NO. 780.—COURT OF SESSION, SCOTLAND (FIRST DIVISION).—4TH, 5TH AND 13TH DECEMBER, 1929.

HOUSE OF LORDS.—20TH, 23RD AND 24TH JUNE, 1930, AND 13TH MARCH, 1931.

THE COMMISSIONERS OF INLAND REVENUE *v.* THE SCOTTISH CENTRAL ELECTRIC POWER COMPANY.[1]

Income Tax, Schedule D—Deduction in computing profits—Owner's rates (Scotland) in respect of property occupied for purpose of trade—Income Tax Act, 1918 (8 & 9 *Geo. V, c.* 40), *Schedule A, No. V, Rule* 4 *and Schedule D, Cases* I *and* II, *Rule* 3 (a).

The Respondent Company owned land and buildings in Scotland which it occupied for the purpose of its trade. Relief had been claimed and allowed from the Schedule A assessments on the property under Rule 4 (1) *of No. V of Schedule A in respect of the owner's rates charged on and paid by the Company. The Company contended that the rates so paid should be deducted in computing its profits for purposes of assessment under Schedule D.*

Held *that the owner's rates were not an admissible deduction in computing the Company's profits under Schedule D.*

CASE.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Glasgow on 4th March, 1929, for the purpose of hearing appeals, the Scottish Central Electric Power Company of Melville Street, Edinburgh, hereinafter called the Company, appealed against two assessments totalling £44,673, less £16,390 for wear and tear, made upon it under Schedule D of the Income Tax Acts for the year ended 5th April, 1928, by the Additional Commissioners of Income Tax for the division of Falkirk.

I. The following facts were admitted or proved :—

(1) The said assessments were made upon the basis of the Company's accounts for its trading year ended 31st December, 1926. The balance of the said accounts after deduction of all expenses of the Company including rates and charges and assessments on lands, tenements and heritages owned and occupied by it for the purpose of its trade and the whole cost of the repairs and

[1] Reported (C.S.) 1930 S.C.226 and (H.L.) 1931 S.C. (H.L.) 36.

maintenance thereof, but inclusive of the profits and gains arising from the said lands, tenements and heritages deductible under Rule 5 of Cases I. and II. of Schedule D of the Income Tax Act, 1918, was £48,897. The said balance does not make any provision for wear and tear of machinery and plant, such provision being calculated separately.

(2) It is agreed that the lands and heritages owned and occupied by the Company are "mills, factories and "other similar premises" within the meaning of the proviso to Sub-section (2) of the said Rule 5, and that by the effect of the said proviso the operation of the said Sub-section is excluded in the present case.

(3) The amount deductible under the said Rule 5 from the said balance of profits and gains in respect of the annual value of the said lands, tenements and heritages was £5,976, in accordance with the assessments made under Schedule A and the decision in the previous case taken by the Crown against the Company reported in 1928 S.C. 260; 13 T.C. 331.

(4) Under Rule 4 of No. V. of Schedule A the Commissioners of Inland Revenue gave relief by abatement from the said assessments under Schedule A of a sum of £1,752 for the year 1926, and the said assessments were also for the purpose of collection reduced by certain allowances in respect of repairs, totalling £1,014 17*s.* 6*d.* for the year 1926.

(5) The said assessments under Schedule D appealed against were made by deducting the full amount of the said assessments under Schedule A (namely £5,976) from the said balance of the Company's profits (namely £48,897) but adding thereto the sum of £1,752 being the amount paid by the Company in the year 1926, in respect of owner's rates, allowed in the Schedule A assessments.

II. It was contended on behalf of the Company that the addition of £1,752 for owner's rates was wrongly made and that this sum was a proper deduction in arriving at the balance of its profits and gains; and the Company relied upon the decision of the Court of Session upon the case brought before the Court for the previous year.(1)

III. H.M. Inspector of Taxes (Mr. D. Cram), on behalf of the Crown, contended that the owner's rates were paid by the Company in its capacity of property owner, and not *qua* trader, and that the deduction should not be allowed.

(1) 13 T.C. 331.

IV. We, the Commissioners who heard the appeal, had listened to arguments in support of the same method of assessment upon the appeal of the Company for the previous year, and for reasons given in the Case stated for the opinion of the Court of Session we had rejected them. We were confirmed in our previous opinion by the judgment of the Court of Session, and we accordingly allowed the present appeal and reduced the assessments under Schedule D upon the Company by £1,752.

V. The Inspector, immediately upon our so determining the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and having duly required us to state and sign a Case for the opinion of the Court of Session, as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VI. The question of law for the opinion of the Court is whether the Company is entitled to deduct the said sum of £1,752 in arriving at the balance of the profits and gains of its trade.

W. J. BRAITHWAITE,
P. WILLIAMSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
30th September, 1929.

The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Morison) on the 4th and 5th December, 1929, when judgment was reserved. On the 13th December, 1929, judgment was given against the Crown, with expenses (Lord Morison dissenting).

The Solicitor-General (Mr. J. C. Watson, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. J. Carmont, K.C., and Mr. A. M. Williamson for the Company.

I.—INTERLOCUTOR.

Edinburgh, 13th December, 1929. The Lords having considered the Case and having heard Counsel for the parties, Answer the Question of Law in the Case in the Affirmative; Affirm the determination of the Commissioners and Decern; Find the Respondents entitled to expenses of the Stated Case and remit the Account thereof to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

II.—OPINIONS.

The Lord President (Clyde).—Two years ago we decided a similar case between the same parties (*Inland Revenue* v *Scottish Central Electric Power Company* (1), 1928 S.C.260). The Company is the occupying owner of its premises, and is thus taxable under both Schedule A and Schedule D. Both the previous case and this year's case are concerned with the question whether an abatement from the amount of the assessment of the Company's premises to tax under Schedule A—equivalent, I understand, to what is known in Scotland as the owner's share of the public rates paid by the Company, and given to it in accordance with Rule 4 of No. V of that Schedule—has any effect, and (if so) what effect, on the adjustment of the estimate of the balance of the Company's profits and gains for the purpose of assessment to Income Tax under Schedule D. But, in order to understand the relation of the previous case and this year's case (and of this year's case in particular) to that question, it is necessary to attend to the precise point decided in the previous case and to the precise point submitted for our decision in this year's case.

The decision in the previous case was that the whole annual value of the Company's premises formed a permissible deduction from its gross trading returns for the purposes of Income Tax under Schedule D.

The question put to us was of a much more general character, namely:—What sums are properly deductible under Rule 5 of Cases I and II of Schedule D for the purpose of the assessment of the Company's profits to tax under that Schedule? Our answer was, and was advisedly, limited to the above finding. On one view the question as put might be regarded as committing to us the function of adjusting or re-adjusting the whole assessment so far as depending on or affected by any deduction from gross trading returns. But the case was not framed in such a way as to submit to us any question except one, namely—whether the whole or only a part of the annual value of the premises was deductible. The assessment as originally made by the assessing Commissioners allowed the usual deductions for all public rates paid by the Company as occupying owner, including (that is to say) both owner's and occupier's shares thereof, for repairs and maintenance, and so on, but docked the usual deduction in respect of the annual value of the premises, by subtracting from the said annual value the abatement made upon it for the purpose of assessment to Schedule A tax under Rule 4 of No. V. of that Schedule—in other words, by subtracting from the said annual value the amount of the owner's share of the total public rates paid by the Company as occupying owner. It was this method of docking the deduction in respect of the annual value of the premises which we held, for the reasons given in the

(1) 13 T.C. 331.

(The Lord President (Clyde).)

report of the previous case, to be warranted neither by Rule 5 of Cases I and II of Schedule D (from which mills and factories such as that of the Company are expressly excepted), nor by anything else in the Income Tax Acts.

There was presented to us, at the same time, some argument as to the permissibility (in view of the grant of an abatement on the assessed annual value for the purposes of Schedule A) of the deduction from gross trading returns of the *whole* public rates paid by the Company as occupying owner; but this deduction was not an open question before us; it had already been allowed and indeed formed the basis of the assessment as it came before us. We were accordingly not in a position to do more than answer the question put to us as we did.

The question in this year's case has nothing to do with the permissibility of any of the deductions made from gross returns. The assessment allows, as before, deduction of *all* public rates paid by the Company as occupying owner of its premises, and of the cost of repairs and maintenance, and so on. It also allows deduction of *the whole* annual value of the premises *without* subtracting therefrom anything in respect of the abatement given to the Company this year (as before) for the purpose of its Schedule A tax, under Rule 4 of No. V of that Schedule. But it adds, or writes back, into the Company's profits the amount of that abatement. There is—strictly speaking—no justification at all for this mode of dealing with the accounts. It is not disputed—in view of the previous case—that (the Company's premises being in the nature of mills or factories) the proper deduction in respect of those premises for the purpose of assessing the Company's profits to Income Tax under Schedule D is their whole annual value, unaffected and undiminished by the abatement of the assessment thereof for the purposes of Schedule A, in accordance with the rules applicable to that Schedule. If for any reason the Company is not entitled to deduct from its gross trading returns the whole of the public rates paid by it on its premises, one would have expected the assessing Commissioners to have docked the deduction made by the Company in respect of those public rates, by so much as represents what is known in Scotland as the owner's share. But instead of doing this, they allow that deduction in full and propose to treat the owner's share of the public rates as an increment of the Company's trading returns on the other side of the account.

As, however, the real bone of contention is obvious and as the argument to which we listened in this case was much more careful and exhaustive—if not more relevant to the point for decision—than the argument submitted to us two years ago, it is proper to deal with it without regard to the precise form of the case.

(The Lord President (Clyde).)

There underlies the argument of the Revenue an assumption that in assessing a tax-payer to tax under the Income Tax Acts it is not enough faithfully to apply the rules of each Schedule (under which the taxpayer is liable to assessment) to its own appropriate subject matter, but that these rules should be regarded as subject to modification or qualification whenever necessary to prevent the tax-payer from enjoying an advantage under each of two Schedules in respect of the same class of expenditure. I commented unfavourably on this assumption two years ago, and nothing has been said this year to make me change my mind. It is sufficient to refer to what I said in the case two years ago.

There are very few millers and manufacturers on either side of the Border who are not occupying owners of their own premises. In England they always enjoy for the purposes of Schedule D the benefit of a deduction of the whole public rates paid by them. No doubt the whole of those rates are charged on them *qua* occupiers. But what difference does it make that, in Scotland, they pay half *qua* owners and half *qua* occupiers? They have to pay the whole, and the payment of that whole is just as much a necessary part of the expense of carrying on their business in Scotland as it is in England.

If a Scottish miller or manufacturer carried on his business in premises hired on lease, he would pay only the occupier's share of the public rates and could not, therefore, claim to deduct the owner's share. The reason would be simply that he did not pay that share. But if he does pay it, why should he not be allowed to deduct it like his English brother?

Rule 4 of No. V of Schedule A obviously came into being from a desire on the part of the legislature to avoid any discrimination, as regards Schedule A tax, against Scottish landlords. Scottish landlords do bear some burdens in respect of public rates from which English landlords are immune, and it is apparently assumed—rightly or wrongly—that the higher burdens on the Scottish landlords were not, or might not be, compensated by a higher standard of rent or annual value in Scotland as compared with the standard of rent or value of comparable premises in England. Therefore, it was made possible, for the purposes of tax under Schedule A "charged in respect of the property in all lands, tenements, "hereditaments, and heritages in the United Kingdom, for every "twenty shillings of the annual value thereof", for the Commissioners of Inland Revenue to abate the assessment of Scottish landlords to tax under Schedule A, by giving relief from such part of the said assessment as they might think just and reasonable in the circumstances. I understand that in practice the abatements

(The Lord President (Clyde).)

granted are usually, if not universally, equal to the whole of the Scottish owner's share ; and that this practice is followed with regard to the Company's Schedule A assessments.

What, then, is the effect (if any) of an abatement of the assessment of the annual value of milling or manufacturing premises for the purposes of Schedule A tax on the right of the Scottish miller or manufacturer (who carries on business in premises of which he is the occupying owner) to deduct, for the purposes of the assessment of his profits to Income Tax under Schedule D, the whole public rates which he actually pays? If he were not a miller or manufacturer, but (say) a shopkeeper, his deduction would, no doubt, under Rule 5 of Cases I and II of Schedule D, be restricted to "the amount of the assessment of the lands, tenements, "hereditaments and heritages for the purpose of tax under Schedule "A as reduced for the purpose of collection". The assessment of the lands would—in other words—be arrived at after making any abatement allowed under Rule 4 of No. V of Schedule A, and the assessment as so abated would be further diminished by any reduction allowed "for the purposes of collection" by Rule 7 (1) (b) (i) of No. V. This would be the effect of faithfully applying the rules of Schedule D to its own appropriate subject matter. But all this has no relevancy to the case of the occupying owner of a mill or factory, because mills and factories are exempt from the operation of Rule 5 of Cases I and II of Schedule D.

