casting referred to has been executed by the first party in accordance with the foresaid offer, and in a manner recognised by and according to the custom of the trade; . . . and further, whether the said work had been executed in a satisfactory and tradesmanlike manner." All these things are matters eminently within his own local and practical knowledge. It was entirely for him to say whether anything further beyond that was required in the shape of evidence to satisfy his own mind. It was in these circumstances that I made the observation that this man was excessively cautious in having allowed any proof at all. I think he was.

Upon the record the arbitrator is charged (1) with having been corrupt, (2) with having gone beyond the boundaries of the submission, and (3) with having based his award on a question not in issue between the parties. A proof was allowed of these averments. The proof having been led in the Court of Session, when this arbitrator was in the witness-box a certain other fact was elicited not on record and not pleaded to, and on that the Lord Ordinary thought fit to give judgment — a judgment which has been reversed.

I am of opinion that arbitrators, or indeed any defenders, in Scotland ought not to be put into that situation. They are put into the witness-box because of averments and pleas which are according to the well-known grounds of reduction, and, as in this case, involve serious charges upon their capacity and their integrity. Having been subjected to examination and cross-examination, something is elicited from such defenders which suggests a new cause of action altogether, or different foundation for the action. In such circumstances my view of the law (and I gather it is the view of your Lordships) is that when that situation arises the new front thus disclosed must be a front which cannot be presented to the Court except upon averments and pleas properly inserted in the record, and upon strict, and it may be severe, conditions as to expenses. Fortunately the terms of arbitration here are wide enough to cover all that was done. No harm was done that I can see by the procedure adopted by the arbiter.

So far for the first ground of appeal. The second ground is this — The appellant on one point of the case obtained the award of the arbitrator in his favour. But he is not satisfied. He says—"I am a legal purist. My grievance is that I got my favour accorded to me by ways which were not in accordance with my ideas of legal purism." No court of justice can entertain arguments of that kind; it would upset the whole foundation of legal remedy. There is nothing to remedy on the concession of the argument.

Had it not been for the admirable address of Mr Wark I should have said that the case was too clear for argument. Reverting to the point of procedure, I desire to say that I do not commit myself to the doctrine in *Davidson* v. *Logan*. I question whether it can be squared with that now laid down in this House. I do not commit myself further than to repeat those views as to correct pleading which your Lordship has announced from the Woolsack. I wish to add respectfully that I do not think it would be possible to improve upon the patient and accurate summation of the legal position of this case by the Lord President of the Court of Session.

LORD PHILLIMORE — I concur with the motion which is proposed by my Lord on the Woolsack, and with the observations which have fallen from the noble and learned Lords who have addressed your Lordships' House.

LORD BLANESBURGH—I concur.

Their Lordships ordered that the interlocutors appealed against be affirmed and the appeal dismissed with costs.

Counsel for Appellants—Wark, K.C. — M. J. King. Agents — Dove, Lockhart, & Smart, S.S.C., Edinburgh— Ince, Cope, Ince, & Roscoe, London.

Counsel for Respondents — MacRobert, K.C. — Black. Agents — Macpherson & Mackay, W.S., Edinburgh—John Kennedy & Company, Westminster.

COURT OF SESSION.

Saturday, October 27.

SECOND DIVISION.

LORD INVERCLYDE'S TRUSTEES *v.* INLAND REVENUE.

Revenue — Income Tax — Income for Purposes of Assessment under Schedule D — Deductions — Whether Interest Paid on Outstanding Estate Duty a Legitimate Deduction—Income Tax Act 1918 (8 *and* 9 *Geo. V, cap.* 40), *Schedule D, Case iii.*

The income of a trust estate included untaxed interest on Government securities. *Held* that in estimating the income liable to assessment under Schedule D of the Income Tax Act 1918 for the year in question the trustees were not entitled to deduct from the untaxed interest on Government securities a sum equal to the amount of the interest paid by them during the year on estate duty which was still outstanding.

The trustees of the late Right Honourable James Cleland, third Baron Inverclyde of Castle Wemyss, *appellants*, being dissatisfied with the determination of the Commissioners for the General Purposes of the Income Tax Acts at Glasgow refusing an appeal against and confirming an additional assessment to income tax for the year to 5th April 1922 made by J. W. Millar, H. M. Inspector of Taxes, Glasgow, *respondent*, appealed by way of Stated Case.

