. On 6 December 1989 judgment was given unanimously against the Crown, with costs.

I

*Andrew Thornhill Q.C. and David Ewart for the taxpayer.*

*Alan Moses for the Crown.*

The following cases were cited in argument in addition to the cases referred to in the judgment:— *Henley v. Murray* 31 TC 351; [1950] 1 All ER

A 908; *Laidler v. Perry* 42 TC 351; [1966] AC 16; *Holland v. Geoghegan* 48 TC 482; [1972] 1 WLR 1473.

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B **Sir Nicolas Browne-Wilkinson V.-C.**:—This is an appeal by the Inland Revenue from a decision of Morritt J.

C The Judge allowed an appeal by the taxpayer, the England goal-keeper Peter Shilton, from a decision of the General Commissioners for the Division of South Nottingham that a payment of £75,000 made by Nottingham Forest Football Club to the taxpayer on his transfer from Nottingham Forest to Southampton Football Club was an emolument of the taxpayer's employment with Southampton and therefore taxable under Case I of Sch E in s 181 of the Income and Corporation Tax Act 1970.

D The Case Stated is reported at [1988] STC 868<sup>(1)</sup>. The relevant facts are stated by the Judge in his judgment (*ibid* and [1989] 1 WLR 179) from which I take the following summary. By a contract dated 28 September, 1979 the taxpayer had contracted to play as a professional footballer for Nottingham Forest until 31 July, 1983. By the rules of the Football League, the taxpayer would be entitled from July 1983 to sign up with the club of his choice without that club being under any obligation to pay any transfer fee to E Nottingham Forest. By July 1982 Nottingham Forest were under some pressure to raise money by the sale of players and to reduce their wages bill.

F In or about July 1982 the manager of Nottingham Forest received an offer from Southampton for the transfer of the taxpayer from Nottingham Forest to Southampton at a transfer fee of £325,000 subject to terms being agreed between the taxpayer and Southampton. This offer was accepted by Nottingham Forest. On the taxpayer's return from holiday, the manager of Southampton told him that a transfer had been agreed subject to the taxpayer and Southampton agreeing the terms of his new employment. The taxpayer in discussion with the manager of Nottingham Forest indicated that he would be prepared to move if the terms were right. The manager of G Nottingham Forest indicated to the taxpayer that should the taxpayer agree terms for his employment with Southampton, Nottingham Forest might be willing to make a payment to the taxpayer for consenting to a transfer. The taxpayer agreed the terms of his employment with Southampton which included a signing-on fee of £80,000. Following that agreement the taxpayer agreed with the manager of Nottingham Forest that Nottingham Forest H would pay the taxpayer £75,000 if he agreed to his transfer to Southampton. On 13 August, 1982 the taxpayer entered into his new contract with Southampton and on 19 August, 1982, the Board of Nottingham Forest agreed to pay the taxpayer the £75,000 ("the Nottingham Forest payment") which was duly paid shortly thereafter.

I The deal was attractive to Nottingham Forest because that club would receive a net sum of £250,000 (after making the Nottingham Forest payment) whereas if the taxpayer left them the following year they would receive nothing. The General Commissioners also found that the deal was attractive to the taxpayer: his new contract with Southampton gave him security for four

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(1) Pages 80A/85F *ante*.



years; the terms of his employment with Southampton were an improvement on those he was currently enjoying with Nottingham Forest, and he would receive the signing on fee of £80,000 payable to him by Southampton.

After pointing out that the negotiations had three component parts, the General Commissioners found as facts<sup>(1)</sup>:

“5 (i) Although there were three parts to the negotiations these parts should be looked at as a whole as if agreement had not been reached between the appropriate parties on each part, then the whole would have failed.

(j) The payment by Nottingham Forest to the Appellant was an inducement to him to play football for Southampton and as such an emolument flowing from that service which he was to render to Southampton.”

The conclusion of the General Commissioners was that the Nottingham Forest payment was chargeable to tax under s 181 of the Act of 1970 “as an emolument of his employment with Southampton.”

It must be stressed that in this case the taxpayer had two employments: one with Nottingham Forest, the other with Southampton. Although the Nottingham Forest payment was made to the taxpayer by Nottingham Forest, the Revenue’s claim is not that it was an emolument of his employment with Nottingham Forest, but that it was an emolument of his employment with Southampton. It is common ground that, if the Revenue’s claim is wrong, the Nottingham Forest payment is assessable to tax under s 187 of the Act as a “golden handshake” from Nottingham Forest but there will be certain tax reliefs which are not applicable if the Nottingham Forest payment is to be treated as an emolument of the taxpayer’s employment with Southampton.

Section 181 of the Act provides that tax under Sch E “shall be charged in respect of any office or employment on emoluments therefrom”. Section 183(1) provides that “emoluments shall include “all salaries fees wages perquisites and profits whatsoever”. It is not in dispute that the Nottingham Forest payment was an emolument. The sole question is whether the Nottingham Forest payment was a payment in respect of the taxpayer’s employment with Southampton and arose “therefrom”.

The Judge held that the Nottingham Forest payment was not an emolument “from” the taxpayer’s employment with Southampton. Whilst he accepted that a payment to an employee by someone other than the employer can be an emolument of that employment, he held that the Nottingham Forest payment could not be so characterised because the payer (Nottingham Forest) had no direct or indirect interest in the performance of the taxpayer’s contract with Southampton: the sole interest of Nottingham Forest was that the taxpayer should enter into, as opposed to perform, the contract with Southampton since it was on that event that Nottingham Forest became entitled to the payment of £325,000 by way of transfer fee.

(1) Page 82C/D *ante*.

A The Revenue submit that the Judge, in so holding, was either improperly interfering with the Commissioner's decision on a question of fact or laying down an erroneous proposition of law viz that a payment by a third party can never be an emolument from employment unless such third party has an interest in the performance by the employee of the contract of employment. The Revenue submit that such proposition of law is only maintainable if an emolument can only be treated as arising "from" the employment if it is a reward for services past, present or future. It is submitted that two recent cases, *Hamblett v. Godfrey*<sup>(1)</sup> 59 TC 694 and *Bray v. Best*<sup>(2)</sup> [1989] 1 WLR 167 show that a payment can be a taxable emolument even though it is not paid or received as a reward for services.

