now arrive. At the moment I see no reason why the decision of the cases referred to should not be correct, but then no argument has been offered to the contrary, so I reserve my opinion. Supposing that decision to be sound, it is nevertheless the case that the Legislature has directed that for the purpose of determining excess mineral rights duty the comparison between the two years shall be upon rates so far as variable according to price and not so far as variable according to two factors — price and income tax. Supposing the decision to be incorrect, the argument is then *a fortiori*. It is suggested that in this event the assessment made by the Commissioners is illogical, but, as the Attorney-General has pointed out, this is not so. The assessment has been made according to the usual practice so as not to subject the taxpayer to double taxation.

Appeal dismissed.

Counsel for the Appellant—Sir J. Simon, K.C. — Disturnal, K.C. — Micklethwait. Agents—May, How, & Chilver, Solicitors.

Counsel for the Respondents — Sir G. Hewart, Att.-Gen. — Sheldon. Agent — Solicitor of Inland Revenue.

HOUSE OF LORDS.

Thursday, May 13, 1920.

(Before the Lord Chancellor (Birkenhead), Lords Finlay, Cave, Atkinson, and Shaw.)

COMAN *v.* GOVERNORS OF ROTUNDA HOSPITAL.

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

Revenue—Income Tax—Assessment under Schedule D—Profits from the Letting of Rooms Belonging to a Hospital—"Concern in the Nature of Trade"—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35) *secs.* 60, 61, *Schedule A, No. VI*; *sec.* 100, *Schedule D, Cases* 1 *and* 6, *sec.* 105—*Income Tax Act* 1853 (16 *and* 17 *Vict cap.* 34), *sec.* 2, *Schedules A and D.*

The respondents owned the Rotunda Hospital and certain attached property known as the Rotunda Rooms and Vaults, from the letting of which, provided with light and heat and the necessary furniture, they derived the revenue which the appellant sought to assess under Schedule D of the Income Tax Acts. The respondents claimed that these profits were included in the assessment under Schedule A, and were therefore exempt from taxation under Schedule D. *Held* that the respondents carried on "an adventure or concern in the nature of trade" which was assessable under Schedule D.

Grove v. *Young Men's Christian Association*, 4 Tax Cas. 613; *Religious Tract and Book Society of Scotland* v. *Forbes*, 33 S.L.R. 289, 23 R. 390, 3 Tax Cas. 415; and *Carlisle and Silloth Golf Club* v. *Smith*, 1913, 2 K.B. 75, *approved and followed.*

Maugham v. *Free Church of Scotland*, 30 S.L.R. 666, 3 Tax Cas. 297, *distinguished.*

Appeal from an order of the Court of Appeal (RONAN and MOLONY, L.JJ., O'CONNOR, M.R. *diss.*) dated the 28th February 1919, affirming an order of the King's Bench Division (GIBSON, MADDEN, and KENNY, JJ., CAMPBELL, L.C.J., *diss.*) dated the 28th February 1918, on a Case stated under 43 and 44 Vict. cap. 19, section 59, by the Commissioners for the Special Purposes of the Income Tax Acts, holding that the decision of the commissions referred to in the Case was erroneous in law.

The facts are fully stated in the judgment of the Lord Chancellor.

LORD CHANCELLOR (BIRKENHEAD)—This is an appeal from an order of the Court of Appeal in Ireland, dated the 28th February 1919.

The Commissioners for the Special Purposes of the Income Tax Acts had on an appeal by the present respondents held that they were liable to be assessed to income tax under Schedule D in respect of their profits from letting the Rotunda Rooms, Dublin.

The respondents appealed by way of Case stated to the King's Bench Division (Revenue Side) and that Court by order dated the 28th February 1918 reversed the decision of the Commissioners, and this reversal was affirmed on appeal to the Court of Appeal.

The assessments in dispute are four in number and relate to the four years ending the 5th April 1915. The facts proved or admitted at the hearing before the Special Commissioners are set out in the Case stated and the documents annexed to it.

The respondents are a corporation incorporated in the year 1756 for the purpose of conducting a hospital for poor lying-in women. The letters-patent appear to be in the nature of an exemplification. They are dated 1766, when George II had been dead six years. From internal evidence the incorporation appears to have been by letters close dated the 26th July 1756. The date, the 2nd December 1756, given by the parties and most of the judges is without any warrant.

The hospital is at present a maternity and gynecological hospital, and as such is clearly a charity. The hospital is managed in accordance with the charter and by-laws made under the authority of the charter and an Irish Act (25 Geo. III, cap. 43) and also certain resolutions passed from time to time by the governors and collected together.

The premises occupied by the respondents at Dublin consists of the hospital, the Rotunda Rooms, and the Rotunda Gardens. The vaults under the building are separately let. The hospital and the rooms are connected by an internal passage way, but it does not appear that the rooms are used for any hospital purpose save that of earning profits which are applied towards the main-

tenance of the hospital. The Rotunda Rooms are in a building and consist of a number of rooms suitable for public entertainments of various kinds. There is a large proscenium and all the rooms are equipped with platforms, seats, and proper fixtures and fittings to enable them to be lighted and heated.

They appear to have been erected towards the end of the eighteenth century in pursuance of by-law 20 with the avowed object of obtaining funds for the support of the charity.

By resolution 10 the general management and superintendence is entrusted to the registrar, who is responsible for the revenue derived from letting the rooms, for which he accounts in the manner prescribed by resolution 17. The rooms are in the immediate care of the keeper of the rooms, who by resolution 19 is responsible for the cleaning, &c., of the rooms and for the due and orderly behaviour of the persons resorting to them. He is entitled for his own and the attendants' services to charge in accordance with a fixed scale, and from the terms of the resolution it would appear that he has charge of certain furniture which may or may not be required for the use of the rooms and presumably is placed there when required and removed when no longer required. The registrar makes the arrangements for letting, the charges for which are made in accordance with a scale which may, however, be relaxed on certain consents being contained. There is a printed form of agreement which, however, was not put in evidence. Gas and electricity must be paid for but not heating.

It is clear from these facts that the lettings, which may be for the day, week, or month, are not such as to constitute the relation of landlord and tenant, but that the possession and occupation of the rooms remains in the respondents, who afford the hirers not merely a right or licence to use the rooms but also fixtures and fittings, some of which are clearly not part of the building but are separate chattels, and the respondents provide certain services such as heat, light, and attendance.

The moneys so received yield profits which form no inconsiderable part of the revenue of the respondents, and the question which your Lordships have to decide is whether these profits are covered by the valuation and assessment of the premises for the purpose of Schedule A of the Income Tax Acts, or whether such profits are something not so covered and may properly be assessed under one or other of the cases of Schedule D.

The law relating to income tax is not quite the same in Ireland as in Great Britain. The former country was excluded from the Income Tax Act 1842, and was first included by section 5 of the Income Tax Act 1853, and section 13 of this Act provided that in Ireland assessments for the purposes of Schedule A should be made upon the poor law valuation of the premises in question in any case. The Irish Valuation Act 1852, section 11, requires such valuation to be made on an estimate of the net annual value—that is to say, "the rent for which one year with another the same might in its actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance, and other expenses, if any, necessary to maintain the hereditament in its actual state, and all rates, taxes, and public charges, if any (except tithe rent-charge), being paid by the tenant." By section 2 of the Irish Valuation Act 1854 the committee of valuation are to "distinguish all hereditaments and tenements or portions of the same used for charitable purposes, and all such hereditaments or tenements or portions of the same, so distinguished, shall, so long as they continue to be used for the purposes aforesaid, be deemed exempt from all assessment." Until 1915 the Rotunda Rooms had been scheduled as exempt in the valuation list and accordingly were not assessed for rating or Schedule A purposes. The assessments now under review are in respect of the four tax years ending the 5th April 1915, during which no assessment under Schedule A was in fact made, but the respondents have not been prejudiced thereby, as the Special Commissioners in adjusting the respective amounts of assessments have allowed the amounts of assessable value under Schedule A.

