

TRANSCRIPT

OF

RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 190

UNITED STATES, PETITIONER,

vs.

THOMAS CRAWLEY LAVIS, ET AL.

No. 268

THOMAS CRAWLEY DAVIS, ET AL., PETITIONERS,

vs.

UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

No. 190—PETITION FOR CERTIORARI FILED JUNE 29, 1961

No. 268—PETITION FOR CERTIORARI FILED JULY 28, 1961

CERTIORARI GRANTED OCTOBER 9, 1961

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IN THE UNITED STATES COURT OF CLAIMS

Docket No. 516-58

THOMAS CRAWLEY DAVIS AND GRACE ETHEL DAVIS, Plaintiff

UNITED STATES OF AMERICA, Defendant

PETITION—Filed November 25, 1958

To the Honorable United States Court of Claims:

The petition of the plaintiffs, Thomas Crawley Davis and Grace Ethel Davis, respectfully shows:

1. At the end of the calendar year 1955, the plaintiff Thomas Crawley Davis and Grace Ethel Davis, wife and husband, are citizens of the United States, and their mailing address is Room 9016 duPont Building, Wilmington, Delaware.

2. This claim arises under the internal revenue laws of the United States to recover income tax and interest erroneously and illegally collected by and on behalf of the defendant by the duly appointed, qualified and acting District Director of Internal Revenue for Delaware.

3. On or before April 15, 1956, plaintiffs Thomas Crawley Davis and Grace Ethel Davis filed a 1955 joint federal income tax return with the District Director of Internal Revenue for Delaware. Such return showed taxable income of \$276,374.43 and net tax payable of \$202,014.50. The latter amount was duly paid on or before April 15, 1956.

[fol. 3] 4. Plaintiff Thomas Crawley Davis and Alice M. Davis were married on March 1, 1941. Towards the end of 1953, the relations between plaintiff Thomas Crawley Davis and Alice M. Davis became quite strained, and Alice M. Davis began to make demands on plaintiff Thomas Crawley Davis that he deliver to her one-half of the approximately 3,000 shares of E. I. duPont de Nemours Company herein after "duPont") common stock held by him.

5. In December 1953, plaintiff Thomas Crawley Davis was elected a member of the board of directors and of the executive committee of duPont. At the same time, plaintiff

Thomas Crawley Davis was named a vice president of duPont. At the time of his election to the board and executive committee, plaintiff Thomas Crawley Davis' stock holdings in duPont were substantially less than those of any other director. There was no precedent in duPont for the election of a director and member of the executive committee of a person with stock holdings as small as those of plaintiff Thomas Crawley Davis. Accordingly, plaintiff Thomas Crawley Davis became convinced that a transfer to Alice M. Davis of one-half of his duPont stock pursuant to her demands would seriously jeopardize his position as a member of the board and executive committee and as a vice president of duPont.

6. For the calendar year 1954, plaintiff Thomas Crawley Davis' adjusted gross income amounted to \$264,984, of which \$258,022 (or over 97%) represented salary and directors' fees from duPont and dividends on duPont stock. For the calendar year 1955, plaintiff Thomas Crawley Davis' adjusted gross income amounted to \$317,865, of which \$317,745 (or over 99%) represented salary and directors' fees from duPont and dividends on duPont stock.

7. Plaintiff Thomas Crawley Davis believed that any substantial depletion of his stock interest in duPont would seriously and adversely affect his position with, and his income from, duPont not only during the period of his [fol. 4], active participation in the affairs of duPont, but also in the period following his retirement.

8. In the early part of 1954, Alice M. Davis retained James R. Morford, Esquire, a member of the law firm of Morford and Bennethum, of Wilmington, Delaware, to represent her in negotiations with plaintiff Thomas Crawley Davis. Initially, plaintiff Thomas Crawley Davis declined to retain an attorney to represent him in this matter. However, by late summer of 1954, it became obvious to plaintiff Thomas Crawley Davis that his attempts at reconciliation were futile and he retained H. Albert Young, Esquire, a member of the law firm of Young and Wood of Wilmington, Delaware, in an attempt to work out a satisfactory property settlement with Alice M. Davis.

9. Alice M. Davis, throughout the initial negotiations between the parties' respective counsel, remained adamant in her demand that plaintiff Thomas Crawley Davis deliver to her, *inter alia*, one-half of his shares of duPont stock

and Plaintiff Thomas Crawley Davis resisted these demands. Following negotiations between the parties' respective counsel, plaintiff Thomas Crawley Davis and Alice M. Davis, on November 4, 1954, executed a separation agreement. A copy of the parts of that agreement pertinent to this proceeding is attached hereto as Exhibit A, and is hereinafter referred to as the "separation agreement."

