COURT OF SESSION (FIRST DIVISION)—19TH, 20TH AND 28TH JUNE, 1963

HOUSE OF LORDS—26TH AND 27TH MAY, AND 28TH JULY, 1964

Brown

v.

Commissioners of Inland Revenue[1]

Income Tax—Earned income relief—Solicitor—Interest on investment of clients' money—Income Tax Act, 1952 (15 & 16 *Geo. VI* & 1 *Eliz. II*, *c.* 10), *Sections* 148 *and* 525(1)(*c*).

In accordance with a recognised practice, the Appellant, a solicitor, deposited clients' moneys at interest, in his firm's name, with a bank, and retained the interest for his own use and benefit. He also advanced clients' moneys at interest to other clients and allowed interest to certain clients whose accounts were in credit. He was assessed to Income Tax under Case III *of Schedule D on the deposit interest.*

The Appellant claimed earned income relief for the years 1957–58 *to* 1960–61 *in respect of* (1) *the deposit interest and* (2) *the difference between the gross interest charged to clients and the gross interest allowed to clients as aforesaid. On appeal before the General Commissioners, he contended that the lending of clients' money to banks or other clients was an integral part of his profession, and the moneys were profits from services to clients and therefore earned income. The General Commissioners held that the moneys were unearned income, were interest on clients' moneys and were properly assessed under Case* III *of Schedule D.*

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 Income Tax Act, 1952, Sections 64 and 224.

At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of Aberdeen held at Aberdeen on 23rd March, 1961, and adjourned to 26th and 27th April, and 28th November, 1961, Charles G. Brown, practising as a solicitor under the firm name of Burnett & Reid, Advocates, 12 Golden Square, Aberdeen (hereinafter called "the Appellant"), claimed earned income relief under Section 211 of the Income Tax Act, 1952, for the years of assessment 1957–58 to 1960–61 inclusive in respect of certain sums received by him in the circumstances hereinafter appearing. H.M. Inspector of Taxes for Aberdeen 1st District having objected to the Appellant's claims, the claims were heard and determined by us in the manner provided under Section 224(2)(*b*) of the Income Tax Act, 1952.

[1] Reported (C.S.) 1963 S.C. 331; 107 S.J. 718; 1963 S.L.T. 347; (H.L.) [1964] 3 W.L.R. 511; [1964] 3 All E.R. 119; 235 L.T.Jo. 472; 1964 S.L.T. 302.

The question for our determination was whether the said sums received by the Appellant were immediately derived by him from the exercise of his profession.

I. Earned income is defined in Section 525 of the Income Tax Act, 1952, which, so far as relevant, provides:

> " 525.—(1) Subject to the provisions of subsection (2) of this section, in this Act, ' earned income ' means, in relation to any individual—(*a*) . . . (*b*) . . . (*c*) any income which is charged under Schedule B or Schedule D and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting therein.
>
> In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife."

II. The sums which the Appellant claimed should be included in his earned income for each of the relevant years of assessment were as follows:

	£
1957–58	1,923
1958–59	2,034
1959–60	1,152
1960–61	1,235

III. (1) During the hearing the following witnesses gave evidence before us:

Mr. Charles G. Brown, the Appellant.

Mr. Henry Philip, employed by the Appellant as senior law accountant in the firm of Burnett & Reid (Mr. Philip).

Mr. William McGibbon, a partner in the firm of Watt & Cumine, Advocates, 8 Golden Square, Aberdeen (Mr. McGibbon).

Mr. Richard T. Ellis, a partner in the firm of Paull & Williamson, Advocates, 6 Union Row, Aberdeen (Mr. Ellis).

Mr. John M. Melvin, a partner in the firm of A. C. Morrison & Richards, Advocates, 18 Bon-Accord Crescent, Aberdeen (Mr. Melvin).

Mr. William F. Wilson, an accountant employed by the Law Society of Scotland (Mr. Wilson).

(2) The following is a list of documents produced in evidence before us. Documents numbered (i), (iii), (iv), (v), (vi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxxi) and (xxxii) are annexed to and form part of this Case[1]; the remainder will be lodged in Court along with this Case and are available for the information of the Court.

(i) Statement of fees earned by various departments of Burnett & Reid for the years 1957–58 to 1960–61 inclusive.

(ii) Extracts from ledger for 1958 kept by Burnett & Reid.

(iii) Interest account for year ended 5th April, 1957.

(iv) Interest account for year ended 5th April, 1958.

(v) Interest account for year ended 5th April, 1959.

(vi) Interest account for year ended 5th April, 1960.

(vii) Periodic interest statement 15th August, 1955 to 15th August, 1956.

(viii)–(xxi) Ledger accounts of fourteen individual clients.

(xxii) Annual report for 1951 by the Council of the Law Society of Scotland.

[1] Not included in the present print.

(xxiii) List of sums under £50 due by Watt & Cumine to clients at 25th April, 1961.

(xxiv) Copy of clause 13 of partnership agreement dated 28th and 30th November, 1931, between John Reid Dean and the Appellant.

(xxv) List of deposit receipts for individual named clients of Burnett & Reid as at 24th March, 1961.

(xxvi) List of deposits with building societies for named clients of Burnett & Reid.

(xxvii) List of loans of clients' moneys made by Burnett & Reid with clients' authority.

(xxviii) Copy of Solicitors Accounts Rules.

(xxix) Copy of Case for the opinion of the High Court in England, *Mossop & Bowser* v. *H.M. Inspector of Taxes*.

(xxx) Volume 1 of the journal of the Law Society of Scotland.

(xxxi) List of activities carried on by the firm of Burnett & Reid.

(xxxii) Decision by the Special Commissioners of Income Tax on the appeal by the Appellant against an assessment to the Special Contribution.

(xxxiii) Bond of cash credit by William George Millar in favour of Burnett & Reid (1944).

(xxxiv) Bond of cash credit by the trustees of the late James Cumine Burnett in favour of Burnett & Reid (1928).

(xxxv) Bond of cash credit and disposition in security by James Malcolm Burnett in favour of Burnett & Reid (1929).

(xxxvi) Letter of acknowledgment by Burnett & Reid in favour of John Thomson's trustees (1940).

(xxxvii) Letter of acknowledgment by Burnett & Reid in favour of Mrs. Sybil Seton (1939).

(xxxviii) Letter of acknowledgment of loan £150 from the trustees of Bishop Burnett's mortification (1921).

IV. For reasons of clarity we record in this paragraph certain facts which were admitted or proved and which show how the sums mentioned in paragraph II were computed and describe the sources from which they arose. The facts so admitted or proved formed part of the evidence given by the Appellant and by Mr. Philip; the remainder of their evidence is summarised in paragraph V. The facts so admitted or proved are set out below.

(1) Each of the sums so mentioned in paragraph II represented the credit balance of the " interest account " kept by the Appellant's firm for each of the years ended 5th April, 1957 to 5th April, 1960, inclusive. Copies of these four interest accounts are annexed to and form part of this Case as documents (iii), (iv), (v), and (vi)[1].

(2) Each of the said sums was made up of two elements as shown by the interest accounts, namely:

(*a*) interest retained by the Appellant's firm on deposit receipts of clients' money;

[1] Not included in the present print.

(*b*) the difference between (i) the gross amount of interest charged by the Appellant on advances to certain clients, and (ii) the gross amount of interest allowed by the Appellant to certain clients in respect of their credit balances in the firm's books.

(3) In each of the Appellant's financial years ended 5th April, 1957, to 5th April, 1960, inclusive, the sum which the Appellant claimed as earned income was made up of the two elements in the following proportions:

	£	£
Year ended 5th April, 1957		
Deposit receipt interest	1,724	
Difference between gross interest charged and gross interest allowed	199	
		1,923
Year ended 5th April, 1958		
Deposit receipt interest	2,026	
Difference between gross interest charged and gross interest allowed	8	
		2,034
Year ended 5th April, 1959		
Deposit receipt interest	697	
Difference between gross interest charged and gross interest allowed	455	
		1,152
Year ended 5th April, 1960		
Deposit receipt interest	1,105	
Difference between gross interest charged and gross interest allowed	130	
		1,235

(4) The deposit receipts which yielded the amounts of interest set out in sub-paragraph (3) were deposit receipts of clients' money only; money belonging to the Appellant or his firm was kept entirely separate and never included in any of these deposit receipts. The money deposited was taken wholly from the firm's clients' current account with the firm's bank into which account all moneys received by the Appellant's firm on behalf of clients was paid. In some instances clients' money was, with their consent, invested with building societies in name of the Appellant's firm for behoof of specified clients (document (xxvi)) and in others, loaned on call, on their authority, to certain commercial firms which were also clients of the Appellant's firm (document (xxvii)). In all these cases interest accruing was credited to the individual clients concerned. Sometimes where a client had a considerable sum of money available for a month or more, that sum was placed on deposit receipt in the individual client's name (document (xxv)).

From the balance which was left in clients' current account the Appellant drew money and placed it on deposit receipt in units of £5,000. These deposit receipts were in name of the Appellant's firm, Burnett & Reid, with the addition of the words " For clients ". None of these deposit receipts was earmarked for or allocated to any particular client or clients. The Appellant so managed his business that he endeavoured to see that the sum at the credit of the clients' current account did not at any time exceed £10,000. When the sum at credit of the Appellant's clients' current account exceeded £5,000 by several thousands, the Appellant drew from the account £5,000 and placed it on deposit receipt in name of his firm " Burnett & Reid for clients ". The total of these deposit

receipts varied from time to time, but on average amounted to £30,000 to £50,000. The interest on these deposit receipts in name of " Burnett & Reid for clients " was not earmarked for nor allocated among any clients, but the amount thereof arising in each of the years mentioned in paragraph II was retained by the Appellant for his own use and benefit.

