No. 235.—HIGH COURT OF JUSTICE (QUEEN'S BENCH DIVISION).

1st June, 1899.

COURT OF APPEAL.

4th, 5th, and 20th December, 1899.

HOUSE OF LORDS.

23rd, 24th, and 26th July, and 10th December, 1900.

ATTORNEY-GENERAL *v.* LONDON COUNTY COUNCIL.(1)

Income Tax.—Deduction—Interest paid—Rents—Interest received—Porportion. The London County Council pay interest on their Consolidated Stock. Such Stock is charged on the whole of the lands, and property belonging to the Council. The Council receive, under deduction of Income Tax, rents of property charged under Schedule A, and interest charged under Schedule D. These rents and this interest are paid into a fund called the Consolidated Loans Fund, into which are carried also moneys of the nature of capital arising from the sale of lands, &c., and a sum raised out of rates. The Council on paying the interest on their Consolidated Stock deduct Income Tax, and claim under section 24 (3) *of the Customs and Inland Revenue Act*, 1888, *only to be liable to pay over the Crown the amount deducted less the tax allowed by deduction from the rents and interest received. The Attorney-General, by Information, claims payment of the full amount of tax deducted less only an amount corresponding to the proportion which the interest received under deduction bears to the whole Consolidated Loans Fund. He alleges that the words "such tax" in section* 24 (3) *mean Income Tax under Schedule D, and do not embrace Income Tax under Schedule A, and that therefore no allowance whatever should be made in respect of the tax deducted from the rents.*

Held, *that the words "such tax" mean Income Tax under any Schedule; that allowance should be made for the tax deducted*

(1) Reported (1899) 2 Q.B. 226, (1900) 1 Q.B. 192, (1901) A.C. 26.

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from the rents; and that the allowance in respect of the rents and interest received should be full and not proportional.

IN THE HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.—QUEEN'S REMENBRANCER.

Between HER MAJESTY'S ATTORNEY-GENERAL (on behalf of Her Majesty) ... ... Informant.

and

THE LONDON COUNTY COUNCIL, THE RIGHT HONOURABLE REGINALD-EARLE BARON WELBY, and C. J. STEWART ... ... Defendants.

INFORMATION.

TO THE RIGHT HONOURABLE CHARLES BARON RUSSELL OF KILLOWEN, G.C.M.G., Lord Chief Justice of England, and to the rest of the Justices of the Queen's Bench Division of the High Court of Justice.

INFORMING, sheweth unto their Lordships, SIR RICHARD EVERARD WEBSTER, Knight, G.C.M.G., Her Majesty's Attorney-General, on behalf of Her Majesty, as follows:—

1. By the Metropolitan Board of Works (Loans) Act, 1869, it was amongst other things enacted as follows:—

S. 3. After the passing of this Act the board shall not (except for such temporary period not exceeding six months as the Treasury may from time to time sanction) raise, otherwise than in conformity with this Act and with the sanction of the Treasury, any money under any powers of borrowing, whether conferred by the Acts mentioned in the first schedule to this Act, or otherwise howsoever.

S. 4. The Board, for the purpose of raising such portion of the loans authorised by the Acts mentioned in the first schedule to this Act for the purposes of those Acts as the Treasury may from time to time sanction, may create capital stock, to be called the metropolitan consolidated stock, in this Act referred to as consolidated stock, and to be issued in such amounts and manner, at such price and times, on such terms subject to such conditions, with such dividends, and redeemable (at the option of the board) at par at such times and on such conditions as the Treasury, before the creation thereof, may from time to time approve.

S. 5. No holder of any portion of consolidated stock shall have any priority or preference by reason of the prior creation of such stock or otherwise, and all consolidated stock created for the purposes of the Act mentioned in the first schedule to this Act, or of any Act hereafter to be passed, and the dividends thereon, and the sums required for the redemption thereof, shall be charged indifferently on the whole of the lands, rents, and property belonging to the board, under the Acts mentioned in the first schedule to this Act, and on all moneys which can be raised by the board by rates under this Act, and on the improvement fund, subject to all charges existing at the passing of this Act on such lands, rents, property moneys, and fund respectively, and shall be a first charge thereon after those charges; and all moneys required for the payment of the dividends on such stock, and the sums required to be raised for the redemption of such stock as mentioned in this Act, shall be raised out of the improvement fund and metropolitan consolidated rate as in this Act mentioned.

S. 22. The Board, for the purpose of paying the dividends on and redeeming the consolidated stock, and also of defraying the expenses authorised to be incurred and incurred by them in the obtaining or the execution of the Acts mentioned in the first schedule to this Act or any of them, and of defraying the sums required for the payment of the principal and interest of and the sinking funds for any securities granted by the board for the purposes of those Acts or any of them, before the passing of this Act, shall (in lieu of all rates or assessments authorised at the passing of this Act to be assessed by them generally over the metropolis) from time to time assess and raise a rate to be called the Metropolitan Consolidated Rate, in this Act referred to as the Consolidated Rate.

Such rate shall be assessed and raised in manner provided by the Metropolis Management Act, 1855, and the Acts amending the same, with respect to the sums required for defraying the expenses of the board in the execution of that Act, and to sums assessed for the purposes of the Main Drainage Acts, and may be assessed wholly or in part in respect of expenses incurred or to be incurred, and also in respect of any unpaid balance of a former rate; and all the provisions of the Metropolis Management Act, 1855, and the Acts amending the same, concerning the estimate on which assessments by the board

are to be made, and for and in relation to the assessing, raising, and enforcing payment of the sums assessed by the board, shall, subject to the provisions of this Act, extend and apply to and in the case of the consolidated rate in the same manner as if that rate were therein mentioned instead of the sums required for defraying the expenses of the board incurred in the execution of the Metropolis Management Act, 1855, and the Main Drainage Rate respectively

Every precept issued by the board for the purposes of the metropolitan consolidated rate shall specify, first, the proportion of the amount named in the precept which is required for the purpose of paying the principal and interest of and sinking fund for securities granted by them before the passing of this Act, and the dividends on and the sums required for the redemption of consolidated stock under this Act. and secondly, the proportion of such amount which is required for all other purposes of the board.

In making an estimate for the first-mentioned portion of the consolidated rate the board shall compute the part required in respect of securities granted or stock issued for the purposes of the Main Drainage Acts and the Fire Brigade Act respectively.

In making an estimate for the last-mentioned portion of the consolidated rate the board shall not estimate the sum required for the purposes of the Fire Brigade Act as larger than a sum which would be produced by a rate of one halfpenny in the pound on the gross value of the property assessed to the metropolitan consolidated rate, and shall compute the part of the said portion of the consolidated rate required for those purposes.

The board shall state in every precept and shall keep a record of all computations required to be made by this section, which record shall be open to inspection by any person on payment of a fee not exceeding one shilling, and shall be conclusive for all purposes whatsoever.

Nothing in this section shall delay or accelerate, or authorise the board to delay or accelerate, the repayment of any principal or interest of, or the providing of a sinking fund for any securities granted by the board before the passing of this Act for the purposes of the Main Drainage Acts without the consent of the holders thereof ; and while such securities remain

undischarged the board shall from time to time ascertain the amount which would have been raised by the levying of the main drainage rate, and the amount which would have been so raised shall be charged on the consolidated rate, and be deemed to be from time to time payable thereout before any portion of that rate is applied to any other purpose.

Nothing in this section shall extend to any sum levied under section one hundred and eighty-one of the Metropolis Management Act, 1885.

S. 26. For the purpose of paying the dividends on and redeeming consolidated stock created under this Act there shall be established a fund to be called the consolidated loans fund of the metropolis, in this Act referred to as the consolidated loan fund, and, subject to the provisions of this Act, the board shall keep a separate account of such fund.

S. 27. The board shall carry to the consolidated loans fund the moneys following (after providing for all charges on such moneys existing at the passing of this Act and to which the same shall for the time being be applicable); that is to say,—

(1.) All moneys whether in the nature of capital or otherwise arising from the sale, lease, or other disposition of lands, rents, and property belonging to the board:

(2.) The residue of the improvement fund which may come into their hands in the manner mentioned in this Act:

(3.) Such an annual sum in every year out of the consolidated rate, and out of the contributions paid to the board in pursuance of the Fire Brigade Act or out of one of such sources as may be equal to two per cent. on the total nominal amount of consolidated stock, whether it has been cancelled or not; or

(4.) Such greater or less annual sum as the Treasury may from time to time approve as being in their opinion necessary in order to pay the dividends on and to redeem all the consolidated stock in sixty years from the date of the creation thereof.

S. 28. The board shall from time to time apply the consolidated loans fund according to such regulations as may be approved by the Treasury, first in the payment of the dividends on consolidated stock, and then in one

or more of the following modes, namely, in purchasing metropolitan consolidated stock, and in redeeming metropolitan consolidated stock, and in payment of the principal of the securities granted before the passing of this Act.

The board may in the meantime invest such fund (subject to the said regulations) in Government securities, the interest of which, and the resulting income thereof, shall form part of the consolidated loans fund and shall be applied and may be invested in the same manner.

All consolidated stock purchased and redeemed and all securities paid in pursuance of this section, shall be cancelled, and thereupon all dividends and interest in respect thereof shall be extinguished.

2. By the said Act and divers subsequent Acts of Parliament (Metropolis Money Acts) the said board and the defendant County Council were empowered to lend to divers local authorities sums of money, and by the said Acts it was and is directed that the interest paid and principal repaid by the local authorities in respect of such loans, shall be carried to the Metropolitan Consolidated Loans Fund.

3. The Defendant Council succeeded the said Board on April 1st, 1889.

4. By the London Council (Money) Act, 1889, it was enacted :—

S. 15. Section twenty-eight of the Metropolitan Board of Works (Loan) Act, 1869, is hereby repealed. The Consolidated Loans Fund shall, subject to regulations approved by the Treasury, be first applied in the payment of the dividends on consolidated stock, and then in purchasing and redeeming consolidated stock, and in payment of the principal or instalments of principal due on securities granted before the passing of the Metropolitan Board of Works Loans Act, 1869, or for debts and liabilities transferred from the counties of Middlesex, Surrey, and Kent, and apportioned to the county of London under section forty of the Local Government Act, 1888. The Council may in the meantime, and subject to regulations approved by the Treasury, invest any money for the time being forming part of the Consolidated Loans Fund in any stocks, funds, or securities in which cash under the control or subject to the order of the Supreme Court may be invested under any order of the Supreme Court for the time being in force.

