
Minister of National Revenue (*Appellant*) *v.* **Gunnar Mining Ltd** (*Respondent*)

Jackett P.—Ottawa, February 3, March 23, 1970.

Income Tax—Appeal from Tax Appeal Board—Right of Board to amend judgment after delivery.

In September 1963 the Tax Appeal Board delivered a judgment dismissing outright an appeal from an income tax assessment. In September 1969 the Board, on the application of the taxpayer, amended the judgment to allow the appeal in part, thereby giving effect to an agreement of the parties made prior to the original appeal in 1963 which the Board had inadvertently overlooked in delivering its judgment in that year. The agreement of the parties in 1963 had been that the Board should be asked to decide one particular question only and that if the taxpayer failed on that question the appeal should nevertheless be allowed in part and the assessment referred back for re-assessment to permit certain deductions to be made in the computation of the taxpayer's income.

Held, on appeal from the judgment as amended, the judgment which the Board gave in 1963 expressed exactly its intention at that time, *viz* to dismiss the appeal, and accordingly the Board had no power to amend that judgment after it had been drawn up and entered. *Paper Machinery Ltd et al v. J. O. Ross Engineering Corp. et al* [1934] S.C.R. 186, applied.

The Tax Appeal Board has no slip rule, but that rule would not in any event authorize the Board to substitute a completely different judgment for the one previously delivered. *Oxley v. Link* [1914] 2 K.B. 734, referred to.

INCOME tax appeal.

D. G. H. Bowman for appellant.

B. A. Kelsey for respondent.

JACKETT P.—This is an appeal from an order of the Tax Appeal Board dated September 30, 1969,[1] whereby the Board purported to amend a judgment delivered by the Board on September 24, 1963,[2] so that the judgment, which had previously dismissed the appellant's appeals from its assessments under Part I of the *Income Tax Act* for its 1958, 1959 and 1960 taxation years, allowed such appeals in part; and it is also an appeal from the judgment as so amended.

The sole ground for the appeal is that the Board had no power, jurisdiction or authority to make the order by which it purported to amend its decision.

Both parties take the position that the court has jurisdiction to hear this appeal and I am satisfied that this is so. If the Board had power to deliver the judgment as it appeared to be after the amending order, which judgment first came into existence on December 30, 1969, it was by virtue of section 59 of the *Income Tax Act,* as read with section 92 thereof;[3] and, by virtue of section 60 thereof, "The Minister . . . may, within 120 days from the day on which the Registrar of the Tax Appeal Board mails the

[1] 70 D.T.C. 1020.
[2] 63 D.T.C. 836.
[3] Sections 59 and 92(1) of the *Income Tax Act* read in part as follows:

59. (1) Where a taxpayer has served notice of objection to an assessment under section 58, he may appeal to the Tax Appeal Board constituted by Division I to have the assessment vacated or varied after either

(*a*) the Minister has confirmed the assessment or re-assessed, or

(*b*) 180 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that he has vacated or confirmed the assessment or re-assessed;

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 58 that the Minister has confirmed the assessment or re-assessed.

* * *

92. (1) The Board may dispose of an appeal by

(*a*) dismissing it,

(*b*) allowing it, or

(*c*) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for re-consideration and re-assessment.

(*d*) Repealed.

decision on an appeal under section 59 to the Minister . . ., appeal to the Exchequer Court of Canada". In my view, this right of appeal extends to a case where the attack is based on a lack of jurisdiction in the Tax Appeal Board to deliver the judgment attacked[4] and, that being so, it follows that it extends to a case where, as I conceive it to be here, the attack is really based on a contention that, while the matter falls within the Board's jurisdiction, that court had no power or authority to deliver the judgment under attack.

