ignited three shots and there were only two explosions. What he did was to assume that there had occurred the exceptional case of two shots firing simultaneously so as to produce only one explosion. There were, however, no special circumstances before him leading to the conclusion that such exceptional case had *de facto* occurred. He merely assumed that it had, and rashly acted on this unwarranted assumption instead of fulfilling the statutory requirements applicable to the situation which was normally indicated by the occurrence of only two explosions following on three shots ignited. This under the regulation he was not, in my opinion, justified in doing.

LORD SKERRINGTON did not hear the case.

The Court answered the question of law in the negative.

Counsel for the Appellants—Sandeman, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Solicitor-General (Murray, K.C.)—Fenton. Agents—Simpson & Marwick, W.S.

Tuesday, March 7.

FIRST DIVISION.

GLASGOW EDUCATION AUTHORITY *v.* SCOTTISH EDUCATION DEPARTMENT.

Education — Education Authority — Expenses of Members—Allowances in respect of "Time Necessarily Lost from Ordinary Employment in Attending . . . Meetings" —Education (Scotland) Act 1908 (8 *Edw. VII, cap.* 63), *sec.* 3—*Education (Scotland) Act* 1918 (8 *and* 9 *Geo. V, cap.* 48), *sec.* 32 (2), *and Fifth Schedule, par.* (5), (*b*), (*ii*).

The Education (Scotland) Acts 1908 and 1918 provide that an education authority may make payments at uniform rates to the members of the authority in respect, *inter alia*, of time necessarily lost from ordinary employment in attending meetings of the authority or of any committee thereof. *Held* that this provision applied only to such loss of time as necessarily involved irrecoverable sacrifice of remuneration in some ordinary employment.

A Special Case was presented to the Court by the Education Authority of the Burgh of Glasgow, constituted under the Education (Scotland) Acts 1872 to 1919, *first party*, and the Scottish Education Department, constituted under the said Education Acts and the Secretary for Scotland Act 1885, *second party*, as to whether the first party was justified in making certain payments to certain of their members out of the school fund.

The Case set forth as follows:—"1. By section 3 of the Education (Scotland) Act 1908 it is provided as follows—'(3) It shall be lawful for a school board, if they think fit, in addition to any powers already vested in them, to incur expenditure, and to defray the same out of the school fund, in carrying out or in combining with one or more school boards to carry out the following objects (that is to say) — . . . . . (7) In paying such reasonable expenses incidental to the proper discharge of the duties of the school board as may be sanctioned by minutes of the Department: Provided that no such minute shall come into force until it has lain for not less than one month upon the table of both Houses of Parliament.' Further, by section 32 (2) of the Education (Scotland) Act 1918 it is provided—'(2) The provisions set out in the Fifth Schedule to this Act with respect to the adaptation of Acts shall have effect for the purpose of adapting the law to the provisions of this Act'; and by section 5 of the said Fifth Schedule it is provided — '5. In the Education (Scotland) Act 1908 — . . . . . (*b*) The expenses which may be sanctioned by minutes of the Department under paragraph (7) of section 3 shall include — (*i*) Travelling expenses necessarily incurred in attending meetings of an education authority or any committee thereof or meetings of a local advisory council; (*ii*) an allowance at uniform rates to be prescribed by the Department in respect of other personal expenses necessarily incurred, and time necessarily lost from ordinary employment in attending such meetings.'

"2. In prescribing the rates referred to in said section 5 (*b*) (*ii*) of the said Fifth Schedule to the Education (Scotland) Act 1918, above referred to, the Department issued a minute, dated 8th April 1919, from which the following is an excerpt: — 'Minute of the Committee of Council on Education in Scotland, dated 8th April 1919, sanctioning the payment by education authorities out of the education fund of expenditure incurred for certain purposes. At Dover House, Whitehall, the 8th April 1919. By the Lords of the Committee of His Majesty's Most Honourable Privy Council on Education in Scotland. Read—Section 3, sub-section (7), of the Education (Scotland) Act 1908, as extended by paragraph 5 (*b*) of the Fifth Schedule to the Education (Scotland) Act 1918. Resolved—1. That an education authority may, subject to the conditions and limitations hereinafter specified, incur expenditure and defray the same out of the education fund for the following purposes:— . . . . . (2) In making payments to the persons mentioned in the preceding subsection' (*i.e.*, members of the authority or of any committee thereof, and members of any local advisory council appointed by the authority) 'in respect of (other personal expenses (*i.e.*, expenses other than travelling expenses) necessarily incurred), and time necessarily lost from ordinary employment in attending such meetings, at the following rates:— . . . . . (*b*) In respect of time necessarily lost from ordinary employment, at the rate of seven shillings and sixpence for each half-day and fifteen shillings for each full day necessarily so lost.' The said minute was duly laid upon the table of both Houses of Parliament.

