THE

SCOTTISH LAW REPORTER.

WINTER SESSION, 1903–1904.

COURT OF SESSION.

Thursday, October 15, 1903.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary

LORD ADVOCATE *v.* LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH.

Revenue — Income-Tax — Deduction of Income-Tax by Party Liable in Interest — Interest on Loans for Periods Less than a Year — Customs and Inland Revenue Act 1888 (51 *and* 52 *Vict. cap.* 8), *sec.* 24 (3).

The Customs and Inland Revenue Act 1888 (51 and 52 Vict. cap. 8), sec. 24 (3), enacts — "Upon payment of any interest of money or annuities charged with income-tax under Schedule D . . . the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income-tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted; . . . and such amount shall be a debt from such persons to Her Majesty, and recoverable as such accordingly." . . .

Held that a municipal corporation, which was empowered by statute and was in use to borrow on temporary loans, was bound under section 24 of the Customs and Inland Revenue Act 1888 to deduct income-tax at the time of paying to the lenders the interest on the loans, even where the loans were for periods of less than a year, and to render an account to the Commissioners of Inland Revenue of the amount so deducted.

The Lord Advocate, for and on behalf of the Commissioners of Inland Revenue, brought this action against the Lord Provost, Magistrates, and Council of the City of Edinburgh for declarator that the defenders were bound "to render to the Commissioners of Inland Revenue a full account of the sums retainable by the defenders in respect of income-tax during the period from 22nd September 1901 to 5th April 1902 upon their payment of interest of moneys borrowed by them on temporary loan by means of bill or promissory-note or simple acknowledgment, and whether such an account be rendered or not," that the defenders should be decerned "to pay to the pursuer the sum of £1200, or such other sum, more or less, as may be found to be due and payable in respect of income-tax retainable as aforesaid, with interest on the said sum of £1200."

Under various Acts the Corporation of Edinburgh are empowered to borrow upon the security of the burgh assessments in order to meet capital expenditure, and, in particular, under section 40 of the Edinburgh Corporation Act 1899 they are empowered to raise at any time temporarily, by the issue and renewal of Edinburgh Corporation bills or promissory-notes any moneys which the Corporation are or may be authorised by Parliament to borrow, provided that the total amount of such bills or promissory-notes issued and outstanding shall not at any time exceed £250,000, except bills or promissory-notes issued in order to pay off other bills or promissory-notes matured..

Since the date of the Act of 1899 the Corporation had been in the practice of borrowing money temporarily by the issue

of bills and promissory-notes, and by simple acknowledgments granted to lenders. The holders of bills and promissory-notes, and of simple acknowledgments for temporary loans, had under the Acts the security of the rates and assessments leviable under the Acts.

The Commissioners of Inland Revenue by letter of September 21st 1901 required the Corporation, upon making payment of interest on the temporary loans, to deduct income-tax at the rate in force at the time of payment, and to render an account of the amount deducted and to pay over the same to the Revenue. The Corporation declined to do so. The pursuer averred that between September 22nd 1901 and April 5th 1902 the interest paid by the Corporation on temporary loans raised by bill or note or acknowledgment amounted to over £20,000, and the tax retainable in respect of that interest to at least £1200.

The defenders, in a statement of facts, averred, *inter alia*, that none of the promissory-notes, by the issue of which money was temporarily borrowed, were issued to or discounted with private individuals. These notes were discounted with bankers or other financial traders, who are assessed as traders upon their profits from the discounts as part of the income derived from their trade or business. The Corporation also borrowed money temporarily by means of short loans or overdrafts from banks. In the case of the said discounts and interest to banks the Corporation were not bound or entitled to deduct income-tax. "(Stat. 5) The temporary loans received by the Corporation from individuals or companies other than banks do not bear annual interest. The whole of said loans are for periods less than a year. . . . Many of the lenders are trading firms or companies who keep regular business books. The interest paid to such firms or companies is included in their income in calculating their profits, and the defenders aver that the income-tax exigible in respect thereof during the period libelled has been duly paid by said firms or companies. No further income-tax is chargeable in respect of said interest. The Corporation are not bound to deduct income-tax from interest not being annual interest paid by them, and in point of fact they have not done so."

