the case against Swann depended entirely upon his contract with the pursuers, to which these defenders were no parties. Even if Swann had not merely acted in breach of his contract but had committed a wrong, that wrong was entirely different in character from the wrong, if any, committed by them. If the action was rested on a fraudulent scheme, then the pursuers had failed to allege fraud on the part of any individual member of the firm.

Argued for Swann—Even if the pursuers had a good ground of action against him, for the reasons stated by the other defenders the action against them was incompetent, and being an attempt to establish joint and several liability, fell to be dismissed *in toto*.

Argued for the pursuers—Swann had not merely acted in breach of his contract; he had done a serious wrong to the pursuers. While pretending to be their servant, and their servant alone, he had advanced the interests of others with their knowledge and connivance. Although fraud was not mentioned in terms, it was a fraudulent scheme which was set forth. If the case were sent to a jury, as the pursuers would prefer, although not opposed to a proof, it would be competent upon their averment to put "fraudulently" into the issue.

At advising—

LORD PRESIDENT—This summons concludes against the defenders Pattison, Elder, & Company and Mr Swann, conjunctly and severally, and under it the pursuers ask nothing from either defender for which the other is not liable. We are therefore put in search of some ground of liability for the same sum common to both defenders. No other ground of liability is within the action.

The only case at all of this nature indicated on record was ultimately represented by the pursuer's senior counsel as a case of fraud with the word "fraud" left out, and this omission, we were told, was immaterial if the substance of the thing was there. It was said that the ground of action really is, that it was arranged between the two defenders that Swann, while continuing ostensibly to act exclusively as the pursuers' traveller (which was his contract duty) should take advantage of that position to divert business from his master to Pattison, Elder, & Company by soliciting orders for them.

Now, it seems to me that a case of this kind is a case of fraud or nothing. If A, the servant of B, conspires with C, that he shall continue to act ostensibly as B's servant and receive his wages, but shall, instead of promoting B's interests, betray them by diverting his business to C, then it is surely clear that A and C are guilty of fraud against B, and are jointly and severally liable in damages to him on the ground of their common fraud.

The pursuers' case, however, seems to me to fall short of what I have stated in one vital point. Fraud is a personal matter, and can only be committed by an individual. It is true that others than individuals may become liable for the frauds of individuals, but that does not affect the essentially personal nature of the act giving rise to the liability. Now, this record does not allege the acts complained of against any individual at all. Accordingly, it is not by a mere euphemism that this case differs from and falls short of a case of fraud. Had the pursuer said that such a conspiracy had been entered into by someone named, one of the partners of Pattison, Elder, & Company, I could quite understand the firm being concluded against, as being liable for a fraud committed by a partner in the region of his mandate. But on this record the basis of such a case is awanting.

I am for recalling the Lord Ordinary's interlocutor, and dismissing the action as against both defenders.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Pursuers—C. S. Dickson —M'Clure. Agents — Davidson & Syme, W.S.

Counsel for the Defenders, Pattison, Elder, & Company — Jameson — Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Defender, Swann—Cook. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Saturday, March 9.

FIRST DIVISION.

[Court of Exchequer.

CORKE (SURVEYOR OF TAXES) *v.* FRY.

Revenue — Income-Tax — Abatement — Income—Annual Value of Manse—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 167, *Schedule E—Customs and Inland Revenue Act* 1876 (39 *and* 40 *Vict. c.* 16), *sec.* 8.

Section 8 of the Customs and Inland Revenue Act of 1876 provides that an abatement shall be given to any person who shall be assessed to any of the duties of income-tax, and who shall prove that his total income from all sources is less than £400.

