Appeal Cases

BEFORE

THE HOUSE OF LORDS

(ENGLISH—IRISH—AND SCOTTISH)

AND

THE JUDICIAL COMMITTEE

OF

HIS MAJESTY'S MOST HONOURABLE

PRIVY COUNCIL.

[HOUSE OF LORDS.]

THE COMMISSIONERS OF INLAND REVENUE . . . . . } APPELLANTS;

AND

HIS GRACE THE DUKE OF WESTMINSTER . . . . . } RESPONDENT.

H. L. (E.)*
1935
May 7.

Revenue—Income Tax—Surtax—Annual Payments under a Deed—Salaries and Wages—Provision made for servant—Covenant—Acknowledgment in writing—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sch. D, Case III., Rule* 1; *All Schedules Rules, Rule* 19.

By a deed made in August, 1930, the respondent covenanted to pay A., a gardener in his employment, a yearly sum of 98*l.* 16*s.* by weekly payments of 1*l.* 18*s.* for a period of seven years or during the joint lives of the parties, and it was agreed that the payments were without prejudice to the remuneration to which A. should be entitled for services, if any, thereafter rendered.

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* *Present:* LORD ATKIN, LORD TOMLIN, LORD RUSSELL of KILLOWEN, LORD MACMILLAN, and LORD WRIGHT.

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Before the deed was executed the respondent's solicitors on his instructions wrote to A. a letter the material parts of which were as follows: "On the 6th inst. we read over with you a deed of covenant which the Duke of Westminster has signed in your favour..... We explained that there is nothing in the deed to prevent your being entitled to and claiming full remuneration for such further work as you may do, though it is expected that in practice you will be content with the provision which is being legally made for you for so long as the deed takes effect with the addition of such sum, if any, as may be necessary to bring the total periodical payment while you are still in the Duke's service up to the amount of the salary or wages which you have lately been receiving. You said that you accepted this arrangement, and you accordingly executed the deed. . . . . If you are still quite satisfied, we propose to insert the 6th inst. as the date of the deed, and we shall be obliged by your signing the acknowledgment at the foot of this letter and returning it to us." A. signed the acknowledgment accepting the provision made for him and agreeing to the deed being dated and treated as delivered and binding on the parties thereto. The acknowledgment was stamped with a sixpenny stamp:—

Held, by Lord Tomlin, Lord Russell of Killowen, Lord Macmillan, and Lord Wright (Lord Atkin dissenting), that sums paid yearly under the above mentioned documents were annual payments within Sch. D, Case III., Rule 1, and Rule 19, s. 1, of the Rules applicable to Schedules A, B, C, D, and E of the Income Tax Act, 1918, and were not payments of salary or wages; and consequently that the respondent, being entitled to deduct tax from the payments, was entitled to deduct the payments themselves in arriving at his total income for the purposes of surtax.

Order of the Court of Appeal affirmed.

APPEAL from an order of the Court of Appeal allowing an appeal by the Duke of Westminster from the decision of Finlay J. upon a special case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The question was whether certain payments made by the Duke of Westminster to various retainers and servants were annual payments within s. 27 of the Income Tax Act, 1918 (1),

(1) Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 27, sub-s. 1: "Any person who claims exemption, abatement or relief under the preceding provisions of this Part of this Act, shall, within the time limited by this Act for the delivery of lists, declarations, and statements, or within such further time as the general commissioners for the division may for any special reason allow, deliver to the assessor of the parish in which he resides, a notice of his claim, together with a declaration and statement in the prescribed form, signed by him, setting forth—

(*a*) all the particular sources

and so admissible as deductions in arriving at the liability of the Duke for surtax for the years 1929–1930, 1930–1931 and 1931–1932.

The payments were made under various deeds of covenant

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from which his income arises, and the particular amount arising from each source;

(*b*) all particulars of any yearly interest or other annual payments, reserved or charged thereon, whereby his income is or may be diminished." . . . .

Schedule D, s. 2. "Tax under this Schedule shall be charged under the following cases respectively; that is to say,— . . . .

"Case III. Tax in respect of profits of an uncertain value and of other income described in the Rules applicable to this case;" . . . .

Rules applicable to Case III.

Rule 1. "The tax shall extend to—

(*a*) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable . . . . either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise . . . . or as a personal debt or obligation by virtue of any contract." . . . .

Rules applicable to Schedules A, B, C, D and E.

Rule 19, s. 1. "Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise . . . . or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, no assessment shall be made upon the person entitled to such interest, annuity, or annual payment, but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due.

"The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid."

Rule 21, sub-s. 1: "Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D . . . . the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment."

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and written acknowledgments stamped as agreements. The deeds were not all exactly in the same form. One deed, in which one Frank Allman, a gardener, was the covenantee, was taken as typical. This deed, with the acknowledgment signed by Allman, is set out in full in the opinion of Lord Atkin and is summarized in the headnote. In one case, that of Mr. Detmar Jennings Blow, there was no acknowledgment in writing.

Para. 6 of the special case was as follows: "It was admitted that all the covenantees were in fact getting under their deeds of covenant (with or without other moneys) the amounts which they would respectively have received as wages or salary if they lived during the period and continued in their employment and that if they ceased to work the payments secured by the deed must still be made. It was also admitted on behalf of the respondents," i.e., the Commissioners, "that in the case of an employee of the appellant," i.e., the Duke of Westminster, "who ceased to be in that employment at the date of the deed applicable to his case the payments made under that deed by the appellant were proper deductions in computation of his surtax income and that such payments made to any employee who though in the appellant's employment at the before mentioned date ceased to be in that employment during the period covered by the deed were also—in respect of the period after retirement of the employee—proper deductions in computation of the appellant's surtax income. This case accordingly concerns only the payments made by the appellant in respect of periods during which the covenantees were in the appellant's service. In some cases in which like deeds or substantially similar deeds were entered into the covenantees had retired and were still being paid under the deeds."

