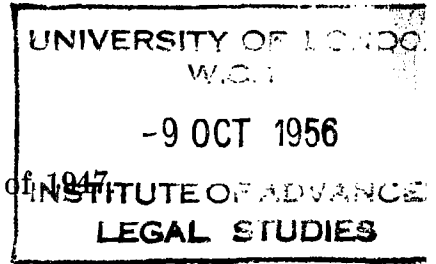


9N6-G.1

14, 1949



In the Privy Council.

44428

ON APPEAL  
FROM THE SUPREME COURT OF BRITISH HONDURAS.

BETWEEN—

THE COMMISSIONERS OF INCOME TAX  
*Appellants*

— AND —

10 HENRY IGNATIUS MELHADO *Respondent*

CASE ON BEHALF OF THE RESPONDENT.

RECORD.

1. This is an Appeal by way of Case Stated dated the 30th December 1946 by the Chief Justice of the Supreme Court of British Honduras from a Judgment dated the 16th July 1946 of the said Chief Justice allowing an Appeal dated the 28th November 1945 by the Respondent against an item of \$21,925.74 contained in a revised assessment to income tax made by the Appellants on his income for the year of assessment 1945.

p. 43  
p. 20  
p. 1  
p. 6

20 2. The question for determination in this Appeal is whether the sum of \$21,925.74, as assessed by the Appellants, is part of the taxable income of the Respondent in respect of the year of assessment 1945 as having been received by him through Martin's Bank, London, as foreign income in the financial year with respect to which his income for the year of assessment was measured, to wit, the year ending 31st January 1945 (hereinafter called "the basis year") or whether none, as held by the Chief Justice, or any and what part of the said sum is such income.

p. 6

p. 33, l. 19  
pp. 13, l. 40;  
15, l. 22;  
32, l. 38;  
33, l. 3

30 3. At all material times the Respondent carried on business at Belize, British Honduras, under the name or style of "C. Melhado and Sons" (hereinafter called "the Belize Company") trading, *inter alia*, in mahogany, chicle and other produce.

p. 15, l. 48

4. For a number of years prior to the 31st January 1945 the Respondent was a shareholder in a private limited company, incorporated in Canada, which carried on in Canada the business of the

p. 16, l. 2  
p. 45, l. 13

p. 45, l. 16 purchase and sale of stocks, shares and other securities. The said company made considerable profits in the carrying on of its said business and paid thereout dividends to its shareholders.

5. At all material times the Respondent had, *inter alia*, the following bank accounts:—

p. 45, ll. 17-19 (a) A private bank account with a bank in Montreal, Canada, into which were paid and therein accumulated over a period of years the dividends received by him from the aforesaid Canadian Company as a shareholder therein (hereinafter called "the Montreal account"); 10

p. 45 l. 26 (b) A private bank account in the name of "C. Melhado" with Martin's Bank, London, England (hereinafter called "the London private account") and

p. 45, l. 27 (c) A business bank account in the name of "C. Melhado & Sons" with Martin's Bank aforesaid (hereinafter called "the London Belize Company account").

p. 45, l. 31 6. In the year 1944 on account of expanding trade the Respondent was in need of additional working capital for the purpose of the business of the aforesaid Belize Company.

p. 45, l. 36 7. The Respondent therefore in the year 1944 caused to be 20 transferred from the Montreal account to the London private account \$37,920.31 Canadian in two drafts, viz.:—

1944		Sterling
11th May	\$22,165.42 which realized in London	£4,952 10s. 2d.
1st June	\$15,754.89 which realized in London	£3,899 13s. 7d.
	<u>\$37,920.31</u>	<u>£8,852 3s. 9d.</u>

pp. 45, ll. 46, 49; 50, ll. 15, 16; 55, ll. 28, 31; 59, ll. 40, 41 8. On the 31st January 1944 the London private account showed a credit balance of £3,523 3s. 6d. Between the 31st January 30 and the 28th July 1944 the only payments made to the credit of the said account were the proceeds of the said Canadian drafts, viz., £8,852 3s. 9d.

