HOUSE OF LORDS.

Monday, March 14.

(Before the Lord Chancellor (Halsbury), and Lords Watson, Macnaghten, Morris, Field, and Hannen.)

TENNANT *v.* SMITH (SURVEYOR OF TAXES).

(*Ante*, vol. xxviii. p. 307; and 18 R. 428.)

Revenue — Income-Tax — Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *Schedules D and E—Income-Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 51—*Customs and Inland Revenue Act* 1876 (39 *and* 40 *Vict. cap.* 16), *sec.* 8—*Emolument—Abatement on* £120 *on Incomes under* £400.

The agent and manager of a bank in a provincial town occupied in that capacity a dwelling-house rent free, which formed part of the bank premises. The dwelling-house was entered in the valuation roll as being of the annual value of £50. If this sum were added to his salary and income from other sources, his income exceeded £400, but otherwise it was only £374. This income was assessed for income-tax under Schedules D and E, as being more than £400. He appealed against this assessment, and maintained that the annual value of the bank house was not part of his "income" in the sense of the Income-Tax Acts; that his income was therefore less than £400; and that he was therefore entitled to the abatement on £120 allowed by these Acts on incomes under £400.

Held (*rev.* the decision of a majority of Seven Judges) that the annual value of the bank house should not be included in reckoning his income, which therefore did not exceed £400, and that he was entitled to the abatement.

This case is reported *ante*, vol. xxviii. p. 307, and 18 R. 428.

Alexander Tennant appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, to put this case very simply, the question depends upon what is Mr Tennant's income. This is an Income-Tax Act, and what is intended to be taxed is income, and when I say "what is intended to be taxed," I mean what is the intention of the Act as expressed in its provisions, because in a Taxing Act it is impossible, I believe, to assume any intention—any governing purpose in the Act—to do more than take such tax as the statute imposes. In various cases the principle of construction of a Taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a Taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subjects for taxation you must see whether a tax is expressly imposed.

Cases therefore under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation. Lord Wensleydale said *in re Micklethwaite*, 11 Exch. 456—"It is a well established rule that the subject is not to be taxed without clear words for that purpose, and also that every Act of Parliament must be read according to the natural construction of its words."

Now, it is certainly true that the occupation of a house rent free is not income. Of course the possession of a house which may be used for purposes of profit is property, and taxable as such. But the bald dry proposition that the mere fact of occupying a house, which house as property is already taxed, is not income in any sense could, I think, hardly be disputed. For my own part, I doubt very much whether a house could ever properly be described as part of a man's income, though doubtless the rent for it when received would be income in the hands of the person receiving it.

Another observation that occurs to me is, that in dealing with real property the whole framework of the statute seems to point to a peculiar kind of assessment while treating the things themselves as the subjects of assessment, and the provisions which give effect to that peculiarity of assessment are entirely distinct from the provisions as to income.

Now, Mr Tennant occupies this house without paying any rent for it. It may be conceded that if he did not occupy it under his contract with the bank rent free, he would be obliged to hire a house elsewhere, pay rent for it, and *pro tanto* diminish his income. And if any words could be found in the statute which provided that besides paying income-tax on income people should pay for advantages or emoluments in its widest sense (such as I think the word "emoluments" here has not, for reasons to be presently given), there is no doubt of Mr Tennant's possession of a material advantage, which makes his salary of higher value to him than if he did not possess it, and upon the hypothesis which I have just indicated, would be taxable accordingly.

But upon the principles to which I at first referred, your Lordships are to ascertain not whether Mr Tennant has got advantages which enable him to spend more of his income than if he did not possess them, but whether he has got that which any words in the statute point out as the subject on which it imposes taxation.

Now, I agree with Lord Adam in his very lucid judgment, that what Mr Tennant is to be assessed upon must be assessed under Schedule E, and I agree with the criticisms which he applies to the words within which, if at all, this advantage of occupying a house rent free must be brought, and none

of the words, either "perquisites," "profits," or "emoluments," are properly applicable, inasmuch as by the rule in which those words are used or explained the word "payable," as applied to them, renders it to my mind quite impossible to suppose that the mere occupation of a house is reconcilable with the just application of that word.

I come to the conclusion that the Act refers to money payments made to the person who receives them, though of course I do not deny that if substantial things of money value were capable of being turned into money they might for that purpose represent money's worth, and be therefore taxable.

