(1993) 03 CAL CK 0037

Calcutta High Court

Case No: None

SMITH (INSPECTOR OF TAXES)		APPELLANT
	Vs	
ABBOTT SAME v. HOLT SAME v. SCOVELL SAME v. SHUTTLEWORTH SAME v. WOODHOUSE.		RESPONDENT

Date of Decision: March 15, 1993

Citation: (1994) 210 ITR 323

Hon'ble Judges: Warner, J; Ralph Gibson, J; Nolan, J; Mann, J

Bench: Full Bench

Judgement

NOLAN L. J. The taxpayers involved in these appeals are journalists employed by Associated Newspapers Ltd. Four of them work for the "Daily Mail." They are Mr. P. J. Abbott, a news layout journalist; Mr. K. P. Holt a staff photographer; Mr. B. S. Scovell, a sports reporter specialising in cricket and football, and Mr. T. R. Shuttleworth, who was at first a news sub-editor and subsequently in assistant chief sub-editor. The fifth tax-payer is Mr. Gary Woodhouse, who is the picture editor of "The Mail Sunday."

In each of the years of assessment under appeal each of them received from Associated Newspapers Ltd. an allowance in reimbursement of the cost of newspapers and periodicals which he bought. It is common ground between the parties in each case (i) that the amount of the allowance was correctly included in the taxpayers assessment under Schedule E as an assessable emolument, and (ii) that he had spent on newspapers and periodicals an amount at least equal to the amount of the allowance. The issue in each case was whether the amount thus spent by the taxpayer and reimbursed by Associated Newspapers Ltd. was deductible in computing his taxable emoluments u/s 189 (1) of the Income and Corporation Taxes Act 1970.

The five taxpayers appealed to the General Commissioners for the City of London against the refusal of the revenue, in the person of Mr. R. W. Smith, inspector of taxes, to allow the deduction of these expenses. Their appeals were heard together on five days in June 1989, during which all of them gave evidence, as did Mr. G. P. Burden, the deputy managing director of the "Daily Mail." On 1 December 1989 the commissioners gave their decision, which was in favour of the taxpayer in all five cases. On 18 October 1991 Warner J. [1992] 1 W. L. R. 201 allowed the appeal of the Crown against that decision in the case of Mr. Abbott, but dismissed it in the four other cases.

Section 189 (1) of the Income and Corporation Taxes Act 1970 reenacted a provision which was first introduced in substantially the same terms by section 51 of the Income Tax Act 1952. It has itself now been re-enacted by section 198 (1) of the Income and Corporation Taxes Act 1988. It reads :

"If the holder of an officer or employment is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

In his judgment Warner J. described the general meaning and effect of the provision in terms which have been accepted and adopted by counsel on both sides as the basis for their arguments, and which I, too, gratefully adopt. He said, at p. 204 :

"It is notorious that that provision is rigid, narrow and to some extent unfair in its operation. In order to satisfy its requirements, an office-holder or employee has to show four things. First, he has to show that he has incurred the expenses in question in the performance of the duties of the officer or employment.... Second, an office-holder or employee has to shown that the expenses he seeks to deduct are expenses that he has been necessarily obliged to incur and defray in the performance of the duties of the office or employment. Third, he has to show that those expenses have been wholly so incurred. The better view seems to be that that goes only to quantum. Last, he has to show that they have been exclusively so incurred."

Each of the five cases stated by the general commissioners had annexed to it a copy of the relevant decision by the commissioners on 1 December 1989. The five cases stated and decisions followed the same pattern and much of the wording is common to them all. The findings and conclusions of the commissioners are expressed in paragraphs 7 and 8 of each decision. That is where the commissioners deal with the duties of the individual concerned, and with the reasons why he bought the newspapers and periodicals in question. The duties differ fairly widely, as one would expect, but for the narrow purposes of the present appeal they can be

considered together because the common features which they share, and on which the claim for a deduction is based, are substantially the same. It was argued on both sides that all five cases stand or fall together, though the Crown would naturally wish to preserve the decision of Warner J. on the case of Mr. Abbott if they fail on the other four. Accordingly, leaving Mr. Abbott aside for the moment, I think it will be sufficient if I quote fully from the findings of the commissioners in relation to one of the other four taxpayers. I take, by way of example, the case of Mr. Woodhouse. Paragraphs 7 and 8 of the decision in his case read as follows :

