A COURT OF SESSION (FIRST DIVISION OF THE INNER HOUSE)—7 AND 16 JUNE 1995

B

Commissioners of Inland Revenue *v.* Quigley(1)

C *Income Tax—Schedule E—Benefits in kind—Employee earning in excess of £8,500 per annum—Reductions permitted in computing cash equivalent—Car insurance payments—Income and Corporation Taxes Act* 1988, *s* 157(5)*(b) and Sch* 6, *Part II, para* 4.

D Q was employed by the Forestry Commission (F) earning in excess of £8,500 per annum. In June 1989 F and Q entered into an agreement, in terms of which F provided Q with a motor car primarily for the purposes of Q's official duties but which Q was permitted to use for private purposes. The agreement provided that Q was to be responsible for arranging and financing the insurance of the vehicle for private and business use although F made a contribution towards the cost of insurance in respect of each mile travelled on official business. Q was assessed to income tax in respect of car benefits by an E additional assessment for the year 1989–90 and as part of his assessment for the year 1990–91. It was agreed that the cash equivalent derived from Income and Corporation Taxes Act 1988 ("ICTA") Sch 6, Part 1, Table A fell to be reduced to take account of direct payments made by Q to F for private use in terms of ICTA Sch 6, Part II, para 4. The Inspector refused to allow further reductions claimed by Q, including reductions in respect of payments made F by Q to insure the car. Q successfully appealed to the General Commissioners who, in terms of ICTA Sch 6, Part II, para 4 allowed further reductions of £187 for 1989–90 and £225 for 1990–91 from the cash equivalent in respect of payments to insure the car since insurance was a necessary prerequisite of day-to-day use of the car and it was a condition of the car being available for private use that Q insure it.

G

The Crown appealed and contended that the expression "for that use" in ICTA Sch 6, Part II, para 4 should be construed according to its ordinary meaning, namely, in return for that use or as the price for that use and that to be a condition of that use was not sufficient to entitle Q to a reduction of H the cash equivalent.

Held, in the First Division of the Inner House of the Court of Session, allowing the appeal, that the words "for that use" in ICTA Sch 6, Part II, para 4 meant for the private use of the car and not for some other purpose. I The reductions claimed were in respect of, or in exchange for, the insurance of the vehicle, not for the use of it and even although they represented payments made as a condition of use of the car they were not allowable reductions in computing the cash equivalent.

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(1) Reported [1995] STC 931.

CASE

Stated for the opinion of the Court of Session as the Court of Exchequer in Scotland under the Taxes Management Act 1970, s 56 by the Commissioners for the General Purposes of the Income Tax for the Division of Edinburgh North.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of Edinburgh North ("the Commissioners") held at Edinburgh on 18 October 1993 for the purpose of hearing appeals, Stephen Eugene Quigley ("the Respondent") appealed against an additional assessment to income tax under Sch E for the year 1989–90 in the sum of £1,178 and an assessment to income tax under Sch E for the year 1990–91 in the sum of £39,159.

2. The said assessments included a taxable benefit assessable under s 157 of the Income and Corporation Taxes Act 1988 ("ICTA") in respect that a motor car was made available to the Respondent by his employers which was available for his private use. The question for the Commissioners to determine was whether particular types of payment said to have been made by the Respondent in respect of the said motor car came within Sch 6 Part II para 4 of ICTA and thereby reduced the taxable benefit assessable under s 157.

3. At the hearing, the Respondent appeared in person and the Commissioners of Inland Revenue were represented by Mr. W. McLean, H.M. Inspector of Taxes, Public Department (2), Cardiff. A statement of agreed facts was lodged with the Commissioners. There was no oral evidence.

4. The following documents were admitted before us[1].

(A) Forestry Commission joint user car scheme agreement dated 13 June 1989.

(B) Memorandum relating to car leasing scheme dated 24 February 1989.

(C) Northern Ireland Civil Service Contract Hire Scheme dated 10 April 1991.

(D) Memorandum by the director of personnel, Forestry Commission to the Respondent dated 15 October 1993.

