[HIGH COURT OF AUSTRALIA.]

MUTUAL ACCEPTANCE COMPANY LIMITED APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . } RESPONDENT.

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SYDNEY, *Nov.* 15; *Dec.* 4.

Latham C.J., Rich, Starke, Dixon and Williams JJ.

Pay-roll Tax (Cth.)—"*Wages*"—"*Allowances*"—*Instalments due under hire-purchase agreements—Collection by travellers—Motor car provided by travellers—Allowance therefor paid to travellers by employer—Liability to tax—Pay-roll Tax Assessment Act* 1941-1942 (*No. 2 of* 1941—*No.* 48 *of* 1942), *s.* 3.

Travellers employed by a company to collect instalments due under hire-purchase agreements were paid a weekly wage and a commission on the amount collected. Some of the travellers provided and used their own motor cars and in respect thereof an additional weekly payment was made to them of a fixed amount agreed between the company and each traveller as representing an arbitrary and rough and ready assessment of two-thirds of the expenditure estimated as likely to be incurred by the traveller in using his motor car. The expenditure actually so incurred by each traveller was always greater than the additional payments received by him.

Held, by *Latham* C.J., *Starke* and *Williams* JJ. (*Rich* and *Dixon* JJ. dissenting), that the additional payments were allowances paid to employees as such and were therefore "wages" as defined by s. 3 of the *Pay-roll Tax Assessment Act* 1941-1942; tax under that Act was therefore payable in respect of such additional payments.

CASE STATED.

Mutual Acceptance Co. Ltd. appealed to the High Court from a decision of the Board of Review which confirmed a decision made by the Federal Commissioner of Taxation that certain additional payments made by the company to certain travellers employed by it, in connection with motor cars provided and used by the travellers on the company's business, were allowances and were therefore "wages" within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942, and that the company was liable to pay tax thereon.

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Upon the appeal coming on to be heard before *Latham* C.J., his Honour, at the request of the parties and pursuant to s. 18 of the *Judiciary Act* 1903-1940, stated a case, which was substantially as follows, for the consideration of the Full Court.

1. The appellant is a company whose business comprises that of discounting hire-purchase agreements and collecting on its own behalf instalments payable under hire-purchase agreements discounted by it.

2. The appellant employs travellers to collect such hire-purchase instalments in and around Sydney.

3. Each of the said travellers is paid by the appellant a weekly wage of £5 16s. together with a commission based on the amount of his collections.

4. Certain of the travellers provide and use, for the purpose of collecting the instalments, motor cars not owned or provided by the appellant.

5. Each of the travellers who provides and uses a motor car as mentioned in par. 4 hereof is paid by the appellant, in addition to his weekly wage and commission, a fixed weekly payment in respect of his use of the motor car in connection with the appellant's business. In its books the appellant describes these payments as car allowances.

6. These additional payments are at the rate of 25s., 32s. 6d., 35s. or 37s. 6d. per week according to the size of the territory which the traveller has to cover and the size of the motor car used by him as aforesaid. These rates have not been calculated by reference to, and do not vary with, the actual cost of using the cars in connection with the appellant's business, but are fixed amounts agreed upon between the appellant and each traveller at the time of his engagement by the appellant as representing an arbitrary and rough and ready assessment of a sum about equal to two-thirds of the expenditure estimated as likely to be incurred by the travellers in using the cars as aforesaid. In fact the cost to each traveller of using the car in connection with the appellant's business is higher than the amount of the weekly payments made to him as aforesaid in respect thereof.

7. The Federal Commissioner of Taxation on 7th September 1942 decided that the additional payments are allowances paid to employees as such and are therefore " wages " within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942, and that the appellant is liable to pay the tax imposed by the *Pay-roll Tax Act* 1941 in accordance with the provisions of the *Pay-roll Tax Assessment Act*

upon all such payments as aforesaid paid or payable by the appellant in respect of any period of time occurring after 30th June 1941.

8. The Commissioner duly served his decision by post upon the appellant and the appellant within forty-two days after service thereof lodged with the Commissioner an objection in writing in the words and figures, omitting formal parts, following, that is to say :—

"I hereby lodge notice of objection against the decision of the Commissioner as notified in his letter dated 7th September, 1942, to the effect that payment of travelling allowances to our travellers is subject to pay-roll tax.

I claim that the decision should be that the travelling allowance is a reimbursement, or partial reimbursement of actual expenditure and is therefore not liable to pay-roll tax.

