No. 927.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—20TH MARCH, 1934

COURT OF APPEAL.—4TH MAY, 1934

BROCKLESBY *v.* MERRICKS (H.M. INSPECTOR OF TAXES)

Income Tax, Schedule D—Architect—Profit on sale of estate—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Schedule D, Case* VI.

The Appellant, an architect in practice, was on a social occasion told by the owner of an estate that he wished to sell his property. Later he arranged a meeting between the owner and a client, the outcome of which was that the client purchased the estate on behalf of his company. Subsequently the Appellant entered into an agreement, which was recorded in correspondence, with the purchasing company, whereby he undertook to endeavour to dispose of the estate and, in conjunction with the company, to negotiate with the parties concerned on the terms that the company should pay him one-fourth of the net profits of the sale. The estate was sold soon afterwards and the Appellant received from the company his share of the net profits thereof. He took no part in the negotiations for the acquisition or the re-sale of the estate; he was not consulted in regard thereto; and did no work in connection with the estate as a surveyor or architect beyond the preparation of a plan which was not in fact used.

On appeal against an assessment to Income Tax (Schedule D) in respect of the sum received, the Appellant contended that it was not income assessable to Income Tax. The Special Commissioners confirmed the assessment under Case VI *of Schedule D.*

Held, *that the payment to the Appellant was made in fulfilment of an enforceable contract for services and was correctly assessed under Case* VI *of Schedule D.*

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 4th day of July, 1933, for the purposes of hearing appeals, Mr. J. Sydney Brocklesby (hereinafter called the Appellant) appealed against an additional assessment to Income Tax in the sum of £4,740 for the year ending 5th April, 1930, made upon him under Schedule D of the Income Tax Act, 1918.

1. The Appellant, who is in practice as an architect and is a Fellow of the Royal Institute of British Architects, was on a social occasion introduced to the then owner of the Tewkesbury Lodge Estate, who told him in the course of conversation that he was anxious to sell. The Appellant later arranged a meeting between a client of his, Mr. Dashwood, of Dashwood and Partners, Limited, and the said owner of the Estate, with the result that Mr. Dashwood negotiated for the purchase of the Estate and on the 22nd August, 1927, acquired it for £12,000 on behalf of Dashwood and Partners, Limited. Neither at the time when this meeting was arranged nor at any time prior to the 7th September, 1927, was there any agreement on the part of Dashwood and Partners, Limited, to remunerate the Appellant.

2. On the 8th September, 1927, the Appellant wrote to Dashwood and Partners, Limited, as follows :—

" Ref. F. 100.

" 8th September, 1927.

" Messrs. Dashwood & Partners, Ltd.,
" 27, Grosvenor Place,
" London, S.W.1.

" Dear Sirs,

" Tewkesbury Lodge Estate, Forest Hill.

" I beg to confirm the arrangement made at our interview " yesterday afternoon, namely :—

" (1) I will endeavour to the best of my ability to dispose " of the above Estate and in conjunction with yourselves will " negotiate with the parties concerned.

" (2) I will carry out all architect's and surveyor's work " necessarily involved without charge.

" (3) It is to be mutually agreed between yourselves and " myself as to whether the Estate shall be disposed of as a " whole or in lots.

" (4) You will immediately purchase the plot of land on the " North-East boundary of the Estate to obtain an outlet, and " will charge no interest against profits for the capital involved. " You will also provide any further capital necessary.

" (5) You agree on your part to use your best endeavour to " dispose of the Estate and in conjunction with myself will " negotiate with the parties concerned.

" (6) It is agreed that, after paying an honorarium to " G. H. Farmer, Esq. of £100 minimum or £500 maximum " (the exact amount to be paid to be determined by the net " profits obtained by ourselves) the net profits on the deal shall " be shared between yourselves and myself in the proportion " of 2/3rds to you and 1/3rd to myself.

" Will you kindly confirm that you agree the above.

