debt due by the Railway Company measured by the amount of the salary actually paid in hard cash. This ignores the fact—as it appears to me, the fundamental fact—that the subject of the tax (on whomsoever the tax may be assessed) is the profit of the office or employment. The question is, What is the amount of that profit? And the answer is that the amount is more or less according as the profit is received after deduction of the tax to which it is subject, or free of that tax. The Railway Company's argument really involves—as indeed the Railway Company's counsel admitted—that the effect of section 6 is to exempt the profit of railway office or employment from taxation under the Income Tax Acts. I have found myself unable to reconcile these views either with the general scheme of the income tax or with the provisions of the Acts of 1842, 1853, and 1860, on which the question immediately turns.

LORD MACKENZIE — I am of the same opinion. It was urged upon us that we ought to apply the analogy of the case of a bank agent whose occupation of a dwelling-house was considered in the case of *Tennant* v. *Smith*, 19 R. (H.L.) 1, [1892] A.C. 150. It was there held that unless what came into the bank agent's hands was money or money's worth, it was not subject to income tax; as Lord Macnaghten put it—19 R. (H.L.) at p. 9, [1892] A.C. at p. 164—"a person is chargeable for income tax . . . under Schedule E, not on what saves his pocket but on what goes into his pocket."

It appears to me that that analogy does not apply to the present case and that the true analogy is the dividend which is paid free of income tax—one on which income tax is paid by the company before the dividend is received. What the recipient gets is $x + y$, x being the amount of his dividend which goes into his pocket, and y being the amount of the income tax which goes to the Inland Revenue, but which is nevertheless money or money's worth in a question with the recipient of the dividend. In the same way you must reckon in regard to profits and gains that the person who receives the particular sum free of tax receives more than the person who got a similar sum subject to deduction of tax.

A consideration of these matters leads me to the conclusion that the Commissioners reached a right decision.

LORD CULLEN—I am of the same opinion. The charge here is on the profits arising from the office or employment. Now if there be one employee who has a bare contract for a salary of, say, £100, and another employee who has the species of contract actually made by the Railway Company—that is to say, one under which he receives a salary of £100 free of all deductions—it seems clear that the profits arising from the employment in the second case are greater than the profits arising from the employment in the first case in respect of direct pecuniary receipts. And if the pecuniary profits arising from the employment in the second case are greater than in the first the tax payable must be correspondingly greater.

LORD SKERRINGTON did not hear the case.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—Macmillan, K.C.—Graham Robertson. Agent—James Watson, S.S.C.

Counsel for the Respondent—The Solicitor-General (Murray, K.C.)—Wark, K.C.—Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, February 17.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* TRUSTEES FOR THE ROMAN CATHOLIC ARCHDIOCESE OF GLASGOW.

Revenue — Income Tax — Exemption — Public School—Buildings Let to Education Authority — Income Tax Act 1918 (8 *and* 9 *Geo. V, cap.* 40), *First Schedule, Schedule A, No. VI, Rule* 1 (*c*).

The Income Tax Act 1918, Schedule A, No. VI, provides—Rule 1—"The following further allowances shall be made under this Schedule: . . . (*c*) The amount of the tax charged on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act, amounts to one hundred and fifty pounds or more, or by a person paying rent for same."

The schools belonging to the Trustees for the Roman Catholic Archdiocese of Glasgow having under the provisions of the Education (Scotland) Act 1918 been transferred by lease to the Education Authority, who paid rent for them and occupied them as tenants of the trustees, *held* that the schools were occupied by a person paying rent for them within the meaning of the Rule, and that the trustees were not entitled to exemption from income tax.

F. J. Bryan, Inspector of Taxes, Dumbarton, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Dumbarton finding that the Trustees for the Roman Catholic Archdiocese of Glasgow, *respondents*, were not liable for the assessments for the year 1920-21, amounting *in cumulo* to £95, 6s. 6d., made under Schedule A of the Income Tax Acts in respect of school premises in the county of Dumbarton owned by the trustees and occupied by the Education Authority for the county under the Education (Scotland) Act 1918, obtained a Case for appeal.