The full and detailed grounds on which my claim is based are as follows :—

Our travellers have large areas to cover—each area being approximately one-sixth the area of Sydney. The cost, to each traveller, of owning and running a car (including registration, insurance, tyres, petrol, oil, repairs, depreciation, etc.) exceeds the allowance which we pay them. We have never regarded the allowance as more than a contribution towards the traveller's expenses. This principle has been recognized by your Department in adjusting the taxable income of certain of our travellers, notably Thomas Turner, Wiley Street, Waverley (See your letter File No. 36054, dated 24th June 1941) ; John Devenish, 42 Teralba Road, Brighton le Sands (See your letter file No. 125687X, dated 23rd July, 1941) ; Maxwell C. Franklin, 2 Margaret Street, Campsie (See your letter File No. 508954, dated 15th December, 1941).

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9. The Commissioner after considering the objection disallowed it, and gave to the appellant written notice of such disallowance.

10. The appellant, being dissatisfied with the decision, within thirty days after service upon it of the notice thereof requested the Commissioner in writing to refer the decision to a Board of Review for review.

11. The Commissioner accordingly referred the decision to a Board of Review and the Board, after taking evidence and hearing the appellant and the Commissioner by their respective representatives, confirmed the liability of the appellant as decided by the Commissioner. The Board gave reasons for its confirmation, and I have directed that the appellant provide for the information of the Court copies of the reasons but I do not make the same part of this case.

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12. The appellant appealed to the High Court of Australia from the whole of the decision of the Board of Review upon the ground that the Board of Review was in error in holding that certain payments totalling £941 13s. 9d. made by the appellant company to certain of its employees in respect of the period from 1st July 1941 to 30th June 1942 and being a partial repayment to them of expenses incurred by them in the use of their own motor cars in the course of their employment by the appellant company were " wages " within the meaning of s. 3 (1) of the *Pay-roll Tax Assessment Act* 1941-1942.

The question of law stated for the determination of the Full Court was :—

> Whether the additional payments referred to in par. 5 of this case are " wages " within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942.

Mason K.C. (with him *Warburton*), for the appellant. " Wages," as defined in the *Pay-roll Tax Assessment Act* 1941-1942, refers only to something which is a benefit, either in cash or in kind, to the employee. The additional payments are merely contributions made by the appellant towards the total cost incurred and paid by the employees in providing motor cars for their own use while on the appellant's business. The additional payments so made are not benefits but are partial reimbursements of the employees' out-of-pocket expenses. Payments so received by the employees are not payments in the nature of rewards for services rendered. In construing the word " allowances " in the definition of " wages " in s. 3 of the Act, regard should be had to the preceding words. The *ejusdem generis* rule should be applied. The Act requires that the payments be made to the employees " as such," that is, for personal services rendered by the employees in that capacity (*Federal Commissioner of Taxation* v. *J. Walter Thompson* (*Aust.*) *Pty. Ltd.* (1)). The question is one of fact. In *Commissioner of Taxes* v. *Lake View and Star Ltd.* (2) it was held that amounts deducted by an employer from the remuneration of certain contract miners in respect of explosives supplied by the employer to the contract miners, were not wages within the meaning of the *Pay-roll Tax Assessment Act*. The word " allowances " was not intended to, and does not, cover any and every payment made by an employer to an employee.

Kitto K.C. (with him *Downing*), for the respondent. The subject additional payments are " allowances " and fall within the meaning

(1) (1944) 69 C.L.R. 227, at p. 234. (2) Noted (1942) 16 A.L.J. 249.

of the word " wages " as defined in s. 3 of the *Pay-roll Tax Assessment Act*. The use of the word " any " in that definition indicates that the expressions there used are not to be given a restricted meaning. There is a distinction between the recoupment of money spent and actual expenditure. At the time the agreement relating to the provision and use of motor cars was made between the appellant and its employees there was not any attempt to ascertain the actual expenditure. The amount paid weekly under that agreement has no relation to the weekly expenditure. The allowance is paid in order to avoid the ascertaining of the actual expenditure, and it is paid and is payable irrespective of what the actual expenditure may have been or may be. The providing and use of his own motor car was part of the services to be rendered by the employee in the course of his employment. The qualification which results from sub-s. 3 of s. 3 of the Act gives rise to an inference that the legislature was not pursuing the policy of taxing the amount paid, but the employees who received it. Unlike the *Income Tax Assessment Act* the *Pay-roll Tax Assessment Act* is directed to provide a tax upon employers for what they pay and looks at the amount in question from the employer's point of view. It is a tax upon his outgoings. The Act is an Act relating to " the Imposition, Assessment and Collection of a Tax upon the Payment of Wages." The direct approach to the interpretation of those words is to consider what sums answer, from the employer's point of view, the descriptions wages, salary, commission, bonuses or allowances that he pays to his employees as such. From that point of view the subject payments are such that it is impossible to say they are not allowances paid by the appellant to his employees as such, because the providing and use of a motor car is part of the contract of employment and is for the purpose of performing the services which the employee contracted to perform. The payments really form part of the remuneration and would rightly be described as wages in the ordinary sense of that word. Remuneration for services is not confined to remuneration for personal services. A victualling allowance paid to the master and crew of a vessel was held to be wages in *The Tergeste* (1). The meaning of " wages " was discussed in *Roberts* v. *Hopwood* (2). The correct approach in this case is the approach made by the House of Lords in *Midland Railway* v. *Sharpe* (3).