pp. 46, l. 4; 55, l. 41 9. On the 17th June and on the 28th July 1944 respectively there were caused to be transferred by the Respondent from the London private account to the London Belize Company account two sums of £3,000.

pp. 15, l. 14 51, l. 31 10. From the Record it would appear that the information requested by the Appellants concerning the origin the transfer and the part user by the Belize Company of the aforesaid drafts from the 40 Montreal account was furnished to them by the Respondent's Accountant, Mr. J. C. Thompson, who gave them inspection of his ledgers and bank vouchers and supplied them with a certified copy of the relevant London Belize Company account. It would also

- appear that these questions were further discussed at a meeting on the 6th September 1945 at which were present the Appellants, a Mr. Watkis and a Mr. A. A. Heustis an Income Tax Assessor who were advising the Appellants, the Respondent and his Counsel Mr. Dragten, K.C., and that at the said meeting or at an earlier date the Appellants were given the relevant information concerning the payments made out of the London Belize Company account on behalf of the Belize Company for goods in the basis year.
11. The accounts of the Belize Company were closed in each year on the 31st January.
12. The Respondent was assessed to income tax by the Appellants by an assessment on his income for the year of assessment 1945 made on the 3rd August 1945.
13. The said income was measured by his income received during the said basis year, i.e., the year ending the 31st January 1945.
14. The Respondent made objection to the said assessment pursuant to Section 43 of the Income Tax Ordinance, chapter 23 of the Consolidated Laws of British Honduras, 1924 (hereinafter called "the Law").
15. The Appellants thereupon pursuant to the said section of the Law made a revised assessment on the Respondent in respect of his income for the said year of assessment which contained, *inter alia*, as part of his income as assessed an item of \$21,925.74 as being foreign income received through Martin's Bank, London.
16. After the meeting on the 6th September 1945 in paragraph 10 hereof mentioned at which the Appellants and the Respondent were unable to agree the said revised assessment, the Appellants confirmed the said revised assessment.
17. The Respondent being aggrieved by the said revised assessment instituted

pp. 15, l. 8;  
16, l. 33;  
17, l. 30;  
46, l. 21

p. 60

p. 44, l. 3

p. 11, l. 13

p. 43, l. 38

p. 11, l. 15

p. 11, l. 14  
p. 6

p. 6, l. 21

p. 16, l. 46

### THE PRESENT SUIT

by lodging a notice of appeal dated the 28th November 1945 whereby he gave to the Appellants notice of his intention to appeal to the Chief Justice in Chambers against the said revised assessment on the grounds:

p. 1

- (a) That the Appellants had assessed him, the Respondent, in respect of the sum of \$21,925.74 as part of his income received in Belize from foreign parts when in fact no part of the said sum had been received by the Respondent as income but as capital transferred from England to Belize; and
- (b) That there were no grounds for the revision made by the Appellants.

p. 2, ll. 4-10

p. 4 18. In pursuance of the said Appeal a summons was issued by  
 the Respondent under Rule 5 of the Rules of the Supreme Court  
 (Income Tax Appeals) 1945 (S.R. & O. No. 75 of 1945) after the time  
 p. 3 for issuing the same had been extended to the 12th February 1946  
 by order of the Chief Justice dated the 1st February 1946, on the  
 11th February 1946 whereby he gave notice to the Appellants to  
 attend the Chief Justice in Chambers on the hearing of his applica-  
 tion by way of appeal that the assessment of the tax on his income  
 made by the Appellants, in purported pursuance of the Law in  
 respect of the year 1945 be revised on the following grounds: 10

p. 4, ll. 26-32 (a) That the Appellants have assessed the Respondent in  
 respect of the sum of \$21,925.74 as part of his income received  
 in Belize from foreign parts when in fact no part of the said sum  
 had been received in Belize by the Respondent as income but as  
 capital transferred from England to Belize; and  
 (b) That there were no grounds for the revision adverse  
 to the Respondent by the Appellants.