The Case stated, *inter alia*—"At a meeting of the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the inhabited house duties for the Division of the City

of Glasgow in the County of Lanark, held at Glasgow on the 5th February 1923, the trustees of the late Right Honourable James Cleland, third Baron Inverclyde of Castle Wemyss (hereinafter referred to as 'the appellants'), appealed against an additional assessment to income tax for the year to 5th April 1922 made under Schedule D, Case iii, of the Income Tax Act 1918 on the sum of £21,847.

"The following *facts* were admitted or proved:—1. The assessment was based on the appellants' own figures, viz., £72,231, being the amount received as untaxed interest during the year to 5th April 1921. 2. From this sum the appellants deducted £21,847 as interest paid on estate duty, and returned the balance of £50,384, which was assessed by first assessment for the year to 5th April 1922. The balance of £21,847 was assessed by additional assessment for the same year. 3. This additional assessment formed the subject of appeal.

"Mr Alex. Moncrieff, K.C., on behalf of the appellants, contended—(1) That the said sum of £21,847 of interest on estate duty included income tax at the rate current in the year of payment, which tax, by the terms of sub-section (1) of section 18 of the Finance Act 1896, the appellants were prohibited from deducting at the time of payment, and that accordingly in bringing into computation for purposes of assessment to income tax their untaxed interest from investments, the appellants were entitled to take credit for the amount of income tax included in the said payment; (2) that upon the assumption that income tax was not included in the said payment of interest the said sum of interest was truly income of the Crown, and therefore not subject to tax although paid through the hands of the appellants, and that upon a sound construction of the provisions of the Income Tax Act 1918 the appellants were accordingly entitled to have excluded from the income of the trust brought into assessment to income tax under Case iii of Schedule D a sum equal to the sum of interest so paid by them; (3) that in particular, upon a consideration of the terms of section (1) (*a*) and (*b*) of Schedule D of the Act of 1918, Rule 1 of the Miscellaneous Rules applicable to the said schedule, Rules 19 and 21 of the General Rules applicable to all the schedules and section 209 of the said Act, it is clear that the policy of the Act was to tax only the ultimate recipient of income brought into charge and not specially exempted, and that no person is liable to account for, or to be assessed to, income tax upon income passing through his hands and paid to third parties unless he is bound on making such payment to deduct income tax for purposes of collection, or entitled to make such a deduction for his own reimbursement. That in any event such liability does not attach to a taxpayer in so far as he acts merely as collector of the income of the Crown; (4) that the fact that payment in the present instance was made to the Crown, who was exempt from income tax, did not warrant the Inspector of Taxes in refusing to the appellants that relief that would have been available to them had payment been made to a subject; and (5) that to refuse the deduction claimed by the appellants was in effect to charge them with income tax upon the revenue of the Crown.

"Mr J. W. Millar, H. M. Inspector of Taxes, on behalf the Crown, contended—(1) That the full £72,231 of interest received is clearly subject to charge under Rule 2 of Case iii, Schedule D, of the Income Tax Act 1918, which provides that 'the tax shall be computed in each case on the full amount arising, ... and shall be paid on the actual amount as aforesaid without any deduction'; (2) that section 209 of the Income Tax Act 1918 precludes any deduction in respect of interest on estate duty; (3) that Rule 19 of the General Rules applicable to Schedules A, B, C, D, and E of the Income Tax Act 1918 provides that the whole of the profits and gains of a person liable to pay interest are to be assessed on that person without deduction in respect of the interest paid; (4) that the only interests in respect of which deductions are allowed by the Income Tax Acts are those mentioned in section 36 of the Income Tax Act of 1918, viz., interest payable to banks, discount houses, and persons carrying on business as members of a stock exchange in the United Kingdom; and (5) that if it was intended that interest paid on overdue estate duty was to be allowed as a deduction in computing assessable income it would have been specially excepted from the provisions of Rule 2, Case iii, Schedule D, section 209, or Rule 19 of the General Rules applicable to all the schedules, or would have been specifically provided for under section 36 of the Income Tax Act 1918 or some similar section, and that as it was not so specially provided for it cannot be admitted as a deduction."