The illustration given in the argument of the mode of arriving at a trader's profits and mode of treating his stock-in-trade, suggests that money's worth may be treated as money for the purposes of the Act in cases where the thing is capable of being turned into money from its own nature.

I have designedly avoided considering the question whether in any sense the occupation of this house is a benefit or a burden to the recipient of the advantage or disadvantage, whatever it may be, though I doubt very much whether such considerations on the one side or the other are relevant to the question which your Lordships have to determine. I am aware that it has the high authority of the late Lord President, and his Lordship undoubtedly treated the question as if it were established to be a clear pecuniary benefit it would be taxable, whereas if it were a heavy burden it would not. Nor did his Lordship shrink from suggesting that this occupation of a house rent free would be taxable or not according as it was unsuitable for the occupant's domestic arrangements or the reverse. It followed, therefore, that in every case where such a question arose it would be necessary to examine the particular circumstances of each man's family. If he had a large family that could not be accommodated in the house, and he must hire a house elsewhere, one result would follow. If he was a bachelor, and the house was appropriate to his wants, then another result would follow.

I cannot think that the Legislature ever contemplated such an examination or discrimination of persons subject to taxation as such a system of assessment would imply. Nor do I understand upon what principle the inquiry could properly be directed. The expense a man is put to for the maintenance of his wife and family, if he has them, has not the less formed part of his income. The fact that he is compelled to spend it on this or that subject of expenditure does not make the money that he has had to spend the less his income because he has to spend it.

The example given by Lord Young, on the other hand, of a man who is saved by the form of his occupation, as a sea captain, from the necessity of hiring a house, is a very cogent and striking illustration to what extreme views such an interpretation of the Act would lead.

I observe both the Lord President and the Lord Justice-Clerk used the phrase "gains" as applicable to the advantage which Mr Tennant derives from the occupation of the house. That seems to be a reference to Schedule D, whereas, as I have already said, I concur with Lord Young and Lord Adam that Mr Tennant's income must be assessed under Schedule E. And further, it appears to me impossible to contend that it can be assessed under both D and E, each being in terms exclusive of the other. Nor do I think that a different class of emolument can be intended to be reached under Schedule D, though the words "emoluments or gains" in Schedule D do not receive exposition from the words that occur in Schedule E.

For these reasons I am of opinion, in the words of Lord Young, that the thing sought to be taxed is not income unless it can be turned into money.

Accordingly, I think that the determination of the Commissioners was right, and that the order appealed from ought to be reversed, and I so move your Lordships.

LORD WATSON—My Lords, the appellant is agent for the Bank of Scotland at Montrose, and in that capacity he resides in part of the bank's business premises in circumstances and under conditions precisely similar to those which this House had occasion to consider in *Russell* v. *Town and County Bank*, 13 App. Cas. 418. He has a yearly salary from the bank of £300, and income from two other sources amounting to £74.

Having been charged with duties upon that income, under Schedules D and E for the year ending 5th April 1890, the appellant claimed an abatement in terms of section 8 of the Customs and Inland Revenue Act 1876 which enacts that a person who shall duly prove that his "total income from all sources," although amounting to £150 and upwards, is less than £400, shall be entitled to be relieved from so much of the said duties assessed upon or paid by him as an assessment or charge upon £150 would amount to. The same section exempts from duty persons whose total annual income is less than £150.

The claim was not admitted by the respondent, who is surveyor for the district of Brechin, upon the ground that, in estimating the appellant's total income from all sources, there ought to be added to the items already mentioned the sum of £50 as representing the yearly value to the appellant of his privilege of residence in the bank buildings. The District Commissioners having on appeal allowed the abatement, the respondent obtained and submitted a case to the Second Division of the Court of Session, who, being equally divided in opinion, took the assistance of three Judges of the other division. The result was that the late Lord President (Inglis), the Lord Justice-Clerk, and Lords

Rutherfurd Clark and M'Laren decided against the appellants, Lords Young, Adam, and Trayner dissenting.

In ascertaining total income from all sources with a view to the exemptions enacted by section 8 of the Act of 1876, I am opinion that no income arising in this country can be taken into account which is not chargeable with duty under one or other of the Income-Tax Schedules. What may be the rule with respect to income arising in another country and not assessable here I do not consider it necessary for the purposes of this case to determine. Accordingly, it appears to me that the case was decided in the Court below, as it has been argued at your Lordships' bar upon the true legal issue, namely, whether the appellant's residence is income within the meaning of the statutes which must be valued and assessed for income-tax.