On one view, the only facts relevant to the disposition of this appeal are that, after duly hearing an appeal that was within its jurisdiction, the Board, on September 24, 1963, delivered a judgment reading,

> "The appeal is dismissed."

and that, after hearing an application by the appellant for a further order, on December 30, 1969, the Board made an order reading as follows:

> It is ordered that the judgment of the Board herein dated September 24, 1963 dismissing the appellant's appeal in respect of its 1958, 1959 and 1960 taxation years is hereby amended to read as follows:
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> > "The appeal with regard to the 1958, 1959 and 1960 taxation years is hereby allowed in part for the purpose only of referring the relevant assessments back to the Minister for re-assessment taking into account the capital cost allowance and deferred exploration and development expense agreed upon between the Minister and the appellant at or prior to the hearing of the appeal before the Board on March 19, 1963, as being the amounts to which the appellant is entitled in respect of the said taxation years, the appeal with regard to the 1958, 1959 and 1960 taxation years to be dismissed in all other respects."
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> And it is further ordered that the judgment amended as set out above shall also be dated September 24, 1963, and shall have effect as and from that date.

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[4] *See Provincial Secretary of Prince Edward Island v. Egan,* [1941] S.C.R. 396, per Duff C.J.C. at page 399:

> I think the contention of the appellant is well founded that section (1) of chap. 5 of the P.E.I. Statutes of 1940 gives *prima facie* an appeal to the Supreme Court (P.E.I.) from any decree, judgment, order, or conviction by a Judge of a County Court who is acting in a judicial capacity, though *persona designata* and not as the County Court, under the authority of a Provincial statute. This is not intended to be an exhaustive description, but in such circumstances I think an appeal lies.
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> The fact that the County Judge has acted without jurisdiction does not, in my opinion, affect this right of appeal. Once the conclusion is reached that the section intends to give an appeal to the Supreme Court, even where the County Court Judge is exercising a special jurisdiction and not as the County Court, I can see no reason for limiting the scope of the appeal in such a way as to exclude questions of jurisdiction. As the Attorney-General observed in the course of his argument, lawyers are more familiar with the practice of dealing with questions of jurisdiction raised by proceedings by way of *certiorari* and prohibition. A tribunal exercising a limited statutory jurisdiction has no authority to give a binding decision upon its own jurisdiction and where it wrongfully assumes jurisdiction it follows, as a general rule, that, since what he has done is null, there is nothing to appeal from. But here we have a statute and this is only pertinent on the point of the meaning and effect of the statute.
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> It has always seemed to me that the proceeding by way of appeal would be the most convenient way of questioning the judgment of any judicial tribunal whose judgment is alleged to be wrong, whether in point of wrongful assumption of jurisdiction, or otherwise. There is no appeal, of course, except by statute and, I repeat, the question arising upon this point is entirely a question of the scope and effect of this statute.

In order to appreciate the argument, however, I must, before dealing with the question in issue, attempt to explain the somewhat complicated events that resulted in the unusual order that is under attack in this appeal.

To appreciate the events that led up to the application to the Tax Appeal Board that resulted in the order or judgment of the Board from which this appeal was taken, it is necessary to have in mind several features of the *Income Tax Act*.

In the first place there is the peculiarity of capital cost allowance that it is only deductible in computing the income for any year to the extent claimed by the taxpayer (Regulation 1100) and the peculiarity of the deduction for "pre-production expenses" that it is only deductible in computing the income for any year to the extent of the amount that would otherwise be the taxpayer's income for the year (e.g. section 83A(8)), so that deductions will not be made under either of these heads, in computing income for a year, to the extent that a taxpayer otherwise escapes taxation for the year because it has no "income" or by reason of exempting provisions in the Act. Such allowances or deductions not deducted or deductible in any year remain available for use in a subsequent year when they are required.

