

THE HIGH COURT

[2004 No. 1586 S]

BETWEEN

ROBERT HARRIS

PLAINTIFF

AND

J.J. QUIGLEY AND LIAM J. IRWIN

DEFENDANTS

Judgment of Mr. Justice Gilligan as delivered on the 18th day of March, 2005.

1. The plaintiff's claim in these proceedings is for the sum of €9,136,776.59 allegedly due to him by the defendants (The Revenue Commissioners) in the following circumstances. The plaintiff invested in a limited partnership established under the laws of the Cook Islands (the Christina Limited Partnership) in a capacity other than as a "limited partner" within the meaning of s. 1013 of the Taxes Consolidation Act, 1997. Following upon the plaintiff's claim for capital allowances the first named defendant disallowed the plaintiff's claim which had previously been allowed as a result of which there was an appeal by the plaintiff to the Appeal Commissioners in respect of which a determination was made on 29th October, 2004, in the plaintiff's favour. The effect of the Appeal Commissioners' determination is that the "ring fencing" provision of s. 1013 of the Taxes Consolidation Act, 1997, does not apply and the plaintiff is entitled to set off capital allowances and interest payments arising in respect of the partnership against his entire income. The Revenue Commissioners have requested the Appeal Commissioners to state a case for the opinion of the High Court on a point of law and pending determination of the case stated it is the Revenue Commissioners' contention that the plaintiff in his capacity as "the taxpayer" is not entitled to a refund of the tax as paid by him. The plaintiff on the contrary contends that he has been successful in his appeal from the decision of the Revenue Commissioners to the Appeal Commissioners and that he is accordingly entitled to a refund of the money so claimed, as a matter of statutory entitlement or alternatively as a matter of general principle.

2. There is no dispute between the parties as to the amount claimed.

3. The legal issue for determination in these proceedings is whether a taxpayer is entitled to a refund of tax consequent on the determination of the Appeal Commissioners notwithstanding that the Revenue Commissioners' appeal by way of a case stated on a point of law to the High Court and such appeal is pending. In particular these proceedings concern the correct interpretation of s. 941(9) of the Taxes Consolidation Act, 1997.

4. The relevant statutory provisions of the Taxes Consolidation Act 1997 are as follows:

933(4) "All appeals against assessments to income tax or corporation tax shall be heard and determined by the Appeal Commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that that person's appeal shall be reheard under section 942 or unless under the Tax Acts a case is required to be stated for the opinion of the High Court."

933(6)(a) "In default of notice of appeal by a person to whom notice of assessment has been given, the assessment made on that person shall be final and conclusive."

934(6) "Where an appeal is determined by the Appeal Commissioners, the Inspector or other officer shall give effect to the Appeal Commissioners' determination and thereupon if the determination is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given."

934(7) "Every determination of an appeal by the Appeal Commissioners shall be recorded by them in the prescribed form at the time the determination is made and the Appeal Commissioners shall within 10 days after the determination transmit that form to the inspector or other officer."

941(1) "Immediately after the determination of an appeal by the Appeal Commissioners the appellant or the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as "other officer"), if dissatisfied with the determination as being erroneous in point of law, may declare his or her dissatisfaction to the Appeal Commissioners who heard the appeal."

941(6) "The High Court shall hear and determine any question or questions of arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit."

941(9) "Notwithstanding that a case has been required to be stated or is pending, income tax or, as the case may be corporation tax shall be paid in accordance with the determination of the Appeal Commissioners; but if the amount of the assessment is altered by the order or judgment of the Supreme Court or the High Court, then -

(a) if too much tax has been paid the amount overpaid shall be refunded with interest in accordance with the provisos of s. 865(a), or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except insofar as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly."

966(5) "In proceedings pursuant to this section a certificate signed by an officer of the Revenue Commissioners certifying the following facts:

(a) that before the institution of the proceedings a stated sum for income tax became due and payable by the defendant -

(i) under an assessment which had become final and conclusive, or

(ii) under s. 942(6),

and

(b) (i) that before the institution of the proceedings payment of that stated sum was duly demanded from the defendant, and

(ii) that the stated sum or a stated part of that sum remains due and payable by the defendant,

shall be evidence until the contrary is proved of those facts."