I am therefore for answering the question put to us in the affirmative, and for affirming the determination of the Special Commissioners.

Lord Sands.—In the case now before us the question concerns a deduction in respect of rates. The question of repairs is not raised. This is the same situation as in the case between the same parties decided by us in 1927. There is, however, a shade of difference between the attitude of the Crown as regards the deduction in respect of repairs set forth in the report of the argument in Session Cases, and my recollection of what took place which is fairly clear and confident. According to that recollection, it is stated on behalf of the Crown in that case that an interpretation adverse to themselves had been adopted by the Commissioners and largely acted upon in England as regards repairs and what was called the "double deduction" in respect of them. The Revenue had acquiesced in this and they were not now going back upon it. But they objected to any argumentative use of this concession in dealing with rates. In other words, the allowance as regards repairs must be regarded as a concession which *in dubio* the Revenue had made to the taxpayer but not when one comes to deal with rates as a matter which had been judicially determined against the Revenue on any ground which entered into the discussion in hand.

(Lord Sands.)

The attitude of the Revenue in the present case is different, and I think it ought to be clearly defined.

(1) The judgment of the Court in the former case is accepted. In these circumstances the result at which we arrived is not open to review in this process or any other process between the same parties.

(2) The inclusion of the amount of landlord's repairs in the amount to be deducted under Schedule D in respect of premises is in accordance with the statute.

Such being the position of the Revenue, they are, as it appears to me, driven out of the stronghold of "double deduction". They must differentiate otherwise than that it involves a double deduction between repairs and landlord's rates in Scotland. The "double deduction" is not to be set aside as something which the legislature cannot possibly have contemplated.

In their findings in the former case, the Commissioners stated [1] "The allowance of the rates as of the repairs is properly made in "arriving at the balances of the Company's profits and gains". I observe that in my opinion I quoted this statement, and I added [2] "I think it right to point out that the question of the propriety "or of the nature of this deduction was not before us". The initial position of the Revenue appears to have been this. The "double deduction" as regards rates must fall to be disallowed. The deduction under Schedule A seemed to them the most vulnerable, so in 1927 they chose it for attack. Having been worsted, and, as they now acknowledge, rightly worsted in this attack, they now turn to Schedule D.

The provision under which the value of business premises does not fall to be taken into account in estimating profits and gains dates back to 1842. No provision was made as to how this was to be worked out. But the practice came to be established and was later recognised both judicially and in statutes as follows:—The total profits and gains of the year were ascertained from the books and accounts in the method of ordinary accounting. The resulting balance was the total profits including, but in no wise distinguishing, the element of the use of the premises as a source of profit. In a word the balance was the amount available on the year's working for distribution among the partners or shareholders. From this balance, for the purposes of assessment under Schedule D, fell to be deducted the annual value of the premises, i.e. the hypothetical rent or the rent which, taking one year with another, the premises would bring, or, in Scotland, the annual value as appearing in the Valuation Roll.

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[1] 13 T.C. at p. 335. [2] *Ibid* at p. 342.

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There can be no doubt that in making provision for the deduction of the value of premises from the amount falling to be assessed under Schedule D, the legislature had in view that the annual value of the premises would be liable to Property Tax under Schedule A. But whilst this may have been the reason for the provision, the two Schedules were independent, and the incidence of the duty under the one had no bearing upon the construction of the other. So far as the deduction of the value of the premises under Schedule D was concerned, it did not matter what would be the operation of Schedule A or whether there would be any operation of that Schedule at all. Thus it was held that in the case of premises situated abroad the Company liable in assessment on its profits and gains was to deduct the annual value of the premises although they were not assessable under Schedule A. (*Stevens* v. *E. Boustead & Co.* (1), [1918] 1 K.B. 382). Although this did not involve a double deduction it involved what is at the basis of the Revenue protest against a double deduction, viz. that, as the Income Tax Acts were framed, part of the profits and gains of the Company, as received in this country, escaped the duty. The Court brushed aside the argument that the reason for the non-inclusion of the value of the premises, viz. that that part of the profit was subject to Schedule A duty did not apply in the case of premises abroad. The statute must be construed according to its terms.

In 1898 the legislature, moved no doubt by the discrepancy which, as the result of certain concessions, had arisen between the gross annual value as appearing in the Valuation Roll and the value as reduced by assessment for Schedule A purposes, made provision in the Finance Act of that year (Section 9) that the amount of the deduction in respect of the value of premises should not exceed the amount of the assessment of the premises for the purposes of Income Tax under Schedule A as reduced for the purposes of collection under Section 35 of the Finance Act of 1894. In the Act of 1918 this provision is general (Rule 5(2) to Cases I and II of Schedule D) the reference to any special deductions having dropped out. It is simply " as reduced for the purpose of collection ".

The provision of Section 9 of the Act of 1898 is, I think, the first intrusion of Schedule A in any shape in the matter of the ascertainment of profits and gains under Schedule D.

I pause here to enquire what the position would now have been if neither Section 9 of the Act of 1898 nor anything resembling it had been passed. It seems to me clear that the position would just have been as it was from 1842 to 1898, as is illustrated in the case of *Russell*, (2) 13 App. Cas. 418. In so far as premises were occupied

(1) 7 T.C. 107.

(2) Russell v. Aberdeen Town and County Bank, 2 T.C. 321.

(Lord Sands.)

for the purposes of the business, their value as appearing on the Valuation Roll would have fallen to be deducted from the total of profits and gains for the purposes of assessment under Schedule D.

I turn now to the proviso to Rule 5 (2) :—" Provided that this " provision shall not apply in the case of any premises being mills, " factories or other similar premises ". In my view the effect, as regards mills, etc. is to write out the innovation introduced in the Act of 1898 and perpetuated by subsequent legislation whereby something less than the annual value appearing in the Valuation Roll fell to be deducted. If the Act of 1918 were the beginning of the matter it might appear somewhat puzzling that while the Rule stated negatively that the limitation of the deduction to the amount of the assessment for the purposes of collection should not apply in the case of mills, etc., it made no positive statement as to what the amount of the deduction should be in the case of mills, etc. But when regard is had to the history of the matter, I do not think that the matter admits of doubt. Mills, etc. are written out of Section 9 of the 1898 Act and its progeny, and we are thrown back upon the system which had obtained for more than half a century. The annual value of the premises as ascertained by the Valuation Roll we know, the annual value as reduced for the purposes of collection we know or ought to know, but between these two things there is nothing that we know or have any means of knowing.

We are here dealing with Schedule D. We may be constrained by the legislature to have regard in the course of our adjustment to Schedule A. But at all events we begin with Schedule D. The first step under Schedule D is to ascertain as a matter of bookkeeping what are the net profits and gains of the business for the year. That is the first factor. Until we have ascertained that, no question of deduction in respect of premises arise. It may be that hereafter such a question will arise. But the contention of the Revenue, as I understand it, is that in ascertaining this initial factor we should take into account the incidence of Property and Income Tax and deny deduction from the profits and gains of any expenditure for which allowance will be made under Schedule A. I am unable to accede to that contention. We are here under Schedule D and we must proceed under that Schedule until by virtue of statutory enactment Schedule A obtrudes itself. It does not do so until the question of the total amount of profits and gains has been ascertained and the question arises what deductions fall to be made in respect of the premises. In the case of premises other than mills, etc. this must not exceed the amount of the assessment as reduced for the purposes of collection. In the case of mills, etc. there is no such limitation, and for the reason I have already indicated there is historical warrant for the deduction of the value of the premises as appearing in the Valuation Roll and no warrant for any other measure

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of deduction greater than that allowed in respect of premises generally but less than the valuation as appearing in the Valuation Roll.

In the opinion I have formed, the Revenue made no mistake two years ago in the choice of the horse they would ride. They chose the better horse, albeit that horse proved not quite good enough to win. The argument was certainly plausible that the Commissioners should not give relief under Schedule A, No. V, Rule 4 in respect of landlord's rates seeing that they had been deducted in the assessment under Schedule D. It seems to me to be a more difficult proposition which is now advanced, viz :—that in ascertaining the amount of profits and gains under Schedule D albeit for the purposes of Schedule D, mills, etc. are expressly excluded from the ambit of reductions for the purposes of collection, no allowance is to be made for outlays on landlord's rates because these will be allowed for as a deduction for the purposes of collection under Schedule A.

The scheme of assessment as regards owner-occupied premises generally is simple and intelligible. From the annual value of the premises (the equivalent of the rent) certain deductions are allowed for the purposes of assessment. The occupying owner is assessed in the same amount as regards the premises as the landlord would be in the case of let premises. By deducting the sum so assessed from the total of the profits and gains and assessing the balance of the profits and gains to tax under Schedule D, the whole of the net profits of the year, neither more nor less, seem to be subjected to tax. This is plain and intelligible. But for some reason the legislature has determined that this rule does not fall to be applied in the case of mills, etc. The deduction in respect of premises is not limited in this case to the annual value as reduced for the purposes of collection. This being so, for reasons I have endeavoured to indicate, the deduction to be allowed in respect of premises in the case of mills, etc. must be taken to be the amount which always had been deducted until the limitation " reduced for the purpose of assess- " ment " (which is not to apply to mills, etc.) was introduced. It may be that the result is that part of the net profits and gains escapes liability for duty. However startling this may seem, we must give effect to what the legislature has provided just as was done in the case of premises situated abroad. It is not so startling, however, as it might have seemed forty years ago. For reasons which are economic rather than fiscal, the legislature has shown anxiety to discriminate in favour of industry as regards both national and local burdens.

Lord Blackburn.—Although the question raised in this case was not expressly before us in the case which we decided two years ago, I do not think that consistently with the opinions expressed in that case we can sustain the present appeal. As I understand the case,

(Lord Blackburn.)

the Revenue do not maintain that the deduction made by the Respondents for landlord's rates in their return under Schedule D is an illegitimate deduction in order to ascertain the value of that portion of their total income assessable to tax under Schedule D. But the Revenue do maintain that since a similar deduction has already been made in ascertaining the value of that part of the Respondents' income assessable under Schedule A, the result is that on the taxation of the whole income of the Respondents they get credit for the same deduction twice over and in consequence are under-assessed to Income Tax. If that is so, it arises in my opinion from the manner in which the Act directs that the different portions of their income shall be separately assessed, and I do not think that we are entitled to go behind these directions and to increase the Respondents' assessment, although it may appear equitable that we should do so. The remedy lies with the legislature, and I think the Commissioners were right and that the question in the Case must be answered in the affirmative.

Lord Morison.—The Company here are the owners and occupiers of lands and heritages in which they carry on their business. Their premises are mills and factories within the meaning of Sub-section 2 of Rule 5 applicable to Cases I and II of Schedule D of the Statute. They are chargeable to Income Tax in accordance with the provisions of Schedules A and D. The amount of the owner's rates on their premises for the year of assessment, after allowance of all the statutory benefits conferred on a Scottish mill owner, was £1,752. The Commissioners of Inland Revenue gave the Company an abatement of this amount from their assessment under Schedule A. The Company maintain, however, that in their Schedule D assessment they are entitled to a second or additional deduction of the amount of their rates viz. the said £1,752.

The precise form in which the Company's balance sheet for Income Tax purposes is stated is immaterial, provided that it is clear, as in fact it is. It is crucial, however, to state accurately the question of law which this case raises. It is put to us thus "whether the Company is entitled to deduct the said sum of £1,752 "in arriving at the balance of the profits and gains of its trade". The said sum of £1,752 is the amount of the owner's rates which the assessment allowed as a deduction under Schedule A, but which was disallowed as an additional deduction under Schedule D. This case raises, therefore, an important general question, viz. whether a Scottish mill owner, who carries on his business in his own premises is entitled to a double deduction of his owner's rates in arriving at the taxable profits of his trade for the purposes of assessment to Income Tax. It is, I think, clear that the sums paid as owner's rates are disbursements made for the purposes of the business and that their amount is a legitimate deduction in arriving at the amount

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of the assessable profits and gains. But there is no Rule in the Statute which expressly provides that the owners of a mill or factory are entitled to deduct the amount of the owner's rates twice over in bringing out the profit assessable to Income Tax under the Statute. The argument was that this double deduction was necessarily implied on the sound construction of Rules 3 and 5 applicable to Cases I and II of Schedule D.

It is to be observed that, as Lord Macnaghten pointed out in the case of the *London County Council* (1), [1901] A.C. at p.35, Income Tax "is one tax, not a collection of taxes essentially distinct. "There is no difference in kind between the duties of Income Tax "assessed under Schedule D and those assessed under Schedule A "or any of the other Schedules of charge".