S. 17. The Council may from time to time, within twelve months after the issue of any consolidated stock, carry to the dividend account in the Consolidated Loans Fund for the purpose of providing for the payment of dividends on such stock from the dates fixed at the time of such issue, though the same day be earlier than the dates fixed for receiving the cash instalments on account of such loan, so much of the money arising from the issue of such stock as they may require for that purpose, and as the Treasury approve, and may from time to time apply the money so carried to such dividend account to the payment of such dividends.

Provisions similar to section 17 aforesaid, are contained in divers other acts applicable to the defendant council.

5. By the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24 (3), it is enacted :—

Upon payment of any interest of money or annuities charged with income tax under Schedule D, and not payable, or not wholly payable, out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be ; and such amount shall be a debt from such person to Her Majesty, and recoverable as such accordingly ; and the provision contained in section eight of the Act of the thirteenth and fourteenth years of Her Majesty's reign, chapter ninety-seven, now in force in relation to money in the hands of any person for legacy duty, shall apply to money deducted by any person in respect of income tax.

6. The said Board and the Defendant County Council from time to time being thereunto authorised by divers Acts of Parliament raised large sums in accordance with the provisions of the said Acts hereinbefore set out. They have also lent large sums to Local Authorities, the interest on which and part of principal repaid are payable into the said Consolidated Loans Fund under the enactments hereinbefore referred to.

7. The total sum paid by the Defendant Council by way of dividends and interest on loans made to the said Board and the Defendant Council during the year April 1st 1897 to March 31st 1898 (inclusive) was £1,142,844 6*s.* 9*d.* the Income Tax on which

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under Schedule D of the Income Tax Acts at 8*d.* in the £ amounts to the sum of £38,096 2*s.* 10*d.* The Defendant Council in paying the said dividends deduct and have deducted and retain and have retained the Income Tax payable thereon under the said Schedule D, except in the cases where the recipients of the dividends are exempt from payment of the said Income Tax and excepting that the Defendant Council do and did not deduct or retain the tax where it amounts to fractions of a penny. The total tax not deducted during the said year either because the recipients were exempt or because it amounted to fractions of a penny was the sum of £1,424 11*s.* 9*d.*, leaving consequently the sum of £36,671 11*s.* 1*d.* as and being the sum which the Defendant Council have deducted and retained as and for Income Tax under Schedule D payable on the dividends due to the holders of the stock created as aforesaid. The Defendants have paid to Her Majesty the sums of £8,490 6*s.* 8*d.* and £8,217 15*s.* 2*d.* on the 23rd December 1897 and the 27th July 1898 respectively and no more, and thus leaving a balance of £19,963 9*s.* 3*d.* unpaid.

8. During the half-year April 1st 1898 to September 30th 1898 (inclusive) the Defendant Council paid by way of dividends and interest on loans made to the said Board and the Defendant Council the sum of £587,055 3*s.* 8*d.* the Income Tax on which under Schedule D of the Income Tax Acts at 8*d.* in the £ amounts to £19,568 10*s.* 1*d.* In paying the said dividends the Defendant Council did deduct and retain the said Income Tax, except in cases where the recipients of the dividends are exempt from the payment of the said Income Tax, and excepting that the Defendant Council did not deduct or retain the tax where it amounts to fractions of a penny. The total tax not deducted in the said half-year, either because the recipients were exempt or because it amounted to fractions of a penny, was the sum of £721 12*s.* 6*d.*, leaving consequently the sum of £18,846 17*s.* 7*d.* as and being the sum which the Defendant Council have deducted and retained as and for Income Tax under Schedule D, payable on the dividends due to the holders of the stock created as aforesaid. The Defendants have paid to Her Majesty the sum of £7,811 13*s.* 11*d.*, on the 7th December 1898, and no more, and thus leaving a balance of £11,035 3*s.* 8*d.* unpaid.

9. The Attorney General charges that none of the said dividends are by law payable out of profits or gains brought into charge to the Income Tax under Schedule D, and that the whole of the sums deducted as aforesaid are payable to and should be accounted for to Her Majesty by the Defendant Council.

10. The Attorney General alternatively alleges and charges as follows :—The said Consolidated Stock and the dividends thereon are, by virtue of the said Act of 1869 and the subsequent Acts made a charge upon the lands, rents, and property belonging to

the Defendant Council and their predecessors, the said Board, under the Acts mentioned in the First Schedule to the said Act of 1869, and on all moneys, whether in the nature of capital or otherwise, arising from the sale, lease, or other disposition of lands, rents, and property belonging to the Defendant Council, and upon all sums received by the Defendant Council from the divers Local Authorities, to whom they have made loans under the statutes above referred to in respect of interest on or the principal of such loans, and on all moneys which can be raised by the Council by rates under the said Act of 1869; that the only part of the said fund which can be brought into charge to the Income Tax under Schedule D of the Income Tax Acts is the interest received on loans to the said Local Authorities; that it is consequently only a rateable proportion of the said dividends on the said Consolidated Stock which can be regarded as being payable out of profits and gains brought into charge to the Income Tax under Schedule D, that is to say, a proportion corresponding to the proportion in which the said interest on loans to Local Authorities is legally applicable and applied to the payment of the said dividends on Consolidated Stock, and that the Defendant Council is bound to pay over to Her Majesty all the Income Tax deducted by them save that deducted on such rateable proportion as last aforesaid.

11. The Attorney General by way of a further alternative alleges and charges as follows:—The said Consolidated Loans Fund has only one constituent portion which is chargeable to the Income Tax under Schedule D of the Income Tax Acts, viz., the said interest paid to the Defendant Council by local authorities on the loans made to them and no other constituent so chargeable and that such Consolidated Loans Fund is by law applicable in the first place to the payment of dividends on Consolidated Stock and loans to the Dependant Council and then in purchasing and redeeming Consolidated Stock, and the payment of the other matters enumerated in section 15 of the said Act of 1889, that a rateable proportion only and no more of the said interest payable by the said local authorities is applicable and applied to the payment of dividends on the said Consolidated Stock and loans to the Defendant Council, and that therefore no part of the dividends paid by the Defendant Council excepting only an amount thereof equal to the said rateable proportion of the said interest is payable out of profits and gains brought into charge to the Income Tax under Schedule D, and that the Defendant Council ought to deduct and to account to Her Majesty for the whole of the Income Tax on the said dividends excepting only the tax on the amount equal to the said rateable proportion of the said interest.

12. The Attorney General charges that (amongst others) the following questions are at issue between Her Majesty and the Defendant Council, videlicet (1) What are the dividends and

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interest the Income Tax under Schedule D of the Income Tax Acts on which ought to be deducted by the Defendant Council from the dividends and interest paid by them, pursuant to section 24 (3) of the Customs and Inland Revenue Act 1888 ? (2) Whether any and what part of the said dividends and interest payable by the Defendant Council are by law payable and paid out of any and what profits or gains broughtinto charge to the Income Tax under Schedule D aforesaid ? (3) What part of the said dividends and interest payable by the Defendant Council are by law not payable and paid out of profits or gains brought into charge to the Income Tax under Schedule D ? (4) What are the dividends and interest paid by the Defendant Council during the period April 1st 1897 to September 30th 1898 (inclusive and their true amount, upon which the Defendant Council were bound under the Customs and Inland Revenue Act, 1888 to deduct the Income Tax under Schedule D, and were bound to render an account to the Commissioners of Inland Revenue of the amount so deducted ? (5) Upon what principles the said sums are to be calculated and ascertained and (6) What enquiries should be directed and accounts taken in regard to the premises ?

13. Under the circumstances aforesaid the Attorney General informs this Honourable Court that the matters in question in this suit are of great importance to and touch and concern Her Majesty's Revenue and the due collection thereof, and that Her Majesty cannot have adequate relief in the premises at law or otherwise than in this Honourable Court.

14. The defendants have now or lately had in their respective possession, custody, power or control, and in the possession, custody, power or control of their Solicitors and Agents, divers letters, deeds, manuscripts and other books, papers, writings, memoranda, notes, bills, accounts, instruments and other documents relating to the matters in question which they ought to produce.

15. The defendants, Lord Welby and C. J. Stewart, are respectively Chairman and Clerk of the Defendant Council and are made defendants hereto for the purpose of discovery only.

PRAYER.

The Attorney General on behalf of Her Majesty prays as follows :—

1. An order within a time to be limited in that behalf for the payment of the said two sums of £19,963 9*s* 3*d*. and £11,035 3*s*. 8*d*. with lawful interest thereon.

1. That it may be declared in accordance with the Attorney General's contentions in paragraph 9 aforesaid, or alternatively paragraph 10 aforesaid, or alternatively

paragraph 11 aforesaid, and that in any case such declarations may be made in reference to the said contentions in the said paragraphs and the several questions stated in paragraph 12 aforesaid as justice and law allow or require, and such further or other declarations in reference to the ascertainment of the said rateable proportions and in all other respects as to the Court may seem meet.

3. That such enquiries may be directed and made and such accounts taken as the said declarations to be made by the Court warrant, and for the purpose of ascertaining the sums which the defendant Council ought to have deducted and accounted for and did in fact deduct and account for respectively pursuant to the Customs and Inland Revenue Act, 1888.

4. Payment by the Defendant Council of the sums found to be due to Her Majesty with lawful interest thereon.

5. That the Defendants may be ordered to give full particulars of the dividends and interest paid by the Defendant Council during the period aforesaid, and of the Income Tax under Schedule D deducted by them during the said period, and the funds from which the same were respectively paid and of the property and funds charged with the payment of the said dividends and interest.

6 That the Defendants may make full discovery in the premises.

7. That the Attorney-General on behalf of Her Majesty may have such further or other relief as the case may require.

N.B.—The Attorney-General seeks no relief against the Defendants other than the County Council except that prayed by paragraphs 5, 6 and 7 of the prayer.

RICHARD E. WEBSTER.
W. O. DANCKWERTS.