5. There is a revenue precedent set out at p. 1975 of the *Tax Acts 2004* (Lexis Nexis Butterworths) in the following terms:

"Revenue precedents

Issue: whether tax is to be repaid pending where a Case Stated has been requested. Whether assessment should be amended in accordance with the Appeal Commissioners determination where a case stated has been requested.

Decision: the reference in s. 941(9) to 'tax shall be paid in accordance with the determination of the Appeal Commissioners' does not entitle the taxpayer demanding a case stated to repayment. Repayment arises only in accordance with sub-s. (9) itself. Section 30(3) FA 1976 (now repealed) and s. 942(6)(b) do not apply where a case stated has been demanded. There is no obligation under s. 934 TCA 1997 on the Inspector to amend the assessment where there is an appeal from the Appeal Commissioners' decision, since to amend the assessment in accordance with this section would give it the same force and effect as if it were 'an assessment in respect of which no appeal had been given'. If it were such an assessment sections 942(6) and 941(9) would be redundant."

6. It is clear accordingly that where the Revenue Commissioners are successful before the Appeal Commissioners income tax or, as the case may be corporation tax shall be paid in accordance with the determination of the Appeal Commissioners notwithstanding any appeal by the taxpayer to the Circuit Court or by way of a case stated to the High Court. It is also clear in these circumstances that the relevant legislation does not entitle a taxpayer demanding a case stated to repayment. However the situation that arises in this case is that the taxpayer has been successful before the Appeal Commissioners and the only appeal that is open to the Revenue Commissioners is by way of a case stated on a point of law to the High Court.

7. The plaintiff's solicitors wrote to the Revenue Commissioners' solicitors by way of a letter of 23rd November, 2004, in the following terms

"We refer to our discussions on last Friday and your confirmation that the Revenue Commissioners do not intend to repay the taxes owing to our client notwithstanding the successful conclusion of the appeal hearing in favour of our clients on 29th October, 2004.

We would be grateful if you could advise by return the statutory basis by which your clients are now claiming that they are entitled to deny our client a refund of significant amounts of money that are owing to him."

8. The Revenue Commissioners' solicitors replied by letter of 26th November, 2004, in the following terms:

"It is my client's case that there is no statutory basis for a repayment to your client in circumstances where the appeal commissioner has been requested to state a case for the opinion of the High Court pursuant to s. 941 of the Taxes Consolidation Act, 1997.

The obligation on an inspector to amend an assessment pursuant to s. 934(6) TCA only applies where such determination is final and conclusive. There is no obligation under s. 934(6) TCA to amend the assessment where there is an appeal from the Appeals Commissioners' decision since to amend the assessment in accordance with that sub-section would give it the same force and effect as if it were "an assessment in respect of which no appeal had been given". Such an assessment would render an appeal to the Circuit Court under s. 942 or an appeal by way of case stated under s. 941 redundant.

The direction in s. 941(9) TCA that "tax shall be paid in accordance with the determination of the Appeal Commissioners" is not a direction the tax shall be repaid. Repayment only arises in accordance with the provisions of s. 941(9)(a) if the amount of the assessment is altered by order of judgment of the Supreme Court or the High Court."

Submissions on behalf of the plaintiff

9. It is submitted on the plaintiff's behalf that it is clear that the provisions of s. 934(6) oblige the defendant to give effect to the Appeal Commissioners' determination and this obligation is not conditional on there being no appeal. The plaintiff contends that a determination by the Appeal Commissioners is a determination irrespective of whether or not there is an appeal from that determination. Any contention that to amend the assessment disallowing the capital allowances would render an appeal to the Circuit Court under s. 942 or an appeal by way of case stated under s. 941 redundant is plainly mistaken because the appeal is no more redundant than it would be in the case of a taxpayer who loses before the Appeal Commissioners and is obliged to pay the relevant tax. In those circumstances the taxpayer pays the monies and if the appeal is successful obtains a refund whereas in this case the defendants wish to appeal and if the appeal is successful the taxpayer is obliged to pay the Revenue Commissioners the amount due on the basis of the High Court determination. There is in the plaintiff's submission no conceivable basis on which it could be contended that the appeal is redundant.

