No. 288.—In the High Court of Justice (King's Bench Division).—28th June, 1904.

Court of Appeal.—31st May and 1st and 8th June, 1905.

House of Lords.—22nd and 25th June, 1906, and 19th March, 1907.

Attorney-General v. London County Council.

Attorney-General *v.* London County Council.[1]

Income Tax.—Retention.—The Council deduct Income Tax on payment of loan interest, and claim to retain an amount of the tax deducted equivalent to the tax paid under Schedule A on certain property owned and occupied by them, which formed part security for the loan.

Held, *that the Council must pay over to the Revenue the whole of the tax deducted except in so far as the interest is in fact paid out of taxed sources, and that they are not entitled to claim the desired set-off in respect of the tax charged upon unproductive property.*

By Information filed on the 9th June, 1903, the Attorney-General, on behalf of the Crown, prayed for an Order for payment by the Defendant Council of a sum of £5,913 10*s.* 2*d.*, with interest. This sum represented the difference between the tax (£63,722 18*s.* 9*d.*) deducted from dividends and interest during the year to the 31st March, 1901, and the tax (£40,162 13*s.* 3*d.*) applicable to the dividends, &c., actually paid out of taxed sources, after allowance for the tax (£17,646 15*s.* 4*d.*) already paid over to the Revenue by the Council. The balance in dispute represented the tax under Schedule A on the annual value of property owned and occupied by the Council, less certain deductions on account of ground rents, &c., the Council claiming to retain out of the tax deducted from the dividends and interest an amount equivalent to this tax under Schedule A on the property in question.

The case was argued in the King's Bench Division on the 28th June, 1904, before Mr. Justice Channell by the Attorney-General (Sir R. Finlay, K.C., M.P.) and Mr. S. A. T. Rowlatt on behalf of the Crown, and by Sir Edward Clarke, K.C., Mr. H. F. Dickens, K.C., and Mr. Ryde on behalf of the Defendants, and Judgment was given for the latter. In the Court of Appeal the case was heard on the 31st May and 1st June, 1905, the Attorney-General (Sir R. Finlay, K.C., M.P.), the Solicitor-General (Sir E. Carson, K.C., M.P.), and Mr. S. A. T. Rowlatt appearing as Counsel

(1) Reported K.B.D. [1901] 2 K.B. 635; C.A. 1905] 2 K.B. 375; H. of L. 1907, A.C. 131.

for the Crown, and Sir Edward Clarke, K.C., M.P., Mr. H. F. Dickens, K.C., and Mr. Ryde for the Respondents. Judgment was delivered on the 8th June dismissing the appeal. A further appeal was entered to the House of Lords, when the following Cases were drawn up for the Appellant and Respondents respectively.

CASE OF THE APPELLANT.

1. This is an appeal from the judgment of the Court of Appeal (the Master of the Rolls, Mathew and Cozens-Hardy, L.J.J) affirming the decision of Channell, J. dismissing an Information filed by the Appellant to recover from the Respondent Council certain sums deducted by them for Income Tax on payment of the interest upon their Consolidated Stock, for which sums it is contended by the Appellant they are bound to account to the Crown.

2. By the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102) section 3, the Metropolitan Board of Works, to whose position the Respondent Council succeeded by the Local Government Act, 1888, was empowered to borrow money in conformity with the provisions contained in that Act.

3. By section 4, it was provided that for the purpose of raising such portion of the loans authorised by certain Acts mentioned in the First Schedule, as the Treasury might from time to time sanction, the Board might create Capital Stock, to be called the Metropolitan Consolidated Stock; and by section 5, it was enacted that all Consolidated Stock and the dividends thereon, and the sum required for the redemption thereof, should be charged indifferently on the whole of the lands, rents, and property belonging to the Board under the said Acts mentioned in the First Schedule, and on all money which could be raised by the Board by rates under that Act, and on the Improvement Fund (in each case subject to existing charges), and that all moneys required for the payment of dividends on such stock, and the sums required to be raised for the redemption of the same should be raised out of the Improvement Fund and Metropolitan Consolidated Rate, as in that Act mentioned.

4. By section 22 of the same Act, the Board were for the purpose of paying dividends upon and redeeming the said Consolidated Stock, and for other purposes, including the service of already existing loans authorised to raise a rate to be called the Metropolitan Consolidated Rate.

5. By section 26, it was provided that for the purpose of paying dividends on, and redeeming Consolidated Stock created under that Act, there should be established a Fund, to be called the Consolidated Loans Fund, of the Metropolis, of which, subject to the provisions of that Act, the Board were to keep a separate account.

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6. Sections 27 & 40 (so far as material) are as follows :—

Section 27.—The Board shall carry to the Consolidated Loans Fund the moneys following (after providing for all charges on such moneys existing at the passing of this Act, and to which the same shall for the time being be applicable) that is to say :—

(1) All moneys whether in the nature of capital or otherwise arising from the sale, lease, or other disposition of lands, rents, and property, belonging to the Board.

(2) The residue of the Improvement Fund which may come into their hands in the manner mentioned in this Act.

(3) Such an annual sum in every year out of the Consolidated Rate, and out of the contributions paid to the Board in pursuance of the Fire Brigade Act, or out of one of such sources, as may be equal to two per cent, on the total nominal amount of consolidated stock, whether it has been cancelled or not ; or

(4) Such greater or less annual sum as the Treasury may from time to time approve as being in their opinion necessary in order to pay the dividends on and to redeem all the consolidated stock in sixty years from the date of the creation thereof.