The pursuer in answer stated (Ans. 4)—"It is the case that in practice bankers are assessed as traders upon their profits from interest on short loans, and if information be supplied by the defenders showing that the parties to whom promissory-notes were issued or acknowledgments were granted within the period libelled were bankers, the Corporation will not be required to deduct tax from the discount or interest in these cases. Though the recipient of discount or interest may be assessed directly, that does not prevent the recovery of duty in the way expressly provided by section 24 of the Customs and Inland Revenue Act 1888."

With reference to temporary loans received by the Corporation from lenders other than banks the pursuer stated (Ans. 5)—"The interest in question is taxable as interest, and it was not included in the returns submitted to the Revenue by trading firms or companies or others, excepting bankers, lending money to the Corporation. Under the Customs and Inland Revenue Act 1888 the defenders were bound to deduct from the interest a proportionate amount of tax on payment, whether the interest arose from a loan for a year or from a loan for a shorter period."

The pursuer pleaded, *inter alia*, as follows—"(1) The defence being irrelevant ought to be repelled. (2) The interest payable by the Corporation in respect of moneys borrowed by them on temporary loan is chargeable to income-tax. (3) The Corporation, when paying interest on moneys so borrowed, ought to deduct income-tax at the rate in force at the time of payment, and are bound to account therefor to the Commissioners of Inland Revenue."

The defenders pleaded, *inter alia*, as follows—"(3) The defenders should be assoilzied from the conclusions of the summons in respect that—(*a*) The defenders are not bound or entitled to deduct income-tax from discounts on bills or promissory-notes discounted with banks or financial traders, or from interest paid on short loans or overdrafts from bankers. (*b*) Income-tax on interest, not being annual interest, falls to be accounted for by the recipients of such interest under section 100 of the Act 5 and 6 Victoria, cap. 35, second rule of third case of Schedule D, and the defenders are not bound to deduct the income-tax from such interest. (*c*) The income-tax sued for, in so far as the same was due or payable, has been already duly accounted for and paid over to the Inland Revenue."

On July 9, 1903, the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor—"Finds that, under the Customs and Inland Revenue Act 1888, section 24, sub-section 3, the defenders are bound, upon payment by them of any interest on money, whether yearly interest or not, or of annuities charged with income-tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax, to deduct out of such interest or annuities the rate of income-tax in force at the time of such payment, and forthwith to render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be: Appoints the defenders, within one calendar month, to render such an account for the period from 22nd September 1901 to 5th April 1902, and decerns: *Quoad ultra* continues the cause: Grants leave to reclaim."

Opinion.—"This case wears an aspect of complication, as most cases do which turn on the construction of the income-tax statutes. But the actual point for decision at the present stage is simple enough.

"The Corporation of Edinburgh have by statute extensive powers for borrowing money on the security of their rates and revenues. These powers are exercised not merely by the issue of stock and annuities of a more or less permanent nature, but temporarily, by granting promissory-notes and simple acknowledgments for advances of money. So far as these temporary loans are obtained from banks, the Crown authorities are satisfied that they have no interest to insist on deduction of income-tax on the sums of discount and interest paid by the Corporation, because these sums are included by banks in their general returns of profit for income-tax purposes. But as regards sums paid to other lenders, the Crown authorities say that they have an interest to insist on their full rights under the Customs and Inland Revenue Act 1888, section 24 (3). And the question is whether this enactment requires deduction of income-tax by the person making payment of any interest of money, even for a period of less than a year, or whether it is only the tax on annual interest which has to be deducted.

"Now, it has been decided that interest on money lent for less than a year is chargeable with income-tax in the hands of the recipient of such interest. That is the result of the case of *Leeds Benefit Building Society* v. *Mallandaine* (1897), 2 Q.B. 402, which was a decision on section 2 of the Income-Tax Act of 1853. The section charges tax on 'all interest of money,' and although these words are followed by the words 'annuities and other annual profits and gains not charged by virtue of any of the other schedules contained in this Act,' the Court of Appeal held that the general words 'all interest of money' were not controlled by the words which followed.

