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

were regarded in the admirable judgment of Hamilton, J.

By the by-laws the company was entitled to have various offices, and in point of fact they had an office at Manchester in the office of another company. There, according to the constitution of the company extraordinary meetings of the board of directors could be and were held, meetings at which certain business reserved by the by-laws for those directors was carried on. Much of the management took place from there. It is not for your Lordships to entertain the question how on the materials which came before the Inland Revenue Commissioners you yourselves would have decided the question. In saying that I desire it to be understood that I am far from saying that I dissent in any way from the conclusion at which the Commissioners came to on the question of fact which was raised in this case. What I say is that after the statute of 1880 (Taxes Management Act 1880, 43 and 44 Vict. cap. 19) your Lordships are precluded from looking at the finding of fact of the Commissioners except so far as to see if there is any evidence at all on which that finding can be supported. I think the judgment of Hamilton, J., shows conclusively that there is ample evidence on which the finding of the Commissioners can be supported. The Commissioners came to the conclusion that the control of the management of the affairs of the company was intended to rest and did rest with the directors of the company resident in England in extraordinary session, who constituted the majority of the board, and were also directors of the English Sewing Cotton Company, Limited, which owned the entire stock or ordinary shares of the appellant company, and further that such control was constantly exercised at meetings of the board in extraordinary session held in England. That finding is not ambiguous, and it is unchallengeable if there is any evidence to support it. That disposes of the question of the finding as a question of fact.

The only other question—the question of law—is that of residence. That question was before this House in *De Beers Consolidated Mines* v. *Howe* (1906 A.C. 455). That case decided that a person resided for the purposes of the income-tax assessment at the place where his real business was carried on, that is to say, where the control and management of the company abides. I have no doubt that in this case it was with the directors at Manchester. No doubt it is true in a sense that these directors did not ordinarily interfere with the details of the trade. There was an executive committee, the agent of the directors, and there was also a directory which took an active part in the weekly meetings.

It is clear that the directory in Manchester was the directory with paramount authority to deal with referred subjects which came before them in extraordinary session. On these facts the Commissioners found that the directors at Manchester were constantly supervising and guiding the policy of the company, even as regarded manufacture and trade. For these reasons I come to the conclusion that the appeal fails and should be dismissed with costs.

The EARL OF HALSBURY, LORDS ATKINSON, KINNEAR, and MERSEY concurred.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—Danckwerts, K.C.—G. Sutton. Agents—Rawle, Johnstone, Gregory, Rowcliffe, & Rowcliffe, for Addleshaw, Sons, & Company, Manchester, Solicitors.

Counsel for the Respondent—The Attorney-General (Sir R. Isaacs, K.C.)—The Solicitor-General (Sir J. Simon, K.C.)—W. Finlay. Agent—H. Bertram Cox, Solicitor of Inland Revenue.

PRIVY COUNCIL.

Tuesday, February 11, 1913.

(*Present*—The Lord Chancellor (Viscount Haldane), Lords Macnaghten, Atkinson, and Moulton.)

RICKARDS *v.* LOTHIAN.

(ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.)

Landlord and Tenant—Liability for Damage from Overflow of Water—Negligence—Malicious Act of Third Party.

Where goods belonging to the tenant of a lower storey were injured by flooding from a lavatory basin above, caused by a third person maliciously obstructing the outflow, *held* that the landlord was not responsible for the damage so caused, because (*a*) the provision of such a basin constructed in the ordinary way was using his premises in an ordinary and proper manner; and (*b*) even if that were not so, and the introduction of the basin were so risky as to bring into play the principle enunciated in *Fletcher* v. *Rylands* (L.R., 3 H.L. 330), he must be held excused by the fact that the damage was caused by the malicious act of a third party for whom he was not responsible.

The following are the *questions* left to the jury by his Honour Judge CHOMLEY, who tried the case in the first instance, and their answers:—1. Was the defendant (the said Harry Rickards) or any of his servants or agents guilty of negligence—(*a*) In not providing a reasonably sufficient escape for water in case of an overflow resulting from accidents or negligence, having regard to the nature of the use of the rooms beneath? (*b*) In leaving tap turned on on the night of the 18th August 1909, or in omitting to discover all that night that the waste pipe was choked. Answer—(*a*) We are of opinion that a lead safe was necessary on the floor of this particular lavatory, and that same would minimise