1934.
March 5.

ATTORNEY-GENERAL
v.
GAVRIELIDES

[STRONGE, C.J., THOMAS AND FUAD, JJ.]

THE ATTORNEY-GENERAL *Appellant,*

v.

MICHAEL GAVRIELIDES *Respondent.*

Action against Government—Cyprus Courts of Justice Order, 1927, *Clause* 44 (*a*)—*Petition of right—Recovery of Tax—Education Law*, 1923—"*Greek-Christian inhabitant of Limassol.*"

The respondent, a merchant and money-lender, carried on business in Limassol up to July, 1928, when he went to Athens, leaving an agent in Limassol to complete pending actions and to wind-up his estate. He made visits to Cyprus during 1928 and 1929. In 1928 he obtained judgment against the appellant entitling him to a refund of £383. 9*s*. collected from him as tax under the Education Law, 1923. From this sum due under the judgment £110 was deducted in respect of the tax for the year 1928-1929. In an action brought to recover this sum as tax illegally collected the respondent obtained judgment. On appeal to the Supreme Court.

Held: (1) that, as a petition of right would lie in England for the recovery of the £110, the action was maintainable against the Attorney-General;

(2) that the question of whether or not respondent was a Greek-Christian inhabitant of Limassol was a question of fact, and that there was evidence before the District Court on which its findings could be supported;

(3) Per Thomas, J.: Whenever money of the subject is in the possession of the Government without lawful authority, an action will lie for its recovery.

This was an action in the District Court, Limassol, brought by the respondent Gavrielides against the Attorney-General as representing the Government of Cyprus claiming a declaration that respondent was entitled to a refund of £110 "which sum has been illegally and without lawful authority assessed on him as school fees for the year 1928–1929 for the town of Limassol and which sum has been illegally and without legal authority collected from him as Government tax and now is in the possession of the Government." The District Court (Greene, P.D.C. and Halid, D.J.) held that the money collected as school fees was collected by the Government tax collector in the same manner as other Government taxes are collected, and amounts so collected were paid into the Government Treasury, and that consequently, a petition of right would lie for its recovery. The Court further held that "inhabitant" in the Education Law, 1923, implied bodily presence, and that on the facts respondent was not a Greek-Christian inhabitant of Limassol for the year 1928–1929 within the meaning of that Law. Judgment was entered for the plaintiff (respondent), and from that judgment the Attorney-General appealed.

Pavlides for appellant.

M. Houry and *Lefkios Zenon* for respondent.

The argument appears sufficiently from the judgments.

JUDGMENT :—

STRONGE, C.J. : The plaintiff (respondent) is a Greek-Christian who for many years carried on business as a merchant and money-lender at Limassol, and it is common ground that he was so living and carrying on business there down to July, 1928. In that month he admittedly caused a notice to be published in the Press and issued a circular in which he declared his intention of definitely leaving Cyprus to settle abroad and stated that he had appointed his son-in-law, Mr. Paul Pavlides, as his agent for the completion of his pending law-suits and for the liquidation of his estate. Notice of his intention to leave the island and settle at Athens was also sent to the Limassol Town Committee which under Section 70 of the Education Law, 1923, had the duty of apportioning among the Greek-Christian inhabitants of Limassol according to their means the amounts to be raised for the purposes of that Law. On the 17th July, 1928, the plaintiff left Cyprus and went to Athens. He returned to Cyprus in November, 1928, to give evidence in two cases fixed for hearing on the 27th of November, 1928, and the 11th of January, 1929, respectively, and left Cyprus again in February, 1929. He came back for a similar purpose at the end of 1929 leaving the island once more in February, 1930, and returning again at a date not stated in the same year. During the course of 1928 he sued the Attorney-General as representing the Government together with the Limassol Town Committee and the Limassol District Committee of Education naming the members composing each body individually, and claiming the refund of £383. 9*s*., money collected from him as tax under the Education Law of 1923 in respect of the year 1927–1928. In January, 1929, the Divisional Court sitting at Limassol gave judgment in his favour declaring him to be entitled to a refund of the £383. 9*s*. claimed plus costs. Meanwhile, he had been assessed in December, 1928, under the same Law, in £110 tax in respect of the year 1928–29, and the Cyprus Government deducted this £110 from the £383. 9*s*. awarded him by the judgment. It is for the recovery of this £110 that the present action has been instituted, which on the 25th March, 1933, the Limassol District Court decided in his favour.