Mason K.C., in reply. The Court is not concerned with " earnings " as in *Midland Railway* v. *Sharpe* (4) and *Mahoney* v. *Newcastle*

(1) (1903) P. 26, at p. 32.
(2) (1925) A.C. 578, at pp. 599, 612.
(3) (1904) A.C. 349, at pp. 351, 353.
(4) (1904) A.C. 349.

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Wallsend Coal Co. (1), but with "wages." The proper approach is to have regard to the Act to ascertain the meaning of "wages," and then to apply the meaning so ascertained to the actual facts as stated in the case. The employees pay out more by way of expenses connected with their motor cars than is recouped to them by the additional payments. Recoupment of the whole amount of the expenses so incurred does not come within the scope of the Act, therefore it follows that the recoupment of any amount less than that whole amount cannot come within the scope of the Act. An allowance given for a particular purpose so as to meet a particular expenditure incurred in connection with the provision of a service does not form part of the wages of the employee supplying that service. "Allowance" does not include any provision which is made and which does not give any beneficial property or interest to the recipient. An allowance to be within the meaning of the Act must be something more than a recoupment to the employee of an amount he is actually out-of-pocket on behalf of the employer.

Cur. adv. vult.

Dec. 4.

The following written judgments were delivered :—

LATHAM C.J. This case raises the question whether certain payments made to employees of the appellant company are "wages" within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942.

The *Pay-roll Tax Act* 1941, s. 3, imposes a tax upon all wages paid or payable by an employer. The Act (s. 2) incorporates the *Pay-roll Tax Assessment Act* 1941. Section 3 of the latter Act defines "wages" as follows :—"'wages' means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such and, without limiting the generality of the foregoing, includes—

(*a*) any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour ;

(*b*) any payment made by a company by way of remuneration to a director of that company ;

(*c*) any payment made by way of commission to an insurance or time-payment canvasser or collector ; and

(*d*) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services".

(1) (1918) 18 S.R. (N.S.W.) 578.

The case states that the appellant company employs travellers to collect instalments due under hire-purchase agreements. The travellers are paid a weekly wage, together with a commission based on the amount collected. The weekly wage and the commission are plainly included within the definition of " wages " contained in the Act. Some of the travellers provide motor cars for the purpose of collecting the instalments. These travellers are paid fixed sums in respect of the use of their motor cars, such payments being described by the appellant as " car allowances." The question is whether these payments are " allowances " within the meaning of the definition of " wages." These additional payments are fixed sums of 25s., 32s. 6d., 35s. or 37s. 6d. a week, according to the size of the territory which the traveller has to cover and the size of the motor car used by him. The payments roughly represent about two-thirds of the expenditure estimated as likely to be incurred by travellers in using the car.

It is contended for the company that the allowances are a partial reimbursement of actual expenditure, and for that reason are not included within the definition of " wages " in the Act. If an employer were to give a traveller employed by him a sum for the purpose of purchasing a railway ticket to enable him to travel, it could not be contended that such a sum was part of the wages of the employee. It is argued that the car allowances are of the same character.

Under par. (*a*) of the definition in s. 3 classes of contracts may be prescribed, and then payments made under such contracts to the extent to which the payments were " attributable to labour " would be included within the definition of " wages." It was contended that this phrase provided a qualification or limitation which should be applied to the terms " commission, bonuses or allowances " contained in the earlier part of the definition, and that payments by way of commission, bonuses or allowances should be held to be wages only in so far as such payments were attributable to labour. If, therefore, a payment was made for the purpose of enabling an employee to provide a motor car, such a payment was (it was argued) made really for the use of the car (though not strictly for the hire of the car), so that it could not be regarded as attributable to labour, and therefore could not be described as " wages " within the definition. In my opinion pars. (*a*) to (*d*) of the definition cannot be used to show that the preceding words of the definition should be construed in some limited sense. Those paragraphs are introduced by the words " without limiting the generality of the foregoing." Thus the phrase " to the extent to which that payment

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is attributable to labour" cannot be applied to the earlier part of the definition for the purpose of limiting the general words contained therein.