In the second place, one must have in mind the broad outline of the procedure for determination and payment of the tax under Part I of the *Income Tax Act*. This may be summarized, to the extent relevant, as follows:

(*a*) a corporation is required to file its tax return for a year within six months from the end of the year (section 44(1)(a)) and the Minister is required to examine the return and "assess" with all due despatch and is authorized to re-assess or make additional assessments within four years from the original assessment (and in certain other cases that are not relevant here) (section 46);

(*b*) a corporation is required to make monthly payments on account of tax (section 50) and to pay the balance of the assessed tax within thirty days after the assessment;

(*c*) the first step to be taken by a taxpayer who objects to an assessment is to send a notice of objection to the Minister and, upon receipt of such a notice, the Minister is required to reconsider the assessment, and "vacate, confirm or vary the assessment or re-assess" (section 58)—(a re-assessment made pursuant to section 58 is not invalid because it is not made within the four years contemplated by section 46 (section 58(4));

(*d*) the second step open to an objecting taxpayer is an appeal to the Tax Appeal Board (section 59), which Board may dispose of an appeal *inter alia* by "dismissing it", or "allowing it" and either vacating or varying the assessment or referring the assessment back to the Minister for reconsideration and re-assessment (section 92);

(*e*) after the decision of the Board, either party may appeal to the Exchequer Court (section 60), which may dispose of the appeal by "dismissing it", or "allowing it" and either vacating or varying the assessment, restoring the assessment, or referring the assessment back to the Minister for reconsideration and re-assessment (section 100);

(*f*) finally, there is an appeal from the decision of the Exchequer Court of Canada, which appeal is governed by the *Exchequer Court Act* and the *Supreme Court of Canada Act*.

The third feature of the Act, which one should have in mind when trying to appreciate what happened in this case, is that, while the Minister is required to refund over-payments of tax after assessment (section 57(1)), the interest payable on such funds is computed at 3 per cent (section 57(3)) unless, by a decision of the Minister under section 58 on a notice of objection, or by a decision of the Tax Appeal Board, the Exchequer Court or the Supreme Court, it is finally determined that the tax is less than the amount assessed under section 46, in which event the interest is computed at 6 per cent (section 57(3a)).

I turn now to what happened in this case.

It would appear that, in making its return for the years in question, the taxpayer did not deduct all the capital cost allowance or pre-production expenses that were available to it because, presumably, other substantive claims made by it, if accepted by the Minister, made such deductions unnecessary or unavailable. The Minister, however, did not accept such other substantive claims and, by its notice of objection, the appellant, in addition to asking for reconsideration of such claims, put forward claims in the alternative for capital cost allowance.[5] The Minister, however, in disposing of the notices of objections under section 58 merely confirmed the assessments.

The taxpayer then appealed to the Tax Appeal Board and, by its notice of appeal to the Board, carefully spelled out not only its main substantive claims but also its alternative claims to capital cost allowance and for deduction of pre-production expenses. When the matter came on for hearing before the Board, counsel for the parties made it clear that the parties were in agreement that, if the taxpayer did not succeed on its main substantive claims, it was nevertheless entitled to capital cost allowance, deduction of pre-production expenses, or both, and that, in the event that the Board decided against the taxpayer on such main questions, the judgment of the Board should be that the assessment be referred back to the Minister for reconsideration and re-assessment on the basis that it was not entitled to the main relief sought but was to be allowed capital cost allowance, deduction of pre-production expenses or both. When the Tax Appeal Board, after a hearing that was thereafter restricted to the main substantive claims of the taxpayer, came to deliver judgment, it decided against the taxpayer on such claims and dismissed the appeal, overlooking the agreement of the parties that there should nevertheless be a reference back.

[His Lordship here stated that following the Tax Appeal Board's judgment, counsel for both parties agreed in writing that an appeal by the taxpayer

[5] I have not satisfied myself whether the notice of objection also dealt with pre-production expenses but, for purposes of this recital, it is immaterial whether it did or not.

to the Exchequer Court should be confined to the issue upon which the Tax Appeal Board gave judgment and that if the taxpayer failed on that issue in the Exchequer Court the Minister would re-assess the taxpayer and allow capital cost allowances and a deduction for pre-production expenses in accordance with the previous agreement of the parties, and therefore that no charge for interest would be payable on late instalment payments.]

Thereafter, the appeals to this court and the appeal to the Supreme Court of Canada proceeded without reference to the questions of capital cost allowance and pre-production expenses and each appeal resulted simply in the taxpayer's appeal being dismissed.

