were not bound to perform this statutory duty on Sunday; but in that case the fishermen had removed the leaders at the earliest moment they could after Sunday, which was between 2 a.m. and 3 a.m. on Monday morning. That, however, was not done in this instance, for here the respondents did not go out till 6 a.m. on Monday morning, when they went to the nets and proceeded to remove from them a large number of fish.

In the Sheriff's statement in this case he sets forth, as I have already pointed out, that owing to rough weather the fishermen could not safely remove the leaders on Saturday night, and that an admission was made at the bar on the part of the prosecutor that the respondents were under no obligation to remove the leaders on Sunday —an admission that it was quite proper to make in view of the decision in the case of *Middleton*. Then he goes on to say that there was nothing in the weather after 12 o'clock on Sunday night to prevent the removal of the leaders, nor was there any obstacle to the respondents removing them except the fact of darkness which existed for a portion of the period between midnight and 6 a.m. on Monday morning. On these facts the Sheriff found the respondents not guilty of the contravention charged.

On these facts I am clearly of opinion that the Sheriff-Substitute was wrong, and indeed I am at a loss to see on what view of the statute he proceeded in forming his judgment. It has been suggested to us that what may have been in the mind of the Sheriff and led him to give this decision was that owing to the want of light the removal could not be attempted with safety until 6 a.m. I cannot accept that suggestion, for at that time of year there is no such want of light as to justify such a conclusion. But anyone who is in the position of the respondent here finds himself *prima facie* in the wrong, and if he is going to excuse his breach of a statutory duty on the grounds of the state of the weather or the light, the onus is on him to prove these circumstances, and for his own protection he must see that these circumstances which excuse him are set forth in the stated case. No such circumstances are set forth here, the finding of the Sheriff as to partial darkness being no more than a statement of what we know from the almanac, which tells us that on the day in question the sun rose at a few minutes past 4. I am clearly of opinion that the decision of the Sheriff-Substitute was wrong, and that the respondents should have been convicted. I understand that a finding to that effect is all that the appellant asks for here.

LORD ADAM—I am clearly of the same opinion. These fishermen ought to have removed the leaders of their nets from 6 p.m. on Saturday till 6 a.m. on Monday, that being the weekly close-time, and this they failed to do; and they must therefore be convicted unless they can show good cause for their having failed to do so. If they were prevented by wind and weather, or other sufficient cause, from removing them at the proper time, they must show that they performed their statutory duty on the earliest possible opportunity. Now they have not got a finding in this case that there were any conditions of wind or weather, or other cause, to prevent the removal of the leaders at any time after Sunday at midnight, and as they delayed removing them until 6 o'clock next morning, I agree with your Lordship that no ground has been shown to us why they should not be convicted of this offence.

LORD M'LAREN—I agree with your Lordships, and with regard to the case of *Middleton*, on which for the decision of this appeal we do not require to proceed, I would desire to reserve my opinion. There was a sharp division of opinion in that case, and if the question that was there dealt with were again to come before the Court, I would desire a full discussion of the law as to Sunday labour before arriving at a conclusion. I may say that I have always regarded the question of Sunday labour as one depending mainly on contract, as, for instance, where you engaged a domestic or a farm servant for service that usually includes a certain amount of Sunday labour, the Sunday work would be held to be a term of the contract of service without the necessity of specifying it. But if the engagement were of a workman to be employed in a factory or a machine shop, where work is not usually done on Sunday, Sunday labour would not be held to be included in the contract. It is unnecessary to go into that question here, for the statutory duty was left unexecuted during at least a portion of the Monday morning. There are no facts stated in the case to excuse that omission, and therefore I agree with your Lordships that the respondents in this case should have been convicted.

The Court answered the questions in the affirmative.

Counsel for the Appellant—T. B. Morison. Agent—James Ayton, S.S.C.

Counsel for the Respondents—Hunter, K.C.—Valentine. Agent—Joseph Chalmers, S.S.C.

COURT OF SESSION.

Tuesday, November 7.

FIRST DIVISION.

[Court of Exchequer.

GRANITE SUPPLY ASSOCIATION, LIMITED *v.* THE SOLICITOR OF INLAND REVENUE.

Income Tax—Profits—Deductions—Cost of Transferring Business to New Premises—Property Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100, *Schedule D, Case* 1, *Rule* 3.

