tory duties imposed upon them. I think it quite impossible to hold anything of the kind.

I have no doubt therefore that the Sheriff-Substitute's decision must be altered, and that the judgment proposed by your Lordship is right.

LORD ADAM was absent.

The Court recalled the findings of the Sheriff-Substitute and answered the third and fourth questions in the negative.

Counsel for the Claimant and Respondent—Orr—W. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Appellants—The Lord Advocate (Dickson, K.C.) — Constable. Agents—Simpson & Marwick, W.S.

Tuesday, November 22.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE v. CADWALADER.

Revenue — Income-Tax — Liability to be Assessed for Income-Tax — Residing in United Kingdom—Income-Tax Act 1853 (16 *and* 17 *Vict. c.* 34), *sec.* 2—*Income-Tax Act* 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 39, *Sched. D, Fourth and Fifth Cases.*

An American citizen having his ordinary residence and practising his profession in New York took a lease for three years of a furnished shooting lodge in Scotland with certain rights of shooting and fishing. The lessor was bound to maintain the buildings, to keep the grounds in order, to pay all rates and taxes, and to pay the wages of certain servants whose services were at the disposal of the lessee. The lessee resided at the shooting-lodge for a period of two months in each year during the shooting season, but the lodge was available for his occupancy at any time. He had no place of business in the United Kingdom, and during his stay therein his residence in New York was kept open so that he could return at any time.

Held that the lessee was a person "residing in the United Kingdom" within the meaning of the Income-Tax Acts, and accordingly was liable to assessment for income-tax.

The Income-Tax Act 1853 (16 and 17 Vict. c. 34), sec. 2, enacts that income - tax is to be "payable yearly for and in respect of the several properties, profits, and gains respectively described, or comprised in" . . . *inter alia*, Sched. D of the Act. Sched. D—"For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom for any kind of property whatever, whether situate in the United Kingdom or elsewhere." . . .

The Income-Tax Act 1842 (5 and 6 Vict. c. 35), sec. 39, enacts—"No person who shall on or after the passing of this Act actually be in Great Britain for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who shall not actually have resided in Great Britain at one time or several times for a period equal in the whole to six months in any one year shall be charged with the said duties mentioned in Schedule D as a person residing in Great Britain in respect of the profits or gains received from or out of . . . any foreign possession . . . or foreign securities." . . . Sched. D, Fourth Case, dealing with the computation of duty to be charged in respect of interest from securities in foreign countries, enacts—"The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year without any deduction or abatement."

Schedule D, Fifth Case, of the said Act, dealing with the computation of duty to be charged in respect of possessions in foreign countries, enacts — "The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the actual sums annually received in Great Britain." . . .

This was an appeal under section 59 of the Taxes Management Act 1880 (43 and 44 Vict. c. 19) by Thomas William Cooper, Surveyor of Taxes, Dundee, from a determination of the General Commissioners of Income-Tax for the District of Brechin, in the county of Forfar, at a meeting held at Brechin on 15th December 1903. At this meeting John Lambert Cadwalader had appealed against an assessment of £3000 made upon him under Schedule D of the Income-Tax Acts for the year ending 5th April 1904.

The assessment was made under authority of the Finance Act 1903 (3 Edw. VII, c. 8), sec. 5, and the Income-Tax Acts of 1853 (16 and 17 Vict. c. 34), sec. 2 (quoted *supra*), and of 1842 (5 and 6 Vict. c. 35), sec. 100, Cases Fourth and Fifth (quoted *supra*).

The facts stated in the case for the opinion of the Court of Exchequer as found or admitted before the Commissioners were set forth in the opinion of the Lord President as follows:—"The appellant (Mr Cadwalader) is an American citizen, having his ordinary residence in New York, where he practises as a barrister.

"By a minute of lease entered into between the commissioners of the Earl of Dalhousie of the first part, and the appellant of the second part, dated 16th March and 2nd and 3rd April 1900, there was let to the appellant for the period of three years from 1st February 1900, at the yearly rent of £1500, payable in advance on 1st February yearly, the sole and exclusive right of shooting and sporting over the grouse shootings of Millden, together with Millden Lodge and the furniture therein, and also with a right of fishing in the rivers and streams within the territory let. It was stipulated in the lease that the furniture and other effects in the lodge and outbuildings should be delivered over, per inventory, to the appellant,

