HOUSE OF LORDS.

Thursday, October 22, 1914.

(Before Earl Loreburn, Lords Dunedin, Atkinson, Shaw, and Parmoor.)

GOVERNING BODY OF WESTMINSTER SCHOOL *v.* REITH (SURVEYOR OF TAXES).

Revenue—House Tax Act 1808 (48 *Geo. III, cap.* 55), *Sched. B, Rule* 2—*House Tax Act* 1851 (14 *and* 15 *Vict. cap.* 36), *sec.* 2—*Offices Belonging to and Occupied with any Dwelling-House—School Buildings.*

The Governors of Westminster School claimed exemption from inhabited-house duty in respect of certain buildings used as class-rooms, &c. The Board of Inland Revenue claimed to assess these buildings under rule 2, Sched. B, of the House Tax Act 1808 as "offices."

Held (Lord Parmoor *dissenting*) that the buildings in question were not "offices," and were exempt from assessment.

Decision of Court of Appeal, 1913, 3 K.B. 129, *reversed.*

Appeal from an order of the Court of Appeal (Cozens-Hardy, M.R., Buckley, and Kennedy, L.JJ.) reversing in part an order of Horridge, J.), reported 1913, 1 K.B. 190.

The order of Horridge, J., was one on a case stated by the Commissioners for General Purposes of the Income Tax and Inhabited-House Duty for the division of St Margaret and St John in the county of Middlesex, and related to the assessment of the Governing Body of Westminster School to inhabited-house duty.

The effect of the order was that in addition to buildings containing a dormitory and studies and a sanatorium (which buildings were admittedly inhabited dwelling-houses) there were to be included in the assessment separate buildings used as a school hall (for prayers and other general assemblies, but not for meals), class-rooms, school library, &c.

The question whether such last-mentioned buildings should be included in the assessment depended on rule 2 of Schedule B of the House Tax Act 1808, which is incorporated by section 2 of the House Tax Act 1851, and is as follows:—"Every coach-house, stable, brewhouse, wash-house, laundry, woodhouse, bakehouse, dairy, and all other offices, and all yards, courts, and curtilages, and gardens and pleasure grounds, belonging to and occupied with any dwelling-house, shall in charging the said duties be valued together with such dwelling-house: Provided no more than one acre of such gardens and pleasure grounds shall in any case be so valued."

The buildings included in the assessment which were admittedly inhabited dwelling-houses were the buildings which had internal communication called the "college" and the building called the "sanatorium." The position of these two buildings was indicated upon the plan annexed to the Special Case by the letters C and A respectively.

The dining hall was not in question in this appeal.

The rest of the buildings which were in question were indicated upon the plan by the letters B and D. They consisted of a hall called "up school" (used only for prayers and general assemblies of the boys), class-rooms, the school library, book offices, tuck shop, common rooms with boys' lockers, carpenter shop, and lavatories.

There was no internal communication between these last-mentioned buildings and the college and sanatorium buildings (marked C and A), the only communication being across an open space known as Little Dean's Yard, which was not vested in the appellants.

All the boys at the school used the buildings B and D and were taught in common. Only forty of the boys were housed in the buildings C and A. The rest of the boys resided in their own homes or in boarding-houses, which were not in the occupation of the appellants. In the years in question, 1906-7 and 1907-8, there were 270 boys at the school.

Their Lordships considered judgment was given by

Earl Loreburn—The differences of opinion, both in the Court of Appeal and in your Lordships' House, show that the question in this case is one of difficulty. The appellants maintain that certain buildings used in connection with Westminster School ought not to be assessed to inhabited-house duty. The buildings in question are those called Ashburnham House and School. It is common ground that these buildings are used as class-rooms, or for purposes of tuition, and that no one sleeps or lives in them. They are detached from the other buildings of Westminster School, and are used both by the boys who are boarded in the college and by those who live in boarding houses and by town boys who live in their own homes away from the school altogether. If it is important, the number of the other boys is five or six times as great as those who live in the college.

Under these circumstances the Court of Appeal, reversing the decision of Horridge, J., held that Ashburnham House and the "school" ought to be assessed to inhabited-house duty upon the ground that they were offices belonging to and occupied with a dwelling-house—viz., the college—in which some forty of the boarders live and sleep. I regret that I cannot agree with this conclusion.

The duty sought to be recovered is inhabited-house duty. If it could be shown that the buildings in question were really part of an inhabited house, whether by reason of structural connection or in some other way, then they might possibly be assessable. I will say no more than that, for it is not contended that these buildings are assessable on that ground, and it is enough to deal with actual contentions.

