JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 35 of 1968

BEFORE: The Hon. Mr. Justice Eccleston, Presiding
The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Smith, J.A. (ag.)

Sir Neville Ashenheim - Appellant

vs.

The Commissioner of Income Tax - Respondent

Mr. David Coore, Q.C. and Mr. W. Waters-McCalla for the Appellant.

Mrs. Hudson-Phillips for the Respondent.

June 17th, 18th, 19th, 22nd, 1970
9th October, 1970

FOX J.A.

This is an appeal from a judgment of Parnell, J. reversing a decision of the Income Tax Appeal Board and restoring a determination of the respondent which assessed the appellant for the payment of Income Tax on his salary for the year 1963 as the Ambassador for Jamaica to the United States of America. The questions for decision are whether the appellant was in the "employment" of the Government of Jamaica during the year of assessment, and whether this "employment" is within the provisions of section 5(b)(iii) of the Income Tax Law. For the appellant it was contended firstly, that he was the occupant of an office of profit; and secondly, if he was to be regarded as an employed person, that the word "employment" as it occurred in the provisions of section 5(b)(iii) meant "self employment" and was not applicable to him. The respondent submitted that the appellant was an employed person and that in its grammatical and ordinary sense, the word "employment" in section 5(b)(iii) described an employer employee relationship, and should be so understood since this would not result in any absurdity, or lead to inconsistency with other provisions of the law.

The answer to the questions in this appeal will entail a consideration of the provisions of section 5 of the Income Tax Law, Law 59 of 1954 as amended by the Income Tax (Amendment) Law, 1958, Law 42 of 1958, and the Income Tax (Amendment) Act, 1963 - Law 9 of 1963. These

provisions describe the incomes which are chargeable to income tax in Jamaica, and are as follows:-

"5 - Income tax shall, subject to the provisions of this Law, be payable by every person at the rate or rates specified hereafter for each year of assessment in respect of all income, profits or gains respectively described hereunder -

(a) the annual profits or gains arising or accruing -

(i) to any person residing in the Island from any kind of property whatever, whether situate in the Island or elsewhere, and

(ii) to any person residing in the Island from any trade, business, profession, employment or vocation whether carried on in the Island or elsewhere; and

(iii) to any person whether a Commonwealth citizen or not, although not resident in the Island, from any property whatever in the Island, or from any trade, business, profession, employment or vocation exercised within the Island;

(b) profits or gains accruing in or derived from the Island or elsewhere, and whether received in the Island or not in respect of -

(i) dividends, discounts, interests, annuities, pensions or other annual sums;

(ii) rents, royalties, premiums and any other profits arising from property;

(iii) any employment or vocation;

(c) all emoluments, including all salaries, fees, wages and perquisites whatsoever, arising or accruing from any office or employment of profit exercised or carried on in the Island; and including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise; and all annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit;

Provided that -

(i) the said emoluments shall not include the payment for any passage from or to the Island for the purpose of leave granted in respect of the employment;

(ii) the said emoluments shall not include emoluments of an office or employment of profit held by a person in the course of a trade, profession or business if either -

(A) any emoluments of that office or employment were taken into account in the case of that person in computing the profits or gains of that trade, profession or business for the purposes of income tax for the year of assessment; or

(B) the office or employment is such that the emoluments thereof would ordinarily be taken into account in computing the profits or gains of that trade, profession or business;

(iii) the annual value of any quarters or residence shall, for the purposes of this paragraph, be determined by the Commissioner having regard to such regulations (if any) as may be prescribed by the Minister but, as regards any person, such annual value shall be deemed not to exceed ten per centum of the total emoluments (other than the value of the quarters or residence) paid or payable for the year of assessment to such person. "

The facts are not in dispute. The appellant is a commonwealth citizen domiciled in Jamaica, and a Solicitor. From 1926 to 1962 he was a partner in the firm of Milholland, Ashenheim & Stone. On March 31st, 1962, he went on pre-retirement leave. On 30th September, 1962, he retired effectively from the practice of law. In a letter from the Governor-General dated 29th August, 1962, he was appointed to be "the Jamaican Ambassador to Washington with salary at the rate of £3,500 a year" for an expected period of three years. The letter also stated the allowances and other facilities which accompanied the appointment. The appellant discharged the duties of Ambassador in Washington from 9th September, 1962, until March, 1967. During this period, the monthly salary cheques, less PAYE deductions, which the appellant received were lodged to his account in his bank in Washington. No part of his salary was remitted to Jamaica. From time to time, the appellant protested

to the Ministry of External Affairs, without success, against the PAYE deductions. On 22nd July, 1968, the Income Tax Appeal Board set aside a decision of the respondent made on 27th January, 1967, which included the appellant's salary as Ambassador within his chargeable income. The Board was of the view that the duties of the appellant as Ambassador in Washington were not "exercised or carried on in the Island." Consequently, his salary did not fall within the provisions of section 5(c) of the Law. Parnell,J. affirmed this view, and the point has been conceded by Counsel for the respondent. But Parnell J. disagreed with the further finding of the Board that the salary of the appellant as a person employed by the Government of Jamaica was only chargeable to income tax by virtue of the provisions of section 5(c), and he held that the salary was also chargeable to tax as a profit or gain derived from the Island, and whether received in the Island or not, in respect of the appellant's employment by the Government of Jamaica, and so within the scope of the provisions of section 5(b)(iii).

The word "employment" may be used in several senses. The particular sense in which it is to be understood depends upon its context. When it occurs in conjunction with the words "trade, business, profession, or vocation" as in section 5(a)(ii) and (iii), it means the way in which a man employs himself so as to make profits; or as Rowlatt J. puts it in Davies v. Braithwaite 18 T.C. 198 at 203 "the way a man busies himself" for the purpose of gain. Such a man is "self-employed", and is charged with the payment of income tax on "the annual profits or gains arising or accruing from" his "employment". On the other hand, when the word is used to describe the activities of the holder of an "employment of profit," as in section 5(c), it is meant to describe a situation in which a man is set to work by another. Such a man puts himself at the disposal of an employer by virtue of a contract of service, and whether he is a professional man or not, he is in the 'employment' of his employer, as distinct from being 'self-employed'. His remuneration is described as "emoluments, including all salaries, fees, wages, and perquisites whatsoever." These words are wide enough to cover, and are an appropriate description of all the monetary rewards received by an employee in return for services rendered under a contract of employment.

