

9N6.9.1

17, 1979

UNIVERSITY OF LONDON  
W.C.1.

-9 OCT 1956

In the Privy Council.

No. 29 of 1956 INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL FROM THE SUPREME COURT  
OF BRITISH HONDURAS

44427

10

BETWEEN

THE COMMISSIONERS OF INCOME TAX ... .. APPELLANTS

AND

HENRY IGNATIUS MELHADO ... .. RESPONDENT.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal by way of Case Stated from a Judgment dated pp. 43-52 ;  
the 16th July, 1946, of the then Chief Justice of the Supreme Court of pp. 20-34  
British Honduras (Sir Carleton George Langley, K.C.) whereby he allowed  
the Respondent's appeal against an assessment to income tax for the  
assessment year 1945, i.e., the year 1st January to 31st December, 1945.

20

2.—The Appellants in computing the Respondent's liability to income p. 6, ll. 12-24  
tax for the relevant year added to the net sum shown by the Respondent  
as derived from the business of C. Melhado & Sons, eight items of which  
the following three were the subject of appeal to the Chief Justice :

(1) \$3,391.02 being the amount claimed by the Respondent for p. 6, l. 14  
depreciation which the Appellants considered to be in excess of  
a reasonable allowance for depreciation The Appellants had allowed p. 6, l. 26  
the sum of \$727.42 for wear and tear.

40

(2) \$2,500 part of a sum of \$20,781.85 which the Respondent's p. 6, l. 18  
accounts showed as expenditure for upkeep, pasturing and purchases.  
The Appellants considered that part of this larger sum was expenditure  
of a capital nature, not deductible as an expense. In the absence of  
details which the Respondent failed to supply when the Appellants  
asked for details, the Appellants estimated the capital expenditure  
at \$2,500.

(3) \$21,925.74 which was added as foreign income received p. 6, l. 21  
through Martins Bank, London.

3.—The Respondent's summons asking that the Chief Justice in chambers should revise the assessment stated the grounds of complaint, and the Appellants, pursuant to the rules, filed a statement of reasons in support of the assessment to which they attached details of the wear and tear allowance on the Respondent's boats, buildings, furniture and fittings, and a copy of the account of C. Melhado & Sons and Martins Bank Limited.

4.—The Respondent's liability to tax is governed by the Income Tax Ordinance being Chapter 23 of the Consolidated Laws of British Honduras 1924 as subsequently amended. The following are the more important relevant provisions in force for the assessment year under appeal. 10

- 2. In this Ordinance, unless the context otherwise requires,—
  - “ Year of assessment,” from and after the first day of January, 1936, means the period of twelve months commencing on that date, and each subsequent period of twelve months.
  - “ Chargeable income ” means the aggregate amount of the income of any person from the sources specified in Section 5 remaining after allowing the appropriate deductions and exemptions under this Ordinance.

Imposition of Income Tax.

20

5. Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1924, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in the Colony in respect of—

(a) Gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised.

(d) Dividends, interest or discounts.

30

6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment.

Assessment of Chargeable Income.

10. (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including :—

10 (c) Where any person engaged in any trade, business, profession or vocation has expended any sum in replacing any plant or machinery which was used or employed in such trade, business, profession or vocation, and which has become obsolete, an amount equivalent to the cost of the machinery, replaced, after deducting from that cost such sum as shall represent the total depreciation which has occurred by reason of exhaustion or wear and tear since the date of purchase of such plant and machinery and any sum realised by the sale thereof.

(e) Any sum expended for repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed.

(g) Such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

20 11. In ascertaining the chargeable income of any person engaged in a trade, business, profession or vocation, there shall be allowed as a deduction a reasonable amount for the exhaustion, wear and tear of property owned by him, including plant and machinery, arising out of the use or employment of such property in the trade, business, profession or vocation during the year immediately preceding the year of assessment.

12. For the purpose of ascertaining the chargeable income of any person no deduction shall be allowed in respect of:—

30 (b) Any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income.

(d) Any capital employed in improvements, except as provided in Section 10 (d).

Assessments.

39. (1) The Commissioners shall proceed to assess every person chargeable with the tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return.

(2) Where a person has delivered a return the Commissioners may—

RECORD

- (a) Accept the return and make an assessment accordingly ; or
- (b) Refuse to accept the return, and, to the best of their judgment, determine the amount of the chargeable income of the person and assess him accordingly.

43. (1) The Commissioners shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice addressed to him at his usual place of abode or business, stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under the next sub-section. 10

(2) If any person disputes the assessment he may apply to the Commissioners by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objections to the assessment and shall be made within fifteen days from the date of the service of the notice of assessment : . . . . .

