

# (Mis)Leading Tax Cases

The three cases reported below are culled from AP Herbert's 'Uncommon Law' and more "Misleading Cases. The cases reported by AP Herbert himself are delightful satires on taxation anywhere and everywhere.

## **BOARD OF INLAND REVENUE V HADDOCK:**

REX V HADDOCK What is a Cheque?

"Was the cow crossed?"

'No, your worship, it was an open cow.' These and similar passages provoked laughter at Bow Street today when the Negotiable Cow case was concluded.

Sir Joshua Hoot, KC, appearing for the public prosecutor, said: Your worship, these summonses, by leave of the court, are being heard together, an unusual but convenient arrangement.

The defendant, Albert Had- dock, has for many months, in spite of earnest endeavors on both sides, been unable to establish harmonious relations between himself and the collector of taxes. The collector maintains that Had- dock should make over a large part of his earnings to the government. Haddock replies that the proportion demanded is excessive, in view of the inadequate services or consideration which he himself has received from that government. After an exchange of endearing letters, telephone calls, and even cheques, the sum demanded was reduced to fifty-seven pounds; and about this sum the exchange of opinions continued.

On May 31, the collector was diverted from his respectable labors by the apparition of a noisy crowd outside his windows. The crowd, your worship, had been attracted by Haddock, who was leading a large white cow of malevolent aspect. On the back and sides of the cow were clearly stenciled in red ink the following words:

To the London and Literary Bank, Ltd.

'Pay the collector of taxes, who is no gentleman, or Order, the sum of fifty-seven pounds (and may he rot!).

£57/0/0

ALBERT HADDOCK

Haddock conducted the cow into the collector's office, tendered it to the collector in payment of income tax and demanded a receipt.

The stipendiary: Did the cow bear the statutory stamp? Sir Joshua: Yes, your worship, a two-penny stamp was affixed to the dexter horn. The collector declined to accept the cow, objecting that it would be difficult or even impossible to pay the cow into his bank. Haddock, throughout the interview, maintained the friendliest demeanor; and he now pointed out that the collector could endorse the cow to any third party to whom he owed money, adding that there must be many persons in that position. The collector then endeavored to endorse the cheque

The stipendiary: Where? Sir Joshua: On the back of the cheque, your worship, that is to say, on the abdomen of the cow. The cow, however, appeared to resent endorsement and adopted a menacing posture. The collector, abandoning the attempt, declined finally to take the cheque. Haddock led the cow away and was arrested in Trafalgar Square for causing an obstruction. He has also been summoned by the Board of Inland Revenue for non-payment of income tax.

Haddock, in the witness-box, said that he had tendered a cheque in payment of income-tax, and if the commissioners did not like his cheque they could do the other thing. A cheque was only an order to a bank to pay money to the person in possession of the cheque or a person named on the cheque. There was nothing in statute or

customary law to say that that order must be written on a piece of paper of specified dimensions. A cheque, it was well known, could be written on a piece of note paper. He himself had drawn cheques on the backs of menus, on napkins, on handkerchiefs, on the labels of wine-bottles; all these cheques had been duly honored by his bank and passed through the Bankers' Clearing House. He could see no distinction in law between a cheque written on a napkin and a cheque written on a cow. The essence of each document was a written order to pay money, made in the customary form and in accordance with statutory requirements as to stamps, etc. A cheque was admittedly not legal tender in the sense that it could not lawfully be refused; but it was accepted by custom as a legitimate form of payment. There were funds in his bank sufficient to meet the

cow; the commissioners might not like the cow, but, the cow having been tendered, they were estopped from charging him with failure to pay. (Haddock here cited *Spowers v The Strand Magazine*, *Lucas v Finck*, and *Vere Bros. v The Metropolitan Water Board*).

As to the action of the police, Haddock said it was a nice thing if in the heart of the commercial capital of the world a man could not convey a negotiable instrument down the street without being arrested. He had instituted proceedings against constable Boot for false imprisonment.

Cross-examined as to the motive, witness said that he had no cheque-forms available and, being anxious to meet his obligations promptly, had made use of the only material to hand. Later he admitted that there might have been present in his mind a desire to make the collector of taxes ridiculous. But why not? There was no law against deriding the income tax.