The first question which arises is—Upon what income is the Tax under Schedule D charged? The Statute directs, in imperative language, that the tax shall be charged in respect of "the annual "profits or gains . . . . in each case for every twenty shillings of "the annual amount of the profits or gains". "The tax . . . . "shall be computed on the full amount of the balance of the profits "or gains". (Cases I and II).

It is, of course, absurd to say that any tax-payer, who deducts from his profits the amount of his rates twice over, is being charged Income Tax on the full amount of his profits. In my opinion, the principle of the tax is of universal application viz. that it is the full amount of the statutory income which is chargeable to duty, and that, in every case, a double deduction of the same item of expense is necessarily prohibited, even in the case where the assessable income is charged under the two Schedules A and D. It is true that a trader's Income Tax assessment must be made up in accordance with the rules applicable to the Schedules. I think it is equally plain that the rules must be construed so as to give effect to the principle of the tax, viz. that it is a tax upon the full amount of the business profits and not a tax upon a balance of profits brought out after a double deduction of an item of expenditure. Although the point was not argued to us, my impression is that this result also follows from an application of Section 208 of the statute of 1918, which corresponds with Section 188 of the statute of 1842. It was not suggested in the argument that any other taxpayer who carries on his business in his own premises was entitled to deduct the amount of the proprietor's rates twice over before arriving at the taxable profits or gains under Schedules A and D. It is necessary, therefore, to examine the rules closely to see whether the mill or factory owner is placed in this exceptional position. Before referring to the Rules of Schedule D, I think it is necessary to point out that the Schedule A

(1) Attorney-General *v.* London County Council, 4 T.C. 265 at p. 293.

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tax is not a tax on property in land. It is a tax upon the occupier's income—that is to say, upon the annual value of his lands and heritages. The duty under Schedule A is, in the same sense, a charge on profits and gains as Income Tax is in the case of the other Schedules of charge under the Statute. It is quite true that under the effect of the proviso to Rule 5 of Cases I and II of Schedule D, the Company's right to deduction is not limited to the amount of the assessment of the premises for the purpose of Schedule A tax as reduced for the purpose of collection. They may be entitled to deduct—speaking broadly—the actual cost of their trading premises. And so the amount of the Company's rates, viz. £1,752 will form a lawful deduction from the profits and gains accruing to them as the owners and occupiers of their factory. But it does not follow that the Company are entitled to deduct this sum a second time in ascertaining their assessable income. In many and indeed most cases Rule 3 is a warrant for the deducting of rates before assessable profit is struck. I think, however, it cannot warrant the double deduction which is claimed here.

The Rule says—" In computing the amount of the profits..... " to be charged, no sum shall be deducted in respect of—(*a*) any " disbursements.....not being money wholly and exclusively laid " out or expended for the purposes of the trade ".

After the owner's rates had been deducted by the Company from the profits and gains arising to it from the occupation of their mill, they cannot be said to have expended any other or additional sum on this head. They did not expend any additional sum and neither this Rule nor any other Rule is a warrant for a second deduction of £1,752. It is true that the Company's Income Tax is assessed under the two Schedules. But it is the full amount of the profits and gains of the whole business which, in my opinion, is assessable as for one tax.

It humbly appears to me that the fallacy in the Company's argument consists in reviving the exploded doctrine that the tax under Schedule A is a tax on property in land and is totally distinct from Income Tax under Schedule D. It was this notion which underlay the judgment of the Court of Appeal in the case of the *London County Council* (1), [1899] 2 Q.B. 226, which was reversed in the House of Lords. I humbly think that assessments under Schedule A and Schedule D are simply variants of one tax—a tax upon income. They are not separate taxes. The operation and effect of the Rules applicable to each Schedule must be considered together in ascertaining the assessable income of a mill owner who carries on his business in his own premises. The Company's liability to Income Tax must be dealt with under the Rules as a liability to one tax and not to two separate taxes. I am quite unable to read

(1) 4 T.C. 265.

(Lord Morison.)

the Rules of the Statute otherwise than as a means for ascertaining "the full amount" of the Company's "profit and gains", and as an instrument for assessing Income Tax on the Company on "the full "amount" of their income and not on that portion of it which remains after a double deduction of owner's rates has been made. The Special Commissioners have based their judgment in favour of the double deduction, not on any rule in the Statute, but solely on the previous decision of this Court. I do not think, as a comparison of the question of law put to the Court will show, that the judgment in that case rules the question of law put to us in this case. It is true that there are opinions expressed by the learned judges to the effect that tax under Schedule A is not properly a tax on profits and gains but is a tax upon property in land. A similar view was expressed and developed in the cases of *Wemyss* (1) and *Lady Miller of Manderston* (2). For reasons, which I endeavoured to explain in the latter case, it humbly appears to me that tax under Schedule A is a tax on the statutory income of the occupier.

If I had been able to take the view that the assessment of tax under Schedule A must be kept wholly apart from the tax under Schedule D, then I should have agreed with the Commissioners' finding. I respectfully think that the contrary was decided in the case of the *London County Council*.(3) I refer to the following passage in Lord Macnaghten's speech, which was concurred in by Lords Davey, Brampton, Robertson and Lindley, viz.,(3) ".In the Divisional "Court the argument on behalf of the Crown as reported was this :— "'The tax under Schedule A is a tax on property and is totally "'distinct from Income Tax under Schedule D'. It appears from "the shorthand notes that that argument was adopted by the Court "without any qualification. Indeed, the presiding Judge seems to "have held that 'Schedule A' was 'not part of the Income Tax Act'. "The passage is omitted in the regular reports, though it is really "the key to the judgment. In the Court of Appeal the argument "was apparently not put quite so high. But there is this obser- "vation in the leading judgment :—'The tax under Schedule D is a "'tax upon 'gains and profits', an entirely different tax from the tax "'under Schedule A'. The other members of the Court agreed. "With all deference, I do not think that that is a sound view of the "Income Tax Acts". The result of the judgment of the House was to disentitle the Crown's claim to a double tax. Its reasoning, in my opinion, equally disables the subject from claiming a double deduction of the same item of expense.

It humbly appears to me that the Company, as proprietors of the mill and the business they conduct in it are assessable under

(1) The Commissioners of Inland Revenue *v.* Wemyss, 8 T.C. 551.
(2) Lady Miller *v.* The Commissioners of Inland Revenue, 15 T.C. 25.
(3) 4 T.C. 265 at p. 294.

(Lord Morison.)

both Schedules only in one tax. No question is raised here in regard to the deduction for repairs and I reserve my opinion on this subject. I think the Commissioners' decision must be reversed, and I respectfully dissent from your Lordships' judgment.

The Crown having appealed against this decision, the case came before the House of Lords (Viscount Hailsham, Lords Warrington of Clyffe, Atkin, Thankerton and Macmillan) on the 20th, 23rd and 24th June, 1930, when judgment was reserved. On the 13th March, 1931, judgment was given in favour of the Crown, with costs (Lord Atkin dissenting), reversing the decision of the Court below.

The Lord Advocate (Mr. C. M. Aitchison, K.C.), Mr. R. P. Hills and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. T. M. Cooper, K.C., and Mr. A. M. Williamson for the Respondents.

JUDGMENT.

Viscount Hailsham.—My Lords, this is an appeal from an Order of the First Division of the Court of Session affirming a decision of the Special Commissioners of Income Tax and allowing a deduction of £1,752 to be made by the Respondent Company in calculating their profits for the purpose of assessment under Schedule D of the Income Tax Act, 1918. The question of law stated for the opinion of the Court is whether that deduction is properly made in arriving at the balance of the profits and gains of the Respondent Company's trade. It appears from the facts as stated that the Respondent Company carries on business in Scotland, and that for the purpose of its business it owns and occupies certain mills and factories in that country. The annual value of these mills and factories is £5,9.6; and the Company pay owner's rates in respect of these premises to the amount of £1,752 annually. The right to deduct these owner's rates in the circumstances to which I shall presently allude, is the matter in dispute. The relevant Sections of the Income Tax Act are as follows:—Schedule A, No. V, Rule 4. "Where it is shown to "the satisfaction of the Commissioners of Inland Revenue that the "landlord of lands in Scotland is by law—(*a*) charged with any "public rates, taxes, or assessments which in England are by law a "charge on the occupiers of land; or (*b*) charged with any public "rates or taxes or other public burdens, the like whereof are not "chargeable on lands in England, the said Commissioners shall "cause such relief to be given in respect of tax as is just and

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" reasonable having regard to the additional burden on the landlord." Schedule D, Case I, Rules applicable to Cases I and II, Rule 1. " The tax shall be charged without any other deduction than is by " this Act allowed." Rule 3. " In computing the amount of the " profits or gains to be charged, no sum shall be deducted in respect " of . . . any disbursements or expenses, not being money wholly " and exclusively laid out or expended for the purposes of the trade ".

Both in the years ending April, 1927, and April, 1928, the Respondent Company claimed to be allowed to deduct from their assessment of £5,976 the aforesaid sum of £1,752 paid by them in respect of owner's rates in assessing their liability under Schedule A ; and the Commissioners of Inland Revenue granted the allowance. In making their return for Schedule D the Company claimed to be allowed to deduct the £5,976 as the annual value of premises used for the purposes of their trade and also the £1,752 as a disbursement of money wholly and exclusively laid out or expended for the purpose of the trade.

In the assessment under Schedule D for the year ending 5th April, 1927, the Inland Revenue authorities sought to reduce the amount allowed by way of deduction in respect of the annual value of the mills and factories by deducting the £1,752 from the £5,976. This deduction was challenged by the Company and on appeal by way of Special Case the Court of Session upheld the Company's contention (1). In assessing the profits under Schedule D for the following year, the Inland Revenue authorities accepted this decision and allowed the deduction of £5,976 as the annual value of the mills and factories ; but they refused to allow the deduction of the £1,752 owner's rates for which allowance had already been given to the Company in assessing their liability under Schedule A. The Court of Session has held that the Revenue authorities are bound to allow the deduction ; hence this appeal.

My Lords, I confess that I have found a very great difficulty in reaching a decision upon this case. My difficulty is increased by the facts, first, that the conception of owner's rates is not one which is familiar to English lawyers, and, secondly, that the argument presented for the Crown before your Lordships and, as we are informed, before the Court below, is not dealt with in any of the judgments, so that we do not have the advantage of knowing the reasons which led to its rejection by the learned judges of the Court of Session. But after careful consideration I have reached the conclusion that the deduction was not admissible and that the appeal succeeds. It is conceded for the Respondents that if their contention is correct, it follows that the same amount is being allowed as a deduction twice over, and that in the aggregate they will pay Income Tax on £1,752 less than their actual profits for the year. It is further

(1) Commissioners of Inland Revenue *v.* Scottish Central Electric Power Company, 13 T.C. 331.

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to be noted that the allowance which is granted under Rule 4 of No. V of Schedule A is plainly intended as an allowance conceded to landlords in Scotland in order to equalise their position with that of landlords in England. In the case of English landlords the Schedule A tax is assessed on the annual value, and it is expressly provided that where a landlord has agreed to pay the occupier's rates, those rates are to be deducted from the annual value of the property. Presumably in such a case the amount of the rent would reflect the result of the agreement, so that ultimately the Crown would receive tax on the full annual value of the premises. In the case where the landlord is also the occupier in England there could be no question of double allowance in respect of any part of the rates. It is an anomalous result if a Rule which is designed to produce equality between landlords in England and Scotland is so worded as to give to the Scottish owner-occupier a right to double deduction which the English owner-occupier cannot possibly obtain. But in my judgment that is not the result of the enactment.

Under Rule 4 of No. V of Schedule A the Commissioners are to cause such relief to be given as is just and reasonable having regard to the additional burden on the landlord, i.e., the burden additional to that borne by the English landlord. If, in fact, these owner's rates were really money wholly and exclusively expended for the purpose of the trade so as to be deductible under the Rules of Schedule D there could be no additional burden on the landlord. In my judgment when the Respondent Company applied for relief under Schedule A in respect of these owner's rates they were in effect representing that these rates were not money wholly and exclusively laid out or expended for the purpose of their trade, and that they were an additional burden laid upon them as landlords and in respect of which they could not get relief otherwise than by allowance under Schedule A. Having obtained the relief under Schedule A on this basis, I do not think that it is open to them now to say that the rates are a proper allowance under Schedule D.

It is said that in some cases under the Income Tax Acts there is a possibility of double deduction and the case of repairs was expressly referred to; but in the case of repairs the allowance to be given under Schedule A is an arbitrary one and the right to receive it is expressly conferred in all cases under that Schedule. No doubt the result is that the statute has given relief in the case of repairs both under Schedule A and under Schedule D though it is not calculated in the same way in each case. But in the case of these Scottish owner's rates I find no such right to double relief expressly conferred, and unless it is so conferred I do not think it can be claimed.