The *question of law* for the opinion of the Court was—"Whether for the purpose of assessment under Schedule D (Case iii) of the Income Tax Act 1918 the appellants are entitled to deduct from the £72,231, being interest received for the year ending 5th April 1921, the sum of £21,847 of interest paid on estate duty for the same period."

Argued for the appellants—*With regard to the appellants' first contention* — The words "simple interest at the rate of three per cent. without deduction for income tax shall be payable," occurring in section 18 (1) of the Finance Act 1896 (59 and 60 Vict. cap. 28), which dealt with interest upon estate duty and other death duties, implied that income tax was included in the interest payable. Until the passing of the Act of 1896 a person on paying interest deducted the tax, and the tax reached the Crown in the way which is now prescribed by General Rule 21 of the Income Tax Act 1918 (8 and 9 Geo. V, cap. 40). Section 18 of the Act of 1896 merely made the taxpayer pay the tax in one operation. It was a mere change of machinery. Section 6 (6) of the Finance Act 1894 (57 and and 58 Vict. cap. 30) contained no reference to income tax. Section 8 (9) of the Act of 1894 was also referred to. The appellants' claim was not truly a claim to make a

deduction. The respondents' contention involved a denial not only of a right to deduct, but also of a right to recover in any other way. The respondents' claim was a claim for a double payment of income tax. True income excluded charges — *London County Council* v. *Attorney-General*, [1901] A.C. 26, *per* Lord Davey at pp. 42-43; *Attorney-General* v. *London County Council*, [1907] A.C. 131, *per* Lord Macnaghten at p. 135; Income Tax Act 1918, sec. 36. The case of *Ashton Gas Company* v. *Attorney-General*, [1906] A.C. 10, showed what income really was. The ratio of the decision in *Alexandria Water Company* v. *Musgrave*, (1883) L.R., 11 Q.B.D. 174, was unsound — see *Gresham Life Assurance Society* v. *Styles*, [1892] A.C. 309, *per* the Lord Chancellor (Halsbury) at p. 315, Lord Watson at p. 320, and Lord Herschell at p. 325. *With regard to the appellants' second contention* — The appellants were merely collectors of tax for the Revenue. The statements of fact in the Case showed that the payment of the £21,847 had been accepted by the parties as a payment out of the £72,231. In collecting the total income of £72,231 the appellants were really collecting their own income, which amounted to £50,384, and at the same time collecting the income of their creditor the Crown, which amounted to £21,847. Under the machinery provisions of the Act of 1918 the taxpayer paid tax on behalf of himself and also on behalf of his creditor—Rule 19 of the General Rules applicable to all the schedules of rules of the Act of 1918—but in the present case the creditor, being the Crown, was not chargeable to tax. All the universal clauses in the Act must be read as exempting the Crown—*Coomber* v. *Justices of Berks.*, (1883) L.R., 9 A.C. 61, *per* Lord Blackburn at p. 65 *et. seq.*; *Mersey Docks* v. *Cameron*, (1864) 11 Clark (H.L.) 443, *per* Lord Blackburn at p. 463. The appellants' claim involved no breach of any rule against deductions. The prohibition contained in section 209 (*b*) of the Act of 1918 did not apply, because it could not deal with what was not chargeable to tax. *With regard to the appellants' third contention* — The appellants could not be liable for tax on what was not essentially part of their profits and gains. The person entitled to the income in question was the Crown. The Act of 1918 imposed the tax in the first place on the beneficiary, but the policy of the Act was to tax only the ultimate recipient of the income brought into charge and not specially exempted, and this implication must be read into the statutory provisions founded on by the respondents. The appellants were entitled to make the deduction because they had otherwise no right of relief. The question in the case really was as to whether the appellants were entitled to relief. Section 209 (*b*) of the Act of 1918 was applicable only where relief was otherwise given, and not where there was no relief. The Income Tax Act 1918, sec. 1, Rule 1 of Miscellaneous Rules applicable to Schedule D, Rules 19 (1) and (2), 20 and 21 (1), and (2) of the General Rules applicable to all the schedules and rules, 1 (*a*) and (*f*), and (2) of Rules applicable to Case iii, Schedule D, were referred to.