The Duke of Westminster appealed against assessment to surtax for the three years above mentioned, claiming that in computing the amount of his total income liable to surtax he was entitled to exclude the payments made under the deeds during the three years. The Commissioners of Income Tax decided that, except as regards payments to such of the

covenantees as had already left the service of the Duke, all payments under the deeds were in effect payments for services to be rendered to the Duke of Westminster, and were not allowable as deductions from his income. From this decision the Duke of Westminster appealed by way of a special case stated under s. 42, sub-s. 7 (*d*), of the Finance Act, 1927, and s. 149 of the Income Tax Act, 1918.

The special case was heard before Finlay J. The learned judge dismissed the appeal. On an appeal by the Duke of Westminster to the Court of Appeal, Lord Hanworth M.R. and Slesser and Romer L.JJ., allowed the appeal and reversed the decision of the Commissioners of Inland Revenue.

The Commissioners appealed to this House.

March 12. *Sir Thomas Inskip A.-G.* and *R. P. Hills* for the appellants. The effect of s. 27, sub-s. 1, of the Income Tax Act, 1918, Rule 1 applicable to Case III. of Sch. D, Rule 19, s. 1, of the Rules applicable to All Schedules, and ss. 38 and 39 of the Finance Act, 1927, is that, where a payer makes a payment of salary or wages, income tax cannot be deducted by the payer from the salary or wages, and the payer is not entitled to deduct the amounts paid in computing his total income liable to surtax; but where he makes payment of an annual sum within Sch. D income tax can be deducted from the annual sum and the payer is entitled to deduct the amounts paid in computing his total income. The question in this appeal is therefore whether the payments made by the respondent to Allman are salaries, fees or wages, other than those mentioned in Sch. E, Rules 1 and 6, or whether they are "annual payments" within Sch. D. If the deed of covenant were the only document to be considered there would be good ground for holding that the payments made under it were annual payments "payable . . . . as a personal debt or obligation by virtue of" a "contract," within Sch. D, Case III., Rule 1. But the deed is not to be so considered; it must be read with the written acknowledgment of Allman, and then it is clear that the deed was merely a method of paying salary or wages in whole or in part. The agreement

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between the parties was made on August 6. It is embodied in the acknowledgment dated August 13 and the deed dated August 14, both instruments being taken by agreement as made on August 6. That being so, there is ample evidence to support the finding of the Commissioners that the payments made under the deed were in substance payments for continuing service ejusdem generis with wages or salaries, and were not annual payments properly to be deducted from the respondent's assessment to surtax. The substance of the transaction is to be regarded, and not merely the form : *Helby* v. *Matthews* (1) ; *Attorney-General* v. *Worrall* (2) ; *Secretary of State in Council of India* v. *Scoble* (3) ; *Lethbridge* v. *Attorney-General* (4) ; *Earl Howe* v. *Inland Revenue Commissioners.* (5)

March 20. *Wilfrid Greene K.C., Raymond Needham K.C., Cleveland-Stevens K.C.,* and *Cyril L. King* for the respondent. Surtax is an additional duty of income tax : Finance (1909–10) Act, 1910, s. 68, sub-s. 1 ; Finance Act, 1927, s. 38. Therefore deductions permissible in assessing an income to income tax are permissible in assessing an income to surtax. Wages and salaries paid to servants and retainers cannot be deducted. They and certain other payments, for example premiums on policies of insurance, are regarded as means of spending money. It is otherwise with annual payments payable " by virtue of any deed . . . . or as a personal debt or obligation by virtue of any contract " : Rule 1 applicable to Case III. of Sch. D. Here the amounts payable are regarded as the income of the payees. The payer may deduct a sum representing the tax thereon at the rate in force at the time when the payments were accruing : Rule 19 applicable to Case III. of Sch. D ; and he does not include them in computing his taxable income.

Upon the crucial question in the case, namely whether the payments made to Allman fall within Sch. E or Sch. D, Case III., Rule 1, it is not suggested that the deed is other than a real deed ; it is not a mere pretence designed to disguise the real relation between the parties.

(1) [1895] A. C. 471, 475.
(2) [1895] 1 Q. B. 99, 104, 105.
(3) [1903] A. C. 299, 302.
(4) [1907] A. C. 19, 26.
(5) [1919] 2 K. B. 336.

No doubt the substance of the transaction is to be regarded. The substance of a transaction is its legal effect: *In re Hinckes, Dashwood* v. *Hinckes* (1); and the case has to be decided on the tenour of the deed as it stands: *Union Cold Storage Co.* v. *Adamson.* (2)

Sir Thomas Inskip A.-G. replied.

The House took time for consideration.

May 7. LORD ATKIN. My Lords, in the year 1930 and in subsequent years the respondent the Duke of Westminster executed a series of deeds in which he covenanted to pay to the several parties mentioned in the deed certain weekly sums for a period of seven years or the joint lives of the parties. The recipients in all the cases in question were persons then in the employ of the respondent at fixed wages or salaries: and after the completion of the deeds they continued in the employment and continued to receive such sums as with the sum payable by the deed made up the amount of the wages or salary payable before the deed and no more. The sums varied from 12*s.* to 2000*l.*; the employment from gardener and laundryman to architect; and the past periods of employment from four years to forty-five. The Crown say that the payments made under the deed were made in the circumstances given in evidence as remuneration for services, and could not be deducted from the respondent's total income for purposes of surtax. The respondent says that the payments were annual payments which he was entitled to deduct. It is agreed between the parties that the question in this case is whether the payments were for remuneration of services or not: if the former the respondent is chargeable: otherwise not. It is unnecessary, therefore, to trouble your Lordships with the various relevant sections and rules of the Income Tax Act, 1918, and subsequent Finance Acts. It is sufficient to say that your Lordships were satisfied that the admission was correct.

It was not, I think, denied—at any rate it is incontrovertible—that the deeds were brought into existence as a device by

(1) [1921] 1 Ch. 475, 489. (2) (1930) 16 Tax Cas. 293, 322.

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which the respondent might avoid some of the burden of surtax. I do not use the word device in any sinister sense, for it has to be recognized that the subject, whether poor and humble or wealthy and noble, has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax. The only function of a Court of law is to determine the legal result of his dispositions so far as they affect tax. In the present case Finlay J., affirming the Commissioners, decided in favour of the Crown, while the Court of Appeal have set aside that decision and given judgment in favour of the respondent.