"7. We find the following facts : (a) [Mr. Woodhouse] during the years of assessment was the picture editor of The Mail on Sunday. His duties involved attendance at The Mail on Sunday officer from Tuesday to Saturday (inclusive), his day being from 9.15 a. m. to approximately 7.00 p. m. at the beginning of the week and from 10.00 p. m. at the end. (b) He was directly responsible to the editor for obtaining illustrations for every page in the newspapers and any supplements. The newspaper currently had 64 pages and the supplements 48 pages. He had an assistant picture editor, a sports picture editor and a secretary assistant immediately under him. He had to generate ideas for illustrations and arrange for obtaining them from in-house and freelance photographers or from other sources. He participated in an early conference on Tuesdays with other editors when the overall look of the paper and its contents were considered, usually starting on the features page. There were seven conferences with the editors of sections of the paper during the week. At each of these (Mr. Woodhouse) was expected to produce a written paper listing his ideas for copy to be discussed. He was expected to suggest to the editors ways in which particular items of news and articles could be illustrated. He was primarily there to put up visual ideas to enhance the look of the paper. He also had mini-conferences with his subordinates who were expected to provide their own ideas which he, in turn, could discuss with the other editors concerned. These were usually held before the daily editorial conference (usually held at about 11.00 a. m) although on Tuesdays they were held afterwards. Once ideas were approved, (Mr. Woodhouse) decided who would do the job and delegated the organisation of the work. (c) To obtain the necessary ideas (Mr. Woodhouse) always spoke to editors, journalists and specialists in the building because they read publications which he did not read. He always read other publications and to this end he purchased all the daily and Sunday newspapers, the Evening Standard and Evening News. The dailies were delivered to his home by the local newsagent, the Sunday papers he purchased himself from that newsagent. He purchased in London each day two or three editions of the evening newspapers. He also purchased each publication of the British Journal of Photography, S.L.R., Amateur Photographer, Paris Match, Stern, Creative Camera, Epoca, Punch, Time, Sussex Courier, Life, Express and Star, Illustrated London News, Tatler, Country Life, Bunte, Cosmopolitan and Melbourne Newsweek. (d) (Mr. Woodhouse) gave us many examples of the profitable use to which he put the reading of these newspapers and periodicals for the purpose of

obtaining ideas for pictures and, in some cases, to obtain copies of the pictures shown therein. We accept the evidence of Mr. Burden and (Mr. Woodhouse) that the reading of this material was inherent in the process of finding ideas for the illustration which it was his duty to obtain and was not merely required to qualify, or maintain the qualifications of, (Mr. Woodhouse) to do the work. (e) He read the newspapers to his house on his railway journey to the office, lasting usually from 8.30 a. m. to 9.15 a. m., on a selective basis and continued this at the office for the first three-quarters of an hour. There was not time afterwards for reading newspapers or periodicals in the office. He also spent time scanning and buying from the railway station bookstall periodicals that would be useful for finding illustrations or ideas for them. He would buy others on the way home and would read them on the homeward journey and at home in the evenings. He spent three to four hours on Sunday morning reading the Sunday newspapers. On holidays he read every newspaper and periodical he could buy, since even then he was on call, and if a story broke where he was, he was expected to file copy. (f) It was necessary for him to do this reading and provide his own reading material because-(a) he had to be equipped with ideas as soon as he started consultations with specialist editors of "The Mail on Sunday;" (b) his duties in the office except for the first three-quarters of an hour gave him no time for such reading; (c) the cuttings library available to employees of "The Mail on Sunday was not equipped to provide the necessary reading facilities; (d) newspaper reading outside office hours was regarded by his employer and by (Mr. Woodhouse) as an essential part of his duties."8. (a) We conclude that the reading of the newspapers and periodicals outside the offices of The Mail on Sunday was in the performance of the duties of the employment notwithstanding that this was done at home and on the train outside the hours of attendance at the offices of The Mail on Sunday, and the money expended on them was in each case expended wholly, exclusively and necessarily in the performance of (Mr. Woodhouses) duties. (b) We find also that (Mr. Woodhouse) spent not less than the sums referred to in paragraph 2 above on newspapers and periodicals, that he purchased them with the sole object of reading the relative material in the performance of the duties of his employment and that there was no private purpose in the purchase. (c) We hold that the sums expended on newspapers and periodicals by (Mr. Woodhouse) as indicated in paragraph 2 above were sums expended wholly, exclusively and necessarily in the performance of the duties of his employment and are therefore expenses admissible as deductions from his emoluments within section 189 (1) of the Income and Corporation Taxes Act 1970."