p. 5 19. Pursuant to Rule 7 of the aforesaid Rules of the Supreme  
 Court the Appellants on the 25th February 1946 filed in the Supreme  
 Court of British Honduras the following documents:— 20

p. 6 (i) Copy of the relevant Income Tax Assessment Form;  
 p. 7 (ii) Statement of reasons in support of assessment.

p. 7, ll. 20-30 20. As appears from the last mentioned document the reasons  
 given by the Appellants in support of the aforesaid assessment on  
 the Respondent in the sum of \$21,925.74 are: Goods to the value of  
 \$21,925.74 imported into the Colony by the Respondent were paid  
 for from funds of the Respondent held by Martin's Bank in London,  
 England.

The Respondent stated to the Appellants that such funds  
 consisted partly of capital and partly of income but, as the 30  
 Respondent, though requested so to do, did not furnish particulars  
 in that connection (or in respect of other matters relating to the  
 items which go to make up the said total of \$21,925.74), they con-  
 tended that the whole of the said amount was liable to income tax.  
 pp. 9 10 A copy of a statement, marked "D" (being a copy of the London  
 Belize Company account for the period 1st February 1944 to the  
 31st January 1945) which had been furnished to the Appellants by  
 the Respondent was attached to the said document and filed  
 therewith.

p. 10 21. By a notice dated 12th March 1946 addressed by the 40  
 Respondent to the Appellants the Respondent gave to them notice  
 that he proposed to tender oral evidence at the hearing of the said  
 appeal before the Chief Justice in Chambers and that the nature of

the proposed evidence was that he would show by the figures submitted to the Appellants that the amount of \$21,925.74 written back as being income received in the Colony was wrong and that the said amount should be allowed as capital and not income.

p. 10, ll. 30-34

22. The hearing of the said appeal took place before the Chief Justice on the 28th and 29th of March 1946 when evidence was given on behalf of the Respondent by the Respondent himself and his accountant, Mr. J. C. Thompson, and on behalf of the Appellants by Mr. Allan Alexander Heustis, an income tax assessor.

p. 11

10 23. The evidence of Mr. Thompson was to the effect that he had been the Belize Company's accountant since the year 1937, that he made out the Company's income tax returns and discussed questions arising thereon with the income tax assessor and with the Appellants; that the debits shown in document "D", referred to in paragraph 20 hereof, other than the balance of £1,382 9s. 11d. and the two sums of £3,000 represented sums, amounting to £436 5s. 2d. which had never been brought to Belize, British Honduras, at all and that in addition thereto a sum of £200 appearing in the credits in the said document against the date 30th January 1945 was transferred to Staveley Taylor in Liverpool and was then still in England and £37 10s. 8d. part of another credit therein, viz. £150 against the date 30th August 1944, was then still in England with Mortons, London, that on the Appellants' own figures, assuming them to be otherwise correct in principle, the assessment on the Respondent should at the most have been £3,383 6s. 8d. instead of the assessed figure of £5,440 12s. 7d. the sterling equivalent of \$21,925.74 calculated at \$4.03 to the £, that such part of the said sums of £3,000 as represented moneys transferred from the Montreal account to the London private account and thence to the London Belize Company account were not, in his opinion, income of the Belize Company at all but loans to it by the Respondent; that he furnished to the Appellants all information concerning the London Belize Company account and its component items including that contained in Summary "A", disclosing to them his ledgers, the original bank vouchers and a certified copy of the said bank account. Mr. Thompson produced to the Court bank documents supporting the transfer of the said sums of £3,000 from the London private account to the London Belize Company account.

p. 12, l. 14

pp. 9, 10

p. 13, ll. 36, 38

p. 13, l. 40

p. 13, l. 42

p. 15, l. 14

p. 60

pp. 9, 10

pp. 15, l. 40, 54,  
55, 57, 58, 59

40 24. The Respondent's evidence was to the effect that he carried on business under the style of C. Melhado & Sons, dealing largely in mahogany and chicle; that he and his brother B. Melhado owned the shares in a private limited investment company in Canada, that the said company made profits out of the sale and purchase of stocks and shares and other securities and paid dividends out of these profits, that practically all the profits of the

p. 15, l. 45

p. 16, l. 20

p. 16, l. 2

p. 16, l. 17

company accrued from such transactions, that dividends paid to him by the said company had accumulated in his bank account in Canada (the Montreal account) for years, that in the year 1944 he caused to be transferred from his said bank account the items shown in the London private account, viz.:

1944

11th May	...	...	£4,952 10s. 2d.
1st June	...	...	£3,899 13s. 7d.

and thence caused to be transferred to the London Belize Company account two sums of £3,000 to provide working capital for the Belize Company, that the credit balance of £3,523 3s. 6d. shown in the London private account had been there since before the 31st January 1944 and that he attended a meeting with the Appellants on the 6th September 1945 when the said assessment of \$21,925.74 was discussed and that at the said meeting all relevant documents were before the Appellants.

25. The evidence given by Mr. Heustis on behalf of the Appellants was that he was concerned with the tax affairs of the Respondent up to a certain point; that a copy of the document "D", referred to in paragraph 20 hereof was supplied to the Appellants by the Respondent and that thereafter the Respondent was assessed in the said sum of \$21,925.74 by the Appellants, that the said assessment was discussed at a meeting on the 6th September 1945 at which were present the Appellants, the witness, a Mr. Watkis assisting the Appellants, the Respondent, his Counsel Mr. Dragten, K.C., and the witness Mr. Thompson, that as far as he could remember the Respondent in answer to questions by the said Mr. Watkis said that the said two items of £3,000 were a mixture of capital and income and that the said assessment was later confirmed.

26. On the conclusion of the hearing of the said appeal judgment was reserved.

27. On the 16th July 1946 the Chief Justice delivered judgment.

28. The learned Chief Justice after pointing out that the appeal was not an appeal against an exercise of their discretion by the Appellants but was an appeal by way of a rehearing before him on which witnesses had been heard on behalf of the Respondent and of the Appellants and documents had been laid before the Court and after referring to Section 44 (5) of the Law and rejecting a submission on behalf of the Appellants that unless the Respondent proved the revised assessment to be wholly, and not merely partly, inaccurate the original assessment of the Appellants must stand said that he accepted the evidence that all the books and documents in Court were available to the staff of the Appellants and accepted the evidence of the Respondent and Mr. Thompson that every offer

of assistance to show and make the accounts understandable was made by them to the Appellants.

29. The learned Judge then discussed the principles of the Law applicable in the appeal and dealt with the method whereby the Appellants had calculated the amount of the said revised assessment of \$21,925.74. pp. 30, 31  
p. 32

30. He found that in making their said calculation the Appellants had failed to give effect to the position that the drawings on the unbroken current London private account should have first of all have been attributed to the earlier payments in that account, viz. the balance of £3,523 3s. 6d. standing to the credit thereof on the 31st January 1944, that had they made allowance for that position only £2,476 16s. 6d. of the £6,000 transferred from the Montreal account to the London private account could have reached the London Belize Company account and, deducting that figure from the aforesaid figure of £5,440 12s. 7d. the net figure would have been £1,917 9s. 1d. He further found that from the last mentioned sum there also fell to be deducted items amounting to £673 15s. 10d. being receipts and credits shown in the relevant London Belize Company Account which, as he found the Appellants were informed, were items which never left England in the basis year and, making allowance for the said sum of £673 15s. 10d., the true net figure would be reduced to £1,243 13s. 3d. had the Appellants' calculations been based correctly on their own arguments. p. 32, l. 37  
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p. 33, l. 3

31. The learned Chief Justice therefore found that the revised assessment made on the Respondent by the Appellants was wrong even if the principle on which they based it had been right. p. 33, l. 5

32. The learned Chief Justice also found that the Respondent had established that the two receipts of £3,000 each shown in the London Belize Company account were in fact shown in his accounts as capital and were in fact used for capital purposes, and that they were funds which had accumulated outside the Colony outside the basis period. He was of opinion that they therefore constituted a capital receipt and did not attract income tax in the Colony. p. 33, l. 9  
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p. 33, l. 8  
p. 33, l. 20

