PART XXV.

No. 63.—In the House of Lords.—November 13, 14, 15, and December 3, 1883.

Coomber (Surveyor of Taxes) *v.* Justices of County of Berks.

Income Tax.—Assize courts and police stations. Crown privilege. In fulfilment of the duty cast upon a county of providing courts and maintaining a police force, the justices cause certain buildings to be erected and used for the purposes of an assize court and police station.

Held, *that the purposes for which the buildings are owned and occupied are purposes required and created by the Government of the country, and that the buildings must be deemed to be for the use and service of the Crown, and, therefore, exempt from income tax.*

Clerk *v.* Commissioners of Supply for Dumfries (*a*) overruled.

At a meeting of the Commissioners for general purposes of the Income Tax Acts held at Reading, in the county of Berks, on the 27th of December, 1879, the justices of the county of Berks, by the clerk of the peace for the said county appealed against an assessment made upon them under Schedule A. of the Income Tax Assessment in the parish of St. Lawrence, Reading, for the year ending 5th of April 1880, whereby they were assessed in respect of certain buildings described as "assize courts, &c." of the alleged annual value of 300*l*. We, the Commissioners, being of opinion that the assessment could not lawfully be maintained discharged it, and the surveyor having demanded a case for the opinion of the Exchequer Division of the High Court of Justice, we hereby state it accordingly :—

1. A copy of the original assessment is hereunto annexed and marked A, and forms part of this case. There is no separation in the assessment and no description of the different buildings included in the assessment under the name "The Assize Courts."

2. The assize courts and the county police station form one block of buildings within the same walls and covered by the

(*a*) *Vol. I., p.* 281. 7 Court Sess. Cas., 4th Ser., 1157.

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same roof. They were erected at the same time, although under different statutory powers.

3. The erection of the assize courts was resolved upon at Easter Sessions, 1858. A presentment of three justices was made on the 5th day of April, 1858, and was duly considered at the quarter sessions holden at Midsummer, 1858, pursuant to the directions of the 7 Geo. IV. c. 63; the said presentment showed that there was a necessity for the erection of a new shire hall, county hall, or other building for the better or more convenient administration of justice by the judges of assize at their holding of the assizes for the county, as well as for the better accommodation of counsel, attorneys, suitors, prosecutors, and witnesses attending upon the occasion of the assizes and sessions of the peace. The said presentment was at said Midsummer Sessions, 1858, determined to be well founded, and at the same time the present site was approved, being adjoining that land the purchase of which had been already authorised for the erection of constabulary buildings. The erection of the buildings was pursuant to public general statutes and not to any private Act.

4. The cost of building the courts was provided for by money borrowed upon the mortgage of the county rates under 7 Geo. IV., c. 63. sec. 11, and the maintenance of the building is provided for out of the county rate. The erection took place, and the maintenance and control of the whole block are regulated (if at all) by public general statutes only.

5. The ground floor of the whole block consists of the following premises, namely, two assize courts opening out of a large hall and corridor, with retiring rooms for judges and juries, counsels' robing and consultation rooms, an office for the use of the county treasurer, during the sittings of the assizes and quarter sessions. Offices for the clerks of indictment at assizes and for other officers attending upon the judges, and also a room for the use of the clerk of the peace, as herein-after mentioned, during the quarter sessions. There are also on the ground floor offices for the chief constable of the county and the chief superintendent of police and one divisional officer of police.

The first floor consists of rooms for the grand jury, for witnesses in waiting, for committees, and for the living and accommodation of the superintendent of police. A room on this floor originally designed for the clerk of the peace is not used by him. Over the jury and counsels' robing rooms before mentioned there is a police dormitory, with sleeping accommodation for six or seven men.

In the basement, and below what has been described as the ground floor, there are cells for the reception of prisoners detained in custody by the police or kept owing to the distance from the gaol immediately before and after trial at the courts. There are a refreshment room for the use of the public at the assizes and sessions, and washing houses and store rooms in connexion with the refreshment room, &c. A police guard room is

situated below the jury rooms and counsels' robing and consultation rooms. This is used by the resident constables for purposes of duty, and for cooking food of prisoners during their detention.

A married constable as part of his duty is required to reside in some of the rooms below the offices of the assize courts, having his sleeping accommodation on the second floor over the committee or grand jury rooms, with access by means of the staircase leading to those rooms.

Some of the rooms originally designed for the offices of the clerk of the peace during the quarter sessions are occupied by another married constable, who performs the duties of the hall keeper. The hall keeper attends to the heating and cleaning of the courts. The clerk of the peace has no use whatever or at any time of any rooms for his private purposes or business.

The one room reserved for him is used by him only as a depository for the statutes and books required in connexion with the courts, and for deposited railway plans, and other county records in his possession as deputy custos rotulorum of the county. The clerk of the peace has no vested interest in this room, and the use he makes of it is official only, and was not considered as of any benefit or value to him in adjusting his salary. He does not in fact use the room except at quarter sessions and when attending committee meetings of justices.

There is a subterranean passage and several doorways and openings, affording complete communication between the various parts of the block, so that although the uses to which the parts are applied are distinct the structure is one and entire.

Unmarried constables inhabit the dormitory before mentioned, subject to written regulations for discipline as to rising, extinguishment of lights, packing up, and cleaning, &c.

The dormitory is a long room divided into cubicles, with sick room and lavatory attached.

The constables of the division are bound to live upon the premises, but are liable to be removed for duty to any other place, and they are at all hours liable to be called out on service.

6. The courts are used for holding the assizes, and for holding the county quarter sessions and the county divisional petty sessions, and also for the purposes of the county court. The Commissioners of Public Works pay 1*l.* per month for the lighting, warming, and cleaning of the courts when used for county court purposes, as provided by the statutes.

Rooms in the buildings are used for meetings of committees of justices appointed by the court of quarter sessions, such as the standing finance and general executive committee, highways standing committee, executive committee under Contagious Diseases (Animals) Act.

The police committee, consisting of justices, meet in that part of the block which is used by the constabulary, namely, in the chief constable's office.

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7. The recorder of Reading is allowed to hold the borough quarter sessions in the court as a matter of courtesy and without charge. The Income Tax Commissioners have occasionally sat in one of the committee rooms, but no payment has been asked for or made.