Mr. Pavlides, in his able argument for the defendant (appellant), founded himself on two propositions as reasons why the decision of the trial Court should be reversed. He said in the first place that by Clause 44 (*a*) of the Cyprus

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Courts of Justice Order, 1927, the only claims entertainable against the Government are claims which might be preferred against the Crown in England by petition of right, and that this is not a claim which could be so preferred. Secondly, said Mr. Pavlides, even assuming such a claim does lie, the finding of the trial Court that the plaintiff (respondent) was not an inhabitant of Limassol, and, therefore, improperly assessed, was (1) wrong in law, or (2) against the weight of evidence. With regard to the first point, Mr. Pavlides argued that, since moneys paid as tax under Law 32 of 1923 do not form part of the general revenue, the £110 claimed in this action is not part of a Crown Fund or "King's Treasure", and that unless it is so a petition of right cannot be preferred, and the present action is consequently not maintainable. This immediately raises the question what is a Crown Fund or King's Treasure. Mr. Pavlides, I think, rather failed us on this point, for he neither furnished us with any definition of either of these terms nor with any authority deciding that taxes or tolls collected must, in order to come within the meaning of either term, form part of the general revenue. At p. 344 of Robertson's *Civil Proceedings by and against the Crown*, the learned author makes use of the terms Crown Fund and King's Treasure, and is clearly of opinion that a petition of right is not maintainable in respect of moneys paid into a fund unless such fund is a Crown Fund or King's Treasure. The learned author, however, is quite as coy as Mr. Pavlides about attempting any definition of these terms and does not formulate any test or tests for determining whether in any given case the fund is or is not a Crown Fund or King's Treasure. At the same page, however, of this treatise, Mr. Pavlides seemed to find some comfort to his soul from a passage in which the learned author states that he inclines to the view that moneys in the General Lighthouse Fund under the Merchant Shipping Acts of 1894 and 1898 are not the subject of a petition of right. In *P. and O. Steam Navigation Co.* v. *Rex* (1), the sole reported case apparently where a petition of right in respect of moneys in the General Lighthouse Fund was preferred— the contention that a petition of right was not sustainable as to such moneys was not raised by the then Attorney-General, Sir Robert Finlay, and in the petition itself—though not in the Answer and Plea of the Crown—the fund is called "Your Majesty's General Lighthouse Fund."

Assuming, however, the author's view to be the correct one in regard to the General Lighthouse Fund, it necessarily follows that, in order to determine whether the same view should obtain in regard to the Greek-Christian Education

(1) (1901) 2 K.B. 686.

Fund, we must examine the incidents of both funds and ascertain whether they are both the same extent removed from relationship to and control by the Crown. In regard to the General Lighthouse Fund the position is this—by Sections 634 and 531 of the Merchant Shipping Act, 1894, the term "General Lighthouse Authorities" is defined, as these Authorities are given superintendence of lighthouses, buoys, and beacons, and power to remove vessels stranded or wrecked in any fairway. But the Merchant Shipping Act of 1898, Section 1 (1), expenses incurred in discharging these duties are charged on and made payable out of the General Lighthouse Fund. By the same Act, Section 5, the General Lighthouse Authorities are to levy light dues according to a statutory scale, and by Section 648 of the Act of 1894, they are to appoint persons to collect these dues which are to be paid over by such persons to the particular General Lighthouse Authority, by whom they were appointed, which Authority is to keep accounts thereof and remit the dues to His Majesty's Paymaster-General to be carried to the General Lighthouse Fund.

