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J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 138/78

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

J. A. ARIS
W. B. BROWN
N. E. EDWARDS v. R. - INCOME TAX

Mr. H. Hamilton and Mr. L. Brown for Collector of Taxes.

Mr. H.G. Edwards, Q.C. and Mr. Enos Grant for Respondents.

June 13, 1979.

ZACCA, J.A.

Several complaints were laid by the Collector of Taxes against Mr. Julius Aris, Mr. Noel Edwards and Mr. Walter Brown for the recovery of Income Tax which is assessed against them. There are three complaints with respect to Mr. Aris, one with respect to Mr. Edwards and three with respect to Mr. Brown.

The Resident Magistrate, after hearing preliminary submissions, ruled that the complaints were statute barred, and having been asked to state a case for the opinion of the Court of Appeal, the Resident Magistrate posed three questions for the opinion of this court. We propose answering these questions, and at a later date we propose to give our reasons in writing. The three questions asked by the Resident Magistrate for the opinion of this court are:-

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- (1) Q. Whether the time for the institution of proceedings for Income Tax is subject to a limitation of six years after the year of assessment?
- A. No. There is no limitation period for the bringing of a complaint for recovery of Income Tax which has been properly assessed.
- (2) Q. Whether the Tax Collection Act, Section 46(1) governs the institution of proceedings in addition to recovery of penalty for seizures etc?
- A. Proceedings may properly be laid under Section 46(1) of the Tax Collection Act for the recovery of Income Tax that has been properly assessed.
- (3) Q. Whether proceedings should be instituted in a court of civil and not criminal jurisdiction?
- A. Proceedings instituted under Section 46(1) of the Tax Collection Act are summary proceedings coming before a Resident Magistrate sitting in Petty Session and are in the nature of civil proceedings.

We propose therefore remitting this case to the Resident Magistrate for re-hearing and there will be no order as to cost.