to the individual. It means a loss of remunerative time which can be stated in terms of money. There can be no loss if wages are being paid for the time which is spent on the public service. Nor can there be any loss when the individual is unable to show that he is a penny the worse off for having spent the time on the public service.

The allowance is the equivalent of compensation for money lost, and the measure contained in the Department's minute indicates that the Department had in view the ordinary wage-earner, and that the policy was not to shut him out from becoming a member of the Education Authority. The fixing of the flat rate also indicates that the question of the amount of the loss does not require to be inquired into provided the fact of loss is established.

Upon the facts which are set out in this Special Case I think there can only be one answer to the question whether it has been shown that any one of the four individuals dealt with in the case lost any remunerative work. In the case of the minister I take leave to say that under no conceivable circumstances could he be brought within the category of cases pointed at by the Department's minute. With regard to the accountant, even if his business is coupled with that of a property agent, it seems to me that there would be great difficulty. And the same remark applies to the case of the manufacturing stationer, who is, I apprehend, a man whose business goes on whether he himself is present or absent. The position of the doctor may be debateable, but more than one question would have to be decided before his right to the allowance could be sustained, and in the present case there is no material which would entitle us to hold it as established.

LORD SKERRINGTON—I agree generally with your Lordships as to the object and construction of the statutory and quasi-statutory enactments set forth in the Special Case. No facts are stated in the case which entitled the Education Authority to make the payments referred to.

LORD CULLEN—I concur.

The Court answered the first alternative question in the negative and the second in the affirmative.

Counsel for First Party—Hon. W. Watson, K.C.—Gilchrist. Agents—Laing & Motherwell, W.S.

Counsel for Second Party—Fraser, K.C.—Cullen. Agent—William Purves, W.S.

Friday, February 17.

FIRST DIVISION.

[Exchequer Cause.

NORTH BRITISH RAILWAY COMPANY *v.* INLAND REVENUE.

Revenue — Income Tax — Schedule E — Salaries Paid without Deduction of Income Tax—Amount of Assessable Salary — Income Tax Act 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedule E—Income Tax Act* 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 146, *— Income Tax Act* 1860 (23 *and* 24 *Vict. cap.* 14), *sec.* 6.

A railway company under a contractual obligation with its officers paid the income tax on their salaries without exercising its statutory right, under section 6 of the Income Tax Act 1860, of deducting the amounts so paid from the salaries. *Held* that the amounts paid by the company in respect of income tax of its officers formed part of the incomes of the officers, and that the company was assessable on the totals.

The Income Tax Act 1853 (16 and 17 Vict. cap. 34) enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted . . . the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act . . . (that is to say)"—Schedule E—"For and in respect of every public office or employment of profit . . . and to be charged for every twenty shillings of the annual amount thereof."

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) enacts—Section 146, Schedule E.—*Rules for Charging the said Duties—First*—"The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profit mentioned in the said Schedule E . . . for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices. . . ."

The North British Railway Company, *appellants*, being dissatisfied with a decision of the Commissioners for the Special Purposes of the Income Tax Acts confirming an assessment to income tax under Schedule E of the Income Tax Act 1853 for the year ending 5th April 1919, obtained a Case for appeal in which C. C. Scott, Inspector of Taxes, was *respondent*.

The Case stated, *inter alia*—"The following *facts* were admitted or proved:—1. The assessment under appeal was in respect of offices and employments of profit held in or under the appellants, and was made upon the appellants pursuant to section 6 of the Income Tax Act 1860 (23 and 24 Vict. cap. 14), which enacts—'In like manner as aforesaid the Commissioners for Special Purposes shall assess the duties payable under Schedule E in respect of all offices and employments of profit held in or under any railway

company, and shall notify to the secretary or other officer of such company the particulars thereof; and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected, and levied accordingly; and it shall be lawful for the company or such secretary or other officer to deduct and retain out of the fees, emoluments, or salary of each such officer or person the duty so charged in respect of his profits and gains.' 2. In a letter from the appellants' solicitor addressed, on 24th May 1920, to the Inspector of Taxes it is stated—'The Railway Company are under contractual obligation to the officer that they will not exercise their statutory discretionary right to deduct tax from his salary.' 3. The appellants accordingly pay to each of their officers the agreed amount of salary in full without any deduction on account of income tax. 4. In arriving at the amount of the assessment an addition was made in the case of each officer to the amount actually paid to him by the appellants in respect of income tax paid thereon by the appellants. For the purposes of this case it is admitted by the appellants that if any such addition has to be made the amounts so added are to be taken to have been correct. . . . 6. Prior to the making of the assessment to which this appeal relates the appellants have never been assessed to income tax, Schedule E, in sums greater than the amounts actually paid by them to their officers, though they have not at any time deducted income tax upon payment to their officers of the said amounts."