The contention on behalf of the appellant can be stated very concisely. In effect it is said the respondents carry on a trade or a concern in the nature of a trade, and that is found as a fact in the case stated, or at least is the only conclusion that can be deduced either as a matter of law or as an inference of fact from the case. He points out that the sole object of the rooms, as shown by bye-law 20 and the annual reports, is to afford revenue; that the course adopted to procure such revenue is not a course adopted on special occasions but a regular habitual course of business. The respondents, it is said, retain control of the premises, select the persons to whom the user is granted, and regulate the conduct and behaviour of the persons allowed to resort thereto, and for the purpose of enabling or facilitating the making of contract for such user they have properly fitted up the rooms with fixtures, fittings, and other things, some at least being clearly chattels, and provide attendance and other services. Such utilisation of property, it is claimed, goes far beyond the scope of Schedule A. Even if not a trade or concern in the nature of trade within case 1 of Schedule D, then it is argued that the profit obtained is not taxed by any other schedule and comes within the drag-net provided by case 6 of Schedule D. The argument is reinforced by this illustration. Assuming that the respondents had let the rooms to a tenant who paid the Schedule A valuation and utilised the premises in exactly the same way as the respondents, then in such case it could not be contended that his profit was within the ambit of Schedule A, nor would it be contended that such a tenant would not be carrying on a trade or concern in the nature of trade much in the same way as persons earn a living by letting furnished apartments.

The contentions of the respondents were necessarily much more elaborate and detailed, and from them I deduce the following series of propositions, which I think accurately sum up the objections in point of law to the assessments now under review—(1) That the respondents are a single statutory corporation constituting an indivisible charitable trust, and that before considering the question of liability to income tax it must first be ascertained whether the respondents make a profit on the results of their activities taken as a whole. Therefore as the respondents' accounts show a deficit, no assessment can be justified under any schedule. (2) That all moneys received by the respondents in respect of the use of the Rotunda Rooms are assessable under Schedule A alone. (3) That these rooms and the moneys so received are exempt from taxation under Schedule A for one of two reasons—either because they are public buildings belonging to a hospital, or, if the word "public" does not apply, they are premises belonging to a hospital, or else because the moneys are rents and profits of lands, tenements, or hereditaments belonging to a hospital and applied to charitable purposes. In other words, that these premises and moneys are within No. 6 of Schedule A (Income Tax Act 1842, sec. 61). (4) That if there were any profit derived from the use of the seating and heating considered *per se*, the amount of such profit has not been ascertained, and there are no materials upon which an assessment can be made. (5) That there has been no finding of fact by the Special Commissioners that there is a liability under Schedule D. They have merely stated that in their opinion, if a certain state of facts existed, it would follow that such liability would arise. (6) That in any event what is done by the respondents does not constitute a trade, manufacture, adventure, or concern in the nature of trade. (7) That as case 6 of Schedule D in terms excludes from its operation any moneys charged by virtue of any of the other schedules, and as the receipts under consideration can only be charged under Schedule A, by which they are exempted from taxation, no assessment can be made under the sixth case of Schedule D.

I do not accept any of these propositions.

If the first proposition were an accurate statement of the principle of law applicable, then in my opinion at this stage of the history of the Income Tax Acts it would have been so well established that no argument would be necessary to establish it, and no objection could or would be made to the contrary.

In my judgment the proposition is contrary to the whole scheme of the Acts and to the cases which have been decided under the Acts.

Income for the purposes of taxation is not ordinarily aggregated. It is grouped according to the source from which it is derived. Without saying that aggregation of income for income tax is never permitted (for that would in some cases be contrary to the Acts themselves), I am clearly of opinion that a composite assessment of the kind which would be necessary in this case would not only be entirely novel, but difficult, if not impossible, to reconcile with the rules applicable to the different schedules. In the case of a charity some income may be exempted from taxation by virtue of sec. 61 of the 1842 Act, other income by virtue of sec. 105. In order to secure those exemptions the income in question must be separated and regarded as severable items assessed to income tax upon a basis which varies according to the schedule or to the case of the schedule applicable. This consideration applies not merely to charities, but to many other cases of allowance, exemption, and abatement occurring in these Acts, and there is frequently a clear difference of treatment according to the source of the income, so that in many cases a loss is not set off against a profit. For example, in the *Religious Tract and Book Society of Scotland* v. *Forbes* (1896, 3 Tax Cas. 415, 23 R. 390, 33 S.L.R. 289) it was held that the appellant society, which carried on a religious colportage and a bookseller's business, could not set off the profits of the latter against the losses of the former as the colportage was not a trade or business. Again, the Young Men's Christian Association, which is a philanthropic institution, running classes, gymnasia, &c., and also conducting on ordinary business lines a restaurant open to the general public, was held not to be entitled to deduct the losses on the classes, &c., from the profits of the restaurant—*Grove* v. *Young Men's Christian Association*, 1903, 4 Tax Cas. 613. The *Carlisle and Silloth Golf Club* v. *Smith* (1913, 3 K.B. 75) also shows that an activity which is outside the ordinary functions of a club will, if resulting in profit, be taxable whatever may be the result shown by the accounts taken as a whole, and retention of tax such as that in question in *Sugden* v. *Leeds Corporation* (1914, A.C. 483) cannot be properly allowed unless the source of income be very carefully examined and dealt with as a separate item. The proposition when examined really amounts to no more than this, that the whole income, including the profits now under consideration, is being devoted to charitable purposes, but that fact cannot alter the effect of the rules under the schedule applicable to the particular income. If Schedule A applies, then sec. 61 confers the allowances there mentioned, but if Schedule D applies, then such exemption as exists is conferred by sec. 105 of the Act of 1842.

The second proposition assumes that the profits are in respect of the property in the Rotunda Rooms, but this provision of Schedule A clearly shows that the object is to tax what for the sake of brevity may with substantial accuracy be called the landlord's income. Over and above that income there is almost without exception a user of the premises whereby a further or tenant's profit is sought to be made. It is for that purpose that Schedule B is directed to tax the benefit of occupation where the land or tenement is not occupied as dwelling

or warehouse or for the purpose of carrying on a trade or business, the profits of trade or business being assessed under Schedule D. The case finds the facts in such a way as to leave no doubt that there is a profit above what may be described as the Schedule A or landlord's profit, and it is, I think, clear that No. 3 of Schedule A cannot in any way be said to apply to this case.

Thirdly, I do not think that much assistance can be derived from an examination of the allowances under Schedule A. They cannot in any way affect the present assessments, which are under Schedule D. For the same reason I do not propose to discuss the *Essex Hall* case (1911, 2 K.B. 434), which was dwelt upon so much in the course of the argument. The assessment in question there was an assessment under Schedule A, and that case therefore has no bearing on the present issue. The dictum of Kennedy, L.J., at p. 444, is in point, but it was *obiter*. If Schedule A alone applies, then that case would be relevant to any question arising on an assessment under that schedule. The issue before your Lordships is whether these assessments, made under Schedule D, are valid assessments.

