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.

Thursday, January 29.

SECOND DIVISION.

[Lord Trayner, Ordinary.

CUNNINGHAM *v.* BROWN.

Sale or Joint-Adventure—Agreement between Author and Publisher.

An author and a publisher entered into an agreement for the publication of a treatise, the author undertaking to provide the work and drawings, the publisher taking all the risk of publication and paying the author half the profits if the publication was successful. The edition was fixed at 1000 copies. While a considerable part of the edition was still unsold the publisher became bankrupt, and his trustee in bankruptcy sold it to another bookseller and publisher at a price considerably below the selling price of the work, and offered the author half the profit actually realised.

In an action of accounting between the author and the trustee—*held* (following the case of *Venables* v. *Wood*, 1 D. 659) that as the transaction between the author and the bankrupt was a sale and not joint-adventure, the defender was justified in the course he had taken, and the action *dismissed.*

In 1878 D. J. Cunningham, Professor of Anatomy, Trinity College, Dublin, wrote a medical text-book entitled, "The Dissector's Guide," and made an arrangement for its publication with Maclachlan & Stewart, booksellers and publishers, Edinburgh, in these terms:—"1. We agree to relieve you of all risk attending the expense of paper, printing, engraving, woodcuts, and advertising, the drawings for the woodcuts to be furnished by you free of all expense. 2. The preceding expenses being paid by us, they are to be charged against the book, and the proceeds of sales in the first instance are to be placed to the credit of the aforesaid charges until liquidated, the surplus thereafter to be divided between the author and the publisher in equal proportions. 3. Paper, printing, and engraving are to be charged at the invoiced prices. 4. Statements of sales to be made up annually, and all copies sold are to be accounted for at the usual trade sale price, 25 copies to be reckoned as 24. 5. The edition to consist of 1000 copies."

The book was published in three parts, and as the first edition of the first part was exhausted, the parties entered into another agreement in 1888 for the publication of a new edition. This agreement was similar to the first, with this addition:—"1. That Maclachlan & Stewart were to receive a publisher's commission of 10 per cent.; and 2. That a sum of £20 was to be paid by them to the pursuer's assistant for work done by him in connection with the work." This edition was printed and was in the hands of Maclachlan & Stewart in October 1889. In the following month, when very few copies had been sold, Maclachlan & Stewart became bankrupt. Richard Brown, C.A., Edinburgh, was appointed trustee on their sequestrated estate, and in the negotiations which took place between him and Dr Cunningham, he wrote on 26th March 1890 to Mr Lindsay Mackersy, Dr Cunningham's agent:—"I am unable to formulate any further proposal consistent with the equitable rights of parties; and in order to obviate any possible misunderstanding in the future, I here repeat the various proposals I have made with a view to settlement, and intimate that I shall found upon these in any future proceedings which may take place. 1st, I offer Mr James Thin, bookseller and publisher, Edinburgh, to take the place of Maclachlan & Stewart under the said agreements, leaving Professor Cunningham precisely in the same position with him as he was with Maclachlan & Stewart. If required, Mr Thin will find security; and if Dr Cunningham has any reasonable objection to Mr Thin, I shall endeavour to find another publisher to suit him. 2nd, I offer to hand over the whole stock of books to Dr Cunningham on receiving payment from him of the value which may be placed, by any practical valuator or valuators mutually chosen, upon the publishers' interest therein, as defined by the agreements and the course of dealing. 3rd, I offer by the hands of Mr Thin to purchase Dr Cunningham's interest at a similar valuation, the only condition I attach to this offer being that Dr Cunningham shall not, in consequence of his interest in the future sale of the book being bought up, be thereby left free to bring out any subsequent edition or any work calculated to damage the sale of any of the parts of the book published by Maclachlan & Stewart until the copies of that part have been sold, or the sale thereof in the ordinary course of trade has practically ceased." Mr Lindsay Mackersy replied—"I offered to give you £100 for any interest you may have in the surplus stock; this offer you declined. I offered to take £100 for any interest Professor Cunningham may have in the surplus stock; this offer also you declined. I offered also to divide the surplus stock, leaving each party free to do what they please with their share; this offer you also declined, except upon conditions which Dr Cunningham could not think of agreeing to." Upon 10th June 1890 the trustee wrote—"As my efforts to make an arrangement with Dr Cunningham have failed, and as you have intimated that it is unnecessary to make any other proposal unless on the lines formerly indicated by him, I have now sold the remaining copies of the book to Mr James Thin, and will account to Dr Cunningham for his interest in the proceeds in due course." The trustee on 12th July rendered an account, and sent a cheque for the balance in Dr Cunningham's favour of £17, 1s., representing half the profits actually realised less certain debts due by Dr Cunningham to the publishers. The cheque was returned, and Dr Cunningham raised this action of accounting against Mr Brown.