"So much for the liability of the recipient of interest on short loans to pay income-tax. Is the person paying such interest bound to deduct the tax and account for it to the Crown?

"The principle of deduction of income-tax at its source has been in operation since an early period of income-tax legislation, and an interesting review of it will be found in the judgment of Lord Macnaghten in the *London County Council* case (1901), App. Ca. 37-40. Prior to 1888 the person making payment of rent or yearly interest of money (for as late as 1853 the clause about deduction referred to 'yearly interest') was not bound to make deduction of income-tax. It was optional on his part; and I suppose he only did it when it was his interest to do it, *i.e.*, when the statutes allowed him to retain for his own benefit the tax so deducted on the ground that he had already paid tax on the interest as part of his own income. But, as Lord Macnaghten points out, the Revenue Act of 1888 by section 24 (3) alters that, and renders it obligatory to make the deduction and to account for it to the Crown, unless the payment comes out of income which has already paid the duty. And what is especially noteworthy for the purposes of the present question is that this Act, unlike the prior Act when dealing with deduction of tax, does not speak merely of the 'yearly interest of money' but of 'any interest of money.'

"Now, that is what, I think, distinguishes the present case from the case of *Goslings* v. *Sharpe* (1889), 23 Q.B.D. 324, which the defenders found on, and which was a decision on the Act of 1853, section 40. That section, as I have indicated, allows the person liable to the payment of 'any rent, or any yearly interest of money, or any annuity or other annual payment' to deduct and retain for his own benefit the amount of duty payable at the time; and the only question in *Gosling's* case was whether interest calculated at a yearly rate, though for periods less than a year, could come within the description of 'yearly interest.' The Court held not. But that does not govern a case under a later statute, where the language is different, and where the purpose is not to confer a privilege on the subject, but to provide greater security to the Crown for the recovery of its revenue.

"The defenders suggest that the principle contended for by the Crown would lead to great practical inconvenience, particularly in the case of short loans obtained from bankers. That may be; but it cannot affect the construction of the statute, nor does it follow that the Revenue authorities will always insist on their full rights. Indeed, their concession in Answer 4 shows a desire to avoid causing unnecessary trouble. The defenders also suggest that, as regards by much the larger proportion of the claim, the Crown is seeking to exact payment of income-tax a second time. That, of course, depends on facts and figures which are not before me, and nothing which I now decide can form any warrant for so inequitable a result. What I shall do, therefore, is to find that, under the Customs and Inland Revenue Act 1888, section 24, sub-section 3, the defenders are bound, upon payment by them of any interest of money, whether yearly interest or not, or of annuities charged with income-tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax, to deduct out of such interest or annuities the rate of income-tax in force at the time of such payment, and forthwith to render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be; and I shall appoint the defenders within one calendar month to render such an account for the period from 22nd September 1901 to 5th April 1902."

The defenders reclaimed, and argued—The pursuer's claim was based on section 24 of the Customs and Inland Revenue Act 1888. That Act was an amending Act, and section 24 must be construed in connection with the provisions of the earlier Acts, and in particular in the light of the provisions of section 40 of the Income-tax Act 1853. The purpose and effect of section 24 of the