Schedule A, which assesses property according to its annual value, includes all lands, tenements, hereditaments, and heritages capable of actual occupation. Schedule B imposes an additional assessment in respect of occupancy upon some of the lands and others comprehended in Schedule A, the occupation of which in itself constitutes a trade or business. The appellant is not a proprietor, neither is he an occupier within the meaning of Schedule B. The bank are the only occupiers, being, as Lord Herschell said in *Russell* v. *Town and County Bank*, "in the same position as if that portion of their bank premises were used in any other way in the strictest sense for the purposes of the bank and the business of the bank." The appellant does, no doubt, reside in the building, but he does so as the servant of the bank, and for the purpose of performing the duty which he owes to his employers. His position does not differ in any respect from that of a caretaker or other servant, the nature of whose employment requires that he shall live in his master's dwelling-house or business premises instead of occupying a separate residence of his own.

The Legislature has made elaborate provision for ascertaining the yearly value of lands, tenements, hereditaments, and heritages, assessable under Schedule A, and also the yearly value of occupation falling under Schedule B, but there is no machinery to be found in any of the Income-Tax Statutes for arriving at the annual value of residence as distinguished from such occupation. Yet it is manifest that the ascertainment of annual value in the latter case may be attended with greater difficulty and nicer considerations than are involved in the application of the rules for assessing and charging duties under Schedules A and B. Even according to the respondent's argument, the assessable value of a servant's residence in premises which he does not occupy is not the price which other persons might be prepared to pay for the privilege, but the benefit which he personally derives from it estimated in money.

In the present case the learned Judges of the majority have assessed the value of the appellant's residence at £50, upon the somewhat speculative footing that if his duty did not require him to reside in the bank he would be compelled to pay that sum for suitable accommodation for himself and family elsewhere. In that view the so-called benefit may in some instances prove a heavy burden, as in the case of a bank agent who but for the service required by his employers would continue to reside free of charge in his parents' house. I entertain very serious doubt whether according to the scheme of the Income-Tax Acts it was intended to assess in any shape mere residence either in performance of duty to the actual occupant or by licence from him. But I do not find it necessary to decide the point, because I am satisfied that the appellant is not liable to duty under any schedule. I agree with your Lordships that income arising from employment as a bank agent is assessable under Schedule E in all cases where the bank which employs him is a company or society, whether corporate or not corporate, as specified in the third rule of that schedule. The Bank of Scotland being a corporation, the appellant's office is undoubtedly within the schedule. Neither is it doubtful that the appellant is liable to pay duty in respect of all salaries, fees, wages, perquisites, or profits whatsoever accruing to him by reason of such office as provided by the first rule.

It is clear that the benefit, if any, which a bank agent may derive from his residence in the business premises of the bank is neither salary, fee, nor wages. Is it then a perquisite or a profit of his office? I do not think it comes within the category of profits, because that word, in its ordinary acceptation, appears to me to denote something acquired which the acquirer becomes possessed of, and can dispose of to his advantage—in other words, money, or that which can be turned to pecuniary account. If the context had permitted, it might have been possible to argue that a benefit of that kind was a perquisite. But the fourth rule of Schedule E defines perquisites, for all purposes of the Act, to be "such profits of offices and employments as arise from fees and other emoluments, and payable either by the Crown or by the subject in the course of executing such offices or employments."

It was argued, however, that if not liable under Schedule E, the appellant was at all events liable under Schedule D. I do not think it can be reasonably maintained that a public office or employment assessable under Schedule E is also liable to assessment as an employment or vocation within the meaning of Schedule D. No doubt that schedule also includes all "other profits and gains not charged by virtue of any of the other schedules contained in this Act." But it appears to me that everything in the shape of profit or gain arising from a public office or employment which the Legislature intended to be chargeable with duty is ascertainable and assessable under the rules of Schedule E, and under these rules

only. The profits and gains arising from public offices and employments are in no sense profits and gains not charged by virtue of schedules other than Schedule D.

