affection towards a brother's widow, and partly by fear that if the property was acquired by an outsider the occupier might be compelled to quit the premises he had long occupied and in which he carried on business as a draper.

I expressed an opinion in the *Lumsden* case that the relevant sections of the Finance Act 1910, if properly construed, did eliminate from the site value on the occasion of a transfer all the factors which had not entered into the calculations of the original site value, in which case the increment value duty would be levied on an increment in value of the same interest between the two dates, but it would be of no purpose to repeat the reasons on which that opinion was based. The counsel for the respondent very properly admitted that he was precluded from questioning the decision in the *Lumsden* case, and raised three points which he said that that decision did not cover.

The first point was that by arrangement the Inland Revenue authorities had agreed to accept certain figures as the basis of valuation, and they could not now be heard to put forward different figures. I can find no evidence of any such arrangement in the correspondence to which the attention of the House was directed.

Secondly, it was argued that the valuation of the referee was not properly made, in that he excluded from consideration the actual transaction of the 9th June 1911. I think it is clear from the statement of the referee that he did not exclude from his consideration the sum of £650 paid as the consideration for transfer on 9th June 1911, but held that for special reasons this sum was in excess of the market value. It is difficult to think that any referee would refuse to regard as relevant evidence the actual sum paid on a recent sale of the land which he is called upon to value. It is a very different matter to say that the referee is bound to accept the amount of the consideration as the market value, and unless the argument for the respondent is carried to this length it fails to show that there is any ground for the suggestion that the referee neglected any relevant consideration in fixing the market value.

In the third place, it was argued on behalf of the respondent that section 25 (4) (*d*) justified a claim to deduct the sum of £180 or some part thereof as expenditure attributable to goodwill or some other matter personal to the owner, occupier, or other person interested for the time being in the land. This section, however, only allows such a deduction if the amount claimed to be deducted is included as part of the total value. In the present case no part of the sum of £180 has ever been included in the estimate of total value, and the claim for deduction under such circumstances appears to me to be inconsistent with the whole framework of section 25 of the Act of 1910.

The appellants are entitled to succeed, having a decision of this House in their favour.

Their Lordships allowed the appeal, the appellants of consent paying the respondent's expenses of the appeal and each party paying their own costs before the referee and in the Court below.

Counsel for the Appellants—The Attorney-General (Sir John Simon, K.C.)—The Solicitor-General for Scotland (Morison, K.C.)—W. Finlay, K.C.—R. C. Henderson. Agents—Solicitors of Inland Revenue for Scotland and for England.

Counsel for the Respondent—Roberton Christie, K.C.—King Murray. Agents—Patrick & James, S.S.C., Edinburgh—Beveridge, Greig, & Co., Westminster.

HOUSE OF LORDS.

(ENGLISH CASE.)

Monday, July 20, 1914.

(Before the Lord Chancellor (Haldane), Lord Shaw, Lord Moulton, and Lord Parmoor.)

LUMSDEN *v.* INLAND REVENUE.

Revenue — Valuation — Increment Value Duty—Site Value on Occasion of Sale—"Like Deductions"—Finance (1909-10) *Act* 1910 (10 *Edw. VII and* 1 *Geo. V, cap.* 8), *secs.* 2 *and* 25.

The Finance (1909-10) Act 1910, sec. 2 (2), enacts—"The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be (*a*) where the occasion is a transfer on sale of the fee-simple of the land, the value of the consideration for the transfer . . . subject . . . to the like deductions as are made, under the provisions of this part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value."

Held, by Lord Chancellor Haldane and Lord Shaw, upholding a decision of the Court of Appeal, that the "like deductions" were deductions calculated from a gross value and total value ascertained by valuation as provided in section 25, not ascertained by reference to the consideration, *dissenting* Lord Moulton and Lord Parmoor, who held that such gross value and total value should be ascertained by reference to the consideration.

Lumsden, *appellant*, appealed against an assessment to increment value duty under the Finance (1909-10) Act 1910 (10 Edw. VII and 1 Geo. V, cap. 8), sections 1 and 2, for a dwelling-house and shop, 32 Lansdowne Road, Forest Hill, Northumberland, in respect of an alleged gross increment value of £125.

The *provisional valuation* which had not been objected to was—Original gross value £658; original full site value (arrived at by deducting from the gross value the difference between that value and the value of the fee-simple of the land divested of buildings, trees, &c., £430) £228; original total

value (arrived at by deducting from the gross value the capitalised value of tithe to which the property was subject, £33) £625; original assessable site value (arrived at by deducting from the total value the deductions from gross value to arrive at full site value as above, £430, and the value of works executed on the land £90, together £520) £105.

The property was sold to a Mrs Stobie on August 23, 1910, subject to the burden of the tithe (valued as above at £33 capital value), and the price was £750.

The appeal went to a referee, who held that the appellant was not liable to pay any increment value duty, and stated a case for appeal.

The Case, *inter alia*, stated—"6. At the time of the sale the fee-simple of the property if sold in the open market by a willing seller in its then condition free from encumbrances and from any burden, charge, or restriction, other than rates and taxes, might have been expected to realise the sum of £658.

"7. It was admitted that there had been no variation in the full site value between April 30, 1909, and August 23, 1910, and that that value was £228 on each date. It was also admitted that £90 represented the amount of deduction for roads to be made under section 25, sub-section 4 (*b*), from the total value to arrive at the assessable site value. The capital value of the tithe was admitted to be £33.

"8. It was contended before me on behalf of the appellant that (*a*) the increment value is either (A) the difference between the original assessable site value of £105 (fixed by the said provisional valuation) and the assessable site value on the occasion of the sale, which is in the present case to be taken to be the value of the consideration for the transfer on the sale to Mrs Stobie, subject to the like deductions as are made under the general provisions of Part 1 of the Act as to valuation for the purpose of arriving at the site value of land from the total value, or (B) the difference between the original full site value of £228 and the admitted full site value of £228 on the present occasion when the increment value is to be collected. In order therefore to arrive at the result here on the footing of (A) the following considerations must be applied:—

"(1) The fee-simple was sold subject to tithe of £33 capital value for £750, therefore the gross value (which in this case is the fee-simple value free from tithe—see sec. 25, sub-sec. 1) is £783.

"(2) It was admitted the full site value at the time of sale was £228, the same as in the provisional valuation.

"(3) Therefore the difference between gross value and the full site value was £555.

"(4) The sale price gives the total value, £750, for that was the price subject to tithe.

"(5) Therefore the 'assessable site value' is the total value (£750) after deducting (A) the deduction of £555 and (B) £90 attributable to roads.

"(6) The 'assessable site value' for calculating increment duty is £105, *i.e.*, after deducting from £750, £555 + £90, *i.e.*, £645.

"(7) There is therefore no increment value.

"On the footing of (B) it is also the case that there is no increment value.

"(*b*) In the alternative, that if there was any increment within the meaning of the Act, it was attributable to some one or more of the elements mentioned in the appellant's notice of appeal.

"9. It was contended before me on behalf of the Commissioners of Inland Revenue—(1) That under section 2, sub-section 1, of the Act the increment value is to be deemed to be the amount, if any, by which the site value of the land on the occasion, ascertained in accordance with the said section, exceeds the original site value of the land as ascertained in accordance with the general provisions of the First Part of the Act.

"(2) That the site value of the land on the occasion was in this case the value of the consideration, *i.e.*, £750, subject to the like deductions as are made under section 25, sub-section 4, to arrive at site value of land from total value.

"(3) That the first deduction to be made under and by virtue of sec. 25, sub-sec. 4 (*a*), read with sec. 25, sub-sec. 2, of the Act is the difference mentioned in sec. 25, sub-sec. 2, *i.e.*, the difference between gross value and value divested.

"(4) That the gross value of the land being as found by the referee £658, the value of the site divested being also as found by him £228, the difference amounted to £430.

"(5) That there being no other deduction except the deduction for roads, which is found by the referee at £90, the total amount of the deduction is £520.

"(6) That deducting the £520 from the value of the consideration, namely, £750, the result is £230.

"(7) That this £230 is the site value of the land on the occasion, arrived at in accordance with the provisions of the Act.

"(8) That increment value duty is exigible on the difference between £230, the site value on the occasion, and £105, the original site value of the land as found in the provisional valuation.

"10. I am of opinion, and I decide, that contention (A) of the appellant is correct, and I accordingly award and decide that the appellant is not liable to pay any increment value duty on the occasion in question and that the expenses of the appellant of and incidental to his appeal be borne and paid by the Commissioners of Inland Revenue."

HORRIDGE, J., reversed the determination of the referee, and, holding that the contention of the Crown was correct, found that increment value duty was payable on £125. The Court of Appeal (COZENS-HARDY M.R., and KENNEDY, L.J. (*dissenting* SWINFEN EADY, L.J.) affirmed this decision.

At delivering judgment—

LORD CHANCELLOR (HALDANE) — This

appeal raises a question of much difficulty which has been the subject of elaborate argument at the Bar. But the real point lies within narrow limits, and turns on the proper construction of a few words in a statute, the Finance (1909-10) Act 1910. The sections of this Act which relate to duties on land values have obviously been drafted with remarkable skill. But the subject was so novel and so complicated that it was inevitable that questions should arise on which the meaning of the Legislature has not been made wholly free from ambiguity. The duty of a Court of construction in such cases is not to speculate on what was likely to have been said if those who framed the statute had thought of the point which has arisen, but, recognising that the words leave the intention obscure, to construe them as they stand, with only such extraneous light as is reflected from within the four corners of the statute itself, read as a whole.

The appellant has been held liable for increment duty arising upon the occasion of a sale by him of a dwelling-house and shop. By the Act of Parliament the duty is charged on the increment value of land. This increment value is the amount by which what is called the site value exceeds on the occasion on which the duty arises the original site value. Such is the effect of sections 1 and 2.

