VOL. XXVIII—PART VI

No. 1379—High Court of Justice (King's Bench Division)—25th and 26th October and 20th December, 1943

Court of Appeal—5th, 6th and 24th July, 1944

House of Lords—25th, 28th and 29th January and 29th March, 1946

Ostime (H.M. Inspector of Taxes) *v.* Pontypridd and Rhondda Joint Water Board[1]

Income Tax, Schedule D—Water Board—Sums received under precepts issued to constituent authorities—Whether trading receipts—Sums paid under precept and as fixed contribution to body of which constituent member—Whether admissible deductions.

The Pontypridd and Rhondda Joint Water Board was established by an Act of 1910, *its constituent authorities being the Urban District Councils of Pontypridd and Rhondda. The Board's statutory limits of supply of water were restricted to the Pontypridd Urban District and part of the Rhondda Urban District, but it had a statutory right to sell water in bulk to the water undertakers in certain other districts. Its revenue consisted mainly of payments by consumers of water in the Pontypridd and Rhondda Districts and payments by the water undertakers in the other districts, and such payments were admitted to be trading receipts. The Board was, however, also entitled to receive moneys from its constituent authorities under a provision in the* 1910 *Act which required the Board to make an advance estimate of its net revenue for each year, and, if there was an estimated deficiency, to apportion the sum required to meet it between its constituent authorities and to issue precepts to them for the amounts so apportioned. The constituent authorities were to pay the money out of their respective general rate funds, and were authorised and required to levy any rate that might be necessary. The sums required to satisfy the precepts in question were levied by the constituent authorities upon their ratepayers whether the said ratepayers took a supply of the Board's water or not, and, in the case of the Rhondda Urban District Council, upon the ratepayers for the whole of the Urban District, notwithstanding that the greater part of the District was outside the Board's statutory limits of supply.*

The P. and R. Board was itself a constituent member of the Taf Fechan Water Supply Board, from which, in common with other constituent members, it purchased in bulk some of the water which it supplied to its own consumers. The P. and R. Board was bound to take from the Taf Fechan Board, or pay for as taken, a minimum quantity of water at a fixed price of 1s. *per* 1,000 *gallons, and could require certain further quantities of water to be supplied to it at the same price. The Taf Fechan Board had the statutory right to apportion any estimated deficiency in its annual net revenue between its constituent members, including the P. and R. Board, and to issue precepts to them requiring them to pay out of their respective revenues the amounts so apportioned. The P. and R. Board was also required to pay to the Taf Fechan Board a fixed contribution of three-quarters of the product of a*

(1) Reported (K.B.) [1944] 1 All E.R. 185; (C.A.) 171 L.T. 211; (H.L.) [1946] A.C. 477.

penny rate in the Pontypridd Urban District and in so much of the Rhondda Urban District as was within the P. and R. Board's limits of supply; the fixed contribution was to be deducted from the amount payable by the P. and R. Board for water supplied in excess of the minimum quantity which it was required to take.

On appeal against an assessment to Income Tax made upon the P. and R. Board under Case I *of Schedule D, the General Commissioners, accepting the Board's contentions, decided* (1) *that the sums received by the Board under precepts issued to its constituent authorities were not trading receipts, and* (2) *that the amounts payable by the Board to the Taf Fechan Board, whether under precept or as a fixed contribution, were admissible deductions in computing the P. and R. Board's profits for Income Tax purposes.*

Held,

(i) (*Court of Appeal*) *that the amounts payable by the Board to the Taf Fechan Board were admissible deductions for Income Tax purposes;*

(ii) (*House of Lords*) *that the sums received by the Board under precept were trading receipts* (*In re* Glasgow Corporation Waterworks, 1 T.C. 28, *distinguished*).

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the General Purposes of the Income Tax for the Division of Miskin in the County of Glamorgan, for the opinion of the High Court of Justice.

1. At a meeting of the said Commissioners held at Pontypridd in the said Division on 28th October, 1941, for the purpose of hearing appeals, the Pontypridd and Rhondda Joint Water Board (hereinafter called "the Board") appealed against an assessment to Income Tax made upon it under Case I of Schedule D in the estimated sum of £10,000 for the year 1939–40 in respect of the profits of its trade, namely the supply of water, in the circumstances set out hereunder.

It is admitted that the Board is assessable to Income Tax under Case I of Schedule D upon the excess of its trading receipts over its expenditure generally, but the questions raised before us and upon which the opinion of the Court is required are as to (*a*) the inclusion as such receipts of sums paid to it under precepts issued to constituent authorities, and (*b*) the allowance as deductions of sums paid by it to a body of which it is a constituent member, as set out hereinafter.

2. The Board was established by the Pontypridd and Rhondda Water Act, 1910, for the purposes (*inter alia*) of acquiring and carrying on the then existing undertaking of the Pontypridd Water Company and of supplying water within certain territorial limits statutorily defined as "the limits of "supply". The said Act, after reciting that it was expedient to establish a joint Water Board consisting of representatives of the Rhondda Urban District Council and the Pontypridd Urban District Council and to empower the Board to acquire the undertaking of the aforesaid company, went on to provide in Section 5(1) thereof as follows:—

"A Board to be called the Pontypridd and Rhondda Joint Water Board "shall be established for the purposes of acquiring by purchase and of "completing managing and carrying on the Undertaking of the company "and generally for the purpose of supplying water within the limits of this "Act and for carrying the powers of this Act into execution".

It was further provided by Section 5(3) of the said Act that the constitution of the Board should be as follows:—

(*a*) The chairman for the time being of the Rhondda Urban District Council.

(*b*) The chairman for the time being of the Pontypridd Urban District Council.

(*c*) Six members to be appointed by the Rhondda Urban District Council.

(*d*) Four members to be appointed by the Pontypridd Urban District Council.

3. The territorial limits within which the Board was originally empowered to supply water are set out in Section 58 of the said Act. The original limits of supply comprised:

(1) The Pontypridd Urban District.

(2) Part of the Rhondda Urban District.

(3) The Llantrisant and Llantwit Fardre Rural District.

(4) Part of the Caerphilly Urban District.

Under the provisions of Section 59 of the Pontypridd and Rhondda Water Act, 1910, and Section 25(6) of the Pontypridd and Rhondda Water Act, 1913, Districts 3 and 4 were excluded from the Board's limits of supply, but the Board was given a statutory right to sell water in bulk to the water undertakers in these Districts. The Board, therefore, supplies water direct to the consumers in Districts 1 and 2, and supplies in bulk to the undertakers in Districts 3 and 4 .

4. The receipts of the Board consist of payments made by consumers in Districts 1 and 2; payments made for water supplied in bulk to Districts 3 and 4; and payments made to it under statutory precepts as hereinafter set out.

5. The statutory provisions in the said Act of 1910 relating to the charges to be made by the Board for the water include Sections 61, 67 and 68. These charges were altered by Sections 26 and 27, Pontypridd and Rhondda Water Act, 1913. An increase of charges was later authorised by Section 18, Pontypridd and Rhondda Water Act, 1925, and the maximum permitted charges have at all material times been levied by the Board.

6. The Board is also entitled to receive moneys from its constituent bodies under Section 91 of the said Act of 1910, which provides, in effect, as follows:—

(1) In or about April of each year the Board is to make an estimate of its probable net revenue for the financial year commencing on 1st April. If that estimate shows that there will be a deficiency in the net revenue of the Board for the year, then " the Board are hereby authorised and required in " every case forthwith to apportion the sum required to meet such deficiency " between the constituent authorities in accordance with the provisions of " this Section."

(2) The deficiency in question is to be apportioned between the two constituent authorities in the proportion which the rateable value of the Pontypridd Urban District bears to the rateable value of that part of the Rhondda Urban District which is within the Board's limits of supply.

(3) The Board is to issue precepts to the constituent authorities for the amounts so apportioned, and the latter are to pay the amounts within three months from receipt of the precept.

(4) The constituent authorities are to find the money out of their respective general rate funds and general rates which are, by the Section, charged with

payment of the same; and each constituent authority is " authorised and " required to make and levy any rate that may be necessary for the purpose " of this Section ".

(5) In default of payment by a constituent authority of the amount apportioned to it as aforesaid, the Board may sue the defaulting authority or itself cause a rate to be levied in the district of such authority, in order to secure payment.

7. Attached hereto, marked " A1 " and " A2 " and " B ", respectively, and forming part of this Case(1), are (i) copies of precepts issued by the Board, pursuant to the foregoing provisions, to the Rhondda Urban District Council on 14th March, 1938, and 12th December, 1938; and (ii) copies of demand notes for rates issued by the Rhondda Urban District Council in respect of the financial year ended 31st March, 1939, which make reference to the amount to be raised to satisfy the Board's precepts.

