

PEPPYS BEHIND
THE SCENES.

Feb. 2.—To the office, where busy all the morning, nor did I have time even to do the cross word puzzle in the morning sheet. About the Board of Trade where little news anywhere, and where little talk there is of the opening of the House and what will come of it, on which there is a great difference of opinion on divers matters. Porey meeting me, we to the club for lunch, and he makes merry over the women getting the vote, which if it be true, he is somewhat pleased for, since says he, will keep his wife too busy about public matters to pay any attention to him. Indeed, he says, the only peace he has known these 10 years past was during the Enquiry conducted by Mr. Commissioner Walker, being that he attended every session of it, and spent little or no time at home. This night abroad to dine, and then to the hockey game, my wife again insisting that I should take her with me albeit what she knows of hockey could be written on a postage stamp. The game a poor one, and I greatly disappointed thereby. So to the Curling Rink, leaving my wife outside to wait for me, and becoming interested in a game did forget her. Talking awhile with Capt. Winsor, that is Minister of Fisheries, he tells me how although he is but a beginner this season, he did win at his curling games but one. Coming out at last, do find my poor wife shivering with the cold, so do drive her home to make amends for my forgetfulness.

"The Marriage Circle"
Pleases Entire AudienceGALAXY OF BRILLIANT PLAYERS
IN ERNST LUBITSCH PRODUCTION.

"If all motion pictures were as good as 'The Marriage Circle,' I'd go to the movies every day of my life."

That was the enthusiastic remark overheard in the lobby of the Majestic Theatre last night after the showing of this Ernst Lubitsch production.

You will wait a long time before you see a better picture than "The Marriage Circle." It is at once sophisticated and simple, humorous and serious, with its story of a discontented rich wife who begins to make things hum when she takes a fancy to the husband of her old girlhood chum.

The acting is beyond praise. One learns what acting is after beholding this wonderful film action. Marie Prevost as the little gadabout coquette of a wife has advanced in impersonation, and is worlds removed from the Marie of the past. And Monte Blue, as Dr. Franz Braun, who tries and succeeds dismally to extricate himself from the cunning plot of the impetuous chamer, lifts acting to new heights. There's no use talking about the acting of the others—you will be able to make your own enthusiastic comments, and the picture is so genuine a triumph that we know you'll attend.

Jacobson and Evans scored a big success and the audiences gave genuine expression of appreciation by encoring each and every item. This will be repeated to-night and to-morrow afternoon and night.

Supreme Court

BETWEEN THE MINISTER OF
FINANCE & CUSTOMS, PLAINTIFF,
AND SIR EDGAR BOWRING,
DEFENDANT.

Judgment of Mr. Justice Kent.

This is a Special Case stated by the parties for the opinion of the Court. The question submitted was whether the defendant, under the circumstances stated in the case, is liable to be assessed to the income tax under the Income Tax Act for the accounting periods from January 1st, 1919, and December 31st, 1922, in respect of the whole of his income.

The answer to that question depends upon the replies to two others, namely: was the defendant at all material times "residing or ordinarily resident" in Newfoundland? and, if so, can he be charged to income tax in respect of all his income including that derived from sources outside Newfoundland, but which was not transmitted to or actually received by him in this country? The form of taxation by which a duty is imposed upon income is of very recent origin in this country. It was first introduced in 1918 during the war as a war tax. In that year the Legislature passed an Act entitled "An Act to authorize the Levying of a War Tax on Certain Incomes" and known as the "Income War Tax Act 1918." An amendment which may have a bearing on the question to be determined in this case, was made to that Act in the following year by section 1 of "An Act to amend the Income War Tax Act 1918." Finally, in the year 1922, the special character of the duty as a war tax was dropped and the previous Acts dealing with the subject repealed by the "Income Tax Act 1922," which was passed that year and is now in operation. Every person liable to taxation under these Acts is required to deliver to the Minister of Finance before the end of April each year, a sworn statement of all his income during each preceding year, in which the tax is assessed and to which it relates is throughout the Acts termed the "Accounting period." The accounting periods in respect of which the question we have now to determine arises, covers in part years when the "Income War Tax Act 1918" was in operation, and in part years when the "Income Tax Act 1922" was in operation. It is therefore necessary to consider how the question submitted to us should be answered under the provisions of each of these Acts. The parts of the 1918 Act which require particular attention are sections 3 and 4. Section 3 defines the meaning of income for the purpose of the Act and, by its section 4, creates certain "exemptions and deductions" to which incomes so defined are subject. Section 4 describes those who are liable to be assessed to the amount of the tax and the income in respect of which the tax is to be paid. Sections 3 and 4 of the Act 1922 deal with the same subjects as the corresponding sections of the Act of 1918. The definition of income in both Acts is the same, namely:—"for the purpose of this Act income means the annual net profit or gain or gratuity, directly or indirectly received by a person whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source."

