IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RENOS FITIKKIDES,

Applicant,

and

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

Respondents.

(*Case No.* 175/69).

Income Tax—Income—Assessment—Exemptions—Gratuity received by the employee under his contract of employment on voluntary termination of his service in anticipation of redundancy as he was entitled so to do under his contract—Such gratuity is a gain or profit accruing from his office or employment—And as such it is taxable under section 5 (1) (b) *of the Income Tax (Foreign Persons) Law* 1961 (*Law No.* 58 *of* 1961)—*And not a "lump sum received by way of retiring gratuity" and as such exempt from tax under the provisions of section* 8(c) *of the same Law.*

Income Tax—Lump sum paid on termination of office or employment whether "gain or profit" liable to income tax under said section 5 (1) (*b*) (supra)—*Or whether a "lump sum received by way of retiring gratuity" and as such exempt from tax under section* 8(c) *of the same Law,* supra—*Principles and tests to be applied in determining the issue.*

Statutes—Construction of—"Retiring gratuity" in section 8(c) *of the Income Tax (Foreign Persons) Law* 1961 (*Law No.* 58 *of* 1961).

Words and Phrases—"Retiring gratuity"; a "lump sum received by way of retiring gratuity" in section 8 (*c*) *of the Income Tax (Foreign Persons) Law* 1961 (*Law No.* 58 *of* 1961).

Income Tax—Assessment—Assuming that the said gratuity amounting to £991 *is taxable under section* 5 (1) (*b*) *of the said Law* (supra) *whether the Respondents were right in including the whole amount in the income of one single year (viz. in the year* 1967) *or, on*

the contrary whether they ought to have spread it over the years of Applicant's service (viz. eleven years).

In June 1956 the Applicant was engaged as a clerk at the seaport office of the Ministry of Transport in the Cyprus Sovereign Bases area. In November 1967, after eleven years of service, the Applicant, anticipating redundancy, exercised his option to terminate his employment by giving one month's notice to his employers. In accordance with the relevant regulation of the Civilian Establishment and Pay Office in Cyprus Cap. XV under the heading "Gratuities on Termination of Service," the Applicant became entitled to be paid gratuities at the rates and under the conditions laid down in that document (*Exhibit* 2); see this Exhibit post in the judgment. Eventually he was awarded and paid under that head the lump sum of £991.

The main point in issue in this case is whether the said same sum of £991 is liable to income tax as "gains or profit from any office of employment....." under section 5(1)(b) of the Income Tax (Foreign Persons) Law 1961 (Law No. 58 of 1961); whether it is merely a "lump sum received by way of retiring gratuity", in which case the said sum of £991 is not taxable by virtue of the provisions of section 8(c) of the same Law. Note: The said sections 5(1) and 8(c) are set out *post* in the judgment.

It was argued on behalf of the tax-payer Applicant that the said sum of £991 paid to him under the regulations (*supra*) was not paid to him as remuneration, but as an award or gratuity and was, therefore, not assessable under section 5(1)(b) (*supra*) in view of the express provisions of section 8(c) (*supra*). On the other hand, counsel for the Respondents argued that the Applicant was rightly assessed in respect of the aforesaid sum of £991 under section 5(1)(b) of the Law; and that the exemptions referred to in section 8(c) (*supra*) do not cover the case of a gratuity or award received because of a voluntary retirement from service or in anticipation of redundancy; and that the aforesaid sum of £991 was paid to the Applicant as remuneration and in consideration of his services under the service agreement and the regulations contained in *Exhibit* 2 (*supra*).

It is to be noted that the said sum of £991 was included in the income for the year 1967 as profit or gain from the office

or employment of the Applicant in that year. A subsidiary point raised in this respect by the Applicant was that, assuming that the aforementioned sum of £991 is taxable income, still it was wrongly included in the income for the year 1967 because it ought to have distributed over the years of the Applicant's term of service i.e. eleven years.

The Court rejecting all the submissions made by counsel for the Applicant and applying the principles and tests derived mainly from the relevant English judicial authorities and dismissing this recourse for the annulment of the relative assessment.

Held, (1)(A). The fact that an employee is paid a lump sum on the termination of his employment does not in itself give the payment the nature of capital, or remove it from the range of taxable emoluments. Liability to tax depends on the nature and purpose of the payment and not upon the fact that it is a lump sum. The fact also that a payment is given a particular name by the parties is not conclusive, and the Court will examine the true nature of the payment.