The stipendiary, after the hearing of further evidence, said: This case has at least brought to the notice of the court a citizen who is unusual both in his clarity of mind and integrity of behavior. No thinking man can regard those parts of the Finance Acts which govern the income tax with anything but contempt. There may be something to be said-not much- for taking from those who have inherited wealth a certain proportion of that wealth for the service of the State and the benefit of the poor and needy; and those who by their own ability, brains, industry, and exertion have earned money may reasonably be invited to surrender a small portion of it towards the maintenance of those public services by which they benefit, the Police, the Navy, the Army, the public sewers, and so forth, but to compel such individuals to bestow a large part of their earnings upon other individuals, whether by way of pensions, unemployment grants, or education allowances, is manifestly barbarous and indefensible. Yet, this is the law. The original and only official basis of taxation was that individual citizens, in return for their money, received collectively some services from the State, the defense of their property and person, the care of their health or the education of their children. All that has now gone. Citizen A, who has earned money, is commanded simply to give it to Citizens B, C, and D, who have not, and by force of habit this has come to be regarded as a normal and proper proceeding, whatever the comparative industry or merits of citizens A, B, C, and D. To be alive has become a virtue, and the mere capacity to inflate the lungs entitles Citizen B to a substantial share in the laborious earnings of Citizen A. The defendant, Haddock,

repels and resents this doctrine, since it has received the sanction of parliament, an order to pay, conduct a he unwillingly complies with it. Hampered by practical difficulties, he took the first steps he could to discharge his legal obligations to the State. Paper was not available, so he employed instead a favorite cow. Now, there can be nothing obscene, offensive, or derogatory in whether it is made on the back of an envelope or the back of a cow. the presentation of a cow by one man to another. Indeed, in certain parts of our empire the cow is venerated as a sacred animal. Payment in kind is the oldest form of payment, and payment in kind more often than not meant payment in cattle. Indeed, during the Saxon period, Haddock tells us, cattle were described as *viva pecunia*, or 'living money,' from their being received as payment on most occasions, at certain regulated prices. So that, whether the cheque was valid or not, it was impossible to doubt the validity of the cow; and whatever the collector's distrust of the former it was at least his duty to accept the latter and credit Haddock's account with its value. But, as Haddock protested in his able argument, an order to pay is an order to pay, whether it is made on the back of an envelope or the back of a cow. The evidence of the bank is that Haddock's account was in funds. From every point of view, therefore, the collector of taxes did wrong, by custom if not by law, in refusing to take the proffered animal, and the summons issued at his instance will be adjourned sine die.

As for the second charge, I hold again that constable Boot did wrong. It cannot be unlawful to conduct cow through the London streets. The horse, at the present time a much less useful animal, constantly appears in those streets without protest, and the motor car, more unnatural and unattractive still, is more numerous than either animal. Much less can the cow be regarded as an improper or unlawful companion when it is invested (as I have shown) with all the dignity of a bill of exchange.

If people choose to congregate in one place upon the apparition of Haddock with a promissory cow, then constable Boot should arrest the people, not Haddock. Possibly, if Haddock had paraded Cockspur Street with a paper cheque for one million pounds made payable to bearer, the crowd would have been as great, but that is not to say that Haddock would have broken the law. In my judgment Haddock has behaved throughout in the manner of a perfect knight, citizen, and taxpayer. The charge brought by the Crown is dismissed; and I hope with all my heart that in his action against Constable Boot Haddock will be successful. What

is the next case, please?

## **BOARD OF INLAND REVENUE V HOE**

Born to be taxed (Before Mr Justice Puce)

This is a test case of high importance. The solicitor general, Sir Roger Wheedle, for the Crown, said:

My lord, the defendant, Sir Rigly Hoe, has to answer two of the gravest accusations in the British catalogue of wrong doing: first, that he deliberately avoided the payment of certain taxes, and second, that he refused to pay certain sums lawfully demanded by the Inland Revenue. Until this unhappy affair, my lord, the defendant was a man of blameless and indeed distinguished reputation. At his university he secured first- class honors in Science, Political Economy, History and Philosophy. He has been a director of many well-known industrial firms and one or two banks, and until recently, was chairman of British Concentrated Chemicals and Engineering. He speaks five foreign languages. He has written several successful books, history, biography, scientific speculation. He has acquired much money and paid large sums into the Exchequer. The residue was invested in well-chosen stocks and securities. He enjoys good health. The Board of Inland Revenue had a right to expect that a citizen so able and experienced would be a fruitful target for another ten, or perhaps fifteen, years.

But, my lord, at the age of 60 Sir Rigly suddenly and arbitrarily retired from all gainful occupations. He sold, at good prices, every one of his stocks and shares and, as he shamelessly admits, proposes to live upon the proceeds till the day of his death.

The Court: Is this man now living in idleness and vice?

