the case I do not think that the defender is much to be pitied. The garden has evidently proved to be a good speculation; and although the pursuers sought to remove him from the cottage summarily they have allowed him to occupy the garden for a full year after he ceased to be in their service. On the whole matter, although I am very much dissatisfied with the way in which the proof has been taken (many matters which could easily have been made clear being left uncertain) and with the carelessness of the returns for the valuation roll, I am satisfied that the good faith of the agreement was that the defender's occupation of the cottage and garden was to terminate with the defender's service as gardener.

LORD YOUNG was absent.

The Court recalled the interlocutor of the Sheriff, found in fact and in law in terms of the interlocutor of the Sheriff-Substitute, of 27th February 1900, and assoilzied the defender.

Counsel for the Pursuers and Respondents — Jameson, Q.C. — M'Lennan. Agents — Mackenzie, Innes, & Logan, W.S.

Counsel for the Defender and Appellant — Campbell, Q.C. — Hunter. Agent — Thomas Liddle, S.S.C.

Saturday, November 24.

SECOND DIVISION.

[Exchequer Cause.

THE SCOTTISH WIDOWS' FUND AND LIFE ASSURANCE SOCIETY *v.* ALLAN.

Revenue — Inhabited-House Duty—Exemption of Business Premises—Mutual Insurance Society — Customs and Inland Revenue Act 1878 (41 *Vict. cap.* 15), *sec.* 13, *sub-sec.* 2—"*Profit*"—*Occupied* "*Solely.*"

The Customs and Inland Revenue Act 1878, section 13 (2), provides that "Every house or tenement occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from" inhabited-house duty.

An insurance society, the membership of which consisted exclusively of holders of mutual insurance policies and purchasers of annuities, and which did not itself directly insure or grant annuities in favour of persons other than members, derived a large part of its income from the investment of its accumulated funds, and also did business with strangers to the society by re-insuring the risks of other insurance companies and by the purchase of reversions.

Held that the premises occupied by the society exclusively for the purposes of its business were entitled to exemption from inhabited-house duty.

At a meeting of the Commissioners for General Purposes, acting under the Property and Income-Tax and Inhabited-House Duty Acts for the County of Edinburgh, held at Edinburgh on 26th July 1900, the Scottish Widows' Fund and Life Assurance Society appealed against an assessment for the year 1898-99 of £45, being inhabited-house duty, at the rate of 9d. per £ on £1200, the annual value of the premises at 9 St Andrew Square, Edinburgh, owned and occupied by the Society.

The following facts were stated in the case as admitted:—"The premises, . . . with the exception of the portion used by the caretaker as his residence, are occupied by the Society exclusively for the purposes of its business. The Society is now constituted and regulated by various private Acts of Parliament. "The Society has no share capital and there are no shareholders. Its membership consists of the holders of policies of life insurance effected with the Society, whether these carry a right of participation in the surplus assets of the Society or not, and of the purchasers of annuities. The purchasers of annuities have no right of participation in the surplus assets of the Society. The Society does not insure or grant annuities in favour of persons other than its members, except in the case of re-assurances of other companies. . . . . Policy-holders may surrender their policies for a money-payment, or they may assign or transfer their interest in the said Society. . . . In investing its funds the Society, *inter alia*, purchases stock, shares, and securities. At the end of each period of seven years there is an investigation into the affairs of the Society, and if the total sum of the assets exceed the total sum of the liabilities, an amount not more than the excess of the assets is allocated among the holders of participating policies by way of additions to the sums assured, but with the option of accepting the present cash value of these additions, or of having them applied in reduction of future premiums. In the case of policies which become claims during any of the septennial periods, additions may be and actually are made in anticipation of the surplus to be ascertained at the end of the period. The holders of participating policies constitute approximately 95 per cent. of the whole membership of the Society. The non-participating policy-holders constitute rather less than five per cent., and the annuitants rather less than one per cent. At the end of 1898 the funds of the Society amounted to £14,544,766. During the year 1898 the Society received—(1) Income from investments, £558,814; (2) Premiums in respect of policies of assurance, £998,702; (3) Sums paid for the purchase of annuities granted by the Society, £12,811. Income-tax is paid upon the whole of the income received in the United Kingdom from the Society's invested funds. This income, so far as received from the United Kingdom without deduction of income-tax, is the subject of direct assessment. There is no other in-

come-tax assessment made upon the Society."

It was also matter of admission that the Society had power to sell and purchase reversions, and that it had from time to time, although not in the year under assessment, exercised this power.