The sole ground upon which the Court of Appeal proceeded was that under rule 2, Schedule B, of the Act of 1808 (which is

incorporated into the Act of 1851) these buildings are assessable. [*His Lordship then read rule* 2.]

Can these buildings be brought within rule 2? It can be done only by saying that they are offices belonging to and occupied with the college buildings—that is to say, with the house in which some forty boys live and sleep.

I do not enter upon the decided cases, not from any want of respect, but because they all relate to different, though in some degree analogous facts, and what we have to do here is to look at the facts of this case and see whether or not they come within the words of this rule. The circumstance that in other cases a chapel or a racquet court was held to be within or not within the rule does not help me to decide whether these structures are within it, though the point of view of the learned Judge is undoubtedly valuable, and I am sure your Lordships are alive to its importance. Still we have to see if the facts of this particular case fit the words of this particular rule.

In my opinion Ashburnham House and the school are not offices at all within the meaning of this rule. The word office is a somewhat vague word with no precise meaning. The words preceding it in the rule ought to be looked at. They are—"Every coach-house, stable, brewhouse, laundry, woodhouse, bakehouse, dairy, and all other offices." Reference has been made to the doctrine of *ejusdem generis*. I will merely say that when you are considering what is the ambiguous import in a rule or statute, the whole context ought to be regarded in order to ascertain what was truly meant. And when I regard the words preceding I cannot believe that class-rooms and tuition rooms ought to be included as offices. They are quite a different kind of thing from the coach-houses and so forth, which are enumerated in the earlier part of the rule. Also, it seems to me, with all respect, that to call these tuitional buildings by the description of offices is doing violence to language as commonly used.

In the next place, even if they were offices they do not come within the words "belonging to and occupied with" the college—that is to say, with the house in which forty boys live and sleep. In fact, Ashburnham House and the "school" are used by 270 boys, of whom 230 do not live in the college. It would be equally reasonable to say that they belonged to and were occupied with one of the boarding-houses other than the college. The inhabitants of the college have no special and no exclusive right to them, and, considering their numbers, have a comparatively small share in their use.

I am therefore of opinion that Horridge, J., was right, and that the order appealed from ought to be reversed.

I have received a communication asking me to say that my noble and learned friend Lord Shaw agrees with the opinion which I have expressed.

LORD DUNEDIN—Assessments to inhabited house duty for the years 1906-7 and 1907-8 were made upon the appellants, who are the Governing Body of Westminster School, and are, under the Public Schools Act 1868, vested in the property of the subjects to be mentioned in respect of occupancy of the following buildings:—

A. Sanatorium	£ 29 69
B. Ashburnham House, classrooms, &c.	425
C. College buildings	200
D. School	300
E. Bursar's office	18
	£1041

No objection was made as to the assessment in respect of the bursar's office, but in respect of all the others the appellants appealed to the Commissioners for General Purposes of the Income Tax and Inhabited-House Duties. They objected to the whole of the items on the ground that the school was a charity school, and as such fell within Case 4 of the exemptions of Schedule B of the Income Tax Act 1808 (which are incorporated in the Assessing Act of 1851). They also, and separately, objected to items B and D, on the ground that they were not inhabited dwelling-houses within the meaning of the Statute of 1851.

The Commissioners sustained both objections. Appeal was then taken, and a case stated for the King's Bench Division of the High Court. Horridge, J., sustained the appeal as regards the objection on the score of the school being a charity school, but upheld the determination in respect to items B and D. In this judgment the Governing Body of the school acquiesced, but the Crown appealed to the Court of Appeal, who sustained the appeal and held that B and D fell to be assessed. The present appeal to your Lordships' House is from that judgment.

The facts as to the items B and D are set forth in the special cases and elucidated by the accompanying plan. It is sufficient here to state that the buildings in question are used entirely for teaching and educational purposes—that they are so used by the whole of the boys attending the school, and are in no way confined to the use of the small section of the school known as the King's scholars who are boarded in item C—that no persons sleep on any part of the items B or D, and that B and D are not structurally connected with C.

In this state of facts the Attorney-General frankly made the following admissions—all of which, in my opinion, he was bound to make. He conceded that as the duty was on inhabited dwelling-houses, the items B and D did not alone, or *per se*, fall under that description; that accordingly they must be shown to be part of, and assessed along with C, which is admittedly an inhabited dwelling-house; and lastly, that as there is no structural connection between C on the one hand, and B and D on the other, he was forced to rely upon the effect of rule 2 of Schedule B of the Act of 1808, incorporated by reference into the Act of 1851. Rule 2 is as follows. [*His Lordship read the rule and continued*—]

The Attorney-General put his argument in two propositions. He said first that the word "office" was apt to describe such a

thing as a building composed of class-rooms, &c., such as items B and D. For this proposition he naturally claimed the authority of *Browne* v. *Furtado*, [1903] 1 K.B. 723. He then said that, holding B and D as an "office," it was in the circumstances of this case belonging to and occupied with the dwelling-house C.