The *question of law* for the opinion of the Court was—"Whether the sum paid by the appellants as income tax in respect of the salaries of their officers, and not deducted from the salaries paid to such officers, is part of the officers' income for income tax purposes?"

Argued for the appellants — The assessment should be on the actual amounts paid to the officer. The tax paid by the appellants was not part of the officers' salaries, but was a statutory debt due by the appellants. The income which was meant to be taxed was money or something which could be converted into money — *Tennant* v. *Inland Revenue*, 1892, 19 R. (H.L.) 1, 29 S.L.R. 492; *Russell* v. *Town and County Bank*, 1888, 15 R. (H.L.) 51, 25 S.L.R. 451; *M'Dougal* v. *Sutherland*, 1894, 21 R. 753, 31 S.L.R. 630; *Corke* v. *Fry*, 1895, 22 R. 422, 32 S.L.R. 341; *Inland Revenue* v. *Blott*, (1921) A.C. 171. The obligations of the appellants not to deduct the tax could not be converted into money by the officers. This method of assessment amounted to changing a contract to pay free of income tax into one under which income tax was to be deducted. It was, further, going back on a practice which had existed for many years. The only reported cases dealing with section 6 of the Act of 1860—*Great Western Railway Company* v. *Baker*, (1921) 2 K.B. 125, and *Attorney-General* v. *Lancashire and Yorkshire Railway Company*, 1864, 33 L.J., Ex. 163—did not apply.

Argued for the respondent—Section 6 of the Act of 1860 was merely a part of the machinery of the Income Tax Acts and could not be regarded as creating a statutory debt—*Attorney-General* v. *Lancashire and Yorkshire Railway Company, cit. sup., per* Martin, B., at p. 166. The income tax paid by the company was therefore the tax on the officers' salaries and formed part of these salaries—*Samuel* v. *Inland Revenue*, (1918), 2 K.B. 553; *Mackie's Trustees* v. *Mackie*, 1875, 2 R. 312, *per* Lord Justice-Clerk at p. 314, 13 S.L.R. 368; *Meeking* v. *Inland Revenue*, 1920, 7 T.C. 603; *Attorney-General* v. *Ashton Gas Company*, (1906) A.C. 10. Cases like *Tennant* v. *Smith, cit. sup.*, where the subject had no money value at all did not apply.

LORD PRESIDENT—This appeal relates to duties payable for and in respect of profits and gains of the class described or comprised in Schedule E of section 2 of the Act of 1853, viz., "public office or employment of profit." In the language of section 146 of the Income Tax of 1842 the duty is chargeable on the holder of such public office or employment. The particular office or employment concerned in this case is held in or under a railway company, and is accordingly subject to section 6 of the Income Tax Act of 1860. By that enactment the duties imposed for and in respect of profit arising from a public office or employment held in or under a railway company are directed to be assessed, not on the officer or employee in the actual enjoyment of the profit which attracts the duty and which is the true subject of taxation, but on the railway company. The section goes on to provide that it shall be lawful for the company to deduct and retain out of the emoluments of the officer or employee the duty so charged in respect of his profits and gains. This leaves the railway company free to pay the officer's or employee's salary either after deduction of income tax or free of income tax as it prefers. In the present case the Railway Company has come under contract with the officer or employee not to retain or deduct the duty to which his salary is subject. The salary, in short, is paid to him free of tax, and the amount of his emolument is accordingly increased precisely by the amount of the duty. A contract to pay salary without deduction of tax is neither more nor less than a contract to pay the amount of the salary plus the amount of the tax, and in such a case the profit of the office or employment is measured by the sum of these two figures. As Lord Gifford said in the case of *Kinloch's Trustees* v. *Kinloch*, (1880), 7 R. 596, at p. 599—"A bequest free of legacy duty is just a bequest of an additional sum equal to the legacy duty, and occurs very frequently. It is precisely the same with income tax."