The appellants maintained that the premises occupied by them were exempt from inhabited-house duty upon the ground — (1) that they were occupied solely for the purposes of the business of life assurance; (2) that the business was to a very considerable extent one by which the occupier sought a profit in the restricted sense of the Income-Tax Acts; and (3) that the whole business was carried on for profit in the ordinary sense of the word; and that the premises were thus within the exemption provided for in section 13, sub-section 2, of the Customs and Inland Revenue Act 1878.

The Surveyor of Taxes, while admitting that the premises charged to duty were occupied solely for the purposes of the Society's business, contended that the business was not of such a character as to answer to the definition of a "business by which the occupier seeks a livelihood or profit in the sense of the Act."

The Commissioners determined that the premises did not come within the exemption granted by the statute, and dismissed the appeal. The appellants obtained a case.

The Customs and Inland Revenue Act 1878, sec. 13, sub-sec. 2, enacts—"Every house or tenement which is occupied solely for the purpose of any trade or business, or of any profession or calling, by which the occupier seeks a livelihood or profit, shall be exempted from the duties by the said Commissioners, upon proof of the facts to their satisfaction, and this exemption shall take effect, although a servant or other person may dwell in such house or tenement for the protection thereof."

Argued for the appellants—The Commissioners were wrong in holding that the appellants' business was not carried on for profit. One of the main objects of the Society was the investment of its large accumulated funds, and the interest and dividends derived from that source formed more than a third of its annual receipts. The Society was in fact a vast partnership for investing money to the greatest advantage. These interests and dividends were clearly "profits," and were assessed for income-tax as such. The labour of dealing with these funds was proportionally greater than that involved in dealing with the contributions of members. The only question decided in the case of the *New York Insurance Company* v. *Styles* [1889], 14 A.C. 381, relied on by the Surveyor, was that surplus premiums returned to the members of a mutual insurance company were simply returned capital and not assessable for income-tax; it did not decide that such an insurance company did not trade for profit; —indeed Lord Watson's opinion was to the effect that it did so. In *Muat* v. *Shaw Stewart*, January 27, 1890, 17 R. 371, it was held that a house used by a large landowner for the management of his estates was not within the exemption. The *species facti* here was totally different. Apart from the investment of their funds, the Society sought profit within the strict limits of life insurance business, for they re-insured risks of other companies, and also purchased reversions. That was clearly profit-seeking business—*England* v. *Webb* [1898], A.C. 758. 2. The contention of the Surveyor that the premises did not fall within the exemption unless they were "occupied solely" in a business by which the occupier seeks profit was not well founded. The word "solely" referred only to the word "occupied" which preceded it. The Surveyor's reading would exclude the premises from the exemption if even the smallest amount of gratuitous or non-profit seeking work was done therein.

Argued for the Surveyor of Taxes—The Commissioners' determination was right. 1. The appellants could not claim the exemption unless their business was carried on for profit—*Muat, supra*; *Carter* v. *London Library*, 1890, 2 Tax Ca. 594. The appellants' business was not carried on for profit. The history of the legislation with regard to these duties showed that those exemptions were designed to favour commerce. The appellants were a mutual insurance society, whose main business was the insurance of its own members. It had no shareholders, and the amount of its business with strangers, as in the purchase of reversions, was trifling. The great bulk of its income was derived from the premiums paid by members, and the surplus thence arising was decided in the case of *Styles*, *supra*, not to be "profits." The income derived from investments was not "profits" in the sense of the Income-Tax Acts, but was separately dealt with and assessed—*Clerical, Medical, and General Assurance Company* v. *Carter* [1889], 22 Q.B.D. 444, *per* Esher, M.R.; *Glasgow Water Commissioners* v. *Inland Revenue*, May 26, 1875, 2 R. 708; *Glasgow Water Commissioners* v. *Miller*, January 8, 1886, 13 R. 489. The distinction between the business carried on by a proprietary company and a mutual insurance society like the appellants' was clearly recognised in *Styles*. 2. The word "solely" must be read as qualifying all that followed, *i.e.*, the premises must be occupied "solely" for the purpose of a business carried on for profit. That was the meaning of the clause according to its grammatical construction —*Smiles* v. *Edinburgh Merchant Company*, November 29, 1889, 17 R. 151. If so, then it was certain that the appellants' premises did not fall within the exemption, for the greater part of their business was not carried on for profit.

