COURT OF SESSION (FIRST DIVISION)—
19TH JUNE AND 5TH JULY 1968

HOUSE OF LORDS—20TH JANUARY AND 19TH FEBRUARY 1969

Korner and Others *v.* Commissioners of Inland Revenue[1]

Income tax, Schedule D—Deduction—Farming—Maintenance, etc., expenditure on farmhouse—Whether expenditure for domestic purposes distinct from those of the trade—Income Tax Act 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10) *ss.* 124, 137(*b*) *and* (*d*) *and* 526(1).

The Appellants—K, his wife and their three children—jointly owned an estate including 1,768 *acres of farm land, which they occupied for the purpose of farming in partnership, apart from* 212 *acres which were let. There were six houses on the estate, of which one, the main house, had been occupied by K and his wife since* 1941*; the others were occupied by the tenant of the let land and by foremen employed by the Appellants. The Appellants employed a local farmer as factor to control the day-to-day farming activities, but K himself kept statistics relating to the enterprise and exercised close financial control. K usually spent approximately one hour a day on the business, but occasionally up to five or six hours. He owned and maintained another house in London, where he would have preferred to reside if his management of the farming business had not otherwise required. The estate house occupied by K contained over* 20 *rooms, but he used for business purposes only the library, where he kept his farming statistics and records, and the drawing-room, where he interviewed business callers. No room was specifically set aside for business purposes. Expenditure on rates, repairs and insurance in respect of the house was debited in the partnership accounts for the years ending* 28*th November* 1962, 1963 *and* 1964 *in amounts of* £187, £563 *and* £301 *respectively.*

On appeal against the assessments to income tax under Case I *of Schedule D for the years* 1963–64 *to* 1965–66, *it was contended on behalf of the Appellants* (1) *that the house was "the farmhouse" within the definitions of "farm land" and "farming" in s.* 526(1), *Income Tax Act* 1952, *and* (2) *that all the expenditure on maintenance, etc., of the house was deductible within the terms of s.* 137(*d*) *of that Act in computing the farming profits. For the Crown it was contended that the house was occupied principally as a private residence and that s.* 137(*a*) *and* (*b*) *allowed the deduction of only one-tenth of the expenditure. The Special Commissioners were not satisfied that the house was "the farmhouse" within s.* 526(1), *but held that if it was s.* 137(*b*) *required nine-tenths of the sums spent on rates, maintenance and insurance to be disallowed as expended for domestic or private purposes distinct from those of the trade.*

In the Court of Session and the House of Lords it was conceded by the Crown that the house was "the farmhouse" within s. 526(1). *Lords Upjohn and Donovan doubted whether the facts justified the concession.*

Held, *that under s.* 526(1) *the farmhouse must be treated as part of the trading assets of the business of farming, and accordingly the expenditure on rates, repairs and insurance, being reasonable in amount, was allowable in full.*

---

[1] Reported (C.S.) 1969 S.L.T. 37; (H.L.) [1969] 1 W.L.R. 554; [1969] 1 All E.R. 679; 1969 S.L.T. 109; 114 S.J. 245.

CASE

Stated for the opinion of the Court of Session, as the Court of Exchequer in Scotland, under the Income Tax Act 1952, s. 64.

I. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Glasgow on 10th March 1967 for the purpose of hearing appeals, Professor Emil Korner, Mrs. Else Korner, John Hugh George Korner, Miss Renata Korner and Dr. Eva Whyte (hereinafter called "the Korner family") appealed against the following assessments to income tax:

1963–64	£2,500
1964–65	£2,500
1965–66	£2,500

II. Shortly stated, the question for our decision was whether the whole cost of rates, repairs, maintenance and insurance incurred in respect of the House of Elrig for the years of assessment under appeal was money wholly and exclusively laid out for the purposes of the trade of farming carried on by the Korner family.

III. Professor Emil Korner gave evidence before us.

IV. As a result of the evidence adduced before us we find the following facts proved or admitted:

(*a*) Professor Emil Korner, his wife Else and his three children, John H. G. Korner, Dr. Eva Whyte and Miss Renata Korner, jointly own the Elrig estate in Wigtownshire. The estate comprises some 1,817 acres, of which 1,768 acres are farmland. Of these 1,768 acres, some 212 are let and the rest are occupied for the purposes of husbandry by the Korner family in partnership. As well as the House of Elrig, there are on the estate five houses, each of which went with one of the five farms into which the estate was divided when the Korner family acquired it. In the relevant years one of these five houses was occupied by the tenant of the 212 acres and the other four were occupied by foremen employed by the Korner family.

(*b*) Since 1941 and during the relevant years Professor Korner and his wife have lived in the House of Elrig. The three children have requested the Professor to stay in the House, from which he managed the trade of husbandry carried on by the family. Professor Korner owns and maintains a house in London, and would prefer to reside there if his management activities did not require him to reside at House of Elrig. The three children did not live at the House of Elrig but they visited occasionally for holidays.