Coming now to the Greek-Christian Education Fund, we find (Section 62 of Law 32 of 1923) that it is established to provide for teachers' salaries and other items of expenditure under Law 32 of 1923, and that it consists of (i) certain annual taxes payable by all members of the Greek-Christian community, and (ii) the sum provided in the Annual Appropriation Law for Elementary Schools. By Sections 63, 64 and 70 the taxes just mentioned are assessed by the Town Committee, a statutory body, and are to be paid at such time or times as the High Commissioner may direct; they are collectable by the Government tax collectors, they are to be paid by the tax collectors into the Treasury of the Commissioner, and when so paid are to be credited (Section 70 (12)) to the Greek-Christian Education Fund. The High Commissioner on the report of the Board of Education prescribes the names of the teachers to be appointed to each school, the salary to be paid to each teacher according to his classification (Section 23), and the instalments in which such salaries are to be paid as well as the times of payment. To recapitulate the matter just stated, we find in the case of the General Lighthouse Fund a fund made up of tolls or dues collected not by Government servants but by servants who are appointed by and pay over the amounts to a statutory body which keeps account thereof and pays the amounts received, not into the Exchequer, but to the Paymaster-General, to be credited to a fund against which the statutory body draws for payment of the expenditure incurred in discharging its statutory duties. On the other hand, in the case of the Greek Education Fund, we have a fund made up of taxes collected by Government servants,

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paid into a Government Treasury, and, as regards payments thereout and the persons to whom such payments are to be made, under the control not of any statutory body but of the Government. It seems to me, therefore, reasonably clear that considerably stronger grounds exist for inclining to the view that a petition of right might not lie in respect of the General Lighthouse Fund than can be advanced in the case of the Greek-Christian Education Fund. The £110 claimed in the action, we are now dealing with, is tax money collected by the Government, paid into the Government Treasury, and there remaining under the control of the Government, which alone possesses the power of directing what payments are to be made out of it and of prescribing the persons to whom such payments shall be made. These last two features differentiate it in my judgment from proceeds of execution paid into the Treasury—the illustration given by Mr. Pavlides— since such proceeds are not in any sense a tax or toll and the Treasury is merely a depositee of the money which is not subject to the control or direction of the Government. That at the time of the receipt by the Treasury of tax money under the Education Law of 1923 such money is by Law to be credited, presumably to earmark it, to a specified fund, instead of being lumped with general revenue, is, I think, mainly a matter of convenience and book-keeping and cannot displace the inference that this is money which has found its way into the possession of the Crown—an inference which arises from the fact of its collection by Government, its payment into a Government Treasury, and its subsequent control by Government. In *Feather* v. *Reg.* (1), Cockburn, C.J., says: "The only cases in which the petition of right is open to the subject are, where the land or goods or money of a subject have found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution or, if restitution cannot be given, compensation in money." In my view, and for the reasons stated, this is such a case, and as these moneys would, in my judgment, properly form the subject of a petition of right under the Act of 1860, this action is, in my opinion, maintainable.

Upon the second point—namely that the decision of the Court below that the plaintiff was not an inhabitant of Limassol and, therefore, not liable to assessment was erroneous—Mr. Pavlides contended that, having regard to the language made use of in their judgment, the decision at which the trial Court arrived in holding the plaintiff not to be an inhabitant of Limassol was an inference of law and as such incorrect and, therefore, capable of being set aside by this Court. Now of this word "inhabitant" occurring

(1) (1865) 6 B. & S. 257; 141 R.R. at p. 413.

in Section 70 (1) of Law 32 of 1923, I think it may be correctly said, as was said by Lord Buckmaster in *Lysaght's Case* (1) of the word "reside" in the English Income Tax Act that "it is used in the common sense and it is essentially a question of fact whether a man does or does not comply with its meaning." In a subsequent passage of his judgment, in the same case, at p. 249, Lord Buckmaster says: "I have reluctantly come to the conclusion that it is now settled by authority that the question of residence or ordinary residence is one of degree, that there is no technical or special meaning attached to either expression for the purposes of the Income Tax Act, and accordingly a decision of the Commissioners on the question is a finding of fact and cannot be reviewed unless it is made out to be based on some error in law including the absence of evidence on which such a decision could properly be founded." Lord Buckmaster then goes on to refer to the several authorities by which in his judgment the question had already been settled. I do not propose to cite them at length. It is sufficient to say that the first of them is *Bayard v. Burt* in which Hamilton, J. (as he then was), after mentioning the finding of the Commissioners that the appellant was resident in the United Kingdom, said: "That only raises a question of law if it can be contended that it is impossible to draw that conclusion of fact as to residence in the United Kingdom from the facts set out in the case." To ascertain the meaning of the word "inhabitant" used in its common sense necessitates praying a dictionary in aid, and on referring to the *Shorter Oxford Dictionary*, I find that it says the meaning is "one who inhabits, a human being or animal dwelling in a place—a permanent resident." Now—to paraphrase another passage from Lord Buckmaster's judgment—if the circumstances found by the trial Court are incapable of amounting to non-residence in Cyprus, their conclusion cannot be protected by saying it is a conclusion of fact since there are no materials upon which that conclusion could depend. (*Lysaght's Case* (*supra*): judgment of Lord Buckmaster, p. 247. *Vide* also *Levene's Case*, (1928) A.C., judgment of Cave, L.C., at p. 222).

