tion to buildings which are wholly occupied for trade, the persons so occupying them for trade having a separate dwelling-house altogether. And as it is in the preamble, so it is in the enacting words, where, after describing the premises occupied for trade which are to be exempt, the exception goes on—[*His Lordship here quoted the provision as above*]. There, I think, the enactment is distinctly to the same effect. Accordingly it appears to me that the Glasgow and South-Western Railway Company, which are occupying different parts of one and the same building for the purposes of trade and as a residence, is not included in this statute.

The next question is, whether the Act of 5th George IV. goes any further? and I confess that for a time I was impressed with the argument which my friend Mr Asher pressed on the use of the expression "the dwelling-house" in that statute. But I am quite satisfied that there is nothing whatever in that argument. The preamble of the 5th George IV. is that it is desirable to extend the exemption, which the Legislature had previously given in favour of proper trade premises, to offices and counting-houses and places of that class; and the purpose of the statute is to extend the exemption from strictly trade premises to the larger class of what I may call business premises. There is no intention to carry that exemption one particle further. The language of the two statutes is precise. The single change that occurs is the use of the definite article "the" instead of the indefinite article "a," but I am quite satisfied in looking at that statute that it does not introduce the change which the railway company here maintain, or give room for the argument which was pressed for them. I think that where a person had a separate dwelling-house as a separate tenement, and occupied his other premises for trade or business only, the premises occupied for trade or business only and exclusively were exempt; but if you have a combined occupation, partly trade and partly residence, then I hold there is no exemption. And so I think the new argument, as I may call it, against the decision in the *Scottish Widows Fund* case entirely fails.

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

Counsel for Inland Revenue—Solicitor-General (Balfour, Q.C.)—Rutherfurd. Agent—The Solicitor of Inland Revenue.

Counsel for Railway Company—Asher—Pearson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Friday, July 16.

FIRST DIVISION.

[Exchequer Cause.

CLERK (TREASURER TO THE COMMISSIONERS OF SUPPLY OF DUMFRIESSHIRE) *v.* INLAND REVENUE.

Revenue—Income-tax—Schedule A—Exemption—Police Station.

Held that police stations which were constructed and supported entirely out of the police assessments for the county, although the pay and clothing of the police were in part defrayed by Government, were proper subjects of income-tax under Schedule A.

In this case the Treasurer to the Commissioners of Supply of Dumfriesshire appealed to the Commissioners of Income-tax for the county against an assessment under Schedule A, made in respect of certain police stations belonging to the Commissioners of Supply. From the case as settled by the Income-tax Commissioners it appeared that "the appellant stated, as a preliminary ground of appeal, that at a meeting of Income-tax Commissioners, held at Dumfries on 1st May 1872, the Commissioners of Supply appealed against charges made on the premises in the parish of Dumfries belonging to them, and occupied as police stations, and relief was granted. He further stated that the police stations in Dumfriesshire had never been assessed, and that, except in the instance before referred to in 1871, no attempt had been made to assess them.

"On the merits the appellant stated that the Commissioners of Supply are bound by statute (20 and 21 Vict. cap. 72) to maintain a police force in the county for the public service; that in order to fulfil the said statutory obligation it is necessary to provide police stations at different police districts into which the county is divided, which stations are used partly as strong-rooms and partly as lodgings for the police-constables serving in the several districts; that said stations yield no return, the strong-rooms being used for the temporary detention of offenders, and the lodgings and offices being given to the constables, as being necessary for the performance of their duties. The police force is annually inspected by a Government officer, and if he reports it efficient (as has always been done in the case of the Dumfriesshire force) the Treasury grants one-half of the expense of pay and clothing, and the rest of the cost of the establishment is defrayed by means of the 'Police Assessment,' which is a compulsory rate levied upon all lands and heritages within the county. He contended—(1) that the decision of 1st May 1872 should be taken as a precedent in the present case; (2) that the stations are not assessable, as they yield no rent; (3) that as the stations are provided by means of a compulsory rate, the assessing of them would be imposing a tax upon a burden. He referred to the following cases—*The Queen* v. *Inhabitants of St Martin's, Leicester*, and *The Queen* v. *Inhabitants of Castle View*, June 13, 1867, L.R., 2 Q.B. 493.

"The Surveyor of Taxes replied—*Preliminary*—That the decision of 1st May 1872 was by the commissioners for general purposes, and for a

different year than the present, and did not prevent liability for the assessment for the present year being considered and decided by the general commissioners, and a Case taken by either party in the Court of Exchequer. At the time the former decision of 1872 was given by the general commissioners there was no appeal to the Judges of the Supreme Court, that right having been introduced in 1874 by the Act 37 Vict. cap. 16, sec. 9.