(*c*) The Korner family in the relevant years employed a Mr. Christie, who is factor of the Monreith Estate Co. and a substantial local farmer, as factor of the Elrig estate, and from the Monreith Estate Co.'s office he controlled the day-to-day farming activities by giving instructions to the four foremen employed by the Korner family.

Professor Korner himself exercised complete control of the Korner family's farming enterprise by keeping statistics relating thereto and by close financial control. Professor Korner himself maintained statistical and financial records which were sufficient to give him overall control of the farming operations. The ordinary farm records and books of the partnership were kept by the office of the Monreith Estate Co. Only Professor Korner and his wife were authorised to sign cheques on the partnership bank account.

Professor Korner spent approximately one hour a day on the business of the partnership, although on odd occasions he spent up to five or six hours in a day on that business. Mrs. Korner was a farmer's daughter, and she was able to give advice on occasions on practical farming matters although the partnership relied on the factor for the day-to-day running of the business.

(*d*) The House of Elrig has the following accommodation: a dining-room; a drawing-room; a study with library; a lounge; a gunroom; two double and four single bedrooms; four bathrooms; seven domestic offices. All the rooms were fully furnished, but the only ones used by Professor Korner and his wife were the dining-room, the drawing-room, the library, the gunroom and two bedrooms. No domestic servants lived in the house.

B Professor Korner, in addition to his three children, had three grandchildren, all of whom used to come occasionally to stay in the house for holidays.

Professor Korner kept his statistics and records relating to his control of the farming in the library, which he normally used for transacting farm business. If someone called to see him on a business matter he would interview C him in the drawing-room. No other room in the House of Elrig was used for business purposes, and no room was specifically set aside for those purposes.

(*e*) Maintenance expenditure incurred in respect of the House of Elrig was debited in the profit and loss accounts of the partnership as follows:

Nature of expenses	*Year ended 28th November*								
	1962			1963			1964		
D	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Rates	83	2	3	87	4	0	133	2	2
Repairs & Maintenance	79	1	6	450	9	0	128	0	4
Insurance	25	13	11	25	14	0	40	8	6
Totals	187	17	8	563	7	0	301	11	0

E Professor Korner did not dispute that, if, contrary to his contentions, the whole of these expenses were not deductible in computing the profits of the partnership for income tax purposes, then the proper amount deductible for each of the relevant years was one-tenth of the annual expenses, to the deduction of which the Inspector of Taxes offered no objection.

V. It was contended on behalf of the Appellants:

F (*a*) that the House of Elrig was "the farmhouse" in relation to the land occupied by the Korner family for the purposes of husbandry, within the meaning of s. 526(1) of the Income Tax Act 1952 and according to the construction given to the word "farmhouse" in *Lindsay* v. *Commissioners of Inland Revenue* (1953) 34 T.C. 289. Furthermore, it was "premises occupied by the owner wholly and exclusively for purposes connected with the manage-G ment of the estate or for the purposes of a trade" in terms of the proviso to para. 7(1) of Sch. 4 to the Finance Act 1963;

(*b*) that maintenance expenditure incurred in respect of the House of Elrig was accordingly expenses of the trade of farming assessable by virtue of the provisions of s. 124 of the Income Tax Act 1952; and

(*c*) that the provisions of s. 137(*d*) of that Act permitted the deductibility H *in toto* of all actual maintenance expenditure in arriving at the profits of the trade of farming, and such maintenance expenditure should accordingly be deducted in computing the profits assessable for the relevant years of assessment. No apportionment of maintenance expenditure whether on the basis of rooms occupied or any other basis was possible. Section 314(2), which provided for an apportionment, was confined to capital expenditure and had no I relevance to maintenance expenditure. Reference was also made to the terms of s. 296(2) of the Income Tax Act 1952, as being a section which provided for the deductibility of expenses *in toto*.

VI. It was contended on behalf of the Commissioners of Inland Revenue:

(*a*) that the House of Elrig was occupied principally as a private residence and only partly and secondarily as the place where the general control of the farming activities of the Korner family was exercised; A

(*b*) that, having regard to the provisions of s. 137 (*a*) and (*b*) of the Income Tax Act 1952, only one-tenth of the cost of rates, repairs, maintenance and insurance in respect of the House of Elrig represented moneys wholly and exclusively laid out for the purposes of the trade of farming carried on by the Korner family; and B

(*c*) that in computing the farming profits of the Korner family for income tax purposes only one-tenth of the cost of rates, repairs, maintenance and insurance for the House of Elrig should be allowed as a trading expense.