In section 5(b)(iii) the activity described is "any employment or vocation." The difference between this context and that described by the words "trade, business, profession, employment or vocation," or by the words "office or employment of profit" is at once apparent. Section 5(b)(iii) first appeared as a distinct provision, but not in its present form, in the Income Tax Law, 1954, Law 59 of 1954. This Law repealed and replaced Cap. 156, which was the first Income Tax Law enacted in Jamaica in October, 1919. Section 4 of Cap. 156 provided for the payment of income tax in respect of incomes falling within five defined categories, namely, the income of persons;

(a) residing in the Island;

(b) not residing in the Island,

(c) whether residing in the Island or not and "derived from any public office or employment of profit,"

(d) residing in the Island "and derived from any pension";

(e) (i) residing in the Island and "derived from any source whatever in or out of this Island;"

(ii) not residing in the Island and "derived from any source whatever in this Island."

It is interesting to note that in categories (a) and (b) the word "employment" was used in association with the words "trade or vocation." When this context is compared with that in which the word was used in category (c), it is clear that, even at that early stage, not only was the legislature aware of the different meanings of "self-employment" and "employment by another" which could be conveyed by the word "employment," but also the verbalism which ensured expression of these different meanings had already been developed and was well understood by the draftsman. Of particular significance also is category (e) the omnibus provisions of which were designed to catch any income which may have escaped the meshes of the previous categories.

The charging provisions of the Income Tax Law, 1954, are in section 5. Structurally, this section differs noticeably from section 4 of Cap. 156. Nevertheless, it is not difficult to see that the provisions of section 5(a) (i) (ii) (iii) cover the same area as categories (a) and (b) in section 4(1) of Cap. 156, and that in 5(c), the same sort of income

is contemplated as in 4(1)(c). There was left to be covered the area described by categories (d) and (e) in section 4 of Cap. 156. It is at this point that the structural changes which were made in section 5 of Law 59 of 1954 are likely to obscure the intention of the legislature. The relevant provisions are in 5(b), the opening words of which describe "profits or gains accruing in or derived from the Island or elsewhere and whether received in the Island or not." This is as wide a description of a source of income as that in category (e). The types of "profits or gains" to which these opening words applied were specified in three sub-paragraphs - (i) was concerned with "dividends ..... pensions or other annual sums." The neat way in which category (d) Cap. 156 was disposed of should be observed. (ii) dealt with rents ..... and any other profits arising from property" and (iii) referred to "any employment, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise but not including the payment for any passage from or to the Island for the purpose of leave granted in respect of the employment."

In arriving at the meaning of the words "any employment" in section 5(b)(iii) of the 1954 Law, it will be helpful to bear in mind the permissible scope of all income tax legislation. Income tax may be charged only upon,

(1) income which is in, or is derived from the Island, or

(2) income of a person domiciled or resident in the Island.

In section 5(a)(ii) and (iii) it would seem that the legislature had exhausted its taxing powers with respect to the incomes of self employed persons. On the other hand, with respect to the income of persons employed by another, the provisions of section 5(c) applied only if the employment was "exercised or carried on in the Island." The area left uncovered by section 5(c) is obvious, and the need to bring persons employed by another within the sweeping ambit of the opening words of section 5(b) would have been clear. This was effected by use of the simple phrase "any employment" in section 5(b)(iii). The definitive provisions which follow put it beyond question that the type of employment which was meant was employment by another. It should be noticed that

PAYE was introduced into the Island for the first time by Law 59 of 1954. The statutory incomes were defined in section 6. Subsection (1) provided that:-

> "the statutory income of any person shall be the income of that person for the year immediately preceding the year of assessment:
>
> Provided that in respect of income arising from emoluments (as specified in paragraph (c) of section 5 of the Law) the statutory income shall be the income of that person for the year of assessment."

The provisions for the collection of PAYE deductions are in section 60(2). It will therefore be seen that PAYE was intended to apply only to emoluments arising or accruing from "any office or employment of profit exercised or carried on in the Island," and that the profits or gains of a person employed by another which did not fall within the scope of 5(c), but which were caught by section 5(b)(iii) were unaffected by this new machinery for the collection of tax. The combined effect of section 5(c) and section 6 made a distinction not only as between the income of self employed persons, and that of persons employed by another, but also in the latter category, it differentiated further between the worker inside the Island, who was made subject to PAYE, and the worker outside the Island who was not.

In July, 1958, the Income Tax (Amendment) Law, 1958, Law 42 of 1958, was enacted. Section 5(b)(iii) of the principal law was amended so as to read "any employment or vocation." Section 5(c) was also amended by transferring to it the definitive provisions which had followed the phrase "any employment" in section 5(b)(iii) of the principal law. Section 5(c) now read as it has been set out in paragraph 2 above. These amendments are the cause of the whole controversy in this case. Counsel for the appellant contended that by associating the word 'employment' with the word 'vocation' in section 5(b)(iii), and by removing those matters which were germane to salaried employment from that section to section 5(c), the legislature intended it to be understood that the employment to which section 5(b)(iii) now referred was "self-employment." The difference between the self employment in section 5(a)(ii) and (iii) and the self employment in section 5(b)(iii), suggested counsel, was indicated by the

phrase "annual profits or gains" in (a) and "profits or gains" in (b). The former was the appropriate phraseology with respect to self generated earnings of a regular nature, while the latter was a fitting description of income derived from self employment of a casual nature. The word employment in section 5(b)(iii), argued counsel, therefore referred to self employment of a casual nature, as distinct from the self employment of a regular nature in section 5(a)(ii) and (iii). As to the reason why the other three words "trade, business or profession" were not also associated with the two words "employment or vocation" in section 5(b)(iii), Counsel submitted that the three words implied the regular continuous activity which was contemplated in section 5(a)(ii) and (iii) and would have been incongruous in section 5(b)(iii) which was meant to deal with activity of an intermittent or irregular character.

The objection which immediately presents itself to these extremely able arguments of Mr. Coore is in terms of the history of the previous legislation. There has never been the need to make separate provision for the casually self employed person. In 1954, the legislature obviously thought that he was caught by the provisions of section 5(a)(ii) and (iii) which were unaffected by the amendments in 1958. On the other hand, as I have endeavoured to show, in 1954 the legislature appreciated the limitations of section 5(c), and recognizing the necessity for provisions with respect to the person employed by another in an employment outside the Island, it enacted 5(b)(iii). It would be strange if in 1958 the legislature became so anxiously preoccupied with the casually self-employed person as to lose sight of those employments of profit outside the Island which fell within its taxing jurisdiction, and which it had been at pains to bring within the ambit of the legislation in 1954. The Statute as a whole was designed to be workable. It should therefore be construed so as to avoid this strange result unless, in the language used, a clear direction to this effect emerges.