The documents at (A) and (B) above are annexed to and form part of this case[1]. The documents at (C) and (D) above are available for inspection by the Court if required.

5. The following facts were admitted between the parties.

(1) The Respondent is employed by the Forestry Commission at 231 Corstorphine Road, Edinburgh.

(2) On 13 June 1989 the Forestry Commission and the Respondent signed an agreement under the Forestry Commission Joint User Car Scheme. (Document A)

[1] Not included in the present print.

A (3) Under clause 2 of the agreement, the Forestry Commission agreed to make a car available to the Respondent. A car had in fact already been delivered to him on 7 June 1989.

(4) Under clause 5 of the agreement the Respondent agreed that "contract user payments" of £112.43 be deducted from his salary each month, the B date of the first payment being 30 June 1989. These payments were subsequently increased to £114.87 following an increase in the rate of value added tax.

(5) In terms of clause 7 of the agreement, the Respondent was liable "... for the cost of any repairs to the vehicle necessitated by damage occasioned C by or arising from fault or negligence on the part of the User".

(6) When the vehicle was not required for the Respondent's official duties clause 12 of the agreement allowed him and his immediate family to use it privately.

D

(7) Clause 20 of the agreement required the Respondent to arrange and finance the insurance of the vehicle for private and business use. He did this at a cost of £187 for the period from June 1989 to 31 March 1990 and £225 for the year ended 31 March 1991.

E (8) Under the provisions of clause 16 the Respondent received contributions from the Forestry Commission towards the cost of insurance totalling £91 in the tax year 1989–90 and £62 in the year 1990–91.

(9) In terms of clause 3 of Sch 2 to the agreement the Forestry Commission was entitled to charge the Respondent 4.83*p* for each private F mile travelled over the agreed private mileage allowance of 10,000 miles per annum.

(10) Clause 4 of Sch 2 to the agreement provided for the user's payments to be increased *pro rata* as the forecast official mileage decreased.

G (11) A memorandum issued by the Forestry Commission in February 1989 (Document B) stated that "Employees will pay a weekly/monthly charge for the private use of the leased car which will be deducted at source from their wage or salary" (para 11) and "In addition to the hire charge for private use employees will be responsible for insuring the vehicle". (para 15).

H (12) Subject to any allowable deductions the benefit of the car which was chargeable to tax on the Respondent was £1,387 for 1989–90 and £2,200 for 1990–91. These sums fell to be reduced by the contract user payments made by the Respondent, totalling £1,034 for 1989–90 and £1,379 for 1990–91 since these payments come within the terms of Sch 6 Part II para 4 of ICTA.

I

6. The Respondent contended that, in addition to the direct payment to the Forestry Commission, he had to pay the following:—

(a) cost of insuring the car;

(b) any cost to repairing damage or loss not covered by insurance;

(c) cost of cleaning the car; and

(d) cost of minor outlays associated with maintenance of the car e.g. oil.

and he submitted that the foregoing represented amounts of money which he was required to pay as a condition of the car being available for private use and that these payments came within Sch 6 Part II para 4 of ICTA and that the taxable benefit chargeable under s 157 of ICTA fell to be reduced accordingly.

7. It was contended on behalf of the Commissioners of Inland Revenue:—

(a) that para 4 of Part II of Sch 6 to ICTA fell to be construed literally so that the only type of payment which came within it was one required to be made by an employee specifically for the private use of a car and as a condition of the car being made available for such use;

(b) that payments made by an employee for something other than private use as e.g. for insurance, repairs, cleaning or maintenance accordingly did not come within para 4. Whether any such payments made by the Respondent could be deducted from his emoluments fell to be determined by reference to s 198 of ICTA;

(c) that the appeals should be dismissed.

8. The following authorities were cited before us:—*Tennant* v. *Smith* 3 TC 158(1); *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue* 12 TC 358(2); *Kliman* v. *Winckworth* 17 TC 569.