Section 40.—Any person or body corporate entitled to any consolidated stock or to any security granted by the Board may, if default be made for a period of not less than two months after demand in writing in the payment of dividend on such security, apply to the Court of Chancery in a summary way for the appointment of a receiver, and the Court of Chancery may, if the Court thinks fit, on such application, appoint a receiver on such terms and conditions, and with such powers, as the Court thinks fit. Such persons shall have the same power of collecting and receiving and applying all moneys liable to be carried under this Act to the Consolidated Loans Fund, and of assessing and raising the Metropolitan Consolidated Rate for the purpose of obtaining such moneys as the Board or any officer thereof may have, and shall apply all such moneys, after payment of expenses and costs, under the direction of the Court, for the purposes of and in conformity with this Act * * * *

7. By that and subsequent Acts of Parliament (Metropolis Money Acts) the Board and the Respondent County Council were empowered to make loans to Local Authorities and it was directed that the interest and principal received

from the Local Authorities in respect of such loans should be carried to the Metropolitan Consolidated Loans Fund.

8. By section 15 of the London County Council (Money) Act 1889, provision was made (respecting an earlier section *in pari materia*) for the application of the Consolidated Loans Fund, subject to regulations approved by the Treasury.

9. Acting under that section the Treasury, on the 19th February, 1891, approved certain regulations, of which the following is one :—

(1) The account to be kept, by the Council, of the Consolidated Loans Fund, shall be divided into two parts, an Income Account and a Capital Account.

To the Income Account shall be credited all interest received by the Council on loans granted, and on investments made by them, and all rents, interest and other annual income received by them into the Consolidated Loans Fund; and debited all payments for dividends, interest, rents, and all other payments properly chargeable to the income of the Consolidated Loans Fund.

10. Under the Acts above referred to, large issues of Consolidated Stock have been made, and for the year ending March 31st, 1901, the Council paid for interest on such stock the sum of £1,371,633 6*s.* 9*d.* from which they deducted Income Tax. This sum was, in accordance with the Treasury Regulation above mentioned, paid out of the money standing to the credit of the Income Account of the Consolidated Loans Fund, such money having been derived partly from interest on loans and investments made by the Council, partly from rents of property let by them to tenants, and as to the remainder from the rates. The interest and rents above mentioned were received after deduction of Income Tax, and the Crown does not question the right of the Council to retain for themselves an equivalent amount of the Income Tax deducted by them on payment of the interest on the Consolidated Stock.

As to the balance of the Income Tax deducted by the Council, the Crown contend that the interest from which it is deducted being paid out of a fund not charged to Income Tax, namely, the rates, the Council deduct tax not for their own recoupment but merely as collectors for the Crown, and that the sums deducted must be accounted for accordingly. This is admitted by the Council except as to the tax on a sum of £118,306 6*s.* 1*d.*, being the value of hereditaments belonging to the Council and in their own occupation, on which the Council have paid Income Tax under Schedule A. These hereditaments are by virtue of section 4 of the Metropolitan Board of Works (Loans) Act, 1869, above referred to included in the charge by which the Metropolitan stock is secured. The only question in this appeal is whether the

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Council are entitled to recoup themselves the tax on this property out of the Income Tax deducted on paying interest out of the rates.

11. By the Income Tax Act, 1842, section 60, Schedule A. No. IV., rule 10, it is, so far as material, provided as follows :—

> Where any such lands, tenements, or hereditaments are subject or liable to the payment of any rent-charge, whether under the Act passed for the commutation of tithes, or otherwise, or any annuity, fee-farm rent, rent service, quit-rent, feu-duty, teind-duty, stipends to licensed curates, or other rent or annual payment thereupon reserved or charged, the landlord, owner, or proprietor by whom any deduction shall have been allowed as aforesaid, and the owner or proprietor being also occupier and charged to the said duties shall deduct, and retain out of every such rent-charge, annuity, fee-farm rent, rent-service, quit-rent, feu-duty, teind-duty, stipend, or other rent or annual payment aforesaid, so much of the said duties or payments on account of the same, (the just proportion of the sums allowed by the Commissioners in the cases authorised by this Act being first deducted) as a like rate of seven-pence for every twenty shillings on such rent-charge, annuity, fee-farm rent, rent-service, quit-rent, feu-duty, teind-duty or stipend, or other rent or annual payment aforesaid, respectively, shall by a just proportion amount unto * * * * .

12. By section 102, tax under Schedule D is imposed upon all annuities, yearly interest of money, or other annual payments, with a proviso for deduction where the same are paid out of profits or gains brought into charge by virtue of the Act. At the end of the section there is a proviso as follows :—

> Provided always, that where any creditor on any rates or assessments not chargeable by this Act as profits shall be entitled to such interest, it shall be lawful to charge the proper officer having the management of the accounts with the duty payable on such interest, and every such officer shall be answerable for doing all acts, matters, and things necessary to a due assessment of the said duties, and payment thereof, as if such rates or assessments were profits chargeable under this Act, and such officer shall be in like manner indemnified for all such acts, as if the said rates and assessments were chargeable.

13. This proviso has never been repealed, and if the officer of the Council had been charged with duty in respect of the interest in fact paid out of the rates as if the rates were profits chargeable under the Act, the result to the

Crown on the one hand and the Council on the other would have been that for which the Crown now contends.

