COURT OF SESSION (FIRST DIVISION)—
13TH AND 14TH MARCH, 1951

HOUSE OF LORDS—
13TH, 14TH MAY, 1952, AND 11TH JULY, 1952

Albion Rovers Football Club, Ltd.

v.

Commissioners of Inland Revenue

Income Tax Schedule D, and Profits Tax—Deduction—Football club —Players engaged under yearly agreements—Change of renewal date—Agreements for a period exceeding 12 *months and including two non-playing periods—Accounting period to which debits for non-playing wages to be allocated in computing profits.*

In April, 1948, *the Appellant Club, whose players were engaged under yearly agreements, was instructed by the Scottish Football League, of which it was a member, that future agreements were to run from each* 1*st August instead of* 1*st May, as previously. To effect the change agreements from* 1*st May,* 1948, *covered the* 15 *months to* 31*st July,* 1949, *and therefore included two non-playing periods, May to July,* 1948 *and* 1949. *The Club's accounts were made up to each* 31*st March.*

On appeal to the Special Commissioners against assessments to Income Tax and Profits Tax, the Club contended (i) *that the payments to its players in respect of the two non-playing periods May to July,* 1948 *and* 1949, *were necessarily made in order to retain the services of the players for the playing season of nine months ended* 30*th April,* 1949; *and* (ii) *that eight-ninths of the payments for both non-playing periods were expenses necessarily incurred by the Club in earning the profits of the eight months of the playing season which fell within the year of account ended* 31*st March,* 1949, *and were accordingly deductible in computing the Income Tax and Profits Tax liabilities based on the accounts for that year. For the Crown it was contended* (i) *that the payments due to players were weekly payments which became due and payable at the respective weekly dates and were chargeable against the profits of the accounting year in which they became due and payable; and accordingly* (ii) *that no part of the payments in respect of the non-playing period May to July,* 1949 *was an admissible deduction in computing the Club's profits for the year ended* 31*st March,* 1949. *The Commissioners upheld the Crown's contentions and dismissed the appeal.*

Held, *that the Commissioners' decision was correct.*

CASE

Stated for the opinion of the Court of Session as the Court of Exchequer in Scotland under the provisions of the Income Tax Act, 1918, Section 149, and the Finance Act, 1937, Fifth Schedule, Part II, Paragraph 4.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Glasgow on 26th April, 1950, for the purpose of hearing appeals, the Albion Rovers Football Club, Ltd. (hereinafter called

" the Club "), appealed against (1) an assessment to Income Tax in the sum of £3,479 less £86 capital allowances made upon the Club under Case I of Schedule D for the year 1949–50 on the basis of its profits for the year of account ended 31st March, 1949, and (2) an assessment to Profits Tax for the chargeable accounting period of twelve months to the 31st March, 1949, in the sum of £213 5*s*.

1. The following facts were admitted or proved.

(1) The Club is a member club of the Scottish Football League and of the Scottish Football Association (hereinafter referred to as " the " League " and " the Association " respectively). It enters into agreements with professional football players, subject to the requirements of these two bodies, as hereinafter appearing. Excerpts from the rules and regulations of the two bodies are contained in the registration form of the League, and the professional registration form of the Association; copies of these documents are annexed, marked respectively A and B, and form part of this Case(1).

(2) The Club can only play in the football season, *viz.* the nine months from the second Saturday in August to 30th April following, since the rules of the Association prohibit matches at any other time (except practice matches, subject to certain conditions, the first of which is that they must not be against another club and the second that matches to which the public are admitted shall be played only between 1st August and the opening of the new playing season).

(3) Before the 1948–49 season, players' agreements ran from 1st May to 30th April following, the players being paid for the season only.

(4) On 7th April, 1948, the League issued a circular letter to all member clubs in the following terms.

" Your attention is drawn to the alteration in the date of Players' " Agreements.

" Players re-signed for season 1948–49 will be under contract from " 1st May, 1948 until 31st July, 1949. All contracts thereafter will " be yearly from 1st August to 31st July."

(5) Article 91 of the Association (see annexe B) provides that the terms on which a professional player is engaged must be embodied in an agreement and article 92 provides that the registration of a player on a full professional form by a club shall be binding for only one season.