C It is necessary first to consider how the law stood before those two recent cases. There is a wealth of authority on the question whether an emolument arises "from" employment. All recent cases stress that ultimately one must come back to the words of s 181 and ask whether the emolument arises "therefrom", i.e. from the office or employment. But although that is the ultimate question, helpful guidance can be obtained from the authorities. The first point, which is not in dispute, is that the question has to be looked at from the standpoint of the person who receives the payment, i.e. the employee: *per* Lord Simonds in *Hochstrasser v. Mayes*<sup>(3)</sup> [1960] AC 376 at page 390. Next, although the words of the statute are the ultimate test, the idea which is expressed by those words is usefully illustrated by judicial glosses which indicate that the payment must have been received by the employee "as such" or "in his capacity of employee" or "by way of remuneration or reward for his services": *ibid per* Lord Radcliffe at page 391. Recently the gloss or interpretation of the statutory words most often referred to is that of Lord Radcliffe (*ibid*) who, speaking of the statutory words, said:

F "For my part, I think that their meaning is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it has been paid to him in return for acting as or being an employee."

G This test is the one on which the Revenue relies in the present case.

H The plainest example of a taxable emolument is remuneration paid to the employee by the employer. But it is established that, even if the payment to the employee is made by someone other than the employer (e.g. tips to a taxi driver) such payment may be taxable under s 181: *Calvert v. Wainwright*<sup>(4)</sup> 27 TC 475. Even though the payment is not made by the employer, the tip is in essence a reward for the performance of the employment. We were not referred to any case where a payment made by a third party was held to be taxable where the reason for the payment was anything other than a reward for services past, present or future. Again, in my judgment it is established by the authorities that a payment made by an employer to induce someone to become his employee may, but not necessarily will, be a taxable emolument of that employment. The question in such a case is whether the reason for the payment is to induce the employee to give up some existing personal advantage (e.g. self-employed or amateur status) or

(1) [1987] 1 WLR 357.

(2) 61 TC 705.

(3) 38 TC 673.

(4) [1974] 1 KB 526.

whether it is a payment referable to services thereafter to be rendered under the contract of employment. Applying the approach of Lord Diplock in *Tyrer v. Smart*<sup>(1)</sup> [1979] 1 WLR 113 at 114, in the former case the payment is not “a reward or return for the employee’s services whether past, current or future” but is bestowed on the employee “for some other reason”: see *Hose v. Warwick* 27 TC 459; *Jarrold v. Boustead*<sup>(2)</sup> [1964] 1 WLR 1357. In the latter case, the payment may be taxable, even though the employee is giving up certain rights in accepting the employment, if it is impossible to sever the consideration for the giving up of those rights from the element of future remuneration: *Glanre Engineering Ltd. v. Goodhand*<sup>(3)</sup> [1983] STC 1.

Until the decision in *Hamblett v. Godfrey* (*supra*)<sup>(4)</sup> there was no case in which a payment to an employee was treated as a taxable emolument “from” the employment where the payment was anything other than a reward for services rendered or to be rendered under the contract of employment. The authorities plainly indicated that there might be payments other than by way of reward for services: but such a case had not arisen. This accounts for the frequent description of a taxable payment as being “remuneration for services” (*per* Lord Cave in *Seymour v. Reid*<sup>(5)</sup> [1927] AC 554 at page 559), a “reward for services” *per* Lord Simonds in the *Hochstrasser*<sup>(6)</sup> case at page 388 and Lord Russell of Killowen in *Brumby v. Milner*<sup>(7)</sup> [1976] 1 WLR 29 at page 36) or a “reward or return for the employee’s services” (*per* Lord Diplock in *Tyrer v. Smart*). Although the ultimate test is to apply the words of the statute, the decided cases down to that date all indicated that the idea lying behind the statutory words involved the concept of reward for the services, past, present or future, to be rendered under the contract by the employee.

In my judgment, were it not for the two recent decisions on which the Revenue rely, the Nottingham Forest payment in this case would not have been held to be a taxable emolument. The Nottingham Forest payment was neither paid nor received as a reward or return for the performance by Mr. Shilton of his services as a footballer playing for Southampton. It was a reward paid by Nottingham Forest to induce him to sign a contract with Southampton, the mere signing of that contract (whether subsequently performed or not) giving rise to the receipt by Nottingham Forest of the transfer fee, that being the sole objective of Nottingham Forest in making the payment to the taxpayer. The Nottingham Forest payment was not received as a reward for the taxpayer’s services to Southampton but for his agreeing to be transferred, i.e. to terminate his employment with Nottingham Forest and enter into a contract with Southampton. Nottingham Forest, having no interest in the performance of the taxpayer’s employment with Southampton, could not be making the Nottingham Forest payment as a reward for such services. Accordingly the Nottingham Forest payment did not arise “from” the taxpayer’s employment with Southampton but “for” agreeing to enter into that contract. The finding in para 5(j) of the Case Stated that the payment was “an inducement to him to play football for Southampton” is not in law decisive of the question whether it is a taxable emolument. Such an inducement may or may not be taxable, depending upon whether the inducement is referable to the services to be rendered under the employment or to some other cause.

(1) 52 TC 533.

(2) 41 TC 701.

(3) 56 TC 165.

(4) 59 TC 694.

(5) 11 TC 625.

(6) [1960] AC 376.

(7) 51 TC 583.

A In my judgment the state of the law as it existed before the two recent decisions is accurately and illuminatingly stated by Megarry J. in *Pritchard v. Arundale*<sup>(1)</sup> [1972] 1 Ch 229. In that case the taxpayer, who was a self-employed accountant, was induced to take up employment with a company in return for the transfer to him of some shares in the company by a shareholder. The Judge upheld the Commissioners' decision that the shares were not a taxable emolument and (at page 240) said this<sup>(2)</sup>:

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E "Second, to return, as always one must, to the language of the statute, the payment must be an emolument 'from' the office or employment; and I do not think 'from' means 'for'. In other words, the payment must be made in reference to the services rendered under the office or employment, and as a reward for them, and so in that sense flow 'from' the office or employment; and this is not the same as a payment made 'for' undertaking the office or employment. I am not saying that merely because some benefit is, as it were, a premium or other initial payment in return for entering into a contract of employment it is not taxable. Remuneration for services is still remuneration for services, even if paid in a lump sum in advance. But whereas it will normally be very difficult to demonstrate that periodical payments made by an employer to an employee during the employment are anything but payments taxable under Schedule E, the fact that a payment is in the form of a lump sum paid at or before the commencement of the employment is a factor which, taken with other factors, may exclude Schedule E. If that schedule is to apply, what the payments must relate to, and reward, is not the mere existence of a contract of service, nor merely entering into such a contract, but the services rendered or to be rendered under the contract."

