of which is germane to the present question. *Expressio unius est exclusio alterius*, and I am unable to regard the special provision for the case of redemption in section 1 (2) of the 1917 Act as impliedly effecting a general unification of the two kinds of payments which would make unnecessary and stultify the preceding provision as to unification for three specified purposes.

The arbitrator points out an incongruity which he says would arise on the appellants' view in regard to cases of indemnification, contribution, and security, and by which his judgment has been materially influenced. We can hardly decide in this case whether such incongruity would arise, as the question is not here raised between parties having an interest in it. It may perhaps be that the arbitrator is well founded in the view of the matter which he says would need to be taken. But *esto* he is, and that there would be a want of logical consistency in the legislation in respect to that matter, I do not think this serves to displace the force of the considerations in favour of the present appellants' contention to which I have adverted. It seems to me that there would be an equal incongruity in deducting from the gross lump sum of £300 the antecedent additional payments to the workman which do not form a factor in its estimation. Such deduction is not required for the purpose of avoiding double payment, and I am unable to discover any other purpose within the presumable intendment of the legislation which it would serve.

LORD MACKENZIE had resigned, and LORD SANDS had not taken his seat in the Division.

The Court answered the question of law in the negative.

Counsel for Appellants — Wark, K.C. — Walker. Agents — Alex. M'Beth & Company, S.S.C.

Counsel for Respondents — MacRobert, K.C.—Wallace. Agents—Wallace & Begg, W.S.

HOUSE OF LORDS.

Thursday, November 2.

(Before the Lord Chancellor, Viscount Haldane, Viscount Finlay, Lord Dunedin, and Lord Shaw.)

YOUNG AND OTHERS *v.* BURGH OF DARVEL.

(See the case of *Latham* v. *Glasgow Corporation*, May 25, 1921 S.C. 694, reported *sub. nom. Macfarlane* v. *Glasgow Corporation*, 58 S.L.R. 504.)

Election Law—Poll—Combination of Polls —Legality—Poll under Temperance Act Combined with Poll for Municipal Election—Ballot Act 1872 (35 *and* 36 *Vict, cap.* 33), *First Schedule — Temperance (Scotland) Act* 1913 (3 *and* 4 *Geo. V, cap.* 33), *sec.* 5 (3).

A poll under the Temperance (Scotland) Act 1913 and a municipal election took place on the same day, in the same place, before the same presiding officers, and by means of the same ballot boxes, distinctively coloured ballot papers being issued to the electors who came to the polling stations. In an action for reduction of the poll in connection with the Temperance Act, on the ground, *inter alia*, that it was illegal to hold the two polls together, *held* (*aff.* the judgment of the First Division) that the course adopted of taking the polls together was not in itself illegal.

At the conclusion of the argument on behalf of the appellants, counsel for the respondents being present but not being called upon, their Lordships delivered judgment as follows:—

LORD CHANCELLOR — This appeal has been fully and ably argued on behalf of the appellants, but I think that your Lordships do not desire to hear an argument on the other side.

It is an appeal from the First Division of the Court of Session affirming the decision of the Lord Ordinary (Lord Ashmore), and the case is of this character:—Under the Temperance (Scotland) Act 1913, which came into effect in the year 1920, there is provision for taking a poll of the electors on three alternative questions, which may be shortly described as "no licence," the "limiting of licences," or "no change." In this particular case the proper steps were taken by requisition for ensuring a poll of that character in the burgh of Darvel. It was the duty of the respondents, who are the Provost, Magistrates, and Councillors of the Burgh of Darvel, to fix a day for the poll and to make the other arrangements, and the respondents, doubtless with a view to economy, fixed the poll for the 2nd November 1920, being the proper day for the municipal election; and they went further, for they caused the licensing poll to be held simultaneously with the municipal election for the burgh. The same polling stations were used for both purposes, the same presiding officers and clerks acted for the purposes of both polls, and while separate ballot papers for the two purposes were given to the electors who came into the polling place, these ballot papers were directed to be put into the same ballot box, and were only separated and counted when the polling was at an end. The result of the poll was in favour of a "no licence" resolution. The appellants, who were licence-holders and also electors, took no steps to question the poll until the month of April in the following year, the result of that delay, however caused, being that by that time the ballot papers had been destroyed in accordance with the statute and could not be referred to. In that month, April 1921, this action was commenced, in which the appellants claimed that the licensing poll ought to be reduced and the pursuers restored *in integrum*. The action was heard and dismissed by the Lord Ordinary, and his decision was affirmed by the First Division.