VII. We, the Commissioners who heard the appeal, were not satisfied that the House of Elrig was "the farmhouse", within the meaning of s. 526(1) of the Income Tax Act 1952, of the land occupied for the purposes of husbandry by the Korner family. Accepting, however, without deciding, that the House of Elrig was "the farmhouse" and was accordingly included in the land occupied for the purposes of husbandry, we nevertheless held that the provisions of s. 137(*b*) of that Act required us to disallow any sums expended for any domestic or private purposes distinct from the purposes of the trade of farming. In our view the major part of the sums spent on the rates, maintenance and insurance of the House of Elrig fell to be disallowed under those provisions as being expended for domestic or private purposes. We understood that the Appellants did not dispute that if any disallowance was required to be made then that suggested by H.M. Inspector of Taxes was fair and reasonable. We accordingly determined the relevant assessments by disallowing nine-tenths of the expenditure claimed. C D E

VIII. The representatives of the Appellants immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law, and in due course required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, which Case we have stated and signed accordingly. F

IX. The question of law for the opinion of the Court is whether on the facts found by us as set out herein our decision was erroneous in point of law.

H. G. Watson
W. E. Bradley
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94–99 High Holborn,
London, W.C.1.
9th October 1967. G

The case came before the First Division of the Court of Session (the Lord President (Clyde) and Lords Guthrie and Migdale) on 19th June 1968, when judgment was reserved. On 5th July 1968 judgment was given unanimously against the Crown, with expenses. H

W. R. Grieve Q.C. and *G. W. Penrose* for the Appellants.

The Solicitor-General for Scotland (*Ewan Stewart Q.C.*) and *C. K. Davidson* for the Crown.

The case cited in argument is referred to in Lord Migdale's judgment. I

A **The Lord President (Clyde)**—The issue in this case is whether the whole or only part of the cost of rates, repairs, maintenance and insurance incurred in respect of the House of Elrig formed a proper deduction in computing the profits or gains of the farming enterprise carried on at Elrig by the Appellants.

During the relevant period the Appellants jointly owned the estate of Elrig. It comprised some 1,817 acres, 1,768 of which were farm land. The B estate was divided into five farms, one of which was let and four of which were occupied by the Appellants for farming. There was on each of the unlet farms a house occupied by a foreman employed by the Appellants. During the years in question the first and second Appellants (who are the parents of the other three Appellants) lived in the House of Elrig on the estate. The first-named Appellant, Professor Korner, managed the trade of farming the estate on behalf C of the family. They employed a factor to supervise the day-to-day operations on the farms, but Professor Korner had overall control of the farming operations and kept the statistical and financial records. It is found in the Case that he exercised complete control of the family farming enterprise, and his management activities required him to reside in the House of Elrig to carry out this work on behalf of the Appellants.

D Under s. 124(1) of the Income Tax Act 1952 it is provided that:

> "All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade . . . and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly."

Section 526 of the same Act defines what is meant by farming. The section provides that:

E > " 'farm land' means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, not being market garden land, and includes the farmhouse and farm buildings, if any, and 'farming' shall be construed accordingly".

This provision treats the land, the farm buildings and the farmhouse as a single unit for the purposes of the trade of farming, and any expenditure on any of F them is part of the expenditure on the trade of farming carried out on the "farm land". It was not disputed before the Special Commissioners, nor before us, that the House of Elrig was the farmhouse on this farm land, and from this it appears to me to follow that any expenditure on rates, repairs, maintenance and insurance on the House of Elrig was expenditure incurred for the purpose of carrying on the trade of farming, and is therefore properly deductible from G the profits of the undertaking. This conclusion seems to me necessarily to result from the provisions of s. 526, which puts a farmhouse or a farm building in the special position of being treated as occupied for the purposes of the trade of farming.

The Special Commissioners reached a different conclusion. They held that s. 137(*b*) of the 1952 Act required them to disallow any sums expended for any H other domestic or private purpose distinct from the purposes of the trade of farming, and they held that the major part of the sums spent on rates, etc., on the House of Elrig fell to be disallowed as being expended for domestic or private purposes. Section 137(*b*) of the Act is as follows:

> "Subject to the provisions of this Act, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no I sum shall be deducted in respect of . . . (*b*) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession or vocation".

In my opinion the Special Commissioners were in error in applying this provision to a case such as the present. Section 526 puts a building which

(The Lord President (Clyde))

constitutes a farmhouse in that category of buildings which are occupied for the purposes of the trade of farming. The farmhouse therefore cannot be a subject occupied for a purpose distinct from the purposes of the trade of farming, and the expenditure in running it cannot therefore to any extent fall within s. 137(*b*). This latter section only applies "subject to the provisions of this Act", and s. 526 is a provision which excludes its application.

In the whole circumstances, therefore, in my opinion the question put to us falls to be answered in the affirmative.