I do not think that this separation of the proposition is the best way to consider the matter, not because I think it is intrinsically wrong, but because the considerations as to the true meaning of the word "office" and the true meaning of the words "belonging to and occupied with" cannot, I think, usefully be kept in separate compartments. In the view I take of the matter I am not concerned to say that the case of *Browne* v. *Furtado* was wrongfully decided—a view which was urged by the appellants. All that *Browne* v. *Furtado* decided as a general proposition was that a schoolroom might be an "office."

It obviously does not follow from this that every schoolroom, or in particular this schoolroom, is an "office," and the determination of whether this schoolroom is or is not is a question of the circumstances viewed as a whole, and does not solely depend upon whether it is occupied with and belonging to the dwelling-house C.

Now the first point which I think clear is that the structures dealt with in rule 2 are all what I may term appanages of the principal taxable building, the inhabited dwelling-house. In fact the rule is designed to make, so to speak, a fictional structural connection. I come to this conclusion not only in respect of the words "belonging to and occupied with," but in respect of what in argument was called the *ejusdem generis* rule of interpretation, though I prefer myself not so to designate it. Further, I point out that the words are "belonging to," not a person but a thing, which gets rid of all ideas of property and title and introduces the idea of fictional physical connection—incidentally, I think, turning the flank of criticism based upon the fact that the expression is "belonging to" and not "solely belonging to." What we have therefore to find out is whether B and D are truly accessories of C. If they are, *accessorium sequitur principale.* But if they are not, then you cannot turn the brocard round and read it as *principale sequitur accessorium.*

I now turn to the facts of the present case, and I may say at once that I think the true view was taken by Horridge, J.

In the first place, let me say—though in the view I take of the facts it would make no difference in the result—that I entirely subscribe to what was said by Pollock, B., giving the judgment of himself and Hawkins, J., in *Governors of Charterhouse School* v. *Lamarque*, 25 Q.B.D. 121, at p. 125—"The whole language and object of the Act . . . point to the conclusion that whether a particular building is taxable or not is to be determined by its status when the liability to taxation arises."

The question in that case was whether the school was a "charity school" or not, *i.e.*, it arose upon a claim for exemption, but the language used is general, and in my opinion perfectly accurate. Now what are the facts at the date of the assessment? They are set forth in the Special Case.

There are 270 boys attending the school, only forty of them living in item C. The governors are vested in B and D, as separate subjects in no way connected with C, and these subjects are used for the education of all the boys in the school, with no privilege or discrimination in favour of the boys who sleep in C. In this state of facts I find it impossible to come to the conclusion that B and D are offices belonging to and occupied with C. It seems to me that the school buildings are the principal and all else but the accessory. It seems almost a *reductio ad absurdum* to say that Ashburnham House, B, is an "office" of the college buildings, belonging to and occupied with it. Ashburnham House would never have been provided for the wants of the King's Scholars, but was only made necessary by the number of boys who were not King's Scholars and who needed schoolroom accommodation.

I have already said that I think the matter must be judged of in the year of assessment. If you took the year of the legislation which imposed the tax, *i.e.* 1851, the state of facts as between the King's Scholars and other boys would be little different. But even if one had to go back to the establishment of the school in Queen Elizabeth's time, I would on the facts as stated in the Special Case come to the same conclusion. In it is distinctly stated that the school was for all boys, not only for King's Scholars.

It seems to me, with deference, that the Court of Appeal really begged the question. They seem to me to have assumed that the schoolrooms are an appanage of the college, and then upon that assumption they say it makes no difference if other outside boys are allowed to use it. I should agree if the question was put, "Does the presence of outside boys alter the condition of the college office?" But the real question is, "Is this schoolroom the college office?" For the reasons I have given I think it is not.

I am therefore of opinion that the judgment of Horridge, J., was right and should be restored, the respondents to pay the costs in this House and in the Court of Appeal.