10. The plaintiff submits that the wording of s. 941(9) is clear in reinforcing the plaintiff's contention that the obligation to pay tax is an obligation in accordance with the Appeal Commissioners' determination. This the plaintiff submits is the only obligation which is imposed on him and having previously paid tax and now having a determination from the Appeal Commissioners the sums claimed in these proceedings are now due to him by way of a refund and in the event of the Revenue Commissioners being successful on appeal then it is clear that s. 941(9) provides for payment of any additional tax, but the plaintiff contends that this provision makes it clear beyond doubt that an appeal by way of case stated does not operate as a stay on the defendants' obligations.

11. The plaintiff contends that the relevant statutes are penal and require a strict interpretation and in the particular circumstances that have arisen the construction which the Revenue Commissioners infer from the relevant provisions have no relationship to the wording of the relevant provisions and are wholly unsustainable.

12. In the plaintiff's submission the relevant provisions do not permit the Revenue Commissioners to retain monies to which on the basis of the Appeal Commissioners' determination they have no entitlement and further prevent a construction which makes the determination binding on the taxpayer pending the outcome of the case stated but not binding on the Revenue Commissioners.

13. It is also submitted on the plaintiff's behalf that in any event the plaintiff is entitled to be repaid the sum as claimed as a matter of general principle and reliance is placed on the principle as enunciated in *O'Rourke v. The Revenue Commissioners* [1996] 2 I.R. 1 wherein Keane J. held that money paid on the basis of a legal demand is paid for a reason that does not exist if that demand is a nullity. He states as follows at p. 18 of his judgment.

"For these reasons, I am satisfied that I am not precluded by the judgments of the majority in Murphy's case from considering whether the *Woolwich* doctrine should be applied in this country. In my view, the opinions of the majority in that case are to be preferred and meet the criteria which our courts have identified as appropriate in developing the doctrine of unjust enrichment. As in other common law jurisdictions, the doctrine has been developed incrementally on a case by case basis, so as to ensure that a vague and uncharted area of the law in which "palm tree justice" flourishes is not judicially encouraged. (See *East Cork Foods v. O'Dwyer Steel* [1978] I.R. 103; In *re P.M.P.A. Garages Ltd.* [1992] 1 I.R. 332 and *Corporation of Dublin v. Building and Allied Trade Union* [1996] 1 I.R. 468). I am satisfied that where a person has deducted sums from monies paid to another person purportedly under the PAYE system and transmitted by them to the Revenue in circumstances where the Revenue are in the result overpaid, the person affected is entitled as of right to the repayment of those monies, even where the deductions have been acquiesced in by him without protest. It follows that, in the circumstances of this case, the defendants were unjustly enriched as a result of the retention by them of these monies and that the measure of the plaintiffs loss is the amount of interest which the money might have earned, had they not been withheld."

14. The plaintiff contends that it follows that the Revenue Commissioners have purportedly retained the monies without any legal basis and on a misconstruction of the relevant legal principles. It is not the plaintiff who has to establish a statutory basis for repayment. In the absence of a statutory provision authorising retention of the monies where the Appeal Commissioner has found that those monies are not due, the defendant is obliged as a matter of law to make repayment.

Submissions on behalf of the Revenue Commissioners

15. It is submitted on behalf of the Revenue Commissioners that having requested the Appeal Commissioners to state a case for the opinion of the High Court the plaintiff is not entitled to a refund of tax pending final determination of the case stated.

16. Insofar as the plaintiff seeks to construe the wording of s. 941(9) of the TCA 1997 as conferring a particular right on him it is submitted that the onus of proof lies on the taxpayer to show that the words of s. 941(9) clearly and unambiguously confer that right.

17. The reference in s. 941(9) TCA 1997 to "tax shall be paid" in accordance with the determination of the Appeal Commissioners does not entitle a tax payer to a repayment of tax pending determination of the appeal. Repayment only arises within subsection 9 itself that is to say on determination of the case stated when any excess of tax will be refunded.