F The Revenue submit that, whilst the decision in *Pritchard v. Arundale* may well be correct, that statement of the law by Megarry J. is shown to be erroneous by the two recent decisions since it is dependent for its reasoning on the basic assumption that, to be taxable, the payment must be a reward for services. In *Hamblett v. Godfrey* (*supra*) the Crown, as employer, had offered £1,000 to all its employees at GCHQ who were prepared to continue to perform their existing contracts of service while giving up their rights under such contract to belong to a trades union and certain other statutory rights of employees. The Special Commissioners had held that such a payment was not a taxable emolument as it had not been received as remuneration or reward for services. On appeal, their decision was reversed by Knox J., whose decision was upheld by the Court of Appeal, on the grounds that the answer to the question "was the payment by way of remuneration or reward for services?" is not legally determinative of the question "is the payment taxable?": see *per* Knox J. at page 710E (approved by Balcombe L.J. at page 727) and Neill L.J. at page 726H. The Court of Appeal then applied the statutory words and the guidance provided by the authorities and held that as the payment was solely referable to the employment and to changes in conditions of service it necessarily arose from the employment. Neill L.J. (at page 727A and D) said this:

I "Accordingly, if I may adopt the language of Lord Radcliffe" [in the passage cited above] "the payment to the taxpayer was made in return for her being and continuing to be an employee at GCHQ, or to

(1) 47 TC 680.

(2) *Ibid*, at pages 689/690.

use the words of Viscount Simonds, 'the payment accrued to the taxpayer by virtue of her employment' . . . I have been driven to the conclusion that the source of the payment was the employment. It was paid because of the employment and because of the changes in the conditions of employment and no other reason. It was referable to the employment and nothing else. Accordingly, in my judgment, the £1,000 was a taxable emolument."

Mr. Moses submits, to my mind rightly, that this case demonstrates that there may be a taxable emolument even though it is in no sense remuneration for services. To that extent the passage I have quoted from Megarry J. requires to be modified. But in my judgment the decision in *Hamblett v. Godfrey* does not depart from the concept that an emolument must, in order to be taxable, be referable to the performance of services under the contract. The Court of Appeal recognised that the mere existence of a contract of employment (in the absence of which the payment would not have been received) is not sufficient to render the payment taxable. The payment in that case was wholly related to the future performance of the contract of employment and the terms on which such future performance was to take place. Therefore, although the payment was not remuneration, it did relate to the performance of the contract of employment, not merely to its existence.

*Hamblett v. Godfrey* was applied by the House of Lords in *Bray v. Best* (*supra*). The circumstances in that case were unusual. After the end of the taxpayer's employment with G. Ltd., he received a payment on the winding up of a fund held on trust for the benefit of employees of G. Ltd. By the time the case reached the House of Lords, it was not disputed that such payment was an emolument from the taxpayer's employment with G. Ltd. The Special Commissioners held that, although the payment was a taxable emolument, since it had not been received until after the employment had terminated it could not be attributed to any year during which the taxpayer was an employee of G. Ltd. Accordingly there was no way in which the payment could be assessed to tax under s 181. The Revenue contended that the Special Commissioners having found that the payment was a reward for services, it necessarily followed that the payment was remuneration for the taxpayer's services with G. Ltd. and accordingly could be apportioned over the whole period of such employment.

The House of Lords rejected this submission. They held that, although emoluments include sums paid by way of periodic remuneration for services, that concept is not an essential ingredient of the term: see at page 176F. In reaching that conclusion they relied on the decision in *Hamblett v. Godfrey*.

In my judgment, *Bray v. Best* casts little light on the present case beyond the fact that the House of Lords applied the decision in *Hamblett v. Godfrey*. The question whether the payment arose "from" the employment was not in issue at all. The case decides that a payment may constitute an emolument "from the employment" even if it is paid otherwise than by way of remuneration for services; it casts no light on the essential characteristic of a payment which does constitute such an emolument.

In my judgment the totality of the authorities lead to this conclusion. In order for an emolument to fall within the words of s 181 as being "from" employment, it is not essential that the payment is received by way of reward or remuneration for services past, present or future. However the receipt of

A such a payment by way of reward for services is the paradigm of a taxable receipt: such a case provides valuable guidance to the meaning of the statutory words. The essence of a payment which is a reward for services is that it relates to the performance of the contract by the rendering of services, not merely to the existence of the contract of employment. *Hamblett v. Godfrey* shows that other types of payment made by an employer to an employee may  
B equally refer to the performance of the contract of employment. But this represents no departure from the essential characteristic required to make such payments an emolument “from” the employment, namely that they are referable to the performance of the services under the relevant contract of employment and nothing else. To adopt Lord Radcliffe’s approach, the payment is assessable if it has been paid to the taxpayer for acting as or being an  
C employee, but not if the payment is attributable solely to the creation of the contract of employment irrespective of the services to be rendered under it.

If that be right, it follows that the Commissioners’ decision was erroneous in law. On the facts found by them, the Nottingham Forest payment could not relate to the performance of services by the taxpayer under his  
D contract with Southampton. Nottingham Forest had no interest whatsoever in the performance (as opposed to the formation) of that contract and the payment was in no way referable to such performance. Therefore, as the Judge held, the Nottingham Forest payment could not be an emolument of the taxpayer’s employment with Southampton.

E I add two words of caution. First, as Megarry J. pointed out in the passage I have quoted, where a premium or other initial payment is made by the employer (as opposed to a third party having no interest, direct or indirect, in the performance of the contract) it may be difficult to show that such payment is not merely advance remuneration. Second, where a payment is made  
F by a third party as an inducement to enter into the contract, the substance of the matter has to be looked at. It is not suggested by the Revenue in this case that there was any arrangement between Southampton and Nottingham Forest that Nottingham Forest (rather than Southampton) should make the payment of £75,000 to Mr. Shilton so as to give him the benefit of tax reliefs. If such an arrangement had existed the taxpayer would have received the  
G payment as additional remuneration indirectly from Southampton (the employer) and as such it would have been taxable in just the same way as the £80,000 paid by Southampton to the taxpayer as a signing-on fee. In my judgment our decision in this case does not open the gate to the avoidance of tax by transferring the burden of the signing on fee from the transferee club to the transferor club.