" Yours faithfully ".

Dashwood and Partners, Limited, replied on the next day as follows :—

" 9th September, 1927.

" J. Sydney Brocklesby, Esq., F.R.I.B.A.,
" 267, Kingston Road,
" Merton, Surrey.

" Dear Sir,

" Tewkesbury Lodge Estate.

" We beg to acknowledge and thank you for your favour " of the 8th instant, outlining arrangements come to for the " above Estate.

" We beg to confirm the terms as set forth in this letter " and are in agreement therewith.

" We have deposited £30 this day with Bromleys of Forest " Hill being 10 per cent. on the top plot and we gather from " them there will be no hitch about our purchase being con- " firmed, although, as we once dropped this plot, they have " to refer back to the owner.

" Yours faithfully ".

and on the 11th February, 1928, they wrote to the Appellant again :

" Dashwood and Partners, Limited,
" 27, Grosvenor Place, S.W.1.
" 11th February, 1928.

" Mr. J. Sydney Brocklesby, F.R.I.B.A.,
" 267, Kingston Road,
" Merton, S.W.19.

" Dear Sir,

" Tewkesbury Lodge, Forest Hill.

" As promised on Wednesday last, and in order to regularise " matters, we confirm the arrangement come to with regard " to the above, that your participation in any profits accruing " from the re-sale of same shall be 25 per cent. (twenty-five " per cent.) after deduction of all expenses properly chargeable " there-against.

" This letter cancels paras. (4) and (6) with the exception " of that part which refers to Mr. Farmer of your letter to us " of the 8th September, 1927, and also our letter of the " 9th September, 1927.

" Your letter of confirmation to the above will oblige.

" Yours faithfully,

" A. G. CLARKSON ".

The Appellant wrote to Dashwood and Partners, Limited, agreeing to these terms on the 28th March, 1928.

3. Dashwood and Partners, Limited, eventually sold the Estate for £33,000 and in pursuance of the arrangement set out in the letter of the 11th February, 1928, the Appellant was paid £4,740, which is the figure of the assessment under appeal.

4. On receiving payment from Dashwood and Partners, Limited, the Appellant wrote to them as follows :—

" 1st April, 1930.

" Messrs. Dashwood and Partners, Ltd.,
" 27, Grosvenor Place, S.W.1.

" Dear Sirs,

" I beg to acknowledge receipt by cheque of the sum of " £4,115 16*s.* 3*d.* which, with the sum of £500 paid to the " National Provincial Bank, Ltd., Wimbledon, for my account " and the deduction of £125 for materials taken by me from " the house, totals £4,740 16*s.* 3*d.*, which amount I hereby " acknowledge in settlement of my share of the profit accruing " from the purchase and sale of Tewkesbury Lodge Estate, " Forest Hill.

" Yours faithfully,

" J. S. B."

5. The Appellant in evidence stated (*a*) that he took no part in connection with the acquisition or re-sale of the estate; (*b*) that he was not consulted in regard thereto and he did no work in respect of the estate as a surveyor or architect beyond the preparation of an estate lay-out plan which was not in fact put to use; (*c*) that the maximum fee he could have charged for this had it been used would have been £60; (*d*) that he invested no capital in this undertaking and, had the re-sale of the estate resulted in a loss, there was no agreement under which he could have been required to bear any share of such loss; (*e*) that he was doing work as an architect for Dashwood and Partners, Limited, in connection with an estate which they were developing at Wimbledon and had Messrs. Dashwood decided to develop the Tewkesbury Lodge Estate he would have expected to receive substantial fees as architect.

This evidence we accepted.

6. On behalf of the Appellant it was contended (*a*) that the sum of £4,740 was not a sum in the nature of income assessable under any of the provisions of the Income Tax Acts; (*b*) that the assessment should be discharged.

