

Monday, January 27.

FIRST DIVISION.

[Court of Exchequer.
(Before Seven Judges.)

MUAT (SURVEYOR OF TAXES) v.
STEWART.

Revenue—Inhabited-House Duty—Exemption—Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13, subsec. 2.

By this subsection it is provided that "Every house or tenement occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from inhabited-house duty."

Held, by a majority of Seven Judges, (1) — *diss.* Lord M'Laren — that the words "by which the occupier seeks a livelihood or profit" apply to and qualify "trade or business" as well as "profession or calling;" (2) — *diss.* Lord Shand and Lord M'Laren — that a house occupied solely for the purpose of conducting the business of large landed estates did not fall under the exemption, in respect that the occupation was not for the purposes of "business" in the sense of the above subsection.

At a meeting of the Commissioners for General Purposes, acting under the Property and Income Tax and Inhabited-House Duty Acts, for the district of the Lower Ward of Renfrewshire, held at Greenock on 30th April 1889, Sir Michael Robert Shaw Stewart of Greenock and Blackhall, Baronet, appealed against an assessment of £8, 12s. 6d. made upon him under the Act 14 and 15 Vict. cap. 36, and relative Acts, for the year 1888-89, being inhabited-house duty at the rate of 9d. per £ on £230, the annual value of premises known as the "Mansion House," situated at No. 1 Ardgowan Square, Greenock, of which the appellant was the proprietor and occupant.

The "mansion-house" was erected by the appellant in 1886 for the special purpose of being used as offices for conducting the business of his various estates in lieu of similar offices belonging to him taken by a public company. It consisted of a sunk storey, a ground floor, and a second floor. The sunk storey was occupied as a dwelling-house by a caretaker or keeper of the building, and as coal cellars for the premises. The ground floor was occupied as offices by the appellant's factor and surveyor, except one room used by the appellant himself for transacting business with his factor, agent, surveyor, tenants, and feuars; and the second floor was occupied by the appellant's law-agent as an office for conducting the law and conveyancing business of his estates. The entrance was by a door fronting to Ardgowan Square, and there were internal communications between the offices to facilitate the transaction of business, and also with the portion occupied by the caretaker as a dwelling-house, but only for the

purpose of enabling the caretaker to attend to his duties. The caretaker or keeper was the only person who resided on the premises, which were shut up at the close of the business of each day. No rent was derived from the building.

The appellant's estates were twelve in number and extensive. They were composed of feuing and agricultural lands, and on several of them the feuing has been and was large. The tenants and feuars numbered nearly 2500, and the rental was considerable.

The business connected with the estates was extensive, and was conducted and carried on in the "mansion-house" by the appellant and his factor, law-agent, and surveyor.

The appellant maintained that the "mansion-house" was not an inhabited house within the meaning of the Acts before mentioned, and that it was exempted from inhabited-house duty by section 13, subsection 2, of the Act 41 Vict. cap. 15, in respect that it was occupied solely for the purposes of his business, as already explained, the only person residing therein being a caretaker or keeper.

Mr John Muat, the Surveyor of Taxes, contended that the "mansion-house" was an inhabited house within the meaning of the Acts, and did not fall within the said exemption, in respect that the premises were not, in the sense of the Act, "occupied solely for the purposes of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit," and that it therefore was correctly assessed as an inhabited house.

The Commissioners sustained the appeal, whereupon the Surveyor expressed his dissatisfaction with the decision, and at his request the present case, from which the above narrative is taken, was stated for the opinion and decision of the Court under the Taxes Management Act 1880.

By section 13 of 41 Vict. cap. 15, it is enacted—"With respect to the duties on inhabited houses for the year commencing . . . as respects Scotland, on the 25th day of May 1878, and for any subsequent year, the following provisions shall have effect . . . (2) Every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from the duties by the said commissioners upon proof of the facts to their satisfaction, and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof."

After hearing the case the Judges of the First Division were equally divided in opinion, and accordingly the case was appointed to be heard before Seven Judges.