The Defendants are :—

The London County Council, the Right Honourable Reginald-Earl Baron Welby, and C. J. Stewart.

This case came on for hearing in the Queen's Bench Division before *Day* and *Lawrance, J. J.*, on the 1st June 1899, when the

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following Judgment was delivered in favour of the Crown, with costs :—

JUDGMENT.

Day, J.—I am clearly of opinion that the Attorney General is right in his contention and in his interpretation of section 5 of the Information. "Upon payment of any interest of money or annuities charged with Income Tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax," makes it abundantly clear to my mind whether I look at the meaning of the words themselves, taking them as part of the ordinary English language, or whether I take it as interpreted by referring to the context to which it is relating, it is perfectly clear it is referring to moneys collected for Income Tax under Schedule D, and to no others. Schedule A is not part of the Income Tax Act, if I may so call it, and is not one which can be called in aid on behalf of the parties prosecuted in this particular case. It is clear to my mind that the County Council are merely entitled to deduct Income Tax upon property which has been made liable to Income Tax under Schedule D, and not under Schedule A ; Schedule A has no reference whatever to the matter. It is perfectly clear, therefore, to my mind that they are not entitled to deduct the large amount they have deducted, but are bound to account to the Crown under paragraph II. That seems to me to be the fairer way of dealing with it, dealing with the moneys of the year in which they are proceeded against under paragraph 11 and not under paragraph 10. It was difficult at first for us to see clearly which paragraph to apply to this case, but I am quite satisfied now that paragraph 11 is the one upon which the charge should be based. We should, therefore, give judgment for the Crown in my opinion.

Lawrance, J.—I agree ; I have nothing to add.

The Attorney General.—My lord, the judgment will be for a declaration in accordance with the Attorney General's contentions (I am reading from the second prayer) "in paragraph 11," and for such enquiry as may be necessary to ascertain the exact amount, and I ask for judgment with costs.
Danckwerts.—And payment of the amount ?

Day, J.—Yes.

Sir Edward Clarke.—My lord, I do not know whether your lordship has considered the question of costs in this case. A very material part of the controversy which we came here to fight was this under paragraph 9, which is now abondoned by the Crown.

The Attorney General.—Nobody can suggest that the costs have been increased one penny by it.

Sir Edward Clarke.—That may be, but having regard to the fact that was a very substantial part of the case—

Day, J.—You have fought one material point with them, and been beaton upon it.

Sir Edward Clarke.—Because one material point was conceded.

Day, J.—The other you have failed upon.

The Attorney-General.—I think the County Council must pay them on this occasion.

Day, J.—Yes.

The London County Council appealed, and the Case came before the Court of Appeal on the 4th and 5th December 1899. On the 20th December the Court (*A. L. Smith, Collins, and Vaughan Williams, L.J.J.*) delivered the following Judgment in favour of the Crown dismissing the appeal with costs :—

JUDGMENT.

A. L. Smith, L.J.—Two questions arise in this case : The one as to the true construction of section 24, sub-section (3), of the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. cap. 8) ; and the other, What upon the facts proved when applied to this section is the account to be rendered by the London County Council to the Crown ? 20th Dec., 1899.

The London County Council has a stock which is called Consolidated Stock upon which they pay dividends to the stockholders amounting in round figures to the sum of one million of money per annum.

By section 24, sub-section 3, of the Act of 1888 it is provided that before the London Council Council pays this annual dividend to their stockholders the Council shall deduct the Income Tax payable thereon under Schedule D—that is, shall deduct one milllion of eightpences—and unless excused, (about which hereafter), the Council is bound to render an account to the Crown of these eightpences whch it has thus deducted, and for this amount the London County Council is made debtor to the Crown. For the payment of the dividends and for the payment of the other expenditure of the London County Council the Council has a fund called the Consolidated Loans Fund which is supplemented by any receipts of moneys which fall in to the London County Council. These receipts consist, amongst others, of rents, of interest upon loans, of profits made by borrowing and lending money, of profits made by purchasing and selling property, and by money raised by the levy of rates. These receipts are

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placed together into one fund which forms the Consolidated Loans Fund. The rents which are received by the London County Council, and which are paid into this fund, amount in round figures to the sum of £100,000 per annum. The interest upon loans which is received by the County Council and which is paid into this fund amounts in round figures to the sum of £500,000 per annum, and the total receipts paid into this fund, including the two sums above mentioned, amount to the sum of about £2,600,000 per annum.

The first question is: Whether the rents of £100,000 per annum which are thus received by the London Council Council, and which have had the Income Tax under Schedule A of the Income Tax Acts deducted by the tenants before these rents] are] paid to the County Council, fall within the provisions of section 24 of the Act of 1888; and this depends upon the true construction of that section. By section 23 of the Act of 1888, under the head "Income Tax," it is enacted that there shall be collected and paid in respect of all property, profits, and gains the amounts therein prescribed chargeable under Schedules A, B, C, D, or E; and section 24 so far as is material is as follows:—"Upon payment of any interest of money charged with Income Tax under Schedule D" (that is upon payment of the annual dividends of £1,000,000 per annum accruing due upon the Consolidated Stock to the stockholders) "the person" (that is the London County Council) "by whom such interest shall be paid shall deduct thereout the rate of Income Tax in force at the time of such payment" (that is Income Tax payable under Schedule D), "and shall forthwith render an account" thereof to the Crown, and for "the amount so deducted" the person rendering the account shall be a debtor to the Crown. What is the meaning of this? It seems to me plain that where a person pays interest or a dividend which is liable to Income Tax under Schedule D, that Income Tax—that is the Income Tax under Schedule D—is to be deducted by the person paying that interest or dividend coupled with the obligation of rendering an account to the Crown of the amount so deducted, for which amount the person deducting that tax becomes a debtor to the Crown.

If there were no exception in this section (which there is) the London County Council, in my judgment, would have to render an account to the Crown of the million eightpences which it had deducted before it paid the million of dividend to their stockholders, which deduction would be the Income Tax payable under Schedule D, and has nothing whatever to do with Income Tax under Schedule A. But there is an exception. And what is it? It is that the person to account to the Crown is not to deduct the Income Tax payable under Schedule D, and, therefore, is excused from rendering an account as to this to the Crown, if the dividend paid to the stockholders is paid out of "profits or gains" already charged "to such tax." What tax?

Why, charged to the Income Tax under Schedule D. This is my reading of this section 24; and, in my opinion, this section, as I have said, has nothing whatever to do with Income Tax payable under Schedule A of the Income Tax Acts, whereas the County Council argues that it has. It is said by the London County Council that the meaning of this section 24 is that the Crown in no case is to get Income Tax twice over, and that it would do so if Income Tax upon the £100,000 of rents is not deducted from the account rendered to the Crown; for, say the County Council, the tenants before they pay their rents to the Council have already dedutced the Income Tax under Schedule A and paid it to the Crown, and unless the London County Council is allowed to deduct this Income Tax from the account to be rendered the Crown will get Income Tax twice over. As regards Income Tax under Schedule A, this apparently would be so. But where is it enacted in section 24 that it is not to be so? As regards Income Tax payable under Schedule D, it is so enacted, but I am clear that this section does not embrace Income Tax payable under Schedule A. It is said that we should read section 24 in such a way as to make it apply to Income Tax under Schedule A. but this I cannot do, for the two taxes—that is, the tax under Schedule A and the tax under Schedule D—are entirely distinct, excepting that they are both taxes upon income, as are the taxes under the Schedules B, C, and E. The Tax under Schedule A is a tax upon the gross annual value of property. The tax under Schedule D is a tax upon "gains and profits," an entirely different tax from the tax under Schedule A. Whether the Legislature should have enacted otherwise is not for me to say: it suffices to say that it has not done so.

The first point, therefore, taken by the London County Council, namely, that in the account it is to render to the Crown it may deduct the tax paid under Schedule A on the £100,000 of rents, in my opinion fails, and I pass on to the next question.

I have already stated of what the Consolidated Loans Fund is composed. It is obvious that though there is one component part upon which the Income Tax under Schedule D has been deducted before it was received into the fund, to wit, the tax under Schedule D upon the £500,000 of interest received by the Council upon loans made by it, on the others no such deduction hae been made; for instance, upon the rents, the profits made by buying and selling property, and upon the rates levied by the Council. If the London County Council is to escape rendering an account to the Crown of the million of eightpences which it has deducted from the stockholders, it is for it to prove that the million of money paid to the stockholders has been paid out of money which has already paid Income Tax under Schedule D. Do they prove this? In my opinion they do not; for it is impossible to say out of what moneys which constitute the Consolidated Loans Fund, the £2,600,000, they do pay these

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dividends of one million pounds of money annually to their stockholders, whether partly out of the £100,000 of rents which have paid no income Tax under Schedule D, or partly out of profits made by borrowing and lending money, or partly out of profits made by purchasing and selling property, or partly out of the rates, none of which have paid Income Tax under Schedule D. If it is to be presumed that no part of the money received from rates and paid into the Loans Fund, together with the other receipts, was raised to pay the one million of dividends, as my brother, Lord Justice Williams, thinks should be presumed. though it is a mere presumption and in my opinion not proved, then the only effect will be that the Loans Fund applicable to the payment of the dividends will stand not at £2,600,000 but at that sum less the amount received from rates, which will alter somewhat the rateable proportion mentioned in paragraph 11 of the Information.

But this is not the real point in the case, for what was really contended for by the learned counsel of the London County Council was that the interest of £500,000 paid to the London County Council was not the only sum in the Loans Fund which had already paid Income Tax under Schedule D, but that the £100,000 of rents had also paid this tax, so that it came within the 24th section of the Act of 1888. This I have held not to be so. In my opinion, upon the facts proved, paragraph 11 of the Information has been established by the Crown. As the £500,000 of interest received by the Council will not pay the million of dividends to the stockholders, it is obvious to me that the dividends in part at any rate, have been paid out of moneys which had not therefore paid Income Tax under Schedule D. I have not to decide whether, if the Crown pushed this case to its extreme limit, the London County Council would have to render an account of the whole of the million eightpences it has deducted from their stockholders, for the Crown does not insist upon this and asks for an account less such a reteable proportion as the £500,000 of interest received bears to the whole fund.