(6) For the 1948–49 season a standard form of agreement was used of which a copy is annexed, marked C, and forms part of this Case(1).

Clause 2 of the agreement provides, " The player binds himself to " play football for the club when and where required and shall attend " the club's ground or any other place decided upon by the club for " the purpose of, or in connection with, his training as a player . . ." (Article 97 of the Association (see annexe B) provides that " the word " ' play ' shall be understood to mean to engage in a match or game " in which the number of players a side is more than five at which " a charge for admission is made . . .").

Clause 3 provides; " The player shall do everything in his power " to get and keep himself in good physical condition so as to render " the best possible service to the club and shall use his utmost skill " when playing for the club. Should he fail to do so, or be guilty

(1) Not included in the present print.

" of . . . misconduct, the club shall have the right to dismiss, fine, or " suspend him, and during the period of any suspension . . . no wages " shall be due . . ." to him.

Clause 4 provides ; " The player shall observe and be subject to all " the rules, regulations and bye-laws of the Scottish Football Associa- " tion, the Scottish Football League ", and other bodies as indicated.

Clauses 7 and 8 concern the conditions under which the club shall have the right to terminate the agreement.

Clause 9 is in the following terms.

" In consideration of the services and of the observance by the " player of the terms and conditions of this Agreement the club shall " pay to the player the sum of ..... (£ : :) per week " from ..... to the termination hereof." Space is left for the purpose of a rubric—" Fill in any Special Provisions required."

(7) In respect of each of the club's players the aforesaid clause 9 of the agreement was completed so as to provide for the player,

(*i*) a sum per week during the playing season,

(*ii*) a reduced sum per week during the months of May, June and July, 1948, and

(*iii*) a reduced sum per week during the months of May, June and July, 1949.

(8) The total amount paid by the Club to the players in May, June and July, 1948, was £1,518 10*s*., and the total amount payable in May, June and July, 1949, under the agreements was £1,826 10*s*.

(9) In its accounts for the year ended 31st March, 1949, the Club charged eight-ninths of both the aforesaid sums, amounting to £1,349 15*s*. 7*d*. and £1,623 11*s*. 1*d*. respectively, as expenses of the year ended on the said date.

A copy of the directors' report and accounts is annexed, marked D, and forms part of this Case[1].

2. It was contended on behalf of the Club ;

(1) that the payments made to players under the agreement in May, June and July, 1948, and the payments to be made in May, June and July, 1949, were payable under a contract extending from 1st May, 1948, to 31st July, 1949, and were necessarily made in order to obtain the services of the players for the 1948–49 playing season of nine months to 30th April, 1949 ;

(2) that eight-ninths of the total payments so made or to be made were expenses necessarily incurred by the Club in earning the profits of the eight months of the playing season which fell within the year of account ending 31st March, 1949 ;

(3) that accordingly £1,349 15*s*. 7*d*., being eight-ninths of the payments in May, June and July, 1948, and £1,623 11*s*. 1*d*., being eight-ninths of those to be made in May, June and July, 1949, amounting together to £2,973 6*s*. 8*d*., should be allowed in computing the profits of the Club assessable to Income Tax for the year 1949–50 and to Profits Tax for the chargeable accounting period 1st April, 1948, to 31st March, 1949 ;

[1] Not included in the present print.

(4) that no service was rendered by the players to the Club during the months May, June and July, and that the players did not have to do anything in those months commensurate with the payments to be made to them in that period ;

(5) that the Club's liability to make the May, June and July payments to a player under his agreement was inescapable unless the player was a party to one of certain specified events ; and that, if the Club were relieved of any part of its liability to make such payments because of such event, that would represent a profit arising in the accounting year in which the event happened ;

(6) that it was erroneous to treat weekly payments to players in May, June and July, 1949, as expenses of those months because they became due and payable at those dates ; that the date of payment of an expense was immaterial in a question as to its admissibility as a deduction and that the test was when the expense was incurred in respect of which the payments were made ;

(7) that the payments to be made to players in the months May, June and July were annual payments and that the whole amount thereof should be allowed as a deduction from the profits of the football season to 30th April, as the period in respect of which this liability was incurred, authority for this being found in *Vallambrosa Rubber Co., Ltd.* v. *Farmer*, 5 T.C. 529, and the *dicta* of the Lord President therein.