33. He, therefore, gave judgment for the Respondent allowing his appeal and ordering the item "Foreign income . . . \$21,925.74" to be struck out from the revised assessment made on the Respondent by the Appellants and set out in Document A filed by the Appellants. p. 33, l. 27  
p. 6

34. The Appellants being dissatisfied with the said judgment applied, after, as would appear from the Record, having obtained an extension of time for the purpose of so doing, to the Chief Justice by summons dated the 7th August, 1946 to state a case raising, p. 35  
40  
p. 37

*inter alia*, the following questions of Law for the decision of His Majesty in Council, that is to say:—

p. 37, l. 19 1. Whether on the facts found by the Chief Justice there was any evidence to justify his holdings as following, and whether such holdings were correct in point of Law:—

p. 38, l. 3 (c) Foreign Income ... .. \$21,925.74

(1) That this amount “constitutes a capital receipt “which does not attract income tax in this Colony.”

(2) That “this item of \$21,925.74 is wrong and must “be struck out.”

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2. Whether in point of Law the Chief Justice was correct in holding that the item foreign income, \$21,925.74, in order to be taxable in the Colony under the provisions of the Law, must be income earned or accruing in a foreign Country during the year immediately preceding the year of assessment and received in the Colony during the said year (Section 5).

3. Whether in point of Law the Chief Justice was correct in holding that upon the failure of the Respondent to furnish information respecting his accounts to the satisfaction of the Appellants, the Appellants were bound to inspect, and accept as conclusive, the unaudited books of account of the Respondent.

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p. 39, ll. 9, 17 35. The said summons was heard by the Chief Justice on the 20th August, 1946.

p. 40 36. On the 30th September, 1946 the Chief Justice gave judgment on the said summons.

p. 42, l. 28 37. By his judgment he expressed his willingness to state a case on the position of an income tax payer having income outside the Colony which he introduces into the Colony as income or capital.

p. 43, l. 7 38. He also stated that in the case he proposed to state he would deal with the question purported to be raised by paragraph 3 of the said summons.

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p. 43, l. 10 39. He reserved the costs of the said summons to His Majesty in Council.

40. In pursuance of the said application and in conformity with the said judgment a case was stated by the Chief Justice under the provisions of Section 44 (10), of the Law and dated the 30th December, 1946.

41. By the said

p. 43

### CASE STATED

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the Chief Justice found that the following facts were proved before him:—

p. 44, l. 4

(1) That the Respondent at all material times traded under the name or style of “C. Melhado & Sons” (the Belize Company).



(2) That the Respondent was by a revised assessment made by the Appellants on his income for the year of assessment 1945 assessed on, *inter alia*, a sum of \$21,925.74 as Foreign income received through Martin's Bank London. p. 43, l. 35

(3) That the Respondent's business accounts were made up on a financial year ending on the 31st January. p. 44, l. 2

(4) That the Respondent's income for the said year of assessment was measured retrospectively by his income received during a basis or financial year ending the 31st January, 1945 in accordance with Section 7 of the Law. pp. 43, l. 37;  
44, l. 1

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(5) That the Respondent was a shareholder in a private Company, incorporated in Canada, which carries on business in the purchase and sale of stocks and shares and other securities in Canada and that the said Company during the last war made considerable profits on capital accretions. p. 45, l. 13

(6) That the Respondent had a private Bank account in Montreal, Canada (the Montreal account) and that the dividends received by him from the said Company were paid into and accumulated in the said account over a period of years prior to the basis year 1944 (i.e. the year ending 31st January, 1945). p. 45, l. 17  
p. 50, l. 9

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(7) That at all material times the Respondent had two Bank accounts with Martin's Bank, London, England one in the name of "C. Melhado" (the London private account) and the other in the name of "C. Melhado & Sons" (the London Belize Company account). p. 45, l. 26

