The Lord Ordinary allowed proof upon the point whether Geddes had a *locus standi* to make objections or not. Your Lordships have not been asked to interfere with that allowance, and accordingly I abstain from expressing any opinion upon it.

As to the charges of ignorance, prejudice, and bias. The only facts alleged in support of these charges was that the Magistrates had before the Court was held formed and publicly declared their opinion that there were too many licensed houses, and had received deputations of persons hostile to any licences. They were entitled to do both these things. Their duty is in the main administrative. And in coming to an administrative conclusion on questions of licensing policy they may use their own judgment and hear whom they please.

I think this appeal must be dismissed.

LORD DAVEY—It is sufficient for me to say in this case that I have carefully considered the judgment delivered by the Lord President and concurred in by his colleagues on the Bench, by the light of the arguments addressed to us by the learned counsel for the appellant, and I see no reason to differ from that judgment. In particular, I think that the Licensing Court was entitled to form the opinion, based on their local knowledge and inquiries, and (as they say) "after full consideration of all circumstances" that the number of licensed houses in the town was in excess of the reasonable requirements of the inhabitants. The appellant might, of course, show that her house has supplied a want which would be unsatisfied if her licence was not renewed, or that on other grounds her licence ought to be renewed, but I doubt whether she was entitled to be heard on the general question of administrative policy.

I also think that the Court was entitled, in its discretion, to entertain the objection (which must be assumed for the present purpose to have been made with proper authority) that the appellant's premises were in an insanitary condition without requiring the objection to be supported by evidence on oath. I think they were entitled to rely on their personal knowledge, and the circumstance (which impresses my mind strongly) that the appellant's agent does not appear to have traversed the allegation of fact but preferred to confine himself to offering to put the premises in a better condition. It is averred that the appellant's agent was heard before the Court retired to consider the appellant's application, but there is no averment that the appellant's agent offered to call evidence or was refused the opportunity of doing so, or that he even asked for particulars or controverted the fact alleged.

With regard to what has been called the finality clause (section 103 of the Act of 1903), I agree with the Lord President that it applies to such matters as prosecutions and decisions of magistrates sitting as such, and not to decisions of the specially constituted Licensing Courts. I observe that the statute is divided into parts. Part 2 applies to the "powers, duties, and procedure of Licensing and Appeal Courts." Section 103 is found not in part 2 but in part 6, relating to "legal proceedings," and I think it is the sounder construction to make it apply only to such decisions as are given under the authority of that part of the Act.

I agree that the appeal should be dismissed with costs.

My noble and learned friend Lord Halsbury is not able to be present to-day and has requested me to say that he concurs in the judgment I have jnst read.

LORD ROBERTSON—I think the judgment ought to be affirmed.

LORD CHANCELLOR—I have been asked by my noble and learned friend Lord James of Hereford to say that he concurs in the conclusions at which your Lordships have arrived.

Their Lordships refused the appeal with expenses.

Counsel for the Appellant—Danckwerts, K.C.—Hunter, K.C.—J. Watt. Agents—James Purves, S.S.C., Edinburgh—Godden, Son, & Holme, London.

Counsel for the Respondents — Scott Dickson, K.C. — Orr, K.C. — Maconochie. Agents—Inglis, Orr, & Bruce, W.S., Edinburgh—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Tuesday, November 6.

FIRST DIVISION.

INLAND REVENUE *v.* CARDONALD FEUING COMPANY, LIMITED.

Revenue—Income-Tax—Profits—Ascertainment of Profits—Company Dealing in Heritage—Sale of Feu-Duties Created by a Company over Land Bought and Built upon by it—Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, First Case.*

A company whose business was the purchase, sale, and development of heritage, bought land on which it erected houses yielding rent. Over the property so occupied it created feu-duties which were sold, the price being applied in reducing a bond over the property, which with its buildings continued to belong to the company. The Inland Revenue claimed income-tax on the price of the feu-duties less the original price of the land, as being profits earned by the company in its business. *Held* that this method of ascertaining the alleged profits was incorrect, since the value of the feu-duties was at least partially attributable to the buildings erected by the company, the cost of

whose erection was not taken into account, and an appeal from the decision of the Commissioners, which relieved the company from the assessment, *dismissed.*

Question—Whether any, and if so, in what manner, profits arising from a transaction of this nature could be ascertained prior to the sale of the property?