The primary attack launched against this conclusion by Mr. Moses, on behalf of the Crown, was to the effect that the expenditure in question has not been shown to have been laid out "in the performance of the duties of the employment, and thus fails to satisfy of the requirements set out by Warner J. Mr. Moses acknowledges that the conclusion of the commissioners is one fact. He asked us to overturn it on the basis that, in Lord Radcliffes familiar words, the true and only reasonable

conclusion contradicts the determination of the commissioners : see Edwards v. Bairstow (1956) A. C. 14, 36.

More specifically Mr. Moses submitted that the true and only reasonable conclusion from the primary facts found by the commissioners is that Mr. Woodhouse purchased and read the publications in question, not in the performance of his duties, but in preparing or equipping himself to perform them Mr. Moses referred us to decided cases which exemplified the difference between preparing and performing. One of these was Simpson v. Tata (1925) 2 K. B. 214, in which a country medical officer failed in his claim to deduct the costs of belonging to a number of professional bodies. His case was that in order to carry out his duties efficiently, he had to be aware of all recent advances in sanitary science, and had to keep himself up to date on all medical question affecting public health : without belonging to the bodies in question. It would be difficult if not impossible for him to do so. Dismissing his appeal, Rowlatt J. distinguished between the cost of qualifying for an office and the cost of performing the duties which it entailed. He said, at p. 219 :

"The respondent qualified himself for his office before he was appointed to it, and has very properly endeavoured to continue qualified by joining certain professional and scientific societies so that by attending their meetings and procuring their publication he may keep abreast of the highest developments and knowledge of the day. He seeks to deduct from his assessable income the subscriptions paid by him to these societies as money expended necessarily in the performance of the duties of the office. When one looks at the matter closely, however, one sees that these are not moneys expended in the performance of his official duties. He does not incur these expenses in conducting professional inquiries or get the journals in order to read them to the patients. If he did, that would be altogether different. He incurs these expenses in qualifying himself for continuing to hold his office, just as before being appointed to the office, he qualified himself for obtaining it."

In Brown v. Bullock (1961) 1 W. L. R. 1095 the taxpayer was a bank manager who was instructed by his employers that he must foster local contract and that he should join the club or clubs best suited for that purpose." He failed in his claim to deduct his club subscriptions. In this court Lord Evershed M. R. said, at p. 1101 :

"The phrase which is used in the case, to foster local contacts, is a vague phrase, not capable of precise significance. No doubt it is, like many such phrases, a useful formula so long as it has not to be further expounded. The natural intention on the part of the taxpayers superior officers was no doubt that if he belonged to clubs of this standing in this part of London it gave him a certain status. It would be obvious that if he was a member of these clubs he was the sort of man who would be acceptable in that sort of social circle, and that, no doubt, would be useful to him and to the bank, because he would thereby meet people who might, as a result of meeting him and liking him, tend to have business relation with him or with the bank... But it seems to me that to the short question, When he pays his subscription,

is the sum paid necessarily incurred in the performance of his duties as a bank manager? the answer is, No. What his employers may think it desirable for him to do, socially, is one thing. Performance of the duties of manager of their branch is something else."

Mr. Moses acknowledged that a distinction must be drawn between the acquisition of qualifications or status or knowledge as a general preparation for carrying out the duties of an employment, and what he described as preparation for a particular assignment, which might well fall to be carried out in the actual performance of the employees duties. That is the crucial distinction in the present case. It is helpfully illustrated by the decision of Ungoed Thomas J. in Humbles v. Brooks (1962) 40 T. C. 500. That was the case of a headmaster who was required to teach various subjects, including history. He attended a series of weekend lectures in history at a college for adult education for the purpose of improving his background knowledge of the subject. He failed in his claim to deduct the cost of attending the lectures. The judge said, at pp. 503-504 :

"(Counsel for the Crown) contended that he was not employed to prepare lectures but to deliver them. This, to my mind, is an unreal distinction for present purposes. I cannot recognise that a person who is employed to deliver lectures or to teach is not, when preparing the lectures or the talks which he gives. Doing what he is employed to do that he is not acting in the course of the performance of his duties. Preparing lectures is, to my mind, a necessary part of his duties. That leaves the question, was the respondent in this case, when listening to the lecture at the adult college, preparing his own lecture... First, he attended the course to improve his background knowledge of the subject which he had studied to G.C.E. O level only; second, he gleaned useful information from the lectures at the course; third, he felt the course was essential to keep himself up to date; and, fourth, to provide him with material which he reproduced in the history lessons. There is, in my view, a distinction between qualifying to teach and getting background material - and even getting information and material which he reproduced in his own lecture - on the one hand, and preparing his own lecture for delivery on the other hand. The statement, in then passages in the case stated, that the lectures at the college provided the respondent with material which he reproduced gets nearest to the performance on his duties within the section, but even it this element could be treated in isolation, it isolation, it goes no further than providing material - just as any background information would provide material - and is not, of itself, part of the preparation of his own lecture. It is, to my mind, qualifying for lecturing, or putting himself in a position to prepare a lecture. It is not the preparation of a lecture. In this sense, the distinction is between preparation for lecturing on the one hand and the preparation of a lecture on the other hand. In my judgment, the respondent, when he was attending a course and listening to a lecture, was not preparing his own lecture, and he was therefore not acting in the performance of his duties with the meaning of paragraph 7 of the ninth Schedule."