The circumstances which the trial Court found in this case are stated in their judgment to be—

(i) That in 1928 the plaintiff decided to wind-up his business and settle abroad.

(ii) That he gave notice of this decision beforehand both by circulars and in the Press stating he had appointed his son-in-law, Paul G. Pavlides, as his agent for the liquidation of his estate.

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(1) (1928) A.C. at p. 247.

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(iii) That thirteen days later he left Cyprus on 17th July and returned to Cyprus in November that year and left again in February, 1929.

(iv) That in the year September, 1928, to September, 1929, the year of assessment, he was in Cyprus for November, December, January and February, approximately sixteen weeks in all.

(v) That from September, 1929–30, he was again in Cyprus for October, December, January and February, again approximately sixteen weeks.

(vi) That during the remaining portion of each of these years he had no home in Athens but was staying at a hotel there from motives of economy.

(vii) That the plaintiff's visits to Cyprus were occasional and only when his evidence was required in pending cases.

(viii) That the plaintiff had considerable business interests and considerable immovable property in Cyprus and voted at the Legislative Council elections in 1930.

(ix) That the plaintiff had also considerable business interests in Athens and has since 1928 invested large sums of money there and has not since he left Cyprus in 1928 invested any money in Cyprus. That he has bought houses in Athens and all money collected from his Cyprus property has been remitted to him in Athens and that his business in Cyprus is being carried on for the purpose of liquidation.

There was, in my opinion, evidence before the Court on which all these findings could be supported with the exception of that as to the business being carried on in Cyprus for the purpose of liquidation, which I find difficult to reconcile with the large increase in the quantity of carobs in the plaintiff's stores in Limassol in the years 1930–31.

It is, I think, somewhat unfortunate that the trial Court having found as facts the matters just enumerated, instead of proceeding to determine in the light of those facts the question of fact of inhabitant or non-inhabitant with which alone they were concerned, should have indulged in observations as to the law of domicile and change of domicile "Residence and domicile", as Lord Westbury observed in *Bell* v. *Kennedy* (1), "are two perfectly distinct things", and he went on in a subsequent passage of his judgment in that case to say that, although residence might be some small evidence of domicile, it was by no means to be inferred from the fact of residence that domicile resulted.

(1) (1868) L.R. 1 H.L.Sc. at p. 320.

If I were satisfied that the trial Court using the word "domicile" in its legal and technical significance had, as argued by Mr. Pavlides, found in favour of the plaintiff on this branch of the case because they came to the conclusion on the evidence that the plaintiff had acquired a domicile in Athens and were of opinion that his acquisition of that domicile necessarily prevented him from being an inhabitant of Limassol, I should feel bound to hold that their finding was based on error in law and should, consequently, be set aside. Consideration, however, of their judgment leads me to conclude that this was not the case for they expressly state that they use the word "domicile" not in its correct legal significance but as meaning "home"—a meaning, it may be observed, similar to that with which the Privy Council in *McMullen* v. *Wadsworth* (1), found it was used in Section 63 of the *Civil Code* of Lower Canada. Now using domicile in that sense—the sense of home—, they must, I think, be credited with what is matter of common knowledge, namely, that a man may have a home in more than one place, and that, just as his having a home in Limassol, does not preclude his also having a home in Platres, so his having a home in Athens does not necessarily prevent him from having a home in Limassol and being an inhabitant of both places. Their finding, consequently, "taking all the facts into consideration that the plaintiff was not a Greek-Christian inhabitant of Limassol", is a finding of fact and not a finding based on error in law, and, as I cannot say that there was no evidence on which the Court below could arrive at its conclusion, I think this appeal should be dismissed.