At the instance of Montague Cornwell Furtado, Surveyor of Taxes, Glasgow, a stated case was presented to the Court bringing under review a decision of the Commissioners for the General Purposes of the Income Tax Acts of the Lower Ward of Lanarkshire.

The case set forth—"At meetings of the Commissioners for the General Purposes of the Income-Tax Acts, and for executing the Acts relating to inhabited-house duties for the Lower Ward of the County of Lanark, held at Glasgow on the 20th day of December 1904 and the 18th day of May 1905, the Cardonald Feuing Company, Limited (hereinafter referred to as the company) appealed against an assessment for the year ending 5th April 1905 on the sum of £746 (duty £37, 6s.) 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. c. 33, sec. 100, Schedule D, First Case; 16 and 17 Vict. c. 34, sec. 2, Schedule D; and 4 Edw. VII, c. 7, sec. 7.

"1. The following facts were admitted or proved:—(*a*) . . .

"(*b*) The objects for which the company was established are set forth in the third article of the memorandum of association, and embrace, *inter alia*, the following:—'(1) To purchase or otherwise acquire lands, buildings, rights, or interests in or over lands or buildings, or any other heritable property or real estate of any tenure in Scotland. (2) To lay out and prepare for building purposes, and otherwise to do whatever may be deemed necessary or proper to develop the resources of the property of the company. (3) To sell the property of the company, or any rights or interests in or over the same, either by public roup or private bargain, in such lots, at such times, and upon such terms as may be thought proper, for a payment in cash or at a postponed date, or for a feu-duty or ground-annual, or partly in the one way and partly in the other, and subject to such conditions and restrictions as may be deemed necessary. (4) To sell, feu, exchange, lease, or otherwise deal with the property of the company or any rights or interests in or over the same, in such manner, upon such terms, and subject to such conditions as may be thought proper. (5) To erect, construct, and maintain, or procure the erection, construction, and maintenance of, any buildings or erections on the property of the company or in which it has an interest. . . . (11) To sell and realise from time to time the feu-duties and ground-annuals and duplications thereof, and other rights and privileges belonging to or vested in the company. . . . (20) To borrow and again reborrow money, and to grant and issue bills or promissory-notes, bonds, bonds and dispositions in security, mortgages, debentures, mortgage debentures, bonds of annuity, annuity certificates, or other securities or acknowledgments therefor, transferable to bearer, or otherwise founded or based on the credit of the company, or secured upon all or any of the property, assets, or revenue thereof, and terminable, redeemable, or perpetual, and upon such terms as to priority or otherwise as the company shall think fit, and for such security to mortgage, pledge, or charge the whole or any part of the property, assets, or revenue of the company, including the uncalled capital for the time, or to transfer or convey the same absolutely or in trust, and to give the lenders power of sale, power to make calls in respect of uncalled capital, and power in any other suitable manner to recover such capital, and all other usual and necessary powers for making any security granted by the company effectual, and also to receive moneys on deposit, account-current, or otherwise, with or without allowance of interest. . . . (24) To pay and distribute among the members of the company as dividends or otherwise moneys received as grassum in respect of any lease or feu, or as purchase money for land of the company sold, or as purchase money for any feu-duty or ground-annual and duplication thereof sold by the company if and so far as may be determined by resolution of the company in general meeting.'