who bound himself to keep and maintain them in good order during the currency of the lease, and on the expiry thereof to deliver them back to the lessors, in an equally good state, ordinary tear and wear excepted. The lessors undertook to maintain the whole buildings wind and water tight, and to bear the expense of keeping in order the grounds attached to the lodge, to pay all rates and taxes imposed in respect of the appellant's tenancy, and also to pay the expenses of a housekeeper and housemaid, as well as of one gamekeeper and a watcher, all of whose services should be at the disposal of the appellant. It was farther stipulated that the shootings should be under the entire management of the keeper appointed by the lessors, but that the appellant should have the services of the keeper and underkeeper, who were to be under his control during the shooting season. It was also stipulated by the lease that the appellant might, upon grounds reasonable and satisfactory to the lessors, require the removal of any of the servants mentioned, and the substitution of others. By subsequent agreements the lease was renewed until the expiry of two years from 1st February 1904.

"The appellant is a bachelor, and he resides, with his valet, whom he brings with him from America, at Millden continuously for a period of two months in each year during the grouse shooting season. A caterer from London supplies him with food and servants. His guests at Millden are chiefly Americans. When he takes possession of Millden the housekeeper and housemaid remove from the lodge and do not return until he leaves. They receive board wages from the lessors.

"The appellant is entered in the valuation roll of the county of Forfar as tenant of the Millden shooting lodge and shootings, and he is charged with all local and imperial rates and taxes applicable to his occupancy, although the lessors relieve him of these rates and taxes under the stipulations of the lease.

"When the appellant or his friends are not living at Millden the lodge is under the care of the female servants above mentioned, and is available for the appellant's return at any time.

"The appellant has no place of business in the United Kingdom, and during his stay there he maintains and keeps open his residence in New York, so that he could return to it at any time. He also pays all rates and taxes due by him in New York in respect of his house and his profession."

On these facts the Commissioners being of opinion that the appellant was not liable sustained the appeal and discharged the assessment.

The Surveyor of Taxes being of opinion that the determination of the Commissioners was erroneous in point of law, appealed to the Court of Exchequer. The case was appointed to be heard before the First Division.

Argued for the appellant—The respondent was a "person residing in the United Kingdom" in the sense of the Income Tax Act 1853, sec. 2, Schedule D. The fact of domicile had nothing to do with the question of residence—*Lloyd* v. *Solicitor of Inland Revenue*, March 12, 1884, 11 R. 687, 21 S.L.R. 482. The fact that this case had been overruled on another point by the decision in *Colquhoun* v. *Brooks* 1889, 14 App. Cas. 493, did not affect its authority on this point. A man could have only one domicile at one time, but he might have many residences. The respondent, too, was not within the exception provided in section 39 of the Income Tax Act 1842. This was settled by *Attorney-General* v. *Coote* 1817, 4 Price 183, a decision on section 51 of 46 Geo. III. c. 65, which was in the same terms as section 39 of the Act of 1842. Absence from the country during the fiscal year or the greater part of it did not prevent respondent having a residence —*Rogers* v. *Inland Revenue*, June 28, 1879, 6 R. 1109, 16 S.L.R. 682.

Argued for the respondent—The word "residing" in section 2, Schedule D, of the Income Tax Act 1853, was to be construed in the light of the provisions in section 39 of the Act of 1842. In the latter section "residing" meant "ordinarily residing"—*Lloyd* v. *Solicitor of Inland Revenue, supra, per* Lord Shand at 11 R. 692. The respondent came to this country for a temporary purpose and not with a view to establish a residence. Residence did not mean a mere right to reside but actual residence. *Colquhoun* v. *Brooks* (*cit. supra*) overruled the decision in *Lloyd* v. *Solicitor of Inland Revenue* (*supra*) relied on by the appellant. The real question was one of intention, and that had been regarded as the determining element in *Attorney-General* v. *Coote* (*cit. supra*). The same principle had been taken as the test in the recent case, *Turnbull* v. *Solicitor of Inland Revenue*, October 25, 1904, 42 S.L.R. 15.

At advising—

LORD PRESIDENT—The question in this case is whether the appellant Mr Cadwalader is assessable to income-tax in respect of his occupancy of a house and shootings belonging to the Earl of Dalhousie at Millden in Forfarshire. [*His Lordship summarised the facts stated in the case, in the terms set forth in the narrative, supra.*]

The answer to the question depends upon whether the appellant was during the year of assessment a "person residing in the United Kingdom" within the meaning of Schedule D of the Act of 1853, section 2. The appellant maintained that he was not a person "residing in the United Kingdom" within the meaning of that section, while the Surveyor of Taxes contended that he possessed that character, and the Commissioners sustained the appeal and discharged the assessment, whereupon the Surveyor of Taxes expressed his dissatisfaction with their determination and required a case to be stated for the opinion of this Court.

