1982 February 10

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS G. IONIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(*Case No.* 92/72).

Income tax—Capital allowances—Plant—Books—Books purchased by public accountant and auditor for his profession—They are "plant" within the meaning of section 12 *of the Income Tax Laws* 1966–1969.

The applicant was a public accountant and auditor. In submitting his return for the income of the year 1969 he claimed £20 wear and tear allowance and £60 investment allowance on the costs of books purchased by him for the purpose of being retained and used in his profession. The applicant claimed that the expenditure that he had incurred in purchasing the books was "plant" within the meaning of section 12(1)* of the Income Tax Laws 1966/1969 and that accordingly he was entitled to an allowance in respect of the expenditure under section 12(2)(a)* and 12(2)(b)* of the above Laws. The respondent Commissioner refused to allow the applicant's claim and assessed his tax accordingly; and hence this recourse.

* Section 12(1) provides as follows:

"12(1). In this section 'property' means plant, machinery or buildings, including employees' dwellings, owned by a person engaged in a trade, business, profession, vocation or employment and used and employed by such person in such trade, business, profession, vocation or employment, or in scientific research proved to the satisfaction of the Commissioner to be for the benefit of such trade, business, profession, vocation or employment".

* Section 12(2)(a) and (b) is quoted at p. 98 *post.*

Held, that the books which the applicant purchased and used in his profession fall within the meaning of the word "plant" in section 12 of the Income Tax Laws 1966–1969; and that, therefore, he was entitled to the allowances claimed; accordingly the sub judice decision must be annulled (*Munby* v. *Furlong* (*Inspector of Taxes*) [1977] 2 All E.R. 953 followed).

Sub judice decision annulled.

Cases referred to:

Yarmouth v. *France* [1887] 19 Q.B.D. 647;

Daphne v. *Shaw* [1926] 11 Tax Cases 256;

I.R.C. v. *Barclay, Curle* [1969] 1 All E.R. 732;

Haigh v. *Ireland* [1973] 3 All E.R. 1137;

Benson v. *Yard Arm Club* [1979] 2 All E.R. 336;

McVeight (*Inspector of Taxes*) v. *Arthur Sanderson & Sons Ltd.* [1969] 2 All E.R. 771 at p. 775;

Munby v. *Furlong* (*Inspector of Taxes*) [1976] 1 All E.R. 753; [1977] 2 All E.R. 953.

Recourse.

Recourse against the refusal of the respondent to allow an amount of £80.–, representing wear and tear allowances and investment allowance on the cost of professional books purchased and used in applicant's business, as a deduction in assessing his income tax.

Applicant appeared in person.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. Loizou J. read the following judgment. By the present recourse the applicant seeks a declaration that the decision of the respondent Commissioner of Income Tax whereby an amount of £80.– representing wear and tear allowance and investment allowance on the cost of professional books purchased and used in the applicant's business has not been allowed as a deduction is null and void and of no effect.

The grounds of law on which the application is based are the following:

1. The refusal of the Commissioner of Income Tax to

allow as a deduction in arriving at the applicant's chargeable income the amount of £80.- which represents wear and tear allowance (£20) and investment allowance (£60) on the cost of professional books purchased and used in the applicant's business is contrary to the provisions of section 12(1)(2)(a)(b) of the Income Tax Laws 1966-1969.

2. The Commissioner of Income Tax by such refusal to allow the aforesaid amounts as a deduction acted in excess or abuse of the powers vested in him.

The undisputed facts of the case, in so far as they are relevant for the purposes of this case, are as follows:

The applicant is a public accountant and auditor. On the 18th July, 1970, he submitted his return for the income of the year 1969 together with a computation. In that return he claimed £20.- wear and tear allowance and £60.- investment allowance on the cost of books purchased by him. The claim for wear and tear allowance was based on section 12(2)(a) and the claim for the investment allowance on section 12(2)(b) of the Income Tax Laws 1966-1969. The books were purchased for the purpose of being retained and used in his profession and they were, in fact, so used. The Commissioner refused to allow the applicant's claim and assessed his tax accordingly. The applicant objected to the assessment but his objection was rejected on the ground that books could not be described as plant and machinery employed in his business since they do not perform any active function in the business.

As a result the present application was filed.