Before referring further to the provisions of section 2, which give a special meaning to site value on this occasion, it will be convenient to turn to the later sections in order to see what various values mean when spoken of generally in the Act. By section 26 a valuation of all lands is to be made, showing separately the total value and the site value. These are defined in section 25, together with two other values. The first of the four values there defined is gross value, which means the amount which the fee-simple of the land, if sold in the open market by a willing seller in its then condition, free from encumbrances and from any burden, charge, or restriction (other than rates and taxes) might be expected to realise. The second value is full site value, which means the value which the fee-simple, if similarly sold, might be expected to realise if the land were divested of all buildings and structures appurtenant to such buildings, and of all growing timber and other things growing on the land. The third value is total value, which means the gross value after deducting the amount by which this gross value would be diminished if the land were sold subject to any fixed charges (afterwards so defined as to exclude mortgages), or public rights-of-way, or user, or rights of common, or easements, or certain kinds of restrictive covenant or agreement. The fourth value is assessable site value, which means the total value after making various deductions. These include the same amount as is to be deducted for the purpose of arriving at full site value from gross value, and also value directly attributable, in the case of a non-agricultural property such as that under consideration, to, among other things, roads. There are other deductions to be made from total value in arriving at assessable site value but these need not for the moment be considered. The section also provides towards its close that any reference in the statute to site value, other than a reference to it on an occcasion on which increment duty is to be collected, is to be deemed to be a reference to assessable site value as ascertained in accordance with the section.

Turning back to section 2, it first enacts that the increment value of any land is to be deemed to be the amount by which the site value, on the occasion on which increment value duty is to be collected after being ascertained in accordance with this section, exceeds the original site value, ascertained in accordance with the general provisions of the Act as to valuation. The section then provides that the site value on the occasion on which increment duty is to be collected is to be taken to be, where, as here, the occasion is a transfer on sale of the fee-simple, the value of the consideration for the transfer. I observe that among the other enumerated occasions are the periodical occasions on which the duty is to be collected in respect of the fee-simple of land held by a body corporate or unincorporate, in which cases the total value is to be estimated in accordance with the general provisions as to valuation to which I have already referred. In all these instances the site value thus defined is to be "subject in each case to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of land from the total value."

It is upon the construction of the words which I have just quoted that the question to be decided turns. The appellant contends that the expression "like deductions" means where the case is one of transfer on sale that deductions are to be made from the value of the consideration in their character resembling or analogous to, but not identical in amount with, those which are made when, under the general provisions as to valuation, site value is ascertained from total value. The argument on his behalf is that in applying the analogy of the process of deduction prescribed by section 25 for the ascertainment of assessable site value, you are to start from the amount of the value of the consideration as though it were a total value, and then make the kind of deductions that are prescribed in section 25, where the start is made from total value which is merely estimated.

The respondents, on the other hand, contend that the words "like deductions" are not ambiguous. They point to the language of section 25, sub-section 4 (*a*), as defining the first deduction to be "the same amount as is to be deducted for the purpose of arriving at full site value from gross value." They argue that there is therefore no room for making any other deduction than this varying amount which is to be, if they are right, ascertained with reference, not to the value of the consideration, but to the difference between the estimated gross and full site values.

Before considering the question of construction thus raised I desire to refer to the facts out of which the appeal has arisen. The referee under the Act stated a Special Case. He found that the consideration for the transfer on sale was £750, and that the fee-simple had been sold subject to tithe of £33 capital value. He found further that the amount of deduction to be allowed under section 25, sub-section 4, for the making of roads was £90. He also found as follows:—At the time of the sale the fee-simple of the property if sold in the open market by a willing seller in its then condition, free from encumbrances and from any burden, charge, or restraint other than rates and taxes (the words of the section defining gross value), might have been expected to realise £658. It was admitted that there had been no variation in the full site value between April 30, 1909 (the date as on which the original valuation had to be made) and August 23, 1910, the date of the sale. It was agreed, he said, that the full site value was £228 on each date. The original assessable site value was £105.

The important controversy between the parties which arose on these findings was as follows:—The appellant maintained that the deductions directed by section 2 to be made from the value of the consideration must be made from the £750 and £33 (the amount of the capital charge for tithe) in order that the analogy of the deduction from gross value might be followed. As the full site value at the time of sale had by admission remained at £228, the difference between gross value and full site value must be taken to be £555. Therefore on the footing that the sale price of £750 was to be taken as representing the total value for the purpose of ascertaining the proper deductions, it was from this figure that the £555 must be deducted, and this subtraction, after allowing £90 as a further deduction for roads made, resulted in an assessable site value of £105. There was therefore no increment value, for according to the original valuation which was annexed to the referee's report the original gross value was £658, the original total value that amount minus the £33 capital value of tithe, *i.e.*, £625, the original full site value £228, and the original assessable site value £105, the same amount as on the occasion of the sale.

The respondents challenged this basis of calculation, contending for a different construction of section 2. Accepting the figures, they said that as the gross value had been found at the time of the sale to be £658 and the full site value to be £228, the difference really prescribed by the Act of Parliament was £430. They maintained that on the facts found there could be no further deduction, the gross value having been so found, excepting the £90 for roads, and that the total amount of deduction from the £750 was therefore £520, which gave a site value of £230, and resulted in increment duty being exigible on the difference between this and the original site value of £105.

The referee took the view of the appellant. On appeal Horridge, J., disagreed with the referee, and adopted the contention of the Crown. In the Court of Appeal Cozens-Hardy, M.R., and Kennedy, L.J., agreed with Horridge, J., but Swinfen Eady, L.J., differed. "The real crux of the matter lies," he said, "in the contention that the direction to make 'the like deductions' from the 'consideration for the transfer' involves a direction to arrive at a new gross *estimated* value of land on the occasion of a sale." He held that the statute contained no direction to make a new valuation of gross value on the occasion of a sale, and that full effect could be given to the direction to make "the like deductions" by starting with the actual considerations realised and making such deduction as was necessary to ascertain the divested or full site value. He thought that this was the only method which achieved the purpose of the Act, which was to tax an actual difference between present and past site value.

Two observations occur to me at once on this reasoning. The first is that it assumes that site value on the occasion of sale when directed to be ascertained for the purposes of increment duty means the same thing as site value when directed to be ascertained for the purposes of the original valuation. The second observation is that the learned Lord Justice regarded himself as bound, or at least at liberty, to construe as ambiguous the words in section 2, sub-section 2—"Subject in each case to the like deductions as are made, under the general provisions of this part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value." I have for the second time quoted the words in full, because they seem to me to contain the whole point on which this appeal turns. Does "the like" mean in this context anything different from "like in amount and method of calculation?" Can the use of the words "the like" be taken to import an instruction to make deductions on another basis than that of the valuation which is expressly mentioned, and can the actual price be substituted, consistently with the language used, for total value as ascertained by valuation?

It is, no doubt, true that there are cases of construction where the natural meaning of the words of a statute is rejected, and another meaning not expressed by the words taken in their ordinary sense is read in. That occurs where the context and scheme of the statute requires that this should be done in order that the language of the statute as a whole may be read as consistent. But a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used if they be literally interpreted is no sufficient reason for departing from the literal interpretation.

It may seem to some unlikely that the Legislature should have meant to put a tax upon anything but an increase in site value strictly so called. It is no doubt true that if the construction argued for by the Crown is right, something more than site value will be taxed in cases in which, by a lucky chance, or by reason, for example, of some special attraction about the building, a

larger price has been realised than would have been anticipated by a competent valuer estimating on the hypothesis of a sale to an ordinary buyer willing to give the full price in an open market.

But if this be what the words used appear when read naturally to direct, that interpretation can only be displaced by showing that the Act intended by the expression site value when used in connection with increment value the same thing as site value when used in relation to original assessable site value. Yet this may well not be so. For in the definition of site value which occurs towards the end of section 25, and has already been quoted, it is expressly provided that a reference to site value in the Act on an occasion when increment duty is to be collected is not, as in other cases, to be deemed to be a reference to assessable site value as ascertained in accordance with section 25. The construction of the appellant assumes, in dealing with the deductions, the actual price as the starting point in place of estimated total value, and proceeds to deduct from this the difference between the former and the amount of full site value, which must always be an estimated value. The amount to be subtracted must therefore always vary with the price. If the price is great it will be proportionately great; if the price is small it will be proportionately small. As full site value is an estimated and not an actually received value, and does not depend on the accident of a good or a bad sale, the assessable site value is thus, on the appellant's construction, the same whatever the price on the particular occasion may be.

On the construction of the Crown, which treats the amount to be deducted from the price as the difference between the estimated gross and full site values, the site value to be taxed for the purposes of increment duty will vary with the actual price. If this is large the subject may have to pay something more than what, for the purposes of other parts of the Act, is estimated to be assessable site value. But if the actual price received be below the estimated market value he may be proportionately relieved from increment duty on the normal amount of site value strictly so called. The difference between the two methods is that, according to the appellant's contention, the casual price, which may be greater or less than would normally be expected, is to govern, while according to the Crown the normal price, *i.e.*, that which might be expected to be obtained under ordinary circumstances in an open market from a willing buyer, is decisive. According to the latter construction windfalls will to some extent be taxed, whatever they may be due to, site, buildings, or anything else. But, on the other hand, depreciation in the auction room by reason of forced sales or other adverse contingencies is mitigated.

That this is so appears to me to be plain when alternative figures in the case based on the two interpretations are compared. On the appellant's interpretation of the Act, which substitutes for the total value in section 25, sub-section 4, the actual price received, it is immaterial whether that price is great or small so far as the assessable site value on the occasion of sale is concerned. In the case before us this must always be on that construction £105. The reason is that gross value is made dependent on actual price, and the difference to be deducted under section 25, sub-section 4 (*a*), between the amount of gross value and the full site value, which is estimated, will therefore vary proportionately to the price. The resulting figure for assessable site value is accordingdly dependent on the estimated full site value and on any deductions to be made from the total value, that is the price, under clauses (*b*), (*c*), (*d*), and (*e*) of section 25, sub-section 4. Supposing the original site value to have increased, the landowner will accordingly be taxed on the increase, notwithstanding that the circumstances under which he sold have made him accept a price much less than the normal value in the market. But this is not the case if, as the Crown contends, that normal value is to be the decisive factor. If the sale price had been, say, £520 instead of £750, the difference of £230, would have been extinguished if the method of the Crown had prevailed, and no duty would have been payable.