The Commissioners have taken six cases as typical in which the documents differ slightly in form, but in their opinion have the same effect. They chose for special example the case of Frank Allman, a gardener, and I will adopt the same course, though reference may have to be made later to some of the other instances.

The deed is in the following terms :—

" This deed of covenant is made this fourteenth day of August one thousand nine hundred and thirty between The Most Noble Hugh Richard Arthur Duke of Westminster, D.S.O. (hereinafter called ' the Duke ') of the one part and Frank Allman of Vine Cottage Aldford near Chester Gardener in the Duke's service (hereinafter called ' the Annuitant ') of the other part Whereas in recognition of the services which for over twenty-seven years past the Annuitant has well and faithfully rendered to the Duke the Duke desires to make provision for the Annuitant in manner hereinafter expressed notwithstanding that the Annuitant may re-engage or continue in the service of the Duke in which event he will become entitled to remuneration in respect of such future services Now this deed made in furtherance of the Duke's said desire and in consideration of the past services so rendered as aforesaid witnesses as follows :—

" 1. The Duke covenants to pay to the Annuitant as from the 2nd day of August one thousand nine hundred and thirty during the joint lives of himself and of the Annuitant or for a period of seven years the weekly sum of One pound eighteen

shillings (amounting in each year to the sum of Ninety-eight pounds sixteen shillings) the first of such payments having fallen to be made on the 9th day of August 1930.

" 2. The said payment shall be made from time to time on such days for such periods and in such proportions as shall from time to time be mutually agreed upon by the parties hereto and in default of agreement shall be made in weekly payments on the Saturday of each week.

" 3. It is hereby expressly agreed that the said payments are without prejudice to such remuneration as the Annuitant will become entitled to in respect of such services (if any) as the Annuitant may hereafter render to the Duke.

" In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written."

" Signed sealed and delivered by the above named Hugh Richard Arthur Duke of Westminster in the presence of :— } WESTMINSTER (L.S.)

St. G. CLOWES, Broadwater, Framlingham, Capt. : late 19th Hussars.

" Signed sealed and delivered by the above named Frank Allman in the presence of :— } FRANK ALLMAN (L.S.)

F. A. CARLTON SMITH, The Grosvenor Office, 53 Davies Street, London, W.1, Solicitor."

Counsel for the respondent took the view that the period of the covenant was the joint lives or seven years whichever was the shorter ; and that the deed was to be without prejudice to the recipient receiving full remuneration for his future services. I shall assume that this construction is correct. No contention was raised in the present case that the payments, though expressed to be weekly, were not annual payments within the Income Tax Act and Rules.

It will be convenient to consider the legal relations which would exist between the Duke and his servant on the supposition, which is that of the respondent, that the deed came

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into force without any further agreement of any kind being made between the parties.

The servant was serving the Duke under a contract of employment under which he was entitled to receive an agreed weekly wage of, we will suppose, 3*l.*; which contract would continue until terminated by notice or summarily, or until varied by agreement. On this footing when the deed came into operation the servant remaining in the employment would be entitled to 38*s.* a week in addition to the 60*s.* wages, and it is obvious that, so far from benefiting himself by avoiding income tax, the Duke would be adding several thousand pounds annually to his expenditure. I conceive it to be self-evident that no single party to the transaction ever contemplated that the servant would in fact draw the full contract wages in addition to the 38*s.* under the deed. And in fact as we learn from the case the servant after the deed continued to receive weekly the exact former amount of his wages 60*s.*, i.e., he received 38*s.* and such additional sum as made the total weekly payment the equivalent of his contractual wages. We are to assume, however, on the respondent's contention, that no contract was made modifying either the terms of the deed or the contract of employment. The position of the Duke therefore was that assuming the servant was content to draw only 60*s.* a week the Duke would remain at all times liable to pay to the servant the arrears of the contractual wages, i.e., 60*s.* minus 22*s.*, in other words a sum equal to the payment under the deed. However long a time the service continued, the servant would be entitled to this sum within the limit, if the Duke of Westminster chose to plead the Statute of Limitations, of six years' arrears. The arrears would be a debt due to the servant and could be attached by any creditor of the servant, and would on death be assets of his which his personal representative would be bound to recover. It is perhaps worth mentioning that if in fact the Duke were only paying as wages 22*s.* peculiar results might follow if the wages were regulated by statute as by the Agricultural Wages Act or similar legislation; but as we have no evidence of such a

position it is unnecessary to dwell on it. A nice question might also arise as to the amount which the Duke would be bound to tender as wages in lieu of notice.

The embarrassments, however, are not all on the Duke's side. One result to the servant, perhaps unexpected, would be that, his total income having become 98*s.* a week, he would incur liability to income tax; for salary or wages that he is entitled to, but voluntarily forgoes, must be included in his total income. And on what footing his "earnings" in his last employment would be calculated for purposes of workmen's compensation, whether on 22*s.* or 60*s.*, is a problem which I am glad we have not to decide.

This being the position if the matter rested upon the deed and no more, it seems to me plain that the Duke's advisers were not prepared to leave him exposed to the liabilities I have mentioned. In every case before the deed became operative a letter was written by the Duke's solicitors to the servant the effect of which seems to me to be the material question in this case. The letter is not in the same form in every case though its effect is the same. In Allman's case it is on a typed form and is signed by the solicitors over a 6*d.* stamp. It is as follows:—

"PRIVATE.
The Grosvenor Office,
53, Davies Street,
Berkeley Square, London, W.1.

"To Mr. Frank Allman. 13th August, 1930.

"Dear Sir,

"On Wednesday the 6th instant we read over with you a Deed of Covenant which the Duke of Westminster has signed in your favour under which you will be entitled to a gross sum of 1*l.* 18*s.* 0*d.* a week in consideration of your past faithful service and irrespective of any work which you may do for His Grace after the deed comes into effect. The deed will be in force for seven years if you and the Duke should so long live, and His Grace can reconsider the position at the end of that period. We explained that there is nothing in the deed to prevent your being entitled to and claiming full

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remuneration for such future work as you may do, though it is expected that in practice you will be content with the provision which is being legally made for you for so long as the deed takes effect, with the addition of such sum (if any) as may be necessary to bring the total periodical payment while you are still in the Duke's service up to the amount of the salary or wages which you have lately been receiving.