H Other difficult points were argued on the appeal. What is the true meaning of the rather cryptic findings in para 5(j) of the Case Stated? What is the correct legal weight to be given to the fact that the transfer of the taxpayer involved not only his agreement to be employed by Southampton but also his agreement to terminate his employment with Nottingham Forest? Where  
I there are two causes for the receipt of a single sum of money, one referable to the relevant employment, the other not, how is the matter to be approached? Since on the view I take of this case it is unnecessary to decide these matters, I express no view on them.

In my judgment therefore the decision of Morritt J. was correct and the appeal should be dismissed.

**Staughton L.J.**:—I agree that this appeal should be dismissed. The statute requires us to consider whether the payment of £75,000 comes within the words “in respect of any office or employment on emoluments therefrom.” It has been said on the highest authority that we must follow the words of the statute, rather than glosses upon them which the courts have provided in the past. But the language is not entirely precise, as a number of cases have shown. In my opinion judges owe some duty to provide guidance for those who pay taxes (or do not pay them), for Inspectors of Taxes, and for General Commissioners, if that can properly be done.

It is accepted that a payment by a third party may qualify as an emolument *from* an employment, as well as payments by the employer. But Morrill J. limited this to cases “where the payer has an interest direct or indirect in the performance of the contract of employment either in the past ... or in the future ...” Mr. Moses for the Inland Revenue submits that there is no warrant for any such limitation. He seeks to include the case where a payment is made by a third party to induce a person to enter into a contract of employment, without any concern as to whether services under that contract are ever performed. The statute would then include emoluments arising from the creation of a contract of employment, as well as emoluments from the performance of it.

I do not accept that argument. The nearest case to it is *Hamblett v. Godfrey* 59 TC 694. But there Neill L.J. (at pages 726–727), relying on the words of Lord Radcliffe in *Hochstrasser v. Mayes* [1960] AC 376, considered that the payment was made to the taxpayer “in return for her being and continuing to be an employee”. She received it “as a recognition of the fact that she had lost certain rights as an employee, and by reason of the further fact that she had elected to remain in her employment”—albeit only for a period of one month.

*Hamblett's* case received the approval of the House of Lords in *Bray v. Best* [1989] 1 WLR 167. There too it was held that an emolument from employment need not necessarily be a sum paid by way of periodic remuneration for services. The reasoning of Lord Oliver of Aymerton (at page 176) again followed the words of Lord Radcliffe (“in return for being an employee”), and asked whether a payment arose “from the existence of the employer-employee relationship and not ... from something else.”

In my judgment those cases show where the frontier lies. If a payment is *not* made for being an employee, or does not arise from the existence of the employer-employee relationship, it is not an emolument from the employment. Specifically, I would hold that a payment made to induce a person to accept an office or enter into a contract of employment is not on that ground alone an emolument from the office or employment.

One can, I think, extract that conclusion from the language of the statute itself. Employment normally means the state or condition of a person who provides services to another for reward; it may sometimes mean the appointment or engagement of a person, but that is to my mind a rarer meaning. So too “office” in the present context means an official position, rather than appointment to that position. In my judgment an emolument from the holding of an office, or from being in the state or condition of a person who provides services, is what is to be taxable, and not an emolument which flows from appointment or engagement alone.

- A How then does one account for the cases where a signing on fee, or golden hello, has sometimes been held to be taxable? The answer is that, where the payment is made by the employer, it may be equally referable both to the signing of the contract of employment and to the services which are expected to be provided under it. Therefore it may be an emolument from the employment, in the sense of that word which I have attempted to define.
- B The distinction between appointment and employment is often of no consequence so far as a payment by the employer is concerned. The same may be true in the case of a payment by a third party, if he is interested in the services to be performed. It is only in cases such as the present (which I suppose to be unusual), where a third party is anxious for the appointment to take place but not in any way concerned with what happens thereafter, that the distinction is necessarily important. This reasoning is, I think, exactly that of Megarry J. in *Pritchard v. Arundale* 47 TC 680 at page 689<sup>(1)</sup>:

- D “Remuneration for services is still remuneration for services, even if paid in a lump sum in advance. But whereas it will normally be very difficult to demonstrate that periodical payments made by an employer to an employee during the employment are anything but payments taxable under Schedule E, the fact that a payment is in the form of a lump sum paid at or before the commencement of the employment is a factor which, taken with other factors, may exclude Schedule E. If that Schedule is to apply, what the payments must relate to, and reward, is *not the mere existence of a contract of service, nor merely entering into such a contract*, but the services rendered or to be rendered under the contract.”

(My emphasis).

- F I would only suggest one slight elucidation of that passage. When Megarry J. spoke of “the mere existence of a contract of service”, I think that he was referring to its creation, rather than the fact of its being in existence at any given moment. That is to be contrasted with Lord Oliver’s speech in *Bray v. Best*, already cited, where “the existence of the employer/employee relationship” meant its state of being.

- G In the course of his reply Mr. Moses referred us to a passage in the judgment of Jenkins L.J. in *Moorhouse v. Dooland* 36 TC 1 at page 24<sup>(2)</sup>:

- H “I do not think Mr. Bucher’s submission to the effect that sums paid voluntarily by third parties to the holder of an office or employment are only taxable if there is some nexus between the payer and the recipient in the shape of services rendered by the latter for the benefit of the former can be accepted. The presence of some such nexus may no doubt support the conclusion that the payment in question is a profit of the office or employment, but it does not follow that the absence of any such nexus will necessarily conclude the matter the other way.”

- I In that case the Court was dealing with collections for a cricketer from spectators on the occasion of some meritorious performance. It was not a case where the payment was made before any services had been provided at all, and without concern as to whether any would be provided. I do not think that Jenkins L.J. intended to refer to such a case.

(1) [1972] Ch 229, at pages 240/241.

(2) [1955] 1 Ch 284, at page 306.