LORD ATKINSON—It is unnecessary to re-state any of the facts which have been already mentioned. The Court of Appeal, differing from Horridge, J., held that all these buildings coloured blue on the plan referred to in the case, and letters B and D, though admittedly not lived in by anyone, and not structurally forming part of or being internally connected with the buildings coloured pink, or with any other building in which anyone lived, were, within the meaning of rule 2 of the schedule of rules attached to the aforesaid Statute of 1808, an office or offices "belonging to and occupied with a dwelling-house," namely, the build-

ing coloured pink. The question for the decision of this House is which of these decisions is right. The case sets forth that the school originally (*i.e.*, immediately after the Reformation) formed part of the whole college of St Peter's, Westminster, and that the foundation, as constituted by Queen Elizabeth in 1560, consisted of a dean and chapter and several officials, including a head master, an usher, and forty scholars, called King's or Queen's Scholars, according to the sex of the reigning sovereign for the time being, dean and chapter being the governing body. The foundation so described continued to exist until, under the Public Schools Act of 1868 (31 and 32 Vict. cap. 118), a new body of governors was created. The buildings marked blue were then vested in them, and an income of £3500 payable by the Ecclesiastical Commissioners was assigned to them. The school has for many years been vastly expanded.

It is found in the case stated (paragraph 7) that there are now 270 boys in the school, 60 being King's Scholars, 40 of whom, or little more than one-seventh of the entire number of pupils, reside in the buildings marked A and C, and 20 reside either in their own homes or in the boarding-houses marked 1 and 2, each of these latter being inhabited by one of the masters of the school, under the provisions of section 13 of the Act of 1868. The head master holds his office at the pleasure of the governing body. All the other masters are appointed by him and hold office during his pleasure; but the boarding-houses resided in by these masters are, apparently, in their occupation. Resident King's Scholars are each maintained and educated for £30 per annum. Non-residents (King's Scholars) living at home get their education free, and non-residents residing in a boarding-house receive what is equivalent to a scholarship of £60 per annum.

In paragraph 4 of the case stated it is mentioned that town boys, that is, boys who are not scholars, are allowed by the original statutes to attend the school. That is, in my view, a rather inadequate description of their true position under the statutes and bye-laws mentioned in paragraph 5 of the case stated.

By section 5 of the Public Schools Act of 1868 (31 and 32 Vict. cap. 118) the new governing body was incorporated and empowered to hold lands for the purposes of the school, with the same power of leasing as that possessed by the dean and chapter. By section 6 they were empowered to make statutes with respect, amongst other things, to scholarships and exhibitions and other emoluments, either tenable at the school, or tenable on quitting the school by boys educated thereat. Under this section a statute was passed on the 28th July 1871, approved of by the Queen in Council on the 6th November 1871, and amended by the Queen in Council on the 26th March 1878 and the 26th February 1880, making all classes of boys attending the school equally eligible to compete for both university and school exhibitions and other prizes. By sub-section 7 of the same section the governing body were empowered to make statutes respecting the disposal of the income and of the property of the school, either for the purpose of improving or enlarging the existing establishment or of founding scholarships tenable at school or elsewhere, &c. The word "establishment" clearly means, I think, in this connection, the whole establishment, not the mere "foundation."

By section 20 of the Act of 1868 special provisions are made for this Westminster School, and, after providing for the payment to the governing body by the Ecclesiastical Commissioners of £3500 per annum, by sub-section 6 it expressly enacts—That "from and after the passing of the Act there shall vest in the governing body for the time being for the use of the school the playground in Vincent Square with the lodge in such playground, the dormitory with its appurtenances, the school and class-rooms, the houses and premises of the head master and under master, the three boarding-houses excepting the crypts." Then sub-section 7 provides that all the said buildings shall be held by the said governing body for the use of the school. The school and class-rooms and other buildings are thus impressed by statute with a trust for the benefit of the whole school. They are to be held for the use of the whole school, not for the sole use or benefit of the college or its inmates, or as an appanage of that college or of the foundation.

Special provision is then made for the King's Scholars in sub-section 8, by which it is enacted that the hall and playground in Dean's Yard shall continue to be used as heretofore by the scholars of Westminster School.

Again, provision is made in one of the regulations or bye-laws for town boys becoming home boarders, special half-boarders, or special boarders. These boarders dine with the King's Scholars in the college hall, and this arrangement is stated to be designed "to provide as far as possible for day boys the advantages of the home system of public schools." In the face of these enactments it would appear to me impossible longer to treat the college or foundation, according to the ordinary use of language, as the central part or nucleus of this school, the day school being merely an excrescence upon, or benevolent accretion, or a subordinate accessory to it.