Lord Guthrie—It was conceded by the Crown that the subject of this appeal, the House of Elrig, is the farmhouse of the estate of Elrig, which is used for the purposes of husbandry. It is found in fact in the Case that the first Appellant, Professor Korner, is a farmer managing the trade of husbandry carried on by his family on the estate. The Special Commissioners, however, have decided that the provisions of s. 137(*b*) of the Income Tax Act 1952 required them to disallow as deductions in computing the profits and gains of the trade "any sums expended for any other domestic or private purposes distinct from the purposes of" the trade of farming. Therefore they disallowed to the extent of nine-tenths sums expended by the Appellants on rates, repairs to, and maintenance and insurance of, the House of Elrig, and claimed by the Appellants as proper deductions for maintenance expenditure in connection with the trade for each of the years ending 28th November 1962, 28th November 1963 and 28th November 1964. In their findings in fact the Special Commissioners stated that Professor Korner usually only spent one hour a day on farm business, although occasionally up to five or six hours. Of the many rooms in the house, he only used to some extent for the purposes of the farm the library for his farm bookkeeping and the drawing-room for interviewing callers on farm business. The house was fully furnished and was the home of Professor Korner and his wife, and his children and grandchildren occasionally stayed there on holidays. The ground of decision of the Special Commissioners appears to be that, as the main purpose of the occupation of the house was as a home, and as its use for the business of the farm was much less in proportion than its domestic use, only a fraction of the maintenance expenditure was attributable to the purposes of the trade of farming.

In my opinion they have erred in law. Section 526(1) of the Income Tax Act 1952 provides that:

> " 'farm land' means land . . . wholly or mainly used for the purpose of husbandry . . . and includes the farmhouse and farm buildings, if any, and 'farming' shall be construed accordingly".

Therefore the farmhouse is part of the farm land for the purposes of the Act. Money spent on the farmhouse would normally be money spent on the farm. Although it is generally the farmer's dwelling, his occupation of it for that purpose is ascribed to his occupation of the farm land, since a farmer needs a home to enable him to carry on his trade. Therefore its use as a home is not use for a purpose "distinct from the purposes of such trade", in the words of s. 137(*b*) of the Act. Accordingly, that subsection did not require the Special Commissioners to disallow sums expended on the maintenance of the house which was the dwelling of Professor Korner. I do not think that they have given sufficient weight to the words in the section "distinct from the purposes of such trade". The position would have been different if Professor Korner had carried on in the farmhouse another trade in addition to his farming, to which part of the expenditure was properly ascribed. But on the findings in fact as

A stated I am of opinion that in this case the Appellants are entitled to the full amount of the deductions claimed.

I agree that the question of law should be answered in the affirmative.

Lord Migdale—In this appeal by the taxpayer the question raised is whether the whole cost of rates, repairs, maintenance and insurance disbursed in respect of the House of Elrig should be allowed as a deduction from tax. B It is not disputed that money under these heads was spent in the years ending 28th November 1962, 1963 and 1964. The Crown sought to disallow these expenses to the extent of nine-tenths. The Appellant contends that the whole expenses should be allowed.

The Special Commissioners, proceeding on the assumption that the House of Elrig is the farmhouse of the agricultural estate of Elrig, have disallowed C the claims to the extent of nine-tenths on the view that to that amount the disbursements were struck at by s. 137(*a*) and (*b*) of the Income Tax Act 1952 because they were sums expended for domestic or private purposes distinct from the purposes of the trade of farming. The question for us is whether on the facts found the decision was erroneous in law.

It is found that the Appellant, his wife and three children jointly own D Elrig estate, which comprises five farms. One is let together with a farmhouse. The other four farms, extending to some 1,500 acres, are occupied for the purposes of husbandry by the Korner family in partnership. The Special Commissioners state that they were not satisfied that the House of Elrig was the farmhouse within the meaning of s. 526(1) of the Income Tax Act 1952. They have, however, accepted for the purposes of this case that it is. No question E on this issue is stated for our opinion, and no argument was submitted to us on behalf of the Crown that it was not. Accordingly, we must approach the question on the basis that the House of Elrig is the farmhouse within the meaning of s. 526(1). That section provides that "farm land" means land wholly or mainly occupied for the purposes of husbandry and includes the farmhouse and farm buildings. There is no doubt that the land of Elrig was mainly occu- F pied for the purposes of husbandry, and it must be taken that the house was the farmhouse.

The construction put forward by the Crown and accepted by the Special Commissioners is that the house is a large one and that, although the Appellant and his wife live there all the time, they only use two rooms for the purpose of the trade of farming. The rest of the house is used by them for domestic or G private purposes. There is no suggestion that any other trade, profession or vocation is carried on in the house.

Section 124(1) of the Income Tax Act 1952, as amended, provides that all farming shall be treated as the carrying on of a trade and the profits and gains shall be charged to tax under Case I of Schedule D. Section 126 provides that tax under Case I shall be charged without any other deduction than is by the H Act allowed. Section 137, headed "General rules as to deductions not allowable", states that:

> "Subject to the provisions of this Act, in computing the amount of the profit or gains to be charged under Case I . . . no sum shall be deducted in respect of—. . . (*b*) any disbursements or expenses of the parties, their families or establishments or any sums expended for any other domestic I or private purposes distinct from the purposes of such trade, profession or vocation; . . . (*d*) any sum expended for repairs of premises occupied . . . for the purposes of the trade . . . beyond the sum actually expended for those purposes".