I do not decide that it is impossible for sums paid by way of owner's rates to come within the definition of disbursements and expenses wholly and exclusively expended for the purpose of trade; what I do decide is that it is not possible for a taxpayer to claim and

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obtain relief in respect of such rates under No. V, Rule 4 of Schedule A and afterwards to contend that they come within Rule 3 of Cases I and II of Schedule D.

In my opinion the appeal succeeds and must be allowed with costs here and below.

Lord Warrington of Clyffe.—My Lords, the Respondents are the owners of certain heritages in Scotland which fall under the description of " mills, factories or other similar premises " within the meaning of the proviso to Rule 5 (2) of the Rules applicable to Cases I and II under Schedule D of the Income Tax Act, 1918, and they occupy these heritages for the purposes of their trade or business.

They are, of course, liable to be assessed under Schedule A in respect of the annual value of these heritages and they have in fact been so assessed.

They are also liable to be assessed under Schedule D in respect of the profits and gains arising or accruing to them from the trade carried on by them as purveyors of electric power. The computation of tax under this head is, under the well-known Rule 5 (1) of the Rules, applicable to Cases I and II of Schedule D, to be made exclusive of the annual value of the heritages above mentioned, occupied as they are for the purposes of trade and separately assessed and charged under Schedule A.

By the law of Scotland, differing in this respect from the law of England, the owner of heritages is required to pay a proportion of the local rates—usually one-half. This proportion may be conveniently referred to as " owner's rates ".

Under Schedule A, No. V, Rule 4, the owner, or " landlord " as he is called, of lands in Scotland charged with owner's rates is entitled to reasonable relief in respect of this additional burden, and in practice this relief is usually allowed in respect of the total sum with which he is so charged. This practice has been followed in the present case and the Respondents in the assessments against them in respect of the heritages in question have been allowed an abatement of £1,752, the amount of the owner's rates, from £5,976, the gross annual value.

In their assessment under Schedule D, in obedience to a decision of the Court of Session in proceedings between the same parties as in the present case (1), the gross annual value of the heritages in question, including the £1,752, has been excluded for the purposes of computation under that Schedule. The profits are therefore not enhanced by that sum. The result is that the £1,752 is not included amongst the items of receipt in the account of profits and gains arising or accruing from the trade. The Respondents nevertheless claim to deduct as an item on the disbursement side of the account the same

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£1,752 with the result that if the claim is justified they would obtain a double deduction from taxable income in respect of that sum. That this would be the result is not disputed.

The Commissioners upheld the Respondents' claim and their decision has been affirmed by the First Division of the Court of Session (Lord Morison dissenting). The Crown appeals.

The first point raised by the Crown—a decision on which in their favour renders unnecessary a decision on the question as to double deduction—is that the deduction of the item of expenditure claimed by the Respondents and allowed by the Commissioners and the Court of Session is prohibited by Rule 3 (*a*) of the Rules applicable to Cases I and II under Schedule D as not being " money wholly and " exclusively laid out or expended for the purposes of the trade ". Curiously enough, although this point was strenuously argued by Counsel for the Crown, it is not alluded to by the majority of the learned Lords of the Court of Session. Lord Morison did refer to it but only to say that he thought it " clear that the sums paid as " owner's rates are disbursements made for the purposes of the " business "(1) and proceeds to decide in favour of the Crown on the other point without giving any reasons for his opinion on the point in question. With all respect to the learned judge the question is not whether the disbursement is made for the purposes of the business but whether it is money wholly and exclusively laid out or expended for such purposes.

It is, I think, clear that not every sum expended by an owner of land occupied by him for the purposes of his trade can be regarded as wholly and exclusively laid out for such purposes—see *Dow* v. *Merchiston Castle School*(2), 1921 S.C. 853, and the judgment of Lord Dundas in *Small* v. *The Inland Revenue*(3), 1920 S.C. 758 at pages 762/3; see also *Strong & Co. Ltd.* v. *Woodifield*(4), [1906] A.C. 448. Moreover, the recent decision in this House in *Fry* v. *Salisbury House Estate, Ltd.* (5), 46 T.L.R. 336, throws considerable light on the question. In that case receipts consisting of rents received by a company, owner of a large building of flats, were excluded from the computation of profits and gains of a business carried on in connection with the same premises on the ground that they were received by the company in their capacity as landowners and not as traders. I see no reason why the same principle should not apply to expenditure.

In the Income Tax Act itself the owner's rates are described as an " additional burden on the landlord " (see Schedule A, No. V, Rule 4) and are therefore dealt with under Schedule A and an abatement allowed accordingly. In my opinion the owner's rates are paid by the landlord as owner of the land and the fact that he also occupies

(1) See page 772 *ante*.
(2) 8 T.C. 149. (3) 12 T.C. 351. (4) 5 T.C. 215. (5) 15 T.C. 266.

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the land for the purposes of trade is immaterial and does not of itself render the expenditure one that is wholly and exclusively made for the purposes of the trade.

I think, therefore, on this point the Crown are right and, if so, the appeal succeeds without it being necessary to express an opinion on the point as to double deduction. I will only say that having read the reasons given by the several learned judges in the Court of Session I prefer those of Lord Morison. There would, if the Respondents' claim be admitted, be a double deduction or allowance of the same sum in ascertaining what it is now settled is one tax only, though computed in different ways, in respect of different items of property, and I can see nothing in the provisions of the Act, express or implied, which authorises such double deduction or allowance. I think the appeal should be allowed and the decisions of the Commissioners and the Court of Session reversed with costs here and below.

Lord Atkin.—My Lords, the Respondents are owners of certain mills and factories which they occupy for the purposes of their trade as an Electric Power Company. The question arises in an Income Tax case in relation to "owner's rates", i.e., the proportion of rates which according to the law of Scotland would fall to be paid by owners as such, whether occupiers or not. The Respondents have deducted the whole of the rates, occupier's and owner's, in computing their profits for assessment under Schedule D of the Income Tax Act. The Crown contests the deduction of the owner's rates. A former case between the parties raised a similar point in a different form (1). In that case the dispute also arose under assessments under Schedule D for the years 1923, 1924 and 1925. The Respondents had deducted the total amount of the assessment of the premises in question under Schedule A. They had also as in the present case deducted as expenses the amount of the owner's rates. The Commissioners had reduced for purposes of collection the Schedule A assessment by the amount of the owner's rates, exercising the discretion given them by Schedule A, No. V., Rule 4. They sought to have it declared that the Respondents were not entitled to deduct the whole of the Schedule A assessment but only the amount less the owner's rates already allowed. The Court of Session decided that the statute entitled them to deduct the whole of the assessment. In that case the right to deduct the owner's rates in computing the profits under Schedule D was not questioned: the only dispute was as to the amount of the deduction in respect of Schedule A. In the present case the Commissioners have again in their discretion made an allowance under Schedule A of the owner's rates: but they now challenge the deduction of those rates in the general computation of trading profits under Schedule D. Their case is put in two ways:

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(1) It is said that the deduction of owner's rates is never a proper deduction under Schedule D. It is not money wholly and exclusively laid out for the purposes of trade, and therefore is a deduction prohibited under Schedule D, Cases I and II, Rule 3 (*a*); or, which is much the same thing, it is an expense specially incident to the property in the heritages, and should be deducted, if at all, under Schedule A. (2) It is said that the deduction having been allowed for Income Tax under Schedule A cannot be allowed again under Schedule D. Income Tax is one tax on the taxpayer's full income : and double deductions are not permitted.

The first contention is far-reaching. It will obviously affect many trading concerns not in Scotland only : and as it appears to me to disturb Income Tax law and practice as established for many years, and to conflict with a series of decisions of your Lordships' House I will not apologise for dwelling on it. In the first place the question whether a deduction is money exclusively laid out for the purposes of the trade is primarily a question of fact (see [1915] A.C. at page 466, per Lord Sumner (1)). On this point no difference of opinion existed amongst the Commissioners or the learned judges of the Court of Session. The Commissioners in the Case Stated referred to the reasons given by them in the former Case Stated, and admitted the deduction. In the former case they found in paragraph (iv) of the Case (13 T.C. at page 335), " The allowance of the rates as of " the repairs is properly made in arriving at the balances of the " Company's profits and gains ". In the former case the Court had not to decide the point but both the Lord President and Lord Sands appear to have had little doubt as to the propriety of the deduction (see T.C. at pages 339 and 342). In the present case, I think there can be no doubt that the argument mainly relied on by the Crown was the argument as to double deduction. This probably accounts for the fact that the learned judges do not expressly deal with the first point. Lord Blackburn indeed treats it as conceded by the Crown. The Lord President(2), after referring to " the usual " deductions for all public rates " which had been allowed by the Commissioners in the assessments in the former case, proceeds " the assessment allows, as before, deduction of *all* public rates ", and goes on to say that if for any reason the Company is not entitled to deduct from its gross trading returns the whole of the public rates paid by it on its premises one would have expected the assessing Commissioners to have docked the deduction by so much as represents the owner's share. Lord Morison who dissents as to double deduction says(3) : " It is, I think, clear that the sums " paid as owner's rates are disbursements made for the purposes of " the business and that their amount is a legitimate deduction " in arriving at the amount of the assessable profits and gains."

(1) Usher's Wiltshire Brewery, Ltd. *v.* Bruce, 6 T.C. 399 at p. 435.
(2) See page 765 *ante*. (3) See pages 772/3 *ante*.

(Lord Atkin.)

Thus the Commissioners and the learned judges are unanimous in their conclusion that these deductions are properly made in arriving at the profits or gains arising to the Respondents from their trade as an Electric Supply Company. The Crown, however, contends that as a matter of law they cannot be made: and this contention your Lordships have to decide. The detailed facts are not fully set out in the Case; but as narrated to the House by Counsel they were not disputed. It appears that the site on which the premises are erected was purchased by the Company for the purpose of erecting thereon the buildings in question: and these buildings consist of power-house and machinery sheds necessary for the Respondents' business and used solely for that purpose. It will be useful to refer to the findings in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*(1), [1915] A.C. at page 435 upon which this House set aside the Commissioners' decision to disallow the deduction there claimed. "The said premises have been acquired by the appellants and "are held by them solely in the course of and for the purpose of "their said business and as a necessary incident to the more "profitably carrying on of their said business. The possession "and employment of the said premises as aforesaid are necessary "to enable them to earn the profits upon which they pay income tax, "and without the said premises and their use as aforesaid the "appellants' profits if there were any at all would be less in amount." The premises in that case were tied houses owned by brewers. I will refer presently to the deductions there allowed: for the present I content myself with saying that it could not be disputed that every word of that finding would apply to the present case: and that the finding of fact of the Commissioners in this case must be taken to be equivalent. It is, however, contended that as the expenses in question fall upon the Respondents because they are owners of the premises, and as some similar expenses (not necessarily the same) would fall upon them though the premises were occupied by other persons not for the business of the Respondents, they cannot be taken into account in computing the profits under Schedule D. The argument seems to be (*a*) they are not expenses of the business; (*b*) if they are they are incurred in relation to so much of the income of the Respondents as is derived from the property in the premises. This income is separately assessed under Schedule A and the expenses in question may be taken into account under Schedule A: and therefore cannot be exclusively expended for the purpose of the business. My Lords, as I have stated it, one cannot avoid observing the *non sequitur*. Expenditure on the premises on which business is carried on is, and must be in ordinary business circumstances, business expenditure, which, if annual, has to be met before profits can be ascertained. Why is the annual value allowed to be deducted in computing the

(1) 6 T.C. at p. 401.