"On the merits the Surveyor submitted:—(1) That the stations are chargeable under the general rule, Schedule A, of the Act 5 and 6 Vict. cap. 35, which provides that all heritages capable of actual occupation shall be charged on the annual value at which they are worth to be let, whatever may be the purpose for which they are occupied; that there is no exemption for such property as here forms the subject of appeal, in the said Act, or in any subsequent Act relating to income-tax. (2) The allowance by the Government is for pay and clothing, and not in respect of such stations, and the duty, if the commissioners are found liable, would not be payable by Her Majesty. (3) That the decisions referred to by the appellant applied to assessments for local rates only; that the Crown was not the owner or joint-owner of the stations, which belonged to and were upheld by the county."

The commissioners being of opinion that they were bound by the decision of the commissioners in 1872, granted relief of the assessment. The Surveyor thereupon craved that a Case might be stated for the opinion of the Court, which was stated accordingly.

Schedule A (5 and 6 Vict. cap. 35, sec. 60) contained the following general rule:—"The annual value of lands, tenements, hereditaments, or heritages charged under Schedule A shall be understood to be the rent by the year at which the same are let at rackrent, if the amount of such rent shall have been fixed by agreement, commencing within the period of seven years preceding the 5th day of April next before the time of making the assessment, but if the same are not so let at rackrent, then at the rackrent at which the same are worth to be let by the year; which rule shall be construed to extend to all lands, tenements, and hereditaments, or heritages capable of actual occupation, of whatever nature, or for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in No. 2 and No. 3 of this schedule." Nos. 2 and 3 laid down a different mode of estimating certain classes of property, but did not confer an exemption from taxation.

The 8th rule under head 4 of Schedule A was in these terms—"The duty to be charged in respect of any house, tenement, or apartment belonging to Her Majesty, in the occupation of any officer of Her Majesty, in right of his office or otherwise (except apartments in Her Majesty's royal palaces), shall be charged on and paid by the occupier of such house, tenement, or apartment, upon the annual value thereof."

By 20 and 21 Vict. cap. 72, sec. 55—Police (Scotland) Act—it was enacted that "It shall be lawful for the Commissioners of Supply of any county, if they think fit, to order that station-houses and strong-rooms or lock-ups, or any or either of them, for the temporary confinement of persons taken into custody by the constables, be provided upon such plan as shall be approved by one of Her Majesty's principal Secretaries of State, and for that purpose to purchase and hold, or to rent or hire, lands and heritages, or to appropriate to that purpose any lands or heritages belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; and the expense of building, purchasing, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong-rooms or lock-ups, and all other expenses attending the same, shall be defrayed out of the police assessments to be made and levied in terms of this Act."

By section 56 of the same statute it was provided that "for facilitating the purchase of lands and heritages for the purposes of this Act the provisions of 'The Lands Clauses Consolidation (Scotland) Act 1845,' except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with this Act."

The arguments sufficiently appear from the above narrative.

Additional authorities—*Clyde Navigation Trustees* v. *Adamson* and *Mersey Dock* v. *Jones*, June 22, 1865, 3 Macph. (H. of L.) 100; *Advocate-General* v. *Garioch*, Jan. 22, 1850, 12 D. 447; *Scotland* v. *Leith Dock Commissioners*, Nov. 26, 1852, 15 D. 95; *Greig* v. *University of Edinburgh*, June 8, 1868, 6 Macph. (H. of L.) 97.

At advising—

Lord President—In this case a charge has been made upon the Commissioners of Supply of Dumfriesshire for payment of income-tax, under Schedule A, in respect of certain premises belonging to them, and occupied as police-stations. The power of the Commissioners of Supply to erect these stations is contained in certain clauses of the Act 20 and 21 Vict.—the General Police (Scotland) Act; and it is stated in the Case that in order to fulfil the statutory obligations of the commissioners in maintaining a police force in the county it is necessary to provide police-stations at different districts into which the county is divided, and these stations are used partly as strong-rooms and partly as lodgings for the police-constables serving in the several districts. The stations yield no return, the strong-rooms being used for the temporary detention of offenders, and the lodgings and offices being given to the constables, as being necessary for the performance of their duties. Now, under the Statute 20 and 21 Vict. the Commissioners of Supply perform very important functions in respect of the local government of the county in regard to matters of police, and they are no doubt acting in a public capacity. They require the property which they use as police-stations under the 55th and 56th sections of the statute, which I have already cited. The 55th section provides—[*reads clauses as above*]. And to facilitate the acquisition of property for this purpose certain portions of the Lands Clauses Consolidation Act are incorporated with this police statute by section 56. Now, in these circumstances it cannot admit of doubt that the police commissioners are the owners of this heritable property, and I think it is just as clear from the statement in the Case that they are also the occupants. Some of the police-constables reside at some of these stations, but they do so merely as the ser-

vants of the Commissioners of Supply or of the police committee, and they are liable to removal without any notice at all whenever it serves the convenience of the police management. The property therefore is acquired for the purpose of local government, and it is owned and occupied by the Commissioners of Supply.