The relevant part of the section of the Income Tax Laws reads as follows:

"12(1). In this section 'property' means plant, machinery or buildings, including employees' dwellings, owned by a person engaged in a trade, business, profession, vocation or employment and used and employed by such person in such trade, business, profession, vocation or employment, or in scientific research proved to the satisfaction of the Commissioner to be for the benefit of such trade, business, profession, vocation or employment.

(2). In ascertaining the chargeable income of any person engaged in a trade, business, profession, vocation or employment, there shall be allowed–

(a) Subject to the provisions of this section, a deduction of a reasonable amount for the exhaustion and wear and tear of property arising out of the use and employment of such property in the trade, business, profession, vocation or employment during the year immediately preceding the year of assessment or, in so far as persons in employment are concerned, during the year of assessment:

Provided that the total of any such deduction shall not exceed the capital expenditure incurred in acquiring the property;

(b) where property consisting of new plant and machinery is acquired and is first used and employed in the year immediately preceding the year of assessment or, in so far as persons in employment are concerned, in the year of assessment, an investment deduction of thirty per centum of the capital expenditure thereon.

For the purposes of this paragraph–

(i) 'new plant and machinery' means new or second-hand plant and machinery imported from abroad or new plant and machinery made in Cyprus.

.....

.....".

The applicant argued in support of his case that under the provisions of s.12(1) he was entitled to the allowances claimed once three conditions were satisfied: (1) That the property is plant; (2) that the property is owned by him and (3) that it is used in his profession. As there was no dispute with regard to conditions (2) and (3) the only remaining issue was whether the books could properly be said to be "plant" within the meaning of the section. He submitted that in view of the definition given to the word in *Yarmouth* v. *France* [1887] 19 Q.B.D. 647 by Lindley, J. and approved in subsequent cases the meaning of the word was very wide and extended to books.

Learned counsel for the respondent, on the other hand, relying on the decision of *Daphne* v. *Shaw* (*H.M. Inspector*

of Taxes) [1926] 11 Tax Cases 256 contended that the respondent Commissioner correctly decided that the word plant could not be said to include books.

So, the only question that has to be decided in the present case is whether the books which applicant admittedly purchased and used in his profession fall within the meaning of the word 'plant' in which case he is clearly entitled to the allowance claimed.

In *Yarmouth* v. *France* [1887] 19 Q.B.D. 647, Lindley, L.J., at p. 658 had this to say in relation to the meaning of the word 'plant': "There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business,—not his stock-in-trade which he buys or makes for sale; but all goods and chattels fixed or movable, live or dead, which he keeps for permanent employment in his business".

The above dictum found approval and was applied in a number of cases (see, inter alia, *I.R.C.* v. *Barclay, Curle* [1969] 1 All E.R. 732; *Haigh* v. *Ireland* [1973] 3 All E.R. 1137; *Benson* v. *Yard Arm Club* [1979] 2 All E.R. 336).

But a case in which the question whether books fell within the meaning of 'plant' and qualified for an allowance for income tax purposes was directly raised in *Daphne* v. *Shaw* (*H.M. Inspector of Taxes*) [1926] 11 Tax Cases 256. Rowlatt, J. in the course of his judgment said:

> "I cannot bring myself to say that the books of a lawyer, whether a barrister or a solicitor or, I am sorry to say, a Judge ——— – I cannot bring myself to say that such books as those people use to consult are 'plant'. It is impossible to define what is meant by 'plant and machinery'. It conjures up before the mind something clear in the outline, at any rate; it means apparatus, alive or dead, stationary or movable, to achieve the operations which a person wants to achieve in his vocation. But the books which he consults, on his shelves, and which he does not use as 'implements' really, in the direct sense of the word, at all, I cannot believe are included in it ———".

In *McVeigh* (*Inspector of Taxes*) v. *Arthur Sanderson & Sons*

Ltd. [1969] 2 All E.R. 771, Cross, J. expressed doubts about the correctness of Rowllat, J's decision. He said: (at p. 775).

> "If I thought that I was free to do so, I am not sure that I would accept the limitation which the Crown's argument imposes on the meaning of 'plant'. If a barrister has to buy a new edition of a textbook in order to help him to write his opinions, I cannot see as a matter of principle why the book should not be regarded as a tool of his trade just as much as a typewriter on which his opinions are typed ——————. But, having regard to the decision in *Daphne* v. *Shaw*, I think that if any extention of the meaning of the word 'plant' beyond a purely physical object is to be made, it ought to be made by a higher court. So I will proceed on the footing that these designs are not 'plant'."

