Appeal dismissed.

Counsel for the Appellant—Sir E. Clarke, K.C. — Hon. H. Macnaghten. Agents — Collyer-Bristow & Company, Solicitors.

Counsel for the Respondent—Shee, K.C. —Eldon Bankes, K.C.—H. Fraser. Agents —Lewis & Lewis, Solicitors.

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## HOUSE OF LORDS.

*Tuesday, March* 19.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson and Atkinson.)

### ATTORNEY-GENERAL *v.* LONDON COUNTY COUNCIL.

*Revenue—Income Tax—Payment of Interest on Loans—Right to Retain Income Tax—Income Tax Act* 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 60, *No. IV*, *r.* 10, *sec.* 142—*Customs and Inland Revenue Act* 1888 (51 *and* 52 *Vict. c.* 8), *sec.* 24, *sub-sec.* 3.

The annual income of the London County Council liable to, and on which they paid, income tax was £956,000, consisting of £838,000 derived from rents &c., and £118,000, the annual value of landed property occupied by themselves. They had from time to time under their statutory powers created capital stock, which was charged upon their whole property. As interest on this stock they annually paid to shareholders (always deducting income tax due thereon), the sum of £1,371,000, the amount by which their own income was insufficient to pay this interest being raised by means of rates. Admittedly, they were entitled to retain for themselves so much of the deducted income tax as represented the tax on their income from rents and other sources—*London County Council* v. *Attorney-General* [1901], A.C. 26. *Held* that they could not retain, but were bound to hand over to the Crown, the amount of tax representing the tax on the value of the lands owned and occupied by them (£118,000).

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and ROMER, L.JJ.), reported (1905), 2 K.B. 375, who had affirmed a judgment of CHANNELL, J., reported (1904), 2 K.B. 635, in favour of the respondents, upon the trial of an information by the Attorney-General.

The facts appear fully from the reports in the Courts below, and in the judgments of their Lordships.

At delivering judgment—

LORD CHANCELLOR (LOREBURN) — The facts of this case are simple. The annual income of the London County Council liable to income tax is £956,000 a-year. I take round figures throughout. Part of it, viz., £838,000 a-year consists of rents or other sums which the Council receives. The remainder—viz., £118,000—consists of landed property which the County Council occupies. It does not let this latter property, but uses it and thereby saves the rent which it would have to pay if instead of occupying its own property it hired other property for the purpose. Upon all this £956,000 a-year the County Council has paid income tax. Upon the other hand, the County Council is obliged to pay £1,371,000 annually as interest upon borrowed money due to the holders of consolidated stock, and all the property upon which the County Council pays income tax is included in the security held by the owners of the stock. Thus the annual value of all the property owned by the County Council is less by £415,000 than the interest which it has to pay upon its debt; and the annual receipts by the County Council from that property show a still greater deficiency, for the County Council receives nothing in cash for that part of its property which it occupies. Pursuant to the scheme of the Income Tax Acts, which require the tax, where possible, to be collected at its source, the County Council when it pays £1,371,000 interest to the owners of consolidated stock is bound to deduct from the whole of it the amount of income tax due upon it. They have done so, and the question in this case is how much of the income tax so collected by the County Council must be handed over to the Crown and how much it may retain for itself. It is quite clear, and is not disputed, that in respect of the income tax deducted from the £1,371,000, the County Council must account to the Crown for the tax they have collected on £415,000 a-year, because they have received it purely as tax collectors for the Crown, and cannot pretend that it represents any moneys which have already paid income tax. Again, as to the remaining £956,000, the decision of this House in *London County Council* v. *Attorney-General* ((1901), A.C. 26) admittedly applies, and the County Council may retain for itself the tax which it has collected upon the £838,000 parcel thereof. All, therefore, that remains in dispute is whether the tax collected upon the balance —viz., upon £118,000 a-year—may be retained by the Council or must be accounted for to the Crown. This sum represents interest paid by the County Council to the holders of consolidated stock, which is not paid out of profits or gains brought into charge. It is paid out of rates, and on the rates which the Council pays over to its creditors it is bound by the proviso at the end of section 102 of the Act of 1842 to deduct the tax and pay it over to the Crown. It is said that the effect of this conclusion will be to tax the same income twice over. I cannot see this. The county Council pays tax on £118,000 annual value of their own land which they occupy. The holders of consolidated stock pay tax on £118,000 annual interest of the debt due to them from the County Council. It seems to me that the two incomes are different, the persons who receive and enjoy them are different, and the persons who pay income

tax on these two incomes respectively are also different. With the utmost respect to Channell, J., and the Court of Appeal, I am unable to arrive at the conclusion which they have reached.