Argued for the Surveyor of Taxes—(1) The words "by which the occupier seeks a livelihood or profit" applied to and qualified "trade or business" as well as "profession or calling" in subsection 2 of section 13 of 41 Vict. c. 15. (2) The business which was carried on in the premises in question was not "business" in the sense of the exempt-

ing clause. It happened that the estate business in the present case was so large that it required special accommodation for offices, but that fact did not change its nature, which was merely estate management, and no more business in the sense of the statute than the management of investments. A comparison of the preceding exempting statutes confirmed the view now presented, as the inference to be drawn from them was that the exemption was intended to be a privilege conferred on the trading and professional classes—57 Geo. III. c. 25; 5 Geo. IV. c. 44; 32 and 33 Vict. c. 14. sec. 11; *Glasgow Coal Exchange Company v. Solicitor of Inland Revenue*, March 18, 1879; *cf.* also 2 and 3 Will. IV. c. 113, sec. 3.

Argued for Sir Michael Shaw Stewart—(1) The words “by which the occupier seeks a livelihood or profit” did not apply to or qualify “trade or business,” but only “profession or calling.” (2) Assuming the first point to be decided against Sir Michael, it was still maintained that the premises in question were occupied solely for the purposes of business in the sense of the clause of exemption in 41 Vict. c. 15, by the terms of which clause the decision of the present question must be governed. That clause was not merely a repetition of the parallel clause in 5 Geo. IV. c. 44, and its terms were more favourable to the present contention than the terms of the former Act. The distinction pointed at in the Act was between dwelling-houses and business premises—*cf.* 57 Geo. III. c. 25, sec. 4. But for the fact that a caretaker resided on the premises the premises would not have been an inhabited dwelling-house in the sense of the Act 14 and 15 Vict. c. 36, so as to be liable to inhabited-house duty—*Rily v. Read*, March 5, 1879, L.R., 4 Ex. Div. 100. Suppose these offices had been the property of a company or of an individual who had purchased the estates for the purpose of feuing them out, and otherwise developing their resources, it could scarcely have been maintained that the exemption did not apply to them. No valid distinction could, however, be founded on the fact that Sir Michael had acquired these estates by inheritance.

At advising—

LORD JUSTICE-CLERK—My opinion is that the decision of the Commissioners is wrong. Without going back beyond the Act of 41 Victoria, but taking the clauses of 41 Vict. c. 15, as it stands, I think it is impossible to read the words which are there used, taken either separately or collectively, as applying to this case. Even if we were to take the words “any trade or business” as being separated from the words “any profession or calling,” I think the word “business” is practically exegetical or interpretative of the previous word “trade,” and not distinctive from it. To read the word “business” as applying to any conceivable business is not a reasonable or sensible reading of the exemption in the statute, which is dealing with a business of the nature of trade or akin to trade. I should therefore hold that

the appellant's case does not fall within the word “business” even if that word be taken as disconnected from the words which follow. But my reading of the clause is that all the four words “trade or business, profession or calling,” are covered by the words “by which the occupier seeks a livelihood or profit;” and that would of course make the reading still more clear in the sense in which I read the word “business” by itself. I do not think that any other reading would be reasonable or consistent. So reading the statute, I can have no hesitation in holding that the appellant does not use these premises for the purpose of making a livelihood or profit, such words being inapplicable to the management of a landed estate. No doubt, as Mr Murray observed in the course of his speech, Sir Michael might be held to be making a livelihood by what is transacted in this office, in the sense that what he lives on comes from his property which is managed there, but that is a very different thing from making a livelihood by carrying on a trade or a business, or a profession or a calling, in that office. Sir Michael is a landed proprietor, and he lays out his estate for feus, draws feu-duties, and recovers rents; but I cannot read the words of the clause as covering business of that kind, having no similarity to either trade business or professional business, and therefore I am for holding that the Commissioners' deliverance is wrong.

LORD SHAND—I am of opinion that the deliverance of the Commissioners is right, and that it ought to be affirmed.

