the bye-law would be valid; if the fact be otherwise, then the bye-law would appear to be *ultra vires* and bad.

There does not appear to be any room for doubt as to how the fact stands in this respect, because it was decided in the case of *Hunter* v. *The Northern Maritime Insurance Company*, 14 R. 544, 15 R. (H. of L.) 72, that the port and harbour of Greenock does not include the navigable channel of the river, but is limited to the artificial works vested in the Harbour Trustees, and such contiguous water as may be necessary for the accommodation of vessels using these works.

That being so, it is clear that the bye-law professes to regulate the speed of vessels over an area which is not within their jurisdiction, and is therefore invalid.

It follows that if the bye-law is invalid the conviction of the suspender for an alleged contravention of it must be bad.

But the respondent endeavoured to support the bye-law under "The Harbour, Docks, and Piers Clauses Act 1847," by the 83d section of which the trustees have power to make bye-laws for preventing damage or injury to any vessel or goods within the harbour or dock, or at or near the pier, or on the premises of the undertakers. It was said that any vessel steaming rapidly past would cause damage to a vessel lying at a pier, and therefore that the trustees had power to protect such vessel by regulating the speed of passing vessels. I should think that it was sufficiently clear that any bye-law they might make for this purpose could have effect only within the area of their jurisdiction. It may be that the trustees may be able to make a bye-law of some limited nature which may be effectual for the purpose—as to which I offer no opinion—but I am clearly of opinion that they have no power to make such a bye-law as the one in question.

On the whole matter I am of opinion that the conviction must be suspended.

The LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

The Court suspended the conviction.

Counsel for the Complainer—M'Lennan. Agents—Miller & Murray, S.S.C.

Counsel for the Respondent—Guthrie. Agents—R. R. Simpson & Lawson, S.S.C.

Saturday, December 27.

GLASGOW CIRCUIT COURT.

(Before Lord Stormonth Darling.)

SCOTT, APPELLANT.

Justiciary Cases — Bail — When Charge Admitted in Declaration.

When a person charged with forgery admitted the charge in his declaration, *held* that he ought not to be admitted to bail.

Alexander Scott, who was in prison on a charge of fabricating and uttering five bills of the total value of about £500, the signatures of the drawers and acceptors thereof being forged, applied to be admitted to bail. The panel had emitted a declaration in which he admitted the charge, but explained that he had discounted the bills for the sake of customers, and had received no consideration or advantage from the transaction. The Sheriff refused to admit him to bail.

He appealed to the High Court of Justiciary, and was heard before Lord Stormonth Darling at the Glasgow Circuit.

At advising—

LORD STORMONTH DARLING—I have consulted with my brother Lord M'Laren, and we are of opinion, that looking to the serious character of the crime charged against the prisoner, we should not be justified in granting the application for bail. No doubt in one view it seems a little hard to use the confession of the prisoner against him, but at the same time his confession rather displaces the presumption of innocence on which such an application is largely founded. I apprehend this is not a case in which there will be undue delay in bringing the accused to trial. For these reasons we think the application cannot be granted.

The Court refused the appeal.

Counsel for the Panel—A. S. D. Thomson. Agent—

Counsel for the Crown—Dundas, A.-D.

COURT OF SESSION.

Wednesday, January 21, 1891.

SECOND DIVISION.

(Before Seven Judges.)

SMITH (SURVEYOR OF TAXES) *v.* TENNANT.

Revenue — Income-Tax — Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *Scheds. D and E—Income-Tax Act* 1853 (16 *and* 17 *Vict. c.* 34), *sec.* 51—*Customs and Inland Revenue Act* 1876 (39 *and* 40 *Vict. c.* 16), *sec.* 8—*Emolument—Abatement on* £120 *on Incomes under* £400.

The agent and manager for a bank in a provincial town occupied in that capacity a dwelling-house rent free which formed part of the bank premises. The dwelling-house was entered in the valuation roll as being of the annual value of £50. If this sum were added to his salary and income from other sources his income exceeded £400; but if otherwise, it was only £374. His income was assessed for income-tax, under Scheds. D and E, as being more than £400. He appealed against this assessment. He maintained

that the annual value of the bank house was not part of his "income" in the sense of the Income-Tax Acts; that his income was therefore less than £400; and therefore that he was entitled to the abatement on £120 allowed by these Acts on incomes under £400.

Held, by a majority of Seven Judges (the Lord President, the Lord Justice-Clerk, Lord Rutherfurd Clark, and Lord M'Laren — *diss.* Lord Young, Lord Adam, and Lord Trayner)—that the annual value of the bank house fell to be included in reckoning his income, that therefore it exceeded £400, and that he was *not* entitled to the abatement.

The Customs and Inland Revenue Act 1876 (39 and 40 Vict. cap. 16), sec. 8, provides—"The following relief or abatement shall be given or made to a person whose income is less than four hundred pounds—that is to say, any person who shall be assessed or charged to any of the duties of income-tax granted by this Act, or who shall have paid the same, either by deduction or otherwise, and who shall claim and prove in the manner prescribed by the Acts relating to income-tax that his total income from all sources although amounting to one hundred and fifty pounds or upwards is less than four hundred pounds, shall be entitled to be relieved from so much of the said duties assessed or paid by him as an assessment or charge of the said duties upon one hundred and twenty pounds would amount unto."

At a meeting of the General Commissioners of Income-Tax held at Montrose on 11th December 1889 for the purpose of disposing of appeals, Alexander Tennant, agent at Montrose for the Bank of Scotland, appealed against an assessment made on him under Schedules D and E, Income-Tax Acts, for the year ending 5th April 1890 on £317, on the ground that he was entitled to the abatement from this sum of £120 allowed on incomes under £400.

After hearing parties the Commissioners sustained the appeal and allowed the abatement of £120.