(Lord Migdale)

Counsel for the Crown contended that nine-tenths of the sums expended on maintenance of the farmhouse were disbursements for domestic or private purposes distinct from the purposes of the trade of farming, because the use made of the house for farming purposes was confined to two rooms, the library and the drawing-room, which made up only one-tenth of the accommodation of the house. On this view the occupation by the Appellant and his wife of the kitchen, the dining-room, a bedroom and presumably, although it is not mentioned, the use of a bathroom must be regarded as occupation distinct from the purpose of farming. Counsel referred to the analogy of certain professions which are carried on in the house where the practitioner resides. We are concerned here only with the trade of farming. That trade is carried on for the full twenty-four hours of the day, and the farmer, according to the usual procedure, lives on his farm. His occupation of the farmhouse is for the purposes of his trade, and this occupation extends over the whole house. I am unable to see how, if that be so, sums expended on maintaining the whole house can be said to be expended on his domestic or private purposes, distinct from his trade of farming.

Section 137(*d*), which disallows sums expended for repairs of premises occupied for the purposes of the trade beyond the sum actually expended for those purposes, contemplates that sums can be expended on the repair of premises which are occupied for the purposes of the trade: see *per* Scrutton J. in *Smith* v. *Incorporated Council of Law Reporting*(1) [1914] 3 K.B. 674, at page 681. In any event, s. 137 says that those general rules are subject to the provisions of the Act. Section 313(*a*) gives relief for the cost of maintenance, repairs, insurance and management of an estate which includes agricultural land. Section 526(1) defines "farm land" as land wholly or mainly occupied for the purposes of husbandry, and provides that it includes the farmhouse and that "farming" shall be construed accordingly. These sections show that farming as a trade is to be regarded in a special way, and recognise that both the land and the farmhouse are to be maintained. They also show that the farmhouse is part of the farm land, and appear to recognise that the house in which the farmer lives is part of the farm and that the expenses of maintaining it are proper deductions in arriving at the profits of the trade.

I do not think that s. 137(*b*) applies to these expenditures on rates, repairs and insurance. They are not expenses of maintenance of the parties or their families or establishments. It was said that they were sums expended for other private purposes distinct from the purposes of farming. If, as I think, proper farming requires the farmer and his family to live on the farm, and if this is the farmhouse, sums expended on maintaining, repairing and insuring that farmhouse are sums expended for the purpose of farming and not sums expended for domestic purposes distinct from farming. I am not prepared to accept the view that because the farmer keeps his books in only two rooms he only uses two rooms for the trade of farming. His trade of farming requires him to live on the farm, and he is entitled to have a house to live in, not just two rooms in which to keep his records.

I am satisfied that the Special Commissioners erred in law in treating the cost of maintaining the residential part of the farmhouse as a sum expended for private purposes distinct from the purposes of farming, and I would answer the question in the affirmative.

---

(1) 6 T.C. 477, at p. 482.

The Crown having appealed against the above decision, the case came before the House of Lords (Lords Reid, Hodson, Guest, Upjohn and Donovan) on 20th January 1969, when judgment was reserved. On 19th February 1969 judgment was given unanimously against the Crown, with costs.

The Solicitor-General for Scotland (*Ewan Stewart Q.C.*), *Patrick Medd* (of the English Bar) and *C. K. Davidson* (of the Scottish Bar) for the Crown.

W. R. Grieve Q.C. and *G. W. Penrose* (both of the Scottish Bar) for the taxpayers.

The following cases were cited in argument:—*Lindsay* v. *Commissioners of Inland Revenue* (1953) 34 T.C. 289; *Wildbore* v. *Luker* (1951) 33 T.C. 46.

Lord Reid—My Lords, I agree with my noble and learned friends that this appeal should be dismissed.

Lord Hodson—My Lords, I agree with my noble and learned friends that this appeal should be dismissed.

Lord Guest—My Lords, Professor Korner is in partnership with his wife and other members of his family, and they own the estate of Elrig, which comprises some 1,817 acres of which 1,768 are farmland. During the years in question Professor Korner and his wife lived in the House of Elrig, which is on the estate. Professor Korner managed the trade of farming the estate on behalf of the partnership. Although a factor was employed to supervise the day-to-day operations on the farm, Professor Korner had overall control of the farming operations and kept the statistical and financial records. He also conducted some farming business at the house. It is found as a fact that his management activities required him to reside in the House of Elrig. The question concerns the deductions to be allowed for the purpose of income tax in computing the profits or gains of the farming enterprise carried on at Elrig by the Respondents. The Special Commissioners allowed one-tenth of the cost of rates, repairs, maintenance and insurance incurred by the Respondents in respect of the House of Elrig. The First Division of the Court of Session reversed their decision and held that the whole of the expenses referred to were a proper deduction.

