No. 491.—COURT OF SESSION (SCOTLAND), SECOND DIVISION.—
16TH, 17TH AND 27TH OCTOBER, 1923.

HOUSE OF LORDS.—28TH AND 31ST MARCH, 1924.

LORD INVERCLYDE'S TRUSTEES *v.* MILLAR (H.M. INSPECTOR OF TAXES).[1]

Income Tax (*Schedule D, Case* III)—*Deduction—Interest on unpaid Estate Duty—Finance Act*, 1896 (59 & 60 *Vict., c.* 28), *Section* 18 (1)—*Income Tax Act*, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 209, *Schedule D, Case* III, *Rule* 2, *and Rule* 19 *of the General Rules.*

---

[1] Reported Ct. Sess., 1924 S.C. 14, and H.L., [1924] A.C. 580.

In accordance with Section 18 (1) *of the Finance Act*, 1896, *the Trustees paid to the Crown certain sums of interest on unpaid Estate Duty without deduction of Income Tax.*

Held, *that, for the purposes of assessment to Income Tax under Case* III *of Schedule D in respect of untaxed interest received by the Trustees, they were not entitled to any deduction therefrom in respect of the interest on Estate Duty paid by them.*

CASE.

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the Inhabited House Duties for the Division of the City of Glasgow, in the County of Lanark, held at Glasgow on the 5th February, 1923, the trustees of the late Right Honourable James Cleland, third Baron Inverclyde of Castle Wemyss (hereinafter referred as "the Appellants,") appealed against an additional assessment to Income Tax for the year to 5th April, 1922, made under Schedule D, Case III, of the Income Tax Acts, 1918, on the sum of £21,847.

I. The following facts were admitted or proved:—

(1) The assessment was based on the Appellants' own figures, viz., £72,231, being the amount received as untaxed interest during the year to 5th April, 1921.

(2) From this sum the Appellants deducted £21,847 as interest paid on Estate Duty, and returned the balance of £50,384, which was assessed by first assessment for the year to 5th April, 1922. The balance of £21,847 was assessed by additional assessment for the same year.

(3) This additional assessment formed the subject of appeal.

II. Mr. Alex. Moncrieff, K.C., on behalf of the Appellants contended:—

(1) That the said sum of £21,847 of interest on Estate Duty included Income Tax at the rate current in the year of payment, which tax, by the terms of Sub-section (1) of Section 18 of the Finance Act, 1896, the Appellants were prohibited from deducting at the time of payment, and that, accordingly, in bringing into computation for purposes of assessment to Income Tax their untaxed interest from investments, the Appellants were entitled to take credit for the amount of Income Tax included in the said payment.

(2) That, upon the assumption that Income Tax was not included in the said payment of interest, the said sum of interest was truly income of the Crown and therefore not subject to tax, although paid through the hands of the Appellants, and that, upon a sound construction of the provisions of the Income Tax Act, 1918, the Appellants were accordingly entitled to have excluded from the income of the trust

brought into assessment to Income Tax under Case III of Schedule D a sum equal to the sum of interest so paid by them ;

(3) That in particular, upon a consideration of the terms of Section 1 (*a*) and (*b*) of Schedule D of the Act of 1918, Rule 1 of the Miscellaneous Rules applicable to the said Schedule, Rules 19 and 21 of the General Rules applicable to all the Schedules and Section 209 of the said Act, it is clear that the policy of the Act was to tax only the ultimate recipient of income brought into charge and not specially exempted ; and that no person is liable to account for, or to be assessed, to Income Tax upon income passing through his hands and paid to third parties, unless he is bound, on making such payment, to deduct Income Tax for purposes of collection, or entitled to make such a deduction for his own reimbursement. That in any event such liability does not attach to a taxpayer in so far as he acts merely as collector of the income of the Crown ;

(4) That the fact that payment in the present instance was made to the Crown who was exempt from Income Tax did not warrant the Inspector of Taxes in refusing to the Appellants that relief that would have been available to them had payment been made to a subject ; and

(5) That to refuse the deduction claimed by the Appellants was, in effect, to charge them with Income Tax upon the revenue of the Crown.