It is important to notice that it is not either alleged or proved as a fact that the irregularity in holding the poll, if irregularity there was, had any effect on the result; it is not said on behalf of the appellants that any voter was prevented from voting, or voted in a manner different from that in which he would have voted if the polls had been separately held, or that by reason of the course adopted there was any infringement of the secrecy of the ballot or any error in the counting of the votes. What is said is that the holding of the two polls together was in itself inherently illegal, and the Courts were asked, and your Lordships are asked, to determine the naked question whether it is or is not legal under the Statutes to hold on the same day and at the same place a poll for a municipal election and a licensing poll under the Act of 1913. I say that because I do not wish it to be thought that anything I shall say on this appeal would prevent a case being hereafter raised in which it might be alleged and proved that in fact the holding of two polls together had affected the result of one or the other of the polls; that point, so far as I am concerned, remains open, and I only address myself to the case raised in the action and on the appeal, namely, the question of the legality or illegality of the course adopted.

The point is put in three or four ways. First, it is said that the effect of holding the two polls together was to attract to the polling place voters who otherwise might not have gone there, or at all events to induce voters who came to the polling place for one purpose to vote also for another purpose. In that manner it is said that the holding of the municipal election on the same day as the licensing poll may have resulted in there being a quorum for the licensing vote which otherwise might not have been obtained. I cannot think that if that was so the effect is to invalidate either one poll or the other. In my view there is nothing illegal in itself in holding the two polls at the same place and on the same day; indeed, the Legislature has enacted Statutes which contemplate such a procedure. For instance, by the Local Government (Scotland) Act 1894, section 14, it is provided that the election of parish councillors under that Act shall be "on the same day and, as nearly as may be, in the same manner, in the same places, and with the same returning and presiding officers and clerks, as the election of county councillors for the county in which such parish . . . is situated"; and it may not be without interest to say that a Statute of New Zealand, the Licensing Act of 1908 of that Dominion, provided that a licensing poll—a poll of electors of a similar character to that which was taken in this case—was to be taken in each district and simultaneously with the election of the members of Parliament for the district. Further, there is some indication in the Statute now in question—the Temperance (Scotland) Act 1913—of the possibility of this method being followed, for that Act provides by section 5, sub-section 3, that a licensing poll "shall be taken on any day not being a market day which the local authority may fix in the month either of November or of December immediately following the lodging of the requisition"—those being the months in which the burgh and county elections are held; and it further provides "that in a county a poll shall be taken only in the year of a triennial election of county councillors," with a certain exception which is not material, thereby showing, as I think, a disposition to link up these polls with the elections for local government purposes. But however that may be, no authority has been cited, and I know of no principle which shows that the mere fact that the electors may by this process be induced to attend or to vote is itself sufficient to invalidate the vote when given.

In the next place it is said that the election was illegal because double voting papers were handed to the electors without their having demanded voting papers for both purposes. It appears to me that if an elector goes into a polling station he thereby shows his desire to vote. If on going to a table he is handed two ballot papers, which he accepts and takes away for voting purposes, he thereby shows his desire to vote in both polls. I can find no provision in the Ballot Act or elsewhere which makes it necessary that a voter shall demand a paper, but in any case I cannot satisfy myself that there is any substance whatever in the argument that ballot papers for both purposes were given to the voters without their having expressly demanded a ballot paper to be used on each issue.

Next it is said—and this might but for a circumstance which I shall mention later have proved a more serious argument—that the procedure adopted leads to an infringement of the Ballot Act which is applied to polls under the Licensing Act. The Ballot Act, as is well known, provides by Rule 21 of the First Schedule that the presiding officer shall only admit to the poll certain persons—the candidates, the agents of the candidates, and the clerks who are named, except, of course, that the electors must be admitted for a sufficient time to enable them to vote. One of the rules for applying the Ballot Act to polls under the Temperance Act (Rule 4) strikes out from that provision in the Ballot Act the reference to candidates and their agents, no doubt because there can be no candidates in a poll of this kind, and it is suggested in argument that the effect of that rule is to make it improper that the agents of candidates at a municipal election shall be present at the poll under the Licensing Act. There may be something in that argument, and I do not desire to say anything to exclude the contingency of its being pressed and fully considered in a case where it is properly raised, but no such point is raised or mentioned either in the pleadings or in the judgments in the present case or in the judgments in the *Cathcart* case (upon which the decision in this case was founded), or in the case for appeal to this House. There is nothing to show your Lordships that in fact any candidate at this election had appointed