" You said that you accepted this arrangement, and you accordingly executed the deed.

" We write, as promised, to confirm the explanation which we gave you on the 6th instant. If you are still quite satisfied we propose to insert the 6th instant as the date of the deed and we shall be obliged by your signing the acknowledgment at the foot of this letter and then returning it to us.

Yours faithfully,

BOODLE, HATFIELD & Co.

Stamp 6*d*.

ACKNOWLEDGMENT.

" To the Duke of Westminster, D.S.O.

" And to Messrs. Boodle, Hatfield & Co., his Solicitors.

" I have read the above written letter, and I confirm that I accept the provision made for me by the deed. I agree to the deed being dated and treated as delivered by and binding upon the Duke of Westminster and myself.

FRANK ALLMAN."

It will be observed from the letter that on August 6, the solicitors had produced to the servant the deed already executed by the Duke but undated and had made the explanation set out in the letter; that the servant had accepted " this arrangement," and had executed the deed. Now what was the object of the letter and the signed acknowledgment which formed part of the document? The respondent gravely says merely to provide evidence that the servant was satisfied with the provision made for him by the deed and to protect the Duke against claims against him in the future for any increased pension. But the servant in no case had any legal claim to pension; in any case the deed was not to last for more than seven years; and finally, and as

I suggest, conclusively, the servant had already signified his acceptance of the provision made in the deed by executing it "accordingly." Execution by the servant had been in law unnecessary.

In my opinion the facts and the terms of the letter indicate that the transaction was intended to have, and had, far more substantial results than the interchange of unnecessary assurances between master and servant. The document was intended to bind the servant, exactly to what terms I will shortly discuss. They must depend on the terms of the letter. But that the document was intended to be contractual is a conclusion that I find irresistible. For what reason is the signature of the solicitors placed by them over a contract stamp? Can there be any reason except that they thought that the letter contained an offer of a contract which would be completed by the signature of the acknowledgment by the party to whom it was addressed? I am satisfied that a letter signed over a contract stamp and requiring the addressee to return it with the appended acknowledgment signed, addressed by the employer's solicitors to a workman at weekly wages would inevitably be understood by the recipient and would be intended by the writers to be understood as a representation that he was being asked to make a contract in the terms of the document.

It still remains to consider whether the document discloses the parties to be agreed and sufficiently defines the terms. I have already pointed out the urgent necessity there was to relieve the Duke from the obligations which would exist if the deed stood alone. I read the letter as saying there is nothing in the deed to prevent your claiming 60s. in addition to the sum mentioned in the deed, but you are expected in practice to be content with the provision, etc., with the addition, etc. You have already said that you accept this arrangement, and will you now bind yourself by a formal contract to this effect? The acknowledgment, "I confirm that I accept the provision made for me in the deed," in my opinion plainly relates to the only matter previously recited as being said by the servant —namely, I confirm that I accept this arrangement; and the

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arrangement is that I will be content with the provision in the deed with the addition, etc., of any sum necessary, etc.

We are thus, I think, inevitably forced to the conclusion that before the deed was executed there was a contract between master and servant as to the effect of the deed on the existing contract of service.

The only remaining question is relatively simple. Is the contract one which radically alters the terms of the existing contract of service—I will make a new contract of service and I will serve you as gardener for 22*s.* a week ; or, as in some of the other cases, I will serve you for nothing ; or is it a contract which maintains the existing contract of service—I will continue to serve you as gardener for 60*s.* a week ; but I will take in payment of that 60*s.*, as to 38*s.*, the payment under the deed, and as to the balance, the ordinary weekly payment. In the latter case the employer remains under an obligation to pay 60*s.* : and discharges 38*s.* of that obligation by making the payment under the deed, which has been delivered with that bargain in existence.

I quite agree that the former is a possible bargain. A servant may agree to work for nothing, or for some sum which is merely a fraction of the current rates of wages. But such agreements are in my experience very exceptional. In the present case they would apply, it is said, to about 100 employees. And I cannot contemplate so many servants consciously making bargains so alien to their traditions and for a period which would not be longer than seven years and might be shorter. The better construction appears to me to be that the servants were never asked to abandon the existing contractual rate. If it were otherwise one bears in mind the strange position of what were neatly called the uncovenanted servants, serving for higher wages, together with the other difficulties earlier referred to as to wages statutes and wages in lieu of notice.

With great respect to the members of the Court of Appeal they seem to ignore what seems to me the essential fact of the document of August 13 signed by both parties. Slesser L.J. alone makes what seems to me the necessary

assumption that it is contractual, but for the reasons given I cannot assent to his view of the ensuing legal effect. Nor am I impressed with the fact that the deed would have a different effect on the surtax liability of the Duke if later he did not happen to be employing the recipient. That seems to me a very ordinary result if the circumstances of the covenantor and covenantee alter for income tax purposes. The fact is that what would make the difference in the tax position would be that the recipient would no longer be employed; the letter would not be in operation; and there could be no ground for alleging that the Duke was paying the money as remuneration.

I do not myself see any difficulty in the view taken by the Commissioners and Finlay J. that the substance of the transaction was that what was being paid was remuneration. Both the Commissioners and Finlay J. took the document of August 13 into consideration as part of the whole transaction, and in my opinion rightly. I agree that you must not go beyond the legal effect of the agreements and conveyances made, construed in accordance with ordinary rules in reference to all the surrounding circumstances. So construed the correct view of the legal effect of the documents appears to me to be the result I have mentioned. I think the difficulty has probably arisen from the wording of the Commissioners' finding that "the payments made under the deed were in substance" payments by way of remuneration. Standing alone I do not think that phrase would be justified. But reference to the immediately preceding sentence indicates that the Commissioners had taken into consideration the letters and form of acknowledgment before expressing their finding as above. Though they have not analysed the transaction as fully as I have endeavoured to do, I have little doubt that they and Finlay J. arrived at the same result as I, and it may be noted that so far as there is any question of fact involved, the finding of the Commissioners, if there is evidence, is final.