Fourthly and fifthly, the seating and heating are not the only matters to be considered, and to treat the user of the premises in this way is not the proper method to adopt. The question is whether the utilisation of these rooms and the provision of facilities and services in the way set out in the case, yielding as it does a regular annual income to the respondents above the letting value as a property and over and above the profit assessable to Schedule A, amounts either to the carrying on of a trade or business under case 1 of Schedule D or to a profitable activity which is assessable under case 6 of that schedule. The provision of seating and heating is part of the whole of the circumstances upon which the determination of the real question depends. It is true that the special commissioners have not expressly stated whether they found that case 1 or case 6 applied, but having regard to the contention of the Surveyor of Taxes, as set out in paragraph 6 of the case stated, I think it is clear that they were of opinion that the respondents were in fact carrying on a business and intended so to hold. The point however is not of great moment, as in my opinion one or other of these cases applies, and the assessments, if not valid under case 1, could in any case be supported under case 6. The absence of precise data forming materials for assessment is not necessarily in itself an objection to an assessment, but the case clearly shows that there was evidence before the Special Commissioners upon which they came to a conclusion to which they could properly come. There is, in my opinion, no substance in the objection.

The sixth proposition I have in substance already rejected. It would, in my view, be impossible to say that the respondents did not carry on a trade or adventure in the nature of a trade without also excluding the business of letting furnished houses or many of the cases of letting or allowing the use of theatres, music-halls, and other places of public entertainment, or without overruling the *Carlisle and Silloth Golf Club* case, which in my opinion was rightly decided.

The seventh proposition has also already been dealt with, and is equally without substance.

When the facts set out in the Case stated and the documents annexed to it are considered as a whole, it becomes plain that the respondents, with the laudable object of raising an income for the support of their charitable activities, have engaged in what can only be described as a business or a concern in the nature of business, and thereby have earned annual profits which are outside the scope of Schedule A. They are therefore taxable under Schedule D. No exemption conferred by the Income Tax Acts is applicable to these profits, and it follows that they are liable to income tax and that the assessments appealed against were duly made. I therefore move your Lordships to reverse the decision appealed against and to restore that of the Special Commissioners.

LORD FINLAY—The Rotunda Hospital was incorporated by Royal Charter dated the 2nd December 1756 for the relief of poor lying-in women. The Rotunda Rooms are contiguous to the hospital and are vested in the Governors of the charity, the respondents in this appeal. The legal occupation of the rooms is and always has been in the respondents, but they are hired out by them for entertainments, concerts, cinema shows, &c., for periods varying from one night to six nights. The rooms have a proscenium and platforms, and when they are hired out they are equipped with seats, and heating, lighting, and attendance are provided by the respondents.

The respondents were assessed under the income tax, Schedule D, in respect of the profits made from the letting of the rooms thus equipped, and the Commissioners for Special Purposes stated a Case for the opinion of the Court, upon which this appeal arises. Paragraphs 7 and 8 of the Case are as follows:—"(7) In arriving at the precise *quantum* of liability the surveyor of taxes was prepared in the circumstances to allow the net annual value, £250, of the Rotunda Rooms (*vide* paragraph 4 of this case) as a deduction in arriving at the profits assessable under Schedule D. He also admitted that certain adjustments fell to be made in respect of renewals of flooring, platforms, seating, and furniture, also a proportion of the general administrative salaries as applicable to the letting of the rooms, with the result that the amended liability would be as under—For the year ended 5th April 1912, £223; for the year ended 5th April 1913, £327; for the year ended 5th April 1914, £405; for the year ended 5th April 1915, £381. The appellants agreed that if the profits in question are held to be assessable to income tax, Schedule D, the figures as above may be taken as correct. (8) Having considered the facts and contentions herein set forth we were of opinion that the pro-

fits derived from letting the Rotunda Rooms were assessable to income tax, Schedule D, and we therefore reduced the assessment to the sums set forth in paragraph 7."

The case was argued before the King's Bench Division (Revenue) of the High Court of Justice. The Court held, the Lord Chief-Justice dissenting, that the decision of the Commissioners was erroneous in point of law and that the respondents were not liable to be assessed under Schedule D. The Court held unanimously "(*a*) That the respondents for the purposes of the Income Tax Acts were in legal occupation of the Rotunda Rooms, and therefore the income derived from the hirings was not 'rents and profits' within the meaning of the third branch of section 61, Schedule A, No. 6 of the Income Tax Act 1842, so as to be thereby exempt from tax. (*b*) That if the profits were chargeable under Schedule D they would not be exempt from tax by reason of their application to charitable purposes, for the only exemption of that kind is to be found in section 105, which is restricted to profits in the nature of 'yearly' interest or other annual payment." But the majority of the Court held that the rooms were assessable to income tax only under Schedule A, while the Lord Chief-Justice held that the use made of the rooms brought the profits within the operation of Schedule D.

An appeal was brought, and in the Court of Appeal it was heard by the Master of the Rolls, Ronan, and Molony, L.JJ. The Court differed in opinion, the Master of the Rolls agreeing with the judgment of the Lord Chief-Justice in the King's Bench Division that the profits derived from the use of the rooms were assessable under Schedule D, while the other members of the Court agreed with the majority of the King's Bench Division that they were not.

The points on which the decision of this appeal must mainly turn are whether the letting out of the rooms, with furniture, heating, lighting, and attendance, constitutes a concern in the nature of a business falling within Schedule D, and whether the "allowances" granted by section 61 of the Income Tax Act of 1842 are applicable to such profits.

The Income Tax Acts were extended to Ireland by the Income Tax Act 1853, section 5, and section 13 of the same Act provided that the duties under Schedules A and B in Ireland should be charged on the annual value of all tenements and rateable hereditaments according to the valuation made for the relief of the poor, with a provision for reduction on appeal if the assessment be shown to be excessive.

Schedule D extends to every description of property or profits which are not contained in either of the Schedules A, B, or C, and to every description of employment of profit not contained in Schedule E and not specially exempt from the said respective duties—Act of 1842, sec. 100, first case. The first case under Schedule D is—"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." The sixth case is—"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."

Section 105 of the Act of 1842 provided for exemption in favour of charitable institutions in respect of any yearly interest or other annual payment chargeable under Schedule D so far as the same is applied to charitable purposes. But it was held—and I think rightly held—in the case of *Trustees of Psalms and Hymns* v. *Whitwell* (1890, 3 Tax Cas. 7) that trading profits do not fall within this provision, which relates only to yearly interest or other annual payments.

Do the profits made by the letting out of the Rotunda Rooms fall under Schedule D according to the definitions to which I have referred, or, in other words, are they to be dealt with as trading profits? It appears to me that this question must be answered in the affimative.

The rooms are hired out not merely as tenements, but with furniture, heating, lighting, and attendance. The contention on the part of the respondents was that the profits fall under head No. 6—"Allowances to be made in respect of the said duties in Schedule A"—in section 60 of the Act of 1842. This head provides for allowances to be made, *inter alia*, "on the rents and profits of lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes so far as the same are applied to charitable purposes." The fact that the possession remains vested in the owner, and has not passed by demise to the person to whom the use of the rooms is granted would not in my opinion by itself prevent the right to this allowance. Sums received in respect of the use of the rooms merely as tenements would be profits of tenements within the meaning of this allowance (No. 6 under Schedule A) even in the absence of an actual demise of the rooms for however short a period each hiring might last, and even if the legal possession still remained in the owner.