Held that the annual value of the manse occupied by a minister of the Established Church forms part of his income in the sense of the above section—*M'Dougall* v. *Sutherland*, March 20, 1894, 21 R. 753 *distinguished.*

At a meeting of the Income-Tax Commissioners, held at Ayr upon the 4th December 1894, the Rev. Samuel Campbell Fry, minister of the parish of Girvan, claimed repayment of £3, 10s. for year ended 5th

April 1894, being the duty on £120 at 7d. per £, the abatement allowable in respect of incomes under £400 by the Customs and Inland Revenue Act 1876 (39 and 40 Vict. c. 16), sec. 8.

After hearing parties the Commissioners sustained the appellant's claim, and allowed the abatement of £120 on the ground that "a parish manse is provided for the incumbent to enable him to discharge the duties of his office, and is therefore not a right capable of being turned into money."

Mr Benjamin Corke, the Surveyor, applied for a case for the opinion of the Court of Exchequer under the Taxes Management Act 1880 (43 and 44 Vict. c. 19), sec. 59.

The first rule under Schedule E of the Income-Tax Act 1842, under which the assessment was imposed, provides that "The said duties shall be annually charged on the persons having, using, or exercising the offices or employments of profit mentioned in the said Schedule E, or to whom the annuities, pensions, or stipends mentioned in the same schedule shall be payable, for all salaries, fees, wages, or profits whatsoever accruing by reason of such offices, employments, or pensions."

The employments of profit mentioned in Schedule E include "any office or employment of profit held under any ecclesiastical body."

The fourth rule under Schedule E provides that "The perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable either by the Crown or the subject in the course of executing such offices or employments." Sec. 167 of the same statute enacts "That the annual value of lands, hereditaments, or heritages belonging to or in the occupation of any person claiming the said exemption shall be estimated for the purpose of ascertaining his title to such exemption according to the rules and directions contained in the said Schedules (A) and (B) respectively."

The Customs and Inland Revenue Act 1876 (39 and 40 Vict. c. 16), sec. 8, provides—"The following relief or abatement shall be given or made to a person whose income is less than £400—that is to say, any person who shall be assessed or charged to any of the duties of income-tax granted by this Act, or who shall have paid the same either by deduction or otherwise, and who shall claim and prove in the manner prescribed by the Acts relating to income-tax, that his total income from all sources, although amounting to one hundred and fifty pounds or upwards, is less than four hundred pounds, shall be entitled to be relieved from so much of the said duties assessed or paid by him as an assessment or charge of the said duties upon one hundred and twenty pounds would amount unto."

The facts of the case as stated were as follows—"(1) The appellant is minister of the parish of Girvan, which is a rural parish, and his whole income, apart from the annual value of the manse, was ascertained to be as under, it all being duly charged to income-tax:—

"Stipend paid by heritors	£319	15	0
Glebe rents and feu-duties	77	5	0
	£397	0	0
Less expenses in terms of Act 16 and 17 Vict. cap. 34, sec. 52	20	0	0
	£377	0	0

(2) The appellant was entered in the valuation roll as owner and occupier of the manse, at the annual value of £30, and is assessed as such for local rates. He was assessed to income-tax, Schedule A, on £30 as the annual value of the manse, in addition to the above net income of £377."

"The appellant contended that he held his manse in virtue of his office, and for the purposes of the same, all as stated for the appellant in the case of *M'Dougall* v. *Sutherland* (21 R. 753) . . . that he derived no benefit from the free use of the manse other than that enjoyed by a Free Church minister, and that therefore the annual value of the manse could not be taken into account in considering his claim of abatement."

"The Surveyor of Taxes maintained that a minister of the Church of Scotland in a rural parish is by law entitled to a dwelling-house or manse within the parish; that the manse was not vested in trustees as in the case of a Free Church minister, and that the parish minister must be held for the purposes of the income tax to be the owner of such manse. He pointed out that the income-tax, Schedule A, charged on the manse was paid by the parish minister, and that he could not deduct the tax so paid from the heritors or other persons, or get repayment of the same, as was done in the case quoted. He therefore contended that in estimating his income from all sources under the rules of the Income-Tax Acts, the annual value of the manse (£30) as assessed on the appellant under Schedule A, must be considered as part of his income, and that as this made the total net income £407, he was not entitled to the abatement of £120."