Act of 1888 was simply to make it compulsory on debtors paying interest to deduct income-tax, in the circumstances in which they were entitled to do so under section 40 of the Act of 1853. Section 40 of the Act of 1853 only applied to persons liable to "the payment of any rent or any yearly interest of money or any annuity or other annual payment." . . . Accordingly bankers lending money to customers for a specified time less than a year, to be repaid at that time with interest accrued due, were not bound to allow a deduction for income-tax, on the ground that such interest was not "yearly interest"—*Goslings & Sharpe* v. *Blake*, 1889, 23 Q.B.D. 324. If, then, it were held that income-tax had to be deducted by the city in case of short loans to it, and not by the banks in the case of short loans to them, the city would be prejudiced as borrowers on short loan compared with banks. Section 24 of the Act of 1888 did not make a radical change in the income-tax law, but was to be construed *in pari materia* with, and as complementary to, the earlier enactments—*per* Lord Macnaghten and Lord Davey in *The London County Council* v. *Attorney General* [1901], A.C. 26. On this principle the words in section 24 of the Act of 1888—"any interest of money"—must be read as being limited to any yearly interest. The contention of the pursuer if upheld would cause grave practical inconvenience, *e.g.*, in the case of loans from banks, and in other cases it might even cause hardship, in respect that it might involve the payment of income-tax twice over by some of the receivers of interest.

Counsel for the respondent were not called upon.

LORD M'LAREN—This case raises a question as to the application of the provisions of the 24th section of the Customs and Inland Revenue Act of 1888 to the collection of income-tax upon interest of money borrowed on debenture or personal obligation. I do not know that the precise nature of the obligation is of consequence, but the question is as to the collection of income-tax from the interest of money borrowed on personal security for a period less than a year. It is conceded, and necessarily conceded, that under the Income-Tax Acts, and particularly under the Act of 1853, where money was received as interest on a loan, whether secured or unsecured, if it was a yearly contract, then income-tax was payable and had to be deducted by the debtor, and then of course the debtor was liable to account to the Crown. But a difficulty existed as to the collection of income-tax for interest accruing upon a loan for less than a year. In regard to loans by bankers, it is stated on record, and is mentioned by the Lord Ordinary in his note, that the practice has been to treat profits made by bankers upon short loans as part of the profits of their profession or trade, the duty being payable upon the aggregate of all the profits of the year. In the case of municipal corporations and others who do not carry on banking business, but borrow money on personal security for three months or six months, or whatever time the creditor may be willing to lend it, the income-tax might be recovered either by going direct to the creditor and finding out from him what interest he has been in receipt of, or by going to the corporation who is the debtor in the obligation, and obtaining payment from him if the Acts of Parliament enable the department to collect the tax in this way. We had occasion to consider the effect of these provisions of the Income-Tax Acts in the case of *Lord Dalrymple*, February 4, 1902, 4 F. 545, 39 S.L.R. 348, where the parties at issue were the debtor and the creditor in the obligation, and the construction of the statutes must be the same whether the question is raised between private individuals subject to the liability of one of them to account to the Crown, or whether the question is raised directly between the Board of Inland Revenue and the party who the Board say is liable to collect for them. Now, as was pointed out in that case—and it is also the subject of observation by the Lord Ordinary in this case—it has been the policy of the Revenue Department to collect income-tax so far as possible at the source of payment. When the Act of 1888 was before Parliament opportunity was taken (section 24) to alter the phraseology of the enactments regarding collection of income-tax by way of deduction, and instead of the words being repeated, "yearly interest of money or any annuity or annual payment,' the provision is perfectly general, that the duty on all interest of money is to be collected by the debtor retaining the duty in order to account to the Crown. If it were possible to show that this was a mere variation of phraseology, and that it was not intended to make any debtor liable to collect income-tax who was not already liable, I might sympathise with the argument while still feeling a difficulty in getting over the words of the statute. But I see no reason to believe that this variation of language between the Act of 1853 and the Act of 1888 was not intentional. On the contrary, comparing the two clauses, I think there is a sharp distinction between the reference to annual or yearly income in the one case, and to all interest of money in the other case. I think when Parliament in a Revenue Act requires the deduction of income-tax upon all interest of money, we must take it that it was intended to make an alteration in the incidence of the tax for the purposes of collection, and that the provision of the statute must receive effect according to its terms. It is conceded that the interest due for less than a year is subject to income-tax. We have not the party here who would be interested in maintaining the contrary, but we have to consider that point, and it was not suggested there was any ambiguity or doubt about it. There is an express decision to the effect that income-tax for less than a year is chargeable. The only question then is, how is it to be recovered? The interest of the Board of Inland Revenue is to recover the money at its source, because they get it from a person

who can gain nothing by withholding it, and generally if it be a corporation or a company they get it from a body whose books are kept by a person who is independent of the taxpayer. That is the interest of the Crown to enforce the 24th section, but, interest or no interest to enforce it, I think it is clear on the face of the statute that this is the proper way of recovering income-tax upon loans for less than a year.