(B) It would appear that a pre-arranged payment which the service agreement provides, to be made on cessation of office or employment, is treated in England as deferred emoluments, and so taxable. On the other hand, a payment, whether by agreement or by way of damages, made not by virtue of the service agreement but as a consideration for a release from that agreement, is treated as not having the nature of emoluments and so not taxable.

(2)(A) The words used in a statute must be considered so as to give them a sensible meaning and must be construed in accordance with their plain meaning. The material words in our section (viz. section 8(c) of Law No. 58 of 1961, *supra*) are that there must be exempt from taxation "any lump sum received by way of retiring gratuity" (*supra*).

(B) In my view the plain meaning of these words is that the legislator has intended to exempt from income tax a sum of money received by an employee only by way of gratuity on his retirement from service; and does not, therefore, cover the case of a gratuity received by an employee who voluntarily terminates his contract. In my opinion it is quite clear that if the legislator intended to exempt from tax every sum of money received by the employee after leaving his employment

as a gratuity, then the addition of the words "retiring gratuity" would have been unnecessary in section 8(c) (*supra*).

(3) (A) In the light of the authorities, I have reached the view, adopting and following the principles laid down by Jenkins L. J. in *Moorhouse* v. *Dooland* (1954) 36 T.C. 1, that the sum of £991 (*supra*), irrespective of whether the parties call it "gratuity" or "award", is a gain or profit accruing to the Applicant by virtue of his office or employment, or in other words, by way of remuneration for his services under the relevant contract of service.

(B) In my opinion, therefore, the said sum of £991 (*supra*) is taxable because it falls within the provisions of section 5(1)(b) of the Income Tax (Foreign Persons) Law 1961.

(C) I would, therefore, affirm the *sub judice* assessment of the commissioner.

(4) With regard to the alternative argument put forward by learned counsel for the Applicant to the effect that in any event the aforesaid sum of £991 (*supra*) is distributable over the whole term of service (viz. eleven years) of the Applicant, I regret again to state that I disagree. In my view the sum in question which was paid to the Applicant arose and accrued in the year 1967 on the termination of his employment and was, therefore, properly included in the assessment which was made upon him for the relevant year of income (viz. 1967) as profit from the office or employment in that year.

Recourse dismissed.

Cases referred to:

Tsagaridou and Others v. *The Republic of Cyprus* (1969) 3 C.L.R. 409;

Herbert v. *McQuade* [1902] 2 K.B. 631 C.A.; at p. 649, per Collins M.R;

Moorhouse v. *Dooland* (1954) 36 T.C. 1;

Henry (*H.M. Inspector of Taxes*) v. *Arthur Foster*, 16 T.C. 605; at pp. 631-2; C.A.

Cooper v. *Blakiston*, 5 T.C. 347 at p. 355;

Reed v. *Seymour*, 11 T.C. 625;

Henley v. *Murray* (*Inspector of Taxes*) [1950] 1 All E.R. 908;

Dale (H.M. Inspector of Taxes) v. *De Soissons*, 32 T.C. 118; at p. 126 et eq.;

Corbett v. *Duff, Dale* v. *Duff, Feebery* v. *Abbott* [1941] 1 All E.R. 512 at p. 514.

The facts sufficiently appear in the judgment of the Court.

Recourse.

Recourse against the validity of an assessment raised upon the Applicant for the year 1967, in respect of a sum of £991.– paid to him by his employers when he left their employment.

F. Saveriades, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:–

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant seeks to challenge the validity of an assessment raised upon him for the year 1967, under section 5 of the Income Tax (Foreign Persons) Law, 1961, in respect of a sum of £991.– paid to him by his employers, the English Ministry of Transport, when he left their employment in November, 1967.

In June, 1956, the Applicant was employed as a clerk at the seaport office of the Ministry of Transport in Cyprus Sovereign Bases area. In November, 1967, after eleven years of service, the Applicant, because he anticipated the question of redundancy, exercised his option to terminate his employment by giving one month's notice to his employers; and in accordance with the regulations of the Civilian Establishment and Pay Office in Cyprus Cap. XV under the heading "Gratuities on Termination of Service", the Applicant became entitled to be paid gratuities at the rates and under the conditions laid down in that document, (*exhibit* 2). He was awarded the sum of £991.–.