I am of opinion that the deci ion of the Commissioners was erroneous and that the appellant is assessable. He has, in effect, a lease of heritage in Scotland, he occupies personally the subjects let to him for a considerable portion of each year, and

when he is absent in America these subjects are kept in readiness for his return. His occupation of the subjects is not of a casual or temporary character, but is substantial, and as regards some of its incidents it is continuous.

Domicile has no bearing on the question, and where a person has in fact a residence in the United Kingdom he is chargeable as a person residing there, although he may also have a residence or residences out of the United Kingdom—*Lloyd* v. *Sulley*, March 22, 1884, 11 R. 687, 21 S.L.R. 482, 2 Tax Cases 37. In that case the Lord President said—"The only question which can be raised upon that" (the statute) "is whether Mr Lloyd was for the year 1883-84, to which alone this case applies, 'residing' in the United Kingdom. There is no mention in this taxing clause of the character of the residence as being ordinary residence or temporary residence, or residence for any particular part of the year or proportion of it—'residing' in the United Kingdom' are the only words we have to guide us." I am not leaving out of view that if or in so far as the case of *Lloyd* v. *Sulley* may be held to be an authority for charging a person resident in the United Kingdom with duty in respect of the profits of a trade carried on exclusively abroad and not received in this country, it must be taken to have been overruled by the decision in *Colquhoun* v. *Brooks*, 1889, 14 App. Cas. 493, but this does not, in my judgment, affect its authority for the purpose for which I now refer to it. The judgment in *Lloyd* v. *Sulley* does not appear to have proceeded to any extent upon the fact of Mr Lloyd being a British subject.

A master mariner having a house in the United Kingdom in which when at home he resided personally, and in which when he was absent his wife and family continued to reside, was held liable to be assessed for income-tax as a "resident in the United Kingdom" — *Young*, v. *Inland Revenue*, July 10, 1875, 2 R. 925, 12 S.L.R. 602, 1 Tax Cases 57—and the fact of his absence from the United Kingdom during the year of assessment was held not to relieve him from liability. If a person continues to have a residence in the United Kingdom he is resident there in the sense of the Acts—*Rogers* v. *Inland Revenue*, June 28, 1879, 6 R. 1109, 16 S.L.R. 682, 1 Tax Cases 225. A person may have more than one residence if he maintains an establishment at each of them. Further, it is not necessary that the trade or business, or other source of the income of the person sought to be charged, should be carried on or exercised in this country.

It was maintained on behalf of the appellant that his case fell within section 39 of the Income-Tax Act 1842, by which it is, *inter alia*, provided that no person who shall on and after the passing of the Act, actually be in Great Britain for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who shall not actually have resided in Great Britain (now the United Kingdom—see the Act of 1853, section 5) at one time or several times, for a period equal in the whole to six months in any one year, shall be charged with the duties mentioned in Schedule D as a person "residing" in Great Britain, in respect of the profits or gains received from or out of any possessions in (Ireland or) any other of Her Majesty's dominions, or any foreign possessions, or from securities in (Ireland or) any other of Her Majesty's dominions or foreign securities; but nevertheless every such person shall, after such residence in Great Britain for such space of time as aforesaid be chargeable to the said duties for the year commencing on the sixth day of April preceding. This provision seems to be directed primarily to prevent temporary residents for less than six months in one year from being charged in respect of profits received from abroad, but it does not appear to me to apply to a case like the present. I do not think that the appellant can reasonably maintain that he is in the United Kingdom "for some temporary purpose only, and not with any view or intent of his establishing his residence therein," in the sense of the section, as he took Millden with the view of residing there during a material part of each year, and maintaining his connection with it as tenant during the rest of the year, as he has a residence always ready for him if he should choose to come to it. It is not necessary in order to a person being chargeable that he shall have his sole residence in the United Kingdom. A man can reside in more countries than one, although he can only have one domicile.

For these reasons I am of opinion that the decision of the Commissioners was erroneous, and that the appellant is liable to the assessment in question, the amount of the assessment being, as was conceded, open to adjustment.