"3. During the period from 4th April 1919 to 14th February 1920 the first party paid to, *inter alios*, Dr J. Grant Andrew, Mr John M. Biggar, the Rev. James M. Brisby, and Mr Hugh S. Boyd, all of whom were members of the first party during said period, the expenses detailed in the statement and incorporated as part of this case, the said members representing to the first party that the hours referred to in the said statement were hours necessarily lost by them from their ordinary employment in attending meetings of the first party. During the hours in question, and on account of their attendance at the Education Authority's meetings, Dr Andrew and Mr Biggar were unable to attend to their professional work, Mr Brisby was unable to attend to his duties, and Mr Boyd was unable to attend to his business, but they produced no vouchers or other evidence instructing any pecuniary loss.

"4. The meetings of the first party are held during business hours, the usual hour for beginning meetings being 1·30 p.m. Dr J. Grant Andrew was and is a physician and surgeon carrying on practice in Glasgow, and resided and resides in Glasgow; Mr John M. Biggar was and is an accountant and property agent carrying on business in Glasgow although resident at East Kilbride, a considerable distance outwith the city; the Rev. James M. Brisby was and is the minister of an Independent congregation in Glasgow, and resided and resides within Glasgow; and Mr Hugh S. Boyd, who is now deceased, carried on business as a manufacturing stationer in Glasgow, and resided in Glasgow.

"5. Objection has been taken by the second party to the allowance of such of the payments in said statement as are printed in red [*viz.*, *Loss of Time Expenses*], amounting respectively to £1, 10s., £13, 10s., £4, 10s., and £3, 15s., the hours and the rates not being called in question, and it has been agreed by the parties hereto to submit by way of a Special Case for the determination of the Court the question of whether the first party were justified in having made the said payments to their said members out of the school fund.

"6. The first party contend that the said payments are justified in respect that the payments in question made to the said members represent time necessarily lost by the said members from their ordinary employment in attending the meetings of the first party.

"7. The second party maintain that the said payments are illegal and *ultra vires* of the first party in respect that in the circumstances stated no time was necessarily lost from ordinary employment by the members in question within the meaning of the statutory provisions; that the said provisions were intended to secure and do only permit of payments to members of an education authority who are under contracts of service in respect of actual loss of wages or salary as the direct result of attendance at meetings, or when a definite *pro rata* reduction of earnings is suffered by any member by the loss of a day's or half-day's employment."

The *questions of law* were—"Were the payments that have been objected to by the second party legally and justifiably made out of the school fund by the first party? or Were they *ultra vires* of the first party, and do the same consequently fall to be disallowed?"

Argued for the first party — The members in question had necessarily lost time from their ordinary occupations. This was all that the words of the statute implied.

Argued for the second party — The provision was intended to enable members who worked for wages and were paid by time to attend the meetings of the Authority? It was not meant for members who could arrange their own time. In any event it must be shown that actual pecuniary loss had been suffered.

LORD PRESIDENT—I think it is clear from the minute of the Department, the relevant parts of which are printed in the case, that the principle upon which these allowances are made is that of giving compensation for such loss of time as necessarily involves irrecoverable sacrifice of remuneration in some ordinary employment, and further that such compensation is to be assessed at a flat rate.

In some employments the withdrawal of a man from his duties involves him in necessary or unavoidable loss. This would be clearly so in the case of a miner who must observe his shift and who cannot go down the pit at his appointed time if he has to attend the meeting of the Education Authority. In his case the time spent in attendance is necessarily lost and the wage for the shift is irrecoverable. Probably the same might be said of a man who was paid by the piece and who could only pursue his trade within the hours during which his master's workshop is open. In other kinds of employment, in the case of the shopkeeper and in professional vocations of all sorts, I do not say that it would be impossible in any instance to show that the withdrawal of a man from his work during part of his ordinary working day causes him a necessary loss. But it is certainly not enough to establish a necessary loss of remunerative time merely to say, as is said here, that the clergyman is in charge of a cure, or the medical man is conducting a practice, or that the accountant is practising his profession. In the case of the clergyman it seems to be almost certain, and in the case of the others it seems to be at least exceedingly probable, that sacrifice of income is not a necessary concomitant of the loss of certain hours of the day.

In these circumstances I think the first alternative of the question put to us ought to be answered in the negative, and the second in the affirmative.

LORD MACKENZIE—I am of the same opinion. The meaning of the expression "time necessarily lost from ordinary employment in attending the meetings" appears to me plainly to indicate that there must be loss

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

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

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

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

LORD CULLEN—I concur.

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

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

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

Friday, February 17.

FIRST DIVISION.

[Exchequer Cause.

NORTH BRITISH RAILWAY COMPANY *v.* INLAND REVENUE.

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

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

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

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

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

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