Another helpful illustration of the crucial distinction was given by Warner J. in the present case. After referring to the cases which I have cited and other authorities for the proposition that expenditure incurred by the holder of an office or employment in qualifying himself, or keeping himself qualified to hold it, is not incurred in the performance of the duties in the statutory sense, he continued (1992) 1 W.L.R. 201, 212-213 :

"On the other hand, it is not in my judgment the law that no reading that is preparatory to the performance of duties of an office or employment can ever itself be part of the performance of the duties of that office or employment. There are manifestly cases where preparatory reading is part of the duties of an office or employment. An example that springs to my mind is that of an employed solicitor reading in preparation for giving advice to a client the papers in that clients case and the statutory provisions or other authorities to it. That reading is just as much in the performance of the duties of his employment as is the giving of the advice itself."

Mr. Moses fully accepted this proposition. In reply to Mann L. J. in the course of argument he equally accepted that a judge fairly be described as performing the duties of his office when he studies the case papers and skeleton arguments in the case which he is about to hear. He submitted that, by way of contrast, the duties of Mr. Woodhouse, as described in the stated case, could not be regarded as including his preparatory reading. The duties, he said, were those set out in paragraph 7 (b) of the case. Mr. Woodhouse performed his duties by generating ideas and carrying them into effect. The preliminary reading described in the following sub-paragraphs of paragraph 7 merely provided him with general background information. In the terms of sub-paragraph that he was "equipped" with the knowledge which he needed to perform his tasks.

The submissions of Mr. Moses in relation to the other four taxpayers followed the same course. In the case of Mr. Shuttleworth the relevant findings were that as news sub-editor for particular pages of the newspaper he had to select and check the news reports, re-writing them as necessary, determine the headlines and page layout, choose pictures, select the type and consider whether any legal problems arose. As assistant chief sub-editor he was in charge of a number of sub-editors and had to check and correct as necessary their work as already described. Properly to carry out his duties, it was found, he needed to have an up-to-date knowledge of all aspect of the news. In order to select copy for the next edition of the "Daily Mail" he had to know what other newspapers were doing about particular news items, what stage various issues in the story had reached, judge every story in relation to everything else going, not repeat stories appearing in other newspapers the previous day and take the story forward (where there was a continuing event) from what had appeared in the previous days newspapers, as well as in the "Daily Mail." It was to this end that he purchased the other newspapers and periodicals in question.

In the case of Mr. Scovell the corresponding findings are that he reported football and cricket matches but most of his time was spent writing about events in the sports world rather than reporting what was happening in (sic) the field. He developed and explored the information which he acquired from reading other newspapers and followed up ideas obtained from them to provide stories to report for the "Daily Mail." He reported to the sports editor at 10.00 a. m. on an average morning and was expected to know what had been going on as reported in other newspapers.

Mr. Holt, the staff photographer, worked at and from home as well as from the office, and was on call effectively for 24 hours a day. Paragraph 7 (b) in his case states :

"The duties of the employment were to provide ideas for photograph as well as taking them. He would telephone or be telephoned to discuss ideas gleaned from reading the newspapers and accept the assignment he was to pursue. He would go and do the work, return to the office to develop the film, print it and give the pictures to the picture editor. There was no set time for going home."

Paragraph 7 (c) adds :

"(Mr. Holt) needed to read newspapers to obtain ideas for stories and photographs and to check that any idea he had was not already dealt with by another newspaper, whether local or national.... Furthermore, he needed to know the latest news so that he was always ready for discussion of matters raised by the picture editor."

It was with these object in view, said the commissioners, that the purchased the other newspapers and periodicals.