I would uphold the decision of Morritt J. and his reasoning which I have quoted, and would dismiss this appeal. A

**Beldam L.J.**— I agree.

*Appeal dismissed, with costs.* B

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The Crown's appeal was heard in the House of Lords (Lords Bridge of Harwich, Brandon of Oakbrook, Templeman, Ackner and Goff of Chieveley) on 16, 17 and 21 January 1991 when judgment was reserved. On 7 February 1991 judgment was given unanimously in favour of the Crown, with costs. C

(<sup>1</sup>) *Alan Moses Q.C.* for the Crown. There is no distinction in the language of the Income and Corporation Taxes Act 1970 between a payment on appointment and a payment during the existence of a contract. The charge under s 181 is a charge in respect of any office or employment. The payment here was in respect of the taxpayer's employment with Southampton. The fact that he had not yet played for them did not change that. A payment "from" employment covers not only a payment "from being" an employee but is wide enough to cover a payment "from becoming" an employee. The words of the statute convey the principle that a payment is an emolument chargeable under s 181 if the source of the payment is the taxpayer's employment and nothing else; i.e. if the payment arises from the existence of the employer/employee relationship and not from something else: see *Bray v. Best* [1989] 1 WLR 167, 177A; *Laidler v. Perry* [1966] AC 16; *Brumby v. Milner* [1976] 1 WLR 1096; and *Hamblett v. Godfrey* [1986] 1 WLR 839. D E

Remuneration for services is not an essential ingredient of an emolument: *Hochstrasser v. Mayes* [1960] AC 376, 390–392; *Laidler v. Perry* [1966] AC 16, 31–36 and *Bray v. Best* [1989] 1 WLR 167, 176F–177A. In order to qualify as an emolument "from" employment a payment need not be in return for some benefit either derived from the performance of services in the past or to be derived in the future. Thus, although *Pritchard v. Arundale* [1972] Ch 299 was rightly decided, its reasoning, that there has to be a causative link between the payment and the services performed under the contract, cannot be supported. F G

The quality of the payment must be identified from the standpoint of the recipient: see *Hochstrasser v. Mayes* [1960] AC 376, 390 and *Laidler v. Perry* [1966] AC 16, 33B, 35E. The source of the payment here was the taxpayer's agreement to enter into a contract with Southampton and nothing else. The payments to him of £80,000 by Southampton and £75,000 by Nottingham Forest were, from his standpoint, for signing that contract. That latter payment thus arose "from" his employment with Southampton and nothing else and, accordingly, was an emolument within section 181. H I

*Andrew Thornhill Q.C.* and *David Ewart* for the taxpayer. The principal formulations of what is an emolument "from" an employment all require a connection between the relevant payment and either the performance of ser-

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

- A vices or, at least, the conditions of service relevant to the performance of services: see *Seymour v. Reed* [1927] AC 554, *Wright v. Boyce* [1958] 1 WLR 832 and *Hochstrasser v. Mayes* [1960] AC 376, 388, 392. The formulations relied upon by the Crown, that the relevant payment must arise from the employment and not from something else (*Laidler v. Perry* [1966] AC 16, 30B) or must arise from the existence of the employer/employee relationship (*Bray v. Best* [1989] 1 WLR 167, 177A) are in reality no different.

- In *Laidler v. Perry* the payments were rewards for future services. The question whether the payment arose "from" the employment was not an issue in *Bray v. Best*, which does not give any assistance save that it applied
- C *Hamblett v. Godfrey* [1986] 1 WLR 839. But in that case there was the clearest relationship between the payment and future services. None of the formulations, therefore, suggests that a payment to enter into a contract of employment is in itself an emolument. A payment to enter into a contract of employment which is not made in reference to future services does not relevantly arise from the employment. It is unnecessary to consider whether on the one hand it arises from the employment or on the other hand from something else because by its nature it could not arise from the employment. If it was necessary to find "a something else," then in the instant case it would be the taxpayer's agreement to transfer.

- E To determine whether a payment arises from employment it is necessary to look at the surrounding circumstances to see why it was paid: *Brumby v. Milner* [1975] 1 WLR 958; [1976] 1 WLR 1096. On the facts, the purpose of Nottingham Forest was not to induce the taxpayer to give service to Southampton but to secure his transfer to that club. The fact that Nottingham Forest had not interest in the taxpayer's performances of his services for Southampton is not determinative as a matter of law. It is a fact
- F which points strongly in favour of the payment of £75,000 not being from the employment. It is supported by the fact that Nottingham Forest had an interest in getting the taxpayer transferred. The transfer fee of £325,000 was agreed before the taxpayer had seen Southampton or discussed any terms with them. The agreement for the payment of £75,000 was only made after the terms with Southampton had been agreed. Nottingham Forest alone
- G must be regarded as the payer of the £75,000. Their purpose in making the payment was the relevant purpose. Their directors had to decide whether it was worth paying as an inducement to get the taxpayer to go in the light of terms already agreed. It was not the reward for any services and therefore did not arise from his employment with Southampton.

- H *Moses Q.C.* replied.

- I The following cases were cited in argument in addition to the cases referred to in the speeches:—

*Wright v. Boyce* 38 TC 160; [1958] 1 WLR 832; *Reed v. Seymour* 11 TC 625; [1927] AC 554.

**Lord Bridge of Harwich:**—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Templeman. I agree with it and for reasons which he gives I, too, would allow the appeal. A

**Lord Brandon of Oakbrook:**—My Lords, for the reasons given in the speech to be delivered by my noble and learned friend, Lord Templeman, I would allow the appeal. B

**Lord Templeman:**—My Lords, in August 1982 the world-famous goal-keeper, Mr. Shilton, was transferred from Nottingham Forest to Southampton. There were three parts to the transfer. Nottingham Forest agreed with Southampton to transfer Mr. Shilton to Southampton for a transfer fee of £325,000. Nottingham Forest agreed with Mr. Shilton to pay £75,000 to Mr. Shilton if he agreed to be transferred to Southampton. Mr. Shilton agreed with Southampton that he would play for Southampton for four years on agreed terms as to salary and otherwise if Southampton paid him £80,000. The Revenue assessed the sums of £75,000 and £80,000 amounting in the aggregate to £155,000, to income tax under s 181(1) of the Income and Corporation Taxes Act 1970. Mr. Shilton agreed the assessment so far as it applied to the sum of £80,000 paid by Southampton but disputed the assessment so far as it applied to the sum of £75,000 paid by Nottingham Forest. C  
D

Section 183 of the Act of 1970, now replaced by s 131 of the Income and Corporation Taxes Act 1988, provided that: E

“(1) Tax under Case I, II or III of Schedule E shall ... be chargeable on the full amount of the emoluments falling under that Case ... and the expression ‘emoluments’ shall include all salaries, fees, wages, perquisites and profits whatsoever.” F

It is common ground that the sum of £75,000 paid by Nottingham Forest to Mr. Shilton was an emolument as defined by s 183.

Section 181 of the Act of 1970, as amended and now replaced, so far as material, by s 19 of the Act of 1988, provided that tax under Schedule E: G

“... shall be charged in respect of any office or employment on emoluments therefrom which fall under ...