The sums required to satisfy the precepts in question are levied by the constituent authorities upon their ratepayers whether the said ratepayers take a supply of the Board's water or not; and, in the case of the Rhondda Urban District Council, the sums are levied upon the ratepayers of the whole of the Urban District notwithstanding that the greater part of the District is outside the Board's statutory limits of supply.

8. During the year ending 31st March, 1939, the Board received the sum of £9,930 from precepts issued upon its constituent authorities as aforesaid.

9. Among the payments made by the Board is an amount paid under precept to the Taf Fechan Water Supply Board (hereinafter called " The Taf " Fechan Board "), of which it is a constituent member, and from which, in common with other constituent authorities, it purchases in bulk some of the water from which it supplies its own consumers. (The Board also has its own reservoirs at Maerdy Rhondda in the County of Glamorgan and elsewhere.)

10. The Taf Fechan Board was established by the Taf Fechan Water Supply Act, 1921, for the purpose (*inter alia*) of supplying water in bulk to its five constituent authorities, namely, the Merthyr Tydfil Corporation, the Rhymney Valley Water Board, the Pontypridd and Rhondda Joint Water Board (i.e., the Respondent) the Llantrisant and Llantwit Fardre Rural District Council, and the Aberdare Urban District Council. Under Section 22(7) of that Act, as varied by Section 3 of the Taf Fechan Water Supply Act, 1937, the Board, as a constituent authority of the Taf Fechan Board, is obliged to take, or pay for as taken, a minimum quantity of 270,000 gallons per day at the price of 1*s.* per 1,000 gallons. In addition, the Taf Fechan Board is, by virtue of these Acts (including an agreement made under Section 22(13) of the Act of 1921), required to reserve certain further quantities of water (330,000 gallons per day in the case of the Board) which the constituent authorities may from time to time require, such further quantities, so far as they are drawn upon, being charged at the same price of 1*s.* per 1,000 gallons.

By Section 49(1) and (2) of the same Act, as amended by Section 23(i) and (ii) of the Taf Fechan Water Supply Act, 1926, the Taf Fechan Board is required, before the commencement of every financial year or half year, as they may determine, to make an estimate of its probable revenue and expenditure. If such estimate shows that there will be a deficiency in the net revenue of the Taf Fechan Board, such Board is authorised and required in every case forthwith to apportion the sum required

(1) Not included in the present print.

to meet such deficiency between the constituent authorities in proportion to the respective maximum quantities of water per day which the Taf Fechan Board may be required to supply them. The Taf Fechan Board is further required to issue precepts to each of the constituent authorities for a sum equal to the amount apportioned to that authority as aforesaid. The Board, as one of the constituent authorities, is by Section 49(3) of the Taf Fechan Water Supply Act, 1921, directed to pay such precept out of its revenue. There is attached hereto, marked "C", copy of a precept dated 16th February, 1938, issued to the Board by the Taf Fechan Board(1).

11. The Board also pays to the Taf Fechan Board a fixed contribution under the provisions of Section 4(1) (*c*) of the Taf Fechan Water Supply Act, 1937, the amount of such contribution being three-quarters of the product of a penny rate in the Urban District of Pontypridd and so much of the Urban District of Rhondda as is comprised within the limits for the supply of water by the Board. Under Section 5 of the said Act of 1937, the fixed contribution is to be deducted from the amount payable by the Board for water supplied in excess of the minimum quantity which the Board is required to take as set out in paragraph 10 hereof.

12. The Board therefore pay to the Taf Fechan Board (1) a sum calculated at 1*s*. per 1,000 gallons for water supplied in bulk; (2) a sum payable under precept issued by the Taf Fechan Board; (3) a fixed contribution.

13. There is attached hereto, marked "D", an abstract of the Board's accounts for the year ending 31st March, 1939(1), upon the results of which the assessment now under appeal is based. In the revenue account, payments for water supplied in bulk to Districts 3 and 4 (as set out in paragraphs 3 and 4 hereof) appear under the item "Meter Supplies £7,989", and payments by consumers in Districts 1 and 2 appear under the remaining sub-headings of the item "Water Rates". In addition to paying 1*s*. per 1,000 gallons for water supplied in bulk, the Caerphilly Urban District repays to the Board under agreement a proportion of the sum paid by the Board under precept to the Taf Fechan Board, as appears in the net revenue account. The item of expenditure "Bulk Water Supplies &c. from Taf Fechan Water Supply "Board £5,844 10*s*. 2*d*." shewn in the revenue account includes an amount of £850 due by way of fixed contribution under Section 4 of the 1937 Act (as detailed in paragraph 11 hereof), such contribution extinguishing an amount of £591 3*s*. 0*d*. which would otherwise have been payable for water supplied in excess of the minimum quantity.

14. The contest before us related to the inclusion of the sums paid to the Board under precept (as referred to in paragraphs 7 and 8 hereof) among the receipts of the Board in ascertaining its liability to taxation under Case I, and the allowance of the sums paid under precept and of the fixed contribution (referred to in paragraphs 10 and 11 hereof) as deductions in ascertaining the said liability. In previous years these sums have been excluded and allowed respectively.

15. It was contended for the Board:—

(*a*) That the monies received under the said precepts were not trading receipts.

(*b*) That on the contrary they were the proceeds of a compulsory rate, and did not fall to be included in the computation of the Board's profits arising from the sale of water.

(1) Not included in the present print.

(c) That while the consideration was not conclusive, the Pontypridd and Rhondda Water Act of 1910 would be unworkable if the Appellant's contentions were correct, so far as concerns Section 91 thereof, for if Income Tax had to be paid on an amount equivalent to the precepts, a further deficiency would result. Another precept would then be required to meet it, on which again Income Tax would be levied, and so on *ad infinitum*.

(*d*) That support for the view that the precept monies were not receipts from trading in water was to be found in the fact that the rates required to satisfy the precepts were levied upon ratepayers whether they took water from the Board or not, and even though some of them could not be supplied with water by the Board, since they lived outside the statutory limits of supply.

(*e*) That the amounts paid to the Taf Fechan Board (whether by way of precept or fixed contribution) were part of the price of the water, and were not rates, properly so called: but that whatever the position in this respect, the said amounts were payments wholly and exclusively laid out or expended for the purposes of the Board's trade, and were deductible on this ground.

16. It was contended on behalf of H.M. Inspector of Taxes:—

(*a*) That, in calculating the amount upon which the Board is assessable to Income Tax, amounts received under precepts and amounts paid under precepts should be included as receipts and payments respectively;

(*b*) That if, contrary to the first contention, receipts under precept are not to be included, then there should be excluded from the expenditure:—

(i) payments made to the Taf Fechan Board under precepts;

(ii) so much of the fixed contribution payable under Section 4 of the Taf Fechan Water Supply Act, 1937, as is not recouped under Section 5 in payment for water in excess of the minimum quantity, i.e., in the year ending 31st March, £850 less £591 3*s*. 0*d*.

17. The following cases were referred to:—

In re *Glasgow Corporation Waterworks*, 1 T.C. 28.
Dublin Corporation v. *M'Adam*, 2 T.C. 387.
Commissioners of Inland Revenue v. *Forth Conservancy Board*, 16 T.C. 103.
Harris v. *Corporation of Burgh of Irvine*, 4 T.C. 221.
Humber Conservancy Board v. *Bater*, 6 T.C. 555.
Weight v. *Salmon*, 19 T.C. 174.
Lowry v. *Consolidated African Selection Trust, Ltd.*, 23 T.C. 259.
Morley v. *Lawford and Company*, 14 T.C. 229.
Hughes v. *Bank of New Zealand*, 21 T.C. 472.

18. The following local Acts were referred to:—

Pontypridd and Rhondda Water Act, 1910.
Pontypridd and Rhondda Water Act, 1913.
Pontypridd and Rhondda Water Act, 1925.
The Taf Fechan Water Supply Act, 1921.
The Taf Fechan Water Supply Act, 1924.
The Taf Fechan Water Supply Act, 1926.
The Taf Fechan Water Supply Act, 1937.

19. The Commissioners decided that, in ascertaining the amount of the Board's taxable income, (1) sums received under precept were not trading receipts and should not be included; (2) amounts paid to the Taf Fechan Board, whether under precept or as fixed contribution, should be deducted.

20. The Appellant thereupon expressed his dissatisfaction with the decision of the Commissioners as being erroneous in point of law and duly required us to state and sign a Case for the opinion of the High Court of Justice, which we have stated and do sign accordingly.

GOMER S. MORGAN,
HERBERT R. EVANS,
W. LESTER LEWIS,
W. B. DAVIES,
F. LLEWELLIN JACOB,
HY. STUART MARTIN,
} Commissioners for the General Purposes of the Income Tax for the Division of Miskin in the County of Glamorgan.

Dated this 22nd day of December, 1942.

