VOL. VI.—PART V.

No. 346.—In the High Court of Justice (King's Bench Division).—9th and 10th February, 1911.

Court of Appeal.—20th, 24th and 25th July, 1911.

House of Lords.—6th, 7th and 14th February, 1913.

Sugden (Surveyor of Taxes) v. Leeds Corporation. (1)

Interest on Loans.—Deduction and Retention of Income Tax.—A Municipal Corporation which exercises also the function of an Urban Sanitary Authority is subject to Income Tax on the rents and profits of its hereditaments and of its several undertakings, which are acquired and worked, and for the purpose of which extensive borrowing powers are exercised, under the provisions of various Acts and Orders, of which the latest is the Leeds Corporation (General Powers) Act, 1901. *Where money is borrowed for the purposes of municipal undertakings the loan is charged in the first instance on those undertakings and the City Fund, where money is borrowed for sanitary undertakings the loan is charged in the first instance on those undertakings and the Consolidated Fund, but the exact effect of the Act of* 1901 *in regard to the charging of loans on the Corporation's Funds, and the application of surplus income, is one of the main matters in dispute. In paying interest on the loans relating to the several undertakings the Corporation deducts Income Tax. In the year of assessment the amount of interest paid exceeds the total rents and profits as assessed, and to the extent of that excess, which is met by rates, it is conceded by the Corporation that it is bound to account for the tax deducted. By the Crown it is conceded that the Corporation is entitled to retain the tax deducted in paying interest to the extent to which such interest is effectively charged on taxed income under the Acts and Orders referred to. As to a portion of such interest, however, representing interest on loans raised in respect of Consolidated Fund undertakings and not covered by the profits of those undertakings, the Crown denies that the taxed income is effectively so charged, contending that the effect of the legislation was and had always been to preclude the Corporation from applying the surplus income of one set of undertakings belonging to the City Fund in paying the interest on the debt of another set of undertakings belonging to the Consolidated Fund.*

Held, *in the Court of King's Bench that the Corporation must account to the Crown for the tax deducted from that portion of the*

(1) Reported [1913] 29 T.L.R. 402; 57 S.J. 425.

(31303—6) Wt. 27684—540 750 2/21 H. St. G. 2

interest paid in respect of loans raised for its Consolidated Fund undertakings which is not met by the profits of those undertakings. This decision was reversed in the Court of Appeal (Kennedy L.J. *dissenting), but unanimously upheld by the House of Lords.*

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1. At a meeting of the General Commissioners of the Income Tax for the Division of Leeds Borough held within the City of Leeds on the 22nd day of December, 1903, the Lord Mayor, Aldermen, and Citizens of the City of Leeds by the abovementioned William Derry (hereinafter referred to as the Appellants) appealed against the sum of £93,929 part of an assessment of £97,185 made upon him the said William Derry for the year ended the 5th day of April, 1903, under s. 102 of the Income Tax Act, 1842, as the proper officer having the management of the accounts in respect of interest paid by the Lord Mayor, Aldermen, and Citizens of the City of Leeds (hereinafter called the Corporation).

The actual figures at the time when the Appeal was heard were not agreed upon, but it was arranged that they should be adjusted between the parties in accordance with the final decision in this case or in case of disagreement by the Commissioners. The amounts herein stated may, subject as aforesaid, be accepted as correct for the purposes of this case.

2. The Corporation were created and are now a corporate body with perpetual succession and a common seal under and by virtue of a charter granted by his late Majesty King Charles II. bearing date the 2nd day of November, 1661.

3. The Corporation are a municipal corporation within the scope and meaning of the Municipal Corporations Act, 1882 (45 and 46 Vic. c. 50), and in accordance with the said Act a borough fund (hereinafter called the city fund) has been provided into which certain moneys received are paid and out of which certain payments are made and in aid of which the Corporation are empowered by section 144 of the said Act to make a borough rate (hereinafter called the city rate) and to assess contributions thereto as in such section provided; and in each and every year the Corporation do make and assess the city rate accordingly.

4. The Corporation are also an Urban Sanitary authority within the meaning and for the purposes of the Public Health Acts, and their expenses under those Acts and under certain provisions of local Acts are payable out of a fund consisting of the produce of a separate rate called the consolidated rate and receipts from various other sources including rents from property, market tolls, bath and cemetery fees, receipts from the electric undertaking and from sanitary and fire brigade services, hackney carriage licences, recreation facilities, sales of stock material, &c. The said rate the Corporation are authorised to levy under and by virtue of the provisions of the Leeds Improvement Act, 1893, section 37, and in each and every year the Corporation do make, assess and levy a consolidated rate accordingly.

5. The Corporation own various undertakings and properties and in particular as follows :—

(*a*) *The Waterworks Undertaking* for the supply of water to the city and certain adjoining districts.

(*b*) *The Gasworks Undertaking* for the supply of gas to the city and certain adjoining districts.

(*c*) *The Tramways Undertaking* comprising tramways in the city and in certain adjoining districts.

(*d*) *The Markets Undertaking* comprising the markets of the city.

(*e*) *The electric Lighting Undertaking* for the supply of electrical energy in the city.

(*f*) Certain lands and hereditaments within and beyond the city.

6. By the Municipal Corporations Act, 1882, it was amongst other things enacted as follows :—

Section 139.—The rents and profits of all corporate land and the interest dividends and annual proceeds of all money dues chattels and valuable securities belonging or payable to a municipal corporation or to any member or officer thereof in his corporate capacity and every fine or penalty for any offence against this Act (except where and so far as the application thereof is otherwise provided for) shall go to the borough fund.

Note.—In addition to the payments made into the city fund under this section there are certain other payments to be made into the fund under the provisions of local Acts, including receipts from the waterworks, gasworks and tramway undertakings of the Corporation, together with sums received from police and judicial services and contributions from the local taxation account of the Local Government Board and also from the city rate.

Application of Borough Fund.

Section 140.—(1) The borough fund shall be applicable to and charged with the several payments specified in the fifth schedule.

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THE FIFTH SCHEDULE.

Payment out of the Borough Fund.

PART I.

Payments which may be made without order.

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PART II.

Payments which may not be made without order.

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XI. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

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Section 143.—(1) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act or otherwise by law the surplus thereof shall be applied under the direction of the Council for the public benefit of the inhabitants and improvement of the borough.

(2) If the surplus arises from the rents and profits of the property of the municipal corporation and not from a borough rate and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation as the sanitary authority for the borough may apply the surplus in payment of any expenses incurred by them as such sanitary authority before or after the commencement of this Act in improving the borough or any part thereof by drainage enlargement of streets or otherwise under the Public Health Act, 1875, or any Act thereby repealed.

7. By the Leeds Corporation (General Powers) Act, 1901, it was amongst other things enacted as follows :—

Section 4.—" The city fund " " the city rate " and " the consolidated rate " mean respectively the city fund, the city rate, and the consolidated rate of the city. " Statutory borrowing power " means any power whether or not coupled with a duty of borrowing or continuing on loan or re-borrowing money or of redeeming or paying off or creating or continuing payment of or in respect of any annuity, rent charge, rent, or other security representing or granted in lieu of consideration money for the time being existing under any Act of Parliament, public or local, passed or to be passed, or under any Provisional Order confirmed by Act of Parliament passed or to be passed, or under any Order or sanction of any Government Department made or given or to be made or given by authority of any Act of Parliament passed or to be passed.

" Principal moneys " means any moneys owing or to be owing or borrowed or to be borrowed by the Corporation under any statutory borrowing power (including borrowing powers under this Act) and whether raised or secured upon or by Corporation stock annuity certificate funded debt Corporation bills or promissory notes mortgages bonds Leeds Gas Light Company's Debenture Stock Leeds New Gas Company's Debenture Stock or otherwise howsoever.

" Revenues of the Corporation " includes the revenues of the Corporation from time to time arising from any land undertakings or other property for the time being of the Corporation and rates or contributions leviable by or on the precept of the Corporation.

" Corporation Acts and Orders " mean the Acts and Orders confirmed by Parliament set out in the third schedule to the Leeds Improvement Act, 1893, and in the fourth schedule to this Act and this Act.

Section 33.—(1) The Corporation may from time to time independently of any other borrowing power borrow at interest for the purposes hereinafter mentioned the sums following :—

(*a*) For experimental and other works of sewage disposal and of experiments in connection therewith carried out and undertaken or to be carried out and undertaken by the Corporation the sum of Sixty thousand pounds;

(b) For and in connection with the purchase of land and for the construction of the street works the sum of Four hundred and fifty thousand pounds;

(c) For the construction of the tramways by this Act authorised and for other tramway purposes the sum of Sixty thousand pounds;

(d) For gasworks purposes the sum of Three hundred thousand pounds;

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(2) In addition to the moneys which the Corporation are by this section authorised to borrow they may borrow such further sums of money for tramway purposes as the Board of Trade may sanction and such further sums of money for any of the other purposes mentioned in this section or purposes of this Act as the Local Government Board may sanction.

(3) In order to provide for the repayment of moneys borrowed under this section and the payment of interest thereon the several revenues of the Corporation are hereby made specifically liable and such moneys are hereby primarily chargeable accordingly (that is to say):—

As regards purposes (a) and (b) hereinbefore mentioned the consolidated rate.

As regards purposes (c) hereinbefore mentioned the revenue arising from the tramway undertaking of the Corporation.

As regards purposes (d) hereinbefore mentioned the revenue arising from the gasworks undertaking of the Corporation.

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Section 36.—(1) The Corporation may raise all or any principal moneys which for the time being they may be authorised to borrow or re-borrow by mortgage or by the creation and issue of adequate amounts of Leeds Corporation Stock subject and according to the provisions of the Corporation Acts and Orders.

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Section 37.—(1) All principal moneys shall be charged indifferently upon the lands and estates the water the gas and other the undertakings of the Corporation and upon all the revenues of the Corporation and each and all such principal moneys or any of them whether raised or owing before or after the passing of this Act together with the dividends interest annuities and all other sums for the time being payable thereon (such dividends interest annuities and other annual sums being hereinafter referred to as "dividends") shall rank equally and *pari passu* without any priority or preference by reason of any precedence in the date of any statutory borrowing power or in the date of the raising of the money or in the date of the money becoming owing or in the date of the security issued or given in respect thereof or on any other ground whatsoever.

(2) The provisions of the Corporation Acts and Orders authorising the raising of the principal moneys and the securities granted

issued and subsisting in respect thereof shall be read and construed as though the charge by this section authorised had been the charge in the said provisions and securities respectively authorised and given.

Section 38.—(1) For payment of dividends there shall be established and formed a fund called the dividends fund.

(2) In each year the Corporation shall pay into the dividends fund a sum or sums equal to the aggregate amount of dividends payable in that year on the principal moneys.

(3) The amount of such sum or sums shall be the amount ascertained to be required in that behalf according to the respective amounts of dividends properly payable out of the several revenues of the Corporation.

Section 39.—The Corporation shall from time to time apply the dividends fund in paying the dividends on the principal moneys.

Section 40.—As parts of the general account of the dividends fund the Corporation shall keep separate accounts distinguishing and showing in relation to each undertaking or purpose for or in respect of which any of the principal moneys are borrowed by them all moneys paid into the dividends fund from the revenues of the Corporation in respect of dividends on the several amounts of the principal moneys chargeable to that undertaking or purpose.

Section 41.—The Corporation shall provide for the repayment of the principal moneys within the following periods (hereinafter referred to as " the prescribed periods ") (that is to say) :—

(*a*) The several principal moneys mentioned in column eleven of the second schedule of this Act within the period set opposite to such sums respectively in column fourteen of the said schedule.

(*b*) Any principal moneys not mentioned as last aforesaid within the periods by the statutory borrowing powers in respect thereof respectively prescribed.

Section 42.—(1) The Corporation shall provide for the repayment within the prescribed periods of the principal moneys or any of them by the payment of equal annual instalments of principal or of principal and interest combined or by means of a redemption fund or partly by one of those methods and partly by another or others of them.

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Section 44.—The Corporation may at any time apply the whole or any part of the redemption fund as follows (that is to say) :—

(1) In or towards the discharge of the principal moneys or any of them for the repayment of which the fund is established provided that the yearly sums to be paid to the fund shall not be affected by such application.

(2) Where the Corporation are authorised by any statutory borrowing power to raise money for any purpose they may instead of exercising such borrowing power by the issue of any fresh security in respect thereof exercise the said power and raise the said money either wholly or partially by using for such purposes any money for the time being forming part of the redemption

fund and moneys so raised shall for the purposes of this Act be deemed to be moneys borrowed under a statutory borrowing power.

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Section 45.—Pending or in default of any such application of the redemption fund as aforesaid the Corporation shall invest the same in any statutory security and the dividends income and annual proceeds thereof may be applied towards paying the yearly sums required to be paid to the redemption fund under the section of this Act with the marginal note "Method of repayment of principal moneys."

Section 46.—(1) As parts of the general account of the redemption fund the Corporation shall keep :—

(*a*) An account showing the securities on which all sums paid into the redemption fund are from time to time invested ; and

(*b*) Separate accounts relative to each undertaking or purpose for or in respect of which any principal moneys for the repayment of which the redemption fund is established were raised ; and

(*c*) Separate accounts relative to such last mentioned principal moneys in respect of each statutory borrowing power so exercised.

(2) Those separate accounts shall distinguish and show :—

(*d*) The amounts of principal moneys outstanding for the time being chargeable to each undertaking or purpose and respectively attributable to the exercise of the several statutory borrowing powers if more than one relating to that undertaking or purpose together with the nature of the security issued given or subsisting in respect thereof ; and

(*e*) The several amounts of principal moneys discharged by application of the redemption fund.

(3) Those separate accounts shall further distinguish and show in relation to each undertaking or purpose :—

(*f*) All moneys being capital or in the nature of capital paid into the redemption fund and in the judgment of the Corporation properly attributable to that undertaking or purpose ; and

(*g*) All money or securities transferred to the redemption fund as having formed part of any other redemption or sinking fund ; and

(*h*) The yearly sums paid into the redemption fund as contributions from the revenues of the Corporation in respect of the discharge of those several amounts of principal moneys.

Section 47.—(1) The yearly sum or sums to be provided under the provisions of this part of this Act shall be provided by contributions from the several revenues of the Corporation (if any) specifically charged with or made liable to provide the same by or under any statutory borrowing power or by any resolution of the Corporation having reference to the respective borrowing powers and if as regards any statutory borrowing power there is

no such specific liability then from the several revenues out of which the respective contributions would be properly payable having regard to the purpose for which the borrowing powers are given and in default thereof or subject thereto out of the city fund and city rate or out of the consolidated rate or out of the highway rate as the Corporation having regard to the provisions of this Act and the objects for which the statutory borrowing power was exercised may consider equitable.

(2) The Corporation shall from time to time in order to raise the amounts of the several contributions as aforesaid out of their several revenues do all such acts exercise all such powers collect all such moneys and (subject to the provisions of sub-section 1) make and levy all such rates as they lawfully can or ought to do exercise collect make and levy for the purpose of or in relation to the respective statutory borrowing powers in exercise whereof the several principal moneys are raised.

Section 48.—(1) If at any time any principal money or dividend shall remain unpaid for two months after the same shall have accrued due and after demand thereof in writing by the person entitled thereto such person may apply to the High Court for a receiver and the Court may if it thinks fit to appoint a receiver on such terms as it thinks fit.

(2) The receiver shall have the like power of collecting receiving recovering and applying all money which ought to be paid under the Corporation Acts and Orders and of assessing making and recovering all rates for the purpose of obtaining the same as the Corporation or any officer thereof would or might have and such other powers and such duties as the Court thinks fit and shall apply all money so collected after payment of expenses and costs as the Court directs for purposes of the Corporation Acts and Orders.

(3) The Court may at any time discharge the receiver and shall have full jurisdiction over him and all persons interested in his acts.

Section 49.—The Corporation shall except as hereinafter provided have power to reborrow for the purpose of paying off any outstanding principal moneys intended to be forthwith repaid or for the purposes of replacing any principal moneys which have been repaid by the temporary application of funds at the disposal of the Corporation : Provided that the Corporation shall not have power to reborrow in respect of any principal moneys discharged by means of the redemption fund or out of moneys derived from the sale of land or out of any capital moneys properly applicable to the purpose of such repayment other than moneys borrowed for that purpose : Provided also that any principal moneys reborrowed shall be primarily chargeable on the same revenues and be deemed to form the same loan as the money in respect of the repayment of which the reborrowing has been made and shall be repaid within the prescribed period.