In my judgment, the London County Council cannot ask for more, and I am of opinion that it is wrong as to this, as also upon the true construction of section 24, subsection (3), of the Act of 1888. I therefore think that this appeal should be dismissed with costs.

Collins, L.J.—I am of the same opinion. I think the burden is thrown upon the London County Council of showing that they did apply that part of their fund which has already paid Income Tax under Schedule D in satisfaction of their obligation to pay the dividend on the Consolidated Stock. I think they might have appropriated, and would have been fully justified in so appropriating, their funds as to put themselves in a position to prove that they had applied the sum, which has been roughly put at £500,000, in payment of those dividends, and if they were in a

position to do so they would be entitled to a duduction of the five hundred thousand eightpences. My difficulty in this case is that they have not proved it, apparently, upon the facts before us. Whether upon inquiry which is directed by the Court below they can prove that they have appropriated that sum to the payment of the dividends or not I do not know, but it seems to me that our present decision is really one as to the principle, and leaving it open to the London County Council to adjust its practice in such a way as to get the full benefit of the principle. What we are deciding now is that they are not entitled to any deduction in respect of that part of the fund which has paid Income Tax under Schedule A; that they are entitled to deduction in respect of that part of the fund which has paid Income Tax under Schedule D, but the burden is upon them to show that they had done so, and the proportionate principle which is laid down by this judgment is one which it seems to me leaves it open to them to effect that proportion in two ways—one by showing directly that they have applied one specific earmarked sum which has already paid Income Tax under Schedule D in the payment of dividends; secondly, by showing that some part of the whole fund was so appropriated as to render it clear that such part of it was not applied in payment of the dividend on the Consolidated Fund. So far as they prove either of those two things I think they effect the proportion, and it may be that the inquiry that is directed by the Divisional Court may result in the proof that is not before us now upon that point. Upon the facts before us now, it seems to me that the London County Council, having the burden upon them of proving an appropriation, have failed to do so.

Vaughan Williams, L.J.—I agree with the view taken by the other members of the Court as to the construction of this very difficult section 24, subsection (3), of 51 & 52 Vict. c. 8, and I think that "such tax" means "Income Tax under Schedule D," and not "Income Tax generally"; and that that proportion of the Income Tax which is a charge on rents under Schedule A is not included in the words "paid out of profits or gains," but is rather in the nature of a property tax; but the meaning of the section is by no means clear.

As to the question, what portion of the deduction made by the County Council for Income Tax from dividends paid by the Council on bonds or debentures issued by them in respect of moneys borrowed by them, the County Council are entitled to retain without accounting to the Crown by reason of such dividends being "paid out of profits or gains brought into charge" under Schedule D, my view is that the fact that the principal and interest on the bonds is secured by a charge on the entire Consolidated Loans Fund does not prevent the County Council in the application of that fund paying the dividends out of any specific constituent portion of the fund it lawfully may be paid out of. Assume that

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the fund is derived from, say, four sources :—Say (*a*), Interest on moneys lent by the County Council ; (*b*), Rents payable to the County Council ; (*c*) Prices of lands sold by the County Council ; (*d*), Moneys coming from the county rates—why should the fact that the principal and interest on the bonds issued by the Council is charged on a fund made up as above prevent the Council in the application of the fund paying the dividend out of constituent item (*a*) in so far as that item is sufficient for the purpose ? It is said that the debenture holders, to enforce their charge, could get a receiver appointed for the whole fund. I do not see that this makes any difference, provided the fund yielded sufficient to pay all the charges in due course. It seems to me, therefore, that it is open to us to consider whether there is any proof that the dividends were in fact paid out of rents or profits already brought into charge ; that is to say, in the example taken. out of constituent item (*a*). Now, in my judgment, if there is any law, regulation or fact which makes it the duty of the County Council in the application of the fund to pay the dividends out of a specific constituent item going to make up that fund, the County Council are bound so to apply the fund unless so to do would be inconsistent with this paramount charge of the bondholders ; and, in the absence of evidence to the contrary, all payments made by the Council would be presumed to have been made in accordance with the duty arising on the law, regulation, or facts, as the case may be. This, in my judgment, would be sufficient proof of payment out of the particular constituent item.

Now let us see whether we find any law, regulations, or facts governing the application of the Consolidated Loans Fund, and making it the duty of the Council to pay dividends out of the constituent item (*a*) as far as it will go. In the first place we find that the borrowing of money by the County Council is controlled and governed by the Metropolitan Board of Works Loans Act, 1869, and that by section 5 of that Act "stock created for the purposes of the Acts" "shall be charged indifferently on the whole of the lands, rents, and property belonging to the Board." and that "all moneys required for payment of the dividends on such stock," and "for the redemption of such stock," that is to say, the deficiency after taking into account the lands, rents, property, moneys, and fund, "shall be raised out of the Improvement Fund" and the Consolidated Rate. The Act goes on to say how the rate shall be raised, and says that every precept shall specify, first, the proportion of the amount named in the precept required for the purpose of paying *inter alia* the dividends on the sums required for the redemption of Consolidated Stock under this Act. An instance of how this is done in practice appears at the end of Lord Welby's letter asking for the sanction of the Treasury for the amounts proposed to be raised by rate in 1897.

I am clearly of opinion that we here find a duty binding on the County Council not to apply in the payment of dividends that

amount whith is named in the precept as being required for redemption, or the amouuts therein mentioned as being required for specified capital payments.

Then we come to section 15 of the Act of 1889, which says that the Consolidated Loans Fund shall be first applied in the payment of dividends and in redemption of stock, and then in the payment of certain specified debts charged on the Fund. There is nothing in this to make either the dividends or any of the specified payments payable out of one constituent item morc than another; but the regulations in force in 1897, under section 15 of the Act of 1889, with respect to the application of the Consolidated Loans Fund provide that the account to be kept by the Council of the Consolidated Loans Fund shall be divided into two parts, an Income Account and a Capital Account. I need not read the regulation now, but it is supposed to be in my judgment.

It is plain from these regulations that the dividends must be paid out of the receipts of the Income Account, that is to say, out of interest received by the Council on loans and rents and other annual income. Besides the dividends there is payable out of these receipts, interests, rents, and other payments properly chargeable to income, but these are a very small matter. Redemption and other capital payments are to be paid out of the Capital Account, that is to say, moneys received by the Council (except income) applicable to the payment or redemption of debt, including moneys received by realisation of temporary investments of capital.

Now, applying these rules of payment, it seems to me that although paragraph 11 is generally right in principle, it is wrong in so far as it treats the whole Consolidated Loans Fund as the factor, to which the amount of interest payable by the local authorities must bear a rateable proportion. The sum to which the interest payable by the local authorities must bear a rateable proportion is so much of the Consolidated Fund as is properly carried to the receipts of the Income Account. This may or may not be an important matter when the figures are examined, but it is important as showing that the Attorney General was right in law in abondoning paragraph 9 of the Information, which charged that none of the said dividends are by law " payable out of profits or gains brought into charge to " the Income Tax under Schedule D. The suggestion made in argument that the Crown, in abondoning Clause 9, abandoned the strict rights of the Crown seems to me, I am happy to say, quite unnecessary and untenable, for I no not think that anyone would have had the right to make such a consession in favour of the County Council, or any other subject.

The London County Council appealed, and the case came on for hearing in the House of Lords on the 23rd, 24th, and

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26th July 1900, before *Lords Macnaghten, Davey, James of Hereford, Brampton, Robertson*, and *Lindley*.

23rd June, 1900.

Sir E. Clarke, Q.C. (*Jelf, Q.C.*, and *W. C. Ryde* with him), for the London County Council.—This case involves two absolutely separate questions. The first is whether the London County Council are entitled to keep in their hands the Income Tax deducted on payment of the interest on their Consolidated Stock where that payment has been made out of rents (say £100,000) which have already been taxed under Schedule A. The second question (whatever the decisions on the first may be) is whether, it being admitted by the Crown that the London County Council are entitled to keep in their hands tax on the interest which they pay out of receipts taxed under Schedule D, it should be deemed that the interest is paid out of the whole of such receipts (*i.e.*, £500,000, interest on loans to the London School Board, &c.), or only (as the Crown contends) out of so much as represents the proportion that such receipts (£500,000) bear to the total (£2,450,000) of the Consolidated Loans Fund to which they are carried. On behalf of the London County Council it is contended that from the interest (£1,160,000) paid by the Council on their Consolidated Stock both these sums of £100,000 for rents and £500,000 for interest (each being received under deduction for Income Tax) should be deducted, leaving the Council to account to the Crown for the tax on the balance only of the interest paid, such balance being the only amount paid out of profits and gains (*e.g.*, rates) not brought into charge to Income Tax.

(Adjourned till next day.)

24th June, 1900.

Under the statutes and under the regulations approved by the Treasury all rents and interest received by the London County Council, including the foregoing sums of £100,000 and £500,000, are carried to the Income Account of the Consolidated Loans Fund, and all instalments of principal repaid to the Council are carried to the Capital Account of the said fund.

Dealing with the first question, under the Income Tax Act, 1842, section 60, Rule 9 of No. IV, Income Tax is deductible from the rents paid to the London County Council, and under section 102 of the same Act the Council in paying interest on their Consolidated Stock out of profits or gains already charged are entitled to deduct and retain Income Tax. Section 40 of the Income Tax Act, 1853, gives every person paying rent or interest a right to deduct Income Tax. Section 24 (3) of the Customs and Inland Revenue Act, 1888, is not a taxing section, but is only machinery to secure an account. The words "such tax" in the section do not mean, as the Crown contends, "Income Tax *under Schedule D*." but "Income Tax." Income Tax under Schedule D is not a separate and distinct tax. (*See* Lord Halsbury's Judgment in *Gresham Life Assurance Society*

v. *Styles* (1).) There is only one Income Tax, and it is applied under different schedules to different classes of property. For any other view reliance is placed merely upon the language of the section last quoted, Income Tax, in the result, being claimed twice over. Schedule A is a tax on profits from land, as will be seen from the title to the Income Tax Act, 1842.