7. On behalf of the Respondent it was contended that the Appellant was rightly assessed in the sum of £4,740 under Case VI of Schedule D, the said sum having been paid to the Appellant as commission for introducing Mr. Dashwood of Dashwood and Partners, Limited, to the owner of the Estate.

8. We were of opinion that the payment made to the Appellant was for services rendered and was rightly assessed upon him under Case VI of Schedule D, and we therefore confirmed the assessment.

9. The Appellant, immediately upon the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

MARK STURGIS, N. ANDERSON, } Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
11th December, 1933.

The case came before Finlay, *J.*, in the King's Bench Division on the 20th March, 1934, when judgment was given in favour of the Crown, with costs.

Mr. C. L. King appeared as Counsel for the Appellant and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT

Finlay, J.—This case is not entirely free from difficulty, but I have come to the conclusion that the conclusion arrived at by the Commissioners cannot be interfered with by me.

The case is rather a peculiar one. It is proper to mention at the beginning that it comes before me as a case of assessment under Case VI of Schedule D. At a late stage, it was intimated on behalf of the Inland Revenue that they would also desire to seek to support the assessment as being one which was, or could be, validly made under Case II of Schedule D. It is not necessary that I should go into that, except to say that the learned Attorney-General, while intimating that he was prepared to rest, and did rest, his argument before me upon Case VI, said that he desired to keep open —I mention it only for that purpose—the possibility of an argument that Case II might be applied if he was driven out of Case VI. Having said that, I proceed to deal with it on Case VI, which was the matter before the Commissioners and which was the matter really argued before me.

The facts, as I indicated a moment ago, are a little peculiar, and it is necessary in this case to ascertain exactly what they were. The appeal was against an additional assessment in the sum of £4,740. The Appellant is in practice as an architect and is a Fellow of the

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Royal Institute of British Architects. On some social occasion he was introduced to the owner of an estate called the Tewkesbury Lodge Estate, and this owner apparently told the Appellant that he was anxious to sell. The Appellant had a client, Mr. Dashwood, of Dashwood & Partners, Limited, with whom apparently he had other business transactions and for whom he had done other work as an architect, and he introduced Mr. Dashwood to this owner of the estate. The result of that was that Mr. Dashwood negotiated with the owner and on the 27th August, 1927, acquired the estate on behalf of his company, Dashwood & Partners, Limited, for a sum of £12,000. At that time and up to that date and, indeed, up to the 7th September, there was no agreement at all to remunerate the Appellant for what he had done.

On the 8th September there was a letter by the Appellant to Dashwood & Partners, Limited. It says this: "I beg to confirm "the arrangement made at our interview yesterday afternoon, "namely:—(1) I will endeavour to the best of my ability to dispose of "the above estate"—that is, the Tewkesbury Lodge Estate—"and in "conjunction with yourselves will negotiate with the parties con- "cerned. (2) I will carry out all architect's and surveyor's work "necessarily involved without charge. (3) It is to be mutually agreed "between yourselves and myself as to whether the Estate shall be dis- "posed of as a whole or in lots. (4) You will immediately purchase the "plot of land on the North-east boundary of the Estate to obtain an "outlet, and will charge no interest against profits for the capital "involved. You will also provide any further capital necessary. "(5) You agree on your part to use your best endeavour to dispose "of the Estate and in conjunction with myself will negotiate with "the parties concerned." Then there is a provision with regard tc an honorarium to a gentleman, which does not seem to be material. On the 9th September that was confirmed. There is a letter from the firm to this gentleman acknowledging it and confirming it. Later, on the 11th February, 1928, there was another letter, which said this: "As promised on Wednesday last, and in order to regularise matters, "we confirm the arrangement come to with regard to the above, "that your participation in any profits accruing from the re-sale of "same shall be twenty-five per cent. after deduction of all expenses "properly chargeable there-against. This letter cancels paras. "(4) and (6) with the exception of that part which refers to "Mr. Farmer"—that is the honorarium—"of your letter to us of "the 8th September, 1927, and also our letter of the 9th September, "1927. Your letter of confirmation to the above will oblige." The Appellant agreed to that.