Finally, in the case of Mr. Abbott, the news layout journalist, the corresponding passages read :

"7... (b) His duties were to create a page or series of pages with news stories and pictures relative to one another and to the advertisements in such a way as to be attractive and make people want to read it. He organised illustration with types, graphs or drawings. He had to work out measures for headlines for sub-editors to write, the lengths of stories and the size of pictures. The creation and preparation of page layouts were designed for the use of sub-editors in order to get the stories sorted out. Everything for a particular page had to be carefully measured for the space available and (Mr. Abbott) was directly responsible to the night editor or his deputy and was responsible for the last production stage before the page was published. (c) (Mr. Abbott) needed to read newspapers and periodicals in order to keep himself informed of current news and how other papers were dealing with it so that he would know what picture to place in relation to a story. He had to have this information so that when he went to the office he did not have to be primed. As a result when he was given a series of pictures, he would known from his reading

which were appropriate to a given story. The relative information had to be known by him before he started work in the office. The pictures had to suit the stories and it was no use printing pictures which had already appeared in other newspapers. With these objects in view he purchased all the daily and Sunday newspapers. In addition he purchased the New Statesman, Newsweek, Time, Campaign, U.K. Press Gazette, Kent Messenger, T. V. Times and Radio Times."

All five of the cases contained, mutatis mutandis, the findings which are set out in paragraph 7 (f) of the case of Mr. Woodhouse. The first part of those findings in the case of Mr. Shuttleworth appears at paragraph 7 (e) and states :

"It was necessary for him to do this work outside the office because (i) he had to be equipped with the news before he started operations in the Daily Mail offices."

Paragraph 7 (f) of Mr. Scovells case states :

"It was necessary for him to do this work outside the office because (i) he had to be equipped with the news before he started consultations with the sports editor."

The corresponding wording in paragraph 7 (f) of the case of Mr. Holt is :@

"It was necessary for him to do this reading and provide his own reading material otherwise than when he was in the office or an assignment because - (i) he had to be equipped with the news and ideas as soon as he started discussions for the assignments or the assignments themselves."

Finally, in the case of Mr. Abbott paragraph 7 (e) reads :

"It was necessary for him to do this reading and provide his own reading material otherwise than when he was performing his office duties because - (i) he had to be already equipped with the news and ideas as soon as he started his layout and checking work in the office; one, two, or even three pages would be waiting for him on his arrival at the office."

In each of the five cases the relevant sub-paragraph concludes with the finding that "newspaper reading outside office hours was regarded by his employer and [the taxpayer] as an essential part of his duties." In each case Me. Moses directed our attention to the use of the word "equipped" in the first part of the sub-paragraph, and Mr. Whiteman for the taxpayers directed our attention to the concluding words of the sub-paragraph. Paragraph 8 of each of the other four cases is couched in virtually identical terms to those of paragraph 8 of Mr. Woodhouses case.

When asked to say what approach commissioners should adopt in considering what the duties of an employment comprised for the purposes of section 189 (1) Mr. Moses submitted that they should identify the things which the employee has to do as practical matter in performing the work of that particular employment. Mr. Whiteman supported that submission, and I would for my part accept it as a correct statement of the law. Adopting this approach to the circumstances of the present

case, the question the commissioners had to ask themselves was whether the reading of other newspapers and periodicals should be regarded as a means of maintaining the general qualifications and fitness of the taxpayers to carry out the employments which they held, or whether it formed part of the daily performance of the duties of those employments. This appears to me to be not merely a question of fact, as is accepted, but essentially a matter of practical experience and judgment. The commissioners were referred to all of the relevant authorities, including Humbles v. Brooks, 40 T. C. 500, and there is no reason to suppose that they misdirected themselves as to the law in any respect. Does the true and only reasonable conclusion from the facts as found contradict their determination ? In my judgment it does not. Their conclusions appear to me to follow perfectly reasonably, and indeed almost inevitably, from their primary findings. The submission that the reading by the taxpayers of other newspapers and publications could only reasonably be regarded as a means of adding to their general qualifications seems to me to ignore the short-lived and almost ephemeral nature of the benefit which they thus acquired. They were studying the news, not history. The purpose which their reading was designed to serve, and did serve, was the production of the next edition of the "Daily Mail" or "The Mail on Sunday." In these circumstances, their reading seems to me to constitute preparation for a particular assignment.