8. In addition to the general provisions above set out the following special provisions were also enacted with reference to the respective undertakings and funds.

Waterworks.

The Leeds Waterworks (Wharfe Supply) Act, 1852.

Section 30.—That the Corporation may borrow the moneys from time to time required by them for all or any of the purposes of this Act on mortgage of the borough fund of the Borough of Leeds and of the rates which they may receive under or by virtue of the first-recited and this Act or any of them.

Section 35.—That all the moneys expended by the Corporation for any of the purposes of this Act and other the costs charges and expenses of and incident to the carrying into execution of this Act by the Corporation (except such costs charges and expenses as are by this Act required to be and can be otherwise paid or satisfied) shall be charged upon and be paid or satisfied out of the borough fund of the Borough of Leeds.

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The Leeds Waterworks Act, 1867.

Section 45.—For any of the purposes of the recited Acts and this Act respectively the Corporation from time to time under the authority of this Act may borrow on mortgage of the borough fund of the Borough of Leeds and of the water rates or rents received by under or by virtue of the recited Acts and this Act or any of them any sums which they from time to time think requisite not exceeding in the whole (inclusive of the sums at the time of the passing of this Act borrowed and owing by the Corporation under the Act of 1852 and which sums on the first day of January one thousand eight hundred and sixty-seven amounted to the sum of Four hundred and twenty thousand pounds or thereabouts) the sum of Nine hundred and twenty thousand pounds.

Section 49.—All the moneys expended by the Corporation for any of the purposes of this Act and other the costs charges and expenses of and incident to the carrying into execution of this Act (including therein the costs charges and expenses of and incident and preparatory to the obtaining and passing of this Act) shall be charged upon and be paid and satisfied out of the borough fund of the Borough of Leeds.

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The Leeds Corporation Water Act. 1874.

Section 8.—The Corporation may in addition to the money which they have borrowed and have power to borrow under the water Acts borrow on mortgage or other security upon the borough fund and borough rates of the borough and on the security of the waterworks and property vested in them under the said water Acts and of the water rents and of the other income to be derived under those Acts and this Act the further sum of Three hundred thousand pounds.

Section 11.—All the moneys expended by the Corporation for any of the purposes of this Act and other the costs charges and

expenses of and incident to the carrying into execution of this Act shall be charged upon and be paid and satisfied out of the borough fund of the Borough of Leeds.

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The Leeds Improvement Act, 1877.

Section 65.—The Corporation may from time to time in addition to any moneys they are now authorised to borrow borrow and re-borrow at interest on the following securities and for the following purposes the following sums (that is to say) :—

For gasworks purposes on the security of the gasworks undertaking borough fund and borough rate Three hundred thousand pounds.

For waterworks purposes on the security of the waterworks undertaking borough fund and borough rate Two hundred and fifty thousand pounds.

For the purposes of the Improvement Acts and of this Act other than gasworks and waterworks on the security of the improvement rate in the Acts of 1842 1856 and 1866 authorised and the revenue of any undertaking lands and property of the Corporation other than the gasworks and waterworks undertaking Three hundred thousand pounds.

And the expression " the waterworks undertaking " " the gasworks undertaking " or " improvement undertaking " in any mortgage relating thereto granted by the Corporation after the passing of this Act shall mean the revenue of those respective undertakings.

Section 92.—All expenses incurred by the Corporation in carrying into execution the provisions of this Act except such of those expenses as are to be paid out of borrowed moneys shall be paid as follows (that is to say) :—

Expenses of and connected with the new road and bridges from Leeds to Armley and expenses other than those of or connected with gasworks and gas supply and waterworks and water supply markets and street improvements out of the borough fund.

Expenses of and connected with the manufacture of gas and gas supply out of the gas revenue.

Expenses of and connected with water and water supply out of the water revenue.

Expenses of and connected with markets and street improvements (except the new road and bridges from Leeds to Armley aforesaid) out of the improvement rate.

And all deficiencies in the water and gas revenue shall be met out of the borough fund and all moneys payable to or receivable by the Corporation under this Act or any bye-laws thereunder shall be carried to the borough fund and to the credit of the proper account therein.

The Leeds Provisional Orders of 1883 *and* 1888 confirmed by the Local Government Board's Provisional Orders Confirmation (No. 8) Act, 1883, and (No. 8) Act, 1888 respectively :—

Authorised the Corporation to borrow for waterworks purposes on the security of the waterworks undertaking as defined by

Section 65 of the Leeds Improvement Act, 1877 (supra), the borough fund and borough rate any sum or sums not exceeding in the whole the sum of Three hundred thousand pounds.

The Leeds Improvement Act, 1893.

Section 83.—The Corporation are hereby authorised independently of any other borrowing power to borrow at interest any sum or sums of money for the purposes hereinafter mentioned not exceeding the respective sums following (that is to say) :—

(1) For gasworks purposes Two hundred and fifty thousand pounds;

(2) For waterworks purposes Two hundred and fifty thousand pounds;

(3) For the purchase of land for and the execution of the street improvements authorised by this Act Four hundred and fifty thousand pounds;

(4) For the purchase of land and the construction of works for the disposal and treatment of sewage Thirty thousand pounds;

(5) For the construction of sewers within and for the drainage of the city the sum of Two hundred and ten thousand pounds;

(6) For paying the costs charges and expenses preliminary to and of and incidental to preparing and obtaining this Act (including the costs of and incidental to the preparation of a Bill to be entitled the Leeds Corporation Consolidated Bill 1891) the sums requisite for that purpose;

(7) For any other purposes of this Act which may require the expenditure of capital moneys such sums as in each case may from time to time be sanctioned by the Local Government Board. (*See* Section 29 of Leeds Corporation Tramways Act, 1896.)

In order to secure the repayment of moneys borrowed under this section and the payment of the interest thereon the Corporation may as regards purposes (1) hereinbefore mentioned mortgage or charge the revenue of the gas undertaking and the city fund and city rate as regards purposes (2) hereinbefore mentioned they may mortgage or charge the revenue of the water undertaking and the city fund and city rate as regards purposes (3) (4) and (5) hereinbefore mentioned they may mortgage or charge the consolidated rate and as regards purpose (6) they may mortgage or charge the city fund and city rate and as regards purpose (7) they may mortgage or charge the fund or rate which having regard to the objects of expenditure in each case they may consider to be properly applicable thereto. And all moneys borrowed under this Act shall be applied only to the purposes for which they are respectively authorised to be borrowed and to which capital is properly applicable and not otherwise: Provided that the Corporation shall not borrow any money for the purposes (1) (2) and (5) hereinbefore mentioned except with the sanction of the Local Government Board.

The Leeds Corporation Act, 1897.

Section 41.—The Corporation may from time to time independently of any other borrowing powers borrow at interest for the purposes hereinafter mentioned any sum or sums of money not exceeding the respective sums following (that is to say) :—

(1) For the purchase of land in the drainage area and for the drainage and other works in connection therewith Three hundred and thirty-five thousand five hundred pounds;

(2) For the construction of the tramways by this Act authorised and for lands buildings plant and other tramway purposes Three hundred and twenty thousand pounds;

(3) For the purchase of land for and the execution of the street improvements by this Act authorised Five hundred and fifty thousand pounds;

(4) For paying the costs and expenses of this Act as hereinafter provided the sum requisite for that purpose.

In order to secure the repayment of moneys borrowed under this section and the payment of the interest thereon the Corporation may as regards purposes (1) hereinbefore mentioned mortgage or charge the revenue of their water undertaking and the city fund and city rate as regards purposes (2) hereinbefore mentioned they may mortgage or charge the revenue of their tramways undertaking and the city fund and city rate and as regards purposes (3) hereinbefore mentioned they may mortgage or charge the consolidated rate and as regards purposes (4) they may mortgage or charge the city fund and city rate.

In addition to the moneys which the Corporation are by this section authorised to borrow they may borrow such further sum or sums of money for waterworks purposes or street improvements as the Local Government Board may sanction and for tramway purposes such further sums of money as the Board of Trade may sanction.

GASWORKS.

Leeds Corporation Gas Act, 1870.

Section 29.—The Corporation may borrow the moneys from time to time required by them for all or any of the purposes of this Act not exceeding the sum of Nine hundred and fifty thousand pounds on mortgage or other security upon the borough fund and borough rates of the borough and on the security as from the times of the respective transfers of the undertakings works and property to be vested in the Corporation under this Act and of the gas rents and of the other income to be derived under this Act.

Section 30.—All the interest on money borrowed on mortgage or on annuities granted and other moneys expended by the Corporation for any of the purposes of this Act and the costs charges and expenses of and incident to the preparing applying for obtaining and passing of this Act and carrying the same into execution shall be charged upon and be paid or satisfied out of the borough fund of the borough.

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TRAMWAYS.

Tramways Act, 1870.

Section 20.—Enables the Corporation to borrow and take up at interest on the credit of the borough fund or other property applicable to the purposes of a borough rate or the borough rate any sum or sums of money necessary for defraying any expenses for the purposes of a Provisional Order granted under the Act.

Leeds Corporation Tramways Order, 1888, confirmed by the Tramways Order Confirmation (No. 1) Act, 1888, as amended by the Leeds Corporation (General Powers) Act, 1901.

Section 47.—The Corporation may under and according to the provisions contained in section 20 of the Tramways Act, 1870, borrow for the purposes of this Order in addition to any sum or sums of money they are already authorised to borrow any sum or sums of money not exceeding in the whole Twenty-one thousand pounds and for the purpose of such borrowing the Corporation may include in any mortgage of the local rate the moneys coming to them out of the rents reserved under any lease made under the authority of this Order and the tolls charges and sums authorised to be taken or received by them under the provisions of this Order.

Leeds Corporation Tramways Act, 1896.

Section 23.—The Corporation may from time to time independently of any other borrowing power borrow at interest for the execution of the works by this Act authorised and of the works in respect of which the powers of the Corporation are by this Act revived and for other the purposes of this Act and for relaying the existing tramways of the Corporation any sum or sums of money not exceeding the sum of Two hundred and thirteen thousand pounds and in order to secure the repayment of moneys so borrowed and the payment of the interest thereon the Corporation may mortgage or charge the city fund and city rate and the revenue of the tramways undertaking.

Section 27.—The Corporation shall apply all money from time to time received by them in respect of the tramways undertaking except money borrowed and money derived from the sale of surplus lands or other moneys received on capital account as follows (that is to say):—

First.—In payment of the cost of maintenance of their tramways and works and working and establishment expenses.

Secondly.—In payment of the interest on moneys borrowed by the Corporation for tramway purposes.

Thirdly.—In providing the requisite instalments or sinking fund payments in respect of moneys borrowed for tramway purposes.

Fourthly.—In payment of all other the expenses of the Corporation in relation to the tramways undertaking not being expenses properly chargeable to capital.

And the Corporation shall carry to the city fund so much of any balance remaining in any year as may in the opinion of the Corporation not be required for carrying on the tramways undertaking and paying the current expenses connected therewith.

Section 28.—Any deficiency in the revenues or receipts of the Corporation on account of the tramways undertaking shall be from time to time made good out of the city rate.

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BOROUGH FUND ACCOUNT.

Leeds Improvement Act, 1866.

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Section 114.—All the expenses from time to time incurred by the Corporation in the execution of the several powers and provisions of this Act and which are not by this Act directed to be charged upon or paid out of the highway rates or the improvement rates shall be charged upon and paid out of the borough fund and the borough rates of the borough and all expenses which by this Act are directed to be charged upon and paid out of the borough fund and borough rates of the borough and all moneys from time to time borrowed under this Act on the borough fund and the interest thereon shall be paid out of the borough fund and of the borough rates accordingly as if the same were expenses necessarily incurred in executing with respect to the borough the provisions of the Act for the regulation of municipal corporations.

Section 115 (as extended by Leeds Provisional Orders, 1881, 1883 and 1888).

For the purpose of defraying the expenses by this Act directed to be charged upon and paid out of the Borough Fund and Borough Rate of the borough the Corporation from time to time under the authority of this Act may in addition to any other moneys which the Corporation are already authorised to borrow at interest on mortgages of the Borough Fund and Borough Rate of the borough and of all lands and other property for the time being vested in them as part of their corporate estate and Borough Fund or of any such securities either together or separately all such sums as they from time to time think requisite not exceeding in the whole Two hundred and thirty thousand pounds and after having paid off (otherwise than by the Sinking Fund) any moneys so borrowed may reborrow the amount so paid off and so *toties quoties* provided that no part of the sum of Eighty thousand pounds thus authorised by the Leeds Provisional Order of 1881 shall be borrowed without the consent of the Local Government Board.

The Leeds Provisional Orders of 1881, 1883, 1888, 1890 and 1895.—Confirmed by the Local Government Board's Provisional Orders Confirmation (Halifax, &c.) Act, 1881 ; (No. 8.) Act, 1883 ; (No. 8.) Act, 1888 ; (No. 7.) Act, 1890, and (No. 15.) Act, 1895.

Authorised the Corporation to borrow on any one or more of the securities mentioned in Section 115 of the Leeds Improvement Act, 1866 (supra), any sum or sums not exceeding in the whole the sum of Two hundred and fifty thousand pounds.

The Local Government Act, 1888.

Section 62 (6).—The payment of any capital sum required to be paid for the purpose of the adjustment or of any agreement under this Act or of any award or order made upon any arbitration under this Act shall be a purpose for which a council may

borrow under this Act or in the case of a borough council under the Municipal Corporations Act 1882 or any local Act and such sum may be borrowed on the security of all or any of the funds rates and revenues of the council and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow and such sum may be borrowed without the consent of the Treasury or any other authority so that it is repaid within such period as the Local Government Board may sanction by such method as is mentioned in Part IV. of this Act for paying off a loan or if the sum is raised by stock under a local Act by such method as is directed by that Act.

Leeds Corporation Act, 1899.

Section 40.—(1) The Corporation may from time to time independently of any other borrowing powers borrow at interest for the purposes hereinafter mentioned any sum or sums of money not exceeding the respective sums following (that is to say) :—

(1.) For the purchase of land for and the extension and improvement of Kirkgate Market and for other market and slaughter house purposes the sum of One hundred and forty thousand pounds.

(2.) For the erection of the Smithfield Hall and for purposes connected therewith the sum of Thirty thousand pounds.

(3.) For the purchase of lands and for the construction of the street works by this Act authorised the sum of Three hundred and twenty thousand pounds.

(4.) For the construction of the tramway by this Act authorised and other tramway purposes the sum of Fifty-two thousand pounds.

(5.) For the construction and completion of the sanitary depot stables and works in Dock Street the sum of Forty thousand pounds.

(6.) For paying the cost and expenses of this Act as hereinafter provided the sum requisite for that purpose.

(7.) For burial ground purposes such sum as the Local Government Board may sanction.

(8.) For sewerage and drainage purposes and for the purchase of additional lands by agreement for any purposes of this Act such sum as the Local Government Board may sanction.

(2) In addition to the moneys which the Corporation are by this section authorised to borrow they may borrow such further sum or sums of money for the purposes of this Act (other than tramway purposes) as the Local Government Board may sanction and for tramway purposes such further sums of money as the Board of Trade may sanction.

(3) In order to secure the repayment of moneys borrowed under this section and the payment of the interest thereon the Corporation may as regards purposes (1.) hereinbefore mentioned mortgage or charge the revenue of their market undertaking and the consolidated rate as regards purposes (2.) hereinbefore mentioned they may mortgage or charge the revenue of the Smithfield Hall and the City Fund and City Rate as regards purposes (3.)

(5.) (7.) and (8.) hereinbefore mentioned they may mortgage or charge the consolidated rate as regards purposes (4.) they may mortgage or charge their tramway undertaking and the City Fund and City Rate and as regards the purpose (6.) they may mortgage or charge the City Fund and City Rate.

* * * * *

CONSOLIDATED FUND AND RATE.

Leeds Improvement Act, 1866.

Section 112 authorises loan of £650,000 on the improvement rate in lieu of £100,000 by the Act of 1842 : " Provided always " that all moneys charged on the credit of the improvement rates " shall be applied only for the purpose to which improvement " rates are for the time being applicable and shall be debited in " the accounts of the Corporation to the improvement rates " authorised to be levied in the township in which the moneys " shall be expended."