"(*c*) The 86th article of association, which provides for the application of purchase money, is as follows:—'Rents, feu-duties, and casualties, ground-annuals, and duplications payable from land belonging to or sold by the company, shall be dealt with as profits arising from the business of the company. The company may in general meeting determine whether money from time to time received by the company as grassum in respect of any lease or feu, or as purchase money for land of the company sold, or as purchase money for any feu-duty or ground-annual from land belonging to or sold by the company, shall be distributed and paid to the members by way of return of capital, or by way of dividend, and the directors shall treat the said money accordingly, provided that no such return of capital shall be made to the members of the company whilst any sums are outstanding and due from the company on bonds or on mortgage or debenture.'

"(*d*) . . . . . .

"(*e*) The company is the proprietor of lands at Cardonald, in the parish of Govan and county of Lanark, on part of which it erected 24 houses. For the purposes of its business the company borrowed £14,500, for which it granted an heritable security over the lands and houses in favour of the lenders. The bond and disposition in security granted by the company in security of said loan contained a declaration that the company should have power, without the consent of the security holders, to feu any parts and portions of the said lands at a rate not under £20 per acre, the feu-duties,

when constituted, becoming subject to the heritable security.

"(*f*) In the year ending the 31st October 1903 the company created feu-duties amounting *in cumulo* to £114, viz., 20 of £4, 10s. and 4 of £6 over the houses. The extent of ground feued was 7181 square yards, and the average rate of feu-duty £76, 16s. 9d. per acre. The rents received for the 24 houses in the year ending 30th October 1903 were as follows:—20 at £30 for the whole year; 3 at £40, for the whole year; and 1 at £42, 10s. for the whole year. In the same year the company sold the feu-duties at the price of £3135, and this sum was applied in reducing to that extent the heritable security. The transaction was carried through by the company entering into feu-contracts with a person nominated by it, and on the sale of the feu-duties they were conveyed to the purchaser and the price paid to the company. The houses themselves remained the property of the company, though conveyed to their nominee for the purpose of creating the feu-duty. Immediately on the feu-duties being disposed of the houses were reconveyed to the company.

"(*g*) The assessment for the year ending the 5th April 1905 fell to be made on the average profits of the company for the three years ending the 31st October 1903. The assessment of £746 made for the year ending the 5th April 1905 consists of the price of the feu-duties, amounting to £3135 0 0
Less the estimated original cost to the company of the ground on which the houses are built, as set forth in the company's report and accounts for the year ended 31st October 1903, ... 898 0 0
£2237 0 0
One-third whereof is . . £746 0 0

"2. Mr John Findlay Robertson, writer, Glasgow, who appeared for the company, maintained—(1) That the feu-duties were constituted without reference to the value of the ground on which the houses were erected, but with reference solely to the rental of the houses over which they were secured. (2) That as matter of fact the feu-duties so constituted represented more than the value of the ground at the date of their constitution, and could not have been obtained for the ground if it had been put in the market. (3) That no profit has been earned, and that the property of the company has depreciated in value by the amount of the feu-duties capitalised. (4) That the transaction was entered into for the sole purpose of reducing the annual expenditure of the company. That the company was paying 4 per cent. interest upon the heritable security, and that by repaying the purchase price of the feu-duties, £3135, to the holders of the heritable security the company effected a saving of interest of £125, 8s., while it imposed feu-duties of £114, thereby effecting an annual saving of £11, 8s., thereby reducing its annual loss. That the transaction was accordingly purely a financial one, and merely a means of raising money more cheaply than by borrowing on heritable security. (5) That the assessment made is excessive. That in any event it cannot be ascertained whether a profit has been made until the houses are sold, and that the proper course is to wait until the houses are realised. (6) That the company's transactions result in a loss annually.