There remains the contention of Mr. Pavlides that the Court below misdirected themselves in law because, although they only had to consider the question of the plaintiff's residence in the year 1928–29, they took into consideration his movements in subsequent years. In *Levene's Case* (*supra*) the claim was in respect of income tax for four successive years, and the contention that each year should be examined separately and without reference to the preceding or subsequent years was dealt with by Lord Sumner at pp. 226–7, and in rejecting it he says: "Light may be thrown on the purpose with which the first departure from the United Kingdom took place, by looking at his proceedings in a series of subsequent years. They go to show method and system, and so remove doubt which might be entertained if the years were examined in isolation from one another."

In conclusion I may add that the regular sequence of visits by the plaintiff to Cyprus in each of the three years, even though made with the object of participating in law-

(1) (1889) 14 App. Cas. 631.

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suits, excludes, in my opinion, the elements of chance and occasion in connection with those visits. It seems to me that if you can predicate with respect to a particular person that he will spend several months of every year—not necessarily at the same time of year—in Cyprus, he becomes for such period in each year an inhabitant of Cyprus. Coupling this consideration with the large increase of carobs in the plaintiff's Limassol stores in the years 1930 and 1931 and with the fact that his wife remains in Limassol and when the plaintiff visits Cyprus he stays in the house occupied by her, I should have come to a different conclusion from that at which the trial Court arrived. The facts evidencing residence in Cyprus appear to me to be considerably stronger than those in *Lysaght's Case* in which Mr. Lysaght, although he lived in Southern Ireland with his family and only came to England on business for a week in every month during which he stayed at a hotel and then returned to Ireland, was nevertheless found to be resident in England.

Thomas, J.

THOMAS, J.: In December, 1928, the Limassol District Education Committee assessed the respondent's liability for school fees under the Elementary Education (Greek and Christian) Law, 1923, at £110, and this sum was deducted from the sum of £383 which the respondent was entitled to receive from the Attorney-General by virtue of a judgment of the Divisional Court of Limassol.

In June, 1931, the respondent began an action against the Attorney-General claiming a refund of this £110 which was alleged in the Writ to be "illegally assessed on him as school fees . . . and illegally collected from him as Government tax and now in the possession of the Government."

The District Court held that, as the money claimed was collected as a Government tax and paid into the Treasury, a petition of right lay for its recovery; and further that the respondent was not a Greek-Christian inhabitant of Limassol during the years for which the assessment was made. The Court accordingly gave a declaration that the respondent was entitled to a refund of the £110.

From this decision the Attorney-General has appealed, and the first ground relied on is that no action lies against the Attorney-General for the recovery of the sum claimed in the Writ. This raises the question of what claims can be brought by action against the Government of this Colony. In the first place it is provided by Clause 44 (*a*) of the Cyprus Courts of Justice Order, 1927, that the only claims, "whether by way of original claim, counterclaim, set off, or otherwise," which can be entertained in any Court are claims "of the same nature as claims which may be preferred against the Crown in England, under the provisions of the Act 23 and 24 Vict., Chapter 34, intituled The

Petitions of Right Act, 1860." The question then to be determined is: "Is the relief claimed in this action such as could be preferred against the Crown in England by a petition of right?" I had occasion to deal with this precise question in the case of *Theodoro Pono* v. *Attorney-General* heard in Nicosia in June, 1926, and the views I am about to express are substantially those stated in a written judgment delivered in that case.

"Petition of right is the process by which recovery is made from the Crown of property of any kind, including money, to which the suppliant is legally entitled, except in cases where this process is ousted by some statutory method of recovery." (Robertson's *Civil Proceedings by and against the Crown*, p. 331). The author cites a passage from Blackstone that petition of right "is of use where the King is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown." He cites also the old authority, Staundford's *Prerogative* (1573) that "petition is all the remedie the subject hath when the King seiseth his land, or taketh away his goods from him, having no title by order of his lawes to do so," but says that this is too limited in its terms. Clode in his *Law and Practice of Petition of Right* cites the above opinion of Staundford, and says that Blackstone, Comyn and Chitty concur in this statement of the law. The draftsmen of the Petitions of Right Act, 1860, with full knowledge of all the authorities, defined the relief which the subject could claim by petition of right. In Section 16 of the Act it is said that "the word 'relief' shall comprehend every species of relief claimed or prayed for in any such petition of right, whether a restitution of any incorporeal right or a return of lands, or a payment of money or damages, or otherwise." The language used in this definition is extremely wide. The two following passages, cited both in Clode and Robertson, are instructive as showing how the Courts have regarded the nature of the remedy by petition of right. "The substance seems always to have been the trial of the right of the subject as against the right of the Crown to property, or an interest in property, which had been seized for the Crown; and, if the subject succeeded, the judgment only enabled him to recover possession of that specified property, or the value thereof if it had been converted to the King's use. (*Tobin* v. *R.* (1)). The second passage is from *Feather* v. *Reg.* (2): "The only cases in which petition of right is open to the subject are, where the land, or goods, or money of a subject have found their way into the possession of the Crown, and