3. It was contended on behalf of the Crown ;

(1) that under the service agreement with each player the service and obligations of the player for which he received payment extended to the non-playing seasons as well as to the playing season ;

(2) that a player might be suspended at any time, and in the case of his suspension between 31st March and 31st July, the full wages for the three months in question, *viz.* May, June and July would not be payable to him ;

(3) that the payments due to players including those due during May, June and July, 1949, were weekly payments which became due and payable at the respective weekly dates. Such payments were charges against the profits for the accounting year in which they were in fact due and payable and the payments due during May, June and July, 1949, were not as to any part of them, expenses of the year of account ended 31st March, 1949 ;

(4) that the only payments for players proper to be allowed as expenses of the said year of account ended 31st March, 1949, which formed the basis of assessment to Income Tax for 1949–50 and Profits Tax for the chargeable accounting period 1st April, 1948 to 31st March, 1949, were the amounts due and payable in that year including the sums due and payable in May, June and July, 1948, *viz.* £1,518 10*s.* ;

(5) that the assessments under appeal, in the computation of the amounts of which the deduction for payments to players had been restricted to the sums due and payable during the year of account ended 31st March, 1949, were correct and should be confirmed.

4. We, the Commissioners who heard the appeal, held that the weekly payments made by the Club to the players under the agreement during the non-playing season of May, June and July, 1949, became due and payable in the weeks falling within those months, and were expenses of the year of account ended 31st March, 1950. There was nothing in the terms of

the agreement to support the contention that those payments, or any part of them, could be related back as expenses proper to the year of account ended 31st March, 1949, forming the basis of the assessments to Income Tax and to Profits Tax respectively which were under appeal. The proper deduction had been allowed, *viz.* the full amount of the payments made in May, June and July, 1948, and we confirmed the assessments.

5. The Appellant Club immediately after the determination of the appeal declared to us its dissatisfaction therewith as being erroneous in point of law and in due course required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, which Case we have stated and do sign accordingly.

6. The question of law for the opinion of the Court is whether we were right in holding that the payments under the agreement made to the players in any non-playing season of May, June and July, are expenses of the year of account into which those months fall, and must be so treated in computing trading profits for Income Tax and Profits Tax purposes.

G. R. Hamilton
F. N. D. Preston
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94–99, High Holborn,
London, W.C.1.

23rd August, 1950.

The case came before the First Division of the Court of Session (the Lord President (Cooper) and Lords Carmont, Russell and Keith) on 13th and 14th March, 1951, and on the latter date judgment was given unanimously against the Crown, with expenses.

Mr. L. Hill Watson, K.C., and Hon. David Watson appeared as Counsel for the Club and Mr. I. H. Shearer for the Crown.

The Lord President (Cooper).—The question of law put to us by the Special Commissioners is " whether we were right in holding that the pay- " ments under the agreement made to the players in any non-playing season " of May, June and July, are expenses of the year of account into which " those months fall, and must be so treated in computing trading profits " for Income Tax and Profits Tax purposes ".

So put, the question seeks to generalise an issue which was presented in the Case and in argument as a special case, due to a change in policy and administration dictated by the Scottish Football League and admittedly imperatively binding upon the Appellants. I propose to deal with the matter as such a special case, depending upon the special circumstances affecting the transitional period between the one system of administration and the other.

The essential facts are these. The football season lasts roughly for the nine months from August to April inclusive—May, June and July being the off-season during which clubs earn nothing. Prior to the spring

(The Lord President (Cooper).)

of 1948 the players' agreements ran for the year from 1st May to 30th April of the following year. In April, 1948, the League issued an instruction to all member clubs, obedience to which was of course a condition of their existence, that players re-signed for the season 1948-49 would be under contract from 1st May, 1948, until 31st July, 1949, thus substituting during the transitional period a 15 months' for a 12 months' contract. The direction proceeded: "All contracts thereafter will be yearly from 1st August to "31st July in the following year." At the same time new forms of agreement were prescribed under which the Appellants (and I assume all the other clubs in the League) agreed to pay a weekly wage to players, during the playing season and a reduced weekly wage during the succeeding off-season.