Basing as I do my conclusion on the preliminary contract contained in the letter and acknowledgment I find myself unable to accept the Commissioners' conclusion in the case

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of Mr. Detmar Blow. No letter appears to have been written to him and there was no evidence before the Commissioners as to any agreement made with him. In those circumstances on the facts as they were made known to the Commissioners it appears necessary to treat the legal relations between him and the Duke in respect of the payment of 2000*l.* a year as governed by the deed alone. The assessment therefore should be reduced by that sum. Except as thus varied, in my opinion the order of the Commissioners should be restored and the appeal allowed with costs here and below.

LORD TOMLIN. My Lords, it cannot I think be doubted that each one of the annuities payable under the deeds of covenant brought to your Lordships' attention, if considered with reference to the deed creating it and without regard to the other matters upon which the appellants rely, falls into that class of payments which are treated as part of the taxable income of the payee and not of the payer. Each annuity is on this footing therefore an item from which the payer is entitled to deduct income tax and which he is entitled to treat as deductible from his total income in making his return for surtax purposes.

So far as concerns the annuity payable to Detmar Jennings Blow I can discover no element in the case which upon any view of the law or facts can alter the position as I have stated it, and in my opinion the appeal in regard to this annuity must fail.

With regard to the other annuities, the correspondence in each case contemporaneous with or following upon the execution of the deed of covenant, together with the fact that after the deed the payee, being in the Duke's employment, was in fact getting under the deed (with or without other moneys) the amount which he would have received as salary or wages if no deed had been executed, is said by the appellants to alter the whole position and, so long as the payee continues in the Duke's service, to render it impossible for the Duke to treat the annuity under the deed as a deductible item in his return of income for surtax purposes.

It is agreed that as between the annuities under consideration (other than that of Blow) no distinction can be drawn and that Allman's annuity is typical. A decision in Allman's case must therefore govern the remainder.

Now so far as I understand the argument the appellants, while admitting that Allman's annuity is payable under the deed, say that there is, having regard to the correspondence and in all the circumstances, another collateral contract between the Duke and the payee to the effect that the payee will serve the Duke in consideration of a salary or wage equal to the salary or wage he was receiving before the deed of covenant was executed, and that he will accept what he receives under the deed in part satisfaction of this salary or wage; and therefore that the annuity, so long as the payee remains in the Duke's service, is of a changed nature and is no longer a payment which the Duke is entitled to deduct from his income for the purposes of surtax.

In the first place I would observe that, if any such contract is proper to be inferred from the correspondence and circumstances, the contract must be a separate independent contract in the case of each payee and could only be inferred from a full examination of each case separately, and, unless the contract alleged is wholly in the correspondence, only after hearing evidence from the parties to the alleged contract or their representatives. In fact no evidence of this kind was called before the Commissioners and the Commissioners have not found that any such contract existed. Their only finding is expressed in para. 11 of the case stated and is as follows:—

"11. We, the Commissioners who heard the appeal, held that in construing the true effect and substance of the deeds under which payments are made to the appellant's (1) employees, we were entitled to consider together with these deeds the letters of explanation and form of acknowledgment which were sent to the covenantees. These letters, like the deeds themselves, were not in one stereotyped form, but were

(1) The respondent in this appeal was the appellant in the special case before the Commissioners.

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sufficiently to the same effect to enable us to arrive at a decision in respect of them all. We held that the payments made under these deeds to persons who remain in the appellant's employ were, in substance, payments for continuing service ejusdem generis with wages or salaries so long as the recipients in fact remain in the appellant's service and as such were not annual payments which were a proper deduction from his assessment to surtax."

I will deal later with that part of the finding which says that the payments were " in substance " payments for continuing service ejusdem generis with salaries or wages.

In the next place I would note that a contract in the terms alleged is nothing more than a contract that the payee will serve the Duke for a salary or wage equal to the difference between the amount received under the deed and the amount of the original salary or wage. In any event, whether he serves the Duke or not, the payee is entitled under the deed to the amount of the annuity less tax, and the annuity already legally payable cannot become part of the consideration for a new contract of service.

Again, such a contract if it could be inferred at all is in flat contradiction of the deed. Under the deed the payments are expressed to be without prejudice to such remuneration as the annuitant would become entitled to in respect of such services (if any) as the annuitant might thereafter render to the Duke. It is also in flat contradiction of the terms of the letter to which I will presently refer.

In fact I do not think that upon the true construction of the relevant letter and written acknowledgment, even when regarded in the light of such facts as are admitted or found in para. 6 of the case stated, there was any such collateral contract as alleged. The letter of August 13, 1930, told the annuitant that there was nothing in the deed to prevent his being entitled to and claiming full remuneration for such future work as he might do, though it was expected that in practice he would be content in effect with the difference between the annuity and salary or wages which he had been lately receiving. I cannot think that a letter so framed can

be construed as constituting a contract that the payee would serve the Duke upon terms in contradiction of the language of the letter—namely, that he should be entitled to less than the salary or wages which he had been then lately receiving. Further, the arrangement which the annuitant is stated in the letter to have accepted must, I think, on a proper reading of the letter refer to all that is set out in the letter as well as what is contained in the deed, and includes his right to full remuneration over and above what is received under the deed. Again, the acknowledgment signed by the annuitant at the foot of the letter is that he accepts the provision made for him by the deed, and that is a provision without prejudice to his right to full remuneration over and above what he receives under the deed. In short, it seems to me that there is no such contract as that which the appellants suggest can be inferred.

Apart, however, from the question of contract with which I have dealt, it is said that in revenue cases there is a doctrine that the Court may ignore the legal position and regard what is called "the substance of the matter," and that here the substance of the matter is that the annuitant was serving the Duke for something equal to his former salary or wages, and that therefore, while he is so serving, the annuity must be treated as salary or wages. This supposed doctrine (upon which the Commissioners apparently acted) seems to rest for its support upon a misunderstanding of language used in some earlier cases. The sooner this misunderstanding is dispelled, and the supposed doctrine given its quietus, the better it will be for all concerned, for the doctrine seems to involve substituting "the incertain and crooked cord of discretion" for "the golden and streight metwand of the law." (1) Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an

(1) 4 Inst. 41.