Paragraph 3 is important. It shows that the company, Dashwood & Partners, Limited, eventually sold the estate and sold it at an exceedingly handsome profit, because they sold it for £33,000, and, in pursuance of the arrangement set out in the letter of 11th February,

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the Appellant was paid £4,740. That is the figure in respect of which the assessment was made. The Appellant acknowledged that in a letter in which he said: "Which amount I hereby acknowledge in "settlement of my share of the profit accruing from the purchase "and sale of Tewkesbury Lodge Estate, Forest Hill." There does not seem to be any room for doubt that that sum was paid to the Appellant, as, indeed, it was expressed to be paid, as his share of the profit paid under the agreement, and that if it had not been paid the Appellant would have had a right to sue for it. He was entitled to enforce it. It was paid of course quite willingly, but, if necessary, he could have enforced his rights to it.

Before the Commissioners the Appellant gave evidence and his evidence came to this: he said that he took no part in connection with the acquisition or re-sale of the estate; that he was not consulted and did no work as a surveyor or architect, except that he prepared an estate lay-out plan, which was not in fact put to use, and the maximum fee for which, on the ordinary architect's scale, would have been £60; he invested no capital in the undertaking and would not have been liable for any loss on the re-sale. He was doing work as an architect for the company in connection with another estate which they were developing at Wimbledon, and if Messrs. Dashwood, instead of selling, had developed this Tewkesbury Lodge Estate, he would have expected to receive substantial fees as architect. Commission was mentioned and, as would be expected of a gentleman in his position, the evidence which he gave was accepted as being true.

The Appellant's contention was that this sum was not a sum in the nature of income assessable under any of the provisions of the Income Tax Acts. The Respondent's contention is a little important. It was that the Appellant was rightly assessed in the sum of £4,740 under Case VI, "the said sum having been paid to the Appellant as "commission for introducing Mr. Dashwood, of Dashwood & Partners, "Limited, to the owner of the Estate." That contention, I think, would not do, and for this very elementary reason: there was no agreement at all that the Appellant, in respect of this introduction arising out of some meeting on a social occasion, was to receive remuneration, and I think it is perfectly well settled that, in those circumstances, anything that might be given to him would be a perfectly voluntary payment and would not be income; it would be merely a present. We are not in the region of cases where tips, or profits of an office or vocation, and matters of that sort, may be part of the profits of, for instance, a waiter. It is, I think, quite clear and quite well settled that if a service of that sort is rendered—rendered with no contract for remuneration at all—then a sum paid afterwards would not be assessable. But what the Commissioners find is not that. What they find is this: "We were of opinion that the payment made to "the Appellant was for services rendered and was rightly assessed

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"upon him under Case VI of Schedule D." It seems to me that it was a payment made to the Appellant for services rendered. It is perfectly true that he did very little. He apparently did nothing except prepare an estate plan. He did very little, doubtless because the estate was promptly and favourably sold, and, in consequence, there was not much of that architect's and surveyor's work which he had agreed to do without charge, nor had he to take any trouble in connection with finding people willing to buy and negotiating with them. The transaction was a fortunate one and went through promptly, but I cannot doubt that this was a contract for remuneration in respect of services rendered. I think the truth of the matter is this: the Appellant had rendered, and rendered voluntarily and without remuneration, an important service to the company. The company was therefore disposed to give him, and did give him, a very advantageous contract in respect of these services which he was to render, but the circumstance that, so to speak, an inducement for the favourable terms which he there got was the fact that he had rendered an important service to them, does not prevent it, to my mind, from being a contract in respect of services rendered. After all one has to consider what he was paid for. He was paid this sum, because he had an enforceable right to get it, and that enforceable right was based on this, that he had got a contract in respect of which, for certain services to be rendered by him specified in the contract, he was to be entitled to remuneration. I repeat, and the Appellant is entitled to any benefit he can get from it, that I think, surveying the facts, it is reasonably certain that the contract would not have been entered into, anyhow would not have been so favourable to the Appellant, if it had not been for the fact that he had rendered this exceedingly important voluntary service to the company; but that does not, to my mind, prevent the contract, when it is entered into, from being, as indeed it is expressed to be, a contract for remuneration in respect of services. The case, therefore, is not of the nature of the cases which depend upon well-known and rather elementary principles to which Mr. King referred. It is not a case where there has been a purely voluntary service rendered and then something given in respect of that. It is a case in which, induced very probably by the voluntary service, the parties chose to enter into a contract for remuneration in respect of services. I think that that was the conclusion at which the Commissioners arrived. I think they rightly thought that this was a case assessable under Case VI, and accordingly it results that the appeal, in my opinion, fails and must be dismissed.