The payments (in cash or kind) which are included in "wages" are payments made "to any employee *as such*." They therefore comprehend only payments made to an employee in connection with and by reason of his service as an employee or in respect of some incident of his service. Thus a merely personal gift by an employer to a person who happened to be an employee would not be included within "wages," though a bonus paid to employees because they were employees would be so included.

Further, the payment must be made "*to any employee*." If money is given to an employee in order to enable him to make a payment to a third person on behalf of his employer, such money cannot be regarded as paid to the employee—as in the case already mentioned of providing an employee with money for the purpose of purchasing a railway ticket. Money is paid to an employee only when he, after receiving it, becomes the owner of the money, having the complete disposition and control of it. Money which is held by an employee on behalf of his employer cannot be regarded as paid to the employee within the meaning of the definition. Such money remains the money of the employer and is not "paid" by him when it is placed in the hands of an employee who holds it on his employer's account. The facts stated in the present case show that the employee is at liberty to spend the car allowance as he chooses without accounting to the employer in any way for his expenditure. The payments are made to employees in respect of an incident of their service, namely the use of a motor car, and because they are the employees of the employer. Accordingly, in my opinion, they fall within the description of payments made to employees as such.

It is contended, however, that they are not "allowances" within the meaning of the section, and that the only allowances which are included within the definition are allowances which are in the nature of remuneration for services. "Allowance" in the relevant sense is defined in the *Standard Dictionary* as meaning :—"That which is allowed ; a portion or amount granted for some purpose, as by military regulation, operation of law, or judicial decree ; also, a limited amount or portion, as of income or food ; as, an *allowance* of rations ; an *allowance* for costs ; an *allowance* for tare or breakage; an extra *allowance* for services ; to put one on an *allowance* of bread." When the word is used in connection with the relation of employer and employee it means in my opinion a grant of something additional to ordinary wages for the purpose of meeting some particular

requirement connected with the service rendered by the employee or as compensation for unusual conditions of that service. Expense allowances, travelling allowances, and entertainment allowances are payments additional to ordinary wages made for the purpose of meeting certain requirements of a service. Tropical allowances, overtime allowances, and extra pay by way of " dirt money " are allowances as compensation for unusual conditions of service.

The latter class of allowances represents higher wages paid on account of special conditions, and may fairly be described as part of wages in the ordinary sense. A victualling allowance has been held to be part of the wages of a seaman (*The Tergeste* (1)). Allowances which are wages in the ordinary sense are, however, included in the word " wages " itself where it appears in the definition. If the word " allowances " were limited by construction to allowances which fell within the ordinary concept of " wages," the result would be that the word " allowances " in the definition would have no application, and would not operate to extend the ordinary meaning of the word " wages." It would have no significance or effect. Accordingly, in my opinion it is proper to reject the contention that only such allowances as are remuneration for services are included within the word " allowances " in the definition.

It was also argued for the company that in so far as an allowance was expended by an employee in the course of rendering his service it could not be regarded as wages and that only what might be called the profit element in the allowance could at most be so regarded. The *Pay-roll Tax Assessment Act*, however, looks at wages from the point of view of an employer. The tax is assessed upon what he pays or is bound to pay as wages (s. 12). He is bound to make monthly returns of wages paid or payable (s. 18). It would be quite impracticable for employers to comply with this provision if they had to ascertain how much, if any, of the allowance represented a personal benefit (or " profit ") to the employee. In *Midland Railway* v. *Sharpe* (2), a similar argument was used in relation to the ascertainment of " earnings " for purposes of workers' compensation in a case where a " lodging allowance " was paid. It was held that the allowance was wages (3) and was earnings, whether or not the workman made any profit out of it. Lord *Davey* said: " If the appellants are right, you would in every case have to analyze the remuneration by way of wages or salary which has been paid to an . . . employee, and to ascertain the conditions of his labour, and what expenses he was put to, or might be put to, in order to

(1) (1903) P. 26.
(2) (1904) A.C. 349.
(3) (1904) A.C., at p. 353.

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earn that remuneration. It would be impossible to analyze that in every case, and I think that cannot have been within the contemplation of the legislature in framing the Act " (1). In my opinion these observations are equally applicable to the *Pay-roll Tax Assessment Act*.

