Their Lordships are referred to the case of *Livingstone* v. *Ross* (1901 A.C. 327), where an agreement was held to be a mere agreement of agency and to give no right to the agent to introduce himself as purchaser. Obviously each agreement must be judged of according to its own terms, and they think that the distinction between the agreements in that case and in this is obvious and vital. In that case no option in favour of Livingstone was expressed, and the opinion of the board is expressly rested on the fact that if sale on option and not agency had been intended, such option would have been expressed by the insertion of the words "to you" after the words "we offer to sell." The expression "to you" was indeed employed in an ancillary clause dealing with timber on the ground, but it was held that this could not supply the crucial omission just mentioned. In this case, as already mentioned, the offer to sell to Enderton by name stands in the forefront of the contract. Further, in that case the moment that Livingstone assumed to accept, Ross at once repudiated that view of the agreement. Here there is neither challenge nor repudiation of the letter of the 15th March, and the conveyance for which the only warrant was the offer contained in exhibit 2, and the acceptance in the letter of the 15th March was duly executed in favour of Enderton & Company's nominee.

This being their Lordships' view of the construction of the contract contained in exhibit 2, it becomes unnecessary to consider whether Simpson is really an independent assignee of Enderton & Company or whether he truly holds as a trustee for them. Their Lordships are therefore of opinion that the result to which the trial Judge and the Court of Appeal came was correct, and they will humbly advise His Majesty that this appeal ought to be dismissed.

The respondents Enderton & Company and Russell will have their separate costs of the appeal, and the respondent Simpson will have such costs as he may be entitled to.

Appeal dismissed.

Counsel for the Appellants—Sir R. Finlay, K.C.—O'Connor, K.C. (of the Colonial Bar)—R. O. B. Lane. Agents—Capron & Company, Solicitors.

Counsel for the Respondents — Buckmaster, K.C. — Andrews, K.C. (of the Colonial Bar)—Geoffrey Lawrence. Agents—Blake & Redden, Solicitors.

HOUSE OF LORDS.

Monday, February 3, 1913.

(Before the Lord Chancellor (Viscount Haldane), the Earl of Halsbury, Lords Atkinson and Shaw.)

LIVERPOOL CORPORATION *v.* CHORLEY UNION.

(On Appeal from the Court of Appeal in England.)

Assessment—Exemption—Occupation.

The appellants, who owned waterworks, contended they were not in beneficial occupation of a moor owned by them and forming part of their catchment area but not otherwise used except by their shooting tenant. *Held* that either of these uses was sufficient to constitute the appellants beneficial occupiers and therefore liable to assessment.

This was an appeal from a judgment of the Court of Appeal (Vaughan Williams, Buckley, and Kennedy, L.JJ.) reported 1912, 1 K.B. 270, affirming a judgment of the Divisional Court (Lord Alverstone, C.J., Hamilton and Avory, JJ.) reported 1911, 1 K.B. 1057, which had reversed a decision of the Court of Quarter Sessions for the county of Lancaster upon a case stated.

The *facts* appear from their Lordships' judgment, which was delivered as follows:—

Lord Chancellor (Haldane)—I have had the advantage of reading the judgment which has been prepared by Lord Atkinson. I fully concur in its conclusions, and I do not propose to add anything.

Lord Atkinson—The judgment of the Court of Appeal in this case, dated 21st December 1911, from which this appeal has been brought, affirmed a judgment of the Divisional Court dated the 25th January of the same year. The matter came before the Divisional Court by way of appeal, upon a Case stated, from a decision of the Court of Quarter Sessions of the county of Lancaster sitting at Preston. The main question for decision in that appeal was whether the appellants are liable to be rated for the relief of the poor under 43 Eliz. c. 2. s. 1, as the occupiers of a tract of open moorland, about 859 acres in extent, of which they are the owners in possession, the same forming part of the gathering ground for the supply of water to their waterworks at Rivington, in the township of Withnell, in that county. The Court of Quarter Sessions held that they were not so rateable on the ground that they were not in occupation of the moor. The Divisional Court and the Court of Appeal held, on the contrary, that they were in such beneficial occupation of it as rendered them liable to be rated in respect of it. Subsidiary questions were raised as to the

amount on which they, if rateable for this tract, should be rated, and also as to the amount on which they should be rated for a plantation 306 acres in extent, another portion of their gathering ground, of which they were admitted to be the owners and beneficial occupiers under the Rating Act of 1874 (37 and 38 Vict. c. 54, s. 3), and a further question as to the admissibility of the price paid for certain of their lands as evidence of their rateable value.