The first point to be settled arises on the argument which has been submitted on behalf of Sir Michael Shaw Stewart, the respondent in the appeal, as to whether the words of the clause giving the exemption “by which the occupier seeks a livelihood or profit,” relate back only to the immediately preceding words, “profession or calling,” or apply also to the words “any trade or business” which go before, for if their application be limited to profession or calling, it would be enough according to the argument in order to entitle the respondent to the exemption claimed if it appeared that the house was occupied solely by the occupier for the purpose of business, without showing further that the occupier was thereby seeking a livelihood or profit. The words of exemption are, “Every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit.” The use of the disjunctive words “or of any profession or calling” in place merely of the words “or any profession or calling” undoubtedly to some extent favour the argument that there is a complete break in the sentence after the words “trade or business,” and that the condition of seeking a livelihood or profit attaches only to the case of professions, described as any profession or calling. But I think this reading is too critical. The reason of the matter seems to be against this interpretation, for if it be necessary in the case of professional

men that their occupation should be with the view of seeking a livelihood or profit, it is not easy to see why persons carrying on any trade or business should have their business premises exempt on any different footing, and the object of trade or business in the ordinary sense of these terms is the making of profit. My opinion therefore is against the appellant's argument on that point. I think that the true reading of the clause of exemption is that it applies to a house or tenement occupied solely for the purpose of any trade or business by which the occupier seeks a livelihood or profit, or occupied solely for the purpose of any profession or calling by which the occupier seeks a livelihood or profit. And so I am of opinion with reference to the present case that in order to get the benefit of the exemption, the respondent must show that the house occupied by him is occupied solely for the purpose of a trade or business by which he seeks a livelihood or profit; or to put the matter precisely, and as applicable to the actual circumstances, that his occupation is for the purpose of a business by which he seeks to gain or acquire profit. The expression "seeks to gain a livelihood" does not in any way control or affect the subsequent words "or profit." Many persons having large means and being under no necessity to seek a livelihood carry on trade or business to gain or acquire profit, and the premises they occupy for their business would of course come under the clause of exemption.

My opinion on the facts as stated is that the appellant does occupy his house in Ardgowan Square of Greenock solely for the purpose of business by which he seeks to gain profit, and consequently that his case is one within the words of the exemption.

The facts upon which this point turns are these:—The appellant has estates twelve in number and very extensive; a great extent of them forms part of the populous district of the town of Greenock. They are composed of feuing and agricultural lands, and on several of them the feuing has been and is now large. The tenants and feuars number nearly 2500, and the rental is considerable, and we have details stated in the case which show that the whole of the house is required for the business connected with these estates, which is transacted by the appellant and his factor and surveyors, who meet with the tenants and feuars and intending feuars, and other persons who come there on business connected with the estate. Part of the building is also occupied by a law-agent employed by Sir Michael Shaw Stewart entirely for the purpose of the law business to be transacted with himself, his factor, and surveyor, and other persons with whom business dealings take place connected with the estates. It is well known that Sir M. S. Stewart acquired his estates, or most of them, by succession and not by purchase. But suppose that instead of inheriting his property he had invested capital which he desired to employ profitably in the purchase of these twelve estates in the belief that from their

situation and advantages with reference to the prospects of feuing or selling or leasing parts of them he would obtain a very profitable return, that he used part of them in farming, let other parts to agricultural tenants, and that he gave off other parts as feus for annual payments, or it may be from time to time sold parts of them, all of these dealings with the lands being entered into with the view of making the best of his invested capital in the way of return or profit, I confess I am unable to see that in so acting he would not be carrying on a business to gain profit. If that be so, it can make no difference that he acquired his estates by succession, for his mode of transacting with the land and the object of his dealings are the same as in the case supposed.

It has been said that the word "business" in the exempting clause of the statute must be read as being limited to some business that has a particular recognised name, such as that of a merchant, or manufacturer, or ship broker, or an insurance agent, or the like. I do not agree in that view. I think that if in substance what is being carried on is business in the ordinary and popular sense of the term with a view to obtaining profit, that is, a profitable return for capital, care, and skill employed, and if the house is occupied solely for such business, that brings the case within the exemption. If the respondent himself occupied the greater extent of his large estates by farming operations himself, and occupied by his factors or managers and others, a house solely with reference to his business of farming, I suppose it must be conceded that he carried on the business of a farmer and the house would fall under the exemption. So if he found and worked coals or minerals, or found and worked clay on his estates, and occupied a house solely for the business of the colliery or clay-field, again there would be an exemption. I do not see that there can be any difference in principle because the return or profit is gained by dealing with the land and its surface differently, but still with a view to a profitable return. The line between the cases I have supposed and the actual case stated by the Commissioners is a very fine one—indeed, the distinction in principle is so fine that I confess myself unable to see it, and I must add that so far as I can judge, the reason for the exemption which is to favour trade or business in the ordinary and popular sense of these terms carried on with a view to gaining profit is quite as applicable to the case of the respondent as stated by the Commissioners as to any other case of the employment of capital and skill in the occupation and use of heritable property for the purpose of gaining the best return.

