

I think that in the present case, looking to the position in life of the parties and to the fact that they were in no sense professional men, we may accept the view that there was inadvertence, by which I take it is meant negligence or carelessness, where the circumstances show an absence of intention to disobey the law.

The LORD PRESIDENT was absent.

The Court pronounced this interlocutor—

“The Lords having considered the petition (no answers having been lodged) along with the proof and the minute for the returning officer, and having heard counsel for the parties, on condition that the accounts in the form prescribed by the statute together with the statutory declarations by both petitioners be lodged in the hands of the returning officer within ten days from this date, grant the prayer of the petition and decern: Find the returning officer entitled to expenses down to and including 18th March 1919: Find him also entitled to a watching fee thereafter, and remit the account thereof to the Auditor to tax and to report.”

Counsel for the Petitioners—Patrick. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Returning Officer—Fraser, K.C.—W. J. Robertson. Agents—W. & F. Haldane, W.S.

Wednesday, June 18.

FIRST DIVISION.

[Court of Exchequer.

INLAND REVENUE v. NOBLE.

Revenue—Income Tax—Liability to Assessment—Money Allowance to Detective Officer to Purchase Plain Clothes—“Salaries, Perquisites, or Profits . . . Accruing by reason of . . . Employments”—Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 146, Schedule E, Rule First.

A detective officer employed by Glasgow Corporation received an allowance of £11, 14s. 3d., out of which he was bound to purchase a suit of plain clothes, coat, waterproof, and boots, and to replace any article which might become worn out. The clothes so purchased required to be suitable for the duties of the officer, and had to be approved by his superior officer. The allowance was not treated as income under the superannuation scheme. The detective officers were chosen from the police force. The police received their uniform free, and admittedly they were not subject to assessment for income tax in respect thereof. *Held* that the allowance in question was taxable as part of the officer's income under the Income Tax Act 1842, section 146, Schedule E, rule first, as being profits accruing by reason of his office or employment.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) enacts, section 146, that the duties thereby granted contained in Schedule E “shall be assessed and charged under the following rules.”—Schedule E, Rule First,—“The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profits mentioned in the said Schedule E . . . for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments. . . .” Rule Third—“The said duties shall be paid on all public offices and employments of profit of the description hereafter mentioned within Great Britain, *videlicet*— . . . any office or employment of profit held . . . under any public corporation.”

William Fergusson, Surveyor of Taxes, Glasgow, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Glasgow finding that an allowance of £11, 4s. 3d. made to Louis Noble, detective sergeant, Glasgow, *respondent*, to purchase plain clothes, was not income within the meaning of the Income Tax Acts, took a case for appeal.

The Case set forth—“The following facts were proved or admitted, viz.—1. The assessment of £194, 10s. included £11, 14s. 3d. allowance for clothing, which the [respondent] claimed was not liable to income tax, and this item forms the subject of the present appeal. 2. Ordinary members of the Glasgow Police Force are supplied free of charge for the purposes of their duty with a uniform, including ordinary tunic and trousers, coat, waterproof, and boots. 3. Certain members of the police force, after being in the force for some time and showing special aptitude for the work, are selected by the Chief Constable for detective work, for which the ordinary uniform is unsuitable. They then become detective officers, and wear plain clothes in order that they may not be readily identified as members of the police force. 4. The Corporation resolved that a sum should be granted to these men with which to buy clothes suitable for their duties. The allowance for the year in dispute was £11, 14s. 3d., with which the [respondent] had to buy a suit of clothes, coat, waterproof, and boots, and to replace any article which may become worn out. The men cannot spend this money just as they please, but must buy clothes suitable for their duties and as approved by their superior officer. 5. Where detective officers in plain clothes, like any constable or police officer in uniform, have any clothing destroyed in the course of their duty—say, in a scuffle with a prisoner—it is replaced at the expense of the Corporation on an order of the Chief Constable. 6. The allowance for clothes is not considered as income in the superannuation scheme. 7. All uniform officers according to their grade receive the same pay as the officers of the detective department. The uniform officers receive their uniforms free, and the detectives receive the money allowance in lieu thereof. 8. The Chief Constable has power to transfer men from one department to the other,

so that a man who is a 'plain clothes man' to-day may be a 'uniform man' to-morrow, and all alike are subject to the Government inspection in respect of clothing as well as other purposes."