(Lord Atkin.)

profits ? Not to avoid double taxation but because the expense of providing the business premises is an outgoing of the business to be taken out of the gross receipts, and is imputed as an expense even if the trader owns the premises and does not year by year pay an annual rent. This was established in *Russell* v. *The Town and County Bank*(1), 13 App. Cas. 418, in 1888. There the Respondent Bank owned branch premises upon which they paid the Schedule A valuation. The premises were used in part as a dwelling-house for the respective branch managers. The Bank deducted the whole of the Schedule A valuation. The Crown resisted the deduction of the whole relying on the Rule which prohibited a deduction for the value of any dwelling-house except such part as is used for the purposes of the trade. This House decided against the Crown. Lord Herschell says at page 425(2): "Now it is not disputed that "the annual value of premises exclusively used for business purposes "is properly to be deducted in arriving at the balance of profits "and gains. I am, of course, speaking, for the moment, of premises "which are not used in any way as a place of dwelling, but are "exclusively business premises. But there may be a question where "the right to make that deduction is to be found. I am myself "disposed to think that it is allowed because it is an essential "element to be taken into account in ascertaining the amount of the "balance of profits. If not it can only be included by a very broad "extension of the terms actually used, as being a disbursement or "expense which is money wholly and exclusively laid out or "expended for the purposes of the trade." It will be noticed that in this case the Bank owned the premises which of course they might have let for other purposes, and paid Schedule A valuation upon them ; and no suggestion is made as to the exemption being due to the desire to avoid double taxation. Lord Herschell's reasoning is accepted and confirmed by both Lord Fitzgerald and Lord Macnaghten, who sat with him. I confess I find it difficult to see why, if the annual expense incurred by an owner-trader in providing the trade premises is allowed as a trade expense, the incidental expenses relating to those premises should be excluded, unless by express provision of the statute. The decision of the House that the provision of the trade premises is necessarily and exclusively a trade expense to be allowed in the computation of the profits was followed by the Court of Appeal affirming a decision of my own in *Stevens* v. *E. Boustead & Co.*(3), [1918] 1 K.B. 382, where there could be no question of double Income Tax inasmuch as the premises were situate at Singapore and Penang and were not assessable under Schedule A. The next case I would refer to is *Smith* v. *The Lion Brewery Co., Ltd.*(4), in [1911] A.C. 150. In that case the Brewery Company owned a number of tied houses ; and in accordance with

(1) 2 T.C. 321. (2) *Ibid.* at pp. 327/8. (3) 7 T.C. 107. (4) 5 T.C. 568.

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the provisions of the Licensing Act, 1904, Section 3, the tenants had made deductions from the rent of the proportion of the compensation levy as fixed by the Second Schedule. The Company in computing their profits under Schedule D had deducted these compensation charges by which their rents had been diminished. The Court of Appeal decided in favour of the deduction, reversing the decision of Mr. Justice Channell, who had held that the amount was not wholly and exclusively laid out for the purpose of the trade. The House was equally divided, Lord Halsbury and Lord Atkinson being in favour of the deduction, Lord Loreburn and Lord Shaw being against it. It is unnecessary to remind your Lordships that the decision *pro negante* so given is authoritative and binds your Lordships. For this reason it was accepted and followed by Lord Loreburn himself in a later case to which I shall refer. It will be observed that the deduction by the tenant is made whether the landlord is trading or not. It is only where he is a trader that there, as here, the computation under Schedule D comes into question. In other words, the deduction is made from the annual profits of the owner as owner. Lord Atkinson, at page 160, says(1): "Again, it is urged that the "landlord pays his contribution as landlord and because of his "proprietary interest in the premises, and not as trader, since he "would be equally liable to it whether he traded or not. That, no "doubt, is so; but in the present case the company have become "landlords, and thus become liable to pay the charge, for the "purpose solely and exclusively of setting up the tied-house system "of trading. If the company took under lease a plot of land to "enlarge their brewery or took similarly premises in which to "establish a depot to sell their beer through an agent, the same "criticism might be applied with equal force to the payment of the "rent reserved by the lease. They would pay it as lessees, not as "brewers. They would pay it whether they continued to brew or "not. Yet under the provisions of the very rule relied upon in this "case, they would be entitled to deduct the rent from the profits "earned, and that, too, utterly irrespective of whether the receiver "of the rent used it to pay for his support or for his pleasure, or "even to set up a rival brewery." Lord Atkinson's reasoning is expressly approved by Lord Halsbury at page 156(2). It is important, I think, to notice that the very contention which Lord Atkinson is combating is adopted by Lord Loreburn at page 155(3), where he says it is only in the character of owners of a house that the brewery company can be called upon to pay this levy at all. In the last sentence of the paragraph he says, "still less, in my opinion, "can you claim to take credit by way of deduction, from an assess-"ment upon a trade, for moneys paid in respect of ownership of "landed property which is assessable under a different schedule

(1) 5 T.C. at pp. 594/5. (2) *Ibid.* at p. 591. (3) *Ibid.* at p. 590.

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" altogether." Great as is the value to be given to any opinion of Lord Loreburn's, it seems plain that his judgment so expressed must be taken as over-ruled by the members of the House whose judgment prevailed. If this be so, can there be any difference in principle between a statutory burden placed upon a landlord *qua* landlord because the tenant carries on a particular trade, and a statutory burden placed upon the landlord *qua* landlord because the premises are occupied and public services rendered to them which have to be paid by rates ? I can see none. If the landlord has acquired the premises exclusively for the purposes of his own trade and is using them accordingly this decision seems to me authoritative that the statutory burden imposed upon him is a trade expense.

The next case is *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*(1), [1915] A.C. 433. The Appellants, the Brewery Company, acquired and owned licensed houses which were let to tied tenants. The tenants under the leases were under covenant to repair and to pay rates : the Company in fact did all repairs, and in some cases paid the rates. It was found that such payments were a matter of commercial expediency and necessary to avoid loss of tenants and consequent transfers. The Company also paid fire insurance premiums and licence insurance premiums. In consideration of the tie, the tenants paid less rent to the Company than the true annual value, and in the case of houses which the Company held on lease less than the rent paid by the Company. The Company in their computation of profits deducted the difference between Schedule A valuation and rents received : or, in the case of their leasehold houses, between rents they paid and rents they received : they also deducted the payments for repairs, for rates and for fire and licence insurances. All these were disallowed by the Court of Appeal but were allowed by this House. My Lords, if the judgments delivered in this House are carefully considered it will appear that they conclude this case. Lord Loreburn(2), accepting the principle laid down in the *Lion Brewery* case in the judgments that prevailed, states that there the compensation levy " was held to be a proper debit in estimating " the balance of profits of the brewery business, because it was paid " to keep going another business the success of which was essential " to their own. That was the principle of the decision, and not the " narrow point that the compensation was payable by statute. " Whether the necessity to pay arises by statute or from business " considerations seems to me immaterial, in view of that decision." In the present case, owner's rates are legally payable ; in the *Wiltshire Brewery* case the expenses were payable under commercial necessity. The last sentence of Lord Loreburn seems to indicate that there is no difference on that score. Lord Atkinson, at page 448, states the principle laid down in the *Lion Brewery* case(3) : " Stated

(1) 6 T.C. 399. (2) *Ibid.* at p. 419. (3) *Ibid.* at p. 422.

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" broadly, I think that doctrine amounts to this, that where a trader " bona fide creates in himself, or acquires a particular estate or " interest in premises, wholly and exclusively for the purpose of " using that interest to secure a better market for the commodities " which in his trade he vends " applying to the present case I would substitute to secure a site for the manufacture of the commodities, etc.—" the money devoted by him to discharge a liability imposed " by statute on that estate or interest, or upon him as the owner " of it, should be taken to have been expended by him wholly and " exclusively for the purposes of this trade." My Lords, that passage might well have been delivered by the learned Lord in a judgment dismissing the present appeal. I am unable to see how the present point could be ruled in favour of the Appellants without expressly overruling the law as there laid down. Lord Sumner at page 469 says(1) : " Next as to the rent. A trader who utilises, for " the purposes of his trade, something belonging to him, be it chattel " or real property, which he could otherwise let for money, seems to " me to put himself to an expense for the purposes of his trade. " Equally he does so if he hires or rents for that purpose property " belonging to another. The amount of his expense is prima facie " what he could have got for it by letting it in the one case, and " what he pays for it when hiring it in the other. Where he gets " something back for it, while employing it in his trade, by receiving " rent or hire for it in connection with that trade, the true amount " of his expense can only be arrived at by giving credit for such " receipt. In principle, therefore, I think that in the present case " rent forgone, either by letting houses, which the brewers own to " tied tenants at a low rent instead of to free tenants at a full rack " rent in the open market, or by letting houses in the same way, " which they hire and then re-let at a loss, is money expended " within the first rule applying to both of the first two cases of " Sched. D, and that upon the findings of the special case, which " are conclusive, it is ' wholly and exclusively expended for the " ' purposes of such trade.' " (The findings have already been set out in the earlier part of the present judgment. There is no express finding of " wholly and exclusively expended " ; on the contrary the Commissioners rejected the deductions. The noble Lord's view of the law is therefore the weightier.) " It is said that such expendi- " ture is not ' wholly and exclusively expended.' In so far as any " questions of law arise here—and it is not clear that there are any— " I think that the decision in *Smith* v. *Lion Brewery Co.* disposes of " them. Where the whole and exclusive purpose of the expenditure " is the purpose of the expender's trade, and the object which the " expenditure serves is the same, the mere fact that to some extent " the expenditure enures to a third party's benefit, say that of the " publican, or that the brewer incidentally obtains some advantage,

(1) 6 T.C. at p. 437.

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" say in his character of landlord, cannot in law defeat the effect of " the finding as to the whole and exclusive purpose." Lord Parmoor, at page 473, says(1) : " In the present case the Commissioners have " found that the possession and employment of the tied houses are " necessary to enable the appellants to earn the profits on which they " pay income tax. I think it follows that expenditure reasonably " incurred on or in connection with such houses is an expenditure " incidental to the trade and necessary to earn the profits taxed, and " would be set against the receipts of the trade in an ordinary " commercial balance sheet. No auditor could properly pass a " balance sheet unless such a deduction had been made." He decides that all the deductions were rightly made.

My Lords, the result of the cases I have cited is that the owner-trader who has acquired premises for the purposes of his trade has been allowed in computing the profits of his trade to deduct the annual value of the premises, rent paid by him for the premises, a statutory deduction from rent due to him made by a tenant to whom he has let for the purposes of his trade, repairs to the premises whether occupied by himself or such a tenant, rates on the premises occupied by such tenant and paid by the owner as a commercial necessity, and finally fire insurance premiums. The question is not whether the expenses would equally have fallen upon the owner if he had not acquired or used them for the purposes of his trade. This is made clear by the passages from Lord Atkinson and Lord Sumner cited above and from the allowance of rent, repairs and fire insurance. The question is whether the trader has acquired the premises for the purposes of his business, and whether the expenses have been incurred for that purpose. I find it impossible to distinguish the share of owner's rates in the present case from the expenses allowed in the cases cited. I am in complete agreement with Lord Morison's expressed view that the amount is a legitimate deduction : but whether I agree with it or not is irrelevant, for in my judgment the matter is concluded by the authority of the cases cited. Reliance was placed on the decision of *Dow* v. *Merchiston Castle School*(2), 1921 S.C. 853. I hesitate to express a definite opinion on a matter of Scots law such as a duplicand. I should have thought that the payment in question was of the nature of a capital payment, and quite unlike an annual expense. If, however, it can be made analogous to such an annual expense as rent, the decision, with respect, is inconsistent with the principles stated in the *Usher's Wiltshire Brewery* case and cannot be followed.

The remaining contention is that which seems to have been principally relied on in the Court of Session on which the judges were not unanimous. It is said that as the Respondents have had the benefit of an allowance for owner's rates in the computation of

(1) 6 T.C. at p. 440. (2) 8 T.C. 149.

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the amount collected under Schedule A, the deduction cannot again be made under Schedule D. It will be observed that for the purpose of testing this contention it must be assumed that the deduction would properly be made in computing the profits under Schedule D were it not that a similar deduction had been made under Schedule A. Otherwise, of course, the argument is merely a restatement of that already discussed. It is said that Income Tax is one tax on the full profits and gains of the taxpayer, and that if a double deduction of a particular expense is allowed the taxpayer does not pay on his full profits. My Lords, it has to be admitted that in the events that have happened the taxpayer in this case has been allowed to deduct the owner's rates twice over in computing Income Tax under the two Schedules, and in that respect has been held liable to pay tax on less than his full profits and gains as they might have been computed in different circumstances. The only question is whether the deduction under Schedule D is admissible under the Act. I venture to think with respect that the deduction under Schedule D is properly made : the fact that it is a double deduction is due to the voluntary act of the Revenue Authorities in allowing it by their discretion under Schedule A and whether voluntary or not the allowance under Schedule A has no bearing upon the computation of profits under Schedule D. It appears to me that this contention is disposed of by the *Usher's Wiltshire Brewery* case, but before I discuss the bearing of that case it may be useful to say a few words on the general principles applicable.

Income Tax it is true is one tax, but it is nowhere enforced upon one income regarded as a whole. On the contrary, the ruling words of the Income Tax Act are to be found in Section 1, which provides : " Where any Act enacts that income tax shall be charged for any " year at any rate, the tax at that rate shall be charged for that year " in respect of all property, profits, or gains respectively described " or comprised in the schedules marked A, B, C, D, and E, contained " in the First Schedule to this Act and in accordance with the Rules " respectively applicable to those Schedules." The income chargeable is to be ascertained in accordance with the Rules. The result is a conventional sum approximating no doubt to the ordinary conception of income : but varying under the Rules to the advantage or disadvantage of the taxpayer. The recent decision of this House in *Fry* v. *Salisbury House Estate Ltd.*(1) called attention to this feature of the Income Tax Act, and decided that the respective kinds of income dealt with by the Schedules would only be assessed under the appropriate Schedules by the appropriate assessing authorities. Income tax cannot be levied twice on the same income. This is well established and is a principle deducible from the nature of the Act, and from the express provisions of Schedule D in its

(1) 15 T.C. 266.

