

of the judgment delivered in each case. A non-compliance with the strict provisions of this rule may not vitiate the judgment and make it wholly void, and the irregularity may be ignored, if there has been a substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. Our attention has not been drawn to any reported case of this Court after the passing of the new Code, in which the case of *Samin Hasan* has been followed. Our answer to the question referred to us is in the affirmative.

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MISCELLANEOUS CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Sen.

IN THE MATTER OF THE BISHOP OF LUCKNOW.*

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July, 16.

Income-tax Act (XI of 1922), sections 4(1) and 7(1)—Allowance received in London by Lord Bishop of Lucknow ex officio—“Salary”—Income accruing or arising in British India.

The Lord Bishop of Lucknow received *ex officio* a gratuitous annual allowance from a certain fund known as the Colonial Bishopric Fund, London. The allowance was payable in London and was paid in London. *Held* that the allowance came within the term “Salary” in section 7(1) of the Income-tax Act and that the income, being payable on account of the payee being in British India and there filling the character of the Lord Bishop of Lucknow, accrued or arose in British India, within the meaning of section 4(1), although it was received in London.

Mr. *H. Cecil Desanges*, for the assessee.

Mr. *Sankar Saran*, for the Crown.

MUKERJI and SEN, JJ. :—This is a reference by the learned Commissioner of Income-tax under section 66(2) of the Indian Income-tax Act, in the matter of the Right Revd. C. J. G. Saunders, Lord Bishop of Lucknow.

The facts of the case are very short and simple. The Lord Bishop of Lucknow draws a salary from the Government of India. He also receives an amount of

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money ranging from £600 to £700 a year, which is payable to him and which is paid to him in London. This income arises in this way. Certain subscriptions were raised both in India and in England, and a fund was created, which is known as Colonial Bishopric Fund, London. The trustees of that fund make an allowance of the aforesaid sum (between £600 to £700 a year) to the Lord Bishop of Lucknow, who resides at Allahabad. The payment is gratuitous and no condition is attached to the payment, save this, that the payment has to be made to the person who for the time being fills in the character of the Lord Bishop of Lucknow.

The assessee, the Lord Bishop, has been taxed on an income which includes the sums that he received during the years 1929-1930 and 1930-1931. There were two assessments, and there were two appeals by the Lord Bishop to the Assistant Commissioner of Income-tax. The appeals were rejected, and thereupon he asked the Commissioner of Income-tax to make the present reference.

The Commissioner of Income-tax has framed three questions, and they are as follows:—(1) Whether the sums received from the Colonial Bishopric Fund were income of the assessee within the meaning of section 3 of the Indian Income-tax Act; (2) Whether this income arose in British India; and (3) Whether the tax on this income was payable under the head "salaries" [section 7(1)] or under the head "other sources" [section 12(1)].

The first question hardly needs any answer, because it is conceded on behalf of the assessee by his learned counsel, Mr. *Desanges*, that the "allowance" (we are using the word which the assessee himself used in his petition to the Commissioner of Income-tax, made on the 17th of January, 1931) is an income within the meaning of section 3 of the Indian Income-tax Act.

The third question is also very easy, and it is whether the allowance that is received is a "salary" within the meaning of section 7 of the Act, or is "an income from other sources" within the meaning of section 12. The definition of the word "salaries" is to be found in section 7, sub-section (1) of the Act and it includes, among other things, any "fees and perquisites" received by the assessee in lieu of, or in addition to, any salary or wages, or on behalf of any public body. The word "perquisites" is a very wide word, and its meaning as given in Murray's English Dictionary is as follows: "Any casual emolument, fee or profit attached to an office or position, in addition to salary or wages". In stating the facts we have pointed out that the allowance is received by the assessee on account of his position as the Lord Bishop of Lucknow, and not in his personal capacity. Thus the allowance does come within the term "salaries", and this is our answer to this question.

The second question is really a matter of first impression. Mr. *Desanges* has evidently devoted a good deal of time and labour to this case, and, thanks to him, we have been taken through a number of rulings as to the construction of section 4, sub-section (1). In our opinion the facts of none of those cases approach near the facts of this case. What we have to see is whether the income that is sought to be taxed accrued or arose in British India. The three words, "accruing", "arising" and "received" used in the section cannot have one and the same meaning. They must have been used in denoting different ideas. There can be no doubt that the allowance was not "received" in British India. The question is, did it "accrue" or "arise" in British India? In our opinion, it did. The reason is very simple, and it is this. If the assessee chooses to give up his appointment as Lord Bishop of Lucknow, and he further chooses to go back to England, will he get the income? The answer must

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be in the negative. It follows that the income accrues or arises on account of the assessee being in India, and in India alone. If that is so, we can safely say that the income accrues or arises in British India. The word "arise", according to Webster's International Dictionary, means "spring up", "come into action, being or notice". The income is there in England, but it springs up or comes into action in India. But for the fact that the assessee holds a position in India the income would not have come into action, would have laid dormant, and would not have been available to the assessee. The word "accrue", according to Murray's English Dictionary, means: "To come by way of addition, increase, accession or advantage". The money, by way of an allowance, comes, by way of addition, increase, accession or advantage in British India, not because it is received in British India, but because it becomes payable on account of the assessee being in British India. The moment he leaves British India the income is lost. That being so, we must hold and do hold that the income "accrues" or "arises" in British India.

Let a copy of this judgment be sent under the seal of the Court to the Commissioner of Income-tax. The assessee, having lost throughout, will pay the costs of the Crown.

REVISIONAL CIVIL.

Before Mr. Justice Sen.

1931
July, 16.

SECRETARY OF STATE FOR INDIA IN COUNCIL
(PLAINTIFF) *v.* GIRDHARILAL SHAMBHUNATH
(DEFENDANT)*

Succession Act (XXXIX of 1925), sections 214 and 381—Escheat—Escheat is not "succession"—Succession certificate not necessary where Crown takes by escheat.

Where a person dies without leaving any heirs, his estate devolves upon the Crown by the rule of escheat under its general prerogative and not by reason of any rule of succession;