"3. The Surveyor of Taxes (Montague Cornwell Furtado) maintained—(1) That a profit arising from the trade or adventure of buying land and creating and selling feu-duties has been earned and received, and should be assessed. (2) That no deduction can be allowed from the profit of the trade or adventure of buying land and creating and selling feu-duties in respect of possible subsequent loss in the trade or adventure of erecting and selling houses—*Imperial Fire Insurance Company* v. *Wilson*, 1876, 1 T.C. 71, Chief Baron Kelly at p. 73, 35 L.T.R. at p. 273. (3) That the Act 53 and 54 Vict. cap. 8, section 23, makes provision by which deduction could be claimed in respect of a loss sustained in the trade or adventure of erecting and selling houses should the houses ever be sold, and sold at a loss, both of which points are uncertain. (4) That it is of no consequence that the price of the feu-duties was applied to capital purposes, the application or destination of profits being immaterial—*Mersey Docks and Harbour Board* v. *Lucas*, 1883, 8 A.C. 891, 49 L.T.R. 781, 2 T.C. 25. (5) That the Company had not made a loss in trading, and that the sale of feu-duties under consideration was its first transaction in the nature of trade, and was a proper trading transaction, forming part of the business which the company was authorised by its memorandum to carry on. That the excess of its expenditure over its receipts since its inception was natural, in view of the fact that the building land which it originally acquired had so far been exploited to a small extent only, and the outlay for interest, law charges, and other expenses had been, so far, necessarily out of proportion to its revenue-earning capacity.

"4. On a consideration of the facts and arguments submitted to them the Commissioners, for the reasons stated in the note, were of opinion that the sum is not profit within the meaning of the Income Tax Acts, and relieved the company of the assessment. . . ."

The note by the Commissioners referred to was in the following terms—"(1) Before the creation and sale of the feu-duties the company's property was burdened with an heritable debt of £14,500, on which they paid interest. After the creation and sale of the feu-duties the heritable debt and the annual interest payable in respect of it were reduced, but, on the other hand, the company's property was burdened with the annual feu-duties. In the view of the Commissioners this is simply a financial transaction, analogous to what takes place when a railway company pays off terminable debentures and replaces them with perpetual debenture stock.

"(2) It cannot be assumed, as the Surveyor practically does, that the feu-duty created by the company represents ground alone as distinguished from buildings. In the ordinary case of ground being feued by a landowner without payment of a grassum the feu-duty represents the value of the ground. But when, as in the present case, the owner of house property enters into a feu-contract with a nominee of his own, simply for the purpose of creating a feu-duty over the property, the feu-duty created usually, if not invariably, exceeds the value of the ground. The feu-duty does not therefore represent the value of the ground alone, but to some extent the value of the buildings as well. In this case it cannot be ascertained whether there is profit or loss until the buildings are sold, when the prices received for the feu-duty and buildings can be compared with the cost of the ground and buildings."

The case came before the First Division.

Argued for the appellant—The company was chargeable on the balance of its profits, and the taxable balance of profits was the sum received less the sum expended in earning it—Income Tax Act 1842, sec. 100, Sched. D, Rules 1, 3, and 4 of first case and Rule 1 of first and second cases. The company, however, was not entitled to charge in the sum expended the money spent in improving the land and making it an income-producing subject, for such expenditure was its business—*Edinburgh Southern Cemetery Company* v. *Surveyor of Taxes*, November 29, 1889, 17 R. 154, Lord M'Laren, at p. 166, 27 S.L.R. 71, 2 Tax Cases 516; *Paddington Burial Board* v. *Commissioners of Inland Revenue*, L.R., 13 Q.B.D. 9, 2 Tax Cases 46; *Portobello Magistrates* v. *Surveyor of Taxes*, July 9, 1890, 27 S.L.R. 863, 2 Tax Cases 647; *Alianza Company, Limited*, v. *Bell*, [1905] 1 K.B. 184, 22 T.L.R. 94, 5 Tax Cases 60. Applying these two principles to the transaction in question, the sum now sought to be assessed was obtained. That sum had been derived from ordinary trade. It was no doubt true that the gain, the profit earned, had been applied to paying off capital borrowed by the company and used in carrying through the transaction; but the Income Tax Acts did not allow any consideration to be given to withdrawal of capital in calculating the sum assessable to income tax. The profit from a similar transaction had been held taxable—*Californian Copper Syndicate, Limited (and Reduced)* v. *Inland Revenue*, July 1, 1904, 6 F. 894, 41 S.L.R. 691. The rule was that no deduction could be made from profits for the interest on borrowed money payable out of the profits—*Alexandria Water Company* v. *Musgrave*, L.R., 11 Q.B.D. 174; nor similarly for money applied as in the present case in reduction of the debt of the undertaking. The realising of investments as here at higher prices than had been given for them produced a sum which was "profit" in the sense of the Act—*Scottish Investment Trust Company, Limited* v. *Inland Revenue*, December 12, 1893, 21 R. 262, 31 S.L.R. 219; *Scottish Union and National Insurance Company* v. *Inland Revenue*, February 8, 1889, 16 R. 461, 26 S.L.R. 330. There might be taxable yearly "profits" in a continuing undertaking where the ultimate result was loss—*Scottish Union and National Insurance Company* v. *Inland Revenue*, *cit. sup.* The decision of the Commissioners was wrong in that it dealt not only with "profits" but also with their application, which was outwith their province. *Coltness Iron Company* v. *Black*, L.R., 6 A.C. 315, was also referred to.