14. By section 40 of the Income Tax Act, 1853, a general right of deducting Income Tax was for the first time given to every person liable to the payment of any rent, or any yearly interest of money, or any annuity or other annual payment. But this section contained no clause, requiring the person deducting to account to the Crown.

15. By section 24 (3) of the Customs and Inland Revenue Act, 1888, it was enacted as follows :—

> Upon payment of any interest of money or annuities charged with Income Tax under Schedule D, and not payable or not wholly payable, out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of Income Tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be ; and such amount shall be a debt from such person to Her Majesty, and recoverable as such accordingly ; and the provision contained in section 8 of the thirteenth and fourteenth years of Her Majesty's Reign, chapter 97, now in force in relation to money in the hands of any person for legacy duty, shall apply to money deducted by any person in respect of Income Tax.

16. Mr. Justice Channell and the Court of Appeal both decided against the Crown, holding that the circumstances that the property in the occupation of the Council was charged with a sum greater than its value was sufficient to conclude the case.

The Appellant submits that the Judgment of the Court of Appeal and Mr. Justice Channell ought to be reversed and judgment entered for the Crown for the following among other—

REASONS.

1. Because under the proviso at the end of section 102 of the Income Tax Act, 1842, the Council are liable to pay Income Tax on all the interest paid by them out of the Consolidated Rate.

2. Because the liability of the Council to pay such Income Tax would not be affected by any right to retain under section 60, No. IV., rule 10, of the Income Tax Act, 1842, even if such right existed.

3. Because if the officer of the Council had been assessed under section 102 on the interest in fact paid

out of the rates, he could not have claimed to have that assessment reduced by the amount of the annual value of any lands on which such interest was also secured.

4. Because section 40 of the Income Tax Act, 1853, and section 24 (3) of the Customs and Inland Revenue Act, 1888, dealt with machinery only, and did not vary the substantive rights of the Crown.

5. Because the interest in question was not paid out of profits or gains charged to Income Tax.

6. Because upon the facts proved, there was no right to deduct and retain under the Income Tax Act, 1842, section 60, No. IV., rule 10.

7. Because the charge upon the property in the occupation of the Council was a mere floating charge, and the Council could have sold or otherwise disposed of the property without the consent of the holders of the charge.

8. Because the effective charge in favour of the holders of the Consolidated Stock was the charge upon the Consolidated Loans Fund.

9. Because the decision appealed from was erroneous.

R. B. FINLAY.
EDWARD CARSON.
S. A. T. ROWLATT.

THE RESPONDENTS' CASE.

1. This is an appeal from the Judgment of the Court of Appeal (Collins M.R. Mathew and Cozens-Hardy L.J.J.) affirming the decision of Channell J. in favour of the Respondents upon an information filed by the Appellant on behalf of His Majesty to recover from the Respondent Council certain sums of money which upon payment by the Respondent Council of dividends and interest on loans out of the income account of their Consolidated Loans Fund they had deducted in respect of income tax upon such dividends and interest and for which it was contended by the Appellant that they were bound to account to His Majesty under the Customs and Inland Revenue Act, 1888, Section 24, Sub-section (3). The Case is reported both on the King's Bench Division and in the Court of Appeal (L. R. [1904] 2 K. B. 635; [1905] 2 K. B. 375).

2. The London County Council are (by virtue of the Local Government Act 1888) the successors of the Metropolitan Board of Works.

3. By the Metropolitan Board of Works (Loans) Act, 1869 (hereinafter called the Act of 1869) it was amongst other things in effect enacted as follows :—

(1) By Section 3 that the Metropolitan Board of Works. (hereinafter called the Board) should not borrow money otherwise than in conformity with the Act and with the sanction of the Treasury.

(2) By Section 4 that "the Board for the purpose of "raising such portion of the loans authorised by "the Acts mentioned in the First Schedule to this "Act for the purposes of those Acts as the Trea- "sury may from time to time sanction may create "Capital Stock to be called the Metropolitan Con- "solidated Stock in this Act referred to as Con- "solidated Stock and to be issued in such amounts "and manner at such price and times on such terms "subject to such conditions with such dividends "and redeemable (at the option of the Board) at "par at such times and on such conditions as the "Treasury before the creation thereof may from "time to time approve."

(3.) By Section 5 that "No holder of any portion of "Consolidated Stock shall have any priority or "preference by reason of the prior creation of such "stock or otherwise, and all Consolidated Stock "created for the purposes of the Acts mentioned in "the First Schedule to this Act or of any Act here- "after to be passed and the dividends thereon "and the sums required for the redemption thereof "shall be charged indifferently on the whole of the "lands rents and property belonging to the Board "under the Acts mentioned in the First Schedule "to this Act and on all moneys which can be raised "by the Board by rates under this Act and on the "improvement Fund subject to all charges exist- "ing at the passing of this Act on such lands rents "property moneys and fund respectively and shall "be a first charge thereon after those charges and "all moneys required for payment of the dividends "on such stock and the sums required to be raised "for the redemption of such stock as mentioned in "this Act shall be raised out of the Improvement "Fund and Metropolitan Consolidated Rate as in "this Act mentioned."

