SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

YOUNG and Co.—*Appellants.*
LEVEN—*Respondent.*

March 27, 28, 1816.

INTEREST OF PUBLIC MONEY.

WHERE a public officer of excise, &c. suffers the duties to be in arrear and exacts interest on the arrear from the private party, the interest belongs to the officer or to the public, and the question is between them; and the private party has no reason to complain, and cannot recover the interest back again.

The Lord Chancellor observing that where a decision is clearly right, the House of Lords will not remit, merely because the ground of decision below has been different from the ground of its own decision.

Action, 1810.

IN June, 1810, the Appellants (Distillers) brought an action against the Respondent, who had been a collector of excise, concluding for repayment to them of two sums of money with which, as they alleged, they had been overcharged by him for duties of excise; and also for repayment of a sum of 500*l.* more or less, for interest charged against them upon arrears of duties.

Interest on arrears of duties.

The last is the point for which the cause is here noticed. It was contended for the pursuers in the action that the charge of interest on arrears of duty was illegal, and the Scoth acts—1693, c. 3. —1695, c. 29.—and 1696. c. 2.—and the British statute, 1 Wm. and Mary, sess. 1. c. 24. were referred to. On the other hand it was contended, that till 1807 (prior to which time the transactions

in question took place) it had been the practice of the collectors in Scotland to receive interest for themselves upon balances of public money allowed to remain in their hands; and that this was universally understood to constitute their chief source of emolument, as their salary was altogether inadequate; that it had been thought expedient at one period to allow the duties to remain in arrear, but that the distillers were bound to pay interest on these arrears, and that as the loss from the duties being in arrear fell on the collectors, they had been authorised by general letter, 1797, of the Board of Excise to take the interest, and that it had been the general practice to do so; and at any rate the private party had no right to demand it back again.

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The proceedings in an investigation into the conduct of the defender, by order of the treasury, upon a charge against him by the pursuers, were referred to, though they had nothing to do with the cause. The result was that the defender was dismissed from his office, but all the Judges below concurred in the opinion that the Lords of the Treasury had been misled.

The Court sustained the defences, assoilzied the defender and decerned, and from this judgment the pursuers appealed.

December 4, 1812. January 12, 1813.

Lord Eldon. (C.) This action was raised upon a summons which states that the Respondent, Leven, received from the Appellants the sums of 400*l.* and 823*l.* upon the pretence that these moneys were due by them for duties to the Excise, and would be placed to their credit in Mr. Leven's accounts as collector; but which moneys were nei-

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ther due to the Excise nor placed to the credit of the Appellants. The summons likewise states that the Respondent had exacted from the Appellants various sums amounting to 500*l.* more or less, in name of interest, contrary to law; and it concludes for repetition of these sums 400*l.*, 823*l.*, and 500*l.* more or less, as it is expressed.

November 12, 1811.

The Lord Ordinary pronounced the following interlocutor: "Having considered, &c. *finds*, that "no regard can be paid in this action, to the pro- "ceedings alleged to have taken place before the "Lords of the Treasury, or Board of Excise:" and then he states the reason why no regard can be paid to them. "Seeing these proceedings have not "been produced in process, and as little to the "report of Messrs. Bonar and Grant for a similar "reason." I should here state that the Appellants had prayed in aid these proceedings and this report, upon which I have nothing to observe, except that they have been the subject of much argument and statement on both sides, though if produced the Court could have taken no notice of them whatever. "*Finds* that the oath said to be emitted by the "pursuer, William Young, in the course of these "proceedings, cannot be received in evidence "against the defender in the present question, while "the other parts of the proof, of which only an "authenticated copy is produced, going in a great "measure to an alleged interference of the defen- "der in a Burgh election, whatever effect it might "have with the Revenue Board, can have none in "this cause." It appears to me that this finding is altogether unnecessary, as the proof, though it had been produced, could clearly have been no

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" *Finds* that the general letter of 1st May, 1797, INTEREST OF
" addressed by the Board of Excise to the collec- PUBLIC MO-
" tors, implies that at that period they were entitled NEY.
" to charge interest on arrears, and that the receipt
" of interest was not prohibited till the year 1807,
" after the date of the transactions now in ques-
" tion." On this finding I have to observe that
there was a good deal of argument as to the mean- Letter. 1797.
ing of this letter, of 1st May, 1797. But it does
not appear to me that such a letter can affect the
question, as a question of law. If the Board gave
directions agreeable to law, they would be sustained
as law; and if not agreeable to law, they could not
be legal merely because they were the directions of
the Board. " *Finds*, that the alleged over-payments
" of 400*l.* and 823*l.* 10*s.* are not made out by the
" statement in the condescendance, and disproved
" by the comparison of the various receipts in the
" answers. Sustains the defences, &c."