The Surveyor took a case for the opinion of the Court of Exchequer, in accordance with the Taxes Management Act 1880 (43 and 44 Vict. cap. 19), sec. 19. Schedules D and E, under which the assessment was imposed, provide as follow:—"Case 2 under Schedule D of the Income-Tax Act 1842 provides for 'the duty to be charged in respect of professions, employments, or vocations not contained in any other schedule of this Act.' Rule 2. The duty to be charged shall be computed at a sum not less than the full amount of the balance of the gains, profits, and emoluments of such professions, employments, or vocations (after making such deductions, and no other, as by this Act are allowed) within the preceding year . . . to be paid on the actual amount of such profits and gains without any deduction. . . .

"By the first rule applicable to both the first and second cases under Schedule D, it is provided, that 'in estimating the balance of the profits or gains to be charged according to either of the first or second cases, no sum shall be set against or deducted from, or allowed to be set against or deducted from such profits or gains . . . for the rent or value of any dwelling-house or domestic offices, or any part of such dwelling-house or domestic offices, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned; nor for any sum expended in any other domestic or private purposes, distinct from the purposes of such trade, manufacture, adventure, or concern, or of such profession, employment or vocation.' The first rule under Schedule E enacts that the duties 'shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profit mentioned in the said Schedule E, or to whom the annuities, pensions, or stipends mentioned in the same schedule shall be payable, for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments, or pensions.' The employments of profit mentioned in Schedule E include employments of profit held under 'any public corporation, or under any company or society, whether corporate or not corporate.'

"The fourth rule under Schedule E provides that 'the perquisites to be assessed under this Act shall be deemed to be such profits, offices, or employments as arise from fees or other emoluments, and payable either by the Crown or by the subject in the course of executing such offices or employments.'"

Upon 4th June 1890, the Second Division having heard counsel, "in respect of the difficulty and importance of the question submitted for decision," appointed the case to be heard before Seven Judges. Upon 16th June 1890 the Court remitted the case to the Commissioners "with instructions to amend it"

The facts stated in the amended case in reference to the assessment were—"1. The appellant is bound, as part of his duty, to occupy the bank house as custodier of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours. He is not allowed to vacate the house even for a temporary period unless with the special consent of the directors, who in that case sanction the occupation of the house by another official of the bank during the absence of the agent. It is imperative that in the absence of the agent some responsible person should occupy the house and attend to the carrying on of the bank's business, so far as that may be necessary, after bank hours and to the due locking up of the premises, and specially to the security of the cash and books in the bank's safe, communicating with which there is a night bolt from the agent's bedroom. The annual value of the house so occupied is £50. 2. The appellant is not entitled to sublet the bank house or any part thereof, and

is not entitled to use it for other than the bank's business, but the appellant, with the tacit consent of the bank, carries on insurance business in the bank's premises. 3. By bond of fidelity granted by the appellant on his appointment as agent at Montrose, dated 17th February 1888, he agreed that he should be liable to removal at any time, and in case of his removal from office, that he should be obliged forthwith to flit and remove from the whole premises occupied by him. 4. If the appellant were to desire not to occupy the bank house, the sanction of the directors would be necessary for any arrangement which he might propose. In other cases where a bank agent has desired not to occupy the bank house, the directors have agreed to his not doing so, and have made arrangements for its occupation by a subordinate official at the branch. In such cases the bank agent's salary has not been affected by the change, and the subordinate officer of the bank who was appointed to occupy the house did not pay the agent any rent for the bank house, and the said officer's own salary was not affected by the change. In some special cases the bank have increased the salary to the official required to occupy the house on account of their requiring him to do so. In such cases the bank house was unsuitable for his use. 5. The general rule of the bank is that the bank agent must occupy the bank house, and no case has ever occurred in which they have asked the agent to give up his house, and they have accordingly never had to consider whether any increase of salary would be given to the agent if such a case ever arose. 6. The bank house is suitable in respect of size and accommodation for the appellant. If a dwelling-house were not provided by the bank, he would require to provide a house for himself of similar size to the bank house. 7. The appellant has a stated income from the Bank of Scotland of £300 per annum, from commissions, &c., £17, and from invested capital (from which tax is deducted), £57. These sums amount *in cumulo* to £374,"

The grounds upon which Tennant objected to the annual value of the bank house occupied by him being added to his return were thus set out in the case—"(1) That the occupancy of the house is imposed upon him as part of his duty; (2) that the premises are not a dwelling-house in the sense of the Act, but are truly bank premises occupied by him specially in connection with the bank's business; (3) that his occupancy of the premises does not fall under Schedule E and the rules applicable thereto; (4) that the premises come under the exemption of section 51 of 16 and 17 Victoria, chapter 34 [quoted *infra* in the opinion of the Lord-Justice-Clerk], as being a necessary expense incurred in the performance of the duties of his office."

It was argued for the Commissioners —There was no doubt that the agent was liable for income tax under Schedules D and E. In the first place, it had been decided that the bank premises were not taxable as part of the bank, but the value had to be deducted from the annual value. The bank was not liable to be taxed on the annual value of the premises. To the bank they were not income—*Town and County Bank* v. *Inland Revenue* (*Russell's* case), March 4, 1887, 14 R. 529, *aff.* April 26, 1888, 15 R. (H. of L.) 51. They must therefore be taxable as part of the agent's income. The question really was whether the possession of this house was an emolument or a burden. It was plain that it was an emolument, and therefore ought to be accounted part of the agent's income as well as his salary. If this house had not been given to him by the bank the agent would have had to buy or rent a house somewhere else. He therefore would have had his income reduced, or the bank would have had to increase his salary by the amount he paid as rent for the house, which would have brought his income over the statutory amount of £400. Whatever therefore was of money's worth to the agent might be taxed. Even if it could be shown that the value of this bank house was not available for taxation, it might still be taken as raising the agent's income over £400. The words of the statute were, "income from all sources," and that included all money he received or money's worth. Two of the difficulties which had induced the Commissioners to support Mr Tennant's appeal on the ground that the house was a burden to him, viz., the fact that he was bound to live in the house, and that he could not sublet it, were only part of his duty for which he was paid his salary, while as regarded the third ground, that he could be turned out at any moment by the bank, many taxable things were enjoyed by people only at will of others.