The question for the opinion of the Court was—"Whether the annual value of the manse, the same being a parish manse, is to be reckoned as part of the appellant's income for the purposes of a claim of abatement under the Act 39 and 40 Vict. cap. 16, sec. 8." On 22nd January the Lord Ordinary in Exchequer Causes appointed the cause, on the motion of the parties, to be heard in the First Division.

Argued for the Surveyor of Taxes—The decision of the Commissioners was wrong, and based on an erroneous view of the case of *M'Dougall* v. *Sutherland*, March 20, 1894, 21 R. 753. The minister in that case was not the owner of the manse, and this fact was emphasised by Lord Adam. He was not assessable under Schedule A in respect thereof, for the property in that manse was vested in trustees, and the minister was repaid the income-tax by the true proprietors, while here he could not deduct the income-tax paid under Schedule

A from the heritors or any other person, or get repayment of it. He was therefore for the purposes of the Act, the true owner of the manse, which was in the same position as the glebe—Ersk. ii. 3, 8; *Gibson* v. *Forbes*, June 14, 1852, 1 Macph. 106; *Presbytery of Selkirk* v. *Duke of Buccleuch*, November 9, 1869, 8 Macph. 121; *Cowan* v. *Gordon*, July 9, 1868, 6 Macph. 1018. The principles on which the case of *Tennant* v. *Smith*, January 21, 1891, and March 14, 1892, 18 R. 429, and 19 R. (H. of L.) p. 1, was decided did not apply here, for the minister's occupancy was not like that of a bank agent, but rather resembled that of a liferenter —*Heritors of Aberdour* v. *Roddick*, December 14, 1871, 10 Macph. 221, at 225. The case of *The Heritors of Pitsligo* v. *Gregor*, June 18, 1879, 6 R. 1062, showed that a parish minister could not be ordained to live in his manse. He was entitled to let it, just like his glebe, and therefore could convert his interest into money, and the case accordingly fell under the rule laid down by Lord Chancellor Halsbury in *Tennant* v. *Smith*, 19 R. (H. of L.) p. 5. In *M'Lea* v. *Walker*, 1819, 1 Bl. App. 535, the position of the parish ministers was considered under the old Acts, the wording of which with regard to this tax was in the same terms as that of the present Acts, and the decision was against the ministers. Section 167 of 5 and 6 Vict. cap. 35, showed that for the purpose of claims for exemption the value of the lands or heritages in occupation was to be estimated according to the rules and directions of Schedules A and B, but the minister had been assessed under Schedule A for the manse, and the value as assessed must be added to his net income.

Argued for the respondent—There was no distinction between this case and that of *M'Dougall*. In that case the minister was primarily assessed under Schedule A, and his relief by the trustees was a matter of arrangement, and did not affect the question of the title by which he occupied the manse. A manse was worth less to a parish minister than to a Free Church minister, because he was not repaid in the same way the assessments paid by him; therefore still less in his case should the value of the manse be reckoned. He was not really the owner of the manse, but held it under an implied trust. He could not turn his right of occupancy into money, for he really could not let it except for a short term, any lease coming to an end at his death. The case of *Roddick* only showed that he might let it for two months. The argument on section 167 of the Act of 1842 was inapplicable, for it applied only to claims for total exemption, not to those for abatement.

At advising—

Lord President—The Reverend Samuel Campbell Fry, minister of the parish of Girvan, claims an abatement from income-tax under 39 and 40 Vict. c. 16, sec. 8, on the ground that his income is less than £400. It is answered by the Crown that if the value of the manse be taken into account as part of his income, that income is over £400. The question we have to decide is whether the value of the manse is to be taken into account in ascertaining the minister's total income from all sources.