The case came before Macnaghten, J., in the King's Bench Division on 25th and 26th October, 1943, when judgment was reserved. On 20th December, 1943, judgment was given against the Crown, with costs.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. J. Millard Tucker, K.C., and Mr. Terence Donovan for the Water Board.

JUDGMENT

Macnaghten, J.—This is an appeal—by way of Case stated under the Income Tax Act, 1918, Section 149—by the Inspector of Taxes from a decision of the General Commissioners for the Division of Miskin in the County of Glamorgan with regard to an assessment to Income Tax made upon the Respondents, the Pontypridd and Rhondda Joint Water Board, for the year 1939–40.

The Board is a body corporate established by the Pontypridd and Rhondda Water Act, 1910 (10 Edw. VII & 1 Geo. V, c. cxx) for the purpose of acquiring and carrying on the then existing undertaking of the Pontypridd Water Company and of supplying water within the Urban Districts of Pontypridd, Rhondda and Caerphilly and the Rural District of Llantrisant and Llantwit Fardre, all in the County of Glamorgan. By that Act, after reciting (*inter alia*) that it was expedient to establish a Joint Water Board consisting of representatives of the Rhondda Urban District Council and the Pontypridd Urban District Council, which are therein described as the constituent authorities, it was provided that the Board thereby established should consist of the chairman of the two constituent authorities and six members appointed by the Rhondda Council and four members appointed by the Pontypridd Council.

Under the provisions of the 1910 Act, as amended by the Pontypridd and Rhondda Water Act, 1913, the Board's " limits of supply " were restricted to the Pontypridd Urban District and part of the Rhondda Urban District, and the Board was given a statutory right to sell water in bulk to the water undertakers in the Rural District of Llantrisant and Llantwit Fardre and in part of the Caerphilly Urban District.

The revenue of the Board consists mainly of (1) payments made by the consumers of water in the Pontypridd and Rhondda Districts, and (2)

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payments made for water supplied in bulk, for the Llantrisant and Llantwit Fardre Rural District and part of the Caerphilly Urban District. For the water supplied to the consumers in the Pontypridd and Rhondda Districts, the Board has at all material times levied the maximum charges permitted by law.

It is admitted that, in accordance with the principle laid down by the House of Lords in *Mersey Docks and Harbour Board* v. *Lucas*, 8 App. Cas. 891; 2 T.C. 25, the Board is assessable to Income Tax under Case I of Schedule D upon the excess of its trading receipts over its expenses computed in accordance with Income Tax principles; and that the payments which I have mentioned are trading receipts which must be included in the computation.

Those payments, however, do not constitute the whole of the annual income of the Board. The Act of 1910 contemplated that they might not be sufficient to cover the expenses of the Board; and it was accordingly provided by Section 91 that in or about the month of April of each year the Board should make an estimate of its probable net revenue for the financial year commencing on 1st April, and, in the event of the estimate shewing that there would be a deficiency in the net revenue for the year, the Board were authorised and required to apportion the sum required to meet the deficiency between its two constituent authorities in the proportion which the rateable value of the Pontypridd Urban District bore to the rateable value of the part of the Rhondda Urban District which was within the Board's limits of supply. The Board was to issue precepts to the constituent authorities, who were to find the money out of their respective general rate funds, and were authorised and required to make and levy any rate that might be necessary to enable them to comply with the Board's precepts. If a constituent authority made default in payment of the amount apportioned to it, the Board might sue the defaulting authority, or itself might cause a rate to be levied in the district of such authority in order to secure payment of the amount of the precept.

During the year ended 31st March, 1939, the Board received the sum of £9,930 from precepts issued by it to its constituent authorities. The main question at issue on this appeal is whether, in the computation of the profits of the Board for the purpose of its assessment to Income Tax, the payments received under precepts issued by the Board to its constituent authorities ought or ought not to be included as trading receipts. The General Commissioners held that those payments ought not to be included as trading receipts, and that they should, therefore, be excluded from the computation. The Crown contends that this decision was erroneous in law and that the payments ought to be included in the computation.

Where a local authority is authorised to supply water to the inhabitants in its district and to defray the cost of so doing out of the rates, it seems clear that the authority could not be said to be making any profits assessable to Income Tax. In such a case, the supply of the water would, as it seems to me, be on the same footing as the supply of sewerage or public lighting, or any other of the public services of a local authority which are paid for out of the rates. From this it would seem to follow that, if a local authority is authorised and required to supply water and to obtain payment from the persons to whom the water is supplied, but such payment is by law restricted to an amount which is insufficient to meet the cost of supplying the water, and the authority is empowered to meet the deficiency by levying a general rate the revenue obtained in that way ought not to be considered as a

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trading receipt. The decision in the case of *Mersey Docks and Harbour Board* v. *Lucas*(1) does not, if I rightly apprehend it, require that it should be so considered.

But, apart from that, there is, as it seems to me, authority on this question which I ought to follow. In the case of In re *Glasgow Corporation Water Commissioners,* 1 T.C. 28, the expense of supplying water to the inhabitants of Glasgow was met by means of (1) a rate on the occupiers of all dwelling-houses within the municipal boundary, and (2) by a public water rate. The Crown claimed that the surplus of receipts over expenses was assessable to Income Tax, but the claim was rejected by the Court of Session. The leading judgment in that case was delivered by Lord President Inglis. It so happened that in that case the Water Commissioners supplied water to consumers who were outside their limits of compulsory supply; and the Lord President (at pages 49/50) pointed out that any surplus income derived from that source might be assessable to Income Tax, but that since the parties had treated such surplus as being on the same footing as the income derived from rates, the Court made no distinction between those different sources of income.

That case was decided before the decision of the *Mersey Docks and Harbour Board* v. *Lucas* in the English Courts. But, in the case of *Glasgow Corporation Water Commissioners* v. *Miller,* 2 T.C. 131, the question left open in the first *Glasgow Water* case came up for decision; and it was then held that surplus revenue derived from the supply of water beyond the limits of compulsory supply and from the sale of water within those limits for trade purposes was assessable as profits under Case I of Schedule D. That case fell to be decided after the decision in *Mersey Docks and Harbour Board* v. *Lucas;* and the Lord President expressed the view that the decision in the English case did not affect the decision of the Court in the previous case.

I think it is relevant here to refer to the observations of Lord Dunedin in the case of *Forth Conservancy Board* v. *Commissioners of Inland Revenue,* [1931] A.C. 540; 16 T.C. 103. The headnote in that case is: " A conservancy " board was established by statute to preserve and improve a river and " firth and to control the navigation therein. Its members were appointed or " elected by local authorities, Government departments, railway companies " and shipowners. It possessed wide powers to dredge, light, buoy and " otherwise improve the navigation of the river, and it was empowered " to levy dues on vessels entering the river or firth. These dues constituted " its sole revenue, and were directed by statute to be applied to the purposes " of the undertaking as the Board might determine. Held, that the Board " was assessable to income tax on the surplus revenue arising from these " dues under Case VI of Schedule D of the Income Tax Act, 1918." Lord Dunedin felt himself compelled with the greatest reluctance to concur in the decision of the House in that case; but at page 549 (16 T.C., at page 119) he made these observations on the first *Glasgow Water* case: " There is, " I think, no question that the same line of reasoning which appeals to me "— and Lord Dunedin had expressed previously with great force and cogency his view as to the public mischief which arose from the decision in the *Mersey Docks and Harbour Board* case—" appealed to Lord President Inglis " in the first *Glasgow* case. It is possible to doubt the soundness of that " decision in the light of the *Mersey Docks* case, which was subsequent " and of higher authority. I think the decision can be saved by considering

(1) 2 T.C. 25.

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" the supply of water, not in the light of supplying a commodity, but " of rendering a public service, just as lighting or cleaning are public " services, and this view is helped by the fact that you could not escape " the water rate by offering to prove you had used no water. That Lord " President Inglis had to consider whether the judgment would stand " after the *Mersey* case(1) is, I think, shown by the ground on which the " second *Glasgow* case(2) was distinguished from the first, and indeed in " that case he distinctly said that he had reconsidered his first judgment " and still remained of the same opinion." There should also be mentioned the case of *Harris* v. *Corporation of Burgh of Irvine*, 4 T.C. 221, where it was admitted by the Crown that surplus derived from the produce of a compulsory rate levied within the municipality was not assessable to Income Tax.

I think therefore, that, on principle and authority, the decision of the General Commissioners was correct, and the claim put forward by the Crown must be rejected. The fact that the rate is levied on all the occupiers in the Rhondda Urban District, though part of that district is outside the Board's limits of supply, is not, in my opinion, of any materiality. It often happens that ratepayers have to contribute to a rate from which they get personally no benefit whatsoever.

A further question arises with regard to sums paid by the Board to the Taf Fechan Water Supply Board, which had been established by the Taf Fechan Water Supply Act, 1921, for the purpose (*inter alia*) of supplying water in bulk to its five constituent authorities, namely, the Merthyr Tydfil Corporation, the Rhymney Valley Water Board, the Respondent Board, Llantrisant and Llantwit Fardre Rural District Council and the Aberdare Urban District Council.