In order to fall within this allowance there must be "profits" received which are applied to charitable purposes. The receipt of such profits imports that payments are made for the use of the tenement. The allowance has no application where the tenement is merely used by the owners themselves. Such an occupation clearly does not satisfy the terms of the allowance. The benefit of such occupation cannot be applied to charitable purposes within the meaning of the allowance, as such application clearly imports that something has been received for the use of the tenement and that the sum so received is to be applied.

Profits are undoubtedly received in the present case which are applied to charitable purposes, but they are profits derived not merely from the letting of the tenement, but from its being let properly equipped for entertainments with seats, lighting, heating, and attendance. The subject which is hired out is a complex one. The mere tene-

ment as it stands, without furniture, &c., would be almost useless for entertainments. The business of the governors in respect of these entertainments is to have the hall properly fitted and prepared for being hired out for such uses. The profits fall under Schedule D, and to such profits the allowance in question has no application, as they cannot be properly described as rents or profits of lands, tenements, hereditaments, or heritages. They are the proceeds of a concern in the nature of a trade which is carried on by the governors, and consists in finding tenants and having the rooms so equipped as to be suitable for letting. The case does not in substance differ from the letting of furnished apartments.

The *Essex Hall* case (1911, 2 K.B. 434, 5 Tax. Cas. 636) has no application to the present case. It was a case in which the trustees for charitable purposes of Essex Hall sought relief under the allowance now in question. They had been assessed under Schedule A in respect of their occupation of the premises. The Divisional Court were divided in opinion. Avory, J., took the view which was ultimately adopted by the Court of Appeal, and the following passage occurs in his judgment—"In my view this clause does not apply to a case of this sort at all. My view is that it applies to a case where a person has let out a building and is in receipt of the rent for that building, but the rent which he has received is in fact applied to charitable purposes. This is a case, it appears to me, simply of an assessment for income tax under Schedule A in accordance with rule 1 of the schedule. As Mr Finlay has said, the assessment is upon the annual value of the lands which in fact are in the occupation of the applicants. For the purposes of this argument it is admitted that they are in occupation, and it does not appear to me to be an assessment on the rents and profits arising from lands within the meaning of rule 2, paragraph 6. They appear to me to be contemplated all through the Act as separate things altogether—one as assessment on the actual annual value of hereditaments which are occupied and the other an assessment upon the profits derived from land in the shape of rents, which profits are coming into the hands of a person who is not in occupation. They appear to me to be two totally different things, and the exempting clause appears to me to apply only to the cases which come under rule 2, where there is an assessment made on the profits arising from lands, and does not apply to a case which comes under rule 1, where the assessment is upon the annual value of the lands which are occupied by the person assessed." His colleagues, the Lord Chief-Justice and Hamilton J., differed from him, holding that the beneficial occupation by the trustees for charitable purposes constituted a case of rents and profits of tenements within the meaning of the allowance. The Court of Appeal, consisting of the Master of the Rolls, Buckley and Kennedy, L.JJ., reversed the decision of the majority of the Divisional Court, and adopted the view of the case which had been presented by Avory, J. Kennedy, L.J., says, at p. 657 of the report in 5 Tax Cases—"And further, as I am inclined to think the profits made in the present case by the trustees of Essex Hall, the occupying owners, from use of parts of the premises are really not in their nature 'rents or profits of lands, &c.,' within the meaning of this allowance clause, but rather profits of a business, a business of letting furnished or partly furnished rooms, carried on by the occupier in the premises." Buckley, L.J., said that he concurred with extreme reluctance, and added —"A subsidiary question was mentioned, namely, whether Essex Hall are entitled in respect of the sums received for casual lettings to the same allowance as has been conceded in respect of the rent received from the Inquirer Publishing Company. But this is not the subject of the appeal before us and I say no more about it."

Some expressions occur in the judgment of the Master of the Rolls, at p. 654, and in the judgment of Kennedy, L.J., at p. 657, which might seem to import that the reason why the sums received by the trustees in respect of occasional hirings would not fall within the allowance was because the occupation always remained in the trustees. If these remarks bear this meaning, I feel unable, for the reasons I have already given in the earlier part of this judgment, to agree with them. The decision really turned on the claim to treat occupation by the trustees as a case of rents and profits within the meaning of the allowance, and it has no application to the facts of the present case, which arises on the question of profits actually received by the hiring out of the rooms.

The earlier case of *Maugham* v. *Free Church of Scotland*, 1893, 3 Tax Cas. 207, 30 S.L.R. 666, is to the same effect as the *Essex Hall* case. The distinction between rents and profits and the buildings themselves is put with extreme clearness by the Lord President at p. 209 of the report. In that case also there were some profits derived from rents for use of the Hall which amounted to a few pounds a year, but Lord M'Laren said that he did not understand them to be the ground of assessment.

In my opinion the case of *Grove* v. *Young Men's Christian Association* (1903, 4 Tax Cas. 613), in which Ridley, J., held a restaurant carried on by the Young Men's Christian Association to be assessable in respect of the profits of the trade there carried on, was correctly decided. The *Carlisle and Silloth Golf Club* case (1913, 3 K.B. 75, 6 Tax Cas. 48 and 198) is another illustration of a business separate from the general objects of the club being held assessable under Schedule D. An effort was made in the present case to maintain the proposition that the letting of the Rotunda Rooms could not be treated as a separate concern in the nature of trade, but that the only subject which could be assessed would be the whole undertaking of the governors, including the hospital. It was contended on this view that there were no profits at all, as all the receipts from the hiring out

of the rooms were spent on the charity. I cannot think that this is the correct way of approaching the question. It is merely another way of saying that all the proceeds of the trade carried on in hiring out the Rotunda Rooms are devoted to the purposes of the charity. The letting out of the rooms for entertainments and other purposes is as much a separate concern in the nature of trade as was the restaurant in the case of the Young Men's Christian Association, or the issuing of tickets to non-members for the use of the golf green and club in the case of the Carlisle and Silloth Golf Club.

I am of opinion that the respondents are not entitled to the allowance claimed, and the assessment made by the Commissioners should be restored.

LORD CAVE—The respondents, the Governors of the Rotunda Hospital at Dublin, are possessed in addition to the hospital of certain rooms connected with it by internal passages and known as the Rotunda Rooms. Those rooms are let by the governors for concerts and other entertainments for periods varying from one night to six months, the lettings not being of such a nature as to create a tenancy but being of the nature of licences, and the legal occupation remaining with the governors. The letting prices include the use of the moveable seats provided by the governors and the heating of the rooms, and additional charges are made to cover the cost of lighting and attendance. The prices received after deduction of all outgoings attributable to the rooms (including a proportion of the general administrative expenses), and of a sum equal to the net annual value of the rooms as ascertained for the purpose of assessment under Schedule A of the Income Tax Acts, yield a profit which in the four financial years 1911-1912 to 1914-1915 amounted on the average to about £330 per annum. The question raised by this appeal is whether these net profits are properly assessable to income tax under Schedule D.

Prima facie they are so assessable. Schedule D of the Income Tax Act 1853, which applies to Ireland, renders taxable all "annual profits or gains" whether arising from property or from any profession, trade, employment, or vocation, and all other annual profits and gains not charged by any other schedule, and there can be no doubt that these words taken by themselves are wide enough to cover the profits now under consideration.