* * * * *

ELECTRIC LIGHTING.

Electric Lighting Act, 1882.

Section 7.—Any expenses incurred by Local Authority under this Act and not otherwise provided for including any expenses incurred in connection with the obtaining by them or any opposition to the obtaining by any other local authority company or person of any licence order or special Act under this Act may be defrayed out of the Local Rate as defined in the Schedule to this Act and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expense : Provided that where such local authority is a Rural Sanitary Authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875.

Section 8.—A local authority authorised to supply electricity by licence order or special Act may from time to time borrow money on such security with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans as are in the Schedule to this Act in that behalf mentioned and the money so borrowed shall be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed and the accounts of all receipts and expenditures by the local authority in pursuance of this Act or any licence order or special Act shall be subject to such audit as is in the said Schedule in that behalf mentioned.

Under Section 31 *and the Provisions of the Schedule.*

The local rate and the security for any loans under the Act for an Urban Sanitary District is the fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district or any other fund or rate applicable to lighting under the local Act that is to say in the City of Leeds the consolidated fund and rate.

The Leeds Order (2) *confirmed by the Local Government Board's Provisional Orders Confirmation* (*No.* 12) *Act*, 1898.

Article II.—The Corporation may borrow on mortgage on the revenues of the undertaking and of the consolidated rate of the city :—

(*a*.) Any moneys to be paid by the Corporation under Article 59 of the Electric Lighting Order;

(*b*.) Any moneys which may be agreed to be paid to the company in lieu of the issue of stock to the company; and

(*c*.) Such sum or sums as the Corporation may require for the purchase of any irredeemable stock created and issued by them under the provisions of this Order which they may agree with any stockholder to purchase or redeem.

9. The whole of the local Acts in this case referred to may be used and referred to as part of this case.*

10. In respect of the properties and the profits of the before-mentioned undertakings of the Corporation as set out in Paragraph 5 of this case, the Corporation had been duly assessed to Income Tax or been charged therewith by way of deduction under the provisions of the Income Tax Acts for the said year ending 5th day of April, 1903, as set out in the table at the end of this paragraph. The Crown also claimed to and did assess to Income Tax under Schedule D the sum of £93,929 (the assessment the subject of this Appeal), being part of the sum paid by the Corporation by way of interest on principal moneys as hereinafter appearing, which assessment is the subject of this Appeal.

For the purposes of this case only, but subject to the final adjustment by the Commissioners of the actual figures, it may be taken that the several amounts of the said assessments and of the tax in respect thereof were and are as follows :—

Undertaking or Property.		*Amount of Assessment.*	*Amount of Tax.*		
		£	£	*s.*	*d.*
Waterworks Undertaking, Schedule	A	102,998	6,437	7	6
Gasworks ,, ,,	A	48,345	3,021	11	3
Tramways ,, ,,	A	72,320	4,520	0	0
Markets ,, ,,	A	12,364	772	15	0
Electric Lighting ,, ,,	A	8,748	546	15	0
Properties owned and let by Corporation ,,	A	25,261	1,578	16	3
		£270,036	£16,877	5	0

11. The Corporation under their powers in that behalf had raised large amounts of principal moneys which in the said year ended the 5th day of April, 1903, were still outstanding, and on such principal moneys in the said year they paid amounts by way of interest as herinafter set out.

12. The said principal moneys had been raised and applied as to part thereof for the purposes of the before-mentioned undertakings and properties of the Corporation and as to the other part thereof for other purposes of the Corporation, and all such

* Certain references to local Acts are omitted in the present print

principal moneys were the subject of the charge provided by Section 37 of the Leeds Corporation (General Powers) Act, 1901, hereinbefore set out together with the other provisions of that Act.

13. The interest of the said principal moneys is from time to time paid out of the statutory dividends fund created by virtue of Section 38 of the Leeds Corporation (General Powers) Act, 1901. The Corporation direct their bankers to pay into a separate account kept at the bank and called "the statutory dividends fund account" from certain separate accounts kept by the Corporation at the bank, the amounts shown in column 3 of the following table. The last-mentioned separate accounts at the bank are the special accounts kept in connection with the undertakings and funds mentioned in the first column of the said table. The Corporation keep in their books separate accounts in respect of these undertakings and funds. The table shows in its first column the various undertakings and funds in respect of which separate accounts are kept. The second column shows the actual amounts of taxed income arising from each undertaking and fund. The third column shows the amount appearing in the statutory dividends fund account as appropriated from the said separate accounts. The fourth and fifth columns show respectively as the case may be the excess of column 2 over column 3 or of column 3 over column 2.

Name of Fund. 1.	Taxed Income. 2.	Amounts appearing in Statutory Dividends Funds Account as appropriated from separate account. 3.	Excess of column 2 over column 3. 4.	Excess of column 3 over column 2. 5.
	£	£	£	£
A. Waterworks	88,498(*a*) (profits)	64,236	24,262	—
B. Gasworks ...	48,345 (profits)	43,702	4,643	—
C. Tramways...	25,320(*b*) (profits)	19,092	6,228	—
D. Electricity...	8,748 (profits)	19,258	—	10,510
E. City Fund and Rate.	63,105(*c*)	19,719	43,386	—
F. Consolidated Rate Fund.	36,020(*d*)	119,439	—	83,419
	£270,036	£285,446(*e*)	£78,519	£93,929(*e*)

(*a*) Excluding £14,500 (profits) appearing in the Corporation accounts as transferred to City Fund.

(*b*) Excluding £47,000 (profits) appearing in the Corporation accounts as transferred to City Fund.

(*c*) Including above sums of £14,500 and £47,000 (profits) and £1,605 other taxed income (rents, &c.). In addition the fund also consists of the City Rate amounting to £78,943.

(*d*) Including profits from markets and other taxed income (rents, &c.), and annual value of properties owned and let by the Corporation. In addition the fund also consists of the consolidated rate amounting to £275,143.

(*e*) The difference between these two columns is £191,517, the amount hereinafter referred to in paragraph 15. [*Sic.*]

Note.—This paragraph and the table are stated and are to be read subject to and in the light of the enactments referred to or set out in this case.

The amounts appropriated by the Corporation to the dividends fund as above stated were the amounts ascertained to be required in that behalf according to the respective amounts of dividends properly payable out of the said several revenues of the Corporation under Section 38 (3) of the Leeds Corporation (General Powers) Act, 1901.

14. The Corporation contend that the effect of the provisions of the before-mentioned Acts is: That the dividends of the said principal moneys are from time to time paid out of the funds of the Corporation, and of those funds the profits and receipts of the before-mentioned undertakings and properties of the Corporation (all of which have been brought into tax as aforesaid) form part, and thus the said profits and receipts to the extent of the amount thereof are in due course of administration of revenue and capital utilised for the payment of the said dividends, and upon payment of the said dividends the Corporation had deducted Income Tax at the rate of 1*s*. 3*d*. in the £, amounting in the total to £17,840 7*s*. 6*d*., and further that the said sums paid as aforesaid by the Corporation by way of dividends on the said principal moneys apportioned according to the purposes for which the same were raised and applied, and the amount of Income Tax thereon deducted by the Corporation as aforesaid were as follows:—

Purpose for which principal money raised and applied.	*Amount of Dividends or Interest.*	*Amount of Tax Deducted.*		
	£	£	*s.*	*d.*
Waterworks Undertaking	64,236	4,014	15	0
Gasworks ,, ...	43,702	2,731	7	6
Tramways ,, ...	19,092	1,193	5	0
Electric Lighting ,, ...	19,258	1,203	12	6
Purposes, other than the foregoing (hereinafter referred to as General Purposes) and comprised within—				
(*a*.) The City Fund	19,719	1,232	8	9
(*b*.) The Consolidated Rate (including markets) ...	119,439	7,464	18	9
	£285,446	£17,840	7	6

15. The Corporation contended that to the extent of the whole amount of their several assessments as set out in paragraph 10 and column 2 of the table in paragraph 13, viz.:—£270,036, the interests paid by them as set out in column 3 of the said table, viz.:—£285,446, must be considered to have been paid out of income brought into charge to Income Tax within the meaning of Section 102 of the Act of 1842, Section 40 of the Act of 1853, and/or of Section 24 of the Act of 1888, and that accordingly the Corporation were and are entitled to retain the tax deducted thereon in respect of the sum of £270,036 part thereof, and are only liable to account for and to pay over to the Crown the tax deducted by them in respect of the amount by which the interest so paid by them as aforesaid, viz.:—the sum of £285,446, exceeds

the amount of their said assessments, viz. :—the sum of £270,036, that is to say, the tax in respect of the sum of £15,410.

16. The Corporation further contended that neither they nor their officer were chargeable or assessable under Section 102 of the Act of 1842 to the Income Tax, or under the provisions of Section 24 of the Customs and Inland Revenue Act, 1888, or otherwise in respect of such dividends as were payable or paid not out of the rates, but out of income of the Corporation assessed or charged or assessable or chargeable to Income Tax.

17. The Corporation claimed also that their lands, tenements, and hereditaments, hereinbefore described and assessed or properly assessable to Income Tax under Schedule A are charged with and subject and liable by reason of the provisions of Section 37 of the Leeds Corporation (General Powers) Act, 1901, to the annual payments made by the Corporation by way of dividend upon their outstanding principal moneys, as set out in paragraph 14 of this case, and that accordingly the Corporation were and are entitled under and by virtue of the 9th and 10th rules of No. IV. of Section 60 of the Act of 1842 hereinbefore set out, to deduct and retain out of such annual payments as set out as aforesaid in paragraph 14 of this case, so much thereof as is equal to the amount of the tax allowed or paid by the Corporation in respect of their lands, tenements, or hereditaments, so assessed or assessable under Schedule A as aforesaid.

18. It was contended (*inter alia*) on behalf of the Crown :—

1. That the Crown was entitled to Income Tax under Section 102 of the Act of 1842, and under the provisions of Section 24 of the Customs and Inland Revenue Act, 1888, on £93,929, as follows :—

   (1.) £10,510 being the interest under the head of Electricity, £19,258 actually transferred to the dividends funds less £8,748 taxed profits thereof.

   (2.) £83,419 being similar interest under the head Consolidated Rate, £119,439 actually transferred to the dividends fund less £36,020 taxed income thereof.

2. That the dividend fund under Section 38 of the Leeds Corporation (General Powers) Act, 1901, is the fund charged with the payment of interest, and is the fund out of which such payments are actually made, and regard must be had merely to the constituents of that fund.

3. In that fund the interest amounting to £93,929 is not in fact paid out of income already taxed and profits brought into charge.

19. The Commissioners decided that the sum of £93,929, part of the sum of £285,446, was not paid out of profits and gains brought into charge to the Income Tax, and confirmed the assessment of £97,185 (of which the said sum of £93,929 forms part, the balance of £3,256 not being in dispute), subject to any necessary adjustment of the figures in accordance with Clause 1 hereof.

20. The appellants thereupon expressed their dissatisfaction with the decision of the Commissioners as being erroneous in point of law, and required them to state and sign a case for the opinion of the King's Bench Division of the High Court of Justice which we have stated and do sign accordingly.

Dated this 9th day of February, 1910.

A. T. LAWSON,
GEORGE MARSH,
ARTHUR SYKES,
JOHN R. FLITCH, } Commissioners.

The Case was argued on the 9th and 10th February, 1911, before Mr. Justice Hamilton. Mr. Danckwerts, K.C., Mr. Ryde, K.C., and Mr. W. J. Jeeves appeared as counsel for the Appellants, and the Attorney-General (Sir Rufus Isaacs, K.C., M.P.) and Mr. W. Finlay as counsel for the Respondents. Judgment was given on the 14th February, 1911, in favour of the Crown.

JUDGMENT.

Hamilton, J.—The Corporation of Leeds is a Municipal Corporation, originally created under a Charter of King Charles II., and regulated by the provisions of the Municipal Corporations Act, 1835, and the Municipal Corporations Act, 1882, and other similar statutes; and, furthermore, it exercises the function of an urban sanitary authority, and is accordingly subject to the regulations of the Public Health Acts. In the last half of the last century Leeds obtained a considerable number of local Acts, the relevant provisions of which are collected together in the Case, commencing with the Leeds Waterworks (Wharfe Supply) Act of 1852. They deal with various subject matters. There are three Waterworks Acts, 1852, 1867, and 1874; three Improvement Acts, 1867, 1877, and 1893; a Gasworks Act of 1870; Tramways Acts of 1870 and 1896, and sundry other Acts; and they have also exercised powers under the Electric Lighting Act with regard to an electric lighting undertaking.

Before 1901 the matter stood thus: The general principle of the Leeds Acts was to draw a deep distinction between undertakings which were matters concerned with the Borough Fund—since Leeds has become a city, that has become the City Fund—and the matters which were concerned with the Consolidated Fund; and the general principle upon which borrowing powers had been granted and exercised was for the fund requisite for the installation and the extension of any one of these different classes of undertaking to be charged in the first instance upon that undertaking and not upon the other undertakings. For example, by the Leeds Waterworks (Wharfe Supply) Act, 1852, for the purposes of that Act the Corporation could borrow on mortgage of the Borough Fund of the borough and af the rates; and all moneys expended by the Corporation for any of the

purposes of the Act were to be charged upon and paid or satisfied out of the Borough Fund, and all moneys borrowed or otherwise raised by the Corporation under the Act and all the water rates, charges, and other moneys raised by the Corporation in carrying it into execution were, except as by the Act otherwise provided (which dealt with the case of default), to be paid to the credit of the Borough Fund. Then by the subsequent Acts there was power to borrow on mortgage of the Borough Fund and the water rates or rents received by virtue of the Act, with a like provision as to paying sums received in respect of the water undertaking to the credit of the Borough Fund.

Then with regard to gasworks, under the Improvement Act of 1877, there was authority to borrow and re-borrow at interest for the purposes of gasworks and waterworks and all objects other than gasworks and waterworks, and the security was to be in the case of gasworks the gasworks undertaking and the Borough Fund and Rate; for waterworks the security was to be the waterworks undertaking and the Borough Fund and Borough Rate; for purposes other than gas and water, the security was to be the Improvement Rate under the various Acts, and the revenue of any undertaking, lands, and properties of the Corporation other than gasworks and waterworks. All deficiencies in the water and gas revenues were to be met out of the Borough Fund, and all moneys payable to or repayable by the Corporation under this Act or any bye-law thereunder were to be carried to the Borough Fund. The Leeds Corporation Gas Act of 1870 contained similar provisions—a power to borrow on mortgage or other security upon the Borough Fund and Borough Rates and on the security of the undertaking, namely, the gas undertaking, then about to be vested in the Corporation, and the gas rates; with a specific provision that the interest was to be charged on and paid or satisfied out of the Borough Fund, and that the gasworks and other matters of that sort were, except as by this Act otherwise provided, to be paid to the credit of and form part of the Borough Fund.

With regard to tramways the provision is similar; again the credit of the Borough Fund, or other property applicable to the purposes of a borough rate, is the security, and again the Corporation has to carry to the Borough Fund (now called the City Fund) so much of any balance remaining in any year as may in the opinion of the Corporation not be required for carrying on the tramways undertaking: "Any deficiency in the revenues "or receipts of the Corporation on account of the tramways "undertaking shall be from time to time made good out of the "City Rate." Under the Leeds Improvement Act, 1866, there were various works not in the nature of trading undertakings which the Corporation was authorised to embark upon, and similar provisions for borrowing and similar provisions for the repayment of principal and interest out of the Borough Fund were made in that case. On the other hand it was provided by the Leeds Improvement Act, 1866, that all moneys charged on the credit of the Improvement rates shall be applied only to the purposes to which Improvement rates are for the time being applicable; and by the Improvement Act of 1893 there was a special clause

Section 38, introducing a differential rating as regards the Consolidated Rates and as regards any increase or addition to the City Rate for gas or water purposes in favour of the owners of tithes and other property the subject of ownership and the occupiers of land used as canals, towing-paths and railways. Finally, under the General Electric Lighting Act, 1882, if a local authority—in this case the Corporation exercise the powers of a local authority—were to incur expenses under the Electric Lighting Act they were to be defrayed out of the local rate as defined in the Schedule, which in the case of Leeds is the Consolidated Rate; and by Section 31 the " local rate and the " security for any loans under the Act for an urban sanitary " district is the fund or rate applicable to the general purposes " of the Public Health Act, 1875, that is to say, in the City " of Leeds the Consolidated Fund and Rate." Then by the Local Government Provisional Orders Confirmation Act, 1898, the Corporation have power to borrow on mortgage of the revenues of the undertaking and of the Consolidated Rate of the city in regard to its electric lighting undertaking.