It was argued for Tennant—The question in this case was, whether the value of this house was or was not an emolument of the bank agent? The question then arose, what was an emolument? It must be held that nothing was an emolument which could not be turned into money at the desire of the person receiving the supposed benefit. The facts stated in the case that the agent was bound to live in the house, that he could not sub-let it, and that he might be turned out of it at any time, showed that he could not turn his occupation of this house into money; therefore it must not be taken as a benefit to the possessor, but as a burden upon him. It was impossible to suppose that the question of emolument or burden could be taken to depend upon the personal circumstances of each bank agent, as that might mean that the revenue authorities would require to hold a yearly inquiry into the domestic concerns of every bank agent in Scotland. The test must be independent of personal considerations, and the test previously suggested was the only fair one. When the case was previously argued an English case had been quoted, but it was now admitted that that case did not bear upon the question, as it was not laid under the same schedule as here—*Burt* v. *Roberts*, December 6, 1877, L.R., 3 Ex. Div. 66.

At advising—

LORD PRESIDENT—The premises belonging to the Bank of Scotland at Montrose consist of buildings in which the business of the bank is transacted, and also of a dwelling-house occupied by the local manager and his family and servants. In this respect the case seems undistinguishable in its facts from *The Town and County Bank* at Aberdeen, which was the subject of consideration by the First Division of the Court nearly four years ago. If it were now proposed by the officers of the Inland Revenue to assess the Bank of Scotland under Schedule (D) of the Income Tax Acts on the annual profits of their business, allowing deduction only of the premises in which the bank business is transacted, but refusing deduction of the portion occupied as a dwelling-house by the local manager, they would be violating the rule established in the former case of *The Town and County Bank* by this Court and the House of Lords.

That case, however, is not decisive of the present, nor indeed has the one any direct bearing on the other. But the rules of Schedule (D) for ascertaining profits of trade and of proportional income afford a good deal of light to guide us in the determination of the question now before us. Neither the trader nor the professional man is chargeable with tax in respect of the value of any premises occupied for the purpose of the trade or professional business which he carries on. And in estimating his income from his trade or business he is entitled to deduct the value of the premises so occupied. But premises or parts of premises occupied by the trader or professional man as a residence stand in the opposite category. In framing the balance-sheet of a professional man's business, the annual value of such premises cannot be deducted in striking the balance of professional income and expenditure, but must be entered as an item of credit.

In this case the dwelling-house in question is not occupied by this trader, but by his official or servant, free of rent. It is therefore, within the meaning of *The Town and County Bank* case, occupied for the purpose of the trade or professional business, and forms an item of debit in ascertaining the balance of trade profit or professional income. But we are dealing here, not with the income of the trader or professional man, but with the income of his official or manager.

The question arises in this form—The appellant, who is agent and manager for the Bank of Scotland at Montrose, has an income of £374, exclusive of the annual value of the house, which he holds rent free from the bank. If no account is to be taken of the rent-free house as part of his emoluments, then his income being under £400, he would be entitled, in accounting with the Inland Revenue, to the abatement of £120 allowed on incomes under £400. But the annual value of his rent-free house is £50, which if taken into account would raise his income above £400, and so disentitle him to the abatement demanded.

It was not, as I understand, disputed in argument that the appellant holds an employment or vocation from which he derives profits or gains within the meaning of both Schedule (D) and Schedule (E) of the whole series of Income Tax Acts. Of what such profits or gains consist we must ascertain from the rules applicable to the second case under Schedule (D), and to the case of employments under Schedule (E). Rule 2nd, applicable to professions, employments, or vocations under Schedule (D), requires the duty to be "computed at not less than the full amount of the balance of the profits, gains, and emoluments of such professions or vocations." And on the 1st rule applicable to both the first and second cases under Schedule (D) no sum shall be "allowed to be set against or deducted from such profits or gains" "for the rent or value of any dwelling-house or domestic offices," "nor for any sum expended in any other domestic or private purposes distinct from the purposes of such" "profession, employment, or vocation." The first rule under Schedule (E) enacts that the duties shall be charged on the persons holding the employments mentioned in the Schedule "for all salaries, fees, wages, perquisites, or profits accruing by reason of such employment." The 4th rule denotes that "the perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arose from fees or other emoluments."

The only question therefore is, whether the annual value of the rent-free house occupied by the appellant is, within the meaning of Schedule (D), part of the "profits, gains, and emoluments," or, under Schedule (E), part of his "salary, fees, wages, perquisites, or profits whatsoever accruing by reason of" his employment as bank manager?

This question would be somewhat difficult to answer in the abstract, because the circumstances under which a house is occupied rent-free may equally vary, and make the occupation either a clear pecuniary benefit or a heavy burden.

If the employer gives the employees money to pay the rent of his dwelling-house which he has hired from a third party, merely requiring the employee to report the receipts for rent, or if the employer pays the rent direct to the landlord, it cannot be disputed that the employee receives as part of his salary or wages the amount of the rent.

On the other hand, if the employee is taken bound, as part of his contract of employment, personally to occupy a house quite unsuitable for his domestic arrangements, and which may require him to live separately from his wife and family, this would be not a benefit but a burden, and the annual value or rent of the house would form no part of his profits or emoluments.

These are extreme cases. But others may arise between the limits of these extremes, which may create difficulties in the application of the enactments referred to.

The facts of the case before us do not ap-

pear to me to present such difficulties.

On the one hand, the bank agent is bound to constant occupation, except when absent with the sanction of the directors, when his place is occupied by another official. He cannot sub-let the house. And he is liable to removal both from his office and his house at any time. In other words, his tenure of office is at the pleasure of the directors.