It follows that prior to April, 1948, and after August, 1949, the situation ought to present no special difficulty, taking one year with another; but that the transitional period from 1st May, 1948, until 31st July, 1949, necessarily presented difficulties of computation and it is with that 15 months' period that the question raised in this case seems to me to be alone concerned.

What happened was that, in preparing their accounts for the year to 31st March, 1949 (that being the date at which the Appellants' accounts ended each year) the Appellants credited against their receipts—which I assume were earned in April, 1948, and between August, 1948, and March, 1949—eight-ninths of the payments made to the players for the off-season of 1948, and eight-ninths of the payments due to players for the off-season of 1949, thus reflecting the fact, to which I have referred, that for that year they had been exceptionally obliged to contract with their players for a 15 months' period. I pause to observe that some point was made of the fact that at the date when the accounts were made up, the exact figures to be paid to the players during May, June and July could not be known, because such eventualities as death, illness, suspension or dismissal might have cancelled the player's right to receipt of his full contractual payment. Those matters I disregard, upon the view that, if there are adjustments to be made on the figures, these are not matters for this Court but for adjustment, either in relation to the year of assessment or by the crediting or debiting the appropriate entries in the following year.

In that situation, the decision of the Special Commissioners, in a word, is that the payments for the months of May, June and July, 1949, payable during these months, must be debited as expenses in the year of account which included these months. I do not agree. Realistically considered, the receipts which form the first item in the computation of the balance of profits and gains were earned by the services of the players during the playing season preceding May, June and July, and in order that those receipts could be earned, the Appellants were compelled to enter into contracts under which they incurred liability to make payments to the players for these three months of May, June and July after the close of the playing season. It does not seem to me to be strictly logical to treat the payments made during these months as proper debits against receipts to be earned in the following season for this reason—if for no other—that the receipts earned in the following season might in theory be earned by a totally different team. To put the matter differently, the position during the transitional period was exactly the same as if the Club had agreed to pay an extra sum to the players, payment being deferred until after the close

(The Lord President (Cooper).)

of the season, but liability being incurred long before. I do not desire to rest this opinion upon any general considerations necessarily applicable to future years or to other situations. It seems to me that this case is a highly special case, unlikely to recur in the special circumstances disclosed by the findings in fact; and so viewing it, my motion would be that we should not answer the question of law as put, because that question of law seems to generalise the issue, but should confine ourselves to a simple finding that the method of computation adopted by the Appellants for the year of account in question was correct, and that in proposing to substitute a different method of computation the Special Commissioners were wrong.

Lord Carmont.—During the hearing I inclined to the view that on general principles, the Special Commissioners had come to a right conclusion. It is not necessary however to come to a definite opinion on any general question, because I agree with your Lordship that there are some very special circumstances in this case which take it out of the operation of general principles. For one thing, the Club has placed itself within a scheme which enables it to be controlled by a League and an Association which impose very definite obligations upon the Club and if they did not conform to certain ways of paying their players as laid down by the Association, the Club would not be able to play a single game or put on the field any definite team of players. I do not think it necessary however to go more fully into what are the specialities of the case. They are contained in the various matters to which your Lordship has referred and much more fully set out in the Case itself. Altering the question, as I think it must be altered to avoid giving a decision on general principles, I agree that it should be answered in the negative.

Lord Russell.—I agree with your Lordships and have little to add. It seems clear that in the conduct of its activities as a football club the Appellants were and are bound to comply with the instructions and administrative regulations issued by the Scottish League to the League's member clubs. When, therefore, in April, 1948, the League issued an instruction to its member clubs altering the dates during which the Club's agreements with each of its players were to endure for the ensuing season, it became necessary for the Club to comply. The Club did so, entering into agreements with each of its players, each agreement having a duration of 15 months—a first period of non-playing time between May and July, 1948, a playing season of nine months from August, 1948, till April, 1949, and a further quarter of non-playing time embracing May to July, 1949. As a result, in and after May, 1948, the Club became bound, under the agreements thus entered into, to maintain in its employment and to pay to the players with whom it contracted for a period of 15 months the wages stipulated, being a larger wage during the nine months of playing time and smaller wages during the two quarters of non-playing time. It follows, in my opinion, that as at May, 1948, after those agreements had been entered into by the Club, the liability to pay wages for the quarter May-July, 1949, was a necessary liability which the Club had to shoulder in order to be in a position to pursue its activities and earn its revenue in the playing season terminating on 30th April, 1949. In the Club's statement of accounts for the year ending 31st March, 1949, a sum representing eight-ninths of the players' wages payable during the quarter May-July, 1949, was entered as an expense falling to be deducted in the ascertainment of the Club's profits or gains during the period of the account. It appears to me that the sum so deducted, being an expense wholly and exclusively