I now turn to the statutes. It will be observed that the subjects taxed under the Statute of 1851, as under the earlier Acts, are inhabited dwelling-houses; certain adjuncts are treated merely as enhancing the value of each of these dwelling-houses and thus increasing the tax upon them. The adjuncts are not themselves separately assessed or taxed. Section 2 of this statute adopts the values set forth in Schedule B attached to the Act of 1808. And upon the construction of rule 2 in this latter schedule the question for decision in this case turns. [*His Lordship read the rule, and continued*—]

Common occupation of the dwelling-house and one of the enumerated subjects is not enough. The subject must "belong to and be occupied with the dwelling-house." That

indicates that the principal and the accessory must be closely associated. And *prima facie* one would be inclined to think that, having regard to the state of things in the year 1808, the enumerated subjects were those whose purpose and use was what might be styled "domestic," that is, a purpose and use which contributed to the greater comfort and enjoyment of the dwelling-house as a dwelling-house, *i.e.*, making it a more comfortable and enjoyable residence.

The Court of Appeal, however, have held, as I understand their decision, that between these vast blocks of buildings coloured blue, despite the trust impressed upon them, the purpose for which they were acquired by the present owners, and the uses to which they are devoted, there exists between them and the college that close association which the rule requires, and that they are within the meaning of this rule merely offices or an office belonging to and occupied with this latter. If this be so, it is difficult to see on what principle these same class-rooms do not belong to each of the boarding-houses in which some of the remaining one-third of the King's Scholars reside. The houses satisfy the same requirements of the King's Scholars who reside in them as does the college of the King's Scholars who reside in it, and the class-rooms and other buildings are used equally by all the sixty King's Scholars for the same purpose and under the same right.

If the boarding-houses are still in the occupation of the governing body, notwithstanding the residence of the masters in them, then the class-rooms are occupied "with them" as truly in the one case as in the other. In my view, however, these class-rooms and buildings coloured blue are *prima facie* not adjuncts of either the college or the boarding houses. They do not "belong to" either the one or the other. The persons residing in the college or boarding-houses have by virtue of that residence no rights in or to those class-rooms, &c., different in kind from these enjoyed by non-resident pupils. The King's Scholars no doubt get their tuition free of charge. The town boys pay for it, but the education is of the same kind, is given in the same place and by the same masters. The class-rooms are held by the governing body upon trusts, under which the town boys quite as truly as the others stand in the position of beneficiaries. This is, I think, the common-sense and rational view of the true position of things and the true relation of these different classes of school buildings to each other, and I do not find anything in the provisions of the statutes conversant with the subject or in the authorities decided upon them requiring one to adopt a different and as it appears to me a somewhat artificial view.

By rule 3, Schedule B, of the Act of 1808 it is provided that all shops and warehouses which are attached to dwelling-houses, or have communication therewith, shall be valued with the dwelling-houses and "the household and other offices aforesaid" thereunto belonging. Two classes of warehouses are excepted from this provision, namely, (1) buildings upon or near to adjoining wharfs, and (2) such warehouses as are distinct and separate buildings, and not parts or parcels of such dwelling-houses, or the shops attached thereto, but employed solely for the purpose of lodging goods, wares, and merchandise, or for carrying on some manufacture (notwithstanding the same may adjoin to or have communication with the dwelling-house or shop). The words in brackets obviously refer to warehouses employed for carrying on some manufacture. An argument was founded on the words occurring in this rule, "the dwelling-house and the household and other offices aforesaid belonging thereto," to show that the words "other offices" used in rule 2 could not be confined to merely "household" or "domestic" offices as they were styled, and that when a dwelling-house was, while it so remained, used in part for another and additional purpose, a building constructed or devoted to subserve this additional purpose solely would be or might be an "office belonging to and occupied with the dwelling-house" within the meaning of rule 2. This may possibly be so. If an artist, for instance, who used one of the rooms of his dwelling-house as a studio in which he painted his pictures chose to build an additional studio in his garden, it may well be that under this latter rule the new and additional studio would properly be held to be an office belonging to and occupied with his dwelling-house. That argument, however well founded, does not in my view help the case of the Crown. There is no analogy whatever between the case of the additional studio and these vast class-rooms. They do not stand to the college in a relation at all resembling that in which the additional studio would stand to the dwelling-house of the artist, and still less do they stand in the relation in which the shop or warehouse or factory of the trader or manufacturer stands to his dwelling-house to which it was attached or with which it had communication, inasmuch as these class-rooms, &c., are, as already pointed out, dedicated by statute to the use equally of every pupil of the school wheresoever he resides, or to whichever of the two categories of pupils he may belong.

The third section of the Act of 1851 and the rules contained in it in favour of trade and business makes further provisions as to houses occupied for business premises and as a farm, and *bona fide* used for the purpose of husbandry only; but it is unnecessary to refer to them as they do not affect the case, inasmuch as it was not contended, as I understand, that these school buildings come within the operation of any of these provisions.