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residual Case, Case VI. But there is in no part of the Act any provision that the conventional income accurately assessed under one Schedule in accordance with the Rules is to be increased because other conventional income correctly assessed under another Schedule has been diminished by some item in the computation common to both. The fact that repairs are expressly allowed in both Schedule A which is charged on the property in hereditaments, and in Schedule D which is charged on the annual profits arising from any trade, seems to me in itself to negative any implication of a provision against double deductions if any such question of construction arose. But in a taxing Act I venture to think that it would be contrary to all principle to seek for an implication against a taxpayer. The emphasis laid on the proposition that Income Tax is one tax in *L.C.C.* v. *Attorney-General*(1) [1901] A.C. 26, seems with great respect to the opinion of Lord Morison to avail the Crown little in the present case. There the London County Council, who deducted Income Tax from the dividends they paid on their consolidated stock, had the right to retain the tax so deducted if the dividends were paid out of profits or gains brought into charge. The Crown said that meant brought into charge under Schedule D. The London County Council said brought into charge under the Income Tax Act, whether Schedule A or D. Part of the dividend was in fact paid out of rents and profits assessed under Schedule A. The argument for the Crown was that there were five separate taxes under the several Schedules, and that as the deduction from dividend was made under the particular tax D, so the retention could only be justified if made from profits charged under that tax. The House of Lords said that there were not five taxes but one tax; and that "brought into "charge" meant brought into charge by the one tax under any of its Schedules. I cannot think that the "one tax" decision helps to elucidate the present problem.

If, therefore, Schedule A in computing the annual charge on hereditaments provides that the annual value brought into charge may be diminished by the amount of owner's rates, that fact, with all respect, has no bearing upon the provisions of Schedule D which computes business profits more or less on business principles, and *ex hypothesi* allows the deduction of owner's rates as a business expense. But in expressing this opinion I venture to think that I am merely following the decision in the *Usher's Wiltshire Brewery* case, which even if I differed from it binds me. In that case one of the deductions claimed was for repairs of the tied houses owned by the Appellant Company and occupied by the tied tenants. The contention for the Crown was that the deduction for repairs was by Schedule D, Cases I and II, Rule 3, limited to premises occupied by the person assessed and those premises were not occupied by the

(1) 4 T.C. 265.

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Brewery Company, and that as the owners had received one-sixth deduction for repairs under Schedule A they were getting a double deduction. It will be found that Lord Loreburn(1) (page 445), Lord Atkinson(2) (pages 453 to 456), Lord Parmoor(3) (page 475) took the view that the repairs were not covered by the Rule; but nevertheless they allowed them on the general principles I have mentioned in the first part of this judgment. This is important, as it indicates that the double deduction in part allowed was not based upon the express terms of the Rules. Lord Atkinson(4) at page 454 deals thus with the question of double deduction. After stating the contention that to allow the landlord to deduct the expenditure on repairs from the receipts of the trade would in reality amount to enabling him to withdraw from liability to the tax the sum twice over, at least to the amount of one-sixth of the assessment, and that the statute was obviously intended to limit the landlord's relief from taxation in respect of repairs to the fractional reduction of the assessment, he proceeds: "I own I am entirely unconvinced by "this reasoning. I think the plain object of the statute was to "limit the assessment" (i.e. under Schedule A) "to the benefit "enjoyed. . . . I am, however, quite unable to see that there is any "necessary connection between assessments under Sched. A and "those under Sched. D in this regard, or to discover upon what "principle, if an owner is relieved from taxation under Sched. A "which would be excessive or unjust the balance of his profits and "gains is for the purpose of Sched. D to be inflated to a sum it never, "in fact, reached, and he is to be assessed on profits he never, in "fact, made." Lord Parker at page 462 says(5): "The Attorney-"General argued that inasmuch as there is only one income tax "under whatever Schedule it be assessed, and inasmuch as a deduction "for repairs is allowed under Sched. A, no similar deduction ought "to be allowed under Sched. D, for if it were there would be a "double deduction for the same thing. I cannot accept this "argument. The fact that the owner of land receives a partial "exemption from the tax which would otherwise be payable under "Sched. A can have, in my opinion, no possible relevance in "ascertaining what as a matter of fact is the balance of his profits "and gains for the purposes of Sched. D." Lord Sumner at pages "470 and 471 says(6): "My Lords, the respondent's argument, based "on the fact that rent, as rent, is chargeable to income tax under "Sched. A, and that repairs, as such, form the subject of a con-"ventional deduction under that Schedule, is one which I find it "difficult to answer only because I find it difficult to understand. "As an argument 'the scheme of the Act' is all very well, but I "think it is pressed too far. The notion seems to be that if a trader "chances to be a landlord his liabilities and his rights in connection

(1) 6 T.C. at p. 420. (2) *Ibid.* at pp. 426/8. (3) *Ibid.* at p. 441.
(4) *Ibid.* at pp. 426/7. (5) *Ibid.* at p. 432. (6) *Ibid.* at p. 438.

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" with income tax so far as his houses are concerned are to be " exclusively dealt with under Sched. A, as though Sched. D did " not exist. The effect is that having paid duty under A in respect " of the houses, he has also to pay duty under D on profits which " really he has not earned. . . . The two things, repairs for allow- " ances under A and expenses for the purposes of trade as an item in " finding out what profits there are to be taxed under D, though they " chance to be for repairs, are not *in pari materia*."

My Lords, in *Usher's* case the present contention for the Crown on double deduction was expressly argued and expressly negatived by this House. I cannot see how it is possible consistently with our duty to be bound by previous decisions to give effect to the same argument. I can quite see that the taxpayer in the present case may be said to be receiving an undue advantage. But this is entirely due to the fact that the Revenue authorities have in the exercise of this discretion allowed the deduction under Schedule A. In that Schedule this allowance is discretionary: in Schedule D it appears to be compulsory. The authorities have only to disallow it under Schedule A on the ground that the taxpayer is entitled to it under Schedule D, and any mischief is remedied. This seems to me to be a simpler and more satisfactory solution than to seek to displace well established practice and authority. For the above reasons I am of opinion that this appeal should be dismissed.

Lord Thankerton.—My Lords, this appeal relates to two assessments totalling £44,673 less £16,390 for wear and tear made upon the Respondents under Schedule D of the Income Tax Act for the year ended 5th April, 1928. These assessments were made on the basis of the Company's accounts for its trading year ended 31st December, 1926.

The Company owns and occupies for the purposes of its business lands and heritages, among which are included " mills, factories and " other similar premises " within the meaning of the proviso to Sub-section (2) of Rule 5 of Cases I and II of Schedule D of the Income Tax Act, 1918.

All the Company's lands and heritages, including the mills and factories, were assessed to Income Tax under Schedule A for the year in question and the Company received relief by way of abatement from that assessment in respect of the owner's rates paid by them by virtue of Rule 4 of No. V of Schedule A, which as is follows :— " 4.—(1) Where it is shown to the satisfaction of the Commissioners " of Inland Revenue that the landlord of lands in Scotland is by " law—(*a*) charged with any public rates, taxes, or assessments " which in England are by law a charge on the occupiers of lands ; " or (*b*) charged with any public rates or taxes or other public " burdens, the like whereof are not chargeable on lands in England, " the said Commissioners shall cause such relief to be given in respect

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" of tax as is just and reasonable having regard to the additional " burden on the landlord ; (2) Relief under this rule may be given " in accordance with such regulations as the said Commissioners may " prescribe, either by abatement from the assessment, or by repay- " ment of tax."

In the present case, the relief so given was equivalent to the amount of the owner's rates actually paid, of which the owner's rates on the Company's mills and factories amounted to £1,752.

Turning now to Schedule D—Rule 5 of Cases I and II of that Schedule (as amended by Section 36 (1) and the Fourth Schedule of the Finance Act, 1926) is as follows :—" 5.—(1) The computation of " tax shall be made exclusive of the annual value of lands, tenements, " hereditaments or heritages occupied for the purpose of the trade " or profession and separately assessed and charged under Schedule A: " . . . where any lands, tenements, hereditaments, or other premises " of whatsoever description used for the purpose of any trade, " profession, employment, or vocation, are situate outside the " United Kingdom, no deduction or set-off shall, in estimating the " amount of annual profits or gains arising or accruing from that " trade, profession, employment, or vocation, in any manner be " allowed on account or in respect of the annual value of those " premises. (2) Where, in estimating the amount of annual profits " or gains arising or accruing from any trade, profession, employment, " or vocation and chargeable to tax under this Schedule, any sum is " deducted on account of the annual value of the lands, tenements, " hereditaments and heritages used for the purpose of such trade, " profession, employment, or vocation,the sum so deducted shall not " exceed the amount of the assessment of the lands, tenements, " hereditaments or heritages for the purpose of tax under Schedule A " as reduced for the purpose of collection : Provided that this " provision shall not apply in the case of any premises being mills, " factories or other similar premises."

The Company's accounts for the trading year 1926 showed a balance of profits and gains amounting to £48,897, which was exclusive of any provision for wear and tear of machinery and plant, such provision being calculated separately, as to which no question arises. But that balance is arrived at after deduction of all expenses, including the owner's rates and cost of repair and maintenance in respect of all the lands and heritages owned and occupied by the Company, and also the amount of the annual value—in terms of Rule 5 of Cases I and II—of these lands and heritages other than the mills and factories. The annual value of the mills and factories was £5,976, and in arriving at the assessments here in question this sum was deducted from the above balance, leaving a sum of £42,921, and thereafter the sum of £1,752, being the portion of the owner's rates debited in the accounts which was referable to the mills and

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factories, was added back, and the assessment of £44,673 was thus arrived at.

The effect of adding back the sum of £1,752 was to render nugatory the debit entry of owner's rates so far as that entry related to the mills and factories, and the Respondents appealed to the Special Commissioners against the addition of this sum of £1,752 in the assessments. The appeal was successful and the Special Commissioners reduced the assessments by £1,752 on the ground that the point was ruled by the decision of the Court of Session on an appeal by the Company against the previous year's assessments under Schedule D to which I will refer later. The Appellants thereupon appealed by way of Stated Case to the Court of Session as the Court of Exchequer in Scotland, which by Interlocutor dated 13th December, 1929, affirmed the determination of the Commissioners, and the present appeal is taken against that Interlocutor.

It will be convenient at this stage to refer to the previous case(1), which is reported in 1928 S.C. 260, and which also was only concerned with the owner's rates paid by the Company in respect of its mills and factories. In the assessments under Schedule D for the year ended 5th April, 1927, the amount of the relief obtained by the Company in respect of owner's rates under Rule 4 of No. V of Schedule A was deducted from the annual value of the mills and factories and the nett amount thus arrived at was treated as the amount to be deducted in computing the tax under Schedule D in terms of Rule 5 of Cases I and II of that Schedule. No attempt was then made by the Revenue to exclude the debit item in the Company's accounts in respect of these owner's rates. The Company appealed to the Special Commissioners, who allowed the Company's claim for deduction of the whole annual value under Schedule A in computing the tax under Schedule D, and, on appeal by way of Stated Case, the First Division of the Court of Session affirmed the determination of the Special Commissioners. The Appellants accepted that decision, and in the assessments for the following year, which are here in question, the whole annual value has been deducted in terms of Rule 5 of Cases I and II of Schedule D.

The question of law stated by the Special Commissioners in the present Case is " whether the Company is entitled to deduct the said " sum of £1,752 in arriving at the balance of the profits and gains of its " trade."

It was maintained for the Crown (1) that the sum of £1,752 so expended in payment of owner's rates was expended by the Company *qua* owners of the heritable property and not *qua* trader, and was therefore not a proper debit item in the accounts of the trade, and further that it was not money wholly and exclusively laid out or expended for the purposes of the trade and was therefore prohibited

(1) Commissioners of Inland Revenue *v.* Scottish Central Electric Power Company, 13 T.C. 331.

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by Rule 3 (*a*) of Cases I and II of Schedule D and by Section 209 of the Act of 1918; and (2) alternatively that, having been allowed as a deduction in assessing the Respondents' income chargeable under Schedule A, it could not be deducted a second time in assessing another compartment of the same income under Schedule D.