(Lord Russell.)

laid out for the purpose of the Club's revenue-earning activities pursued between August, 1948, and March, 1949, and arising from a liability necessarily undertaken for that purpose, was a permissible deduction and must be treated as an allowable item of expense in the ascertainment of the Club's profits for purposes of Income Tax for the year in question. It is true that the sums which would *de facto* be payable during the quarter May-July, 1949, might not be capable of being stated with entire accuracy in the accounts made up to March, 1949, but any difference would fall to be adjusted in the Club's accounts in the following year. I agree with your Lordship that the circumstances by reference to which the question for decision arises in this case are very special and unlikely to recur. For that reason I consider that the answer to the question of law proposed by your Lordship is the appropriate answer in the circumstances.

Lord Keith.—Making the assumption that eight-ninths of the wages paid to their players by this Club in the non-playing seasons in 1948 and 1949 was an expenditure necessarily incurred for earning the receipts in the playing season 1948-49, I would have no difficulty in holding that the eight-ninths of the wages so paid was a proper debit against receipts of the playing season 1948-49. My difficulty, however, is whether it is a proper inference from the facts stated that weekly payments of wages made in May, June and July, 1949, can be regarded as a liability incurred in the season ending 31st March, 1949. I am not entirely clear that the players were not giving services in these months in return for the weekly wages which they received and if in fact they were giving services in return for these wages in the off-season 1949-50, these wages could not, I think, be set against receipts in the season 1948-49. Further it seems to me a somewhat artificial conception to treat a liability to pay weekly wages, which in various contingencies might never emerge, as a liability incurred when the players' contracts were made. But as your Lordships take a different view of the proper inferences to be made in fact in the circumstances of this case, I can only come to the conclusion that my first impressions must be wrong and accordingly I do not dissent upon what seems to be primarily an inference of fact rather than a question of law. I would only say that this is in my view a very special case which can establish no general question of principle.

The Crown having appealed against the decision of the Court of Session, the case came before the House of Lords (Lords Porter, Reid and Asquith of Bishopstone) on 13th and 14th May, 1952, when judgment was reserved. On 11th July, 1952, judgment was given unanimously in favour of the Crown.

Mr. L. Hill Watson, Q.C., and Hon. David Watson appeared as Counsel for the Club and the Lord Advocate (Mr. J. W. Clyde, Q.C.) and Sir Reginald Hills for the Crown.

Lord Porter.—My Lords, this case raises a matter of Income and Profits Tax law and involves a question as to the year to which certain expenses incurred by the Respondents are to be attributed. The same principles apply to both taxes and no distinction need be made between them for the purposes of your Lordships' decisions. The question arises in this way.

(Lord Porter.)

The Respondents are a limited company which runs a football club and for the purpose of its business enters into agreements with professional players. That Club is a member of the Scottish Football League and of the Scottish Football Association, two bodies which control Scottish professional football and whose dictates the Respondents must obey if they are to play matches and obtain a gate. The Club is prohibited by the rules of the Association from playing matches to which the public are admitted for a fee except between the second Saturday in August and 30th of April following. Before the season covering 1948 and 1949 players' agreements ran from 1st May to the following 30th of April, but players were paid for the nine months playing season only.

In 1948, however, a change took place. The League issued an instruction saying: " Players re-signed for season 1948-49 will be under contract " from 1st May, 1948 until 31st July, 1949. All contracts thereafter will be " yearly from 1st August to 31st July."