I propose reading extracts from the regulations. Para. 527 provides as follows:–

" Subject to the rules in paras. 529 to 534 below, minimum

periods of satisfactory reckonable service as shown in sub-paras. (a) (b) (c) and (d) will qualify for an award if such service is terminated for reasons shown in the sub-paras.

(a) (i) Redundancy,

(ii) Resignation in anticipation of redundancy, Qualifying service.....one year.

.....

(d) (i) Voluntary resignation,

Qualifying service.....five years.

(e) An award may be reduced or with-held altogether if service has not been satisfactory or if incapacity has arisen through neglect.

(f) Service terminated for misconduct will under no circumstances qualify for the award of a gratuity."

.....

" *ASSESSMENT OF AWARDS*

535. Pay for the purpose of assessing the gratuity issuable will be the basic pay and cost of living allowance in issue on the termination of service or the average basic pay and cost of living allowance drawn over the last three years of service whichever is the more favourable.

536. Service terminated for reasons shown in para. 527 (a) (b) and (c) above or who voluntarily resign after seven years or more reckonable service:- One month's salary for each year of reckonable service."

It would be observed that the reckonable service of the Applicant was more than eleven years.

The Applicant, having been assessed to pay tax on his chargeable income derived from an amount of rents and the amount of £991.-, and after he was informed of his rights, apparently under section 43 of Law 58/61, he applied to the Commissioner of Income Tax to review and to revise the assessment made upon him.

On March 22, 1969, Mr. Panayiotou, on behalf of the

Commissioner, wrote to the Applicant (*exhibit* 1) informing him that the amount of £991.– received by him during the year 1967 on his retirement from his work, was considered as being income and was, therefore, taxable during that year.

On June 11, 1969, the Applicant, feeling aggrieved by the assessment made upon him, filed this recourse under the provisions of section 44 of the said law (as amended by Law 4/63 and 21/66) claiming: (a) "that the decision of the Respondents dated 27.3.69 is *null* and *void* as ultra vires and infringes constitutional rights of the Applicant and against the law", and (b) "that the sum of £991.– received as a gratuity or otherwise by the Applicant is not taxable."

On September 13, 1969, pursuant to the order of the Court, the Applicant filed particulars of the grounds of law: (a) "the imposed taxation is not based on any law in force at the time when the gratuity was received under the circumstances by the Applicant, and the Respondent imposed taxation contrary to sections 1, 2, 3 and 4 of Article 24 of the Constitution"; (b) "the annuity and or receivings of this nature taken by Applicant if received by civil servants or other personnel of public bodies, i.e. employees of Electricity Authority are not taxable, whereas the Respondent taxed Applicant, an act which infringes the provisions of Article 28.1 of the Constitution as to equality before the Law and equal treatment."

I think it is constructive at this stage to deal with two sections or our Law.

Section 5(1) provides that:–

> " Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of –
>
> (a) .....
>
> (b) gains or profits from any office or employment, irrespective of whether the person employed is serving in Cyprus or elsewhere, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise."

Section 8(c) of the same law deals with the exemptions of various heads of items from the tax and is in these terms:-

> "There shall be exempt from the tax—any lump sum received by way of retiring gratuity, commutation of pension, death gratuity or as consolidated compensation for death or injuries."

Counsel on behalf of the Applicant contended that:- (a) the sum of £991.- paid to him under the regulations was not paid to him as remuneration, but as an award or gratuity and was, therefore, not assessable under the provisions of section 5 of Law 58/61; (b) In view of the express provisions in section 8(c) of the law, the said sum is exempted from those provisions of the law; (c) The said assessment should be discharged because the Commissioner of Income Tax was acting contrary to the law and or in excess of power.

Counsel on behalf of the Respondent contended that:- (a) the sum of £991.- was not a gratuity, but gains or profits from his office or employment and was, therefore, assessable to tax under the provisions of section 5 (1) (b) of the law; (b) the exemptions referred to in section 8(c) of the law refer to a sum received by way of retiring gratuity; and do not cover the case of a gratuity or award received because of a voluntary retirement from service or in anticipation of redundancy; (c) the said sum of money was paid to him as remuneration and in consideration under the service agreement and the said regulations contained in *exhibit* 2; (d) the Applicant, having exercised a right which he had under the regulations to terminate the contract of employment, the amount received by him was remuneration under the terms of his service. Counsel, in support of his contentions, is relying on the authority of *Henry* v. *Foster* (1931) 16 T.C. 605; and *Corbett* v. *Duff* [1941] 1 All E.R. 512.