The entrance hall or corridor is used as a polling station for the county elections,. and the grand jury room for casting up votes by the returning officer, without charge.

In the year 1864 the officers of the Berks Militia were allowed, upon special application to the court of quarter sessions, to use the grand jury room as a mess room during their month's training, and to use the basement storey as a kitchen. No payment was made therefor.

An amateur musical society has occasionally but not habitually used the grand jury room for a short time for practice. No charge has been made or payment received therefor.

The committee of management of the Berks Friendly Society have occasionally met in one of the committee rooms, but no payment has been made in respect thereof.

Twice since the erection of the courts the hall or corridor has been used for general county meetings called by the high sheriff, videlicet, to pass votes of congratulation and condolence to Her Majesty on important events. No payment or charge has been made for the building or for admission.

The under sheriff has occasionally held a writ of inquiry in one of the courts without payment.

On no occasion has any payment or remuneration been received for the use of the building or any part of it, or for admission, and no profit whatever is made out of it.

8. In the year 1861 it was resolved at the quarter session "that the whole of the building of the assize courts and police "station be placed under the charge and supervision of the "chief constable, who has undertaken to provide a hall keeper, "with sufficient assistance and proper instructions, to attend to "the ventilating, lighting, and warming apparatus, cleaning, "the other necessary duties, and that the county should allow "a guinea a week, to the credit of the police fund, to be applied "to the above purposes at the discretion of the chief con-"stable."

This arrangement has been since carried out, and the entire charge of the whole block is vested in the chief constable as such custodian. The uses of the building mentioned in paragraph 7 have been by the allowance of the chief constable.

On the two occasions when the hall was used for county meetings the chairman of the quarter sessions for the time being gave permission on his own responsibility. Except in the case of the militia, the justices in quarter sessions have never authorised or sanctioned or been asked to authorise or sanction the use of the buildings in the manner specified in paragraph 7.

9. The county police station, as before stated, was erected by the justices at the same time as and in connexion with the

assize courts for the county constabulary under 3 & 4 Vict. c. 88, sec. 12, on lands purchased by the justices, the cost being provided by money borrowed on mortgage of the police rates.

At the Michaelmas Sessions, 1858 (*i.e.*, between the date of the contract for the purpose and the execution of the conveyance), the court of quarter sessions resolved "that a portion of "the land purchased for a site of the central police station be "appropriated for the erection thereon of the new assize courts," and ordered the treasurer to debit the assize courts' fund with a portion of the purchase money of the premises.

The cost of erecting the police station was provided by money borrowed on the mortgage of the police rates.

The land on which the assize courts and also the central police station are built was conveyed under 21 & 22 Vict. c. 92., in 1859, by direction of quarter sessions, two justices having at a previous sessions been authorised to enter into a contract for its purchase, unto G. B. Morland (the then clerk of the peace), to have and to hold the same premises unto and to the use of the said G. B. Morland and his successors for ever upon trust, to permit a police station house to be constructed on the premises at the expense of the justices, and otherwise to permit the premises to be used, appropriated, and disposed of as the said justices of the peace for the said county should from time to time order.

10. The county constabulary was established under the provisions of 2 and 3 Vict. c. 93.

The force and the police station is annually inspected by one of Her Majesty's inspectors appointed under the Act of 19 & 20 Vict. c. 69., and if his report is satisfactory a grant is made by the Treasury, amounting to one half of the expenses of the pay and clothing of the force, in aid of the police rates.

11. The police station is used as the central police station for the county for the temporary confinement of persons taken into custody by the constables.

It is necessary that two superintendents and a certain number of constables should be always on the spot available for duty, and sleeping and living accommodation is provided for them as herein-before mentioned. Their residence on the premises is part of their duty.

No rent is paid by them for the accommodation given; some unmarried constables, who are compelled as part of their duty to sleep at the station, are required to contribute one shilling each per week to cover the expense of gas and fuel for their cooking in the guard room, and for washing.

The superintendent and married constables pay for their gas and coal themselves.

No more or better accommodation is provided than is absolutely required for the proper maintenance of the constabulary, and no profit or pecuniary benefit is derived from the use of the building.

12. Water and lighting are paid for by the county.

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13. The block of premises are not nor is any part assessed to the district or to the borough rates or to the poor rates, and no inhabited house duty is charged.

Prior to the assessment now made the premises were never assessed for income tax, and no person has been previously charged in respect thereof.

14. So far as it is a matter of fact for our determination we find that neither the justices of the peace nor the clerk of the peace, nor the members of the constabulary, derive any benefit whatever from, nor have they any beneficial, nor indeed any occupation, of the said premises by reason of their use thereof, and that their use thereof is solely official and for purposes of duty, and that (except the clerk of the peace, as herein appears) they are not the owners, and they are not any of them occupiers thereof.

The buildings are not adapted for any purposes but those for which they are used. No rent ever has been received for them or any part of them.

No evidence was given before us or tendered to us as to the alleged annual value of the assessed premises or any part thereof.

So far as we can decide in the absence of evidence on the point, we are of opinion that 300*l*. per annum exceeds their annual value, but under the circumstances herein appearing we have not attempted to make any entire or partial assessment, and postpone dealing with the amount of assessment until the determination of this case.

15. It was contended before us amongst other matters that the buildings were not assessable, and that the justices were not assessable under the circumstances, and that the assessment could not lawfully be maintained.

We, the Commissioners, are of opinion that under the circumstances before stated

I. No part of the building was properly assessable to income tax.

II. That even if the buildings were or any part thereof was properly assessable to income tax the justices of the county for the time being were neither owners nor occupiers of the buildings, and were not chargeable with income tax.

III. That no person was chargeable either as owner or occupier of the buildings with income tax.

IV. That there was no evidence before us of beneficial occupation, or that the premises were of the annual value mentioned.

Upon our discharging the assessment the surveyor of taxes declared his dissatisfaction with our determination as being erroneous in point of law, and within 21 days after the said determination requred us by notice in writing addressed to our clerk to state a case for the opinion of the Exchequer Division of Her Majesty's High Court of Justice.

We therefore hereby state the same, raising the following questions for the opinion of the court :—

I. Whether the buildings are or any and what part thereof is properly assessable to income tax?

II. If the buildings are (or some part thereof is) properly assessable to income tax, are the justices of the county for the time being chargeable with income tax in respect of the said buildings under Schedule A.?