On the other hand, we have it distinctly found as matter of fact in the case stated by the Commissioners that the house is suitable in respect of size and accommodation for the appellant, and that if a dwelling-house were not provided by the bank, he would require to provide a house for himself of similar size. It is not said that a house of similar size could be provided by himself at a less rent than £50, and in the absence of any such statement we cannot assume the fact to be so.

Something was suggested in the argument to the effect that the conditions of the tenure of this house were productive of hardship to the appellant as unduly restraining his natural liberty on the choice of a place of abode. But this is nothing but sentiment, and very fanciful and false sentiment. For I cannot conceive anything more desirable for a bank agent or more conducive to his comfort and convenience than that he should be able to occupy a house suitable to his domestic requirements in immediate vicinity to the centre of his daily labours and duties.

It seems to me a matter of very small importance whether the assessment is held to fall more appropriately under the second case of Schedule (D) or under Schedule (E). It was in fact made under both, and I have no doubt that both schedules are applicable.

I am therefore for reversing the determination of the Commissioners and sustaining the assessment.

Lord Justice-Clerk—Your Lordship in your opinion has so clearly and fully stated the facts upon which this case must be decided that I shall not recapitulate them.

The question to be decided upon these facts relates not to assessment but to exemption from assessment. It is not the question whether a certain person's assessable income shall be assessed to income-tax, but whether on its being assessed relief shall be given from a portion of the assessment under the 8th section of the Act 39 and 40 Vict. cap. 16. By that clause any person who may be assessed or charged to any of the duties of income-tax "who shall claim and prove in the manner prescribed by the Acts relating to income-tax that his total income from all sources, although amounting to £150 or upwards, is less than £400, shall be entitled to be relieved from so much of the said duties assessed upon or paid by him as an assessment or charge of the said duties on £120 of his income would amount to." Three things are clear in this enactment—first, that it relates to a relief claimed from part of an assessment made, such relief to be allowed either by "deduction or abatement" from the charge as assessed, or repayment of part of an assessment paid; second, that the abatement shall only be given where the claimant's income from all sources, whether assessable to income-tax or not, is less than £400; and third, that the person claiming the abatement must prove the fact that his income from all sources is less than £400. Under the Income-Tax Acts the income of a person in a profession such as that of the bank agent in this case falls to be computed on the "profits, gains, and emoluments" of such profession under Schedule D, and on the "salaries, fees, wages, perquisites, or profits whatsoever" under Schedule E. And in ascertaining the income no deduction is to be made for any premises occupied as a dwelling-house; that is to say, that the amount assessable is not to suffer diminution by reason of part of it being expended in house rent.

The respondent maintains that although he occupies a dwelling-house, which is stated in the case to be a suitable house in size and accommodation for his requirements, which is provided for him rent free by his employers, and which he occupies under his employment by them, the value of his occupation is not to be computed as an emolument—that is, as a profitable advantage—of his employment. He bases his objection on the grounds that his occupancy is imposed on him as part of his duty, that the house is not a dwelling-house, but bank premises occupied in connection with the business, and that in any case he is entitled to the deduction under the 51st section of the Income-Tax Act of 1853.

The first ground is one plainly not tenable. For it may be necessary for a person to occupy a certain dwelling-house for the proper fulfilment of his duty, while beyond all possibility of doubt the provision of the particular house for his occupation may be a most substantial addition to the gains he makes or the emolument he enjoys in consequence of his being appointed to the office. In my opinion, the occupation of the house in this case constitutes a gain to the person obtaining the office to which it is attached, and is a substantial emolument which he enjoys.

The second ground is equally untenable, for the house is provided to him by the bank as a dwelling-house and nothing else, and it is occupied by him solely as a dwelling-house, although in occupying it as such he is doing that which is also of advantage to the bank's business.

The third ground is, I think, sufficiently answered by quoting the terms of the clause itself (sec. 51): "In assessing the duty chargeable under Schedule (E) of this Act, in respect of any public office or employment where the person exercising the same is necessarily obliged to incur and defray out of the salary, fees, or emoluments of such office or employment the expenses of travelling in the performance of the duties thereof, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to lay out

and expend money wholly, exclusively, and necessarily in the performance of the duties of his office or employment, it shall be lawful to deduct from the amount of the said salary, fees, and emoluments to be assessed under this Act the amount of all such expenses and disbursements necessarily incurred and defrayed in manner aforesaid."

Now, in the present case the respondent in occupying this house does not incur expenses, or lay out or expend money in the performance of the duties of his employment. I cannot look upon his occupation of the house as a burden. He has agreed with the bank that he shall receive a certain salary and have that house rent free upon condition that he occupies it, it being to the advantage of the bank that he should do so. The case must be dealt with on its own facts, and not on any abstract or general view. It is a question of fact in this particular case whether a person provided with a house by his employer has its value as part of his income from all sources. That a person being a candidate for a position in the employment of a bank should not consider a house provided by the bank as a profit, gain, or emolument of the office in considering whether he will accept the employment seems to be contrary to common sense. So much salary and a free house constitute the profit, gain, or emolument offered to him, in respect of which he is to give certain services, of which one is that he shall personally reside in the house. No doubt all his gains, both from salary, commissions, and house, are at the pleasure of his employers, who may dismiss him when they please. But it is what a man enjoys, apart altogether from certainty of future enjoyment, upon which he must be assessed for income-tax; and if he in fact enjoys the occupation of a house, I consider that his liability to be removed from the house is no more a ground for holding that its annual value while he does occupy is not a gain of his office than his liability to lose his whole money income by dismissal is a ground for holding that the money he has received is not a profit or gain of his position. Of course, if a citizen has paid income-tax in respect of a salary which he is drawing, and is removed from his office, he is entitled to restitution of such an amount of the duty paid by him on computation as corresponds to what he is deprived of by the loss of his office during the year for which the computation was made. But what he pays upon is what he is at the time of the computation enjoying. The respondent in this case has not been assessed for income-tax upon the annual value of the house which he occupies rent free. There is no question of assessment before us. The question before us is, whether the respondent's income in money having been duly assessed, he is entitled to a deduction from the assessment corresponding to £120 of his income, on the ground that his income from all sources is less than £400 a-year? It is not disputed that if the annual value of the house he occupies rent free is to be held to be a gain or emolument of his office, and therefore to be computed as part of his income, that then his income does exceed £400 a-year. I am of opinion with your Lordship that it is in accordance with the true meaning and intent of the Income-Tax Acts that it should be so computed, and that we should therefore find that the deliverance of the Commissioners was wrong.