(5) The amount of deposit receipt interest so retained by the Appellant in each year was included in an assessment made upon the Appellant under Case III of Schedule D for each of the relevant years of assessment, pursuant to the provisions of Section 148 of the Income Tax Act, 1952. No part of the interest referred to in sub-paragraph (3) above was taken into account in computing the Appellant's liability to Income Tax under Case II of Schedule D.

(6) The Appellant's practice regarding the charging of interest on advances to clients, and the allowance of interest on clients' credit balances, we find to be as described in this and the next two sub-paragraphs. Advances were made or allowed to selected clients in whom the Appellant had absolute confidence. In some cases the advances were made for a specific purpose and under specific arrangements with the borrowing client; in other cases there was no specific purpose or arrangement, the advance being made by allowing the client's account with the firm to be in debit for varying periods. During the period covered by the Appellant's claim, the money advanced by the Appellant in this manner belonged to other clients who were in credit in the firm's books. None of the Appellant's own money or the firm's own money was ever advanced to clients. The Appellant had followed this practice of advancing one client's money to another for many years prior to and during the period covered by his claim, but no client's money had ever been lost. The Appellant had now stopped the practice.

(7) Whether or not interest was charged on advances to clients was decided at his discretion by the Appellant from time to time, taking into consideration such matters as the fees chargeable against any particular client. Where interest was charged, it was always calculated at bank overdraft rates. In cases where interest was charged the Appellant might at his discretion modify the fees chargeable against that client, but modification of fees was not automatic and did not necessarily correspond in amount to the interest charged.

(8) The Appellant at his discretion allowed interest to clients whose accounts with the firm were in credit to a substantial extent for more than three or four weeks at a time. In considering whether interest should be allowed, the Appellant took into consideration the period during which the account had been in credit and the fees chargeable against the client and other matters. Where interest was allowed to a client in respect of credit balances it was normally calculated at deposit receipt rates. In some cases where clients had substantial credits to their account, the Appellant would not allow them interest on those credits but would give them a restriction on fees chargeable against them. This restriction or modification of fees was not automatic and did not necessarily correspond in amount with the interest which would have been allowed to them at deposit receipt rates. The matter rested solely in the discretion of the Appellant.

(9) The interest accounts kept by the Appellant for each year ended 31st March recorded every instance during those years in which the Appellant's firm either:

(*a*) retained interest on deposit receipt of clients' money, or

(*b*) charged interest on advances to clients, or

(*c*) allowed interest to clients in respect of credit balances.

V. We record in this paragraph the facts found by us on the oral evidence of the witnesses and from the documents produced.

(1) Mr. Philip was the first witness to be heard and on his evidence we found the following facts:

(*a*) Mr. Philip's duties in the firm of Burnett & Reid include the following:

(i) supervision of all clients' accounts,

(ii) supervision of the firm's books,

(iii) preparation of fee notes,

(iv) preparation of firm's profit and loss accounts, and

(v) supervision of firm's bank accounts.

(*b*) The staff of Burnett & Reid number forty, including five qualified solicitors, two apprentices, ten typists, six clerks in the factoring department, four surveyors, two clerks on accounts and Income Tax, four clerks in the cash room and looking after clients' and firm's bank accounts, two clerks in the business ledger department, two in the dispatch department, one clerk on insurance business and one clerk employed on company secretary work.

(*c*) Mr. Philip produced the document (i) which shows the amount of fees earned by the various departments in Burnett & Reid's practice.

(*d*) Burnett & Reid collected money such as dividends, rents of property and other income on behalf of clients. They acted as factors for numerous estates, and secretaries for about twenty-one companies. They did stock-broking business on behalf of clients, and bought and sold property and timber as well as doing valuation work. There was one qualified surveyor on the firm's staff with three assistants who were employed on drawing up estate development plans and plans for civil engineering work.

(*e*) The firm kept two bank accounts. The office account containing only the firm's own money was normally in credit between £5,000 and £13,000 and this sum was kept on current account in bank, never on deposit receipt. The other bank account was the client current account, which varied considerably in amount from time to time, but might be in credit as much as £100,000. There was only one client current account and it was from this that the deposit receipts described in paragraph IV of this Case were taken.

(*f*) The witness produced extracts from Burnett & Reid's ledger for 1958. These extracts form document (ii) and show how the sums at credit or debit of various clients of the firm fluctuated from time to time.

(*g*) As well as deposit receipts taken from the client current account, the firm also took deposit receipts in the names of specified clients. This was done when it was known that the money might be on hand for some time. The interest on these deposit receipts when uplifted was credited to the client whose money was on deposit, and was never included in the interest account.

(*h*) On the Appellant's instructions loans were made to some selected clients out of the moneys standing at credit on the general client account. As the ledger extracts showed, some clients' accounts with the firm were in debt for varying periods. Whether interest was charged on loans and debit balances was decided by the Appellant himself.

(*j*) Some clients of the firm did not have any bank account at all. When they needed money they came to the firm and drew cash, and the amount drawn was debited to their account in the firm's books. These clients gave instructions by means of a form instructing the firm to debit their account, and these forms were signed by clients when they drew cash from the firm.

(2) The next witness was Mr. McGibbon. On his evidence we found the following facts:

(*a*) When Mr. McGibbon's firm, Messrs. Watt & Cumine, received money on behalf of clients and knew that the money was to be left for some time, it was placed on deposit receipt. In some cases the deposit receipt was taken in the client's own name and in others in the firm's name " for behoof of clients ". Mr. McGibbon gave details of figures he had extracted from his firm's books showing *inter alia* the amount of his firm's deposit receipts for unnamed clients at 25th April, 1961. Mr. McGibbon explained that a daily check was made to ensure that the amount shown in the firm's client account was sufficient to cover all sums due at that date to clients.

(*b*) Mr. McGibbon's firm followed approximately the same practice as the Appellant in dealing with money placed on deposit receipt for clients. As the figures he had extracted showed, there was £32,500 on deposit receipt for unnamed clients; but there were also considerable sums on deposit receipt in the names of individual clients. There was no fixed rule by which the firm decided whether or not a deposit receipt would be taken in the name of an individual client or for behoof of unspecified clients. Large sums might be on hand for a particular client for less than a month and would not earn interest if put on deposit receipt in the client's name. On the other hand, there had been a case where a sum of £5,000 had been put on deposit receipt for an unnamed client for two months. The deposit receipt had not been earmarked for the client and the interest which arose when the deposit receipt was uplifted was credited to the firm, not to the client concerned.

(*c*) A copy of the annual report of the Council of the Law Society of Scotland for 1951 (document (xxii)) was produced. Mr. McGibbon referred to a passage on page 19 of the report which reads as follows:

> " The Council have also been asked for their views regarding the question of the disposal of interest on Deposit Receipts or deposits with Savings Banks for unnamed clients. They have expressed the opinion that if the allocation of interest on a general sum taken out of the client account and placed on Deposit Receipt or with a Savings Bank is so difficult or involves so much work as to be substantially impracticable, the solicitor is entitled to retain the interest in the form of a general charge against clients for the work involved in keeping the clients' Banking Account(s)."

Mr. McGibbon said that his firm's practice of retaining interest on deposit receipts was based on this ruling by the Council of the Law Society. He admitted however, that in some cases it would have been possible to allocate the interest on deposit receipts among the clients whose money had been deposited.

(*d*) On 25th April, 1961, Mr. McGibbon's firm's books showed that there were 234 small sums under £50 due to clients, totalling in all £2,377, and he produced a list showing these sums (document (xxiii)). It would have been impossible to allocate the interest on deposit receipts representing this total among the clients concerned.

(*e*) Mr. McGibbon admitted that as a matter of principle there was no difference between interest on deposit receipts for named clients and similar interest on deposit receipts for unnamed clients. The interest was interest on clients' money.

(*f*) Mr. McGibbon's firm did not hold themselves out as bankers, although they did advance comparatively small sums out of the firm's own money to clients. These were mainly temporary payments for Stamp Duty, architect's fees, etc. Where larger advances were required these were arranged from outside lenders. Clients' money was never used to finance loans to other clients.

(*g*) The financial accommodation given by Mr. McGibbon's firm to their clients was all part of the general services which his firm of solicitors performed as part of their ordinary business.

(3) At this point documents (xxiv) to (xxxii) were produced on behalf of the Appellant. With regard to document (xxxi) (list of activities carried on by the firm of Burnett & Reid), it was agreed between the parties that the Appellant's firm carried on the activities enumerated therein, with the exception of banking. The Appellant wished to include banking as one of his activities but this was not agreed to by the Crown nor accepted by the Appeal Commissioners.

(4) The next witness to give evidence was the Appellant. On his evidence we found the following facts:

(*a*) The Appellant explained that the question whether the income he derived from his firm's interest account was his earned income had been considered by the Special Commissioners in connection with an assessment to the Special Contribution. The Special Contribution was assessable on individuals whose total income for 1947–48 exceeded £2,000 and whose aggregate investment income exceeded £250 for that year, and for the purposes of the Contribution investment income meant income from any source other than a source of earned income. The assessment to the Special Contribution on the Appellant had been made on the footing that the credit balance of the Appellant's firm's interest account was investment income. The Appellant had appealed against the assessment on the ground that the credit balance of the interest account was earned income. On appeal to the Special Commissioners, they had held that the credit balance of the interest account was a source of earned income of the Appellant.