Finally, by Sections 139 to 143 of the Municipal Corporations Act, 1882, general provisions to which the Leeds Corporation were subject, it was provided that " The rents and profits of all cor-" porate land and the interest dividends and annual proceeds " of all money, dues, chattels and valuable securities belonging " or payable to a municipal corporation or to any member of " office thereof in his corporate capacity and every fine or penalty " for an offence against this Act (except where and so far as " the application thereof is otherwise provided for) shall go to " the Borough Fund," and a note is appended which is part of the Case. " In addition to the payments made into the City Fund " under this section there are certain other payments to be made " into the fund under the provisions of local Acts, including " receipts from the waterworks, gasworks and tramways under-" takings of the Corporation, together with sums received from " police and judicial services and contributions from the local " taxation account of the Local Government Board and also " from the City Rate "—those local Acts being the provisions which I have already summarised. Then by Section 143 of the same Municipal Corporations Act it is provided " If the Borough " Fund is more than sufficient for the purposes to which it is " applicable under this Act or otherwise by law the surplus " thereof shall be applied under the direction of the council for " the public benefit of the inhabitants and improvement of the " borough." The contrary case of a surplus arising not from a Borough Rate but from rents and profits of the properties of the Municipal Corporation is dealt with in sub-section (2) of that section, but that case does not arise here.

Now, that was the state of the powers of the Corporation down to 1901, and it is to be observed that the legislation carefully distinguishes between the Borough or City Fund and the Consolidated Fund and creates interests which must be of an extensive as well as valuable character in certain persons by reason of their right to a differential rating according as the rate is the Consolidated Rate or the Borough Rate and according as the purposes

to which it is to be applied are the purposes of a Consolidated Rate or the purposes of a Borough Rate. Section 207 of the Public Health Act, 1875, deals with that generally, and the sections I have read of the Leeds Improvement Act, 1893, deal with it specially. Then it is further manifest that the policy of those Acts had been to appropriate the loans raised for the purposes of separate undertakings by way of security to the Borough Fund or the Consolidated Fund, as the case might be, and specifically to the undertakings for the purposes of which the fund was raised.

The present case deals with a question arising upon the financial year ending 5th April, 1903, and commencing therefore very shortly after the Leeds Act of 1901 came into operation. The figures with regard to this dispute are set out quite sufficiently for any present purpose in the case, but subject to a reservation as to an ultimate adjustment of an amount in case that should become necessary. The following appear to be the essential facts. In order to pay the whole of the interest upon the whole of its loans the Leeds Corporation required in the year in question the sum of £285,446, and it did pay that sum, and it did upon the whole of that sum deduct or retain from the stockholders the Income Tax appropriate to that amount of interest. From six sources of income, being funds earmarked by means of separate accounts kept by the Corporation at its bank in connection with the several six undertakings and funds—waterworks, gasworks, tramways, electricity, City Fund and Rate, and Consolidated Rate Fund—the Corporation receives an income of £270,036 derived from taxable property of different kinds, and upon the aggregate amount of the assessment, amounting to that sum, under Schedule A, tax has been duly paid by the Corporation. If, therefore, the Corporation were seeking to pay the whole of its interest out of the whole of its taxable income it would be £15,410 short, and to that extent it would be obliged, instead of resorting to property which brings it in gains or profits or revenues, to levy a rate. It is conceded therefore that to that extent the Corporation is not in a position to contend that the Income Tax deducted from the interest payable to the stockholders has been paid before, and it consequently admits that upon that sum of money it cannot retain the Income Tax deducted from the stockholders, not being able to allege that, if it were to pay it over, it would be paying it twice over.

Now, under the machinery, or perhaps I had better say under the provisions, of a section, in the Act of 1901, which I must come to later, there is a dividends fund created and maintained by the Corporation's direction at their bank, and their bankers are directed to pay into that statutory dividends fund account, as it is called, out of separate accounts kept by the Corporation at the bank, certain sums which are set out in the table in paragraph 13 of the Case. The effect, to say the least of it, as a matter of bookkeeping, of the working of the provisions of this Section 38, is that the waterworks undertaking, after paying its Income Tax, and after paying to the statutory dividends fund that sum which was required to pay the interest upon the amount of the Corporation's loans appropriated to the waterworks undertaking, was

in a position to show an excess of £24,262. Similar results, though of a less satisfactory character, because the excesses are smaller, arise in the case of the gasworks undertaking and the tramways undertaking. The electricity undertaking, although after payment of its Income Tax there was £8,748 of profit, required a much large sum than that to pay into the statutory dividends fund account for the satisfaction of the interest on that portion of the loans which have to be appropriated to the electricity undertaking, and accordingly a sum of £10,510 had to be contributed for the purpose of satisfying that interest, and that came, under the provisions of the Electric Lighting Acts, from the Consolidated Fund. The City Fund, which receives a comparatively small sum of rents, and consists principally of the proceeds of the City Rate, had appropriated to it a sum of £14,500 from the waterworks undertaking and £47,000 from the tramways undertaking. The Consolidated Rate Fund, on the other hand, which stood at £36,020, included some profit from markets and other taxed income of properties owned and let by the Corporation, but the greater part of the fund consisted of the Consolidated Rate. Now in point of fact the Corporation has not paid the interest upon the parts of the loan attributable to the electricity undertaking and the matters falling upon the Consolidated Rate by the application of surpluses arising upon the undertakings—waterworks, gasworks, tramways and general undertakings—falling on the City Fund. It has not done so in fact in the sense that actual cheques received in respect of those undertakings were utilised for the purpose of paying such interest, but there would be no difficulty at all in stating an account which would show that there were available for the service of the loans, which prior to 1901 were specifically matters affecting the Consolidated Rate, various surpluses arising out of all matters which before that date specifically belonged to the Borough Rate, and notably the waterworks and the tramways undertakings. It is in this connection that the present dispute arises. There being an aggregate excess in respect of waterworks, gasworks, tramways and City Fund of £78,519, it is contended by the Corporation of Leeds that to that extent it is entitled to retain those deductions by way of Income Tax which it has made as against the stockholders, because it is entitled to claim that in contemplation of law it has paid, or it might have paid, the interest on the other parts of the undertakings by the application of what I may call the Borough Rate undertakings' excesses to that sum, and having paid Income Tax already upon that £78,519 as part of its total taxed income of £270,036 it would be calling upon it to pay tax twice over upon the same sum if it were not entitled to claim to retain the sums deducted from stockholders upon that amount and to assert that the interest to that amount had been paid out of the surpluses that amount to that sum in the aggregate. Now it is there that the present case arises.

The sections that most immediately deal with this matter are Sections 102 of the Income Tax Act of 1842, to a less extent, I think, Section 40 of the Act of 1853, and again, principally, sub-section (3) Section 24 of the Customs and Inland Revenue Act, 1888.

Danckwerts, K.C.—Also the section under Schedule (A) itself, my Lord.

Hamilton, J.—Yes, but as I said, I do not think it necessary to recapitulate all the sections which may relate to this. These are the three principal ones concerned.

Provision is made in the Acts for the two cases where interest is payable out of profits or gains brought into charge by virtue of the Acts, and where interest is payable, but not payable, or not wholly payable, out of profits or gains brought into charge to such tax. It appears to me that the question whether or not the officer of the Corporation is bound to render an account to the Commissioners of the amount deducted in respect of this sum, and to pay that amount as a debt, really depends upon the question whether or not the income aggregating £78,519, and arising from waterworks, gasworks, tramways and City Fund matters, is a fund consisting of profits or gains brought into charge to such tax out of which the interest in question was payable. This makes it necessary to look at the Act of 1901 closely. The Leeds Act of 1901 was an Act which dealt with sundry matters. There was a portion of it which is, I think, numbered Part 7, which is entitled " Financial Provisions," and extends from Section 32 to Section 59. First of all, under Section 33, new borrowing powers exercisable from time to time independently of any other borrowing power were conferred, the purposes and the amounts being defined. Then in sub-section (3) it was enacted : " In order to provide for the repayment of moneys " borrowed under this section and the payment of interest thereon " the several revenues of the Corporation are hereby made " specifically liable and such moneys are hereby primarily charge- " able accordingly," and " revenues " included revenues from any land, undertakings or other property and rates leviable by or on the precept of the Corporation. There was also by Section 49 a power to re-borrow subject to certain limitations, and with a proviso that any principal moneys re-borrowed were to be primarily chargeable on the same revenues and be deemed to form the same loan as the money in respect of the repayment of which the re-borrowing had been made. That is with regard to the exercise of powers of borrowing or re-borrowing *in futuro*. Then Section 37, which made provision with regard to loans which had been already borrowed, by sub-section (1), says : " All principal " moneys "—and that includes moneys owing and to be owing, borrowed or to be borrowed—" shall be charged indifferently " upon the lands and estates the water the gas and other the " undertakings of the Corporation and upon all the revenues of " the Corporation."—that relates to the subject matter of charge —" and each and all such principal moneys or any of them " whether raised or owing before or after the passing of this " Act together with the dividends interest annuities and all other " annual sums for the time being payable thereon (such dividends " interest annuities and other annual sums being hereinafter re- " ferred to as ' dividends ') shall rank equally and *pari passu* with- " out any priority or preference by reason of any precedence in the " date of any statutory borrowing power or in the date of the " raising of the money or in the date of the money becoming owing

"or in the date of the security issued or given in respect thereof "or on any other ground whatsoever. (2) The provisions of the "Corporation Acts and Orders authorising the raising of the "principal moneys and the securities granted issued and subsist- "ing in respect thereof shall be read and construed as though the "charge by this section authorised had been the charge in the "said provisions and securities respectively authorised and "given." Now it appears to me to be clear that that section unifies the loans and unifies the security, but unifies them in this sense, that, in favour of the lender, he has indifferently, equally, and *pari passu* with regard to all other lenders the right to look, in case of ultimate repayment, or of default, to the whole of the lands, estates, undertakings and revenues charged, and instead of it being a mere additional security to the securities previously assigned to the separate loans, I think that it is in substitution therefor. That seems to me to be clear from the words of sub-section (2) that the provisions of the other Acts are to be read and construed as though the charge by this section authorised had been, not added to the charge in the said provision, but had been *the* charge in the said provision; and secondly, because, if the old charge still subsisted, then the lenders on the separate undertakings would have had separate rights to look to those undertakings and funds inconsistent with their ranking equally with all the lenders on all the other undertakings. Now that is the whole of the section dealing with the charge. It is said upon that that the effect of that is to unify not merely the loans and the securities, but the undertakings of the Corporation, to such an extent that the Corporation is as free to pay any part of its obligations out of any part of its receipts as though there were no statutory provisions in that regard, or as though this were the undertaking of some one private person; and then it is said: It matters not whether it has been done or not: for the purpose of liability to tax the subject is entitled to have his business looked at as though he had done that which it was lawfully in his power to elect to do. Furthermore, it is said that as in the course of due administration of its affairs a Corporation ought, and, I think it is said, is compellable, to resort to its income before resorting to its rates, in contemplation of law that must be deemed to have been done which it would have been right and proper for the Corporation to do. I do not understand that those propositions are contested if it can be shown that upon the provisions of all the Leeds Acts, and the General Acts applicable to Leeds taken together, it can be established that the Corporation could lawfully apply all and any of its incomings to the discharge of all and any parts of the interest upon the whole unified loans which are in question. There follow a number of sections—Sections 38 to 47 which are said to be *in pari materia*, and then Section 48 is an enabling section, which adds to the remedies, which the lender would otherwise have by reason of his holding of the security, the specific right through a receiver, subject to the Order of the Court, of exercising the Corporation's powers of collecting and applying the money. There is no doubt that Sections 38 to 47 do in terms purport to direct how the incomings shall be appropriated and applied, and it is further clear that,

except in so far as it is to be inferred by necessary implication from the express provisions of Section 37, there is nothing which in terms cuts down or takes away the characteristic features of the previous legislation which I have dwelt upon as distinguishing between the Borough Rate matters and the Consolidated Rate matters and attaching thereto certain obligations with regard to the disposal of the sums received in respect of each of those classes of matters. But it is said these sections are passes *alio intuitu;* that they are partly for the purpose of satisfying the requirements of the Local Government Board, partly for the purpose of keeping before the eyes of the Corporation and its corporators the true state of its undertakings, so that there may be no question as to whether their borrowing powers are exhausted or not, so that it would be possible to see whether municipal trading is really being carried on at a profit or is only apparently being carried on without loss, and so that there may be a healthy public criticism of the affairs of the Corporation; and this is summed up in the general expression: "These are mere book-"keeping sections." I do not doubt that those were among the objects with which they were passed I do not think that I can accept the argument that if those objects were the only objects with which they were passed it would follow that I could disregard them in a question between the Crown and the Corporation with regard to the true fund from which the interest is paid by the debtor Corporation to the lender stockholder. If the sections are sufficiently precise to interfere with the free hand of the Corporation to apply its revenues to the satisfaction of its debts in due course of administration, I do not consider that my duty to give effect to such interference is got rid of by describing these sections, even quite correctly, as mere book-keeping sections. But I do not think they are mere book-keeping sections, and, apart from the objects that have been suggested as the purpose for which they were passed, I think it must be bourne in mind that they have in effect the very important office of preserving the rights of those large and important ratepayers who have the benefit of a differential rating according as the objects on which the money is spent belong to the rate where they have differential rating, or the rate where they have not. That appears to be a right possessed by those classes of ratepayers which could only be taken away by express words, or by very necessary implication, and which I do not find anything in the Act of 1901 to interfere with. Section 38 provides in terms for the formation of a fund called the "Dividends Fund," for the payment of dividends—a word which includes the interest on the loans in question. It requires the Corporation in each year to pay into the Dividends Fund a sum or sums equal to the aggregate amount of dividends payable in that year on the principal moneys, an amount which is to be ascertained according to the respective amounts of dividends properly payable out of the several revenues of the Corporation. Section 39 is: "The Corporation shall from time "to time apply the Dividends Fund in paying the dividends on "the principal moneys"; Section 40 is: "As parts of the general "account of the Dividends Fund the Corporation shall keep "separate accounts distinguishing and showing in relation to each

"undertaking or purpose for or in respect of which any of the "principal moneys are borrowed by them all moneys paid into "the Dividends Fund from the revenues of the Corporation in "respect of dividends on the several amounts of the principal "moneys chargeable to that undertaking or purpose." The language of those sections distinguishes between a fund which is to be created by a mandate of the legislature, and an account which is to be kept of that fund for the purpose of its due administration. The language of those sub-sections preserves instead of repeals the provisions of the earlier Acts by which it was assumed that certain dividends were properly payable out of the several revenues instead of being permissibly payable in general out of all the revenues in the aggregate, and it appears to me that on the wording of those sections, instead of their being mere internal management, mere book-keeping sections, they are sections which intrinsically stamp with a particular statutory character the portions of the income received in respect of the particular undertakings and the portions of the interest which, although the security for the loan has been unified, still remains distinguishable portions of interest. Then Section 47 further provides this: "The yearly sum or sums to be provided "under the provisions of this part of this Act shall be provided "by contributions from the several revenues of the Corporation "(if any)," then you come to the first category, "specifically "charged with or made liable to provide the same by or under "any statutory borrowing power or by any resolution of the "Corporation having reference to the respective borrowing "powers and if as regards any statutory borrowing power"—and here one comes to the second category—"there is no such "specific liability then from the several revenues out of which "the respective contributions would be properly payable having "regard to the purpose for which the borrowing powers are "given"—and the third category—"and in default thereof or "subject thereto out of the City Fund and the City Rate or out of "the Consolidated Rate or out of the Highway Rate as the Cor-"poration having regard to the provisions of this Act and the "objects for which the statutory borrowing power was exercised "may consider equitable." It does not appear that the Corporation has ever taken into consideration at all the equity of exercising the power given by that section, and I presume the consideration of it would be a condition precedent to its exercise. But the very fact that there is a specific provision there for a case in the last resort in which the Corporation and not the general legislation may determine whether particular sums are to be provided annually out of the City Fund or out of the Consolidated Rate, shows that except in the area of that specific case the general provisions of the law with regard to those two classes of expenditure still survive and are not repealed by the unification of the charge given by Section 37. Then sub-section (2) of the same Section 47, is: "The Corporation shall from "time to time in order to raise the amounts of the several con-"tributions as aforesaid out of their several revenues do all such "acts exercise all such powers collect all such moneys and "(subject to the provisions of sub-section 1) make and levy all

"such rates as they lawfully can or ought to do," and so forth. It is manifest that if the Corporation were to be treated as though it had done what it has not done, applied £78,000 odd out of the Borough Fund to the satisfaction of the interest in connection with matters which belonged to the Consolidated Fund, the result might well be that the Borough Rate to which certain ratepayers would be contributing without differentiation would be increased instead of the Consolidated Rate being increased to which such ratepayers would contribute with the benefit of differentiation.