It does not appear to me that any assistance in the determination of the question at issue is to be got by tracing through the different statutes the progress and history of the exemption clause which had gradually been made more and more extensive. The exemption at first was made applicable to houses, including counting-houses occu-

plied in connection with any trade carried on, but the Act of 1824 greatly extended the exemption by including tenements or buildings, or parts of tenements or buildings, used as offices or counting-houses for the purpose of exercising or carrying on any profession or business by which the occupier should seek a livelihood or profit. The question in this case must be determined entirely on the meaning of the words of the statute of 1878, which contains an independent and substantive enactment making no reference to prior statutes for the explication of the meaning to be given to the words used in the clause of exemption. For the reasons I have stated I think the language used gives exemption in this case, but I should also come to the same conclusion and by the same reasoning if the question depended on the clause of exemption in the Act of 1824.

On the whole, I am of opinion that the proposal now made as I understand for the first time, after a contrary usage of years, to assess the house in question for inhabited-house duty is not warranted by the provisions of the statute of 1878 under which the question arises.

LORD YOUNG—My opinion concurs with that which the Lord Justice-Clerk has expressed, and I shall state my view almost in a sentence. I think the exemption in the statute is an exemption in favour of persons engaged in professions and trades, and that it applies only to premises which are occupied by them exclusively for the purposes of their professions or trades. I think that language does not apply to Sir Michael Shaw Stewart, and does not apply to the premises which are here in question. The word "business"—the word "trade" also—is capable of construction. They are both used very generally and very comprehensively, and also in a very limited sense. Shakespeare—I think it is in Hamlet—says every man has business of his own such as it is. The business of one man's life is charity, another religion, a third (and I think Pope says the most numerous) pleasure. That is the business of their lives, and they pursue it even at life's expense whatever their inclination be. But it is not in that sense that it is used here. Nor is trade used here in a sense in which it is familiarly applied, and consistently with the true origin of the word properly applied. One has heard Judges, not in this Court but in the other Court, address people and tell them that they have made a trade of thieving. They are thieves by trade. That is their profession. The language is quite applicable to these cases, but it is not in that sense that it is used here. A trade or business means not a trade or business which has a technical name, but we know the kind of thing it is. Commerce, manufacture, the interchange of commodities, which is barter; that is the most original of all trades, and is probably that which is the origin of the word—*Trado*. It is handing over, passing from hand to hand—handling; very applicable to a thief who makes a trade of

stealing. But trade is the changing of commodities, and business is used in connection with that here. The business of an estate, it will occur I think to most minds, is something totally foreign to that. It is collecting the rents, seeing that the fences are kept in good order, I suppose looking after the game—that is a very considerable part of the business on some estates—appointing the gamekeepers, and seeing that they are well selected and well provided in every way, and that they do their duty. That is part of the business of an estate. I suppose looking after the dogs is part of the business of an estate too. But is that trade or business within the meaning of this Act of Parliament? The surveyor and architect connected with the estate is there, and I suppose if anything has to be done connected with the mansion-house it would be done there. The law-agent is there. If anything has to be done connected with the marriage of a son or a daughter or the making of a will, that would be done there. That is part of the business of a great landed proprietor. Is that trade or business within the meaning of the Act of Parliament? It seems to me that the language, although the words here are all such as may be applied to the business of sport, and to business of every variety and kind, is, from the place where it occurs and the connection in which it is used, totally inapplicable to Sir Michael Shaw Stewart or the premises with which we are dealing.

LORD RUTHERFURD CLARK—I agree with the Lord Justice-Clerk.

LORD ADAM—I also agree with the Lord Justice-Clerk.

LORD M'LAREN—I am of opinion that the deliverance of the Commissioners is well founded, and although my opinion, in the view that your Lordships have taken, will not influence the decision of the case, it is right that I should state it as briefly as possible.