III. If the buildings are (or any part thereof is) properly assessable to income tax, and the justices are not chargeable with income tax in respect thereof, whether the clerk of the peace or the inhabitants or ratepayers of the county, or any other person or body of persons, is or are chargeable with such income tax?

IV. If part only of the premises is chargeable, what part is chargeable, and who is to be charged, and in what capacity and under what schedule, and how is the amount to be ascertained?

V. Whether the assessment can in law be maintained, or whether our decision is under the circumstances lawful?

RICHD. BENYON.
ALEX. W. COBHAM,
} Commissioners of Income Tax for the Division of Reading, Berks.

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"A."

ST. LAWRENCE, READING.

No. of Assessment.	No. of Poor Rate.	Christian and Surnames of Occupiers, and of Owners where assessed for Properties under 10*l.* annual value.	Christian and Surnames of Owners, with their Residences.	Description of Property—If a house, the Trade, Profession, or purpose for which the premises are occupied. If an Inn, &c., the name or sign by which known.	No. of House.	Street, Place, Name, or Situation of Property.	Poor Rates. Estimated extent.	Poor Rates. Gross Estimated Rental.	Poor Rates. Rateable Value.
1.	2.	3.	4.	5.		6.	7.	8.	9.
							Acres. R.	£ *s.*	£
	672	County Magistrates.	Selves	Assize Courts, &c.	—	Forbury	—	—	—
						Total			

Rent or Annual Value returned.	Annual Value charged by Assessors.	Annual Value charged by Surveyor.	Annual Value by determination of Commissioners.	Deductions and Allowances. Land Tax unredeemed paid by Landlord.	Drainage, &c. Rates paid, and Sums expended for Sea Walls by Landlord.	For Colleges and Halls in Universities, Hospitals, Public Schools and Almshouses.	Amount of other deductions, including Rates, &c., on Tithe Rent Charges.	Amount discharged on the ground of Exemption, less Ground Rent, Interest, &c.	Amount allowed from the Total Income on the Ground of Abatement.	Total Deductions and Allowances.	Net Amount on which the Duty is to be charged.	Amount of Duty payable 1879.
INCOME TAX.				SCHEDULE A.								
10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.
£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s.*	£ *s. d.*
—	300 0	300 0	300 0	—	—	—	—	—	—	—	300 0	6 5 0

I certify this to be an extract from the original A. and B. assessment of income tax for the years 1879-80.

JOHN DODD,
Clerk to the Commissioners.

27th February 1882.

This case was heard in the Queen's Bench Division in June 1881 and March 1882, and the Judges (*Grove, J.*, and *Huddleston, B.*) held that the buildings were not properly assessable to income tax. Coomber having appealed, *L. J. J. Baggallay, Brett,* and *Lindley* confirmed the decision of the Divisional Court. The decision being at variance with the ruling of the Scotch Courts in the case of *Clerk* v. *Commissioners of Supply for Dumfries* (*b*), an appeal was preferred to the House of Lords in order to obtain a conclusive settlement of the point at issue.

November 1883.

Sir H. James, A.G., and the *Lord Advocate* (*Balfour, Q.C.*) (*Sir F. Herschell, S.G.*, and *Dicey* with them) for the Appellant.—This is an assessment under the Act 42 & 43 Vict. c. 21., which imposes a duty in respect of the annual value or amount of property, profits, and gains chargeable under the Schedules of the Act 16 & 17 Vict. c. 34. Schedule A. of that Act charges property in all lands, tenements, hereditaments, and heritages in the United Kingdom. The mode of assessment is to be found in the Act 5 & 6 Vict. c. 35., which says (section 60, Schedule A., Rule 1) that the annual value of lands shall be understood to be the rackrent which they are worth to be let by the year, which rule shall extend to all lands capable of actual occupation, of whatever nature and for whatsoever purpose occupied or enjoyed. It is said these buildings yield no profit, but under this rule that is a point of no importance. They are capable of actual occupation, and of realising an annual value; they might be let, and a rent might be got for them. Therefore, they fall within the general words, and as there is no exception to take them out, they are assessable at something, and the value put upon them here is not at all in dispute.

Then, if the buildings are a subject of assessment, the next point is, Who is assessable in respect of them? The course taken under the statute is to assess the occupier. Here the justices are both owners and occupiers. Rule 2 of No. IX., sec. 63, 5 & 6 Vict. c. 36., says every person having the use of any lands, &c., shall be considered to be the occupier. Section 40 of the same Act makes "all bodies politic, corporate, or "collegiate, companies, fraternities, fellowships, or societies of "persons, whether corporate or not corporate," chageable with such and the like duties as any person. The justices are a "society not corporate," or they might be a "body politic." If the justices are not the occupier, then the legal owner, the clerk of the peace, is.

But it is further contended that these buildings are not liable because they are used for Crown purposes. It is stated that a series of cases has established that no one is rateable to the poor in respect of property occupied for the purposes of the Government of the country, and that under that head are included the

(*b*) *Vol. I., p.* 281. 7 *Court Sess. Cas., 4th Ser.* 1157.

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police and administration of justice. The judgments of Lords *Westbury* and *Cranworth* in *Cameron* v. *Mersey Docks and Harbour Board* (*c*) were very explicit upon the point of the ground of exemption in the rating cases. It was that inasmuch as the Crown was not mentioned in the Act of Elizabeth, it could not be liable to the burden imposed. This is not a case of a burden being cast upon the Crown, which is not to be imposed except by express words. Here the Crown is seeking to take advantage of a statute to obtain a tax, and against the Crown they set up Crown privilege. Furthermore, the poor rate is payable by the occupier, but the income tax, Schedule A., is a tax upon the owner. Even if we have here an occupation by the Crown, the Crown is not the owner. The exemption from poor rate has, therefore, no analogy to, and no bearing upon, this case.

A building used partly for Crown purposes and partly for something else cannot be exempted upon the ground of Crown privilege, and there is nothing to prevent the justices making any use they please of the assize buildings during the greater part of the year. The portion of the building occupied by the police is used for local not for imperial purposes. In *Clerk* v. *Dumfries Commissioners of Supply* it was held that premises occupied as police stations were liable to income tax.