LORD ADAM—As I understand, the Corporation of the City of Edinburgh are in use to borrow money from individuals and to grant debenture bonds and other documents of debt for money so borrowed. These sums are payable, as I understand, at various periods—some at three months and some at six, some longer, some shorter, and in many cases they are not what you would call yearly loans, that is to say, current for a year and payable at the end of that year. The question is, whether, in paying the interest due upon such obligations, the city are bound under the Act of 1888 to retain, as agents for the income tax authorities, upon the sums of interest due upon these obligations, the income-tax effeiring to such sums. That is the question, and the reason assigned by the city for maintaining that they are not so bound is that section 24 of the Act of 1888 applies not to such payments but to payment of interest from year to year. Now, I may notice, with reference to the conclusions of the summons, that a word is used there which the Lord Ordinary has not repeated in his decree. What the Corporation are asked to do is to render to the Commissioners of Inland Revenue an account of the sums retainable by them in respect of income tax during the period mentioned upon their payment of interest of moneys borrowed by them on temporary loans. Now, I suppose all loans, whether payable from year to year or not, are temporary loans, but it is clear what is meant, and there is no dispute about it, namely, as his Lordship explains, loans upon promissory-note or simple acknowledgment, and in giving effect to the conclusion of the summons the Lord Ordinary has given decree in terms which include all such temporary loans, because he has just repeated the words of the Act of Parliament. I think, and have always thought from first to last, that this 24th section of the Act of 1888 is quite clear, because it says that "upon payment of any interest of money or annuities charged with income tax under Schedule D" the Corporation shall deduct the rate of income tax in force at the time of such payment and shall render to the Commissioners of Inland Revenue an account of the amount so deducted. Now nothing can be plainer than that, because there is an express direction that the debtors who pay the money are to retain the income tax and pay it over to the Commissioners, and it is the income tax due upon the payment of "any" interest. On the face of the words of the Act I think nothing can be clearer. The duty imposed upon the debtor is to retain it as the hand or agent of the Crown and to pay it over. This raises no question about making people liable to pay income tax who were not liable before. It is a mere question of collection, and the difference is this, that if this income tax is deducted and paid to the Crown in respect of a person who is not liable for income tax, he just applies and gets it back. That is his right; but if it is paid in respect of a person who is liable for income tax he has no need to apply, because he only pays income tax on sums on which income tax has not been already levied, and it is a question of no importance in my view, but just a question of the mode of collection. But then what Mr Cooper argued was this, that section 24 of the Act of 1888 is an amending Act, and if you look back particularly to the 40th section of the Act of 1853 and the earlier Acts they only apply to yearly sums, and that when you read this 1888 section in connection with these prior Acts all it does is this, that while by section 40 of the 1853 Act debtors paying interest were entitled under certain circumstances to retain income tax, the only effect of this 24th section is to make it compulsory upon them to do it and hand the money over. But so far as the words go that is not the only difference, because it has not only made compulsory what formerly was permissive, but it has extended the area, because it says any interest whatever of any kind, and for my part I do not see any impropriety in that. If it was an advantage to recover yearly sums liable for income tax, equally was it an advantage that sums paid from time to time for shorter periods should be collected by the debtor and paid over to the Commissioners in the same way as yearly sums were paid over. It is a mere matter of collection. Upon these grounds, which are just the grounds that the Lord Ordinary and Lord M'Laren have put, I think the interlocutor is right and ought to be affirmed.

The LORD PRESIDENT and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer and Respondent —Dundas, K.C—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers —Guthrie, K.C.—Clyde, K.C. — Cooper Agent—Thomas Hunter, W.S.