10. In the separation agreement, the parties made provision for the settlement of their respective interests and demands in connection with property held by the parties and for a division of such properties. Under paragraph 3 of the separation agreement, in connection with the property division, plaintiff Thomas Crawley Davis agreed to deliver to Alice M. Davis 1,000 shares of duPont common stock, of which 500 shares were to be delivered on April 1, 1955, and the balance on April 1, 1956.

[fol. 5] 11. The separation agreement, in addition to making provision for the division of the parties' property, provided in paragraph 5 thereof for payments to Alice M. Davis in discharge of plaintiff Thomas Crawley Davis' obligations of maintenance and support.

12. Attached hereto as Exhibit B is a schedule listing the shares of duPont stock transferred to Alice M. Davis by plaintiff Thomas Crawley Davis during 1955 in accordance with the terms of the separation agreement.

13. During 1955, plaintiff Thomas Crawley Davis paid to Young and Wood, Esquires, of Wilmington, Delaware, and Morford and Bennethum, Esquires, of Wilmington, Delaware, legal fees as follows:

Item	Description of services as set forth in attorneys' statement	Payee	Amount	Date
1.	Tax matters in the case of Davis v. Davis	Young & Wood	\$2,500 00	1-27-55
2.	Professional services rendered in connection with tax matters involved in the matter of Alice M. Davis versus T. Crawley Davis	Morford & Bennethum	2,500 00	1-27-55
3.	Separation agreement and property division between T. C. Davis and Alice M. Davis	Young & Wood	5,000 00	1-27-55
4.	Professional services in the matter of division of property and the preparation of separation agreement between T. Crawley Davis and Alice M. Davis	Morford & Bennethum	2,500 00	1-27-55

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14. Plaintiffs Thomas Crawley Davis and Alice M. Davis were granted an absolute divorce by a decree of the Second Judicial District Court of the State of Nevada in and for [fol. 6] the County of Washoe on January 5, 1955. Said decree incorporated and approved the property division provided in the separation agreement mentioned in paragraph 9 hereof.

15. In the 1955 joint federal income tax return filed by plaintiffs, they claimed as deductions legal fees in the amount of \$5,000 representing payments during 1955 for legal services in connection with tax matters associated with the negotiation of the separation agreement, being the services described in items 1 and 2 in paragraph 13 hereof.

16. In connection with the audit of plaintiffs' federal income tax return for the year 1955, representatives of the United States Internal Revenue Service proposed to assess a deficiency in the amount of \$6,318.66 on the basis of the disallowance as a deduction of \$5,000 of legal fees in connection with tax matters (as mentioned in paragraph 15 hereof) and on the basis of including in plaintiffs' gross income net long-term capital gain of \$3,737.31, representing the difference between the tax basis to plaintiff Thomas Crawley Davis of 500 shares of duPont stock transferred to Alice M. Davis during 1955 and the fair market value of such shares as of the date of transfer to Alice M. Davis.

17. On February 14, 1958, plaintiff Thomas Crawley Davis paid to the District Director of Internal Revenue for Delaware the amount of \$6,961.95, representing the asserted deficiency in 1955 federal income tax in the amount of \$6,318.66 plus interest of \$643.29.

18. On April 7, 1958, plaintiffs filed with the District Director of Internal Revenue for Delaware a claim for refund of \$13,642.29 of 1955 federal income tax and deficiency interest mentioned in paragraph 17 based upon an overpayment of such tax resulting from the failure of the United States Internal Revenue Service to allow as a deduction legal fees in the amount of \$12,506 as described in paragraph 13 above pursuant to the provisions of section 212 [fols. 7-19] of the Internal Revenue Code of 1954 and from the erroneous inclusion in the gross income of plaintiffs of long-term capital gain resulting from the transfer of 500 shares of duPont stock from plaintiff Thomas Crawley

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Davis to Alice M. Davis. A copy of said claim for refund is attached hereto as Exhibit C.

19. By registered mail letter dated September 23, 1958, the District Director of Internal Revenue for Delaware notified plaintiffs of disallowance in full of their claim for refund for the year 1955.

20. No action on this claim other than that set forth herein has been taken before Congress or in any department of the government of the United States or in any court. The plaintiffs are the sole owners of this claim and no part of this claim has ever been assigned or transferred. The plaintiffs believe the facts stated herein to be true.

21. The defendant owes the plaintiffs \$13,642.29 plus interest thereon as provided by law.

WHEREFORE, plaintiffs demand judgment against the defendant for the sum of \$13,642.29 with interest thereon as provided by law and costs and disbursements of this proceeding.