The payments made to the travellers employed by the appellant company are allowances in the sense that they are payments made to employees of the company as such, that is, in respect of an incident of their service, and the moneys when paid are at the complete disposition of the employees. In my opinion they are allowances within the meaning of the definition and the question in the case should therefore be answered in the affirmative.

RICH J. The present matter came before this Court as an appeal from a decision of a Board of Review under s. 40 (5) of the *Pay-roll Tax Assessment Act* 1941-1942, it being contended that the Board's decision involves a question of law. The matter coming before the Chief Justice, he has stated for the opinion of the Full Court pursuant to s. 18 of the *Judiciary Act* 1903-1940 the following question arising in the appeal as being in his opinion a question of law, namely whether the additional payments referred to in par. 5 of the case are " wages " within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942. It is with this question only that we are concerned, and it has been referred to us as being a question of law.

It turns upon the proper construction of that part of the definition section which deals with the word " wages " as used in the Act, and in particular upon the meaning of the word " allowances " as there appearing. A definition of this kind is not an exercise in philology. It is a mechanical device to save repetition. Its purpose is not to endow the word " wages " with a new meaning, but to enable the expression " wages, salary, commission, bonuses or allowances paid or payable," &c., to be supplied by a single word whenever it is desired to legislate in this Act for anything which is included in that expression. In ordinary parlance, wages is the term used for the remuneration paid for other than " white-collar jobs." The definition clause is employed to make it clear that, where not otherwise indicated, the Act is intended to apply to all forms of remuneration for all types of services rendered under contracts of service. What falls to be determined is whether a particular class of payment made by a particular employer to his employees is in law an allowance within the meaning of ss. 12 and 13 as expanded by s. 3. The meaning of " allowance " as an English

(1) (1904) A.C., at pp. 352, 353.

word is a matter of fact, not of law (*Girls' Public Day School Trust Ltd.* v. *Ereaut* (1)). The question, in which of its various meanings it is used in its present context, is one of construction and therefore of law (*Binding* v. *Great Yarmouth Port and Haven Commissioners* (2)). The question whether any particular payment made by an employer to an employee is an allowance is prima facie one of degree and of fact (*Currie* v. *Inland Revenue Commissioners* (3)). If, however, none of the relevant facts is treated as in dispute, the question whether they admit of no other conclusion than that the payment is or is not an allowance is one of law (*Farmer* v. *Cotton's Trustees* (4) ; *Ritz Cleaners Ltd.* v. *West Middlesex Assessment Committee* (5)).

I therefore treat the question submitted to us as asking whether the additional payments referred to in par. 5 of the case are capable of being regarded as " wages " within the meaning of the Act. Approaching it from this point of view, I think it clear that, in its context, the word " allowances " is intended by the legislature to be read with a meaning *ejusdem generis* with the words which precede it. That is to say, only such allowances are intended to be included as are in the nature of remuneration akin to wages, salary, commissions, or bonuses. The factor common to all these forms of remuneration is that they are payments designed to confer on the employee a substantial benefit for himself and from which he in fact obtains such a benefit. This is so whether they be for time-work or piece-work or both, and whether they be sums expressly stipulated for or paid *ex gratia* for specially good individual work or for increased profit to the employer from good team work. Clearly not all payments made by an employer to an employee are intended to be included. If an employee were sent on a special journey by his employer and supplied with, or subsequently recouped, the amount of his fare by taxi-cab or railway, it would be impossible to regard the payment as an allowance within the meaning of s. 3. On the other hand, if an employer maintained cottages at a holiday resort and provided his employees in rotation with funds to enable them to spend a week or two there with their families, it would be impossible to regard these payments as other than allowances. Other extreme cases could be imagined, but between extremes a multitude of possible cases could occur in which the question would be essentially one of fact, upon which the decision of a tribunal of fact could not be successfully challenged unless some question of law were involved, and this, as in the present Act, gave a right of appeal.

(1) (1931) A.C. 12, at pp. 25, 28.
(2) (1923) 128 L.T. 743, at p. 745.
(3) (1921) 2 K.B. 332, at pp. 335, 336, 338-341.
(4) (1915) A.C. 922, at p. 932.
(5) (1937) 2 K.B. 642, at p. 653.

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Rich J.