The Respondent Board, as a constituent authority of the Taf Fechan Board, was bound to take, or pay for as taken, a minimum quantity of 270,000 gallons of water per day at the price of 1*s.* per 1,000 gallons, and the Taf Fechan Board was bound to reserve for the Respondent Board a further 330,000 gallons per day in case it should require more than 270,000 gallons per day. Such further quantity was also to be supplied at the price of 1*s.* per 1,000 gallons.

Parliament conferred upon the Taf Fechan Board the right to issue precepts to its constituent authorities similar to the right conferred upon the Respondent Board, requiring the constituent authorities to pay out of their respective revenues such sums as might be necessary to meet any estimated deficiency in its revenue. The Respondent Board, accordingly, is bound to pay to the Taf Fechan Board year by year the amount of any such estimated deficiency which is apportioned to it by that Board. In the year ended 31st March, 1939, the Taf Fechan Board issued a precept requiring the Respondent Board to pay £964 5*s.* 9*d.*

The Respondent Board also pays to the Taf Fechan Board a fixed contribution under the provisions of Section 4 (1) (*c*) of the Taf Fechan Water Supply Act, 1937, namely, three-quarters of the product of a penny rate in the Pontypridd Urban District and so much of the Rhondda Urban District as is comprised within the limits of supply of water by the Board.

The case put forward by the Crown was that, in the computation of the profits of the Board for the purposes of Income Tax, the sums received by the Board under the precepts should be included as trading receipts; and that, in like manner, the sums paid by the Board under the precepts

(1) 2 T.C. 25. (2) 2 T.C. 131.

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should be included as trading expenses. But if, as I hold, the sums received by the Board under the precepts are not to be included as trading receipts, then the Crown contends the sums paid by the Board pursuant to the precepts issued by the Taf Fechan Board ought also to be excluded from the computation. It seems to me that this contention cannot be sustained. The sums which are received by the Board under precepts and are provided out of a general rate are excluded from the computation on the grounds which I have ventured to set forth. Those grounds have no application to the sums paid by the Board under precepts. The sums paid by the Board under precepts issued by the Taf Fechan Board are part of the price which the Board is by law compelled to pay in order to obtain the water required by it to carry on its trade of supplying water, and must, therefore, be allowed as a trading expense in the computation of the Board's profits for the purposes of Income Tax.

Therefore, in my opinion, the appeal fails and must be dismissed with costs.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Scott and du Parcq, L.JJ., and Uthwatt, J.) on 5th and 6th July, 1944, when judgment was reserved. On 24th July, 1944, judgment was given unanimously in favour of the Crown, with costs, as respects sums received, under precept, from the constituent authorities, and against the Crown as respects sums paid to the Taf Fechan Board.

The Attorney-General (Sir Donald Somervell, K.C.) and Mr. L. Maclaren (for Mr. Reginald P. Hills) appeared as Counsel for the Crown, and Mr. J. Millard Tucker, K.C., and Mr. L. C. Graham-Dixon (for Mr. Terence Donovan) for the Water Board.

JUDGMENT

Scott, L.J.—The Respondent Board carries on a water undertaking in Wales and was assessed to Income Tax under Schedule D, Case I, for the year 1939–40 in the estimated sum of £10,000. On appeal to the General Commissioners the assessment was set aside; and an appeal from their order was dismissed by Macnaghten, J. The Crown has appealed.

There are two issues before us. The first and main question is whether moneys received by the Board from its two constituent bodies, the Pontypridd Urban District Council and the Rhondda Urban District Council, pursuant to a precept served upon each of them by the Board under its statutory powers, formed part of its income within the meaning of the Income Tax Acts. The second question is whether moneys paid by the Board to another statutory water undertaking, the Taf Fechan Water Supply Board, for water supplied by it in bulk to the Respondent Board, constituted expenditure incurred by the Board in the earning of its taxable income. To appreciate the real significance of the two questions, particularly of the main one, it is necessary to state the history and constitution of the Board. Before 1910 the larger part of the present Board's undertaking was owned and carried on by the Pontypridd Waterworks Company under various private Acts of Parliament passed between 1864 and 1909. That company supplied water to the inhabitants in its neighbourhood. In 1910 the Urban District Councils of Pontypridd and Rhondda promoted an Act which transferred the company's undertakings to their control through the medium of the Respondent Board, set up by the Act and composed of members of the two Councils.

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Before the transfer the company carried on a trade within the Income Tax Acts and was assessable upon its income. The new Board succeeded to that position and also admittedly was and is carrying on a trade which makes it assessable on such income as it earns.

The Stated Case is fully and clearly stated, and there are only certain facts which need to be restated for the purpose of this judgment. In addition to the Taf Fechan supplies, the Board has resources of its own in its reservoirs fed by natural streams. It delivers water direct to consumers (both domestic and in bulk) over (1) the whole area of the Pontypridd District, and (2) a part only of the Rhondda District, the larger part of that District being outside its limits of supply. It also delivers " bulk " supplies only in (3), the Rural District of Llantrisant and Llantwit, and (4) in a part of the Caerphilly Urban District. Its domestic supplies are paid for by water rates payable by the individual consumers (Sections 61 to 66 of the 1910 Act). The bulk supplies are " by measure " and charged at scale prices fixed by the Act (Sections 67 to 69). The Board has usual ancillary powers, by which it earns certain further small sums. The moneys received by it under precept arise in this way. By Section 91 of the Act the Board is required, before the 1st April in each year, to budget for the ensuing 12 months, and if on an " estimate " of the probable revenue and expenditure (other than capital expenditure) for that year there is going to be " a deficiency in the net income ", the Board is required to apportion that anticipated deficiency between its two "constituent" District Councils in accordance with the relative proportions of the rateable value of the whole of the Pontypridd District and that part of the Rhondda District which lies within the Board's limits of supply. For the respective sums so debited to the two Councils the Board is to issue precepts; which, when duly served, undoubtedly constitute enforceable debts. To put themselves in funds to pay these amounts the two Councils are authorised and required to make payment out of their general rate fund, and to make a levy (for the purpose of replenishing that fund) as part of their general rate (Section 91, Sub-section (4), and subsequent Local Government legislation). Against the remote possibility of either Council failing to pay, the Board is given a default power of itself to levy a general rate in the place of the defaulting local authority.

It is this system of payment which is the pretext for the Board's contention that money receivable by it in response to a precept is not income within the meaning of the Income Tax Acts. I use the word " pretext " because, in my opinion, the Respondent's argument, when analysed, amounts to no more. The financial system imposed by the statute is one which was no doubt adopted by Parliament with due consideration for the convenience of all the customers, of whatever kind, of the Board who are also ratepayers in one or other of the four parts of the Board's area of supply. If what the customers are paying is not enough to cover all the Board's expenditure in the current year, the Board, in effect, allows credit to the extent of the deficiency; but the Board has got to pay its way eventually, and on the expiration of the year, the balance, whichever way it may be, is of course carried forward to the credit or debit of the ensuing year's account; but if, on the rates of payment of the current year it appears that there will be a deficit in the ensuing year, the Board is both permitted and required by Parliament to increase its net revenue for the ensuing year so as to restore the balance of its accounts by debiting the anticipated deficit then and there to its two constituent authorities. I cannot see room for any argument whatever that this augmentation of its net revenue for the ensuing year produces a receipt in any way different in kind from the rest of the income that the Board is going to earn during the ensuing year. It might well be that the whole of the prospective deficit was due to an

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unexpected increase in the number of unoccupied houses reducing the money yield of domestic supplies; or it might be that a depression in trade was causing a serious drop in the demand for bulk supplies. In neither case would the level of expenditure fall proportionately to the decrease in receipts, and in either case there would be a need for the Board to get in extra revenue in order to balance its accounts; and, whatever the cause of the anticipated deficit, the additional revenue received to cover it would necessarily be the same in kind as the rest of the Board's revenue, namely, money received in consideration of water supplied or to be supplied pursuant to the statutory functions of the Board. If on taking an account of its revenue and expenditure on Income Tax principles—that is to say, disallowing prohibited deductions and other expenses which cannot properly be brought into such an account as income-producing expenditure—the result shows a net balance of income over expenditure, the whole of that balance must, in my opinion, be taxable as being the income of the Board's trade. It follows that, on first principles of Income Tax law, the Board is wrong in its contention that money received on precept is to be excluded from such an account.