(*b*) A copy of the Special Commissioners' decision was produced on behalf of the Crown and is annexed to the Case as document (xxxii)[1]. On behalf of the Crown it was admitted that the Special Commissioners had made their decision in the terms of the document produced and that the Crown had not appealed to the Court against the Special Commissioners' decision. The General Commissioners did not accept this case as binding on them in view of the decision in *Commissioners of Inland Revenue* v. *Sneath*, 17 T.C. 149, at page 160. In any event the facts as founded on by the Appellant in that case were not the same as in this case.

(*c*) The firm of Burnett & Reid had been in existence for more than 150 years, and has always carried on financial business for clients such as providing them with financial accommodation and looking after their money. Up to about 1815 the firm made advances to clients by discounting bills, but in recent times, including the period covered by the Appellant's claim, the firm's practice had been to take bonds of cash credit or letters of acknowledgment from clients desiring financial accommodation. Money belonging to the firm had never been advanced in this way; all money lent or advanced belonged to clients who had funds available. No client had ever lost money lent to other clients.

(*d*) The firm's former practice of lending one client's money to another was in breach of the solicitors accounts rules, but prior to these rules being adopted by the Law Society the practice had been quite common among some solicitors. The Appellant's firm had now ceased the practice.

(*e*) The Appellant during the period covered by his claim made a periodical examination of the firm's financial transactions for clients on the basis of a statement produced by the firm's cash room. It was on the basis of these statements that the Appellant decided whether or not interest would be chargeable on outstanding balances due by clients to the firm.

[1] Not included in the present print.

(*f*) At the present time the total amount due to clients by Burnett & Reid was approximately £140,000. The firm had a bank current account for clients' money which was normally in credit to the extent of about £5,000. When the balance at credit of the client current account exceeded this sum by several thousands, £5,000 was withdrawn and placed on deposit receipt in the firm's name " for clients ". In general, all money received by the firm on behalf of clients was banked in the client current account, but where the Appellant's firm knew that an individual client would have a considerable sum at his credit for longer than a month, that sum was placed on deposit receipt or deposited with a building society in the client's own name. In such cases the client received the deposit receipt interest which his money earned. A client's money was banked in the general client current account either because the amount was small or because in the case of a larger amount the Appellant's firm did not anticipate that it would remain in the firm's hands for long enough to justify placing it on deposit receipt in the client's name.

(*g*) The handling of clients' money which was placed on deposit receipt from the client current account involved the firm in time and work. The Appellant regarded the appropriation by the firm of the deposit receipt interest as a justifiable charge for the work involved.

(*h*) The Appellant produced a copy of clause thirteen of the partnership deed entered into between a former partner and himself in 1931 which contained a reference to banking as one of the activities to be carried on by the partnership. The clause is reproduced as document (xxiv). The Appellant asserted that banking was one of the activities carried on by Burnett & Reid; he admitted, however, that whatever the firm did with money belonging to clients, that money always remained the property of the clients who entrusted it to the firm; he also admitted that the firm did not issue cheque forms to clients who wished to draw money from the firm. Clients drawing cash signed an unstamped form authorising their accounts with the firm to be debited with the amount drawn.

(5) The next witness we heard was Mr. R. T. Ellis. On his evidence we found the following facts:

(*a*) Mr. Ellis' firm dealt with clients' moneys in a broadly similar fashion to that adopted by the Appellant. Where a client was expected to have a substantial amount at his credit for a month or more, that sum was deposited in bank in the client's name. In other cases the money went first of all into client current account and, when that account was in credit in excess of £5,000 or so, the excess was put on deposit receipt in the firm's name with the addition of the words " client account ". Generally speaking an amount over £100 or £200 belonging to one client was put on deposit in the client's name where this was possible, but there was no hard and fast rule. When deposit receipts from the general client account were uplifted the capital was entered in the client's current account in the firm's books, but the interest was treated as part of the firm's profit and brought into the profit and loss account. So far as Mr. Ellis knew this method of dealing with deposit receipt interest was common but not universal in other towns in Scotland as well as in Aberdeen.

(*b*) Mr. Ellis admitted that, apart from the opinion expressed by the Council of the Law Society in their report for 1951, all interest on deposit receipts of clients' money belonged to clients. There was never any specific arrangement or bargain regarding the treatment of this interest between a solicitor and his clients, but the retention of the interest amounted to a charge against the general body of clients for services rendered in looking after their money.

(6) The next witness we heard was Mr. John M. Melvin. On his evidence we found the following facts:

Mr. Melvin's firm placed money on deposit receipt out of their client current account and did not earmark the deposits for particular clients. The firm treated interest on these deposit receipts as part of their business profits. His firm had no hard and fast rules for deciding whether a sum of money belonging to a client would be placed on deposit receipt in that client's name, or whether it would be credited to the firm's client current account. In some cases money which had been put on deposit receipt in the firm's name without allocating to any particular client could have earned interest for the client whose money it was. Mr. Melvin regarded the interest retained by his firm as a justifiable charge for services rendered. In the year ended 31st December, 1959, his firm had so retained £329 of interest on deposit receipts and in the succeeding year it would be over £600.

(7) The next witness we heard was Mr. William F. Wilson. On his evidence we found the following facts:

(*a*) Mr. Wilson's duty was to audit solicitors' accounts in Scotland, his main concern being to ensure that a solicitor's various client bank accounts and deposits were always in credit to the extent necessary to cover money due by the solicitor to clients. His duties required him to be familiar with the solicitors accounts rules, and he also knew of the opinion expressed by the Council regarding the appropriation by solicitors of interest on deposit receipts not earmarked for individual clients.

(*b*) The practice adopted by the Appellant of keeping a client current account and placing sums from that account on deposit receipt in the general name " for clients " was fairly common in his experience among solicitors, but was by no means universal. It was also common for solicitors to treat the interest on such deposit receipts as part of the firm's profits. This practice though common was not universal.

VI. It was contended on behalf of the Appellant:

(1) that the Appellant in the name of the firm of Burnett & Reid managed and dealt with clients' money as one of their normal services to clients;

(2) that the lending of clients' money to banks or to other clients was carried on to such an extent and in such a systematic way that it formed an integral part of or was incidental to the Appellant's profession of solicitor or that it formed part of or was incidental to a composite business carried on by the Appellant or that such lending of money was in itself a venture in the nature of trade;

(3) that the firm, in return for making loans or advances available to clients, was entitled to charge interest at its discretion on the loans or advances;

(4) that the firm had authority express or implied supported by widespread custom among solicitors in Scotland to retain interest on deposit receipts of clients' money taken in the name of the firm " for clients " as a charge for managing the clients' money;

(5) that because of the way in which the firm's general client account was kept it would have been laborious, if not impossible, to allocate interest on deposit receipts taken from the general client account among the individual clients whose money was in the client account; and

(6) that both the interest charged on loans to clients and deposit receipt interest retained by the firm were profits derived by the firm from services provided to clients, and were thus earned income of the Appellant as defined in Section 525(1)(*c*) of the Income Tax Act, 1952.

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

(1) that the Appellant through the firm of Burnett & Reid practised as a solicitor;

(2) that in the course of the Appellant's practice, clients entrusted their money to the Appellant, and that the money so entrusted to the Appellant remained at all times the property of the clients;

(3) that interest earned by clients' money, whether as deposit receipt interest or by way of loan interest, belonged to the clients whose money it was;

(4) that the deposit receipt interest received by the Appellant had been correctly assessed on the Appellant under Case III of Schedule D of the Income Tax Act, 1952, and in accordance with the provisions of Section 148 of the said Act as unearned income of the Appellant's clients;

(5) that the Appellant through his firm did not carry on either a separate trade or business akin to banking nor did banking form part of his professional practice;

(6) that neither a custom among solicitors nor the opinion expressed by the Council of the Law Society of Scotland in their report for 1951 could convert interest earned by clients' money into income derived by a solicitor from the exercise of his profession;

(7) that as no part of the interest in question formed part of the Appellant's income assessed to Income Tax under Case II of Schedule D, the earned income relief claimed in respect thereof was not due; and

(8) that the Appellant's claim to earned income relief in respect of the deposit receipt interest and loan interest—the subject matter in dispute—should be refused.

The following cases were referred to:

Martin v. *Commissioners of Inland Revenue*, 22 T.C. 330.

Commissioners of Inland Revenue v. *Hagart and Burn-Murdoch*, 1929 S.C. (H.L.) 76; 14 T.C. 433.

W.A. & F. Rutherford v. *Commissioners of Inland Revenue*, 23 T.C. 8.

Commissioners of Inland Revenue v. *Sneath*, [1932] 2 K.B. 362; 17 T.C. 149.

VIII. We, the Commissioners who heard the appeal, gave our decision orally on 28th November, 1961. We held that these moneys were unearned income; were interest on clients' moneys; and were properly assessed Case III Schedule D. We accordingly refused the Appellant's claim to earned income relief. We accepted the submissions for the Crown and rejected the submissions for the Appellant.

IX. The Appellant immediately after the refusal of his claim declared to us his dissatisfaction therewith as being erroneous in point of law and having duly 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.