an agent or that any such agent was present at the poll. Possibly it may have been so, but the foundation is not laid for the argument which is now made before the House, and I do not think it would be right at this stage of the case to permit that point to be taken for the first time as a substantive point. The learned counsel for the appellants contended that even though he may not be able to put the point forward on the facts, he is still entitled to show that a procedure of this kind may, and naturally would, lead to something illegal, and he rests his argument partly upon that ground. I do not say that the argument is not properly put forward, but it is a rule in election petitions, and I think it may properly be laid down as a rule in a case of this kind, that a technical irregularity even if established does not invalidate a poll unless it is shown that the effect of the irregularity was or may have been to affect the result of the poll itself. There are many such cases, perhaps the best known being the case of *Woodward* v. *Sarsons & Sadler*, reported in 1875 Law Reports, 10 Common Pleas, p. 733. Now the point now taken is purely theoretical. There is absolutely no evidence or proof that the secrecy or the result of the poll was in any way affected by the presence of any person who might have been there. Under these conditions I do not think your Lordships will consider that the theoretical argument prevails to the extent of making it necessary to invalidate the poll.

Those are the main arguments that were put forward, and in my opinion they are insufficient to support the appellants' claim. The result is, that while I cannot say that I think the procedure adopted to be wholly free from risk—and I think it requires to be very carefully considered before it becomes the general practice—still it appears to me that in the present case no sufficient ground is shown for declaring this poll to be invalid, and accordingly that this appeal fails and ought to be dismissed.

VISCOUNT HALDANE—I am of the same opinion. On the last point to which the noble and learned Viscount on the Woolsack has adverted—the question as to the presence of unauthorised persons in the room where the ballot was being taken—I have only to say that if the pursuers make such a case they must make it and succeed on the merits not only of what is alleged but of what is proved. Now no evidence was given in the Court below upon this question, nor is it really raised. The only substantial question before us is that raised by article 3 of the condescendence. It is in these terms—"The poll under the Act for the burgh of Darvel was held simultaneously with the ordinary municipal election of the burgh. The same polling stations and the same ballot boxes were used for both purposes, the ballot papers for both purposes being put into the same ballot box. The same presiding officer presided at the municipal elections and the polls under the Act. Separate ballot papers were issued to the electors, and ballot papers for both these purposes were handed to each elector entering the polling station without any demand being made by him therefor. In consequence many electors voted at the poll who would not have voted at all if it had been held on a different day from the municipal elections, or if the casting of their votes had been dependent, as is contemplated by the Act and Regulations, upon their making application for a ballot paper." That is the real substance of the case that is made for the appellants, and the question is what does it amount to?

There is one prohibition about the day to be chosen for the poll—that is, the prohibition in section 5, sub-section (3), of the Temperance (Scotland) Act 1913. That subsection says that "A poll shall be taken on any day not being a market day which the local authority may fix in the month either of November or of December immediately following the lodging of the requisition." Well, this was not a market day. It was a day chosen by the local authority, and they chose the day on which the municipal election was also being held. It is said that that was wrong, on the grounds alleged in the third article in the condescendence. But why was it wrong? At this ballot it was necessary if the Temperance Party were to succeed in their policy that they should get 55 per cent. at least of the votes recorded in favour of a no-licence resolution, and that not less than 35 per cent. of the electors for the area on the register should have voted in favour of it. Now these are two quite separate things—35 per cent. is wanted to constitute what I may call a quorum for the election; 55 per cent. must be the majority. If the opposite party has over 45 per cent. that is enough to enable them to defeat the effort of the no-licence party. It is obvious therefore that it may be to the advantage of either party to get a large vote. There is no provision which is specially favourable to the Temperance Party in the 35 per cent. quorum. That is introduced merely for the purpose of making it a real election. Is there any objection to getting the voters to come up by choosing the period of another election in which the voters will be the same people—an occasion which may tempt them to come in larger numbers to the neighbourhood of the polling station than they otherwise would? I can see none. Apart from the indication in favour of the principle of contemporary elections that the Legislature has given in another case which has been pointed out in which it was said that two elections may be on the same day and in the same place, is there any abstract reason for thinking that elections should not occur together? If you wanted to keep people from attending and voting then I can understand the argument, but that is not a legitimate argument, because the very purpose of the Act is to get a substantial election and therefore I come to the conclusion that there is no abstract objection to taking any means that is not prohibited for bringing people together. You cannot choose a market day—the Legislature has been careful to say that; it would bring people together under conditions which are

not regarded as desirable for the exercise of the electoral vote. But there is no provision in the statute about any other day, and it is left to the discretion of the local authority to choose a day as they may think fit in the months mentioned.