I think that as regards increment duty, at all events, the Legislature may, so far as the general policy of the statute is concerned, have contemplated either of these methods. It is to the precise expressions used in the case of increment value that we have therefore to look for guidance. Now, when I turn to section 25 to find the character and amount of "the like deductions" which are directed to be made by its provisions as to valuation for the purpose of arriving at site value from total value, I meet with what appear to me to be directions which are *prima facie* unambiguous.

The first deduction directed by section 25, sub-section 4, is to be the same amount as is to be deducted for the purpose of arriving at full site value from gross value. Both of these values, as referred to in this section, are values estimated as probably to be secured under normal and fixed market conditions. They have, and can have, nothing to do with sums which may result from sales in the contingent circumstances of special occasions. And I am wholly unable to read the expression "like" in section 2, sub-section 2, as naturally meaning that the principle on which the language used directs them to be estimated is to be departed from. "Like" may not import identity of amount as definitely as the use of the word "same" would have done. But at least it connotes resemblance in main features.

Now to my mind the most prominent of these main features is that in section 25, the section pointed to, the Legislature is dealing with, not actually realised prices, but estimated amounts to be calculated by the method of valuation which sections 25 and 26 prescribe. I find myself unable to agree here with a judge for whose views I always

entertain much respect, Swinfen Eady, L.J., who thinks that the Act cannot be read as containing any direction to arrive at a gross value of land on the occasion of sale. The scheme of the Act appears to me to provide for all the valuations that from time to time may become necessary. For instance, in the case of increment duty, section 2, sub-section 2 (*d*), directs the estimation by valuation, in the case of a periodical collection of increment duty payable by a body holding land, of the total value, and this implies the ascertainment of gross value as its basis. There is no reason to think that the duties of the valuers are confined to the estimation of original values only. Again, section 28 expressly provides in the case of undeveloped land duty for periodical re-valuations.

In the case of increment value duty it appears to me that Parliament must on the literal construction of its language be taken to have contemplated the possible taxation of either something more or something less than site value strictly so called. The amount of the duty, whichever construction is adopted, is in the case of increment duty based on deduction from the actual price as the starting point. For the rest the ascertainment of the normal market price, that is to say valuation, seems to me to be prescribed as the basis on which deductions are to be estimated.

It was argued by Sir Robert Finlay that the deductions directed after that under clause (*a*) in section 25, sub-section 4, cannot properly be made from estimated value. Clause (*b*) directs the deduction of any part of the total value which is proved to be attributable to works executed or expenditure of a capital nature made under certain specified conditions. Clause (*c*) directs deduction of such part of the total value as is directly attributable to appropriations or gifts of land by persons interested in it for streets and other public purposes. Clause (*d*) excludes any part of the total value which is attributable to the redemption of land tax, fixed charges, enfranchisement in the case of copyholds or customary freeholds, release of restrictive covenants or agreements, or to goodwill or any other matter which is personal to the owner or other persons interested in the land. Clause (*e*) directs the deduction of any sums which in the opinion of the Commissioners it would be necessary to expend in order to strip the land for the purpose of arriving at full site value from gross value and of realising full site value. I do not see why each of these deductions, so far as they relate to total value, should not be made from estimated total value just as easily as from actual price, and the former alternative is in my opinion the only one which is "like" that which the literal meaning of section 2, sub-section 2, points to.

There are two other remarks which I wish to make before concluding. The first is that the appellant's construction of the word "like" in section 2, sub-section 2, compels him to hold himself at liberty to construct a new "gross value" of a kind not resembling that defined by section 25. He has to treat gross value as meaning for the purposes of his calculation, the sale price plus the capital value of the tithe. For this I can find no direction in the words of the Act. The second observation relates to Sir Robert Finlay's reliance on section 2, sub-section 3, which substitutes for original site value in 1909 the site value at the time of any transfer on sale within twenty years of that period, to be estimated by reference to the consideration given.

I think that this provision, which is in the nature of an option to the person sought to be taxed, is more favourable to him, assuming that he can surmount the difficulty of proof as to past estimated values, on the construction of the Crown than on that of the appellant, under which variation of actual price cannot, as it seems to me, affect the result. For this opinion I have in previous observations already given reasons which equally apply here. Nor do I think that section 3, sub-section 5, affects the general question. As I observed in *Commissioners of Inland Revenue* v. *Herbert*, [1913] A.C. 326, it is a difficult section to construe, but on no construction does it appear to me to bear on the decision of the only point which we have to settle at present.

I said at the beginning that the duty of judges in construing statutes is to adhere to the literal construction unless the context renders it plain that such a construction cannot be put upon the words. This rule is especially important in cases of statutes which impose taxation.

For the reasons I have given I think that there is nothing in the context or general structure of the Finance Act before us that renders it necessary to read the words which have given rise to the present litigation otherwise than as the majority of the judges in the Courts below have read them. With the conclusion reached by Horridge, J., and by the majority in the Court of Appeal I find myself in agreement, and I am of opinion that their judgments ought to be affirmed.

LORD SHAW—[*Read by Lord Atkinson*]—The question between the parties on this appeal is whether the appellant is liable to pay increment value duty upon the occasion of a sale by him of a dwelling-house and shop in the county of Northumberland. The sale took place on August 23, 1910—that is to say, about sixteen months after the original valuation in terms of the statute. It was a sale of the fee-simple. The price obtained was £750. The property was sold subject to the burden of tithe of £1 per annum, the capital value of which is £33.

Under the Finance Act this property had been valued, and the valuation was as at the statutory date, namely April 30, 1909. In terms of section 27, sub-section 1, of the Finance Act of 1910, the value shown in this original valuation must be "adopted as the original total value and the original site value respectively for the purposes of this part"—that is the valuation part—"of this Act." So that two elements have become fixed by reason of what has been done under

the head of valuation under the statute; that is to say, the original total value and the original site value are definitely settled. These values were as follows:—The original total value was £625 and the original site value was £105. These were arrived at by adopting calculations and making deductions, all in terms of the statute; but it is important to state and to keep in view that per the entries in the Doomsday Book and in terms of the statute the original total value and the original site value have been precisely ascertained.

The property, having this original total value and original site value per the statute, was, as mentioned, sold, and the price obtained for its fee-simple, subject as before to tithe, was £750. That also is a fixed figure. There may be many calculations and deductions, but it is plain that not one of these amounts that I have mentioned dare be departed from or violated.

The question which arises has reference to the duty called increment value duty. It is necessary carefully to attend to what the statute specifically declares that this "shall be deemed to be." Section 2, sub-section 1, declares that "for the purpose of this part of the Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land on the occasion on which increment value is to be collected, as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this part of this Act as to valuation." It is plain that the increment value consists in the excess of one of these site values, namely, the site value on the occasion of increment value collection, over the other site value, namely, the original site value. To ascertain how much the occasional site value exceeds the original site value you must find out what the amount of each factor is. Each of these factors—these site values—is also a result of a process of deduction of one element from another, and you cannot reach either site value except by scrupulously conforming to the Act, taking the statutory elements and following the statutory process of deduction. Thus and thus only is "site value" reached. I examine these factors in turn.

As to the occasional site value—"(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be (*a*) where the occasion is the transfer on sale of the fee-simple of the land the value of the consideration for the transfer . . . subject to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of land from the total value." The consideration has been fixed; there is no difficulty about that; it is £750. But what are the "like deductions"? The statute prescribes that they are the like deductions as in valuation are made from the total value for the purpose of arriving at the site value of the land. The Act appears to me to say: Although this is not the original valuation period, but a subsequent occasion, you must get at the deductions on the like principle and method as was originally adopted. For whether for valuation purposes originally or for increment value duty purposes subsequently these deductions are the things which must be kept out. As I shall show presently, the principal item of these deductions is, in fact, the element of buildings, fixed machinery, timber, and what for short may be described as permanent visible improvements. No increment value duty itself is to fall upon these improvements. This consideration is vital.

The method of reaching the deduction figure is the method adopted in section 25 in ascertaining assessable site value. By section 25, sub-section 4, the assessable site value means the total value under certain deductions set forth there; and what, in my opinion, the statute clearly declares is that, on the occasion of making calculations for increment value the deductions, *e.g.*, the improvements, are to come off the amount of the consideration received. That, in my view, you cannot avoid. With regard to deductions, they must be the like deductions as are made in getting at assessable site value—that is to say, deductions made from the total value for arriving at the site value. In this way section 25, sub-section 4, becomes fairly clear—"The assessable site value of land," it provides, means the total value after deducting certain specified things.

I pause there for a moment to remark that these deductions under section 25—it must never be left out of view—are deductions from the total value as ascertained under that section. Unless the total value be taken as the datum from which certain deductions are to be made in order to ascertain the assessable site value, and unless that be adhered to, confusion is sure to emerge. But once the deductions thus made are quantified in money, then you are put in possession of a figure derived from the methods adopted at the original valuation—a figure of deductions—which figure must now, however, be put, not against total value as in the original case but against the consideration received on the occasion when increment, if any, arises.

The problem therefore now is to get at the amount of those deductions from total value which are made for the purpose of arriving at assessable site value. Now those are set forth. They are in five different categories, (*a*) to (*e*) of section 25, sub-section 4, but only the first two of these categories emerge in this case. As to one, namely (*b*), it is not disputed that to get at the assessable site value you must take in this case that part thereof which was attributed to expenditure of a capital nature—works like roads, drainage, &c.—and that figure is £90. That would have been clearly a deduction from total value in the original valuation. The next, namely (*a*), is set out in these terms: "The same amount as is to be taken for the purpose of arriving at full site value from gross value."

These respective values are set out in section 25, which I may call the glossary

section, and which this House discussed in the case of *Commissioners of Inland Revenue* v. *Herbert*, [1913] A.C. 326. The gross value is the open market value free from encumbrances. The full site value is that same open market value less encumbrances, after deducting buildings, structures, timber, and what might be called visible permanent improvements; deducting these from the gross value, you come at the full site value of the land. The total value is the gross value, subject to the deduction of fixed charges, as in this case the tithe rent-charge.