The appellants are the owners of the Rivington waterworks, in and by which they carry on the commercial business of vendors of water. The commodity which they sell is collected for them in a vast gathering ground 10,000 acres in extent. Owing to the configuration of this tract, the rain water which falls upon it flows towards their reservoirs in natural channels.

The appellants availed themselves for several years of this source of supply, though the gathering ground did not belong to them; but in order to have more absolute control over this catchment area, and thereby enable them to protect from pollution the more effectually the water gathered in it, thus rendering the water better, purer, and presumably more saleable, they purchased in the year 1898, at very considerable cost, the whole tract of 10,000 acres. Part of this tract they let to tenants, who are rated in respect of the occupation of their holdings. The appellants are themselves rated in respect of their reservoirs and works, and as they have devoted the planted area to two uses, first, to the use of collecting water for them, and secondly, to the use of producing timber for them, they have also devoted the moorland to two uses, first, the gathering of water, and secondly, the use of harbouring, feeding, and rearing game. The moor is a grouse moor. They have, by lease bearing date the 16th March 1906, leased the sporting rights over it and the plantations together with some other lands to a tenant at a rent of £300 per annum. Later on I shall deal with some of the terms of this lease and the nature of the rights which it confers. The appellants, however, insist that, notwithstanding the second use to which they thus devote the moorland, lucrative though it be, they are not liable to be rated as being in beneficial occupation of it.

The changes which the appellants made in their treatment of and mode of dealing with this moor and their other lands after they had purchased them are described in pars. 5 and 6 of the Case stated, which ran as follows—(5) "The said land when bought by the appellants consisted partly of agricultural land with farmhouses and buildings on it, and more largely of moorland. In order to reduce the population and the cattle on the said land, and so diminish the risk of the pollution of the water flowing therefrom, the appellants demolished, or caused to be left unoccupied, certain farmhouses and buildings thereon, and abolished certain rights of pasturage and turf cutting which had previously been enjoyed thereon, and limited the user thereof to purposes of sporting and afforestation in manner hereafter appearing." (6) "They had planted 297½ acres of the said land with trees for the purpose of improving the shooting, and had utilised 8½ acres as a nursery for young trees, and they had enclosed the said planted area in a ring fence. The remainder of the said land, 859 acres, was moorland already enclosed by a fence when the appellants bought it. They had made a few grips in the said planted area for the purpose of adapting it for plantations. The water from the said grips flowed naturally, like the rest of the water from the land, to the waterworks of the appellants."

In order to prove that an owner in possession of such an extensive tract as this has entered into actual occupation of it, one is not obliged to prove the doing of some physical act on every portion of it. One must have regard to the kind of occupation of which the tract is reasonably susceptible. Acts done on one portion of it may furnish strong evidence of his having entered into and being in actual occupation of other portions of it or of the whole tract. The fencing of and planting of nearly 300 acres of this tract, and the demolition of farmhouses and other buildings erected upon other portions of it, go strongly to prove in this case that the appellants had entered into actual occupation of the whole tract. But as regards the moorland there is much more.

The gamekeeper of the lessee, acting with the authority of the appellants, regularly warns trespassers off the moor. Since the purchase the trespassers have been more rigorously excluded than heretofore. Before the passing of the Rating Act of 1874 the right of sporting over land granted by the owners of the lands was not rateable under the statute of Elizabeth, not being a "hereditament"—*Reg. v. Battle Union*, L.R., 2 Q.B. 8. Now it is rateable though granted in gross and severed from the occupation of the land—*Kenwick* v. *Overseers of Guilsfield*, 5 C.P. Div. 41. It was stated that the lessee is rated under this statute in respect of the sporting right granted to him. He has no estate or interest in this moorland itself, but this lease contains covenants binding him to burn each year a portion of the old ling or heather growing on the moor, in the manner therein described, to the satisfaction of the appellants, and also binding him to keep and maintain shooting butts and stands and walls (presumably on the moor) in good and substantial repair to the satisfaction of the agent of the corporation. The appellants have thus appointed a person to dispose yearly of some of the heathery produce of the moor, and to repair and maintain certain physical structures upon it. If the lessee keeps his covenant and does those things, he does them, not by virtue of any estate or proprietary interest which he has in the land or right over it, but as the agent of the appellants. The physical acts thus required