III. Mr. J. W. Millar, H.M. Inspector of Taxes, on behalf of the Crown, contended :—

(1) That the full £72,231 of interest received is clearly subject to charge under Rule 2 of Case III, Schedule D of the Income Tax Act, 1918, which provides that " the tax " shall be computed in each case on the full amount arising " . . . " and shall be paid on the actual amount as " aforesaid without any deduction " ;

(2) That Section 209 of the Income Tax Act, 1918, precludes any deduction in respect of interest on Estate Duty ;

(3) That Rule 19 of the General Rules applicable to Schedules A, B, C, D, and E of the Income Tax Act, 1918, provides that the whole of the profits and gains of a person liable to pay interest are to be assessed on that person without deduction in respect of the interest paid ;

(4) That the only interests in respect of which deductions are allowed by the Income Tax Acts are those mentioned in Section 36 of the Income Tax Act of 1918, viz., interest payable to banks, discount houses, and persons carrying on business as members of a Stock Exchange in the United Kingdom ; and

(5) That if it was intended that interest paid on overdue Estate Duty was to be allowed as a deduction in computing assessable income it would have been specially excepted from the provisions of Rule 2, Case III, Schedule D, Section 209, or Rule 19 of the General Rules applicable to all the Schedules, or would have been specifically provided for under Section 36 of the Income Tax Act, 1918, or some similar section, and that as it was not so specially provided for it cannot be admitted as a deduction.

IV. After considering the whole of the facts and arguments the Commissioners refused the appeal and confirmed the assessment.

V. Whereupon Mr. Moncrieff, on behalf of the Appellants, declared his dissatisfaction with the Commissioners' determination as being erroneous in point of law, and having duly required the Commissioners 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.

VI. The question of law for the opinion of the Court is whether for the purpose of assessment under Schedule D (Case III) of the Income Tax Act, 1918, the Appellants are entitled to deduct from the £72,231, being interest received for the year ending 5th April, 1921, the sum of £21,847 of interest paid on Estate Duty for the same period.

CHAS. J. CLELAND,
A. M'INNES SHAW,
} Commissioners.

Glasgow, Fifth day of July, 1923.

The case came before the Second Division of the Court of Session (the Lord Justice Clerk, and Lords Ormidale, Hunter and Anderson) on the 16th and 17th October, 1923, when judgment was reserved. Mr. Moncrieff, K.C., and Mr. Keith appeared as Counsel for the Appellants, and the Lord Advocate (Rt. Hon. William Watson, K.C.) and Mr. Skelton as Counsel for the Respondent.

Judgment was delivered on the 27th October, 1923, unanimously in favour of the Respondent, with expenses.

I. INTERLOCUTOR.

Edinburgh, 27th October, 1923. The Lords having considered the Case stated and heard Counsel for the parties Answer the question stated in the Case in the negative, Dismiss the Appeal, Affirm the determination of the Commissioners and Decern; Find the Appellants liable to the Respondent in expenses in the appeal to this Court, Allow an account to be lodged and Remit the same when lodged to the Auditor to tax and to report.

(Signed) ROBERT MUNRO,
I.P.D.

II. OPINIONS.

The Lord Justice Clerk (Alness).—The Trustees of the late Lord Inverclyde appealed to the Commissioners for the General Purposes of the Income Tax Acts in Glasgow against an additional assessment to Income Tax for the year to 5th April, 1922, which was made upon them by the Crown under Schedule D, Case III, of the Income Tax Act, 1918 (8 & 9 Geo. V, c. 40). The Commissioners refused the appeal, whereupon the Trustees' Counsel required them to state a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland. This was duly done, and Counsel have been heard upon the Case so stated.

