been responsible at common law, but inasmuch as that negligence resulted in effectuating a dangerous condition in a "way" he became liable under the precise provision of the section.

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

Counsel for the Appellants—Dean of Faculty (Sandeman, K.C.) — Carmont. Agents—W. B. Rankin & Nimmo, W.S., Edinburgh—Beveridge & Company, London.

Counsel for the Respondents—Morton, K.C.—Keith. Agents—Simpson & Marwick, W.S., Edinburgh—Deacon & Company, London.

Monday, March 31.

(Before Viscount Cave, Viscount Finlay, Lord Dunedin, Lord Shaw, and Lord Sumner.)

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

(In the Court of Session, October 27, 1923, 1924 S.C. 14, 61 S.L.R. 29.)

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

The income of a trust estate for a certain year included a sum of £72,231 untaxed interest on certain Government securities. *Held* (*aff.* the judgment of the Second Division) that in computing their income for the purpose of assessment under Schedule D of the Income Tax Act 1918 the trustees were not entitled to deduct from the said sum of £72,231 a sum of £21,847 which they had paid during the year as interest on estate duty.

The case is reported *ante ut supra.*

Lord Inverclyde's Trustees appealed to the House of Lords.

At delivering judgment—

VISCOUNT CAVE—This is an appeal by the trustees of the late Lord Inverclyde from a decision of the Second Division of the Court of Session upon a Case stated by the Commissioners for the General Purposes of the Income Tax Acts for the City of Glasgow. During the tax year ending on 5th April 1921 the appellants received interest on Government securities to the amount of £72,231, without deduction of tax, and under the provisions of the Income Tax Act 1918, Schedule D, and particularly under Rules 1 (*f*) and 2 of the Rules applicable to Case iii under that Schedule, they became liable to be assessed to tax in respect of that sum in the following tax year, namely, the year 1921-22. In the latter year the appellants paid in respect of interest on unpaid estate duty a sum of £21,847, that sum being paid in accordance with the provisions of section 18, sub-section (1) of the Finance Act 1896, without deduction for income tax. In making their return for income tax for the tax year 1921-22 they deducted that sum of £21,847 from the £72,231 received for interest on Government securities, and returned the balance only, namely, £50,384, as liable to assessment for income tax. Tax was duly assessed and paid on this sum of £50,384, but an additional assessment was made on the appellants for tax on the sum of £21,847 which had been deducted in the return. Against that additional assessment the appellants appealed to the Commissioners, who rejected the appeal and confirmed the additional assessment, but on the application of the appellants stated a Case for the opinion of the Court of Session as the Exchequer Court.

The question of law which was submitted for the opinion of the Court of Session was formulated by the Commissioners as follows:—"The question of law for the opinion of the Court is whether for the purpose of assessment under Schedule D (Case iii) of the Income Tax Act 1918 the appellants are entitled to deduct from the £72,231, being interest received for the year ending 5th April 1921, the sum of £21,847 of interest paid on estate duty for the same period." The Court of Session unanimously affirmed the decision of the Commissioners, and thereupon the present appeal was brought.

Upon the argument of the appeal before your Lordships counsel for the appellants did not insist upon the view that the appellants had a right, for the purposes of income tax, to "deduct" (in the strict sense of the word) the £21,847 from the income which they had received, and indeed such a contention would be plainly untenable. The case does not fall within any of the categories under which deduction (in the strict sense) is allowed by the Act. The trustees of course did not carry on any business. The payment of interest on estate duty was not an outgoing necessary for obtaining the income from the investments. The interest on estate duty was not legally charged upon or payable out of the sum received for dividends, but was payable out of any moneys in the hands of the appellants as trustees. It did not fall within the deductions allowed by section 36 or any other section of the Act of 1918, and section 209 of the Act expressly provides that "in arriving at the amount of profits and gains for the purpose of income tax (*a*) no other deduction shall be made than such as are expressly enumerated in this Act." Deduction therefore, in the ordinary sense, is out of the question.