Now as to the authorities. In *Lambton* v. *Kerr*, 3 Tax Cas. 380, [1895] 2 Q.B. 233, the appellant Lambton occupied premises consisting of (1) a dwelling-house called Park Lodge containing ten rooms, with domestic offices and a garden of about one rood, (2) half an acre of ground on the east side of the dwelling-house and communicating with it by two gateways, and (3) stables and

saddle-rooms ranged on three sides of the stable yard. The appellant carried on the business of a trainer of racehorses on these premises, and the stables would accommodate about thirty-nine horses. It is not stated in the case whether any of these stables were built by the appellant, or whether they did not form a portion of the premises as they originally stood before he occupied them. Sleeping accommodation was provided for four of the stable-lads over the stables, and the dwelling-house itself was occupied and apparently resided in by the servant of the appellant called the "head lad." I find it stated by Grantham, J., at p. 237, that the learned Judges "find that the stables are not only stables, but that they contain rooms which are practically a dwelling-house for men who belong to the stables and work in them. Therefore besides the stables we have these four rooms in the stables, and we have a separate dwelling-house which is practically attached to the stables. Looking, therefore, at the building as a whole, I am clearly of opinion that the case comes within the decision in the Scotch case of *Cheape* v. *Kinmont* (2 Tax Cas. 418, see 26 S.L.R. 103, and 16 R. 144)."

Charles, J., gives the pith of his judgment in this sentence—"They were used by these persons not as mere caretakers but for a common purpose—namely, the purpose of training horses. Therefore whilst on the one hand the stables may be said to belong to the dwelling-house, on the other the dwelling-house equally belongs to the stables; they each belong to the other and are both used for a common purpose. That is the conclusion at which I would arrive apart from authority." And he then refers to *Cheape* v. *Kinmont*. It was clear that these stable lads did not live in the houses and stables for the purposes of protecting them, but to carry on the appellant's business. And therefore the case could not have fallen under the 41 and 42 Vict. c. 15. The case has no resemblance, however, to the present case. The same may be said of the case of *Cheape* v. *Kinmont*.

The cases of *Clifton College* v. *Tompson* and *Charterhouse School* v. *Gayler* ([1896] 1 Q.B. 432, 437, 3 Tax. Cas. 430, 435) were really decided on the ground that the school houses were in the occupation of the governing body, while the houses in which the boys resided were in the occupation of the masters, whereas rule 2 requires that the "office should be occupied with the dwelling-house." There was, therefore, no common occupation of the two buildings.

The case of *Browne* v. *Furtado* ([1903] 1 K.B. 723), and especially the judgment of Stirling, L.J., was much relied upon by the Crown, while your Lordships were pressed on behalf of the appellant to overrule it. It does not appear to me to be at all necessary to overrule it in order to decide this case in favour of the appellants. There the buildings in dispute were only separated by a wall from the residence of the appellant, the residence of the assistant masters, and the dormitories and living rooms of the pupils, all of whom were boarders. Through a doorway in this dividing wall on the ground floor, and through a passage, which was roofed in, access was free from one building to the other.

The whole of the buildings, disputed and not disputed, were contained in the same enclosed ground, and the disputed buildings contained classrooms, playrooms, gymnasium, closets, carpenter's shop, chapel, &c., and other rooms necessary for carrying on the business of the school and the proper training and education of the boys. Stirling, L.J., was not satisfied that these disputed buildings formed, structurally, one building with the dwelling-house. They were, however, all in the occupation of the schoolmaster, were built in 1893 and 1897, and were all used solely for the purposes of the boarding school carried on in the main building. No person resided in them and no person used them save these pupils.

The ground of the decision was that it was not necessary that the word "offices" mentioned in rule 2 should be confined to those offices which were only used for the "domestic" purposes of a dwelling-house as such, but might be held to include buildings such as these, which served a purpose to which the dwelling-house was put, in addition to the purpose of the residence of the occupier himself and his family. The fact remains, however, that the disputed buildings were built and used for the accommodation of residents in the dwelling-house, and for the accommodation of none others.

In the case of *Young* v. *Douglas* (1 Tax. Cas. 227) and *Cheape* v. *Kinmont*, referred to by the learned Lord Justice, it was stated by him that the general grounds upon which the decisions in these cases appear to have been based was this—that where there are buildings occupied together with a building which is admittedly a dwelling-house, and used for the same purposes for which the dwelling-house is used, the whole buildings are subject to the tax. He further states that he does not dissent from that view. But the facts of all these cases are wholly different from the facts of the present case. The buildings coloured blue on the map are not used for the same purposes for which the college is used. They are not used for the teaching of those dwelling in the college, but for the teaching of hundreds of others residing elsewhere, each and everyone of whom has the same right to use these buildings as have the residents of this dwelling-house.