It is pointed out, however, on behalf of the respondents that by virtue of the regulations contained in the Act of 1842 (which by section 5 of the Act of 1853 are incorporated in that Act so far as consistent with its provisions), and particularly of the first rule in section 100, any profits liable to assessment under Schedule A are expressly excluded from Schedule D; and it is argued that the profits from the Rotunda Rooms fall within that category. Accordingly the first question to be determined is whether these profits are assessable under Schedule A.

It is contended that they are so assessable in one of two ways, namely, either (1) as being profits of lands, tenements, hereditaments or heritages, and so falling within the general description of property comprised in Schedule A and within rule 1 in section 60 of the Act of 1742, or (2) as being profit of a concern of the like nature with ironworks, gasworks, and the other undertakings specified under the third heading of rule 3 in the same section. With regard to the former of these contentions, I am unable to see how the profits in question can be said to be derived from the Rotunda Rooms alone. They result, not from the letting of bare rooms, but from the whole venture, consisting of the equipment and disposal of the rooms with their fixtures and furniture and the provision of the services of heating, lighting, and attendance. These may perhaps be described as profits of a trade or concern in the nature of trade—that is to say, of the business of providing and letting rooms for entertainments, and so as falling under the first case in section 100, Schedule D; but if not, then they fall under the sixth case as profits or gains not falling under any of the earlier rules. In some respects they resemble profits derived from letting furnished houses or apartments, which are regularly assessed under Schedule D. It is, no doubt, true that a substantial part of the profits in question arises from the occupation and use of the tenements occupied for the purposes of the business; but this is precisely the event contemplated by the second of the rules contained in section 100 and applicable to cases 1 and 2, which provides that the computation of the duty to be charged in respect of any particular trade, manufacture, adventure, or concern is to be made exclusive of the profits or gains arising from lands, tenements, or hereditaments occupied for the purpose of such trade, manufacture, adventure, or concern, and effect has been given to that rule by deducting the Schedule A assessment. It may be that in the present case the share of profits so attributed to the elements in the concern other than the rooms themselves is excessive, but if so, that is the effect of section 9 of the Finance Act 1898, which provides that the sum deducted under the rule above quoted is not to exceed the Schedule A assessment. The hardship (if there be any) may be obviated by getting the Schedule A assessment increasd. As to the alternative argument, that the profits in question are assessable under the third paragraph of rule 3, it is sufficient to say that the undertaking in the present case cannot be held to be "of the like nature" with ironworks, gasworks, and the other concerns mentioned in that paragraph.

The result is that in my view the profits in question are not assessable under Schedule A, and accordingly fall to be assessed under Schedule D.

An argument was addressed to your Lordships for the purpose of showing that the profits from the Rotunda Rooms are exempt from taxation under rule 4 of section 60 of the Act of 1842, on the ground that the rooms are public buildings, offices, and pre-

mises belonging to the hospital, or, in the alternative, on the ground that the profits are profits of hereditaments belonging to the hospital and are applied for charitable purposes, but that rule appears to me to have no bearing on this case. The exemption relied upon is confined to assessments under Schedule A, and if, as I have shown, the profits in question are not assessable under that schedule, then the exemption cannot apply to them. This being so, it is unnecessary to consider the construction of the rule here referred to or the effect of the decisions in *Maugham* v. *Free Church of Scotland* (30 S.L.R. 666, 3 Tax Cas. 207) and *Ex parte Essex Hall* (1911, 2 K.B. 434), which turned entirely on the language of that rule. It was not contended that the exemption in section 105 of the Act of 1842 which relates to "any yearly interest or other annual payment" chargeable under Schedule D, which is applied to charitable purposes, entitles the hospital to exemption in this case. It was decided in *Trustees of Psalms and Hymns* v. *Whitwell* (1890, 3 Tax Cas. 7) that trading profits are not an "annual payment" within the meaning of section 105, and that decision was not challenged in this case. As a final argument it was said that as by the statute regulating the hospital (25 Geo. III, cap. 43) the profits in question are directed to be applied for the maintenance of the charity, the hospital with the receipts from the rooms must be regarded as one undertaking which yields no profit and accordingly is not liable to taxation under Schedule D. It does not appear to me that this argument is maintainable. No doubt the hospital like other charities yields no profit, but if the governors in the course of their management carry on a profitable business, the profits of that business are subject to taxation. Upon this point I agree with the decisions in *Grove* v. *Young Men's Christian Association*, 4 Tax Cas. 613, and *Carlisle and Silloth Golf Club* v. *Smith*, 1913, 3 K.B. 75, 6 Tax Cas. 48.

For the above reasons I am of oninion that the profits in question are properly assessable under Schedule D of the Act, and accordingly that the decision appealed from should be set aside and the decision of the Commissioners for Special Purposes restored.

LORD ATKINSON—I concur. The facts of this case have already been fully stated. It is unnecessary to repeat them.

It would, I think, be well to bear in mind that, to use Lord Macnaghten's words in his celebrated judgment in *London County Council* v. *Attorney-General* (1901 A.C. 26, 4 Tax Cas. 265), "Income tax . . . is a tax upon income." When the amount of the income to be taxed under the Act of 1842 and the Acts amending it comes to be measured different standards are selected, and the words "profits or gains" are used in reference to all the Schedules in the Act of 1842 to describe the income, the subject of charge. The standard selected as a measure of the amount of the income to be taxed under Schedule A in respect of lands, tenements, hereditaments, and heritages capable of occupation is the annual value. If the owner of such properties as these should be himself in occupation of them it by no means follows that he will in fact derive from them an income equal to this annual value; but as he has the use and enjoyment of the properties it is for the purposes of the statute presumed that he does derive from them an income equal in amount to this annual value, and the tax is accordingly under Schedule A assessed upon this presumed income. The annual value of properties of these kinds is in Ireland ascertained and fixed by methods somewhat different from that applied in England for this purpose. The income tax was first imposed in Ireland by the Act of 1853 (16 and 17 Vict. cap. 35). It is entitled, just as the English Act of 1842 is entitled, "An Act for granting to Her Majesty duties on profits from property, professions, trades, and offices." For the purpose of classifying and distinguishing the several properties the profits and gains in respect of which the duties are granted, and assessing, raising, and levying the same, these profits and gains are described in five separate schedules marked A, B, C, D, and E respectively. Schedule A comprises all profits and gains "for and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, and are to be charged for every 20s. of the annual value thereof." Schedule B comprises profits and gains in respect of the occupation of such lands, tenements, hereditaments, and heritages as aforesaid, and is to be charged for every 20s. of annual value thereof." The properties comprised in these schedules correspond substantially with those comprised in Schedule A in the Act of 1842. Schedule C in the Irish Act comprises the profits arising from interest, annuities, dividends, and shares payable out of any public revenue to be similarly charged. Schedule D comprises the duties 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 carried on in the United Kingdom or elsewhere, to be charged for every 20s. of the annual value of such profits and gains." The case of a person non-resident in the United Kingdom deriving profits and gains from any profession, trade, employment, or vocation exercised here is then dealt with, and the schedule then winds up with the following sweeping provision—"And for and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any other schedules contained in this Act to be charged for every 20 shillings of the amount thereof." This schedule substantially is the analogue of section 100, Schedule D, of the Act of 1842, and the last sweeping provision is analogous to the sixth case of that schedule.

