of Glasgow, and (second) that their failure to call upon the Corporation to remedy the defective lighting, after it had been brought to their knowledge that a fatal accident had happened on the stair, may constitute negligence on their part. If there was a duty on the defenders to light the stair, no doubt they might be liable if they failed to fulfil that duty; but if the duty is cast upon a responsible body like the Corporation of Glasgow, I fail to see that they have a duty to direct the Corporation as to the mode in which they shall fulfil their statutory obligation. On the whole matter I am clearly of opinion that this action is irrelevant and that we should dismiss it.

LORD ORMIDALE—I concur. While it is true that the pursuer makes sundry averments as to the construction of the stair down which she fell, and as to the want of a railing or door to mark off the entry to the stair from the recess through which she was passing, the main ground of her complaint is the want of adequate lighting. It is quite apparent from all that she says that if she had been able to see the entrance to the stair neither the alleged steepness of the stair nor the narrowness of its steps nor the want of a railing would have been in any real sense sources of any danger. She was not attempting to descend the stair to the back area when she met with the accident—she was searching for the door of the house in the close, and in doing so she put her foot on the steps of the stair and missed her footing. That was the direct consequence of the want of light. In these circumstances it is impossible to understand what the pursuer really means when she avers as in part the cause of the accident the steepness of the stair or the narrowness of the steps or what standard of construction she has in mind when she describes them as too narrow and too steep. But taking a more general view I entirely agree with Lord Salvesen that the defenders owed no duty to the pursuer in relation to the sort of stair they thought fit to provide, and that they cannot be held responsible in law for the want of a rail or door at the head of it.

The accident was due to the pursuer's ignorance of the existence of the stair and her inability to detect its presence in the dark. Accordingly it was maintained for her that it constituted a trap into which a member of the public lawfully on the premises was likely to fall. It was not disputed that the pursuer had legitimate occasion to be in the recess, but I am not at all clear that the stair constituted a "trap" in the legal acceptation of the term. However that may be, I am satisfied that if trap there was the defenders were not responsible for its existence. The stair only became a trap in any sense because the recess was insufficiently lighted, and the lighting was entirely under the control, not of the defenders but of the Corporation of Glasgow. That is plain from the terms of the Glasgow Police Act 1866, section 361. The only answer made by the pursuer to the citation of that Act is that it is the duty of the defenders to light the property and that no application was made to the inspector to provide improved lighting. But it is the duty of the Corporation to see to the lighting of a common stair, and there is no duty on the part of the owners to interfere with or control the exercise of their statutory duty by the Corporation. Their only duty is to provide gas fittings to the satisfaction of the inspector of lighting, and it is not said that the defenders failed so to do—*Gaunt* v. *M'Intyre*, 1914 S.C. 43. Nor in my opinion if there was a failure on the part of the Corporation in the present instance to supply sufficient light, did it become incumbent on the defenders to take steps to vary the existing state of their premises, otherwise free from defects, in order to prevent the risk of a possible accident when that risk was the direct consequence of the negligent performance by the Corporation of their obligations.

Accordingly I agree that we should sustain the appeal and dismiss the action.

LORD HUNTER did not hear the case.

The Court dismissed the action.

Counsel for the Pursuer and Respondent—Skelton. Agents—W. G. Leechman & Company, Solicitors.

Counsel for the Defenders and Appellants — Hon. William Watson, K.C. — Jameson. Agents—Alex. Morison & Company, W.S.

Tuesday, June 13.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* SHAND.

Revenue — Income Tax — Employment of Profit—Commissions on Company's Profits — Whether Assessable on Three Years' Average or on Receipts of Year of Assessment — "Perquisites" — Income Tax Act 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedule E—Income Tax Act* 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 146, *Rules for Schedule E, Rules* 1 *and* 4.

By the terms of his appointment the remuneration of the manager of a company consisted partly of an annual salary of fixed amount and partly of a commission or bonus on the company's net profits in each year. *Held* that the commissions fell to be assessed for income tax as "perquisites" under Rule 4 of Schedule E, and might be estimated therefore either on the basis of the preceding year or the fair and just average of the three preceding years.