On the occasion of the valuation of this property as at April 1909, the gross value was set down at £658, and the tithe rent-charge being £33, the total value was set down, as already mentioned, at £625. From that total value of £625, there had to be deducted the same amount as is to be deducted for the purpose of arriving at full site value from gross value—that is to say, the amount reckoned as for buildings and improvements. That was £430, which, with the £90 for works like roads, &c., made £520, and this taken from the total value of £625, left the figure of £105. The assessable site value accordingly entered the Domesday Book as at that figure.

The report made by the referee in this case shows clearly that in his judgment the total value and the value of the things which form deductions from that, namely, buildings and improvements, in order to arrive at site value, remain the same. If, therefore, on the allegation of increment, the statute had ordained that in order to ascertain increment value you had simply, as in the original case, to make your deductions of buildings, &c., from the total value, the case would be at an end. But the statute has not done that, but has done something, in my opinion, very plainly different. It has said in effect this—The buildings and improvements in the original valuation were to be reckoned as deductions from total value in order to ascertain assessable site value; but this occasion, namely, value ascertainment, is a different occasion, and upon it you are to make the like deductions from the consideration actually received for the transfer of the fee-simple. When you make the like deductions from that consideration, then that is what "the site value of the land on the occasion on which increment value is to be collected shall be taken to be." So that the deductions, their value not having changed, as is certiorated by the referee, namely, £430 plus £90, that is, £520 in all—these same deductions, amounting to £520, are made an this occasion, not off total value, but, under the express command of the statute, off the actual consideration received—that is to say, not off £625, but off £750. For my own part, I do not have any hesitation in agreeing with the conclusion reached by Horridge, J., and the majority of the Court of Appeal.

It would be easy to comment upon the fact that the consideration in the present case being in excess of what, in the referee's opinion, was the actual value, there is no affirmance that the site value has risen. There is not, nor is there any affirmance that the buildings or improvements value has risen. There is, in short, no affirmance as to the cause of the rise, but the consideration is nevertheless perfectly real, and it is that real, non-speculative, actual thing which the statute says you must begin by taking into account as the full site value, subject to the deductions made as on the valuation occasion or as I have set out. The statute seems to say, There is the windfall. If it is established that the increment arises by an increased value in buildings and improvements, then by no means let those be taxed, because the statute is imperative that these must be treated as deductions from any sum which is to be the basis upon which taxation is laid. Buildings and improvements are to escape increment duty. No taxation of that kind is to be laid upon them. But when it is not established that there is any increase in the value of those buildings and improvements, or therefore any increase in the amount of the deductions which are to be made, let these deductions stand. They are unchanged in value. But let the sum from which they are made be the amount received by the fortunate vendor, and let the increment value—it being, however derived, increment value to him—be subject to his contribution to the taxation. Or, in the words of the Act, "Site value . . . on the occasion . . . shall be taken to be . . . the value of the consideration for the transfer." It is indeed a remarkable fact that the opposite construction in fact obliterates these words altogether. According to that view difference of consideration made no difference to site value. If the consideration, the price received, had been tenfold greater, and the improvements had remained the same, then no difference would have happened to the site value, and the words, that the site value is to be deemed to be the value of the consideration, are emptied of meaning.

That the consideration received should neither be expunged nor rendered meaningless other provisions of the Act make clear. The property in the first place is franked, so to speak, in respect of the increment, the site value being taken as the consideration subject to the deductions on the principle mentioned, and being raised accordingly so as to prevent subsequent increment being reckoned except upon that raised datum. And what appears to me to be a commanding consideration in the construction of this statute is the case of the transfer on the sale of the fee-simple of, or interest in, land any time within twenty years before the date when the statute came into effect, namely, April 30, 1909. This period is extended by the Revenue Act of 1911 under circumstances which need not be referred to. But it is important to look to the main provision of section 2, sub-section 3, of the Act of 1910 so as to see how carefully the interest of the taxpayer was guarded under the twenty years' provision. During that twenty years a late owner may have bought upon the crest and sold in the trough of the wave, and when the Act passed his successor who

had bought in the low market might hold the subject. Thereafter he sells in a rising market, but the level of the old crest of the wave is not reached.

He is permitted in these circumstances the exercise of an option enacted for the purpose of conferring upon him a favour and a benefit to point back to the old and contrast it with the present consideration. The statute treats these as good indications both of the crest and the trough. I must decline to read all value out of this favour given to the taxpayer by saying that a comparison of considerations means nothing at all, for in such a case the statute is very far indeed from reckoning difference of consideration or price as of no account. It expressly enacts in section 2, sub-section 3, that "site value shall be estimated for the purposes of this provision of reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act." In these circumstances, speaking for myself, I do not feel free, but feel forbidden to displace or discard the actual consideration or price as a vital and controlling element in site value.

I agree with the conclusion reached by the Courts below, and by the noble and learned Viscount on the Woolsack.

LORD MOULTON—This case raises a question of vital importance in the construction of an Act the passing of which marks a great change in the methods of taxation in this country. So far as the matters in dispute in this case are concerned, it was the conclusion of a political and economic agitation of many years' standing in favour of the adoption of a system which was commonly known as the taxation of land values. For the first time practical recognition was given to the principle that in the rise in value of land in civilised countries there is an element which is due to the general progress of the community, and is independent of any labour or expenditure of the owner or his predecessors upon the land itself, and that this so-called "unearned increment" forms a proper subject for specific taxation, or in other words, that it is just that the State should take its share of such increment of the value of land as arises from this cause.

This particular tax was not, however, the only form of taxation of land which was introduced by the Act. Part I of the Act (which is headed "Duties on Land Values," and which is the only portion of the Act which will be referred to by me on this occasion, inasmuch as the other divisions of the Act relate to wholly different forms of taxation) imposes also three other novel taxes upon land. The first of these, entitled "Reversion Duty," is a tax of 10 per cent. on the value of the benefit accruing to the lessor by reason of the determination of any lease. The second, entitled "Undeveloped Land Duty," is an annual tax at the rate of ½d. in the pound in respect of the site value of undeveloped land. The third, entitled "Mineral Rights Duty," is a tax of 1s. in the pound of the rental value of all rights to work minerals and of all mineral wayleaves.

In each of these cases there are careful and elaborate provisions for defining precisely the subject-matter of the taxation, and making allowances and adjustments so as to bring the tax more fully in accordance with the fundamental ideas which plainly underlie the various departments of the new scheme of land taxation. But so far as a close and attentive perusal of the Act enables me to form a judgment none of the specific provisions do anything more. None of them indicate any intention to depart from the fundamental principles underlying each of these taxes, nor have they any such effect. They are either of the nature of practical provisions necessary for the purposes of the Act, or concessions to claims for allowances in respect of special circumstances, with the view of making the tax correspond more accurately with the principles upon which it is based.

An Act dealing with such novel forms of taxation must introduce concepts of the elements out of which the value of land is built up which were wholly new so far as legislation was concerned, however familiar they may have been to economists and political writers, and even to the public itself. To understand the Act properly it is necessary to get a clear idea of these concepts. They are four in number. The first is the "gross value" of land, which signifies the market value of the land taken just as it stands with all buildings, &c., that are upon it and free from all charges or restrictions. The second is the "full site value," which means the market value of the stripped site. The third is the "total value." This signifies the market value of the land with its buildings, &c., in the condition in which it stands, but subject to any fixed charges that are upon it (such, for instance, as "feu-duties") and any other existing burdens, such as public rights-of-way, &c. All these charges and restrictions which are to be taken into account when arriving at the "total value" of the land are specifically enumerated in the statutory definition, and for the sake of convenience I shall term them the "burdens" on the land. The fourth and last of these concepts is the "assessable site value." It is the "full site value" less the "burdens." In other words, it represents the value of the stripped site subject to the existing legal burdens upon the land, which would of course be burdens upon the site even if all buildings, &c., were removed.

These are the fundamental conceptions of the Act. But it is necessary to add that in the last case certain specific deductions enumerated in section 25, sub-section 4 (*b*), (*c*), (*d*), and (*e*) are prescribed. These deductions do not affect the main concept of "assessable site value" which follows from section 25, sub-section 4 (*a*), although they affect its amount. They are of the nature of special allowances to meet cases where special circumstances (such as the

construction of roads or other work done on the site itself as contrasted with erections upon it) exist which would render the result of applying the fundamental conception of "assessable site value" in an unmodified form unfair in those particular cases.

I have great sympathy with the difficulties of the draftsman of an Act dealing with matters so new to legislation, and I should be the last to cavil lightly at the form which he has adopted to express his meaning. But it is most unfortunate that instead of expressing these simple concepts in clear and simple language he has defined them as the results of arithmetical operations with which they have no necessary connection, and has thus given a wholly false appearance to their mutual relationships.

For instance, the "full site value of the land" is defined as the amount which remains after deducting from the "gross value" the difference between the gross value and the value of what I have called the "stripped site." This amounts to nothing more nor less than saying that it is the value of the stripped site. It is thus made to appear to be dependent on and to be derived from the "gross value," whereas it is quite independent of it. If from any chosen sum of money I deduct the difference between that sum of money and £100 the result must necessarily be £100 whatever be the sum chosen. I have entirely failed to find any explanation of the adoption of this complicated and misleading manner of expressing these simple ideas. It has been suggested that it was for drafting reasons, but on closer examination I can see no ground for thinking that it presents any advantages from that point of view. Yet the draftsman has adopted it not only in this but in other cases. Thus the "total value" of land is defined as the difference between the gross value and the gross value less the value subject to burdens, which is the same as saying that it is the value subject to burdens. Similarly, the "assessable site value" (apart from the specific deductions to which I have referred) is defined as the difference between two things, each of which is apparently dependent on the "gross value" of the land. Yet when one looks more closely into the matter it is found that the "assessable site value" depends in no way on "gross value," but is simply the full site value with the burdens thrown upon it, as was decided by this House in the *Herbert* case, [1913 A.C. 326]. But although this peculiarity in the form of the definitions has the effect of rendering it more difficult to construe the Act, it does not leave any room for doubt as to the true meanings of the several definitions. They are as given above. These meanings are the direct arithmetical consequences of the verbal definitions appearing in the Act, and they and the concepts to which they relate and to which these special names have been given in the Act must be borne in mind in dealing with the provisions of the Act if we would avoid becoming confused by the inexplicable form of the drafting.