He has been assessed under Schedule A in respect of the manse. I do not regard this fact as conclusive against him in the present question. As occupier he is liable to have the duty under Schedule A charged on him in the first instance. But then it is quite certain that in his case there is no one from whom he can claim or retain payment of the tax paid by him under Schedule A. Whether he be owner or not, it is quite certain that no one else is.

It appears to me, however, that for the purposes of the present question he is the owner. I think the right is not merely a a right of personal residence, but that it could be turned into money.

An examination of the statutes on which the minister's right to a manse rests, shows that the manse pertains to the minister during his incumbency; and the statutory restrictions against grants of the manse by setting in feu or in tacks to the prejudice of successors seem to imply that the minister's right in the manse would include such settings as were not to the prejudice of successors. It is to be observed also that the statutes treat the manse as being in the same position as the glebe so far as the minister's rights are concerned. Now it is not doubtful that glebes are constantly let. It is quite true that, on the other hand, manses are not in practice let, except occasionally in summer, but this would seem to be due to social convenience and perhaps a sense of fitness. The case of *Roddick* did not completely decide, but it tested, the question which I am now considering, and if the question was not decided, this was because there was no occasion for it.

There are, indeed, two checks upon the exercise of the minister's rights. The one is his duty to be present to serve the cure—a duty enforceable by his ecclesiastical superiors. But then this duty may be performed without living in the manse, for a minister might have, or might choose, some other residence within the parish. I am not aware that if he did so the presbytery could interfere on the ground that it is an ecclesiastical duty to live in the manse. The other check to which I have referred is on the part of the heritors, who are entitled to see that nothing is done unduly to deteriorate the fabric of the manse. Here, however, their interest ends. Now, letting to a good tenant does not necessarily imply any greater wear and tear of the manse than the minister's own residence does.

The decision of the Commissioners seems very neatly to express what I consider the fallacy of the minister's argument. It is true that the manse is provided for the incumbent to discharge the duties of his office, but it does not follow that his right is not capable of being turned into money.

The conclusion to which I come is that the minister's right to the enjoyment of

the manse is one part of the benefice, and that he can turn it into money. Accordingly, the case seems to me to fall within the rule laid down by Lord Chancellor Halsbury in *Tennant* v. *Smith*, 19 R. (H. of L.) 1, at p. 4. The recent case of *M'Dougall* v. *Sutherland* is, in my opinion, completely different to the present. There the ground of judgment was that, on the face of the title to the manse (which was that of a dissenting church), the minister had merely a right of residence, the property being in the trustees, and that he had no right to let. His right to the manse, therefore, could not have been turned into money.

An argument was rested by the Crown on sec. 167 of 5 and 6 Vict. c. 35. My view is that that section does no more for the present case than rule that, if lands fall to be computed as part of income for the purpose of exemption, their value is to be taken to be the sum at which they are assessed under Schedule A.

I am of opinion that the determination appealed against is wrong.

LORD ADAM — The question here is whether the respondent Mr Fry has proved that the aggregate annual amount of his income is less than £400. If he has established that, he will be entitled to a certain abatement. He is assessed under Schedule A as proprietor of the manse as being a valuable subject, and the question in this case is whether the sum assessed in respect of the manse is to be taken into consideration in determining the amount of his income with a view to ascertaining whether or not he is to be entitled to an abatement. The case of *Tennant* was that of a bank clerk who occupied a free house. He was bound to occupy the house and could not let it. The Court here, and the House of Lords afterwards, came to the conclusion that in such a case as that the value of the house was not to be taken into consideration; and they laid down the principle that it was only money or what was equivalent to money's worth that was to be taken into consideration in determining such a matter as this. In that case it was the bank which was assessed under Schedule A, and the bank agent was not assessed at all, either under Schedule A or Schedule B. Then came the case of *M'Dougall* v. *Sutherland*. That was the case of a Free Church minister who was assessed as occupier under Schedule A—being a step nearer this case than the case of *Tennant*. But it appeared on the facts that he was not in fact proprietor — that the trustees of the Free Church were the proprietors of the manse, and they relieved him of the assessment. The turning point in that case was that the minister could not let his manse; he was bound by the terms on which he held it to use and occupy it personally. These were the conditions on which he possessed it. In that case, again, we held that it was not a case where value could be converted into money, and therefore that the value was not income, and was not to be taken into consideration in the question of ascertaining the aggregate amount of the gentleman's income.