It was submitted that the case is concluded in favour of the Board by the decision of the Inner House of the Court of Session in In re *Glasgow Corporation Waterworks* (1875), 2 R. 708; 1 T.C. 28, because, although we are not bound by that decision, it has been approved by the House of Lords. That case has not been formally approved in any actual decision of the House, but favourable expressions of opinion have fallen from some noble Lords, although they have not all been in its favour. There the Glasgow Corporation were constituted Commissioners to carry on a water undertaking previously carried on by a statutory undertaker; and the view taken by the Court of Session was that, in substance, the ratepayers of Glasgow were supplying themselves; and that of such a mutual enterprise it is impossible to predicate the earning of a profit. It was that analogy which Mr. Tucker, for the Board, sought to apply here. I think this Court should treat that decision as one which we ought to follow if *in pari materia,* but I do not regard it as applicable. In the first place it is conceded that if the Respondent Board were to make a profit out of supplying water to the ratepayers of the Pontypridd and Rhondda Districts, either for domestic use or by measure, without taking into account any precept money, that profit would be taxable; *a fortiori* perhaps if part of the revenue which produced the profit consisted of payments for bulk supplies coming from Districts (3) and (4)—the Councils of which are not " con- " stituents " of the Board. In the second place the degree of identity between supplier and consumer, which was said to be inherent in the Glasgow position, is absent in the present case. The Board is a corporate " person " wholly distinct from the two corporate " persons " which exist in the two Urban District Councils of Pontypridd and Rhondda. The fact that the Board contains members of those two Councils, appointed by them, does not constitute identity of the *persona juridica* of the Board with that of each of the two local authorities. Some modern corporate bodies have members appointed by the Crown, or a department of State: but the corporation does not thereby take on, in whole or in part, the personality of the Crown or the department.

The exemption of co-operative societies from Income Tax (apart from recent statutory modification) was not based on any identification in law between the society and its members. The society was a corporation in virtue of its registration under the Industrial and Friendly Societies Acts, and was so treated for all legal purposes, including taxation. The ground of immunity there was that no profits and gains resulted, because the cash payments by

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members to the society for goods received were not final; they were subject to reduction by bonus returns so that the total of the resulting net payments left the society with no surplus over its expenses, and therefore no income. A third distinction in the present case from the *Glasgow* case is that the complete identity of consumer and payer, which was alone considered (though not alone present) in the *Glasgow* case, is absent. Uthwatt, J., has drawn my attention to an illuminating statement of the principle of such " identity " in the opinion of Lord Macmillan in *Municipal Mutual Insurance, Ltd.* v. *Hills*, 16 T.C. 430, at page 448 (a mutual insurance case): "The cardinal requirement " is that all the contributors to the common fund must be entitled to partici- " pate in the surplus and that all the participators in the surplus must be " contributors to the common fund; in other words, there must be complete " identity between the contributors and the participators. If this requirement " is satisfied, the particular form which the association takes is immaterial." The difference of the present case is obvious; there are many distinctions.

The Respondent Board's precept is met by the Rhondda Urban District Council out of a general rate over the whole of its district, the major part of which lies outside the part within the district supplied by the Board. The second *Glasgow* case (1886), 13 R. 489; 2 T.C. 131, decided that revenue from outside the town was taxable. This distinction was considered also in *Harris* v. *Corporation of Burgh of Irvine* (1900), 2 F. 1080; 4 T.C. 221, in which, at page 231, the Lord President said of the *Glasgow* case[1]: " The " short ground on which that and other decisions proceeded is that the produce " of a tax for public service is not, in the hands of the local authority by which " it is levied to be by them administered for the benefit of the ratepayers " within their administrative area, in the nature of ' profits ' at all."

For similar views see also *Humber Conservancy Board* v. *Bater*, [1914] 3 K.B. 449; 6 T.C. 555; and *Commissioners of Inland Revenue* v. *Forth Conservancy Board*, [1931] A.C. 540; 16 T.C. 103, per the Lord President at page 111, Lord Buckmaster at page 117, Lord Warrington at page 122 and Lord Thankerton at page 123. It is true that Lord Dunedin, at page 118, expressed certain regrets about the law as it stands, but what he said does not touch this point. The " mutuality " of a mutual insurance club to which Scrutton, J., as he then was, referred in 6 T.C., at page 571, is, in my opinion, wholly absent in the present case.

Mr. Tucker sought to re-establish his principle of identity or mutuality by contending that each Council, in raising a rate to meet a precept, was acting as agent of the Board; but the reverse was the fact. By the precept each Council came under a specialty debt to the Board, and each had to raise the money needed on its own behalf in order to discharge its debt. For these reasons the main appeal must be allowed.

If the money received by the Board on its precepts was a part of its revenue earned by its expenditure, as in my opinion it clearly was, it must follow automatically and indeed *a fortiori*, that money expended by it in responding to a statutory precept from the Taf Fechan Board was an expense incurred in the course and for the purpose of earning its income, and therefore is a proper debit in its revenue account. Indeed this point was hardly disputed in argument before us.

It is unnecessary to go into figures as they are not in dispute, and can be expressed so far as may be necessary in the Order of the Court. I have read the draft judgments of my brethren and agree with them. The appeal will be allowed with costs here and below, and the questions asked in the Stated Case answered accordingly.

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[1] 1 T.C. 28.

du Parcq, L.J.—If a local authority levies a compulsory water rate in respect of premises within its district, any balance of the proceeds of the rate left in its hands after the necessary expenditure for the year has been made is not subject to tax. The local authority is regarded as representing the ratepayers. It manages the ratepayers' affairs and holds their purse. It is, in the words of Lord Deas, " the mere trustee, hand and instrument of the rate-" payers" (In re *Glasgow Corporation Waterworks,* 1 T.C., at page 50). When the ratepayers pay rates, they are passing money, so to say, from their physical hands to their own metaphorical " hands "; any unexpended balance is no more a profit than is the money which is left in an individual ratepayer's pocket when, having provided himself with cash to be spent for a particular purpose, he is gratified by finding that it has not all gone.

This I take to be the underlying principle of the first *Glasgow* case. Counsel for the Crown did not challenge the authority of that decision, and I assume that it is correct. I am of opinion, however, that the principle which it established has no application to the facts of the present case. I have read in advance the judgment of Scott, L.J., and also that which is about to be delivered by Uthwatt, J., and I agree with them that this Joint Water Board cannot be said to be the representative of the ratepayers of the Rhondda Urban District Council and the Pontypridd Urban District Council; and that, for the reasons which they give, the present case is distinguishable from the Scottish decision and must, on general principles and on authority, be decided in favour of the Crown. I have nothing to add to what has been said by Scott, L.J., with regard to the second question raised by the Case Stated. I agree that the appeal must be allowed.

Uthwatt, J.—It is conceded by the Water Board that it is a trading concern and that all its receipts, other than the sums received under precepts made by it on the local authorities in respect of the deficiency levy, are trading receipts. The argument for the exclusion of those sums in the computation of the Board's profits for tax purposes is based on the general proposition that the proceeds of rates, as such, are not trading receipts, and on the particular proposition that the sums paid to the Board under the precepts represent the proceeds of a rate levied by the Board through its representatives, the two local authorities. In support of the particular proposition, reliance is placed upon the fact that the sums paid by the Councils are necessarily found out of their general rate fund: that in making the general rate the local authorities take into account the sums for which they have to provide for the purposes of the Water Board and indeed, in their rate demands, are required to state not only the amount necessary for that purpose but the consequent fraction of the general rate represented by that amount. The identity between the amount raisable (being the appropriate part of the general rate) and the amount payable to the Board is apparent. The appropriate part of the general rate is levied exclusively for the purposes of the Board, and, having regard to the relations between the local authorities and the Board, the local authorities should, it is argued, be treated as making the general rate to that extent as representatives of the Board and as passing on to the Board the sums represented by it.

The accuracy of the general proposition may be accepted, and I propose only to examine the argument that, on the facts of the case, the deficiency payments are in law rates received by the Board levied through their representatives.

On some points of detail the facts assumed by the argument are not correct. It is possible, and indeed probable, that the local authorities do not in practice in any year succeed in collecting the whole rate levied by them.

(Uthwatt, J.)

If that happens the deficiency sums remain payable to the Board in full. The shortfall of the appropriate part of the general rate is not carried forward as a debit to be met out of that appropriate part in succeeding years. Something other than a sum equal to the actual proceeds of the appropriate part of the general rate has, in that case, to be paid to the Board. Again, as appears from the specimen rate demand, Government grants are received under the Act of 1929 in aid of local government services generally and the grants cannot be allocated to any particular service. The result is that the amount of the total rate otherwise demandable is reduced by the amount of this Government grant.

For two reasons the supposed identity between the proceeds of the appropriate part of the rate and the sums paid to the Board disappears at an early stage. But the argument preferred may, I think, be dealt with on broader grounds.

At the outset it may be pointed out that the provisions of Section 9 of the Rating and Valuation Act, 1925, have no application to the case, and that the Court is not concerned with a case where precepts are made on a poundage basis and the obligation is to account for an amount produced by a rate made pursuant to the precepts.