The Income Tax Act 1853 (16 and 17 Vict. cap. 34) enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting such duties respectively,

the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act, and marked respectively A, B, C, D, and E, and to be charged under such respective schedules—that is to say, . . . Schedule E.—For and in respect of every public office or employment of profit, . . . and to be charged for every twenty shillings of the annual amount thereof." Section 5—"The said duties hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the Act passed in the session of Parliament held in the fifth and sixth years of Her Majesty, chapter thirty-five. . . ."

The Income Tax Act 1842 (5 and 6 Vict. cap. 35) enacts—Section 146—"And be it enacted that the duties hereby granted, contained in the schedule marked E, shall be assessed and charged under the following rules:—. . . Schedule E.—*Rules for Charging the said Duties.—First*—The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profit mentioned in the said Schedule E, . . . for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments . . . ; and each assessment in respect of such offices or employments shall be in force for one whole year. . . . *Fourth*—The perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable either by the Crown or the subject, in the course of executing such offices or employments, and may be estimated either on the profits of the preceding year, or of the fair and just average of one year of the amount of the profits thereof in the three years preceding. . . ."

Francis James Shand, formerly general manager of Nobel's Explosives Company, Limited, *respondent*, appealed to the Commissioners for the General Purposes of the Income Tax Acts for the Lower Ward of Lanarkshire against an additional first assessment made upon him under Schedule E of the Income Tax Act 1842. The Commissioners sustained the appeal and discharged the additional assessments. Against that decision D. M'Donald, Inspector of Taxes, appealed.

The Case stated—"The following *facts* were admitted or proved:—The respondent, as general manager of Nobel's Explosives Company, Limited, and in virtue of his agreements with that company, received during the years 1914 to 1917 (both inclusive) a fixed salary and a commission or bonus on the company's net profits. During these years, and for a series of years prior thereto, he was assessed under Schedule E upon the amount of the salary received by him during the year of assessment, plus an amount equal to the average of the bonuses received by him during the three years immediately preceding the year of assessment. By the additional assessments appealed against it is proposed to assess both salary and bonus upon the amounts received or receivable by the respondent in respect of each year of assessment. The sole point at issue between the respondent and the Crown is whether the bonuses in question fall to be assessed under Rule 1 or under Rule 4 of section 146 Income Tax Act 1842, Schedule E. There is no dispute about the figures involved, and if effect is given to the view of the Crown both parties were agreed and submitted to the Commissioners that the additional assessments appealed against should be amended as follows, namely, to £5829, £24,194, £35,126, and nil for the years 1914-15, 1915-16, 1916-17, and 1917-18 respectively.

"Mr Alexander Moncrieff, K.C., appeared for the respondent and contended—(*a*) That the respondent had correctly interpreted the law in returning for assessment his commission on an average of the three years preceding the year of assessment. This basis had for about thirty years been accepted by the Inland Revenue authorities, who had expert knowledge of the Income Tax Acts. Counsel, however, did not maintain that the Revenue authorities were thereby barred from now assessing on a different basis. (*b*) That the assessment came under section 146 of the Income Tax Act of 1842 as the charging section, which was re-enacted by section 2 of the Income Tax Act of 1853. The rule contained in Schedule E of the Act accordingly applied. It was to be noted that by section 82 of the Taxes Management Act of 1880 the duties imposed were made payable annually on or before the 1st day of January. Thus payment was due before the expiry of the year of assessment, and as commissions might not be ascertainable before the expiry of the year of assessment, it must be inferred that the basis of assessment was to be looked for in a year or period of years prior to the year of assessment. (*c*) That under Rule 1 of Schedule E, while both salaries and wages which might be termed stable income, and perquisites and profits which were unstable and fell to be estimated, were made chargeable, it was neither provided nor implied that the manner of assessment should be uniform. On the contrary, it was necessary in order to give effect to the statutory rules that stable income should be assessed on the actual receipts of the year, while unstable income was assessed upon an estimate based on the receipts of former years. (*d*) That under Rule 4 perquisites were defined as such profits of offices and employments as arise from fees or other emoluments. In view of this definition the term 'perquisites' was appropriate, and was the only term in the schedule which was appropriate to include the bonuses paid to the respondent. Such bonuses fell to be estimated at the option of the receiver either on the profits of the preceding year or on the fair and just average of one year of the amount of profits thereof in the three years preceding. Thus perquisites were withdrawn from the scope of Rule 1, and the receiver of such bonuses was thus given an option to be assessed either on the preceding year or on the average of the three preceding years.