The facts which give rise to the controversy between the parties are few and simple. They are these :—On the death of Lord Inverclyde, Estate Duty became payable to the Crown by his Trustees. Upon this Estate Duty, which remained unpaid interest also became due. During the year to 5th April, 1921, the Appellants received, as untaxed interest on Government securities, the sum of £72,231. Instead of paying Income Tax on this sum, the Appellants deducted £21,847 as interest which they had paid upon the Estate Duty due by them, and returned the balance of £50,384 as liable to assessment for Income Tax. That sum was duly assessed for the year to 5th April, 1922. An additional assessment, moreover, was imposed by the Crown on the balance of £21,847 for the same year, and that additional assessment gives rise to the appeal which was taken by the Trustees, first to the Commissioners, and then from their determination to this Court.

Now in Revenue law many things are obscure, but some things are plain. I think Mr. Skelton was right in saying it is plain that (1) no subject can be taxed, unless the Crown can find a clearly charging section, and (2) that, once that is found, the subject cannot escape taxation unless he can find a clearly exempting section. And Mr. Skelton proceeded to maintain that there is a charging section applicable to the Appellants in this case, and that there is no section affording them exemption from the charge laid upon them.

The Crown in the first place found on the Income Tax Act, 1918, Schedule D, Section 1 (*b*), which provides that "Tax under this "Schedule shall be charged in respect of . . . . all interest of money, "annuities, and other annual profits or gains not charged under Schedule "A, B, C or E, and not specially exempted from tax". The Crown maintained, as I understood the argument, that the sum of £72,231 being admittedly interest of money, it satisfied both the statutory conditions in respect that it is not charged under the enumerated Schedules and that it is not specially exempted from tax. The Crown further found on Rule 2 of Case III in Schedule D, which provides that "the tax shall be computed in each case on the full amount arising ". . . . and shall be paid on the actual amount as aforesaid without any "deduction". The Crown also point to Section 209 of the Act of 1918, which provides that "in arriving at the amount of profits or gains "for the purpose of income tax, no other deductions shall be made "than such as are expressly enumerated in this Act". The Crown in these circumstances claim, and, as I think, rightly claim to have found

a charging section, which applies to the sum in dispute. It remains for the Appellants to find, if they can, an exempting section, in order to escape liability.

The Appellants' Counsel were unable to point to any such section. Their argument was of a different character, as will presently appear. In the meantime it is sufficient to say that the Crown maintain that they have demonstrated that the sum of £72,231 is income of the Appellants, that the Appellants are charged with liability to pay Income Tax upon it, and that no avenue of escape from their statutory obligation has been discovered by them or indeed exists. I think the contention is sound, and that it must prevail.

I will only add that I have by no means overlooked the ingenious and forcible argument presented by Mr. Moncrieff for the Appellants. But, while I have not overlooked it, I am not certain that—no doubt owing to my fault, not to his—I can claim to have fully comprehended it at any rate in its more elusive aspects. Mr. Moncrieff maintained that the Crown was not in this case resisting a deduction, but that his clients were resisting a claim by the Crown for double payment of Income Tax. Now in the first place I am unable to see that the claim of the Appellants is other than a claim to make a deduction. What they did is thus set out in the facts in the Case which were admitted or proved :—" From this sum (£72,231) the Appellants deducted £21,847 as interest paid on Estate Duty." It is that deduction by the Appellants, and nothing else, which is challenged by the Crown. Again, the question put to the Court is :—" Whether for the purpose of assess-" ment under Schedule D (Case III) of the Income Tax Act, 1918, " the Appellants are entitled to deduct from the £72,231, being interest " received for the year ending 5th April, 1921, the sum of £21,847 of " interest paid on Estate Duty for the same period." In the second place, as regards the contention that the Appellants have already paid the tax and that the Crown is seeking to exact payment a second time, I think the Lord Advocate was right in saying that it is based on mere speculation ; that, at any rate in this region of law, speculation is inadmissible ; and, further, that, if the contention is sound, then Section 18 of the Finance Act, 1896, would be nugatory. Mr. Moncrieff's final argument, which was based upon the loss of his clients' right of relief, involved, as he admitted, a direct assault upon the decision in the case of *Alexandria Water Coy.* v. *Musgrave*, (1) 11 Q.B.D. 174. If that case was well decided, the argument is inadmissible. Now whether the case was well decided or not, I am of opinion that it is not open to us to review the decision, inasmuch as it has received the sanction of the House of Lords in the case of the *Gresham Life Assurance Society* v. *Styles* (2), [1892] A.C. 309. While it is true that Lord Halsbury and Lord Watson abstained from identifying themselves with all the reasoning in the Court below, it is also true that their criticism of that reasoning was limited and guarded in its character, that they expressly approved of the decision pronounced, and that Lord Herschell, recognising its authority, not only expressed no disapproval of the judgment or the reasoning upon which it proceeded, but was at pains to dis-