Matthews, Q.C., and *Gorst*, Q.C. (*Greene* with them) for the Respondents.—Rule 1 of No. IX., section 63, 5 & 6 Vict. c. 35., directs that income tax under Schedules A. and B. shall be charged on and paid by the occupier, and the 73rd section emphasizes this by saying that whatever the covenants between the owner and the occupier may be, the occupier shall always pay the tax. Even when the lands are vacant the remedy under section 70 is by distress at any time after the duties are payable. You must find an occupier before you can proceed to levy the income tax under Schedule A. Here there is no one who can be treated as the occupier under the Income Tax Act except the Crown.

[*Lord Blackburn*.—If the Crown took a lease from a subject and paid rent, I can never believe the landlord was intended to go free. I think you are suggesting something of the sort, and I wish you to pass by all that and come to the real point, whether the purpose for which these buildings were used and enjoyed is such as to bring them within the Government privilege.]

The principle of the Mersey Docks case covers the whole ground in this case, and shows that the purposes for which these buildings are occupied are Crown and Government purposes, and the ownership is equally for Crown and Government purposes. The maintenance of public order is one of the most important duties of the Sovereign power in every State, and in this country it has always been considered the especial duty of the Sovereign

(*c*) 11 H. L. C. 443.

to provide for it. The Metropolitan Police are paid for out of the Consolidated Fund, and they are under the authority of an officer appointed by the Crown. It makes no difference that in other parts of the kingdom the police are put under the authority of the justices of the peace (themselves appointed by the Crown), who are directed by Act of Parliament to maintain the force in a certain manner, and under the supervision and direction of the Home Secretary. In *Justices of Lancashire* v. *Stretford* (*d*) it was held that premises occupied by the county police were exempt from poor rates, and the judgment proceeded upon the ground that the police establishment was required and created for the purposes of the country; and in the *Queen* v. *St. Martin's, Leicester*, (*e*) Leicester Castle was held to be exempt from poor rates for similar reasons, having been granted by letters patent for the occupation of the chief constable and an inspector of the Leicester county police, and for the holding of the assizes.

It is also without doubt the duty of the Crown to provide for the administration of justice, and some of the courts which administer not only civil but criminal justice are provided and paid for out of the Consolidated Fund. It is argued that the assize buildings are capable of being used for other purposes when the assizes are not being held. But there is no legal power in the justices or anyone else to use or let the buildings for any other than Government purposes. 7 Geo. IV. c. 63., 21 and 22 Vic. c. 92.

[*Lord Blackburn.*—Are there any restrictive words?]

There are no restrictive words, but no power is conferred on the justices to let the buildings. If your Lordships are against the argument that there is no power to let, then we contend that, provided these buildings are held and occupied for the purposes of the Crown, they do not become liable because they are occasionally used for other purposes.

[*Lord Blackburn.*—The potentiality that an annual value might be derived from using the premises for those other purposes might be an element for consideration; but the Commissioners do not find and have not been asked to find any fact upon that, and neither the Queen's Bench Division nor this House has any jurisdiction to find it.]

The *Lord Advocate* in reply.

The House took time for consideration.

Lord Blackburn.—My Lords, the Commissioners for general purposes of the Income Tax having determined on appeal by the now Respondents that certain buildings were not properly assessable to income tax, the now Appellant required the Commissioners to state a case, which was done. On that case the

December 1883.

(*d*) E. B. & E. 225. (*e*) L. R. 2 Q.B. 493.

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Queen's Bench Division, Revenue Side, on the 24th March, 1882, made this Order: "The Court are of opinion that the buildings "described in the assessment of income tax for the year 1879-80 "for the parish of St. Lawrence, Reading, as assize court, &c., "are not properly assessable to income tax, and affirm the "determination of the said Commissioners. And do order that "the costs of the said Respondents of this Appeal, including the "costs of and occasioned by the amendment of the said case, "be paid to them by the said Appellant. And it is hereby "referred to the Queen's Remembrancer to tax such costs."

The now Appellant, under the power given by statute 41 Vict. c. 15. s. 15, appealed to the Court of Appeal. And this Order was made: "Under reading, on the 29th and 30th days of "November last, the above-mentioned Order, and the notice "of appeal herein, and on hearing Mr. *A. V. Dicey*, of Counsel "for the Appellant; and *Henry Matthews*, Esq., Q.C., and *J. E.* "*Gorst*, Esq., Q.C., for the Respondents; and *Sir Farrer* "*Herschell*, Knight, Her Majesty's Solicitor-General in reply, "the matter was adjourned for judgment until this day. Now "it is ordered by the Court that the said Order of the 24th day "of March last be and the same is hereby confirmed. And it "is further ordered that the costs of this appeal be paid by the "said Appellant to the said Respondent. And it is hereby "referred to the Queen's Remembrancer to tax such costs."

From this Order there has been an appeal to this House; and the question, therefore, now to be determined is, whether the original Order of the Queen's Bench Division is right.

The jurisdiction to determine on such a case was originally created by 37 Vict. c. 16. s. 10. The Court were required to determine the "question of law arising on the case."

The case shows that the buildings in question were built on land purchased under the authority of Public Acts by the county, and paid for out of the county rates; that on it the buildings, or rather one building, was erected to answer the double purpose of being an assize court and a police station. The case states various details as to how they are occupied, on which some minor points are raised with which I shall deal hereafter. But the main facts are clear, that the buildings were acquired *bonâ fide* for the purpose of fulfilling the duty cast on the county, in aid of the general government, of having courts and having a police station, and that no revenue is derived from them. Does this, assuming for the present that the buildings are not more than is required for those purposes, bring them within the implied exemption by virtue of the prerogative?