X. The question of law for the opinion of the Court is whether the sums of deposit receipt interest and loan interest which were the subject of the Appellant's claim were immediately derived by the Appellant from the exercise by him of his profession of solicitor.

Archibald Hamilton
Peter Duguid
J. Chalmers
A. E. Jones
James A. Mackie
} Commissioners for the General Purposes of the Income Tax Acts for the Division of Aberdeen.

13th March, 1963.

Note by the Commissioners

We, the Commissioners, wish to state initially that the money claimed is interest on clients' money for which the solicitor is accountable to the clients, the capital on which it is earned being the clients' money and therefore the interest their money also. We feel, however, bound to deal with the assessments as made and have done so notwithstanding the fact that the interest is interest on clients' money. Dealing with the assessments as made, the reasons for our decision were as follows.

The question raised in this appeal is whether two items under the earnings of the Appellant in his annual accounts are items upon which earned income relief should be granted. Taking the accounts for example for one of the years—1957–58 (and the following years are on the same basis)—the two items under " Gross Earnings " are :

Interest Account:	£
Deposit receipt interest	1,724
Taxed interest	199
In all £1,923	

These amounts are shown in detail in the firm's interest account for the year to 5th April, 1957.

The first amount of £1,724 is deposit receipt interest and the second is interest on money lent by the Appellant. They are separate and distinct in their origin. They have this, however, in common, viz., that in no case is the money on which the interest arises the Appellant's money. It is all clients' money being dealt with by him.

1. In the case of the £1,724 this is deposit receipt interest for the year ended 5th April, 1957 (see paragraph IV(3)). There are deposit receipts for clients of two kinds as the findings show, viz., money belonging to clients on one or more deposit receipts in the name of the Appellant's firm marked simply " for clients ": there are others in the firm's name each for a specifically named client. The sum in question refers to the money on deposit receipt " for clients " which in one quarter of the year may be £30,000 or more, said to be made up of different sums belonging to the different clients in the firm's hands for a short or long time. This is shown in document (ii) for the Appellant in which the sum at the end of each quarter of 1958 is shown as £30,000, £35,000 (June and September) and at 31st December, £40,000. The accounts for a number of clients produced, while showing substantial debits for some, for others show substantial credits over the year and for more than a month. The £1,724 is the interest on the sums on deposit receipts " for clients ". This

money the Appellant carried into his earnings as stated for the year. The practice is that when the sum on clients' current account becomes too high for business purposes sums are put on deposit receipt " for clients ", each for £5,000 taken from the accounts of many clients in credit, and when any money is required beyond what is on clients' current account the oldest deposit receipt is cashed and the interest retained. It is retained and regarded by the Appellant as " earned income " on the ground that it is a proper charge to make against the respective clients for looking after their money. A paragraph in the annual report of the Law Society of Scotland is founded on (year up to 31st December, 1951) in which it is stated that the Council had been asked for their views upon the disposal of interest on deposit receipts or deposits with savings banks for unnamed clients (see paragraph V(2)(*c*)). The Solicitors (Scotland) Accounts Rules, 1952, lay down the provisions with regard to the keeping of accounts by solicitors and in particular regarding the keeping of clients' accounts. Rule 8 provides that proper books shall be kept to show dealings with money held or received or paid. Under the Rules the solicitor must be able to say exactly what he has, or has done with the money, for each client. It follows he must account to him for it, and if invested, for any interest upon it, whatever the amount, and any views expressed by the Law Society are only views and cannot affect the liability of a solicitor to account to a client for all his money. The amount for the year 1957–58 is £1,724 and with taxed interest £1,923. This is a very substantial figure on a net income of £5,872. On the evidence and looking at the credits produced for a number of clients it is difficult to understand why much of it was not put on deposit receipt for the particular clients. Clients 21, 22 and 23 for example for the year 1958 (letter A document (ii)) represent insurance premiums collected and there are other substantial sums as well. It was submitted for the Appellant that to trace all the clients who would be entitled to the £1,724 of interest would be a long and difficult business with time out of proportion to the amount involved. It is thought this is quite wrong in itself and that with a sum of this amount per annum, very much more could and should have been put on deposit receipt for particular clients. We do not accept the submission that interest to this amount would be so difficult and substantially impracticable to allocate as to allow the solicitor to claim it for looking after the moneys. The sums cannot be regarded as otherwise than very substantial, and interest where it had accrued could easily have been allocated with proper book-keeping, and should have been in our view.

It was sought to say for the Appellant—as well as founding on what the Council of the Law Society said—that prior to the date of the Rules the Appellant lent money to clients as a long and continuous practice by his firm: that it continued to the banks thereafter and that if this is not accepted, then the placing of the money on deposit receipt for clients was a practice so methodical of managing his business by the Appellant, viz., putting money on deposit receipt, that it constituted in itself a profession or trade. If this submission was not regarded as sound it was then submitted that the sums on deposit receipt came into the Appellant's hands solely because of his business, and that he took payment of the interest because of consideration given to the clients, viz., safeguarding and management of their money; that it was therefore earned income within Section 525(1)(*c*) of the Income Tax Act, 1952, being either a separate venture or part of a composite business.

While it was submitted that the interest represented services to the clients in attending to their money it was at the same time admitted that the practice might not work out fairly for all clients, as some might be overcharged and some undercharged, and that in rendering accounts an upward or downward fee was adjusted by the Appellant depending on whether the account was in debit or

credit. It is not accepted that this is a proper way of dealing with clients' accounts and cannot be supported. There was no evidence to show how the account might stand for interest if in credit when it was charged, or what interest would be properly charged if in debit. If any sum was worth taking into account for interest that should have been done exactly and a fee charged in accordance with the table of fees. In contrast to this crediting to himself by the Appellant of the interest on deposit receipts for unnamed clients, and not explained on the evidence, is the situation with regard to interest on deposit receipts for named clients. In these cases the client is paid interest less tax and his account charged on the table of fees. The two methods of dealing with interest are quite inconsistent. What is in fact being done in the case of the " unnamed " deposit receipt clients is that they are being charged a fee in the discretion of the Appellant depending at least to some extent on their debit or credit—with unknown interest—whereas the " named " client pays his account after payment to him of his interest less the tax deducted from it.

It was also submitted that the acceptance of interest on unnamed clients' deposit receipts depended on agreement between the solicitor and the client express or implied. There was no evidence to support any such proposition. The only evidence there was was that, when each deposit receipt for £5,000 was turned over, the interest was credited to the interest account as part of the Appellant's income. There was no evidence to suggest that any of the clients knew anything about the practice at all. The three arguments, viz., upon the Solicitors Rules, an upward or downward fee and express or implied agreement for the retention of the interest, all conflict. It was admitted by the Appellant that he was accountable to clients for interest on the named deposit receipts and it must follow that he is accountable similarly to clients for the interest on the unnamed ones.

The Solicitor to the Inland Revenue submitted that the interest on the deposit receipts was not " earned income ". He pointed to and founded on the words " immediately derived " by the individual in carrying on his business in Section 525(1)(*c*) of the Act of 1952, submitted this was not so derived, and more so when one looked at the main source of income in solicitor's fees already referred to.

He further asked the question " Whose money was it? ": and answered that it was the clients' money on the principle that the capital being the clients' so is the interest: that it had been assessed on the Appellant as untaxed interest belonging to clients under Section 148 of the 1952 Act, and until it was taxed could not belong to him. He submitted that the interest in law was clearly that of the clients and that it could not belong to the Appellant.

We were of the opinion that the interest was clients' money to whom the Appellant was accountable and was unearned income of clients in his hands.

2. Item of £199. This arises from loans to clients with debit balances, financed by other clients with credit balances, now passing out in view of the terms of the Solicitors Rules already referred to. What happened was that the Appellant lent these moneys at a higher rate than he paid in interest as the statements (iii), (iv), (v) and (vi) show and the difference is the amount in question. Taking account (iii) as an example he received £315 11*s.* 9*d.* gross from clients Nos. 1–9. He paid clients 10–14 on the statement £116 7*s.* 6*d.* gross and the difference is the amount in question.

Much endeavour was devoted to show that the Appellant's firm carried on a banking business and at one stage the Appellant described himself as a " private banker "—whatever that means. He described himself in other capacities than an advocate which it is thought cannot with him carry their full

implications, e.g., valuer of landed estates, timber valuer and surveyor. It is not accepted that he carried on the business of banking. He only lends money belonging to clients. He does not deal with the general public—and in the manner described, makes a profit. It has been a constant practice of the Appellant's firm over very many years and, acting in the way he has done, he claims he is entitled to earned income allowance on the money as stated. Lawyers are not bankers, in paying moneys in the course of their business as such for clients. It is done as a matter of convenience and in furtherance of the profession as solicitor, although it must have been curtailed by the introduction of the Solicitors Rules, unless the solicitor keeps a very large amount in his own account or money of his own in the clients' account as a float. In *Bank of Chettinad, Ltd., of Colombo* v. *Commissioner of Income Tax, Colombo*, [1948] A.C. 378, at page 383, with reference to a bank it is stated that

> " its principal business [is] accepting . . . money on current account or otherwise, subject to withdrawal by cheque, draft or [money] order."

In the Solicitors Accounts Rules already referred to the term "bank" is defined as meaning

> " the Bank of England, any Bank incorporated by Royal Charter or Act of Parliament or registered under the provisions of the Companies Acts and being a member of the British Bankers Association, or any Savings Bank established under the Acts relating to Banks, or the Post Office Savings Bank".