It is unfortunate that the first argument of the Crown has not been dealt with in the Court below, except in so far as Lord Blackburn assumed that it was not maintained and Lord Morison, who dissented, stated(1): "It is, I think, clear that the said sums paid as owner's "rates are disbursements made for the purposes of the business "and that their amount is a legitimate deduction in arriving at the "amount of the assessable profits and gains." On the other hand, this is the only contention recorded in the Stated Case as having been made for the Crown, and in the Official Report (1930 S.C. 226, at page 228) it is recorded as the main argument for the Crown in the Court of Session.

The nature of the Income Tax and its relation to the various Schedules has on several occasions been the subject of consideration and decision in this House, and the recent decision in the case of *Fry* v. *Salisbury House Estate, Ltd.*(2), [1930] A.C. 432, affords an important exposition of this matter. In that case Lord Dunedin says at page 439 (3): "Now, the cardinal consideration in my judg- "ment is that the Income Tax is only one tax, a tax on the income "of the person whom it is sought to assess, and that the different "Schedules are the modes in which the Statute directs this to be "levied. In other words, there are not five taxes which you might "call Income Tax A, B, C, D and E, but only one tax. That tax is to "be levied on the income of the individual whom it is proposed to "assess, but then you have to consider the nature, the constituent "parts, of his income to see which Schedule you are to apply. Now, "if the income of the assessee consists in part of real property you "are, under the statute, bound to apply Schedule A. Schedule A "may, so to speak, get in touch with the assessee in different ways "according to the condition of affairs. It may touch property in "occupation which actually brings in no money return. A good "example will be found in the case decided within the last few weeks "in this House in the case of Lady Miller. There a lady enjoyed "the use of a mansion house under the provisions of the will of her "deceased husband, which was feudally vested in trustees. The "mansion house brought her in no money, but she was reckoned as "for Income Tax, in order to arrive at Super-tax, on the yearly value "of the house. In this matter it differs from all the other Schedules, "all of which only deal with actual return. When, as in the present "case, a subject is let, the rent, if it represents a fair bargain, is taken "as the measure of that part of the income of the lessor, and he

(1) See pages 772/3 *ante*. (2) 15 T.C. 266. (3) *Ibid.* at pp. 306/7.

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" suffers the tax by way of deduction by his tenant from the rent " due or as in the present case by paying it himself. The result is " that by the operation of the assessment under Schedule A, which " is made imperative by the statute, and was in fact applied here, the " income of the assessee is so far dealt with and cannot be dealt " with again. Of course that does not mean that the assessee may " not be liable in respect of other income under other Schedules."

If then the Company's heritable property, as a source of income, is to be separated from the income derived from trading carried on in the property, and to be separately dealt with under Schedule A, it equally follows, in my opinion, that a burden, which is imposed on the Company as owners of the property and for which they are liable, whether they are carrying on their trade in the property or not, is expenditure which they solely incur as owners and not as traders. While it may be said commercially that it is expenditure made for the purposes of their business, that argument is fully as applicable to the property itself. I agree with Lord President Clyde's statement in the previous case(1), 1928 S.C. at page 264: " it follows that, in the " case of a trading company which owns its own trading premises, " the tax under Schedule D must be computed apart altogether from " the profits or gains arising from the trading premises owned by it. " In other words, income of the description appropriate to Schedule " A must not be mixed up with, but on the contrary must be kept " apart from, income of the description appropriate to Schedule D; " and the only way in which the trading premises can come into the " account of the profits and gains of a trade is as a deduction from " the gross trading returns in respect of the annual cost of providing " such premises." It is true that the expression in Rule 5 (1) was then " the profits or gains arising from lands " and is now " the " annual value of lands," but this makes no difference as it is a tax on " profits and gains ", in the case of duties chargeable under Schedule A and everything coming under that Schedule—the annual value of lands capable of actual occupation as well as the earnings of railway companies and other concerns connected with land—just as much as it is the case of the other Schedules of charge (per Lord Macnaghten in *London County Council* v. *Attorney-General*, [1901] A.C. 26, at page 36)(2).

In my opinion, the present case falls within the decision of the Court of Session in the *Merchiston Castle School* case(3), 1921 S.C. 853, with which I agree. In that case the company which owned the school property and carried on the school sought unsuccessfully to deduct in its accounts of profits and gains under Schedule D the amount of a duplicand due to the superior in respect of the playing-fields. In Lord President Clyde's opinion he states (page 856)(4): " It

(1) 13 T.C. at p. 337.
(2) Attorney-General v. London County Council, 4 T.C. 265 at p. 294.
(3) Dow v. Merchiston Castle School, Ltd., 8 T.C. 149. (4) *Ibid.* at p. 153.

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" appears plain that a casualty, payable in terms of the feu-charter " by which a piece of property is held, is something which is paid " as a condition of the ownership which that title confers, and not as " an expense of carrying on business in those premises. In short, " the payment of this casualty is a payment which is made by the " company as owner of the premises, because it is a condition " imposed upon its ownership, and is not a payment incurred in " carrying on the business of a school in the premises. It is therefore " a payment which is referable to their assessability under Schedule A, " and not to their assessability under Schedule D." Lord Cullen says (page 857) (1): " The obligation for feu-duty with recurrent " duplicand is incurred to enable the feuar to be the owner of the " property irrespective of how he may use it. If he chooses to " occupy it for the purposes of his trade or business, he is entitled, " under Schedule D, to deduction of the annual value but to no " further deduction." I am unable to distinguish a statutory burden of rates imposed on the owner in respect of his ownership and which remains the same irrespective of the purpose to which he turns the property, from the burdens *in gremio* of the conventional title on which he holds the property. This is in accordance with the principles laid down in this House in *Strong & Co. Ltd.* v. *Woodifield*(2), [1906] A.C. 448. In that case Lord Davey says (page 453)(3): " It is " not enough that the disbursement is made in the course of, ... " or is connected with, the trade, or is made out of the profits of the " trade. It must be made for the purpose of earning the profits." The payment of owner's rates and of feu-duty is purely for the purposes of ownership of the property, though the ownership of the property may have been acquired by the particular taxpayer to enable him to use the premises for carrying on a trade.

The Merchiston Castle School case may be contrasted with *Smith* v. *The Lion Brewery Co. Ltd.*(4), [1911] A.C. 150, in which the Brewery Company were held entitled, in computing their profits under Schedule D, to deduct the proportion of the compensation charges under Section 3 of the Licensing Act, 1904, which, as owners of licensed premises, they had to bear by way of deduction from the rents paid by the Licence-holders. This House was equally divided in opinion and the decision of the Court of Appeal was therefore affirmed. The statutory liability for these charges only becomes exigible from owners who, either themselves or through tenants, use their premises or let them for use as licensed premises, and such charges are not deductible in assessment under Schedule A. Lord Atkinson, who agreed with the Court of Appeal, and with whose judgment Lord Halsbury agreed, says (page 159)(5): " In the " present case the respondents cannot set up the system of trading

(1) 8 T.C. at p. 154. (2) 5 T.C. 215. (3) *Ibid.* at p. 220. (4) 5 T.C. 568.
(5) *Ibid.* at p. 594.

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" through tied houses unless they first acquire these premises as " owners in fee or lessees, and, secondly, unless the houses are " licensed; but the moment these two conditions are fulfilled the " liability to pay the compensation attaches. The impost must, " therefore, necessarily be paid, in order to set up the system which " it is found vital to their trade prospects to set up. And if the " substance of the transaction be looked at, this impost differs, in " my view, but little, if at all, from the licence or tax which a man " is obliged to pay in order to carry on a particular trade or business " such as that of an auctioneer, or a pawnbroker or a publican." This case was followed in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*(1), [1915] A.C. 433, in which the expenditure in dispute was all incurred by the brewers voluntarily, though it was commercially necessary in the interests of their tied-house business. Lord Loreburn, referring to the compensation levy in the *Lion Brewery Company's* case, said (page 444)(2): " It was held to be a proper debit in " estimating the balance of profits of the brewery business, because " it was paid to keep going another business the success of which " was essential to their own. That was the principle of the decision, " and not the narrow point that the compensation was payable by " statute. Whether the necessity to pay arises by statute or from " business considerations seems to me immaterial, in view of that " decision." It seems clear to me from this passage and from the opinions of the other noble Lords in that case that they had only in view expenditure which was incurred because of the particular use to which the premises were put, and that their opinions in no way relate to expenditure which is compulsorily incurred by the owners irrespective of the use, if any, to which the premises are put. It may well be noted that the expenditure on rates referred to in that case was expenditure on occupier's rates.

Further, in my opinion, the matter is put beyond doubt by the special provision for an abatement in respect of owner's rates under Schedule A, No. V, Rule 4, of the Income Tax Act, 1918, which treats them as a burden falling on the landlord of lands in Scotland, and deals with them in arriving at the artificial standard of " profits " and gains " under Schedule A.

In the present case the Crown has confined its contention to the rates paid in respect of mills and factories, but I see no ground for this limitation, as Rule 5 of Cases I and II of Schedule D does not affect the contention. I desire to add, however, on the question of construction of that Rule, that I am not satisfied that the abatement granted under Schedule A, No. V, Rule 4, is a reduction of the tax under that Schedule " for the purpose of collection " within the meaning of Sub-section (2) of Rule 5 of Cases I and II of Schedule D, and I desire to reserve my opinion on that point.

(1) 6 T.C. 399. (2) *Ibid.* at p. 419.

(Lord Thankerton.)

Accordingly I am of opinion that the first contention of the Crown is well founded and that the expenditure on owner's rates is not a proper debit in the accounts submitted by the Company under Schedule D.

This would render it unnecessary to consider the alternative contention for the Crown, but I desire to express my concurrence in its rejection by the majority of the learned judges of the Court of Session. It must be assumed, for the purpose of this contention, that the expenditure on owner's rates is a proper debit in the accounts of the Company under Schedule D, but the Crown claims that it should be withdrawn from the accounts, as otherwise the Company will receive the benefit of a double deduction, in respect that it has also received an abatement in respect of the same owner's rates under Schedule A, No. V, Rule 4. In my opinion, even if the two deductions are strictly comparable—which is open to question—once it has to be conceded that the debit is a proper one in the accounts under Schedule D, the fact that a similar deduction is authorised by the statute under another Schedule is irrelevant.

My Lords, we are not concerned with the question of expenditure on repairs in this case, but they do not appear to fall necessarily into the same category as owner's rates, and I express no opinion as regards them. It need only be pointed out that Rule 3 (*d*) of Cases I and II of Schedule D contains a prohibition of any deduction of sums expended for repairs of premises occupied beyond the sum actually expended, and that in regard to this provision Lord Parker states in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A.C. page 433, at page 459(1) : " This is a prohibition which, in my opinion, goes to " the quantum only. It assumes that money spent in repairs or for " the other purposes mentioned would be a proper item of deduc- " tion ". There is no such provision under Schedule D affecting owner's rates.

It follows that the appeal should be sustained and that the question of law in the Stated Case should be answered in the negative.

Lord Macmillan.—My Lords, the question of law in this case is whether the Respondent Company, which carries on business in Scotland, is entitled, in arriving at the balance of its profits and gains for the year ended 5th April, 1928, to deduct for the purpose of assessment under Schedule D of the Income Tax Act, 1918, a sum of £1,752, being the amount of the owner's rates paid by it as proprietor of certain premises of the nature of " mills, factories or " other similar premises " occupied by it for the purposes of its trade.

In computing for the purposes of Schedule D the amount of the profits or gains of a trade carried on by a trader in premises which he

(1) 6 T.C. at p. 430.

(Lord Macmillan.)

occupies but does not own, the rent which he pays to his landlord is clearly a disbursement or expense " wholly and exclusively laid out " or expended for the purposes of the trade " and is consequently a legitimate debit item in the computation. So also are the local rates which he pays as occupier of the premises. The landlord on the other hand is assessed under Schedule A in respect of his property in the premises for every twenty shillings of the annual value thereof estimated in the manner prescribed by the Act which in general means the rent at which the premises are let less certain statutory deductions. No general provision is made in the case of property in England for the deduction of local rates from the landlord's assessment under Schedule A for the reason that they are there ordinarily charged upon the occupier. If, however, the English landlord is under agreement to pay or satisfy out of the rent reserved any public local rates, taxes or assessments which by law are charged upon the occupier, these are excluded from the estimation of the annual value of the property for the purpose of assessing him under Schedule A. Presumably the assumption of this burden by the landlord is reflected in the rent paid by the tenant. Provision is also made for the deduction of such charges for rates as do fall upon the landlord in certain instances. Consequently in England the whole local rates on premises occupied for trade purposes form a deduction from assessment to Income Tax either in favour of the tenant under Schedule D or in favour of the landlord under Schedule A according as they have been paid by the one or by the other.