(1) 1 T.C. 521. (2) 3 T.C. 185.

tinguish the case from that with which he was then concerned. In short, the House of Lords, in my opinion, recognised the case as authoritative. I therefore think—even if I doubted the soundness of the decision, which I do not—that the *imprimatur* of the House of Lords precludes this Court from reviewing it.

I am accordingly of opinion that the argument for the Crown is well founded, that the argument for the Appellants fails, and that the question put to us by the Commissioners falls to be answered in the negative.

Lord Ormidale.—It appears from the admitted facts in this case that the Appellants received £72,231 as untaxed interest during the year to April, 1921. From this sum they deducted £21,847 as interest paid on Estate Duty and returned the balance of £50,384 which was assessed by first assessment for the year to April, 1922, and no question arises as to that assessment.

But the balance of £21,847 was thereafter assessed by additional assessment for the same year. Against this additional assessment an appeal was taken to the Commissioners. The latter confirmed the assessment and the present Case was then stated. The question put to the Court is whether the Appellants are entitled to deduct from the total interest received by them the £21,847 interest paid by them on Estate Duty.

I agree that the answer to that question must be in the negative, whether the question be taken literally or whether it be read in a more general sense as involving, if answered in the negative, the denial to the Appellants of any right of exemption or relief in any form from liability to pay Income Tax on the sum in question.

There appears to me to be no ground for holding that the sum of £21,847 was in any way earmarked and falling necessarily to be applied to liquidate the interest on Estate Duty. The Appellants were not collectors for the Crown, and the £21,847 was in no legitimate sense Crown revenue and therefore exempt from Income Tax. The £21,847 interest was payable to and received by the Appellants on their own account to do with what they pleased. It was therefore precisely in the same position as the other sums of interest received by them as regards their liability to be brought into charge to Income Tax. That appears to be quite plain from the various sections and rules founded on by the Inland Revenue. Rule 2 of Case III, Schedule D, of the Income Tax Act, 1918, provides that the tax "shall be computed "in each case on the full amount arising . . . and shall be paid on the "actual amount as aforesaid without any deduction". Deduction is again precluded in Rule 19 of the General Rules applicable to all the Schedules. Section 209, read along with Section 36, clearly demonstrates that the Appellants were not entitled to make any deduction. The limitation sought to be put on Sub-section (1) (*b*) of Section 209, viz., that it is applicable only where relief is otherwise given and not where there is no relief appears to me to be without warrant. I see no reason to differ from Lord Justice Bowen (in *Alexandria Water Coy.* v. *Musgrave* (1), 11 Q.B.D. 174, at 177)—as to the meaning and effect of

(1) 1 T.C. 521.

the words "in regard". "'In regard'," he says, "here, is not an "expression of the reason of the legislature, but is to render impossible "an erroneous view which might otherwise be entertained by the "person computing as to his being entitled to make the deduction."

The Finance Act of 1896, Section 18, enacts that simple interest at the rate of 3 per cent. "without deduction for income tax" shall be payable upon all Estate Duty. I see no reason for inferring that Income Tax is included in the 3 per cent. There is nothing in the Statute to suggest that: on the contrary, so to hold would, in my opinion, negative the clear intendment of the Section. The denial of a right to deduct or recover in any other way the tax already paid does not involve double taxation. It would rather appear that to give the relief sought by the Appellants would result in the income in question escaping the tax altogether. The exemption of the ultimate recipient of the income—and the Crown is exempt, however foreign to the general policy of the Act—does not of itself infer the exemption also of the first recipient.