Under these conditions I can see no objection to what was done. It would require pretty strong reasons to justify any Court in interfering with the discretion that was committed to the local authority when the local authority have not violated any statutory prohibition such as is made in the case of market day. For my part I have listened with attention to the vigorous argument urged at the Bar by the learned counsel for the appellants, but I have been unable to derive from it any sense of substance or of reason given for an attempt to review what was done in this case by the authority to which the matter was remitted. I am therefore of the same opinion as my noble and learned friend the Lord Chancellor. I think the appeal fails and must be dismissed with costs.

VISCOUNT FINLAY—I have arrived at the same conclusion, but I desire to add some observations on the several points that have been taken.

The question is whether the vote that there should be no licences was a nullity. It is not enough for the appellants to make out, if they could make it out, that there was something improper and undesirable in the procedure with regard to this vote. What they have to make out is that there was such a flaw in the process that the vote itself is a nullity.

The first point which was taken was that it was illegal to hold two votes either for the choice of municipal officers or with regard to any matter of municipal regulation, such as the control of the liquor traffic, at the same place and simultaneously. Now in support of that the learned counsel for the appellants referred to the fact that in the Local Government (Scotland) Act 1894, section 14, provision is specially made for the holding of the parish council elections simultaneously with the county council elections and before the same officers. If the provision there had been that it should be lawful to hold the two both simultaneously, I think it would have afforded a very strong argument in favour of the appellants' case upon this point; but it is not a provision that it shall be lawful to do it; it is a provision that in one particular case the thing shall be done. There may have been reasons, and no doubt were reasons (I think one can see them), which rendered it expedient that the vote for the parish council should be taken at the same time and place as the vote for the county council, and the fact that the Legislature provided that these votes shall be taken together, to my mind does not show that to take two votes together is at common law illegal. The fact that it is necessary for the appellants to make out that the resolution arrived at was a nullity prevents their succeeding upon this point with regard to the combination of the two votes.

In connection with that point, and from one point of view it might be regarded as a branch of that point, a matter was raised which might under other circumstances deserve the most serious consideration. The point was not at all that in point of fact there were persons present at the time the temperance vote was going on who were not voting on that question, and were not there for the purpose of voting on that question; the point raised is not one that required any proof of actual presence. The point, as I understand it, is this, that where two votes are being taken together you necessarily have present in the room, while the temperance vote, say, is going on, persons who may have come there not with regard to the temperance vote at all but with regard to the municipal vote—that is to say, that when provision is made for holding the two votes together it involves the possibility of such other persons being present. Well, that certainly would be contrary to the provisions of the rules under the Ballot Act which are incorporated in the procedure under the Temperance Act, but it does not follow that the result arrived at is void. It might be, I think it would be, a very serious reason against holding two votes together; it does not follow if that thing were done that the results arrived at would be necessarily a nullity, and I certainly am not prepared to hold that for that reason (which I think is the most formidable of the reasons that have been adduced on the side of the appeal) the resolution for no licences was a nullity.

This point was really not taken below at all—indeed there was no argument, as I understand it, in the present case, and there are certainly no judgments upon it in the present case. All that we have is a reference to the judgment in the *Cathcart* case, and in the *Cathcart* case it appears that this point was barely mentioned, but then it was pointed out by Lord Mackenzie, I think, that the point was not raised upon the record, and then the point was dropped and disappeared, and we have nothing about it in the proceedings which are before us. I do not desire to say more on this point which may arise, as my noble and learned friend the Lord Chancellor has indicated, under other circumstances, but certainly in the present case, in the absence of any argument on this point, and in the absence of any opinion upon it from any of the judges in the Courts below, I am not prepared to treat it as being open for the purpose of arriving at the conclusion that the whole of the proceedings taken were a nullity.