9. We, the Commissioners who heard the appeal, on consideration of the facts as established and the submissions of the parties, expressed our opinion in the following terms:—

(1) In accordance with clause 2 of the agreement, the Forestry Commission agreed to make a car available to the Respondent for his private use.

(2) As a condition of that agreement, the Respondent was responsible for arranging and financing the insurance of the vehicle for private and business use.

(3) The insurance of the car was a necessary prerequisite for the day-to-day use of the car and it was, accordingly, a condition of the car being available for private use that the Respondent was required to pay for the insurance of the vehicle.

(4) There was no evidence that the Respondent incurred any specific cost during the year of assessment in respect of repairs or other loss not covered by insurance, cleaning or maintenance and, in any event, the Commissioners were not directed to any provision in the agreement or otherwise which might demonstrate that the Respondent was required to pay such sums as a specific condition of the car being available for his private use.

(1) (1892) AC 150. (2) [1921] 1 KB 64.

10. We found that the payments made by the Respondent for insurance were payments giving an entitlement to deduction under Sch 6 Part II para 4 of ICTA but that the other expenditure referred to by the Respondent did not give an entitlement to such deduction.

11. We remitted to the parties to agree the amounts in which the assessments under appeal ought to be determined on the basis of this finding.

12. In due course, agreement was reached that the benefits chargeable under s 157 of ICTA on the basis of the Commissioners' decision be calculated as follows:

			1989–90		1990–91
Car benefit charge s 157			1,387		2,200
less para 4 Sch 6	(a)	1,034		1,379	
	(b)	187	1,221	225	1,604
			166		596

(a) "contract user" payments.
(b) insurance.

In accordance with that agreement, we determined the assessments under appeal as follows:

1989–90	Additional assessment	£166
1990–91	Main assessment	£37,584

13. The Commissioners of Inland Revenue, immediately after the determination of the appeal, declared to us their dissatisfaction therewith as being erroneous in point of law and subsequently required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland. This Case is stated and signed accordingly.

14. The question of law for the opinion of the Court is whether on the facts found we were entitled to hold that the benefit chargeable on the Respondent under s 157 of ICTA fell to be reduced under Sch 6, Part II, para 4 of ICTA by the amounts paid by the Respondent for insurance.

16 November 1994

The case came before the First Division of the Inner House of the Court of Session (the Lord President (Lord Hope), Lord Clyde and Lord Allanbridge) on 7 June 1995 when judgment was reserved. On 16 June 1995 judgment was given unanimously in favour of the Crown, with expenses by prior agreement to be paid by the Crown.

P. S. Hodge for the Crown.

C. J. Tyre for the taxpayer.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*Shannon Realties Ltd.* v. *Ville de St. Michel* [1924] AC 185; *Ross & Coulter* v. *Commissioners of Inland Revenue* 1948 SC (HL) 1;

Glenrothes Development Corporation v. *Commissioners of Inland Revenue* 1994 SLT 1310.

The Lord President (Lord Hope):—This Case has been stated by the General Commissioners under the Taxes Acts for the opinion of this Court under s 56 of the Taxes Management Act 1970. The Respondent had appealed against an additional assessment to income tax under Sch E for the year 1989–90 and an assessment to income tax under Sch E for the year 1990–91. These assessments included a taxable benefit assessable under s 157 of the Income and Corporation Taxes Act 1988 in respect that a motor car had been made available to the Respondent by his employer, the Forestry Commission, for his private use. It was admitted that, subject to any allowable deductions, the benefit of the car which was chargeable to tax on the Respondent was £1,387 for 1989–90 and £2,200 for 1990–91. It was also admitted that these sums fell to be reduced by the payments made by the Respondent to the Forestry Commission, referred to in his agreement with them as "contract user payments", totalling £1,034 for 1989–90 and £1,379 for 1990–91. The Respondent contended that, in addition to these payments, he had to pay various other costs including the cost of insuring the car, which represented amounts of money which he was required to pay as a condition of the car being available to him for his private use. His argument was that these payments came within para 4 of Part II of Sch 6 to the Income and Corporation Taxes Act 1988 and that the taxable benefit chargeable under s 157 of that Act fell to be reduced accordingly.