Respectfully submitted, Kenneth W. Gemmill,
Converse Murdoch, Attorneys for Plaintiffs,
1600 Three Penn Center Plaza, Philadelphia 2,
Pennsylvania.

November 20, 1958

Barnes, Dechert, Price, Myers & Rhoads, 1600 Three Penn Center Plaza, Philadelphia 2, Pennsylvania, of Counsel.

[fol. 20] IN THE UNITED STATES COURT OF CLAIMS

No. 516-58

[Title omitted]

ANSWER—Filed January 23, 1959

The defendant, the United States of America, by its attorney, Charles K. Rice, Assistant Attorney General, answering the allegations in plaintiffs' petition herein:

I

Denies the allegations of such petition not admitted, qualified or otherwise specifically referred to below.

II

Further answering the petition, defendant—

1. Admits the allegations contained in paragraph 1. [fol. 21]
2. Denies the allegations contained in paragraph 2, except that it admits that this claim arises under the internal revenue laws of the United States and admits that the District Director of Internal Revenue for Delaware was duly appointed, qualified and acting.
3. Admits the allegations contained in paragraph 3.
4. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.
5. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.
6. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 6, except that it admits that for the calendar year 1955, plaintiff, Thomas Crawlew Davis's adjusted gross income amounted to \$317,862, of which over 99% represented salary and directors' fees from duPont and dividends on duPont stock. The defendant avers that the salary, directors' fees and dividends referred to amounted to \$317,727.
7. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 7.
8. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 8.
9. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 9, except that it admits that a copy of parts of a [fol. 22] separation agreement is attached to the petition as Exhibit A and is referred to as the "separation agreement" in the petition.
10. Neither admits nor denies the allegations contained in paragraph 10 inasmuch as the separation agreement speaks for itself.
11. Neither admits nor denies the allegations contained in paragraph 11 inasmuch as the separation agreement speaks for itself.

12. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 12, except that it admits that a schedule is attached to the petition as Exhibit B.

13. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. Is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 15, except that it admits that in the 1955 joint federal income tax return filed by plaintiffs they claimed as deductions legal fees in the amount of \$5,000.

16. Admits the allegations contained in paragraph 16.

17. Admits the allegations contained in paragraph 17.

18. Denies the allegations contained in paragraph 18, except that it admits that on April 8, 1958, plaintiffs filed [fol. 23] with the District Director of Internal Revenue for Delaware a claim for refund of \$13,642.29 of 1955 federal income tax and deficiency interest, and further admits that a copy of said claim for refund is attached to the petition as Exhibit C. The defendant also avers that it denies each and every allegation contained in said claim for refund not herein otherwise admitted.

19. Admits the allegations contained in paragraph 19.

20. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Denies the allegations contained in paragraph 21.

Wherefore, the defendant, having answered fully, prays that the plaintiffs' action be dismissed with prejudice and that the defendant be awarded its costs and such other and further relief as to the Court may seem just and proper.

Charles K. Rice, Assistant Attorney General.

Peter J. Donahue, Attorney.

[fol. 24]

[File endorsement omitted]

IN THE UNITED STATES COURT OF CLAIMS

STIPULATION OF FACTS—Filed May 19, 1959

The parties to this proceeding, by their undersigned counsel, hereby stipulate that in addition to the facts already agreed to by virtue of the pleadings, the following shall be an agreed statement of facts subject to the right of either party to later object to the admissibility of such facts and to introduce other and further evidence not inconsistent herewith.

1. This claim arises under the internal revenue laws of the United States to recover income tax and interest collected by and on behalf of the defendant by the duly appointed, qualified, and acting District Director of Internal Revenue.

2. Plaintiff Thomas Crawley Davis and Alice M. Davis were married on March 1, 1941.

3. In December, 1953, plaintiff Thomas Crawley Davis was elected a member of the board of directors and of the executive committee of duPont. At the same time, plaintiff Thomas Crawley Davis was named a vice president of duPont.

[fol. 25] 4. For the calendar year 1954, plaintiff Thomas Crawley Davis' adjusted gross income amounted to \$264,984, of which the following represented payments from duPont:

Salary	\$87,437.48
Dividends treated as salary	4,090.00
Bonus	\$ 91,527.48
Directors' fees	152,705.97
Dividends—duPont	550.00
	13,239.02
	\$258,022.47

For the calendar year 1955, plaintiff Thomas Crawley Davis' adjusted gross income amounted to \$317,865, of which the following represented payments from duPont:

Salary	\$90,600.00
Dividends treated as salary	3,592.75
Bonus	\$ 94,192.75
Directors' fees	208,016.27
Dividends—duPont	500.00
	15,030.00
	\$317,745.02

5. In the early part of 1954, Alice M. Davis retained James R. Morford, Esquire, a member of the law firm of Morford and Bennethum, of Wilmington, Delaware, to represent her in negotiations with plaintiff Thomas Crawley Davis. In the summer of 1954, Thomas Crawley Davis retained H. Albert Young, Esquire, a member of the law firm of Young and Wood, of Wilmington, Delaware, in an attempt to work out a satisfactory property settlement with Alice M. Davis.