This is the case of a parish minister who in like manner occupies a manse, and the question, it appears to me, is whether the right which he has to this manse—to occupy or dispose of this manse —is convertible into money, so as to be treated as income or money's worth. I think practically that question comes back to this—can he let it or must he occupy it as in the previous cases?

Now, it may not be very easy to define the exact nature of the minister's right to the manse. It is not, of course, that of absolute proprietor, but there is nobody else in existence who can be treated as owner or proprietor of the manse. With the exception of the heritors, who can interfere as regards the fabric of the manse, there is nobody who can interfere with his use and administration of the manse or prevent his using and enjoying it as he pleases. Now, in the case of *Roddick*, to which your Lordship has alluded, it was substantially held that the heritors had no title to interfere with the administration of the manse on the part of the minister, except in so far as their own interest was concerned, that is, that the minister was not entitled to do anything that could injure the fabric. Their obligation extends merely to the fabric, and if the act of letting was not such as to impair or injure the fabric, they would not be entitled to interfere with the parish minister letting his manse. Subject to that condition, that there shall be no injury to the fabric, I do not see that the heritors have any title to interfere with it. Then the only body that may interfere in the matter is the Presbytery, but it appears to me that this is not a matter with which they have anything to do. The Presbytery are not proprietors of the manse. They have no title to the manse any more than to the glebe, and it appears to me, that so long as the minister resides in the parish and gives no cause of complaint as to the way in which he performs his ministerial functions in the parish, the Presbytery have no right to say to him "You shall not let the manse, or you shall not do this, that, and the other thing to the manse." Therefore, that being the position, as it appears to me, of a minister of the Established Church, I think this case is quite different from the case of *M'Dougall* v. *Sutherland*, where the occupant of the manse was bound to occupy it personally in the discharge of his duty. So far as I can see, there is no such personal obligation on the part of a minister of the Established Church. Now, as your Lordship pointed out, we may take the case of a glebe. So far as I can see, the right of the minister to his glebe and the right of the minister to the manse stand in the same position, and everybody knows that glebes are constantly let. Of course he cannot let the manse or the glebe beyond the period of his own incumbency, but I think it would be difficult to distinguish between the right of the minister to let his glebe and the right of the

minister to let his manse. Nobody has any right to interfere in the matter. Therefore I think the case of *M'Dougall* v. *Sutherland* is distinguishable from this, and that the Crown are right in saying that the £30 for which this parish minister is assessed is value, and that that value is capable of being converted into money and treated, therefore, as money's worth going to swell the aggregate amount of his income. That being so, it is not necessary to decide any question of the construction of the 167th section, but the argument was maintained to us, as I understood, that, on the construction of the 167th section, in the case of a particular individual who was claiming a deduction from his alleged aggregate income, the mere fact that he was assessed under Schedule A or Schedule B made it imperative that the sum so assessed should be taken as part of his income. I do not think that is the proper interpretation of section 167. I think it is dealing with money and income only, and is determining nothing whatever as to what shall be taken as to income. It says that the annual value of lands and so on, in the occupation of any person claiming exemption shall be estimated, for the purpose of ascertaining his title to such reduction, according to the rules contained in Schedules A and B, but that is on the assumption that such value is income and is to be taken into consideration. In the case of *Sutherland* the Court were of opinion that the annual value, in regard to the tenant in question, was not income.