It is plain on the practice of the Appellant regarding his transactions of lending money that he does not fall within either of these definitions. In the case of a bank also when a customer gives money to the bank the money as such ceases to be his and he becomes a creditor of the bank for the amount. In the cases with the Appellant no such situation arises. The money always remains the clients' money for which the Appellant is accountable. The practice in the Appellant's office as in others is that if a client wishes money which the solicitor has, or some of it, he simply asks for it. The only evidence in this case about banking, apart from the lending itself already dealt with, was that if a client came in and wanted money he signed a debit note and the money was given to him.

In our opinion the Appellant was not carrying on a banking business as he sought to prove and the interest cannot be earned income. In our view it is investment income.

We had before us, which was strongly founded on by the Appellant, a decision in the Appellant's favour of the Special Commissioners under Section 49 of the Finance Act, 1948, in a case relating to the Special Contribution under the Cripps levy of 1947. It was submitted by the Appellant that the decision in that case was binding on the Commissioners in this case, and that as it was the same in fact, the decision should be followed. To begin with the decision is not binding on us in this case in view of the decision of the Court in *Commissioners of Inland Revenue* v. *Sneath*, 17 T.C. 149. In any event the facts as founded on by the Appellant in the case under the Cripps levy were not the same as in this case. It dealt only with loan interest and in different circumstances to this case. The findings are not accepted by us as applying to and governing this case in any event. It is not clear whether the loan interest in that case was the Appellant's own money on which interest was paid, or advances to executries and for factorial work, which would fall within a solicitor's ordinary business, these being clients. The loan interest arose in different circumstances and not as part of a banking business as is claimed by the Appellant in this case. We were also referred to an article in the journal of the Law Society of Scotland, Vol. I, No. 9, by J. C. Mossop, of a case under Section 49 of the Finance Act of 1948 already referred to in respect of a firm's

taxed mortgage interest. The Special Commissioners found that the interest was a receipt from a composite business and that had it been necessary to do so they would have held that looking to the regular systematic scale of lending—as it is sought also to say in this case—it was in itself an adventure in the nature of a trade and that the interest was a receipt from it. Be that decision as it may these decisions cannot affect the decision and opinions by the Judges in *Commissioners of Inland Revenue* v. *Hagart and Burn-Murdoch*, 14 T.C. 433, and *W. A. & F. Rutherford* v. *Commissioners of Inland Revenue*, 23 T.C. 8. *Hagart and Burn-Murdoch's* case was the one of lending money to a client in connection with the flotation of a company and the object of the company failed. Hagart and Burn-Murdoch wrote off the amount they had advanced to the company—£2,615—and contended it should be treated as a loss in computing their liability for Income Tax purposes. *Rutherford's* case was one of loans to clients, one for farm stock and the other for a farm. In both cases the Courts held—and in *Hagart and Burn-Murdoch's* case the House of Lords held—*Rutherford's* case following it—that the advances were not moneys wholly and exclusively laid out for the purpose of the solicitors' profession within the meaning of rule 3(*a*) of the rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, and still in the same lines in the Act of 1952. We are of opinion that in the lending of money these cases apply in principle to this case. In these cases as in this they are loans to clients, and lending which was held here not part of a solicitor's business. If reference is to be made to any of the opinions more than another, the views of Lord Shaw of Dunfermline[1] are referred to (part of which has been questioned in *Mossop's* case[2]); also where he quoted Lord Parker[3] at page 446; and also Lord Warrington of Clyffe at page 448[4]. This applies to money on loan only bearing taxed interest and not to money on deposit receipts as dealt with in this case; which forms the greater part of it and did not appear at all in any of the other cases.

Archibald Hamilton
Peter Duguid
J. Chalmers
A. E. Jones
James A. Mackie
} Commissioners for the General Purposes of the Income Tax Acts for the Division of Aberdeen

13th March, 1963.

The case came before the First Division of the Court of Session (the Lord President (Clyde) and Lords Carmont and Guthrie) on 19th and 20th June, 1963, when judgment was reserved. On 28th June, 1963, judgment was given unanimously in favour of the Crown, with expenses.

The Hon. H. S. Keith, Q.C., and Mr. J. J. Clyde appeared as Counsel for the taxpayer, and the Lord Advocate (Mr. I. H. Shearer, Q.C.) and Mr. J. P. H. Mackay for the Crown.

The Lord President (Clyde).—This case comes before us on appeal from the General Commissioners. It arises out of claims by the Appellant, who is a solicitor in Aberdeen, in respect of earned income relief. The General Commissioners have refused the claims, and the Appellant has appealed against this refusal.

[1] 14 T.C. 433, at p. 443.
[2] *See* paragraph III(2)((xxix) of the Stated Case (p. 44, *ante*).
[3] In 6 T.C., at p. 429.
[4] 14 T.C.

(The Lord President (Clyde))

The Appellant is the sole partner of a well-known firm of advocates in Aberdeen. The firm carries on an extensive business, involving legal work for clients, factoring numerous estates, acting as secretaries for a large number of companies, stockbroking business for clients, the valuation and sale of estates and timber, and the preparation of estate development plans and plans for civil engineering work. The income with which the present case is concerned falls into two categories. In the first place, in the course of its operations the firm is in possession of substantial sums of clients' money which are placed in the client current account which the firm kept with its bankers. As that account builds up to a sum in excess of £5,000, the firm withdraws £5,000 and places it upon deposit receipt in the firm's name. The interest accruing on these deposit receipts each year represents the first category of income to which the present case relates (hereinafter referred to as "category (*a*)"). The other category (which I shall refer to as "category (*b*)") is the difference between (1) the gross amount of interest charged by the firm on advances made to clients and (2) the gross amount of interest allowed by the firm to certain clients in respect of their credit balances in the firm's books.

The Appellant's contention is that the gross amount of income from these two categories should be treated as part of the firm's income, and that, as it was immediately derived from the carrying on or exercise of a trade, profession or vocation, it was " earned income " within the meaning of Section 525(1)(*c*) of the Income Tax Act, 1952.

No question arises or can arise in the present case as to the propriety of these operations. And indeed the Lord Advocate expressly disclaimed any intention of presenting any argument upon that aspect of the matter. But it appears to me that there is a preliminary difficulty in the Appellant's way which makes it unnecessary to investigate the details of the operations in question.

The preliminary difficulty is this. Under Section 148 of the 1952 Act, tax under Schedule D shall be charged on and paid by the person receiving or entitled to the income in respect of which tax under that Schedule is directed to be charged. The mere accrual of the interest attracts tax, therefore, which may be levied either on the recipient or on the person entitled to it. In the case of the category (*a*) transactions the capital sums belonged to the clients. The deposit receipt interest also necessarily belonged to the clients. Tax is accordingly recoverable either from the solicitor as recipient of that interest or from the client who was entitled to it. In neither event could the gross sum of interest be treated as income derived by the solicitor from the carrying on of a profession or trade, for the client is in right of the interest. Even if the client and the solicitor agreed to the solicitor treating the deposit receipt interest as representing payment for the work involved in looking after the client's money, this could not deprive the Crown of tax at the standard rate on the interest received from the client's capital. Such an arrangement could only relate to the client's interest after tax had been deducted. In my opinion, the solicitor, as holder of the client's capital and the recipient of the client's interest upon it, is chargeable to tax upon it, and he cannot treat the gross sum of interest as a sum derived by him from the exercise of his profession.

The situation, as I see it, is substantially the same as regards the category (*b*) transactions. The substance of these transactions was that the Appellant lent one client's money to another. The interest which he claims as income of his firm was in reality interest belonging to his clients and not to the firm. He was in the position of a trustee in regard to this money, and any interest

(The Lord President (Clyde))

he received from lending one client's money to another belonged to that client and not to the firm. A trustee could not treat the trust income as his own; and neither can the Appellant. It is found in the Case that none of the Appellant's own money nor the firm's own money was ever advanced to clients. On the contrary, all of it belonged to clients. This seems to me to be fatal to the Appellant's contention.

On the whole matter, in my opinion the General Commissioners reached the correct conclusion, and the question put to us should be answered in the negative.

Lord Carmont.—I agree.

Lord Guthrie.—The Appellant is a solicitor practising in Aberdeen, under the name of Burnett & Reid, Advocates, Aberdeen. In the course of his professional work he received sums of money belonging to clients, which in some cases he placed in bank in an account called " clients' current account ". From time to time he drew sums of £5,000 from this account and placed them on deposit receipt in the name of " Burnett & Reid for clients ", but no deposit receipt was earmarked for any particular client or clients. The interest on these deposit receipts was retained by the Appellant for his own use and benefit. The Inspector of Taxes assessed him under Case III of Schedule D upon this interest. He appealed against a refusal to give him earned income relief in respect of that interest, on the ground that the interest was a justifiable charge for the time and work involved in handling clients' money. The General Commissioners having refused the claim to earned income relief, the Appellant obtained a Stated Case to raise the question whether the deposit receipt interest was immediately derived by him from the exercise of his profession.