By s. 124(1) of the Income Tax Act 1952 all farming and market gardening are treated as the carrying on of a trade, and the profits or gains thereof are charged under Case I of Schedule D. By s. 126 of the Act tax under Cases I and II of Schedule D is charged without any other deduction than is by the Act allowed. Section 137 provides as follows:

> "137. Subject to the provisions of this Act, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—(*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation; (*b*) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession or vocation".

Section 526(1) provides as follows:

> "526.—(1) In this Act, except so far as is otherwise provided or the context otherwise requires—. . . 'farm land' means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, not being market garden land, and includes the farmhouse and farm buildings, if any, and 'farming' shall be construed accordingly".

(Lord Guest)

The question at issue turns, in my opinion, upon the proper construction of s. 526(1). But before I turn to this section I must make one point clear. The Special Commissioners, without deciding the question, assumed for the purpose of their decision that the House of Elrig was "the farmhouse" within the definition contained in s. 526(1). It was conceded by the Crown before the First Division and before your Lordships that this was so. It is, therefore, only upon this basis that the question arises. The position might be different if the family lived in a house on the farm but it was not found to be "the farmhouse".

In my opinion, the proper construction of s. 526(1) is that "the farmhouse and farm buildings" are included as "farm land" and that the words "wholly or mainly occupied for the purposes of husbandry" do not qualify the words "farmhouse and farm buildings". The Crown contended that the farmhouse was only farm land if it was wholly or mainly occupied for the purposes of husbandry. I do not agree. If this were so, the farmhouse in the present case would not qualify for any deduction, because upon the proportions advanced by the Crown nine-tenths of the expenditure is for purposes distinct from the purposes of the trade. Upon this basis the farmhouse could not be "wholly or mainly occupied for the purposes of husbandry". Once a particular house qualifies as a farmhouse it has, in my view, become farm land, that is, part of the trading assets of the husbandry. This is made plain from the fact that "farmhouse" and "farm buildings" are treated as being in *pari materia.* Farm buildings are plainly part of the trading assets of the business of farming, and the farmhouse is similarly treated. If this be so, then, according to ordinary income tax practice, all the expenses reasonably incurred and wholly and exclusively laid out on the maintenance of the trading asset form permissible deductions for income tax purposes.

The Special Commissioners have excluded nine-tenths of the expenditure on the basis that in terms of s. 137(*b*) the major part of the expenses were expended for other domestic or private purposes distinct from the purposes of the trade of farming. In my opinion, the Special Commissioners fell into error. If the House of Elrig was the farmhouse, and as such part of the farm land and part of the trading assets of the business, just as the fields were, then I fail to see how the repairs, rates and insurance can be said to be expenses for private or domestic purposes distinct from the purposes of the trade of farming. They are wholly and exclusively laid out on the farmhouse. It is not suggested that the expenses of maintenance were other than what were reasonable in the circumstances. The First Division were therefore right, in my view, in holding that the whole of the expenses fell to be allowed as a deduction.

There is no warrant under s. 137 for an apportionment of the total expenses as between the agricultural and the private purposes, as there is to be found in s. 313. We were informed that by an extra-statutory concession the Revenue allow deductions in cases where premises are occupied partly for trading purposes and partly for domestic purposes, such as doctors' consulting rooms or advocates' chambers in private houses. This is not one of those cases. The farmhouse is *per expressum* by s. 526(1) made part of the trading assets of the farm. No part of the doctor's or advocate's private house is part of his professional premises.

I would dismiss the appeal.

Lord Upjohn—My Lords, this appeal raises a short but important question of construction in the definition of "farm land" in s. 526(1) of the Income Tax Act 1952. The facts are fully set out in the Case Stated and, in view of a concession (which I shall mention later) made by the Crown, for the purposes of the appeal require only brief mention. The Respondents, Professor Korner,

his wife and three children, jointly own the Elrig estate in Wigtownshire, where they farm about 1,500 acres of farmland in partnership. For the relevant years of assessment 1963–64 to 1965–66 the Professor managed the farm on behalf of the partnership and he and his wife lived permanently in the House of Elrig. This is a very substantial house. The Professor did not give the whole of his time or attention to the farming business: indeed, normally only about one hour a day, although occasionally he spent up to five or six hours a day on that business. The Korner family in fact employed a local factor, who controlled the day-to-day farming activities and kept the ordinary farm records and books of the partnership in his office; nevertheless, the Professor exercised final control by keeping statistics and close financial supervision. During the relevant years of assessment the partnership expended upon or in respect of the House of Elrig certain sums for rates, repairs and insurance; it has not been suggested that any of these amounts were unreasonable. The whole question is whether the Respondents are entitled to deduct the whole of these expenses from their Schedule D assessment in respect of their farming business, or only a proportion.