I now turn to section 1, which imposes the increment value duty. It levies a duty of 20 per cent. on the "increment value" of any land and enacts that this duty shall be collected by instalments on certain occasions. Those occasions are respectively (*a*) when there is a transfer of interest by sale or lease, (*b*) when there is a transfer of interest on death, (*c*) at certain periodical occasions. This last method only applies to cases where the land is held by a corporate or unincorporate body or in such a manner that it is not liable to death duties. The instalment of the "increment duty" to be paid in the case of the transfer of the fee-simple of the land, or on one of the periodical occasions above referred to, is the full duty of one-fifth of the then increment value less so much as has already been paid. In cases of transfer of interest only (not amounting to the transfer of the whole fee-simple) the instalment is a suitable proportion of such one-fifth of the total increment value, such proportion to be fixed by the Commissioners. The conception of the Act therefore is that as the site value of the land rises the State becomes entitled to one-fifth of the increment, but that it only ascertains and collects that which is thus due to it on occasions when there has been an ascertainment of the value of the land either by actual sale or leasing of the land or by a valuation of the land for revenue purposes by reason of death—unless the tenure of the land is such that these occasions will very rarely or never happen. In these last cases it collects the instalments at fixed intervals of fifteen years.

I shall not stop to examine the provisions of section 2, which deals particularly with the ascertainment of the site value on the occasions when duty is to be collected, except to say that it appears to me fully to carry out the above idea. The only novel feature in the method adopted in section 2 (as I understand it) is that in cases where an ascertainment of value has taken place of an independent kind without recourse to the machinery of the Act the value thus ascertained is taken as the datum from which the calculations of the increment value and therefore of the duty are made.

To my mind, therefore, this part of the Act has a clear and distinct object, ascertainable from the language of the Act itself, which carries into effect a special form of taxation well recognised at the time and marked by distinct incidents inseparable from it. It could not be better described than in the language of the Minister in charge of the Bill when introducing it—"The valuations upon the difference between which the tax will be chargeable will be the valuations of the land itself—apart from buildings and other improvements; and of this difference—the strictly unearned increment—we propose to take one-fifth or 20 per cent. for the State."

I quote these words not because they have any title to be used in the construction of the statute as it stands, but because they express in such clear and simple language the aim and object of the Act. For the purposes of judicial decision the aim and

object of the Act and the machinery for effecting them must be ascertained from the language of the Act itself. But to my mind this House has already declared that the Act does in fact carry out the object of its authors as above expressed, and I shall proceed to make good this proposition before subjecting to an independent examination the language of the special provisions with which we are concerned in this case.

In the case of *Inland Revenue Commissioners* v. *Herbert* the Act was subjected to examination in this House in order to determine whether it was consistent with the scheme of the Act that a recorded "assessable site value" should be a minus quantity. This House by its unanimous judgment decided that it was quite consistent with the object and provisions of the Act that recorded assessable site values should be minus quantities, because the tax was based, not on the actual value of the site value, but on its increment, and that there was no difficulty in measuring an increment from a datum line that marked a negative quantity. This decision that the tax is a tax on the increment of the site value is to my mind decisive of the present case for reasons that I shall presently give in detail. It is therefore desirable to refer with particularity to the judgments of this House in the *Herbert* case, [1913] A.C. 326, in order to show how unhesitatingly and emphatically this House read out of the language of the Act that this is its general purport and effect.

The present Lord Chancellor, after frequently referring to the increment value on which the value is to be levied as the difference between the site value when the duty is to be collected and the original site value, says on p. 334—"For the increment value directed to be taxed is, as I have already pointed out, simply the difference between present and past site value, and this difference is as real and easily measured when one of the quantities is minus as when both are plus." And again, on p. 338—"The answer to this is that what will be taxed when increment duty is levied will not be the original site value but the increase in site value."

In like manner Lord Atkinson says on p. 340—"The increment in value arising from an increased demand for building land due to an increase in the wealth or numbers of the surrounding or adjacent population, to its progress in trade or manufacture, or to works carried out at the expense of the municipality within the limits of which the lands are situate, and such like things, the unearned increment, as it is popularly called, it is alone designed to tax."

Somewhat later he deals with the very case that is now before the House, namely, a sale of the property. He says on p. 344—"The site value of the land should then be taken to be purchase-money less the deduction authorised by section 25, subsection 4 (*a*)."

Lord Shaw in his judgment deals mainly with the question of the position of feu duties. But on p. 355, in dealing with increment duty, he says—"When the statute is treating the problem and fact of increment, it is in the position of laying down, to begin with, the mode of settling a datum line from which in future years and on future occasions the increment shall be reckoned."

And in the opinion delivered by myself (in entire agreement I believe with the views of the other noble Lords), in speaking of "assessable site value" I say, on p. 359—"In order to see whether there is any absurdity in this being a negative quantity, it is justifiable and even necessary to look to the way in which the 'assessable site value' so arrived at is to be used for the purpose of assessment of taxes. When this is done it will be found that the principal assessment based upon it is that of the increment value duty, and that the amount of this duty does not depend upon the actual amount of the assessable site value, but upon its variations. For such a purpose there is no incongruity in the assessable site value being a negative quantity, because a negative quantity is capable of positive variations just as much as is a positive quantity."

This House, therefore, interpreted the Act as levying the increment duty on the rise in the site value of land. In so doing it was not in any way overlooking or disregarding the fundamental provisions of section 2 (which is repeatedly referred to in the judgments) as to site value, but was in my opinion emphasising them. Those provisions are that "The increment value of any land shall be deemed to be the amount, if any, by which the site value of the land on the occasion on which increment value duty is to be collected or ascertained in accordance with this section exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation." I see in these provisions only an intention to carry into effect the interpretation of the Act which was given by this House in *Herbert's Case*. And in any case that decision justifies us in viewing with the gravest suspicion, if not in summarily rejecting, any proposed interpretation of the section which would prevent the calculation which it directs being an estimate of the "site value" of the land in any sense of the words, and would make it impossible to apply the word "increment" to the subject of taxation.

We start, then, with the decision of this House that the Act levies the increment value duty on the rise in the site value of the land. The directions for ascertaining this rise in the site value are given in section 2, and it is the interpretation of these directions that is in issue in this case. As interpreted by the appellant they do in fact give the rise in site value. As interpreted by the respondents they do not. It is between these two interpretations that we have to choose.

To demonstrate that this correctly describes the issue in the present appeal I will indicate briefly the rival contentions of the parties.

The appellant contends that the scheme of the Act is to ascertain the assessable site

value on the occasion when the duty is to be levied in the same way as on the original occasion, with the exception that the "total value" (*i.e.*, the actual value of the owner's interest), instead of being determined by a valuation made for the purpose, is determined by the sale price, if the occasion be an actual sale, or by the price at which it appears in the valuation for death duties, in case it is a transfer at death. This is a perfectly reasonable method of determining the site value, and the difference between the value thus found and the original value may rightly be termed the "increment value."

The respondents' contention, on the other hand, is that you must take no heed of the sale price or probate valuation price in your calculations. You must make an independent valuation of the "total value" as before, and you must use that to find what would be the "assessable site value," if it were calculated in the same manner as on the original occasion. No one could complain of this if the result were taken as the new "site value," or as it has been conveniently termed throughout the argument the "occasional site value." It would only be a different way of arriving at the same end, and the difference between the occasional site value thus found and the original site value as recorded might justly be called the "increment" of that value. But the respondents do not take the value thus found as the "occasional site value." They add to it the difference between the sale price and what they estimate to be the "total value" of the whole of the owner's interest in the estate, and they contend that the sum thus arrived at is what the statute means by the "increment value." The figure thus added has admittedly nothing to do with the site value. The consequence is that what they claim to be the "occasional site value" is wholly different in its nature from the "original site value," and is not the same thing calculated at a different date. In no intelligible sense is it "site value," and (what is more important) the difference between it and the original site value cannot possibly be termed the "increment" of that value.

I was greatly struck during the argument by the way in which counsel on behalf of the Crown completely disregarded the light thrown on the meaning of the Act by the consistent use of the term "increment" in connection with this duty. The increment of anything is the difference between its value at two different times—it is not the difference between the value of one thing at one time and another and wholly different thing at another time. Thus the difference between the longitude of a ship to-day and the longitude yesterday may fairly be termed the "increment" of that longitude. It may be ascertained to-day by one method, say that of lunar distances, whereas yesterday it was ascertained by another and perhaps easier method, say, solar observations and the chronometer. But so long as these are merely different methods of arriving at the same thing the difference between the results is justly termed the "increment" of the longitude. But the difference between the latitude of a ship to-day and its longitude yesterday is not the "increment" of anything. By the use, therefore, of the word "increment" throughout the relevant parts of the Act it declares in an unmistakable way that the subject-matter—the assessable site value—is in its nature one and the same throughout, though the precise method of arriving at its value may vary from time to time according to the material for arriving at that value which the circumstanees of the moment provide. And this is no case of a term chosen merely for convenience of drafting. On the contrary, the word "increment" goes to the very root of the matter. Both in the nature and the justification of the new system of taxation the idea of "increment"—unearned increment—reigns supreme. How completely the contention of the respondents contradicts the identity of the subject-matter may be seen from the figures of the present case. They admit that no element of value of the land has changed. The gross value, the total value, the full site value, the burdens, are all unaltered, and if the assessable site value had to be calculated now the figure would be identical with the original site value as recorded. And yet they claim that there is an "increment" of £125 on that value, and they seek to tax that "increment."

I have said that the fact that the Act uses the term "increment" to describe the subject of the tax ought to make us reject, or at all events be very slow to accept, an interpretation of the directions for ascertaining site value which would be inconsistent with the natural meaning of the word. But it must not be imagined that the case of the appellant rests solely on this consideration. It is, in my opinion, supported by the language of the Act throughout as well in the provisions which prescribe the calculations which are to be made to ascertain site value as by those other parts of the Act which indicate the nature and status of the site value thus obtained.

To establish that this is the case I shall now proceed to examine the specific directions given in section 2 for the "ascertainment" of "the site value of the land on the occasion on which increment duty is to be collected," *i.e.* the "occasional site value." In this examination I shall take for the sake of simplicity the case where it is the whole interest, and not merely a part of it, which is being transferred, &c.