LORD YOUNG — The Lord Justice-Clerk has pointed out quite accurately that the question here as it is presented to us is not one of assessment, but of exemption from assessment, or being relieved from assessment upon a portion of income. But your Lordship in the chair dealt with the question—if I have followed the judgment, and I attended to it carefully as your Lordship read it—exactly as if the question was whether the annual value of this house was assessable to income-tax, and I think that is so, and the Lord Justice-Clerk, although he pointed out that the question was not so presented, dealt with it in the same manner. The views, and the argument in respect of these views, of both your Lordships go to this—that the annual value of this house, stated in the case to be £50, is part of the gains, profits, and emoluments of the bank agent, and that therefore he is liable to be assessed for income-tax thereon. If that is not so, then I have misunderstood the opinions. I think I understand them, and, thinking so, I entirely differ. My opinion is quite the opposite, except upon one point, which is, that the case of *The Town and County Bank of Aberdeen* has no application to the case at all—has nothing whatever to do with the question before us. In that case the question, as I understand, was only this, whether the bank's outlay—that is to say, the cost and the charge to the bank of providing this as part of the establishment—where they made any profits they did—must be deducted before estimating the free profits, which were taxable? And it was quite certain that the bank did expend the whole expenditure that was made upon these premises where the business was carried on, including the house where their agent or manager lived, as necessary in their opinion to conducting their business as they did conduct it, and if their profits in any year had not been sufficient to meet that expenditure, it is quite plain that there would have been no profits for that year. All that expenditure must be provided for before there are any profits for division, and if in any year the residue of profit remaining was just sufficient to meet the expense of providing and upholding these buildings, the shareholders would have found to a certainty that there were no profits for them. That was therefore a plain enough question. The view might have been suggested—"You could have demanded a rent from your manager or agent, or anybody else who was occupying the house." But they did not demand a rent, and could not have got a rent without giving the agent or manager just so much more salary, and that would have amounted to just the same thing—so much

more expenditure as deduction before any profits were struck. The question here is of another order altogether. It is not doubtful in my opinion—I cannot think it is in the opinion of anyone—that a bank agent occupies a situation the income to him from which is assessable for income-tax. There is no question about that. His income from other sources is not affected in any way. Here the emoluments or the income—it is better to take one word for the thing—his income consists of £300 a-year of salary, and £17 a-year of commission. That is his whole income, apart from this question about the house, as bank agent. But he has other income. He has invested capital which yields him an income of £57 a-year, and upon that he pays tax in the usual way—pays it by retention—that is to say, his debtors in whose hands the capital is, deduct and retain the income-tax when they are paying him the periodical interests, and they hand that over to the proper Revenue authorities. These are the three sources of income—salary £300, commission £17, income from capital invested, £57, coming altogether to £374. For that I have pointed out he pays tax by retention upon £57, and he has been assessed by the Commissioners upon the residue of £317. The question is—and that is the only question before us—whether the accommodation which he has in the bank premises is to be added as part of his income? Is this house part of his income? Now, I must say for myself that I think we must deal with the case as raising a general question, and that it would be altogether unsuitable to enter upon the domestic surroundings or the tastes or habits of particular bank agents, and to consider that this question of revenue law must be answered differently according as the agent was married or single, according as he had children or none, according as he had a mother or an aunt with whom he should greatly desire to live if permitted, according as he would choose to live in his club, or preferred the country to the town. Entering upon considerations of that kind would lead to those sentiments which your Lordship has characterised as fanciful and bad. I think we shall avoid fanciful sentiments or bad sentiments by dealing with the case as a general question, and not involving a general inquiry into the domestic surroundings or the tastes and habits of individual men, and I shall so regard it in anything I have to say.

And the first thing I have to attend to is, what is this bank establishment? I suppose banks know best how to conduct their own business, and this bank sees fit—and it is not exceptional—to conduct its business by having premises such that a responsible agent can live upon the premises day and night, give his attention to the bank affairs, not only during ordinary bank hours, but out of the bank hours, and shall attend to the safety of the premises by sleeping in an apartment which shall be brought by mechanical contrivances into immediate contact with the bank safe. And they think it proper in the conduct of their business—and in this they are in harmony with the other banks—to insist that their agent shall live there day and night, and shall be dismissible upon a moment's notice, and the question is, whether the accommodation of such a bank's servant in the bank's premises, in carrying on the bank's business under this system, is part of his income. Some observations were made about his occupation of the house being distinct from his vocation. Distinct from his vocation! Why, it is imperative as part of the duties of his vocation, and it is necessary his occupation shall be given, and given constantly, in order to earn his salary. A bank agent may enjoy living in the bank's house, wherever the situation may be, and enjoy sleeping in a bed which is in immediate contact with the bank safe by means of these mechanical contrivances, so that he could not sleep so soundly without them. But that is not occupation distinct from his vocation. It is occupation in the course of his vocation, and in discharging the duties of his vocation for which he is paid. Consequently, the facts stated to us are these—"The appellant is bound, as part of his duty"—not as distinct from his vocation, but as part of his duty—"to occupy the bank house as custodier of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours. He is not allowed to vacate the house, even for a temporary period, unless with the special consent of the directors, who in that case sanction the occupation of the house by another official of the bank. It is imperative that in the absence of the agent some responsible person should occupy the house and attend to the carrying on of the bank's business, so far as that may be necessary, after bank hours, and to the due locking-up of the premises, and specially to the security of the cash and books in the bank's safe, communicating with which there is a night bolt from the agent's bedroom." Is that distinct from his vocation? Is it not part of his vocation, and in return for which he receives his salary?