LORD ADAM—The question in this case is whether the respondent was a person residing in the United Kingdom in such circumstances as to make him liable to assessment under Schedule D of the Income-Tax Act of 1853. The respondent is an American citizen, but that makes no difference in the application of the Act, as the Act says that any person residing in the United Kingdom shall be liable. Now, in order to reside a person must have a residence, and the question is, what residence has the respondent here? He is tenant under a lease of some two or three years of Millden Lodge and shootings. Millden Lodge is a furnished house. It is kept up for him, and is placed at his disposal to go to at any time of the year he chooses. In fact he has occupied it in the past and probably will in the future continuously for two months in each year, with all the comforts and necessaries of a man of wealth, as if it were his own house. That is the mode of residence of this gentleman. Can it be said that during, for example, these two months in which he is residing continuously in Millden Lodge he is not residing there? Where is he residing? He is residing, in my humble opinion, in Millden Lodge, and therefore residing in

the United Kingdom, and if that be so, then it humbly appears to me that he is a person, in the sense of the Act, residing in the United Kingdom and assessable under the Act. We know that numerous persons have two houses with two residences in the United Kingdom, but in such a case as that the question does not arise, because if they are residing in the United Kingdom it does not matter what house they reside in. But when you come to a person who has one residence in this country and one residence abroad what is to be said? It arose, as your Lordship has said, in the case of *Lloyd*, March 12, 1884, 11 R. 687, 21 S.L.R. 482. There Mr Lloyd had a residence in this country of his own, because he had bought it, in which he resided for three and a-half months in each year, but his business lay in Italy. He had his principal residence in Italy. Now, it was held that, although Mr Lloyd had this other residence in which he resided part of the year in Italy, he had a residence in Scotland where he resided three and a-half months, and he was found liable to be assessed, and, as your Lordship has said, that case is not, so far as I am aware, questioned in that respect. There is another case from Ireland, which was in the position of a foreign kingdom at the date of the Act in respect of the income-tax, because I understand Ireland was not made assessable, and that was the case of *Coote*, 1817, 4 Price, 183. There this Irish gentleman, who had his residence in Ireland, came over to London, acquired a house, and set up an establishment there. It appears that he resided the whole year in Ireland except for ten weeks and there was a case of two residences, one in a district which was subject to income-tax and one in Ireland which was not, but the Court held that he nevertheless was residing in England for a certain time of the year. Now, I confess I cannot draw a distinction between the ten weeks in *Coote's* case and the three and a-half months in *Lloyd's* case and the two months in this case. In this case there is residence in each country, and it is not a question of principal residence at all. It is simply a question of residence in this country. Is the person residing in this country? In my humble opinion Mr Cadwalader was residing in this country and was liable to assessment. That is, unless his case comes under section 39 of the Act of 1842, and I do not think it does. What that Act says is this—"That no person who shall after the passing of this Act actually be in Great Britain for some temporary purpose only, and not with any view or intent of establishing his residence therein," and so on. Now, there might have been a question whether coming here to shoot for a few months in the year was to be considered under the construction of this Act as a temporary purpose. I should have thought it was not, because evidently this part of the Act applies to much more temporary purposes than that; but then in the next sentence it says, "for some temporary purpose only and not with any view or intent of establishing his residence therein." If we are right, then it was with the view of establishing his residence that Mr Cadwalader came to this country. On these grounds I agree with your Lordship.

Lord M'Laren—I think the important question in this case is whether Mr Cadwalader comes within the exempting clause, because if he does not come within the exemption there is the strong presumption supported by, I think, previous decisions that the general enacting words are broad enough to apply to this case. Now, the exemption is one that walks upon two legs. It is, first, that the party is here for a temporary purpose only; and secondly, that he is here not with a view or intent of establishing a residence. If the argument is lame in one of the limbs, then the party does not get the benefit of the exemption, because he is not able to affirm both members of the double proposition. There might, I think, be a possible room for difference of opinion as to the meaning of the words "view or intent of establishing a residence." The words are somewhat vague, but they seem to me to recognise what may be called a constructive residence as distinguished from actual residence. It is, that you may take a house or country place with a view or an intention of establishing a residence although you may not have had time to become a resident. Yet if you are looking forward to it, apparently that makes you liable to taxation, because in order to get the benefit of the exemption you must be able to say that you have no view and no intention of acquiring a residence. But then I think for the purposes of the present case the first point in the exempting clause is sufficient, because I do not think that Mr Cadwalader is in a position to affirm, when he comes year after year during the currency of his lease to spend the shooting season in Scotland, that he is here for a temporary purpose only. I do not mean that you might not frame a definition which would bring this within the scope of temporary purposes, but taking the ordinary meaning of the word I should say that temporary purposes means casual purposes as distinguished from the case of a person who is here in the pursuance of his regular habits of life. Temporary purpose means the opposite of continuous and permanent residence. Nobody ever supposed that you must reside twelve months in the year in order to be liable for income-tax, and therefore "temporary" does not mean the negation of perpetuity, but means that it is casual or transitory residence as distinguished from a residence (of which there may be more than one) which is habitual or permanent. I agree with all that has been said by your Lordships, and I think the decision in this case must be in favour of the Crown.