Case I: where the person holding the office or employment is resident and ordinarily resident in the United Kingdom, ...” H

The Commissioners found and it is not disputed that:

“Although there were three parts to the negotiations these parts should be looked at as a whole as if agreement had not been reached between the appropriate parties on each part, then the whole would have failed.” I

On that finding the Commissioners held that:

“The payment by Nottingham Forest to [Mr. Shilton] was an inducement to him to play football for Southampton and as such an emolument flowing from that service which he was to render to Southampton.”

A The Commissioners concluded that the payment of £75,000 by Nottingham Forest to Mr. Shilton was chargeable to tax under s 181 of the Act of 1970 as an emolument of his employment with Southampton.

B Morrirt J. allowed an appeal by Mr. Shilton on the grounds that the payment of £75,000 by Nottingham Forest was an emolument "for" but not "from" his employment with Southampton and that an emolument paid to an employee by a third party, i.e. a person other than the employer, was only an emolument "from" the employer's employment if the third party had some interest in the performance by the employee of his contract of employment; [1989] 1 WLR 179, 186. Nottingham Forest had no interest in the performance by Mr. Shilton of his contract of employment with Southampton.

C Once he had been transferred it did not matter to Nottingham Forest whether Mr. Shilton fulfilled his contractual obligations to Southampton or not or whether he kept goal for Southampton well or badly. The Court of Appeal (Sir Nicolas Browne-Wilkinson V.-C., Staughton and Beldam L.JJ.) upheld the decision of Morrirt J. holding that to be chargeable under s 181(1) an emolument must be referable to the performance of services by the

D employee under his contract of employment; [1990] 1 WLR 373.

If the emolument of £75,000 is not chargeable under s 181(1) it is chargeable under s 187 of the Act of 1970, now s 148 of the Act of 1988, but various reliefs and allowances apply to the charge under s 187, so the impost of tax on Mr. Shilton under s 181 will be heavier than the impost under s 187 which he has already paid. The Revenue take the view that the result of this appeal will have substantial repercussions on the ambit of s 181 and may have repercussions on other taxing provisions. Accordingly the Revenue now appeal and seek to restore the decision of the General Commissioners and the assessment.

F I sympathise with the conclusion which absolves Mr. Shilton from part of the tax claimed by the Revenue but if that conclusion is to be upheld it must be consistent with the logical construction and application of the taxing statute. Section 181 is not confined to "emoluments from the employer" but embraces all "emoluments from employment;" the section must therefore

G comprehend an emolument provided by a third party, a person who is not the employer. Section 181 is not limited to emoluments provided in the course of employment; the section must therefore apply first to an emolument which is paid as a reward for past services and as an inducement to continue to perform services and, secondly, to an emolument which is paid as an inducement to enter into a contract of employment and to perform services in the future. The result is that an emolument "from employment"

H means an emolument "from being or becoming an employee." The authorities are consistent with this analysis and are concerned to distinguish in each case between an emolument which is derived "from being or becoming an employee" on the one hand, and an emolument which is attributable to something else on the other hand, for example, to a desire on the part of the provider of the emolument to relieve distress or to provide assistance to a home buyer. If an emolument is not paid as a reward for past services or as an inducement to enter into employment and provide future services but is paid for some other reason, then the emolument is not received "from the employment." The task of determining whether an emolument was paid for being or becoming an employee or was paid for another reason, is frequently difficult and gives rise to fine distinctions. In the present case, the £80,000 emolument provided by Southampton was admittedly an emolument "from

I

becoming an employee” and is admitted to fall within s 181 because £80,000 was paid as an inducement to Mr. Shilton to enter into a contract of employment under which he would perform services for Southampton for the next four years. The £75,000 paid by Nottingham Forest was also an inducement to Mr. Shilton to enter into a contract of employment under which he would perform services for Southampton for the next four years. True it is that unless Nottingham Forest and Southampton induced Mr. Shilton to enter the employment of Southampton, the sum of £325,000 would not be paid by Southampton to Nottingham Forest. Thus Nottingham Forest had a powerful motive for offering an inducement to Mr. Shilton to become an employee of Southampton. This motive does not alter the fact that the £75,000 paid by Nottingham Forest was an emolument “from employment” because it was an emolument “from becoming an employee” indistinguishable from the £80,000 paid by Southampton for the like purpose. If the provider of the emolument is the employer who has an interest in the performance of the contract, the court may find difficulty in accepting that the emolument was not “from the employment” but from something else. The difficulty is not so great where a person who is not the employer provides an emolument because such a person may well be activated by motives other than desire to see that the employee enters into or continues in the employment of another.

The authorities have been concerned with those cases in which it is not clear whether an emolument has been paid to an employee for acting or agreeing to act as an employee or has been paid for some other reason.

In *Hochstrasser v. Mayes*<sup>(1)</sup> [1960] AC 376, ICI operated a scheme under which ICI made a tax-free loan to an employee member of the scheme to enable the employee to purchase a house. Under the scheme, if the employee were transferred to another place of work and sold his house at a loss, ICI were bound to make good the loss. The employee purchased a house for £1,850 with the help of an ICI loan of £300 and on transfer sold his house for £1,500. ICI duly paid the employee £350 and this House decided that the emolument of £350 was not an emolument “from” employment. This was a case of an existing employee and Viscount Simonds decided that the emolument was not a reward for past services. Lord Radcliffe, said at p 391<sup>(2)</sup>:

“... it is not easy in any of these cases in which the holder of an office or employment receives a benefit which he would not have received but for his holding of that office or employment to say precisely why one considers that the money paid in one instance is, in another instance is not, a ‘perquisite or profit ... therefrom.’

The test to be applied is the same for all. It is contained in the statutory requirement that the payment, if it is to be the subject of assessment, must arise ‘from’ the office or employment. In the past several explanations have been offered by judges of eminence as to the significance of the word ‘from’ in this context. It has been said that the payment must have been made to the employee ‘as such.’ It has been said that it must have been made to him ‘in his capacity of employee.’ It has been said that it is assessable if paid ‘by way of remuneration for his services,’ and said further that this is what is meant by payment to him ‘as such.’ These are all glosses, and they are all of value as illustrating the idea which is expressed by the words of the statute. But it is perhaps

<sup>(1)</sup> 38 TC 673.

<sup>(2)</sup> *Ibid.*, at page 707.

A worth observing that they do not displace those words. For my part, I think that their meaning is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it has been paid to him in return for acting as or being an employee.”