Now, it is very difficult to see how property so constituted should not come under the rule No. 1 in Schedule A of the Income-tax Act. It must be kept in mind that under Schedule A the assessment is this—"For all lands, tenements, and hereditaments or heritages in Great Britain there shall be charged yearly in respect of the property thereof, for every twenty shillings of the annual value thereof, the sum of sevenpence;" and then the first rule of Schedule A is this—"The annual value of lands, tenements, hereditaments, or heritages charged under Schedule A shall be understood to be the rent by the year at which the same are let at rackrent, if the amount of such rent shall have been fixed by agreement, commencing within the period of seven years, ... but if the same are not so let at rackrent, then at the rackrent at which the same are worth to be let by the year, which rule shall be construed to extend to all lands, tenements, and hereditaments or heritages capable of actual occupation of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in Nos. 2 and 3 of the schedule." Now, Nos. 2 and 3 of the schedule have no sort of application to property of this description, and it is needless to refer to them; and there is not in this statute any clause that can be cited conferring an exemption on property held for such purposes as that we are dealing with. We can find no ground of exemption within this Income-tax Act of the 5th and 6th Vict., nor in any subsequent Act, upon that subject.

But it is said that this is property occupied for the purposes of the Government of the country; and in support of that contention reference is made to those provisions of the Police Act which authorise the Treasury to advance to the Commissioners of Supply a certain proportion of the cost of maintaining the police force. But it must be kept in view that what the Treasury undertake, and are entitled to undertake, to do in respect of these provisions is to pay a certain portion of the pay and clothing of the constables, and nothing else. The cost of maintaining stations is not defrayed by the Treasury at all, nor could any portion of the money advanced by the Treasury be lawfully applied to such a purpose. On the contrary, the Act, as I have already shown, by the 55th section provides that all the cost of acquiring and maintaining the stations is to be defrayed out of the police assessment—out of a local assessment. In these circumstances it appears to me that it is impossible to say that in charging income-tax against this property any charge is made against the Queen or the Queen's Government. The charge is made against a certain public body administering the statute for local purposes and as part of the local government, and I know no ground upon which it can be said that property so occupied is exempt from income-tax. Indeed, I should say it is impossible to hold that unless you could find within the Income-tax Acts themselves some clause of exemption. I take no account of that class of cases which has been referred to, and upon which the argument of the respondents mainly turned, viz., those cases in which certain premises have been found not liable in poor-rates or other local assessments of that kind, because I think these cases have no application to a question under the Income-tax Acts. I do not think it necessary to inquire whether these cases are all reconcileable with the principles laid down in the House of Lords in the case of the *Mersey Docks* and in the case of the *Clyde Navigation Trustees*. That question may perhaps arise for consideration hereafter, and it would be very improper to prejudge it. The cases, I think, have no application to the present question. I proceed entirely upon the plain rule laid down in Schedule A of the 5th and 6th of Victoria, and upon that ground I am of opinion that the deliverance of the commissioners is wrong and must be reversed.

Lord Deas—I am of the same opinion, and very clearly so. I think these commissioners of police are both the owners and the occupiers of these stations, and I do not know of any ground upon which it can be held that they are not liable for this assessment.

Lord Mure—I am entirely of the same opinion. It appears to me that looking to the nature of the property and the nature of the occupation, it falls distinctly within the provision of rule No. 1 of Schedule A which your Lordship has read; and the fact that the police force is to a certain extent supported by Government money cannot, I apprehend, take the occupiers or owners of these premises in which the police force is located from time to time out of the provisions of the Act, more especially when in addition to the rule which your Lordship has read we find that in the 8th rule of No. 4 it is expressly provided how the income-tax is to be levied from parties who occupy official houses, plainly contemplating that under this Income-tax Act there is no exemption of property occupied for such public purposes from the taxes laid on by that statute. In addition to what your Lordship has said with reference to the plain distinction which there is between the poor-rate cases in England and in this country, I observe in looking over the opinions of Lord Cranworth and Lord Chancellor Westbury in the *Mersey Docks*' case that the opinion of both these noble Lords proceeded upon this very special ground applicable to poor-rating in England, viz., that in the particular statute that they were dealing with the name of the king is not mentioned at all. Lord Westbury says—"The only occupier exempt from the operation of the Act is the king, because he is not named in the statute." But I think your Lordship's observation that these cases apply to poor-rating exclusively, and have nothing to do with income-tax rating, is sufficient for us to hold that they are not authorities in dealing with a point of this sort.