On the grounds I have stated I think we should answer the question in the affirmative.

LORD M'LAREN—The condition of any claim to abatement of income-tax as defined by statute, is that the person claiming abatement must be able to show that his income from all sources is under £400 a-year.

When the case of *Tennant* v. *Smith* was considered in this Court, there was a difference of opinion as to the construction of the clause. I was one of those who thought that, as no definition was given of the word "income," we ought to consider that the criterion of exemption was the ability of the person assessed to contribute to the revenue of the country, and that if he had a house provided for him free of rent, that would be the equivalent of income within the meaning of the clause. But on appeal that principle of interpretation was held to be erroneous, and it was very forcibly pointed out that in this, as in all questions arising under the Revenue Statutes, we must give to words that are not defined their ordinary and customary meaning; and in the view of their Lordships nothing was to be considered as income except what represented value in money, that is, either money or something that was equivalent to money, because it could be converted into money and the proceeds expended in any way that the taxpayer pleased. Another criterion was indicated in the opinions of two of their Lordships, that in the particular case the right of occupation of the bank house was not a right for which the bank agent could be assessed under any of the schedules of the Income-Tax Act. Now, it is plain enough that these two elements are not identical. There may be cases—as, for instance, the case of a person who receives an allowance from his father—where the sum is certainly not assessable under any clause of the Income-Tax Act, and yet it represents income which the man is free to expend as he pleases. And, conversely, there are such cases as that of a person who has a liferent of a house under a trust or settlement, which he is, by the terms of the deed, precluded from letting. There again, his right is not value in money, because he cannot let it, and yet he would undoubtedly be subject to assessment under Schedule A, and without relief from any other party.

Now, the distinction between the present case and the case of *M'Dougall*,—which no doubt in their circumstances have a great resemblance—is that in the case of *Macdougall* neither of the tests indicated in the judgment of the House of Lords when applied to the case would make the Free Church clergyman liable, because we found that (1) under the terms of the trust which defined his right to his manse or residence, that he was only entitled to have the use of the house for his personal occupation, and also that he was not ultimately liable under Schedule A, because the conditions of his appointment entitled him to have his taxes paid for him by the congregation. Now, in the present case, I think that both these criteria apply. A parish minister holds by a somewhat peculiar title. He has been called an official liferenter, because he has the liferent of an official residence which is given to him primarily to enable him to discharge the duties of the benefice. But I agree with your Lordships that, while that is the nature of the right to the manse, yet the title of the minister is such, that he has power to let the manse, if he finds that he can do so consistently with the discharge of his duties, and, for example, I cannot doubt that in a town, where the manse is considered by the minister to be inconvenient or unsuitable, he is well entitled to let it and to provide himself with a residence elsewhere at his own expense. There being nothing in the tenure, and no law or decision of the Courts prohibiting the minister from letting his manse, it follows, in my apprehension, that he is entitled to let it. But then, I also think that this must be regarded as property which is assessable under Schedule A in the hands of the minister without relief, and that circumstance, although not necessarily decisive, ought to make the possession of, or benefit derived from the manse, income in the sense of this exempting clause. No one who derives a benefit from land such as renders him liable to assessment under Schedule A can say that that is other than income which must be taken into account in estimating the total amount of his assessable income.

I have only to add that I agree with your Lordship's opinion, which I think contains the complete argument on the case, and

what I have added is only for further illustration.

LORD KINNEAR—I am of the same opinion. The question is, whether the minister's income from all sources is less than £400 a-year, and that depends upon whether his right and interest in his manse is income in the sense of the statutes.