The Commissioners held that the payments made by the Respondent for insurance were payments which fell within para 4 of Part II of Sch 6 of the Act and that he was entitled to a deduction from the taxable benefit under s 157 in respect of this expenditure. They held that the other items of expenditure referred to by the Respondent did not give him an entitlement to such a deduction. The Respondent has not sought to challenge the Commissioners' decision in respect of those other items of expenditure. But the Commissioners of Inland Revenue expressed dissatisfaction with the Commissioners' decision with regard to the insurance payments as being erroneous in point of law. The question of law which the Commissioners have now stated for the opinion of the Court is whether on the facts they were entitled to hold that the benefit chargeable on the Respondent under s 157 of the 1988 Act fell to be reduced under Sch 6, Part II, para 4 of that Act by the amounts paid by the Respondent for insurance.

Section 157 is one of a number of sections in Chapter II of Part V of the Income and Corporation Taxes Act 1988 dealing with the treatment of benefits in kind as emoluments of the person's employment and thus chargeable to income tax under Sch E. It deals with the treatment for this purpose of cars which are made available to the employee for his private use. Subsection (1) is in these terms:

> "Where in any year in the case of a person employed in [employment to which this Chapter applies], a car is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—

A (*a*) it is so made available by reason of his employment and it is in that year available for his or their private use; and

(*b*) the benefit of the car is not (apart from this section) chargeable to tax as the employee's income,

B there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year."

Subsection (2) provides that the cash equivalent of that benefit is to be ascertained with reference to Tables A, B and C in Part I of Sch 6. These C tables set out the flat rate cash equivalent of the benefit of the use of the car, which varies according to the original market value of the car and its age at the end of the relevant year of assessment. Subsection (3) excludes from the charge to tax various benefits to the employee including any payment made to him in respect of expenses incurred by him in connection with the car. Subsection (5) provides that Part II of Sch 6 has effect—

D "(*b*) for the reduction of the cash equivalent under this section in cases where the car has not been available for the whole of the relevant year, or the use of it has been preponderantly business use, or the employee makes any payment for the use of it."

E Paragraph 4 of Part II of Sch 6 is in these terms:

"If in the relevant year the employee was required, as a condition or the car being available for his private use to pay any amount of money (whether by way of deduction from his emoluments or otherwise) for that use, the cash equivalent—

F (*a*) is to be reduced (or, if already reduced under the foregoing paragraphs, further reduced) by the amount so paid by the employee in or in respect of the year; or

(*b*) if that amount exceeds the equivalent shown in the applicable Table in Part I of this Schedule, is nil."

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The car was provided to the Respondent by the Forestry Commission under an agreement called the Forestry Commission Joint User Car Scheme Agreement. Clause 2 of that agreement stated that the Respondent, who is referred to as the "User", was in the employment of the Forestry Commission and required the use of a car in connection with his official H duties, that he had requested the Forestry Commission to make a car available to him under the scheme and that the Forestry Commission had agreed to this request. Clause 5 made provision for "contract user payments", the amount of which was said to include " ... accessories fitted by Manufacturer and not paid fully at the outset of the Agreement, full servicing, repairs and maintenance, vehicle excise duty and RAC breakdown rescue and recovery I service". Clause 16 provided that the Forestry Commission was to make a contribution towards the cost of insurance in respect of each mile travelled on official business of the Forestry Commission at the rate laid down in Sch 2 to the agreement. In terms of para 2 of Sch 2 the Forestry Commission undertook to make a contribution towards the cost of insurance in the sum of 1.5*p* for each mile travelled by the vehicle on official business, the amount of that contribution to be reviewed annually on 1 April and to be increased

in line with any rise with the retail price index which had taken place over the previous year. Clause 20 of the agreement was in these terms:

> "The User shall be responsible for arranging and financing the insurance of the vehicle for private and business use in accordance with the requirements detailed in Schedule 1 to this Agreement. The User shall not permit anything which may make void or voidable this insurance cover."

