No. 148.—In the House of Lords. February 15th and 16th, and March 14, 1892.

Tennant v. Smith.

Tennant *v.* Smith (Surveyor of Taxes). (1)

Income Tax.—Official Residence.—Emoluments.—Total income from all sources.—A banking company assigns to its agent as a residence a portion of the bank premises occupied by them in respect of which they are assessed to Income Tax under Schedule A. The agent is required to reside in the building as the servant of the bank, and for the purpose of performing the duty which he owes to his employers.

Held, *That the value of the residence is not an emolument of office in respect of which the agent is chargeable with Income Tax; and is not to be included in estimating the total amount of the agent's income for the purposes of a claim of abatement.*

At a meeting of the General Commissioners of Income Tax for the district of Brechin, in the county of Forfar, held at Montrose on the 11th December 1889, for the purpose of hearing and disposing of appeals, there were present George Scott, Esq., Provost of Montrose; Edward Millar, Esq., of Rossie. Alexander Tennant, agent at Montrose for the Bank of Scotland, appealed against an assessment made on him under Schedules D. and E. Income Tax for the year 1889 ending 5th April 1890 on 317*l.* less 22*l.*, insurance, duty 7*l.* 7*s.* 6*d.*, on the ground that he was entitled to the abatement from this sum of 120*l.* allowed on income under 400*l.*

The facts in reference to the above assessment are these:—

1. The Appellant is bound, as part of his duty, to occupy the bank house as custodier of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours. He is not allowed to vacate the house even for a temporary period unless with the special consent of the directors, who in that case sanction the occupation of the house by another official of the bank during the absence of the agent. It is imperative that in the absence of the agent some responsible person should occupy the house and attend to the carrying on of the bank's business, so far as that may be necessary after bank hours, and to the due locking up of the premises, and specially to the security of the cash and books in the bank's safe, communicating with which there is a night bolt from the agent's bedroom. The annual value of the house so occupied is 50*l.*

2. The Appellant is not entitled to sub-let the bank house or any part thereof, and is not entitled to use it for other than the bank's business, but the Appellant, with the tacit consent of the bank, carries on insurance business in the bank's premises.

(1) Reported at L.R. (1892) A.C. 150.

3. By bond of fidelity granted by the Appellant on his appointment as agent at Montrose, dated 17th February 1888, he agreed that he should be liable to removal at any time, and in case of his removal from office, that he should be obliged forthwith to flit and remove from the whole premises occupied by him.

4. If the Appellant were to desire not to occupy the bank house, the sanction of the directors would be necessary for any arrangement which he might propose. In other cases where a bank agent has desired not to occupy the bank house, the directors have agreed to his not doing so, and have made arrangements for its occupation by a subordinate official at the branch. In such cases the bank agent's salary has not been affected by the change, and the subordinate officer of the bank who was appointed to occupy the house did not pay the agent any rent for the bank house, and the said officer's own salary was not affected by the change. In some special cases the bank have increased the salary to the official required to occupy the house on account of their requiring him to do so. In such cases the bank house was unsuitable for his use.

5. The general rule of the bank is that the bank agent must occupy the bank house, and no case has ever occurred in which they have asked the agent to give up his house, and they have accordingly never had to consider whether any increase of salary would be given to the agent if such a case ever arose.

6. The bank house is suitable in respect of size and accommodation for the Appellant. If a dwelling-house were not provided by the bank, he would require to provide a house for himself of similar size to the bank house.

7. The Appellant has a stated income from the Bank of Scotland of 300*l.* per annum, from commissions, &c., 17*l.*, and from invested capital (from which tax is deducted), 57*l.* These sums amount, *in cumulo*, to 374*l.*

The Appellant contended that this was his whole income, and that the same being under 400*l.* per annum, he was entitled to the abatement of 120*l.* allowed on incomes under that amount.

The Surveyor maintained that to the above sum of 374*l.* there fell to be added to the Appellant's income the sum of 50*l.*, being the annual value of the bank house occupied by him, for which he paid no rent, and which must be regarded as in the beneficial occupation of the Appellant. By adding this sum to the 374*l.* returned by the Appellant, his income was increased to 424*l.*, which would deprive him of the benefit of the abatement of 120*l.* claimed.

The Appellant objected to the annual value of the bank house occupied by him being added to his return, on the following grounds, viz.:—

(1.) That the occupancy of the house is imposed upon him as part of his duty.

(2.) That the premises are not a dwelling-house in the sense of the Act, but are truly bank premises occupied by him specially in connexion with the bank's business.

TENNANT v. SMITH.

(3.) That his occupancy of the premises does not fall under Schedule E. and the rules applicable thereto.