The Attorney-General.—Dismissed with costs, my Lord?

Finlay, J.—Yes.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 4th May, 1934, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. C. L. King appeared as Counsel for the Appellant and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT

Lord Hanworth, M.R.—We need not trouble you, Mr. Attorney.

This case really is one that I think is simple when one appreciates the facts, and I should be content to leave it where Mr. Justice Finlay had left it in a very careful judgment, but, in deference to the argument presented to us, I will just add a few words. Let it be noted that, in a letter of the 8th September, 1927, the present Appellant undertook to endeavour to the best of his ability to dispose of the estate and, secondly, " in conjunction " with yourselves will negotiate with the parties concerned." Then, in paragraph (2) of the letter, he wrote : " I will carry out " all architect's and surveyor's work necessarily involved without " charge ", and in paragraph (3) : " It is to be mutually agreed " between yourselves and myself as to whether the Estate shall be " disposed of as a whole or in lots." It appears to me that those terms are open to two constructions : (1) that the Appellant had undertaken to hold himself as retained as the architect if this property was developed; or (2) that he was a co-adventurer with Messrs. Dashwood & Partners, Ltd., because it was indicated that he was to negotiate, in conjunction with them, with such parties as were concerned with it, and also that, if an agreement was made, he was in a position to say that it was to be one which would be mutually agreed between Dashwood & Partners, Ltd., and himself, indicating to my mind, quite clearly, abundant evidence that he was a co-adventurer. The terms were altered slightly on the 11th February and that letter reveals this : " As promised on " Wednesday last, and in order to regularise matters, we confirm " the arrangement come to with regard to the above, that your " participation in any profits accruing from the re-sale of same " shall be 25 per cent." That seems to me evidence that a mutual agreement had been arranged between Messrs. Dashwood & Partners, Ltd. and the Appellant as to whether the estate should be disposed of as a whole or in lots. Ultimately it appears that the estate was sold—whether exactly as a whole or not, I do not know—at a very large profit, and thereupon I think that the learned Judge is quite right in holding that the position was that the Appellant could have enforced his rights. He was in a position to say : " A part of the profit which has been earned does, under

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" the arrangement made between us, in fact belong to me." With regard to the work that he did, he prepared an estate plan which was ultimately not put to use because they did not lay out the estate in accordance with that plan; but there it was, and that is confirmatory evidence of the fact that he was to take his part —whether as an architect or as a co-adventurer concerned in and with some knowledge of the land or not—but he was to take his part in the development or sale of this property when a price could be obtained for it. Under those circumstances, it appears to me there is abundant evidence on which the Commissioners could come to the conclusion that they have, and, under those circumstances, there is no point of law on which the case ought to be upset. In other words, we agree with the view that has been presented and taken by Mr. Justice Finlay. The appeal must be dismissed with costs.

Slesser, L.J.—I agree.

Romer, L.J.—I agree.

[Solicitors :—Arthur H. Dabbs & Sons; Solicitor of Inland Revenue.]