LORD MACNAGHTEN—The financial position of the London County Council is still much the same as it was at the time of the dispute with the Crown determined in this House in December 1900. As stated in that case—(*London County Council* v. *Attorney-General, ubi sup.*), the stock known as Metropolitan Consolidated Stock represents moneys borrowed by the Council and their predecessors the Metropolitan Board of Works. The stock and the dividend 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 on the rates collected under the head of the metropolitan consolidated rate which the Council are authorised to levy. For the financial year ended the 31st March 1901 the dividend payable on metropolitan stock amounted in round figures to £1,371,000. On the other hand, the Council received about £851,000 from rents and interest on authorised loans to other public bodies. The balance required to make up the dividend was provided by the metropolitan consolidated rate. In the case of *London County Council* v. *Attorney-General* the question was whether the Council were bound to account to the Crown for the whole of the income tax deducted from the dividend on metropolitan stock, or only for so much as was attributable to the sum raised by rates. That question was ultimately determined in favour of the Council after two adverse decisions. A further question is now raised. The Council are owners of property which they occupy themselves and use for their statutory purposes. It is valued at £118,000 a year, and assessed at that value under Schedule A. Having paid income tax under Schedule A in respect of this property the Council claim a right to recoup themselves by retaining an equal amount out of so much of the income tax deducted from the dividend on metropolitan stock as is attributable to the sum raised by rates. The Crown brought this information to try the question. Channell, J., considered the claim on the part of the Council well founded, and dismissed the information. The learned Judges of the Court of Appeal have upheld his ruling. I must confess that I do not quite understand the decision. There is no question as to the principles applicable to these income tax cases. Speaking generally, all income is chargeable, but chargeable only once. Income is brought into charge at its source, and the burden is then distributed among the recipients of the income, who bear their share in just proportion. The income derived by the council from rents and interest on loans pays income tax by deduction before it comes to their hands. When that income is applied in or towards payment of interest on metropolitan stock the burden is shifted. Again, the sum which the Council's creditors are entitled to receive from rates is chargeable under section 102 of the Act of 1842. But I cannot understand what the property in the occupation of the Council has to do with the matter. It stands apart. It is quite true that this property is charged in favour of the holders of metropolitan stock, but the charge is not, and never can be, operative. It is superseded by the charge on the rates and vanishes altogether. The "profits and gains" derived from the property in the occupation of the Council are charged at their source in the hands of the Council under Schedule A. The stream flows no further. It is enjoyed and absorbed by the Council. The Council must have the use and occupation of some property to enable them to perform their statutory duties. So long as the rates are available to meet the demands of the stockholders the Council are secure in the full and beneficial enjoyment of the property which they occupy. What possible claim can there be to relief or indemnity as regards income tax in respect of this property? I cannot help thinking that Channell, J., has misapprehended some observations which fell from Lord Davey in the case of *London County Council* v. *Attorney-General*. In explaining the principle of taxing income at its source and distributing the burden among the persons who in their turn share and enjoy the income, Lord Davey observes that "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." That is a proposition of the truth of which encumbered owners are for the most part painfully conscious. But it proceeds on the assumption that the charge for the interest or for the annuity, as the case may be, is a real burden. If the interest or the annuity is discharged by some person other than the encumbered owner or devisee without any recourse to such owner or devisee the burden is nominal. The owner or devisee is practically none the worse for the charge. Take the present case—the property in hand, which is valued at £118,000 a-year, has never contributed, and so long as the Council use it for their statutory purposes never will contribute, a single penny towards the payment of interest on metropolitan stock. The property in the actual occupation of the Council is worth to them for all practical purposes just as much as if it were not charged at all. Collins, M.R., with whom his two colleagues agreed, follows Channell, J. He rests his conclusion on Lord Davey's observations. "It is clear," he says, "from section 60, rule 10, as explained by Lord Davey, that the real income of an owner of encumbered property is the annual income of the property less the interest on the encumbrance." So it is if the encumbered owner pays the interest out of his own pocket. But the case is different if the interest is discharged