Argued for the respondents — A subject was not liable to income tax unless there was a clearly charging section, but if there was a clearly charging section the subject could not escape taxation unless there was a clearly exempting section. There was a clearly charging section — section 1 (*b*) of Schedule D of the Act of 1918. See also Rules 1 (*a*) and (*f*) and 2 of the Rules applicable to Case iii of Schedule D, and Rules 19 and 21 of the General Rules applicable to all the schedules, section 209 (*a*) of the Act, and Rule 1 of the Miscellaneous Rules applicable to Schedule D. There was no exempting section in the Act. On the contrary, the Act forbade deductions—Rules 19 and 20 of the General Rules applicable to all the Schedules—*Alexandria Water Company* v. *Musgrave* (*cit.*), *per* Brett, M.R., at p. 178. That decision had been approved in *Gresham Life Assurance Society* v. *Styles* (*cit.*). The appellants were debtors to the Crown in both capital and interest, and the debt was chargeable on the whole estate and not merely on the income of the estate. If the appellants' contention were sound, section 18 of the Act of 1896 would be nugatory. It was not necessary as a condition of the Crown's recovering income tax to establish that the person paying the tax would be entitled to recover from the person to whom the whole or some part of the amount brought into charge was payable. Payment of the tax did not involve double payment—*Colville* v. *Inland Revenue*, 1923 S.C. 423, 60 S.L.R. 248.

LORD JUSTICE-CLERK (ALNESS)—The trustees of the late Lord Inverclyde appealed to the Commissioners for the General Purposes of the Income Tax Acts in Glasgow against an additional assessment to income tax for the year to 5th April 1922 which was made upon them by the Crown under Schedule D, Case iii, of the Income Tax Act 1918. The Commissioners refused the appeal, whereupon the trustees' counsel required them to state a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland. This was duly done, and counsel have been heard upon the Case so stated.

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

Now in revenue law many things are

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

The Crown in the first place founds on the Income Tax Act 1918, Schedule D, section I (*b*), which provides that "Tax under this schedule shall be charged in respect of . . . all interest on money, annuities, and other annual profits or gains not charged under Schedule A, B, C, or E, and not specially exempted from tax." The Crown maintained, as I understood the argument, that the sum of £72,231 being admittedly interest on money satisfies both the statutory conditions in respect that it is not charged under the enumerated schedules, and that it is not specially exempted from tax. The Crown further found on Rule 2 of Case iii in Schedule D, which provides that "The tax shall be computed in each case on the full amount arising, . . . and shall be paid on the actual amount as aforesaid without deduction." The Crown also point to section 209 (*a*) of the Act of 1918, which provides that "In arriving at the amount of profits or gains for the purposes of income tax, no other deductions shall be made than such as are expressly enumerated in this Act." The Crown in these circumstances claims—and as I think rightly claims—to have found a charging section which applies to the sum in dispute. It remains for the appellants to find if they can an exempting section in order to escape liability.

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

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

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

LORD ORMIDALE—It appears from the admitted facts in this case that the appellants received £72,231 as untaxed interest during the year to April 1921. From this sum they deducted £21,847 as interest paid on estate duty, and returned the balance of £50,384, which was assessed by first assessment for the year to April 1922, and no question arises as to that assessment. But the balance of £21,837 was thereafter assessed by additional assessment for the same year. Against this additional assessment an appeal was taken to the Commissioners. The latter confirmed the assessment, and

the present case was then stated. The question put to the Court is whether the appellants are entitled to deduct from the total interest received by them the £21,847 of interest paid by them on estate duty. I agree that the answer to that question must be in the negative, whether the question be taken literally, or whether it be read in a more general sense as involving, if answered in the negative, the denial to the appellants of any right of exemption or relief in any form from liability to pay income tax on the sum in question.