Well, I cannot regard this as a free house. It is a free house in a sense. He does not pay for being allowed to occupy it, any more than the servants in one's house pay for their bedrooms. It is in that sense free. £50 a-year is said to be its rateable value. I wonder what would be got for a house which was advertised to be occupied on these terms—You may be turned out on a moment's notice; you must live in it; and you must have your bedroom communicating with some other premises. Would you get for that the rent at which a house is entered in the valuation roll? I quite see that in many cases—perhaps in most cases—it is really a great benefit to the man who gets the agency; but we are dealing with all cases, and we are considering a general rule in order to lay down a general rule.

Now, I really do not know I should distinguish this case from that of a ship. A bank is not a ship, to be sure, but the captain of a ship, I suppose, greatly enjoys the comfort of the accommodation which is provided for him on board ship, and it

may be a great element in determining him to accept employment on board a particular ship that the accommodation provided for him there is good, comfortable, luxurious, and that there is good cheer on board. But is the cabin accommodation which he must occupy not distinct from his vocation, but as part of his vocation—is that part of his income? That he enjoys it exceedingly is, I daresay, very true, and he would be quite unhappy if he were sent to live on shore. But that will not make the cabin accommodation which is provided for him part of his income.

I pointed out more than once in the course of the discussion, as being in accordance with my opinion, that I thought income must be money or money's worth, and convertible into money at the pleasure of the recipient. And therefore if a man had, as part of his salary, a house valued £50 a-year, which he might live in or let so as to realise him £50 a-year, I should consider that to be money's worth, convertible into money at his pleasure, and if he chose to occupy it rather than draw the £50 a-year, or whatever it would bring of rent, for it, and employ that in some other way, whether in living in another house or not, it would be part of his income, and would be subject to duty. But where it is not convertible into money, but is, like the accommodation on board ship, simply the provision of premises in which it is necessary that he should give his personal presence and attendance in the performance of his duties, I think there is a totally different view. I do not know whether your Lordships would consider the case different if you were dealing with a bank that would only have unmarried men, would not have wives and families upon their premises, or insisted that the wife and family, if there were any, should live elsewhere. The house would still be £50 a-year, and it is rent-free in the sense in which this is rent-free, the man must give his presence and his services there. I have put the case in the course of the argument—a rent-free house in that sense—that is to say, which a man pays no rent for, and which he must occupy—is not necessarily income, and I do not think it is income unless he can turn it into money.

I think I put the case of a bishop. Take the Archbishop of Canterbury. This Act applies to England as well as to Scotland. Is Lambeth Palace a source of income to the Archbishop of Canterbury? He is required to have it and to occupy it for the dignity and glory of the Church, but it is no source of income. It is a source of great expenditure to him, but it is rent free, and if he was at liberty to let it, why, there may be millionaires who would give many thousands a-year to be permitted to live in Lambeth Palace. But as it is, is it assessable income upon what it might bring if it were to let? Let me take a more humble illustration. Take a housekeeper in a large house. There are many instances of housekeepers who have been housekeepers in great houses, and have died leaving large fortunes. The housekeeper in a large house, I shall say, is worth £20,000. It is not an unknown case—not an extravagant case. Take it at any sum you like which yields her an income just short of £400 a-year. But the old lady is provided with a valuable bedroom and sitting-room in the house, and is provided with her breakfast, dinner, and supper. Are these part of her income so that they would be assessable to income-tax? They are very pleasant to the old lady. She would not like to live anywhere else—she has been living there all her life—and it would be contrary to common sense, according to the view of the Lord Justice-Clerk, to consider it anything but an accommodation and an emolument of the office. But is it not rather contrary to common sense to say that a servant in a house, who is required to give her attendance there, and the accommodation for whom is provided just that she may give her attendance there and perform the duties of her office, has that accommodation as part of her income? If you calculate it at only £10 or £20 a-year, it might make all the difference between her being assessed upon £400 a-year as the return from her invested capital and having £120 of a deduction.

We are getting into all these cases, and I for myself must give my opinion quite distinctly to the effect that accommodation in premises where business is carried on, and provided for the purpose of carrying on that business according to the arrangements which are made for it, is not income upon the part of the official who occupies that in order to discharge his duties there. The official here is occupying these premises in order to discharge his duties there. It is the bank arrangement. They find that they can most profitably carry on the business of the bank if they provide premises in which this official shall be constantly present in order to perform their business there. That may be convenient for him or not according to his domestic surroundings, tastes, or habits, but I think it is not income.

Now, a distinction was pointed out between being assessable to the tax and being taken account of in bringing the income up to £400 a-year or over £400 a-year although not assessable. I think the matter was adverted to in argument, but I do not think it was dwelt upon, and I do not think it is tenable. If it is income, if it is profit, gain, or emolument, it is assessable; and my opinion that it is not is upon the ground that it is not income, profit, or emolument—is not of that nature at all. If it were that, it would be assessable. If it is not that, how is it to be taken account of? Under the words "income from all sources?" Why, any income you choose to think of is from some source, and "income from all sources" is just income from any source you please to instance. My view is that it is not income from any source. I heard the suggestion made, and I notice it in case it may be adverted to, that income from abroad, although not assessable here, might be taken account of in considering whether the person's income amounted to £400 a-year or not. I concede that. We do not need to determine that,

and it would probably be improper to express any decided opinion upon it as it does not arise. But assuming that, that is only where there is no objection to its being assessed as income where it is income, profits, emoluments, or whatever language you choose to apply to it, and no reason for not assessing it except that it comes from abroad. How would that help the argument? This does not come from abroad. If it is income or emolument it is assessable, not merely to be taken into account, but it is assessable, and, in the other case, if the only objection to its being assessed is that it comes from abroad, then it is income or emolument. But if it were of this character, being abroad would not matter in the least degree. In the case of a Frenchman here, who had a situation in France, where he had a free house or accommodation upon the business premises where he was to be during that period of the year when he was performing his business, the question would just arise—is that income? In my view it would not be income. Therefore I do not see how that really bears upon the matter. If it comes from abroad, and the only objection to assessing it is not that it is not income, but that it comes from abroad, then it does not aid the argument in the least any more than this money which is rated otherwise, and paid by retention of income from invested capital. That is taken account of in considering whether the income amounts to £400 a-year or not. Here, admittedly, the income is below £400 a-year if the house is not income. It is above £400 a-year if it is. I am of opinion that the house is not income, and that therefore the income is under £400 a-year, and that the abatement demanded ought to be allowed.