The second question is more complicated. It is for paragraph 11 of the Information that the Crown contends, and for which it has obtained the Judgment of the Court below. The paragraph makes the amount of Income Tax to be received by the Crown depend on the proportion between the interest received by the Council, £500,000, and total amount of receipts shown in the Income and Capital Accounts, £2,450,000. But there is no relation between these two amounts, and no reason why the size of the Capital Account should alter the sum to be received by the Crown for tax. The size of that account in any particular year is a mere accident, depending on what loans are made by the Council during the year. The language of paragraph 11 is unintelligible, but the following illustration will perhaps show what is intended by it. The Crown says: "You have these 500,000 sovereigns; out of each of these a little bit has been cut before it has come to you—$\frac{1}{310}$th part has gone; but you put them into a bag with a number of other sovereigns in it which have not been clipped, and you then out of that bag proceed to pay your liabilities, and that inasmuch as your sovereigns which have been clipped are only $\frac{1}{5}$th of the whole, it must be taken that when you pay £1,000 out it is only £200 that will be paid in clipped sovereigns, and that therefore you ought only to be relieved in respect of that £200. The idea is that you keep the rest of the clipped sovereigns in your possession and must put up with the loss."

In his Judgment in the Court of Appeal, *Collins, L.J.*, says that it is open to the London County Council to show that they have applied one specific ear-marked sum which has already paid Income Tax under Schedule D in payment of dividends on their Consolidated Stock. The London County Council claim that their accounts show that the sum of £500,000 has been so applied, and that the judgment of *Collins, L.J.*, is therefore really in their favour. The following sentence in the Judgment of *Vaughan Williams, L.J.*, "The sum to which the "interest payable by the local authorities must bear a rateable "proportion is so much of the Consolidated Fund as is "appropriately carried to the receipts of the Income Account," makes the proportion one between the £500,000 (or £600,000) and the whole sum the London County Council pay in dividends, in other words gives the Council the tax on the whole £500,000 (or £600,000).

(1) 3 T.C. 185.

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Jelf, Q.C.—None of the Judges in the Courts below suggest any reason why the Crown should by virtue of section 24 (3) of the Act of 1888 have tax twice over. The object of that section was to prevent tax slipping out of the hands of the Crown because it was not stopped early enough. It makes it obligatory on the middle man, so to speak, to stop the whole tax and pay over that part which has not been paid before. The Income Tax is one Tax. (*See* Lord Blackburn in *Coltness Iron Company* v. *Black* (1).). The ability of a man is taxed at the same rate and absolutely by the same tax. The words "profits or gains" are not used only with reference to Schedule D, for in section 104 of the Income Tax Act, 1842, "profits and gains arising from lands" are mentioned. Either section 24 (3) is confined to Schedule D, or it applies to all the schedules. If it does not apply to Schedule A, it does not apply to Schedules B, C, and E, profits taxed under those schedules may therefore, it seems, be taxed twice over by virtue of this new section, profits under Schedule D alone escaping double charge. That cannot have been the intention.

Dealing with the second point, there can be no question of proportion. The London County Council merely pass on the rents they receive, less tax. They are only a conduit pipe. The fact that there is collateral security for the Consolidated Stock does not make the income received less tax any larger.

Danckwerts, Q.C., (*Sir R. B. Finlay, A.G.*, and *Rowlatt* with him) for the Crown.—Section 24 (3) of the Customs and Inland Revenue Act, 1888, was only intended to deal with those cases where annuities and interest of money which were chargeable to Income Tax under Schedule D were not payable out of moneys already brought into charge under Schedule D (or to the extent to which they were not so payable), the reason being that there was before no compulsory provision for taxing such annuities and interest and it was desired to stop the gap. If the words "to such tax" in the section are dealt with as meaning Income Tax under any schedule it will lead to curious results, because the tax need not necessarily be at the same rate in the £ under each schedule. Schedule B was formerly one-half or one-third of the full rate Section 1 of the Income Tax Act, 1842, grants to Her Majesty "the several rates and duties mentioned in the several schedules," thus treating them as separate duties and not as one tax subsequently divided up and classified for the purpose of assessment. The word "tax" is never used throughout the Act, but "duties" only (*see* sections 3, 22, 38, 60, 63, 88, 100, 105, 106, 146, 189). The duty under Schedule B is to be charged in addition to the duty under Schedule A, two duties being thus payable for practically the enjoyment of the same thing.

(1) T.C. 287.

The tax under Schedule A is paid by the occupier, who deducts it from his landlord. A mortgagee is only liable to deduction under Schedule A where he is landlord or where he is actually himself in possession. There is special provision for this in the 11th Rule of No. IV, Schedule A, but there is no provision enabling a landlord to deduct tax from a mortgagee not in possession. Schedule D specifically excludes anything which is already charged under any other schedule. Under the 10th Rule of No. IV, Section 60, Schedule A, of the Income Tax Act, 1842, tax can be deducted from annuities payable out of the rent of lands; under Schedule C annuities payable out of any public revenue are chargeable; under Schedule D, section 100, First Case, 4th Rule, annuities payable out of the profits of a business are taxed at the source. The only annuities not dealt with so far are annuities either not payable out of profits or gains brought into charge under Schedule D, or partly so payable and partly not, or those which are payable in gross and not out of any particular fund. Section 102 deals with these. The first part of that section makes all annuities not already charged at the source chargeable under the Third Case of Schedule D. In the case of annuities payable out of property abroad, &c., and out of profits or gains not charged by the Act, the section charges the person receiving the same, and this object is also secured by Schedule D of the Income Tax Act, 1853. It was because there was no compulsory collection of the tax on the last-mentioned annuities *at their source*, that Section 24 (3) of the Act of 1888 was needed. (*See* Lords Halsbury and Watson in *Gresham Life Assurance Society* v. *Styles* (1).) Section 40 of the Income Tax Act, 1853 was an enabling section only.

Sections 1 and 2 of the Income Tax Act, 1853, speak of "duties," and in the latter a new word, "properties," as contradistinguished from "profits and gains," is used as applicable to Schedules A and B. As Lord Penzance in *Coltnes Iron Company* v. *Black* (2) point out, under Schedule A it is not profits and gains that are brought into charge, but the subject matter of the charge is the property in the lands. His Judgment shows the total inapplicability of such words as "profits brought into charge" so far as Schedule A is concerned. Under section 45 of the Valuation (Metropolis) Act, 1869, the assessment to Schedule A must be on gross value, not on profits. The word "tax" was introduced by the Taxes Management Act, 1880 section 5.

Grammatically "such tax" in section 24 (3) of the Act of 1888 means the Income Tax under Schedule D. In all the Income Tax Acts when once you have mentioned the Income Tax under a particular schedule you always refer to it afterwards as "such tax" or "such duty." There is no difference for

(1) 3 T.C. 185. (2) 1 T.C. 287.

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this purpose between "tax" and "duty." In section 24 (3) the words "such interest or annuities" necessarily mean "interest of money or annuities charged with Income Tax under Schedule D." The word "such" is there used to drag in the whole previous phraseology, and, if so, why should not "such tax" mean "Income Tax under Schedule D," the preceding words?

(*Lord Davey.*—Supposing that you are right, still the County Council will have the right to deduct the Income Tax so far as the interest which they pay is charged upon their rents.)

That is a difficulty, but the point is not raised in this case. There is no double charge on the County Council, for the charge under Schedule D is not on the Council at all. The Council are merely the collectors for the Crown.

(Adjourned till 26th July).

26th July, 1900.

Where there is a mortgagor who continues in the receipt of the rents and profits of land, mortgaged, and his tenant deducts Income Tax from the rent, it is the practice of the Crown to allow the mortgagor to retain the amount of the Schedule A tax corresponding to the amount of the interest he pays to the mortgagee. It has always been doubted whether this practice is legally right, but the question has never arisen in any court. If, however, the landlord borrows money on personal security, with no mortgage at all, although he pays the interest out of the rent because he has no other source of income, he is not entitled to retain any tax deducted from the interest. If the income of a person who is liable to pay interest on a loan is derived solely from Government Securities, the interest on the Government Securities will be charged to Income Tax, and the recipient of the interest on the loan will also be liable to be assessed under Schedule D. (*London County Council* v. *Grove* (1).) In such circumstances the person who pays the interest to his creditor and deducts Income Tax is liable to account for the Tax under section 24 (3) of the Act of 1888. Before that Act, if he exercised his permissive right under section 40 of the Act of 1853 he was liable to account for the duty deducted. In cases covered by the 9th and 10th Rules of No. IV, Schedule A, section 60, of the Income Tax Act, 1842, there was a right under those rules to retain the tax deducted. In cases not within Schedule A, but within Schedules C or D, the retention was on behalf of the Crown, because it was Income Tax which was payable by the person from whose money it had been deducted. If part of a sum of interest payable is distinctly something which falls within the 10th Rule, there is a right to deduct and retain tax, and section 24 (3) of the Act of 1888 would

(1) 3 T.C. 508.

apply to the balance only, as being the sole portion assessable under Schedule D. The 10th Rule only applies when the payee of the annuity, &c., has *pro tanto* an interest in the property in the land and ought *pro tanto* to bear a share of the tax that falls upon the owner of the property in the land. A mortgagee is not such a person ; he is simply an incumbrancer upon the land ; he has no property in the land ; the land is simply a security which can be resorted to for the purpose of satisfying the personal liability of the mortgagor.

In the present case no part of the interest payable by the London County Council falls under Schedule A, and the recipient of the interest is liable to be taxed under Schedule D. *Mosse* v. *Salt* (1) merely shows the *practice* of allowing a mortgagor to deduct tax. Even in the case where interest is payable out of a source taxed under Schedule D, the tax can only be retained where the person to whom the interest is paid is, so to speak, entitled to a share of the thing that has been taxed. It is not correct to say that the Crown gets the tax twice. It gets it is true two duties but from different people and in respect of two distinct liabilities, the property in the land in the one case, and the dividends in the other.