Argued for the appellant—The allowance in question was taxable under the Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 146, Schedule E, rules first, third, and fourth. It was a cash payment, and in any event the goods for the purchase of which it was given could be readily turned into cash. That rendered it taxable—*Tennant v. Smith*, 1892, 19 R. (H.L.) 1, *per* Lord Chancellor Halsbury at p. 4, and Lord Watson at p. 6, 29 S.L.R. 492. Where deductions were made for, e.g., insurance, the full income was chargeable—*Hudson v. Gribble*, [1903], 1 K.B. 517. The allowance accrued to the respondent by virtue of his office, and as such was taxable—*Herbert v. M'Quade*, [1902] 2 K.B. 631, *per* Collins, M.R., at p. 649—just as voluntary Easter offerings to a clergyman were—*Blakiston v. Cooper*, [1909] A.C. 104. The appellant was not concerned with the purpose for which the money was given. It was a payment of money, and that was enough to render it taxable. No question could arise in the present case as to a possible right of deduction under section 51 of the Act of 1853 (16 and 17 Vict. cap. 34).

Argued for the respondent—It was admitted that a constable was not taxable in respect of his uniform. The plain clothes for the purpose of which the money was given were simply the equivalent of the uniform. The police officer did not change his employer, but merely entered a different category of employment in which a uniform would have been useless and plain clothes were required as a disguise. The clothes were not the equivalent of the ordinary clothes which one required, but were required to enable the officer to perform the work for which he was employed just as much as the uniform. The payment in question was not regarded as salary, for it was not salary in a question of superannuation. In *Gribble's* case the whole sum received was treated as salary. Here the payment was *extra* the salary. It was not money or money's worth, for it never got into the respondent's pocket—*Tennant's* case (*cit.*), *per* Lord Watson at p. 7, and Lord Macnaghten at p. 9. The respondent was not free to do as he liked with the money or the clothes. That rendered the allowance exempt—*Inland Revenue v. Fry*, 1895, 22 R. 422, *per* Lord Adam at p. 426, and Lord M'Laren at p. 427, 32 S.L.R. 341; *Gresham Life Assurance Society v. Styles*, [1892] A.C. 309. Further, it was not a benefit accruing, for the clothes had to be worn for official purposes, and if it were taxed the benefit would not correspond to the assessment made. In any event the respondent was entitled to deduct the £11, 14s. 3d. under section 51 of the Act of 1853.

LORD SALVESEN—We have had a very full argument in this case and a complete citation of all the authorities that bear upon the matter which is referred to us for

decision. But after all one has to come back to the terms of the Taxing Acts and to go very strictly by the words which are used. The facts as stated are that this detective officer receives an allowance from the Corporation, who are his employers, of £11, 14s. 3d. in lieu of obtaining his uniform as a policeman free of charge. He receives this allowance and has to buy a suit of clothes, coat, waterproof, and boots out of it, and to replace any article which may become worn out. It is further stated that he cannot spend the money just as he pleases. He must buy clothes which are suitable for his duties and are approved by his superior officer. I think that is really the main statement of facts upon which the Commissioners proceeded, and I rather take it that they have proceeded on the view that this is just the same case as if the detective were receiving the uniform that the policeman receives, and that as that uniform, with the advantages derived from getting it, is not assessable, so a money allowance for the purpose of buying clothes suitable for the detective in the discharge of his duties should also not be assessable.

Now I think it is rather dangerous to proceed on analogies, and what we have to consider is whether this allowance falls within Rule 1, Schedule E, which provides that the duties are to be charged "for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments," &c. Giving the best consideration to it that I can, I hold that this money allowance does come under that rule. It is certainly, to use the most general words, "profits" accruing by reason of the office in which he is employed. He gets the money allowance because he is a detective in the police force, and I do not think that the argument which seems to have weighed with the Commissioners, namely, that he is not able to spend it as he pleases but must turn up in clothes suitable for the performance of his duties, is at all conclusive. The contrary was decided in the case of *Hudson v. Gribble* ([1903], 1 K.B. 517), in which it was held that an addition to a man's salary was not the less assessable because he was taken bound to pay it to an insurance company which gave benefits, either to himself if he survived for a long enough period, or to his representatives if he predeceased the period when the benefits would emerge to himself. Therefore it does not seem to me, if this is part of the emoluments of this man's office, that it is in the least conclusive against assessment that he has to employ it in a particular way prescribed by his employers. He agrees to that when he accepts employment from them. It appears to me that such a money allowance is in a totally different position from a uniform which the employer supplies to be worn only when the man is on duty and which remains the employer's property. I cannot imagine that the Corporation, when they have provided this pecuniary allowance and have no fault to find with the mode in which their servant attires himself, have any right of property in the clothes which he purchases or any say at all in the

place where, or the person from whom, the man shall purchase them.