(1) 16 C.B. (N.S.) 310
(2) 6 B. & S. 257 at p. 294.

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the purpose of the petition is to obtain restitution; or, if restitution cannot be given, compensation in money; or, where the claim arises out of contract, as for goods supplied to the Crown, or to the public service. It is in such cases only that instances of petitions of right having been entertained are to be found in our books."

In the earlier *Baron de Bode's Case* (1), the question was first raised whether a petition if right would be to recover money in the hands of the Crown, and the following passage from the judgment of Lord Denman is cited in Clode, p. 90: "The position of the suppliant is this, that money has been received by the Crown in trust for and to the use of the suppliant. The Crown urge that . . . a petition of right is maintainable for no other objects than land or specific chattels, certainly not for a sum of money claimed either as debt or by way of damages. Upon this point we may observe that there is nothing to secure the Crown against committing the same species of wrong—unconscious and involuntary wrong—in respect of money which founds the subject's right to sue out his petition when committed in respect of land or specific chattels, and there is an unconquerable repugnance to the suggestion that the door ought to be closed against all redress or remedy for such wrong."

In explaining the principle contained in *Feather* v. *Reg.*, Clode says: "The most usual way in which, at the present day, a subject's money finds its way wrongfully into the hands of the Crown is when it is paid to the Crown under a mistake, and under protest in the form of duty or tax. In such cases, should the tax or duty prove to have been wrongly levied, the whole or part of the amount so paid appears to be recoverable upon a petition of right" (p. 91).

In the case of *The Queen* v. *The Commissioners of Inland Revenue*: *In re Nathan* (2) the administrator of an estate had paid duty on the estate of the deceased in England. Later it was found that there was a debt of £55,000 and this was paid out of the assets. Application was made to the Commissioners for the return of the duty overpaid. By Statute, 5 and 6 Vict., Clause 79, Section 23, the Commissioners are required upon proof of payment of debts of the deceased to return the amount of probate duty overpaid. A mandamus was brought to compel the Commissioners to return the duty overpaid. The Court of Appeal held that a mandamus would not lie. Bowen, L.J., said: "A mandamus ought not to be granted if there is any other remedy. To my mind there is a clear remedy in a petition of right if the applicant is entitled to any remedy at all.

(1) (1845) 8 Q.B. 208.
(2) 12 Q.B.D. 461.

The money is in the hands of the Crown, and there is an old constitutional way by which subjects of the Crown in this country are enabled to obtain back out of the hands of the Crown, either land, money or goods, upon which the Crown has laid its hands, and that is by the proceeding known as a petition of right. If that is the true view, then the petition of right would be the proper remedy in this case" (p. 478). Brett, M.R., expresses a like opinion, and says "the proper remedy for the prosecutor would have been to apply to the Crown by a petition of right."

In a later case *Malkin* v. *Reg.* (1), the suppliant recovered from the Crown by petition of right a duty which had been improperly imposed. The suppliant applied for a renewal of his licence to the licensing sessions who granted a provisional licence and referred the application to quarter sessions. Quarter sessions refused the renewal subject to the payment of compensation. The provisional licence was in force on the day when the excise duties had to be paid. The Commissioners of Inland Revenue would not accept payment of the excise duties unless accompanied by a further sum of £6 due under the Act in respect of a provisional licence. The suppliant paid the £6 under protest, and brought a petition of right for its recovery. The Court held that the Commissioners had no right to demand payment of the £6 and gave judgment for the suppliant for the refund of this sum by the Crown.