Article 91 of the Association's rules provides that the terms on which a professional player is engaged shall be in writing, and article 92 that his registration shall be binding for one year only, and article 97 that the word " play " shall be understood to mean to engage in a match or game in which the number of players a side is more than five and at which a charge for admission is made.

The standard form of agreement in use in the season 1948-49 contained the following terms:

" 2. The player binds himself to play football for the club when and " where required and shall attend the club's ground or any other place " decided upon by the club for the purpose of, or in connection with, his " training as a player. . . .

" 3. The player shall do everything in his power to get and keep him- " self in good physical condition so as to render the best possible service " to the club and shall use his utmost skill when playing for the " club. Should he fail to do so, or be guilty of . . . misconduct, the " club shall have the right to dismiss, fine or suspend him, and during the " period of any suspension . . . no wages shall be due . . ." to him.

Under his contract the player undertook to observe the rules of the two controlling bodies and was subject to have his agreement terminated in certain conditions.

Clause 9 contained provision for a weekly payment to the players at a higher rate during the playing season and a reduced sum during the months of May, June, July, 1948, and of May, June and July, 1949. Under these provisions the Club paid to its players a sum of £1,518 10*s.* 0*d.* in respect of the months May, June, July, 1948, and £1,826 10*s.* 0*d.* in respect of the same months in the year 1949.

As I understand it, the Club made up their accounts on the basis that their earnings were obtained in the nine playing months and then deducted from the profits so earned the sum of their expenses in earning them. They only took, however, eight-ninths of the resultant sum as the profits were earned in eight of the months, that is, the month of April, 1948, was omitted. The dispute between the parties centres round the sum to be deducted. The Respondents say that it was necessary, in order to earn their income, to enter into this contract for 15 months, otherwise they would not have been able to play at all, and therefore sums paid in respect of the three non-playing months of 1949 must be included. It was, they submitted, immaterial that

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the payment was weekly or that the sum payable might not be presently calculable, because the player's behaviour or inability to play might reduce it. It was equally irrelevant that the payment might have to be, and in fact would be, made in the following year; the test was not when the payment was made, but when the expense was incurred. The Appellants controverted these contentions and maintained that the duties of players were not confined to the playing season; they had duties of training, of fitness, of practice playing in the non-playing season, though these duties were not, of course, so important as those imposed in the playing season, and that the payments made in, and in respect of, those months were charges against the profits for the accounting year in which they were in fact paid.

The Commissioners who heard the appeal held that "the weekly pay-"ments made by the Club to the players under the agreement during the "non-playing season of May, June and July, 1949, became due and payable "in the weeks falling within those months, and were expenses of the year "of account ended 31st March, 1950. There was nothing in the terms "of the agreement to support the contention that those payments, or any "part of them, could be related back as expenses proper to the year of "account ended 31st March, 1949, forming the basis of the assessments "to Income Tax and to Profits Tax respectively which were under appeal. "The proper deduction had been allowed, *viz.*, the full amount of the pay-"ments made in May, June and July, 1948, and we confirmed the assessments." On appeal to the Inner House that result was reversed substantially on the ground that the whole of the expenses for the 15 months were necessarily incurred in order to earn the income obtained from gate money received in the nine playing months. Lord Keith doubted but did not dissent.

My Lords, I cannot accept this view on the facts of this case. It may be that, if the Club was under the necessity to make and did make one single payment in order that they might obtain the services of their players and if that payment was to be attributed to services rendered in respect of the year of charge only, it could successfully be contended that the payment must be deducted as expenditure for earning income in that particular year. No doubt if a merchant obtains delivery of goods for which he is under no obligation to pay until a date following the year of charge, it cannot be maintained that the goods which he has purchased enhance his profits by increasing the value of his stock-in-trade without taking account of the liability incurred, although as a matter of commercial practice it may be that in some cases the income and expenditure is treated in a running account in which, as a matter of convenience, the value of the goods received is set off against payments made in the year of receipt for other articles. But the accurate course is to set off against the enhanced value of stock the price incurred in its purchase even though that price is payable at a later date.