At advising—

LORD TRAYNER — The appellants have been assessed for inhabited-house duty in respect of the premises occupied by them for the purposes of their business, and they claim to be exempted from that tax in respect of the provisions of section

13th (2) of the Customs and Inland Revenue Act 1878. That section is quoted in the case, and need not be repeated here, but generally, so far as we need consider it, it provides that the exemption from inhabited-house duty shall be given in the case of every house or tenement occupied solely for the purpose of any business by which the occupier seeks a profit. From what has already been said in more than one decided case, I suppose it cannot now be doubted that an insurance company carries on a business within the meaning of that word as used in the exempting provision. The respondent, however, maintains that in the case of the appellants their business is not one by which a profit is sought in the sense of the Act, and that is the question which we have to decide. The exemption must, I think, be liberally construed, but without pressing that view unduly, it appears to me that the appellants are entitled to the benefit of the exemption. That they carry on a business is clear. Is it not a business from which they seek to make profit? I can hardly suppose the business is carried on with any other view. The business of life insurance is not purely philanthropic nor charitable; if not, I can see no other reason for its existence than the seeking of profit. It certainly results in profits being made, and that to a very large extent, for the profit made by the Widows Fund (for example) from the investment of its capital alone amounts to considerably over half-a-million sterling per annum. It is said that that profit does not arise from life insurance, and that is true. But the profitable investment of the Society's funds, so as to yield profit to its members, is an integral part of the Insurance Company's business. Its members would be, and would have reason to be, dissatisfied if their capital was left uninvested, and therefore unproductive, and would be entitled to complain that the officials of the Society were neglecting the business which, *inter alia*, they were appointed for the purpose of transacting. Apart from this, the company before us as appellants insure strangers to their Society, because they re-insure risks which other offices have undertaken, and purchase reversionary rights. To what end do they transact this business if not for the purpose of gaining profit? I do not regard the case of *Styles*, relied on by the Surveyor of Taxes, as deciding anything adverse to the contentions maintained by the appellants. In that case it was held that the bonus additions added in participating policies were not profits on which income-tax was payable; that such bonuses were in fact a return of capital to the members of the society, which had been contributed beyond the amount necessary for the Society's operations. There was nothing else in question there, and nothing else decided. Lord Watson said, in the course of his opinion, that with the profits derived from the sale of annuities, &c., "and with the income derived by the company from its investments, we have no concern." The appeal in his view was limited to the question whether bonus additions on participating policies were profits within the meaning of the Income-Tax Act of 1853. Accepting that decision as conclusive of the matter there decided, it does not determine the question before us. It may very well be that certain returns are not profits in the sense of the Income-Tax Acts and yet may be profits in another sense. If a man sells property or stock (that not being his trade or business) for a larger sum than he paid for it, he makes a profit to the extent by which the sale price exceeds the purchase price. But such advantage as is thus gained is not "profit" in the sense of the Income-Tax Acts.

But I take it as settled that the bonuses which from time to time are paid to policyholders, or added to the amount insured, are not profits on which income-tax can be demanded. It is not so clear, however, that a society which exists, *inter alia*, for the purpose or with the intention of procuring such an advantage for its members, is not carrying on a business which seeks to make profit within the meaning of the exempting clause.

It was argued for the Surveyor that the appellant companies were not proprietary but mutual insurance societies, but I fear I did not quite comprehend what this distinction pointed to. That distinction was certainly recognised in *Styles*' case for the purpose of showing that any sums paid to the share-holders of a proprietary company were profits liable to income-tax, whereas payments to members of a mutual insurance society were or might be different, as not being profits but returned capital. But as regards inhabited-house duty I cannot see the importance of the distinction. A mutual insurance society is a company consisting of partners just as is a proprietary company. The members are associated on different conditions no doubt, but in each case they form a company preserving (according to our law) a separate and independent *persona* from the members who constitute it. The members in each may ultimately be called on to liquidate the company's obligations—but not in the first instance—and the company alone can vindicate its rights, which an individual member cannot. The profits gained by each may be different, proceeding from different sources and differently distributed. But that is immaterial. If profits are gained by one or other, it is immaterial to the question we are dealing with whence these profits proceed, who gets them, or in what proportion. The question here is, does the Society (whether proprietary or mutual) carry on a business by which it seeks to make profit? It may make none or make much—the test is, Does it seek to make profit? and that, I think, the appellants do. For I have shown that the appellants (apart altogether from the premiums they receive and the bonuses which they give) by re-insurances, purchase of reversions, and investment of capital, all legitimate and proper parts of an insurance business, seek profit and make it.