It may appear to be an inequity or hardship that the Appellants are disabled from getting the relief which, in the case of interest payable to an ordinary creditor, they would have got, but in the case just cited the right to make such a deduction as the Appellants made here on the ground merely that the right of recovering the tax from the ultimate recipient was not available, was negatived. That consideration was, it was said, immaterial. That decision, apart, it may be, from some of the grounds on which it was based, was approved by the House of Lords in the *Gresham Life Assurance Society* v. *Styles* (1), [1892] A.C. 309, and is binding on this Court.

Lord Hunter.—In terms of the Income Tax Act, 1918, Schedule D, Section 1 (*b*), and Rule 2 of Case III under that Schedule, I think that Income Tax upon the £72,231, consisting of untaxed interest on Government securities, is chargeable against and payable by the Appellants unless they are in a position to show in terms of Section 209 of the Act that they are entitled under the Statute to any deduction therefrom. This they have made no attempt to do. The interest upon unpaid Estate Duty payable to the Crown is not a charge upon the untaxed revenue of the Appellants. It is payable upon a debt unconnected with that revenue, and the whole estate of the Appellants, whether taxed or untaxed, is liable to meet it. It appears to me, therefore, that the question as put can only be answered in one way, *i.e.*, in the negative.

The Appellants were conscious of the weakness of their case as so presented, and they therefore maintained that the real question was whether or not they are entitled to get relief from Income Tax upon the interest paid by them on unpaid Estate Duty. I doubt whether the present case is a suitable form of process in which to try that question. Assuming that it is, I am of opinion that the argument for the Appellants is unsound. It is quite true that the Income Tax Acts give relief in certain cases to persons primarily chargeable against their creditors entitled to interest on burdens upon the revenue brought

(1) 3 T.C. 185.

into charge. The object of this provision is as far as possible to impose payment of the tax upon the persons in beneficial enjoyment of the revenue. The relief is given by allowing a deduction to be made from the interest payable to their creditors by the persons charged with the tax. The case of the *Alexandria Water Coy.* v. *Musgrave* (1), 11 Q.B.D. 174, however, shows that it is not necessary as a condition of the Crown recovering Income Tax to establish that the person paying the tax will be entitled to recover from the person to whom the whole or some part of the amount brought into charge is payable. In the present case the Appellants are debarred by statute from making any deduction in respect of Income Tax from the payment of interest upon unpaid Estate Duty—Finance Act, 1896 (59 & 60 Vict., cap. 28), Section 18. That Section, as I read it, precludes the Appellants from recovering Income Tax with which they have been charged on the money employed by them in paying interest on their debt to the Crown. If their contention were sound, they would in effect be getting a deduction to which that Section says they are not entitled.

It was argued for the Appellants that the Crown were getting a double payment of Income Tax from the same funds. I do not think this argument is sound. Income Tax has only been charged once on the £72,231 or on any portion of it. But for the express provisions of the Act of 1896 the Appellants might have been entitled to make a deduction in respect of Income Tax from the interest payable upon Estate Duty, but the fact that they are not entitled to make the deduction does not infer double taxation. I am also unable to accept the Appellants' contention that they should enjoy exemption from payment of Income Tax upon the interest on the Estate Duty as that is Crown revenue and therefore exempt from tax.

Lord Anderson.—The Appellants' Counsel disclaimed the term "deduction" as accurately describing the right which was asserted. What that right was—whether exemption, set-off or drawback—was not precisely formulated. The exact legal nature of the Appellants' claim does not seem to be material. Whatever it be, it must have statutory sanction in order that the appeal may succeed. The case, however, has been submitted to us on the footing that the Appellants are claiming to deduct a part of their annual income from the total amount received and thus elide, so far as the portion deducted is concerned, the claim of the Crown for Income Tax. The question of law deals with a claim to "deduct" and nothing else, and the stated facts disclose that the sum of £21,847 was "deducted" by the Appellants from the total amount of their income which was prima facie assessable to Income Tax. The case must therefore be considered and disposed of on the footing that what the Appellants are claiming is a right to deduct.