Paragraph 2 of Sch 1 stated that the user was responsible for arranging and financing full comprehensive insurance of the vehicle and ensuring that various matters listed in that paragraph were provided for in the policy.

The effect of these provisions was that the insurance of the car was to be the responsibility of the Respondent and not that of the Forestry Commission. The cost of insuring the car was to be borne by the Respondent, but he was to be entitled to a contribution towards this cost in respect of every mile travelled by the car on official business which, in terms of s 157(3)(c), was not taxable. The question is whether the net cost to the Respondent of this insurance fell to be deducted, in addition to the amount of the contract user payments, from the flat rate cash equivalent in arriving at the amount of the benefit chargeable to tax under s 157(1).

The Commissioners held that the Respondent was responsible, as a condition of the agreement, for arranging and financing the insurance of the vehicle for private and business use. There is no dispute between the parties on this point. Clearly, in view of the terms of clause 20 of the agreement and of para 2 of Sch 1, it was a condition of the agreement that the Respondent should arrange for and finance the insurance of the vehicle. The Commissioners also held, in para 9(3) of the Case, that insurance of the car was a necessary prerequisite for the day-to-day use of it, and that it was, accordingly, a condition of the car being available for private use that the Respondent was required to pay for the insurance of the vehicle. It is that part of their reasoning which is under challenge in this appeal.

The benefit chargeable under s 157 is excluded from the general charging provision in s 154 for benefits in kind by subs (2)(b) of that section. Section 155(1) provides that, where the benefit of a car is taxable under s 157, s 154 does not apply to any benefit in connection with the car other than the benefit in connection with the provision of a driver for the car. Section 157 and Sch 6 are to be seen as providing a set of rules for the taxation of the benefit of a car for private use which stands apart from the other rules by which benefits in kind are treated as taxable. So the answer to the question raised in this case must be found by examining the words used in the section and in para 4 of the Schedule. We were invited to construe these words according to their ordinary meaning, and Mr. Tyre, for the Respondent, submitted that we should resolve any ambiguity in favour of the taxpayer.

The system which has been provided for the taxation of this category of benefit in any year is to treat the cash equivalent of the benefit as the emoluments which are chargeable to income tax. But it also allows for the cash equivalent of the benefit to be reduced in certain circumstances. These are the circumstances which are mentioned in subs (5)(b) of s 157, and in the supplementary provisions which are set out in Part II of the Schedule. The circumstance with which we are concerned in this case for the reduction of the cash equivalent of the benefit of the car for private use is described in

A subs (5)(b) as being where " ... the employee makes any payment for the use of it". As a matter of first impression, one would expect the principle of taking like with like to operate in this context. On the one hand, the cash equivalent is a measure of the benefit of the use of the car by the employee for his private use. On the other hand, the reduction is to be measured by any payment which he makes for the use of it. The cost of the insurance would seem B to have no part to play in this formula. If the employee bears the cost of the insurance, one would expect this to be treated as a separate item, namely as an expense incurred by him in connection with the car. Section 157(3)(c) provides that any payments made by the employer in respect of expenses incurred by the employee in connection with the car are not to be taxable. So if the employer chooses, as the Forestry Commission has done in this case, to C make a contribution towards the cost of insuring the car in respect of its use also for business purposes, the employee is entitled to receive the full benefit of that contribution without any deduction for income tax. It would seem logical, in these circumstances, to leave the net cost of insuring the vehicle for private use entirely out of account for tax purposes.

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But in *Tennant* v. *Smith*[1] (1892) 19R (HL) 1, at page 3, Lord Halsbury L.C. said that, in a Taxing Act, it was impossible to assume any intention, or any governing purpose, to do more than take such tax as the statute imposes. As he put it, " ... you must see whether a tax is expressly imposed". Rowlatt J. was making the same point when he said in *Cape Brandy Syndicate* v. E *Commissioners of Inland Revenue*[2] 12 TC 358, at page 366, that in matters of taxation you have to look simply at what is clearly said in the Taxing Act, as there is no room for any intendment and there is no equity about a tax. The answer to the question in this case must depend, therefore, upon an examination of the words used in para 4 of Sch 6. That is the provision to which one is required to look by s 157(5) to identify the amount of the reduc- F tion from the cash equivalent.