I would like to begin by stating that the fact that an employee is paid a lump sum on the termination of his office or employment, does not of itself give the payment the nature of capital, or remove it from the range of taxable emoluments. Liability to tax depends on the nature and purpose of the payment and not upon the fact that it is a lump sum. The fact also that a payment is given a particular name by the parties to the arrangement is not conclusive, and the Court will examine the true nature of the payment. Of course, the question in

England whether a lump sum receipt constitutes income assessable under Schedule E or capital has arisen in circumstances of great variety. It resolves itself in every case into a question whether or not the sum in question is truly remuneration or emolument of office, and it is not easy to reconcile the decisions of the Courts or to extract short guiding principles therefrom. It appears that a pre-arranged payment, which the service agreement provides, shall be paid on cessation of office, is treated as deferred emoluments, and so taxable. On the other hand, a payment, whether by agreement or by way of damages, made not by virtue of the service agreement but as consideration for a release from that agreement, is treated as not having the nature of emoluments.

Before examining the nature of the payment of the sum of £991.– to the Applicant, I am proposing to review some of the authorities on this issue. In *Dora Tsagaridou and Others* v. *The Republic of Cyprus (through the Ministry of Finance and The Commissioner of Income Tax)* reported in (1969) 3 C.L.R. 409, shortly the facts are, that a female employee who had to leave the service due to her engagement or marriage was paid a gratuity calculated on the basis of a month's salary for every year of service, but not exceeding, in any event, a total of 13 months salaries. This was done by way of practice, and without there being in existence any express condition of service to that effect.

The Court, after reviewing the authorities, in giving judgment against the Applicants, had this to say at pp. 415-416:–

> " In the light of the foregoing, and on the basis of all the material before me in these cases, I have reached the conclusion that the gratuities in question were paid to the Applicants by way of gains or profits accruing to them from their offices or employment, in the sense that they were intended to be special emoluments destined to alleviate their plight, when they were placed in a less advantageous position, through their having relinquished, due to marriage, their permanent status, and, then, been, immediately, re-appointed on only a temporary basis.
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> In my mind there is no doubt that each Applicant received the gratuity concerned by virtue of her office or employment and not merely because she happened to be in the service of The General Insurance Company of Cyprus Ltd. when she got married.

It is perfectly clear from the evidence given by the aforementioned Mr. Menelaou—who was called as a witness by counsel for Applicants—that the gratuities were not paid to the Applicants by way of presents on the occasion of their being engaged or married, and that there was not in existence any practice to make such presents."

In *Herbert* v. *McQuade* [1902] 2 K.B. C.A. 631, according to the headnote, the Appellant, a beneficed clergyman, received for several years an annual grant of money from a diocesan branch affiliated to the Queen Victoria Clergy Sustentation Fund, a body incorporated with the object of providing adequate remuneration for the beneficed clergy for the work done by them; the fund was not intended to be merely a clerical charity. The funds of the diocesan branch were administered by a council whose aim was to raise the incomes of all benefices under 200 L. per annum in value to that amount. The council did not take into consideration the personal circumstances of the particular incumbent, but the onus rested upon the Applicant of deciding whether his own circumstances justified him in applying for a grant. The incumbent of a benefice of less than 200 L. a year was not necessarily entitled to a grant, but the giving, withholding, continuance, and discontinuance of grants out of the funds were matters wholly within the discretion of the council. Where a benefice fell vacant during the year for which the grant was made, the grant was divided between the outgoing and incoming incumbent in proportion to the length of time for which each had been incumbent:-

Held (reversing the decision of a Divisional Court), that the grants received by the incumbent from the diocesan branch were "perquisites or profits accruing by reason of his office" within the meaning of the first rule contained in s. 146 of the Income Tax Act, 1842, for charging duties under Sched. E, and that he was therefore liable to pay income tax under Sched. E. upon them.