Sir Roger: No my lord. By his own account, he has never been busier. For he has chosen-wantonly chosen, if I may say so, to devote himself to charitable and unpaid public service, so many forms of which exist in this country. He is chairman of the local bench of magistrates, unpaid, a Borough Councilor, unpaid, one of the Board of the Thames Conservancy, unpaid, a Trustee of the National Maritime Museum, unpaid, and the Tate Gallery, unpaid, a member of the Royal Commission on New Planets, unpaid, of agricultural and other committees, all unpaid. In short, my lord, he might be said, in the biblical phrase, to have

‘bestowed all his goods to give to the poor.’”

The Court: He sounds rather a busybody. But what’s wrong?

Sir Roger: A great deal, my lord. A man of his powers ought to continue in gainful employment, to the enrichment of the revenue, as long as his physical and mental condition permits.

The Court: Oh? I see.

Sir Roger: The Inland Revenue, my lord, has been defrauded in two ways. First, they have lost the revenue from the dividends yielded by the securities he held.

The Court: But somebody bought them. He’s paying now.

Sir Roger: Yes my lord, but the defendant’s capital is on current account, and, not being invested, is yielding nothing. Secondly, they have lost the tax upon the high earnings which he would have received if he had Sir Roger: My lord, the Board. has assessed the defendant to income and surtax, first, on the income that he would have enjoyed if he had retained his securities, and second, on the sums that he would have earned if he had remained in gainful employment. remained in gainful employment. He does not even write any books.

The Court: The But, look here, the fellow can’t be made to work.

Sir Roger: My lord, by the Finance Act 1960 to have ‘bestowed all his goods to give to the poor.’ new powers were given to the long- suffering Board of Inland Revenue. They can now question any manipulation of stocks and shares the purpose of which appears to be the avoidance of tax, or the gaining of ‘tax advantage.’ The defendant, we submit, in deliberately divesting himself of taxable securities, had no other purpose.

The Court: Yes, I see that. But what’s to be done? The Court: Imaginary sums? That’s a bit harsh, isn’t it? Sir Roger: My lord, the doctrine of National or Hypothetical Gains is now well-established. My lord, to take one example, if an author dies penniless his widow is nevertheless required to pay Estate or Death Duties on the estimated values of the dead man’s copyright works: and that estimate is based on the royalties considered likely to accrue after his death, though none may in fact accrue, and there is nothing in the bank wherewith to pay the duty.

The Court: Oh, well, an author? That's fair enough.

Sir Roger: My lord, the defendant has refused to pay: and that is the case for the Crown.

Sir Rigly (in the witness-box): It's a free country. My time and my money are much better spent now than they were before. And saving is anti-social.

The Court: I say, you mustn't say things like that! Stand down. After further argument on the Doctrine of National Income his lordship said:

It is a long time since I took a Revenue case, and I am greatly indebted to the solicitor-general for his excellent exposition of modern thought and practice. Without it I might well have fallen into the same old-fashioned errors which have evidently bedeviled the defendant.

From time to time, as civilization advances, there is formed a new conception of the individual citizen and his place in the general pattern. Convenient labels mark the change. There was the Economic Man, who was moved only by considerations of personal gain. There was the Reasonable Man, beloved by the law, who cautiously avoided trouble, to himself or others. Each of these Men retained a vestige of personal freedom and decision. But now we have the Magnet or Revenue Man, who is important only as an instrument of taxation. In ancient days the tax, or tribute, was the mark of a slave or subject race. As freedom grew and spread, the tax was resented and resisted. Then came a phase in which the tax was granted by the free citizen to the Crown as a kind of favor, for the prosecution of unavoidable wars.

Some traces of this notion rather laughably remain. The Queen, when she gives the Royal Assent to a Money Bill, '*remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*' There is sometimes heard, among the ignorant, the historic cry of 'No taxation without representation', and in theory still the faithful Commons decide, in special Committees, how much money shall be granted to the Crown, and how it shall be collected. The informed know that none of this has the slightest relation to reality.

If every subject elected ten Members of Parliament instead of one, his benevolence, his taxes, would remain the same. But still, till recently, the illusion of individual freedom remained. More than one of my learned brethren on the

Bench have declared that the subject is entitled so to arrange his affairs that they do not 'attract taxation'-a charming choice of words-and is not to be blamed if he does. All that is past. We are back in the age of the subject race.

The Treasury, that subtle body of men, have succeeded in shifting the moral values, in adding insult to injury. No Village Hampden would win applause today-he would be told that he was merely increasing the burdens of his fellows. When the Chancellor of the Exchequer reduces by a fraction a savage tax he does not apologize but speaks of 'giving money away.