Robertson cites cases where petitions of right have been brought for the return of Probate, Legacy—Succession Duty, Stamp Duty, and he is of opinion that a petition of right would lie for the return of land tax. With regard to a petition for money claimed as a debt the learned author says: "No reasonable ground could be adduced for supposing that a petition of right would not lie in respect of it. It matters not whether the money has been taken by the Crown directly, or whether it has come into the Crown's hands in some other way, so long as the petitioner can prove his rights to it on the merits."

The appellant has submitted that the assessments are not Government taxes, and further that, even if the money is paid into the Government Treasury, plaintiff could not succeed unless it formed part of the general revenue. The assessments are by Section 70 (12) of Law 32 of 1923 recoverable in the same manner as Government taxes; they are collected by the Government tax collectors and are paid into the Treasury to the credit of the Greek-Christian Education Fund. Payments can only be made out of this Fund upon the authority of the Governor. The assessments are made for the purposes of education, a matter in

(1) (1906) 2 K.B. 886.

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which the Government is very much concerned. I think the sums raised by these assessments have all the attributes of and are Government taxes indistinguishable in character from any other Government tax. Even if these assessments were not taxes properly so called, it would make no difference to the claim preferred in the petition. A consideration of all the available authorities show that they establish a principle—and a most important principle it is, acted upon without question by the Courts in England for more than sixty years—that, whenever money of the subject is in the possession of the Crown without lawful authority, a petition of right lies for its recovery. For the reasons given above I am clearly of opinion that a petition of right would lie in England for relief claimed in this case and that, therefore, the present action lies against the Attorney-General.

With regard to the second question raised by this appeal, viz., whether the respondent is an inhabitant of Limassol, I have read the judgment just delivered by the learned Chief Justice and I find myself in entire agreement with the opinions expressed therein and with the reasons for such opinions. I come to this conclusion with regret, because, if I were free to decide the question of fact, I should have come to the conclusion that the respondent was "a Greek-Christian inhabitant of Limassol" within the meaning of the law.

The appeal, in my view, fails on both grounds and should be dismissed with costs.

Fuad, J.

FUAD, J.: I have had the opportunity of discussing this case at length with the Chief Justice and, as I concur in the view taken by him, I have not written a long judgment. I only wish to point out that, notwithstanding the able argument of the Crown Counsel, the assessment (the subject matter of this case) was a compulsory contribution levied by authority from certain classes of persons in order to defray the expenses on education and is, therefore, a species of tax. In spite, however, of this fact, Government would, in my view, have succeeded in their defence if they could have shown that they were mere depositees of this fund having no control over its expenditure but holding it at the disposal of a statutory body created for the purpose of controlling it. But here it is clear that money could not have been paid out of the fund without the Governor's authority, and the function of the Board of Education was limited to making recommendations to him in the matter. I would go so far as to say that things might have been different if the Board could have spent money out of the fund subject to the Governor's approval. For the reasons above given I am of opinion that an action does properly lie against the Government.

It is difficult to follow by whom and how the assessment was made in this case; but it is admitted that an appeal was made to the Board of Education, which gave a decision in the matter. Assuming that the assessment was regular and that an appeal was properly made and decided upon by the Board, it is a moot point whether the jurisdiction of the Court is not ousted in such a case. But the Attorney-General must be taken to have waived any possible objection to the jurisdiction of the Court as was done in *Hunter* v. *King* (1).

The second point is whether the plaintiff was an inhabitant of Limassol within the meaning of the Law during the crucial period. This is admittedly a question of fact. It is true that the use of the word "domicile" in the judgment of the trial Court is unfortunate; but the Court makes it clear that "domicile" is not used in its strict legal sense but as meaning "home." Reading the judgment of the trial Court as a whole it is safe to say that they did direct their minds to the fact that the question before them for decision was not where the plaintiff was domiciled or where he was resident—whether in Greece or in Cyprus or in both countries—but that the issue was whether he was an inhabitant of Limassol during the time in question. I think there was evidence before them upon which they could reasonably come to the conclusion that the plaintiff was not an inhabitant of Limassol within the meaning of the Law; and, although I would not have come to the same conclusion myself, it would not be justifiable to set aside their judgment.

Appeal dismissed.

(1) (1903) 1 K.B. 514.