Now, the expression "total income from all sources," which is what we have to construe, is explained by Lord Macnaghten in the case of *Tennant* v. *Smith*. His Lordship says—"It certainly means more than income properly so described—it includes more than 'profits and gains' chargeable under the last three schedules of charge. It includes the annual value of property chargeable under Schedule A, and the annual value of the occupation chargeable under Schedule B. The Income-Tax Code (5 and 6 Vict. c. 35, sec. 167, and 16 and 17 Vict. c. 34, sec. 28) contains express directions for estimating and calculating these values for the purpose of ascertaining the title to abatement when relief by way of abatement is claimed." Now, it is not disputed that the appellant is liable, without relief against anyone else, to pay the duty under Schedule A in respect of his manse. If that be correct, then it appears to be already determined that his interest in the manse is assessable in the sense explained by Lord Macnaghten. The case, therefore, is altogether different from the case of *Tennant* v. *Smith*. The question there was whether a bank agent, who occupied rent free premises in the bank as a residence, was bound to take the advantage so derived into account in estimating his total income from all sources. He was neither proprietor nor occupier within the meaning of Schedule A or Schedule B. The bank alone was chargeable under Schedule A, and liable to pay duty. The question, therefore, was in effect whether the Crown, after receiving the proper duty from the bank itself, was entitled to something more in respect of the benefit derived by the bank agent from his residence. The case for the Crown was that this advantage was income chargeable, not under Schedule A, for the duty under that schedule was payable by the bank alone, but under Schedule E, or at all events under Schedule D. It was held by the House of Lords that a mere privilege of residence in a house in which the appellant had no property of any kind, and which was not convertible into money, did not fall under either Schedule E or Schedule D. But then it is not maintained in the present case that the minister's right and interest in his manse is chargeable by virtue of either of these schedules. It is said to be chargeable by virtue of Schedule A, and therefore that it ought to be taken into account as income properly charged under that schedule. If that be sound, then the position of the minister does not resemble that of the bank agent, but rather that of the bank itself in the case of *Tennant* v. *Smith*. But then it is said that the right in the manse is a mere right of residence by virtue of an office, and therefore that it is not to be taken into account. That, I think, might have raised a question of difficulty and of general importance, if the grounds of the appellant's claim to be treated as a mere resident with no assessable right or interest had enabled him to carry his argument to its legitimate conclusion, and to say that the manse was not assessable in any shape under the Income-Tax Acts. But then it is quite clear that it is the right and interest of the minister and of no one else that is assessed under Schedule A. It is not pretended that there is any right of property in any other person except the minister which could be so charged. But it seems to me clear enough that the Crown could not possibly have charged the minister, if his right and interest were not in its own character assessable, upon the mere ground that they could find nobody else to charge; and accordingly it was not maintained for the appellant that the assessment made upon him in respect of the annual value to him of his manse was not correctly made, or that he was not liable to pay duty. This would not be conclusive if it could be said that, although he had been made to pay as occupier, the assessable interest was really vested in someone else. But that is not said. We are asked to dispose of the case on the hypothesis that he has been rightly assessed to income-tax on £30 as the annual value of the manse to him, and that he has no relief against that burden. Well, if that be so, it appears to me that that annual value, on the grounds explained in the opinion of Lord Macnaghten, is part of his income from all sources, to be taken into account in estimating his claim for abatement. I have no doubt that the concession of the minister's liability to assessment rests upon the grounds which your Lordships have fully explained in expounding the legal character of the minister's right to the manse, because it appears to me that the question whether his residence is assessable or not necessarily depends on the legal character of the right, and not upon the actual uses which in practice he may or may not generally make of it. It may be that in the ordinary execution of his duty the minister may very seldom find it necessary or proper to let his manse. The question is whether his legal right and interest in the manse enable him to let it, if it were otherwise proper and convenient for him to do so. On that point I agree with your Lordships.

The Court reversed the determination of the Commissioners, sustained the assessment, and decerned.

Counsel for the Surveyor of Taxes—Sol.-Gen. Shaw, Q.C.—A. J. Young. Agent—Solicitor for Inland Revenue.

Counsel for the Respondent—Pitman. Agent—L. D. Corson, S.S.C.