The contentions of the Crown are plain, but, in my opinion, cogent and conclusive. Crown Counsel argued (1) that the taxing enactments bring the sum deducted under charge for Income Tax and (2) that there is no statutory provision which expressly or by plain implication authorises the deduction claimed.

---

(1) 1 T.C. 521.

On the first point the statutory provisions relied on are these :—

1. The Income Tax Act, 1918, Schedule D, Rules applicable to Case III, Nos. 1 (*a*) and 2. By No. 1 (*a*) the tax is extended to "any "interest of money" : by No. 2 it is provided that "the tax shall be "computed in each case on the full amount arising within the year ". . . . and shall be paid on the actual amount as aforesaid without any "deduction".

2. Section 209 of said Act of 1918, which provides that in arriving at the amount of profits or gains for the purpose of Income Tax "no "other deductions shall be made than such as are expressly enumerated "in this Act".

3. The 1918 Act, General Rules applicable to all the Schedules, Rule 19, which provides that where interest is payable out of profits or gains brought into charge to tax, the whole of these profits or gains shall be assessed and charged with tax on the person liable to the interest.

4. The 1918 Act, Miscellaneous Rules applicable to Schedule D, Rule 1, which specifically provides that the person liable to pay the tax is the recipient of the income in respect of which the tax is charged.

These enactments plainly impose on the Appellants the duty of paying, in the first instance at all events, the Income Tax due in respect of the whole of their income which has been received without deduction of tax.

On the second point the Crown maintained three contentions :— (1) that there was no statutory enactment which specifically authorised the deduction claimed and this was not disputed by the Appellants ; (2) that in view of the provisions of Section 36 of the Act of 1918 there was no room for an argument based on implication. That Section enumerates the cases in which Income Tax may be reclaimed in respect of interest which has been paid out of profits and the Crown maintained that the list of cases dealt with by the Section was exhaustive ; (3) if the argument based on implication is open, it was maintained for the Crown that the contentions of the Appellants were not well founded.

It was finally urged by the Crown that as there was no statutory provision in virtue of which the Appellants could recover from the Crown the Income Tax effeiring to the interest paid it followed that the Appellants were responsible both primarily and finally for the tax.

The interest payable by the Appellants to the Crown in respect of unpaid Estate Duty is at the rate of 3 per cent. and is imposed by the Finance Act, 1896, Section 18, which provides that the interest is to be paid "without deduction for income tax".

The grievance of the Appellants is that, if they pay Income Tax in respect of the amount due to the Crown as interest, they are unable to recover it, as they would be had the payment of interest been made to a subject. The purpose of the concession in the case of payment of interest to a subject is to obviate the contingency of the same sum having to pay Income Tax twice. That contingency does not arise when the Crown is the recipient of the interest.

The three main contentions of the Appellants are formulated on pages 2 and 3 of the Case.

1. The first contention was that Income Tax had already been paid on the said sum of £21,847, inasmuch as it formed part of the 3 per cent. charged as interest. This is pure surmise for which I can find no foundation. The suggestion made on behalf of the Crown was at least equally plausible, to wit, that the rate of interest was fixed at the low rate of 3 per cent. just because the person paying the interest would be debarred from recovering the Income Tax which has been paid in respect thereof.

2. It was argued that the interest paid was truly income of the Crown of which the Appellants were merely the collectors. I am unable to accept this suggestion. The interest as well as the principal amount of Estate Duty are debts payable to the Crown and the Appellants hold no different relationship towards the Crown than they have towards any subject creditor.

3. The last main contention of the Appellants was that the policy of the Act of 1918 was to tax only the ultimate recipient of income brought into charge and not specially exempted and that this implication must be read into the statutory provisions founded on by the Crown. The short answer to this contention is the decision of the Queen's Bench Division in *Alexandria Water Coy.* v. *Musgrave* (1), 11 Q.B.D. 174. This case is binding on us inasmuch as it was considered in the House of Lords, and certainly not discredited, in the case of the *Gresham Life Assurance Society* v. *Styles* (2), [1892] A.C. 309.