There is a clause in the Act of 1842 (section 188) which enacts that "every provision in this Act contained and applied to the duties in any particular schedule, which shall also be applicable to the duties in any other schedule, and not repugnant to the provisions for charging, ascertaining, or levying the duties in such other schedule, shall, in charging, ascertaining, and levying the same, be applied as fully and effectually as if the application thereof had been expressly and particularly directed." The respondent did not rely in argument upon the terms of that clause, the construction of which is by no means free from difficulty. Thus far its terms are clear enough. The provisions of Schedule D with respect to employments and vocations are not to be applied to offices and employments under Schedule E unless they are, in the first place, "applicable" to such offices and employments, and, in the second place, not repugnant to the rules of assessment enacted for Schedule E. Assuming, for the sake of argument, that the rules of assessment for employments and vocations under Schedule D differed in material respects from the rules for assessing public offices and employments under Schedule E, I do not think they would be applicable to cases falling under Schedule E, or could be applied without repugnancy, or, in other words, without abrogating *pro tanto* the rules of Schedule E.

I think it right to add, that in my opinion the result would not be different if the rules of Schedule D were applied to the appellant's so-called benefit of residence.

In that case the appellant would be chargeable upon the full balance of "the profits, gains, and emoluments" accruing to him from his employment as bank agent. Having regard to the general scheme and context of the Act, I am unable to come to the conclusion that these words "profits, gains, and emoluments" of a private employment as bank agent under Schedule D were meant by the Legislature to include more than the "salaries, fees, wages, perquisites, or profits whatsoever" accruing to a similar employment by a public company. In my opinion the word "emolument" occurring in the rules of Schedule D, means some more tangible benefit than a servant's residence in his master's house, or a meal or a suit of livery supplied by the master.

I therefore concur in the judgment which has been moved by the Lord Chancellor.

LORD MACNAGHTEN—My Lords, I agree.

The appellant, who is the agent at Montrose for the Bank of Scotland, being assessed for income-tax, claims an abatement. The question is, whether his "total income from all sources" is or is not less than £400? That depends upon whether he has to bring into account the value of a free residence provided for him by the bank in the bank premises. Notwithstanding the opinion of one of the learned Judges of the Court of Session, I think it is perfectly clear that nothing is to be brought into account on a claim to relief except what is chargeable for the purpose of assessment.

The first point for consideration is, what is the meaning of the expression "total income from all sources." It certainly means more than income properly so described. It includes more than "profits and gains" chargeable under the last three schedules of charge. It includes the annual value of property chargeable under Schedule A, and the annual value of the occupation chargeable under Schedule B. The Income-Tax Code (5 and 6 Vict. c. 35, sec. 167, and 16 and 17 Vict. c. 34, sec. 28) contains express directions for estimating and calculating these values for the purpose of ascertaining the title to abatement when relief by way of abatement is claimed. But it contains no directions for estimating or bringing into account any benefit or advantage or enjoyment derived from lands, tenements, hereditaments, or heritages, which does not come under Schedule A or Schedule B.

The next point to be considered is, what is the nature of the appellant's occupation of the residence provided for him in the bank premises. From the case stated for the opinion of the Court of Exchequer in Scotland, it appears that "the appellant is bound as part of his duty to occupy the bank house as custodian of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours." He is not entitled to sub-let the bank house or to use it for other than bank business, and in the event of his ceasing to hold his office, he is under obligation to quit the premises forthwith. Property therefore in the house he has none of any sort or kind. He has the privilege of residing there. But his occupation is that of a servant, and not the less so because the bank thinks proper to provide for gentlemen in his position in their service accommodation on a liberal scale. It is clear therefore that the appellant is not chargeable under Schedule A in respect of the bank house, or liable to pay the duty as occupying tenant. The bank and the bank alone is chargeable and liable to pay. Then this question suggests itself—Has not the Crown got all that it is entitled to in respect of this house when it has received the duty on its full annual value? Is not the notion of finding some subject for taxation in lands, tenements, hereditaments, or heritages, over and above the full annual value chargeable under Schedule A and B, a fanciful notion and foreign altogether to the scope and intent of the Income-Tax Code? The learned counsel for the Crown say, No. Their case is, that the benefit derived by the appellant from his occupation of the bank house is chargeable under Schedule E, or at any rate under Schedule D.

I do not doubt that the occupation of the bank house rent free, though not unattended with some inconveniences, is, on

the whole, a considerable advantage to the appellant. It is a gain to him in the popular sense of the word. Whether such a benefit or gain comes under the head of "profits and gains" chargeable for income-tax purposes is the question submitted to your Lordships. I use the expression "profits and gains" because that is the term which the Legislature uses as applicable to both the schedules of charge under which it is said the appellant is chargeable. In the course of the argument the learned counsel for the Crown admitted that there was a difficulty in maintaining their claim under Schedule E. On examining that schedule it became obvious that it extends only to money payment or payments convertible into money. And so they took their stand on Schedule D.