18. It is further contended on behalf of the Revenue Commissioners that s. 941(9) refers to income or corporation tax being paid. Quite simply it can never be the case that the Revenue Commissioners pay tax. The language used in s. 941(9) may be contrasted with that employed in sub-paragraph (a) which imposes an obligation on the Revenue Commissioners to refund the "amount" overpaid. The requirement in s. 941(9) that income or corporation tax be paid is only open to one construction: that the taxpayer must pay tax in accordance with the Appeal Commissioners determination, and further the section specifically provides for repayment once the appeal process has been exhausted. In these circumstances it is not possible to imply into s. 941(9) an obligation on the Revenue Commissioners to make an interim refund of tax based on the Appeal Commissioners' determination. It is submitted that the intention of the legislature as expressed in s. 941(9) is that any overpayment is only to be repaid when the appeal process is exhausted, at which stage the assessment is final and conclusive.

19. It is further submitted on behalf of the Revenue Commissioners that an assessment which is under appeal cannot be regarded as "final and conclusive" for the purposes of the TCA 1997 and in the circumstances s. 934(6) has no application to an assessment that is under appeal.

20. I am satisfied that the relevant statutory provisions shall be interpreted by me literally taking into account the context and purpose of each provision so as to give effect to the intention of the legislature.

21. In *Revenue Commissioners v. Doorley* [1933] I.R. 750 at p. 763 Kennedy C.J. cited with approval the speech of Lord Cairns in *Partington v. Attorney General* (1869) LR 4 HL 100 at p. 122:

"I am not at all sure that, in a case of this kind – a fiscal case – form is not amply sufficient, because as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

22. Kennedy C.J. then continued:

"This dictum does not mean, however, that the ordinary rules applied to the interpretation of statutes are not to be applied to the interpretation of taxing statutes, as has often been pointed out. (...) In *Attorney General v. Carlton Bank* [1899] 2 QB 158 Lord Russell C.J. said (at p. 164):- "In the course of argument reference was made on both sides to supposed special canons of construction applicable to Revenue Acts. For my part I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament and I know of no authority for

saying that a taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same whether the Act to be construed relates to taxation or to any other subject, namely to give effect of the intention of the Legislature as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed."

23. Kennedy C.J. concluded at pp. 765-766:

"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject matter under consideration and is complementary to what I have already said in its regard. The court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the Taxing Act as interpreted by the established canons of construction so far as applicable."

24. I am satisfied on a literal reading of the provisions of ss. 933(4) and (6)(a), 934(6), 934(7) and 966(5) of the TCA 1997 that having regard to the decision of the Revenue Commissioners to state a case on a point of law for the opinion of the High Court by way of appeal the decision of the Appeal Commissioners in this instance is not final and conclusive, and that accordingly a correct interpretation of s. 934(6) excludes decisions of the Appeal Commissioners that are being appealed to the High Court by way of a case stated and therefore do not provide a statutory basis for any refund of overpaid tax as has occurred in the circumstances of this case.

25. Section 934(6) says that an assessment amended pursuant to a decision by the Appeal Commissioners "shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given". Under s. 933(6)(a) this would mean that the assessment thus amended would then be "final and conclusive", but s. 933(4) explicitly states that a decision of the Appeal Commissioners that is being appealed by way of case stated is not "final and conclusive". Therefore the intention of the legislature must have been that s. 934(6) would not apply to decisions of the Appeal Commissioners that were being appealed to the High Court by way of case stated, because otherwise the legislature would not have made specific provision to the effect that such decisions were not "final and conclusive", as they would have to be if they were covered by s. 934(6).