Now authorities have been cited to me, and I will just refer to them, leaving the construction of the Statutes with this observation, that although there is a power to borrow so as to create a charge upon all lands and estates, water, gas and other undertakings, and all revenues of the Corporation, I do not think that can be construed in face of the other provisions as conferring a power to pay the interest on such principal moneys so unified at will out of these different revenues whatever they may be. A power to borrow on mortgage doubtless involves a power to borrow on mortgage at interest, and a charge of the loan doubtless involves a charge upon the subject matter of the security, not only in respect of the principal but of the interest attaching to it. That is not essentially the same thing as giving liberty to the borrower to pay the interest out of any fund that he pleases, even although the lender may, in case of default, have, under the general power to create such a security, the right to come for interest as well as principal upon all and any of the sources of revenue, but in face of the provisions in question it not only does not of itself follow that there is such a power for the borrower to apply his revenues at will, but I think he is in this case expressly tied down and prevented from doing so.

The cases cited to me were the two London County Council cases in the House of Lords which are reported in 1901 Appeal Cases at page 26(1), and 1907 Appeal Cases at page 131(2). It does not appear to me that there is anything in contest here with regard to the principles laid down in the third decision in the House of Lords in the case cited—*the Edinburgh Life Assurance Company v. The Lord Advocate*—reported in 1910 Appeal Cases at page 143(3). All I think it necessary to say on those cases is this: In the argument founded exclusively on the proposition in the Judgment of Lord Davey in the first of those two London County Council cases, this sentence: "It is enough if the interest is "charged upon or payable out of the taxable income, though "there may be other subjects of charge," might seem to support the argument for the Corporation, because the antithesis between those two terms "charged upon or payable out of taxable income" might be said to be one applicable here, and if the interest is charged upon the whole of the taxable income which, in certain, and, I think, remote contingencies, is the case, it might be said that is enough, although there may be other subjects of charge, and although there may be also other funds from which it is proper that the stockholder should be paid: but I think that

(1) 4 T.C. 265. (2) 5 T.C. 242. (3) 5 T.C. 472.

that must be read in connection with what was said in the subsequent London County Council case, and particularly with the exposition given by Lord Macnaghten with regard to the property charged in that case, where he says: " 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 "— " never can be operative " I understand there to be within the measurable foresight of finance, because in contemplation of law the charge upon the whole of the property of the London County Council was no doubt one that might be resorted to. I think, therefore, that the proposition cited from Lord Davey's Judgment is in effect " it is only if the interest is operatively charged upon " or payable out of the taxable income "; that is to say if the sum of the statutory or other provisions is that in truth and in fact, the taxable income is a fund out of which the debtor, the borrower, either lawfully does, or lawfully might, pay before any default has occurred. The specific provisions of the Leeds Act, 1901, coupled with the oustanding provisions of the prior Leeds legislation, seem to me to prevent that. I do not think that the application of the income to the purpose in question, the theoretic possibility of which is the foundation of the argument for the Leeds Corporation, is one which is permissible in view of these various sections.

The result, therefore, is that I think the claim to treat the fund paid over to the Stockholders as having already borne the charge fails, the argument that the Crown is claiming Income Tax twice over the same sum, fails, and consequently I think the account and payment provided by Section 24 of the Act of 1888 have become due. Such was the decision of the Commissioners as regards a sum which not only includes the £15,000 odd, as to which admission has been made, but the £78,000 as to which the contest has arisen, and my Judgment is in favour of the opinion of the Comissioners and of the Surveyor of Taxes.

The Attorney-General.—In form it will be: Appeal dismissed with costs.

Hamilton, J.—The Appeal is dismissed with costs.

Notice of Appeal having been given, the case came before the Court of Appeal on the 20th, 24th and 25th July, 1911, when Mr. Danckwerts, K.C., Mr. Ryde, K.C., and Mr. Jeeves appeared as Counsel for the Appellants, the Attorney-General (Sir Rufus Isaacs, K.C., M.P.), the Solicitor-General (Sir J. A. Simon, K.C., M.P.), and Mr. W. Finlay as Counsel for the Respondent. Judgment was given on the 29th July, 1911, when the decision of Mr. Justice Hamilton was reversed, Kennedy, L.J. dissenting.

JUDGMENT.

The Master of the Rolls.—The question in this Appeal is whether the Leeds Corporation can, as against the Crown, pool the profits arising from their municipal undertakings in respect of which they have paid Income Tax, and retain an equivalent sum

out of Income Tax deducted from the dividends or interest payable on Corporation loans. The answer to the question involves the consideration of several sections of the Income Tax Acts, of three decisions of the House of Lords, and of the Leeds Corporation Act, 1901.

The Leeds Corporation had, prior to 1901, acquired five separate undertakings, viz., (*a*) the Waterworks undertaking; (*b*) the Gas Works undertaking; (*c*) the Tramways undertaking; (*d*) the Markets undertaking; and (*e*) the Electric Lighting undertaking. In respect of each of these undertakings large loans had been contracted on the security of the revenues of the particular undertaking, and either the "City Fund" or the "Consolidated Fund." In no instance did the security extend to both funds. Although the same body of ratepayers contributed to both funds, the proportions payable by the contributors varied. An amalgamation of the two funds was directly contrary to local and general statutes. There were express provisions of carrying over the balances of the net receipts in respect of a particular undertaking, after payment of interest on moneys borrowed for the purposes of the undertaking and in providing for a sinking or redemption fund, to the credit of the "City Fund" or the "Con-" solidated Fund," as the case might be.

The Leeds Act of 1901 is certainly one of the most remarkable Acts it has fallen to me to attempt to understand. I say *attempt*, because I think it passes the wit of man to discover a consistent and intelligible meaning. If I read Section 37, it seems that all existing securities upon separate undertakings are destroyed, and that all loans are charged indiscriminately upon all assets of the Corporation. Section 37 says:—"All principal moneys shall be " charged indifferently upon the lands and estates the water the " gas and the other undertakings of the Corporation and upon " all revenues of the Corporation and each and all such principal " moneys or any of them whether raised or owing before or after " the passing of this Act together with the dividends interest " annuities and all other annual sums for the time being payable " thereon (such dividends interest annuities and other annual " sums being hereinafter referred to as 'dividends') shall rank " equally and *pari passu* without any priority or preference by " reason of any precedence in the date of any statutory borrowing " power or in the date of the raising of the money or in the date " of the money becoming owing or in the date of the security " issued or given in respect thereof or on any other ground " whatsoever." Before reading sub-section (2) of that same section I ought to refer to the definition of "principal moneys" which means "any moneys owing or to be owing or borrowed or to " be borrowed by the Corporation under any statutory borrowing " power (including borrowing powers under this Act) and whether " raised or secured upon or by Corporation stock annuity certifi- " cate funded debt Corporation bills or promissory notes mortgages " bonds Leeds Gas Light Company's Debenture Stock Leeds New " Gas Company's Debenture Stock or otherwise howsoever." The definition of "Revenues of the Corporation" includes the revenues of the Corporation from time to time arising from any land

undertakings or other property for the time being of the Corporation and rates or contributions leviable by or on the precept of the Corporation. Now let me turn to sub-section (2) of Section 37, which says: "The provisions of the Corporation Acts and "Orders authorising the raising of the principal moneys and the "securities granted issued and subsisting in respect thereof shall "be read and construed as though the charge by this section "authorised had been the charge in the said provisions and "securities respectively authorised and given."

Section 48 apparently authorises any creditor to obtain a receiver in the widest possible terms, although there are some words which may be held to reserve the rights against particular funds. But Section 33, which expressly authorises the borrowing of upwards, of £800,000, makes the sums so borrowed "*primarily chargeable*" upon the particular undertakings for the purposes of which the money is to be borrowed. This is absolutely contradictory of Section 37 and is a continuation of the old practice, and there is to be found in Section 46, 47 and 49, language which it is not easy to reconcile with Section 37. I only say with reference to Section 37, that the prolonged attempts I have made to understand it, or to put any rational meaning upon the section, have been utterly fruitless and vain.

Sections 38, 39 and 40, which deal with a new fund to be called the "Dividends Fund," are important. Section 38 says: "(1) "For payment of dividends there shall be established and formed "a fund called the 'Dividends Fund.' (2) In each year the "Corporation shall pay into the Dividends Fund a sum or sums "equal to the aggregate amount of dividends payable in that "year on the principal moneys. (3) The amount of such sum "or sums shall be the amount ascertained to be required in that "behalf according to the respective amounts of dividends pro- "perly payable out of the several revenues of the Corporation." Then Section 39: "The Corporation shall from time to time "apply the Dividend Fund in paying the dividends on the "principal moneys," and by Section 40 it is provided: "As "parts of the general account of the Dividends Fund the Corpora- "tion shall keep separate accounts distinguishing and showing "in relation to each undertaking or purpose for or in respect of "which any of the principal moneys are borrowed by them all "moneys paid into the Dividends Fund from the revenues of the "Corporation in respect of dividends on the several amounts of "the principal moneys chargeable to that undertaking or "purpose.

Upon the whole, though with considerable hesitation, I have come to this conclusion: That the dividends or interest on all the loans are no longer payable out of the net receipts of the particular undertaking, and that such net receipts cannot be earmarked for that purpose. The obligation of the Corporation is to pay into the Dividends Fund the required amount without regard to the source from which the money, or any portion of it, may be derived. No doubt there is an obligation upon the Corporation to keep separate accounts showing the profits of each undertaking,

and the principal which is still in some sense chargeable to that undertaking. One reason for this is that there are different periods for paying off different loans.

If I am right in the above view, it seems irrelevant to consider whether there is a surplus upon any one undertaking and a deficiency upon another undertaking. The Corporation are entitled to say that their aggregate profits, upon which they have paid tax, are X, and that the amount upon which dividends are payable is X + Y, and that to the extent of X they must be considered to have paid interest out of income brought into charge within the meaning of Section 102 of the Act of 1842, and that they are only liable to account to the Crown for Income Tax on Y, which sum has been provided out of rates. The opposite contention really involves the payment of double duty. This seems to follow from the decision of the House of Lords in the first County Council case(1). I have not overlooked the fact that the Corporation have, in their accounts, adhered to the old system; but the decision of the House of Lords in the Edinburgh case(2) seems to cover this point as soon as it is established that there was a Common Fund, each and every part of which was applicable to satisfy income charges.

Nothing that I have said must be taken to suggest any doubt that it will be the duty of the Corporation in some way to adjust accounts between the City Fund and the Consolidated Fund. I foresee grave difficulty in settling the principle of such adjustment except on the old lines. But happily that question does not arise for our decision.

In my opinion the decision of Mr. Justice Hamilton cannot be supported and the Appeal must be allowed. The costs here and below must follow the event.

Lord Justice Farwell.—The Appellants are a Corporation by Charter and are also a Municipal Corporation within the Municipal Corporation Acts, and an Urban Sanitary Authority within the meaning of the Public Health Acts, and, prior to 1901, they had raised large sums of money under their various statutory powers for various purposes, such sums being charged specifically on different properties of the Corporation and on different rates raiseable by them, payable at various times, some by way of annuity perpetual or for terms of years, some with and some without special sinking funds. In 1901 the Corporation obtained a private Act, one of the preambles to which is that it is expedient that " better provision should be made as in " this Act mentioned in regard to the loans of the Corporation, " the securities upon which they are charged, the discharge of " borrowed moneys and other financial matters," and, accordingly, the Act contains a number of clauses headed " Financial Provisions " from Section 32 onwards. Section 37 has already been read by the Master of the Rolls and I will not read it again. I think it clear that the effect of this section is to substitute for the specific securities on specific properties existing at the date of the Act, in favour of various different persons with different

(1) 4 T.C. 265. (2) 5 T.C. 472.

priorities, one general charge on the whole of the assets of the Corporation to the benefit of which all the secured creditors were to be entitled *pari passu* without any preference or priority. Sub-section (2) makes it clear to my mind that substitution is intended. Moreover, there is power to apply for the appointment of a receiver over the whole assets not part thereof, and a common Redemption Fund is provided for all.

Now the assets thus charged consist of properties some of which do and some do not produce income, and the charge includes the right to make rates, and so to call into existence further assets; and the *prima facie* duty of the Corporation in such a case is to follow what Lord Davey in the *London County Council* v. *The Attorney-General* (1901) [Appeal Cases at page 46 (¹)], calls the "general principles of payment in due course of administration," namely, to pay annual charges in the first place out of annual income. The Act of 1901 recognises this, in my opinion, by Sections 38 and 39, whereby the Corporation is directed to form a Dividend Fund equal in amount to the aggregate of the annual income payable to the secured creditors, and to apply such fund in payment thereof. The only directions given as to the source from which the Dividend Fund is to be formed are found in Section 47, but these are silent as to the order of application and it is, therefore, left to the general rule stated by Lord Davey. The natural procedure as a matter of business would be to pay in income first and not to make a rate, except when necessary to supply a deficiency in income. It is not easy to put a satisfactory meaning on Section 47 in view of the fact that Section 37 has put an end to all specific charges as between the various creditors; but I think it possible that the specific charges (if any) may refer to future borrowings under Section 33, and that the incidence and application of the revenues of the Corporation so as to prevent injustice to the ratepayers *inter se* is left to the Corporation by the words at the end of Section 47, sub-section (1): "as the "Corporation having regard to the provisions of this Act and the "objects for which the statutory borrowing power was exercised "may consider equitable," and this is consistent with the provisions in Section 40 for keeping separate accounts. I can find nothing in the Act that supports the contention of the Crown that it is unlawful for the Corporation to use the surplus income of one of their undertakings in paying the interest on the charges on another of their undertakings as a matter of administrative management, nor do I think that any ratepayer could obtain an injunction to restrain such use. The payment is not a final conclusion of the rights of the ratepayers *inter se;* such rights can be adjusted afterwards. But I do not believe that any Court would entertain an application by a ratepayer for an injunction to restrain the Corporation from keeping down the interest on their mortgages out of their income, although he showed that such payment would entail a subsequent recoupment of one account out of another, and if a ratepayer could not succeed still less has the Crown any right to object. The Revenue authorities have no

(¹) 4 T.C. 265.

right to dictate to the Corporation the order in which they shall apply their funds. There is nothing in the Act to prevent the Corporation from managing their estates and keeping down the interest on their mortgages in the ordinary course of business, but such management no more affects the ultimate rights of ratepayers *inter se* than does the retention by trustees of their costs out of any trust funds in their hands (see *Stott* v. *Milne*, 25 Chancery Division 710) prejudice the question whether such costs ought to be borne by capital or income in adjusting the accounts between tenant for life and remainderman.

This disposes of the Solicitor-General's ingenious argument on the Tramways undertaking. It is true that it is only the power to appoint a receiver and the provisions as to a sinking fund that are repealed in this Act of 1896, and that the nature of the two rates renders it important to preserve the other provisions which are not repealed; but the fact that the surplus income from the Tramways is applied in keeping down interest on the less successful Electric undertaking does not affect any rights of the ratepayers to have those payments adjusted in account. Great stress was laid on Section 33, and, if a question ever arose between future lenders under that section and present secured creditors as to priorities, I think it will be found impossible to reconcile the specific prior charge, which is given by Section 33 with the general charge *pari passu* also given to the same lender by Section 47, but I do not think that it affects the general question. I agree that the rights of the ratepayers *inter se* are intended to be kept alive, but the Act has superimposed upon all a general charge on all assets for the benefit of all creditors and has created a fund for payment of their interest. The formation and application of this fund for the benefit of the creditors is, as regards ratepayers, mere matter of management, and the fact that the Corporation are entitled to use all income for this purpose in the first instance does not destroy any rights that taxpayers may have of subsequent adjustment.