In the present case, the employees are by their contracts of employment required to collect money on behalf of their employer, and they are remunerated by a fixed weekly wage and a commission on the amount collected. I treat it as implied in the way in which the case is stated that they are not required by their contracts of employment to use any particular means of conveyance for the purpose of their collections, but that, if they choose to provide motor cars for the purpose, agreed sums are paid to them designed to amount to about two-thirds of the expenses likely to be incurred by each in using the car in his own collecting territory. In fact, the cost to the employee of using the car for his employer's business is greater than the payments made to him in respect of this user. It follows that an employee who uses a car in this way is a loser by the arrangement unless he is able to make increased collections and thereby gain increased commissions through the larger area which he is able to cover to an extent sufficient to make up the difference, and it is only if increased commissions more than make up the difference that he gets any benefit for himself. If, for example, there had been evidence that all collector-employees were required to provide their own motor cars as a term of their employment, and that the allowance was an element in the weekly payment made to each, or if, though the provision by them of cars was optional, the allowance was designed to result, and in normal practice did result, in an increased remuneration by way of commission when due offset was made for outgoings on the car, the position would be different. But it does not appear from the case stated that any such case has been sought to be made out. The Board of Review has not rested its decision on any such grounds. It treats itself as being in possession of all the relevant facts, and it accepts the position that the only relevant function of the payment of the allowances is to compensate employees, but only to a limited extent, for expenses incurred by them in their employer's business. The ground on which it has treated the payments as coming within the section is that it regards the word " allowances " as uncontrolled by the words which precede it. I think this to be wrong in law as a matter of construction.

I treat the case stated by the learned Chief Justice as intended to include the whole of the facts found by him and regarded by him as relevant. Since the question submitted is submitted as one of law, I think that it should be regarded as asking whether, on the assumption that the facts stated in the case are all the relevant facts, the payments referred to are in law capable of being regarded

as " wages " within the meaning of the Act. So understood, I am of opinion that the question should be answered in the negative.

STARKE J. Case stated pursuant to s. 18 of the *Judiciary Act* 1903-1940.

The *Pay-roll Tax Act* 1941 imposes a tax upon all wages paid or payable by any employer. And, unless the contrary intention appears, the *Pay-roll Tax Assessment Act* 1941-1942 provides that " ' wages ' means any wages, salary, commission, bonuses or allowances paid or payable . . . to any employee as such." Despite the generality of the definition of the word " wages," pay-roll tax is a tax upon wages, that is, upon payments made in cash or in kind for services rendered, whether those payments be by way of pay, commission, bonus or allowances. And it is not, nor is it meant to be, a tax upon anything else. The facts, which I shall not repeat, are stated in the case. But it appears that the taxpayer paid to his travellers, in addition to their weekly wages and commission, car allowances when the travellers provided and used their own motor cars, varying with the size of the territory which the travellers had to cover and the size of the motor cars used by them. Roughly the car allowances represented two-thirds of the expenditure incurred by the travellers in using the cars.

The question is whether those car allowances are wages within the meaning of the *Pay-roll Tax Assessment Act* 1941-1942.

That depends, I think, upon whether the car allowances were made to the travellers as part of the remuneration for their services as travellers or whether the allowances were made to the travellers, not for their services as such, but for the use or hire of the cars by the taxpayer. The answer is an inference of fact, though depending in this case upon admitted facts: Cf. *Usher's Wiltshire Brewery Ltd.* v. *Bruce* (1).

In my opinion the car allowances were wages within the meaning of the Act above mentioned. The actual expenditure incurred in using the cars did not fall upon the taxpayer but allowances were made to the travellers who used their own cars. The taxpayer had neither the possession, the control nor the direction of the cars, when, where or how they were to be used. The cars were used by the travellers at their own discretion and in performance of their services as travellers for the taxpayer.

The jurisdiction of this Court to hear an appeal from the Board of Review depends upon s. 40 (5) of the *Pay-roll Tax Assessment Act*, but that jurisdiction is established in this case because the decision

(1) (1915) A.C. 433, at p. 466.

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of the Board involved an interpretation of the Act: See *Ruhamah Property Co. Ltd.* v. *Federal Commissioner of Taxation* (1).

Accordingly the question stated should be answered in the affirmative.

DIXON J. The question for our consideration arises out of the definition of "wages" in the *Pay-roll Tax Assessment Act* 1941-1942, s. 3.

The *Pay-roll Tax Act* 1941 imposes a tax on all wages paid or payable by any employer and requires it to be paid by the employer who pays or is liable to pay the wages.

The Assessment Act, which is incorporated by the Tax Act, provides that, subject to and in accordance with the provisions of the former, the tax imposed by the latter shall be levied and paid on all wages paid or payable by any employer and that the tax shall be paid by the employer who pays or is liable to pay the wages (ss. 12 and 13).