By section 5 of the Act of 1853 it is provided that the duties thereby granted are to be assessed, raised, levied, and collected under the regulations and provisions of the Income Tax Act of 1842, and the Acts subse-

quently passed explaining, altering, amending, or continuing the same, and are as far as they may be applicable, consistently with the provision of the former statute, extended to Ireland. It is not disputed therefore that for all the purposes of the present case the Income Tax Code of England is, save as to the matter hereinafter mentioned, substantially identical with the Irish Income Tax Code. The difference between them consists solely in the different method prescribed by section 13 of the latter statute for ascertaining the annual values of the several kinds of property mentioned in those schedules.

These are in Ireland ascertained and fixed under the Poor Law Relief Acts in force in that country, the duties chargeable under Schedule A being made upon the landlord or immediate lessor, and those chargeable under Schedule B being made upon the occupier of the property. The valuations for the purpose of these Acts are in Ireland made under the 15 and 16 Vict. cap. 63, the eleventh section of which prescribes that land shall be valued in reference to the average prices named of the several agricultural products therein mentioned, and the valuation of houses and buildings is made (very much as it is in England) "upon an estimate of the rent which one year with another the same might in its actual state be reasonably expected to let from year to year, the probable annual cost of repairs, insurance, and other expenses (if any) necessary to maintain it in its actual state, or rates, taxes, or public charges (if any) except the rent-charge being paid by the tenant."

It has frequently been decided that for the purpose of this valuation not only is the site of the house or building and its quality and condition to be taken into account, but that if some lucrative trade or business has been carried on in it then its inherent capacity (not personal to the occupier carrying on this trade or business) to make a profit should be taken into consideration when seeking to ascertain what the hypothetical tenant would be likely to give by way of rent for it, for the very sufficient reason mentioned by Lord Macnaghten in *Cartwright* v. *Sculcoates Union* (1900 A.C. 150), namely, that the volume of business done in the hereditament and the profit thereby earned is the very first thing a tenant who was going to offer for the hereditament would take into consideration, and is one of the circumstances which would influence him when bargaining about the rest demanded from him. But the valuing for the purpose of Schedules A and B of this inherent capacity of the hereditament is a wholly different thing from including for these purposes as part of its value the profits gained by the use of this capacity.

The building in which a trade or business is carried on may contribute more largely to the earning of the profits of that trade in one case than in another. For instance, in a cotton mill, in which all the expensive and delicate machinery used is not only supported by, but often attached to, the fabric or the building itself, the latter helps to a much greater extent to earn the profits than where the trade carried on is that of a watchmaker, for instance, where the fabric does little more than provide shelter for the workman. In the former case the greater inherent capacity of the building to earn the profit would cause it to be more highly valued for the purposes of Schedule A than in the latter.

The case of licensed premises forms no exception to this rule, for the licence to carry on the trade of a publican is not a licence purely personal to the publican. It only authorised him to carry on his trade in the particular premises named—see *Mersey Dock and Harbour Board* v. *Birkenhead Union*, 1901 A.C. 175, and *Armstrong* v. *Commissioners of Valuation*, 1905, 2 Ir. R. 448. Moreover, the provisions of section 9 of the Finance Act 1898 (61 and 62 Vict. cap. 10) clearly indicate that the profits and gains themselves accruing from any trade or business carried on in any particular tenement are not to be included in the valuation of that tenement, and that the profits derived from a trade carried on in particular premises may be properly assessable under Schedule D, while the profits and gains accruing from these very same premises themselves may be assessable under Schedule A of that statute. Section 9 provides that where in estimating the amount of annual profits or gains arising or accruing from any profession, trade, employment, or vocation, and chargeable to income tax under Schedule D of the Income Act 1853, any sum is deducted on account of the annual value of the premises used for the purpose of such profession, trade, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises for the purpose of income tax under Schedule A to the said Act, as reduced for the purpose of collection under section 35 of the Finance Act 1894.

The course which this section prescribes was followed in the present case. The Rotunda Lying-in Hospital and Gardens being hereditaments or tenements, or portions of hereditaments or premises, used for charitable purposes, are exempted from liability for poor rates under the Irish Valuation Act of 1854 (17 and 18 Vict. cap. 8). The annual value of the concert hall and ball room, and of which the governors are the occupiers, was fixed at £300 for the purposes of Schedule A. This sum was diminished by one-sixth, as prescribed in section 35 of the Finance Act of 1894. Then, as I understand the statement in the Special Case, the net annual profit derived from the use of the concert hall and ball room in the manner described was ascertained in the usual commercial manner, namely, by deducting from the receipts what it costs to earn them, then from the amount of the net annual profit so ascertained the sum of £250 was deducted. Whether the letting of the concert hall and ball room together with the rendering of the services connected therewith amounted to the carrying on of a trade or employment within the meaning of Schedule D is a question of law for the decision in the present case of this House. If that be

decided in favour of the appellants, then there does not seem to be any valid reason for disturbing the findings of the Commissioners on the questions of fact—the proper amounts to be arrived at. If it were permissible to speculate, I should, however, for myself be inclined to think that if the suitability of these rooms for the use to which they have been put, and their inherent capacity to help in winning the profits realised, were properly taken into consideration, they ought to have been valued for the purposes of Schedule A at a higher value than was actually put upon them. Mr Jellet on behalf of the respondents relied much on two of the allowances authorised to be made under the 61st section of the Act of 1842 in respect of the duties assessable under Schedule A, namely, first, the duties assessable on any hospital, public school, or almshouse in respect of the public buildings, offices, and premises belonging to such institutions, and second, on the duties on the rents and profits of lands, tenements, hereditaments, and heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes so far as the same are applied to these purposes. The answer given by Mr Brown on behalf of the appellants to this contention is in my opinion quite convincing. These allowances are exceptions out of Schedule A, not Schedule D. If the duties in respect of which the allowances are to be made did not come within Schedule A and be covered by it, then the words "allowances to be made in respect of the said duties in Schedule A" are meaningless. A particular thing cannot be excepted out of another thing unless it was originally comprised in that other. The question at issue in this appeal is the liability of the respondents to be charged for income tax assessed on their profits and gains under Schedule D. It may well be that if the respondents were sued for the income tax assessed upon them under Schedule A they might be able to rely with success on these allowances, but these are matters not arising for consideration in the present appeal. The next point of importance relied upon by Mr Jellett was that the Rotunda with its garden and all the building belonging to or connected with it constituted for taxing purposes one unit, and that if the income taxable under Schedule D was applied to discharge the debts and liabilities incurred in this charitable work it would be found after this pooling had taken place that the governors had not any profits or gains to their credit. The use made of the concert hall and ball room is undoubtedly very lucrative. Separate accounts can be and have been kept of profits they realised, as if the letting was a separate commercial enterprise. It is quite true that these profits are ultimately to be applied to the purposes of the charity, but in no other way are these buildings made available for those purposes. The patients or staff do not use them in any way, nor indeed as far as appears have they access to them.

If the governors of a charitable institution, in buildings belonging to them but forming no portion of the buildings devoted to their charitable work, choose to carry on a separate adventure or enterprise of a lucrative commercial and trade character different and distinct from their charitable work, I fail to see upon what principle they should escape being taxed under Schedule D for the profits and gains realised by that trade or business, and I think it is not the law that they should so escape. In *Mersey Docks and Harbour Board* v. *Lucas* (8 A.C. 905) Lord Selborne said—"To my mind it is reasonably plain that the gains of a trade are that which is gained by the trading, for whatever purposes it is used, whether it is gained for the benefit of a community or for the benefit of individuals. Whether the benefit is to be obtained by dividends or burdens, or whether it is to be obtained by lightening and diminishing public burdens, it is the same."