B Lord Radcliffe was dealing with an emolument paid to an existing employee. Applying his words to an emolument paid to a prospective employee “it is assessable if it has been paid to him in return for his agreement to act as or become an employee.” Lord Radcliffe decided in that case that the emolument had not been paid to the employee in return for his acting as or being an employee. He said, at p 392(1):

C “The essential point is that what was paid to him was paid to him in respect of his personal situation as a house-owner, who had taken advantage of the housing scheme and had obtained a claim to indemnity accordingly. In my opinion, such a payment is no more taxable as a profit from his employment than would be a payment out of a provident or distress fund set up by an employer for the benefit of employees whose personal circumstances might justify assistance.”

D In the present case Nottingham Forest paid £75,000 as an emolument in return for Mr. Shilton agreeing to act as or become an employee of Southampton and for no other reason. Mr. Shilton accepted the emolument of £75,000 in return for agreeing to act as or become an employee of Southampton just as he accepted £80,000 from Southampton for the same reason. The taxation consequences to Mr. Shilton should be and are the same. Mr. Shilton sought and obtained the aggregate sum of £155,000 for his agreement to enter the employment of Southampton. It did not matter to Mr. Shilton whether the £155,000 was paid wholly or partly by Southampton or Nottingham Forest or some other third party.

E In *Laidler v. Perry* [1966] AC 16, a company gave each of its employees a gift voucher for £10 each Christmas. The gift was held to be taxable. Lord Reid, said at p 30(2):

G “There is a wealth of authority on this matter and various glosses on or paraphrases of the words in the Act appear in judicial opinions, including speeches in this House. No doubt they were helpful in the circumstances of the cases in which they were used, but in the end we must always return to the words in the statute and answer the question—did this profit arise from the employment? The answer will be ‘no’ if it arose from something else.”

H The Commissioners had held that the vouchers were made available in return for services rather than as gifts not constituting a reward for services. Lord Reid said at p 32 that “this finding does appear to me to negative mere personal gift, and it appears to me to be unassailable.” In the present case I both the sums of £80,000 and £75,000 were made available in return for Mr. Shilton’s agreement to render services.

*Pritchard v. Arundale*<sup>(3)</sup> 47 TC 680 was a case dealing with a prospective employee. A senior partner in a firm of chartered accountants agreed to leave

(1) 38 TC 673, at page 708.

(2) 42 TC 351, at page 363.

(3) [1972] Ch 229.

his firm and serve a company as managing director on terms *inter alia* that 4,000 shares in the company would be transferred to him by a shareholder. The Revenue claimed that the 4,000 shares constituted an emolument from the employment. The taxpayer claimed that the shares were an inducement to him to give up an established position and status and to compensate him for so doing. The Commissioners accepted this claim and held that the transfer of the shares was not something in the nature of a reward for his future services with the company. Megarry J. held that there was ample evidence on which the Commissioners could reach their conclusion.

In the instant case Mr. Thornhill, who appeared on behalf of Mr. Shilton, argued in the first place that for the purposes of s 181, an emolument must be "for" employment and not merely "from" that employment. If the argument were correct, no emolument provided by a third party would be taxable under s 181. The argument substitutes the words "emolument from the employer" for the words "emolument from the employment." The courts below shrank from this conclusion and accepted that an emolument provided by a third party in the employ of another could be an emolument from the employment in some circumstances. The courts below said that the third party must have an interest in the performance of the contract and relied on the following passage from the judgment of Megarry J. in *Pritchard v. Arundale* 47 TC 680, 689(1):

"Second, to return, as always one must, to the language of the Statute, the payment must be an emolument 'from' the office or employment; and I do not think 'from' means 'for.' In other words, the payment must be made in reference to the services rendered under the office or employment, and as a reward for them, and so in that sense flow 'from' the office or employment; and this is not the same as a payment made 'for' undertaking the office or employment. I am not saying that merely because some benefit is, as it were, a premium or other initial payment in return for entering into a contract of employment it is not taxable. Remuneration for services is still remuneration for services, even if paid in a lump sum in advance. But whereas it will normally be very difficult to demonstrate that periodical payments made by an employer to an employee during the employment are anything but payments taxable under Schedule E, the fact that a payment is in the form of a lump sum paid at or before the commencement of the employment is a factor which, taken with other factors, may exclude Schedule E. If that Schedule is to apply, what the payments must relate to, and reward, is not the mere existence of a contract of service, nor merely entering into such a contract, but the services rendered or to be rendered under the contract."

This passage was unnecessary for the decision because on the finding of the Commissioners in *Pritchard v. Arundale* the emolument, of 4,000 shares did not arise from employment but from something else, namely, as compensation for the taxpayer giving up an established position. In the present case the Commissioners found that the payment of £75,000 by Nottingham Forest was an inducement to Mr. Shilton to play football for Southampton and nothing else. As Morritt J. pointed out [1989] 1 WLR 179, 186, the Commissioners rejected the contention that the payment was compensation for the loss of the rights he enjoyed under his existing contract with

(1) [1972] Ch 229, at pages 240F/241A.

## A Nottingham Forest.

Morritt J., applying the passage which I have cited from the judgment of Megarry J. in *Pritchard v. Arundale* held in the instant case [1989] 1 WLR 179, 186 that<sup>(1)</sup>:

B “A payment by a third party may nevertheless be an emolument from the employment where the payer has an interest direct or indirect in the performance of the contract of employment either in the past as in the case of tips or in the future as in *Pritchard v. Arundale* itself.”

C In the Court of Appeal Sir Nicolas Browne-Wilkinson V.-C. said ([1991] 1 WLR 373, 381) that the essential characteristic required to make a payment an emolument “from” the employment was that the payment must be “referable to the performance of the services under the relevant contract of employment and nothing else.” Staughton L.J. said, at p 383, that the distinction between appointment and employment, i.e. the difference between becoming and remaining an employee “is often of no consequence so far as a payment by the employer is concerned. The same may be true in the case of a payment by a third party, if he is interested in the services to be performed.”

E There is nothing in s 181 or the authorities to justify the inference that an “emolument from employment” only applies to an emolument provided by a person who has an interest in the performance by the employee of the services which he becomes bound to perform when he enters into the contract of employment.

