

# PIZZARELLO v ATTORNEY GENERAL

Supreme Court  
Flaxman, C.J.  
30 January 1957.

*Income tax — allowable deductions — child receiving full time instruction — meaning of “educational establishment” — Income Tax Ordinance, s. 21.*

Reading in chambers after Call to the Bar does not constitute receiving instruction at an educational establishment for the purpose of s. 21 of the Income Tax Ordinance (Cap. 76).

**Note.** The judgment refers to s. 21(2) of the Income Tax Ordinance; this appears, with amendments not material to the judgment, as s. 21(3) in the 1977 Reprint.

**Case referred to in the judgment.**

*Heaslip v Hasemer*, (1927) 138 L.T. 207.

**Appeal**

This was an appeal against the refusal of the Deputy Commissioner of Income Tax to allow a deduction under s. 21 of the Income Tax Ordinance in respect of an unmarried child claimed to have been receiving full time instruction.

F.E. Pizzarello for the appellant.

A.J. Sanguinetti for the respondent.

**8 February 1957: The following judgment was read—**

This is an appeal under s. 55(1) of the Income Tax Ordinance against the refusal of the Deputy Commissioner of Income Tax to allow a deduction from the amount of the appellant's assessable income in respect of an unmarried child who was, in the appellant's submission, receiving full time instruction at an educational establishment during the year of assessment. It is agreed that during that period the appellant's son, Mr. Felix Pizzarello, who appears on his father's behalf in this matter, was reading full time in Common Law and Chancery chambers after having been called to the Bar. The issue for decision is whether reading full time in chambers constitutes "full time instruction" at an "educational establishment" within the meaning of the Income Tax Ordinance, or, in narrower form "Is a barrister's chambers an educational establishment within the meaning of that enactment?"

The appellant submits that the answer is in the affirmative, and claims that the full time instruction received by his son was received at an educational establishment within the contemplation of s. 21(2) of the Ordinance, the material part of which reads:

"... an individual who proves to the satisfaction of the Commissioner that he maintained during the year of assessment an unmarried child ... who was during that year receiving full time instruction at any university, college, school or other educational establishment ... shall be entitled to claim a deduction of £75 in respect of each such child from the amount of his assessable income."

There appears to be no decided case on this point, although I have been referred by learned counsel for the appellant to *Heaslip v Hasemer*<sup>1</sup>. This has some relevance, and I shall refer to it later. The main argument for the appellant is that instruction in chambers is a part of the system of education

<sup>1</sup> (1927) 138 L.T. 207.

of the Inns of Court, "the schools of learning", and that the Council of Legal Education, the body empowered to superintend the education and examination of students for the English Bar, recognises and recommends reading in chambers as a means of education, and makes some provision relating to it in reg. 18 of its Consolidated Regulations.

The footnote to this Regulation opens with the words

"Students, in addition to availing themselves of the means of instruction provided by these Regulations, are recommended to read in the chambers of a Barrister, preferably after passing the examination for Call to the Bar."

This was the course followed by the appellant's son. I am asked to decide from these submissions and facts, and from the relationship of master and pupil created by his acceptance to read in chambers, that the chambers in which he read are "educational establishments" within the terms of the Ordinance in question.

Learned counsel for the respondent submits that a barrister's chambers is not a place primarily devoted to education, and does not fall within the definition, and that even if I should decide to the contrary the *eiusdem generis* rule should be applied, in which event the "educational establishment" will not be an "educational establishment" within the meaning of the Ordinance. He argues that, following the particular and specific words "university, college, school" the words "other educational establishment" must take their meaning from them, with the resulting presumption that "educational establishment" is restricted to the same class as "university, college, school", institutions which have education as their principal purpose.

I am invited by the appellant to construe the words "educational establishment" in as wide a sense as possible, but, certainly at first sight, I find it difficult to picture a barrister's chambers as such an institution. The education of others is not the primary object of a member of the Bar setting himself up in rooms in the Inns of Court. They are the base for his practice as a barrister-at-law. Closer consideration of the question leads me to no different conclusion. No argument has been produced to satisfy me that the Common Law and Chancery chambers in which the appellant's son read full time can be classed as "educational establishments", either generally or within the meaning of the Income Tax Ordinance. In my view reading in chambers is little more than a means to gain professional experience. The Council's reference in its Consolidated Regulations to this practice has the limited purpose contained in reg. 18; it does not convert a barrister's chambers into an "educational establishment" forming part of what has been referred to as the University of the Inns of Court.

The case of *Heaslip v Hasemer*, already referred to, forms a useful comparison. In this case a young lady, instead of receiving instruction at a college of music, was instructed privately at the house of a fellow of such a college. He had numerous pupils engaged in preparation for the college examinations. The issue in the case was principally one of "full time instruction" (a question which is not in issue in this appeal), but it will be

noted that in the course of the appeal Rowlatt, J., observed that the music teacher's house was "not an establishment at all." If this dictum was applied in the case of a place where a number of pupils were privately and individually prepared for examinations in music, it would seem to me to apply with even more force in the case of a barrister's chambers, where the private professional instruction of a pupil is given as a matter more or less incidental to the principal use of such rooms in the Inns of Court.

The appellant fails to satisfy me that his son, when reading in chambers, was receiving "full time instruction in an educational establishment". I do not think it is relevant to the point I have to decide that the exemption might have been granted had he taken the Council's post-final practical course instead.

It seems a pity that the appellant is not entitled to a deduction in this case, but I must dismiss this appeal, with costs.