In my opinion, on the assumption that the Appellant was entitled to appropriate the interest on the deposit receipts towards his professional charges against clients, his contention fails. The matter becomes clear when it is considered at two stages. The first stage was when the interest was paid by the bank and received by the Appellant. It was " interest of money " within the meaning of Case III of Schedule D, and therefore tax under that Schedule was chargeable on it under Section 123 of the Income Tax Act, 1952. As the interest was paid on clients' money deposited with the bank it was the clients' interest, but, by Section 148, tax on it was properly charged on and fell to be paid by the Appellant as the person receiving the income. Therefore, the Appellant could only appropriate as his professional dues from the clients whose interest it was the balance remaining at the second stage after tax on the interest received by him had been properly charged and paid under Case III of Schedule D. The Crown suggested that afterwards he would require to meet a further levy on the balance as earned income, but that matter is not before us. It is sufficient that the assessment which is the subject of appeal was correctly imposed on interest of money received by the Appellant.

A second matter with which this case is concerned is a claim by the Appellant to earned income relief on the difference between the gross amount of interest charged by him on loans to some clients and the gross amount of interest paid by him to other clients who had credit balances in his books. One of the documents appended to the Case shows that Income Tax at the standard rate had been deducted from the interest paid on their loans by the clients who had borrowed money from the Appellant. The borrowed money was in no instance the Appellant's money, but was always clients' money in his

(Lord Guthrie)

possession. The Appellant maintained that the firm of Burnett & Reid had carried on for many years this practice of lending clients' money to other clients—a practice now discontinued—and that therefore this course of dealing should be regarded as a branch of his professional business, a form of banking or money-lending. Therefore the difference between the receipts (the interest charged to clients) and the outgoings (the interest allowed to clients) of this branch of the business was truly income derived by him from the carrying on of his profession.

But again the answer is to be found by looking at the position when the borrowing clients paid the interest on their loans. Since it is found as a fact, based on the Appellant's own evidence, that the capital lent belonged to other clients, the interest on that capital also belonged to these other clients. Before the interest could be paid by the borrower to the Appellant on behalf of the other clients, the borrower properly deducted the appropriate amount of tax on the interest due, not to the Appellant, but to the other clients. It is not possible for the Appellant to contend that interest so paid on clients' money was his property, and that he is entitled as an individual to earned income relief in respect of tax paid upon that interest.

In my opinion the General Commissioners reached a sound conclusion.

The taxpayer having appealed against the above decision, the case came before the House of Lords (Lords Reid, Evershed, Guest, Upjohn and Donovan) on 26th and 27th May, 1964, when judgment was reserved. On 28th July, 1964, judgment was given unanimously in favour of the Crown, with costs.

Mr. F. Heyworth Talbot, Q.C., and Mr. H. Major Allen appeared as Counsel for the taxpayer, and Mr. W. R. Grieve, Q.C., Mr. E. Blanshard Stamp, Mr. J. Raymond Phillips and Mr. J. P. H. Mackay for the Crown.

Lord Reid.—My Lords, the Appellant is the sole partner of the firm of Burnett & Reid, advocates in Aberdeen. In addition to doing the ordinary work of a solicitor the firm acts as factor for numerous estates and as secretary of various companies and it does stockbroking business and sells property and timber. In the course of this work it receives on behalf of its clients numerous sums of money, some large and some small, and it pays these sums on receipt into a separate current account " for clients ". From this account it pays outgoings due by its clients. In the aggregate it generally holds at least £30,000 of its clients' money and at times the amount is considerably greater. Of course it keeps separate ledger accounts for each client and when the Appellant sees that there is a considerable sum at the credit of any client and judges that it, or part of it, is not likely to be required for any purpose for some time, he puts that part on deposit receipt earmarked as belonging to that client. No question arises about these cases. When the deposit receipt is uplifted the accrued interest is credited to the particular client.

But there still remain large sums which the Appellant does not consider it appropriate to deal with in that way. The sum at the credit of a particular client may be small, or, if large, it may be likely to be wanted within a comparatively short time. In such cases there might well be no net gain to the client by putting it on deposit receipt earmarked for him.

(Lord Reid)

The General Commissioners appear to have thought that he should have put more of his clients' money on deposit receipt earmarked for particular clients but I need not consider that matter. For the purpose of this appeal I can assume that there would have been no net gain to any client if he had done this because the trouble and therefore the expense involved would have exceeded any interest likely to accrue if it had been done.

The practice of the Appellant was to wait until the aggregate sum in the clients' general current account approached £10,000 and then to put £5,000 of this on deposit receipt in name of Burnett & Reid for clients. Normally there would be several such deposit receipts in existence and when appropriate one of them was uplifted and the £5,000 paid back into the clients' current account. But the interest which had accrued was paid into the firm's own account and was regarded by the Appellant as belonging to him and as going to increase the profits of the business.

During the four years with which this case is concerned this interest amounted to nearly £6,000, and the case arises because the Appellant claimed that this was part of his earned income. The Commissioners and the Court of Session held that it was not. It appears to me that the first question to be decided is whether this interest ever belonged to the Appellant. If it did not it could not be part of his income and the question of earned or unearned does not arise. The general principle is well settled. A solicitor has a fiduciary duty to his clients, and any person who has such a duty

> "shall not take any secret remuneration or any financial benefit not authorised by the law, or by his contract, or by the trust deed under which he acts, as the case may be."

(*per* Lord Normand in *Dale* v. *Commissioners of Inland Revenue* (1953), 34 T.C. 468, at page 491). If the person in a fiduciary position does gain or receive any financial benefit arising out of the use of the property of the beneficiary he cannot keep it unless he can show such authority.

This interest was earned by using clients' money. It may be true that it could only have been earned by aggregating the money of a large number of clients and could not have been earned for each client by using the money of that client alone. But that does not appear to me to make any difference in law, though it may remove any possible suggestion that the solicitor was simply appropriating for himself money which he could and should have credited to his clients. I can see that if clients' money is dealt with in this way it may be quite impracticable to determine with any accuracy what share of the interest should be credited to any particular client. One might, it is true, begin by assuming that if half the money in the clients' general current account is put on deposit receipt then half the money at the credit of each client is to be regarded as included in the sum put on deposit receipt. But the position changes from day to day. The whole of the money then at the credit of certain clients may have been paid out by the solicitor long before the deposit receipt is uplifted, the general current account having been kept in credit by money coming in from other clients. So notionally the ownership of the £5,000 on deposit receipt will change from day to day. No doubt an accountant could devise a fair method of apportioning the interest. But to make even a rough approximation might well cost more than the whole of the accrued interest. On the other hand, if the solicitor is deterred by this difficulty from putting such money on deposit receipt, it must just remain on current account. No interest will be earned and the only gainer will be the bank.

(Lord Reid)

So it is not very surprising that a similar practice has been followed for a long time not only by the Appellant's firm but by a number of other solicitors. The Commissioners accepted the evidence of an accountant employed by the Law Society that it was fairly common in his experience but by no means universal. Unfortunately we do not know what was the practice of those who did not follow this practice. The Appellant founds on a passage in the Report of the Council of the Law Society of Scotland for 1951:

> " The Council have also been asked for their views regarding the question of the disposal of interest on deposit receipts or deposits with Savings Banks for unnamed clients. They have expressed the opinion that if the allocation of interest on a general sum taken out of the client account and placed on deposit receipt or with a Savings Bank is so difficult or involves so much work as to be substantially impracticable, the solicitor is entitled to retain the interest in the form of a general charge against clients for the work involved in keeping the clients' Banking Account(s)."

This opinion, coming from so responsible a body, negatives any possible suggestion of professional malpractice by the Appellant or any other solicitor who has acted in accordance with it. But it was not argued that it has any binding force and I do not think that it can be supported in law. I do not see how the difficulty in discovering who is the owner can make the money the property of the solicitor. Nor am I aware of any authority for making a general or collective charge against clients.

The Appellant supports his contention on the grounds of custom and implied agreement. On the facts found in the Case he cannot succeed on custom if only because the practice is by no means universal, and I shall not consider what the position would be if there were a custom in the legal sense. As regards implied agreement I do not doubt that clients could agree, if they so chose, to their solicitor making profit out of their money by using it in certain ways in certain circumstances. The fact that a solicitor is in a fiduciary position does not prevent him from making agreements with clients who are *sui juris* and are fully aware of the facts. And there might be circumstances from which such an agreement could be implied. But here the Commissioners have made a finding:

> " It was also submitted that the acceptance of interest on unnamed clients' deposit receipts depended on agreement between the solicitor and the client express or implied. There was no evidence to support any such proposition. The only evidence there was was that when each deposit receipt for £5,000 was turned over, the interest was credited to the interest account as part of the Appellant's income. There was no evidence to suggest that any of the clients knew anything about the practice at all."

I can therefore find no ground on which it could be held that this interest ever became the property of the Appellant. The case also involves smaller sums received by the Appellant as interest on loans made by him to clients out of the general clients' current account, but this does not raise any different issue in law and I need not deal with it in detail.

I recognise that a decision by this House that this interest did not belong to the Appellant may have rather wide repercussions and may give rise to some practical difficulties. But on the facts as stated I think that it is inevitable. I would therefore dismiss this appeal.