(4.) By Section 22 that "The Board for the purpose of "paying the dividends on and redeeming the Con- "solidated Stock and also of defraying the expenses "authorised to be incurred and incurred by them "in the obtaining or the execution of the Acts men- "tioned in the First Schedule to this Act or any "of them and of defraying the sums required for

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"the payment of the principal and interest of and "the sinking funds for any securities granted by "the Board for the purposes of those Acts or any "of them before the passing of this Act shall (in "lieu of all rates or assessments authorised at the "passing of this Act to be assessed by them gene-"rally over the Metropolis) from time to time "assess and raise a rate to be called the Metro-"politan Consolidated Rate in this Act referred to "as the Consolidated Rate.

"Such rate shall be assessed and raised in manner "provided by the Metropolis Management Act "1855 and the Acts amending the same with "respect to the sums required for defraying the "expenses of the Board in the execution of that "Act and to sums assessed for the purposes of the "Main Drainage Acts and may be assessed wholly "or in part in respect of expenses incurred or to "be incurred and also in respect of any unpaid "balance of a former rate and all the provisions "of the Metropolis Management Act 1855 and the "Acts amending the same concerning the estimate "on which assessments by the Board are to be made "and for and in relation to the assessing raising "and enforcing payment of the sums assessed by "the Board shall subject to the provisions of this "Act extend and apply to and in the case of the "Consolidated Rate in the same manner as if that "rate were therein mentioned instead of the sums "required for defraying expenses of the Board "incurred in the execution of the Metropolis "Management Act 1855 and for the Main Drainage "Rate respectively."

"Every precept issued by the Board for the pur-"poses of the Metropolitan Consolidated Rate shall "specify first the proportion of the amount named "in the precept which is required for the purpose "of paying the principal and interest of and sinking "fund for securities granted by them before the "passing of this Act and the dividends on and the "sums required for the redemption of Consolidated "Stock under this Act and secondly the proportion "of such amount which is required for all other "purposes of the Board."

(5.) By Section 26 that "For the purpose of paying the "dividends on and redeeming Consolidated Stock "created under this Act there shall be established "a fund to be called the Consolidated Loans Fund "of the Metropolis in this Act referred to as the "Consolidated Loan Fund and subject to the pro-"visions of this Act the Board shall keep a separate "account of such fund."

(6.) By Section 27 that "The Board shall carry to the "Consolidated Loans Fund the moneys following "(after providing for all charges on such moneys "existing at the passing of this Act and to which "the same shall for the time being be applicable) "that is to say:—

"(1.) All moneys whether in the nature of capital "or otherwise arising from the sale lease or "other disposition of lands rents and pro- "perty belonging to the Board:

"(2.) The residue of the improvement fund which "may come into their hands in the manner "mentioned in this Act:

"(3.) Such an annual sum in every year out of "the consolidated rate and out of the contri- "butions paid to the Board in pursuance of "the Fire Brigade Act or out of one of such "sources as may be equal to 2 per cent. on "the total nominal amount of Consolidated "Stock whether it has been cancelled or not; "or

"(4.) Such greater or less annual sum as the "Treasury may from time to time approve as "being in their opinion necessary in order to "pay the dividends on and to redeem all the "Consolidated Stock in 60 years from the "date of the creation thereof."

4. By the said Act of 1869 and divers subsequent Acts (the Metropolitan Board of Works and London County Council (Money) Acts) the said Board and the London County Council were empowered to lend divers local authorities sums of money and by the said Acts it was directed that the interest paid and the principal repaid by the local authorities in respect of such loans should be carried to the Consolidated Loans Fund.

5. The Metropolitan Board of Works and the London County Council have from time to time (being authorised thereto by divers Acts of Parliament) borrowed large sums by the creation and issue of Consolidated Stock in accordance with the Acts hereinbefore cited and have paid dividends on such stocks to the holders thereof for the time being.

6. Large sums forming part of the moneys so borrowed were from time to time borrowed for the purpose of being lent and were lent to divers local authorities under the powers conferred by the Acts hereinbefore referred to and the interest due to the London County Council on the sums so lent have been from time to time carried by the London County Council to the Consolidated Loans Fund in accordance with the statutes hereinbefore referred to and the regulations of the Treasury made thereunder.

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7. Large sums of money forming other parts of the money borrowed as stated in paragraph 5 hereof have been spent in the purchase of lands by the said Board and the London County Council for the purpose of street improvements and other works. Some of the said lands not being required for the purposes in connection with which they were acquired have been let for various terms of years. All rents in respect of any of the said lands which have been let have been carried to the income account of the said Fund in accordance with the Statutes hereinbefore mentioned and the regulations of the Treasury made thereunder.

8. In the year 1899 Her late Majesty's Attorney-General on behalf of Her late Majesty lodged an information against the London County Council to recover certain sums of money which upon payment by the London County Council of the interest upon their Consolidated Stock they had deducted as income tax upon such interest, such sums being income tax upon so much of the said interest upon Consolidated Stock as was paid out of interest received from local authorities on money lent to them by the London County Council as stated in paragraph 6 hereof, or out of rents or profits of lands let for terms of years as described in paragraph 7 hereof.

9. Upon the said information lodged in the year 1899 it was decided by this Honourable House (reversing the decisions of the King's Bench Division and the Court of Appeal) that the contentions of the Attorney-General upon the said information were wrong and that the London County Council were entitled to retain the sums of money deducted by them from the interest on the said Consolidated Stock as stated in paragraph 8 hereof. The decision of this Honourable House has been reported (L. R. [1900] A. C. 26.)