In that view I think one avoids a number of the very difficult and perplexing cases which were put by way of analogy by Mr Brown. We are not dealing here with the question of what constitutes money's worth. We are dealing with a payment of money. It seems to me to be a payment accruing to the respondent by reason of his office. Whether he may be entitled to a deduction in respect of its being an expense to which he is put in the necessary discharge of his duties is not a matter before us, but as the Solicitor-General stated quite properly that that question was not foreclosed, I think we should indicate that it is quite open to the Commissioners to consider that question with reference to the assessment of the respondent for the year in question. I am pronouncing no opinion at all as to whether there is any right to such a deduction, but it seems to me that once we have reached the conclusion that this money allowance is part of the salary or wages, perquisites, profits, or other emoluments which are derived from his office we must hold that it is assessable to income tax, whatever deductions may be claimable by the respondent in terms of section 51 of the Income Tax Act 1853 or any other legislation entitling him to make a claim.

On these grounds we must in my opinion hold that the finding of the Commissioners that the pecuniary allowance for clothes "was not income within the meaning of the Income Tax Acts so as to be chargeable with income tax" was erroneous, sustain the appeal against their judgment, and remit to them to proceed further in the matter.

LORD SKERRINGTON—I agree with your Lordship. I confess it is with some regret that I have come to the conclusion that this appeal must be sustained, because it is difficult to disguise from one's self that the transaction between the Corporation of Glasgow and its detective employees was intended by the parties to be really the equivalent of the contract which was made between the Corporation and its uniformed policemen. None the less the contract in the case of the detectives involved the payment to each of a sum of money in lieu of the uniform which he would have received as a policeman. What was given was not a suit of clothes but cash. I assume for the purposes of this case that if the Corporation had given each detective a suit of ordinary clothes to be worn during the performance of his official duties such suit would not have constituted part of his income, but it is unnecessary to express any definite opinion on this point. The Corporation took a different way of attaining the same end. Now it often happens that a tax may be avoided in one way but not in another. In other words, analogy is not a safe guide in the construction of Taxing Acts. The only safe course is to walk by the statute, and neither to extend the application of the tax nor to restrict it merely because analogy and logic suggest that one thing is equivalent to another.

It was suggested in argument that the effect of the contract between the detectives and the Corporation was that the sum of £11, 14s. 3d. received by the respondent never became his property, but was simply money which a master handed to his servant in order that the servant might apply it on the employer's behalf. I do not think that this somewhat unusual and inconvenient arrangement can be extracted from the statements in the Case. If it had been so intended by the contracting parties the Case should have said so in clear and express language. It might then have been argued that the money was not "payable" to the officer within the meaning of the statute. I construe the Case as meaning that the money became the property of the respondent, and that he became bound in return to supply himself with clothes which would satisfy the Chief Constable and also the Government Inspector. I see no reason to doubt that if he could have provided himself with suitable clothing at a smaller cost the difference would have been his own, and that he would not have been bound to account for it. On the other hand if the clothes cost more than the sum allowed he was bound to provide the difference out of his own pocket. In short, this allowance was simply a contribution towards the man's expenses and a part of his pecuniary emoluments.

LORD CULLEN—I am of the same opinion. The disputed portion of the assessment in question is paid to the respondent in money, and is paid to him as part of the consideration to which he is entitled in return for the services he renders under his contract of employment. *Prima facie* therefore it is part of his assessable income, and I do not think it ceases to be so because he has agreed to devote it to a purpose which is beneficial to himself.

The LORD PRESIDENT and LORD MACKENZIE were absent.

The Court reversed the determination of the Commissioners and remitted to them to proceed.

Counsel for the Appellant—Solicitor-General (Morison, K.C.)—R. C. Henderson. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Counsel for the Respondent—Brown, K.C.—Russell. Agents—Campbell & Smith, S.S.C.