I am therefore of opinion that there is nothing in the statute dealing with these matters, nor in the authorities decided upon them, to lead one to put upon this rule, as applied to the facts of this case, the construction put upon it by the Court of Appeal. I think, with all respect, that construction was erroneous, that the decision of Horridge, J., was right and should be upheld, and this appeal be allowed with costs in this House and the Court of Appeal but no costs to either party in the Court of first instance.

LORD PARMOOR—I regret I differ from the other noble and learned Lords who heard this appeal, and have formed the conclusion that the decision of the Court of Appeal is right and should be maintained. The question to be determined is whether certain buildings, whose position is shown upon a plan attached to the case, and which consist of a large schoolroom called "Up school," classrooms, the school library, book office, book shop, common room, carpenter's shop, and lavatories should be assessed under rule 2 of Schedule B of the House Tax Act 1808. The Court of Appeal has held that these buildings should be assessed as coming within the language of the rule, and it is against this decision that the appeal is made to this House. Subject to a proviso, which is not material, rule 2 provides that every coachhouse, stable, brewhouse, washhouse, laundry, woodhouse, bakehouse, dairy, and all other offices, and all yards, courts, curtilages and gardens and pleasure grounds, belonging to and occupied with any dwelling-house, shall in charging the said duties be valued together with such dwelling-house. Unless the context in which it is used implies limitation, the word "office" is a word of wide signification, including places where public or private business is transacted, as well as the parts of a house or building used for work or service. It is not material whether, in comparison with the remainder of the building or buildings, the office or offices happen to be large or small. Unless the context has introduced a limitation the buildings in question would, I think, be comprised within the heads "all other offices," subject, no doubt, to a compliance with the later conditions stated in rule 2.

It was argued on behalf of the appellants that the buildings in question did not come within the words "all other offices," and that the principle of *ejusdem generis* would exclude them. If the particular examples enumerated, such as coachhouse, stable, brewhouse, washhouse, bakehouse, dairy, are limited to buildings exclusively of a household and domestic character, then no doubt the words "all other offices" should be construed to include only buildings of a similar type, and such buildings as a schoolroom or a class-room would not come within the type.

I am unable to assent to the argument that the enumerated examples are so limited, and the words appear to me to be equally applicable when the buildings are used for business or other purposes. If this is correct the principle of *ejusdem generis* tells against the argument on behalf of the appellants, and the words "all other offices" would be capable of including, not only buildings of a domestic or household type, but also buildings used for business or other purposes of which the buildings B and D would be a type.

The same question arose in the case of *Browne* v. *Furtado*, [1903] 1 K.B. 753. I entirely agree with the opinion expressed by Stirling, L.J. — "The argument of the schoolmaster was that, regard being had to the nature of the buildings specifically enumerated in the rule, which are of a household or domestic character, 'all other offices' thereby contemplated must be offices used for the purpose of a house used as a dwelling-house, whereas the buildings here in question are used for the purpose of the business carried on by the occupier. It was said that it was not in accordance with the language of the rule to hold that such buildings should be included in the valuation. I cannot assent to that argument."

The only difference which can be suggested between that case and the present so far as the construction of rule 2 is concerned is that the Governing Body of Westminster School do not use the buildings in question for the purpose of obtaining profit from a business, but this distinction appears to me to be immaterial. The real effect of the judgment in *Browne* v. *Furtado* is that if the doctrine of *ejusdem generis* applies, as was claimed by the appellants, the type or genus is not restricted to buildings of a household or domestic character, but is capable of including buildings used for other purposes. In my opinion the argument for the appellants under this head cannot be accepted.

It is not sufficient that the buildings B and D should be capable of being included under rule 2 unless they comply with the conditions that they belong to and are occupied with a dwelling-house — in this case with the buildings coloured pink on the plan and marked A and C. These are the only conditions, and no further conditions can properly be introduced. The appellants occupy both buildings, and in this respect the present case is clearly distinguishable from the cases of *Clifton College* v. *Tompson* and of *Charterhouse School* v. *Gayler*, [1896] 1 Q.B. 432, 437, 3 Tax Cas. 430, 435. The buildings are further occupied for the common purpose of a school, and where buildings in a common occupation are occupied for a common purpose they are occupied with one another within the language of rule 2. I agree with the unanimous decision of the Court of Appeal.