For the purposes of this case I am willing to assume that in assessing a person holding an office chargeable under Schedule E the Crown may resort to Schedule D in order to reach gains or profits arising or accruing from his office which for some reason or another do not come within the letter of Schedule E. The third paragraph of Schedule D imposes the duty in respect of all profits and gains not charged by virtue of any of the other schedules. It seems to me, therefore, that if the privilege of occupying the bank house rent free is really a profit or gain within the meaning of the Income-Tax Code, and if it is not chargeable under Schedule E it might be caught by Schedule D—not I think under case 2, rule 2, on which the Crown mainly relied, but under case 6. Case 2, rule 2, is I think inapplicable, because it only extends to the duty to be charged in respect of employments not contained in any other schedule. Case 6 goes much further. It gives effect to the third paragraph of Schedule D, and extends to the duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any of the other schedules.

In my opinion the answer to the claim of the Crown does not depend on any minute criticism of the language of the different schedules.

The real answer is, that the thing which the Crown now seeks to charge is not income, nor is it required to be taken into account as income for the purpose of ascertaining title to relief by way of abatement. It falls neither under Schedule A nor under D or E. I have already dealt with Schedule A. Under that schedule the duty is payable on the "annual value." The duty under Schedules D and E is payable on the "annual amount." It is a tax on income in the proper sense of the word. It is a tax on what "comes in" on actual receipts. Take, for example, the 6th case of Schedule D, which sweeps in all profits or gains not otherwise chargeable—what the person liable to be assessed is required to do under Schedule G is to return "the full amount of annual profits received" (5 and 6 Vict. cap. 35, sec. 190, Schedule G, 12). No doubt if the appellant had to find lodgings for himself he might have to pay for them. His income goes further, because he is relieved from that expense, but a person is chargeable for income-tax under Schedule D as well as under Schedule E, not on what saves his pocket, but on what goes into his pocket, and the benefit which the appellant derives from having a rent free house provided for him by the bank brings in nothing which can be reckoned up as a receipt or properly described as income.

For these reasons I am of opinion that the appeal must be allowed.

LORD MORRIS—I concur in the judgment which has been moved.

LORD FIELD—I also concur in the judgment that the appeal should be allowed, and the decision of the Commissioners restored. For the reasons which have been so fully indicated by your Lordships it appears to me that the residence of the appellant upon the bank premises, which although rent free could not in any way be converted by him into money, or money's worth, cannot be held to be either a gain or profit or perquisite or emolument within the meaning of the statutes.

LORD HANNEN—My Lords, the question for consideration is, whether the appellant is entitled under the Customs and Inland Revenue Act 1876, section 8, to an abatement on the amount of income on which he has been assessed, on the ground that his total income from all sources is under £400. His undisputed income is £374; if to this should be added the annual value of the house he resides in rent free his assessable income exceeds £400, otherwise not.

The appellant is agent for the Bank of Scotland at Montrose. He is bound as part of his duty as such agent to live in the bank house as custodier of the whole premises, and to transact business there after bank hours. He cannot temporarily vacate the house without special consent of the directors, and he cannot sublet or use the premises for other than bank business. Is such an occupation as this to be regarded as a part of the appellant's income. It certainly does not come within the natural meaning of the word "income." It saves the appellant from the expenditure of income on house rent, but it is not in itself income. That it is a suitable residence for the appellant is an accident which ought not to affect the determination of the question of principle as to the incidence of taxation. The income-tax is imposed, not on the personal suitableness of a man's surroundings, which must vary with each man, and with the same man in different circumstances, but on his income capable of being calculated. The appellant occupies the bank house as a part of his duty, and I do not see how the case can be distinguished from that so aptly put by Lord Young of the master of a ship who is spared the cost of house rent while afloat. His cabin does not on that account become a part of his income.

Different considerations would apply to the case of an agent who as part of his remuneration has a residence provided for

him which he might let. That which could be converted into money might reasonably be regarded as money, but that is not the case before us.

Although the question raised on this occasion is on a claim for abatement I think it would equally arise on an assessment under either of the Schedules D and E. For the reasons given by Lord Adam I am of opinion that the occupation of this house does not fall within the description of "salaries, fees, wages, payments, profits, or emoluments," in the sense in which these words are used in the Act.

I think therefore that the judgment appealed from should be reversed, and that of the Commissioners affirmed.