LORD RUTHERFURD CLARK—I concur with your Lordship in the chair.

LORD ADAM—The question in this case is, whether Mr Tennant's income from all sources amounts to less than £400 per annum, and that depends upon whether the annual value of the bank house, which is stated to be £50, and is occupied by him rent free, is to be reckoned as part of his income.

Prima facie it would not occur to me that a person's income was increased by his occupying a house rent free. His income no doubt would be more valuable to him by the extent to which he did not require to expend it on house rent or other necessaries, but I do not see that the amount of his income would be thereby in any way altered although his expenditure would be less.

But however that may be, the question must depend for its solution upon the terms of the assessing Acts. Mr Tennant's income is derived from several sources, but it appears to me that that part of it which he derives from the bank falls to be assessed under Schedule E.

The duties granted by that schedule are directed by rule 1 to be charged on persons having, using, or exercising the offices or employment of profit mentioned in the said schedule, for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices or employments. Rule 3 specifies these offices and employments of profit, and among these there is included any office or employment of profit held under any public corporation or society whether corporate or not corporate.

Mr Tennant holds an office or employment of profit under the Bank of Scotland, which is a public corporation, and he therefore falls to be assessed under this schedule as regards his income from that source. If that be so, then I think he is not assessable under Schedule D, because the duties granted under that schedule only apply to every description of property or profits which shall not be contained in either Schedule A, B, or C, and to every description of employment of profit not contained in Schedule E. If this case were within Schedule D at all it would fall within the second case, but that case relates only to the duty charged in respect of professions, employment, or vocations not contained in any other schedule of the Act. But if I am right in thinking that Mr Tennant's employment of profit is contained in Schedule E, then it does not fall within Schedule D.

In my view, therefore, we have only to consider the terms of Schedule E. Now, Schedule E declares that the duties shall be charged on the persons holding such offices or employments, "for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments," &c. I think that if the annual value of the house is to be treated as assessable income it must be brought under one or other of these words. Now, the word "salary" seems to me to imply a money payment. If Mr Tennant were asked how much he got from the bank, he would probably, and I think quite correctly answer, so much salary and a free house. So the words "fees" and "wages" imply money payments, and can have no reference to the annual value of the house. The next word is "perquisites," and I think that if it had been intended that such advantages or emoluments as a free house should be treated as assessable income that it would have fallen under this word, but rule 4 explains what we are to regard as "perquisites" in the sense of the Act. It is there said that "the perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable, either by the Crown or the subject, in the course of executing such offices or employments." Now, this free house may be said to be in one sense an emolument received by Mr Tennant in respect of his office, but does it at all answer the description of an emolument payable by the Crown or the subject? Is it possible to say that the annual value of the house is paid by the bank to Mr Tennant? I think not. I cannot think therefore that the annual value of the house falls under the word "perquisites" as interpreted by the statute.

The only other word used is "profits," and it also appears to me to refer to money only. I think accordingly that the Act treats as income only money payments made to the recipient, or, it may be, immediately convertible into money.

The manner in which the duties are directed to be dealt with in rule 5 also appears to me to point in the same direction. That rule declares that in all cases when any salaries, wages, or other perquisites or profits shall be payable at any public office, which includes such an office as the Bank of Scotland, the duties chargeable under the Act in respect of such salaries, fees, wages, perquisites, or profits shall be detained and stopped out of the same, or out of any money which shall be payable upon such salaries, fees, wages, perquisites, or profits, and be applied to the satisfaction of the duties on such offices or employments in the manner directed by the Act.

I do not see how the duties could be detained or stopped out of perquisites, emoluments, or profits which are not money perquisites, emoluments, or profits.

For these reasons I am of opinion that the annual value of the house in question ought not to be reckoned as part of Mr Tennant's income assessable for income-tax, and that therefore the deliverance of the Commissioners ought to be affirmed.

I only wish further to add, that I doubt whether the house ought to be considered an emolument at all, or whether it is not more of the nature of a burden. It is true that its annual value is stated in the case to be £50. It is not stated what that annual value is, but I suppose it is the value appearing in the valuation roll, or the value which such a house would fetch in the market. If that be so, and if the house is to be treated as an emolument of the office, then I think that that is not the true criterion of value in this case. The question is, what is the value to Mr Tennant? and looking to the terms and conditions on which he is bound to occupy the house, its value to him cannot possibly be the same as if he were free to let in the market or turn it into money.

LORD M'LAREN—I concur in the opinion of the Lord President. I wish only to add one observation in order to make it quite clear that in my opinion the question does not depend on the possibility of assessing the bank agent in respect of his occupation of the bank house. The bank agent is not entitled to claim the benefit of the statutory abatement unless his "income from all sources" is less than £400 per annum. The word "income" is not here used in any technical sense. In my opinion it includes income from foreign estate, although such estate may not be assessable under the Income-Tax Acts, and I see no reason why "income" in this use of the word should not include income derived from estate within the United Kingdom, although the enjoyment of such estate may not in that particular case be assessable for income-tax. I only use this illustration to show that there may be income which is not assessable, and yet which everyone would admit ought to be taken into account in considering whether the abatement can be claimed.