The second point is that the interest on the Consolidated Stock is payable out of the whole of a mixed fund, the Consolidated Loans Fund, and that any payment out of the fund must in law be attributable proportionately to each part of the fund. When the Metropolitan Board of Works (Loans) Act, 1869, was passed, it was thought that the main fund that would have to bear the interest on the loans to the Board would be the Consolidated Rate (*see* section 32). That rate is no longer levied, and by section 15 of the London Council (Money) Act, 1889, the interest is made payable out of the whole Consolidated Fund. Therefore the rule of law applies that when you go to a mixed fund consisting of divers components, you must treat any money that you take out of that fund as coming proportionately from the then constituents of that fund

Sir R. B. Finlay, A.G.—The question of mortgagor and mortgagee is not raised by the present case. The practice under which a mortgagor deducts tax from mortgage interest is referred to in *Leeds Building Society* v. *Mallandaine* (2). It is not now necessary to decide whether or not, Rule 10 of No. IV Schedule A, applies, as the law charging this dividend on all the elements forming the Consolidated Loans Fund does not constitute them a rent charge, annuity, &c., such as is referred to in Rule 10. The holder of Consolidated Stock is not a beneficial owner of the Consolidated Loans Fund ; he has a charge upon the whole Fund, and may go upon the land, the rates, or the interest paid into the fund.

(1) 32 Beav. 269, 1863. (2) 3 T.C. 577.

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Section 102 of the Income Tax Act, 1842, ought to be read as applying only to the case of annual payments out of profits or gains liable to Schedule D. Section 40 of the Income Tax Act, 1853, is a piece of machinery provided for the benefit of the person making a deduction where he has a right to retain under the law, and for the benefit of the Crown in other cases. As it was found that the privilege of acting as agent for the Crown was not as highly valued as had been expected, section 24 (3) of the Act of 1888 was passed to make deduction compulsory in certain cases. The words "such tax" in the latter enactment refer to the Income Tax under Schedule D on the interest of money or annuities mentioned at the beginning of the subsection. The interest on the Consolidated Stock is such interest as is mentioned there, and Rule 10 of No. IV, Schedule A, does not apply so as to confer any exemption.

If the security that the holders of Consolidated Stock have is in its nature a charge on the whole fund, the proper way to deal with the right to the deduction is to take the proportion thus:

As £2,450,000 : £500,000 : : £1,160,000 : the amount of interest on which tax is to be retained by the Council for their own use.

The whole fund should be taken, and not, as *Vaughan Williams L.J.* thought, only the Income Account.

(*Lord Davey.*—And yet you have told us that in the case of an ordinary mortgage (where principal and interest are charged on the corpus as well as on the income of the land) it is the practice to allow the deduction as if the interest were paid only out of the income. If your view be correct the Department ought to apportion between the annual income of the land and the value of the corpus, and only allow so much as the proportion of the annual value of the income is to the value of the corpus.)

Logically that would follow. The regulations of the Treasury are for book-keeping purposes only. Even if you take only the part of the fund that goes to income, you have the rates also to take into account.

Sir E. Clarke (in reply).—Rule 10 of No. IV, Schedule A, only requires the annuities, &c., to be charged on land; it does not require that the person receiving the annuity, &c., shall have an actual interest in the land. A licensed curate is not a part owner of the land. The person who gets the ultimate benefit is to pay the tax. This is the case under Rule 10 and under Section 102 Part V of the Act of 1888 is headed "Income Tax," and the Act speaks of "duties of Income Tax." "Such Tax," therefore, means "Income Tax," and the rents and interest received on

loans have been brought into charge to Income Tax. Section 24 (3) does not alter the burden of the charge to Income Tax, and under it the London County Council have only to render an account of the £520,000 paid out of the rates. There can be no question of proportion. The Treasury treats the rents and interest as ear-marked for the purpose of paying the dividends on the Consolidated Stock, and allows the balance required to be raised by rate. The dividends are not charged upon the Consolidated Loans Fund, but indifferently upon lands, rates, &c. The point that Schedule B may be at a different rate has no force, for Schedule B, being a tax on the enjoyment of occupation, cannot be passed on to another person. "Profits" and "gains" are identical expressions. (*See* Lord Selborne, in *Lucas* v. *Mersey Docks and Harbour Board* (1).) "Profits and gains" occur under Schedule A, 5th Rule, No. IV, section 60, in connection with mines. The word "profits" runs through Schedule A, which is a tax on the profits made from land.

(Judgment reserved).

On the 10th December 1900 the following Judgment was given in favour of the London County Council, reversing the decision of the Court below, with costs :—

JUDGMENT.

10th Dec., 1900.

Lord Macnaghten.—My Lords, acting under statutory authority, the Metropolitan Board of Works and the London County Council, as their successors, have from time to time raised money on loan by the creation and issue of stock known as Metropolitan Consolidated Stock. This stock and the dividends upon it, and the sums required to form a sinking fund, are charged "indifferently" on the whole of the lands, rents, and property belonging to the Council, and in addition to the benefit of this charge the stockholders have the security of the rates.

For the financial year 1897-8, the year to which your Lordships' attention was specially directed, the dividend on Metropolitan Stock amounted in round figures to £1,140,000. On the other hand, in that year the Council received about £100,000 in rents, and about £500,000 for interest on authorised advances to other public bodies. The balance required to make up the dividends was raised by rates. In their return to the Commissioners of Inland Revenue the Council charged themselves with Income Tax on the proceeds of rates applied towards the payment of the dividend, but they claimed exemption in respect of the rest of the money so applied, as having been paid

(1) 2 T.C. 25.

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out of profits or gains already brought into charge. The Commissioners disallowed the claim. They insisted that the Council was bound to pay over the amount of Income Tax deducted from interest on Metropolitan Stock so far as the deduction was made out of moneys not brought into charge under Schedule D; that it was no answer to say that the moneys had been brought into charge under some other schedules. That was the principal question in the controversy before your Lordships.

There was another point raised on behalf of the Crown, which I confess I do not quite understand. It was seriously argued that, inasmuch as the holders of the Metropolitan Stock have a charge on all the propery of the Council—capital and income alike—for their interest as well as for their principal and might in case of default resort to any and every item comprised in their security, therefore it would be right and proper before default, and merely for the purpose of computing Income Tax, to treat the dividend on Metropolitan Stock as paid rateably out of the capital of the property belonging to the Council and the different branches of their income. That is an ingenious, but not, I think, very business-like suggestion. It is enough to say that it is the plain duty of the Council, not being beneficial owners of the funds which they adminster, to keep down annual charges out of annual income as far as it will extend, and not, perhaps, the less so because the instructions of the Treasury, under whose financial control they are placed, require them to keep accounts distinguishing capital from income. The return to which I have already referred shows that the Council has dealt with the matter properly. I cannot see that there is anything calling for further inquiry. I pass from that point. It is not, I think, open to argument. I cannot say as much for the principal matter in dispute. That involves the construction of a modern Act of Parliament.

The question depends upon the meaning and effect of subsection 3, section 24, of the Customs and Inland Revenue Act, 1888, which enacts that "upon payment of any interest of money or annuities charged with Income Tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax," the rate of Income Tax in force at the time shall be deducted, and an account rendered to the Commissioners of Inland Revenue "of the amount so deducted or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be." and then the amount deducted is declared to be a debt due to the Crown and recoverable accordingly.

It will be observed that there is a change of language, and that the word "paid" takes the place of the word "payable" which occurs in the earlier part of the sentence. The result, therefore, is that so far as interest of money or annuities chargeable under Schedule D are in fact paid out of profits or gains "brought into

charge" whether in law payable thereout or not, the person who makes the payment and deducts the rate of Income Tax is not accountable to the Crown for the duty deducted.

The difficulty which has given rise to the present claim on the part of the Crown is created by the use of the words "profits or gains brought into charge to such tax" in the earlier part of the sub-section, and the words "profits or gains brought into charge" in the latter part. What is the meaning of "such tax"? And what is the meaning of "brought into charge"? The Divisional Court and the Court of Appeal have both held that the expression "such tax" referring back to the foregoing words, means "Income Tax under Schedule D," and that the expression "profits or gains brought into charge," in the latter part of the subsection, mean "profits or gains brought into charge under that schedule," and not "profits or gains brought into charge by virtue of the Income Tax Acts."

Now, if one had to construe the enactment with nothing but the words of the subsection to go upon, ignoring the state of the law at the time when the enactment was passed, and supposing, as one might possibly suppose from the language used, that there was a special or peculiar sort of Income Tax which could be properly described as "Income Tax under Schedule D." still I think it would be difficult to give any satisfactory reason why the expression "such tax" should mean "Income Tax under Schedule D" rather than "Income Tax" simply, or why the expression "brought into charge" should be limited to what is brought into charge under one particular schedule. But the subsection in question as the Act itself declares, is introduced by way of amendment. And how can you understand the true meaning and effect of an amendment unless you bear in mind the state of the law which it is proposed to amend. It is necessary therefore, to take a wider survey; and then I think the meaning of the enactment becomes plain enough. I cannot help thinking that the advisers of the Crown have somewhat misapprehended the scope and leading principles of our Income Tax Legislation and have not paid sufficient attention to the state of the law at the time when the Act of 1888 was passed. The consequence is that now when the Act of 1888 has been in force for a number of years it is discovered that a provision described in the Act as an "amendment" has worked a radical change in the law.

Income Tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of Income Tax assessed under Schedule D and those assessed under Schedule A or any of the other schedules of charge. One man has fixed property another lives by his wits, each contribute to the tax if his income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which taxable income

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is derived. That is all Schedule A contains the duties chargeable for and in respect of the property in all lands, tenements, and hereditaments capable of actual occupation. There the standard is annual value. It is difficult to see what other standard could have been adopted as a general rule. But there again, if the subject of charge be lands let at rack rent, the annual value is "understood to be the rent by the year at which the same are let." In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on "profits or gains" in the case of duties chargeable under Schedule A, and everything coming under that schedule, the annual value of lands capable of actual occupation as well as the earnings of railway companies and other concerns connected with land—just as much as it is in the case of the other schedules of charge. And it is to be observed that the expression "profits or gains" which occurs so often in the Income Tax Acts is constantly applied without distinction to the subjects of charge under all the schedules. I need not trouble your Lordships by giving instances of this use of the expression, because I shall presently have occasion to call your Lordships' attention to a section in the Act of 1842 in which it so happens that the expression "profits or gains arising from lands, tenements, hereditaments or heritages" is used to denote the annual value of lands capable of actual occupation brought in to charge under Schedule A. I will only refer in passing to one rather striking example. The "general declaration" required by the Act of 1842, section 190, Schedule G, XV, is described as "general declaration by each person returning a statement of profits under Schedules A, B, D, or E."