10. Large sums of money forming other parts of the money borrowed as stated in paragraph 5 hereof have been spent in the purchase of lands and buildings by the said Board and by the London County Council for the purpose of erecting offices, sewage pumping stations, and other buildings and works, which are now used and occupied by the London County Council themselves, and in respect of which the London County Council have been assessed to and have paid income tax under Schedule A. The interest on Consolidated Stock charged on these lands buildings and works far exceeds the annual value thereof. By the information lodged by the Attorney-General on behalf of His Majesty which is the subject of the present appeal the Attorney-General claims sums of money representing income tax upon so much of the said interest upon Consolidated Stock as is equal to the annual value of the property on which the London County Council have paid income tax under Schedule A of the Income Tax Acts 1842 and 1853 being their property in the lands buildings and works occupied by them as described in

this paragraph. These sums the London County Council claim to be entitled to retain for the reasons hereinafter appearing.

11. The amount of dividends and interest payable by the London County Council during the year from April 1st 1900 to March 31st 1901 on consolidated stock and loans hereinbefore mentioned was £1,371,633 6*s.* 9*d.* The actual sums paid by the London County Council in the said year on account of such dividends and interest amounted to £1,307,910 10*s.* after deducting income tax. The sums deducted on account of income tax in respect of such dividends and interest amounted (after allowing for non-deduction in the case of exempted holders of such Consolidated Stock and in respect of fractions of a penny) to £63,722 16*s.* 9*d.* (By an arithmetical error this sum is wrongly stated in the Information to be £63,722 18*s.* 9*d.*) The said sum of £63,722 16*s.* 9*d.* was deducted by the London County Council from the said dividends and interest on account of income tax and the London County Council have paid to the Commissioners of Inland Revenue out of the said sum three sums amounting together £17,646 15s. 4*d.*; and have further since the said information was brought expressed their willingness to pay a further sum of £211 14*s.* 9*d.* making the whole sum which the London County Council have paid or are willing to pay to the Commissioners of Inland Revenue in respect of the said dividends and interest £17,858 10*s.* 1*d.* The Appellant by the information admits that the London County Council are entitled to deduct and retain tax amounting to £40,162 13*s.* 3*d.* which sum added to the said sum £17,858 10*s.* 1*d.* makes a total of £58,021 3*s.* 4*d.* and this total deducted from the said sum of £63,722 16*s.* 9*d.* leaves a balance of £5,701 13*s.* 5*d.* which is the sum now in dispute between the parties hereto.

12. The Income Tax Acts 1842 (5 and 6 Vict. cap. 35) by Section 60 enacts that the duties contained in the Schedule A shall be charged under the rules therein set forth which include (*inter alia*) the following directions, viz. :—

No. IV.—RULES AND REGULATIONS RESPECTING THE SAID DUTIES.

* * * * *

TENTH.—Where any such lands tenements or hereditaments are subject or liable to the payment of any rent-charge whether under the Act passed for the commutation of tithes or otherwise or any annuity fee farm rent rent service quit rent feu duty teind duty stipends to licensed curates or other rent or annual payment thereupon reserved or charged the landlord owner or proprietor by whom any deduction shall have been allowed

as aforesaid and the owner or proprietor being also occupier and charged to the said duties shall deduct and retain out of every such rent charge annuity fee farm rent rent service quit rent feu duty teind duty stipend or other rent or annual payment aforesaid so much of the said duties or payments on account of the same (the just proportion of the sums allowed by the Commissioners in the cases authorised by this Act being first deducted) as a like rate of sevenpence for every twenty shillings on such rent charge annuity fee farm rent rent service quit rent feu duty teind duty or stipend or other rent or annual payment aforesaid respectively shall by a just proportion amount unto and the receivers of Her Majesty and all persons who shall be any ways entitled unto such rents duties stipends or annual payments their receivers deputies or agents are hereby required to allow such deduction upon the receipt of the residue of such monies as shall be due and payable for such rents duties or annual payments without any fee or charge for such allowance and under the penalty herein contained and the landlord owner proprietor and occupier respectively being charged as aforesaid or having allowed such deduction shall be acquitted and discharged of so much money as if the same had actually been paid unto such persons to whom such rent charge annuity fee farm rent rent service quit rent feu duty teind duty stipend or other rent or annual payment aforesaid shall have been due and payable.

13. The Income Tax Act 1853 (16 and 17 Vict. cap. 34) by Section 40 enacts as follows:—

40. Every person who shall be liable to the payment of any rent or any yearly interest of money or any annuity or other annual payment either as a charge on any property or as personal debt or obligation by virtue of any contract whether the same shall be received or payable half-yearly or at any shorter or more distant periods shall be entitled and is hereby authorised on making such payment to deduct and retain thereout the amount of the rate of duty which at the time when such payment becomes due shall be payable under this Act that is to say sevenpence sixpence or fivepence as the case may be for every twenty shillings of such payment and the person liable to such payment shall be acquitted and discharged of so much money as such deduction shall amount unto as if the amount thereof had actually been paid unto the person to whom such payment shall have been due and payable and the person to whom such payment as aforesaid is to be made shall allow such deduction upon receipt of the residue of such money under pain of forfeiting the sum of £50 for any refusal so to do: provided always that no tenant or

occupier of any property chargeable under Schedule (A) of this Act shall be entitled to deduct or retain out of the rent thereof any greater sum than the amount of the duty which shall have been assessed and charged upon or in respect of such property and actually paid by such tenant or occupier.