Turning to the figures in the Case, the several undertakings of the Corporation have produced in the relevant year £270,036; on this amount Income Tax has been paid. The sum required to pay the interest on the charges is £285,446; on £15,410 of this the Corporation submits to pay Income Tax, because it has to be paid out of rates which have not paid tax; but as regards the balance they contend that it is properly payable out of the profits of their undertakings, and they claim to retain for their own benefit the amount of the tax which they have deducted on paying the interest to the creditors. The Crown contends (1) that the Corporation cannot legally apply the surplus income of one undertaking in paying the interest on the debt of another undertaking whose profits do not suffice to keep it down; and (2) that the accounts shew that they have not in fact paid the income in this way.

I have dealt with the first contention and shown why in my opinion it is untenable, and I am of opinion that the second contention is contrary to the authorities, and in particular to the

Edinburgh case[1] and the London County Council case[2] in the House of Lords (1910 Appeal Cases 143, and 1901 Appeal Cases 26). I think the following propositions are established: (1) Income Tax is not payable twice over on the same profits or gains brought into charge by virtue of the Act—*see* Lord Macnaghten in *Attorney-General* v. *London County Council* (1907 Appeal Cases, page 135)[3]: "Speaking generally, all income is chargeable, "but chargeable only once," and *see* Lord Atkinson at page 158 of 1910 Appeal Cases where he is dealing with Section 24, sub-section (3), and says:—"One of the main objects, if not the main "object of the section, namely, to avoid obliging a subject to pay "Income Tax twice over on the same sum"—if the Crown succeeds here the Corporation will undoubtedly pay twice over. (2) It is a question of substance and of right, and is independent of the mode of book-keeping adopted by the Corporation, *see* Lord Gorell, at page 163, in the Edinburgh case in 1910 Appeal Cases, where his Lordship says:—"But then it was argued that for the "respondent it has not been shewn that the annuities have been "paid out of the taxable income. This argument would seem to "make the rights of the Crown depend on the book-keeping of the "Company, but this cannot be, nor do I think the liabilities of "the Company can be made to depend on their system of accounts. "This argument could hardly be open if the company had, in "fact, kept the interest, dividends and rents from their invest-"ments apart from their other moneys and paid the annuities out "of the former. Can it then make any difference to their rights "and liabilities if they choose to mix the funds for the purpose "of their accounts and pay thereout whatever sum is necessary to "discharge their liabilities to the annuitants?" (3) It is not necessary to use in payment of interest the actual moneys received in respect of the profits or gains—and I refer to the same speech of the same noble Lord lower down on the same page.

The Crown relied on *Attorney-General* v. *London County Council* (1907 Appeal Cases, page 131) but the Judgment of the Lord Chancellor shows clearly the distinction between that and the present case. There were in fact no profits or gains brought into charge under Schedule D in that case (*see* page 134); but here the whole £270,000 is so brought into charge.

I am, therefore, of opinion that this Appeal should be allowed with costs here and below.

Lord Justice Kennedy.—In this case, I agree that the Act of Parliament, the Leeds Corporation (General Powers) Act, 1901, upon the construction of which the decision of the question largely depends, has been so framed and worded as to make it impossible to place upon its provisions any interpretation which gives complete or certain consistency to the whole, or satisfactorily to reconcile some of the provisions with earlier statutory enactments which remain unrepealed. Mr. Justice Hamilton in his Judgment has stated the effect of these earlier enactments in historical order, and he has also stated, I think very clearly, the material provisions of this Act of 1901. I do not see that anything would be gained by my recapitulating them here.

(1) T.C. 472. (2) 4 T.C. 265. (3) 5 T.C. 242.

Reading together Sections 4 to 49—especially Sections 33, 37, 38, 39, 41, 46, 47, 48 and 49, I confess myself left in doubt whether the effect of the legislation in regard to the rights of creditors who have lent their money in respect of one particular undertaking upon the security of that undertaking and upon the security of the rates leviable for the support of that undertaking is to substitute for that security a general charge upon all the undertakings and all the revenues of the Corporation enforceable *pari passu* with the claims of creditors in respect of other undertakings; or whether (as I think the better view is) the effect of the legislation is simply to widen and enlarge the security so as to enable the creditor in respect of a particular undertaking, whilst retaining a primary claim upon the particular security upon which he advanced his money, to have recourse in case of need not only to that undertaking and to the revenue arising therefrom and to the rate leviable by the Corporation for its maintenance and for the discharge of liabilities created in respect of it, but also to all the undertakings and the revenues and rates receivable by the Corporation in respect of all. Be it assumed, however, whichever construction of this legislation in 1901 be the right one, that in the last resort a creditor of the Corporation in respect of any one of the several undertakings may, either in addition to or in substitution for his pre-existing contractual rights through a receiver, enforce payment of what is due to him for principal or interest out of all money which ought to be paid under the Corporation Acts and Orders, and out of all rates, whether applicable to undertakings belonging to the City Fund or to undertakings belonging to the Consolidated Fund, I do not think that the assumption helps us materially towards the solution of the question which the present case asks us to solve. That question is, as it seems to me, substantially this : Can the Corporation, by virtue of the provisions of this Act, claim to set off, against Income Tax paid on profits of the City Fund, Income Tax deducted on interest of Consolidated Fund debt? Or, to put the question in a concrete form, it may be stated thus : Are the taxable revenues arising from the City Fund undertakings and the taxable revenues arising from the Consolidated Fund undertakings so unified or pooled by this legislation of 1901, that a surplus, as I understand the figures, of £78,519 belonging to the City Fund undertakings, although not so applied in fact, may for Income Tax purposes be treated as applied to the payment of interest due in respect of Consolidated Fund undertakings, so that in respect of that amount the Corporation are entitled to retain for their own benefit the amount of Income Tax which they have deducted in paying interest to those entitled to receive it?

In paying the interest upon the whole of its loans, the Leeds Corporation paid £285,446. From the whole of their undertakings they derived a taxable income of £270,000. The balance of £15,446 was raised by rates, and as to that no question arises. The sum of £78,000 which I have mentioned, and which no doubt represents taxable profits and gains, is composed of the sum of £24,262 from waterworks, £4,643 from gasworks, £6,228 from tramways, and £43,386 from City Fund and Rate. Are the Corporation entitled to treat these sums, although not in fact

applied for that purpose, as if they had been utilised for the payment of interest so as to be entitled in respect of the sum of £78,000—part of £285,446—to treat it as paid out of profits and gains brought into charge to the Income Tax?

Upon the whole I have come to the conclusion that the Corporation are not entitled to succeed; that they are not in the same position as the private trader in the case of the *Edinburgh Life Assurance Company* v. *The Lord Advocate* (1910 Appeal Cases, page 143) all of whose receipts may properly be regarded as creating a Common Fund. The Corporation are, under the Act of 1901, bound to keep separate accounts of all their several undertakings, and I do not think that the effect of Section 37 is to destroy the obligations of the Corporation which previously existed by statute, with regard to the application of the sums received by the Corporation in respect of the several undertakings. Those obligations sufficiently appear in the fourth and succeeding paragraphs of the Case stated. The Act of 1901 itself prescribed the maintenance of separate accounts for the several undertakings, and I agree with Mr. Justice Hamilton that the obligation thus imposed cannot be treated as imposed merely for "book-keeping" purposes. In some cases the system of rating is a differential system, and I think that the learned Judge (on page 106 of the Report) is well warranted in laying stress upon the fact that the sections which prescribe the keeping of separate accounts have in effect the very important office of preserving the rights of those large and important ratepayers who have the benefit of a differential rating, according as the objects upon which the money is spent belong to the rate where they have the differential rating, or to the rate where they have not. I shall not repeat here the learned Judge's lucid development of his reasoning on this point, which appears on pages 107 and 108 of the Report of his Judgment. I only add that the possibility of a rectification by subsequent adjustment of rating burdens does not appear to me to be a sufficient or satisfactory answer to the objection that the claim of the Corporation to treat the gains and profits of a City Fund undertaking as applicable to the payment of interest, due on a Consolidated Fund undertaking, does involve, at the time of such application, an infringement of the rights of a large body of ratepayers.

It is with very great diffidence indeed that I differ from the Master of the Rolls and Lord Justice Farwell upon the subject of this Appeal, but, finding, as I do, that as a matter of unquestionable fact this £78,519—part of the sum of £285,446—was not in fact paid out of profits and gains brought into charge to the Income Tax, or in other words that the sum of £78,519 coming from waterworks, gasworks, tramways and City Fund and Rate, and constituting no doubt taxable profits and gains, was not in fact used for the payment of interest, and, coming to the conclusion, as I do, that it could not lawfully have been used for that purpose because such use would have involved the application, unauthorised by law, of the revenues of one set of undertakings belonging to the City Fund, to pay interest upon undertakings belonging to the Consolidated Fund, I can only say that, in my opinion, the Judgment of Mr. Justice Hamilton was right, and

that this Appeal ought to be dismissed. I desire to add that I believe, in so deciding, I am not departing from the law as laid down by the House of Lords in the *London County Council* v. *the Attorney-General* (1901 Appeal Cases, page 26), and I hope that I am deciding in accordance with the reasoning which seems to have prevailed in the *Attorney-General* v. *The London County Council*, in the decision given which is reported in 1907 Appeal Cases, page 131.

Mr. Jeeves.—My Lords, the Order of this Court will be that the decision of the Commissioners is incorrect, and that the order of the Court below be reversed, with costs to the Appellants?

The Master of the Rolls.—Yes.

The Crown having appealed, the case was argued in the House of Lords before the Lord Chancellor (Lord Haldane), the Earl of Halsbury, and Lords Atkinson, Kinnear, and Mersey, on the 6th, 7th and 14th February, 1913, when Judgment was reserved. On the 3rd April, 1913, Judgment was delivered in favour of the Crown reversing the decision of the Court of Appeal. The Attorney-General (Sir Rufus Isaacs, K.C., M.P.), the Solicitor-General (Sir John Simon, K.C., M.P.), and Mr. W. Finlay appeared as Counsel for the Appellant, and Mr. Danckwerts, K.C., Mr. Ryde, K.C., and Mr. Jeeves as Counsel for the Respondents.

The Solicitor-General, for the Appellant.

This case is in some senses a test case. At any rate the question of law which it raises is, I understand, a question which arises more or less identically or may arise in a number of other cases of the application of the Income Tax Acts to the affairs of great Municipal Corporations.

The question is whether, for the purpose of retaining Income Tax which has been deducted, the Leeds Corporation are entitled to treat all their undertakings as inextricably one, or whether for the purpose of determining the amount of tax to be retained they must not still be treated as having undertakings which fall into two classes.

[*Lord Mersey.*—Is not the real question this : Are the accounts to be treated as the accounts of two different entities?].

My Lord, I think that is right. Everything turns on that distinction. If I do not make good that distinction, and not only make it good but make it relevant for the purpose of this argument, then I fail, and it is that distinction which is the basis of the Judgments which have been given in my favour.

I now look at the Leeds Act of 1901. This is the Act which particularly excited the criticism of the Master of the Rolls from a drafting point of view. For the purpose of getting through this tangle what is important to have in mind is that the earlier Acts not only create charges, but they also authorise a particular use of a surplus, and after you have used profits on the tramways in paying working expenses and loans, you are then under a statutory obligation, unless it has disappeared, to use the surplus

by carrying it to the City Fund; and it will become a question whether that obligation has either disappeared or has, at any rate, become immaterial.

My proposition is that when one reads the Act of 1901, it is not the case that you have all the properties swept away and that you are now dealing with a single subject matter. On the contrary, you find that, although every creditor has been given a general charge, and, therefore, might in the last resort put his hand on any piece of property he pleased, I submit you do not find a sweeping away of these primary charges, but, on the other hand, you do find expressions in the Act which show they are intended to survive.

[*The Lord Chancellor.*—Your proposition is that the new security given by the Act of 1901 was a collateral security not intended to disturb the incidence of the loans on the old security as the primary security; it was simply intended to improve the security of the bondholder.]

Yes, that is my proposition, and also this, to which I attach even more importance, that the Act of 1901 does not destroy the duty of the Corporation to dispose of the surpluses in the way previously directed; and since the statute of 1888 says that the right of retention will only arise if it is payable out of the taxed fund, my proposition is that in the sense of the statute the interest on these Consolidated Fund things is not payable out of the surplus profit of the tramways. The recourse which a creditor has to a source of possible assets does not in the least alter the fact that the Leeds Corporation must not regard these profits as usable, at their own free will and pleasure, in the payment of other debts.

Danckwerts, K.C., for the Respondents.

The great point here is that the £78,000 is the sum by which the receipts from the various enterprises exceed the sum which the Crown admit we are entitled to retain tax upon. The £78,000 they do not deny we have paid tax upon, and borne the tax upon, and if we are entitled to employ that in paying the creditors, our case is clear. But they say: " No, you, upon our construction " of the Act of 1901, as between you and the ratepayers, are only " entitled to pay it out of rates, and therefore we are entitled to " assess you under Schedule D. and under Section 102." Now, my Lord, I quarrel with that argument on two points. My first quarrel with it is that under the Act of 1901 the interest is payable out of the profits of any one of these enterprises, and, as was proved in the Edinburgh Life case, duty under the due course of the administration of the law ought to be paid out of those profits rather than out of the rates.

[*The Lord Chancellor.*—That is a point of construction.]

That is one, and second, I say you cannot take advantage of the fact that, as between the Corporation and the ratepayers, the Corporation is obliged to keep certain book-keeping accounts in order to shew the ratepayers how the enterprises stand, and in order to shew that, when they do raise a revenue for any purpose and are not able to apply this particular interest for that purpose, they saddle the right shoulders with the right amount of burden. They say therefore: " Because that is so we are entitled to say

"that you pay it out of the rates." That is the Solicitor-General's argument. His further argument upon the separate charge under the earlier Acts and upon what he called the extraordinary change which would be introduced by the Act of 1901 if I was right, is destroyed to a large extent by my contention that long before the Act of 1901, viz., in 1877, the policy of consolidating the debt and charging it indiscriminately upon all the property of the Corporation from whatsoever source had been initiated and had been largely carried on, and the 1901 Act was but the coping stone which completed the process.

[*Lord Atkinson.*—You read the Act of 1901 in the light of the policy which you say underlay all these previous Acts.]

Yes. But now look at the Act of 1901. I submit it is abundantly clear that the real effect of Section 37 (1) and (2) is that it was intended that all past securities given by any Act or Order were to have substituted for them the general charge on all the property and all rates given by this Act.

[*The Lord Chancellor.*—I think you would have a very strong argument *prima facie* on that; but your difficulty is Section 47 which seems to contradict it flatly.]

I do not think it is against me when properly looked at. The suggestion put to me is that the words of Section 47 indicate that there are specific charges. The answer is that it does the exact contrary, does it not? If there were specific charges, if the old specific charges were kept alive, it would be absurd to use the words "if any."

[*The Lord Chancellor.*—I think I might equally say to you: What is the use of putting in the words "if any," if everything has been swept away?]

There are two answers to that, I submit. The first is that it is because they have been swept away as regards the past, that the words "if any" are employed, and it is because in the future there may be such. It does not follow that there will be any, but it means if there are any in future. It is quite clear from Section 37 (1) that the financial provisions made by this Act are intended to be a permanent code, subject to future legislation naturally, and I submit the words "if any" make that abundantly clear.

[*The Lord Chancellor.*—If the Attorney-General can read Section 47 in his way, then he succeeds; if you can read Section 47 your way or Section 37 your way, then you succeed.]

I think not. I think it is not necessary for me to do both. My argument is that it is sufficient for me to make out that Section 37 (2) does what I say, and again it must be shown that your Lordships are compelled to modify the natural meaning and effect of Section 37 by Section 47 before the Attorney-General's argument gets on its legs even. I say there is nothing which compels you to do it. The language of Section 37 is clear, of Section 47 ambiguous; it is really a novelty in construction if the Crown can successfully contend that a clear section can be modified by an ambiguous section.