Unfortunately, the learned Judges of the Courts below took a very different view in regard to this point. That I think was the initial mistake. In the Divisional Court (1899, 2, Q.B. 235) the argument on behalf of the Crown as reported was this:—"The tax under Schedule A is a tax on property and is totally distinct from Income Tax under Schedule D." It appears from the shorthand notes that that argument was adopted by the Court without any qualification. Indeed the presiding Judge seems to have held that "Schedule A" was "not part of the Income Tax Act." The passage is omitted in the regular reports though it is really the key to the judgment. In the Court of Appeal the argument apparently was not quite so high. But there is this observation in the leading judgment:—"The tax under Schedule D is a tax upon 'gains and profits'; an entirely different tax from the tax under Schedule A" The other members of the Court agreed. With all deference, I do not think that that is a sound view of the Income Tax Acts.

It is interesting, and I think instructive, to trace the development of Income Tax Legislation. A very clear account of it is to be found in Mr. Stephen Dowell's excellent work. I turn at once to the original Act—the Act of 1799, 39 Geo. III, c. 13, as

amended by 39 Geo. III., c. 22. For the purpose of the tax the income for the current year of persons to be assessed was ranged under four divisions: "I. Income arising from lands, tenements, and hereditaments. II. Income arising from personal property, and from trades, professions, offices, pensions, stipends, employments, and vocations. III. Income arising out of Great Britain. IV. Income not falling under any of the foregoing rules." In the form of return required from the taxpayer, which is given in a schedule, these four heads of income were represented by nineteen "cases," of which the first fourteen fell under division I. The taxpayer had to return his total income under each and all of these cases. From this total income the taxpayer was allowed to make a great many deductions under various heads, also specified in the schedule. There were deductions for rents of all sorts. There was a deduction for "annual interest for debts," whether "personal" or charged on property enumerated in the several "cases," a deduction for "allowance to children or other relations," and a deduction for "annuities." The total amount of deductions was to be subtracted from the total amount of income, and the difference was the "income chargeable." That general return, as Mr. Dowell observes, was regarded as the most objectionable feature in the Income Tax. By the Act of 1803, in lieu of a general return, particular returns of income from particular sources were required. That was the origin of the five schedules of charge with which we are now so familiar. It was not that there was any difference in kind between the income arising from the different sources. The alteration was made in order to avoid disclosure of the taxpayer's circumstances. This new method was found to work so well that it has been continued in every Income Tax Act ever since. The Act of 1853, after imposing the duties of Income Tax by section 1, distributes those duties in section 2 among the different Schedules A, B, C, D, and E, on the ground, as there stated, of convenience of classification and facility of collection.

Another departure was made in 1803 from the system adopted in the Act of 1799. The principle was established of taxing income at its source and afterwards distributing the burden among those upon whose shoulders it ought to fall. Speaking generally, the deductions authorised by the Act of 1799 were prohibited altogether, and the taxpayer liable to an annual payment whether payable out of any subject of charge or not, was authorised to deduct and retain the tax upon the payment which he was bound to make. And so the law stood when the Act of 1888 was passed.

I need not trouble your Lordships with a reference to all the provisions of the Income Tax Acts which authorise a person who has paid Income Tax on what is not really available income because it includes money which he has to pay over to someone else, to deduct and retain the tax upon that payment. But it is, I think, worth while to refer very briefly to sections 102, 103, and 104 of the Act of 1842. In the Act of 1842 the charge upon annuities,

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yearly interest of money, and other annual payments, is not expressly included in Schedule D, where it was afterwards placed by the Act of 1853. It forms the subject of a distinct section. The charging section is section 102. It extends to all annual payments. The charge is to be according to, and under and subject to, the provisions by which the duty in the third case of Schedule D may be charged. Then there is a provision that "in every case where the same shall be payable out of profits or gains brought into charge by virtue of this Act," (your Lordships will note those words, they extend to income chargeable under each of the five schedules) no assessment is to be made upon the person entitled to the annual payment. The whole of the profits and gains are to be charged, and the person charged in respect thereof is entitled to deduct a proportional part of the duty when he comes to make the annual payment to which he is liable. In every other case the annual payment is charged with duty in the hands of the recipient. Then section 103 imposes penalties on persons refusing to allow the deductions authorised by the Act. It is only material as showing that these provisions with regard to annual payments extend to annual payments out of profits or gains chargeable under all the different schedules. Then comes section 104, a curious section, and one rather clumsily framed. It provides that when it is proved to the satisfaction of the Commissioners "that any annual payment shall be annually paid out of the profits and gains *bonâ fide* accounted for and charged by virtue of this Act at the rate and according to the rules specified in Schedule D," a certificate may be granted entitling the person so assessed upon making the annual payment to deduct a proportionate part of the duty; and then it goes on to say that "no such certificate shall be required when such payments are to be made out of the profits or gains arising from lands, tenements, hereditaments, or heritages as before mentioned, or of any office or employment of profit, or out of any annuity, stipend, or any dividend or share in such public annuities as are herein mentioned, but such deductions may be made without having obtained such certificate." So it came to this in the result, that a certificate was only required when the payment was to be made out of profits or gains chargeable under Schedule D.

A change was made by the Act of 1853 in ease of the taxpayer. Section 40 of that Act had the effect of dispensing with the certificate of the Commissioners altogether. It authorised "every person" liable to the payment of rent or yearly interest of money, or any other annual payment on making such payment to "deduct and retain thereout." the rate of duty then payable. It is obvious that that enactment was not a sufficient protection for the Crown. It contained no provision for cases where the annual payment was made out of gains or profits not brought into charge by virtue of the Act. And the person making the annual payment was not bound to make a deduction for Income Tax; if he did, he was apparently not bound to account to the Crown, except in the case of payments out of rates under section 102 of the Act of 1842,

It was to stop this gap, as it seems to me, that the enactment now under consideration was passed. It was not intended, I think, to effect a revolution in Income Tax law.

Now, what has the Act of 1888 really done? It is no longer optional for a person who has to make an annual payment to deduct Income Tax. He is bound to make the deduction, and bound to pay over to the Crown the amount deducted unless the payment comes out of income which has already paid the duty. That is a substantial improvement, and a reasonable security for payment of duty in many cases where formerly it was liable to be evaded. But to read the enactment as imposing a double duty would be contrary to the whole scope of Income Tax legislation and whimsical in the highest degree, when you consider that the double burden would necessarily fall upon the fund holder, in whose case the collection of duty is certain, while a person chargeable under Schedule D would be expressly exempted from double duty.

It seems to me that the mistake comes from mis-reading subsection 3, and making a pause in the sentence at a wrong place, and so treating the words "Income Tax under Schedule D" as a compound expression instead of connecting the words "under Schedule D" with "charged," to which they properly belong. When the enactment speaks of "interest of money or annuities charged with Income Tax under Schedule D" it does not refer to such interest or annuities as being charged with a special kind of Income Tax. There is really no such thing as Income Tax under Schedule D in that sense. The expression only means "assessed to Income Tax in accordance with the provisions of Schedule D."

It seems to me, therefore, that the contention put forward on behalf of the Crown cannot be maintained; and I am of opinion that the Information must be dismissed with costs, both here and below, and I move your Lordships accordingly.

Lord Davey.—My Lords I had prepared the judgment which I am about to read before I had had the advantage of seeing that which had been delivered by my noble and learned friend, Lord Macnaghten. There is necessarily some repetition in what I have written; but with apologies to your Lordships for troubling you with the same matter twice over, I think it better, as we are differing from the Court below, to read my own judgment.

My Lords, I am against the contention of the Crown on both the points which have been argued. The enactment on the construction of which the case turns is the third subsection of section 24 of the Customs and Inland Revenue Act, 1888; but in order to understand this section it will be proper to refer to a few sections of the earlier Income Tax Acts. By the 10th rule of No. IV, section 60 of the Act of 1842, which is applicable to Schedule A, it is provided (reading it shortly) that where any

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lands are subject or liable to the payment of (*inter alia*) any annual payment thereupon reserved or charged, the owner may retain the proportionate part of the tax out of such annual payment. The person entitled to receipt of the annual payment is bound to allow the deduction, and the owner is discharged of so much money as if the same had actually been paid to the person entitled to the annual payment. An annual payment, of course, includes interest reserved by the year on a mortgage, notwithstanding the suggestion of Mr. Danckwerts to the contrary. It has been continuously so construed by land-owners, mortgagees, and the Crown, and if anything were wanted to make clear that which was clear enough before, it will be found in the 11th rule which makes special provision for the case of a mortgagee in possession who receives the rents and pays himself his own interest, allowing the amount of the tax on his interest to the mortgagor. Section 102 of the same Act brings the yearly interest of money, whether payable as a charge upon any property or as a reservation thereout, or as a personal debt or obligation, within the third case of Schedule D; but it is provided that where the same shall be "payable out of the profits gains brought into charge by virtue of this Act" (your Lordships will observe the language) no assessment is to be made upon the person entitled to such interest, but the whole of such profits or gains is to be charged with the duty upon the person liable to make the payment, and he is entitled to deduct the proportionate amount of the tax from the yearly interest and is thereby discharged of so much money as such deduction shall amount unto. I construe the words "profits or gains brought into charge by virtue of this Act" as including all annual income charged with the tax under any of the schedules, and not as confined to profits charged under Schedule D. This is, I think, the natural meaning of the words; but it is made clear by the terms of section 104, enabling the Commissioners to grant a certificate of the tax having been paid and making such certificate a condition precedent to the deduction where the annual payment is made out of profits and gains "charged by virtue of this Act at the rate and according to the rules specified in Schedule D." Then follows a proviso in these terms:—"Provided always that no such certificate shall be required where such payments are to be made out of the profits or gains arising from lands, tenements, hereditaments, or heritages as before-mentioned; or if any office or employment of profit, or out of any annuity, pension, stipend, or any dividend or share in such public annuities as are herein mentioned, but such deductions may be made without having obtained any certificate."