The question whether the buildings B and D belong to buildings A and C raises more difficulty. In ordinary language a schoolroom and classrooms, of whatever relative size or capacity, are buildings which belong to other school buildings, such as a sanatorium or a dormitory, and form with them the buildings or a portion of the buildings which constitute the school establishment. The present case is a particularly strong one. The buildings are immediately adjacent to one another, and if there had been efficient internal communication would have constituted one inhabited dwelling-house within the meaning of the House Tax Act— *London and Westminster Bank* v. *Smith*, 4 Tax Cas. 503. Rule 2 was intended to provide that buildings should not escape liability to taxation from the non-existence of internal communication, and unless there are special circumstances adequate to negative the natural inference, I can come to no other conclusion than that buildings B and D belong to buildings A and C.

In the years in question there were 270

boys at the school, all of whom used the buildings B and D in common. Of these 270 boys only 40 are housed in the buildings A and C, whereas the rest either reside in their own homes or in boarding-houses which are not in the occupation of the appellants. It is said that under such circumstances, and having regard to their relative size and extended user, the buildings B and D cannot be regarded as belonging to the buildings A and C, and that they might as well be regarded as belonging to the boarding-houses which are not in the occupation of the appellants, or even to the homes of the boys.

This argument would have weight if rule 2 were limited to cases in which the offices sought to be included belonged solely to the particular dwelling-house, but no such restriction is to be found in the language of the rule, and I should hesitate to introduce it. If logically applied it would exempt from taxation offices not solely belonging to or occupied with the particular dwelling-house, and there would not be much difficulty in making adjustments to escape the liability to taxation.

On this point I agree with the view expressed in the Court of Appeal by the Master of the Rolls that the buildings B and D plainly belong none the less to buildings A and C because other boys use them for the same purpose as the King's scholars residing in A and C. There is no doubt that the buildings B and D are not inhabited dwelling-houses, and do not communicate internally with an inhabited dwelling-house, so that the only question to be determined is whether they come within rule 2.

In my opinion the decision appealed against is right, and the judgment of the Court of Appeal should be affirmed.

Judgment appealed from reversed and appeal allowed with costs there and in the Court of Appeal. No costs in Court of first instance.

Counsel for the Appellants—Ryde, K.C. —E. M. Konstam. Agent—H. B. Willett, Solicitor.

Counsel for the Respondent—Sir J. Simon, K.C. (A.-G.)—Sir S. Buckmaster, K.C. (S.-G.) —W. Finlay, K.C.. Agent—Solicitor of Inland Revenue.

HOUSE OF LORDS.

Tuesday, December 1, 1914.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

COMMISSIONERS OF INLAND REVENUE *v.* BROOKS.

Inland Revenue—Income Tax—Super-Tax —Mode of Assessment—Duty of Special Commissioners to Make their Own Estimate of Income—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *secs.* 66, 72—*Income Tax Act* 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 163, 164.

An assessment by the General Commissioners for income tax in the preceding year is not binding upon the Special Commissioners assessing for super-tax.

The *facts* are detailed in their Lordships' considered judgment, which was delivered as follows :—

EARL LOREBURN—I should have been glad to accept the Attorney-General's argument because I cannot help feeling that the construction rightly placed on this Act by the Court of Appeal is likely to result in considerable inconvenience without any corresponding benefit. But upon the whole I cannot escape from the conclusion at which they felt themselves bound to arrive.

The substance of the controversy is this. In order to fix ordinary income tax the General Commissioners must find what is the average of gains and profits made in his business by a particular trader during the specified three years. When this figure has been determined on an appeal, the determination is final under section 57 (10) of the Act of 1880. In order to fix super-tax, which is declared to be a duty of income tax, the amount has to be estimated by Special Commissioners, and they are required to estimate the total income in the same way as in case of exemptions from the ordinary income tax. The tribunal is different, but the principle is to be the same. In the present case Mr Brooks' average income for the three years from his business was determined by the General Commissioners on appeal to be £6331. When he was required to pay super-tax it was necessary to ascertain this average income for the same three years, because the result would be a part of his total income upon which he had to pay super-tax. But being dissatisfied with the determination of the General Commissioners he claimed that he was not bound by this determination for super-tax purposes, and requested the Special Commissioners to investigate it over again and come to their own conclusion. The Crown claimed that he was bound by what had been already determined. We have to say whether he is bound or not.

I do not think we can say that, apart from statute, there is an estoppel, because sections 66 and 72 of the Act of 1909-10 tell us that the figures for super-tax are to be estimated by the Special Commissioners.