A reduction is available under para 4 only "If in the relevant year the employee was required, as a condition of the car being available for his private use, to pay any amount of money ... for that use ... ". If he was so G required, the amount so paid is the measure of the reduction from the cash equivalent. It is the words "for that use" which lie at the heart of the argument. For the Revenue, Mr. Hodge submitted that, if full weight was given to these words according to their ordinary meaning, their effect was to confine the reduction to amounts paid by the employee in return for, or as the price for, the use of the car for his private use. The fact that the amount was H paid as a condition of the car being available for his private use was not enough. Both tests required to be satisfied. For the Respondent, Mr. Tyre submitted that the Revenue's approach involved reading into the provision words which were not there. He said that there was a single test, which was whether the payment was made as a condition of the car being available for the employee's private use. The words "for that use" did not limit the I amount to money paid by him for the use of the car. So long as the money was paid as a condition of the car being available for his private use, it was an amount which was paid "for" that use. The obligation on the Respondent in this case to arrange and finance the insurance of the vehicle was clearly set out in the agreement. That was enough to bring the amounts paid by the Respondent for the insurance into account by way of reduction.

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(1) 3 TC 158. (2) [1921] 1 KB 64.

I think that it is clear from its wording that para 4 permits only those payments which are made for the private use of the car to be brought into account for this purpose. These payments must be made as a condition of the car being available for the employee's private use, otherwise they do not qualify. But it is not all payments which are made as a condition of the car being available for his private use that can be claimed by way of reduction from the cash equivalent. They must be amounts paid "for that use". In this context the word "for" simply means "in respect of" or "in exchange for". Its effect is that the use of the car for private use and the payment by the employee for this benefit are counterparts one for the other. I do not see this approach as reading into the statute words which are not there. It does no more than give the word "for" its ordinary meaning according to the context in which it is used.

As I understand this paragraph, there are two tests which must be satisfied. The payments must be payments which the employee is required to make as a condition of the car being available for his private use. Voluntary payments by him for whatever purpose cannot be brought into account. Then the payments must also be made by the employee for the use of the car for his private use. Payments made by him for some other purpose, or to entitle him to some other benefit, must also be left out of account. So far as the cost of the insurance in the present case is concerned, it is clear that the Respondent was required to pay for this by his agreement with the Forestry Commission. So these payments do not fall out of account as having been made voluntarily. On that point there is no difficulty. But they were made in respect of, or in exchange for, the insurance of the vehicle, not for the use of it. That insurance was, as the Commissioners have held, a necessary prerequisite for the day-to-day use of the car, for both private and business use. Thus the payments which the Respondent made for the insurance were made for a different purpose than for the private use of the vehicle. In my opinion, the Respondent was not entitled, on these facts, to bring the payments which he made for the insurance into account by way of reduction of the cash equivalent of the benefit of the car for his private use.

For these reasons, I would allow this appeal and answer the question of law in the negative.

Lord Clyde:—The Respondent in this case is employed by the Forestry Commission. Under an agreement entered into between the Respondent and his employers, a car has been made available to him which he can use both for official purposes and for his private use. Under the agreement the Respondent is made responsible for arranging and financing the insurance of the car for private and business use. Under s 157 of the Income and Corporation Taxes Act 1988 the cash equivalent of the benefit which the Respondent enjoys through the availability of the car for private use is taxable as an emolument of his employment. The question raised in this case is whether the sum paid for the insurance of the car should be applied under para 4 of Sch 6 of the Act to reduce the cash equivalent of the benefit of the availability of the car.

The Commissioners have held that payments made by the Respondent for insurance were payments giving an entitlement to such a deduction. The reason for their so holding is set out in para 9(3) of the Case in these terms(1):

(1) Page 538G–H *ante*.