I turn first to deal with the suggestion that by use of the phrase "annual profits or gains" in section 5(a) as distinct from the phrase "profits or gains" in section 5(b), the legislature intended to indicate a difference between the self employed person in section 5(a)(ii) and (iii) and his counterpart in section 5(b)(iii). I find this

suggestion unacceptable. A person engaged in a trade, a business, or a profession is taxed on the net profits of his enterprise whether this is 'regular' or 'casual' in nature. These net profits are the product of his labour and his capital. They must be ascertained during a relevant period by reasonable business methods, and in accordance with proper accounting practices, however rudimentary, and the directions of the law. In Ryall v. Hoare [1923] 2 K.B. 447, Rowlatt J. held that a commission paid to a person in consideration for the guarantee of an overdraft at the bank was properly assessed to income tax as an annual profit or gain even though the transaction was an isolated one and represented a casual profit only. At p.455 the learned judge said - "The word 'annual' here can only mean 'calculated in any one year,' and 'annual profits or gains' mean 'profits or gains in any one year or in any year as the succession of years come around." This definition was approved by Viscount Cave L.C. in Martin v. Lowry [1927] A.C. 312 at 315. It is wide enough to cover the 'casual' earnings of a person in any one year, or his 'regular' earnings from year to year. On the other hand, the income specified in section 5(b)(i) and (ii) and the earnings of a person employed by another are of a more direct character. They are the product of property alone, or of labour alone, and inasmuch as they are ascertainable without 'calculation' during a relevant period, are aptly differentiated from the net profits envisaged in 5(a)(ii) and (iii) by the phrase "profits or gains." In my view, therefore, the difference adverted to by Mr. Coore between the opening words of sections 5(a) and 5(b) does not favour, but is against his contention that the language in these provisions point a distinction between "regular" and "casual" self employment. If anything, they point a distinction between "self employment" and "employment by another."

Neither am I able to agree with the reasoning which maintains that the alterations made by the Income Tax (Amendment) Law, 1958, to sections 5(b)(iii) and 5(c) have had the effect of attaching to the word "employment" in the former provisions the exclusive meaning of "self employment." In section 5(a)(ii) and (iii) the word employment takes its meaning and colour from the words with which it is associated. More precisely, the three words 'trade,' 'business,' 'profession' which precede the word 'employment' indicate particular self directed types of operations

with a view to making a profit or earning an income, and the more general words "employment or vocation" which follow, must be treated as referring to operations of a similar nature. This is the reason why "employment" in section 5(a)(ii) and (iii) means "self employment." In amending section 5(b)(iii) in 1958, the legislature was careful to omit the three words 'trade,' 'business,' 'profession.' The reason for this is, not as Mr. Coore suggested, because they would have been unsuitable in provisions which dealt with "casual self-employment," (it is not difficult to imagine a casual trader, businessman, or professional) but because the legislature wished to leave the word "employment" unfettered of the limitation which would have been imposed if it had been preceded by these three words; as in section 5(a)(ii) and (iii).

The word vocation means a calling - a profession. A vocation, like a profession, may be followed by way of employment by another, or self employment. Preceded as it is, by the word 'employment', the word 'vocation' as it occurs in the context of section 5(b)(iii) should not be construed so as to control, but should itself take its colour from the meaning of the word 'employment' which, as demonstrated by the external evidence derived from previous legislation, comprehends the meaning "employment by another". But it is argued that particular internal evidence derived from the existing provisions of the Act itself provides an overwhelming indication to the contrary. This evidence consists of, -

(1) the transfer to section 5(c) of the definitive provisions which had followed the phrase "any employment" in section 5(b)(iii) of the 1954 law; and,

(2) the fact that the P.A.Y.E. provisions of the law are confined to salaried income described in section 5(c).

With respect to (1). It is so that this transfer has had the result of releasing the word 'employment' from the significant incident which had determined with certainty its meaning in the 1954 law of "employment by another," but to treat the transfer as a conclusive indication that the word was now intended to mean "self employment" is a non-sequitur. The historical setting from which the word emerges, and the context - free of the preceding words 'trade, business, profession' - in which it continues to occur, clearly suggest that the word was intended to encompass "employment by another". Proof of this intention may not be as conclusive

as it was in the 1954 Law, but still it is sufficient. And in truth, the transfer is explicable in simple terms which are entirely consistent with such an intention. In tax legislation, the process of development is gradual and likely to be endless. If the efforts of those persons who dishonestly seek to evade the law, and of those others who honestly attempt to avoid the law are to be kept in check; if the law is to keep pace with the advances of science and technology, and the dynamism of growth in the life of the country; and if the challenge of elegance in language and in structural form is to be met, constant changes and amendments to the law are necessary. The striving towards an unattainable ideal of sophistication and precision; the quest for the absolute in efficiency, are categorically imperative so long as the present system which supports a free self-respecting community endures. Seen in the focus of this gradual and continuous development of the law, it is not difficult to understand that the definitive provisions were transferred to section 5(c) not for the reason suggested by Mr. Coore, but simply because they define identifiable perquisites of salaried employment, and when the amendments were made in 1958, it was perceived to be neater and more appropriate, to include them within provisions which deal specifically with that subject, rather than clumsily append them to "sweeping up" provisions as had been done in the 1954 legislation.

With respect to (2) the argument may be stated in the following terms -

(i) The only income which is conveniently susceptible to P.A.Y.E. deductions is salaried income.

(ii) The provisions which create the machinery for effecting P.A.Y.E. deductions apply only to salaried incomes described in section 5(c) -

(iii) A charge to tax on salaried income is imposed by the provisions of section 5(c).

Therefore (iv) No other provisions of section 5 impose a tax on salaried income.

I apologise if this exposition of the dialectic is inadequate, but logic apart, the fundamental objection to the argument is that it ignores the distinction which has been affirmed between employment in the Island, and employment outside the Island and assumes that all salaried income was intended to be taxed as it was earned. For reasons which it considered

sufficient, and as to which I am not required to speculate, but which come readily to mind nevertheless, the legislature decided in 1954 that the former employment should be subject to the P.A.Y.E. provisions of the law but not the latter. In construing the 1958 amendments this criterion for the application of the P.A.Y.E. provisions must not be overlooked. So that, although the appellant's salary was conveniently susceptible to P.A.Y.E. deductions, this is beside the point. Susceptibility to deductions is not the test for determining whether the deductions should be made, neither is it a guide for ascertaining whether tax has been imposed. Read as a whole with the other charging provisions, there are positive indications that the provisions of section 5(b)(iii) were intended to impose a tax on persons in the appellant's position, and the machinery provisions which establish P.A.Y.E. should not be allowed to defeat this intention. In my opinion, the phrase "any employment or vocation" means exactly what it says, with emphasis on the word "any." Unfettered by the words "trade, business, profession," and freed of the definitive provisions which were referable to salaried positions, the two words 'employment' and 'vocation' were deliberately placed in association with each other for the purpose of having a wide sweeping up effect, and to catch <u>any</u> employment or vocation, whether self directed, or directed by another which may have escaped the other relevant provisions in section 5.