Collins, M.R. in his judgment said at p. 649:-

" Now that judgment, whether or not the particular facts justified it, is certainly an affirmation of a principle of law that a payment may be liable to income tax although it is voluntary on the part of the persons who made it,

and that the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office; if it does, it does not matter whether it was voluntary or whether it was compulsory on the part of the persons who paid it. That seems to me to be the test; and if we once get to this—that the money has come to, or accrued to, a person by virtue of his office—it seems to me that the liability to income tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it."

In *Moorhouse* v. *Dooland* (1954) 36 T.C. 1., Jenkins, L.J. said that he deduced the following principles from *Herbert* v. *McQuade*, 4 T.C. 489, *Cooper* v. *Blakiston* 5 T.C. 347 at p. 355 and *Reed* v. *Seymour* 11 T.C. 625:-

"(i) The test of liability to tax on a voluntary payment made to the holder of an office or employment is whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office or employment, or in other words, by way of remuneration for his services.

(ii) If the recipient's contract of employment entitles him to receive the voluntary payment, whatever it may amount to, that is a ground, and I should say a strong ground, for holding that from the standpoint of the recipient it does accrue to him by virtue of his employment, or in other words by way of remuneration for his services.

(iii) The fact that the voluntary payment is of a periodic or recurrent character affords a further, but I should say a less cogent, ground for the same conclusion.

(iv) On the other hand, a voluntary payment may be made in circumstances which show that it is given by way of present or testimonial on grounds personal to the recipient, as, for example a collection made for the particular individual who is at the time vicar of a given parish because he is in straitened circumstances, or a benefit held for a professional cricketer in recognition of his long and successful career in first class cricket. In such cases the proper conclusion is likely to be that the voluntary payment is not a profit accruing to the recipient by virtue of his office or employment but a gift to him

as an individual paid and received by reason of his personal needs in the former example and by reason of his personal qualities or attainments in the latter example."

In *Henry (H. M. Inspector of Taxes)* v. *Arthur Foster*, 16 T.C. 605 C.A., a company's Articles of Association provided, by Article 109, for the payment of "compensation for loss of office" in the event of a person ceasing to be a director (after 5 years or more years service) by reason of death or any other cause other than misconduct, bankruptcy, lunacy or incompetence. The Director retired.

Lawrence, L.J., in giving judgment for the Crown in the Court of Appeal, reversing the decision of the Court, below, said at p. 631:-

> " The question in this case is whether the sum of £6,000 odd paid by the company to the Respondent, Arthur Foster, on his retirement from the office of director in accordance with the terms of his contract of service which are contained in Article 109 of the articles of association, and there stated to be by way of compensation for loss of office, is a profit from the office of director for the year of assessment, 1925–1926, within the meaning of Schedule E, Rule 1, of the Income Tax Act, 1918. The Special Commissioners held that the sum so paid was a solatium given to the Respondent upon retirement, and not a payment for services, and upon that ground discharged the assessment which had been made upon the Respondent. Mr. Justice Rowlatt upheld the conclusion of the Commissioners, but upon a different ground. The learned Judge founded himself on the decision of Lord Dunedin in the case of *Duncan's Executors* v. *Farmer*, which is reported in 5 T.C. at p. 417, and held that the sum paid to the Respondent, although payment could legally have been enforced, was a payment made in respect of the cessation of the office of director and therefore was not a profit of that office.
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> In my opinion, the view taken both by the Commissioners and by the learned Judge is erroneous. As pointed out by Lord Sterndale, Master of the Rolls, in the case of *Cowan* v. *Seymour*, 7 T.C. at page 379, the judgment of Lord Dunedin in Duncan's case must be read in the light of the facts of that case, which were that

the allowance there was in the nature of a compassionate allowance made after the minister had retired on the ground of ill health. In my opinion neither Duncan's case nor any other case dealing with voluntary payments made on the relinquishment of an office or an employment of profit has any bearing on the question which we have to decide. In my judgment, the determining factor in the present case is that the payment to the Respondent whatever the parties may have chosen to call it was a payment which the company had contracted to make to him as part of his remuneration for his services as a director. It is true that payment of this part of his remuneration was deferred until his death or retirement or cesser of office, and that in the articles it is called 'compensation for loss of office'. It is, however, a sum agreed to be paid in consideration of the Respondent accepting and serving in the office of director, and consequently is a sum paid by way of remuneration for his services as director."