Your Lordships will observe, in passing, the bearing which the language of these sections has upon one of the arguments addressed to us, of which more hereafter. It is not open to doubt, and was not disputed, that sections 60 and 102 alike mean that the person paying the yearly interest may deduct and retain

the amount of the tax for his own benefit, and the scheme of the Act is so far clear, and is in favour of the taxpayer. It was, no doubt, considered that the real income of an owner of encumbered property, or of property charged (say) with an annuity under a will, is the annual income of the property less the interest on the incumbrance or the annuity; and the mortgagee or annuitant and the owner of the property are, in a sense, entitled between them to the income; and, therefore, the Crown, receiving the tax on the whole income in the first instance from the owner, has no further claim against the mortgagee or annuitant on whose account the owner is deemed to have paid as well as on his own; or, in other words, the Crown under this Act cannot demand the tax twice over on the same income.

The only other section I need refer to is section 40 of the Income Tax Act, 1853, (16 & 17 Vict. c. 34), by which persons liable to the payment of any yearly interest or other annual payment, either as a charge upon any property or as a personal debt or obligation, are empowered to deduct the Income Tax thereout.

I now turn to the section to be construed, which is *in pari materia* with and complimentary to the earlier enactments. The words are "Upon payment of any interest of moneys or annuities charged with Income Tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of Income Tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be, and such amount shall be a debt due from such person to Her Majesty, and recoverable as such accordingly."

I confess I should have thought the meaning of these words sufficiently plain when read with the earlier enactments. Their general effect is to make it compulsory on the person paying taxable interest of money (not payable out of income already taxed) to deduct the tax and account for it to the Crown (as in such a case he would be bound to do) instead of leaving the deduction to his option, as was done by section 40 of the Act of 1853. But the singular thing is that the learned Attorney-General and his junior, while they tell us that this is a mere collecting section for improvement of the machinery of collecting the tax, and not a charging section, nevertheless give a construction to the words which seriously and materially increases the burden on the subject, and enables the Crown in the present case, and other similar cases, to claim payment of the tax twice over. They say that the words "brought into charge to such tax" mean "to Income Tax under Schedule D" and the section therefore applies to all

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interest charged upon or payable out of income not within that schedule. In other words, the effect (they say) of the section is to deprive the subject of the benefit of the rule X of section 60 and section 102 of the Act 1842. The encumbered owner of land, or of property or income within Schedules C and E, must deduct the tax from his incumbrancer's interest, but pay it over to the Crown, instead of retaining it for his own benefit as previously he was entitled to do. One wonders why it has taken ten years or more to develop this view of section 24 of the Act of 1888, which, if correct, must be immensely beneficial to the Crown.

In my opinion the construction of the section is entirely wrong. Grammatically I think it wrong. I think that the words "charged with Income Tax under Schedule D" mean "charged under Schedule D with Income Tax"; and the words "such tax" mean the tax which is called in the Act "Income Tax." It is said that the tax imposed on property within Schedule A is not strictly an Income Tax, because it is levied on the annual value of property and not on the profits received by the owner That no doubt is so, and if one were writing a treatise on taxation it would be proper to refer to this distinction. But the question is: What do the words "Income Tax" mean in the language of the Legislature and in this Act? I believe the expression is not used in either of the principal Acts of 1842 or 1853; but by the Short Titles Act, 1892, these statutes have received the title of "Income Tax Acts" of 1842 and 1853. The first instance of the words being used by the Legislature of which I am aware is in the title of another Act of 1853, relating to deduction in respect of life insurance. But in an Act of 1856 for relieving Scotch landlords in respect of public burdens not borne by landlords in England "Income Tax" is the expression used for describing the tax levied under Schedule A. And not to weary your Lordships, the words may be found in all the subsequent Acts (which have been passed almost yearly) as describing the tax which is levied under all the five schedules without distinction. In this Act of 1888, section 24 is one of a group of sections collected under the heading of "Income Tax." By section 23 it is enacted that there shall be charged, collected, and paid the following duties of Income Tax under all the five schedules. I come to the conclusion that the expression "Income Tax" in the language of the Legislature is a generic description of the tax which is levied under all the schedules alike, and is so used in section 24.

Again, it is said (if I understand Mr. Danckwerts rightly) that the expression "profits and gains" has a technical, or almost technical, meaning as descriptive only of the taxable subjects comprised in Schedule D. No doubt from the nature of the case the word "gains" is more frequently, though not exclusively, used in Schedule D. But unluckily for the argument the word "profits" is the word selected by the Legislature for describing generally the subjects of taxation under the Income Tax Acts The title to as well the Act of 1842 as that of 1853 is "An Act

for granting to Her Majesty duties on profits arising from property, professions, trades, and offices." I have already drawn attention to the language of section 102, and to the use of the words "profits or gains arising from lands, tenements, hereditaments, and heritages." in section 104 of the Act of 1842. The truth is that the Income Tax is intended to be a tax upon a person's income or annual profits, and although (for conceivable and no doubt good reasons) it is imposed in respect of the annual value of land, that arrangement is but the means or machinery devised by the Legislature for getting at the profits. Comparing sections 102 and 104 of the Act of 1842 with this section, I think the words "profits or gains brought into charge to such tax" are intended to be, and are, the exact equivalent of the words "profits or gains brought into charge by virtue of this Act" in section 102. I am, therefore, of opinion that the words "profits or gains" are apt words, and the words chosen by the Legislature for describing not only the taxable subjects under Schedule D, but also those comprised in Schedules A and B and the other schedules; and I hold that the London County Council are entitled to retain for their own benefit so much of the deduction made by them for the interest paid by them to their mortgagees in respect of Income Tax as is equal to the Income Tax paid by them on their real estate under Schedule A, or, which comes to the same thing, to account to the Crown only for the deducted Income Tax on so much of the interest as is not paid out of their income which has already been taxed.

On the second point I find it difficult to express myself with becoming respect. The contention is that as interest on their Consolidated Stock is charged on the whole of the lands, rents, and property belonging to the Council and on their rates, such interest ought for the benefit of the Crown to be apportioned rateably over all the usbjects of the charge, and only a rateable proportion deemed to be paid out of their income from rents or from interest receivable by them from their own debtors. The proposition has the merit of novelty. Admittedly there is no authority for it. The attention of your Lordships was not called to any statutory enactment directing any such procedure, or to any principle of law which prescribes it. On the contrary, the general principle of payment in due course of administration is to pay annual charges in the first place out of annual income. It is not required by the Income Tax Acts in order to raise the right of deduction and retention that the interest or annual payment shall be exclusively charged upon or payable out of profits or gains brought into charge. It is enough if the interest is charged upon or payable out of the taxable income, though there may be other subjects of charge. But the mortgagor cannot, of course, retain against the Crown more Income Tax than he has paid. One of the learned Judges in the Court of Appeal seems to have thought the case might have been different if the County Council had made some appropriation of their funds, though it is difficult to see how

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any account-keeping by the debtor could alter the rights of the Crown. If such appropriation be wanted I find it in the division of the account of the Consolidated Loans Fund into an Income Account and a Capital Account, pursuant to the regulations approved by the Treasury under the statutory powers.

I am of opinion that the judgment appealed from should be reversed, and that the Information should be dismissed with costs, and the Rsepondents should also pay the costs of the Appellants in the Court of Appeal, and in this House.

Lord Brampton.—My Lords, I had commenced to write an independent Judgment upon this important case, when I was afforded an opportunity of reading the opinions already printed of my noble and learned friends Lord Macnaghten and Lord Davey. The conclusion at which I have arrived coincided so exactly with theirs that I felt it to be unnecessary to trouble your Lordships with an elaboration of my own views. I am content to say that I entirely agree in the Judgments they have just delivered.

Lord Robertson.—My Lords, I am very clearly of opinion that the claim of the Crown is untenable; and, having had the advantage of reading the Judgments of my noble and learned friends Lord Macnaghten and Lord Davey,and, concurring as I do in the reasons given, I do not think it necessary further to develop the argument.

Lord Lindley.—My Lords, the main question raised by this Appeal turns on the true construction of section 24, clause 3, of the Customs and Inland Revenue Act, 1888, (51 & 52 Vict. c. 8). This enactment has no special reference to the London County Council, but is a general enactment applicable to that body, inasmuch as they have to pay interest to the holders of their Consolidated Stock.

The language of the enactment is such that, if it had to be construed by itself, I should feel some difficulty in putting upon it any other interpretation than that which has been put upon it by the Court of first instance, and by the Court of Appeal, and which is contended for by the Crown. In other words, I should read "such tax" in section 24, clause 3, as applying to Income Tax, under Schedule D, and not as applying to Income Tax generally. But the enactment in question cannot be read by itself. Its object is simply to cure a defect in prior enactments—not to remodel them. Section 24, clause 3, must be read with them, and, so far as its language permits, it must be so construed as to accomplish its special object, and produce with them results which are in conformity with the principles on which they are framed, and with the scheme of taxation contained in their provisions. The construction to which I have alluded appears to me to be quite

inconsistent with those principles and with such scheme. It introduces anomalies which are startling and irrational, and which there is no reason to suppose that the Legislature ever contemplated. The judgments of my noble and learned friends Lord Macnaghten and Lord Davey, which I have had the advantage of reading, have made this so clear that it is quite unnecessary for me to say more upon this point. The language of section 24, clause 3, is by no means so plain and free from ambiguity as to justify a construction which leads to such results; and if authority is wanted to show that the Income Tax Acts must be treated as a whole, such authority will be found in the decision of this House in *Colquhoun* v. *Brooks* (1). The Courts below have not, in my opinion, given sufficient weight to those sections in the earlier Acts to which our attention was called by the Appellants, and which have been so fully commented upon by the noble and learned lords who have preceded me.

I also agree with what they have said on the subordinate question of apportionment.

For the reasons given by them, I have come to the conclusion that the Judgments appealed from cannot be supported, and that the Appeal should therefore be allowed.

Questions put—

That the order appealed from may be reversed.

The Contents have it.

That the Information be dismissed with costs, and that the Respondent do pay to the Appellants their costs in the Courts below, and in this House.

The Contents have it.

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(1) 2 T.C. 490.