There appears to me to be no ground for holding that the sum of £21,847 was in any way earmarked, and falling necessarily to be applied to liquidate the interest on estate duty. The appellants were not collectors for the Crown, and the £21,847 was in no legitimate sense Crown revenue, and therefore exempt from income tax. The £21,847 of interests were payable to and received by the appellants on their own account to do with them what they pleased. They were therefore precisely in the same position as the other sums of interest received by them as regards their liability to be brought into charge to income tax. The obligation to bring them all into charge appears to be quite plain from the various sections and rules founded on by the Inland Revenue. Rule 2 of Case iii, Schedule D, of the Income Tax Act 1918, provides that the tax "shall be computed in each case on the full amount arising . . . and shall be paid on the actual amount as aforesaid without any deduction." Deduction is again precluded in Rule 19 of the General Rules applicable to all the schedules. Section 209, read along with section 36, clearly demonstrates that the appellants were not entitled to make any deduction. The limitation sought to be put on sub-section (1) (*b*) of section 209, viz., that it is applicable only where relief is otherwise given, and not where there is no relief, appears to me to be without warrant. I am not inclined to differ from Lord Justice Bowen in *Alexandria Water Co.* v. *Musgrave*, 11 Q.B.D. 174, at p. 177, as to the meaning and effect of the words "in regard." "'In regard,'" he says, "here is not an expression of the reason of the Legislature, but is to render impossible an erroneous view which might otherwise be entertained by the person computing as to his being entitled to make the deduction."

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

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

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

The appellants were conscious of the weakness of their case as so presented, and they therefore maintained that the real question was whether or not they are entitled to get relief from income tax upon the interest paid by them on unpaid estate duty. I doubt whether the present case is a suitable form of process in which to try that question. Assuming that it is, I am of opinion that the argument for the appellants is unsound. It is quite true that the Income Tax Acts give relief in certain cases to persons primarily chargeable against their creditors entitled to interest on burdens upon the revenue brought into charge. The object of this provision is as far as possible to impose payment of the tax upon the persons in beneficial enjoyment of the revenue. The relief is given by allowing a deduction to be made from the interest payable by the persons charged with the tax to their creditors. The case of the *Alexandria Water Company* v. *Musgrave* (11 Q.B.D. 174), however, shows that it is not necessary as a condition of the Crown recovering income tax to establish that the person paying the tax will be entitled to recover from the person to whom the whole or some part of the amount brought into charge is payable. In the present case the appellants are debarred by statute from making any deduction in respect of income tax from the payment of interest upon unpaid estate

duty—Finance Act 1896 (59 and 60 Vict. cap. 28), sec. 18. That section, as I read it, precludes the appellants from recovering income tax with which they have been charged on the money employed by them in paying interest on their debt to the Crown. If their contention were sound they would in effect be getting a deduction to which that section says they are not entitled.

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

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

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

On the first point the statutory provisions relied on are these—1. The Income Tax Act 1918, Schedule D, rules applicable to Case iii, 1 (*a*) and 2. By 1 (*a*) the tax is extended to "any interest of money;" by 2 it is provided that "the tax shall be computed in each case on the full amount arising within the year . . . and shall be paid on the actual amount as aforesaid, without any deduction." 2. Section 209 (*a*) of said Act of 1918, which provides that in arriving at the amount of profits or gains for the purpose of income tax "no other deductions shall be made than such as are expressly enumerated in this Act." 3. 1918 Act, General Rules applicable to all the schedules, Rule 19, which provides that where interest is payable out of profits or gains brought into charge to tax, the whole of these profits or gains shall be assessed and charged with tax on the person liable in the interest. 4. 1918 Act, Miscellaneous Rules applicable to Schedule D, Rule 1, which specifically provides that the person liable to pay the tax is the recipient of the income in respect of which the tax is charged. These enactments plainly impose on the appellants the duty of paying, in the first instance at all events, the income tax due in respect of the whole of their income which has been received without deduction of tax.

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

It was finally urged by the Crown that as there was no statutory provision in virtue of which the appellants could recover from the Crown the income tax effeiring to the interest paid, it followed that the appellants were responsible both primarily and finally for the tax. The interest payable by the appellants to the Crown in respect of unpaid estate duty is at the rate of 3 per cent., and is imposed by the Finance Act 1896, section 18, which provides that the interest is to be paid "without deduction for income tax."