In the first place, I think it is to be kept in view that we are here construing a Revenue statute, and in considering the effect to be given to the exempting clause I think we are not entitled to leave out any word which would extend the exemption, nor are we entitled to generalise for the purpose of holding one word to be synonymous with another word if in fair construction it is capable of receiving an independent signification. Then I may say that I dissent entirely from the view that we are to take the word "business" as being exegetical of "trade." The principle on which a word may be construed as exegetical of another word, I think, implies that the first word stands in need of elucidation. Now, "trade" is a perfectly definite thing, and the word does not stand in any need of exegesis from being associated with the word business. Business is, as your Lordship has pointed out, the larger word of the two; and therefore to hold that it is merely exegetical of trade is virtually to

say that you will confine the exemption in the statute to such businesses as can also be designated by the word trade. I dissent from that principle of construction as applicable to a Revenue statute.

Going on to consider the clause more in detail, I would say in the next place that I think the words "by which the occupier seeks a livelihood or profit" are disjointed grammatically and logically from the words "trade or business." This may seem rather minute criticism, but a person who is seeking exemption is entitled to the benefit of the fair grammatical reading of the statute. According to the view contended for by the Crown, I think the clause would have been worded in this way—"any trade, business, profession, or calling by which the occupier seeks a livelihood or profit;" and I can see no other reason for putting in the words "or of" before "profession or calling" than to sever these words from those which immediately precede them, and to show that the expression about seeking a livelihood or profit is confined to professions or callings. If that construction be well founded we have then simply to consider whether the word business is sufficient to cover the case of a building occupied in the manner described in this case—a building appropriated to the purposes of the estate management of Sir Michael Shaw Stewart's property.

There is no doubt a use of the word "business" synonymous with *negotium*, and wide enough to include every description of human affairs—everything in which the mind or hand of man can be engaged; and I agree that to give the word "business" so extended a meaning would be contrary to the scope of the statute, which is a statute dealing with money matters, and in this clause drawing a distinction between an inhabited dwelling-house and a tenement occupied in a different way. But there is a more limited use of the word "business" which is still wider than trade, and which means, I think, everything connected with property and pecuniary interests. When you describe a lawyer as a man of business, it is not meant that his duties are confined to advising people regarding their trades, but it means that he is to advise them on everything relating to their property or their pecuniary interests; and in many other ways we are familiar with the distinction between "business" which has to do with one's pecuniary interests and pleasure or the cultivation of some intellectual pursuit. I think it is in the sense which I have endeavoured to define that the word "business" is used in this statute. I should think it a very palpably erroneous construction of "business" or "trade" to limit these words to buying and selling, because that would exclude the business of location, and I cannot suppose that it was the intention of the Legislature to tax as an inhabited dwelling-house the business premises, for example, of a shipping agent who is engaged in the chartering or freighting of ships and the business incidental thereto, or of a postmaster who lets out horses and carriages

and who does not sell to anyone.

Now, taking the word "business" in the larger sense I am unable to see anything in this statute which should deprive premises which are occupied for the letting of land of the exemption which would be given premises occupied for the letting and hiring of horses or moveable commodities. They are both business in the larger sense, and while the one might in a certain sense be called trade, we are not dealing here with the construction of the word trade, but with that of business. Even if the words "livelihood or profit" are to be held to be associated with the word business, I agree with Lord Shand that the exemption might be claimed, because it seems to me that the revenue or income derived from landed property is in a sense profit, and it is so treated in the Income Tax Act. It may be held to be profit in this view, that the premises are occupied not for any residential purpose, not for any purpose connected with the private life or pursuits of the occupier, but for purposes connected with these sources of income or profit by which he obtains the means of living.

These are the grounds on which I hold that Sir Michael Shaw Stewart is entitled to the exemption which he seeks.

LORD PRESIDENT—The enactment which we are called upon to construe in this case is the second subsection of section 13 of the Statute 41 Vict. cap. 15, but it appears to me that it is indispensable in the construction of that statute to have regard to the history of the Act and of the exemption from the general imposition of the tax contained in the 48th of Geo. III. The question will arise, after considering the terms of the previous exempting statutes, whether it was intended by the enactment immediately under construction to extend or alter the exemptions conferred by these previous Acts.

I suppose there can be no doubt that this inhabited house would certainly have been taxable under the original Statute the 48th of Geo. III., and therefore the question is purely whether there is an exemption from that tax to be found in any of the succeeding statutes applicable to a subject occupied as this is.