In *The King* v. *Cook* (*f*) the general principle as to the construction of statutes imposing charges as containing an exemption of the Crown was laid down. That was a case raising the question whether the duty on post horses was exigible in respect of post horses carrying an express from the Governor of Ports-

(*f*) 3 T. R. 519.

mouth to one of His Majesty's Principal Secretaries of State, which was not of any private business whatever, but wholly related to the public concerns of this kingdom. It was held that it was not exigible. Lord Kenyon, delivering the judgment of the Court, says : " Now, although there is no special exemp- " tion of the King in this Act of Parliament (25 Geo. 3. c. 51.), " yet I am of opinion that he is exempted by virtue of his pre- " rogative in the same manner as he is virtually exempted from " the 43 Eliz., *and every other Act imposing a duty or tax on* " *the subjects.*" There may well be expressions in an Act imposing a duty or tax on the subject such as to show that the intention of the Legislature was to impose the duty on some property belonging to the Crown. But I do not think it made out that there is any such intention shown in the Income Tax Act. Reliance was placed in the argument on the general words of the rule : " which rule shall be construed to extend to all " lands, tenements, and hereditaments or heritages capable of " actual occupation, of whatever nature and for whatever pur- " pose occupied or enjoyed." But I not think this can be construed as taking away the exemption, by virtue of the prerogative, of property actually occupied or enjoyed for the Crown.

Lord Mure, in the Scotch case of *Clerk* v. *Commissioners of Supply of Dumfries* (g), seems to have been struck by the 8th Rule under No. IV. : " The duty to be charged in respect of any " house, tenement, or apartment belonging to Her Majesty, in " the occupation of any officer of Her Majesty in right of his " office or otherwise (except apartments in Her Majesty's royal " palaces), shall be charged on and paid by the occupier of such " house, tenement, or apartment upon the annual value thereof." As the tax is imposed upon the salary of such officers, it was most reasonable to provide that where the salary was partly paid by a rent-free house, the officer should pay the tax on that house; but I cannot think that affords any ground for saying that the Legislature intended to impose the tax on Crown property generally, so as to take away the exemption that would otherwise be implied. I should rather infer that those who framed the Act thought that, unless expressly named, such an occupation would have been exempted.

It is on the application of this general principle to the facts stated in the case that, in my opinion, the whole difficulty of the case arises.

I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, nor that by the constitution of this country these functions do, of common right, belong to the Crown.

(g) *Vol. I., p.* 281. 7 *Court Sess. Cas., 4th Ser.* 1157.

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In England a subject may have a franchise, giving him the right to administer justice in a particular locality in courts held by him, and he may also have a right to name the constables. In early times such local franchises were of value for the revenue derived from the fees, and no doubt, as increasing the local influence of the grantee. But it was always held that on a proceeding *in quo warranto* the Crown could call on the person in possession of such a franchise to show his title, on the ground that they were among the matters *quœ mere spectent ad regem*, and that, unless he showed a title by grant from the Crown or by prescription, the franchises were seized, and he was ousted. (*See* Comyn's Digest, Quo Warranto A., and the authorities there collected.) In the present case there is no question raised as to any franchise in the hands of a subject.

From very early times Judges, acting under the King's commission, went down to administer justice in counties. The sheriff, the head officer of the county, but appointed by the Crown, was always called upon to attend them, and to provide lodging and accommodation for them. He did this at the cost of the county. I do not stop to inquire by what machinery the cost was in early times defrayed. It is now provided for by the statutes referred to, and comes out of the county rate.

The sheriff also was bound to raise the hue and cry, and call out the *posse comitatus* of the county whenever it was necessary for any police purposes. In so doing he was acting for the Crown, but the burthen fell on the inhabitants of the county. By modern legislation the county police are arrayed at the expense of the county, defrayed by a police rate on the county, supplemented in some cases by grants from the Imperial revenues.

There had been a considerable number of decisions on the poor rate, which laid down a much wider principle than that laid down in *The King* v. *Cook*, namely, that whenever property was occupied for " public purposes " it was exempted from poor rate. In *The Mersey Docks* v. *Cameron* (*h*) it was decided by this House that the exemption to such an extent could not be supported. But whilst this was decided, it was not said that all the cases which established exemption on the ground indicated in *The King* v. *Cook* were wrong. The passage at pages 464, 465, in the opinion of the majority of the Judges, which I delivered, and which has been so often quoted, shows that those who joined in that opinion thought that many of them, such as those deciding that buildings occupied by the Post Office, the Horse Guards, or the Admiralty were exempt, were obviously right, and that those which decided that buildings occupied for police and for the assize courts were exempt, though not so obviously right, were capable of being supported on a ground that did not touch the case then before the House. I do not think that opinion can be properly cited as an authority that those

(*h*) 11 H.L.C. 443.

cases were rightly decided, but certainly their authority was not weakened by anything said in that opinion.

The House, in *Mersey Docks* v. *Cameron*, did not decide that those cases to which I have referred were rightly decided; but the language of the Lord Chancellor (Lord Westbury), at page 505, seems to me to add to their authority. He there says that the public purposes to make an exemption "must be such as are "required and created by the Government of the country, and "are therefore to be deemed part of the use and service of the "Crown;" and in *Greig* v. *University of Edinburgh* (*i*) he more clearly shows what was his view by using this language: "Property occupied by the servants of the Crown, and (accord-"ing to the theory of the Constitution) property occupied for "the purpose of the administration of the Government of the "country, became exempt from liability to the poor rate." Lord Cranworth (11 House of Lords, page 508), by using the words "more or less sound," seems to me to guard against being supposed to decide that those cases which proceeded on this ground were all right in deciding that the purposes were those of the public Government to such an extent as to bring them within the principle of *The King* v. *Cook*, but he certainly does not at all impeach them.

The Scotch cases on the Scotch Poor Law proceed on a similar ground. It has been pointed out that in the Scottish Poor Law half the poor rate is imposed on the owner in respect of property, and so far the case is more closely analogous to that of the income tax; but I think that whether the rate is exigible in respect of property or in respect of occupation, the ground of exemption must be the same, viz., as said by the Lord Chancellor (*Cairns*) *re Greig* v. *University of Edinburgh*: "The "Crown not being named in the English or Scotch statutes on "the subject of assessment, and not being bound by statute "when not expressly named, any property which is in the "occupation of the Crown or of persons using it exclusively in "or for the service of the Crown, is not rateable for the poor "rate."

It was not necessary, however, to decide in that case, nor I think in any case in this House, that the exemption proceeded so far; all that was decided was that it did not go further. And I, therefore, do not think it can be considered as decided by this House that property held as this is would not be liable to the poor rate. I think it would not be open to a court of the first instance, in England, to hold that a uniform series of decisions extending over many years, and certainly not impeached, if not confirmed by this House, are wrong, but it is open in this House to say so. But I cannot see sufficient reason for saying that they are wrong. I do not say that the assize courts, maintained by the county for the administration

(*i*) L.R. 1 H.L. Sc. 354.