(3) On receipt of the notice of objection referred to in sub-section (2) of this section, the Commissioners may require the person giving the notice of objection to furnish such particulars as the Commissioners may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, they think, is able to give evidence respecting the assessment to attend before them and may examine such person (except the clerk, agent, servant, or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise. 20

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioners as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person : 30

Provided always that in the event of any person who, under sub-section (2) of this section, has applied to the Commissioners for a revision of the assessment made upon him failing to agree with the Commissioners as to the amount at which he is liable to be assessed his right of appeal to the Chief Justice under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired. 40

44. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioners in the manner provided in sub-section (4) of the preceding section, may appeal against

the assessment to the Chief Justice in Chambers upon giving notice in writing to the Commissioners within thirty days from the date of the refusal of the Commissioners to amend the assessment as desired :

(4) The onus of proving that the assessment complained of is excessive shall be on the Appellant.

(5) If the Chief Justice is satisfied that the Appellant is overcharged he may reduce the amount of the assessment by the amount of the overcharge, and if he is satisfied that the Appellant is undercharged, he may increase the amount of the assessment by the amount of the undercharge.

(10) The decision of the Chief Justice shall be final : provided that the Chief Justice if he so desires may, and on the application of the Appellant, or of the Commissioners shall state a case on a question of law for the decision of His Majesty in Council under the provisions of The Privy Council Appeals Ordinance.

5.—By Section 7 of the Income Tax Ordinance income might be calculated on the accounting year of any trade or business. Section 10 (d) relates to sums expended on the re-afforestation of timber lands. By Section 21, as frequently amended, the current rates of tax were imposed. The reference in Section 44 (10) is to Chapter 155 of the Consolidated Laws of British Honduras 1924, which by Section 2 provides that subject to the provisions of the Ordinance an appeal shall lie to His Majesty in Council from certain Judgments, including “ a judgment of the Court on a question of law under the provisions of the Income Tax Ordinance. By Section 35, “ ‘ Court ’ means the Supreme Court of this Colony, or the Chief Justice or any other Judge thereof sitting in the Court Room or in Chambers.”

6.—The Respondent's appeal was heard by the Chief Justice on the 28th March, 1946. The Respondent's accountant, Mr. J. C. Thompson and the Respondent gave evidence in support of the appeal, and an assessor, Mr. A. A. Heustis, gave evidence on behalf of the Appellants.

7.—On the 16th July, 1946, the learned Chief Justice gave Judgment in which he imputed to the Appellants ignorance of the law in thinking that the fact that the Appellants had a statutory discretion in any way restricted the Court's unfettered discretion to review both law and fact. Although the Appellants had a discretion not to accept the Respondent's return and to assess his income to the best of their judgment, the Appellants must not, said the Chief Justice, invent estimated assessments, for the law required the Appellants to give the particulars upon which an assessment is made. The Chief Justice then criticised what he described as the injustice of the Appellants' review of the assessment after the Respondent had served notice of objection. The Chief Justice held that the effect of

p. 12, l. 13—p. 15, l. 43 ; p. 15, l. 45—p. 16, l. 37  
p. 16, l. 38—p. 18, l. 11