The first criticism on the Board's argument is that the obligation arising under the Act of 1910 is not in form or in substance an obligation to make a rate or to account to the Water Board for any part of a rate. The obligation is to pay sums fixed by the Board, who in fixing such sums act in accordance with the directions contained in the Act. The circumstance that the local authorities necessarily meet that obligation out of the general rate fund and, in part, measure the amount of the general rate by reference to that obligation, cannot alter the quality of that obligation or the nature of the payments made under it. In no sense are the proceeds of the rate passed on to the Board. It was argued that the right of the Board under Section 91(5) of the Act of 1910 itself to levy a rate in case of default of the deficiency payment being made in full added, even if it did not entirely give, colour to the nature of the payment made under the obligation. I do not accept this argument. In case of failure to pay the Board has other remedies beyond the levying of a rate open to it. The nature of one of several remedies arising on breach of a substantive obligation is no guide to the nature of that obligation. Next, it cannot, in my view, be said that in making any part of the general rate the local authorities act as representatives of the Board. The general rate is one rate and the Board has no voice in the imposition, quantification or collection of the general rate. A debtor, in placing himself in funds to meet his obligations, does not represent his creditor. Essentially, he is acting for his own account.

Nor, indeed, can it be said that the connection between the Board and the local authorities places the local authorities in the position of representatives of the Board. A consideration of their formal relations—the circumstance that the members of the Board are appointed by and must be members of the Councils, and that the local authorities are in relation to the Board called the constituent authorities—suggests that, if there be any representation in the matter at all, the Board is in general the representative of the local authorities, not that the local authorities are the representatives of the Board. This is no reason why the opposite should obtain as regards a rating power provision by the local authorities.

The particular proposition contended for by the Board is not, therefore, in my opinion, well founded; on that footing the argument fails.

(Uthwatt, J.)

The next question is whether the present case is governed by the first *Glasgow* case, 1 T.C. 28. In that case a private Act (18 & 19 Vict., c. cxviii) was passed for the purpose of placing the supply of water to the City of Glasgow and the adjacent places in the hands of Commissioners. By Section 6 of the private Act, the Magistrates and Council of the City of Glasgow and their successors for the time being, " as representing, and for and on behalf " of the community of the said city ", were appointed Commissioners for executing the purposes of the private Act. The Commissioners, who were not a corporate body, were required to levy a domestic water rate, to be fixed by them, and a public water rate (not exceeding a 1*d.* in the £) on property situate within the city limits which constituted the area of compulsory supply. Any excess of income over expenditure (including in expenditure, contributions to a sinking fund) was to be carried forward to the next year and be applied in reducing the domestic water rate (Section 92). It was held that the proceeds of the compulsory rate so levied was not liable to be brought into computation for purposes of Income Tax. The Commissioners were, it was said, the hands and instruments of the compulsory ratepayers, who were, as regards the compulsory rate, in substance assessing themselves. The present case is not, in my opinion, governed by the decision in the *Glasgow* case. There is not, in the legislation affecting the Board and its undertaking, any such declaration as is found in Section 6 of the Glasgow Act. The deficiency payments here in question are made by the two District Councils and not by compulsory ratepayers. If the payments made to the Water Board be traced back and attributed to the ratepayers, all the ratepayers in the area of the Rhondda Urban District Council are liable to pay the general rate, but the major part of that area lies outside the area of compulsory supply; and any balance of receipts over expenditure of the Board is (Section 92) to be paid to the constituent Councils and is to be carried to the credit of the district fund and general district rates. Mutuality was present in the *Glasgow* case and, in my view, is absent in this case.

For these reasons I think that the contention of the Water Board on the first point fails. The sums in question are trading receipts and enter into computation accordingly.

As regards the sums payable under precepts by the Taf Fechan Water Supply Board, I agree with the conclusion at which Macnaghten, J., arrived and the reasons given by him.

Scott, L.J.—The case will go back to the Commissioners to carry out the directions in the judgments.

Mr. MacLaren.—If your Lordship pleases.

Mr. Graham-Dixon.—My Lord, may I have leave to appeal to the House of Lords in this case?

(*The Court conferred.*)

Scott, L.J.—Yes.

Mr. Graham-Dixon.—If your Lordship pleases.

The Water Board having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon and Lords Thankerton, Wright, Porter and Simonds) on 25th, 28th and 29th Janurary, 1946, when judgment was reserved. On 29th March, 1946, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. J. Millard Tucker, K.C., and Mr. Terence Donovan, K.C., appeared as Counsel for the Water Board, and Sir Patrick Hastings, K.C., and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Simon.—My Lords, I have had the advantage of considering the opinion which my noble and learned friend Lord Thankerton is about to deliver, in which he has fully set out the facts in this case, and has examined and analysed the authorities. I agree with his conclusion and will limit myself to a brief statement of two contrasted propositions: the real question in the appeal seems to me to be under which of these two propositions the present case falls.

The first proposition is that, subject to the exception hereafter mentioned, payments in the nature of a subsidy from public funds made to an undertaker to assist in carrying on the undertaker's trade or business are trading receipts, that is, are to be brought into account in arriving at the balance of profits or gains under Case I of Schedule D. It is sufficient to cite the decision of this House in the sugar beet case (*Smart* v. *Lincolnshire Sugar Co., Ltd.*, 20 T.C. 643; 156 L.T. 215) as an illustration.

The second proposition constitutes an exception. If the undertaker is a rating authority and the subsidy is the proceeds of rates imposed by it or comes from a fund belonging to the authority, the identity of the source with the recipient prevents any question of profits arising—see, for example, Lord Buckmaster's explanation in *Forth Conservancy Board* v. *Commissioners of Inland Revenue*, [1931] A.C. 540, at page 546 (16 T.C. 103, at page 117) and compare what Lord Macmillan said in *Municipal Mutual Insurance, Ltd.* v. *Hills*, 16 T.C. 430, at page 448.

Lord Thankerton has conclusively demonstrated that Lord President Inglis' decision in the first *Glasgow Water* case (In re *Glasgow Corporation Waterworks* (1875), 2 R. 708; 1 T.C. 28) falls within this second proposition; so interpreted, it was rightly decided, but it does not help the Appellants. The precepts which the Appellants issued called for lump sums to be contributed by the two Urban District Councils which they might pay either from their respective district funds or by levying rates. They were not agents for the Appellants in finding the money, but distinct parties. It is true that, if either of the Councils did not provide the money, the Appellants, instead of suing it, might itself by precept empower an officer of their own to raise the necessary amount by levying a rate in place of the defaulting authority, but the substance of the matter is that there is no such identity between contributors and recipients as removes the Appellants from the application of the first proposition set out above.

I move that the appeal be dismissed with costs.

Lord Thankerton.—My Lords, the subject-matter of this appeal arises upon an assessment made upon the Appellant Board under Case I of Schedule D of the Income Tax Act, 1918, in the estimated sum of £10,000 for the year 1939–40 in respect of the profits of its trade, which was that of an undertaking for the supply of water. The only question argued before this House was whether certain sums paid under precept to the Appellant Board by the Pontypridd Urban District Council and the Rhondda Urban District Council under Section 91 of the Pontypridd and Rhondda Water Act, 1910, fall to be included as receipts in the computation of the Appellant Board's trade profits.

(Lord Thankerton.)

The Commissioners for General Purposes of the Income Tax for the Division of Miskin in the County of Glamorgan held that these sums received under precept were not trading receipts and should not be included, and, on the requisition of the Crown, stated a Case for the opinion of the High Court of Justice. It may be mentioned that there was also a dispute as to whether a sum paid by the Appellant Board to the Taf Fechan Water Supply Board should be allowed as a deduction; the General Commissioners held that it should be so allowed, and this conclusion was affirmed in the King's Bench Division and in the Court of Appeal, and the Crown did not press for its disallowance before this House. That point accordingly requires no further mention.

On appeal the decision of the General Commissioners that the sums received under precept by the Appellant Board were not trading receipts and should not be included in the computation of profits was affirmed by Macnaghten, J., but an appeal by the Crown to the Court of Appeal was allowed, and it was held that the sums in question were trading receipts and should enter into computation. Hence this appeal by the Appellant Board.

Counsel for the Appellant Board referred to reasons Nos. (6) and (7) of the Appellant's case as embodying his main contentions. These are: (6) where a local authority carries on a commercial undertaking at a loss, and is permitted to make good that loss by a compulsory rate levied on the ratepayers, the amount of the rate so raised is not a receipt of the local authority's said trade; and (7) the Board's position in respect of the sum raised by precept to meet its trading losses is similar to that of a local authority, its "ratepayers" being either the two Councils, the Rhondda Urban District Council and the Pontypridd Urban District Council as its constituent authorities, or the individual ratepayers of those two Districts.