A great deal was made of the point that the Temperance Act provides that in order that the resolution may be valid there must have been a vote for it of 35 per cent. of the electors, and I think it is perfectly true, as was argued on behalf of the appellants, that that provision was intended very largely as a sort of security that interests should not be interfered with unless a substantial part of the electorate came to poll on the day on which this question was to be determined,

and it was said that fixing the vote to be taken concurrently with the municipal elections really got rid of the danger of there not being a vote of 35 per cent. of the electors—that is to say, that a number of electors were brought there for municipal purposes, and that being there many might have voted who would not have taken the trouble to come if it had been merely a vote upon the question of the control of the liquor traffic. Well, there may be a good deal in that, and it is discussed in the judgments in the Court below, and probably the two votes being taken together might destroy or prejudice that safeguard which the framers of the Act intended to provide by saying that there should be a vote of 35 per cent. It may well be that 35 per cent. would not have come if the vote had been merely upon the liquor question. But I am certainly not prepared to say that that can be taken as rendering the whole proceedings null and void. I concur in the observations made by the Lord President as to its being open to objection to have two votes of this kind taken together. I think it might tend to undermine the provisions of the Act intended for the protection of the interests affected, but I certainly am not prepared to say that it has the effect of rendering the result arrived at a nullity.

These points which I have adverted to are the three main points which have been relied on by the learned counsel for the appellants. Observations are made by the Lord President and by Lord Mackenzie as to undesirable features in cases where two votes are taken at the same time and place. With a great deal in these observations I concur, and I think that they are well worthy of the consideration of those with whom the regulation of such matters in the future must rest. Lord Skerrington goes further, and says that he considers the taking of a vote simultaneously with another vote is contrary to the spirit of the Licensing Act. By that I think he means that it has the effect of bringing a number of people to the place at the time of voting who otherwise would not have been there if it had been merely the question of the liquor control that had to be determined. I on the whole agree with the Court of Session, for Lord Skerrington although he expressed doubts did not dissent. I think that the holding of two polls together is inexpedient unless there is statutory provision for it, but the mere fact that it is inexpedient would not render the result a nullity. For these reasons I agree with the decision of the Court of Session on the point now under appeal.

LORD DUNEDIN—I concur. My view upon the law of the case has been exactly expressed by my noble and learned friend the Lord Chancellor, and I shall not repeat what he has said. I would only add that having regard to what has taken place, and what under certain circumstances might have taken place, I cannot help thinking that the municipal authority here have suffered the fate of many a wayfarer who, taking a short cut, has found that he has performed a longer journey than if he had stuck to the ordinary road.

LORD SHAW—I concur. I desire upon the points that were argued in the Courts below to say that I agree with the judgment of Lord Ashmore, the learned Lord Ordinary, in the case of *Latham* v. *Corporation of Glasgow*. Anything I could say upon those points would be an imperfect paraphrase of that judgment, the text of which I venture to appropriate.

With regard to the new point—for it is a new point—taken at your Lordships' Bar, I will only say that I approach it from a point of view different from that of some of your Lordships. It appears to me that, looking to the practice of Scotland, it is out of the question to suggest that the holding of two elections in the same place under the supervision of the same presiding officer and at the same hour is against the spirit either of propriety or accuracy in Scotch procedure. So little is this so that the simultaneity of the operation was affirmed and actually made compulsory by the Legislature in the Local Government (Scotland) Act of 1894.

On the merits of the fresh point—which is simply this, that certain unauthorised persons might have been admitted to the booth—I will only say that it seems to me a very elementary consideration in all questions of electoral procedure (and the point ought to be determined on that footing) that what you have to substantiate is not some formal and it may be trivial error, but some fundamental illegality. When you are dealing with a question of irregularity you must bring that irregularity up to this, that the effect of it was *de facto* to prevent freedom of election, or secondly, was so much to distort the percentages arrived at as to produce a different legal result under the statute. I cannot conceive that the point would have any such result (in which I agree with my noble and learned friend Lord Finlay) as to make the whole procedure illegal. I refer to the well-known case of *Woodward*, 1875, L.R., 10 C.P. 733. As to convenience, I assent to your Lordship's remark, subject to this, that the only inconvenience that appears to me in the case is not the inconvenience to the public, but the inconvenience to the local authority in being drawn into most unnecessary and frivolous litigation. I hold that this appeal is one which should not have been presented, and that the results arrived at in the Courts below were unanswerably sound.