Lord Evershed.—My Lords, in my opinion there is no answer to the judgments and reasoning of the Lord President and Lord Guthrie. The Appellant at all material times was carrying on as sole partner the advocates' firm of Burnett & Reid in Aberdeen. There is no doubt at all that the business of the firm covered a wide range of activities, and according to the Case Stated

by the General Commissioners the firm's staff numbered forty persons, including four surveyors, four clerks in

> " the cash room and looking after clients' and firm's bank accounts ",

two clerks in

> " the business ledger department ",

one clerk on insurance business and one clerk employed on company secretary work. In the course of the conduct of the business very considerable sums came to the firm's hands belonging to its numerous clients. It should be stated at once (for it was made clear before the Inner House and before your Lordships) that no suggestion was or has been made that the firm had acted with any impropriety towards its clients—particularly having regard to the opinion of the Council of the Law Society of Scotland hereafter mentioned. Of the large sums received by the firm on behalf of clients some were put in the names of individual clients on deposit receipts or so as otherwise to earn interest for such clients. But the major part of the Appellant's claim in the present case is related to the considerable sums which from time to time belonged to clients and had been together banked in the name of the firm in the clients' current account. From time to time sums, individually amounting to £5,000, were withdrawn from the account and placed upon deposit receipts. These receipts were in the name of the firm but with the important addition of the words " for clients ". It is in respect of the interest received by the Appellant in respect of these deposit receipts, referred to in the Case Stated as category (*a*) items, that the present claim is mainly concerned; for it has been the Appellant's contention that the interest so received should be treated as " immediately derived from " the carrying on by the Appellant of the advocates' business of Burnett & Reid within the meaning of Section 525(1)(*c*) of the Income Tax Act, and so entitled the Appellant to relief under Section 211 of the Act. It was also the Appellant's practice from time to time to make loans to individual clients of the firm out of moneys belonging to other individual clients (a practice in fact now discontinued), and a similar claim is made in respect of any excess of the gross interest paid by any such borrowers over the gross interest paid to any of the clients whose moneys were used for the purposes of the loans. It appears to have been entirely within the Appellant's discretion whether in any particular case he charged interest to the borrower or allowed interest to the client whose moneys were used for the loans; but when any interest had been charged the borrower paid it, in accordance with ordinary practice, after deduction of Income Tax. The Appellant's claim in respect of the latter items, referred to in the Case as category (*b*) items, relates for the years in question to only about one-eighth in amount of the total of the Appellant's claim.

As regards the larger subject matter of the Appellant's claim, the category (*a*) items, it appears to my mind inescapable, on the facts as I have briefly stated them, that the sums of interest received from the deposit receipts, which were, as I have said, labelled in the name of the firm but with the pregnant addition of the words " for clients ", were, as stated by the Inner House, in the hands of the Appellant *prima facie* the money of the firm's clients. It is, in my judgment, no less clear, as the Inner House held, that the interest received from any borrower in respect of the category (*b*) claims was, upon the facts stated and without more ado, the interest of the client whose money had in fact been used in providing the loan. It was, however, the burden of the Appellant's case that the interest received in each case by the Appellant qualified as earned income of his business (so as to entitle him in respect of it to relief under Section 211 of the Act)

(Lord Evershed)

on the ground either of implied or tacit agreement between himself and his clients, or alternatively (as regards particularly the category (*a*) items), on the ground that, according to established custom applicable to the businesses of advocates in Scotland, such interest constituted business receipts. In support of these contentions, as regards the category (*a*) items it was argued on the Appellant's behalf that, having regard to the number of the firm's clients whose money was involved and comprehended in the clients' current account at the bank and to the wide variation in the amounts at any point of time belonging severally to the clients out of the total in the bank and to the wide variation also in the length of time during which clients' moneys remained with the firm, it was for practical purposes impossible properly to apportion the interest received in respect of the deposit receipts between the several clients concerned. Unfortunately for the Appellant there was no evidence whatever of any agreement between the Appellant and any client whereby the interest arising either under category (*a*) or category (*b*) could be retained by the Appellant by way of fees or reward for the firm's management of the clients' affairs; nor of any circumstances from which such an agreement could be implied. Further, the evidence of Mr. W. M. Wilson, who had the duty of auditing the bank accounts of solicitors in Scotland, was to the effect that the practice adopted by the Appellant as regards these deposit receipts (that is, as regards the category (*a*) items) though common was by no means universal. It may further be added that the General Commissioners did not accept as proven the contention that the allocation of the deposit receipt interest would have been substantially impracticable.

In these circumstances the conclusion of the Inner House appears to me, as I have said, inevitable. As regards the category (*a*) items, it is indisputable that the deposit receipts, being in the name of the firm but with the added words " for clients ", were the property of the clients, that is to say, of all of those clients whose money had in fact been utilised in making the deposit receipts; so that, although the Income Tax was properly payable in respect of the interest by the Appellant's firm pursuant to Section 148 of the Act, the property in the interest when received *prima facie* remained that of the clients; and I have been unable to find any basis on the facts of this case upon which could be founded a transfer of that proprietary interest to the Appellant. It follows equally, in my opinion, that the interest paid by any borrowing client (a category (*b*) case) was the property of the client whose money had in fact been lent, and again there seems to be no basis upon the facts proved in the present case upon which a transfer of the property in the interest to the Appellant could be founded.

There was before the General Commissioners and before the Inner House and your Lordships an extract from the 1951 Annual Report of the Council of the Law Society of Scotland upon which, not unnaturally, the Appellant strongly relied. The extract was as follows:

> " The Council have also been asked for their views, regarding the question of the disposal of interest on Deposit Receipts or deposits with Savings Banks for unnamed clients. They have expressed the opinion that if the allocation of interest on a general sum taken out of the client account and placed on Deposit Receipt or with a Savings Bank is so difficult or involves so much work as to be substantially impracticable, the solicitor is entitled to retain the interest in the form of a general charge against clients for the work involved in keeping the clients' Banking Account(s) ".

It appears plainly from the terms of the extract (and no less correctly) that *prima facie* the interest earned on the deposit receipts is the property of the clients; but according to the opinion expressed by the Council there

is a transfer of the property in such interest, which is converted into professional fees, where

> " the allocation of interest . . . is so difficult or involves so much work as to be substantially impracticable ".

I readily accept that a solicitor may acquire the right to interest on money invested by him on behalf of a client by appropriate agreement with the client. But apart from such an agreement I, for my part, see great difficulty in supporting the conclusion which the Council of the Law Society has suggested. The law in Scotland, as in England, views, I apprehend with strictness, the position of a trustee towards his *cestui que trust* and with strictness also the position of a solicitor towards his client; and the question here involved must be answered against that background. According to the opinion expressed the transfer of the property in the interest takes effect upon the happening of an event which must in nine cases out of ten at least be extremely uncertain and difficult of assessment. It is, as I apprehend, clear that a custom of the kind here in question would have to be not only certain and also reasonable, but notorious so as to be well known to all those who come into professional relations with firms of advocates: see, e.g., *per* Jessel, M.R., in the case of *Nelson* v. *Dahl* (1879), 12 Ch. D. 568, at page 575, where the learned Judge said in reference to alleged custom in the shipping trade that:

> " . . . like all other customs, it must be strictly proved. It must be so notorious that everybody in the trade enters into a contract with that usage as an implied term. It must be uniform as well as reasonable, and it must have quite as much certainty as the written contract itself."

I confess, therefore, for my part, to feeling doubt upon principle whether a custom such as that which has been here invoked would be recognised by the law of Scotland or the law of England. In the present case, however, it is not necessary for me to express a final conclusion on this matter of principle for, as I have already stated, in the present case not only was the alleged practice not, according to the evidence, uniform, but further, the General Commissioners were not satisfied as a fact that the difficulty of allocation of the interest, with which the present claims are concerned, was so substantial as to found the premise for the conclusion suggested by the Council of the Law Society.

I therefore agree that this appeal must be dismissed.

Lord Guest.—My Lords, the only question in this appeal is whether the Appellant, a solicitor by profession, is entitled to " earned income relief " in terms of Sections 208, 211 and 525 of the Income Tax Act, 1952, for the years of assessment 1957–58 to 1960–61, in respect of certain sums in name of interest received by him and included in an assessment made upon him under Case III of Schedule D. The sums included interest under two categories. Category (*a*) represented interest on money placed on deposit receipt from his clients' general account: category (*b*) interest is represented by the difference between (1) the gross amount of interest charged by his firm on advances made to clients, and (2) the gross amount of interest allowed by his firm to certain clients in respect of their credit balances in the firm's books. No separate question arises in regard to category (*a*) interest and category (*b*) interest respectively and both can be considered together.

It is not disputed that the interest received or allowed in each case is on client's money entrusted to the Appellant in his capacity as solicitor or man

(Lord Guest)

of business. The interest on this capital is therefore *prima facie* money to which the client is entitled. A solicitor is not entitled, without the client's consent, to make profit out of his client's money. Accordingly, unless there is some agreement between the solicitor and his client entitling the solicitor to retain the interest this belongs to the client. This proposition was not challenged by the Appellant. But it was said there were in this case facts from which it could be inferred that the client agreed to the Appellant's method of dealing with the interest on his (the client's) money. I can find no evidence of any such agreement, express or implied, and the findings in the Case Stated expressly negative any such agreement. The Appellant suggested that it would be reasonable to imply such an agreement arising from the relationship which existed between the Appellant and his clients. But there would have, in my view, to be very clear and explicit evidence from which any such agreement could be implied, having regard to the duty imposed on a solicitor to account to the client for any money acquired in the utilisation of his client's funds. It was also suggested that such an agreement could be implied from a general custom of the profession. The evidence falls far short of any such custom, and it is doubtful whether any such custom would satisfy the strict requirements laid down by Jessel, M.R., in *Nelson* v. *Dahl* (1879), 12 Ch.D. 568, at page 575.