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increased tax. This so-called doctrine of "the substance" seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable.

The principal passages relied upon are from opinions of Lord Herschell and Lord Halsbury in your Lordships' House. Lord Herschell L.C. in *Helby* v. *Matthews* (1) observed: "It is said that the substance of the transaction evidenced by the agreement must be looked at, and not its mere words. I quite agree;" but he went on to explain that the substance must be ascertained by a consideration of the rights and obligations of the parties to be derived from a consideration of the whole of the agreement. In short Lord Herschell was saying that the substance of a transaction embodied in a written instrument is to be found by construing the document as a whole.

Support has also been sought by the appellants from the language of Lord Halsbury L.C. in *Secretary of State in Council of India* v. *Scoble.* (2) There Lord Halsbury said: "Still, looking at the whole nature and substance of the transaction (and it is agreed on all sides that we must look at the nature of the transaction and not be bound by the mere use of the words), this is not the case of a purchase of an annuity." Here again Lord Halsbury is only giving utterance to the indisputable rule that the surrounding circumstances must be regarded in construing a document.

Neither of these passages in my opinion affords the appellants any support or has any application to the present case. The matter was put accurately by my noble and learned friend Lord Warrington of Clyffe when as Warrington L.J. in *In re Hinckes, Dashwood* v. *Hinckes* (3) he used these words: "It is said we must go behind the form and look at the substance . . . . but, in order to ascertain the substance, I must look at the legal effect of the bargain which the parties have entered into." So here the substance is that which results from the legal rights and obligations of the parties ascertained upon

(1) [1895] A. C. 471, 475. (2) [1903] A. C. 299, 302.
(3) [1921] 1 Ch. 475, 489.

ordinary legal principles, and, having regard to what I have already said, the conclusion must be that each annuitant is entitled to an annuity which as between himself and the payer is liable to deduction of income tax by the payer and which the payer is entitled to treat as a deduction from his total income for surtax purposes.

There may, of course, be cases where documents are not bona fide nor intended to be acted upon, but are only used as a cloak to conceal a different transaction. No such case is made or even suggested here. The deeds of covenant are admittedly bona fide and have been given their proper legal operation. They cannot be ignored or treated as operating in some different way because as a result less duty is payable than would have been the case if some other arrangement (called for the purpose of the appellants' argument "the substance") had been made.

I find myself, therefore, in regard to the annuities other than that of Blow, unable to take the same view as the noble and learned Lord upon the Woolsack.

In my opinion in regard to all the annuities the appeal fails and ought to be dismissed with costs.

LORD RUSSELL OF KILLOWEN. My Lords, I would dismiss this appeal.

It is conceded that the deeds are genuine deeds, i.e., that they were intended to create and do create a legal liability on the Duke to pay in weekly payments the annual sum specified in each deed, whether or not any service is being rendered to the Duke by the covenantee. Further, it is conceded that the sums specified in the deeds were paid to the covenantees under the deeds.

The question for our decision is whether those sums so paid constitute part of the Duke's income for the purpose of computing his liability for surtax in the particular years in question.

I need not consider in detail the various statutory provisions which are relevant to the consideration of this matter. The result may for the purposes of this case be summarized thus:

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If the payment of these sums is payment of salary or wages within Sch. E (1), from which tax is not deductible by the Duke, then he is not entitled to exclude the amounts paid in ascertaining his total income for surtax purposes, but if the payment is an annual payment within Sch. D, from which tax is deductible by the Duke, then he is entitled to exclude the amounts paid in ascertaining such total income.

There can I think be no doubt that if the deeds stood alone the payments are annual payments within Sch. D. Indeed, this is not I think disputed. It is, however, argued that certain letters written by the Duke's solicitor to the covenantees and certain acknowledgments signed by the covenantees at the foot of those letters, effect a complete change in the situation, and turn the payments made under the deeds into payments of salary and wages within Sch. E.

I will consider this suggestion in relation to the case of Frank Allman. The argument centred round his case, and it was common ground that all the cases (with the exception of the case of Mr. Blow) stood or fell together notwithstanding any difference of wording which might exist among them.

The legal position created by Allman's deed is clear. He is entitled during the defined period to his annual sum of 98*l.* 16*s.* by weekly payments of 1*l.* 18*s.*, commencing on August 9, 1930. He is not bound to do a stroke of work in order to be entitled to payment. If he does in the future render any service to the Duke, he will be legally entitled to claim remuneration for it, over and above the payments under the deed, which are to be without prejudice to his remuneration for future services. The deed expressly so provides.

The letter to Allman states the effect of the deed, but says that it is expected that in practice he will be content with the legal provision made by the deed " with the addition of such sum (if any) as may be necessary to bring the total periodical payment while you are still in the Duke's service up to the amount of the salary or wages which you have lately been receiving." That is an expression of hope or anticipation, that the covenantee will not enforce his legal right to

(1) See Finance Act, 1922 (12 & 13 Geo. 5, c. 17), s. 18, sub-ss. 1, 2.

remuneration for future services beyond a certain amount. The letter states that the covenantee had "accepted this arrangement" and asks him to sign an acknowledgment in a form already written out at the foot of the letter. The arrangement said to have been accepted can be nothing more than what the letter states—namely, the execution of a deed which was to be binding and in full force, coupled with an expectation on the part of the Duke that the covenantee's legal right to full remuneration for future services would not be enforced. There is no evidence of any other arrangement. Acceptance of that arrangement cannot turn the expectation into an enforceable legal right. The acknowledgment signed by the covenantee is in strictly limited terms. It accepts the provision made by the deed; it in no way admits or suggests that the deed has to any extent been qualified by the letter. My Lords, for myself I can find nothing in the letter and acknowledgment which constitutes or resembles a contract, notwithstanding the fact that the names of the solicitors were written across an adhesive stamp. There is an expression of a hope or anticipation or expectation that the covenantee will pursue a certain line of conduct, but he nowhere binds himself to do so, nor indeed is he even asked to do so. In my opinion the letter has no operation at all, and has no effect upon the legal rights and liabilities of the parties created by the deed.