The broad view is that the Corporation have a taxable income of £270,000. The point of the Crown is that although, according

to their argument, all but £78,000 of the £270,000 is spent in paying people who are themselves taxable, and whose taxes the Corporation vicariously bear, the remaining sum of £78,000 is to pay tax both in the hands of the recipients and in the hands of the Corporation who earn it. Why should that be? The income of the Corporation must be regarded as a whole. Why should they, when their debts swallow up the whole of the £270,000 of income, be treated as though they have a free income of £78,000 free from duty, which they can deal with as they like? Plain justice is entirely in my view.

JUDGMENT.

The Lord Chancellor (read by Lord Atkinson).—My Lords, broadly stated the principle of the Income Tax Acts is to charge all income with tax, but in the hands of the same person only once. Income is brought into such charge at its source, and the burden is then distributed among the recipients, who bear their share of it proportionately. When the tax is payable on income which consists of the profits of property or undertakings, and out of these profits annual payments have in substance and properly been made, the person entitled to such profits, whatever in point of mere form may have been the way in which he has kept his accounts, is still charged with tax on the whole of the profits. But the Acts give him the right to deduct the tax due from the recipient in respect of the annual payments, and, as he has himself already paid tax on the whole profits, to retain for himself the amount so deducted. If, on the other hand, the annual payments were not really and properly made out of the profits, he is treated as having received these profits undiminished, and, though still bound to deduct the Tax from what he has to pay to the creditor, he must account to the Crown for what has been so deducted.

If the annual payments would properly have been payable out of profits, but the person bound to make them has chosen to defray them out of some other source of income, this does not affect his right to retain the amount of tax he has deducted. On the other hand it is not enough to entitle him to retain it that he has a merely contingent or ineffective right to pay out of the profits. His right must be of a kind that actually enables payment to be properly made out of the profits, and does not leave them practically unaffected because of the existence of some other source of income primarily and effectively applicable in discharge of the burden. In each case the question is whether the annual payments taxed are actually and properly payable out of the profits. If they are, these profits are treated by the Acts as diminished *pro tanto* in the hands of the owner, and he, having paid once for all on the whole, is thus entitled to retain for his own benefit the amount of tax he deducts from the annual payments before making them, as being tax that he has already paid.

My Lords, these propositions appear to me to result from the consideration of the Acts themselves, and their interpretation in the three cases on their construction, decided by this House in 1901, 1907 and 1910, to which reference was made during the arguments.

In the case now before the House the Corporation of Leeds is the owner of various undertakings such as waterworks, gasworks, tramways, markets, and electric lighting, and it owns certain hereditaments. The undertakings were acquired and worked under the provisions of various Private Acts and Provisional Orders, excepting the electric lighting undertaking, which was owned and worked under the provisions of the Electric Lighting Act of 1882. Under the powers conferred by these Acts and Orders the Corporation borrowed large sums of money. Where the money was borrowed for the purposes of an undertaking owned and worked by the Corporation in its capacity of a Municipal Corporation, the loan was charged on, and the interest was made payable out of, the particular undertaking and the Borough Fund, which was dependent on the Borough Rate. Where the money was borrowed for the purposes of an undertaking owned and worked by the Corporation in the capacity of an Urban Sanitary Authority, the loan was charged on, and the interest was made payable out of, the particular undertaking and the Consolidated Fund, which was dependent on the Consolidated Rate. In the former case any surplus profits were earmarked for the Borough Fund and so for relief of the Borough Rate. In the latter case any such surplus went to the Consolidated Fund and in relief of the Consolidated Rate. In no instance, at all events prior to the year 1901, was a loan in respect of a Borough Fund Undertaking charged on the Consolidated Fund, or a loan in respect of a Consolidated Fund Undertaking charged on the Borough Fund.

The Corporation was duly assessed to Income Tax for the year ending on the 5th April, 1903, on the rents and profits, amounting to about £270,000, of its various hereditaments and undertakings. In paying the interest on the loans relating to these undertakings the Corporation properly deducted Income Tax. The amount of the interest so paid was some £285,000, being some £15,000 in excess of its rents and profits. The Corporation is, of course, bound to account for the tax deducted from this excess of £15,000 which is not met by, and therefore had not been already taxed as part of, its receipts.

By the Crown it is conceded that the Corporation is entitled to retain the tax deducted in paying interest to the extent to which such interest was effectively charged, under the Acts and Orders referred to, on the rents and profits of the undertakings of the Corporation. The dispute in the case arises as to the tax on a sum of about £78,000, as to which the Corporation affirms and the Crown denies, that it was similarly charged on these rents and profits by virtue of the Leeds Corporation (General Powers) Act, 1901.

To understand the nature of the controversy it is necessary to refer briefly to the history of the relevant legislation.

The Corporation of Leeds is a Municipal Corporation, created by a Charter of King Charles II.; and is subject to the provisions of the Municipal Corporations Acts of 1835 and 1882. Leeds became a City in 1897. The Corporation is also an Urban Sanitary Authority, to which the provisions of the Public Health Acts apply. It has powers under the various Acts and Provisional

Orders already referred to. As certain ratepayers were rated differentially according as the rate was a Borough or a Consolidated Rate these ratepayers have had a material interest in any question as to which fund was to be resorted to for making up a deficit arising in connection with the undertakings of the City. Under the legislation prior to 1901, as I have already indicated, it was not permissible to charge the Borough Fund, and therefore the Borough Rate, with a loan deficit in respect of a Consolidated Fund undertaking, or *vice versa*. Under the legislation referred to the money borrowed was, as I have said, charged on the profits of the undertakings for the purpose of which it was borrowed and also, secondarily, on either the Borough Rate or Consolidated Rate, so that these Rates were available in case of a deficiency in the profits.

The real question which arises is whether the Leeds Corporation Act of 1901 has so altered the principle by which the payment of the interest on loans was primarily to be made out of the profits of the respective undertakings on which they were raised that the Corporation is no longer bound in such case to apply the profits specifically in discharge of the interest on the loan relating to the particular undertaking, and then to treat the balance as appropriated to the relief of the Borough Rate or the Consolidated Rate as the case may be, but has now to hold the entirety of these profits as income charged generally with the payment out of it of interest on the whole of the loans. A further question was suggested in the arguments as to whether the Act of 1901 had not wholly abrogated the securities of the various lenders and substituted for them general securities over the entirety of the undertakings and revenues of the Corporation, and on the Rates, Borough or Consolidated, indifferently, such new securities ranking *pari passu*. Under the legislation prior to 1901 no such step as to vary a specific security or to substitute for it a different one, however good, appears to have been contemplated. The intention to take it under the Act of 1901 is not an intention which one would lightly presume in the absence of clear language. But I do not think it necessary to express an opinion as to whether the existing securities were kept alive as primary securities with a new and general but merely secondary charge added, or whether the language used is so clear that the inference of an intention to substitute a new security for an old one, *in invitum* as regards the lender, is too strong to be resisted.

The crucial question seems to me to be a narrower one and to arise in a different form. It is whether, even if the old securities are abrogated and a new security substituted so as to provide for the case of a deficiency should liquidation in some form be necessary, the original statutory directions for the application of rents and profits are left standing and operative in the meantime, so that the Corporation is bound to continue to apply its income from the various undertakings to the payment of interest on the loans specifically charged on them, and, as regards any surplus, in relief of particular rates and to the other purposes for which it was earmarked originally. I may add that it is obvious that so far as the last point is concerned, those ratepayers who were

rated differentially, according as the rate was Borough or Consolidated, had a material interest in the preservation of the old allocations and statutory directions, and therefore in the answer to this question.

My Lords, towards the end of his Judgment, Mr. Justice Hamilton discusses some observations of Lord Davey in the first of the two London County Council cases which were referred to in the argument before us (1901, Appeal Cases, 26).(1) Speaking of the passage in which Lord Davey says that "it is enough if "the interest is charged on, or payable out of, the taxable income, "though there may be other subjects of charge" he interprets Lord Davey's words as meaning that the charge upon or right to pay out of the taxable income must be actually operative within what he calls "the measurable foresight of Finance" and not merely contingently operative. As authority for this view he relies on what Lord Macnaghten said in the second of the London County Council cases (1907, Appeal Cases, p. 131).(2) In the light of Lord Macnaghten's Judgment, Mr. Justice Hamilton interprets the expression "payable out of" in Lord Davey's Judgment, as used, not as signifying what is in antithesis to "charged upon" but as explaining its meaning, and, after saying that the case of the Edinburgh Life Assurance Company (1910, Appeal Cases, 143)(3) is not in opposition to this conclusion, inasmuch as there the Company had a perfect right to treat interest as payable out of the income in question, he sums up the law as being that the person assessed can retain the Income Tax which he has deducted from the interest paid to his creditor only if the interest is operatively charged upon or payable, that is to say, immediately out of the taxable income.

My Lords, I think this is the proper interpretation of the effect of the three decisions of this House which have been referred to, and I now turn to the Private Act of 1901 to find what application the principle so established has to the case before us. Section 33 of this Act, after authorising the Corporation to borrow for various purposes, including tramways and gasworks, enacts that to provide for the repayment of principal and the payment of interest the several revenues of the Corporation arising from the tramway and the gasworks undertakings are made primarily chargeable as was the case under the previous Acts. But Section 37 provides that all principal moneys shall be charged indifferently upon the lands and estates, the water, the gas, and other the undertakings of the Corporation, and each and all such principal moneys or any of them, whether raised before or after the passing of the Act, together with the dividends, interest, annuities, and all other annual sums for the time being payable thereon shall rank equally and *pari passu* without any priority or preference by reason of any precedence in the date of any statutory borrowing power or the date of the raising of the money, or in the date of the money becoming owing, or in the date of this security, or any other ground whatsoever. Subsection 2 provides that the provisions of the Corporation Acts and Orders authorising the raising of the principal

(1) 4 T.C. 265. (2) 5 T.C. 242. (3) 5 T.C. 472.

moneys and the securities granted, issued, and subsisting in respect thereof shall be read and construed as though the charge by this section authorised had been *the* charge in the said provisions and securities respectively authorised and given.

The latter subsection apparently, for the purposes of the charge authorised by this 37th section, substitutes that charge for the existing charge, but the question remains what is the meaning of the substitution of the charge so authorised. Even taking the first part of Section 37 by itself I observe that the effect is twofold. Firstly, it is to constitute a general charge for the principal without any direction as to payment of interest, and secondly, it is to make the principal and interest under the securities rank *pari passu* without priority or precedence on any ground. The section does not purport to repeal the statutory directions which compel the Corporation to pay the interest in the case of each undertaking specifically out of the profits of that undertaking. Nor does the Schedule of Repeals to the Act of 1901 repeal, as one would have expected had the intention been to alter the existing rights and duties in this respect, the provisions in the older Acts containing these directions. Section 37 is at least verbally consistent with these directions remaining operative under normal conditions and until the question of ranking had arisen, when the new charge was to be effective in place of the old charge. And if this be a possible construction it is, in my opinion, the proper one. For unless it is adopted a mode of using the rates of the Corporation must, as I have already pointed out, be held to be sanctioned which will take away their rights from those ratepayers who, as I have said, are in possession of rights to differential treatment.

But the conclusion to which I have come does not rest merely on these considerations. In interpreting the provisions of a statute they have, as far as possible, to be interpreted so as to make them consistent, and unless the view which I have expressed is wrong, Section 37 would be inconsistent not only with Section 33, to which I have referred already, but with Section 47. That section directs that the yearly payments in question are to be provided by contributions from the several revenues of the Corporation specifically charged with or made liable to provide the same by or under any statutory borrowing power, or by any resolution of the Corporation having reference to the respective borrowing powers, and, if there is no such specific liability, then from the several revenues out of which the respective contributions would be properly payable, having regard to the purpose for which the borrowing powers are given, and, in default thereof or subject thereto, out of the City Fund and City Rate or out of the Consolidated Rate or Highway Rate, as the Corporation, having regard to the provisions of this Act and the objects for which the Statutory borrowing power was exercised, may consider equitable. Section 46 directs the Corporation to keep separate accounts relative to each undertaking. Section 49 provides for reborrowing, and that any principal moneys reborrowed are to be primarily chargeable on the same revenues and to be deemed to form the same loan as the money reborrowed. Section 48 provides for the case of any principal money or interest being

unpaid, and for a receiver being appointed and having the same power of collecting and applying the money which ought to be paid under the Corporation Acts and Orders as the Corporation would have had.

My Lords, I am unable, after consideration of these sections to arrive at the conclusion of the Master of the Rolls, that the interest on the loans is no longer presently payable out of the net receipts of the particular undertakings to which they belong, and that the net receipts cannot be earmarked for that purpose. What may happen if there is default and a question of ranking has arisen we are not called on to determine. In the meantime and pending that event I think that no other income than the profits of the several undertakings and properties is operatively and effectively charged with payment of the interest on the various loans. I agree with the conclusion reached by Mr. Justice Hamilton and Lord Justice Kennedy, who was in a minority in the Court of Appeal, and I think that the Appeal ought to be allowed and the Judgment of the former learned Judge restored, and that the Respondents should pay the costs here and below.

Lord Atkinson.—My Lords, I concur.

The statutory enactment upon which this case mainly turns is the 24th section of the Customs and Inland Revenue Act, 1888.

Its construction has many times been the subject of judicial decision. Its third subsection deals with the payment of interest or annuities charged with the payment of income tax. The subsection is not, perhaps, happily worded, but its main object is, I think, clear.

It was designed to protect the subject from the injustice to which he would be subjected if the tax were exacted twice over in effect on the same sum of money, namely, first, on the acquisition or receipt of that sum by the debtor bound to pay the interests or annuities mentioned, and, second, on the payment by him of, practically, the same sum to his creditor or creditors in discharge of that interest or of those annuities.

The words " such tax " used in the subsection, according to the Judgment of Lord Macnaghten in the first London County Council case (1901) (A.C., p. 41) simply mean the income tax. The " profits and gains brought into charge " may for convenience be styled " taxed fund " and all other resources of the debtor may be styled the " untaxed fund." The first important question to determine then, is, what is the meaning of the words " not pay-" able out of " this taxed fund. They cannot mean, I think, " not charged upon the taxed fund." Every professional man who has nothing but his professional income, or tradesman who has nothing but the profits of his trade to live on, would be entitled to retain for his own benefit the tax he had deducted from an annuity he had contracted to pay if he had, in fact, paid it out of that income, or those profits, forming the " taxed fund," though the annuity were not specifically charged on anything. This is, I think, according to the invariable practice. If then, these words, " not payable out of " do not mean " not charged " upon " it appears to me they must mean " not legally payable " out of," that is, which cannot lawfully be paid out of the " taxed fund."

If the interest or the annuities were in fact, but against the law, paid out of the "taxed fund," then, though the tax should be deducted from the creditor, it could not be retained by the debtor. He should account for it to the revenue. Of course, if the interest and annuities be charged upon the taxed fund they will almost necessarily be lawfully payable out of it. This fund might, however, not be charged as the primary security, or some condition might have to be fulfilled before it could be so applied, in which case payment out of it might be illegal till the first fund was exhausted, or the condition fulfilled. If this be the true view as to the meaning of these words, "not payable out of," then the results of the application of the subsection would, according to the authorities, apparently be the following:—

(1) Where no portion of the interest or annuities charged with the tax could be lawfully paid out of the "taxed fund," the debtor, who on paying this interest or these annuities deducts the appropriate tax from his creditor or creditors, must account to the Commissioners of Inland Revenue for the full amount of the tax so deducted.

(2) When only a portion of this interest or these annuities can lawfully be paid out of the "taxed fund," then the debtor, though bound to deduct the tax from his creditors on the full sums paid to them, is only bound to account to the Revenue Authorities for the amount of the tax deducted from that portion of the interest or annuities actually paid out of his untaxed fund. The remainder of the entire sum deducted he is entitled to retain for his own benefit.

(3) When the interest and annuities so charged may with equal legality be paid out of either the "taxed" or "untaxed" fund of the debtor, and the taxed fund is adequate in amount to pay them, it will not be necessary for the debtor, in order to entitle him to retain for his own benefit the entire sum deducted, that he should have, in his books or otherwise, specifically appropriated, or set apart, the taxed fund to discharge this interest or these annuities, or to prove that he had in fact paid them out of the "taxed fund." It will suffice, should the two funds be blended and formed into a mixed fund, that the interest and annuities charged should be paid out of this mixed fund. They will, if so paid, be treated as having been paid out of the taxed fund, especially where in the ordinary course of business it should be applied for that purpose.