(8) That on the 1st February, 1944 the Respondent had standing to his credit in the London private account the sum of £3,523 3s. 6d. pp. 45, l. 46;  
50, l. 14

(9) That the Respondent in the year 1944 transferred from the Montreal account to the London private account \$37,920.31 (Canadian) in two drafts viz.:— p. 45, l. 36

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1944				Sterling	
11th May	\$22,165.42	which realized in			
		London ... ..		£4,952	10 2
1st June	\$15,754.89	which realised in			
		London ... ..		£3,899	13 7
	<hr/>			<hr/>	
	\$37,920.31			£8,852	3 9

(10) That on the 17th June, 1944 the Respondent had £12,375 7s. 3d. standing to his credit in the London private account. p. 46, l. 3  
p. 50, l. 18

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(11) That the Respondent transferred two sums of £3,000 each from the London private account to the London Belize p. 46, l. 4  
p. 50, l. 22

Company account on the 17th June and the 28th July, 1944 respectively.

p. 46, l. 7 (12) That all the Bank Statements contained in the Record were before the Appellants when they made the said revised assessment of \$21,925.74.

p. 46, l. 9 (13) That the Appellants based the said revised assessment on the said Bank Statements, the details being the following:—

		£	s.	d.	
1944					
1st February	Balance in hand ... ..	1,382	9	11	10
	Miscellaneous cash receipts during the year ... ..	6,436	5	2	
		<hr/>			
		£7,818	15	1	
1945					
31st January	Less cash balance in hand ...	2,378	2	6	
		<hr/>			
		£5,440	12	7	
		<hr/> <hr/>			

p. 46, l. 20 £5,440 12s. 7d. calculated at \$4.03 to £ = \$21,925.74. 20

p. 46, l. 21 (14) That at the time the said revised assessment was made by the Appellants they were aware:—

(a) That the said balance in hand of £1,382 9s. 11d. was not chargeable to tax;

(b) That several of the items appearing in the Belize Company account were transactions not connected with the Respondent's trading at all;

(c) That other items in the said account were not brought to the Colony and never become chargeable to tax.

p. 60 The details of (b) and (c) *supra* is set out in Ex. 19. 30

p. 50, l. 27 (15) That in arriving at the revised assessment figure of \$21,925.74 the Appellants gave no effect to the facts and matters set out in (14) above and in dealing with transfers of sums from the London private account to the London Belize Company account they wrongly failed to apply the Rule in Clayton's Case.

p. 50, l. 36 (16) That the said sum of \$21,925.74 was not received by the Respondent within the basis period but was a capital accumulation in his custody and control prior thereto devoted to a capital purpose, as working capital, and so appeared in the ledger produced. 40

p. 50, l. 24 (17) That the total amount received in the Colony by the Belize Company in the basis year 1944 was £3,383 6s. 8d.

p. 50, l. 26 (18) That the said sum of £3,383 6s. 8d. was wholly made up of cash in the Respondent's possession prior to the said basis year.

(19) That the said revised assessment made no allowance for any relief to which the Respondent might be entitled under Section 48 of this Law. p. 46, l. 29

(20) That the said revised assessment was demonstrated by the said Bank statements to be arithmetically inaccurate. p. 50, l. 42

(21) That the Respondent produced to the Appellants all information as was required for the purposes of Section 34 of the Law. p. 51, l. 18

10 (22) That in order to assist the Appellants in discharging their duty to determine to the best of their judgment the amount of the Respondent's chargeable income the Respondent gave them full access to all his books and accounts and gave them explanations on every relevant point. p. 51, l. 28

(23) That there was no finding by him in the judgment under appeal that upon the failure of the Respondent to furnish information respecting his accounts to the satisfaction of the Appellants they were bound to inspect and accept as conclusive his books of account. p. 44, l. 34  
p. 51, l. 37

42. It was contended on behalf of the Appellants:—

20 (a) That so much of the monies transferred from the Montreal account to the London private account as were from that account transferred to the London Belize Company account and were utilized for the purchase of merchandise sent to British Honduras as is represented by income is liable to taxation. p. 18, l. 31

(b) That the whole of the said sum of \$21,925.74 was such income and liable to taxation.