The first exemption that was introduced by the 57th section of Geo. III. was an exemption purely in favour of commerce, and it was expressed in this form—Where a house which had been previously occupied for the purpose of residence was "occupied wholly as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, no person inhabiting, dwelling, or abiding therein, except in the day-time, for the purpose of such trade," it shall be exempt. Now, about the construction of that exemption there can be no possible question. It is intended solely in favour of commerce, and wherever commerce or trade is carried on in a house and the house is not occupied for any other purpose, there the exemption applies.

But it naturally occurred to another class of the community who are supposed to be pretty influential in their way, that the principle of this exemption of houses occupied only for the purposes of trade might be very justly extended to houses occupied entirely for the purpose of carrying on professions. And accordingly by the 5th of Geo IV. we have an exemption of "any house, tenement, or building, or part of a tenement or building in the said Act described which shall be used by such person or persons as offices or counting-houses for the purposes of exercising or carrying on any profession, vocation, business, or calling by which such person or persons shall seek a livelihood or profit." Now, taking these two exempting statutes together, I think there can be very little doubt as to what the construction would be if we had not to deal with the enactment in the 41st Vict. cap. 15. I should say the result of them was to exempt premises devoted wholly to the purposes of trades or professions.

Now, this being the state of the law prior to the Act of the 41st of Victoria, it falls to be observed in the first place that that is an Act not only for the purpose of introducing certain amendments on the Inhabited-House Duty Acts, but it is an Act to grant certain duties of customs and inland revenue, to alter other duties, and to amend the laws relating to customs and inland revenue. I think it would be rather strange if by that statute there was introduced, without any preamble giving the slightest notice of such a change of the law, a farther exemption from the tax laid on under the 48th of Geo. III. One would not expect to find such an enactment there, and accordingly I think we find nothing except what is quite in consonance with the two previous exempting statutes. The words are—"Every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit," shall be exempt. Now, there is no word there so far as I see that has not been used in some of the previous statutes. The word business is used in the previous exempting statutes, and I do not think it can be intended to have in this statute any larger or different meaning from that which it had in the previous statutes.

I ought to have noticed also in passing that there is some importance to be attached to the preamble of section 3 of the Act 2nd and 3rd of Will. 4, cap. 113, where in reciting the previous exempting statutes the words used are "wholly occupied by them in the day time only for the purposes of their trades or professions." Now, these words in that preamble express exactly the meaning that I attach to the two previous exempting statutes.

Coming back now to the 41st of Victoria, we have, as I said before, no word used that is not to be found in the previous exempting statutes, and I do not think there is anything in the collocation of the words that suggests the idea of an intention to alter or enlarge the previous clauses of

exemption. "Any trade or business" is very naturally used for the purpose of embracing businesses of the nature of trade, but which yet cannot perhaps very properly be called trades. Lord M'Laren has referred to the case of persons carrying on the business of hiring. That can hardly be called a trade in any proper sense of the term, but it is very properly called a business, and persons in the situation his Lordship figured would I think be quite within the exempting clause. In like manner it was held, previous to the Act 41 Vict. cap. 15, that an insurance company is not a trade, though it certainly carries on a business for profit—*Edinburgh Life Insurance Company v. Inland Revenue*, 2 R. 394. In short, I cannot find in this section any indication of an intention, as I said before, to enlarge the exemption, or any words used which in any fair and reasonable sense can be held to alter the law in that respect.

Now, the premises in question are said to be occupied for a business, and in one sense of the word that may be true, but are they occupied for a business within the meaning of that word as used in this statute? I think business in this statute means a business carried on for the purpose of profit, and I do not care whether the words "by which the occupier seeks a livelihood or profit" are held to apply to trade or business or not, because even if these words were not there, I should still construe the word business as a business carried on for the purpose of profit, in its nature resembling trade. The word "business" must take its colour from the company in which it is found. But the business of Sir M. S. Stewart consists merely in ingathering, enjoying, and employing the income of his estate. And therefore I concur with the majority of your Lordships in holding that this determination of the Commissioners must be reversed.

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

Counsel for Appellant—Graham Murray—Howden. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Surveyor of Taxes—Sol-Gen. Darling—Young. Agent—David Crole, Solicitor of Inland Revenue.

Thursday, January 30.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

HEYS v. KIMBALL & MORTON
(LIMITED).

Contract—Sale—Condition—Immediate Entry.

A company carrying on business as sewing-machine manufacturers offered to purchase certain premises "on condition of immediate entry being given,