Argued for the respondents—There was no taxable profit derived from the sale of the feu-duties. There was no profit at all, but if the respondents were wrong in that contention, there was no profit which could be ascertained, and further, the method proposed for ascertaining it was wrong. The creation of these feu-duties was only rendered possible by the erection of the houses on the land acquired, and the cost of their erection fell to be considered. It was impossible to apportion what part of the value of the feu-duties was attributable to the houses and what to the land respectively, so the taxable profits, if any, were not yet ascertainable—*Assets Company, Limited* v. *Inland Revenue*, February 23, 1897, 24 R. 578, 34 S.L.R. 486. Further, the terms of the statute prescribed that the tax was to be assessed on the "balance" of profits or gains, and the method for calculating such balance of profits was that against the profits must be set the expenditure necessarily incurred in earning them—*The Gresham Life Assurance Society* v. *Styles*, [1892] A.C. 309. Here the cost of building the houses, or at least a large part of it, as well as the price of the land, must be set against the price of the feu-duties. *Edinburgh Southern Cemetery Company* v. *The Surveyor of Taxes*, *cit. sup.*, was not on all fours with the present case, since there what was sold was actually the thing bought; here the subject sold had been created by the respondents.

At advising—

LORD KINNEAR—In this case the Surveyor of Taxes for Glasgow appeals against a decision of the Commissioners for the general purposes of the Income Tax Acts, disallowing an assessment for income tax on a certain sum of £746 in respect of the profits of the business carried on by the respondents, the Cardonald Feuing Company.

The question for our consideration is whether the sum so assessed is or is not profit or gain within the meaning of the Income Tax Act.

The business of the respondents (which is set out in detail in its memorandum of association) may be said shortly to consist of the purchase and sale of lands and buildings and rights or interests in or over lands and buildings or other heritable estate in Scotland. In the course of this business the company acquired a piece of land at Cardonald, in the parish of Govan, built twenty-four houses upon it, yielding rent, and thereafter, as the case puts it, "created

feu-duties" amounting to £114 over the lands so occupied, which were sold to a purchaser for £3135. The conveyancing operations by which this was effected are not clearly explained, but this is not material, because the parties are agreed as to the meaning and result of the transaction as matter of business. The company now holds this piece of land at Cardonald for payment of an annual feu-duty of £114 to a mid-superior, who paid them £3135 for the mid-superiority. The respondents maintain that this is not a commercial but a purely financial transaction. They say—"That the transaction was entered into for the sole purpose of reducing the annual expenditure of the company. That the company was paying 4 per cent. interest upon the heritable security, and that by repaying the purchase price of the feu-duties, £3135, to the holders of the heritable security the company effected a saving of interest of £125, 8s., while it imposed feu-duties of £114, thereby effecting an annual saving of £11, 8s., thereby reducing its annual loss. That the transation was accordingly purely a financial one, and merely a means of raising money more cheaply than by borrowing on heritable security."