But your Lordships have not held the appellants strictly to the question as formulated by the Commissioners, and Mr Moncrieff, in an ingenious argument, put his case in two other and alternative ways. First he said that the sum of £21,847 paid for interest on estate duty included income tax on that amount, and that although the appellants were prohibited by section 18 of the Finance Act 1896, from deducting tax from the interest paid, they were entitled, in bringing into computation for the purposes of income tax their untaxed interest

from investments, to take credit for that amount of tax as having been actually paid to the revenue. If this argument were held good, the effect would be to render abortive the provision in section 18 of the Act of 1896 that the interest on estate duty is to be paid without deduction for income tax, for it would enable the appellants to deduct it, not indeed from the interest on estate duty, but from the tax on their general income. Apart, however, from this consideration, the argument appears to me to be wholly untenable. The argument assumes that the payment of interest without deduction of the tax is equivalent to a payment of interest including the tax; but this is, as the learned Judges of the Court of Session pointed out, a pure speculation or surmise. There is nothing in the Acts or cases which supports such a view. The Crown is not accountable for tax, and there is no sufficient ground for holding that a debtor to the Crown, who under statutory direction, pays interest on his debt without deduction of the tax is thereby paying a tax for which the Crown is not accountable. In my view there is no question of double imposition of tax.

Secondly, Mr Moncrieff contended in the alternative that, as £21,847, part of the £72,231 received for income on investments, had to be paid over to the Crown, the appellants must be treated as having received that sum on behalf of the Crown, and not on their own behalf, and were therefore entitled to have it excluded from the trust income brought into assessment. Mr Keith developed the argument by suggesting that the sum in question was therefore "specially exempted" from tax within the meaning of Rule 1 (*b*) of Schedule D. It appears to me that this argument is also misconceived. No part of the sum receivable for interest on investments was earmarked for the payment of interest on estate duty or charged with the payment of such interest. The appellants owed the interest on estate duty to the Crown, and they were entitled to pay it out of any funds in their hands which might be available for the purpose, and their relationship to the Crown in this respect was similar to their relationship to any other creditor of the estate. Mr Moncrieff suggested as a foundation for this argument that when a taxpayer collects an income and is subject to the obligation of diverting it into two streams, one of which streams is to flow to the coffers of a creditor, then he must be considered to have collected that part of his income for and on behalf of the creditor. I am unable to assent to that principle. In my view the taxpayer in such a case collects the whole income for himself, and then (if he is an honest man) pays his debt to his creditor, but he does not in any true sense of the word collect that part of his income for the creditor. If so, it is incorrect to say that any part of the income from investments was received by the trustees as collectors for the Crown, or that the Crown is, within the meaning of the expression as used in the cases, the "ultimate recipient" of any part of the income. On this point the decision in *Alexandria Water Company* v. *Musgrave*, decided in 1883 and reported in Law Reports, 11 Q.B.D., p. 174, which was approved by this House in the *Gresham Life Assurance Society* v. *Styles*, reported in Law Reports, 1892 A.C., p. 309, is in point.

On the whole case I am of opinion that this appeal fails and should be dismissed with costs, and I move your Lordships accordingly.

VISCOUNT FINLAY — I agree that this appeal fails.

LORD DUNEDIN—I agree. In the hands of the learned counsel for the appellants a most intricate and ingenious statement has been evolved. The case also permits of a very simple statement. Estate duty would be exigible at once as a payment, but it has been thought better that payment should be postponed by means of instalments. In return for that a sum is charged in the name of interest. I think that sum is an ordinary debt, but to make it quite certain that it is an ordinay debt and not a profit, section 18 of the Finance Act 1896, says that it is to be paid without deduction of income tax. I am afraid I think the simple statement is the true statement, and that ends the case.

LORD SHAW—There are no merits in this appeal.

LORD SUMNER—I agree in the motion to be proposed from the Woolsack.

Their Lordships ordered that the interlocutor appealed from be affirmed, and the appeal dismissed with costs.

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

Counsel for the Respondent—The Attorney-General (Sir Patrick Hastings, K.C.)—The Lord Advocate (Macmillan, K.C)—Sir Douglas Hogg, K.C. — Hills — Skelton. Agents—Solicitor for Scotland of the Board of Inland Revenue—Solicitor for England of the Board of Inland Revenue.

Thursday, April 3.

(Before Viscount Cave, Viscount Finlay, Lord Dunedin, Lord Shaw, and Lord Sumner.)

M'INTOSH *v.* ARDEN COAL COMPANY, LIMITED.

(In the Court of Session, June 27, 1923 S.C. 830, 60 S.L.R. 532.)

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Out of and in the Course of the Employment*"—*Breach of Regulation Imposed by Employers—Miner Returning to Shot-hole Within Prohibited Time.*

A miner who was working with two shot-firers in driving a stone mine in a pit retired with them, after two shots