to be done by him should consequently, if done, be, for the purpose of this question of occupancy, treated as their acts. Presumably the lessee has performed his covenant during the five years for which his lease has run. If so the appellants have, through him as their agent, been dealing physically with the produce of this land in such a way as to increase the value of the right of sporting over it. This latter right is, in its true legal nature, a right springing from and incident to the occupation of the land. In *Reg.* v. *Battle Union* Cockburn, C.J., says—"Now the right to take game upon land is an incident to the occupation of the land. If the land is let without any reservation, or any previous granting away of the right, it follows as a necessary consequence of the right of occupation." So that if the appellants themselves had through their agent (they could not do it otherwise) exercised the right of sporting over this moor before they granted the lease, they would undoubtedly be held to be in beneficial occupation of the moor. To use the language of section 6, sub-section 2, of 37 and 38 Vict. c. 54, the appellants have severed the right of sporting from the occupation and let it. The lessee, however, does not become the occupier of the moor, and I am quite unable to see on what principle the maintenance and keeping in repair of the structures upon the moor, and the dealing each year in the manner described with the heather growing upon it, does not, under the circumstances, amount to a user of the land by the appellants and a proof of their occupancy of it notwithstanding the lease of the sporting rights.

As an illustration of how slight a user of land by its proprietor in possession will be held sufficient to render him liable to be rated as the beneficial occupant of it (the land), I may refer to the decision in the case of *Rex* v. *Mersey and Irwell Navigation Company* (9 B. & C. 95), apparently approved of in this House in the case of *Assessment Committee of Doncaster Union* v. *Manchester, Sheffield, and Lincolnshire Railway Company* (71 L.T. Rep. 585)—(see the judgment of Lord Davey in *Assessment Committee of Holywell Union* v. *Halkyn Mines Company*, 1895 A.C. 117, and the footnote on the following page). In the first-mentioned case the undertakers, the respondents, were empowered by statute to deepen and straighten the bed of portions of the rivers Irwell and Mersey so as to make them navigable. The exclusive right (a most valuable one) of navigating the portions of these rivers where those works were effected was conferred upon them, subject only to this, that the riparian owners of land abutting on the streams had also the right of navigating the rivers, but only with pleasure boats. The respondents had acquired for the purpose of this navigation certain towing paths and locks in respect of which they were admittedly rateable. The point at issue was whether they were also rateable as occupiers of the subaqueous soil, the bed of the river. They were held not to be so, because they were not the owners of the bed and soil, but only entitled to an easement over it. It was quite clear, however, from the judgments of Bayley and Parke, JJ., that had they been owners of the bed and soil they would have been held to be rateable as the occupiers of it though the only way in which they used the soil was by navigating the waters lying above it.

In the case of *Jones* v. *Mersey Docks and Harbour Board* (3 Macph. (H.L.) 102, note, 11 H.L.C. 443), Blackburn, J., in delivering the opinion of the Judges, said—"It is clear that there can be no valid rate unless the occupation be of value, and if the words 'beneficial occupation' are to be understood as merely signifying that the occupation is of value, which is the sense in which the phrase is used in many cases cited at the Bar, it is clear that a beneficial occupation is essential to the foundation of the rate." Lord Cairns, L.C.'s, judgment in *Greig* v. *University of Edinburgh* (L.R., 1 Sc. App. 348, 6 Macph. (H.L.) 97) is to the same effect; and Lord Herschell, L.C., in commenting in *London County Council* v. *Churchwardens of Erith* (1893 A.C. 562) on this passage from Blackburn, J.'s, judgment, said—"The learned Judge, in my opinion, did not, and could not, have meant that it is essential to rateability that a particular occupier of the land can make a pecuniary profit by the use to which he is putting it. It is, I think, rateable whenever its occupation is of value." That principle has been pointed out and acted upon in many subsequent cases, and yet in the argument of the case before your Lordships it has not been steadily kept in view. Indeed, with all respect to the learned Judges who commented upon the judgment of your Lordships' House in *Winstanley* v. *Overseers of North Manchester* (1910, A.C. 7), I am not quite sure that the distinction between the kind of occupation of land which, however well established, is not rateable, and the kind of occupation which is rateable, has not, by one of them at least, been rather lost sight of. For instance, Lord Alverstone, C.J., is reported to have expressed himself thus in the present case—"On behalf of the respondent it was contended that the proposition laid down by Lord Atkinson in giving judgment in *Winstanley* v. *Overseers of North Manchester* that owners in possession are *prima facie* occupiers, is to be understood in the literal and bald way in which it is there stated, and that it governs the present case, and therefore that the owner of land in possession of the land as owner, if he does not allow anybody else to occupy it, is in rateable possession of it." But this House never affirmed or purported or intended to affirm any such proposition as that the owner of land, not houses, is to be held to be *prima facie* in rateable occupation of it in such circumstances.