I am therefore of opinion that the question of law should be answered in the negative.

An appeal having been entered against the decision in the Court of Session, the case was argued in the House of Lords before Viscounts Cave and Finlay, and Lords Dunedin, Shaw of Dunfermline and Sumner on the 28th and 31st March, 1924. Mr. Moncrieff, K.C., and Mr. Keith appeared as Counsel for the Appellants, and the Attorney-General (Sir Patrick Hastings, K.C., M.P.), the Lord Advocate (Mr. H. P. Macmillan, K.C.), Sir Douglas Hogg, K.C., M.P., Mr. R. P. Hills and Mr. Skelton for the Respondent.

Judgment was delivered on the latter day unanimously in favour of the Respondent, with costs, affirming the decision of the Court below.

JUDGMENT.

Viscount Cave.—My Lords, this is an appeal by the Trustees of the late Lord Inverclyde from a decision of the Second Division of the Court of Session upon a Case stated by the Commissioners for the General Purposes of the Income Tax Acts for the City of Glasgow. During the tax year ending on 5 April, th1921, the Appellants received interest on Government securities to the amount of £72,231 without deduction of tax, and under the provisions of the Income Tax Act, 1918, Schedule D, and particularly under Rules 1 (*f*) and 2 of the

(1) 1 T.C. 521. (2) 3 T.C. 185.

Rules applicable to Case III under that Schedule, they became liable to be assessed to tax in respect of that sum in the following tax year, namely, the year 1921–22. In the latter year the Appellants paid in respect of interest on unpaid Estate Duty a sum of £21,847, that sum being paid, in accordance with the provisions of Section 18, Subsection (1), of the Finance Act, 1896, without deduction for Income Tax. In making their return for Income Tax for the tax year 1921–22 they deducted that sum of £21,847 from the £72,231 received for interest on Government securities, and returned the balance only, namely, £50,384, as liable to assessment for Income Tax. Tax was duly assessed and paid on this sum of £50,384, but an additional assessment was made on the Appellants for tax on the sum of £21,847 which had been deducted in the return. Against that additional assessment the Appellants appealed to the Commissioners, who rejected the appeal and confirmed the additional assessment, but on application of the Appellants stated a Case for the opinion of the Court of Session as the Exchequer Court.

The question of law which was submitted for the opinion of the Court of Session was formulated by the Commissioners as follows: "The question of law for the opinion of the Court is whether for the "purpose of assessment under Schedule D (Case III) of the Income "Tax Act, 1918, the Appellants are entitled to deduct from the £72,231, "being interest received for the year ending 5th April, 1921, the sum "of £21,847 of interest paid on Estate Duty for the same period." The Court of Session unanimously affirmed the decision of the Commissioners and thereupon the present appeal was brought.

My Lords, upon the argument of the appeal before your Lordships, Counsel for the Appellants did not insist upon the view that the Appellants had a right, for the purposes of Income Tax, to "deduct" (in the strict sense of the word) the £21,847 from the income which they had received, and, indeed, such a contention would be plainly untenable. The case does not fall within any of the categories under which deduction (in the strict sense) is allowed by the Act. The Trustees, of course, did not carry on any business. The payment of interest on Estate Duty was not an outgoing necessary for obtaining the income from the investments. The interest on Estate Duty was not legally charged upon or payable out of the sum received for dividends, but was payable out of any moneys in the hands of the Appellants as trustees. It did not fall within the deductions allowed by Section 36 or any other section of the Act of 1918; and Section 209 of the Act expressly provides that "in arriving at the amount of profits and gains for the purpose "of income tax (*a*) no other deductions shall be made than such as are "expressly enumerated in this Act." Deduction, therefore, in the ordinary sense, is out of the question.