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of the Queen's justice in the Queen's Court, are quite so clearly occupied by the servants of the Crown as those Courts which are maintained by the Woods and Forests out of the general revenue of the country. Nor do I say that the police station, maintained by the county for the maintenance of the police, is quite so clearly occupied by the servants of the Crown as a barrack maintained for solders, and paid for out of the general revenues of the country. But I think there is great reason for saying that both are maintained for the purposes of the administration or those purposes of the Government which are according to the theory of the constitution administered by the Sovereign.

If it was a new point whether buildings occupied for the purpose of county courts and county police were liable to be rated for the poor rate, I think there would be considerable force in the argument that the county occupying property in order to fulfil a duty to the Crown, which it is required to fulfil at its own expense, is not occupying it for the Government, or in the service of the Government. But as for many years property thus occupied has been uniformly held exempt from the poor rate, I do not think your Lordships ought now to hold that it is liable to poor rate.

It remains to be considered whether, if the county is not liable for poor rate in respect of the occupation, it may not be liable to the income tax in respect of the property or the occupation.

The decision of the First Division of the Court of Session in *Clerk* v. *Dumfries Commissioners of Supply* (*j*) was much and properly relied on by the Counsel for the Appellants. There the question was whether the Commissioners of Supply were chargeable with income tax in respect of police stations erected under the 20 & 21 Vict. c. 72. If there be any difference between such police stations in Scotland erected by Commissioners of Supply and those erected by the county authorities in England it has not been pointed out, and I have not discovered it. The decision was that they were chargeable; and it certainly seems to me that the decision in the case at bar, at least so far as regards the police stations, and that Scotch decision, cannot both be right. It must be for your Lordships to determine which you will follow.

The Lord President gives as the reasons :—" It appears to me " to be impossible to say that in charging income tax against " this property any charge is made against the Queen or the " Queen's Government. The charge is made against a certain " public body administering the statute for local purposes, and " as part of the local government; and I know no ground upon " which it can be said that property so occupied is exempt from " income tax. Indeed, I should say that it is impossible to hold " that, unless you could find within the Income Tax Acts them- " selves some clause of exemption. I take no account of that

(*j*) *Vol. I., p.* 281. 7 *Court Sess. Cas., 4th Ser.,* 1157.

"class of cases which has been referred to, and upon which the "arguments of the Respondents mainly turned, viz., those cases "in which certain premises have been found not liable in poor "rates or other local assessments of that kind because I think "those cases have no application to a question under the income "tax."

I have great respect for the opinion of the Lord President, and he having said (though without giving his reasons) that in his opinion the poor rate cases are not applicable, I have reconsidered the reasons which make me think them in point, and I have been unable to change my opinion. It seems to me that it is not material whether the assessment statute imposing any tax does so, like the Poor Rate Acts, for a local purpose, or like the statute imposing a duty on post horses, considered in *The King* v. *Cook*, (*k*) or the income tax, for an imperial purpose. In each there is an implied exemption on the ground of prerogative. And if the property is so held as to bring it within the ground of exemption for the one statute, it must surely be brought within the ground of exemption for the other.

I think, therefore, that your Lordships must either hold that this property is liable to be rated for the relief of the poor, or that it is not liable to be taxed for income tax.

The Lord President says that the county police is a local purpose, and one of the local government. If this were so it would be a reason for holding the premises assessable to both the poor rate and the income tax. But I think Mr. Greene in his argument gave the answer to that. The general Government administers law and justice, and keeps order; but it necessarily does it in different localities separately. If Berkshire or Dumfriesshire were suffered to get into lawless anarchy, every part of the empire would suffer, more or less directly according to their vicinity. It is a purpose of the Imperial Government carried out in a particular locality, but not the less a purpose of the Imperial Government.

I do not think it necessary to say anything on what I may call the technical answers, on which the Respondents' Counsel, and I think (to some extent) Lord Justice Brett, relied. I do not much doubt that if the premises were taxable means would be found for obtaining payment.

But the Attorney-General argued that, even if property held exclusively for the purpose of assize courts, &c. were not taxable, here there was, or (if the justices did their duty) would be, a surplus revenue, and for that there ought to be a tax. But the court are to decide only "the questions of law arising on the case." The question whether any extra revenue was raised is a question of fact, and the case expressly finds that there was none. It is also a question of fact whether the premises being as they are, a revenue could be and ought to be raised from them, by taking payment for uses to which, when the assizes

(*k*) 3 T. R. 519.

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are not sitting, the courts might be applied. The utmost that the case finds on this is that there was some evidence from which might have been drawn an inference of fact that it was so. The Commissioners neither drew that inference nor were asked to do so, and I do not think the Court on this case can do so.

The result is that I advise your Lordships to affirm the order appealed from, with costs, and I move accordingly.

Lord Watson.—My Lords, I also am of opinion that the premises in question are not assessable to income tax.

I entertain no doubt that the occupiers of buildings used as courts of assize or as county police stations are within the privilege of the Crown, and are therefore not liable to be rated under the first section of the Act of the 43rd Elizabeth, chapter 2.

In the case of the Mersey Docks, my noble and learned friend (Lord Blackburn), delivering the opinion of five of the consulted judges, said "Long series of cases have established that when "property is occupied for the purposes of the government of the "country, including under that head the police and the ad- "ministration of justice, no one is rateable in respect of such "occupation. And this applies not only to property occupied "for such purposes by the servants of the great departments of "State, such as the Post Office, *Smith* v. *Birmingham*, (*l*) the "Horse Guards, *Lord Amherst* v. *Lord Somers*, (*m*) or the "Admiralty, *The Queen* v. *Stewart*, (*n*) in all which cases the "occupiers might strictly be called the servants of the Crown; "but also to property occupied by local police, *Justices of* "*Lancashire* v. *Stretford*, (*o*) to county buildings occupied for "assizes, and for the judges' lodgings, *Hodgsen* v. *Local Board* "*of Carlisle*, (*p*) or occupied as a county court, *The Queen* v. "*Manchester*, (*q*) or for a gaol, *The Queen* v. *Shepherd*. (*r*) In "these latter cases it is difficult to maintain that the occu- "pants are, strictly speaking, servants of the Sovereign, so "as to make the occupation that of Her Majesty; but the "purposes are all public purposes of that kind which, by the "constitution of this country, fall within the province of "Government, and are committed to the Sovereign; so that "the occupiers, though not perhaps strictly servants of the "Sovereign, might be considered *in consimili casu*. And the "decisions are uniform, and it was not disputed at the Bar that "the exemption applies so far; but there is a conflict between "the decisions as to whether the exemption goes farther."