26. Section 941(9) of the TCA 1997 clearly gives the Revenue Commissioners the right to demand an immediate payment of tax due pursuant to a decision of the Appeal Commissioners which has gone against the taxpayer. The reference in the section is quite distinct in referring to income tax or, as the case may be corporation tax being paid in accordance with the determination of the Appeal Commissioners and that if the Appeal Commissioners' decision is altered by order of the High or Supreme Court then if too much tax has been paid the amount overpaid shall be refunded with interest and if too little tax has been paid the amount unpaid shall be deemed to be arrears of tax and shall be paid and recovered accordingly. It is clear that the Revenue Commissioners do not pay tax. If the legislature had wished to create an obligation to refund tax a provision could have been quite simply phrased that income tax or corporation tax as the case may be shall be paid or *refunded* in accordance with the determination of the Appeal Commissioners.

27. It does appear anomalous that a statutory provision which is designed to ensure that the Appeal Commissioners determination against the taxpayer is complied with in full by the taxpayer, despite an appeal, is to be used to ensure that the same determination if in favour of the taxpayer has no effect on the position of the Revenue Commissioners if they appeal by way of a case stated to the High Court.

28. I am satisfied however that the relevant statutory provisions do not give the plaintiff any statutory entitlement to a repayment of the sum as claimed herein notwithstanding that the taxpayer has the benefit of the Appeal Commissioners decision in his favour. I agree with the view as expressed in the correspondence of 26th November, 2004, on behalf of the Revenue Commissioners that there is "no statutory basis for a repayment to the plaintiff in circumstances where the appeal commissioner has been requested to state a case for the opinion of the High Court pursuant to s. 941 of the Taxes Consolidation Act 1997." I am, however, equally satisfied that the relevant provisions do not exclude an entitlement to repayment.

29. I do not consider that it can be imputed into s. 941(9) that it was the intention of the legislature that any overpayment of tax is only to be repaid when the appeal process is exhausted against a background where the Appeal Commissioners have found in the taxpayer's favour as has occurred in this instance.

30. This brings about a situation whereby in the absence of express statutory provision the plaintiff taxpayer has sought a refund of the sum as claimed pursuant to the decision of the Appeal Commissioners and the Revenue Commissioners have declined to comply with that request.

31. Mr. Gallagher for the plaintiff laid considerable emphasis on the decision of Keane J. in *O'Rourke v. The Revenue Commissioners* (as already referred to herein) wherein Keane J. took the view that the doctrine as expounded in *Woolwich Equitable Building Society v. Inland Revenue Commissioners* [1993] A.C. 70 should be applied in this country. Keane J. took the view that the opinions of the majority in the *Woolwich* case were to be preferred and meet the criteria which our courts have identified as appropriate in developing the doctrine of unjust enrichment.

32. Lord Goff in the course of his judgment in *Woolwich* at p. 177, in summing up his conclusions, stated as follows:

"I would therefore hold that money paid by a citizen to a public authority in the form of taxes or other levies paid pursuant to an *ultra vires* demand by the authority is *prima facie* recoverable by the citizen as of right. As at present advised, I incline to the opinion that this principle should extend to embrace cases in which the tax or other levy has been wrongly exacted by the public authority, not because the demand was *ultra vires* but for other reasons, for example, because the authority has misconstrued a relevant statute or regulation. It is not, however, necessary to decide the point in the present case, and in any event cases of this kind are generally the subject of a statutory regime which legislates for the circumstances in which money so paid either must or may be repaid. Nor do I think it necessary to consider for the purposes of the present case to what extent the common law may provide the public authority with a defence to a claim for the repayment of money so paid: though for the reasons I have already given I do not consider the principle of recovery should be inapplicable simply because the citizen has paid the money under a mistake of law."

33. In an earlier passage of his judgment, at p. 171, Lord Goff explains the reasoning for the existence of the ground of unjust enrichment as being policy orientated and based on fundamental principles of fair play:

"Take any tax or duty paid by the citizen pursuant to an unlawful demand. Common justice seems to require that tax to be repaid, unless special circumstances or some principle of public policy require otherwise; *prima facie*, a taxpayer should be entitled to repayment as a right."

34. As we have seen, Lord Goff at p. 177 indicates *obiter* that the principle set out above applied not only where the demand was *ultra vires*, but also where the Revenue's agents had simply misconstrued the applicable statutory provisions in demanding payment.