(4.) That the premises come under the exemption of section 51 of 16 and 17 Victoria, chapter 34, as being a necessary expense incurred in the performance of the duties of his office.

The Appellant and Surveyor having been heard, the Commissioners, after deliberation, sustained the appeal, and allowed the abatement of 120*l.* The Surveyor thereupon expressed dissatisfaction with the determination of the Commissioners, as being erroneous in point of law, and has since in writing required a case to be stated for the opinion of the Court of Exchequer, in accordance with the Act 43 and 44 Victoria, chapter 19, section 59, and the present case has been stated and signed accordingly.

EDWARD MILLAR,
DAVID LYALL, } Commissioners.

Montrose, 29th October 1890.

The case originally stated was argued on June 4, 1890, before four Judges of the Second Division of the Court of Session, sitting as the Court of Exchequer, and in view of the difficulty and importance of the question submitted for decision was appointed by them to be re-argued by one Counsel on each side before them, and three Judges of the First Division. This was done on June 16, 1890, with the result that the original case stated was remitted to the Commissioners for amendment.

The amended case, as printed above, was accordingly presented, and Counsel having been heard on January 22, 1891, the Court, by a majority of four Judges to three, reversed the determination of the Commissioners. Against this decision Tennant appealed.

Sir H. Davy, Q.C. (*Guthrie* with him) for Tennant:—

This particular case only raises the question of the Appellant's right to the abatement of 120*l.*, but the decision of your Lordships will also settle whether the Inland Revenue is not entitled to take into consideration, for assessing purposes, the value of the residence he occupies as bank agent. It is not directly the question whether this gentleman ought to be assessed in respect of the assumed value of the portion of the bank premises which he occupies as a residence, but whether the assumed value of those premises ought to be added to his income so as to bring it above the 400*l.* limit.

[*Halsbury, L.C.*—Would there be any difference in the question either way?]

We say not; and the majority of the Scotch Judges thought not—but one, and I rather think two, of the learned Judges thought that the word income might bear a different meaning for purposes of taxation from what it would bear for purposes of exemption.

[*Lord Watson.*—Has the Appellant the exclusive occupancy of the residence while he is an officer?]

If the Appellant is absent for a few days, under any circumstances, another person is put in, not by him, but by the bank. We contend that the premises are occupied by the bank and that the Appellant's so-called occupation is merely part of his duties which he undertakes in consideration of his salary.

The abatement of 120*l.* is granted to persons whose income from all sources is under 400*l.* It has been suggested that "income" there means something different from income which is liable to taxation; but that cannot be. If we look at the exemption of "income" under the 150*l.* limit, we find that is in terms, income liable to be taxed; and therefore, where the Act grants an abatement in the case where the "income from all "sources, though amounting to 150*l.*" (and therefore outside the scope of exemption) "or upwards is less than 400*l.*" it is clear that "income" means the same in each case. Section 163, 5 & 6 Victoria c. 35., confers exemption on any person charged or chargeable to the duties granted by that Act, either by assessment or by way of deduction, upon proof that the aggregate amount of his income estimated according to the rules and directions of the Act is less than 150*l.* Clearly, therefore, "income" there means income assessed according to the rules and regulations of the Act for purposes of taxation. We conceive, therefore, that the real question in this case is whether the assumed annual value of the occupation of this portion of the Bank premises is income for the purposes of these Acts, both for the purpose of taxing and for the purpose of exemption.

It has been said that this residence is an emolument to the Appellant, because it is suitable for his particular requirements in respect of size and accommodation, and the Lord President seems in one place to treat this case as not deciding any general principle, but as depending upon the suitability of the house to this particular Appellant; but we venture to think that "emolument" must be something of a general nature without regard to the particular circumstances of the receiver or the receiver's family. In order to make a thing an emolument it must be something either in money or capable of being converted into money.

There has been some question raised as to whether the Appellant is chargeable for this residence under Schedule D., or under Schedule E. I do not think it matters much which Schedule you take. Schedule D. charges "profits and gains," and these words mean something tangible in the shape of money or money's worth which comes into a man, not merely some expenditure which he is saved from incurring by holding a particular office.

Case II. of Schedule D., section 100, 5 & 6 Victoria c. 35., regulates the duty to be charged in respect of professions, employments, or vocations, not contained in any other Schedule. Under the first Rule that case is to extend to all "profits and earnings" of whatever value; and under Rule 2 the duty charged is to be

TENNANT v. SMITH.

computed at a sum not less than the full amount of the profits, gains, and emoluments, and to be paid on the "actual amount" of such profits or gains.