Before considering the impact of s. 526 upon this question I think it would be helpful to consider the position altogether apart from it. Originally farming was not treated as a trade and taxed under Schedule D at all; it was a natural use of land as such, so that the owner who farmed his own land was taxed under Schedules A and B and the tenant farmer was taxed under Schedule B. This method of taxation, being virtually fixed (subject only to periodical review), was splendid for the farmer when farming was profitable but not so good in the years of depression, and so in 1887 Parliament provided that the farmer might elect to be assessed and charged under Schedule D, while in 1896 (when the depression was even worse) it provided that where the profits fell short of the Schedule B assessment the income arising from the occupation should be taken as the actual profits or gains. But in 1941, when no doubt farming was very profitable, the Legislature enacted, in s. 10(1) of the Finance Act 1941, that all farming and market gardening in the United Kingdom was to be treated as a trade and charged under Case I of Schedule D accordingly. This is now s. 124(1) of the Income Tax Act 1952. The result of this compulsory change to Schedule D was that, apart altogether from s. 526, the farmer occupying a house (no doubt with his wife and children) for the purpose of his farming activities would be entitled to claim a proportion of the reasonable and necessary expenditure upon the maintenance of his house as a deduction from his assessment to tax for the purposes of Schedule D. This practice is very old, works great justice between the Crown and the subject, and I trust will never be disturbed. Thus, speaking generally, the grocer living above his shop, the doctor who has a surgery in his house and the barrister who works in his house where he keeps or brings his law books and works on his briefs in the evenings and at weekends is allowed by the Crown a reasonable sum in respect of the necessary upkeep of his dwelling as being properly attributable to his trading or professional activities. So that in the present case there is no doubt—and indeed it is not disputed, for I did not understand the Solicitor-General for Scotland to challenge this proposition in his reply—that apart from s. 526 the Respondents are in any event entitled to a proportion of these expenses, and it is agreed between the parties that this proportion should be one-tenth.

Section 526(1) of the Income Tax Act 1952, originally s. 10(2) of the Finance Act 1941, provides as follows:

> "In this Act, except so far as is otherwise provided or the context otherwise requires—. . . 'farm land' means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, not being

(Lord Upjohn)

market garden land, and includes the farmhouse and farm buildings, if any, and 'farming' shall be construed accordingly". A

Now in this case the Crown concedes that the house in which the Professor and his wife live is properly to be described as "the farmhouse" for the purposes of s. 526. This being so, the inevitable conclusion upon the true construction of that section is, in my opinion, that "the farmhouse" is to be treated as a part of the assets of the farming business just like the land upon which that business B is carried on, and not the less so because the farmer uses it not only for his farming business but to house his wife and family. The farmhouse ceases to be comparable to the dwellinghouse of the grocer, the doctor or the barrister; it is an asset of the business. That does not conclude the matter, however, or lead to the conclusion that all expenditure upon the farmhouse is allowable for tax purposes. The farming business of which the farmhouse is an asset is a C trade for the purposes of Schedue D and is, therefore, subject to s. 137, which is in these terms:

"137. Subject to the provisions of this Act, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—(*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for D the purposes of the trade, profession or vocation; (*b*) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession or vocation".

So one must look at the claim for deduction and see whether it passes through the sieve of that section. In this case the expenses or disbursements claimed are E for rates, repairs and insurance (all reasonable in amount) upon and in respect of "the farmhouse" that is an asset of the partnership, and as such those claims are typical of expenses or disbursements which have normally to be discharged and then allowed by the Crown under s. 137(*a*) in respect of buildings upon which the business is carried on. So, in my opinion, these disbursements must be allowed in full. It was said that because of s. 137(*b*) the whole of these F disbursements ought not to be allowed but only the agreed tenth. I do not understand this. These disbursements are in respect of the farmhouse, which by definition in s. 526 is an asset of the business, and they are not disbursements for any of the purposes mentioned in s. 137(*b*), notwithstanding that the farmer and his family live there. Not only does that seem to me to be the natural result of the definition, but the result contended for by the Crown G would mean that the definition was meaningless, because it was not shewn in argument that that definition was necessary for any other purpose of the Income Tax Act 1952, and the subject would gain no greater benefit than under the well-known and established practice, to which I have earlier referred, where premises are in part occupied as a dwellinghouse and in part for the purposes of a trade or profession. H

So, my Lords, I would agree with the conclusions of the Judges of the First Division. But, in my opinion, when Lord President Clyde at the conclusion of his judgment stated that the expenditure in running the farmhouse could not to any extent fall within s. 137(*b*) he went too far. Section 526 makes the farmhouse a farming asset notwithstanding that being the farmhouse it is used by the farmer as a dwelling for himself and his family, but when a claim I is made for a deduction then the sieve of s. 137 is there. And though, for example, expenditure upon the reasonable and proper repair of a part of the house which happened to be a child's bedroom would plainly qualify, for it was incurred as a disbursement in the upkeep of the asset, it is possible to think of

A some disbursements which might fall within s. 137(*b*) and fail to qualify for deduction.