Finally, by the Finance Act of 1960 it was established that the subject may not, in certain areas of activity, arrange his affairs so that he does not attract taxation; from this it follows, the solicitor-general says, that he has a duty to arrange them so that he does. I think Sir Roger is right; and the defendant, like any other tax unit, must pay the sums demanded, or go to prison. I dismiss the plea of unpaid public service. This is often a form of self-indulgence or personal vanity, and in any case should be confined to those who are unable to earn large taxable incomes.

The governing section in the Act of 1960 applies only to transactions concerning stocks and shares. But, no doubt, in later enactments the principle will be extended. Twenty-five years ago, I remember, the entire 'Budget' amounted to about £800,000,000. Today, I am told, more revenue than that is raised by the taxes on tobacco alone, enough to defray the whole expenses of the National Health Service. Evidently, those who do not smoke or drink are shamefully avoiding taxation, and failing in the citizen's first duty. There is now no reason, it seems to me, why they should not be 'deemed' to smoke and drink, and pay accordingly. By their behavior they are seeking 'tax advantage.'

The simplest thing would be to do away with all the tiresome details and distinctions, one tax on this, no tax on that. The State should say 'Every citizen shall pay £X a year, whether he drinks, smokes, bicycles or motors, plus SY, a proportion of his income' and leave the Treasury to fill in X and Y. May I add that no citizen over 70 should pay anything at all.

Note:- Asked what he meant by his extraordinary remark: 'Saving is antisocial' Sir Rigly Hoe recited some lines by the poet Had-dock:

'Save, save, they say, and put away



What you would like to spend today!

Don't drink or smoke- or go abroad.

And all the parties will applaud.

But when the money's in your banks

Expect no more the nation's thanks.

Your earnings now have changed their name:

They're CAPITAL - a cause for shame,

While any yield that they may bring Is DIVIDEND - a filthy thing:

And, what is really quite a bore,

It's UNEARNED INCOME -

which pays more.

Give some away to poorer men?

Oh, no you're DODGING TAXES then.

In short, the patriots who save

Remain in error till the grave: So die as quickly as you can And pay DEATH DUTIES like a man.

## **INLAND REVENUE V HADDOCK**

### **The 'Bottle' Case**

Mr Justice Roush today gave judgement in this fascinating case. " He said:

This, I think, is one of the innumerable actions which the Inland Revenue should when the main never have begun. One of the singular and baleful features of the recent communications were dislocated or idle, parcels forbidden, and letters and telegrams discouraged, the terse red menaces of the tax collector seemed to their targets as easily as ever.' reach their targets as easily as ever. At a time when business and professional men were suffering loss and threatened with ruin by

strikes with which they had nothing to do, the tax collector still thought it fitting to demand from them large portions of any money they had left in the bank. In such a state was the defendant, Albert Haddock.

First, he says, the news- paper strike diminished his opportunities to earn money by the pen. Then the dock strike held up several ships which were to carry in their holds large quantities of his many master pieces to the United States and other foreign lands. Last came the railway strike which prevented or discouraged the people from attending in their usual numbers his fine and numerous theatrical productions.

At the very peak of all this trouble, it appears, the Inland Revenue demanded of him the payment of a sum which must make his relations with his bank, already precarious, impossible. Moreover, they sternly named a date after which, failing payment, legal proceedings would be taken. At first, Haddock told us, he was tempted to ignore this impudent threat. He is not, he said, one of those unfeeling monsters who think only of themselves. Indeed, he assured the court, every morning on rising he says three times, aloud: "Thank God for the Welfare State!" But, he added, at the age of nearly sixty-five he does feel from time to time a momentary reluctance to hand over most of his earnings for the benefit of those who are so well-off that they can stop work whenever the spirit moves them, and so lacking in the finer feelings that they do not care what injury they do to their country. They expect, he said and are permitted to enjoy, while they are idle, not only the ordinary public services but the so-called 'social' services to which the direct tax- payer is compelled so heavily to contribute.

'I asked myself, the defendant said, 'whether in the stances circumstances it was right to encourage such behavior by making such a payment. Was it not perhaps the national duty of every taxpayer to fight the strike fever by withholding his taxes? For the logical end would be that the Revenue would be diminished and the social services reduced, so that the strikers would feel at last the impact of their folly-in other words a strike against strikers. 'I confess,' said the defendant frankly, 'that beside this patriotic anxiety there may, for a moment only, have been in my mind the selfish thought that I might thus postpone for a month or two my inevitable end, bankruptcy through the taxes. But then,' he continued, in a moving passage, 'I thought of the wan faces of the strikers' mothers and wives, unable to do their Pools, the wails of little children cruelly disappointed of the promised television set: and I put those other thoughts aside.'