The question is, whether the occupation of the bank house is a source of income in the sense of the statute? It is certainly a source of income in the economic sense. Its value to the agent is £50 per annum, which I take to be part of his income although it comes to him not in the form of money but of money's worth. I cannot agree that the conditions of the bank agent's occupancy are comparable with domestic services. I think the bank agent is not in the position of a person whose income from all sources is less than £400 a-year, and he is therefore not entitled to the abatement given to persons in that position.

LORD TRAYNER—The appellant Mr Tennant is agent for the Bank of Scotland in Montrose, and receives from the bank a yearly salary, or as it is called in the case before us, "a stated income," of £300. He has income from other sources amounting to £74. As bank agent he has also the occupancy as a dwelling-house of part of the bank's premises, and this house is said to be of the yearly value of £50. Mr Tennant maintaining that his income from all sources does not amount to £400, claims that in estimating the amount of income-tax payable by him he shall have the abatement allowed to those persons whose income does not amount to £400 per annum. This claim the Commissioners have allowed, and the question we have to decide is whether the determination of the Commissioners is right.

If the yearly value of the dwelling-house is regarded as part of Mr Tennant's income, then he is not entitled to any abatement, for in that case his income exceeds £400 a-year. On the other hand, if the value of the house is not regarded as part of his income, Mr Tennant is entitled to the abatement which he claims.

I think it of importance to keep in view the conditions under which Mr Tennant occupies the house in question. It is not optional to him to occupy the house or not according as his desire or convenience dictates, It is required of him "as part of his duty" to occupy the house as custodier of the whole premises belonging to the bank, and "for the transaction of any special bank business after bank hours;" he is not permitted to vacate it even for a temporary period without the special consent of the directors; he may not sublet the whole or any part of it; he must not use it for other than the bank's business; he may be required to remove from it, even while he remains the bank's servant, "at any time;" and if he ceases to be the bank's servant he is obliged "forthwith to flit and remove" from the premises. I note these facts to show that the nature and conditions of Mr Tennant's occupancy are very different from the usual conditions attending the ordinary tenancy of a dwelling-house.

They appear to me to show that the occupancy of the house is not in any sense an emolument or benefit attached to the office which Mr Tennant holds, but rather that such occupancy is a condition or obligation which must be observed and fulfilled by him (along with others, no doubt) in order to his earning the salary of £300 a-year which the bank pays him for all the services he renders or duties he performs. His occupancy of the house as custodier of the whole bank premises, and for performance of bank business after bank hours, is just as much a part of his duty or service in return for which his salary is paid as his occupancy of the agent's or manager's room in which he performs bank business during bank hours.

Apart from this view, and assuming it to be unsound, the question remains, Under which provision in the statute is Mr Tennant chargeable for the value of the house as income upon which income-tax is chargeable? In *Russell's* case, 14 R. 528, and 15 R. (H. of L.) 51, the Lord President expressed the opinion that it falls within the provision of Schedule E, while in the same case in the House of Lords Lord Herschell said "that the liability, if it exists, is not under Schedule E, but under Schedule D, case 2." I am humbly of opinion that the Lord President's view is the right one, at all events in so far as the salary derived from the bank is concerned; but as this difference of opinion has been expressed, both schedules must be examined to see under which, if either, the liability exists. Schedule E provides that income-tax shall be exigible from "all salaries, fees, wages, perquisites, or profits" accruing from employment. I think it plain that the words "salaries, fees, wages" mean nothing else than money payments received by the servant in return for his service, and the Lord President has clearly shown in *Russell's* case that "profits" mean also pecuniary gain. "Perquisites" might be regarded in some circumstances as including something other than money payments. But the statute interprets this word so that there is no room for doubt as to what it means. "The perquisites (rule 4) to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable either by the Crown or the subject," &c. So that perquisites, just like salaries, fees, wages, and profits, are things payable to the recipient. Now, the right or privilege or duty of occupying the house in question cannot be said to be anything payable to Mr Tennant, and therefore in my opinion there is no liability imposed on him for income-tax in respect of the value of the house in question under Schedule E.

Under Schedule D (case 2) income-tax is chargeable on "the full amount of the balance of the profits, gains, and emoluments of such professions, employments, or vocations, after making such deductions, and no other, as by this Act are allowed," &c. Here again the words used (which are synonymous) to designate the kind of income which is chargeable are words descriptive of money payments. They represent just the money profits or gains derived from the profession or vocation. It is out of them that those sums are paid, expended, or disbursed which are allowed as deductions in estimating or ascertaining the net income on which duty is to be paid. I think it impossible to read the Income-Tax Acts in any other sense than as meaning that income-tax, or money tax, is to be chargeable on and paid in respect of and out of the money gained by the person chargeable. The right to occupy the house in question cannot be so described. It is not, in my opinion, in any proper sense income, and I am of opinion therefore that the determination of the Commissioners is right.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for Inland Revenue—Sir C. Pearson, Sol.-Gen. — A. J. Young. Agent — David Crole, Solicitor for Inland Revenue.

Counsel for Tennant—Murray—Guthrie. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, January 27.

FIRST DIVISION.

NORTH OF SCOTLAND BANK *v.* HARRISON.

Diligence — Messenger-at-Arms — Sheriff Officer—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 19.

The North of Scotland Bank stated that they held a decree of removing against John Harrison, merchant in Lerwick, and his wife, Mrs Andrina Bruce or Harrison, and that the said decree contained a finding for expenses upon which they desired to charge the defenders. They further stated that there were no messengers-at-arms resident either in Orkney or Shetland, and that the nearest was at Wick, a distance of 150 miles from the defenders' residence. Under the Court of Session Act 1868, sec. 19, a sheriff-officer was authorised to execute a summons but not diligence. The petitioner prayed for authority to the sheriff-officer to charge the defenders, and the Court, following the authority of *Schweitzer*, Oct. 27, 1868, 7 Macph. 24, *granted* the prayer of the petition.

Counsel for the Petitioner—Ure. Agent —Alex. Morison, S.S.C.
