HOUSE OF LORDS.

Wednesday, October 21, 1914.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

COMMISSIONERS OF INLAND REVENUE *v.* SOUTHEND-ON-SEA ESTATES COMPANY.

Revenue—Finance (1909-10) *Act* 1910 (10 *Edw. VII and* 1 *Geo. V, cap.* 8), *sec.* 17 (5)—*Undeveloped Land Duty—Power to Determine Tenancy under Lease.*

The Finance (1909-10) Act exempts from undeveloped land duty agricultural land held under lease granted before 30th April 1909, but provides that "where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power."

By lease dated 4th December 1906 the respondents had let a farm for seven years from 29th September 1904 to 29th September 1911. Power was reserved to the lessors of resuming part of the land let at any time during the currency of the lease "for building or other purposes" on giving the lessee one month's notice in writing.

Held that the power to determine the tenancy only arose when the landlord purposed to enter "for building or other purposes." Therefore where the landlord had no such purpose the proviso did not apply.

Their Lordships gave judgment as follows:—

EARL LOREBURN — I do not think it is necessary to trouble the learned counsel for the respondents, because in my opinion the decision of the Court of Appeal was perfectly sound. Undeveloped land duty is claimed by the Attorney-General. It is not payable on land which was under a lease made before the Act, but there is a proviso that exemption is not to arise where the landlord has power to determine the tenancy. Now here the lease enables the landlord to resume possession for building or other purposes, which means in my opinion purposes of the same kind. It is admitted that the landlord had no such purpose. Under these circumstances had the landlord in this case the power to determine the tenancy? I think he had not. This power only arose when there was a purpose. If in an action between him and the tenant the landlord had said "I wish very much to determine, but I have no purpose within the covenant," he would have been restrained from determining the lease. In fact he had not power accordingly to determine the lease. At the end of the proviso there are words to the effect that the tenancy shall not be deemed to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power. I do not think it is possible to determine the tenancy unless circumstances exist which would enable the landlord to support his determination in a court of law.

The Solicitor-General has argued that the landlord had the power, because if he resolved upon the purpose he then would possess the power, and it would be in his power to resolve the purpose. I do not agree with that. The statute says he shall have power to determine, and if the landlord has not the purpose he has not power to determine even though he may have the power to form the purpose.

LORD ATKINSON—I concur. I think the judgment of the Court of Appeal was sound, and the reasoning on which the learned Lords Justices based their respective judgments is quite convincing.

LORD PARKER—I agree. I will only add this, that I think on perusing the section it is reasonably clear that in order to bring the case within the proviso there must be a power to determine the lease which is immediately exerciseable, although of course the section itself contemplates that the operation of the power may be only to determine the lease at a future date, because it alludes to the earliest date at which it is possible to determine it under the power. If that be the case, not only must the power be immediately exerciseable, but in the present case in order to bring that about there must exist a certain state of circumstances, and that state of circumstances must be that there must be a *bona fide* intention on the part of the landlord to use the land for certain definite purposes. It is admitted that there was no such intention, and therefore though there may be a power in the sense that the Solicitor-General has mentioned there is no power immediately exerciseable, and therefore the case is not within the proviso.

LORD SUMNER—I agree.

LORD PARMOOR—I agree.

Their Lordships dismissed the appeal.

Counsel for the Appellants—Sir J. Simon, K.C. (A.-G.)—Sir S. Buckmaster, K.C. (S.-G.)—W. Finlay, K.C. Agent—H. Bertram Cox, Solicitor.

Counsel for the Respondents — Hawke, K.C. — Allen. Agents — Dennes, Lamb, & Pearce Gould, for Dennes, Lamb, & Drysdale, Southend-on-Sea, Solicitors.

HOUSE OF LORDS.

Thursday, October 22, 1914.

(Before Earl Loreburn, Lords Dunedin, Atkinson, Shaw, and Parmoor.)

GOVERNING BODY OF WESTMINSTER SCHOOL *v.* REITH (SURVEYOR OF TAXES).