14. By Sub-section (3) of Section 24 of the Customs and Inland Revenue Act 1888 (51 and 52 Vict. cap. 8) it is enacted as follows:—

Upon payment of any interest of money or annuities charged with income tax under Schedule D and not payable or not wholly payable out of profits or gains brought into charge to such tax the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge as the case may be and such amount shall be a debt from such person to Her Majesty and recoverable as such accordingly.

15. The London County Council furnished to the Commissioners of Inland Revenue an account dated the 15th January 1902 set out in paragraph 12 of the information* herein, and another account amended for the reasons stated in the Respondents' answer to the fifth of the Appellants' interrogatories and scheduled to that answer (both accounts being signed by Harry Edwin Haward the Comptroller of the London County Council) which were made out under the said section of the Customs and Inland Revenue Act 1888 taken in conjunction with the Income Tax Acts 1842 and 1853 and the sums which the London County Council have paid or are willing to pay to the said Commissioners in respect of income tax as stated in paragraph 11 hereof are the sums which the said accounts show to be payable in that respect by the London County Council for the said year April 1st 1900 to March 31st 1901.

16. The information alleges that the London County Council were liable under the said Customs and Inland Revenue Act, 1888, s. 24 (3) to account to the Commissioners of Inland Revenue for a sum of £23,560 5*s.* 6*d.* in respect of income tax deducted by the London County Council as stated in paragraph 11 hereof. Of this sum the London County Council have paid or are willing to pay (as stated in the said paragraph) a sum of £17,858 10*s.* 1*d.* leaving a balance for which the London County Council now say that they are not liable to account and for which the Appellant

* Omitted from the present print.

claims that the London County Council are liable of £5,701 15*s.* 5*d.* (or, if the arithmetical error referred to in paragraph 11 hereof be corrected, £5,701 13*s.* 5*d.*

17. The Appellant charges by paragraph 13 of the information that the following questions are at issue between His Majesty and the London County Council *videlicet* :—

(1.) Whether any and what part of the dividends and interest paid by the London County Council were paid out of any and what profits or gains brought into charge to income tax ?

(2.) What part of the said dividends or interest paid by the London County Council was not paid out of profits or gains brought into charge to income tax ?

(3.) What was the amount deducted for income tax by the London County Council on paying the said dividends and interest during the said year from April 1st 1900 to March 31st 1901 and for how much of such amount are they liable to account to His Majesty ?

(4.) What enquiries should be directed and accounts taken in regard to the premises ?

18. The information came on for hearing on June 28th 1904 before Mr. Justice Channell in the King's Bench Division. No oral evidence was given. The Court gave judgment for the London County Council on the ground that the land buildings and works hereinbefore described as occupied by the London County Council were already charged with income tax to the full amount of their annual value and that to order the London County Council to account for the sum claimed in the Information would be to give the Crown income tax twice over in respect of the same income. Copies* of the said Order and Judgment of Mr. Justice Channell are set out in the Appendix.

19. Against this decision the Appellant appealed to the Court of Appeal and the Appeal came on for hearing on June 1st 1905 before the Master of the Rolls Lord Justice Mathew and Lord Justice Cozens-Hardy who on June 8th 1905 gave judgment dismissing the Appeal and affirming the decision of Mr. Justice Channell. Copies* of the said Order and Judgment of the Court of Appeal are set out in the appendix. The Respondents humbly submit that the order appealed against is correct and should be affirmed for the following among other

REASONS.

1. Because it is an essential part of the scheme of the Income Tax Acts that no form of income should be taxed more than once under the same or different Schedules.

* Omitted from the present print.

2. Because income tax under Schedule A is a tax for and in respect of the property in lands, tenements, hereditaments and heritages, that is to say, a tax upon the person who has the beneficial ownership of such property;

3. Because under the Income Tax Act, 1842, s. 60, Sched. A, Rule IV. (9), and the Income Tax Act, 1853, s. 40, where lands or tenements are let at a rent, the person receiving such rent is made liable to pay tax on the whole or part of the value of such beneficial ownership of such property according as the rent which he receives represents the whole or part of such value;

4. Because where lands or tenements are not let at a rent, but are occupied by the owner thereof, and are not subject or liable to the payment of any rent charge or other annual payment thereupon reserved or charged, the owner in occupation is liable to pay income tax upon the whole of the annual value of such lands or tenements, because (although he receives no rent) he enjoys, by virtue of such ownership and occupation, the whole of the beneficial ownership of the property on such lands or tenements;

5. Because under the Income Tax Act, 1842, s. 60, Sched. A Rule IV. (10), and the Income Tax Act, 1853, s. 40, where lands or tenements are not let at a rent, and are occupied by the owner thereof, but are subject or liable to the payment of any rentcharge or other annual payment thereupon reserved or charged, the owner in occupation (although liable in the first instance to pay income tax under Schedule A upon the whole of the annual value of such lands and tenements) is entitled to deduct and retain out of every such rentcharge or other annual payment a sum equal to the income tax chargeable thereupon, because such owner in occupation does not enjoy the whole of the beneficial ownership of the property in such lands and tenements, and because the person receiving the rentcharge or other annual payment charged on such lands and tenements is (to the extent of such rentcharge or payment) enjoying the beneficial ownership of the property in such lands and tenements;