[His Lordship here set out at length the contents of two letters from officials of the Department of National Revenue to the taxpayer's solicitors in which they gave their reasons for confining interest to 3% instead of 6% on the amount of refund of overpayment of tax. In their opinion the refund was made under s. 57(3) of the *Income Tax Act* and not under s. 57(3a). Following receipt of that letter the taxpayer referred the matter to the Deputy Minister of National Revenue who concurred with the views expressed in the two earlier letters from the Department.]

By notice of motion dated November 7, 1969, the taxpayer made the motion to the Tax Appeal Board that resulted in the order amending the judgment that gave rise to this appeal.[6]

This appeal is from the order so made, or from the judgment created by the order so made. I cannot see that it matters whether it is regarded one way or the other.

The general rule is, of course, that no court can, without special authority, rehear a matter or change its decision on a matter of substantive right after its judgment has been drawn up and entered. It is generally accepted "that the general good of the community" requires "a final end to be put to litigation". Compare *In re St. Nazaire Co.*[7], per Jessel M.R. at page 100. See also *Preston Banking Co. v. William Allsup & Sons,*[8] *Ainsworth v. Wilding,*[9] *Oxley v. Link,*[10] *Firm of R.M.K.R.M. v. Firm of M.R.M.V.L.,*[11] *MacCarthy v. Agard,*[12] *Paper Machinery Ltd v. J. O. Ross Engineering Corp.,*[13] *Webster Co. v. Connors Bros. Ltd.,*[14] *Meier v. Meier*[15] *and Kuziak v. Romuld.*[16] A judgment should normally be reviewed on appeal or, in an appropriate case, be set aside by a new action based on fraud or new evidence. These general rules are, I am satisfied, applicable to the Tax Appeal Board.[17]

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[6] The judgment of the Tax Appeal Board (Mr. Weldon presiding) is reported in 70 D.T.C. (2d) 1020—Ed.

[7] (1879) 12 Ch.D. 88 (C.A.)

[8] [1895] 1 Ch. 141.

[9] [1896] 1 Ch. 673.

[10] [1914] 2 K.B. 734.

[11] [1926] A.C. 761.

[12] [1933] 2 K.B. 417.

[13] [1934] S.C.R. 186.

[14] [1936] 2 D.L.R. 164.

[15] [1948] P. 89.

[16] (1967) 60 D.L.R. (2d) 286.

[17] I do not say that the law that allows an action to set aside based on fraud, or new evidence, applies to a judgment of the Tax Appeal Board. I have not considered that question.

I am satisfied, however, that the Tax Appeal Board, which is a court of record, has the inherent power to change the record[18] of a judgment pronounced by it so that it will express the order actually made by the Board even though there is nothing in the statute law or the regulations that expressly permits it to do so. See *In re Swire*[19] and *Milson v. Carter.*[20] In the absence of any express authority such as that conferred on most common law courts and commonly known as the "slip rule",[21] the Board's power to change the record of its judgment or otherwise make corrections is no greater, and is possibly less, than the power of the Supreme Court of Canada as laid down by the judgment of that court in *Paper Machinery Ltd v. J. O. Ross Engineering Corp.*,[22] per Rinfret, J. (as he then was) at page 188:

> The question really is therefore whether there is power in the court to amend a judgment which has been drawn up and entered. In such a case, the rule followed in England is, we think,—and we see no reason why it should not also be the rule followed by this court—that there is no power to amend a judgment which has been drawn up and entered, except in two cases: (1) Where there has been a slip in drawing it up, or (2) Where there has been error in expressing the manifest intention of the court (*In re Swire,* (1885) 30 Ch. D. 239; *Preston Banking Co. v. Allsup & Sons,* [1895] 1 Ch. 141; *Ainsworth v. Wilding,* [1896] 1 Ch. 673). In a very recent case (*MacCarthy v. Agard,* [1933] I K.B. 417), the authorities were all reviewed and the principle was re-asserted. In that case, although, indeed, all the judges expressed the view that the circumstances were particularly favourable to the applicant, but because neither of the conditions mentioned were present, the Court of Appeal came to the conclusion that it had no power to interfere. (The rule as stated was approved by the Privy Council in *Firm of R.M.K.R.M. v. Firm of M.R.M.V.L.,* [1926] A.C. 761 at 771-772).