One of the exemptions and deductions to which incomes are subject by the Act of 1918 is given in sub-section (5) of the said section, namely: "Income derived by a taxpayer domiciled or resident in Newfoundland from property or investments outside Newfoundland, shall not be subject to taxation under this Act in any case where income tax has been paid upon it in the United Kingdom or in the Dominion of Canada or in the United States of America." This sub-section was repealed by the Amending Act of 1919. Section 4 of the Act of 1918 says "4. (1) There shall be assessed and paid upon the income during the preceding year of every person residing or ordinarily resident in Newfoundland during the following taxes:—(a) Five per cent, upon all income exceeding the corresponding section 4 of the Act of 1922 includes those liable under the 1918 Act and others. It separates those liable to assessment into five classes. It says "4. (1) There shall be assessed and paid upon the income during the preceding year of every person:—(i) residing or ordinarily resident in Newfoundland; or (ii) who remains in Newfoundland during any calendar year for a period or periods equal to one hundred and eighty-three days; or (iii) who is employed in the Colony; or (iv) who, not being a resident of Newfoundland, is carrying on business in Newfoundland; or (v) who, not being ordinarily resident of Newfoundland, derives income for services rendered by him in the Colony to any person resident or carrying on business in Newfoundland, but only upon that portion of the income so earned by such non-resident; the following taxes:—(a) A normal tax of five per cent upon all income exceeding the corresponding section 4 of the Act of 1922 is also relevant to the present question. It reads as follows: "(8) Income derived from investments outside Newfoundland shall be liable to taxation on the amount received from such investments." These seem to be the sections of the Act having the most material bearing on our answer. It was contended on behalf of the plaintiff that the defendant, during the accounting periods specified, was a person "residing or ordinarily resident in Newfoundland" and as such he was liable under both Acts to be assessed to income tax in respect of his full income. The defendant on the other hand denies that he was during these periods a person "residing or ordinarily resident in Newfoundland." When is a person said to be "residing or ordinarily resident" in a country? Section 4 of the Act of 1918 makes two classes of persons liable to pay the tax, namely: (1) those "residing or ordinarily resident in Newfoundland," (2) those "carrying on business in Newfoundland." Section 4 of the Act of 1922 makes five classes of persons liable: the first class comprises those "residing or ordinarily resident in Newfoundland." If therefore the defendant is a person "residing or ordinarily resident" in Newfoundland he is liable to be assessed under both Acts. What does that expression mean in its context in each Act? The words "residing" and "resident" are separately used at and that it is apparently seem to me to express the same idea,—the one as participial, the other as an adjective. They are both

derived from the verb "to reside." A person residing in a place where he has a settled home; it conveys an intention of permanency and distinguishes his relation to the place of residence from that of a person who stays in a particular place as a visitor or whose relation to that place is of a temporary and transient character. A person resides in a place where he has a fixed abode. It is not necessary that he should dwell there personally all the time, and it does not exclude the idea of having other residences in other places of which permanency may be predicted with equal or even greater truth. I think there can be no doubt that upon the statement of facts contained in the special case that if the words used in the Acts had been "residing or resident" the defendant, a resident of Newfoundland within the meaning that I have attached to that word, "residing or ordinarily resident" would be liable to be assessed to income tax in respect of the whole of his income. Do these words express distinction which excluded the defendant from the persons comprehended by class one of the section? It seems to me that that particular form of words was used not to distinguish one kind of residence from another or to institute a comparison between different places at which the same person may be resident by the time or character of their occupancy, but to distinguish a place which he is "ordinarily resident" from a place at which he is "resident" but rather to accede to the difference between a transient visitor and an ordinary resident. Residence is the essential fact. It is intended that ordinary residents only and not sojourners shall be assessable. Sojourners or transient visitors are dealt with in the class next named in the section. A person may be ordinarily resident in a place and yet be resident in more places than one. Lord Reading C.J. in Pittar vs. Richardson, 87 L.J. K.B. 59, says on page 61 in a case under the Military Service Act: "It is perfectly clear that under certain circumstances, a man may be ordinarily resident in Great Britain and at the same time ordinarily resident in His Majesty's Dominions abroad."