The House has no information before it going to explain the delays in procedure in this case. It is a case an early decision of which was required so as to prevent, if possible, the licensing authority being put into a position of any embarrassment if application for a renewal of the licence was made. The failure to obtain an early decision is well illustrated by the present case, in which the licence has been and is now continued. This amounts to a practical defiance and defeat of the law which Parliament has laid down. It is clear that the Courts of the country would never permit themselves to be participants in what might amount to

a constitutional impropriety. They have power—and in my opinion such a power in such a case should be exercised—to accelerate procedure, but so far as the parties to these proceedings are concerned neither of them ever asked the Court even for an early hearing.

Their Lordships ordered that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Counsel for Appellants — Duffes—Thom. Agents—Bruce & Stoddart, S.S.C., Leith—E. B. Gee & Company, London.

Counsel for Respondents — T. Graham Robertson, K.C.—Patrick. Agents — Dunlop, Gibson, & Mair, Glasgow — Alex. Morison & Company, W.S., Edinburgh — Beveridge & Company, Westminster.

Friday, November 3.

(Before Lord Dunedin, Lord Atkinson, Lord Sumner, Lord Wrenbury, and Lord Carson.)

NORTH BRITISH RAILWAY COMPANY *v.* INLAND REVENUE.

(In the Court of Session, February 17, 1922 S.C. 247, 59 S.L.R. 258.)

Revenue — Income Tax — Salaries Paid without Deduction of Income Tax — Amount of Assessable Salary—Office or Employment Held under Railway Company—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 146—*Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedule E—Income Tax Act* 1860 (23 *and* 24 *Vict. cap.* 14), *sec.* 6.

The Income Tax Act 1860, sec. 6, enacts that the Commissioners for Special Purposes shall assess the duties payable under Schedule E in respect of all offices or employments of profit held under any railway company, . . . "and the said assessment shall be deemed to be and shall be an assessment upon the company, . . . and it shall be lawful for the company . . . to deduct and retain out of the fees, emoluments, or salary of each such officer . . . the duty so charged in respect of his profits and gains."

A railway company under a contractual obligation with its officers paid their salaries without exercising its right under section 6 of the Income Tax Act 1860 of deducting the tax from the salaries. *Held* (*aff.* the judgment of the First Division) that the amounts paid by the company in respect of income tax of its officers formed part of the income of the officer for income tax purposes, and that the company was assessable not only on the salaries actually paid, but also on the sums paid as income tax.

The Case is reported *ante ut supra.*

The company appealed.

At delivering judgment—

LORD DUNEDIN—This appeal has to do with an income tax assessment for the year ending 5th April 1919.

By the Income Tax Act of 1860 it is provided in section 5 that assessments for income tax on a railway company shall be made by the Special Commissioners in lieu of the General Commissioners who are debarred from making any such assessment.

Section 6 of the same Act is in these terms — "VI. In like manner as aforesaid the Commissioners for Special Purposes shall assess the duties payable under Schedule E in respect of all offices and employments of profit held in or under any railway company, and shall notify to the secretary or other officer of such company the particulars thereof, and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected, and levied accordingly; and it shall be lawful for the company or such secretary or other officer to deduct and retain out of the fees, emoluments, or salary of each such officer or person the duty so charged in respect of his profits and gains."

There are certain officials of the appellant company whose salary is fixed at a specified sum in cash, the company at the same time coming under contractual obligation to make no deduction in respect of the income tax paid by them in terms of the said section.

A test case was taken. The Special Commissioners assessed the income tax on such a sum as would when the income tax thereon was deducted leave a sum equal to the sum in cash which the company paid to the officials.

A Case was stated for the opinion of the First Division of the Court of Session, in which the above-mentioned facts were set forth and the following question for the opinion of the Court stated:—"Whether the sum paid by the appellants as income tax in respect of the salaries of their officers, and not deducted from the salaries paid to such officers, is part of the officers' income for income tax purposes?"

The First Division of the Court of Session affirmed the determination of the Commissioners. Appeal has now been taken to your Lordships' House.

Turning back to the sixth section of the Act we find that the first duty of the Commissioners is to assess the duties payable under Schedule E in respect of offices and employments held in or under the railway company. That necessarily sends us to Schedule E. Schedule E, which is to be found in the Act of 1853, imposes the duties "for or in respect of every . . . employment of profit," and by Rule 1, which is contained in section 146 of the Act of 142 and is applicable to Schedule E of the Act of 1853, "the duties . . . shall be payable for all salaries, fees, wages, perquisites, and profits whatsoever arising by means of such office."

Now each office must be dealt with separately. It is obvious that if the official here in question were asked what profits whatsoever do you get from your office, his answer would have to be, "I get *x* pounds