The passage cited from the report in *Winstanley's* case, based as it was upon the judgments of Blackburn, J., and Lord Herschell, L.C., had reference solely to the first of the three questions into which

it was stated that the question for decision resolved itself. These questions were—(1) Does the appellant occupy the cemetery for which he is rated? (2) If he does, is his occupation a thing of value? (3) What is the measure of that value? It is quite obvious that, according to the authorities already cited, the appellant would not have been rateable if the second question were answered in the negative though the first question were answered in the affirmative. I have read all the judgments delivered in the present case as well as the authorities cited in them, and I have failed to find anything to lead me to the conclusion that the guarded and limited proposition laid down by Lord Herschell, of which the proposition laid down by me in the *Winstanley* case was but a literal reproduction, is, when properly understood, unsound. There is, however, much beyond that *prima facie* presumption in the present case. The appellants relied much upon a judgment of Lord Mansfield in the case of *Rex* v. *St Luke's Hospital* (2 Burr. 1053). There the Corporation of London had leased certain lands to several lessees for the purpose of having erected upon them a hospital for the reception of lunatics. The hospital was erected, and at the time when it was rated it was occupied exclusively by the insane patients and the staff which attended upon them. It was sought to rate one of the members of the staff as the person in beneficial occupation of the entire hospital. Lord Mansfield in delivering judgment said that the material point in the case was, Who can be named and charged as occupier? He then proceeded to show that the lessees could not be so treated, "as they were the nominal trustees bound to use the premises as a hospital and for no other purpose," that one of their servants could not be so treated, and of course that the lunatics could not be so treated. The case was accordingly decided upon the ground that there was no occupier who could be rated. That was the only point decided. This appears clearly, not only from the language used by Lord Mansfield in the case itself, but also from the judgment subsequently delivered by him in the case of *Rex* v. *St Bartholomew's-the-Less* (4 Burr. 2435). During the argument of the hospital case, however, an anonymous case was cited to him, reported in 2 Salk. 527, in which Holt, C.J., laid it down broadly that hospital lands were chargeable to the poor as well as others, "for no man," said he, "by appropriating them to a hospital can discharge or exempt them from taxes to which they were subject before, and throw a greater burden upon their neighbours." It was this proposition with which Lord Mansfield was dealing when he made use of the language upon which so much reliance was placed. This pronouncement of Lord Mansfield was entirely unnecessary for the decision of the case. It must be taken in connection with the statement of the law to which it refers. It does not touch the present case, and is, I think, in no way in conflict with the proposition already referred to as to *prima facie* occupation laid down by Lord Herschell.

The next authority cited on behalf of the appellants was *Smith* v. *New Forest Union*, reported very briefly in the Court of Appeal (61 L.T.R. 870) and in the Divisional Court (60 L.T.R. 927). The facts which appear from these reports were as follows:—Smith, the person whom it was sought to rate, had purchased a plot of building ground with the intention of building upon it. It was unenclosed when he bought it. He never himself enclosed it, cultivated it, or built upon it, let it, or used it in any way. The cattle of a neighbour, without his knowledge or permission, frequently strayed over it and ate any grass which they found upon it. He caused a bill to be affixed to a tree growing upon the plot stating that it was to be let, but he never succeeded in letting it. The fixing of this notice was the only physical act which he did upon it, and the question asked of the Divisional Court by the justices in the case stated was this—Was Smith under the circumstances an occupier of this plot of ground within the meaning of 43 Eliz. c. 2? That question was answered in the negative. It was obvious that he, if in occupation of the plot at all, was not in such beneficial occupation of it as would render him rateable, and it is somewhat difficult to discover whether or not this was the precise ground of decision. Lopes, L.J., says—"To constitute occupation under the statute of Elizabeth there must be an enjoyment of the property capable of being beneficial. There is no evidence of any such here." Lord Esher, M.R., said—"He was never in such occupation as to be rateable under the statute of Elizabeth." I do not think that the decision is in any way applicable to the present case or in conflict with the law as laid down by Lord Herschell.