35. Lord Browne-Wilkinson stated in the course of his judgment, at pp. 198-199:

"In cases such as the present both the concept of want of consideration and payment under implied compulsion are in play. The money was demanded and paid as tax, yet no tax was due; there was a payment for no consideration. The money was demanded by the State from the citizen and the inequalities of the parties' respective positions is manifest even in the case of a major financial institution like the Woolwich Building Society. There are therefore, in my judgment, sound reasons by way of analogy for establishing the law in the sense which Lord Goff proposes. I agree with him that the practical objections to taking this course are not sufficient to prevent this House from establishing the law in accordance with both principle and justice."

36. Lord Slynn in the course of his judgment, having pointed out that there was no statutory provision on which the plaintiff building society could rely to reclaim their money or any interest, said at p. 200:

"I do not consider that the fact that parliament has legislated extensively in this area means that no principle of recovery at common law can or should at this stage of the development of the law be found to exist. If the principle does exist that tax paid on a demand from the Crown when the tax was the subject of an *ultra vires* demand can be recovered as money had and received, then, in my view, it is for the courts to declare it. In so doing they do not usurp the legislative function. I regard the proper approach as the converse. If the legislature finds that limitations on the common law principle are needed for reasons of policy or good administration then they can be adopted by the legislation e.g. by a short limitation period, presumptions as to validity, even (which I mention but do not necessarily think appropriate since the matter has not been discussed) a power in the courts to limit the effects of any order for recovery comparable to that conferred on the Court of Justice of the European Communities by Article 174 of the EEC Treaty."

37. Although both the *O'Rourke* and *Woolwich* cases involve the repayment of interest on overpaid tax rather than the repayment of overpaid tax itself, it does appear reasonable to accept that the ground of unjust enrichment as set out in the *Woolwich* case and approved by Keane J. in *O'Rourke v. The Revenue Commissioners* should also be applicable to the general circumstances of overpaid tax. According to the determination of the Appeal Commissioners the plaintiff has made a payment for which there is no legal basis and therefore the Revenue Commissioners in their capacity as a public authority stand unjustly enriched by the payment and are holding it unlawfully from the date on which the payment was made because it was paid over pursuant to an unlawful demand. In my view, as a result they are required at common law to refund the sum paid over. The Revenue Commissioners do not in my view have a statutory entitlement to retain the monies as claimed by the plaintiff in a situation where the Appeal Commissioners have held in the plaintiff's favour. The Revenue Commissioners have a statutory entitlement to appeal the Appeal Commissioners' decision by way of a case stated on a point of law to the High Court which course of action they have chosen to adopt. There is in my view no stay provided for in the relevant legislation in the event of an appeal by the Revenue Commissioners by way of case stated where as previously discussed the taxpayer must comply with the Appeal Commissioners' decision if it is found against him.

38. There is no doubting that the Appeal Commissioners is a statutory body that was set up to decide points of law and fact in taxation matters. In consequence there can be no disputing that its decisions are binding and have full legal effect. Otherwise there would be no point in having recourse to the Appeal Commissioners. Therefore the default position is that all parties to a claim before the Appeal Commissioners are bound by the decision and are obliged to take all necessary steps to comply with this decision. If the statutory provisions are silent as to whether the Revenue Commissioners must refund overpaid tax pursuant to the Appeal Commissioners' decision pending the outcome of an appeal to the High Court by way of case stated, then regard has to be had to the default position. The Revenue Commissioners are bound by the decision and must comply with it by repaying the overpaid tax and in the event of the Revenue Commissioners ultimately being successful in their appeal they have all the necessary powers available to them to recover any monies found to be properly due and owing by the taxpayer.

39. In my view at this point in time the Revenue Commissioners are bound by the Appeal Commissioners' finding and the relevant legislative provisions do not provide otherwise and in particular do not in my view remove the taxpayer's entitlement to rely on the Appeal Commissioners' decision in his favour which entitles him to a refund of the monies as paid.

40. In the circumstances I find that the plaintiff is entitled as a matter of general principle to a refund of the amount as claimed in accordance with the decision of the Appeal Commissioners.