Two matters remain -

a. The contention that the emoluments which the appellant received arose from an <u>office</u> of profit within the meaning of section 5(c) and not from an employment.

b. The claim that in any event the appeal should succeed because the P.A.Y.E. deductions which had been made from the appellant's salary were unauthorised.

<u>As to a.</u> - It is true that in section 126(3) of the Constitution of Jamaica the post of Ambassador is described as an office, but from the written judgments which were delivered, it is clear that both the Income Tax Appeal Board and Parnell, J. concluded that the emoluments which the appellant received arose from the contract of employment which is evidenced by the letter from the Governor-General, and that he was therefore in the employment of the Government of Jamaica. This conclusion is the reasonable

inference to be drawn in the circumstances. The phrase "office or employment of profit" describes positions which may overlap. A person may occupy an office of profit exclusively. In such a case, his remuneration is by way of the fees and other premiums (exclusive of contractual rewards) which, as perquisites attached to the office itself, are receivable by whomsoever happens to occupy that office. On the other hand, a person who occupies an 'office,' and is paid a regular salary and allowances as a consequence of contractual arrangements between himself and an employer, is an employed person. His remuneration is not an incident of the office he occupies, but the consideration flowing from the contract of employment, and is properly described as a profit or gain accruing from employment. The appellant comes within this latter category. He escapes the provisions of section 5(c) because his employment was found not to have been "exercised or carried on in the Island," but he is caught by the wider all embracing provisions of section 5(b)(iii) which is free of any such limitation.

As to b. - The central question in this appeal, and indeed the real question, is whether the appellant is liable for the payment of tax on the salary which he received during the year 1963 as the Ambassador for Jamaica in Washington. This question should be answered in the affirmative. Tax has been paid for that year by way of P.A.Y.E. deductions, and is in excess of the amount which is properly payable. In the light of the conclusions which have been stated above, the matter now calls for adjustment at the administrative level and not for further judicial pronouncement. There is no merit in this claim.

I would dismiss this appeal with costs.

SMITH J.A.

The appellant, Sir Neville Ashenheim, was appointed in August, 1962 as Jamaica's first Ambassador to Washington, U.S.A. The fact of his appointment, and the terms and conditions thereof, were set out in a letter dated 29th August, 1962 addressed to him by the Governor-General. His salary was stated to be at the rate of £3,500 a year and he was eligible for an overseas allowance of £7,000 a year, as well as other allowances. He served as ambassador from September 1962 until March 1967. The appellant is a Jamaican citizen and was found to have been domiciled in Jamaica at all material times.

The appellant was assessed to income tax for the year of assessment 1963 in respect of his full ambassadorial salary for the year 1963. He objected to this assessment and appealed to the Income Tax Appeal Board on the ground that he was not liable to pay tax on this salary. The Board allowed his appeal, holding that the appellant's ambassadorial salary was not taxable as paragraph (c) of section 5 of the Income Tax Law, 1954 was the only paragraph of that section that could apply to the salary of a person employed to another and that that paragraph did not apply to the appellant's salary as his employment was not exercised or carried on in Jamaica.

The respondent's appeal against the Board's decision was allowed by Parnell, J., who set aside the Board's order and restored the decision of the respondent on the assessment. Parnell, J. held that the appellant's salary was taxable under paragraph (b)(iii) of section 5 of the Income Tax Law, 1954. It is from this decision that this appeal is brought.

Section 5 is the charging section of the Law and its relevant provisions are as follows:

> " 5 - Income tax shall ..... be payable by every person at the rate or rates specified hereafter for each year of assessment in respect of all income, profits or gains respectively described hereunder -
>
> (a) the annual profits or gains arising or accruing -

(i) to any person residing in the Island from any kind of property whatever, whether situate in the Island or elsewhere; and

(ii) to any person residing in the Island from any trade, business, profession, employment or vocation whether carried on in the Island or elsewhere; and

(iii) to any person whether a Commonwealth citizen or not, although not resident in the Island, from any property whatever in the Island, or from any trade, business, profession, employment or vocation exercised within the Island;

(b) profits or gains accruing in or derived from the Island or elsewhere, and whether received in the Island or not in respect of -

(i) dividends, discounts, interests, annuities, pensions or other annual sums;

(ii) rents, royalties, premiums and any other profits arising from property;

(iii) any employment or vocation;

(c) all emoluments, including all salaries, fees, wages and perquisites whatsoever, arising or accruing from any office or employment of profit exercised or carried on in the Island; and including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise; ....."

On behalf of the appellant it was submitted as follows:

Firstly, that the salary paid to the appellant as ambassador is an emolument arising from an office of profit within the meaning of section 5(c);

secondly, that, alternatively or co-extensively, the salary is an emolument arising from an employment of profit within the meaning of section 5(c);

thirdly, that such salary is not a profit or gain arising from any employment or vocation within the meaning of section 5(b)(iii);

fourthly, that there being no other portion of section 5 under which it is now contended that this salary falls, and it having been found and accepted that the appellant's duties as ambassador were not exercised

> or carried on in the Island, which is the condition precedent for the assessment of an emolument described in section 5(c), there is no basis on which the appellant's salary can be taxed.

There can be no doubt that as ambassador the appellant held an office. Section 128 of the Constitution, which authorised his appointment, so describes it. It comes within Rowlatt, J.'s definition of "office" in Great Western Railway Co. v. Bater, (1920) 3 K.B. 266 at 274, which was adopted by Lord Atkinson in the same case /(1922) A.C. at p.157, and approved of by Lord Wright in McMillan v. Guest, 24 T.C. 190 at 201. So the submission is right, in my view, that the salary paid to the appellant was an emolument arising from an office of profit within the meaning of section 5(c). Indeed, it is on this premise that the appellant's salary was assessed. It is conceded, however, that the salary is not taxable under section 5(c) as the appellant's office was not exercised or carried on in the Island. The question of substance which arises for decision therefore, is whether the appellant's salary is liable to be taxed under section 5(b)(iii). The respondent contends that it is, while the appellant says that it is not.