A company engaged in the business of buying and selling granite found it

necessary to acquire a larger yard. It removed stones and cranes from the old to the new yard, re-erecting the cranes there. *Held* that in estimating the annual profits for the purposes of the Income Tax Acts the company was not entitled to deduct the cost of the transference of stones to the new yard and the re-erecting of the cranes.

The Property Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts—"And be it enacted that the duties hereby granted, contained in the Schedule marked D, shall be assessed and charged under the following rules, which rules shall be deemed and construed to be a part of this Act, and to refer to the said last-mentioned duties as if the same had been inserted under a special enactment.

"*Schedule D.*

"The said last-mentioned duties shall extend to every description of property or profits which shall not be contained in either of the said Schedules A, B, C, and to every description of employment of profit not contained in Schedule E, and not specially exempted from the said respective duties, and shall be charged annually on and paid by the persons, bodies politic or corporate, . . . receiving or entitled unto the same. . . .

"*Rules for Ascertaining the said last-mentioned Duties in the Particular Cases herein mentioned.*

"*First Case.*—Duties to be charged in respect of any trade . . . not contained in any other schedule of this Act.

"*Rules.*

"*First.*—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, . . . upon a fair and just average of three years . . . and shall be assessed, charged, and paid without other deduction than is hereinafter allowed. . . . . .

"*Third.*—In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from . . . such profits or gains, on account of any sum expended for repairs of premises . . . beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made; . . . nor for any sum employed or intended to be employed as capital in such trade . . . nor for any capital employed in improvement of premises occupied for the purposes of such trade. . . ."

The Granite Supply Association, Limited, 81 Union Street, Aberdeen, appealed against a deliverance of the Commissioners for General Purposes of the Income-Tax Acts, &c., for the County of Aberdeen.

The case stated by the Commissioners was as follows—"The Granite Supply Association, Limited (hereinafter referred to as the company), appealed against an assessment for the year ending 5th April 1905, on the sum of £1814 (less allowance of £75 for tear and wear of machinery) made upon it under Schedule D of the Income-Tax Acts in respect of the profits of the business carried on by it.

"The assessment was made under 5 and 6 Vict. cap. 35, sec. 100, Schedule D, first case; 16 and 17 Vict, cap. 34, sec. 2, Schedule D; and 4 Edward VII., cap. 7, sec. 7, and computed on the average of the balance of the profits of the three years ended 31st May 1903.

"1. The following facts were admitted or proved—

"(*a*) The company was incorporated on 1st June 1897, under the Companies Acts, and its registered office is situated at 81 Union Street, Aberdeen.

"(*b*) The object for which the company was established, as set forth in its memorandum of association, is the buying and selling of granite.

"(*c*) The company carried on its business in a yard at Palmerston Road, Aberdeen, until Whitsunday 1903. It was found necessary to acquire a larger yard. The company did so in January 1902 at Urquhart Road. Betwixt January and Whitsunday 1903 the company removed stones and cranes from the yard at Palmerston Road to the yard at Urquhart Road, re-erecting the cranes in the latter yard.

"(*d*) A sum of £444, 19s. of expenditure, termed 'flitting expenses,' appeared in the company's accounts for the year ended 31st May 1903, which sum is made up as follows—

"(1) Jan. 23. Expense of telephone at Urquhart Road, .	£9	10	0
"(2) Feb. 28. Mr Wisely, a/c carting to new yard, ...	20	0	0
"(3) Mar. 28. Do. do.	50	0	0
"(4) April 7. J. M. Henderson & Co., taking down and re-erecting first crane, ...	27	12	0
"(5) May . Do. do. second crane	27	12	0
(The cost of the concrete foundations for cranes is not included above, having been charged to capital account.)			
"(6) May . Proportion of outward cartages directed by resolution of directors of 23rd May 1903, to be credited to outward cartages and charged to flitting account, ...	135	5	0
"(7) May . Proportion of rent and taxes do. to be credited to rent and taxes account and debited to flitting account, .	100	0	0
"(8) May . Proportion of coals and wages do. to be credited to general expenses (say £25) and wages (£50), and debited to flitting account, . . .	75	0	0
	£444	19	0

"(*e*) The said sum of £444, 19s. was not allowed as a deduction in arriving at the amount of the assessment.

"(*f*) A copy of the company's report and accounts for the year ended 31st May 1903 is appended hereto and forms part of this case.

"2. The company maintained that the whole of the expenses were incurred solely

in the carrying on of its business, and were properly and necessarily deductible before the profits could be ascertained.