6. Because the Consolidated Stock of the London County Council and the interest thereon are charged upon their lands assessed under Schedule A, and the London County Council does not enjoy the beneficial ownership of such lands;

7. Because sub-section (3) of s. 24 of the Customs and Inland Revenue Act, 1888, is not a charging section, or intended to create fresh liabilities to income tax, and does not defeat the right to deduct and retain

tax which was given under the Income Tax Act, 1842, s. 60, Sched. A, Rule IV. (10), and the Income Tax Act, 1853, s. 40;

8. Because the contentions raised by the Attorney-General on this information are inconsistent with the decision of this House on the previous information against the present Defendants, reported [1901] A. C. 25;

9. Because in respect of the annual value of the lands of which the London County Council are the owners and occupiers, the Crown has already received from the London County Council income tax under Schedule A, and if the Crown can in addition recover from the London County Council income tax upon the interest charged upon the said lands, which interest is equal to the full value of the said lands, the Crown will receive income tax twice over in respect of the same income.

Edward Clarke.
Henry F. Dickens.
Walter C. Ryde.

The case was argued before the House of Lords on the 22nd and 25th June, 1906, when the Attorney-General (Sir J. Lawson Walton, K.C., M.P.), Sir R. B. Finlay, K.C., and Mr. Finlay appeared in support of the Crown's arguments, and Sir Edward Clarke, K.C., Mr. H. F. Dickens, K.C., and Mr. Ryde in support of the Respondent's arguments. Judgment was delivered on the 19th March, 1907, in favour of the Crown.

Judgment.

The Lord Chancellor.—My Lords, the facts of this case are simple. The annual income of the London County Council liable to Income Tax is £956,000 a year. I take round figures throughout. Part of it, viz., £838,000 a year, consists of rents or other sums which the Council receives. The remainder, viz., £118,000, consists of landed property which the County Council occupies. It does not let this latter property, but uses it and thereby saves the rent it would have to pay if instead of occupying its own property it hired other property for the purpose. Upon all this £956,000 a year the County Council has paid Income Tax.

Upon the other hand, the County Council is obliged to pay £1,371,000 annually as interest upon borrowed money due to the holders of Consolidated Stock, and all the property upon which the County Council pays Income Tax is included in the security held by the owners of the Stock. Thus the annual value of all the property owned by the County Council is less by £415,000 than the interest it has to pay upon its

debt, and the annual receipts by the County Council from that property show a still greater deficiency, for the County Council receives nothing in cash for that part of its property which it occupies.

Pursuant to the scheme of the Income Tax Acts which require the tax, where possible, to be collected at its source, the County Council when it pays £1,371,000 interest to the owners of Consolidated Stock is bound to deduct from the whole of it the amount of Income Tax due upon it. They have done so, and the question in this case is how much of the Income Tax so collected by the County Council must be handed over to the Crown, and how much it may retain for itself.

It is quite clear, and is not disputed, that in respect of the Income Tax deducted from the £1,371,000 the County Council must account to the Crown for the tax they have collected on £415,000 a year, because they have received it purely as tax collectors for the Crown, and cannot pretend that it represents any moneys which have already paid Income Tax. Again, as to the remaining £956,000, the decision of this House in *Attorney-General* v. *London County Council* (Law Reports, 1901, Appeal Cases, 26) admittedly applies, and the County Council may retain for itself the tax that it has collected upon £838,000 parcel thereof.

All, therefore, that remains in dispute is whether the tax collected upon the balance, viz., upon £118,000 a year, may be retained by the Council or must be accounted for to the Crown.

This sum represents interest paid by the County Council to the holders of Consolidated Stock, which is *not* paid out of profits or gains brought into charge. It is paid out of rates. And on the rates which the Council pays over to its creditors it is bound by the proviso at the end of Section 102 of the Act of 1842 to deduct the tax and pay it over to the Crown.

It is said that the effect of this conclusion will be to tax the same income twice over. I cannot see this. The County Council pays tax on £118,000 annual value of their own land which they occupy. The holders of Consolidated Stock pay tax on £118,000 annual interest of the debt due to them from the County Council. It seems to me that the two incomes are different, the persons who receive and enjoy them are different, and the persons who pay Income Tax on these two incomes respectively are also different.

With the utmost respect to Mr. Justice Channell and the Court of Appeal, I am unable to arrive at the conclusion which they have reached. I am of opinion that the Appeal from their Order ought to be allowed and I move your Lordships accordingly.

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Lord Macnaghten.—My Lords, the financial position of the London County Council is still much the same as it was at the time of the dispute with the Crown determined in this House in 1900. As stated in that case the stock known as Metropolitan Consolidated Stock represents moneys borrowed by the Council and their predecessors, the Metropolitan Board of Works. The stock and the dividend upon it and the sums required to form a sinking fund are charged "indifferently" on the whole of the lands, rents, and property belonging to the Council, and on the rates collected under the head of the Metropolitan Consolidated rate which the Council are authorised to levy.

For the financial year ending the 31st of March, 1901, the dividends payable on Metropolitan Stock amounted in round figures to £1,371,000. On the other hand the Council received about £851,000 from rents and interest on authorised loans to other public bodies. The balance required to make up the dividend was provided by the Metropolitan Consolidated rate.

In the case of *The Attorney-General* v. *The London County Council* the question was whether the Council were bound to account to the Crown for the whole of the Income Tax deducted from the dividend on Metropolitan Stock, or only for so much as was attributable to the sum raised by rates. That question was ultimately determined in favour of the Council after two adverse decisions.