It was contended for the Railway Company that the effect of the relief from direct assessment provided to the railway employee by section 6 of the Act of 1860 is to convert what would otherwise be a charge or impost on his profits and gains, ascertained in the usual way, into a Crown

debt due by the Railway Company measured by the amount of the salary actually paid in hard cash. This ignores the fact—as it appears to me, the fundamental fact—that the subject of the tax (on whomsoever the tax may be assessed) is the profit of the office or employment. The question is, What is the amount of that profit? And the answer is that the amount is more or less according as the profit is received after deduction of the tax to which it is subject, or free of that tax. The Railway Company's argument really involves—as indeed the Railway Company's counsel admitted—that the effect of section 6 is to exempt the profit of railway office or employment from taxation under the Income Tax Acts. I have found myself unable to reconcile these views either with the general scheme of the income tax or with the provisions of the Acts of 1842, 1853, and 1860, on which the question immediately turns.

LORD MACKENZIE — I am of the same opinion. It was urged upon us that we ought to apply the analogy of the case of a bank agent whose occupation of a dwelling-house was considered in the case of *Tennant* v. *Smith*, 19 R. (H.L.) 1, [1892] A.C. 150. It was there held that unless what came into the bank agent's hands was money or money's worth, it was not subject to income tax; as Lord Macnaghten put it—19 R. (H.L.) at p. 9, [1892] A.C. at p. 164—"a person is chargeable for income tax . . . under Schedule E, not on what saves his pocket but on what goes into his pocket."

It appears to me that that analogy does not apply to the present case and that the true analogy is the dividend which is paid free of income tax—one on which income tax is paid by the company before the dividend is received. What the recipient gets is $x + y$, x being the amount of his dividend which goes into his pocket, and y being the amount of the income tax which goes to the Inland Revenue, but which is nevertheless money or money's worth in a question with the recipient of the dividend. In the same way you must reckon in regard to profits and gains that the person who receives the particular sum free of tax receives more than the person who got a similar sum subject to deduction of tax.

A consideration of these matters leads me to the conclusion that the Commissioners reached a right decision.

LORD CULLEN—I am of the same opinion. The charge here is on the profits arising from the office or employment. Now if there be one employee who has a bare contract for a salary of, say, £100, and another employee who has the species of contract actually made by the Railway Company—that is to say, one under which he receives a salary of £100 free of all deductions—it seems clear that the profits arising from the employment in the second case are greater than the profits arising from the employment in the first case in respect of direct pecuniary receipts. And if the pecuniary profits arising from the employment in the second case are greater than in the first the tax payable must be correspondingly greater.

LORD SKERRINGTON did not hear the case.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—Macmillan, K.C.—Graham Robertson. Agent—James Watson, S.S.C.

Counsel for the Respondent—The Solicitor-General (Murray, K.C.)—Wark, K.C.—Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, February 17.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* TRUSTEES FOR THE ROMAN CATHOLIC ARCHDIOCESE OF GLASGOW.

Revenue — Income Tax — Exemption — Public School—Buildings Let to Education Authority — Income Tax Act 1918 (8 *and* 9 *Geo. V, cap.* 40), *First Schedule, Schedule A, No. VI, Rule* 1 (*c*).

The Income Tax Act 1918, Schedule A, No. VI, provides—Rule 1—"The following further allowances shall be made under this Schedule: . . . (*c*) The amount of the tax charged on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act, amounts to one hundred and fifty pounds or more, or by a person paying rent for same."

The schools belonging to the Trustees for the Roman Catholic Archdiocese of Glasgow having under the provisions of the Education (Scotland) Act 1918 been transferred by lease to the Education Authority, who paid rent for them and occupied them as tenants of the trustees, *held* that the schools were occupied by a person paying rent for them within the meaning of the Rule, and that the trustees were not entitled to exemption from income tax.

F. J. Bryan, Inspector of Taxes, Dumbarton, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Dumbarton finding that the Trustees for the Roman Catholic Archdiocese of Glasgow, *respondents*, were not liable for the assessments for the year 1920-21, amounting *in cumulo* to £95, 6s. 6d., made under Schedule A of the Income Tax Acts in respect of school premises in the county of Dumbarton owned by the trustees and occupied by the Education Authority for the county under the Education (Scotland) Act 1918, obtained a Case for appeal.

The Case stated—"The following *facts* were admitted:—1. Prior to the passing