But if I am wrong in this view, and some contract dehors the deed was brought into existence by means of the letter and acknowledgment, it can be no more than a contract by Allman that his remuneration for future services shall not be full remuneration but only the additional sum referred to in the letter. I can see no grounds for extracting from the language used a contract that the remuneration for future services shall, despite the deed, be the sums payable under the deed in respect of past services plus the additional sum mentioned in the letter. I can find no possible justification for this. A suggestion was made that such a contract can be found by reason of the presence in the letter of the words "to bring the total periodical payment up to the amount of the salary

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which you were receiving previously to the deed of covenant." I fail to see how these words can bear this strain. Indeed, to me they seem to point in the opposite direction. They recognize that full remuneration for future services will not be paid, and that the total periodical payment will be composed in part of salary and in part of something which is not salary at all.

If the true view is that (contrary to my opinion) a contract has been made to accept less than full remuneration for future services, the position is still the same—namely, that the legal rights and liabilities of the parties created by the deed remain unqualified and unaffected.

The result is that payments, the liability for which arises only under the deed, are not and cannot be said to be payments of salary or wages within Sch. E. They cannot with any regard to the true legal position be said to arise from an employment. They are, and can only be said to be, annual payments within Sch. D. Tax was deductible on payment; they are income of the recipient, and are accordingly not part of the Duke's total income for the purpose of calculating his liability for surtax.

The Commissioners and Finlay J. took the opposite view on the ground that (as they said) looking at the substance of the thing the payments were payments of wages. This simply means that the true legal position is disregarded, and a different legal right and liability substituted in the place of the legal right and liability which the parties have created. I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if, in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in *Partington* v. *Attorney-General* (1): "As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the

(1) (1869) L. R. 4 H. L. 100, 122.

judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be." If all that is meant by the doctrine is that having once ascertained the legal rights of the parties you may disregard mere nomenclature and decide the question of taxability or non-taxability in accordance with the legal rights, well and good. That is what this House did in the case of *Secretary of State in Council of India* v. *Scoble* (1); that and no more. If, on the other hand, the doctrine means that you may brush aside deeds, disregard the legal rights and liabilities arising under a contract between parties, and decide the question of taxability or non-taxability upon the footing of the rights and liabilities of the parties being different from what in law they are, then I entirely dissent from such a doctrine.

The substance of the transaction between Allman and the Duke is in my opinion to be found and to be found only by ascertaining their respective rights and liabilities under the deed, the legal effect of which is what I have already stated.

The case of Mr. Blow's deed, which is uncomplicated by any letter, is necessarily decided, in my view, in the same way as Allman's case.

For these reasons I am of opinion that the order of the Court of Appeal was right and ought to be affirmed.

LORD MACMILLAN. My Lords, the respondent recently entered into certain transactions with a number of his employees, and the question to be determined in this appeal is whether these transactions have affected his liability to surtax. It has been agreed that, to test the matter, the respondent's transaction with Frank Allman may be taken as typical of the series.

Allman was employed by the respondent as a gardener at a weekly wage the amount of which is not stated, but which was in excess of 38*s*. a week. The wages paid by the respondent to Allman were profits arising to Allman from

(1) [1903] A. C. 299.

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his employment within the meaning of Sch. E to the Income Tax Act, 1918. Consequently the respondent was not entitled to deduct tax on paying Allman his wages, nor was he entitled to deduct his payments to Allman in computing his total income for surtax purposes. This being the position of the parties, they executed in 1930 a deed of covenant which has been quoted in full by my noble and learned friend Lord Atkin.

It is agreed on all hands that the legal effect of this deed was to give Allman thereafter for the period of its endurance the right to a weekly payment of 38*s.* irrespective of whether he remained in the respondent's employment or not, but without prejudice to Allman's right to remuneration for such services as he might thereafter render to the respondent. I do not think that there can be any doubt, and indeed none was suggested, that, if this deed had stood alone, the sums paid to Allman in pursuance of it would have been of the nature of an annual payment payable as a personal debt or obligation by virtue of a contract within the meaning of Rule 1 applicable to Case III. of Sch. D, with the result of entitling the respondent, under Rule 19, sub-s. 1; of the Rules applicable to all the Schedules, to deduct income tax on making the covenanted payments to Allman, and consequently to deduct the amount of these payments in computing his total income for surtax purposes.

But the deed of covenant did not stand alone. There were in addition a letter addressed to Allman by the respondent's solicitors and an acknowledgment by Allman, which have also been quoted in full by my noble and learned friend. In my opinion these two documents formed part of the transaction between the parties. It has been suggested that they had no legal efficacy. The respondent's solicitors do not appear to have held that view. They may have been mistaken in their belief that the letter and the acknowledgment embodied a binding arrangement, but I confess that I share it. In my opinion these documents embody an agreement between the parties that, notwithstanding Allman's unqualified right under the deed to 38*s.* a week, work or no work, and to full

remuneration for any future work he may do for the respondent, nevertheless, so long as he remains in the respondent's employment, he will be content with the covenanted payments under the deed plus the difference between them and the wages he was previously receiving. In other words, Allman agrees that in view of the respondent having undertaken to pay him 38s. a week in the future independently of his employment, he will not expect or be entitled to any further payment from the respondent, so long as he remains in the respondent's employment, beyond the difference between the covenanted payments and the wages he previously received.

Allman has, I understand, remained in the respondent's service and receives in fact the same sum of money weekly from the respondent as he received before the transaction in question. Has that sum to the extent of 38s. altered its legal character in consequence of the transaction? In my opinion it has. Whereas previously Allman was entitled to the 38s. a week as wages, he is now entitled to payment of this sum weekly whether he is employed by the respondent or not. That is the effect of the deed of covenant. The arrangement embodied in the two collateral documents does not alter that effect, whatever else it does. It is difficult to see how a sum which is payable irrespective of employment can be said to be a profit arising from employment. If the collateral documents had affected the absolute and independent nature of the obligation under the deed of covenant different considerations might have arisen. But the absolute obligation to pay irrespective of employment remains unaffected by the collateral documents, which recognize that Allman will in future have an unqualified right to a weekly payment of 38s. from the respondent whether the respondent employs him or not.