What happened here would seem to be clear. At the opening of the hearing before the Board, the parties made it clear to the Board that they were in agreement that, even if the taxpayer was unsuccessful in its first attack on the assessment, the appeal should be allowed and there should be a reference back to the Minister for re-assessment, but with a direction that would relate to a secondary matter and not the direction that the taxpayer sought to obtain. This fact was not present in the mind of the member of the Board when he rendered judgment with the result that he delivered a judgment by which he dismissed the appeal. Thinking that it could obtain satisfactory relief without doing so, the taxpayer deliberately refrained from

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[18] Having regard to the fact that the Board's formal judgment was apparently settled concurrently with the issuance of its reasons, no question arises here as to whether it has the power of most common law courts to rehear a matter and reconsider its judgment at any time before its judgment is settled and entered.

[19] (1885) 30 Ch.D. 239, per Cotton L. J. at page 243 and Bowen L. J. at page 248.

[20] [1893] A.C. 638.

[21] See, for example, Rule 172(6) of the Rules of this Court, which reads:

(6) Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court without an appeal.

[22] [1934] S.C.R. 186.

appealing against this error on the part of the Board when it did appeal against its defeat on its first attack on the assessments. After losing its appeals and then finding that it could not obtain satisfactory relief on the secondary matter, it returned to the Board and got the order giving rise to this appeal. It is clear that, when the Board delivered its original judgment, it completely overlooked the agreement of the parties that the appeal should be allowed in any event. This appears from several passages in the Board's reasons of September 30, 1969, of which it will be sufficient to refer to only one, *viz:*

> I should like to record in these reasons and to emphasize the fact that, if the matter had been impressed on me more pointedly at the hearing of the appeal, I would have been quite willing to frame the judgment issued by me on September 24, 1963, to comply with the form of judgment now being sought by the appellant.

As the matter had been completely overlooked at the time of the judgment of September 24, 1963, it seems to me that the only "intention" of the Board at that time, "manifest" or otherwise, was to dismiss the appeal. That being so, within my understanding of the words as used by Rinfret, J. in the *Paper Machinery* case, there was no "error" at that time "in expressing the manifest intention of the court". Obviously, the Board's reasons for the order appealed from proceed on a different view of those words when they say "the judgment . . . which is the subject of this motion is and has been deficient since the date of its issue by reason of an inadvertent error of omission in expressing the manifest intention of the Board . . ." According to my understanding of the matter, the 1963 judgment carried out exactly the intention as formulated by the Board at that time.

As I view the matter, the order appealed from can only be supported if the Board has power to substitute one judgment for another so as to do what it would have done if it had had something in mind at the time of rendering the original judgment that in fact it did not have in mind at that time. There are authorities, on which the taxpayer relies in support of the order appealed from, which would seem to lend some support for the view that a court has power to change judgments when it discovers oversights. In my view, however, none of these authorities go so far as to hold that any court can completely change the substance of its judgment on the ground that it overlooked or did not know something when it rendered it. In addition, most of such decisions seem to be based on the "slip" rule or some other authority not vested in the Tax Appeal Board. In any event, to the extent that such authorities go beyond the bounds laid down in the *Paper Machinery* case, as I understand them, I am of the view that I should apply the law as stated in that case.

Before referring to the cases that I have in mind, I should say that, when some of the cases relied on by the taxpayer are examined, it is found that the changes made in the judgments there under review were made to make the formal judgment express the judgment as actually delivered by