It will be remembered that in the definition of "assessable site value" in section 25 it is represented as being derived from "total value" by making certain deductions. For the purpose of "ascertaining" the "occasional site value" the statute directs that you shall take as that from which the deductions are to be made—not the "total value" *eo nomine*—but (*a*) and (*b*) the amount of the consideration where the occasion is one of an actual sale; (*c*) the amount of the valuation as ascertained for the purposes of the Finance Act 1894,

where the occasion is one of transfer by death; and (*d*) the "total value" ascertained according to section 25 of the Act where the occasion is one of those "periodical occasions" when the duty is levied on corporate or unincorporate bodies holding land, such bodies being viewed by the Act as persons who cannot be expected to sell or transfer the land they hold, and must therefore be taxed on stated occasions. From these amounts the "like deductions" are to be made as are directed to be made for the purpose of arriving at the site value of land from the total value.

The first thing that strikes one is that the substituted amounts are in each case actual representatives of the "total value," the only difference being that in the first case the total value is arrived at by what an actual sale has shown it to be, in the second it is arrived at by a valuation of the same subject-matter for the purposes of another statute, and in the third case it is arrived at by a valuation made in the precise way set out in section 25 of the Act. What then is the meaning of the provision? It means in my eyes that the statute is aiming at the same thing when ascertaining "occasional site value" as when ascertaining "original site value," but that it is availing itself to the full of the special facilities for determining fairly the "total value" which the "occasion" furnishes. If there is a sale it takes the consideration given as being the "total value," if there has been a valuation for Revenue purposes which has been duly proved to be correct it takes that as being the "total value," and it is only when there has been neither sale nor independent valuation that it is driven to have recourse to a special valuation of "total value" to aid it in arriving at the site value at the moment.

This third case appears to me to give guidance as to the meaning of these provisions which is of special value. In the cases that come under it the "occasional site value" is arrived at in precisely the same way in all respects as if it were "original site value" calculated at the later date. Now these cases do not differ in any way from the others so far as regards the nature of the property or its being subject to the duty. The holders of the land in the cases that come under (*d*) are neither more nor less meritorious than the holders in the cases previously dealt with, and there is no sign of any intention in the statute to vary the amount or the incidence of the tax in their case, nor would there be any conceivable reason for doing so. The only *differentia* of the cases that come under (*d*) is that the Legislature is unable to avail itself of help or guidance from independent transactions occurring at the moment of levying the duty. It is thus thrown upon its own resources to ascertain "occasional site value," and it does so by treating it as the then value of the same thing as appears in the register of original valuations as "original site value." How can we then admit an interpretation of the provisions in cases of sale or death which would make "occasional site value" in those cases mean something radically and in its very nature different from the "original site value" with which it is to be compared and of which its increased amount is to show the "increment" when we find that the Legislature in this last case, the one in which it is perfectly free to make its choice, treats the two as identical in nature so that their difference is a true "increment"?

The natural construction, therefore, of these provisions of section 2 is, to my mind, that the total value of the property as shewn by the sale, lease, or valuations made on the occasion (whether those valuations were made specially for the purpose or for the purposes of the Finance Act 1894) is to be taken as the "total value" for the purpose of the calculations which are to give the "occasional site value"—these calculations being effected in precisely the same way as adopted originally for the purpose of arriving at the "assessable site value" from the "total value." This does no violence to the language of section 2 and, indeed, it is the natural and obvious meaning of that language. Indeed, I cannot understand how this interpretation can be resisted so soon as it is realised that the Act, by taking in (*d*) the "total value" as obtained under section 25 as replacing the values which are otherwise obtained in the cases coming under (*a*), (*b*), and (*c*), is impliedly giving to those values the status of "total values" for the purposes of this taxation.

This simple and rational interpretation clears up all the difficulties. The "total value" is obtained directly from the sale, &c. The "gross value" is then obtained by adding to the total value the capitalised value of the "burdens." The "full site value" is to be obtained (as all parties admit) by direct valuation of the stripped site and not by calculation. These values are used precisely as in section 25, subsection 4. In this way the provisions of section 2 carry out in every way the principle of taxing the "increment" of site value which the House in the *Herbert Case* recognised to be its intention, and this interpretation renders the language of the Act so far as it relates to increment duty consistent, and such as could fairly be used for the purpose of describing the taxation it imposed.

I cannot think that the learned Judges who have in the Courts below supported the contention of the respondents have appreciated the consequences of their interpretation, and how completely inconsistent it is with the object of the Act and its general tenor. To make this plain I will take the figures of the present case, but for the sake of clearness I will suppose that it was a transfer by death and not by alienation. There is nothing in the Act to make the valuers for probate purposes the same as those for the taxes on land values, and I will take it that it was the valuers for probate (instead of the purchaser) who fixed the value of the whole of the owner's interest in the estate at the actual figure of £750, which was the consideration of the sale. How would the

matter stand on the contention of the respondents which has been supported by the Courts below? It would stand thus. The respondents admit, as they are compelled to do, that the site value has not changed in any way, and that this will be found to be the case whichever valuation you take as correct. But they claim *that the Act entitles them to charge upon the difference of the two valuations of the total estate as being "increment of site value"!*

I picture to myself how a catechism on the laws of England would read if this be so. Question—What is the increment of the site value of land when the value of the site has not changed? Answer—It is the difference of opinion of two sets of Government valuers as to the value of the owner's total interest in the estate. Could the force of absurdity go farther? Yet this is no ingeniously framed hypothetical case. It gives the plain arithmetical results of the contention of the Crown applied to the figures of the present and all similar cases, and indeed applies in substance to all cases under the Act. The defect in the method of calculation contended for by the Crown is not that the results are sometimes wrong but that they are never right except by pure accident. This Act is no minor or subsidiary Act where one might without disrespect to the Legislature imagine that a mistake might be made by haste or inadvertence. It is an Act introducing a novel form of taxation which was in the future to be one of the main sources of the national revenue. It must have received, as it undoubtedly merited, the closest attention of the Legislature while the Act was passing through it. The object and intention of the Act are clear and have been pronounced to be so by this House, and the point in issue goes to the root of the taxation introduced by it. I cannot bring myself to declare that it has wholly failed to achieve that object or carry out that intention, and further that it has done so in a manner so ludicrous as to make it a laughing-stock to anyone who will take the trouble to follow out to its necessary arithmetical consequences the construction which is contended for by the respondents.

Counsel for the Crown defend this construction of section 2 by saying that it follows exactly the language there used. To my mind it has not even that merit. There is nothing to justify calculating the deductions on the basis of a "total value" different from the figure from which these deductions are to be made, which is clearly the figure taken in the clause, as representing "total value." Indeed, the phrase "the like deductions" (not "the same deductions") points to allowing for the fact that the circumstances are changed and that the deductions are to be obtained by like processes, *mutatis mutandis*. This agrees precisely with the construction put upon the words by the appellant. But there is the far weightier argument against the suggested construction to which I have already referred and which arises out of the language of the section itself. If it means what is contended for by the Crown, it is not in any sense an "ascertainment" of the "site value" of the land on the occasion. It leads to something wholly different from and independent of the site value—something which may increase when the site value decreases, and *vice versa*. To shut one's eyes to the expressed object of a clause is a bad preparation for understanding it aright, and between one interpretation which leads to what may rightly and fairly be said to carry out that object, and another which does something irreconcilable therewith, there is no doubt to which preference should be given.

Let me now turn to the other arguments urged by the counsel on behalf of the Crown in support of their contention. The main one (and in fact the only substantial one) is that if the appellant's contention be taken the "site value" arrived at is independent of the value of the consideration for the sale or the amount of the probate valuation as the case may be. Why then should they be referred to in the section?

This argument—even if it were correct in its facts—defeats itself. For if we look at the method of arriving at occasional site value under (*d*) we find that this very same thing is and must be the case, even on the contention of the Crown. The "total value" there referred to disappears or becomes immaterial in exactly the same way and to the same extent as does the "consideration for the sale" or the "principal value" in cases (*a*), (*b*), and (*c*). In truth the argument tells against the respondents and not in favour of them. The fact that in (*d*) the "total value" referred to becomes immaterial in respect of section 2, subsection 2, would lead us to expect that the figures which in (*a*), (*b*), and (*c*) take its place would become immaterial in a like way and to a like extent. The fact is that this peculiarity arises solely from the topsy-turvyness of the definitions in section 25, which, as I have said, make it appear as though the figure which represents "total value" affects "assessable site value," whereas in fact it does no such thing.

But the argument is incorrect in fact. The deductions enumerated in section 25, sub-section 4 (*b*), (*c*), (*d*), (*e*), which are to be made in arriving at "assessable site value," are expressed as being parts of "total value," and therefore the figure which represents that value may very well affect them. It is only when none of these deductions are made that the amount taken to represent "total value" has no effect on occasional site value, and then it is right and proper that it should not affect it in the calculations under section 2 in just the same way that it does not affect "assessable site value" in the calculations under section 25.

This argument therefore breaks down entirely. The facts of the case do not support it, and even if they did the supposed absurdity is not got rid of by the contention of the Crown. Moreover, as I have said, this so-called absurdity is only one in form due to the peculiar shape of the definitions in section 25 and not to their substance. To put it plainly, the drafting of this part of

the Act is such that it is not enough to look at the words alone. You must remember what they denote, and must keep present to the mind an intelligent conception of the meaning of those words and their relation to the main principles of the Act if a correct construction is to be arrived at. A striking example of this is to be found in this very section. In sub-section 2 (*a*) and (*b*) reference is made to the "fee-simple" of the land, and under (*b*) it is the "value of the fee-simple" which is to be taken as the figure from which the deductions are made. The natural meaning of the term would be the whole "fee-simple" of the land, and this is the meaning of the phrase in section 25. To give it this signification is quite possible arithmetically, but its consequence would be not only unjust but ludicrous. It would make a man who sells his land pay increment value duty in respect of the capitalised value of the whole of the burdens that exist on that land (and which he does not own) as if they were increments of site value. How is it, then, that in construing the section one is saved from such a blunder? It is solely because one sees that the value of the "fee-simple" is about to take the place of and be treated as the "total value," which is of course the value of the burdened fee-simple. The section therefore leads to absurd consequences unless you realise that there is an intention to make the figures spoken of in (*a*) and (*b*) play the part of "total value" and allow yourself to be guided thereby, and that is all that is needed to support the appellant's contention.