But the authorities mainly relied upon by the appellants were those which deal with the non-rateability of vacant houses. I find great difficulty in reconciling these one with the other, from the statement of the law laid down by Lush, J., in *Reg.* v. *St Pancras Assessment Committee* (2 Q.B.D. 581) down to the decision in *Rex* v. *Melladew* (1907, 1 K.B. 192) and *Borwick & Sons* v. *Mayor of Southwark* (1909, 1 K.B. 78), and still greater difficulty in discovering any intelligible principle upon which the decisions are founded, or any principle applicable equally to vacant houses and to property like that which it is sought to rate in this case. Blackburn, J., in *Hunter* v. *Overseers of Salford* (6 B. & S. 591) says that the exemption of vacant houses from rateability is a good rough rule which may work well in practice, but that he could never understand the reason why a vacant house should not be rated if there is no furniture in it. During the argument Lord Halsbury suggested a possible construction of the statute of Elizabeth which would afford a quite intelligible reason for the practice which is followed. It was, as I understand it, this—The statute of Elizabeth enumerates "houses" as well as "lands"

in the list of properties the occupiers of which are to be rated for the relief of the poor. In one sense a house is merely land with the bricks, mortar, and the other building materials of which the house is composed resting upon it, and in that sense there would be no difference in the legal nature of the hereditament whether these materials were heaped together upon the ground in an unformed mass or were built and fashioned into a house. The word "land" would include the site and the super-encumbered materials in both cases. This, however, is plainly not the sense in which the word "house" is used in the statute, since it is mentioned as a separate and different kind of property from land. When the statute, therefore, enacts that the occupier of a house shall be rated it must mean that the person to be rated shall occupy the house as a house; that is to say, that he shall use the house for the purpose of living in it, or sojourning in it, or working in it, keeping animals in it, storing other chattels in it, or using it for some such other purpose as houses are reasonably devoted to, and that, as a vacant house is not used for any of these purposes it is not occupied as a house within the meaning of the statute.

However that may be, I do not think that the cases dealing with the rateability of vacant houses are applicable to such a property as this moor, which through the operations of nature, unaided by man, produces each year products such as grass, heath, and bracken, useful and valuable to man, and in this case rears and harbours game upon it in addition, thus differing in almost every aspect from a vacant house, which produces nothing, and is used for no purpose whatever. Mr Balfour Browne urged that occupation includes possession plus use. He admitted, however, that if the appellants had built an embankment across the mouth of a valley on this moorland and flooded the valley, thereby turning it into a reservoir to supply their lower works, they would, properly, have been held to be in beneficial occupation of the lands upon which the water rested in the valley. I am quite unable to discover any principle upon which these lands could be distinguished on this point from those upon which the rainwater falls, and over which it runs on its way to its resting place.

The lands of each kind all help to this same end, and serve in different ways to effect the same ultimate purpose — namely, to feed the appellants' works with a supply of pure and unpolluted water for their commercial gain. Accepting, then, for the moment, Mr Balfour Browne's definition, I am clearly of opinion that each of the uses to which the appellants devote this moorland—the commercial use of collecting for them water which they in their business vend, as well also its use as a game preserve of the kind described, and certainly those two uses combined—are sufficient to turn the appellants' admitted possession of the moor into their beneficial occupation of it, which renders them rateable in respect of it. For all the foregoing reasons, I think that the order of the Court of Appeal was rightly made and should be affirmed, and this appeal be dismissed.

The EARL OF HALSBURY and LORD SHAW concurred.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants — Balfour Browne, K.C.—Macmorran, K.C.—Oulton. Agents—F. Venn & Company, for E. R. Pickmere, Town Clerk of Liverpool, Solicitors.

Counsel for the Respondents — Danckwerts, K.C.—Ryde, K.C.—Gordon Hewart, K.C. Agents—Crowders, Vizard, Oldham, & Company, for Stanton & Sons, Chorley, Solicitors.

HOUSE OF LORDS.

Thursday, February 6, 1913.

(Before the Lord Chancellor (Viscount Haldane), the Earl of Halsbury, Lords Atkinson, Kinnear, and Mersey.)

AMERICAN THREAD COMPANY *v.* JOYCE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue — Income Tax — Residence — Evidence of Residence in United Kingdom — Finding of Fact by the Commissioners.

Where a company registered abroad, but controlled by a body of directors who met in England, was found by the Income Tax Commissioners to be resident in the United Kingdom, and therefore liable to be assessed under section 2, Schedule D, of the Income Tax Act 1853, *held* (1) that the Court, on a Stated Case, can only consider whether there was evidence to justify the finding; (2) that there was evidence that the company resided in the United Kingdom.

This was an appeal from a judgment of the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON, and BUCKLEY, L.JJ.), who had affirmed a judgment of HAMILTON, J., affirming a decision of the Commissioners of Income Tax for the division of Manchester.

The *facts* are given in the opinions.

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (HALDANE)—If I had any doubt about this case, either upon the law or upon the facts as found, I would have suggested that the House should take time to consider their judgment. But not only does the principle of law applicable seem to me thoroughly established and clear, but the facts of the case do not seem to me to be capable of being regarded in any other light than that in which they