No such considerations, however, either on the one side or the other, come into the present question. There is no finding of commercial practice, the Commissioners have found against the Respondents and your Lordships' decision must be governed by the facts which they have found. In particular there is no finding that the expenses were incurred for the one year only or that the training required, and other obligations imposed on players for the months of May, June, July, 1949, were solely attributable to the earnings of profits in the year of charge. Indeed, they are more naturally attributable to the following year. It is true that a player's contract was concluded at the end of July, 1949, and need not have been renewed by him or by his employers, but the Club might well want to keep its players for the following year and to have some control over their activities in

the non-playing season in order that those retained might be fit for their work in the next season. Moreover, those who were not to be retained might be useful in forming part of a team required to play practice matches or in assisting the activities of those members of the team whose contracts were to be renewed, whereas nothing was to be gained from the services of a player whose contract was not to be renewed in respect of the football season which was over. The provisions in the contract which require a weekly payment in those months are more naturally attributable to the following season and not to the preceding one. The weekly wage paid in the non-playing season of 1949 is not, in my view, an expense in the nature of a bonus attached to the 1948 season, but a weekly wage paid in respect of services rendered in the week in which the payment is made.

My Lords, I do not find any difference of principle between my view and that of the Inner House ; it is merely a difference in the weight attached to the events proved.

I may add that I have received little, if any, assistance from the two cases cited. *Vallambrosa Rubber Company, Ltd.* v. *Farmer,* 1910 S.C. 519 ; 5 T.C. 529, has some slight bearing, but in my opinion the present case must be decided, and can only be decided, on its own facts.

I would allow the appeal and restore the assessments.

Lord Reid.—My Lords, the First Division of the Court of Session decided this case as a highly special case in which it was not necessary to come to a decision on any general question. The Appellants have submitted that the case does raise questions of principle which the Lord Advocate developed in argument. I feel bound to consider this argument. It is true that the facts are unusual and may never recur, but I do not find anything which would put the case beyond the reach of ordinary Income Tax principles.

It appears that clubs who desire to engage professional footballers to play association football in Scotland, cannot carry on business unless they obey directions given by the Scottish Football Association and the Scottish Football League. Those directions require that players must be engaged by contracts which comply with certain conditions, and in 1948 the conditions were changed. The playing season runs from 1st August to 30th April in each year (subject to certain limitations which apply to the early part of August but are not material to this case). Before 1948, the players' contracts ran for a year and ended at the end of the playing season, but from 1948 onwards the contracts had to run on to the end of the non-playing season. So the contracts made in 1948 had to run from 1st May, 1948, to 31st July, 1949.

The Respondents' financial year runs from 1st April to 31st March. Their whole revenue is derived from games played during the playing season, but they have to pay wages to their players throughout the year. I accept their contention that in order to earn any revenue during the playing season 1948–49—a period of nine months—they had to come under obligation to pay wages to their players from 1st May, 1948, to 31st July, 1949—a period of 15 months. They say that the wages paid during the six non-playing months of this period ought to be attributed wholly to the nine playing months of the period because it was only during that time that the players' services were of any value to the Club. Eight of these nine playing months fell within the Respondents' financial year 1948–49, and so they contend that eight-ninths of the wages for the six non-playing months ought to be attributed to those eight months and are, therefore, a proper deduction in computing their profits for that year.

(Lord Reid.)

It was, of course, not disputed that the wages for the three non-playing months which fell within the financial year 1948–49 were a proper deduction in that year, but the formula proposed by the Respondents would lead to the deduction in that year not only of those wages but also of the greater part of the wages paid in the non-playing months of the next year, 1949–50. The Special Commissioners disallowed this deduction and held that the weekly payments made by the Club during the non-playing months of May, June and July, 1949, were expenses of the year of account ended 31st March, 1950, and could not be related back as expenses proper to the preceding year of account. The First Division allowed an appeal from the decision and held that the method of computation adopted by the Respondents was correct.