A "The insurance of the car was a necessary prerequisite for the day-to-day use of the car and it was, accordingly, a condition of the car being available for private use that the Respondent was required to pay for the insurance of the vehicle."

In my view, that reasoning does not fit the test set out in para 4 of Sch
B 6. The Commissioners have recognised the general necessity for insuring a motor vehicle before using it lawfully for any purpose on a road. It is from that general necessity that they conclude that it was a condition of the car being available for private use that the Respondent was required to pay for the insurance of the vehicle. But the requirement with which para 4 is concerned is a requirement which arises as a condition of the car being available
C for the Respondent's private use, not simply as a requirement of the lawful use of the vehicle on a road. Moreover, it seems to me that the matter is not one of the availability of the car for him for any use but its availability for his private use. The Commissioners expressed the matter more accurately in para 9(4) of the Case where they refer to the Respondent being required to pay sums(1) " ... as a specific condition of the car being available for his pri-
D vate use", but they have failed to apply that test to the problem of the payments for insurance.

Even if the phrase " ... as a condition of the car being available for his private use" was to be understood as covering a condition under which the car was made available for his use, including his private use, but also includ-
E ing his official use, the requirement remains that he should have paid an amount of money "for that use". That phrase must refer back to "his private use". Accordingly, in order to qualify under the paragraph, the payment must be shown to have been made for his private use of the car. It is accepted that the "contract user payments", payable under clause 5 of the agreement which he made with his employers, constitute such a payment.
F They are evidently accepted as being designed to reflect something at least of the cost to the Respondent of the benefit of the private use of the car. But the obligation to pay for the insurance which is contained in clause 20 of the agreement is expressly related to both private and business use. It cannot then be said that the insurance payment is a payment for the private use of the car. It is a payment for the insurance for both uses of the car.

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The approach adopted by the Respondent before us seems to me not to take adequate account of the phrase "for that use". Counsel suggested that those words were there in order to avoid repeating the earlier phrase about the car being available for the employee's private use. But that involves a misreading of the clear words of the clause. The payment which the clause states that
H the employer was required to make is specifically not one for the availability of the car but rather for the employee's private use of the car. It was recognised by counsel for the Revenue that the payments might not necessarily be payments made to the employer but the express restriction in the application of para 4 to payments made for the private use of the car points to the flaw in the Respondent's argument and in the Commissioners' decision.

I

I find it hard to believe that, under the scheme set out in s 7 and Sch 6 of the Act, the cash equivalent of the benefit of the availability of a car for private use was intended to include the benefit of insurance of the car. If the value of the benefit of the availability of the car has been assessed under Part

(1) Page 538I *ante*.

I of Sch 6, that is the "cash equivalent", without account taken of the benefit of insurance of the car in the hands of any particular employee, then it would be wrong to deduct under para 4 something which is not included in the cash equivalent. Counsel, however, felt unable to develop this line of thought in the absence of any clear indication of the basis of the calculation of the cash equivalent beyond what can be seen in the table contained in Part I of Sch 6 and it may be that this approach is not altogether a safe one to adopt. It does, nevertheless, help to focus attention on the scheme of these statutory provisions which seek to tax the benefit of the availability of a car for private use as part of the employee's emoluments. The valuation of the benefit is provided by a simple and broadly based calculation. The deductions permitted from that in para 4 must be related not to the availability of the car for all uses but, as the paragraph states, to the private use of it. The wider approach suggested by the Respondent gives rise, if not to some uncertainty in the extent of the paragraph, at least to a lack of coherence in the overall scheme. But the matter is one to be determined on the clear terms of the legislation and, on the application of those to the facts in the present case, I agree that the appeal should succeed and the question posed by the Commissioners in the Case should be answered in the negative.

Lord Allanbridge:—I agree that, for the reasons given in the opinion of your Lordship in the chair, this appeal should be allowed and the question in the case answered in the negative.

Appeal allowed, with expenses by prior agreement to be paid by the Crown.

[Solicitors:—Solicitor of Inland Revenue (Scotland);
Messrs. W. & J. Burness, WS.]