The case of *Grove* v. *Young Men's Christian Association* (4 Tax Cas. 613) has a direct bearing upon this point. There the defendant association had for its object the improvement of the spiritual, mental, social, and physical condition of young men. With that view they had established educational classes, a gymnasium, and a publication department. The fees charged for the work carried on in these departments were so low that they were insufficient to cover the expenses and had to be supplemented by donations and subscriptions. They had also a restaurant carried on upon ordinary commercial principles, and used not only by the persons attending the classes instructed in the above-mentioned departments, but in addition by those attending numerous religious meetings held at Essex Hall, by associates of the association, and by the general public. Should there in any year be a loss on the working of the restaurant it must be made up out of the above-mentioned subscriptions and donations. It was contended that the undertakings of the association formed one concern, that the association was consequently entitled to deduct the losses sustained in their education classes, gymnasiums, and publication department from the profits made by the restaurant, with the result that their accounts would show a loss, inasmuch as the profits earned in the restaurant, amounting to £703, would not cover the losses sustained on the other branches. The appellants on behalf of the Crown contended that the association was carrying on a competing trade in the business of a restaurant and was therefore liable to be assessed under Schedule D in respect of the profits made in the restaurant, and that the losses sustained in the other departments could not be set off against these profits. It was decided that the contention of the Crown was right, and that the law is that if you carry on a trade you are not to take off the losses connected with something else which you do, however philanthropic and however desirable, from the profits you make in that trade. This decision was based very much on the decision in the Scots case of *Religious Tract and Book Society of Scotland* v. *Forbes*, 33 S.L.R. 289, 23 R. 390, 3 Tax Cas. 415. In that case a colportage

society, founded for the diffusion of religious literature, sold Bibles and other religious books at a depository shop in Edinburgh, and sent out colporteurs into the country, whose duty it was to sell Bibles and also to act as cottage missionaries. The sales in Edinburgh resulted in a profit, the colportage in a loss, the net result of the whole operations resulted in an annual loss which was met by subscriptions. It was held that colportage was not a trade, and that the loss on it could not for the purpose of income tax be set off against the profits from the bookseller's business carried on in the shop. Lord M'Laren in delivering judgment said—"It appears to me that the two branches of the society's operations cannot be identified as one and the same trade adventure or concern, and therefore that under the third rule for estimating profits under Schedule D the society is not entitled to set off loss arising from the colportage business in reduction of the profits upon which they fall to be assessed for their commercial business. The two being clearly separable, I think the income tax is payable upon the remunerative part of the society's business."

The case of *Carlisle and Silloth Golf Club* v. *Smith* (1913, 3 K.B. 75, 6 Tax Cas. 48) is a most important authority bearing directly on the present case. The golf club had obtained from the North British Railway Company a lease of the lands upon which the links were formed and the club house erected. This lease contained a provision that members of the public, not members of the club nor introduced by any member of the club, and not being persons of any particular class, should by the lessees be permitted to play upon the links and use the golf club house on payment of the green fees fixed by the lessors. The total annual expenditure incurred by the club in keeping the links in a fit condition for play exceeded the total amount of fees received from the visitors. Hamilton, J., as he then was, on the hearing before him, held that the golf club, in permitting these non-members to play upon the links and use the golf club house on the terms mentioned, were carrying on an enterprise which was in itself outside the scope of the ordinary functions of the club and distinct from its ordinary objects and activities, as to which it was possible to keep separate accounts so as to ascertain whether there were any profits thereby realised, and that any profits derived from the green fees were therefore taxable under Schedule D of the Act of 1842. In the course of his judgment (1912, 2 K.B. 177) he said—"In my judgment therefore the club has for considerations sufficient in its own view annexed to its ordinary enterprise of a golf club systematic services to strangers for the purpose of obtaining the revenue that these strangers provide. It is not a case where, owing to relation of membership or family bonds persons club together and reduce the common expenditure on some common object by contributions which they fix roughly by some reference to cost. It is not a case in which the members as an aggregate (for they are not incorporated) dispose of their surplus because they have no necessity to consume it, but it is a case in which this aggregate of gentlemen, who may for practical purposes be treated as one person, have annexed to their club for the purposes of recreation an enterprise which is separate from it and which results in pecuniary receipts to themselves."

That decision came on appeal before a Court of Appeal composed of Cozens-Hardy, M.R., and Buckley, L.J., (as they then were) and Kennedy, L.J. The Master of the Rolls in giving judgment said—"It seems to me there is a real difference between moneys received from members and applied for the benefit of members and moneys received by the club from strangers. I cannot draw any distinction between gate moneys and green moneys. In each case the club is assessable. Whether there have been any profits or gains is a matter of fact, and the answer would depend upon the mode in which the expenses of maintenance or other outgoings ought to be attributed to the visitors." Buckley, L.J., said—"I agree as well on the reasoning as in the conclusion pronounced by Hamilton, J. If it were necessary, which it is not, to decide whether the club were carrying on an 'adventure or concern in the nature of trade,' I am of opinion that they were. To determine this question it is not the character of the person who carries on, but the character of the concern which is carried on, that has to be regarded. If a landlord laid down a golf links upon his land, and charged fees for admission and use—if, that is to say, the links were proprietary golf links carried on with a view to profit—there can be no question that the proprietor would be assessable. The adventure of maintaining the golf links and charging for the use of them is an 'adventure or concern in the nature of trade.' If other conditions therefore are satisfied the club are I think assessable under the first rule of Schedule D. But as I have already said, it is I think unnecessary to determine whether that is so or not, for if it were not a concern in the nature of trade, yet other things being satisfied, the club would be made assessable under the sixth rule. I think the question is not whether the members of the club are making a profit, but whether the fraternity or society chargeable under section 40 are making profit by the concern in question. The appellants laid great stress upon the fact that the expenses in a year exceed the amount received from the visitors. That fact seems to me irrelevant upon the question whether the club are assessable." Kennedy, L.J., said—"But upon the facts appearing in the case it appears to me that this club is carrying on the business of supplying to the public for reward a recreation ground fitted for the enjoyment of the game of golf, and that the receipts derived from this business are in the nature of profits and gains in respect to which it is liable to assessment." Adopting the language of Kennedy, L.J., to the present case the governors of the Rotunda are, in my opinion, engaged in the business of letting for reward their rooms heated,

lighted, and furnished with seats in the manner described in the third paragraph of the Case stated, and cleaned, managed, and regularly controlled by their servant, the keeper, as prescribed by the 19th regulation, for the purpose of providing through the operations of those who take their rooms recreation and amusement to such members of the general public as choose to pay for admission.

I do not think the services thus given can be regarded as mere incidents attached to the letting of the rooms themselves. What is let, paid for, and used is the room plus the services as constituting one composite whole, for which money is paid, and is obtained from the general public. In my opinion this letting is an "adventure or concern in the nature of trade" within clause 1, rule 1, Schedule D, but even if not the profit and gains derived therefrom are assessable under clause 6 of that schedule.