pp. 20-34  
p. 20, l. 30—p. 21, l. 28

p. 21, l. 29—p. 22, l. 29

p. 22, l. 30—p. 23, l. 34

p. 23, l. 35—p. 24, l. 21

## RECORD

- p. 24, l. 22—p. 26, l. 6 Section 44 (4) which places on a person appealing against an assessment the burden of proving an assessment to be excessive is not to leave a person objecting to an assessment to struggle as best he could with an erroneous assessment, for the Appellants were bound to supply all relevant evidence in their custody. The Chief Justice then condemned the conduct of the case by the Attorney-General, the “silly arrogance” of one of the Appellants’ officials and the Appellants themselves for not exercising their own discretion. Turning to the several items in issue the Chief Justice expressed the view that (although none of the accounts were audited) the Respondent had an efficient accounting system which fully disclosed the business transactions in accordance with the best commercial usage. The Chief Justice found that the cattle account, relating to herds totalling over 1,000 head, took no account of the sex or age of animals and valued each animal at \$6, but there was nothing to justify an estimate that capital expenditure included in the account was \$2,500. In his view the item was fictitious, its insertion disreputable, and therefore it must be struck out and the assessment reduced accordingly. The amount disallowed for wear and tear was, in the Chief Justice’s opinion, also improperly disallowed and must be struck out. As regards the item of \$21,925.74 included in the assessment as foreign income received, the Chief Justice held that only income received in the Colony was there taxable, and that income received elsewhere if not brought into the Colony within the year of assessment in which it was received did not become liable to any tax if it were used to buy capital assets imported into the Colony, although if brought in as cash or its equivalent for the taxpayer’s use, tax would be payable. The learned Chief Justice then considered the evidence about the Respondent’s account in Martins Bank Limited and the sums transferred to the Colony, and held that the money was received as untaxable capital, and that the whole sum of \$21,925.74 should be struck out of the assessment. The Chief Justice also criticised the Appellants for not calling the Respondent’s attention to Section 48 of the Ordinance, which provides for reciprocal relief in respect of income tax in parts of His Majesty’s dominions and protectorates other than the United Kingdom or British Honduras.
- pp. 37–38 8.—The Appellants applied by summons for the statement of a case raising for the decision of His Majesty in Council the question whether there was any evidence to justify the Chief Justice’s findings and whether his findings were correct in law in respect of each of the sums in dispute.
- p. 40, l. 29—p. 43, l. 15 9.—By Judgment dated the 30th September, 1946, the learned Chief Justice refused to state a case except, upon the question of foreign income, this being the third item mentioned in paragraph 2 hereof. On the 30th December, 1946, he stated and signed the case.
- p. 43, l. 28—p. 44, l. 17 10.—The case stated dealt with the Judgment in the Respondent’s appeal, the summons for a case to be stated and the Chief Justice’s decision in respect of the first two matters raised by the summons. The case then

- sets out the Appellants' allegations in respect of the foreign income, and denies that the Chief Justice had held that the Appellants were bound to accept such accounts as the Respondent might produce. The case states that as regards the item of \$21,925.74 the assessment was wrong arithmetically even if the Appellants be right in law. After saying that the Chief Justice accepted the Respondent's accounts as correct in detail and accepted the evidence of the Respondent and Mr. Thompson, the case set out that the Respondent received into a bank account in Montreal dividends, subject to Canadian tax, from a private Canadian company dealing in the purchase and sale of securities. These Dividends were accumulated in the Montreal bank account over a period of years. The Respondent also had in London a private account and one in the name of C. Melhado & Sons, both in Martins Bank, and, requiring working capital in British Honduras and London, had transferred \$37,920.31 (£8,852. 3s. 9d.) from Montreal to his said private account in two instalments on the 11th May and 1st June, 1944, this being cash which would not have attracted British Honduras tax whilst in Canada or England. On the 1st April, 1944, the private account showed a balance of £3,523. 3s. 6d. which had been there from the 1st February, 1944, and which with the cash from Canada could not, in the Chief Justice's opinion, be regarded as income during the basis year. On the 17th June and on the 28th July, 1944, the Respondent transferred sums amounting to £6,000 to the Respondent's account in London in the name of C. Melhado & Sons. The case then dealt with the assessment of \$21,975.74 which the Chief Justice thought to be based on a misconception of and a gross misuse of the Appellants' powers under Section 39 of the Ordinance, which the Chief Justice said that he had already dealt with in judgments which he was lodging with the Registrar of the Privy Council. As an instance of such misuse of powers the case cited the item of \$2,500 which the Appellants had disallowed as being capital expenditure.
- 11.—The case then proceeded to deal with the law which the Chief Justice thought should have guided the Appellants. The Ordinance contemplates the taxation of the income (1) received from inside the Colony by a resident ; (2) received from inside the Colony by a non-resident ; and (3) received from outside the Colony by a resident ; but income from outside not received in the Colony is not taxable. The issue was concerned only with income received in the Colony from outside, and the Chief Justice thought that once a receipt anywhere becomes true income it attracted tax at once or not at all, otherwise all capital moneys would become income when received in the Colony. If received both outside and inside the Colony in the same basis period, the income, in the Chief Justice's opinion, would however attract tax even if received in the Colony in the form of a capital asset. The case then records the Chief Justice's doubts about whether he was right in his judgment of the 16th July, 1946, in expressing the view that income might be taxable if received outside the Colony
- p. 44, ll. 18-33  
p. 44, ll. 34-37  
p. 44, ll. 38-43  
p. 44, l. 44—p. 45, l. 12  
p. 45, ll. 13-25  
p. 45, ll. 26-45  
p. 45, l. 46—p. 46, l. 2  
p. 55, l. 28  
p. 46, ll. 3-8  
p. 46, ll. 9-50  
p. 47, ll. 1-11  
p. 47, ll. 12-28  
p. 47, l. 29—p. 48, l. 11  
p. 48, ll. 12-40  
p. 48, l. 41—p. 49, l. 13