But apart from all direct consideration of the precise language of section 2, there is a further argument, based upon a consideration of the whole of this part of the Act, which to my mind forces us to reject the contention of the counsel for the Crown. They would have us construe the language of section 2 as meaning that "occasional site value" is not a site value at all or alike in its nature to "assessable site value," but, on the contrary, is a figure arrived at by a prescribed method solely for the purposes of taxation and not representing any element of land value. That is not the lesson taught us by the Act itself. It loyally and consistently treats occasional site value arrived at under section 2 as being the equivalent of and as being capable of taking the place of assessable site value, and as differing from it not in nature but only in date.

The most striking example of this is to be found in section 2, sub-section 3. It is there provided that if it can be shown that the site value of the land at the time of any transfer within twenty years before the Act exceeded the original site value as ascertained under the Act, that site value shall be substituted for the original site value for the purposes of increment value duty. The site value at the earlier date is to be arrived at according to the provisions of section 2, sub-section 2, *i.e.*, is to be based on the actualities of the transfer.

Is it possible to conceive that the Legislature would take as an "original site value" a figure that has nothing to do with the value of the site? This Act lays the burden of the increment value duty on all landowners. It taxes the increment of site value. Is it possible that in measuring the increment one landowner should be allowed to start from a figure having no reference to actual site value, while others have to start from its actual value? There is no injustice in allowing site value to be arrived at by a more accurate method—one depending more directly on actualities—where the materials for such a process exist, and yet leaving it to be determined solely by valuation where those materials are not at hand. But there is injustice in taxing one man according to the site value of his land and another according to a figure which does not represent that value and has no necessary connection with it, the two cases being distinguished by nothing in the nature or circumstances of the holding, but by the accidental circumstance of a sale having or not having taken place within twenty years.

Let me give another example of the manner in which the Act testifies by its treatment of occasional site value to its being of the same nature as assessable site value and differing from it only in date. In section 2, sub-section 5, we find provisions for granting a certain allowance on the collection of increment value duty. On the first occasion there is to be remitted an amount equal to 10 per cent. of the original site value of the land and on any subsequent occasion an amount equal to 10 per cent. of the site value on the last preceding occasion on which duty was collected. This must, of course, be an "occasional site value" calculated according to the procedure of section 2, sub-section 2. It is clear, therefore, that occasional site value is regarded as representing and taking the place of original site value for the substantial purpose of measuring the remission of taxation to be made. Is it conceivable that this should be done if it was a figure that had nothing to do with site value? This reinforces the remarks that I have made as to the provisions of section 2, sub-section 4, which permits landowners to require that the "occasional site value" at a past date should be inserted as the "original site value" in the record. The remission on the first occasion for those who come under it would be 10 per cent. of a figure having no reference to the site value of their land, but greater than it, while their brother taxpayers would only have a remission which is based on the true site value.

Other cases could be given, but they may be all summed up in saying that whenever occasional site value is referred to in the Act it is treated as though it represented assessable site value in its nature and status—in short, that it was in its nature the assessable site value of the later date, although arrived at in certain cases by the use of special material then available.

Let me now turn for a moment to the general aspects of this case. Even assuming that the contention of the Crown were correct as to the literal construction of the language of section 2, it would only mean that this suit is brought to establish that a

draftsman's error (which must have become obvious as soon as anyone began to administer the Act) is irremediable except by fresh legislation. It is clear that the contention of the Crown does not represent the true intention of the Legislature. Let me give an example of its meaning in quite an ordinary case. Suppose that while the site value of certain land has remained unchanged, the buildings thereon have fallen in value either from age, or unsuitability, or any other cause. The estate is sold, say, for £300 less than its original recorded value. The Government valuer thinks that its value has in reality fallen more than this, say £500. On the interpretation contended for by the Crown the owner would have to pay on the £200, the difference between these figures, as increment of the site value although these figures have nothing to do with the site value (which is unchanged), and, alas! have nothing to do with "increment" because it is a case of a diminishing estate. No one can for one moment imagine that any Legislature could have consciously enacted such utter nonsense, or that any responsible Minister could have proposed it. It must be purely a draftsman's error. He has not made his language clear enough to prevent its being supposed to have the absurd signification in question. In such a case, ought we not to give great weight to the principle that a statute should be construed as a whole? The Legislature is more capable of seeing that its true aim is expressed by the general tenor of an Act than of criticising minute details of drafting. Surely we ought in this case to reject an interpretation of what I may term a machinery section which is inconsistent with the admitted aim and tenor of the Act, especially when we have at hand an interpretation entirely consistent with it, and which, at any rate, is so far a possible interpretation, that until the hearing of this appeal it never occurred to me as possible that anyone would understand it in any other sense.

The whole Act, therefore, in my opinion, pronounces against an interpretation of section 2 which would make occasional site value a meaningless abstraction having no connection with site value. What is there to put against this? Though one may not take into consideration that it would be directly contrary to the declaration of the Minister in introducing the Bill, it is permissible to say that one must have lived outside the ordinary life of educated people in England to suppose that any Government or any Legislature could have called such a tax a tax on the increment of the site value of land. Moreover there is no conceivable reason for such an absurd system being adopted. It is impossible even to say that it produces more or less revenue than would be produced by that for which the appellant contends. It only ensures that the revenue is collected in such a way that it cannot be, or be honestly called, a tax on the increment of site values. And after long and careful consideration of the Act I am convinced that the interpretation contended for by the respondents cannot be defended as being in accordance with the true construction of the Act. If read as a whole, the Act, to my mind, clearly means that for which the appellant contends. The same is true if section 2 be read as a whole. And even if we were to put ourselves into blinkers and shut out all but a small portion of section 2 and construe it by itself, we could only arrive at the construction contended for by the respondents by forcing the language of the section and ignoring the fact that it is only the "like" deductions and not the "same" deductions that are to be made. To calculate deductions on one value of "total value" and then to apply those deductions to another and a different value is not to make the "like" deductions to those made in a process the correctness of which essentially depends on taking one and the same value of "total value" throughout the process. I see therefore nothing which requires me to hold that this section bears a meaning which would render misleading the clear and repeated professions of the Act that the duty it imposes is a tax on the increment of site value, and I am of opinion that the appellant is right in his construction of the section and that this appeal should be allowed.

LORD PARMOOR—I regret not to be able to concur with the noble Viscount on the Woolsack on a question which in my opinion simply involves the construction of the Finance Act of 1910.

This is an appeal which raises the question whether the appellant is liable to pay increment value duty upon the occasion of the sale by him of the dwelling-house and shop known as No. 32 Lansdowne Road, Forest Hall, Northumberland.

The sale was of the fee-simple of the land, and the consideration paid was £750. The land was subject to a tithe rent-charge of the capitalised value of £33. The full site value was estimated at £228, and there was an agreed sum of £90 in respect of works executed, to be deducted before arriving at the assessable site value on the occasion. The referee adopted the contention of the appellant that "the fee-simple was sold, subject to tithe of £33 capital value, for £750, therefore the gross value which in this case is the fee-simple value free from tithe (see section 25 (i)) is £783" (paragraph 8 (*a*) (1) of the special case). He further found that at the time of the sale the fee-simple of the property if sold in the open market by a willing seller in its then condition free from encumbrances and from any burden, charge, or restraint other than rates or taxes, might have been expected to realise the sum of £658. Neither of these findings of the referee is in any way conclusive of the question to be decided, which is the construction of the Finance Act, in order to ascertain in what sense the Legislature has used the words "gross value" in their application to the calculation of an occasional site value, to be ascertained in accordance with section 2 of the Act, when there has been a transfer on sale of the fee-simple of the land.

In coming to a conclusion on this point the ordinary principles of construction must be followed. A statute is the expression of the will of the Legislature, and it is the duty of the courts to give effect to the language in which the will of the Legislature has been expressed. It is not the function of courts of law to entertain questions of policy, and I am unable to give any weight to arguments based on the consideration whether a particular interpretation is more favourable to the Crown or to the subject. In all cases ordinary words must be interpreted in their natural sense, and technical words in the sense which they have acquired, having regard to the context in which they are found and to the principle that every section of a statute should, so far as possible, be construed to make a consistent enactment of the whole. As a key to arrive at the interpretation of language used in a statute it is permissible, and may be necessary, to get a conception of the aim and object of the whole statute, since in this way an interpreter of the statute places himself in the position of those who used the language which he is called upon to interpret, but care must be taken that this is done not to make law but only to expound it. In the present case the statute appears to me to have been drafted with perfect consistency. Its aim in the sections under review is to impose duties on land values and to direct the methods of valuation. The language to be interpreted is not, in my opinion, difficult if the context in which it is found is fairly considered.

Section 1 of the Act simply denotes the occasions on which the increment value duty may arise and the rate at which it should be collected. I think it is clear that increment value duty denotes a duty on the increment in value between the same thing calculated at different dates. Section 2 contains a definition of the increment value of any land, and the present case largely depends on its proper construction. The increment value of any land is to be deemed to be the amount, if any, by which the site value of the land on the occasion on which increment value duty is to be collected, as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this part of this Act as to valuation. The contrast between ascertaining site value in accordance with section 2 and ascertaining site value in accordance with the general provisions of this part of this Act is essential, and must be followed through the whole process to prevent confusion and inconsistency. The care of the draftsman to avoid such confusion and inconsistency is further illustrated in the last paragraph of section 25, sub-section 4. In each case the words "site value" denote the assessable site value of the land, and may be referred to respectively as the occasional site value and the original site value. To ascertain the occasional site value of land full directions are contained in section 2, sub-section 2. Where, as in the present case, the occasion is a transfer on sale of the fee-simple of the land, the calculation starts from the value of the consideration for the transfer, in this case the sum of £750. Where the occasion is a grant of a lease or the transfer on sale of any interest in the land, the value of the fee-simple of the land is to be calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest. In other words, a capitalised figure is to be ascertained from the actual transaction on the occasion on which increment value duty is due. Where the occasion is the death of any person and the fee-simple of land is property passing on that death, the principal value of the land as ascertained for the purpose of Part I of the Finance Act 1894, and where any interest in the land is property passing on that death, the value of the fee-simple of the land calculated on the basis of the principal value of the interest as so ascertained become the initial figure in the calculation.