In Scotland, on the other hand, many local rates are by law charged on both the owner and the occupier, roughly in the proportion of one-half each, though there are many variations. The system is highly complicated and is exhibited in minute detail in Appendix III to the Report of the Departmental Committee on Local Taxation in Scotland presided over by Lord Dunedin (1922 Cmd. 1674). To meet this situation, the Income Tax Act does not provide in terms that the local rates paid by the Scottish landlord shall form a deduction from his assessment under Schedule A, but has dealt with it in No. V (4) of the Rules applicable to that Schedule as follows :—" (1) Where it is shown to the satisfaction of the Com- " missioners of Inland Revenue that the landlord of lands in Scotland " is by law—(*a*) charged with any public rates, taxes, or assessments " which in England are by law a charge on the occupiers of lands ; " or (*b*) charged with any public rates or taxes or other public burdens, " the like whereof are not chargeable on lands in England, the said " Commissioners shall cause such relief to be given in respect of tax " as is just and reasonable having regard to the additional burden " on the landlord ; (2) Relief under this rule may be given in accord- " ance with such regulations as the said Commissioners may prescribe,

(Lord Macmillan.)

" either by abatement from the assessment, or by repayment of tax." The practice is understood to be that the landlord receives relief to the extent of the owner's rates paid by him, by way of deduction from his assessment. That is what has taken place in the present instance.

If then, the Respondent Company had been only the occupier of the premises in question and not also the owner, the rent and occupier's rates payable by it would have been proper deductions in the computation of its profits or gains under Schedule D while the landlord in his assessment under Schedule A, in respect of the rent received by him, would have been accorded relief by way of deduction as regards the owner's rates paid by him.

But your Lordships are concerned with the case of an owner-occupier. Now where a trader is the owner of the premises in which he conducts his trade the Act prescribes that there shall be excluded from the computation of his profits or gains for the purposes of Schedule D the annual value of such premises which are separately assessed and charged under Schedule A. His position as a trader liable to be assessed under Schedule D is clearly discriminated from his position as a landlord liable to be assessed under Schedule A. The two sources of revenue are relegated each to its appropriate schedule. In the words of the Lord President in the previous case of the *Inland Revenue* v. *Scottish Central Electric Power Company*, (1928 S.C. 260 at page 264)(1): " in the case of a trading company which owns its " own trading premises, the tax under Schedule D must be computed " apart altogether from the profits or gains arising from the trading " premises owned by it. In other words, income of the description " appropriate to Schedule A must not be mixed up with, but on the " contrary must be kept apart from, income of the description " appropriate to Schedule D ". The distinction between the various Schedules and the necessity of relegating each source of income to its appropriate Schedule with its appropriate scheme of deductions and allowances was strongly emphasised in the recent case of *Fry* v. *Salisbury House Estate, Limited*, [1930] A.C. 432. As Viscount Dunedin said at page 442(2): " when income is dealt with in the " proper Schedule the same income cannot be dealt with again under " another Schedule."

The Respondent Company being both owner and occupier of the premises in question which it occupies for the purpose of its trade is assessed as a trader under Schedule D on the balance of its profits or gains from which the annual value of these premises has been excluded or deducted and is also assessed as a landlord under Schedule A on the annual value so deducted. From the assessment under Schedule A it has received relief under the Rule above quoted to the extent of the owner's rates amounting to £1,752 paid by it.

(1) 13 T.C. at p. 337. (2) 15 T.C. 266 at pp. 308/9.

(Lord Macmillan.)

But in computing its profits or gains for the purposes of assessment under Schedule D it has deducted this same sum of £1,752, as being a disbursement or expense "wholly and exclusively laid out or ex- "pended for the purposes of the trade," under Rule 3 (*a*) of Cases I and II.

My Lords, I am satisfied that this is not permissible. The Respondent Company as owner of the premises must make up a return under Schedule A. It has duly done so and has claimed and received relief in its assessment under that Schedule in respect of the owner's rates paid by it. That relief has been accorded to it because it is a landlord and the owner's rates are by the statute treated as a burden on the Respondent Company as such landlord and not as a trader at all. When the Respondent Company addresses itself in turn to the preparation of its return under Schedule D and to the computation of its profits or gains as a trader, what right has it to deduct as a trade outlay the owner's rates in respect of which in its assessment as a landlord under Schedule A it has expressly claimed relief as a burden imposed upon it as a landlord ? No doubt if the statute expressly permitted the taxpayer to claim a deduction twice over in respect of the same expenditure the taxpayer would be entitled to this benefit. But I find nothing in the statute which compels your Lordships to sanction the claim which the Respondent Company makes here, namely, to receive relief under Schedule A in respect of the owner's rates paid by it and to deduct under Schedule D the same owner's rates as a payment made wholly and exclusively for the purposes of its trade. The statute itself indicates under which Schedule owner's rates in Scotland are to be dealt with. They are treated as a charge on property, not on trade. And this is quite reasonable. The profits of a trade do not depend upon the ownership but upon the occupation of the premises in which it is conducted. If the trader finds it convenient or desirable to be his own landlord, that circumstance does not entitle him to debit his trading account in a question with the Inland Revenue with the charges which his ownership of the premises entails. There may no doubt be cases in which the ownership of land or property is so essentially a factor in the conduct of the trade itself as to render disbursements on landlord's account appropriate deductions in computing the profits of the trade for the purpose of Schedule D. An instance is afforded by the case of *Smith* v. *Lion Brewery Company, Limited*(1), [1911] A.C. 150. In the present case there are no such findings of fact as those set out by Lord Atkinson in that case at pages 158/9.

I confess that I do not quite understand the manner in which the case has been dealt with by the learned judges of the First Division of the Court of Session. The question stated by the Special Commissioners is "whether the Company is entitled to

(1) 5 T.C. 568.

(Lord Macmillan.)

" deduct the said sum of £1,752 in arriving at the balance of the " profits and gains of its trade." The report of the argument for the Inland Revenue as appearing in 1930 S.C. at page 228, opens thus :—" The question for decision was whether a business which " owned its trading premises was entitled, in estimating its profits " assessable to income tax under Schedule D, to deduct the owner's " rates paid by it for those premises." Further passages in the reported argument show that the only question argued for the Crown was whether owner's rates were a legitimate deduction under Rule 3 (*a*) seeing that they were paid by the company not *qua* trader but *qua* landlord. Yet the learned Lord President at page 231 says(1) : " The question in this year's case has—strictly speaking— " nothing to do with the permissibility of any of the deductions " made from gross returns." Lord Blackburn at page 237 says(2) : " As I understand the case, the Revenue do not maintain that the " deduction made by the Respondents for landlord's rates in their " return under Schedule D is an illegitimate deduction in order to " ascertain the value of that portion of their total income assessable " to tax under Schedule D." And Lord Morison, who dissented, says at page 238(3) : " It is, I think, clear that the sums paid as " owner's rates are disbursements made for the purposes of the " business and that their amount is a legitimate deduction in " arriving at the amount of the assessable profits and gains." The real question stated for decision by the Special Commissioners is thus said either not to arise or not to have been argued or is disposed of without discussion. The result is that, in deciding the important question presented by the Crown for determination, your Lordships are without the advantage of the assistance of the reasoned views upon it of the learned judges of the Court of Session.

It would rather appear that the present case has been allowed to become unduly entangled with the previous and quite distinct case between the same parties two years ago (*Inland Revenue* v. *Scottish Central Electric Power Company*(4), 1928 S.C. 260). In that case the Crown did not challenge the deduction of owner's rates by the Company from its profits or gains for the purpose of its Schedule D assessment. Owner's rates were allowed to be treated by the Company as a disbursement or expense wholly and exclusively laid out or expended for the purposes of its trade. The question there was as to what could be legitimately excluded under Cases I and II, Rule 5, from the computation of the Company's trading income in respect of the annual value of certain premises of the nature of " mills, factories or other similar premises " owned by it and occupied for the purposes of its trade. The Company claimed that the " annual value " to be excluded or deducted was what may be termed the gross annual value, undiminished either by the reductions made " for the purpose of collection " under Schedule A, No. V, Rule 7,

(1) See page 765 *ante*. (2) See pages 771/2 *ante*.
(3) See pages 772/3 *ante*. (4) 13 T.C. 331.

(Lord Macmillan.)

(being the statutory allowances in respect of maintenance, repairs, insurance and management) or by the relief accorded under Schedule A, No. V, Rule 4 (being the relief received in respect of owner's rates). The Crown in view of the terms of the proviso to Schedule D, Cases I and II, Rule 5 (2), conceded that the premises being of the nature of " mills, factories or other similar premises " the Company was not required before excluding the annual value thereof from its Schedule D assessment to deduct from the annual value the reductions allowed under Schedule A, No. V, Rule 7 " for " the purpose of collection," but the deduction of the relief granted under Rule 4 in respect of owner's rates was contested by the Crown. The decision of the Court was in favour of the Company and as between the parties is now *res judicata*. But the question whether owner's rates are a proper deduction under Schedule D, Cases I and II, Rule 3 (*a*), as being money wholly and exclusively laid out or expended for the purposes of the trade, the question now submitted, was not before the Court at all. " I think it right ", said Lord Sands at page 268(1), " to point out that the question of the " propriety or of the nature of this deduction was not before us." It is obviously a question quite distinct from the question whether under Schedule D, Cases I and II, Rule 5, owner's rates should be deducted from annual value in excluding from the assessment the annual value of " mills, factories or other similar premises " occupied for the purposes of the trade, the question decided in the negative in the previous case. The present case has also been unnecessarily confused by referring to the claim of the Crown as a claim to add back the sum of £1,752 to the Company's assessment, whereas it would be more properly described as a claim to disallow the deduction of £1,752.

A consideration of the nature of owner's rates, as I have already said, leads in my opinion clearly to the conclusion that they are a landlord's charge and not a trader's charge. The owner's rates are no doubt payable by a trader who is an owner-occupier of the premises in which he conducts his trade, but: " It is not enough that the dis- " bursement is made in the course of, or arises out of, or is connected " with, the trade. . . . It must be made for the purpose of earning " the profits." (*per* Lord Davey in *Strong and Co.* v. *Woodifield*(2), [1906] A.C. 448 at page 453). The owner's rates in the present case would be payable by the Company whether it carried on any trade in the premises or not or if it chose to let them. The justification for the relief given in respect of them by Rule 4 of Schedule A, No. V, is that " the landlord of lands in Scotland is by law charged " with them. The distinction between disbursements which are attributable to the ownership of premises and those which are attributable to the trade carried on in the premises is well illustrated in *Inland Revenue* v. *Merchiston Castle School*(3), (1921 S.C.853). It was there held, to quote the headnote, that " Where land is owned and occupied for the

(1) 13 T.C. at p. 342. (2) 5 T.C. 215 at p. 220. (3) 8 T.C. 149.

(Lord Macmillan.)

" purposes of a business, duplicands payable to the superior, being " payments incidental to the ownership of the land and not expenses " of carrying on the business, cannot be deducted from the profits " of the business chargeable to income-tax under Schedule D." As Lord Cullen says at page 857(1) : " The obligation for feu-duty with " recurring duplicand is incurred to enable the feuar to be the owner " of the property irrespective of how he may use it." The obligation to pay owner's rates is similarly incidental to the ownership of the property, irrespective of how he may use it. Accordingly as a matter of general principle, and in the absence of any speciality affecting the particular trade, I am of opinion that the owner's rates payable by a trader who owns the premises in which he conducts his trade are not a permissible deduction in the computation of his profits and gains for the purpose of assessment under Schedule D whether or not the premises are of the nature of " mills, factories or other similar premises."

The attention of your Lordships was drawn to the fact that it is apparently permissible to deduct the allowance for repairs both in computing the annual value for the purposes of Schedule A and in computing the balance of profits and gains for the purposes of Schedule D in the case of a trade carried on in premises of the nature of " mills, factories or other similar premises " owned by the trader. But if this be the effect of the statute as regards the allowance for repairs I see no justification in that circumstance for the extension of the anomaly to owner's rates. Your Lordships are not called upon in the present case to decide whether the relief granted in respect of owner's rates in Scotland is a reduction of the assessment under Schedule A " for the purpose of collection ". *Prima facie* it would appear not to be so, for the language is obviously related to that of Rule 7 of Schedule A, No. V, which deals with allowances for repairs. I concur in the motion that the question stated by the Special Commissioners be answered in the negative and the appeal of the Crown allowed with costs here and below.

Questions put :

That the Interlocutor appealed from be reversed.

The Contents have it.

That the cause be remitted to the Court of Session with a direction that the question of law in the Stated Case be answered in the negative and that the Respondents do pay to the Appellants their costs here and below.

The Contents have it.

[Agents :—Solicitor of Inland Revenue, England, for Solicitor of Inland Revenue, Scotland ; Linklaters and Paines for Shepherd and Wedderburn, W.S., Edinburgh.]

(1) 8 T.C. at p. 154.