The Appellant Board was established as a corporate body by a Local Act, the Pontypridd and Rhondda Water Act, 1910, the Board being constituted as follows:—

(*a*) The chairman for the time being of the Rhondda Urban District Council;

(*b*) The chairman for the time being of the Pontypridd Urban District Council;

(*c*) Six members to be appointed by the Rhondda Urban District Council;

(*d*) Four members to be appointed by the Pontypridd Urban District Council;

and it was provided that no one was qualified to be a member of the Board unless he was a member of either of these two Urban District Councils, these two Councils being referred to in the Act as "the constituent authorities."

Under Sections 58 and 59 of the Act of 1910, as amended by Section 25 (6) of the Pontypridd and Rhondda Water Act, 1913, the limits of supply within which the Board are authorised to supply water direct to consumers are (1) the Pontypridd Urban District and (2) part only of the Rhondda Urban District; but in addition the Board was authorised to sell water in bulk to the water undertakers in (1) the Llantrisant and Llantwit Fardre Rural District and (2) part of the Caerphilly Urban District. The maximum charges which may be made by the Board for supplies taken by consumers within the limits of supply are fixed by Sections 61, 67 and 68 of the Act of 1910, Sections 26 and 27 of the Act of 1913, and Section 18 of the Pontypridd and Rhondda Water Act, 1925. The maximum permitted charges have at all material times been charged by the Board.

(Lord Thankerton.)

The payments received by the Board from the persons to whom water is supplied consist of (*a*) payments made direct to the Board by the consumers within the limits of supply, and (*b*) payments made by the water undertakers in the Llantrisant and Llantwit Fardre Rural District and part of the Caerphilly Urban District for water sold to them in bulk. It is admitted that both these classes of payments are trade receipts. In addition further sums are received by the Board by virtue of Section 91 of the Act of 1910, the material portion of which provides as follows:—

"91.—(1) Before the first day of April in each year or so soon "thereafter as may be practicable the Board shall make or cause to be "made an estimate of the probable revenue and expenditure other than "capital expenditure which will be received and incurred respectively "during the year beginning on that day and if such estimate shows that "there will be a deficiency in the net revenue of the Board for the year "the Board are hereby authorised and required in every case forthwith "to apportion the sum required to meet such deficiency between the "constituent authorities in accordance with the provisions of this section.

"(2) The sum required to meet any deficiency whether for satisfying "past or future liabilities shall be apportioned between and borne by the "constituent authorities in the proportion which the assessable value of "the Pontypridd district bears to the assessable value of that part of the "Rhondda district which is within the limits of supply.

"(3) The Board shall issue precepts to the constituent authorities "for the amounts apportioned in pursuance of this section and the con-"stituent authorities respectively shall within three months from the "receipt of such precepts pay to the Board the amount so apportioned "to them respectively.

"(4) Such amounts respectively shall be paid by the constituent "authorities out of their respective district funds and general district "rates which funds and rates are hereby charged with the payment of the "same accordingly and the constituent authorities respectively are hereby "authorised and required to make and levy any rate that may be "necessary for the purpose of this section."

Sub-section (5) of Section 91 provides that, in default of payment by a constituent authority of the amount so apportioned to it, the Board may sue the defaulting authority or itself cause a rate to be levied in the district of such authority in order to secure payment.

Pursuant to Section 91 the Board made an estimate, which showed an estimated deficiency of £9,930 in the net revenue of the Board for the period ending 31st March, 1939, and issued precepts on the constituent authorities for the respective sums apportioned to them out of the said amount. These sums were duly paid by the constituent authorities, and an appropriation account of the Board for that year showed the amount of £9,930 as received under these precepts. The question at issue is whether the sums thus received under precept to meet an estimated deficiency in the result of what are admittedly trading activities, fall to be taken into account in computing the profits and gains of the Board's trade under Case I of Schedule D.

Mr. Tucker, for the Appellant Board, submitted, in the first place, that the amounts of the precepts were not to be included among its trade receipts, in view of the decision in the case usually referred to as the first *Glasgow* case, In re *Glasgow Corporation Waterworks* (1875), 2 R. 708; 1 T.C. 28, with which he maintained the present case was *in pari casu*. In the second place

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Mr. Tucker contended that the sums in question were not trade receipts (*a*) on general grounds, and (*b*) that they were in exactly the same category as a local rate raised by a public body for the assistance of an undertaking carried on by that body, which is entitled to have such assistance.

My Lords, the first of these contentions appears to me to involve the question whether the Appellant Board is entitled to the benefit of the well-recognised principle of the exemption of public rating authorities from taxation in respect of the surplus of rates, which is defined by Lord Buckmaster in *Forth Conservancy Board* v. *Commissioners of Inland Revenue,* [1931] A.C. 540, at page 546; 1931 S.C. (H.L.) 95; 16 T.C. 103, at page 117, as follows: " The principle of exemption for the surplus of rates is, I think, to " be found in this, that the rating authority collects money from the inhabitants " of the district for the purpose of application to the expenses incurred on " behalf of the inhabitants, and that any surplus rightly belongs to the " inhabitants themselves, who receive its benefits in case of any surplus, " because it is carried forward towards the expenses of the ensuing year." This principle had already been recognised before the first *Glasgow* case(1) in *Attorney-General* v. *Black*(2) (1871), L.R. 6 Ex. 78 and 308, in which it was admitted by the Crown, at page 83, that a tax imposed by the community on themselves did not involve liability to Income Tax; and in the Exchequer Chamber, Keating, J., said, at page 311: " Mr. Manisty does not contend that " harbour and port dues, and other revenues of that description, are not " taxable; and the Attorney-General admits that a district rate is not. The " question then is, does the rate in question partake more of the nature of the " one or of the other? I am of opinion that it does not partake of the " character of a district rate imposed by the inhabitants of a place upon them-" selves; and that on the other hand, it is very difficult to distinguish it from " harbour dues." It will be found that this same principle was applied in the first *Glasgow* case, which was decided four years later, and to which I will now return.

The Glasgow Water Commissioners were created as a statutory corporation, according to the law of Scotland, by the Local Act, 18 & 19 Vict., c. cxviii, by Section 6 of which it was provided: " The Magistrates and Council of the City " of Glasgow and their successors in office for the time being, as representing " and for and on behalf of the Community of the said City, are hereby " appointed Commissioners for executing and carrying into effect the purposes " of this Act." They were required to furnish the City of Glasgow, that is to say, within the municipal boundaries, with a supply of water for domestic purposes, and to erect thirty-two public fountains within those boundaries which formed the limits of compulsory supply. They were empowered also to deal with parties outside the compulsory limits. Within the limits of compulsory supply the Commissioners were entitled to levy two rates, (*a*) a domestic water rate, levied on the occupiers of all dwelling-houses within the area according to their rents, and (*b*) a public water rate not exceeding a penny in the pound on the full annual value of all premises whatever within the same limits. Both these rates were payable irrespective of whether the ratepayers chose to use the water or not.

After meeting the current expenses of the undertaking, interest on borrowed money and sinking fund charges, the Commissioners were required to apply any surplus in reduction of the domestic water rate for the following year. Having been assessed to Income Tax for the year 1872–73 in respect of profits to the amount of £17,032 15*s.* arising upon their undertaking, the Water

(1) 1 T.C.28. (2) 1 T.C.52.

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Commissioners' appeal was refused by the Commissioners of Property and Income Tax for the City of Glasgow, and a Case stated by them came before the First Division of the Court of Session, which allowed the appeal. Lord President Inglis, 2 R., at page 712 (1 T.C., at page 48), said: "Now, the "sum of £17,032 15*s*., upon which the charge is made under Schedule D "of the Income Tax Act, comprehends the whole portion of the revenue of "the water commissioners which is applied towards the formation of the "sinking fund in redemption of the annuities and mortgages in the manner "that I have already mentioned, and also the balance, if any, which is carried "forward to the following year's account, to be applied as the Act directs "in reducing the domestic water rate; and the question is, whether income "arising from this assessment, which is appropriated to such purposes, is "assessable for income tax under Schedule D as profits of this water under-"taking. I am humbly of opinion that it is not. It seems to me that this is an "Act of Parliament by which the citizens of Glasgow have undertaken, through "this water corporation as their representatives, to assess themselves for a "very important public purpose—a purpose very conducive to their own "comfort and well-being—to obtain a good supply of water for the city. In "so assessing themselves they had not in view certainly to make profit by "the undertaking. On the contrary, what they have distinctly in view is to "pay money in order to obtain this particular benefit. They are not therefore "trading in any commodity, nor are they entering into any undertaking for "the use of property that is to be attended by a resulting profit, or a beneficial "interest accruing to any individuals, or to any corporation. The object of "the assessment is to pay for bringing in the water, and when that is done "the assessment and the authority to levy it come to an end." The Lord President then distinguishes the case from the cases of *Attorney-General* v. *Black*(1) and *Attorney-General* v. *Scott*(2) (1873), 28 L.T. 302: "The case "is entirely different from those that have been cited which have been decided "in the Court of Exchequer in England, because in those cases the statute "which gave the right to levy the assessment did not impose it upon the "citizens of the particular burgh or locality which obtained the Act. It was "not an authority to the citizens of a particular locality to assess themselves." The learned Judge then made the reservation which led to the second *Glasgow* case(3): "I have only farther to say, that if any attempt had been made "here to discriminate between that portion of the revenue which arises from "the rates levied within the limits of compulsory supply and that portion of "the revenue which is raised in the district beyond the limits of compulsory "supply, I should have been very glad to attend to any grounds which might "have been urged for such a distinction." The taxability of profits in respect of the extraneous sources of revenue was raised in *Glasgow Corporation Water Commissioners* v. *Miller* (1886), 13 R. 489; 2 T.C. 131, in which it was held that, while the rates levied within the compulsory area were to be regarded as sums levied to defray the cost of the water supply within the district, so that any surplus remaining over could not be regarded as profit, any surplus of rates above outlay collected beyond the compulsory area, or from sales to manufacturers, was profit, which went to reduce the cost of water supply to those within the compulsory area, and was liable to assessment for Income Tax under Schedule D. Referring to the decision in the earlier case, Lord President Inglis, in delivering the judgment of the Court, at page 492 (2 T.C., at page 140), said: "We are all of opinion that within the limits "of compulsory supply the concern or undertaking as defined by the local "Act was of this nature, that the citizens of Glasgow undertook to assess