30 (c) That it was the duty of the Respondent to separate the total of the monies transferred to the London Belize Company account as aforesaid and used for the purpose aforesaid into capital and income and that in default of his so doing the whole of the said monies was liable to taxation as income. p. 18, l. 35

(d) That unless the Respondent established that the said revised assessment was wholly, and not merely partially, inaccurate the said assessment should stand. p. 21, l. 20

(e) That the making of the said revised assessment by the Appellants was a decision made by them in the exercise of their discretion and could only be disturbed by the Court on the strongest possible grounds. p. 20, l. 36

40 (f) That the said revised assessment was correct and that the Respondent's appeal should be dismissed.

43. It was contended on behalf of the Respondent:—

(a) That the monies transferred from the Montreal account to the London private account and thence in part transferred to the London Belize Company account were capital monies in

p. 20, l. 10

Canada, that when transferred to England they remained capital monies and ever after retained that character and that at no material time did they or any part of them have the character of income.

p. 19, l. 40

(b) That all sums transferred from the London private account to the London Belize Company account in the basis year were loans to the Belize Company by the Respondent for working capital and never were or became income of the Belize Company.

(c) That no part of the said sum of \$21,925.74 was income 10 of the Respondent in the basis year.

p. 19, l. 42

(d) That even if the Respondent were wrong in his contentions (a) (b) and (c) supra, the Appellants in considering the transfer of monies from the London private account to the London Belize Company account had failed to give effect to the fact that the balance standing to the credit of the London private account on and before the commencement of the basis year on 1st February, 1944 was the sum of £3,523 3s. 6d., that the drawings on that account of the said two sums of £3,000 should have been attributed first of all to that balance and only 20 after its exhaustion to subsequent credits to that account, that on that basis, the amount of the said balance fell to be deducted from the figure of £5,440 12s. 7d. assessed by the Appellants leaving a figure of £1,917 9s. 1d. from which there fell to be deducted the items set out in "Summary A" as being items which in part concerned transactions which had nothing to do with the Belize Company's trading and in part were items which never in fact left England, in all the sum of £673 15s. 10d. leaving a net figure of £1,243 13s. 3d. as the maximum at which the Respondent should have been assessed, assuming the 30 Appellants to be otherwise right in principle.

p. 19, l. 32

(e) Alternatively, that on the Appellant's own figures, assuming them to be otherwise correct in principle, the assessment on the Respondent, on the evidence, should at the highest, have been the dollar equivalent of the sterling figure of £3,386 6s. 8d., as being the sum, represented by goods paid for out of the London Belize Company account, which came to the Colony in the basis year, instead of the assessed sterling figure of £5,440 12s. 7d.

(f) That the Respondent having given to the Appellants 40 the fullest access to his books paper accounts and bank statements and having furnished them with the fullest explanations on every relevant point thereby discharged the duty to furnish such particulars as may be required for the purposes of the Law imposed by Section 34 of the Law.

(g) That the Respondent having established that the said revised assessment was wholly or, alternatively, partially inaccurate the Respondent's appeal should be allowed.

(h) That whether or not the making of the said revised assessment by the Appellants was a decision made by them in the exercise of their discretion the same was open to review by the Chief Justice in the unfettered exercise of his discretion both as to the Law and as to the facts by virtue of the provisions of Section 44 (5) of the Law.