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

The three main contentions of the appellants are formulated on pp. 2 and 3 of the case. 1. The first contention was that income tax had already been paid on said sum of £21,847, inasmuch as it formed part of the 3 per cent. charged as interest. This is pure surmise for which I can find no foundation. The suggestion made on behalf of the Crown was at least equally plausible—to wit, that the rate of interest was fixed at the low rate of 3 per cent. just because the person paying the interest would be debarred from recovering the income tax which has been paid in respect thereof. 2. It was argued that the interest

paid was truly income of the Crown, of which the appellants were merely the collectors. I am unable to accept this suggestion. The interest as well as the principal amount of estate duty are debts payable to the Crown, and the appellants hold no different relationship towards the Crown than they have towards any subject creditor. 3. The last main contention of the appellants was that the policy of the Act of 1918 was to tax only the ultimate recipient of income brought into charge and not specially exempted, and that this implication must be read into the statutory provisions founded on by the Crown. The short answer to this contention is the decision of the Queen's Bench Division in *Alexandria Water Co.*, 11 Q.B.D. 174. This case is binding on us inasmuch as it was considered in the House of Lords, and certainly not discredited, in the case of the *Gresham Life Assurance Society* [1892] A.C. 300.

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

The Court answered the question stated in the Case in the negative, dismissed the appeal, and affirmed the determination of the Commissioners.

Counsel for the Appellants — Moncrieff, K.C. — Keith. Agents—Webster, Will, & Company, W.S.

Counsel for the Respondents—Lord Advocate (Hon. W. Watson, K.C.) — Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, November 9.

FIRST DIVISION.

[Exchequer Cause.

THOMSON & BALFOUR *v.* INLAND REVENUE.

Revenue—Income Tax—Schedule D—Succession to Trade—Purchase by A of Business belonging to B—Income Tax Act 1918 (8 *and* 9 *Geo. V, cap.* 40), *Schedule D, Rules Applicable to Cases i and ii, No.* 11.

The Income Tax Act 1918, First Schedule, Schedule D, Rules applicable to Cases i and ii, No. 11, provides—"If . . . any person succeeds to a trade . . . the tax payable in respect of . . . the person so succeeding shall be computed according to the profits or gains of the trade . . . during the respective periods prescribed by this Act notwithstanding the . . . succession."

A firm of timber merchants and saw millers purchased from another firm of timber merchants in the same place a saw mill in which the sellers had carried on business up to the time of the sale. The price was fixed at the value of the saw mill and the land, but in the letters which constituted the agreement to sell the goodwill of the sellers' business was included in the price. As soon as the sale was concluded a joint circular was issued to the public by the purchasers and the sellers, in which the purchasers announced an intention to add to their own business that of the sellers, and the sellers recommended the purchasers to their customers as their "successors." The sellers had at the time of the sale no current orders, and the purchasers were not able to identify any orders received by them as coming from the sellers' customers. No books or lists of customers was taken over by the purchasers, nor were any debts due to or by the sellers transferred, and the purchasers obtained no information from the sellers as to the business previously carried on by the latter or as to the profits earned, and acquired no right of access to the sellers' books whereby the profits could be ascertained. The purchasers transferred their entire office staff to the premises formerly owned by the sellers and carried on their principal business there. The purchasers having been assessed for income tax as having succeeded to the business carried on by the sellers, *held* that the Commissioners were entitled to hold that the purchasers had succeeded to the sellers' business within the meaning of Rule 11 of Cases i and ii of Schedule D of the Income Tax Act 1918, and to confirm the assessments.

Messrs Thomson & Balfour, Victoria Saw Mills, Bo'ness, *appellants*, being dissatisfied with a decision of the Commissioners for the Special Purposes of the Income Tax Acts confirming assessments to income tax made upon them in the sums of £9630 and £7567 less allowances for wear and tear for the two years ended 5th April 1923 in respect of the profits of their business, obtained a Case for appeal in which E. le Page, Inspector of Taxes, was *respondent*.

The Case stated, *inter alia*—"The following *facts* were admitted or proved:—1. The appellants are an old-established firm, and have for many years carried on business as timber importers and saw millers at the Links Saw Mills, Bo'ness. They had an old but well-equipped saw mill on one side of a road and an extensive yard with shed accommodation on the other side. The business consisted in importing Baltic and American timber and logs and converting the same for sale. 2. Upon the outbreak of the war the dock at Bo'ness was closed by order of the Admiralty, and the appellants were no longer able to import timber except to the extent to which they were able to obtain the same through Leith. In consequence of the war and of the circumstances so attending it the nature of the appellants' trade was changed, and they developed the manufacturing side of their business, principally making huts under contracts for the Government. 3. In January 1916 a very large part of the appellants' mill and plant was destroyed by fire. After the fire the appellants continued to carry on business in the remainder of their premises, and Government contracts for huts were executed by them up to the date of the Armistice. 4.