(1) L.R.6 Ex. 78 and 308; 1 T.C.52. (2) 1 T.C.55. (3) 2 T.C.131.

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" themselves for accomplishing the important public purpose of supplying the " city (being the limits of compulsory supply) with a good supply of pure " water; that in doing so they had and could have no view of making profit, " for that would have been equivalent to paying out of one pocket and into " another pocket of the same individual or class; that they paid these assess- " ments for no other purpose than that of obtaining the particular contemplated " benefit, and when that benefit is fully attained and secured for the future, " the assessment and the authority to levy it come to an end. I have re- " considered that judgment and have not seen any reason to doubt its " soundness."

The significant features of the *Glasgow* case(1) were that (1) the Water Commissioners were expressly appointed " as representing and for and on " behalf of " the community of the City of Glasgow which formed the area of compulsory supply; (2) the Commissioners had the power of levying the domestic and public rates direct on the ratepayers within the compulsory area, and, *quoad* these rates, the ratepayers were ratepayers of the Commissioners and not of the municipal corporation; (3) these rates were payable whether the particular ratepayer chose to use the water or not; (4) no price was paid by any domestic consumer for his particular supply and he did not enter into any trading transaction with the Commissioners; (5) the rates thus levied were applied to the expenses incurred on behalf of the inhabitants, and any surplus rightly belonged to the ratepayers, and was carried forward and applied in reduction of the domestic rate in the next year, thus answering Lord Buckmaster's definition of the principle(2). On the other hand the present case is very different. The Appellant Board (1) are not directly representative of the inhabitants of the Rhondda and Pontypridd Urban District Councils; (2) their limits of supply do not include the whole of the Rhondda Urban District; (3) they have no power to levy a rate, except on default of a constituent authority; (4) the sums obtained by precepts under Section 91 are not the expense of obtaining a benefit for the inhabitants of the compulsory area, but are designed to meet a deficiency arising out of the insufficiency of their admitted trading receipts to cover their trading transactions with the individual consumers within the limits of supply, and their sales in bulk—in other words, to make good their loss in trading; (5) in view of Sub-section (4) of Section 91, these sums are not necessarily paid out of the proceeds of any rate; and (6) there is no provision for a public rate, and it would appear that if a constituent authority needed water for any of the purposes usually covered by a public water rate, it would need to enter into a trading transaction with the Board. In all these respects the present case is in strong contrast to the first *Glasgow* case.

It is true that in the case of the *Forth Conservancy Board,* Lord Buckmaster, [1931] A.C., at page 547 (16 T.C., at page 117), while finding it unnecessary for the purposes of that case to examine the soundness of the decision in the first *Glasgow* case, said it appeared difficult to reconcile it with the later decision in this House in *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 App. Cas. 891 (2 T.C. 25), and Lord Dunedin, at page 549 (16 T.C., at page 120), expressed a similar doubt. I did not share these doubts, and, as I pointed out, at page 555 (16 T.C., at page 124), Lord President Inglis had the *Mersey Docks* case before him in the second *Glasgow* case(3), and reaffirmed his decision in the first case, and the judgment delivered by Lord President Inglis was the judgment of the Court, and in the *Mersey Docks* case, two out of the three noble and learned Lords who took part in

(1) 1 T.C.28. (2) 16 T.C., at p. 117. (3) 2 T.C.131.

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the decision referred to the first *Glasgow* case: Lord Blackburn, 8 App. Cas., at page 911 (2 T.C., at page 34), approved of the principle on which the Court of Session acted, though, not having the Glasgow Act before him, he was not able to say whether a proper construction had been put on it; Lord FitzGerald, 8 App. Cas., at page 913 (2 T.C., at page 36), clearly found no inconsistency between the decision in the *Glasgow* case and the decision in the *Mersey Docks* case. Having again considered the matter, I am unable to find any inconsistency between the decisions in these two cases.

Mr. Tucker's claim to come within the principle of the first *Glasgow* case not only fails, in my opinion, but in stating the various points of contrast between the provisions of the Glasgow Water Act and the provisions of the Appellant Board's Water Act, the various matters I have indicated in respect of the latter Act go far to show that the amount of the precepts are not in the position claimed under head (*b*) of Mr. Tucker's second contention, namely, that they were in exactly the same category as a local rate raised by a public body for the assistance of an undertaking carried on by that body which is entitled to have such assistance. But I will deal first with head (*a*) of Mr. Tucker's second contention, by which he contended on general grounds that the sums in question were not trade receipts. In regard to this contention he cited two cases, the first of which was *Seaham Harbour Dock Company* v. *Crook*, 16 T.C. 333; 47 T.L.R. 23; 48 T.L.R. 91, which was decided by this House in 1931. The Harbour Dock Company had applied for and obtained grants from the Unemployment Grants Committee from funds appropriated by Parliament. These grants were paid as the work progressed and were equivalent to half the interest on approved expenditure met out of loans. The payments were made several times a year for some years. It was held that they were not to be brought into account in computing annual profits or gains. Lord Buckmaster said, at page 353: "It was a grant which was "made by a government department with the idea that by its use men might "be kept in employment . . . I find myself quite unable to see that it was a "trade receipt". Lord Atkin said, at page 353: "When . . . received, they "were received by the appropriate body not as part of their profits or gains "or as a sum which went to make up the profits or gains of their trade." I am unable to regard the sums here in question as falling into the same category as the unemployment grants; on the contrary, they were received "as a sum which went to make up the profits or gains of their trade."

The other case cited was *Lincolnshire Sugar Co., Ltd.* v. *Smart*, [1937] A.C. 697; 20 T.C. 643, in which advances made under the British Sugar Industry (Assistance) Act, 1931, to a company carrying on business as manufacturers of sugar beet were held to be trading receipts of the company and liable to Income Tax under Case I of Schedule D. The language of my noble and learned friend Lord Macmillan, in describing the nature of these advances, seems to be equally applicable to the sums in question in this appeal. Lord Macmillan, in whose opinion the other four noble and learned Lords concurred, said, at page 704 (20 T.C., at page 670): "It was with the very object of "enabling them to meet their trading obligations that the 'advances' were "made; they were intended artificially to supplement their trading receipts "so as to enable them to maintain their trading solvency." In my opinion these two cases afford sufficient reason for the rejection of Mr. Tucker's contention that, on general grounds, the sums here in question are not trading receipts.

In addition to what I have already said as to head (*b*) of Mr. Tucker's second contention, I will only add that the two cases last cited show that if, as in my opinion was the case here, the assistance is given for the purpose

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of being used in the business carried on by the Appellant Board, so as to enable them to meet their trading obligations, the amounts so given are trading receipts, and this contention also fails.

I have so far expressed my own opinion, but I would like to express my general agreement with the reasons given in the judgments in the Court of Appeal.

Accordingly, I am of opinion that the appeal should be dismissed with costs, and that the Order of the Court of Appeal should be affirmed.

Lord Wright (read by Lord Thankerton).—My Lords, I agree with the speech which has just been delivered by my noble and learned friend Lord Simon, and do not desire to add anything to it.

Lord Thankerton.—My Lords, I have been asked by my noble and learned friend **Lord Porter** to say that he concurs in the opinions which have been delivered.

Lord Simonds.—My Lords, I concur.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

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

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Smith, Rundell, Dods & Bockett, and Theodore Goddard & Co., for Morgan, Bruce & Nicholas (Pontypridd.)]