The House ordered and adjudged that the interlocutor appealed from be reversed, with expenses in both Courts.

Counsel for Appellant—Sir H. Davey, Q.C. —Guthrie. Agents—Loch & Goodhart, for Tods, Murray, & Jamieson, W.S.

Counsel for the Respondent—The Lord Advocate—Solicitor-General for Scotland. Agent—W. H. Melvill, Solicitor for England of the Board of Inland Revenue, for David Crole, Solicitor for Scotland of the Board of Inland Revenue.

COURT OF SESSION.

Tuesday, March 15.

FIRST DIVISION.

[Lord Wellwood, Ordinary

COUNTY COUNCIL OF THE COUNTY OF LANARK *v.* INLAND REVENUE.

Valuation Roll—Expenses Connected with Printing Valuation Roll — Valuation Act 1854 (17 *and* 18 *Vict. c.* 91), *secs.* 3, 18 *—Valuation Act* 1857 (20 *and* 21 *Vict. c.* 58), *sec.* 1 — *Registration Amendment (Scotland) Act* 1885 (48 *Vict. c.* 16), *sec.* 12 *—Local Government (Scotland) Act* 1889 (52 *and* 53 *Vict. c.* 50), *sec.* 83, *sub-sec.* 3.

Held that the expenses connected with printing a county valuation roll where the Land Valuation Assessor is the Surveyor of Taxes, fall to be borne by the Inland Revenue.

Since the passing of the Act 20 and 21 Vict. c. 58 (1857) the valuation roll of the county of Lanark has been made up by the Surveyors of Inland Revenue, and the expenses of making up the roll have been defrayed by the Board of Inland Revenue. On October 21, 1890, the County Council of the county of Lanark—to whom the powers and the duties of the Commissioners of Supply have been transferred under the Local Government (Scotland) Act 1889—resolved, in virtue of the provisions of the Registration Amendment (Scotland) Act 1885 (48 Vict. c. 16), sec. 12, that the valuation roll of the county should be printed for such a period of years, not exceeding ten, as their finance committee might decide upon. The finance committee fixed five years. Arrangements for having the roll printed were accordingly made, when the comtroller of Inland Revenue forbade the Surveyors of Taxes as Land Valuation Assessors to furnish the printers with MS. copy of the roll for 1891-92 until the said County Council should make payment to the Inland Revenue of £80 for the extra work and expense connected with the correction of the proofs and revision of the first printed roll. The matter being urgent the County Council paid the sum demanded under protest, and afterwards brought an action against the Lord Advocate as representing the Inland Revenue for repayment of the same.

The Acts relied upon in support of the action are fully set forth and the appropriate clauses quoted in the opinion of the Lord Ordinary.

The pursuers pleaded — "(1) The Surveyors of Taxes for the county of Lanark, as Lands Valuation Assessors for said county, being bound, in terms of the Acts 17 and 18 Vict. c. 91, and 20 and 21 Vict. c. 58, to make up the valuation roll of the county, the Commissioners of Inland Revenue were not entitled to require payment of the sum sued for as a condition of their doing so. (2) The pursuers having resolved that the valuation roll should be printed, the surveyors as assessors foresaid were bound to supply a MS. copy of the roll for the use of the printer, and to revise the proof print, without requiring from the pursuers the payment of the said sum."

The defenders pleaded—"(1) The printing of the valuation roll and the work connected therewith being no part of the duty of Surveyors of Taxes as assessors in making up the roll, the payment required for their services on that account was properly and legally charged. (2) As the sum concluded for is only an adequate consideration for the work done by the assessors, the claim for repayment is not well founded. (3) The direction given by the pursuers to print the roll is subject to the approval of the Treasury, and in respect that the Treasury would insist on remuneration as a condition of their approval, the claim which is now made is untenable."

Upon 12th February 1892 the Lord Ordinary (WELLWOOD) repelled the defences and decerned against the defender in terms of the conclusion of the summons.

"*Opinion.*—I am of opinion that the pursuers, the County Council of the county of Lanark, who are now in place of the Commissioners of Supply, are entitled to repayment of the sum of £80 sued for. That sum, which was paid under protest by the pursuers, represents, I understand, in the opinion of the Commissioners of Inland Revenue, the extra work and expense imposed upon the assessors and their clerks in connection with the first printing of a valuation roll for the county of Lanark for the year 1891-92, the assessors appointed by the pursuers being also officers of Inland Revenue.