the court. See, for example, *Hatton v. Harris*[23] where the decision was based on the principle stated by Lord Watson at page 560, that ". . . it is always within the competency of the court . . . to correct the record in order to bring it into harmony with the order which the judge obviously meant to pronounce". Another example is *Milson v. Carter*[24] where Lord Hobhouse said at page 640: "It is obvious that the omission to provide for the case of dismissal . . . must have been an accidental omission for which the registrar of the Supreme Court, or perhaps the respondent himself, is to blame. It is impossible to suppose that the court could have intended to give the appellant an opportunity of shuffling out of his just liability by making default in the prosecution of his appeal". See also *Lawrie v. Lees*,[25] per Lord Penzance at pages 34-5, *Kidd v. National Railway Association*[26] and *Craig v. Sinclair*[27]. A somewhat similar case carries this power of the court a little further. In *Thynne v. Thynne*,[28] it was held that the court could correct a divorce decree after it became absolute to make it recite the marriage ceremony which created the state of marriage that was dissolved by the decree instead of a subsequent ceremony that was the only one of which the court had been informed before the divorce decree was pronounced. This would seem to go somewhat further than the bounds established in the *Paper Machinery* case, *supra*, but does not go any further than making changes necessary to make the judgment reflect what the court really intended to do. See per Singleton, L. J. at page 301:

> "It is important to bear in mind that the commissioner intended to dissolve a lawful marriage, to put an end to the status of married persons which up to that time existed between the wife and the husband: . . ."

These cases can have no application here where it is clear that the Board did not have in mind, when it delivered its original judgment, the quite different judgment substituted by the later order.

There are, however, other cases where a court has, subsequent to delivering a judgment or making an order, either amended it so as to change its substantive effect, or made a further order, by reason of having something brought to its attention that it had overlooked or had not known about. The following are the examples of such cases that have come to my attention:

1. *Fritz v. Hobson*[29]—where, after judgment at the end of the trial of an action, an application was made for costs of a motion for an interlocutory injunction that had been adjourned to the trial and the

[23] [1892] A.C. 547.
[24] [1893] A.C. 638.
[25] (1881) 7 App. Cas. 17.
[26] (1916) 37 O.L.R. 381.
[27] (1944) 61 B.C.R. 253.
[28] [1955] P. 272.
[29] (1880) 14 Ch.D. 542.

trial judge held that he could still award costs of that motion (even though they would ordinarily have been dealt with in the judgment disposing of the action if counsel had not overlooked applying for them) either by reason of an implied liberty to apply reserved in the original order on the motion or an express liberty to apply in the judgment itself or by reason of the "slip" rule.

2. *Barker v. Purvis*[30]—where the judgment at the trial of an action ordered a payment to be made by the defendant to the plaintiff but directed that he should be at liberty to set off a sum of £453 on account of interest which he had paid on behalf of the plaintiff, the amount of £453 having been fixed on the faith of a statement of the defendant and being in fact in excess of the right amount, and it was held that the judgment could be corrected under the "slip" rule, the mistake having been caused by an "accidental slip".

3. *Hardy v. Pickard*[31]—where Rose J. had overlooked expressing an award of costs for the successful party when he delivered judgment and, being satisfied that he had not decided to deprive the successful party of costs, held that he had authority under the "slip" rule to add the order as to costs "whether the omission was in not considering the question, or in not making a record of my judgment".

4. *Chessum & Sons v. Gordon*[32]—where it was held that, under the "slip" rule, the court could order that a disbursement that a successful party had omitted to claim on taxation of costs be referred to the taxing master for taxation and that his certificate might be amended.

5. *Prevost v. Bedard*[33]—where the Supreme Court of Canada ordered that its judgment dismissing an appeal be varied by inserting a direction that the judgment appealed from and the plaintiff's declaration be varied to correct the inadequate description of certain lands and Anglin J. said, at page 635:

> Of course this jurisdiction is distinct from the inherent power which the court possesses to correct its formal judgment when it finds as drawn up it does not correctly state what the court actually directed and intended. There can be no doubt that the omission to provide in the judgment for the amendment was due to an accidental slip or oversight. Had the request and necessity for it been present to the minds of the judges when delivering judgment it would certainly have been directed. In delivering its judgment dismissing the appeal, the purpose of the court clearly was that the respondent should have an effective judgment for the relief which he sought. That intention might be defeated if the court were powerless to grant the amendment now asked.

