LORD JOHNSTON—I concur.

LORD MACKENZIE was absent.

The Court adhered.

Counsel for Petitioner (Respondent) — D. Anderson. Agents—J. & J. Milligan, W.S.

Counsel for Reclaimers—C. H. Brown. Agents—Mackintosh & Boyd, W.S.

Wednesday, October 30.

FIRST DIVISION.

(EXCHEQUER CAUSE).

WYLIE *v.* INLAND REVENUE.

Revenue — Income Tax — Deductions — Balance of Profits — Expenses Incurred in Earning Profits — Rent Paid for Furnished House while Own House Let— Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Sched. D—Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Sched. D.*

The owner of a house let it for two months and took a furnished house for four months—the period for which she let and endeavoured to let her own house—and made profit thereby.

Held that she was not entitled, in estimating profits for income tax purposes, to deduct the rent of the furnished house, it not being a necessary incident of earning the profit in question.

At a meeting of the Income Tax Commissioners for the County of Haddington, held there on 10th May 1912, Miss C. E. Wylie, Eastfield, North Berwick, appealed against an assessment on the sum of £60 (at the rate of 1s. 2d. per £1) for the year ending 5th April 1912, made upon her under the Acts 5 and 6 Vict. cap. 35, section 100, Sched. D; 16 and 17 Vict. cap. 34, section 2, Sched. D; and 1 and 2 Geo. V, cap. 48, section 14.

The Commissioners having confirmed the assessment, a case for appeal was stated.

The *facts* were as follows:—"The assessment was made on Miss Charlotte Ethel Wylie in respect of rent received by her for letting her house, Eastfield, North Berwick, furnished, for the months of August and September 1911.

"The rent received for said two months was - - - - - - - - - £90

and the following deductions were allowed:—

Valued rent for two months	£14	
Proportion of rates - - -	3	
Wear and tear of furniture	9	
Cleaning - - - - -	2	
Agency - - - - -	2	
	—	30
		£60

"For the appellant it was contended (while the fairness of the above deductions was not disputed) that the rent paid by Miss Wylie for a furnished house at Aberfeldy, during the period for which she let and endeavoured to let her house at North Berwick, is a proper deduction, and the assessor had not allowed anything for it. The house at North Berwick was the appellant's only house, and she had no other house to which to remove in order to vacate the North Berwick house and so render it a lettable subject. The address of the house so rented by her was Cuilaluinn, Aberfeldy, and the amount paid by her for the use of it for four months was £70 (seventy pounds).

"The Surveyor of Taxes (Mr W. J. Eccott) maintained that the rent paid by Miss Wylie for the house she occupied during the time her house at North Berwick was let is not a proper deduction for the following reasons:—The Income Tax Acts contemplate the assessment of profit and are not concerned with the application or destination of the profit when it is made.

"This principle has been repeatedly laid down, and particularly in the following cases:—Mr Justice Day in *Paddington Burial Board* v. *Commissioners of Inland Revenue* (2 T.C. 50), 1884; Lord Trayner in *Californian Copper Syndicate* v. *Harris* (5 T.C. 168, 1904, 41 S.L.R. 691).

"The Surveyor further argued that if the appellant contended that no profit could be said to be realised until she had actually returned to her house, and had set over her expenditure upon lodging against her receipts from letting her house, she was confusing two totally distinct things. What was sought to be ascertained were the expenses necessarily incurred in the process of letting the house at North Berwick furnished. Now, the expense incurred by Miss Wylie in taking another house elsewhere was not such an expense. She might have gone to stay with friends. Or again, supposing she had not let it, but she wished to take a holiday abroad or at Aberfeldy, she could not claim to set the expense so incurred against any other portion of her income."

The case was heard on 30th October 1912 before the Lord President, Lord Johnston, and Lord Cullen.

Argued for appellant—Profits were ascertained by setting against the income earned the necessary cost of earning it—Dowell's Income Tax Laws (6th ed.), p. 185, and cases there cited. The appellant had only one house, and in order to let it she had to take another, for she was entitled to a roof over her head. The rent of the second house therefore was a necessary incident of earning the profit in question—Hallett Fry on Income Tax, p. 20. *Esto* that the appellant would not be entitled to deduct the cost of maintaining herself, that was because the Income Tax Acts had expressly so provided. The appeal therefore ought to be sustained.