Mr. Moses did not suggest that this was a case, like those involving the cost of travelling from home to work, in which a line can be drawn at the office door in order to determine the point at which the performance of duties begins. On the contrary, he submitted that the reading of other newspapers and periodicals within the office, not less than outside it, could only reasonably be regarded as preparatory to the performance of duties. Thus, said Mr. Moses, Mr. Woodhouse did not begin to perform his duties after the first three-quarters of an hour at the office which (see paragraph 7 (e) of the decision in his case) he normally spent in completing his reading. On this line of argument, his conversations with the other journalists in the building who read papers which he did not read would equally constitute mere preparation for the performance of his duties.

Conversely Mr. Holt, the staff photographer, did most of his work on assignments outside the office and away from home and Mr. Moses accepted, of course, that in carrying them out Mr. Holt was performing the duties of his employment,. In Mr. Holts case, however, it was found at paragraph 7 (d) (ii) that, in addition to reading newspapers before he left home,

"it was his practice to buy the local newspapers of the town in which he was carrying on an assignment and read them before leaving the town to see whether there was anything of interest to the Daily Mail."

Did he, then, cease to perform his duties during the time when, in mid-assignment, he bought and read the local newspapers ? Mr. Moses submitted that this must

necessarily follow.

Mr. Moses, who argued the Crowns case with his customary skill and frankness, acknowledged that his submissions on the facts of the present case resulted in the making of some highly artificial distinctions. He contended, however, that this was the unavoidable consequence of applying section 189 (1) in the strict and literal sense in which it had always been construed by the courts, and which Parliament had approved by its numerous re-enactments. For my part, I accept at once that the rule is strict, and must be strictly applied, but I do not accept that strictness need involve the drawing of artificial distinctions. The view of the matter which the commissioners evidently formed was that the five taxpayers began to perform their daily duties when they read the newspapers and periodicals which they had selected to provide some of the raw material for the contribution which they would make towards the finished product later in the day. This seems to me to be a sensible and natural appraisal of what was evidently a continuous process, and one which conforms fully with section 189 (1). The practical application of the strict statutory test must always depend on the precise facts. It is interesting to note in this connection that shortly before the decision of the commissioners in the present case the special commissioners had dismissed appeal by journalists on the Glasgow Herald who were making similar claims : see Fitzpatrick v. Inland Revenue Commissioners (No. 2) (1992) S. T. C. 406, where the unsuccessful appeal of the taxpayers to the Court of Session is reported. Although the working backgrounds to the two sets of appeals were similar, the evidence and the findings in the Fitzpatrick case were significantly different from those in the present case; the Court of Session regarded the decision of Warner J. as being distinguishable, and of no material assistance; see per Lord President Hope, at p. 439.

Before considering the remaining matters which were touched on in argument, I must turn to the ground on which Warner J. allowed the appeal of the Crown in the case of Mr. Abbott. It will appear from what I have said that the findings of the commissioners in relation to him were very similar to their findings in relation to the other four taxpayers. There was however, one difference, to which the judge attached critical importance. It arose from the evidence of Mr. Burden and is illustrated in paragraph 7 (d) of the case of Mr. Woodhouse, quoted above. The second sentence of that paragraph reads :

"We accept the evidence of Mr. Burden and [Mr. Woodhouse] that the reading of this material was inherent in the process of finding ideas for the illustrations which it was his duty to obtain and was not merely required to qualify, or maintain the qualifications of, [Mr. Woodhouse] to do the work".

Similar findings appeared in the cases of Mr. Shuttleworth, Mr. Scovell and Mr. Holt except that in the cases of Mr. Shuttleworth and Mr. Holt the finding described the reading as "a necessary part of" the duties rather than being "inherent in" their performance : but there was no such finding in the case of Mr. Abbott. It is a curious

omission. It is hard to suppose that Mr. Burden was not asked the same questions when giving evidence about Mr. Abbott as he was when giving evidence about the other four taxpayers. The omission could readily have been repaired, or at least addressed, by one or other of the parties asking the commissioners to make a finding on the point in Mr. Abbotts case when the draft case was sent to them, as we were told it was, for comment. Alternatively, when the matter came before Warner J. either party could have asked him to remit the case to the commissioners for them to make as finding on the point, in the exercise of his wide powers u/s 56 (6) and (7) of the Taxes Management Act 1970. Neither course was taken. Perhaps neither party wanted to take the risk of getting an unwelcome answer.