"Wages" is defined by s. 3 to mean any wages, salary, commission, bonuses or allowances paid or payable (whether at piece-work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such. The definition then proceeds to say that, without limiting the generality of the definition, the word shall include four specified cases. One is the payment under prescribed contracts to the extent to which it is attributable to labour. Another relates to the remuneration of company directors. A third brings in payments by way of commission to insurance canvassers and collectors. The fourth specifies the provision by the employer of sustenance or quarters and the like as consideration or part consideration for the employee's services. There is a sub-section which fixes for the purpose of assessment the monetary equivalent of the sustenance, &c., so provided.

The question we must decide turns, in my opinion, upon the meaning in this context of the word allowance. For I cannot think that the ordinary meaning of the word "wages" would cover the payments with which the case is concerned.

"Allowance" is one of the many words which take their meaning from a context rather than affecting or controlling the meaning of other words of the context in which they occur. For, considered alone and at rest rather than at work with other words, it means the allowing of a thing or a thing allowed. It is only by its application that you discover the kind of thing in mind.

(1) (1928) 41 C.L.R. 148, at p. 151.

In the present case I think that the whole context and subject matter shows that the definition of wages is dealing with the emoluments of employment paid in money or made over in kind to an employee by an employer. The figure of speech " pay-roll " used to describe the tax and supply a title to the Acts gives some indication of the subject taxed. In the definition of " wages " the two first words " wages " and " salary " refer to ordinary forms of remuneration for work done. " Commission " covers percentage rewards and " bonuses " occasional or periodical additions whether contracted for or voluntary. The next word " allowances " seems to me naturally to follow as an attempt to make sure that any other kind of gain or reward allowed or conceded by the employer to the employee for his work is brought within the definition. In language borrowed from Lord *Esher*, it is intended to cover any payment beyond the agreed salary of the employee for services or additional services rendered by him (*Burgess* v. *Clark* (1)). That remuneration for work is the subject is further shown by the four specified cases I mentioned above as included in the definition.

The payment made by the appellant company which the Commissioner says falls within the definition is a separate and distinct amount of money provided by the employer not in respect of the employees' work, but as a subvention towards expenditure. The employees are travellers for the collection on behalf of the appellant company of instalments payable under hire-purchase agreements. They are paid a fixed wage and a commission on the amount collected. These payments are, of course, assessable to pay-roll tax. But certain of the travellers provide and use motor cars for the purpose of collecting the instalments. The cars are neither owned nor provided by the company, their employer. To each of them who so provides and uses a motor car, the employer makes a fixed additional weekly payment in respect of his use of the motor car in connection with the employer's business. There are four different rates adopted, and they are applied according to the area which the traveller is employed to cover. The rates are fixed amounts agreed between the employer and the employee as representing an arbitrary and rough and ready assessment of a sum about equal to two-thirds of the expenditure estimated as likely to be incurred by the travellers in so using the motor cars. They have not been calculated by reference to and do not vary with the actual cost of using the cars in connection with the employer's business, but, in fact, the cost to each traveller is higher than the amount of the weekly payments made to him in respect of the use of the motor car.

(1) (1884) 14 Q.B.D. 735, at p. 738.

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Upon these facts, which are precisely stated in an agreed case, I think that, as a matter of law, the payments in question cannot form part of the wages assessable to pay-roll tax. The amount is not a payment contributing to or forming part of the emoluments or gains of the employee and is not paid to him in respect of his work. It is, I think, nothing to the point that an indiscriminate lump sum paid to an employee providing his own tools or apparatus in respect of his work including the use of his implements might be taxable in its entirety. That consequence arises, not from any intention on the part of the legislation to bring into tax the consideration paid by an employer for the use by an employee of his own implements or chattels, but from the circumstance that no separate or divisible consideration for that advantage is, in the case supposed, payable to the employee. That the consequence was unintended sufficiently appears, I think, from that part of the definition of wages that provides for the inclusion of any payment made under prescribed classes of contracts to the extent to which the payment is attributable to labour. It shows that in the case of an independent contractor the remuneration for labour is to be separated out from the consideration for the use of the materials and plant. How improbable it is that the legislation meant to apply an opposite policy in the case of master and servant.

It appears to me that the agreed fact that the weekly payment in issue is made in respect of the use of the employee's motor car in connection with the employer's business is decisive. It means that it is a distinct and separate sum paid for a distinct and separate consideration beyond the work done, the services performed. Neither the employer nor employee meant it to be a gainful consideration, and in fact it was not gainful.

In my opinion the question in the case stated should be answered : No.