It was submitted on behalf of the appellant that if the appellant's salary is to be taxable at all it can only be taxable under section 5(c) because that is the only place in the charging section in which an office of profit is mentioned. In deciding whether the emoluments arising from an office of profit are taxable or not one would, naturally, look first at section 5(c). Finding that it is not taxable there is it permissible to look elsewhere in the charging section? Learned counsel for the appellant submitted that it would be a very strange situation to find that the respondent could be given a discretion whether to charge a particular emolument either under section 5(c) or under section 5(a) or (b). Strange, it was said, in the sense that it would be contrary to the structure of the Income Tax Law, which has treated incomes that fall under section 5(c) in a different way from the way in which it treats incomes falling under section 5(a) & (b). This difference of treatment is in the way in which incomes are taxed. By virtue of section 6, incomes under section 5(c) are taxed on the basis of incomes for the year of assessment, while those under section 5(a) & (b) are taxed on the basis of incomes for the year

immediately preceding the year of assessment.

Learned counsel for the respondent submitted that the various sub-paragraphs of section 5 are not mutually exclusive and that if a particular type of income falls into any particular category mentioned in any sub-paragraph then that income can be charged to tax in accordance with that sub-paragraph. This submission was based on Commissioner of Income Tax v. Hanover Agencies Ltd., (1967) 2 W.L.R. 565. In delivering the judgment of the Privy Council in that case, a Jamaican case, Lord Guest referred to an attempt by counsel for the appellant to draw an analogy from Fry v. Salisbury House Estate Ltd. [(1930) A.C. 432] in support of his argument and said, at pp. 568, 569:

> "There are expressions of opinion in some of the speeches that the company were not carrying on a trade, but these expressions must be taken in the context of the British Income Tax Law and particularly in the context of Schedule D. The real ratio decidendi is contained in the speech of Lord Atkin, when he says that annual income from the ownership of land can only be assessed under Schedule A and that the option of the Revenue to assess under whatever Schedule they prefer does not exist. The Schedules are mutually exclusive. In their Lordships' opinion the decision in the Salisbury House case has no bearing on the construction of the provisions of the Income Tax Law of Jamaica where there is no parallel to the division of the charges to income tax into various separate and distinct Schedules. Section 5 already referred to is an omnibus section which treats all profits and gains together whether arising from property or from a trade, business, employment or profession, or in respect of rent or emoluments, salaries or wages. These are all treated as profits or gains."

This passage clearly supports the submission that the several heads of charge under section 5 are not mutually exclusive. Learned counsel for the appellant conceded this but submitted that the Revenue is not free either in Jamaica or in England to elect whatever part of the charging section suits it best and in all cases to choose that part. He submitted that there are some situations in which a particular income must come under one particular portion of the charging section because to hold otherwise would be to defeat the clear intention of the law.

Since the heads of charge under section 5 are not mutually exclusive, it seems to follow that where a particular income falls under

more than one head the Revenue has the option of deciding under what head to assess it. As I understand it, in practice it would make no difference in the majority of cases which head is chosen. If a case clearly falls under two heads and a taxpayer would be deprived of an allowance if taxed under one rather than the other, in justice the Revenue would be obliged to tax him so that he gets the allowance. In my opinion, the Hanover Agencies case (supra) does not support the submission that the Revenue is not free to elect as between parts of the charging section, as was contended. As I understand the decision in that case, on the facts found the profits of the company fell to be assessed under section 5(a)(ii) only, not under both 5(a)(ii) & 5(b)(ii). Whatever may be said of a case where a particular income is taxable under more than one head, there can be no doubt, in my opinion, that where a decision is being made whether income is liable to be taxed under one or other of two heads of section 5 under which, prima facie, it falls, the Revenue has a right to elect that head which makes the income liable to tax, where under the other it is not so liable. I hold, therefore, that the appellant's ambassadorial salary, not being liable to tax under section 5(c), may be taxed under section 5(b) if it is clear that it is a profit or gain within that provision.

On behalf of the respondent, it was submitted that the appellant's salary is a profit or gain arising from "employment' within the meaning of that word in section 5(b)(iii). The first question that arises on this submission is whether as an ambassador the appellant was an employed person. The appellant must not be taken by his second main submission to be admitting that he was an employed person. The submission was made on his behalf that it cannot be said that an ambassador is employed to anyone, and he is not self-employed; so, it was said, the only way in which one can describe an ambassador is to say that he is the holder of an office. The question whether the appellant held an office and was, therefore, not an employed person does not appear to have been raised before the Income Tax Appeal Board or Parnell,J. The Board held that the appellant's salary arose from an employment of profit within section 5(c). Parnell,J. impliedly held that the appellant was a person employed.

It is plain, in my view, that as Ambassador the appellant was

employed to the Government of Jamaica. The appellant's letter of appointment has all the essentials of a contract of service. His salary and allowances, the duration of his appointment and his leave entitlement are all stated. His duties are not stated but it is well known that in the performance of his duties an ambassador is subject to the direction and control of his Government. It was said that section 128 of the Constitution describes the Ambassador as the holder of an office and that the fact that it was necessary to state this in the Constitution shows that an ambassador is not employed to anyone, otherwise it would be that person who would have power to appoint and dismiss. The power to appoint persons as ambassadors, and to remove from office persons so appointed, is by section 128 of the Constitution vested in the Governor-General, who also appoints, and removes from office, persons to public offices under section 125. Both section 125 and section 128 appear in Chapter IX of the Constitution, which bears the title "The Public Service." The Constitution, in section 1, defines "public office" as "any office of emolument in the public service," and "the public service" is defined as "the service of the Crown in a civil capacity in respect of the Government of Jamaica." An ambassador appointed under section 128 is the holder of a public office under the Constitution. His is not one of the offices excluded by section 1(6) from the definition of "the public service." So the fact that the Constitution describes the post as an office is no indication that a holder of that post is not a person employed, or the same could be said of the hundreds of persons known as public officers who are appointed to public offices under section 125. It cannot be doubted that these persons are all employees of Government. I hold that the fact that the appellant was the holder of an office is not inconsistent with his being also an employed person.

The other, and really difficult, question is whether the appellant's employment was "employment" within the meaning of that word in section 5(b)(iii). In what sense is "employment" used in that part of the section? The appellant contended that where the word "employment" appears in section 5(a) and (b) it is used in the sense of self-employment, as distinct from employment to another or salaried employment, which is the sense in which it is used in section 5(c). This contention was based

on two main grounds, which overlap somewhat. Firstly, it was said that the word, as used in the context in which it appears in section 5(a) & (b), has been judicially construed to mean self-employment only; and that in accordance with well known principles of construction it must be assumed that the draftsman and the legislature who use in a statute words which have been judicially construed in enactments which are in pari materia are aware of that construction and intend to use the words in the meaning ascribed by that judicial construction. Secondly, that the history of, and the structural changes in, the Income Tax Law show quite clearly that the legislature intended in 1958 to remove out of section 5(b) all employments in the sense of one man being employed to another and to put them in section 5(c). It was submitted that if it can be said that the appellant was employed to the Government the salary of that type of employment is chargeable only under section 5(c) and, therefore, is not chargeable under section 5(a) or (b).