It was no doubt unnecessary for the Appellants in the Mersey Docks case to impeach the consistent series of autho-

(*l*) 7 E. & B. 483.
(*m*) 2 T. R. 372.
(*n*) 8 E. & B. 360.
(*o*) E. B. & E. 225.
(*p*) 8 E. & B. 116.
(*q*) 3 E. & B. 336.
(*r*) 1 Q. B. 170.

rities referred to by my noble and learned friend in the passages which I have just read. It was sufficient for them to establish that occupation for what were, strictly speaking, public, though in no sense Government purposes, was not, as regarded exemption from the poor rate, *in pari casu* with the occupation of the Crown, a matter in regard to which the decisions of the Courts below were in conflict. Neither was it necessary that the House should in that case decide in terms that no person was rateable in respect of the occupation of county police buildings, assize courts, or gaols. But the principle upon which the House disposed of the point immediately arising from its decision appears to me to imply that their Lordships were satisfied that the *Justices of Lancashire* v. *Stretford*, and other similar cases, were originally well decided, or had at least become an authoritative series of precedents.

The Lord Chancellor (Westbury) thus expresses what was in his opinion, the "true criterion" of exemption from rateability when property is valuable.

"At last, in the case of the *Tyne Improvement Commissioners* v. *Chirton*, (*s*) the Court of Queen's Bench recurred to that which is, in my opinion, the only true principle, namely, that the only ground of exemption from the statute of Elizabeth is that which is furnished by the rule, that the Sovereign is not bound by that statute, and that consequently when valuable property (that is, property capable of yielding a net rent above what is required for its maintenance) is sought to be exempted on the ground that it is occupied by bare trustees for public purposes, the public purposes must be such as are required and created by the Government of the country, and are, therefore, to be deemed part of the use and service of the Crown."

The precise language of that definition satisfies me that the noble and learned Lord meant to affirm, and did affirm, that the exemption extended not only to the immediate and actual servants of the Crown, but to all other persons, not being servants of the Crown, whose occupation was ascribable to a bare trust for purposes required and created by the Government of the country. And seeing that, in my opinion the administration of justice, the maintenance of order, and the repression of crime are among the primary and inalienable functions of a constitutional Government, I have no hesitation in holding that assize courts and police stations have been erected for proper Government purposes and uses, although the duty of providing and maintaining them has been cast upon county or other local authorities.

Lord Chelmsford does not, indeed, say that these cases (which were not conflicting) were originally well decided; but I conclude, from the terms in which he refers to the opinion of Chief Justice Tindal in *Crease* v. *Sawle* (*t*), that, even if his Lordship

(*s*) 1 E. & E. 516. (*t*) 2 Q. B. 885.

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had thought they were not, he would have upheld their authority. On the other hand, it appears to me that Lord Cranworth, although he does make use of the expression "more or less sound," meant to express approval of the principles upon which these cases were decided; and I am confirmed in that impression by the fact that his Lordship subsequently stated his entire agreement with the opinion of the Lord Chancellor (Cairns) (which has already been cited by my noble and learned friend) in *Greig* v. *The University of Edinburgh*. The rule laid down by Earl Cairns in that case is in substance the same as that stated by Lord Westbury in the case of the Mersey Docks.

It was argued, however, that the authorities to which I have referred have no application to the question with which the House has to deal for two reasons. First, because the assessment for the relief of the poor is imposed upon occupation, whereas "property" is the basis upon which the income tax is levied; and in the second place, because the *ratio* of these authorities is limited to the case of a local rate, and ought not to be extended tho the case of an imperial tax.

I confess that I had great difficulty in following the argument founded upon the supposed difference in principle (as regards the limits of Crown privilege) between an assessment on occupation and an assessment on property. I did not hear from the Bar, and I have been unable to discover for myself, any good reason why a person vested with the legal estate, but whose right is that of a bare fiduciary holding the premises for proper Government uses, should be less entitled to plead the privileges of the Crown than one who occupies for the same purposes. In the *Clyde Navigation Trustees* v. *Adamson*, (*u*) which was decided upon the same day on which judgment was given in the Mersey Docks case, the trustees were the legal owners as well as occupiers of the premises sought to be rated to the poor by the city parish of Glasgow, and they claimed exemption on the ground that any property vested in them was so vested in them as trustees for public purposes. The Lord Chancellor (Westbury) in his judgment points out that by the general Poor Law Act for Scotland (8 & 9 Vict. c. 83.) the assessment is imposed, one half upon owners and one half upon the tenants and occupants of all lands and heritages within the parish; and his Lordship then goes on to state that the question raised by the trustees, in answer to the demand that they should be rated for the poor, was "precisely the same as the questions raised by the "Mersey Docks and Harbour trustees." The same view was taken by the House in the subsequent Scotch case of *Greig* v. *The University of Edinburgh*. (*v*)

But it was next said that all the decisions founded on by the Respondents, in which the occupiers of property used for *quasi* Government purposes have been held exempt from taxation,

(*u*) 4 Macq. 931. (*v*) L. R. 1 H. L., Sc. 348.

refer to local rating for the poor, and therefore decide nothing as to exemptions from general rates, such as the income tax. It was accordingly argued for the Appellant that your Lordships are free in this case to consider all questions as to the proper extent and limit of Crown privilege as if these had now arisen for the first time for decision. The statement, in point of fact, upon which that argument was rested is not strictly accurate, because, as has been pointed out by my noble and learned friend, the Court, in *The King* v. *Cook*, (*w*) gave effect to the privilege of the Crown, not in the case of the local but of a general tax, holding that such privilege extended not only to the Act of Elizabeth but to every Act imposing a tax upon the subjects of the Crown. But I should have been prepared to hold, apart from the authority of that case, that the Appellant's contention upon this point is untenable.