WILLIAMS J. The relevant facts and provisions of the *Pay-roll Tax Act* 1941 and of the *Pay-roll Tax Assessment Act* 1941-1942 are set out in the reasons for judgment of the Chief Justice and I need not repeat them. The tax is imposed on all wages paid or payable by an employer. Wages are defined in s. 3 of the Assessment Act. The definition is so wide that it can include payments which would not be part of the taxable income of the employee. The section expressly provides that the generality of the opening words is not to be limited by the specific instances which follow. It is wide enough to include the full remuneration for which the man is engaged to work (*Abram Coal Co. Ltd.* v. *Southern* (1)).

(1) (1903) A.C. 306, at p. 308.

In the present case the appellant is liable to make three classes of payments to its travellers under their contracts of employment, namely, (1) wages, (2) commission, and (3) sums called car allowances in respect of the use by them of their own motor cars. The amounts payable to employees under contracts of employment may vary indefinitely and be sub-divided into various classes. Employees may receive a certain wage, and be left, out of that wage, to bear all the expenses such as clothing, travelling, and board and lodging that are involved directly or indirectly in placing themselves in a position to earn it, or they may be paid a certain wage and in addition receive other recompense in cash or in kind expressly or impliedly to cover all or certain of their expenses, direct or indirect. These additional payments would all be properly described as allowances in the ordinary and natural grammatical meaning of that word. In order to do their work it is necessary for the travellers to use cars. This is an expense to which they are put in the course of their employment. If the appellant did not make the car allowances it would either have to provide cars for the travellers or increase their wages or commission. But I am unable to see any distinction in substance between such an allowance and another allowance to meet any of the expenses, direct or indirect, already mentioned. Contrast, for instance, an allowance of tea-money to employees who have to work back with the car allowance in question. In each case the employee would be entitled to the payment and it would become his property, whether he actually partook of an evening meal or used his car or not, and irrespective of the amount he actually expended on his meal or car.

As the definition of wages in the *Pay-roll Tax Assessment Act* includes any allowances paid or payable in cash or in kind, it seems necessarily to follow that all three classes of payments are part of the travellers' wages as defined by the Act. It was contended for the appellant that the car allowances to the travellers were not part of their wages, because wages as defined by the Act only included payments in cash or in kind which were of some pecuniary benefit to the employee, whereas the car allowances were a mere reimbursement for the special expense to which the travellers were put because it was necessary to use their cars in order to do their work. But the definition of wages includes *any* allowance paid or payable to any employee as such. The allowances were part of the earnings of the employees (*Midland Railway* v. *Sharpe* (1)). The effect of that decision was abrogated by a statutory provision that where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the

(1) (1904) A.C. 349.

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nature of his employment, the sum must not be reckoned as part of his earnings : See *Jones* v. *International Anthracite Collieries Co.* (1) ; *Woodhouse* v. *Turnerising Roofing Co. Ltd.* (2) ; *Halsbury's Laws of England*, 2nd ed., vol. 34, p. 934. But the *Pay-roll Tax Assessment Act* contains no such provision, and it is not, as I have said, concerned with pecuniary benefit in the sense of the profit that an employee derives from the payments which he receives from his employer, but with the actual remuneration which he is entitled to receive in respect of his employment, quite irrespective of the expenses to which he has been put to earn that remuneration. The car allowances are in a very similar position to the cash allowance paid to the detective in *Fergusson* v. *Noble* (3) to purchase plain clothes in lieu of uniform which was held to be a payment accruing to the officer by reason of his employment and part of the emoluments of his office. They are just as much allowances in the ordinary acceptation of the word as the victualling allowances referred to in *The Tergeste* (4), or the allowances of members of the armed forces referred to in such cases as *Collins* v. *Collins* (5), *Jones* v. *Amalgamated Anthracite Collieries Ltd.* (6) ; *M'Mahon* v. *David Lawson Ltd.* (7), and *Heaney* v. *B. A. Collieries Ltd.* (8).

For these reasons I am of opinion that the question asked in the case stated should be answered in the affirmative.

Question in case answered : Yes. Costs of case to be costs in the appeal. Case remitted to Chief Justice.

Solicitors for the appellant, *Owen Jones, McHutchison & Co.*

Solicitor for the respondent, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

J. B.

(1) (1919) 1 K.B. 156, at pp. 162, 163.
(2) (1933) 26 B.W.C.C. 326.
(3) (1919) 7 Tax Cas. 176.
(4) (1903) P. 26.
(5) (1943) P. 106.
(6) (1944) A.C. 14.
(7) (1944) A.C. 32.
(8) (1944) 171 L.T. 163.