It is conceded that "employment" in section 5(a), used in the context "trade, business, profession, employment or vocation," means self-employment. This is because the word has been judicially so interpreted when used in a similar context in United Kingdom income tax legislation. The word "employment" appeared in both Schedule D and Schedule E of the United Kingdom Income Tax Act, 1918. In Schedule D it was used in the context "trade, profession, employment or vocation." In Schedule E the context was "public office or employment of profit." In 1931, in Davies v. Braithwaite, (1931) 2 K.B. 628, (1931) All E.R. 792, 18 T.C. 198, Rowlatt,J. had to decide what the word meant in both schedules. He began his judgment by saying - at (1931) 2 K.B.633:

> "The question of principle in this case is whether the respondent ought to be assessed under Schedule D of the Income Tax Act, 1918, as following her profession of an actress, or whether she ought to be assessed under Schedule E as exercising certain employments under the particular engagements she makes. The question is a difficult one, mainly because of the want of precision in the meaning of the term "employment" as it comes into this controversy."

Then, at p. 634, he said:

> "When the word "employment" is used in connection with a profession or vocation in Schedule D it means the way in which a man employs himself. But "employment" in Schedule E means something different. In that Schedule it means something analogous to an office and which is conveniently amenable to the scheme of taxation which is applied to offices as opposed to the earnings of a man who follows a profession or vocation."

The appellant contends that when "employment" is coupled with "vocation" in section 5(b)(iii) it should, for the same reason, have the meaning that it has in section 5(a) as "employment or vocation" is part of the context in section 5(a).

The rules which govern the construction of a taxing statute are not different from those which apply to statutes generally. In Attorney-General v. Carlton Bank, (1899) 2 Q.B. 158 at 164, Lord Russell of Killowen, C.J. said:

> "I see no reason why any special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed."

To the same effect are passages in Simon on Income Tax (1964-65 edn.) V. 1 para. 83 - at p. 48:

> "It follows, therefore, that in construing a taxing Act the Court must have regard to the meaning of the words used and to the intention of the Legislature as shown by the statute or statutes."

and at p. 49:

> "The principle, therefore, does not entitle the Court either to disregard the plain meaning of words used in a taxing Act or to resolve ambiguities in favour of the taxpayer or the Revenue contrary to the plain intention of the Legislature as appearing from the statute."

The question to be answered is, therefore: what meaning did the legislature intend the word "employment" to have in section 5(b)(iii), having

regard to its ordinary or primary meaning, the context in which it is used and in the context of the statute as a whole?

It was said that "employment" does not have a plain ordinary meaning. This may be true in the sense that it is a word of wide meaning and it may not be strictly accurate to describe its meaning as being plain. Vaisey, J. in Westall Richardson Ltd. v. Roulson, (1954) 2 All E.R. 448, 451, describes it as a word "of very wide significance." But it certainly has an ordinary meaning, which includes both self-employment and employment to another. Davies v. Braithwaite (supra) demonstrates this; though the context in which it appears may indicate that it is used in one sense and not the other, as that case also shows.

The history and structure of section 5, the charging section, of the Law of 1954 was examined and analysed before us by learned counsel for the appellant. As was pointed out, the first income tax law in Jamaica was passed in the year 1919. The charging section as then enacted remained unchanged through various amendments and re-enactments up to 1954, when the current law was passed. The charging section which section 5 of the Law of 1954 replaced was section 4 of the Income Tax Law, Cap.156 (1953 Revised Edition of Laws of Jamaica). The relevant provisions of that section are as follows:

> " 4 - (1) Income tax shall be payable in respect of the following incomes:
>
> (a) income arising or accruing to any person residing in this Island and derived from the annual profits or gains from any kind of property whatever wherever situate in this Island or elsewhere, or derived from the annual profits or gains from any profession, business, trade, adventure or concern in the nature of a trade, employment or vocation, whether the same shall be respectively carried on in this Island or elsewhere;
>
> (b) income arising or accruing to any person not residing in this Island, whether a subject of Her Majesty or not, and derived from the annual profits or gains from any kind of property whatever in this Island or derived from the annual profits or gains from any profession, business, trade, adventure or concern in the nature of a trade, employment or vocation carried on within the Island.
>
> Provided .....;

(c) income arising or accruing to any person, whether residing in this Island or not, and derived from any public office or employment of profit or from any pension payable out of the public revenue of this Island

Provided .....;

(d) income arising or accruing to any person residing in this Island and derived from any pension received from any source whatever in or out of this Island; and generally;

(e) income arising or accruing to any person residing in this Island and derived from any source whatever in or out of this Island, and income arising or accruing to any person not residing in this Island, whether a subject of Her Majesty or not, and derived from any source whatever in this Island."

It will be seen from an examination of the five paragraphs of the section that the clear intention was to tax two main categories of income, viz., (a) all income arising or accruing to residents of the Island, whatever its source, and (b) all income which has its source in the Island. For reasons already stated, "employment" in section 4(1)(a) and (b) meant self-employment while in section 4(1)(c) it meant employment to another. The salary of the appellant would, quite clearly, have been liable to tax under para. (c) if it were still in force.

The scheme of section 5 of the Law of 1954 is essentially the same as that of section 4 of the old law, which it replaced. The intention is to tax the same two main categories of income. The provisions in section 4(1)(a) now appear as section 5(a)(i) & (ii). Those in section 4(1)(b) are now contained in section 5(a)(iii). Those in 4(1)(c) are now in 5(c) but limited to office or employment exercised or carried on in the Island. Those in 4(1)(d) appear now in 5(b)(i). It was said on behalf of the appellant that there is no counterpart to section 4(1)(e) in the present law. It was described as an omnibus "clean up" provision which was intended to catch anything that may have been omitted from the words and categories defined in paras. (a), (b), (c) & (d) and which charged in terms the income of residents derived from any source whatever. Its omission from the present law, it was said, is a clear indication that the legislature was not intending in the present law necessarily to catch every

emolument or earning of a Jamaican resident but was only intending to catch those specifically identified in the charging section. I agree that para. (e) of section 4(1) was a "clean up" or "sweeping up" provision. It followed exactly the pattern in paras. (a) and (b) in that it sought to sweep up income of residents from all sources and income of non-residents from all sources in the Island.