Under Schedule E. the language is a little different. Instead of the word "emoluments," the word "perquisites" is used, and that word is defined. The first Rule is that the duties shall be charged for all salaries, fees, wages, perquisites, or profits. The word perquisites is defined, and the definition is important for two reasons; first, from the meaning it attaches to perquisites, and secondly, because it defines a perquisite as an "emolument" and then implicitly defines "emoluments." Perquisites are defined as being fees or other emoluments "payable" either by the Crown or the subject. That word "payable" carries out exactly our view that to be a perquisite or emolument it must be money or money's worth.

[*Lord Morris.*—Are not both lands, tenements, hereditaments dealt with finally under Schedules A. and B.? If so, how can they be brought under Schedule D.?]

I do not know; what is said against us is that the value of the part of this house occupied as a residence is an emolument of the bank manager, and is therefore income. But we contend that the Act taxes only profits, or gains, or incomings.

Sir C. Pearson, Q.C., Lord Advocate, and *Graham Murray, Q.C., S.G.* for *Scotland,* for the Surveyor.

We propose to argue this case as if it had arisen in a question of assessment, and not in a question of abatement.

[*Halsbury, L.C.*—You agree that the same construction must apply whether it is a question of assessment or deduction?]

We do not see our way successfully to distinguish the one from the other. It has been stated and truly that the bank pay income tax under Schedule A. in respect of the bank premises, the dwelling-house included. But when they come under Schedule D. as a trading company, they are entitled under the decision in *Russell* v. *Aberdeen Town and County Bank* [Vol. II. p. 321.] to claim the value of the whole premises as a deduction, as an outgoing or expense. The question then arises to whom does that outgoing or expense accrue in the counter shape of benefit or emolument. We say that this occupation of the dwelling-house which is held to be of value in one sense to the bank, that is to say, in the sense in which they find it necessary to occupy the dwelling-house through an agent to make their profits and gains, is, as looked at from the agent's point of view, a part of the emoluments which he derives from the bank.

It falls then on us to show which schedule or which rule is applicable to the case. We contend it falls under Schedule D. The same person can quite competently be assessed under both Schedule D. and Schedule E. There may be something in the nature of salary, and there may be something in the nature of emoluments accruing from employment, which is one of the things that Schedule D. deals with.

[*Lord Watson.*—Schedule E. deals with emoluments. It refers to perquisites as including emoluments.]

We quite understand the objection that the word "perquisites" is defined in such a way as to lead to the inference that the section contemplates money payments. But that seems only to have the effect of confining the interpretation of the word "emoluments" in Schedule E. to such matters.

[*Halsbury L.C.*—Do you suggest that the word "emoluments" is susceptible of a different construction in Schedule D. and Schedule E.? That this is an emolument under Schedule D. and as such chargeable under Schedule D.?]

That is our contention. In the case of an employment of which some of the incidents fall under Schedule E., and some do not, then as regards the matters which do not fall under Schedule E., there is no reason why we should not appeal to the net of larger sweep supplied by Schedule D.

Sir H. Davy in reply.

Cur. adv. vult.

14 March 1892.

Halsbury. L.C.—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 (1), "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

(1) 11 Exch., 456.

TENNANT v. SMITH.

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.

Fow 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 first 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 the mode of treating his stock-in-trade, suggest 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 them 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 recent occasion to consider in *Russell* v. *Town and County Bank*. (1) He has a yearly salary from the bank of 300*l.*, and income from two other sources amounting to 74*l.*

(1) Vol. II., p. 321.

Tennant v. Smith.

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*l.* and upwards, is less than 400*l.*, 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 120*l.* would amount to. The same section exempts from duty persons whose total annual income is less than 150*l.*

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*l.* 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 Lord President (Inglis), the Lord Justice Clerk, and Lords Rutherfurd Clark, and McLaren decided against the Appellant, 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 of 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 Lordship's 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*l.* 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 parent's 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

TENNANT v. SMITH.

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 levy-"ing 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*l.* 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 & 6 Victoria c. 35. s. 167, and 16 & 17 Victoria c. 34. s. 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 "custodier 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

TENNANT v. SMITH.

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 Schedules 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 sixth 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" (5th and 6th Victoria, chapter 35, section 190, Schedule G. XII.). 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.—My Lords, I concur in the judgment which has been moved.

Lord Field.—My Lords, 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 to 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*l.* His undisputed income is 374*l.*; if to this should be added the annual value of the house he resides in rent free his assessable income exceeds 400*l.*, 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

Tennant v. Smith.

not to affect the determination of a 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 those words are used in the Act.

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

Questions put and agreed to.

That the Interlocutor appealed from be reversed.

That the Respondent do pay to the Appellant the costs both here and below.