Still later in *Munby* v. *Furlong* (*Inspector of Taxes*) [1976] 1 All E.R. 753, a case in which the issue was whether the books of a practising barrister were 'plant', Fox, J., who heard the case at first instance, expressed similar doubts about the correctness of the decision in *Daphne* v. *Shaw* but felt that he could not depart from it. He said: (at p. 761)

> "If I were free to determine that question of construction in the present case, I would take the view that the taxpayer is right and that these books are plant. It seems to me, in the first place, that they do fall within Lindley, L.J.'s definition. Put more generally, they are part of the apparatus used by a professional man for carrying on his profession. They do not fall within any of the exceptions so far classified. And, as a matter of principle, I do not see good ground for excluding them if as a matter of construction they could properly be included in plant.
>
> But if I depart from *Daphne* v. *Shaw* I am merely substituting my view of a question of construction with that of Rowlatt, J. in an uncertain and difficult area of the law. It does not seem to me that Rowlatt, J. in *Daphne* v. *Shaw* seriously misdirected himself".

and he concludes his judgment as follows:

> "The position therefore is this, that *Daphne* v. *Shaw* has

now stood for nearly 50 years, and as recently as 1968 Cross, J. came to the conclusion that he could not depart from it. In the circumstances, I think I must follow *Daphne* v. *Shaw* and hold that the books are not plant".

The taxpayer (Munby) appealed against the decision of Fox, J. and the court of appeal unanimously reversed the first instance decision and overruled *Daphne* v. *Shaw* (see [1977] 2 All E.R. 953). It was held by the court of appeal that the word 'plant' extended to the apparatus or chattels which were used by a professional man in the day to day exercise of his profession and that so interpreted it was not confined to objects which were used physically by a professional man but extended to objects used by him intellectually in the course of carrying on his profession and, therefore, included books purchased by a barrister for the purpose of his practice.

Lord Denning, M.R., in the course of his judgment after referring to the parts of the judgment of Cross, J. in the *McVeigh* case and of Fox, J. in the first instance judgment, quoted above, said: (at p. 956).

"So there it is. Those two judges did not like *Daphne* v. *Shaw* at all. Nor did the commissioners of income tax, but they felt they had to apply it.

The case now comes up for the first time for consideration in the Court of Appeal. I would agree with what Lord Donovan once said:

> 'If you ask me for the ordinary meaning of the word "plant", I would not say that a horse and cart were plant, I would not call the partitions in a building separating a room "plant", but still the cases show that they are plant for tax purposes'.

So his statement there and, I may add, the statements by the majority of the House of Lords in the dry dock case, *Inland Revenue Comrs* v. *Barclay, Curle & Co. Ltd.*, show quite conclusively that in this taxing statute the courts do not apply the meaning to the word 'plant' as the ordinary Englishman understands it. It has acquired by the course of decisions a special meaning in tax cases. It has acquired a special meaning; it seems to me, in the interests of fairness, that 'plant' extends

virtually to a man's tools of trade—that is the phrase which Cross, J. used. It extends to the things which he uses day by day in the exercise of his profession.

Counsel for the Crown, in his excellent argument before us, would confine a professional man's 'plant' to things used physically like a dentist's chair or an architect's table or, I suppose, the typewriter in a barrister's chambers; but, for myself, I do not think 'plant' should be confined to things which are used physically. It seems to me that on principle it extends to the intellectual storehouse which a barrister or a solicitor or any other professional man has in the course of carrying on his profession. The difficulty has arisen because the legislature, when it extended this provision to professions, did not make clear the scope of the word 'plant' in that context. It seems to me, in the context of a profession, the provision of 'plant' should be so interpreted that a lawyer's books, his set of law reports and his textbooks, are 'plant'. Although I know many years have passed since the decision in *Daphne* v. *Show*, the time has now come when this court should say that it would not be decided in the same way today. It may have been all very well in Rowlatt J.'s day, but the course of decisions since has shown that that decision should no longer be relied on. I would therefore allow this appeal and hold the library to be plant".

In the light of the above authorities I must answer the question posed for consideration and decision in the present case in the affirmative and hold that the books which the applicant purchased and used in his profession fall within the meaning of the word "plant" in section 12 of the law and that, therefore, he is entitled to the allowances claimed.

In the result the sub-judice decision is hereby annulled. No order as to costs.

Sub judice decision annulled. No order as to costs.