As originally enacted, section 5(b)(iii) was in these terms:

> "(iii) any employment, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment, whether in money or otherwise but not including the payment for any passage from or to the Island for the purpose of leave granted in respect of the employment."

By section 2 of Law 42 of 1958, sub-paragraph (iii) was deleted and the present provision - "any employment or vocation" - substituted. The words appearing after the word "employment" in the sub-paragraph as originally enacted were, by the same Law of 1958, added to section 5(c). It is plain, in my view, that section 5 (b) was intended to be, and is, the sweep up provision of section 5, intended to catch any income not caught within paras. (a) and (c). Though it is not in identical terms, it serves the same purpose in section 5 as did section 4(1)(e) in section 4 of the old law. It appears in one respect to be wider in scope than was section 4(1)(e). In respect of the specific matters set out, it purports to tax a non-resident on income derived from sources out of the Island, once the non-resident is domiciled here (see section 15). If the appellant's contention as to the meaning of "employment" in section 5(b)(iii) is held to be wrong, the result may be that this provision makes section 5 wider in scope than section 4(1)(e) made section 4 of the old law.

Craies on Statute Law (6th edn.) deals with the judicial interpretation of words in a prior statute in the following passage, at pp. 171, 172:

> "It is a general rule of construction ..... that the use in a statute of a term which has received a judicial construction leads to the presumption that the term is used in that sense. Accordingly notwithstanding the fact that ..... the meaning of ordinary words will vary according to the subject or occasion on which they are used, if, as Lord Coleridge

> said in Barlow v. Teal, 'Acts of Parliament use form of words which have received judicial construction, in the absence of anything in the Acts showing that the legislature did not mean to use the words in the sense attributed to them by the courts, the presumption is that Parliament did so use them.' "

Dealing with the same topic, in Simon on Income Tax (op cit); V.1. p.49 para.84, it is stated as follows:

> "In construing the present Act, that Act and subsequent Finance Acts will all be taken in pari materia, so that the meaning and intention of a provision will be ascertained from the words used in the light of the statutes as a whole. In cases of doubt or ambiguity recourse may be had to the former statutes ..... and where words are used in the same context as in previous statutes, and those words have received judicial interpretation, it will be assumed that the words are used in the same sense."

In answer to the contention that this rule of construction applies so as to give the meaning of self-employment to "employment" in section 5(b)(iii), it was submitted that the rule does not apply because: (i) para. (b)(iii) in its present form is not a re-enactment of any provision found in the previous legislation and has no counterpart in the United Kingdom Income Tax Act, 1952, the Act on which the Law of 1954 was based; (ii) the context of para. (b)(iii) is not the same as in the previous, or United Kingdom, legislation; and (iii) there is indication in the Law that the legislature did not intend to confine the meaning of "employment" in the paragraph to self-employment. These submissions are based on, and are supported by, the passages just cited.

As will be seen above, with the exception of the word "business," the context in which "employment" is used in section 5(a) is identical to the context in the corresponding United Kingdom legislation. ("Business" appears in section 5 but not in the U.K. Acts.). So it is easy to see why the concession had to be made as to the meaning of the word in that context. It is true that the words "employment or vocation" appearing in para. (b)(iii) do not appear in isolation in the United Kingdom legislation. Those words, so used, have not, so far as is known, been the subject of prior judicial interpretation. The rule of construction being discussed would not, therefore, apply. It was said, however, that

both words are part of the wider context of words in section 5 (a) and "employment" should, therefore, have the same meaning as it, admittedly, has in the wider context. In Davies v. Braithwaite (supra) Rowlatt,J. (at p.634) said that "when the word 'employment' is used in connection with a profession or vocation in Schedule D it means the way in which a man employs himself." I do not think it can be said that the learned judge meant that when the word is used with "vocation" separately from "profession" it has the meaning stated. It was not suggested that the passage can be interpreted in this way. I think that the word "profession" is the governing word in the context "profession, employment or vocation" and that it is this word rather than "vocation" which has impressed the meaning of self-employment upon "employment." I say this because, like "employment," "vocation" is a word of general and very wide meaning. It is described in Halsbury's Laws of England (3rd edn.), V.20 p.244 para.446, as "a word of very wide meaning, and is analogous to a calling, and means the way in which a person passes his life." This statement is taken from Partridge v. Mallandaine, (1886) 18 Q.B.D. 276, in which Denman,J. said, at p.278: "But the word 'vocation' is analogous to 'calling', a word of wide signification, meaning the way in which a man passes his life." The Oxford English Dictionary defines the word as meaning: "one's ordinary occupation, business or profession." And Webster's International Dictionary (New edn.) defines it as: "destined or appropriate employment; calling; occupation; trade; business; profession." Its meaning is, therefore, wide enough to include self-employment and employment by another. "Profession," on the other hand, in its common acceptation, is a word of more precise, or less general, meaning. A profession is a vocation but a vocation is not necessarily a profession. In my opinion, the fact that the words "employment or vocation" are part of the group of words in para.(a) of section 5 is not sufficient to give "employment" in para. (b)(iii) the same meaning as it has been held to bear in para. (a).

The meaning of "employment" was arrived at in Davies v. Braithwaite (supra) as a result of the application of the rule of construction noscitur a sociis. This rule, or principle, was also relied on by the appellant. It was submitted that the juxtaposition of "employment" and

"vocation" has the effect of restricting the meaning of "employment" to self-employment. The rule is stated thus in Maxwell on Interpretation of Statutes (12th edn.) at p.289:

> "Where two or more words which are susceptible of analogous meaning are coupled together, noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general."

For the reasons I endeavoured to give above in discussing the meanings of both words, I am of the view that this rule cannot assist the appellant's contention. Both being general words of wide significance one is incapable of restricting the meaning of the other. Indeed, as seen above, each may mean both self-employment and employment by another.