Counsel for the Respondents first sought to justify this method of computation by arguing that a taxpayer is entitled, in computing his profit in any year, to deduct from his receipts all sums for which he has had to assume liability in order to earn those receipts, although such sums do not become payable until after the end of the year. So stated the proposition is clearly too wide because the purpose or effect of assuming such liability may be partly to earn profits during the current year and partly to earn profits in a subsequent year. That was the position in the present case. According to the Respondents the wages paid in May, June and July, 1948 and 1949, were spent in order to earn profits during the intervening period of nine months, only eight of which were within the financial year in question. So the Respondents do not seek to deduct the whole of the sum for which they undertook liability in the year in question, but only an appropriate proportion of those sums. Therefore, the argument must be that, where liability is assumed for expenditure beyond the current year, that expenditure must be allocated and attributed to the current year in so far as its purpose or effect can be shown to have been the earning of revenue during the current year. I think that there are at least two answers to that argument. In the first place, it would generally be laborious and often impracticable to make such an allocation. It may be that in the present case an allocation is practicable, but the right to relate back an allocated part of subsequent expenditure can hardly depend on the relative ease or difficulty in making a proper allocation. And, secondly, if this method were proper where the earning of the receipts precedes the payment of the cost of earning them, it is hard to see why it should not also be proper where the expenditure is made in an earlier year than that in which the resultant profit is made. But that was the case in *Vallambrosa Rubber Company, Ltd.*, v. *Farmer*, 1910 S.C. 519 ; 5 T.C. 529. There the company had incurred expense in tending young rubber trees which would not become productive for several years. It was argued that this expense was not a proper deduction in the year in which it was incurrred because it could not produce or help to produce revenue during that year. But this argument was rejected and the deduction was allowed. I think that the reasoning in Lord Dunedin's opinion is unanswerable and, so far as I am aware, it has never been questioned.

The Lord Advocate, on the other hand, argued that a sum must be actually paid during the year to be a proper deduction. I think that ultimately it was conceded that a sum which became payable during the year but was not actually paid until later might be a proper deduction, but even so I think that the proposition is too narrow. For example, if a transaction is completed during the year but the contract provides for postponement of payment of the whole or part of the price until a later date it may well be that the whole price is a good deduction during the current year, although not payable until after the end of that year.

(Lord Reid.)

The Respondents' next argument was that in this case the wages paid to their players during May, June and July, 1949, were in effect only postponed payments of money which had been earned by the players during the previous playing season, and if that were so it may be that they would be entitled to succeed. But there is no finding to that effect, and I cannot find anything in the Case Stated which would justify such a finding. A specimen form of the contract under which the wages were due is appended to the Case. It provides that in consideration of the services and of the observance by the player of the terms and conditions of the agreement the club shall pay to the player certain sums per week, and it appears that the weekly sums payable during the non-playing season were less than the sums payable during the playing season. There may be some doubt about the extent of a player's duties under the contract during the non-playing season, but at least he was bound to do all his power to keep himself in good physical condition and to attend the club's ground for training. One would suppose that if the player were re-engaged for the next year the club would derive some benefit from this training. But even if the player was not re-engaged or the club derived no benefit from paying him during the non-playing season, that does not mean that their payments to him were not wages for that period, but must be regarded as extra remuneration for the earlier period when his services were of value. In order to become entitled to payments during the non-playing season the player had to remain in the service of the club and perform such duties as he had undertaken to perform, and if he did not do this he could not say that he had already earned his wages for the non-playing season. The players may have earned their wages by their services during the playing season in the sense that their services during the playing season brought in the money to pay them wages in the later period but not in any other sense. I am unable to find anything in the Case which indicates that the Special Commissioners came to a wrong decision, and I therefore agree that this appeal should be allowed.

Lord Porter.—My Lords, I am asked by my noble and learned friend, **Lord Asquith of Bishopstone,** to say that he agrees with the opinion which I have expressed.

Lord Porter.—Their Lordships are not aware whether any arrangement with regard to costs has been made in this case.

Sir Reginald Hills.—Yes, my Lord. An arrangement has been made that the Order below as to costs, shall, in any event, not be disturbed, and that the Crown, if successful, will pay the costs of the other side as between solicitor and client.

Questions put :

That the Interlocutor appealed from be reversed.
The Contents have it.

That the question of law in the Case Stated be answered in the affirmative.
The Contents have it.

That the arrangement with regard to costs made between the parties be adhered to.
The Contents have it.

[Solicitors:—C. R. Enever Freeman & Co. for John M. Alston & Son, W. S., and Fraser, Stodart & Ballinghall, W. S. : Solicitor of Inland Revenue (England) for Solicitor of Inland Revenue (Scotland).]