OLIVE ETHEL RAGG *v.* HER MAJESTY THE QUEEN

[Court of Appeal (Hyne, C.J., Russell, Higginson, J.J.) February 26th, 1954]

In the original action brought against the appellant which was heard by *Carew, P.J.,* the respondent claimed from the appellant the sum of £21 1s. 4d. income tax due and unpaid, together with the sum of £261 13s. 1d. income omitted by the appellant from her return and therefore claimed by virtue of section 19 of the Income Tax Ordinance.

The trial judge held that by reason of section 27 of the Ordinance the Court could not inquire into the validity of the assessment as the appellant had not filed her objection within the time specified in this section.

On appeal it was argued, *inter alia,* that the amount of £261 13s. 1d. was a penalty and therefore could not be sued for on a specially endorsed writ with which the original action had commenced.

HELD.—(1) That the sum of £261 13s. 1d. being a known, ascertained amount fixed by statute it could be the subject of a specially endorsed writ.

(2) That since the objection to the assessment was raised out of time, the appellant's right of appeal ceased and the assessment became valid and binding. (Decision in the case *Commissioners of Inland Revenue v. Pearlberg* followed.)

Cases referred to:—

Commissioner of Inland Revenue v. Pearlberg [1953] 1 A.E.R. 388.

Ann Bernard for the appellant.

W. G. Bryce, Solicitor-General, for the respondent.

HYNE, C.J.—It is argued by learned Counsel for the appellant that the amount claimed cannot be anything but a penalty and that therefore the writ of summons cannot by reason of paragraph (*c*) of rule 6 (1) of Order 3 be specially endorsed.

Paragraph (*c*) reads:—

> " on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty."

It is argued by the learned Solicitor-General for the respondent that the sum claimed is a fixed sum, known and ascertained. He referred to section 19 (7) of the Ordinance which reads:—

> " Any person liable to pay any tax under this Ordinance who, in the return of the income liable to taxation makes a return in which he states the income to be less than the true amount, shall pay to His Majesty the additional amount of tax due on the income omitted from his return and in addition interest at the rate of ten per centum per annum upon such amount from the last day prescribed for making such return until the same is paid.

If the amount of the income omitted from his return exceeds ten per centum of the correct income, but is under twenty per centum of the same, such person shall pay to His Majesty an additional amount equal to one-half of the amount of such deficiency, and if the deficiency amounts to twenty per centum or more of the correct income, such person shall pay to His Majesty an additional amount equal to the amount of such deficiency."

He contends further that the words in paragraph (*c*) of Order 3, rule 6 (1), namely, "other than a penalty" relate to the word "debt" and not to "a fixed sum of money".

We have carefully considered the submissions of Counsel and we are of the opinion that the amount of £261 13s. 1d. is a fixed sum, and that it is claimed under a statute. We agree with the Solicitor-General, too, that the words "other than a penalty" are not in any way connected with or intended to limit the effect of the words "on a statute where the sum sought to be recovered is a fixed sum of money".

The amount claimed is a known ascertained amount and is fixed by statute. The amount can therefore be sued for on a specially endorsed writ, and the appellant's appeal on this ground fails.

In her last ground of appeal the appellant avers that there were no provisions in the Ordinance which barred the Court from hearing the case on its merits.

We are unable to agree. Section 27* (1) of the Ordinance reads as follows:—

"Any person objecting to the amount at which he is assessed or as having been wrongfully assessed may, personally or by his agent, within the time determined for payment in the notice of assessment as provided in section 23 of this Ordinance, give notice in writing to the Commissioner in Form 2 of the First Schedule hereto that he considers himself aggrieved for either of the causes aforesaid; otherwise such person's right to appeal shall cease and the assessment made shall stand and be valid and binding upon all parties concerned notwithstanding any defect, error or omission that may have been made therein or in any proceeding required by this Ordinance or any regulation hereunder:"

In our opinion this language is clear and unmistakable. Any person objecting to an assessment must give notice in writing to the Commissioner within the time determined for payment.

In the present case, the time determined was January 31st, 1953. The objection of the appellant is dated the 31st January, but there is absolutely clear evidence, which the learned trial Judge quite rightly accepted, that the objection did not reach the Commissioner until the 4th February.

The objection not having been received in time, the appellant's right of appeal ceased, and the assessment stands and becomes valid and binding. The case of the *Commissioners of Inland Revenue v. Pearlberg* [1953] 1 A.E.R. at p. 388, deals with a similar point. In this case notices had been served on the taxpayer, but he had given no notice of appeal. The Commissioners issued a summons under Rules of the Supreme Court, Order 14, for leave to sign final judgment, and the taxpayer asked for leave to defend on the ground that he had been wrongly assessed. The Master gave leave to sign final judgment, and later *Havers, J.* dismissed the taxpayer's appeal.

* *Replaced.*

In the Court of Appeal which dismissed his further appeal *Denning, L.J.* said:—

> "The whole question in the case is whether that is an issue which the taxpayer is allowed to have tried in these proceedings in the High Court? The correct answer has been, I think, given by counsel for the Crown, namely, that the right way for him to have raised any of these matters was by appeal to the commissioners in the way provided by the Income Tax Acts, and, as he did not raise the matters by way of appeal, he is not allowed to raise them now."

Later in his judgment he said:—

> "Once there is an assessment duly made and not appealed from, then, under section 169 of the Income Tax Act, 1918, the tax charged may be sued for and recovered from the person charged therewith in the High Court as a debt due to the Crown. In my opinion, therefore all issues on the merits of these cases, as to fact or law, should have been determined on appeal to the commissioners and cannot be raised at this stage. If there has been no appeal to the commissioners the debts become absolute and conclusive, and their legal effect cannot be denied."

It has been urged by the appellant's Counsel that there is no analogy between the procedure under the Income Tax Acts of the United Kingdom and the Fiji Income Tax Ordinance.

We cannot accept this. In both cases provision is made whereby a taxpayer can dispute his assessment. If he fails to do so within the time stipulated, his further remedy by way of appeal against assessment is barred.

Denning, L.J. said the debt becomes absolute and conclusive. Section 27 of the Ordinance says the assessment shall stand and be valid and binding on all parties concerned, which in effect means the same thing.

Having determined that the objection was out of time, the Judge was therefore right in not hearing the case on its merits, and, having held that in law the assessment was binding and valid, he was fully justified in giving judgment for the respondent.

The appeal is dismissed.