But your Lordships have not held the Appellants strictly to the question as formulated by the Commissioners, and Mr. Moncrieff, in an ingenious argument, put his case in two other and alternative ways. First he said that the sum of £21,847 paid for interest on Estate Duty included Income Tax on that amount, and that, although the Appellants were prohibited by Section 18 of the Finance Act, 1896, from

deducting tax from the interest paid, they were entitled, in bringing into computation for the purposes of Income Tax their untaxed interest from investments, to take credit for that amount of tax as having been actually paid to the Revenue. If this argument were held good, the effect would be to render abortive the provision in Section 18 of the Act of 1896 that the interest on Estate Duty is to be paid without deduction for Income Tax; for it would enable the Appellants to deduct it, not, indeed, from the interest on Estate Duty, but from the tax on their general income. Apart, however, from this consideration, the argument appears to me to be wholly untenable. The argument assumes that the payment of interest without deduction of the tax is equivalent to a payment of interest including the tax; but this is, as the learned Judges of the Court of Session pointed out, a pure speculation or surmise. There is nothing in the Acts or cases which supports such a view. The Crown is not accountable for tax, and there is no sufficient ground for holding that a debtor to the Crown who, under statutory direction, pays interest on his debt without deduction of the tax is thereby paying a tax for which the Crown is not accountable. In my view there is no question of double imposition of tax.

Secondly, Mr. Moncrieff contended in the alternative that, as £21,837, part of the £72,231 received for income on investments, had to be paid over to the Crown, the Appellants must be treated as having received that sum on behalf of the Crown, and not on their own behalf, and were therefore entitled to have it excluded from the trust income brought into assessment. Mr. Moncrieff developed the argument by suggesting that the sum in question was therefore "specially exempted" from tax within the meaning of Rule 1 (*b*) of Schedule D. It appears to me that this argument is also misconceived. No part of the sum receivable for interest on investments was earmarked for the payment of interest on Estate Duty or charged with the payment of such interest. The Appellants owed the interest on Estate Duty to the Crown, and they were entitled to pay it out of any funds in their hands which might be available for the purpose; and their relationship to the Crown in this respect was similar to their relationship to any other creditor of the estate. Mr. Moncrieff suggested as a foundation for this argument that when a taxpayer collects an income and is subject to the obligation of diverting it into two streams, one of which streams is to flow to the coffers of a creditor, then he must be considered to have collected that part of his income for and on behalf of the creditor. I am unable to assent to that principle. In my view the taxpayer in such a case collects the whole income for himself, and then (if he is an honest man) pays his debts to his creditor; but he does not in any true sense of the word collect that part of his income for the creditor. If so, it is incorrect to say that any part of the income from investments was received by the Trustees as collectors for the Crown, or that the Crown is, within the meaning of the expression as used in the cases, the "ultimate recipient" of any part of the income. On this point the decision in *Alexandria Water Company* v. *Musgrave*,[1] decided in 1883 and reported in Law Reports 11 Q.B.D., page 174,

[1] 1 T.C. 521.

which was approved by this House in the *Gresham Life Assurance Society* v. *Styles*,[1] reported in Law Reports [1892] Appeal Cases, page 309, is in point.

My Lords, on the whole case I am of opinion that this appeal fails, and should be dismissed with costs, and I move your Lordships accordingly.

Viscount Finlay.—My Lords, I agree that this appeal fails.

Lord Dunedin.—My Lords, I agree. In the hands of the learned Counsel for the Appellants a most intricate and ingenious statement has been evolved. The case also permits of a very simple statement. Estate Duty would be exigible at once as a payment, but it has been thought better that payment should be postponed by means of instalments. In return for that a sum is charged in the name of interest. I think that sum is an ordinary debt, but, to make it quite certain that it is an ordinary debt and not a profit, Section 18 of the Finance Act, 1896, says that it is to be paid without deduction of Income Tax. I am afraid I think the simple statement is the true statement, and that ends the case.

Lord Shaw of Dunfermline.—My Lords, there are no merits in this appeal.

Lord Sumner.—My Lords, I agree in the motion to be proposed from the Woolsack.

Questions put:

That the Interlocutor appealed from be reversed.

The Not Contents have it.

That the Interlocutor appealed from be affirmed, and this appeal dismissed with costs.

The Contents have it.

---

[1] 3 T.C. 185.