My Lords, I venture to suggest that the proper approach to the problem is to ask the question, in the language of Rule 1 applicable to Case III. of Sch. D: Is the 38s. a week of the nature of an annual payment payable by the respondent as a personal debt or obligation by virtue of a contract? Plainly it is, and none the less so because of the collateral

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arrangement which, whatever it does, does not convert the deed of covenant into a contract of employment, for the 38*s.* remains payable, employment or no employment. It is agreed that if Allman leaves the respondent's employment the weekly payments which he will continue to receive under the deed will fall within Rule 1 applicable to Case III. of Sch. D. But the payments made to him while he remains in the respondent's employment are exigible by him under precisely the same legal obligation on the part of the respondent. If then the question which I have put must be answered in the affirmative, Rule 19, sub-s. 1, of the Rules applicable to all Schedules automatically applies and the respondent is entitled to deduct tax on making the covenanted payments to Allman, and if he is entitled to deduct tax from the payments he is also entitled to deduct the amount of these payments in computing his total income for surtax purposes. The same reasoning is applicable to the respondent's transactions with his other employees, except that in the case of Mr. Blow there was only a deed of covenant and no collateral letters. His case is consequently a fortiori of the others.

I am fully conscious of the anomalous consequences which might conceivably arise in other connections from the course adopted by the respondent, but your Lordships are concerned only with the technical question whether the respondent has brought himself within the language of the income tax rule as to contractual payments, and I think that he has succeeded in doing so. That is enough for the decision of the case. It is not likely that many other employers will follow the respondent's example, for few employers would care to take the risk to which the respondent has left himself exposed —namely, that his servants may quit his employment and take their services elsewhere and yet continue to exact the covenanted weekly payments from him.

The result of the views which I have expressed is that in my opinion the appeal should be dismissed and the judgment of the Court of Appeal affirmed.

LORD WRIGHT. The difference of opinion which this appeal

has elicited has caused me some doubt, but after careful consideration I am bound to say that, speaking for myself, I have come to the conclusion that the appeal must fail.

If the case were one in which it was found as a fact in regard to each of the deeds in question that it was never intended to operate as a legal document between the parties, but was concocted to cover up the payment of salary or wages and to make these payments masquerade as annuities in order to evade surtax, it may well be that the Court would brush aside the semblance and hold that the payments were not what they seemed. But there is no such finding by the Commissioners; indeed no such case was even suggested; on the contrary, it is admitted that the deeds are genuine and carry an obligation according to their tenour, irrespective of whether the various payees are or are not in the respondent's service at any material date. This is clearly so in the cases not here questioned in which the covenantees are no longer in the respondent's employment. And all your Lordships are of opinion that this is so in the case of Blow, though he is still in the respondent's service, and that the payments in his case are properly deductible.

What then is the difference which distinguishes Blow's case from that of the other covenantees whose cases are to be considered in this appeal? The only difference is to be found in the accompanying letter and form of acknowledgment, both of which are absent in Blow's case. It is on these documents that the Commissioners arrive at their conclusion that the payments under the deeds are not annual payments but "in substance payments for continuing service ejusdem generis with wages or salaries" so long as the recipients remain in the respondent's service.

Like others of your Lordships I shall take as typical the case of Allman. The covenant in the deed to pay him is unconditional. It is not conditioned by the contingency of Allman re-engaging or continuing in the respondent's service; the relevance of that contingency is expressly negatived in the recital; and by clause 3 it is expressly agreed that the payments are to be without prejudice to such remuneration

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(what that may be is unspecified) as the annuitant will become entitled to in respect of such services, if any, as he may thereafter render to the respondent.

On the footing that the deed is genuine, I do not see any possibility of going behind what appears on the face of the document, or qualifying its effect by documents dehors the deed and in no way embodied in it, or regarding the payments as other than annual payments, as it is admitted that ex facie they are. And what the legal effect is as between the covenantor and the covenantee must determine for revenue purposes the character of the payments actually made.

That character is not to my mind changed if the letter of explanation and the letter of acknowledgment can be taken into account.

The letter of explanation quite correctly, and in accordance with the actual terms of the deed, states that there is nothing to prevent Allman from claiming full remuneration for future work from the respondent; the letter goes on to state what is expected—namely, that Allman will "in practice be content" with the provision made by the deed with such additional payment as will, with the payments under the deed, bring his salary up to what he had been previously receiving. This seems to me to be merely the language of hope and expectation and not to be language capable of being construed as an offer which, if accepted by Allman, would bind him to work for the respondent at the reduced rate; that is if in future he did so work, because no one suggests that if he did not work for the respondent his right under the deed would be affected.

But if the letter of explanation, together with the acknowledgment, were treated as constituting a contract, it could only be a contract to pay and accept what may be called the additional sum. I cannot extract from the actual words a promise or right to pay or receive what is called the "full remuneration for future work"; it is true that Allman would under the deed be entitled to claim "full remuneration" if he were so minded, as a condition of working, but I cannot find any ground for thinking that he ever did so, and still less that the respondent employed him on that footing.

But whatever view is taken, the nature of the obligation embodied in the deed appears to me to be unaffected. I do not stop to examine what is the precise position of Allman and those in like case with him if they go on working in the respondent's employment. It may be that the true inference of fact is that they are working for the additional sum and nothing else, the reason why they are content with this reduced rate being that they are receiving also the annuities under the deed. There may be difficulties in that position. But in any event any such agreement would be merely collateral to the deed.

I may add that I do not understand what is meant by the expression " payments for continuing service ejusdem generis with wages or salaries." The payments must be one thing or the other, either annual payments or wages ; there is no room for anything intermediate or in the nature of cy-près. And once it is admitted that the deed is a genuine document, there is in my opinion no room for the phrase " in substance." Or, more correctly, the true nature of the legal obligation and nothing else is " the substance." I need not develop this point, as I agree with what has been said by my noble and learned friends, Lord Tomlin and Lord Russell of Killowen.

Order appealed from affirmed, and appeal dismissed : Appellants to pay respondent the costs of the appeal.

Lords' Journals, May 7, 1935.

Solicitor for appellants : *The Solicitor of Inland Revenue.*
Solicitors for respondent : *Boodle, Hatfield & Co.*