If the governors instead of letting their rooms equipped and watched over and attended to as they are, leased them to a lessee who was bound to use, let, equip, and manage them as they have done, I do not think it could be contended that the lessees would not be liable to be assessed under Schedule D for the profits and gains they acquired by obeying the provisions of his lease. I do not think it can make any real difference if the governors themselves do these things instead of binding their lessee to do them. For the reason given by noble Lords who have preceded I do not think that the *Essex Hall* case has any application to the present case. In my opinion the appeal succeeds, the decision appealed from should be reversed, and the decision of the Commissioners mentioned in paragraph 8 of the cases stated should be adjudged to have been right in law.

LORD SHAW—I agree.

The facts of this case and the statutes and decisions bearing thereon have been so fully and clearly brought under your Lordships' notice by my noble and learned friend Lord Atkinson that I hesitate to express any separate opinion, more particularly as the case does not appear to me, once those facts and statutes have been expiscated, to present any serious difficulty.

I may say that I agree in the results of the judgment of the learned Lord Chief-Justice and the learned Master of the Rolls, and substantially with the reasons which these learned judges gave for those conclusions. But there are two passages, one relating to fact and the other on the point of law in issue, which I venture to extract from the judgment of the Master of the Rolls as expressing my own opinion.

The facts as to the letting of the Rotunda concert and ball rooms are thus stated by the learned judge—"Reference to the bye-laws shows that the subject-matter of the hirings or lettings is not bare rooms but rooms with seating and heating. In addition the governors undertake the lighting of the rooms by gas or electricity at certain charges according to consumption. There is, further, an officer of the governors called the Keeper of the Rotunda Rooms whose duty it is to prepare the rooms for all entertainments and to see that no smoking or improper conduct is permitted at any entertainment or meeting. He is further bound to remain constantly on the premises and to be attentive and accommodating to all parties occupying the rooms. He is also bound to attend to the lights and fires, and he is entitled personally to receive for his services certain prescribed charges from the persons who engage the rooms. These circumstances seem to me to be inconsistent with the creation of legal tenancies giving estates carrying with them the right to legal occupation. They seem rather to support the view that the governors of the hospital were to retain the legal possession while they gave the accommodation of the rooms with the addition of seating, heating, and lighting apparatus." I think that this is right.

When one peruses those bye-laws this occurs to the mind, namely, What would have been the view taken of a good many of the transactions and arrangements provided for had the same language occurred in the prospectus of a company? It would have been said without any hesitation that that language was descriptive of the trade or business of providing or providing for public entertainments, and that the real estate which was to be in possession of the company was to be the sub-stratum of that business, with all the arrangements for suiting the market and for commercial adventure being made so as to obtain the largest possible revenue from the public. This is indeed the express language of section 9 of the Irish Statute, 25 Geo. 3, cap. 43, which authorises the governors and guardians of the hospital to make bye-laws not only for the management of the hospital and funds but "also for the proper management and protection of such places of entertainment and resort as shall stand on the premises."

Mr Brown in the brief but most helpful address which he made in his reply in this House stated with great force this view—Suppose the owners, *i.e.*, the Rotunda Hospital, did demise for its rental value the concert and ball rooms to a tenant at an annual rent (it might have been, say, a single tenant, or, for better illustration, a theatrical company), and that the lessee had then proceeded to carry on an entertaining business under rules just such as those which exist in the present case, it seems unanswerable that that company, earning a profit in so doing, would have been liable to taxation under Schedule D.

If the respondents are not so liable it must be simply that they are the owners and occupiers of the property in which the business is carried on. On this subject there appears, in the judgments of the Courts below, a variety of expressions to the effect that the taxation under Schedule A of owners and occupiers of hereditaments was meant to be "exhaustive." I cannot agree with such a proposition. When income is derived by way of profit from any

undertaking the scope of the statute is that that income shall be liable to taxation irrespective of the identity of the person who earns the income with the one who pays income tax in respect of other revenue returns or profits under other schedules in the statute. The aim of the statute is to gather in all income and make it subject to taxation. That aim may of course have been imperfectly accomplished in the schedules of enumeration. But it is plain, also, from the language of Schedule D, that while the main object, *i.e.*, the ingathering of all income as a subject for taxation, was that which was being pursued, yet on the other hand it was necessary to avoid overlapping so as to prevent a double payment of taxation upon the same amount of income or any part of it. Yet while the avoidance of overlapping of taxation is provided for that avoidance cannot be made the reason or cover for escape from taxation. No countenance is given to the idea which seems to be favoured by some of the judges in the Courts below that the assessment in, say, Schedule A remits from the region of taxation any property or profits not reached by such a schedule but liable under another schedule.

The learned Master of the Rolls thus expressed these ideas—"Schedule A embraces only property in lands, tenements, hereditaments, and heritages. Schedule D covers any kind of property and all profits and gains not charged by the other schedules —a kind of drag-net clause to capture everything—so that while the Rotunda Rooms are taxable merely as lands according to their annual value, they are also taxable as an establishment with a certain equipment, making it to some extent a going concern, and thereby a profit-earning investment. This does not mean that the governors are subject to double taxation, because it will be seen later on that for a case like the present provision is made for giving credit against any assessment made under D for any assessment made under A." I beg respectfully to express my concurrence with this. If these views be sound, it follows that the profits of the entertaining business, to put the matter thus briefly, do not escape taxation under Schedule D because they are earned by a taxpayer who is the owner and occupant of buildings taxed under Schedule A. The identity of such owner and occupant with an undertaker, business man, or trader gives him no privilege as a taxpayer in the latter capacity.

The only remaining question therefore is whether the owner and occupant escapes by reason of the profits being devoted, as in fact they are, to charitable purposes. On this subject there was no difference of opinion in the Courts below, and I think rightly so. For it was agreed by all of the judges that the respondents, for the purposes of the Income Tax Acts, were in legal occupation of the concert and ball rooms, and therefore that the receipts obtained from those who used or hired the premises from the respondents were not "rents and profits" within the meaning of the third branch of Schedule A, No. 6, so as to be thereby exempt from taxation. The Courts were further unanimous in holding that supposing the profits to be chargeable under Schedule D they may not be exempt from taxation by reason of their application to charitable purposes seeing that the exemption is only applicable to profits in the nature of yearly interest or other annual payment. In my opinion these views in the Courts below were correct on the two points mentioned. Naturally the result follows that the profits derived from what may be called the entertaining business do not escape taxation under Schedule D.

It is important on this head to observe what the Case stated narrates upon that subject. It says that—"In arriving at the precise quantum of liability the Surveyor of Taxes was prepared under the circumstances to allow the net annual value of £250 of the Rotunda Rooms as a deduction in arriving at the profit assessable under Schedule D." To that extent there can be no question of the accuracy of the surveyor's allowance. By making that allowance, and in these terms, he avoids the overlapping between Schedules A and D. But the case proceeds further—"He" (the surveyor) "also admitted that certain adjustments fell to be made in respect of renewals of flooring, building, forms, seating, and furniture, also a proportion of the general administrative salaries as applicable to the letting of the room." This appears to me to be a clear application of proper commercial principles to the items falling to be debited against the concern under the head of a profit-earning concern, and it is only after these debited items appear that any net profit emerges. The result is, in my opinion, that the deliverance of the Commissioners of the 13th August 1907 must stand.

LORD FINLAY—I understand that by arrangement with the Attorney-General the costs of the respondents are to be paid as between solicitor and client. The order will be that the decision of the Commissioners for Special Purposes of the Income Tax be restored; that by consent of the Attorney-General the appellants do pay to the respondents their costs here and below, such costs to be taxed as between solicitor and client. I move your Lordships accordingly.

The motion was agreed to.

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