

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 deci-

sion 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 ordinary 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-frers in driving a stone mine in a pit retired with them, after two shots

had been lit, to a place of safety. One of the shots missed fire, and the miner, in breach of a notice issued by the employers which he had read, and which, after referring to the Explosives in Coal Mines Order of 1st September 1913, provided that if a shot missed fire no person should on any pretext approach the shot-hole before the expiry of the period mentioned in the Order, returned to the shot-hole within the prohibited time and was injured by an explosion.

*Held* (aff. the judgment of the First Division) that the miner was not acting within the sphere of his employment at the time of the accident, and appeal *dismissed*.

The case is reported *ante ut supra*.

The claimant appealed to the House of Lords.

At delivering judgment—

**VISCOUNT CAVE**—It is impossible not to feel sympathy with the appellant in this case who has been seriously injured, but I am afraid that the facts and the law are too strong for him.

This case arose before the making of the amending Order of August 1922, and of course before the passing of the Workmen's Compensation Act 1923, and therefore it has to be decided on the law as it stood before those enactments were passed.

The notice, which is the essential thing in this case, after referring to the Explosives in Coal Mines Order of the 1st September 1913, added these words—"And no person shall in such circumstances"—that is when an attempt has been made to fire a shot—"on any pretext return to the place before the expiry of the above-mentioned periods respectively from the attempt to light the shot." Those words clearly added a new and substantial prohibition to the provisions of the statutory regulation. That prohibition was binding upon all the workmen at the mine, including the appellant. The appellant read it, and in breach of it, and in spite of it, he went to the place where the attempt had been made to fire a shot and was seriously injured.

On the authorities, which are really quite clear, in so doing he was going outside the scope of his employment, and therefore he did not become entitled to compensation under the Acts.

I will only mention one other point. It was suggested that the employer could not add to the statutory regulations in this way. Of course, he could not add to them in this way so as to make the addition statutory and enforceable by penalty, but clearly there was nothing to prevent him from making an additional regulation of his own, even although it dealt with the same subject-matter as that which was dealt with by the statutory regulations, and the regulations which he made were binding upon the workmen who knew of them. I see no option but to hold that the Court of Session was right and that this appeal ought to be dismissed.

**VISCOUNT FINLAY**—I agree.

**LORD DUNEDIN**—I concur. I think the notice was sufficiently clear.

**LORD SHAW**—I agree.

**LORD SUMNER**—I agree.

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

Counsel for the Appellant—The Solicitor-General (Fenton, K.C.)—Keith. Agents—Simpson & Marwick, W.S., Edinburgh—Deacon & Company, London.

Counsel for the Respondents—Graham Robertson, K.C.—Russell. Agents—W. & J. Burness, W.S., Edinburgh—Beveridge & Company, Westminster.

Friday, April 4.

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

**MURRAY v. FIFE COAL COMPANY, LIMITED.**

(In the Court of Session, December 7, 1923, 1924 S.C. 134, 61 S.L.R. 178.)

*Workmen's Compensation Act 1906* (6 Edw. VII, cap. 58), sec. 1 (1)—"Out of and in the Course of the Employment"—*Breach of Verbal Prohibition Imposed by Employers—Guiding Descending Hutches by Getting in Front of them instead of from the Side.*

A miner whose duty it was to take hutches, when they were full, down an incline attempted to do so by placing himself in front of them in violation of an express verbal prohibition by his employers from guiding hutches downwards otherwise than from the side, with the result that he was fatally injured.

*Held* (rev. the judgment of the First Division, Viscount Finlay *diss.*) that the miner was not acting within the sphere of his employment at the time of the accident, and appeal *allowed*.

The case is reported *ante ut supra*.

The Fife Coal Company, Limited, appealed to the House of Lords.

At delivering judgment—

**VISCOUNT CAVE**—This case is of a class with which your Lordships are only too familiar, for the succession of cases in which men have suffered by committing a breach of regulations which were made for their safety appears to be unending.

In this case the deceased was a young man who was employed at a colliery as what is called a "hanger-on"—that is to say, he was employed to conduct hutches or tubs when they were empty up an incline, and when they were full down an incline. He was told very definitely that he was to conduct them from the side, and that he was not to get in front of a descending hutch. The reason for that direction was very plain, as, if he got in front of a descending hutch,