F If s 181 applies only to an emolument provided by an employer or by a third party who has an interest in the performance by the employee of his contract of service with the employer, there are difficulties in defining the “interest” which makes the employee liable to pay tax on the emoluments under s 181. Mr. Thornhill suggested that if the £75,000 had been paid by a shareholder in Southampton Football Club Ltd. interested in the dividends and capital value of his shares or if the £75,000 had been paid by a sponsor of the Southampton football team interested in obtaining valuable publicity or if the £75,000 had been paid by a philanthropic millionaire supporter of Southampton sentimentally interested in the fortunes of the club, then the £75,000 would or might have been an emolument from the employment of Mr. Shilton by Southampton. But, he said, as the £75,000 was provided by Nottingham Forest, who were only interested in the £325,000 payable if Mr. Shilton agreed to play football for Southampton, s 181 does not apply. I prefer the simpler view that an emolument arises from employment if it is provided as a reward or inducement for the employee to remain or become an employee and not for something else.

I I can find nothing in the Act of 1970 which suggests the gloss which the courts below have put on the Statute. In the present case both Southampton and Nottingham Forest were interested in Mr. Shilton becoming an employee of Southampton. Both Southampton and Nottingham Forest provided emoluments to induce Mr. Shilton to become an employee of Southampton. So far as Mr. Shilton, the taxpayer, is concerned, both the emoluments of £80,000 from Southampton and £75,000 from Nottingham Forest were paid to him for the same purpose and had the same effect,

(1) Page 92C/D *ante*.



namely, as an inducement to him to agree to become an employee of Southampton. The actual performance of the terms of his contract of employment did not depend on either or both the emoluments. Mr. Shilton kept goal for Southampton because he had contracted to do so, not because he had received emoluments. Mr. Shilton made miraculous saves for Southampton because he was an honourable man and a professional footballer and was contractually bound to do his best for Southampton. Emoluments amounting to £155,000 may be expected to inspire a goalkeeper to great achievements but that inspiration came as much from the £75,000 provided by Nottingham Forest as it came from the £80,000 provided by Southampton. Indirectly, the whole of the £155,000 can be said to have been provided by Southampton. On the transfer of Mr. Shilton there will be shown in the accounts of Nottingham Forest the receipt of the net sum of £250,000 from the transfer. Nottingham Forest received £325,000 from Southampton and were enabled to pay £75,000 to Mr. Shilton leaving them with £250,000.

In *Brumby v. Milner*<sup>(1)</sup> 51 TC 583 under a company profit-sharing scheme the trustees of a trust deed with the help of a loan from the company purchased shares in the company to be held in trust for the employees and former employees of the company. When the company merged with a larger company the scheme became impracticable and the trustees reluctantly resolved to determine the scheme, whereupon the capital of the trust fund became distributable between the current employees and former employees at the discretion of the trustees and was distributed in amounts varying with length of service. It was contended on behalf of an employee that the distribution was not made in order to reward the employees but because the merger had made the continuation of the scheme impracticable and that the distributions were not received by the employees "from" their employment but were received as an incident of the merger. This argument was rejected by Walton J., the Court of Appeal and this House. The test suggested by Lord Radcliffe in *Hochstrasser v. Mayes* [1960] AC 376, 391 and by Lord Reid in *Laidler v. Perry* [1966] AC 16, 30 were applied and Lord Kilbrandon at p 614 said<sup>(2)</sup>:

"It was submitted that the payment arose not from the Appellant's employment but from the company's reluctant decision to wind up the profit-sharing scheme. I cannot agree with that. Certainly the money forming the payment became available in consequence of certain events and decisions connected with the structure of the company. But the sole reason for making the payment to the Appellant was that he was an employee, and the payment arose from his employment. It arose from nothing else, as it would have done if, for example, it had been made to an employee for some compassionate reason."

The fact that the emoluments were provided by the trustees and not by the company and the fact that the trustees as trustees had no interest in the performance by the taxpayers of their services as employees were not argued to make any difference.

In *Glanre Engineering Ltd. v. Goodhand*<sup>(3)</sup> [1983] 1 All ER 542, a company appointed a financial director and paid him £10,000 which the company claimed was to compensate him for his loss in leaving his previous employment. Warner J. declined to interfere with the finding of the

(1) [1976] 1 WLR 1096.

(2) *Ibid.*, at page 1101.

(3) 56 TC 165.

A Commissioners who held that the £10,000 was an inducement to the employee to enter the employment of the company and was taxable.

This is an illustration of the fact that an emolument from employment may be an emolument for agreeing to become an employee.

B In *Hamblett v. Godfrey*<sup>(1)</sup> [1987] 1 WLR 357, a sum of £1,000 paid to a civil servant for giving up her rights to join a trade union was held to be taxable under s 181 of the Act of 1970. The taxpayer received the £1,000 in recognition of the loss of rights that were not personal rights but were directly connected with her employment. The source of the payment was the employment.

C In *Bray v. Best*<sup>(2)</sup> [1989] 1 WLR 167, this House held that payments otherwise taxable under s 181 escaped taxation because the distributions were found to be attributable to the fiscal year in which they were made and after the termination of the taxpayer's employment and were not attributable to any year of assessment during which the taxpayer's employment subsisted.

D In the instant case [1990] 1 WLR 373, 383, Staughton L.J. treated the decisions in *Hamblett v. Godfrey* and *Bray v. Best* as establishing that<sup>(3)</sup>:

E "If a payment is *not* made for being an employee, or does not arise from the existence of the employer-employee relationship, it is not an emolument from the employment. Specifically, I would hold that a payment made to induce a person to accept an office or enter into a contract of employment is not on that ground alone an emolument from the office or employment."

F But *Hamblett v. Godfrey* only decided that the payment in that case arose from the employment and not from "something else." *Bray v. Best* was not concerned with the present problem. Neither case is authority for the proposition advanced by the Lord Justice.

G My Lords, in August 1982 Mr. Shilton was transferred from Nottingham Forest to Southampton. The transfer fee for Nottingham Forest was £250,000. The signing-on fee for Mr. Shilton was £155,000. The cost of the transfer to Southampton was £405,000. The signing-on fee is liable to tax in the hands of Mr. Shilton under s 181 of the Act of 1970. I would allow the appeal and restore the assessment pursuant to the findings and decision of the Commissioners.

H **Lord Ackner:**—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Templeman. I agree with it and for the reasons which he gives I, too, would allow the appeal.

**Lord Goff of Chieveley:**—My Lords, for the reasons given in the speech to be delivered by my noble and learned friend, Lord Templeman, I would allow the appeal.

I *Appeal allowed, with costs in the House of Lords.*

[Solicitors:—Messrs. George Davies & Co.; Solicitor of Inland Revenue.]

(1) 59 TC 694.

(2) 61 TC 705.

(3) Page 100G/H—H/I *ante*.