The only point remaining to be noticed is an argument based on the construction of the exemption clause. The exemption is granted only in respect of premises "occupied solely" for the purpose of any business by which the occupier seeks profit. This, it is now contended for the Surveyor, means premises in which no business is transacted or anything done except in the pursuit of profit; that if any business whatever is done or transacted within the premises, gratuitously or otherwise than in pursuit of profit, the exemption clause does not apply. I think this reading of the clause inadmissible. The word "solely," in my opinion, only qualifies the occupation, and does not refer to or qualify the business. That is, I think, the natural and reasonable conclusion, having regard to the fact that the exemption has reference to "inhabited-house duty," and from the further fact that the sole occupation is declared to be unaffected by the circumstance that a servant dwells on the premises for the protection thereof—a circumstance which would at one time have rendered the premises liable to this tax as being otherwise occupied than for trade or business purposes. The view of the Surveyor now maintained (which does not appear to have been maintained before the Commissioners) would lead, if sustained, to curious results. A firm of chartered accountants who annually gratuitously audited the accounts of, say the Royal Infirmary, or any other charitable institution, would be liable in inhabited-house duty for their offices, because they did business there which was not done for profit. A bank in like manner would be liable for the tax if it set aside a strong room in which it deposited gratuitously the silver chests of some of its customers, thus not using their whole premises solely in the pursuit of gain or profit. I think this cannot seriously be maintained to be the meaning of the exemption clause—at all events, I think it is not its meaning.

On the whole matter I have come to the conclusion that the determination of the Commissioners is wrong.

LORD MONCREIFF—The question which we have to decide is, whether the appellant Society occupies its premises at 9 St Andrew Square, Edinburgh, solely for the purposes of a business by which it seeks a profit in the sense of the statute which at present regulates the incidence of inhabited-house duties, viz., the Customs and Inland Revenue Act 1878, section 13, sub-section (2). It is a hard saying that this Society, consisting of so many thousand policy-holders and partners, with its large staff of officials and clerks, its capital of upwards of fourteen millions, and its enormous yearly income, does not carry on business for profit. But by piecing together various decisions which have been pronounced by this Court and by the House of Lords, the Surveyor presents a case which is not free from difficulty.

I am not sure that it was seriously maintained that this is not a "business," whether carried on for profit or not. But if that argument, which I presume is founded on the case of *The Edinburgh Life Assurance Company*, 2 R. 594, is insisted on, I am not prepared to give effect to it. That case was decided upon the terms of the statute 32 and 33 Vict. cap. 14, section 11, in which the word "business" does not occur; the words being "any tenement or part of a tenement occupied as a house for purposes of trade only," &c. The 13th section, sub-section (2) of the Act of 1878 is differently expressed, the words being, "Where any of such tenements are occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit." Now, I think we are entitled and bound to give a meaning to the word "business;" and besides, it seems to me absurd to say that premises occupied for the purposes of trade on the one hand, and premises occupied for the purposes of a profession on the other, are to get the benefit of this exemption, while large undertakings like this Society, which perhaps, strictly speaking, fall neither under the category of trade nor profession, but which, to a much larger extent than most trades or professions, carry on business for profit, are to be excluded.

The Surveyor's main argument, however, was directed to showing that this is not a business carried on for profit in the sense of the Act; and this is sought to be established as follows:—(1) As regards the surplus premium income, it is said that it has been decided in the House of Lords, in the case of *Styles* v. *The New York Life Assurance Company*, 14 App. Ca. 381, that the surplus premium income of a mutual insurance company which is returned to the policy-holders is not profit; (2) As regards the interest from the invested funds of the Society, it is maintained that it also is something different from profits and gains; and (3) That as regards the purchase of reversions and re-insurances, these form a very small part of the Society's business, and must therefore be disregarded.

Thus, if the Surveyor's argument is sound the whole fabric of the Society's business, as a business carried on for profit, disappears.

In my opinion, however, for the purposes of the present question, these considerations are one and all insufficient. The case of *Styles* decided, and we must assume rightly, that for the purpose of the Income-Tax Statutes, premium income as such is to be regarded only as so much capital subscribed by the members of the Society; and that the surplus which is returned to them simply represents part of their own money which is not required for the purposes of the business, and does not constitute profit in the sense of the Income-Tax Acts.