Later on he says at p. 632:–

"Now the sum which was paid to the Respondent, in my judgment, arose and accrued in the last year of the office of director and is therefore properly included in the assessment which was made upon him for the year of assessment, 1925–1926, as a profit from the office in that year, and is not distributable, as has been suggested, either over the whole term of service of the Respondent or over the last five years of such service."

In *Dale (H. M. Inspector of Taxes)* v. *De Soissons* 32 T.C. 118, the headnote reads as follows:–

"The Respondent was employed as assistant to the managing director of a company, his remuneration consisting of a fixed salary of £3,000 per annum and a commission calculated on profits. Under the terms of his service agreement, the Respondent's appointment was to be for three years from 1st January, 1945, but the company was entitled to terminate the agreement at 31st December, 1945, or 31st December, 1946, on payment of £10,000 or £6,000 respectively, as 'compensation for loss of office'. The company terminated the agreement at 31st December, 1945, and paid the £10,000 to the Respondent.

On appeal to the Special Commissioners against an assessment for the year 1945-46 under Schedule E, the Respondent contended that the £10,000, being paid as compensation for loss of office, was not assessable. For the Crown it was contended that the sum was remuneration and not compensation for loss of office. The Commissioners allowed the appeal."

Roxburgh, J., holding that the sum of £10,000 was not compensation for loss of office but profits from an office or employment, contrasted the case with *Henley* v. *Murray* (*Inspector of Taxes*), [1950] 1 All E.R. 908, and pointed out that in the latter case the sum was paid for the total abrogation of Mr. Henley's contract of employment, and concluded his judgment with the words at p. 126:-

> " In the present case the taxpayer surrendered no rights. He got exactly what he was entitled to get under this contract of employment. Accordingly, the payment, in my judgment, fails within the taxable class.....".

These words were quoted with approval by Lord Evershed, M.R. in the Court of Appeal, and the decision that the payment was taxable was upheld. He said at p. 126:-

> " Cases of this character are never easy, and as Mr. Grant observed at the end of his argument the line between those in which the taxpayer has succeeded and those in which he has failed may perhaps be described as 'a little wobbly', but in my judgment the learned Judge rightly held that this case fell on that side of the line which has been illustrated by, among other cases, the case of *Henry* v. *Foster* reported, among a series of cases, *Henry* v. *Foster* and *Hunter* v. *Dewhurst* 16 T.C. 605, and not on the side of the line on which fell the recent case of *Henley* v. *Murray*, decided in this Court and reported on page 908 of [1950] 1 All E.R."

Later on he says:-

> " Mr. Grant accordingly says that it really represents, as a matter of principle as in the *Henley* v. *Murray* case, in effect a sum paid in consideration for the cancellation of the rights under the agreement which Colonel de Soissons would otherwise have had. As I have already indicated, to my mind the correct answer is that given

by Roxburgh, J., namely, that this £10,000 was part of the remuneration which Colonel de Soissons was entitled to get under, and received from, his contract of service. The contract provided that he should serve either for three years at an annual sum or, if the company so elected, for a shorter period of two years or one year at the annual sum in respect of the two years or the one year, as the case might be, plus a further sum, that is to say it was something to which he became entitled as part of the terms upon which he promised to serve, something which he was entitled to receive in the particular event specified, namely, the term not running the three years but being earlier determined. I agree with the learned Judge that there is a true analogy between this case and the cases to which I have referred, called *Henry* v. *Foster*, where the taxpayer received sums by virtue of the articles of association which were treated, for that purpose, as being a part of the contract of service.

In the very full Case Stated it is apparent there was a difficult question to be resolved when the war ended, namely, for how long in the circumstances then affecting the tobacco trade would it be right to engage Colonel de Soissons. The Case sets out the evidence, which indicates that the arrangement in fact came to and incorporated in the agreement to which I have alluded was a compromise, one side desiring a longer and a securer term and the other, or at any rate some members of the board, that is the employers, preferring an annual contract of service. I think that evidence is clearly consistent with and reflected by the terms of the agreement itself. As I have indicated, the effect of it was that Colonel de Soissons engaged himself, if called upon, to serve for three years at a remuneration which was specified, but the right was given to the company to make his term a shorter one. In that event, as it seems to me, the remuneration for the services took the form in part of a remuneration plus a commission for the period he in fact served, plus a further sum which he was contractually entitled to get under the terms of his agreement and as part of the bargain which he made.