The exemjtion of the Crown from the incidence of rating Statutes is a general privilege, and is nowise dependent upon the local or imperial character of the rate. It takes effect in all cases when the Crown is not named in the Statute, or, I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication. There is not, in my opinion, one kind of Crown exemption from the Statute of Elizabeth and another kind of Crown exemption from the Income Tax Acts. In other words, it appears to me that the existence of the same kind and degree of interest on the part of the Crown, which is deemed in law sufficient to protect an occupier from liability to the poor rate, must also be held sufficient to shield the owner of the bare legal estate against any demand for the payment of income tax. The judgment of a court of law to the effect that certain public purposes are such as are required and created by the Government of the country, and must therefore be deemed part of the use and service of the Crown, is a decision resting upon grounds altogether outside and independent of the provisions of the Act of Elizabeth, and, so far as I know, of any other taxing Act to be found in the Statute Book. I therefore think that the cases in which it has been decided that the actual occupiers of assize courts and police stations are exempt from poor's rate, as being within the privilege of the Crown are decisions of equal authority is a question as to exemption from income tax. I cannot conceive that what must be held to be a proper Government use, for the purpose of determining the incidence of the poor's rate, or any other local rate, should be held to be a use unconnected with the government of the country in determining the incidence of the income tax.

Your Lordships were referred, in the course of the argument, in the case of *Clerk* v. *The Dumfries Commissioners of Supply*, (*x*)

(*w*) 3 T. R. 519.
(*x*) *Vol. I., p.* 281. 7 *Court Sess. Cas., 4th Ser.* 1157.

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which was decided by the First Division of the Court of Session in the year 1880. After careful examination, I am satisfied that the circumstances of that case raise the precise question which your Lordships have now to decide, and, consequently, that in the event of your Lordships holding the decision of the Lords of the First Division to be right, there would remain no alternative in the present case except to give judgment for the Appellant. For the reasons which I have already endeavoured to indicate, I am of opinion that *Clerk* v. *The Dumfries Commissioners* was not rightly decided, and I have the less hesitation in differing from the learned judges of the Court of Session, seeing that their judgment appears to rest mainly on the assumption that the cases establishing immunity from poor rates have no application to a question under the Income Tax Acts, and that an owner who could plead the privilege of the Crown against payment of a local assessment cannot on the same ground resist payment of an Imperial Tax. It would have been more satisfactory had their Lordships explained the reasons upon which that assumption was made. The Lord President observes "that it is im-"possible to say that in charging income tax against this "property any charge is made against the Queen or the Queen's "Government." That is unquestionably true; but it is equally impossible to say that, if the owners and occupiers of county police stations were held to be liable to assessment for the poor, the rate would be a charge against Her Majesty or Her Government.

I do not think it necessary to notice in detail the alternative argument addressed to the House by counsel for the Respondent, founded on the circumstance that, under the Income Tax Acts, property is the subject of assessment, the owner being ultimately liable, whilst the tax is made directly payable by the occupier. The argument was carried the length of maintaining that the owner could not be made liable if the occupier was not a rateable person, but I am by no means satisfied that if A. were to let his property for Government use to the head of one of the great departments of the State for a substantial rent he would escape from payment of the income tax because his tenant was exempt from all taxation. I desire to add that I do not concur in many of the observations that were made upon this part of the case by some of the learned judges in the courts below.

In the event of judgment going against him upon the main questions raised by his appeal, the Appellant maintained that he was entitled to have a finding from your Lordships, to the effect that part of the premises in question have an assessable value, seeing that the county hall, and certain apartments connected with it, are only temporarily required for assize purposes, and are capable of being let at other times. I am certainly not prepared to hold that the duty laid upon county authorities of providing suitable accommodation for Her Majesty's courts of assize carries with it an implied statutory prohibition against

letting for profit at seasons when such accommodation is not required for Government purposes. Whether any part of the premises in question could be so let by the Respondents, consistently with fair and reasonable administration of their public trust, is a question to which the case before us affords no materials for an answer. Besides, the question is not one of law for the consideration of this House, but one of fact which must be determined by the Income Tax Commissioners.

I, therefore, am of opinion with your Lordships that the judgment of the Court of Appeal ought to be affirmed with costs.

Lord Bramwell.—My Lords, I am of the same opinion, and after what has been said I need add but little. When the courts had first to consider the question of liability to the poor rate of property, its owners and occupiers being such as those under consideration, I suppose it seemed unreasonable to them that such property should pay rates, there being no profitable occupation for private purposes, and they found or made a reason for its exemption. Whether they were right may be doubtful. The poor's rate is local. Whatever exempts part of the property in a rated locality adds to the burthen on the rest, and there is this additional hardship that the exempted part may increase the burthen itself by adding to the numbers chargeable on the rate. Moreover, the reasoning on which the exemption was founded may be doubtful. But it is the law, the law as confirmed in this House by the reasoning in the Mersey Docks case.

I agree with my noble and learned friend (Lord Watson) that "the cases in which it has been decided that the actual "occupiers of assize courts and police stations are exempt from "poor's rate, as being within the privilege of the Crown, are "decisions of equal authority in a question as to exemption "from income tax. I cannot conceive that what must be held "to be a proper Government use for the purpose of determining "the incidence of the poor's rate or any other local rate should "be held to be a use unconnected with the government of the "country in determining the incidence of the income tax." This is my *ratio decidendi*. Indeed, I think the case is one *à fortiori;* for, as I have said, there is some hardship in exempting any property from a local rate; there is none in exempting from a general tax a class of property everywhere within the range of that tax. The payers and receivers of poor rate are not the same. If the Crown paid income tax it would be at once payer and receiver. And indeed in one view the question is unimportant; for if this kind of property pays everywhere, a less rate of income tax will be necessary and a greater local rate everywhere, whereas by our decision more income tax may be required and less local rate, and this is what many people think desirable.

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I agree also that if this property was leasehold the owner of the rent paid for it would be liable to income tax.

I also desire to add that I see no reason why this property should not be used for purposes other than, but not inconsistent with, its primary objects. The doctrine of *ultra vires* has done mischief enough; I am not prepared to extend it.

The appeal was dismissed with costs.