Assuming that the reasoning of the decision applies to inhabited-house duties, surplus premium income forms only a part of the income of this and other mutual insurance societies. In regard to other sources of profit that decision has certainly no application adverse to the Society in this case. As Lord Watson says in the case of

Styles (L.R., 14 App. Ca. 393)—"Besides issuing life policies, the appellant company issues without participation sums payable at fixed periods, sells annuities, and has funds invested which bear annual interest. It is not disputed that, in so far as its transactions relate to non-participating policies, whether for life or for periods certain, and to annuities, the company carries on a trade in the same sense as any proprietary office does; or that surplus moneys arising upon these transactions are business profits, and as such are liable to income-tax. With these profits and with the income derived by the company from its investments we have no concern."

Then as to the question whether income from investments does or does not constitute profit in the sense of the enactment which we have to construe, the Surveyor's argument rests on this, that in the Income-Tax Acts interest on money is separately mentioned as a subject of taxation. The later Income-Tax Acts no doubt are so worded as to reach interest upon money lent or invested, even although the person who receives the interest may make no ultimate profit in his business—*Clerical, &c., Insurance Society* v. *Carter*, 22 Q.B.D. 449. But it does not follow that interest from investments does not constitute profit for the purposes of this enactment. The members of a mutual society have more than one object in view in joining it. One is to obtain policies upon as good terms as possible; another is to derive gain from the profitable investment of the large accumulated funds of the society. In this sense therefore I feel no doubt that interest on investments constitutes profit in the sense of the Act.

Lastly, the Society has power to deal in reversions and re-insurances, both of which involve transactions with third parties and may be expected to yield profit.

The business must be judged of as a whole, and so judged, I have no hesitation in saying that it is a business carried on for profit.

I should add that the Surveyor also relied on the case of *Muat* v. *Shaw Stewart*, 17 R. 371. That was a decision of Seven Judges, and of course we are bound by it so far as in point. While some of the *dicta* certainly support the Surveyor's argument, I do not think that I misrepresent the judgment, taken as a whole, when I say that it proceeded on this view—that the premises which were occupied in Ardgowan Square, Greenock, as an estate office were not truly occupied for the purpose of any trade, business, or professional avocation, but simply to enable Sir Michael Shaw Stewart, a private gentleman of large means and estates, to transact the business connected with the management of his funds and estates more conveniently than he could do in his own house or in that of his factor. The position of a private individual, however wealthy, dealing simply with the management of his own means and estate is surely widely different from that of a large public body like this Society, which conducts its business for purposes of profit with the aid of a board of directors and a large resident staff.

In regard to the interpretation of the word "solely," I agree with Lord Trayner, with this qualification, that there may be cases in which a substantial part of a tenement may be devoted by the same occupier to purposes in which profit is not sought, so completely unconnected with the business carried on in the remainder as to forfeit the exemption. On such a case I reserve my opinion.

I am therefore of opinion with your Lordships that the Society's premises do come within the exemption, and that the appellant Society is not liable in inhabited-house duty in respect thereof.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

Counsel for the Appellants—Dundas, Q.C. —Fleming. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for the Surveyor of Taxes—Solicitor-General (Dickson, Q.C.) — A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Wednesday, November 7.

FIRST DIVISION.

[Sheriff Court of Dumfries.

CROSBIE *v.* CROSBIE'S TRUSTEES.

Bill of Exchange—Joint Acceptors—Liability inter se — Relief—Parole Evidence—Bills of Exchange Act 1882 (45 *and* 46 *Vict. c.* 61), *sec.* 100—*Payment—Proof of Payment.*

Where one of two persons, who had both signed a bill as acceptor, claimed in the sequestration of the other to rank for the whole amount in the bill, and produced the bill in support of her claim, *held* that she was entitled, independently of the provisions of the Bills of Exchange Act 1882, section 100, to prove by parole evidence (1) that she had accepted the bill merely as cautioner for the bankrupt, (2) that the bankrupt had received the whole benefit of the bill, and (3) that she had paid the whole sum due on the bill to a bank.

Opinions reserved as to whether the 100th section of the Bills of Exchange Act 1882 applied to a case of this kind.

Bill of Exchange — Drawer Acting on Behalf of Third Party—Value—Parole Evidence—Loan—Proof of Loan.

The mother of a bankrupt claimed in the sequestration upon a bill of which she was the holder. The bill was drawn by her son-in-law upon and accepted by the bankrupt, and was endorsed blank by the drawer after the date of the sequestration. The claimant was met by the defence of no value received. The drawer admitted that in taking the bankrupt's acceptance he had acted on behalf and in the interest of the claimant.