10 44. The learned Chief Justice was of opinion:—

(a) That upon the true construction of Section 5 of the Law income accruing outside the Colony, to a taxpayer resident in the Colony but not received by him in the Colony, is not subject to tax in the Colony. p. 47, l. 26

(b) That upon its true construction the Law recognised that a taxpayer resident in the Colony may have two incomes in a basis period viz., an extra Colonial income not chargeable, and an internal Colonial income which is chargeable, to tax under the Law. p. 47, l. 33

20 (c) That income received by a taxpayer from a source outside the Colony in a basis period and brought into the Colony by the taxpayer in that same basis period attracts income tax under the Law. p. 30, ll. 37, 42  
p. 48, l. 29

(d) That income received by a taxpayer from a source outside the Colony in one basis period and brought into the Colony by the taxpayer in another basis period, is not, on the true construction of the Law, income of the taxpayer, and as such chargeable to tax in the Colony, in respect of the year of assessment the income of which is measured by that of the basis period in which the said income is brought into the Colony by the taxpayer. p. 48, l. 35

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45. The learned Chief Justice therefore found:—

(i) That the monies transferred by the Respondent from the Montreal account to the London private account and thence in part to the London Belize Company account were at all material times capital monies and were so received and dealt with in the Colony by the Respondent in the basis year and that therefore no part of the said sum of \$21,925.74 was chargeable to tax as being part of the income of the Respondent for the year of assessment 1945. p. 50, l. 41

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(ii) That even if the monies transferred from the Montreal account as aforesaid and finding their way into the London Belize Company account partook of the character of income no more than £1,243 13s. 3d. was received by the Respondent in the Colony during the basis year. p. 50, l. 27  
p. 32, l. 37

p. 50, l. 25 (iii) That of the monies in the London Belize Company account in the year 1944 no more than £3,383 6s. 8d. was received by the Respondent in the Colony during the basis year.

p. 51, ll. 18, 31 (iv) That the Respondent discharged in full the duties imposed on him by Section 34 of the Law and that the Appellants failed in their duty to determine to the best of their judgment the amount of the Respondent's chargeable income for the year of assessment 1945.

p. 43, ll. 27, 33 46. The learned Chief Justice therefore gave judgment for the Respondent allowing his appeal and ordered the item 10  
 "Foreign income ... .. \$21,925.74"  
 to be struck out from the said revised assessment made by the Appellants on the Respondent in respect of the year of assessment 1945.

p. 51, l. 40 47. The learned Chief Justice reserved to His Majesty in Council the costs of and occasioned by the Appellants' application for the aforesaid case to be stated.

48. The question for His Majesty in Council is whether the learned Chief Justice upon the above statement of facts came to a correct determination and decision in point of Law and, if not, 20 what should be done in the premises.

And how the costs of and occasioned by the application for the aforesaid case to be stated should be provided for.

49. The Respondent respectfully submits that the learned Chief Justice came to a correct determination and decision in point of Law and that this Appeal should be dismissed with costs for the following among other

## REASONS

1. BECAUSE the learned Chief Justice rightly held that on the true construction of the Law income received by 30 a taxpayer in the Colony from a source outside the Colony in one basis period and brought into the Colony by him in another basis period is not income of the taxpayer and as such chargeable to tax in the Colony, as income received in the basis period in which it is brought into the Colony by him.
2. BECAUSE the learned Chief Justice rightly found that the monies in the Montreal account were at all material times capital monies and not income of the Respondent and that after the transfer of part of the same from the 40 said account to the London private account and thence

in part to the London Belize Company account they retained their character as capital monies and never in whole or in part acquired the character of income.

3. BECAUSE if the last mentioned monies at any material time were or became income of the Respondent no part of the same other than £1,243 13s. 3d. or, alternatively £3,383 6s. 8d. was received by the Respondent in the Colony in the basis year i.e. the year ending 31st January, 1945.
- 10 4. BECAUSE even assuming the Appellants to be correct in principle in assessing the Respondent on Foreign income the said revised assessment of \$21,925.74 was inaccurate in that not merely was it arithmetically inaccurate but in that the Appellants in assessing the said sum made no allowance for any relief to which the Respondent might be entitled under Section 48 of the Law.
5. BECAUSE for other good and sufficient reasons the decision of the learned Chief Justice was correct.

FREDERICK WISHART.

No. 28 of 1947.

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT OF BRITISH  
HONDURAS.

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**THE COMMISSIONERS OF  
INCOME TAX**

— AND —

**HENRY IGNATIUS MELHADO.**

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**CASE FOR THE RESPONDENT.**

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