The Court, on the whole, commends this decision, though it is not quite sure. But Haddock, having escaped from one dilemma, now found himself in another. The public had repeatedly been joined by the government to send no parcels and no unnecessary or avoidable letters through the post during the railway strike. The sum demanded of the defendant, though in his eyes enormous, was without doubt less than a drop in that great ocean the national revenue. I asked myself, Haddock said again, 'whether it would be right to clog the channels with so trivial a communication. This time the answer was No. But ingenious as he is patriotic, it appears, the defendant hit upon a device which would discharge with honor, he thought, both his obligations. He lives beside the tidal Thames, at Hammersmith. Somerset House, the plaintiffs' headquarters, stands upon the same historic stream about nine (statute) miles farther down. He therefore wrote a cheque for the required amount (crossed, I need hardly say, 'a/c payee'), placed it in a bottle, sealed and clearly labeled the bottle in indelible ink: To The Inland Revenue - Somerset House please forward. In the presence of witnesses he committed the bottle to the river at the top of the tide on Friday, June 3, that is at about 2.12 p.m. by British Summer Time. He then telephoned to the plaintiffs and warned them to be on the look-out between 5.00 and 6.00 p.m. when, according to his calculations, the cheque should be passing the plaintiffs' premises.

But in addition, he took the trouble to inform them that this would not be their only opportunity to collect the cheque. The ebb tide at this point runs out for about seven hours, and the flood runs in for about five. If they failed to gather the bottle on the first transit, it would, he calculated, pass Somerset House again on the flood at about 12.00 midnight, when the moon, nearly full, he said, would be high in the sky. It might that night go up as far as Chelsea, but about 04.40 (well after sunrise) it would, on the ebb, pass the plaintiffs' office again. Thereafter, by simple calculations, its gradual departure down the river could be followed for many days.

The cheque has not yet come to hand, and the Crown has rashly instituted these proceedings. The Attorney General (not at his best, by the way) says that Haddock has not discharged his debt; that, if he had such worthy scruples about using Her Majesty's mails he should himself have delivered the cheque at Somerset House. But this discloses, it seems to me, a lamentable misconception of the plaintiffs' function. Their officers, for good reason, are called 'collectors of taxes. It is their business to go out into the highways and byways and gather in the revenue. No

man would think himself worthy to be called a collector of butterflies if he sat in an office and waited till the butterflies came in. Recent practice, and some recent legislation, it is true, may seem to have condoned some slackness in this department. Theatrical managers slavishly and at some expense collect the entertainment tax instead of compelling the Crown's officers to attend and do their dirty work themselves. The system known as Pay As You Earn exposes employers to labors even more costly and surprising. But these deplorable exceptions cannot be accepted as the rule. In this case the plaintiffs should have hired a boat and done their best to collect the cheque. One word to that fine force, the River Police, might have been even more effective. In fact the plaintiffs took no such precaution, and they ignore, it appears, the elaborate tidal information kindly provided by Had-dock. The explanation given by the Crown is that they regarded the defendant's action as frivolous, and that in any event the River Thames is not a recognized or proper channel for the payment of taxes. This is astonishing. The Thames, that mighty highway, the first great stream of Western commerce, of London's greatness and England's wealth, deserves no insult from any quarter, least of all from the British Treasury. But there is more. Many an important message has been placed in a bottle and delivered safely by the tidal waters. If a shipwrecked mariner or castaway delivered to the same powerful but uncertain agency his last will and testament, duly framed and attested, who can doubt that the Courts would accept and enforce it? I can see no difference between a will and a cheque. If found that the defendant was at fault in any way I should have to find as well that the plaintiffs were guilty of contributory negligence. But I do not. I find that the defendant has done all that, in the circumstances, he could. The cheque, through the sloth or carelessness of the crown, may have escaped to sea; but it is likely still to come to rest upon some civilized shore and be delivered to the right address. If this does not occur within a reasonable time, say two or three years, the matter may legitimately be raised again and the cheque presumed to be destroyed or lost. But meanwhile, I find for the defendant. Costs of every kind will be paid by the Crown.

Stanley Fernando is a graduate of the University of Ceylon and an attorney-at-law, specializing in Tax law. He has been a lecturer and examiner in Tax at the Sri Lanka Law College, and a visiting lecturer of the University of Colombo.