A further question has now arisen. The Council are owners of property which they occupy themselves and use for their statutory purposes. It is valued at £118,000 a year, and assessed at that value under Schedule A. Having paid Income Tax under Schedule A in respect of this property the Council claim to recoup themselves by retaining an equal amount out of so much of the Income Tax deducted from the dividend on Metropolitan Stock as is attributable to the sum raised by rates. The Crown brought this information to try the question. Mr. Justice Channell considered the claim on the part of the Council well founded, and dismissed the Information. The learned judges of the Court of Appeal have upheld his ruling.

I must confess that I do not quite understand the decision. There is no question as to the principles applicable to these Income Tax cases. Speaking generally, all income is chargeable, but chargeable only once. Income is brought into charge at its source, and the burden is then distributed among the recipients of the income who bear their share in just proportion. The income derived by the Council from rents and interest on loans pays Income Tax by deduction before it comes to their hands. When that income is applied in or towards payment of interest on Metropolitan Stock the burden is shifted. Again, the sum which the Council's

creditors are entitled to receive from rates is chargeable under Section 102 of the Act of 1842. But I cannot understand what the property in the occupation of the Council has to do with the matter. It stands apart. It is quite true that this property is charged in favour of the holders of Metropolitan Stock, but the charge is not and never can be operative. It is superseded by the charge on the rates and vanishes altogether. The "profits and gains" derived from the property in the occupation of the Council are charged at their source in the hands of the Council under Schedule A. The stream flows no further. It is enjoyed and absorbed by the Council. The Council must have the use and occupation of some property to enable them to perform their statutory duties. So long as the rates are available to meet the demands of the stockholders the Council are secure in the full and beneficial enjoyment of the property they occupy. What possible claim can there be to relief or indemnity as regards Income Tax in respect of this property?

I cannot help thinking that Mr. Justice Channell has misapprehended some observations which fell from my noble and learned friend Lord Davey in the case of *The London County Council* v. *Attorney-General*. In explaining the principle of taxing income at its source and distributing the burden among the persons who in their turn share and enjoy the income, Lord Davey observes that "it was no doubt "considered that the real income of an owner of incum-"bered property or of property charged, say with an annuity "under a will, is the annual income of the property less "the interest on the incumbrance or the annuity." That is a proposition of the truth of which incumbered owners are, for the most part, painfully conscious. But it proceeds on the assumption that the charge for the interest or for the annuity, as the case may be, is a real burden. If the interest or the annuity is discharged by some person other than the incumbered owner or devisee without recourse to such owner or devisee the burden is nominal. The owner or devisee is practically none the worse for the charge. Take the present case, the property in hand, which is valued at £118,000 a year, has never contributed, and so long as the Council use it for their statutory purposes never will contribute, a single penny towards the payment of interest on Metropolitan Stock. The property in the actual occupation of the Council is worth to them, for all practical purposes, just as much as if it were not charged at all.

The learned Master of the Rolls, with whom his two colleagues agreed, follows Mr. Justice Channell. He rests his conclusion on Lord Davey's observations. "It is clear," he says, "from Section 60, Rule X., as explained by Lord "Davey, that the real income of an owner of incumbered "property is the annual income of the property, less the "interest on the incumbrance." So it is if the incumbered

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owner pays the interest out of his own pocket. But the case is different if the interest is discharged from some other source, and the owner is free. His Lordship then goes on to say, "the Crown cannot demand the tax twice on the same "income. * * * It follows, therefore," he adds, "that the "Crown, having received Income Tax once under Schedule A "on the full annual value of the property in question, can "have no possible right to receive it a second time." The answer is, that the Crown does not receive it or claim to receive it a second time. It receives the tax only once. But if the contention on the part of the Council were to prevail there might be taxable income, income plainly taxable, and yet the Crown would receive no tax upon it at all. Let me put the case. I leave out of consideration the property belonging to the Council which produces income. That does not affect the question. I will assume the dividend on Metropolitan Stock to be £100,000 a year. Then if the Council have no property in their own occupation and the dividend is raised entirely by rates the Crown gets Income Tax on the whole of the dividend. But if the Council proceed to acquire property for their accommodation, the tax on the dividend receivable by the Crown gets less and less until it vanishes altogether if and when the annual value of the property in hand assessed under Schedule A reaches £100,000. The property itself pays tax under Schedule A whoever may be the owner and occupier. The point is that the Crown loses the tax on the dividend if the tax when collected goes to recoup the Council for what they pay under Schedule A.

In my opinion the Crown is entitled to receive the whole of the Income Tax on the rates applied in or towards the satisfaction of the dividend on Metropolitan Stock.

It seems to me that the Judgment of the Court of Appeal must be reversed and an order made on the Information for payment of the sum claimed by the Crown, and the Council must pay the costs both here and below.

Lord James of Hereford.—My Lords, I entertain grave doubts as to the Judgments which have been delivered in this case, but they are not strong enough to cause me to dissent from the views which have been expressed by my noble and learned friends. Therefore, I concur in the motion before the House.

Lord Robertson.—My Lords, I concur.

Lord Atkinson.—My Lords, I agree.

Questions put.

That the Order appealed from be reversed ?

The Contents have it.

That the Respondents pay to the Appellant the costs of this Appeal and below ?

The Contents have it.