Mr. Whiteman submitted to Warner J. that the absence of the "Burden findings" as the judge called them ([1992] 1 W. L. R. 201, 209) in the case of Mr. Abbott was immaterial because the same ground was covered by the findings in paragraph 7 (9) (iv) and paragraph 8 (a) of the decision on his appeal. I have already quoted these findings directly or indirectly, but I repeat them for ease of reference :

"7 (e) (iv) newspaper reading outside officer hours was regarded by his employer and [Mr. Abbott] as an essential part of his duties. 8 (a) We conclude that the reading of the newspapers and periodicals of the duties of the employment, notwithstanding that this was done at home and outside the hours of attendance at the Daily Mail offices, and the money expended on them was in each case expended wholly, exclusively and necessarily in the performance of [Mr. Abbotts] duties."

Warner J., at p. 216, decided that paragraph 7 (e) (iv) was "at best a finding that Associated Newspapers Ltd. and Mr. Abbott himself regarded his newspaper reading as an essential part of his duties. It is not a finding by the commissioners themselves that it did." He accepted that paragraph 8 (a), although it begins with the words "We conclude," might be taken to contain findings of fact, the commissioners conclusion being that expressed in paragraph 8 (c). What was lacking from paragraph 8 (a), he said, was any finding to negative the contention of the Crown that in part at least Mr. Abbotts reading was undertaken in order to keep him qualified to perform the duties of his employment. In the result the judge came to the conclusion, "after considerable hesitation," that in Mr. Abbotts case the findings of fact of the commissioners did not justify their determination.

I cannot share these views. Paragraph 7 (e), like the Burden findings, show that the commissioners accepted the evidence of Mr. Burden and the taxpayer concerned as an important part of the basis for their decision. Paragraph 8 (a) seems to me to dispose completely of the Crowns contention that Mr. Abbotts reading was undertaken, at least in part, merely to keep him qualified. All that the Burden findings in the other cases add is that the commissioners accepted what was really the opinion rather than the evidence of Mr. Burden and the taxpayer concerned on the central issue in the case, namely whether the reading was a necessary part of the duties of the taxpayer or was merely required to qualify him or maintain his

qualifications. The absence of the Burden findings in the case of Mr. Abbott may have been due to a mere oversight, as Mr. Whiteman suggested, but whether accidental or deliberate it plainly did not affect the commissioners conclusions. I cannot regard it as a justification for holding that the true and only reasonable conclusion from the primary facts found in Mr. Abbotts case, as distinct from the others, contradicts the determination of the commissioners. Mr. Moses, for his part, did not submit that the Burden findings were crucial : he could hardly have done so without sacrificing his appeals in the case of the four taxpayers other than Mr. Abbott. He submission for the reasons already given.

Following the terms of the summary by Warner J. [1992] 1 W. L. R. 201, 204, of the requirements imposed by section 189 (1), Mr. Moses next submitted that even if the expenses were laid out in the performance of the duties, the taxpayers were not "necessarily obliged to" incur them, nor could they be said to have been laid out "wholly and exclusively" in the performance of duties. He accepted, realistically, that if he failed in his first and main submission, he was unlikely to succeed in these remaining arguments and I can, I hope, without disrespect deal with them more shortly.

The gist of his submissions on the words "necessarily obliged" was that there were insufficient findings in the cases stated to justify the conclusion that the expenditure was incurred necessarily in the performance of the duties in the sense that the duties objectively considered could not be performed without such expenditure. It may well be, continued Mr. Moses, that the duties of the employment could not be performed as efficiently without preparatory reading, but there are no findings that they could not be performed at all without such reading; as the findings make clear, he said, newspapers and periodicals were not the only source of the acquisition of general knowledge of the daily news.

Mr. Moses relied in this connection on a passage in the judgment of Donovan L. J. Brown v. Bullock [1961] 1 W. L. R. 1095, 1102 :

"The test is not simply whether the employer imposes the expense, but primarily whether the duties do, in the sense that irrespective of what the employer may prescribe, the duties themselves involve the particular outlay. This result follows in my opinion from the decision of the House of Lords in Ricketts v. Colquhoun [1926] A. C. 1."

Mr. Whiteman submitted that this statement of Donovan L. J. went too far, and had not been applied in any later case. I for my part do not read Donovan L. J. as saying any more than was said by Lord Blanesburgh in the very well known passage from his speech in Ricketts v. Colquhoun [1926] A. C. 1, 7 where, speaking of the statutory predecessor of section 189 (1), he said :

"Undoubtedly its most striking characteristic is its jealously restricted phraseology, some of it repeated apparently to heighten the effect. But I am also struck by this,

that, as it seems to me, although undoubtedly less obtrusively, the language of the rule points to the expenses with which it is concerned being only those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties - to expenses imposed upon each holder ex necessitate of his office, and to such expenses only. It says :