In the London County Council case already cited the "taxed" fund was, under regulations made under Section 15 of the London County Council (Money) Act, 1889, and approved of by the Treasury, specifically appropriated to the payment of the interest on their Consolidated Stock (1900, 1 Q.B. 201). But it was inadequate in amount, and, therefore, that interest when paid in full as it was, must of necessity, to the extent of the deficit, have been paid out of the untaxed funds of the Council—the rates. It was only in respect of the amount of the tax deducted on this latter sum that the County Council were held bound to account to the Revenue.

In the Edinburgh Life Assurance Company v. The Lord Advocate (A.C., 143) the taxed fund was fully adequate to pay all the annuities but was not specifically appropriated to that purpose. On the contrary the taxed and untaxed funds were blended, and a mixed fund created. It was decided that the annuities, though in fact paid out of this mixed fund, should be taken to have been paid out of the taxed portion of it, so that the subject should not be made liable to the tax by reason of the mere form in which his books were kept, but should be put in the same position as if the "taxed fund" had been set apart to pay the claims upon it, and they had, in fact, been paid out of it. In both these cases the taxed and untaxed funds were charged; in the first with the payment of the interest on the stock, and, in the second, with the payment of the annuities.

Section 24, subsection 3, is obviously conversant with the action of the debtor and his liability to the Revenue. It has no special reference to the remedies the creditor, from whom he deducts income tax, may have to recover the interest or annuities due. That is outside its purview.

In the present case the Respondents, in their capacity of a municipal authority, borrowed large sums to finance certain municipal works and undertakings, such as waterworks, gasworks, tramways, &c. These were very lucrative. They yielded an income far in excess of what was necessary to pay the interest on the money so borrowed. That income was paid into the Borough Fund of the Corporation.

The Respondents, in their capacity of a sanitary authority, also borrowed large sums to finance certain sanitary works and undertakings, using the term "sanitary" in its widest sense, such as electric lighting, &c. These latter undertakings were not at all as lucrative as the municipal undertakings. The income from them was not nearly sufficient to meet the interest on the loans. The precise financial position of the Corporation was this. The amount required in the year in question in this case to pay the interest on all the loans contracted was £285,446. The income from the several undertakings to finance which these loans were incurred amounted to £270,036. There was, therefore, a deficit of £15,410. This must necessarily have been paid out of their untaxed funds, and the Respondents admit that to the extent of the tax deducted on payment of this sum they are bound to account. The income from what I have called the sanitary undertakings was deficient by the sum of £78,519 to meet the interest on the sanitary loans. Though the consolidated rates were, as well as the undertakings, charged with the payment of this interest, a rate was not struck to meet this deficit. It was admittedly not paid out of the Consolidated Rate.

It must, therefore, I think, be taken that it was, in fact, though possibly not in form, paid out of gains or profits brought into charge, *i.e.*, the taxed funds of the Corporation. I do not think it can be taken that it was paid solely out of the Borough Rate.

In this condition of things, the Corporation on their own initiative, and not as a result of hostile legal proceedings taken against them by creditors, met this deficit by an advance of £78,000, out

of their Borough Fund, which they applied to the payment of the interest on the loans contracted for sanitary purposes.

Now the Borough Fund is created under the provisions of the Municipal Corporations Act of 1882. By Section 139 of that statute it is enacted that the rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all moneys, dues, chattels, and valuable securities belonging to a municipal corporation shall be paid into the borough fund. In addition to these, the city or borough rate, and under various local Acts, the receipts from waterworks, gasworks, tramways, and other undertakings of the Corporation are to be paid into the fund. By the 140th section this fund is made applicable to, and is charged with, the several payments specified in the Fifth Schedule to the Act, amongst which are (item XI.) "All expenses charged on "the borough fund by an Act of Parliament or otherwise by "law."

In addition, in no instance up to the year 1901 has a loan effected in respect of a sanitary undertaking, as distinguished from a municipal undertaking, been charged upon, or the interest made payable out of, the Borough Fund. On the contrary, it has invariably been charged upon, and the interest made payable out of, a certain other fund called the Consolidated Fund. The converse is equally true. In no instance has a loan contracted for a municipal undertaking been charged upon the Consolidated Fund. The electric lighting undertaking was financed and instituted under the provisions of a public statute, the Electric Lighting Act of 1882. The 7th and 31st Sections of that Act combined in effect provide that the expenses of the undertaking may be defrayed out of the local rate mentioned in the Schedule to the Act, which, in the case of the City of Leeds, is the Consolidated Fund. Moreover, special provisions are introduced into the different Acts under which the waterworks, tramways, gasworks, &c., were constructed to the effect that balances not required for the undertaking should be paid into the Borough Fund, and that all deficiencies should be met out of that Fund.

Not only, therefore, are all loans other than those obtained for sanitary purposes charged upon the Borough Fund, but it is provided by Section 143, subsection 1, of the Municipal Corporations Act of 1882, that if that fund be more than sufficient for the purposes to which it is applicable under the Act, or otherwise by law, the surplus shall be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough. It is not contended that subsection 2 of that Section applies to this case. As matters stood, therefore, before the year 1901 this enactment made it illegal to devote any of this surplus to the payment of the interest on the loans contracted for sanitary purposes. That interest was charged upon an entirely different fund, a fund fed by a consolidated rate raised upon a system of rating entirely different from that upon which the Borough Rate is raised, namely a differential system. The question then is: Has the local Act of 1901 impliedly repealed not only this provision of the Act of 1882, but also the provisions of the several statutes under which the

municipal undertakings were authorised charging each with the payment of the loan by which it was financed as well as the interest thereon? Have the corporation been empowered, on their own initiative and without hostile pressure, to change the nature of the securities held by their creditors without those creditors' consent, to pool, as it were, their entire loans and the securities held for the payment of them, and, without altering the differential system of rating upon which the Consolidated Rate is raised, to divert their surplus income from purposes, which might lighten the Borough Rate, to purposes which must lessen the Consolidated Rate? For the reason stated at length with the utmost clearness by Mr. Justice Hamilton, I am of opinion that the local Act has not this effect, though it may possibly extend the reach of the remedies of the creditor, who, in hostile proceedings against the Respondents, seeks to recover his debt or the interest due upon it. I concur, therefore, in thinking that the Corporation cannot retain for their own benefit the income tax they have deducted in respect of this sum of £78,519, and are assessable for it, not for the reason, however, that the tax must be taken not to have been paid wholly or partly out of a " taxed fund " belonging to them, namely, the income from the municipal undertakings, &c., but because it was not legally payable out of the particular fund out of which it has in fact been paid. The Corporation had not, in my view, any power to devote the surplus of the income from their municipal undertakings to meet the deficit on their sanitary undertakings, and thereby to apply that surplus in relief of the Consolidated Rate.

I would wish, however, to point out that the true import of the passages cited from the Judgment of Lord Davey in the first London County Council case (A.C. 1901), and of Lord Macnaghten in the second case (A.C. 1907), can only be properly apprehended if they be taken in connection with the contentions of the Parties in the cases to which they respectively apply. In the first case Lord Davey at page 48 of the Report says, " The " contention of the Crown is that as the interest on the consoli- " dated 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 subjects of charge and only a rateable " proportion deemed to be paid out of their income from their " rents or from interest receivable by them from their own " debtors." He then proceeds, " 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 a right of " deduction and retention, that the interest or annual payment " should be exclusively charged upon, or payable out of, profits " or gains brought into charge. It is enough if interest is " charged upon, or payable out of, the taxable income though " there may be other subjects of charge."

Lord Davey was, obviously, dealing altogether with this question of apportioned rateability, and his Judgment is no authority whatever for the proposition that interest must be what is called "effectively" charged on a taxed fund in order to entitle the debtor to retain what he deducts, or that if "ineffectively" charged upon any fund it is not "payable" out of that fund within the meaning of Section 24, subsection 3, of the Inland Revenue Act of 1888. What it is an authority for is, I think, this: (1) that there is not to be any apportionment of rateability in favour of the Crown between two funds out of either of which the interest or annuities charged with the tax may lawfully be paid; and (2) that in case a mixed fund be formed from two funds, out of either of which the interest and dividends charged with the tax may lawfully be paid, you are to assume, in the absence of evidence to the contrary, that they have been paid from that portion of the mixed fund out of which they should be paid in the due course of administration, which due course is this "that annual charges should, in the first place, be paid out of "annual income."

The principle of apportioned rateability contended for by the Crown in this County Council case was adopted by the Court of Session in the Edinburgh case, and their decision was reversed, in effect, on the very principle thus laid down by Lord Davey as to the due course of administration of payment, that is, that it had to be assumed that the annuities were, in fact, paid out of the portion of the mixed fund consisting of annual income upon which they were an annual charge.

In the second County Council case (A.C. 1907), the Council had to pay under Schedule A income tax on the annual value of property in their own occupation. It was assessed at £118,000 per annum. This, like all the other property of the Council as well as the rates, was charged with the payment of the divdends on their consolidated stock. It had been decided in the first case that the Council could not retain the tax deducted in respect of the dividends paid out of the rates, as the rates were not a "taxed "fund." What the Council in the second case contended for was that they were entitled to retain out of the amount deducted from the dividends paid out of the rates the income tax paid by them on this sum of £118,000, the annual value of the property they occupied, that this sum should be treated as annual income which they had in the due course of administration of payments applied to satisfy the annual charges upon it.

That contention was held to be unsound, and it was in reference to it that Lord Macnaghten used the words upon which this distinction between "effective" and "ineffective" charges has apparently been founded. At page 136 of the Report (1907 A.C.) he says: "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 suspended by a charge on the "rates. 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 "perform their statutory duties. So long as the rates are avail- "able to meet the demand of the stockholders the Council are "secure in the full and beneficial enjoyment of the property they "occupy."

And then he proceeds to ask the question—"What possible "claim can there be as to relief or indemnity of income tax in "respect to this property." My answer to this is, none, because dividends paid to the stockholders were not paid, could not be paid and must not be taken to have been paid, out of a mere enjoyment, valued no doubt under Schedule A at £118,000 per annum, but not available as money received by the Council for the payment of any of their debts. It will be observed that in this passage Lord Macnaghten is not dealing with the remedies the creditors of the Council might have to recover their debts, but with the voluntary and spontaneous action of the Council in the administration of their own property. In my view, therefore, the right of the debtor who has paid "interest on annuities" brought into charge to the income tax to retain for his own benefit the amount of the tax he has deducted from his creditors depends upon whether he can answer in the affirmative each of the two following questions:—(1) Have the interest and annuities been, in fact, paid, or must they in the circumstances of the case be taken to have been, in fact, paid out of profits or gains brought into charge, *i.e.*, out of the so-called "taxed fund"? (2) Was it lawful to pay them out of the fund?

If either of these questions be answered in the negative he must account to the revenue for the tax he has deducted. This is, I think, the only workable rule which can in practice be applied. It inflicts no injustice upon the subject. To allow him to retain the tax where he has not, in fact, paid it in the first instance himself would be in effect to allow him to levy a tax upon his creditors for his own benefit not for that of the Crown. And if he has applied the moneys of a "taxed fund" to discharge debts liable to income tax in a way the law forbade him to do, he is the author of his own wrong and deservedly suffers.

In the present case I think the Corporation, though they might be able to answer the first of these questions in the affirmative, must on the true construction of the Act of 1901 answer the second in the negative. And for that reason I think the Appeal should be allowed with costs, the Judgment and decision appealed from reversed, and the Judgment and decision of Mr. Justice Hamilton restored, and I beg to move accordingly. I express no opinion on what property might, under the Act of 1901, come within the reach of the remedies of the creditors of the Corporation in hostile litigation.

I desire to say that I have been authorised by Lord Halsbury to say that he concurs in the conclusion arrived at.

Lord Mersey (read by Lord Shaw).—My Lords, for the reasons to be found in the Judgment of the Lord Chancellor and in the

Judgment of my noble and learned friend Lord Atkinson, I think that this appeal ought to be allowed, and I desire to add only a few words.

The question is whether two sums of £10,510, and £83,419 respectively, making together £93,929 were payable out of profits and gains which had already been brought into charge to income tax. The Appellant (the Crown) says they were not so payable, whereas the Respondents (the Corporation) say they were. The two sums represent the excess of interest on loans raised in relation to certain undertakings worked by the Corporation either under the Electricity Lighting Act, 1882, or in their capacity as an urban sanitary authority, over the profits earned by those undertakings. The ground upon which the Corporation allege that the two sums have already been brought into charge is this. They say (truly) that in their capacity of a Municipal Corporation they work many undertakings which result in profits exceeding the interest on the loans raised in relation to them and that these profits have been brought into tax, and they claim that they are entitled to pay the interest on the £93,929 out of these profits. In other words, they contend that the accounts of the municipal, the electrical, and the sanitary undertakings ought to be lumped together for the purposes of income tax, and that when so lumped together it will be found that the £93,929 has been brought into charge.

It may be conceded that if the accounts are amalgamated in this way the result will be to show, as contended, that the £93,929 has already been brought into tax, and there remains, therefore, one question only, namely whether the Corporation are entitled as against the Crown to deal with the accounts in this way. The answer, in my opinion, turns entirely on the true effect of the Leeds Corporation (General Powers) Act, 1901. Before this Act the profits arising from each undertaking were by statute allocated to specific purposes and it was not lawful to divert them from those purposes. As the law then stood it was not possible to employ the profits of one undertaking towards the payment of the liabilities of another undertaking. But it is said that this has been altered by the Act of 1901. It is therefore necessary to examine the Act to see whether this is so.

One of the principal objects of the Act of 1901 was to enable the Corporation to borrow money for the purpose of carrying out certain improvements in the City of Leeds authorised by the Act. The Sections of the Act relating to this matter are headed "Financial Provisions" and they extend from Section 32 to Section 59 inclusive. The first, and in my opinion the only material section is the 37th. By sub-section 1 of this section it is enacted that "all principal moneys" shall be charged indifferently upon the undertakings and revenues of the Corporation, and that all such principal moneys together with the interest payable thereon, shall rank equally and *pari passu* without priority or preference. By the interpretation section (Section 4) the expression "principal moneys" is defined as meaning "any moneys "owing or to be owing or borrowed or to be borrowed by the "Corporation under any statutory borrowing power." Thus it

appears that a "charge" in favour of all existing and future loans was created upon the whole of the Corporation property. One of the objects of this clause was doubtless to secure in the amplest way the whole of the liabilities of the Corporation and thus to enable the Corporation to raise their loans on the best possible terms. It appears to be a charging section and nothing more. It is not, however, very material to enquire what the section does enact; it is much more important to notice what it does not enact; and it is, in my opinion, clear that it does not enact that the method of dealing with the annual profits of the different undertakings should be altered. These annual profits were, as I have already said, by statute applicable to certain purposes only. This subsection does not deflect such profits from those purposes.

The second sub-section of Section 37 enacts that the provisions of earlier Acts authorising the raising of money by the Corporation and the granting of securities therefor are to be read as though the charge authorised by the first subsection had been the charge authorised by those provisions. But this again is, in my opinion, but a charging provision, and does not affect the statutory method of allocating the profits of the different undertakings.

I do not stop to examine the Sections which follow the 37th. For the reasons to be found in the Judgment of Mr. Justice Hamilton I think their language "preserves, instead of repeals, the provisions of the earlier acts, by which it was assumed that certain dividends were properly payable out of the several revenues instead of being permissibly payable in general out of all the revenues in the aggregate."

The Act of 1901 does not in terms, nor does it, in my opinion, by necessary implication, repeal the relevant provisions in the earlier Acts, and in the absence of such a repeal I think the Corporation are precluded from applying the profits of the municipal undertakings to aid the other undertakings of the Corporation. It follows that the two sums, amounting together to £93,929 have never been brought into tax, and that in collecting the tax from the payees the Corporation are not recouping themselves for a payment which they have already made, but are acting merely as the tax collectors of the Crown, and to the Crown they must accordingly account.

I think the appeal should be allowed, and the Judgment of Mr. Justice Hamilton restored.

Lord Kinnear.—My Lords, I concur in the Judgment proposed, for the reasons stated by the Lord Chancellor in the Opinion which has been read by my noble and learned friend.

Question put.

That the Judgment and Order appealed from be reversed and the Judgment of Mr. Justice Hamilton restored.

The Contents have it.

That this Appeal be followed with costs here and below.

The Contents have it.