My Lords, the Special Commissioners in the Case Stated said that they were not satisfied that the House of Elrig was "the farmhouse", within the meaning of the Income Tax Act 1952, of the land occupied for the purposes of husbandry by the Korner family. In its Case before your Lordships' House the B Crown said that it shared those doubts but was prepared to make the concession, so your Lordships are not directly concerned with this question. But I think it right to say that I am no more satisfied than were the Special Commissioners that this house could properly be described as "the farmhouse" within s. 526. This is a matter of fact to be decided in the circumstances of each case, and I would think that to be "the farmhouse" for the purposes of C the section it must be judged in accordance with ordinary ideas of what is appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farmland being farmed, and not part of a rich man's considerable residence; I say that without reference to the facts of this case.

Another question that may one day arise is whether, although in s. 526 D the words "wholly or mainly occupied for the purposes of husbandry" govern grammatically only "farm land", yet did Parliament intend that the definition in that section should apply to the farmhouse which, though appropriate in size, content and layout to the farm land, is occupied by someone who does not really occupy it for farming but, for example, mainly as a weekend residence, though he may use it partly as a farmhouse (and possibly be entitled to E make a claim under the practice I have mentioned earlier)?

My Lords, for these reasons I would dismiss this appeal.

Lord Donovan—My Lords, the combined effect of ss. 124 and 526 of the Income Tax Act 1952 is that farming and market gardening shall be treated as the carrying on of a trade and, among other things, that the farmhouse shall be treated as part of the farm land. The Special Commissioners were not satisfied F that the House of Elrig was "the farmhouse"; and having regard to the kind of accommodation it affords, and the use of the house for farming business for about one hour a day as a rule, this is not surprising. The point has, however, been conceded for the purpose of the present proceedings; and in the issue, therefore, is simply whether the whole of the sums spent on rates, repairs, maintenance and insurance of the house are legitimate deductions for income G tax purposes, or whether these deductions must be abated because the house is also used as a private residence.

Although s. 526 makes the farmhouse one of a farmer's trading assets, this does not oust the application of s. 137 of the Act, which negatives any deduction of expenditure laid out for purposes other than the purposes of the trade. Nor, in particular, does it render inapplicable s. 137(*b*), which prohibits the H deduction of expenditure for purely private and domestic purposes. Indeed, the Respondents did not so contend before the Special Commissioners. When, therefore, Lord President Clyde says in his judgment that the expenditure in running the house cannot to any extent fall within s. 137(*b*), I should have to disagree if this statement were to be literally interpreted. I think, however, that what the Lord President really had in mind was the particular expenditure with I which this case is concerned. It is to be noted that both Lord Guthrie and Lord Migdale recognise that expenditure on some other trade carried on in the house would not be deductible as expenses of farming, which is simply another way of saying that any expenditure, to be deductible, must be wholly and exclusively laid out for the purpose of the trade of farming.

(Lord Donovan)

Your Lordships are here concerned solely with expenditure under three heads, namely, rates, repairs and maintenance, and insurance. These are all outgoings on revenue account which are *prima facie* necessary in order to earn the farming profits. Why, therefore, may they not be deducted? The Crown's answer is that the expenditure was not wholly and exclusively laid out for the purposes of the trade, but the bulk of it was laid out for private and domestic purposes. The only evidence relied upon by the Crown in support of these contentions is that in fact the farmhouse is used a good deal by Professor Korner and his family as a private residence. Much of the expenditure, therefore, enures to the benefit of himself and his family as residents in the house. But this is immaterial unless such private benefit was the purpose of the expenditure. If a smoky chimney in the library has to be swept so as to enable the Professor to work on his farm records and statistics there, the expense incurred is none the less all trading expenditure notwithstanding that it enables him to read a novel more comfortably in the evenings. There is simply no evidence in the Case to displace the legitimate *prima facie* assumption that the expenditure on rates, repairs and maintenance and insurance was for the purposes of the trade alone. Professor Korner gave evidence and was no doubt cross-examined, and any answers which supported the Crown's contention would, one may be sure, be reflected in the Stated Case. In the circumstances any benefit to individuals in their private capacity which resulted in consequence of the expenditure must be taken to be simply a by-product of this outlay and not its purpose. On this ground I would agree that the appeal should be dismissed.

I also agree that the present case is in a different category from those cases where professional men may use part of their homes to do their professional work and may be allowed a proportionate part of the expenses of the home in consequence. I agree with what my noble and learned friend, Lord Upjohn, says upon this point.

Questions put:

That the Interlocutor appealed from be recalled.

The Not Contents have it.

That the Interlocutor appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—William A. Crump & Son, for Dundas & Wilson C. S.; Solicitor of Inland Revenue (England), for Solicitor of Inland Revenue (Scotland).]