Lord Kinnear concurred.

The Court sustained the appeal.

Counsel for the Appellant the Surveyor of Taxes—The Solicitor-General (Dundas,

K.C.)—Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondent — Lorimer, K.C.—Crurie Steuart. Agents—Mackenzie & Kermack, W.S.

Tuesday, November 22.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* OLD MONKLAND CONSERVATIVE ASSOCIATION.

Revenue—Income-Tax — Claim of Exemption from Income-Tax by Unincorporated Society—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *secs.* 40, 163, *and* 192.

Although in the Income-Tax Acts unincorporated societies are in the statutory provisions laying on income-tax expressly mentioned as being chargeable with the tax, while in the statutory provisions relative to claims for exemption from income-tax, such societies are not expressly referred to, nevertheless an unincorporated society whose aggregate annual income is less than £160 is exempt from income-tax.

The Income-Tax Act 1842 (5 and 6 Vict. c. 35) enacts as follows:—Section 40—"All bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies of persons whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable with." . . . Section 163—"That any person charged or chargeable to the duties granted by this Act either by assessment or by way of deduction from any rent, annuity, interest, or other annual payment to which he may be entitled, who shall prove before the Commissioners for general purposes in the manner hereinafter mentioned that the aggregate annual amount of his income, estimated according to the several rules and directions of this Act, is less than £150, shall be exempted from the said duties." . . . [The Finance Act 1894 (57 and 58 Vict. c. 30), sec. 34, extends the exemption to "persons whose respective incomes do not exceed £160 a-year."] Section 192 — "Wherever in this Act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction." . . .

This was an appeal under section 59 of the Taxes Management Act 1880 (43 and 44 Vict. c. 19) by Frederick James Curtis, Surveyor of Taxes, Glasgow, from a determination of the Commissioners of Income-Tax for the Middle Ward of Lanarkshire at a meeting held at Hamilton on 25th February 1904. At this meeting the Old Monkland Conservative Association had appealed against an assessment of £65 for the year 1903-4 made upon it in respect of premises situated at Nos. 20-22 Church Street.

In the case for the opinion of the Court of Exchequer the Commissioners stated—"The following facts were found or admitted—1. The Association is constituted under certain rules and bye-laws. . . . 2. The Association is the owner and occupier of the premises at No. 20-2 Church Street aforesaid. The premises are occupied by the Association as reading and recreation rooms, offices, &c. 3. The feu-duty (£2, 15s. 5d.) paid by the Association for its premises, and the interest (£31) paid by it on a bond over its premises, amount to £33, 15s. 5d., from which the Association deducted income-tax amounting to £1, 10s. 11d. 4. For the year of assessment the Association had no excess of income over expenditure. The Association claimed total exemption from income-tax (except in respect of the feu-duty and interest referred to in No. 3) for the year 1903-04, on the ground that its income from all sources did not exceed £160, and in support of this claim founded on the following enactments"—(These are quoted *supra.*)

"On behalf of the Association it was contended that the constitution of the Association is defined by and embraced in section 40 of 5 and 6 Vict. c. 35, under which section it is therefore entitled to rank: and alternatively under section 192 of said Act it was further argued that section 40 applied not only for the purpose of 'charging' any body of persons, but also for the purpose of relieving them under section 163 of the same Act, and that otherwise the word 'wherever' at the opening of section 192 would have to be wholly disregarded.

"On behalf of the Crown it was contended that section 40 was a charging section; that section 163 granted exemption to 'any person' with a certain limited aggregate annual amount of income; that the words 'any person' could not be held to include an association, as the wording of section 163 was repugnant to such construction, and that the Association was not a body politic or corporate. A club as a body though a distinct entity has no position recognised in law; it is not a company or a corporation but an unincorporated society—*per* Day, J., *Steele* v. *Gourley*, 1886, 3 T.L.R. 119."

The Commissioners sustained the appeal.

The Surveyor of Taxes being of opinion that the determination of the Commissioners was erroneous in point of law, appealed to the Court of Exchequer. The case was appointed to be heard before the First Division.

Argued for the appellant—Under section 40 of the Act of 1842 an unincorporated society such as the respondents was declared in the most comprehensive terms to be chargeable with income-tax. But under section 163, providing for exemption, the the words were that "any person" whose income is less than £150 "shall be exempted from" the duties. The word "person" could not include an association such as the re-