Lord Shand—I am of the same opinion. Regarding this as raising a question as to the property-tax, and the property-tax only, it appears to me that the statute by which that tax is imposed plainly includes this subject. I think the surveyor Mr Clerk, in the propositions which he has submitted, and which form part of this case, states

very clearly and succinctly the true argument in regard to this question, and I adopt entirely the propositions so stated by him as part of my judgment.

The Court reversed the decision of the commissioners and remitted to them to sustain the assessment.

Counsel for Inland Revenue—Solicitor-General (Balfour, Q.C.)—Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Commissioners of Supply—Kinnear—Johnstone. Agents—J. C. & A. Steuart, W.S.

Friday, July 16.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CALEDONIAN RAILWAY COMPANY *v.* NORTH BRITISH RAILWAY COMPANY.

Statute — Construction — Local and Personal— Railway—Amalgamation—First Payment of Dividend.

A certain line of railway was transferred from the company with which it had been amalgamated to that company and another company jointly, the preamble of the Act of Parliament which effected this change declaring that it was expedient that the two companies "should have equal rights and powers and be subject to equal liabilities" in respect of the line transferred. It was further enacted that "from and after the vesting period the [new] company shall pay to the [old] company half-yearly on the 1st March and 1st September in each year a sum equal to one-half of" the dividends payable to the shareholders of the line transferred, which had hitherto been paid by the old company alone, it having received the entire revenue of the line; and under the new arrangement the old company was to continue to make the actual payments to the shareholders. The vesting period was 1st February 1880, and the dividends were for the half-years ending 31st January and 31st July of each year, and were payable respectively in the months of March and September following. In an action by the old company against the new company concluding for payment of one-half of the dividends due on March 1st 1880, *held* (*diss* Lord Mure) (1) that the words "1st of March and 1st September" above quoted were intended to define the terms of payment generally, and not to lay down that the 1st March immediately following the vesting period was the first term of payment; and (2) that the equitable construction, looking to the purpose of the Act, was that the first term of payment should be that for the first half-year during which the line was in the joint possession of both companies—Defenders therefore *assoilzied*.

The Scottish North-Eastern Railway was amalgamated with the Caledonian Railway by "The Caledonian and Scottish North-Eastern Railways Amalgamation Act 1866" (29 and 30 Vict. c. 301). Section 1 of that Act declared the commencement of the Act to be 1st August 1866, after which, by section 5, the Scottish North-Eastern Railway was dissolved and amalgamated with the Caledonian Company; but section 12 enacted that "The revenue of the *Scottish North-Eastern* Railway Company available for dividend in respect of the half-year ending on the 31st July 1866 shall, notwithstanding anything herein contained, be divided among and paid to the holders of shares and stock in that company as if this Act had not passed."

Section 16 created the guaranteed and preference shareholders of the Scottish North-Eastern Company guaranteed or preference shareholders of the Caledonian Company; and by section 19 ordinary shareholders in the former company became guaranteed shareholders in the latter, with a contingent right to a higher than the guaranteed dividend in the event of the dividend on the Caledonian ordinary stock being above seven per cent.

Section 22 enacted that "All the guaranteed and preference and contingent dividends hereinbefore mentioned shall be payable on the same days in the month of *March* or *April* and *September* or *October* as the other preference and ordinary dividends of the company [*i.e.*, the Caledonian] shall be payable, the first payment thereof being on the same day in the month of *March* or *April* 1867 as such other preference and ordinary dividends for the six months ending on the 31st January 1867 shall be payable."

The Scottish North-Eastern Railway was itself an amalgamation of other companies, of which the Dundee and Arbroath Railway was one. By "The North British Railway Dundee and Arbroath Joint Line Act 1879 (38 and 39 Vict. c. 147) the Dundee and Arbroath line was transferred from the Caledonian Company to that company and the North British Company jointly. The preamble of this Act, after reciting the previous Acts, was in these terms:—"And whereas it is expedient that all interest which the Caledonian Railway Company possess in the Dundee and Arbroath and Arbroath and Forfar Railways respectively between . . . should be transferred to and vested in the Caledonian Railway Company and the North British Railway Company—in this Act called 'The Company'—jointly and equally, and that those companies should have equal rights and powers and be subject to equal liabilities over and with respect to the said railways between the points aforesaid as hereinafter provided."

By section 3 it was provided that "On the 1st day of February 1880 (in this Act called 'the vesting period') all interest of what nature or kind soever which the Caledonian Railway Company possess or enjoy, or to which they are entitled, whether as owners, lessees, or otherwise, in the line of railway between . . . shall by force and virtue of this Act be transferred to and vested in the Caledonian Railway Company, and the Company jointly, and in equal proportions, in manner provided by this Act."

By section 6 it was provided that "The consideration for the transfer of the joint line shall be as follows (that is to say)—1. From and after the vesting period the company shall pay to the Caledonian Railway Company half-yearly, on the first day of March and first day of September in each year, a sum equal to one-half of the aggre-