6. Following negotiations between the parties' respective counsel, plaintiff Thomas Crawley Davis and Alice M. Davis, on November 4, 1954, executed a separation agreement. A copy of the parts of that agreement pertinent to [fol. 26] this proceeding is attached to the petition in this proceeding as Exhibit A and is hereinafter referred to as the "Separation Agreement."

7. Attached to the petition in this proceeding as Exhibit B is a schedule listing the shares of duPont stock transferred to Alice M. Davis by plaintiff Thomas Crawley Davis on March 21, 1955, in accordance with the terms of the Separation Agreement.

8. During 1955, plaintiff Thomas Crawley Davis paid to Young and Wood, Esquires, of Wilmington, Delaware, and Morford and Bennethum, Esquires, of Wilmington, Delaware, legal fees as follows:

Item	Payee	Amount	Date
1.	Young and Wood	\$2,500.00	1/27/55
2.	Morford and Bennethum	2,500.00	1/27/55
3.	Young and Wood	5,006.00	1/27/55
4.	Morford and Bennethum	2,500.00	1/27/55

9. Plaintiff Thomas Crawley Davis and Alice M. Davis were granted an absolute divorce by a decree of the Second Judicial District Court of the State of Nevada in and for the County of Washoe on January , 1955. Said decree incorporated and approved the property division provided in the Separation Agreement mentioned in paragraph 7 hereof.

10. In the 1955 joint federal income tax return filed by plaintiffs, they claimed as deductions legal fees in the amount of \$5,000.

11. No action on this claim other than that set forth herein has been taken before Congress or any other department [fol. 27-29] ment of the Government of the United States or in any court. The plaintiffs are the sole owners of this claim and no part of this claim has ever been assigned or transferred.

12. Plaintiff Thomas Crawley Davis' employment record with the duPont Company is as follows:

November 16, 1934 to November 30, 1941

Manager, Tax Division, Treasurer's Department

December 1, 1941 to August 26, 1944

Assistant Comptroller, Treasurer's Department

August 27, 1944 to May 19, 1946

Assistant Treasurer, Treasurer's Department

May 20, 1946 to January 18, 1948

First Assistant Treasurer, Treasurer's Department

January 19, 1948 to December 20, 1953

Treasurer of the Company

December 21, 1953 to present time

Member, Board of Directors

Member, Executive Committee

Vice President

November 1, 1954 to present time

Member, Finance Committee

13. Attached hereto as Exhibit A is a schedule showing plaintiff Thomas Crawley Davis' stockholdings in duPont as of February 28, 1953, and changes therein from that date to July 18, 1958.

Converse Murdoch, Attorney for Plaintiffs. Charles K. Rice, Assistant Attorney General. By: Peter J. Donahue, Attorney.

[fol. 30] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

SUPPLEMENTAL STIPULATION OF FACTS—Filed July 20, 1959

The parties to this proceeding, by their undersigned counsel, hereby stipulate that in addition to the facts already agreed to by virtue of the pleadings and the previously filed stipulation of facts, the following shall be a supplemental agreed statement of facts subject to the right of either party to later object to the admissibility of such facts:

1. Exhibit A attached to this supplemental stipulation of facts is a statement of the principal assets and liabilities of plaintiff Thomas Crawley Davis as of July 1, 1954.

2. For the purpose of this case only, the parties agree that if Mrs. Alice Mahood (Alice M. Davis) were called as a witness by the defendant, she would testify in substance as follows:

[fols. 31-33] For a period of many years, the plaintiff Thomas Crawley Davis and his former wife, Alice M. Davis, had many disagreements of a personal nature, which finally led Alice M. Davis in 1954 to seek a separation. At that time, she asked that she be given approximately one-third of the plaintiff's property (including 1,500 shares of duPont stock) in order to provide for herself and her son in the future. Alice M. Davis' primary purpose in obtaining the separation was to sever the marital relationship which for personal reasons had not been successful.

The parties further agree that with the filing of this Supplemental Stipulation of Facts, the record may be closed since neither party proposes to introduce further evidence.

Converse Murdoch, Attorney for Plaintiffs. Charles K. Rice, Assistant Attorney General. By: Peter J. Donahue, Attorney.