[30] (1887) 56 L.T. 131.
[31] (1888) 12 Ont. P.R. 428.
[32] [1901] 1 Q.B. 694.
[33] (1915) 51 S.C.R. 629.

6. *McCaughey v. Stringer*[34]—where it was held that, following the *Fritz* case and the *Chessum* case, an order could be varied to increase the amount payable because the plaintiff, in applying for the order had, by mistake, allowed the defendant a credit greater than he was entitled to.

7. *Re City Housing Trust Ltd*[35]—where it was held that, the Master having ordered the plaintiff's costs in a debenture action to be paid out of the fund in court, an order could subsequently be made that the trustee's remuneration be paid out in priority of the plaintiff's costs.[36]

8. *Re Inchcape*[37]—where Morton J. held that he could order costs to be paid out of an estate even though they had not been drawn to his attention when he rendered a judgment in the matter by which he ordered that other costs be paid out of the estate.

In so far as these cases are cases where the court found that it still had jurisdiction to do something in addition to what was done by its original order or judgment, they cannot supply any support for the order of the Tax Appeal Board that is under appeal because what it does is to substitute a completely different judgment for the one previously delivered. In so far as they are based on the "slip" rule, they have no application, not only because there is no "slip" rule applicable to the decisions of the Board, but also because the "slip" rule, while it may well have been properly applied in the cases to which I have referred, cannot, properly considered, authorize what the Board did in this case. The "slip" rule was authoritatively construed in *Oxley v. Link*,[38] per Vaughan Williams L.J. at pages 737 *et seq.*, where he said:

> ...the same objection which arises in respect of the words "clerical mistakes in judgment or orders" in my opinion arises in respect of the words "errors arising therein from any accidental slip or omission." What is "therein"? That is in the judgment. It is exactly the same thing. "Clerical mistakes in judgments" only covers the same area, neither greater nor smaller, as you get from the words "errors arising therein from any accidental slip or omission"—that is in judgments or orders. Under those circumstances, I come to the conclusion that this slip rule does not apply in the present case. The real fact of the matter is that what is asked for here by the judgment creditors, if I may call them such, is this, not that there may be a correction in the judgment or order, but that they may substitute for the judgment or order which has been made something which is a wholly different judgment. I heard Mr. Sankey say this morning that all that was wished to be done here was to add an omitted clause; but it is not so. The proposal is to substitute one form of judgment or order for another. He has no desire, as I understand it, to make any correction at all.

[34] [1914] 1 I.R. 73.
[35] [1942] 1 All E.R. 369.
[36] This decision followed the decision of the Court of Appeal *Re Roper*, (1890) 45 Ch.D. 126, and is to be contrasted with the decision of the Court of Appeal *In re Suffield and Watts*, (1888) 20 Q.B.D. 693.
[37] [1942] 2 All E.R. 157.
[38] [1914] 2 K.B. 734.

and by Buckley, L.J. at pages 741 *et seq.*, where he said:

> The words relied upon are: "errors arising therein," that is to say, in a judgment—errors arising in a judgment "from any accidental slip or omission may at any time be corrected by the court or a judge on motion or summons without an appeal." To my mind an error in something means that the thing of which you are speaking contains parts which are right and parts which are wrong, and that you are going to alter so much of it as is wrong. It is not correcting an error in a thing which is wrong from beginning to end to substitute for it something which is right. In order to see if this order applies I have to see whether this judgment contains something which is right and which I am to correct by adding something, if it be a mistake which arises from omission, or by correcting something, if it be something which requires modification or correction of some sort. So that to see whether the order applies or not, it is vital in the first instance to see whether this is a document parts of which are right and parts of which are wrong. If I am right in what I have said already, there is no part of it which is right; it is wrong altogether. For that reason it seems to me that the slip rule does not apply.

I am satisfied, from my examination of the authorities, that the "slip" rule, even if it were applicable, would not have authorized the Board to do what it did here, namely, substitute for the judgment originally delivered a completely different judgment that it had no intention of delivering when it rendered its original judgment.

The appeal will therefore be allowed with costs and the assessments that are the subject matter of the Board's judgment will be restored.