from some other source and the owner is free. His Lordship then goes on to say—"The Crown cannot demand the tax twice on the same income." "It follows, therefore," he adds, "that the Crown, having received income tax once under Schedule A on the full annual value of the property in question, can have no possible right to receive it a second time." The answer is that the Crown does not receive it or claim a right to receive it a second time. It receives the tax only once. But if the contention on the part of the Council were to prevail there might be taxable income—income plainly taxable—and yet the Crown would receive no tax upon it at all. Let me put the case—I leave out of consideration the property belonging to the Council which produces income—that does not affect the question. I will assume the dividend on metropolitan stock to be £100,000 a year. Then if the Council have no property in their own occupation, and the dividend is raised entirely by rates, the Crown gets income tax on the whole of the dividend. But if the Council proceed to acquire property for their accommodation, the tax on the dividend receivable by the Crown gets less and less until it vanishes altogether if and when the annual value of the property in hand assessed under Schedule A reaches £100,000. The property itself pays tax under Schedule A whoever may be the owner and occupier. The point is that the Crown loses the tax on the dividend if the tax when collected goes to recoup the council for what they pay under schedule A. In my opinion the Crown is entitled to receive the whole of the income tax on the rates applied in or towards the satisfaction of the dividend on metropolitan stock. It seems to me that the judgment of the Court of Appeal must be reversed and an order made on the information for payment of the sum claimed by the Crown, and the Council must pay the costs both here and below.

LORD JAMES OF HEREFORD—I entertain grave doubts as to the judgments which have been delivered in this case, but they are not strong enough to cause me to dissent from the views which have been expressed by my noble and learned friends. Therefore I concur in the motion before the House.

LORD ROBERTSON and LORD ATKINSON concurred.

Appeal sustained.

Counsel for the Appellant—The Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C.—W. Finlay. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

Counsel for the Respondents—Sir E. Clark, K.C.—H. F. Dickens, K.C.—W. C. Ryde. Agent—Seager Berry, Solicitor.

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## PRIVY COUNCIL.

*Friday March 22.*

(Present—The Right Hons. the Lord Chancellor (Loreburn), Lords Macnaghten and Davey, and Sir Arthur Wilson.)

### OWNERS OF STEAMSHIP "LANGFOND" *v.* CANADIAN FORWARDING AND EXPORT COMPANY.

(ON APPEAL FROM THE SUPERIOR COURT FOR THE PROVINCE OF QUEBEC.)

*Ship — Charter-party — Breach — Withdrawal of Ship.*

A charter-party contained a clause providing—"Payment of the said hire to be made in cash monthly in advance, . . . and in default of such payment or payments as herein specified, the owners shall have the faculty of withdrawing the said steamer from the service of the charterers."

A month's hire became due on the 11th September. On the 1st October it was still unpaid, and the owners gave notice that they withdrew the ship, which was at that time at sea.

On the 2nd October the month's hire was paid, and on the same day the ship arrived in port.

On the 4th October the master, under instructions from the owners, withdrew the ship.

*Held* (*affirming* the judgment of the Court below) that by withdrawing their ship at a date when there were no arrears unpaid under the charter-party, the owners had committed a breach of the charter-party, for which they were liable in damages.

Appeal from a judgment of the Superior Court for the province of Quebec (TAIT, LORANGER, and DOHERTY, JJ.), affirming a judgment of FORTIN, J., in favour of the respondents (the plaintiffs below) in an action brought by them as charterers of the steamship "Langfond," against the owners, for damages for a breach of the charter-party.

The facts are fully set out in the judgment of their Lordships.

At the conclusion of the arguments their Lordships took time to consider their judgment, which was delivered by

SIR ARTHUR WILSON—The action out of which this appeal arises was brought by the respondents, as charterers, against the appellants, as owners of the steamship "Langfond," to recover damages for breach of the charter-party. The charter-party was made in New York on the 17th February 1902 between Bennett, Walsh, and Company, agents for owners of the steamship "Langfond," of Stavanger, and the respondents. By it the owners agreed to let and the respondents to hire the ship from the time of delivery for a period of about two months, fourteen days more or less, with an option in the charterers to