The Case stated—"The following *facts* were admitted:—1. Prior to the passing

of the Education Act the trustees were proprietors of a number of voluntary schools in different parts of the county of a denominational character, which prior to the passing of the Act were used by the trustees for educational purposes, and were exempted from income tax as public schools. 2. The providing of elementary education is by the Education Act laid upon the Education Authority. 3. The schools owned by the trustees were under the provisions of the Education Act transferred by the trustees by lease to the Education Authority prior to the year 1920-21, and have since been and now are occupied by the Education Authority as tenants under the trustees. 4. The rents to be paid by the Education Authority to the trustees are still under negotiation, but for the purposes of the present appeal are taken to be the amounts of the valuations appearing in the valuation roll for the year 1920-21."

The *question of law* for the opinion of the Court was—"Whether the trustees are entitled to exemption from income tax in respect of the said school premises in virtue of Schedule A, No. VI, Rule 1 (*c*), of the Income Tax Act 1918."

Argued for the appellant—The Rule was intended to apply only to persons who carried on public schools, and not to persons who were merely proprietors of the building. The latter were just in the position of ordinary owners of property. In any case the Rule was excluded by the fact that the buildings were let to a person who paid rent for them. There was no question raised as to the amount of the assessments.

Argued for the respondents—The Rule was meant to apply to the owners of buildings used as public schools. The general policy of the Act was to exempt such owners unless the buildings were occupied or let for other purposes. The procedure under the Rule was only adopted to avoid recovering under section 37, but the exceptions in the Rule only applied where parts of the buildings were let for other purposes, and not where the whole buildings were let for use as a school. Further, it was questionable whether there was any proper rent. In the transference of a school the payment was for other considerations besides the buildings, such as goodwill, site, and furnishings.

LORD PRESIDENT—The Trustees for the Archdiocese of Glasgow have been assessed to tax under Schedule A in respect of certain buildings and premises owned by them. These buildings and premises, until after the passage of the Education (Scotland) Act 1918, were in the occupation of the trustees as and for the purposes of a public school; and while that was the case, there is no dispute that they were entitled to the benefit of the allowance provided for in Schedule A, No. 6, Rule 1, subhead (*c*). After the passage of that Act, however, they availed themselves of those provisions in it which enabled voluntary schools to be made the subject of transfer to the Education Authority, and they adopted the alternative of carrying that transfer out by way of lease. The result is that the Trustees for the Archdiocese now carry on no public school in these premises, and are not in respect of these premises an institution carrying on a public school. They are nothing more than owners and lessors of a piece of property built and designed for scholastic purposes, and actually disposed of for a rent for that purpose to the Education Authority. The question is whether in these changed circumstances they can any longer claim the benefit of the allowance to which I have referred.

The particular clause to which they appeal, *prima facie* at any rate, excludes their resort to it, for it applies only to taxation in respect of the public buildings, offices, and premises belonging to a public school in so far as these are not occupied by a person paying rent for the same; and the fact is that the public buildings, offices, and premises in question are, as a matter of fact, occupied by a person, to wit, the Education Authority, who pays rent for the same. The suggestion, however, was made, that so long as the purpose for which the building was actually used (either by the owner or by a lessee) is that of a public school, the allowance could still be claimed. I see nothing in the words of the section to justify that interpretation, and certainly there is nothing in the intention of the statute, so far as one can gather, which would render such a construction permissible. The idea of the allowance is that any institution—I use that word as a neutral one covering the position of the Trustees for the Archdiocese—which has premises in which it carries on a school is entitled to the allowance; but the allowance becomes unavailable to whatever extent (be it in part or in whole) the buildings and premises are put into the occupation of an officer or a teacher with a salary of the specified amount, or are let at a rent to a third party for whatever purpose, be it educational or otherwise. Therefore I think we have no alternative but to answer the question put to us in the negative.

LORD MACKENZIE—I concur.

LORD CULLEN—I am of the same opinion. The respondents seek to read the words at the end of the section "or by a person paying rent for the same" as meaning paying rent to the authority having control of the hospital, public school, or almshouse, but I see no justification for that reading. It seems to me that "paying rent" means paying rent to the owners of the premises in question. Here rent is paid by the Education Authority to the respondents as the owners, and therefore it appears to me that the exemption does not apply.

LORD SKERRINGTON did not hear the case.

The Court answered the question of law in the negative.

Counsel for the Appellant—The Solicitor-General (Murray, K.C.) — Wark, K.C. — Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Counsel for the Respondents—Watson, K.C.—Carmont. Agents—W. & H. Considine, W.S.