Claim for interest on overpaid tax fails

[Judgement July 12]

In the absence of an agreement, express or implied, the court had no power to order the Inland Revenue to pay interest to a taxpayer in respect of sums paid by him under an unauthorized tax demand.

Mr Justice Nolan so held in the Queen's Bench Division in dismissing an action brought by the Woolwich Equitable Building Society to recover interest on payments exceeding £56 million that it made to the Inland Revenue under Regulations later held to be *ultra vires* and void.

MR JUSTICE NOLAN said that in July 1987 in an action by the society in judicial review proceedings he had held that the Income Tax (Building Societies) Regulations were *ultra vires* and void in so far as they purported to provide for the imposition of tax on dividends and interest paid by building societies prior to April 1986.

Before that sate the Revenue had obtained some £56 million form the society in reliance on those regulations. After the decision the moneys were repaid to the society with interest from that date but not from any earlier date. The issue was whether the society was entitled to interest from the date of is making the payments to the Revenue until until July 31, 1987.

The society's claim was originally pleaded on the ground that the payments were made pursuant to demands which were unlawful and the Revenue was liable to repay them together with the interest under section 35A of the Supreme Court Act 1981. the basis of that claim was that the Revenue had unjustly enriched itself at the society's expense.

Later that claim was amended to one for money had and received. So pleaded it constituted a claim for the recovery of a debt within the meaning of section 35 A of the 1981 Act.

The Crown's case was that the payments were voluntary and were not repayable – the payment in fact made being *ex gratia.* In the alternative, it submitted, there was an implied agreement that the money would be repaid if the proceedings for judicial review were resolved in the society's favour.

Whenever money was paid to the Revenue pending the outcome of a dispute an agreement for the repayment of the money if and when the dispute was resolved in a taxpayer's favour had inevitably to be implied unless statute itself produced that result – as did in cases falling within paragraph 10(4) of Schedule 20 to the Finance Act 1972.

The Revenue had to be assumed to have behaved honestly and honourably and to have accepted the money on terms that it would be repaid if the proceedings went against it but would be retained as having discharged a tax liability from the due date, thus obviating any interest liability, if that decision went in its favour. Regrettably there was no basis in law for implying an agreement to pay interest on the money. There had to judgment for the Revenue.