In my opinion the expression "resident or ordinarily resident" in these Acts includes residing in the ordinary sense of the term,—living in an established dwelling house—a fixed place of abode. The different classes of persons liable to assessment under the Act of 1922 have distinguished characteristics,—that of class one is an intention to permanently occupy an established abode; that of class two those who remain in Newfoundland for a specified time during each year before they became assessable to the tax, but made no such provision in the case of those of class one; the very fact of residence being sufficient to make them taxable whether the period be short or long. A person who keeps a permanent dwelling house at a place where he intends to and does return whenever he wishes, is said to reside, not to remain there. Such a person comes within the first and not the second class named in the Acts. A person therefore who keeps permanently an established dwelling house or residence in the country though he may be abroad for most of the year but has the intention of returning to and occupying it at intervals of long or short duration, and who in fact does so, remains in the country for the purposes of these Acts. Now what are the facts regarding the defendant? Until the year 1905 he lived continuously in the country and took an active part in the business of Bowring & Co., Ltd., from which company he derived a large part of his income. He was a member of the Legislative Council of the Colony. There can be no doubt that until that date he was a person "residing or ordinarily resident" in Newfoundland and that had he not changed taken place in his mode of living, he would undoubtedly be liable to taxation under these Acts as a resident. In that year he retired from active participation in the business of Bowring Brothers, Ltd., but continued his connection with the company as a director and shareholder. He also continued to be and still is a member of the Legislative Council of the Colony. He went abroad each year, including the years 1919 to 1922 covered by the accounting periods to which this action relates. He spent approximately eight months of each of these years abroad; during his absence he lived in a rented flat in a London hotel, visiting Liverpool on a few occasions each year in connection with the business of C. T. Bowring & Co., Ltd., from which company he derived far the greater part of his income and of which company he was a shareholder and director. During the years 1918 to 1922, both inclusive, he was High Commissioner in the United Kingdom for the Newfoundland Government and occupied an office at 53 Victoria Street, London. From 1908 until the present time he has returned to Newfoundland each year and lived here approximately four months, from July to October, both inclusive. While in Newfoundland he occupied a dwelling house and grounds at Topsail and attended as a director to the business of Bowring Brothers, Ltd. He owned the dwelling house and grounds at Topsail. The dwelling house was not, during the accounting periods to which this action relates, occupied by any person but the defendant and his wife and servants. It was at all times ready for occupation. He employed several servants each year during his occupancy of the dwelling house and acted as caretaker in charge of it during his absence. It seems to me that under these circumstances the defendant never ceased to be a resident of Newfoundland and that during the periods in question he maintained a permanent dwelling house in the country at all times ready for his occupation; that he always had the intention to return and did in fact return and occupy it with his family and servants at regular intervals; that he might return and occupy it whenever he wished and live there as long as it suited him to do so.

Whether the period of occupation was long or short, it is clear that he occupied it as his ordinary residence during the months he was there. He, himself, must have regarded his residence here as something more permanent than that of a transient visitor who remained in the country for a time, for during the years covered by the accounting period, he continued his membership of and took his seat as such in the Legislative Council of the Colony. In my opinion he undoubtedly resided at Topsail and it cannot be said he did so for temporary purposes only or that he had no intention of establishing a permanent residence there; his intention is evidenced by the fact he had during his absence abroad the intention of returning there, and by the fact that he kept it always ready for immediate occupation. I must therefore hold that the defendant was, during the accounting period in question, a person residing or ordinarily resident in Newfoundland within the meaning of these words in the Acts of both 1918 and 1922. That being so, upon what income is the defendant assessable to income tax under these Acts? Is it a person residing or ordinarily resident in the Colony he is of course assessable to the same extent as any other resident. The question then arises, what large portion of each year abroad or that he might during his absence abroad have established a residence in some other country does not affect the nature or extent of his liability. A distinction was drawn during the argument of this case between income derived from sources in the Colony and that derived from sources outside the Colony. The defendant is in receipt of income from both these sources. It was contended by the plaintiff that he was assessable in respect of both. This is a question of interpretation of the statutes in question. The definition of income in both Acts is the same; it means the annual net profit, &c., "directly or indirectly received" by the taxpayer from specified sources generally, without distinction between that derived from sources within the Colony and from outside. Appended to the definition of income as part of the same section in my opinion the expression "exemptions and deductions," one of which, according to the Act of 1918, is as follows:—

