use of his holding by the tenant which has nothing to do with agriculture. Then again many of those questions are questions involving matters both of law and of fact, and then when you come to the second part of the section which begins with the proviso, you find there the things enumerated which may deprive the tenant of his right to compensation, some of which are not connected with agriculture at all, for the first one is that the tenant must give the landlord a reasonable opportunity of making a valuation of the goods, and again that the tenant must within two months after reception of notice to quit or refusal to grant renewal, as the case may be, give the landlord notice in writing of his intention to claim compensation under the section. That involves, first of all, the adequacy of the notice, and next whether it is given within the proper time. That has nothing whatever to do with agriculture. Therefore when you find the section terminated by the provision that in the event of any difference arising as to any matter under this section the difference shall in default of agreement be settled by arbitration, it would certainly appear to me that that must extend both to all the things which the tenant must do in order to get compensation, and to those things for which unless he does them he will be deprived of compensation. I therefore think that the jurisdiction of the arbiter arises both as to the notice to be given under the first part of the section and as to the notice that may be required to be given under the second portion of the section.

Their Lordships reversed the interlocutor appealed from, with costs.

Counsel for the Appellant (Respondent)—Hon. W. Watson, K.C. — C. H. Brown. Agents — Ronald & Ritchie, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for the Respondent (Complainer)—Macmillan, K.C.—Gentles. Agents—John C. Brodie & Sons, W.S., Edinburgh — Grahames & Company, Westminster.

Tuesday, January 28.

(Before Lord Buckmaster, Lord Finlay, Lord Dunedin, and Lord Atkinson.)

MALCOLM *v.* LOCKHART.

(In the Court of Session, November 16, 1917, 55 S.L.R. 98.)

Revenue — Income Tax — Stallion's Fees — Mode of Assessment — Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 63, *Schedule B, and sec.* 100, *Schedule D, First Case, Rule First, and Sixth Case — Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedules B and D.*

The Income Tax Act 1853 enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting such duties respectively, the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act, and marked respectively A, B, C, D, and E, and to be charged under such respective schedules—that is to say," Schedule B, "for and in respect of the occupation of all such lands, tenements, hereditaments, and heritages as aforesaid, and to be charged for every twenty shillings of the annual value thereof." Schedule D—"For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever . . . and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the annual amount of such profits and gains."

The above schedules replace Schedules B and D of the Income Tax Act 1842, but the cases and rules applicable to the Schedules B and D of that Act are still operative, and of these the following are the first and sixth cases under Schedule D:—First Case—"Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of this Act." Sixth Case—"The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any of the other schedules contained in this Act."

The tenant and occupier of a mixed farm of 400 acres at a rent of £580 kept a stallion which he used to serve his own mares on the farm, and also to serve mares belonging to others. The mares were either served at the farm or at other places where the stallion attended under the care of the owner's servants. The owner was assessed under Schedule B of the Act of 1853 upon the rental of his farm as tenant thereof, and in the year of assessment his gross earnings from the stallion amounted to £290. The Commissioners for the General Purposes of the Income Tax decided to assess the owner of the stallion upon the profits derived from its ownership under Schedule D of the Act of 1853, in respect that the use made by the owner of the stallion was a use that provided a profit that did not arise in respect of the occupation of his lands. *Held* that the question of the use made of the stallion was a question of fact, and that the Commissioners' decision was final.

The case is reported *ante ut supra.*

William Taylor Malcolm, the appellant, appealed to the House of Lords.

LORD BUCKMASTER—The appellant in this case is a farmer who has a farm at Dunmore. Upon this farm he has a considerable quantity of stock and horses. Among his animals he possesses a stallion known by the name of "Prince Ossian." This stallion he has been in the habit of using for the service both of his own mares, six in number, upon the farm, and also for the service of the mares of adjacent farmers who desire to get the benefits of the horse. It is not the only stallion which serves his farm; he has another which he also keeps upon the premises. The service of the stallion "Prince Ossian," apart from its use in connection with the farm, is so much sought for and is of such value that the appellant received in the income tax year 1915 the gross sum of £290 in respect of its use. The Income Tax Commissioners sought to assess the appellant to income tax upon £250, part of this sum of £290, and he thereupon required them to state a Special Case raising the question as to whether or no the use of this stallion in the manner that I have described did or did not render him liable for the tax. That Special Case, which was stated on the 21st June 1917, was referred to the Court of Session for decision, and the Judges of the First Division have unanimously decided that the assessment was correct.

The question which arises for determination is one which not infrequently occurs in connection with the Income Tax Acts, and which in the result always becomes the determination of a simple question of fact. It is well known that by Schedule B of the Income Tax Act of 1853 provision is made for taxation in respect of the occupation of lands in the United Kingdom, and there then follow provisions in Schedule D, which secure that further duties under that schedule are to be exacted in respect either of any trade, adventure, or concern in the nature of a trade not contained in any other schedule, or in the case of duties to be charged in respect of annual profits or gains not falling under any foregoing rule. There can be no question therefore that these profits are liable to taxation unless it can be properly asserted that they arise for and in respect of the occupation of the lands which the appellant holds as his farm.

It is quite possible that an entire horse may be used by a farmer in connection with his farm in such a manner that its use outside will in relation to its use for his own purposes be so trivial and unimportant that there would be no tax exigible in respect of profits received for its services. Or on the other hand it may be that the real use and purpose of the animal and its real advantage to its possessor lie in the moneys which can be obtained by the use of its services outside. This question is essentially a question of fact. The Commissioners in this case have decided that the use by the appellant of this stallion is a use that provides a profit which does not arise in respect of the occupation of his lands. There seems to me no reason whatever why that finding of fact should be investigated more closely. Had it been found in terms it would have been outside the competence of a court to discuss it further. It is not found in exact language, but it is found inferentially, and the facts to which I have referred, namely, the number of mares on the appellant's farm, the number of entire horses that he possesses, and the extent of the profits which this horse has earned, are in my opinion abundant to justify the conclusion which has been reached.

For these reasons in my opinion this appeal fails and should be dismissed with costs.

LORD FINLAY—I am of the same opinion. Every case of this kind really depends upon questions of fact, and very largely in most cases it resolves itself into a question of degree. I see no reason whatever which would justify us in overruling the conclusion at which the Commissioners have arrived, and it seems to me that the appeal must be dismissed.

LORD DUNEDIN—I concur.

LORD ATKINSON—I concur.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellant—Condie Sandeman, K.C. — Watson. Agents — Guild & Guild, W.S., Edinburgh—Thorne, Priest, & Company, London.

Counsel for the Respondent—Lord Advocate (Clyde, K.C.) — R. C. Henderson. Agents — Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue for Scotland—H. Bertram Cox, Solicitor of Inland Revenue for England.

COURT OF SESSION.

Tuesday, January 14.

FIRST DIVISION.

[Lord Anderson, Ordinary.

WATT *v.* CORPORATION OF GLASGOW.

Reparation — Negligence — Tramcar — Absence of Conductress on Roof at Stop-if-Required Station — Passengers Going on Platform of Car to Request Conductress to Stop — Passengers Thrown off by Car Swinging on a Curve.

A girl and her infant brother, passengers on a tramway car in Glasgow, desiring to alight at a stop-if-required station went upon the rear platform of the car to request the conductress to stop. The conductress was upstairs for no reason arising out of her duties. The car did not stop, and the passengers in question were carried on the platform past the station about 77 yards where there was a curve. The car took the curve without diminution of speed, which caused a swing on the rear platform by which the passengers were thrown off. *Held* (*dis.* the Lord President) that the conductress was negligent in being absent from the platform without cause at the stop-if-required