## RECORD

before the year of assessment and brought into the Colony in that year ; and this was what he regarded as the real issue for determination.

p. 49, l. 14—p. 50,  
l. 6

12.—The learned Chief Justice then gave his construction of the Ordinance which in his opinion had the controlling purpose of taxing only profits and gains coming in to the taxpayer during the limited periods of assessment, and if received outside the Colony the profits and gains could not be regarded as income if subsequently brought in after accumulation outside. In his opinion the fact that a taxpayer could so arrange his external finances as to escape taxation did not justify a different and (in the view of the learned Chief Justice) unnatural construction opposed to the underlying principle of the law. 10

p. 50, ll. 7-39

13.—Applying his construction to the facts found by him, the Chief Justice held that the total amount received by the Respondent in the Colony was £3,383. 6s. 8d. all of which had been under his control before the year of assessment and so not taxable, and moreover had been devoted to a capital purpose. The learned Chief Justice furthermore held that the item of \$21,925.74 should in any case be struck out as wrong arithmetically.

p. 50, ll. 40-44

p. 50, l. 47—p. 51,  
l. 39

The case stated then criticised as untrue the Appellants' contention that the Chief Justice had decided that the Appellants were bound to accept the Respondent's unaudited accounts, but affirmed that the Appellants were not, under the Ordinance, entitled to disclosure of books and accounts relating to non-chargeable income outside the Colony, and the Respondent had therefore produced all information required for the purposes of the Ordinance. The Chief Justice then purported to find as a fact that the Appellants had been given all relevant information and explanations to enable them to exercise their honest judgment unfettered by any compulsion to accept any evidence. 20

p. 51, l. 40—p. 52,  
l. 35

14.—Finally the case stated left the question of the costs of the application for the case to His Majesty in Council with a statement of the Chief Justice's view of facts which in the Colony were (in his opinion) calculated to cause a tyrannous application of the law. 30

15.—The Appellants respectfully submit that the strictures of the learned Chief Justice upon their conduct were entirely unjustified, and that in respect of all three items in dispute the Chief Justice should have affirmed or increased the assessments. The Appellants submit that although the Chief Justice refused (improperly, in the Appellants' contention to state a case in respect of two items, the references in the case stated to his judgment on the Respondent's appeal and on the summons for a case to be stated effectively raise questions open in this appeal in respect of all three items. 40

p. 26, l. 15  
p. 44, l. 51

16.—The Respondent's accounts are not included in the record. In the Appellants' submission they should have been included for they were in evidence.



17.—As regards the assessment in respect of foreign income, the Appellants submit (1) that the learned Chief Justice wrongly construed the Ordinance, (2) that if income, in whatever year it arises or is received abroad, is brought into the Colony in the year of assessment, such income is taxable in the Colony, and (3) that it is immaterial whether it is brought into the Colony as cash or as goods or any other asset. The Appellants further submit that no sum credited to the Respondent in either of the accounts in Martins Bank Limited appears to be other than income, and that the whole amount received in the Colony as cash or goods was taxable  
10 in the Colony.

18.—The Appellants therefore submit that this appeal should be allowed and that the Appellants' assessment of the Respondent to income tax for the assessment year 1945 should be affirmed for the following amongst other

### REASONS

1. Because the Chief Justice of British Honduras misconstrued the relevant provisions of the Income Tax Ordinance.
2. Because the assessment of which the Respondent complained was a proper assessment and should have been affirmed.
- 20 3. Because in so far as questions arising in relation to the disputed items involved performance of duties cast upon the Appellants or the exercise by them of a discretion, the Appellants had properly performed their duties and had properly exercised that discretion, and their decisions ought not to have been overruled.
4. Because in so far as the questions arising in relation to the disputed items are questions of law, the Appellants came to right conclusions thereon and these conclusions ought not to have been overruled.
- 30 5. Because there was no reasonable basis for the Chief Justice's attack on the Appellants and their officials.
6. Because the conclusions of the Chief Justice in the Case Stated are erroneous.

CYRIL L. KING.

FRANK GAHAN.

In the Privy Council.

No. 29 of 1947.

ON APPEAL FROM THE SUPREME COURT OF  
BRITISH HONDURAS.

---

---

BETWEEN  
THE COMMISSIONERS OF  
INCOME TAX ... .. APPELLANTS  
AND  
HENRY IGNATIUS MELHADO  
RESPONDENT.

---

---

CASE FOR THE APPELLANTS

---

---

BURCHELLS,  
9 Bishopsgate, F.C.2,  
*Appellants' Solicitors.*