As to the last finding, it has not been alleged here on the part of the Appellants that they have a case, which calls upon us to reverse the judgment in as far as it finds that they have not been overcharged in the sums of 400*l.* and 823*l.* But it has been argued that the Court below ought to have employed an accountant of excise to ascertain whether they had or not been so over charged. As to that, on the most attentive consideration which I have been able to give the case, it appears to me that this part of the interlocutor is right, and that the Appellants have not been double charged in these sums. And if such be your Lordships' opinion, you would feel great reluctance in sending the case with orders

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to the Court below to send the matter to an accountant.

Interest for duties in arrear.

Then it has been insisted, that the Appellants are entitled to a return of interest charged for duties in arrear; and to make out that claim they allege that, whatever might be the case with respect to the public money when received, the collector ought not to receive interest from the private party for duties in arrear. With regard to that, if a public accountant has public money in his hands, and employs it so as to make interest of it before it is called for, the interest made in that intermediate time, belongs either to himself, or to the public. Whether it was his own in this instance, or belonged to the public, I give no opinion. But it must belong to him or to the public. There is a difference here however, for this is not a case where the collector made interest of money actually received before it was called for on behalf of the public, but a case where the money was not paid by the party, and the officer charged interest on the arrears. In one view, that case is not substantially different from the other. But as far as respects the policy of the law there may be a very wide difference between the officer receiving the money and deriving interest from it, leaving open the question whether it belongs to himself or to the public, and his suffering it to remain in the hands of the party, he (the officer) receiving interest upon the arrear. But still the trader cannot keep it, for it belongs to the public or to the officer. Suppose an information were filed and it proceeded for interest, it would not be necessary to proceed against the trader. It would be enough to charge the collector as if he had re-

That is a question between the officer and the public.

ceived the money and made interest of it. Then if the interest did not belong to Leven it was the property of the public; and if the duties were not paid at the time they were payable and interest was charged, whether that interest belonged to the officer or to the public, as issuing from the *corpus* of that fund which belonged to the public, the trader had no reason to complain. And as to exaction within the acts here mentioned, the claim upon that ground, I think, cannot be at all maintained. I therefore still think that the party has no right to recover. But as to the question, whether the interest belongs to the officer or the public, I avoid giving any opinion.

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Then it was said that this was not the ground upon which the Court below decided. But I apprehend it is not our duty, merely for that reason, to send a case back again to the Court below; where it is perfectly clear that if the Court below were to decide differently, the judgment must here be reversed.

Where it is clear that the decision is right, the House of Lords will not remit merely because the Court below decided on a different ground from that upon which the Lords decide.

Then the best mode of proceeding, as it appears to me, will be, not adopting the *reason* in the Lord Ordinary's judgment, to affirm it as far as it sustains the defences, assoilzies the defender, and decerns, and then to affirm the other interlocutors. This seems to me, likewise, a case in which 50*l.* costs may be properly given.

Lord Redesdale. As to the question whether Leven had improperly overcharged the Appellants, it is manifest on the evidence that he did not; for the only reason given for that allegation is founded on the receipts, and in looking at these, it appears

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almost impossible that overcharges could have been made, unknown to Young; and so far I am clearly of opinion that the judgment is right.

As to the interest, that is a very serious question in one view. But it is clear the Appellants have no right to recover it back again. The duty of the officer is to call for payment as the money becomes due, and at stated times to remit it to the proper hands. But Leven takes sums as interest of arrears of money not paid, when it ought to be paid. The effect of this, if made out, would be that he would be chargeable with, and responsible for, both the gross sum and the interest. But the trader has no right to complain of the indulgence which he has received, however improper; and I concur likewise in the opinion which has been given as to that point. I agree also that the reason alleged for sending back the case is not sufficient, and that the Lord Ordinary's interlocutor ought to be affirmed, so far as it sustains the defences, assoilzies the defender, and decerns; and that the other interlocutors ought to be affirmed. As to the costs, I should be inclined to concur if a larger sum had been mentioned.

Lord Eldon (C.) Then let it be 70*l.*

Appeal dismissed, and judgment (with alterations as above) *affirmed*, with 70*l.* costs.

Agent for Appellant, CAMPBELL.
Agent for Respondent, SPOTTISWOODE and ROBERTSON.