Argued for respondent—Taking a second house was not a necessary incident of letting one's house. The rent of the second

house was therefore not a proper deduction. No allowance could be made for expenses which (like the expenses in question) were not necessary to earn the profit, but came out of the profit after it had been earned—Dowell (*cit. supra*), pp. 185, 197; *Strong & Company, Limited* v. *Woodifield*, [1906] A.C. 448.

LORD PRESIDENT—I think there is no doubt about this case. A lady lets her house furnished, and by that means gets a very much larger return for it than the relative amount of the annual value which is in the valuation roll, and upon which she pays income tax under Schedule A. Accordingly the Crown made a claim under Schedule D, and they begin with a statement of the rent which she gets from her tenant. Then they deduct the proportion of the rent in the valuation roll upon which she has already paid income tax under Schedule A, corresponding to the period for which the house is let. Then they take off certain other deductions in respect of rates, wear and tear of furniture, cleaning, and agency, and they bring out the sum which represents clear profit to the lady and on which they propose to charge. She says—and it is contended in this case—that she is entitled further to make a deduction of the rent which she had to pay for a house elsewhere when she turned out of her own house in order to allow it to be let.

If it was the law that you were entitled before reckoning the profits of your business to have a deduction for the necessary cost of your living somewhere (because you must always live somewhere in order to conduct business), the argument would be a good one, but as it is distinctly specified in one of the cases under the Income Tax Act that no such charge is permissible, I am afraid that this charge cannot be allowed. This particular expenditure on a house elsewhere has nothing necessarily to do with the letting of her own house. It only represents the necessity of her living somewhere. So far as letting her house is concerned it is a necessity that she should go out, but it is not a necessity of the situation that she should take a house elsewhere. She might be put up by friends —she might go to a hotel.

Accordingly I am of opinion here that the determination of the Commissioners was quite right and should be affirmed.

LORD JOHNSTON—The claim in question is made under the sixth case of Schedule D, and therefore I do not think it necessary to refer to the rules applicable to both the first and the second cases upon which argument was addressed to us. There can be no doubt that this lady *ex facie* made a profit by letting her house, because she received as rent a good deal more than the proportion of the year's assessed rental after making all proper allowances. If, then, under the sixth case the Commissioners have got to ascertain the full amount of profits and gains which she made out of this letting, I cannot see that it is possible to make a deduction in respect of the rent which she pays for another house, the renting of which enabled her to let her own, and for this very simple reason, that what she does when she leaves her own house and provides for her residence during the interval is entirely a personal matter, which it is impossible to reduce to any rule. She may take a smaller house. She may take a larger house. She may take no house at all, but live with friends or travel. The whole thing is so entirely dependent upon her own personal wishes and circumstances that it is impossible to found upon the course which she actually took any claim for deduction from the net rent which she received for the house which she let.

LORD CULLEN—I entirely concur.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court affirmed the determination of the Commissioners.

Counsel for Appellant—Maitland. Agents —Hamilton, Kinnear, & Beatson, W.S.

Counsel for Respondent — Sol.-Gen. Anderson, K.C. — J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, June 20.

OUTER HOUSE.

[Lord Dewar.

CONSTANT *v.* KLOMPUS.

Foreign — Ship — Maritime Lien — Necessaries Supplied to Foreign Ship at Foreign Port—Sale of Ship in Scotland at Instance of Mortgagee.

A foreign ship found in a Scotch port was arrested and sold at the instance of a mortgagee who had advanced money on security of the ship. The price realised being less than the amount of the mortgage, a competition arose between the mortgagee and a person who claimed to have a maritime lien over the ship in respect of necessaries supplied to it at a foreign port, and to be entitled to a preference in respect thereof.

Held that the question whether there was a maritime lien over the ship fell to be determined according to the law of Scotland.

Ship — Maritime Lien — Necessaries Supplied to Ship at Foreign Port.

Held, in a question with a mortgagee, that a person who had supplied necessaries to a ship at a foreign port had no maritime lien over the ship for the price of the necessaries.

Joseph Constant, shipowner, London, on 14th June 1911, raised an action of declarator and sale of the steamship "Baltic" of