Lastly, where the occasion is a periodical occasion, and there is no transaction on which the occasional site value of land can be based, then the total value of the land on the occasion falls to be estimated in accordance with the general provisions of this part of the Act as to valuation. It is noticeable that where the method of ascertainment of value is to be in accordance, not with section 2, but with the general provisions of the Act as to valuation, this is provided for in express terms. The phrase "total value" is here introduced for the first time, and to ascertain its meaning it is necessary to turn to section 25. In section 25, sub-section 3, the total value of land is defined to mean the gross value, after deducting the amount by which the gross value would be diminished if the land were sold subject to any of the fixed charges, burdens, or restrictions specified in the subsection. In the present case the only fixed charge is the tithe rent-charge of the capitalised value of £33, so that the total value under section 25 would be ascertained by deducting £33 from the gross value. In sub-section 1 of the same section the gross value of land is the fee-simple value of the land in its then condition, free from encumbrances and from any burden, charge, or restriction other than rates and taxes and this value as ascertained under section 25 means the amount which the fee-simple value of the land if sold at the time in the open market by a willing seller in its then condition, free from encumbrances and burdens, might be expected to realise. It is argued that in calculating the gross value under section 2 the method of ascertainment in section 25 must be followed, but in my opinion this is a fallacy and inconsistent with the statutory directions.

Turning back to sub-section 2 of section 2, it is evident that total value and the value of the consideration for the transfer of the fee-simple of land denote the same thing, namely, the value of the land subject to the encumbrances which the vendor does not sell and the purchaser does not buy. This substantial identity is not affected, because the method of ascertain-

ment differs where there has been an actual sale. The only encumbrance in this case is the tithe rent-charge, capitalised at £33, which is not included in the sale price and is excluded from total value. I agree that it is nowhere said that for the purpose of ascertaining the occasional site value of land the value of the consideration for the transfer shall be substituted for total value, but in my opinion such a direction would be wrong in principle and calculated to lead to confusion. Total value in section 25 is a deduction from estimate; consideration for the transfer denotes an actual figure, and this is a vital distinction. The important factor is that in a section dealing with valuation consideration for transfer and total value are treated as equivalent factors in arriving at the site value of land. Such a direction is in accordance with the recognised principles of valuation. Section 2 accordingly enacts that when the value of the consideration for the transfer has been ascertained, it is subject to the like deductions as are made in the general provisions of this part of the Act as to valuation for the purpose of arriving at the site value of land from the total value. These deductions are specified in section 25, sub-section 4. The first of them (*a*) is the same amount as is to be deducted for the purpose of arriving at full site value from gross value. No such deduction is made, since full site value is ascertained by valuation, but the meaning is clear, that whatever amount denotes the difference between full site value and gross value the same amount is to be deducted. There is no difficulty in the meaning of full site value. It means the value which the fee-simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, and other things growing thereon. In the present case this value has been estimated on the occasion of the sale at the sum of £228.

The remaining factor to determine is gross value. This is the real test in the case to which the main argument on both sides was directed. It was argued on behalf of the Crown that gross value in section 2 means an amount ascertained by valuation under section 25, sub-section 1, and that in this case the referee has found that amount to be £658. The fallacy of this contention arises in a confusion between the interest to be valued and the method of valuation to be applied.

The gross value of land in section 25, sub-section 1, is the value of the fee-simple of land free from encumbrances or from any burden, charge, or restriction other than rates or taxes. This language is unambiguous, whether regarded in reference to the ordinary meaning of the words or as introducing a technical definition. Where there has been no actual transaction, the only way of ascertaining the amount of gross value is by valuation, and in section 25, sub-section 1, the method of valuation is to estimate the amount which the land might be expected to realise if sold at the time in its then condition in the open market by a willing seller. The appellant does not deny that the gross value of land in section 2 means the value of the fee-simple of land free from encumbrances and from any burden, charge, or restriction other than rates or taxes, and frames his case on the application of this definition. What the appellant does say is that the contention of the Crown, that the method of ascertaining the gross value in section 25 should be applied in section 2, is not in accord with the directions of section 2, and leads to the confusion and inconsistency which these directions are intended to avoid. The result in the present case would lead, not to the actual fee-simple value of the land free from encumbrances and burdens in its condition at the date of the sale, but to a figure based on a hypothetical estimate proved by experience to be wrong and inaccurate. If the consideration of the transfer on the sale of the fee-simple of the land is £750, and there are encumbrances in the nature of tithe rent-charge to the capitalised value of £33, then the gross value according to the definition in section 25, as ascertained under section 2, is £783. I not only do not find that the statute compels the substitution of £658, but in my opinion it carefully provides against such an absurd conclusion as would result in giving a lower figure for gross value than the consideration on transfer in respect of the same property on the occasion of a sale.

The occasional site value of the land ascertained in accordance with the contention of the Crown includes an element of builders' profits, and in other cases might introduce elements wholly independent of the actual site value of the land. On the other hand, the contention of the appellant does eliminate the site value of the land from other elements of value. I have already referred to the paragraph which occurs at the end of section 25, sub-section 4, which excludes from site value, deemed to be assessable site value of the land as ascertained in accordance with this section, the site value of land on an occasion on which increment duty is to be collected. In my opinion the crucial words in this paragraph are "as ascertained in accordance with this section," and the paragraph recognises that the ascertainment of site value in section 2 proceeds throughout on the method therein directed. There is an inevitable difference in method when a datum line founded on an actual transaction is contrasted with one founded merely on estimate.

The words "like deductions" in section 2 in no way conflict with the above construction. I understand the word "like" to mean deductions of an equivalent or corresponding character, and not merely deductions of the same amount. The amount of the deduction is the difference between full site value and gross value, and in order that like deductions may be made, it is necessary to ascertain the figures for gross value and full site value in accordance with section 2, and to apply the difference in the calcula-

tion. I cannot agree with the view that this problem can be answered by saying that no gross value need be fixed, since a similar result may be obtained by the simple deduction of the two sums of £33 and £90 from the full site value. It is only by ascertaining gross value in section 2 that it is possible to apply the principle of like deductions in accordance with the directions of the Act. It follows, in my opinion, that the referee came to a sound conclusion in accordance with the proper construction of the relevant sections of the Act without reference to considerations of policy which are wholly irrelevant.

It was argued against this construction, on behalf of the Crown, that there is no direction to obtain gross value by the addition of two figures. In my opinion no such direction is required. If the gross value of land in section 2 is the fee-simple value of the land free from encumbrances, and from any burden, charge, or restriction, then the amount is accurately ascertained by the addition of the sum of £33 to the sum of £750, and the referee properly regarded it as immaterial whether the arithmetical process is one of addition or subtraction. The important factor is the datum line from which the calculation starts, and the Act provides that on the occasion of the sale of land in fee-simple the datum line shall be the consideration for transfer.

It was further argued on behalf of the Crown that the contention of the appellant would result in the same site value whatever the consideration for transfer might be. I am not prepared to assent to this proposition in respect of deductions to be made under section 25, sub-section 4 (*b*), (*c*), (*d*); but whether true or not, it does not appear to me to be material. The same argument is applicable in whatever way the gross value is ascertained so long as one form of calculation is consistently applied. This is evident in the present case, where the sums of £33 and £90 might be deducted from the full site value without any reference to gross value, but this is not the method directed in the Act, and I think that gross value should be ascertained and applied, whether under section 2 or section 25.

The attention of the House was directed in the argument both on behalf of the appellant and of the respondents to subsection 3 of section 2. This section refers to what has been called substituted site value; that is to say, a site value to be substituted for the original site value under certain conditions for the purposes of increment value duty. The conditions arise where it is proved to the Commissioners on an application made within due time that the site value of any land at the time of any transfer on sale within a certain period exceeds the original site value of the land as ascertained under the Act. The provision is also applied to the case of a mortgage. In such a case the site value is to be estimated by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on the transfer where increment value duty is to be collected on the occasion of such transfer.

If the argument on behalf of the Crown is accepted, the substituted site value would not be the same thing as the original site value for which it is substituted, but might include and would include, in such an instance as the present, an element of builders' profits in addition to the stripped value of the land. It is satisfactory to find that the language of the Act does not lead to such an anomaly, and that the drafting of the Act is not open to this criticism.

The attention of the House was further directed to a number of sections which appear to indicate that site value is consistently applied to the value of land, and not to the value of land with an addition of other elements, such as builders' profits. Should these sections come to be interpreted in this House further consideration may be necessary, and I desire to express no opinion. Section 3 of the Act is, however, directly in point. It contains general provisions as to the collection of increment value duty. In each of the sub-sections the subject to be taxed for increment value duty is limited to the increment value of land, and in subsection 5 a reduction is allowed on the first occasion for the alteration of increment duty of an amount equal to 10 per cent. of the original site value of the land, and on subsequent occasions to an amount equal to 10 per cent. of the site value on the last preceding occasion. It appears to me that this provision necessarily implies that the site value means the same thing on the successive occasions, and that it is only on this basis that the whole scheme of the Act is consistent.

The result of the method adopted by the referee, and which in my opinion is accurate, is to find the site value on the occasion of the sale in fee-simple at £105. It is not until this amount has been fixed that the original site value should be referred to, since the two figures fall to be compared in order to ascertain whether there has been an increment value of land on which an increment value duty is payable. The original site value is £105, so that in this case there is no increment value of land and no increment value duty is chargeable.

In my opinion the appeal should be allowed.

Their Lordships being equally divided dismissed the appeal.

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Counsel for the Respondents—The Attorney-General (Sir J. Simon, K.C.)—The Solicitor-General (Sir Stanley Buckmaster, K.C.) —W. Finlay. Agent — Solicitor of Inland Revenue.