I cannot say that this appears to me to be a relevant consideration. If profit in the sense of the statute is ascertained to have been earned, it is immaterial whether it has been applied in paying off debt or for any other purpose. The question is whether it has been earned. The first point for consideration therefore is the method by which it is to be ascertained for the purpose of the Income Tax Acts whether profits have been earned or not; and this is explained by the judgments delivered in the House of Lords in the *Gresham Life Assurance Company* against *Styles*.

"It cannot, of course, be denied," says Lord Herschell, "that, as a matter of business, profits are ascertained by setting against the income earned, the cost of earning it, nor that, as a general rule, for the purpose of assessment to the income tax, profits are to be ascertained in the same way."

It is on this principle that the assessment in question purports to proceed. It is set forth in the case that "The assessment of £746 made for the year ending the 5th April 1905 consists of the price of the feu-duties amounting to £3135, less the estimated cost to the company of the ground on which the houses are built, as set forth in the company's report and accounts for year ended 31st October 1905, £898, £2237, one-third of which is £746."

. This method of stating the account would answer exactly to Lord Herschell's definition if the company had bought land for £898, and without laying out money for making it more productive had sold it in the same condition for £3135. But it does not follow that it is the correct method for ascertaining the profit of a totally different kind of transaction. I am unable to see any intelligible relation between the two sides of the account as stated by the Surveyor of Taxes. If the cost of the subjects burdened with feu-duties is to be taken into account in ascertaining the profit earned by the sale of the feu-duties, it must be the cost of these subjects in the condition which makes them capable of yielding the feu-duties. It is certain that feu-duties amounting to £114 a-year charged upon a piece of vacant ground yielding—so far as appears from the case—no rental whatever, could never have been sold for £3135. It was only by building houses yielding an annual rental to the owners of the land that the property as they held it was made capable of yielding a marketable feu-duty. The answer for the Crown is that the houses cannot be taken into account, because they still remain the property of the respondents. But the land is still the property of the respondents also, and in exactly the same sense, and the answer only shows that the assessment rests on an entirely false basis. There is no distinction between the property of the land and the property of the houses built upon it. The whole subject, land and houses, is the property of the respondents, and the whole subject so occupied is charged with the feu-duty. I agree that to set the entire cost of land and houses together on the one side, and the purchase-money obtained for the feu-duties on the other, would be just as false a method as that adopted by the Surveyor. But it is no part of the respondents' argument that anything of the kind should be done. On the contrary, they say that no profit can be ascertained until the land is sold. I do not think it necessary to, consider whether this is a sound position or whether on the other hand a profit may not have been earned on the transaction in so far as the respondents have already turned a portion of the right they acquired in this land into money. What they have given to the purchaser of the feu-duties in return for the sum of £3135 is neither the land apart from the houses, nor the land and houses together, but a feudal right which will enable him to recover from both a perpetual annuity of £114. The payment of this duty remains as a permanent burden upon the respondents' property which will diminish their income from the rental so long as they retain the property, and will proportionably diminish the price when they come to sell. They may still have earned a profit by the sale they have already made, but if that is to be ascertained by reference to the expenditure they require to make in order to create the subject sold, the cost of putting the land into a condition to produce marketable feu-duties must be taken into account as well as the cost of the land itself. It is said correctly that these sums taken together represent more than the cost of creating the feu-duties, because the respondents are still looking for a large part of their return to the sale of the lands and houses. But if the Crown maintains that profit has been already earned, they must in some way distinguish