Cases of this kind, as I have said, are never entirely easy, and in the last resort it seems to me to turn upon the short question which I have attempted to answer as

I have, namely, whether following the language of the Rule this sum can be said to arise from the contract of employment. Having given briefly my reasons for thinking that an affirmative answer should be given, I hope Mr. Grant will not think me disrespectful of his argument if I leave it at that, and do not attempt to elaborate and perhaps thereby succeed only in confusing. I am satisfied to accept the last few words of Roxburgh, J's., judgment as giving expression entirely to my own conclusion, 'In the present case the Colonel surrendered no rights. He got exactly what he was entitled to get under his contract of employment. Accordingly the payment, in my judgment, falls within the taxable class'."

In *Corbett* v. *Duff, Dale* v. *Duff, Feebury* v. *Abbott*, [1941] 1 All E.R. 512, "the taxpayers were professional football players and had received in one case the proceeds of a benefit match and in the other cases sums stated to be accrued shares of benefit. These payments were provided for by the regulations of the Football League and, though not obligatory, were expected, generally asked for, and generally accorded after continuous service for a certain number of years. The regulations stated that such payments were made for loyal and meritorious service:-

Held: "These sums were paid as remuneration for the services of, and not as mere personal testimonials to, the players, and were rightly assessed to income tax."

Lawrence, J. had this to say at p. 514:-

"In the present cases, it appears to me that all the payments in question were made in respect of, and as remuneration for, the Appellants' employment and are taxable. As the special cases stated and the Football League Regulations indicate, the payments, though not obligatory, are expected, are generally asked for, and are usually accorded. They are made after continuous service for a certain number of years, are stated in the regulations to be for loyal and meritorious service and, in special circumstances, to be in lieu of a presumed accrued share of benefits.

In my opinion, in face of the terms of regs. 61, 63 and the facts stated in the cases as to the understanding amongst professional football players, it is impossible to

hold that any of the three payments to the Appellants in question was not paid in respect of, and as remuneration for, the Appellants' employment as football players."

I find it convenient to deal first with the second contention of counsel. With the greatest respect to counsel's argument, I find myself unable to accept his contention, that the sum of £991.– falls within the provisions of sec. 8(c) of Law 58/61. In this case the crucial rule for the construction of a statute is that, if possible, the words of an act of the House of Representatives must be considered so as to give a sensible meaning to them, and it must receive a construction according to the plain meaning of the words and sentences therein contained. The material words of our section are "any lump sum received by way of retiring gratuity", and in my view, as a question of construction, the plain meaning of these words is that the legislator intended to exempt from the tax a sum of money received by an employee only by way of gratuity on his retirement from service; and does not, therefore, cover the case of a gratuity received by an employee who voluntarily terminates his contract of employment. Furthermore, in my opinion, it is clear that if the legislator intended to exempt from the tax every sum of money received by an employee after leaving his employment as a gratuity, then the addition of the words "retiring gratuity" would have been unnecessary to be inserted in sec. 8(c) of our law. For these reasons I would, therefore, dismiss this contention of counsel.

With regard to the first contention of counsel, after considering fully the facts and regulations in the case in hand, and in the light of the authorities I have reviewed, I have reached the view, adopting and following the principles formulated by Jenkins L.J. in *Dooland* case (*supra*) that the sum of £991.– —irrespective whether the parties call it gratuity or award—is a gain or profit accruing to the Applicant by virtue of his office or employment, or in other words, by way of remuneration for his services. In my opinion, therefore, the said sum of money is taxable and falls within the provisions of sec. 5 (1) (b) of our law. I would, therefore, affirm the decision of the Commissioner, and dismiss this contention also.

With regard to the alternative argument of counsel for the Applicant, I regret again to state that I disagree, because, in my view, the said sum of money which was paid to the

Applicant arose and accrued in the year 1967, on the termination of his employment and is, therefore, properly included in the assessment which was made upon him for the year of assessment 1967, as a profit from the office or employment in that year, and is not, therefore, distributable as has been suggested over the whole term of service of the Applicant.

For the reasons I have endeavoured to explain, I have reached the view that the decision of the Commissioner is not contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers, and I would, therefore, dismiss the application.

Application dismissed.