Revenue—House Tax Act 1808 (48 *Geo. III, cap.* 55), *Sched. B, Rule* 2—*House Tax Act* 1851 (14 *and* 15 *Vict. cap.* 36), *sec.* 2—*Offices Belonging to and Occupied with any Dwelling-House—School Buildings.*

The Governors of Westminster School claimed exemption from inhabited-house duty in respect of certain buildings used as class-rooms, &c. The Board of Inland Revenue claimed to assess these buildings under rule 2, Sched. B, of the House Tax Act 1808 as "offices."

Held (Lord Parmoor *dissenting*) that the buildings in question were not "offices," and were exempt from assessment.

Decision of Court of Appeal, 1913, 3 K.B. 129, *reversed.*

Appeal from an order of the Court of Appeal (Cozens-Hardy, M.R., Buckley, and Kennedy, L.JJ.) reversing in part an order of Horridge, J.), reported 1913, 1 K.B. 190.

The order of Horridge, J., was one on a case stated by the Commissioners for General Purposes of the Income Tax and Inhabited-House Duty for the division of St Margaret and St John in the county of Middlesex, and related to the assessment of the Governing Body of Westminster School to inhabited-house duty.

The effect of the order was that in addition to buildings containing a dormitory and studies and a sanatorium (which buildings were admittedly inhabited dwelling-houses) there were to be included in the assessment separate buildings used as a school hall (for prayers and other general assemblies, but not for meals), class-rooms, school library, &c.

The question whether such last-mentioned buildings should be included in the assessment depended on rule 2 of Schedule B of the House Tax Act 1808, which is incorporated by section 2 of the House Tax Act 1851, and is as follows:—"Every coach-house, stable, brewhouse, wash-house, laundry, woodhouse, bakehouse, dairy, and all other offices, and all yards, courts, and curtilages, and gardens and pleasure grounds, belonging to and occupied with any dwelling-house, shall in charging the said duties be valued together with such dwelling-house: Provided no more than one acre of such gardens and pleasure grounds shall in any case be so valued."

The buildings included in the assessment which were admittedly inhabited dwelling-houses were the buildings which had internal communication called the "college" and the building called the "sanatorium." The position of these two buildings was indicated upon the plan annexed to the Special Case by the letters C and A respectively.

The dining hall was not in question in this appeal.

The rest of the buildings which were in question were indicated upon the plan by the letters B and D. They consisted of a hall called "up school" (used only for prayers and general assemblies of the boys), class-rooms, the school library, book offices, tuck shop, common rooms with boys' lockers, carpenter shop, and lavatories.

There was no internal communication between these last-mentioned buildings and the college and sanatorium buildings (marked C and A), the only communication being across an open space known as Little Dean's Yard, which was not vested in the appellants.

All the boys at the school used the buildings B and D and were taught in common. Only forty of the boys were housed in the buildings C and A. The rest of the boys resided in their own homes or in boarding-houses, which were not in the occupation of the appellants. In the years in question, 1906-7 and 1907-8, there were 270 boys at the school.

Their Lordships considered judgment was given by

Earl Loreburn—The differences of opinion, both in the Court of Appeal and in your Lordships' House, show that the question in this case is one of difficulty. The appellants maintain that certain buildings used in connection with Westminster School ought not to be assessed to inhabited-house duty. The buildings in question are those called Ashburnham House and School. It is common ground that these buildings are used as class-rooms, or for purposes of tuition, and that no one sleeps or lives in them. They are detached from the other buildings of Westminster School, and are used both by the boys who are boarded in the college and by those who live in boarding houses and by town boys who live in their own homes away from the school altogether. If it is important, the number of the other boys is five or six times as great as those who live in the college.

Under these circumstances the Court of Appeal, reversing the decision of Horridge, J., held that Ashburnham House and the "school" ought to be assessed to inhabited-house duty upon the ground that they were offices belonging to and occupied with a dwelling-house—viz., the college—in which some forty of the boarders live and sleep. I regret that I cannot agree with this conclusion.

The duty sought to be recovered is inhabited-house duty. If it could be shown that the buildings in question were really part of an inhabited house, whether by reason of structural connection or in some other way, then they might possibly be assessable. I will say no more than that, for it is not contended that these buildings are assessable on that ground, and it is enough to deal with actual contentions.

The sole ground upon which the Court of Appeal proceeded was that under rule 2, Schedule B, of the Act of 1808 (which is