the proportion of the expenditure which has gone to earn the price, £3135, for the feu-duties from that which belongs to the remaining rights which the respondents keep in their own hands. That is the problem to be solved, and I cannot see that any attempt has been made to solve it. It appears to me that the calculation of the profit upon this transaction is in reality a more complex operation than is assumed in the statement of account made by the Surveyor of Taxes. I think his method cannot be accepted, because he selects arbitrarily one item of the expenditure made by the company in acquiring this land and turning it into a rent-yielding subject, and sets that particular item in its entirety against a price obtained on the sale of a limited right in the property so acquired. I know no reason—and none has been stated—why the original price of the vacant ground should be supposed to be the exact measure of the expenditure necessary to earn the purchase price of the feu-duties any more than the expenditure laid out on building houses upon the land and so enabling it to produce that. I think the assessment must be rejected, because it proceeds upon no sound principle and because it is manifest upon the face of it that the sum set against the alleged profits as the expenditure necessary to earn the profit is altogether inadequate. If anything is on the face, it is that this sum of £3135 could never have been earned by spending merely something over £800 in buying land which produces no rental capable of producing feu-duties. I think, therefore, the decision of the Commissioners is perfectly right, and that the appeal ought to be dismissed.

LORD PEARSON—It is of course well settled that when once money has been received as profits it becomes taxable subject to certain deductions, and it is immaterial to what purposes the profits are thereafter applied. The question is whether the sum sought to be charged with tax is profit, or includes profit. Here £3135 was realised by selling feu-duties; and it is said that this sum includes the profit arising from the trade of buying land and creating and selling feu-duties, which is within the scope of the company's business. But the Crown authorities do not say that this is all profit. They admit, and they cannot but admit, that the original cost of the ground feued is a proper deduction for the purpose of income tax, and on this head they deduct £898. But if the cost of the land is a proper deduction, I am unable to find any reason why the cost of the houses built on it should not also be deductible in whole or in part. It is said that the two sets of transactions must be kept separate, and that the erecting and selling of houses is to run its own course as a profit-earning branch of the company's business; but that in the meantime the trade or adventure of buying land and creating and selling feu-duties has earned this profit, which is separately taxable. One can easily imagine a case in which that would be so; but in my opinion it is not so as regards this transaction. I think it is impossible to separate this land from the houses built on it in dealing with what is called the price of the feu-duties; for that price would never have been realised but for the houses. This being so, one of two things must follow. On the case as argued to us I should say either the whole question of profits earned must stand over until the complex transaction is worked out by the sale of the houses, which is the Commissioners' view, or, at the least, the cost to the company of the houses must be deducted in whole or in part from the price of the feu-duties, just as much as the cost of the ground. I do not express any opinion as to whether either of these would be a sound rule of charge, but in either view the assessment as made cannot be maintained.

LORD KINNEAR stated that LORD M'LAREN, who was absent, concurred in this judgment.

The LORD PRESIDENT was not present.

The Court dismissed the appeal, and affirmed the decision of the Commissioners.

Counsel for the Appellant—The Solicitor-General (Ure, K.C.)—A. J. Young. Agent—The Solicitor of Inland Revenue.

Counsel for the Respondents—Scott Dickson, K.C.—J. A. T. Robertson. Agents—Laing & Motherwell, W.S.

Tuesday, November 13.

FIRST DIVISION.

[Sheriff Court at Glasgow.

GOSLAN *v.* JAMES GILLIES & COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (1)—*Accident*—"*Arising out of and in the Course of the Employment*"—*Weighing Clerk and Bookkeeper Helping to Lift Machinery to be Weighed—Emergency,*

The duty of a workman employed as clerk and bookkeeper was to weigh articles which it was the duty of others to carry to the weighing-machine. *Held* that an accident which caused personal injury to him while engaged in helping to carry a heavy piece of metal work to the weighing-machine, was an accident "arising out of and in the course of the employment" in the sense of section 1 (1) of the Workmen's Compensation Act 1897.

Per Lord Kinnear—"I may add that I assent to the doctrine which we are told was laid down by the English Courts in the case of *Losh* v. *Evans & Company, Ltd.*, 1902, 19 T.L.R. 142, that where the master has divided the work into certain spheres, and one man steps out of his own class and undertakes to do work which he was not fit for and