"3. The Surveyor, Mr W. S. Kitton, offered no objections to the allowance of items Nos. (1), (6), (7), and (8) of paragraph (*d*) of 1, which, though termed 'flitting expenses,' represent the expense of carrying on the business of the new yard, but contended that the initial outlay in preparing the new yard for business, that is, the cost of transferring the stones from the old yard to the new yard and of the re-erection of cranes, items (2), (3), (4), and (5) of paragraph (*d*) of 1, was not an allowable deduction, as it was not incurred in carrying on business, but in preparing to carry on business.

"4. The Commissioners, on consideration of the evidence and arguments submitted to them, disallowed items Nos. (2), (3), (4), and (5), amounting *in cumulo* to £125, 4s., allowed items Nos. (1), (6), (7), and (8), amounting *in cumulo* to £319, 15s., and reduced the assessment to £1688, 16s.

"5. . . . . ."

Argued for the appellants—The whole of the items in the "flitting account" formed proper deductions from the gross receipts before ascertaining the profits for the year. They were all expenses necessarily incurred in earning the profits for the year, and should properly be debited against profit. They were incidents in the conduct of the company, and thus distinguished from expenses incurred in, for example, sinking a coal pit. A mine with new pits open had an increased earning capacity, but in this case, when the transference of stones, &c., was completed the earning capacity remained exactly as before—*Addie* v. *Solicitor of Inland Revenue*, February 16, 1875, 2 R. 431, 1 Tax Cases, 1, 12 S.L.R. 282; *Gresham Life Assurance Society* v. *Styles*, May 31, 1892, 3 Tax Cases, 185; Property Tax Act 1842, sec. 159.

Argued for the respondent—The expenditure was not necessarily incurred to secure the profits of one year. The outlay was part of the cost of acquiring new premises. By rule 3, case 1, no deduction was allowed for improvements. Here the improvement consisted in the removal to new and more commodious premises. The expense incurred in removing should properly be charged to capital.—*Smith* v. *Westinghouse Brake Company*, June 29, 1888, 2 Tax Cases, 357.

LORD PRESIDENT—The point in this case is very short, and I think rightly determined by the Commissioners. The appellants, in January 1902, finding it necessary to acquire a larger yard changed their place of business. In their accounts they inserted a separate item called "flitting expenses," which they proposed to deduct before striking their profits for the year. I express no opinion as to whether this was not a proper book-keeping operation as between the company and its shareholders, but that is not the question before us. We have to decide whether these particular items form a proper deduction under the rules in the cases of the Income Tax Acts. The controversy has been narrowed to four particular items, all connected with the cost of the transference of stones to the new yard and the re-erection there of cranes which had been in the old. Now, I think that, looking to the phraseology of rule 3 of the first case, your Lordships can have no doubt that, supposing these parties had not had a crane, and in fitting up their new yard had found it necessary to buy one, its cost is not a deduction which would have been allowed. Such a deduction would clearly have been struck at under the words of rule 3. It seems to me to make no difference if, instead of having to buy a crane completely new, they had a crane at the old yard, but yet had to incur a certain expense in putting it up as a working crane in the new yard. The character of the expense seems to me to be unaltered from what it would have been if they had had to pay a larger sum for a new crane, and if this is so the question is at an end. I am therefore of opinion that the Commissioners were perfectly right.

LORD M'LAREN—I am of the same opinion. I think that the cost of transferring plant from one set of premises to other and more commodious premises is not an expense incurred for the year in which the thing is done, but for the general interest of the business. It is said that this transference does not add to the capital value of the plant, but I think that is not the criterion. These are costs which in a strict accounting would not be properly set against the income of the year and which yet do not add to the capital value. Suppose a person is so imprudent as not to insure his business premises or his goods and they are destroyed by fire and he has to replace them, he would not in a question with the Revenue be allowed to charge the reinstatement against the income of the year, even if such reinstatement did not add to the value of his property, but only sufficed to maintain it according to its original value. I agree, therefore, that the cost of re-erecting the cranes and the cartage of materials, being a thing not done for the benefit of the trade of the particular year, is not a proper deduction from income.

LORD ADAM and LORD KINNEAR concurred.

The Court adhered to the determination of the Commissioners.

Counsel for the Appellants—Crabb Watt, K.C.—A. R. Brown. Agents—Paterson & Gardiner, S.S.C.

Counsel for the Respondent—Solicitor-General (Clyde, K.C.)—A. J. Young. Agent —Party.