The only other matter to which I desire to refer is the passage excerpted from the Annual Report of the Council of the Law Society of Scotland for 1951, at page 19, which reads as follows:

> " The Council have also been asked for their views regarding the question of the disposal of interest on Deposit Receipts or deposits with Savings Banks for unnamed clients. They have expressed the opinion that if the allocation of interest on a general sum taken out of the client account and placed on Deposit Receipt or with a Savings Bank is so difficult or involves so much work as to be substantially impracticable, the solicitor is entitled to retain the interest in the form of a general charge against clients for the work involved in keeping the clients' Banking Account(s)."

In view of this guidance solicitors who followed the advice cannot be blamed, but I cannot see how the difficulty or impracticability of allocating the interest can entitle the solicitor to retain the interest on what is client's money. Whether the firm make a general charge for work involved in keeping the clients' banking accounts is an entirely unrelated matter. I have come to the conclusion that the opinion given by the Society is not well founded. But whether the opinion is sound or not, it could not in any case be the basis upon which a general custom of the profession could be founded.

I agree that the appeal should be refused.

Lord Upjohn.—My Lords, the Appellant practises as a solicitor in the city of Aberdeen under the firm name of Burnett & Reid, advocates. As part of his practice the Appellant also carries on business as a factor for numerous estates, acts as secretary for a number of companies, conducts stock-broking business on behalf of his clients, buys and sells property and timber estates on their behalf, and does also work of valuation. The Appellant, therefore, in the ordinary course of his business receives on behalf of his clients very considerable sums, rents received, deposits, proceeds of sale, and so forth, which at the time of the hearing before the Commissioners amounted to £140,000.

All these sums are properly paid by the Appellant into his clients' current account with his bank. In the case of considerable sums received on behalf of a particular client which are going to be held for some time they would be invested in the name of or earmarked for that client on deposit receipt or in a building society or other investment, and that client would receive the interest on such investment; with such sums this appeal is not concerned. Apart

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from that, the Appellant's practice is that when the clients' current account approaches £10,000 he withdraws from that current account a sum of £5,000 and places sums in units of £5,000 in deposit receipts. These deposit receipts are in the name Burnett & Reid, marked " for clients ". The interest on these deposit receipts is not earmarked or allocated to any particular client's account but is retained by the Appellant for his own use and benefit. The amount of these deposit receipts naturally varies from time to time, but in the past has averaged some £30,000 to £50,000 per annum, so that the interest earned thereon was considerable. Before the Commissioners the Appellant at one time alleged he was a " private banker " to his clients, but that obscure phrase, whatever it meant, was decisively negatived by the Commissioners, as a matter of fact, on the short ground that lawyers are not bankers. The Appellant does not dispute that finding and, therefore, admits at once that the whole of these sums held on deposit are moneys which remain the property of his clients which they had entrusted to him and do not belong to him. However, he claims that he is entitled to retain the interest earned on these deposit receipts and that it is his earned income as defined in Section 525(1)(*c*) of the Income Tax Act, 1952, so that he is entitled to relief under Section 211 of that Act as amended. This claim has been disallowed by the Commissioners, and an appeal to the Inner House has been refused, and now comes before your Lordships' House.

The first step in the Appellant's argument to establish his claim is that the interest from these deposit receipts belongs to him and not to his clients. If it does belong to him, the second step is to establish that it is his earned income. As, in my opinion, the Appellant fails to surmount the first step I shall not consider the second.

One of the most settled principles of the law of Scotland, as of the law of England, is that a person who is in a fiduciary relationship to another may not make a profit out of his trust, and the contrary was not argued. A professional adviser, whether he be solicitor, factor, stockbroker or surveyor, is of course in a fiduciary relationship to his client, and if and when he is entrusted with his client's money he can make no profit out of it. He may make proper charges to his clients for the professional services he renders to them, including, no doubt, the investment of their money, but he cannot, without his clients' agreement, make indirect charges by way of retaining interest on the investment of his clients' money. It avails him not to say that he retains such interest either in lieu of or in reduction of such charges or in addition thereto because of the extra time and trouble in which he may be involved in handling his clients' affairs. But the client may agree to allow his adviser to retain such interest provided that the true legal position is explained to him and he fully understands it. Such an agreement may be expressed or may be implied from the course of dealing between the client and his adviser but can, in my view, only be implied where, at all events, it can be shown that the client knew of his rights and by his course of conduct agreed or assented to their waiver and to the substitution of this practice.

In this case the Commissioners have found as a fact that there was no evidence to support the proposition that there was any such assent, express or implied, on the part of any client, to the Appellant's practice of retaining the interest on these deposit receipts. Indeed, the Commissioners found:

> " There was no evidence to suggest that any of the clients knew anything about the practice at all."

That finding of fact seems to me to be completely destructive of the Appellant's case. The interest belongs not to him but collectively to his clients whose money has earned it.

(Lord Upjohn)

Then it was said that the Appellant had authority, express or implied, to retain this interest because it was supported by widespread custom amongst solicitors in Scotland to retain interest on deposit receipts of clients' money taken in the name of the firm " for clients " as a charge for managing the clients' money. The Commissioners held as a fact that the Appellant failed to establish any such custom among solicitors in Scotland. Whether such a custom among any particular body of solicitors, had it been established, could be said to be so notorious and widespread that the lay client entrusting his money to his solicitor must be taken to know of it and impliedly assent to it, is a question which it is not necessary to decide to-day.

Finally, it was said that, having regard to the way in which the Appellant's general account was kept, it would have been laborious and, indeed, impossible to allocate interest on these deposit receipts formed by transfers from the clients' current account among individual clients. The Commissioners did not accept the submission of the Appellant that it was, on the facts of this case, impossible for him to do so. But let it be assumed that in some cases it may be established that the allocation of such interest among clients is so difficult or involves so much work as to be substantially impracticable, I still find much difficulty in seeing how that circumstance entitles the adviser to retain the interest due to his clients. Much reliance was placed on an extract from the Annual Report for the year 1951 by the Council of the Law Society of Scotland when they were asked to deal with this very question. They replied:

> " They have expressed the opinion that if the allocation of interest on a general sum taken out of the client account and placed on Deposit Receipt or with a Savings Bank is so difficult or involves so much work as to be substantially impracticable, the solicitor is entitled to retain the interest in the form of a general charge against clients for the work involved in keeping the clients' Banking Account(s)."

With all respect to that opinion I cannot see how the difficulty of making an allocation can justify the adviser in retaining the interest which his clients' money has earned or in making a profit out of the performance of his fiduciary duty to his client. Furthermore, I have never heard it suggested before that a solicitor is, in the absence of agreement with all the clients involved, entitled to make " a general charge against clients ". Accordingly, the Appellant fails to make out the first branch of his case that the interest on these deposit receipts belongs to him.

I reach this conclusion with some regret. A practice whereby the solicitor uses his clients' money, too small in individual amounts or held for too short a time to make individual investment worth while in the interest of the client but which, in the aggregate, amounts to a large floating sum, to earn interest for him is an entirely innocent and commonsense practice which harms no one and probably indirectly benefits the general body of clients. But this interest belongs collectively to the clients and not to the solicitor, and equity has always regarded, and rightly regarded, the fiduciary relationship of client and adviser as subject to such strict rules of conduct that its retention by the solicitor cannot be justified in law without the client's consent. So the solicitor must explain the matter to his client and obtain his assent thereto.

It remains only to notice quite shortly the claim of the Appellant to retain interest which the Lord President described as the category (*b*) cases; that is to say, cases where the Appellant lent his clients' money to others

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of his clients, persons of unexceptional character, to whom he quite reasonably charged interest. Let it be said at once that this practice, though innocent, was wrong and has been discontinued. Against the interest which the Appellant charged his borrowing client, he made an entirely arbitrary credit of interest in favour of such clients who had had money with him for some time, but the allocation of such interest bore no relationship whatever to the moneys lent and such credits seem from a legal point of view to be an unjustifiable concession by the Appellant and, in my view, must be entirely disregarded. However, that matters not, for I cannot understand how the Appellant can claim to receive, and keep for his own, any part of the interest which he has charged to his clients to whom he has lent money which does not belong to him.

For these reasons I would dismiss this appeal.

Lord Donovan.—My Lords, the Appellant claims that certain deposit and loan interest which he received is part of his professional income, and qualifies for the earned income allowance. The short answer to the claim is that on the facts proved none of the interest is his income at all, but that of his clients to whom the capital, upon which the interest was paid, belongs. Nothing has been proved, by way of assignment, contract or otherwise, shifting the beneficial ownership of that income from such clients to the Appellant. In the circumstances it becomes unnecessary to consider whether the interest would, if it belonged to the Appellant, have satisfied the statutory definition of " earned income ".

The ruling of the Council of the Law Society of Scotland cannot help the Appellant. It is simply the Council's opinion, and if the words

> " the solicitor is entitled to retain the interest "

are intended to refer to a legal title, then, in my view, the opinion is wrong.

If I may say so, I think the Council recognised the difficulty it was in: for in effect the ruling says that if certain work is too difficult or impracticable then a charge may be made for other work which the solicitor would be doing in any event. The premise is really irrelevant to the conclusion. Be that as it may, I am of opinion that this appeal is hopeless and must fail.

Questions Put:

That the Interlocutor appealed from be recalled.

The Not Contents have it.

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

The Contents have it.

[Solicitors:—(C.S.) W. H. Mill, McLeod & Rose, W. S. and (H. L.) Rider, Heaton, Meredith & Mills, both for Burnett & Reid; Solicitor of Inland Revenue (England) for Solicitor of Inland Revenue (Scotland).]

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