"(6) Income derived by a taxpayer domiciled or resident in Newfoundland from property or investments outside Newfoundland, shall not be subject to taxation under this Act in any case where income tax has been paid upon it in the United Kingdom or in the Dominion of Canada or in the United States of America." Unless the legislature intended that "income" should be defined for the purpose of the Act should include income derived from sources outside Newfoundland it would not have been necessary to insert the words "domiciled or resident in Newfoundland" in the definition. Its insertion is a clear indication of its intention to make income from these sources subject to the tax but to exempt from the tax income upon which a like tax has been paid in the countries named. It is true this sub-section was repealed by the Amending Act of 1919, but that repeal did not affect the original intention of the legislature to include in the definition of income derived from property or investments outside the Colony, it merely destroyed the exemption given it by sub-section (6) of section 1. It is perfectly clear to me that all income of a person who is a resident or ordinarily resident or domiciled in Newfoundland derived from property or investments outside Newfoundland is assessable under the Acts. The defendant holds that the income of the defendant derived from such sources is so assessable. I think the same conclusion must therefore be given to the definition of income contained in the Act of 1922. I think the fact that no exemption corresponding to that given by sub-section (6) of section 1 of the Act of 1918 is given by the 1922 Act cannot be regarded as indicating a contrary intention; the definition of income being the same in both Acts, it must therefore be given the same meaning in both places. Income is "received" not only when it is actually in the possession of but also when it is placed at the disposal of or within the control of and may be drawn against by the taxpayer. I therefore conclude that income assessable under both Acts include that derived from property and investments abroad. No place in the Act can there be found anything to distinguish the income of a taxpayer derived from abroad according to whether it is transmitted or not to this country. The income assessable to the tax is that "directly or indirectly received" by him whenever or wherever it is credited to him or comes under his control it is subject to the tax. I think the answers to the questions submitted by the parties for the opinion of the Court should be that the defendant is liable to assessment to income tax upon the whole of his income for the accounting periods in question under the provisions of the Acts, including that received from sources outside Nfld. whether transmitted to or received by him in this country or not. Judgment will therefore be entered for the plaintiff with costs. The defendant however, shall have leave as stipulated in the Special Case, to make such objection, if any, to the point of law herein decided, to the said assessment as he may be advised.

Mr. Cramm for the Plaintiff.
Mr. H. A. Winter for the Defendant.
St. John's, Jan. 13th, 1925.

DIARIES, 1925.—We have a few Office and Pocket Diaries remaining which we offer at Half Price. DICKS & CO., LTD.
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Probing the
Atom's SecretMATTER CHANGED INTO COLOUR
RAYS—LORD CLIFFORD'S THEORY.

That revelations as to the separation and reconstruction of the atom by means of coloured light might be expected within a few years is the theory of Lord Clifford, of Chudleigh, a scientific Peer who has experimented widely along this line of research.

Lord Clifford said that about 20 years ago he was induced to turn his attention to the action of light on the germination of seeds, and reached the conclusion that the colour of light had much to do with the transformation of organic substances.

Having reached the view that

at least 19 pure colours, brought about organic formation of tissues and cells by the action of colour, and that matter could be and was transformed into "rays" of colour and ceased to exist as matter, Lord Clifford said he decided to call these colour waves "colour electrons."

His theory is that all matter can be represented in colour electrons, just as it can be in positive or negative charges of electricity. He said:

By the beginning of last year I had so far progressed as to have formulated methods of using seven out of the 19 colours so as to be of practical utility to the medical profession. It was the subject of my first experiment.

For 15 months or more I had been almost unable to speak and partly paralyzed as a result of a stroke. Within two months I had recovered

the action of the rays, in April found I was recovering from a pronounced stoop that I had had since 1886, and acquired as a rodeo champion in Australia.

Lord Clifford claimed many cures for the rays, including cures of deafness, insanity of 24 years standing brought about by physical infirmity, and septic poisoning.

Doctors had made use of the rays which had been taken up by a leading hospital. The apparatus was being acquired by the Hospital of St. John and St. Elizabeth at John's Wood.

"If some public help were to come," added Lord Clifford, "I have no doubt that in two or three years the rays would be of great use in constructing the atoms might be

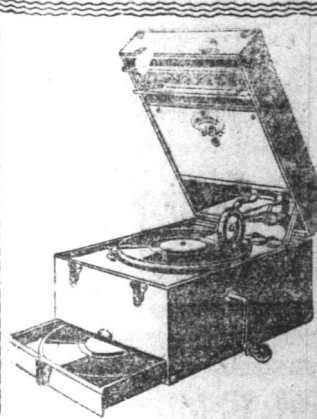
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BERT HAYWARD,
Feb. 2, 1925. Water St.



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