If the holder of an office - the words, be it observed, are not if any holder of an officer - is obliged to incur expenses in the performance of the duties of the office - the duties again are not the duties of his office. In other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective :"

As appears from their context, these remarks of Lord Blanesburgh were spoken with reference to the duties of the officer - the office of the recorder of a city in that case. I would suppose that the duties of an office tend to be more uniform and more readily defined than those of a commercial employment. Even in that context, however, Land Blanesburghs remarks need to be read with the speech of Lord Wilberforce in Pook v. Owen [1970] A. C. 244 where his Lordship, after referring to the passage which I have cited, said, at p. 263 :

"Now, I would entirely agree that rule 7 [of the Rules applicable to Schedule E in Schedule 9 to the Income Tax Act 1952] is drafted in an objective form so as to distinguish between expenses which arise from the nature of the office and those which arise from the personal choice of the taxpayer. But this does not mean that no expenses can ever be deductible unless precisely those expenses must necessarily be incurred by each and every office holder. The objective character of the deductions allowed relates to their nature, not to their amount : to take the often quoted case of the archdeacon, it would be absurd to suppose that each holder of that officer or even each archdeacon of Plumstead Episcopi travels the same distance or travels by the same means in a year, or that his choice of residence would affect his entitlement"

So the test is whether the expenses are dictated by the nature of the employment, as distinct from the personal choice of the taxpayer. The question whether the taxpayer is necessarily obliged to incur them is to be answered not simply by reference to the legal obligations imposed by the contract of employment - though these may be highly relevant - but by considering once again what the employee has to do as a practical matter in performing the work of his employment. Judged by this yardstick, the commissioners conclusion that each of the taxpayers was necessarily obliged to incur them is, to my mind, amply justified by the primary findings to which I have referred.

It remains to consider the words "wholly" and "exclusively." Mr. Moses advanced no argument to us on the requirement imposed by the word "wholly." He accepted that this adverb refers to the quantum of money on which no point was taken by the Crown : see in this connection Bentleys, Stokes and Lowless v. Beeson (1952) 2 All E.

R. 82, 88-89, per Romer L. J. That case was concerned with the meaning of the words "wholly and exclusively" in the context of the rule governing. The deduction of expenses in computing profits taxable under Cases I and II of Schedule D, but it is common ground that it applies equally to the content of those words as they appear in the Schedule E rule.

In relation to the word "exclusively" Mr. Moses submitted, as I have already mentioned, that the expense were incurred in part at least by way of general preparation for the continued holding of the employment. Thus, for example, Mr. Scovell was found to have been furnished with ideas, and Mr. Shuttleworth with up to date knowledge, which, it was submitted, would be of continuing use to them; and the finding in Mr. Holts case in relation to his early morning newspaper reading includes the statements that :

"He scanned them at first and then read the items that interested him in more detail. He made notes and also took cuttings for filing and future use."

Mr. Moses accepted, however, once again in the light of the judgment of Romer L. J. in the Bentleys, Stokes and Lowless case, at pp. 83-89, that if in truth the sole object of the expenditure was to read the newspapers and periodicals in the performance of the daily duty, then the fact that this activity necessarily involved the attainment of some other result, or the enjoyment of some incidental benefit, did not prevent the expense from being deductible. He accepted, as he put it, that if the benefit was purely residual, then his argument on this issue could not succeed. Finally he accepted, of course, that the question once again was one of fact. And once again the conclusion of the commissioners in paragraph 8 (c) that the sole object of the expenditure was to read the relevant material in the performance of the taxpayers duties is to my mind fully justified and incontrovertible.

In this as in every other aspect of the argument before us the submission of Mr. Moses on the law appeared to me to be impeccable, but his assault on the commissioners findings and conclusions of fact was in my judgment unsustainable. I would dismiss the appeals of the Crown in the cases of Messrs. Woodhouse, Shuttleworth, Scovell and Holt, and would allow the appeal of Mr. Abbott.

MANN L. J. I agree.

RALPH GIBSON L. J. I also agree. I have nothing to add to the reasons given by Nolan L. J. The appeals of the Crown will be dismissed. The appeal of Mr. Abbott will be allowed.

Crowns appeals dismissed with costs.

Mr. Abbotts appeal allowed with costs.

Leave to appeal refused.

15 June. The Appeal Committee of the House of Lords (Lord Keith of Kinkel, Lord Griffiths and Lord Browne-Wilkinson) allowed a petition by the Crown for leave to appeal.

Solicitors : Berwin Leighton; Solicitor of Inland Revenue.

H. D.