

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CIVIL DIVISION)**

**Plaint No. 12/01**

**BETWEEN** **REVENUE MANAGEMENT**  
**DIVISION OF THE**  
**MINISTRY OF FINANCE**  
**AND ECONOMIC**  
**MANAGEMENT**

**Plaintiff**

**AND** **HEDLEY** **GEORGE**  
**RADFORD,** Vaimaanga  
Rarotonga

**Defendant**

Mr T Clarke for Plaintiff  
Mr Radford for himself  
Date of hearing: 23 November 2001  
Date of Judgment: 23 November 2001

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**ORAL DECISION OF GREIG CJ**

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This is a claim by the Collector of Inland Revenue for unpaid tax based on default assessments which he issued on 22<sup>nd</sup> December 2000. Mr Radford the tax payer appeared in person. He had been represented at an earlier stage by Mr Mitchell who appeared before me this morning and sought leave to withdraw. I granted him that leave.

The Collector gave evidence. He produced before me copies of the assessments on which the claim is founded. Those assessments are accepted as evidence of the amount due. S 25 of the Income Tax Act provides that, except on proceedings on an objection to an assessment under Part IV of the Act, no assessment made by the Collector may be disputed in any Court and the assessment shall be deemed and taken conclusively to be correct. There was no objections made to these assessments under Part IV of the Act.

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The claim made by Mr Radford is that he is exempt from tax. Mr Radford appears to be a wealthy man. He claims to be a Bermudan resident for tax purposes but has lived in the Cook Islands from time to time and for some period. He has lent to a number of individuals and businesses in the Cook Islands, what amounts in total to a considerable sum of money. The details and amounts are not before me but it is accepted that a significant amount is involved. Mr Radford is somewhat elderly but that of course is a matter of relativity. He appears to be a businessman involved in investment of money, he has had advice from legal practitioners and others in the course of dealing with the various government entities and the Collector in the course of this time.

As Mr Radford appeared on his own I allowed him considerable scope to ask question of the Collector in cross examination and to address me by way of evidence on a wide variety of matters. Most of these were irrelevant involving hearsay and opinions of other persons. As I have said, there being no objection to these assessments the taxpayer is unable to challenge them.

The underlying question however is whether he has been granted an exemption which permits him to invest money and to receive income free of income tax. I expressed some surprise that an individual might be treated in such a way but it seems that there have been in the past incentive arrangements which have allowed individuals to obtain as against the general population some particular tax advantage.

What Mr Radford has claimed is that he is entitled to an exemption or what is also described as a moratorium for a period which expired in October 2001. The papers which he has produced to me do not support that. The sole exemption that was purportedly granted is contained in a letter from the Development Investment Board to an agent or adviser of Mr Radford, it is


dated 14 October 1996. The relevant portion of that letter states, "in light of the amount of money put into the economy by Mr Radford and the fact that Mr Radford would like to lend more money to Cook Islands the Board agreed to grant exemptions on withholding and turnover tax on the interest Mr Hedley Radford would receive from the repayment of all loans approved by the Monetary Board and this Board *thus far*.' I emphasize the words 'thus far'. All he was being granted apparently was an exemption of withholding tax on those loans which had then been granted. There are some five further loans which were later approved, with letters formally approving them, up to the date 19 May 1997. These later letters contained an extension of the taxation exemption in respect of each of these loans.

The validity of these tax exemptions is not in issue before me and I express no view as to that. It is however before me in evidence that the opinion of the Collector was that these exemptions were invalid. However, as a matter perhaps of comity between government departments and government entities, the Collector decided to honour the exemption in respect of the loans which were approved up to the middle of May 1997 by the Development Investment Board. Although this was not the occasion to enter into any details as to the assessments the Collector assures me and I accept that in making the assessments in question he has carefully ensured that his decision to honour the exemptions has been carried out. He has therefore as I understand it not assessed tax on the loans up until May 1997 which were approved by the Board.

Mr Radford has thus received a purported exemption which is limited in the way I have expressed it. That exemption has been honoured in the assessments that have been made. He is not entitled to any exemption beyond that. He has not shown me or pointed me to any authority or

authoritative statement which would support an exemption beyond those granted to May 1997. I therefore reject his claim that he is entitled to any exemption.

These assessments have been made in default of any returns of income. They are based on the details of the loans which were available to the Collector from the Development Investment Board. In default of tax returns and objection the assessments must be accepted. In the result then the Collector is entitled to judgment in accordance with the claim and there will therefore be judgment against the defendant in the sum of \$172,168.32. The Collector is entitled to costs, witnesses expenses and disbursements to be fixed by the Registrar.

  
**CHIEF JUSTICE**