In support of the respondent's contention that there is indication in the Law that the legislature did not intend to confine the meaning of "employment" in para. (b)(iii) to self-employment, reliance was placed on an amendment of the Law of 1954 by Act 9 of 1963. This amendment exempted from taxation any allowance paid to any person in the service of the Crown which is certified by the Minister to represent compensation for the extra cost of having to live outside the Island in order to perform his duties. (see para.(s) of section 7 added by Act 9 of 1963). It was argued that this amendment would have been unnecessary if allowances paid to persons serving abroad were not taxable, prior to the passing of the Act of 1963, as profits or gains from employment; that they could only have been taxable under section 5(b)(iii); that if the allowances paid to them were taxable so were their salaries; that since the salaries paid to such persons were not likewise exempted by the Act of 1963 they remain taxable under section 5(b)(iii); that, therefore, this indicates that the legislature intended "employment" in the section to include employment to another or salaried employment. In my view, this is not a convincing argument. The short answer to it seems to be that the legislature may have mistakenly assumed in 1963 that the allowances were taxable. In Simon on Income Tax (op cit), V.1 p.48 para.83, it is said that "the mere fact that the statute appears to assume that the existing law lays down a particular rule does not in itself make the rule to be law when the assumption is erroneous." This

passage is supported by extracts from the judgments of Lord Radcliffe and Lord Reid in I.R. Commissioners v. Dowdell O'Mahoney & Co. Ltd., (1952) A.C. 401. In one of these extracts Lord Radcliffe said (at p.426) that "the beliefs or assumptions of those who frame Acts of Parliament cannot make the law."

I deal now with the arguments of the appellant based on the amendments made to paras. (b) and (c) of section 5 by the Law of 1958. It was admitted that before the amendment, when "employment" stood alone, para. (b)(iii) applied to persons in the employment of another. It was argued, firstly, that the removal from para. (b)(iii) of all reference to annual value of quarters, leave passage etc., which, it was said, seem to be germane to salaried employment, and putting them in para. (c) was designed to make it clear beyond doubt that the employments being dealt with under para. (c) were of an entirely different kind and specie from anything that could properly be considered to fall under para. (b)(iii) in its new form; that the legislature intended to remove out of section 5(b) all employments in the sense of one man being employed to another and put them in section 5(c). I do not think it reasonable to say that the removal of the provisions from para. (b)(iii) to para. (c) was for the purpose suggested. It seems to me to have been a tidying up exercise and nothing more. Section 5 (c), as enacted originally, dealt expressly with salaried employment, to which quarters, leave passages etc. are relevant. Section 5(b), on the other hand, is, as I have suggested, a general sweeping up provision. Only the odd case would be affected by the presence of the provisions in question in this part of section 5. The proper place for them to be is in section 5(c) and they should have been put there from the start. The amendment was, in my view, only correcting the error.

Next, it was argued that the legislature, knowing the interpretation of "employment" when put with "vocation", changed para. (b)(iii) and put in "employment or vocation" to make it abundantly clear that in that paragraph the word "employment" was to mean "the way in which a man busies himself." This argument has already been dealt with.

Finally, it was said that section 6 of the Law of 1954 assists the contention of the appellant. The first proviso to sub-section (1)

of section 6 provides that "in respect of income arising from emoluments (as specified in para. (c) of section 5 of this Law) the statutory income shall be the income of that person for the year of assessment." This provision is the basis of what is known as the "pay-as-you-earn" system. Other income, as already stated, is taxed on the basis of income for the year immediately preceding the year of assessment. The p.a.y.e. system is, as stated, limited to income from emoluments i.e. to incomes of persons in employer/employee relationship. It was argued that in view of the p.a.y.e. provisions in section 6 it could not have been the intention of the legislature, when in 1958 it enacted para. (b)(iii) of section 5 in its present form, to include in it any income of a type covered by section 5(c). It was submitted that it became apparent by 1958 that the law as it stood did not make it clear that persons who were in some employer/employee relationship could only fall under section 5(c). It was not made clear, it was said, because section 5(b)(iii) used the word "employment" only and would seem at that time to comprehend salaried employment. The legislature, so the argument ran, realising the inconvenience of that situation (presumably so far as it affected the operation of the p.a.y.e. system) amended para. (b)(iii) to make it clear that that paragraph no longer applied to salaried employment.

Section 6 is a machinery, not a charging, section. The p.a.y.e. provisions contained in it merely provide for a surer and more convenient method of tax collection. "A machinery section will not be so construed as to defeat a charge which is clearly imposed." (vide Simon on Income Tax (op cit) V.1 p.56 para.90). The fact that the p.a.y.e. provisions would not apply to a case of salaried employment falling within para. (b)(iii) is not a valid reason, in my view, for saying that, therefore, salaried employment cannot fall within that paragraph. Tax in that case would simply be assessed on the previous year basis. Indeed, that is the case with certain emoluments which, as a result of provisions in para.(ii) of the proviso to section 5(c), are expressly excluded from the p.a.y.e. system. It must also be remembered that the p.a.y.e. provision in section 6 was part of the Law of 1954 since its enactment and during the time, up to 1958, when there was no doubt that para. (b)(iii) applied to salaried employment.

In spite of the compelling and, as always, able argument of learned

counsel for the appellant, no valid reason has, in my opinion, been advanced for restricting the meaning of "employment" in section 5(b)(iii). As I have indicated, I do not agree that the coupling of "vocation" with "employment" has the effect of limiting the meaning of "employment" to self-employment. It is difficult to believe that a draftsman would select this roundabout and imprecise method to change the meaning of "employment" when it could be done by simple and direct language. It is also extremely unlikely, in my view, that the legislature would deliberately limit the scope of tax legislation in this way without very compelling reason. On the contrary, it is my opinion that the purpose in adding "vocation" was to widen the scope of the sweep up provisions in section 5(b) to embrace any activity not caught by section 5(a) or (c) which, though not an employment, may be a vocation. I think this view is more consistent with reason.

In my judgment, "employment" in section 5(b)(iii) is used in its unrestricted sense and includes salaried employment. The ambassadorial salary of the appellant was, therefore, liable to be taxed under this provision.

If I am right that the appellant's salary is liable to be taxed under section 5(b)(iii), the assessment made by the respondent was wrong. For year of assessment 1963, it is the salary received in 1962 that should have been assessed, i.e. approximately four months' salary. Instead the whole of the salary for 1963 was included in the assessment. Learned counsel for the appellant submitted that on the respondent's own case the assessment must, at the very lowest, be varied by deleting the amount of salary over and above the amount earned during the four months in 1962.

The contention of the appellant before the Board was that his salary for 1963 was not liable to tax at all. It does not appear that it was sought to reduce or vary the assessment on any other ground. Before Parnell,J. the same position obtained. Before us the question of the excessive assessment, if the appellant's salary was taxable under section 5(b)(iii), was raised during the argument but variation or reduction of the assessment on this ground is not asked for in the notice of appeal. In the notice of appeal the contention is maintained

that the salary for 1963 does not fall for assessment in 1963 or at all. I agree that the excessive assessment, which will result if my view prevails, is a matter for administrative adjustment. I would, accordingly, dismiss the appeal.

ECCLESTON, J.A.

I have read the judgments prepared by my brethren. I agree with their conclusions. The appeal is, therefore, dismissed with costs.