"Mr D. M'Donald, Inspector of Taxes, contended—(*a*) That section 82 (3) of the Taxes Management Act 1880 provided for assessments being made after 1st January, that section 53 of the Income Tax Act 1853 provided for assessment of additional salary, fees, or emoluments, and that section 52 of the Taxes Management Act provided machinery for additional assessments. (*b*) That the respondent had right to commission in virtue of a series of agreements enforceable in law. (*c*) That his commission was not a perquisite, which term connoted something casual and irregular, and not an annual sum payment of which could be enforced in law."

Argued for the appellants—The determination of the Commissioners was wrong. The commissions received by the respondent were not perquisites as defined by Rule 4. The definition indicated something fluctuating in character which was not of the nature of salary or remuneration for the services of the office and was payable casually in connection with some particular piece of work. It meant something different from profits in the ordinary sense. The essence of a perquisite was its casual character—*Tennant* v. *Smith*, 1892, 19 R. (H.L.), *per* Lord Watson at p. 1, 29 S.L.R. 492; *Blackiston* v. *Cooper*, (1909) A.C. 104, *per* Lord Loreburn at p. 107; *Turton* v. *Cooper*, (1905) 5 Tax Cas. 138, 92 L.T. 863, 21 T.L.R. 546; *Cowan* v. *Seymour*, (1920) 1 K.B. 500, *per* Lord Sterndale, M.R., at p. 507; New Oxford Dictionary, *s.v.* "Perquisite"; Standard Dictionary, *s.v.* "Perquisite." The only thing casual about the commissions was the uncertainty of the amount. They were the remuneration for the services of his office as manager, were not connected with any particular work, and were ascertainable and payable under contract at definite periods. If they were not salary they were still to be assessed under Rule 1 as "profits whatsoever accruing by reason of such office." Uncertainty in amount was not sufficient to withdraw them from assessment under Rule 1. The earlier statutes provided for the taxation of uncertain incomes—Income Tax Act 1799 (39 Geo. III, cap. 13), Cases 15 and 16; Income Tax Act 1803 (43 Geo. III, cap. 122), section 175, Schedule (E). There was no decision on the meaning of "perquisite" in Rule 4, but in the only cases where profits might have been held to be perquisites they had been dealt with under Rule 1 as "profits whatsoever accruing"—*Ferguson* v. *Noble*, 1919 S.C. 534, 56 S.L.R. 488; *Herbert* v. *M'Quade*, (1902), 2 K.B. 631, *per* Stirling, L.J., at 650. Any option there might be as to alternative methods was in favour of the Crown—*Lord Advocate* v. *Edinburgh Life Assurance Company*, 1909 S.C. 847, *per* Lord Johnston at p. 853, 46 L.L.R. 480. The previous method of assessment had been wrong and the Crown was entitled to desert it. There was no technical difficulty in the statutes affecting the method here adopted. The additional assessments were based upon the Income Tax Act 1853, section 53, but amendment of the assessments was provided for under the Act of 1842, sections 127 and 161.

Argued for the respondent—According to the scheme of the statute and the wording of the rules this was a case for assessment under Rule 4 on the average of three years. Rule 1 provided that certain classes of income should be chargeable under Schedule (E), but was neutral as to the method of assessment. Rule 4 provided the method of assessment of certain of these classes of income which were uncertain in amount and incidence, and introduced the alternative in the option of the taxpayer of assessing on a three years' average to overcome the difficulty of accurately anticipating the amount. The rules were not framed in contemplation of a second assessment, and provisions for amending and for additional assessments were only for the purpose of curing oversights and were not intended to be used when a complete assessment could be made under Rule 4. The commissions received by the respondent were "payable" in the course of "executing such office." They were just the sort of uncertain payments to which Rule 4 was intended to apply, and the language of the rule was fully habile to cover them. Counsel referred to *Herbert* v. *M'Quade*, *cit. sup.*; *Tennant* v. *Smith*, *cit. sup.*; New Oxford Dictionary, *s.v.* "Perquisite"; Standard Dictionary, *s.v.* "Perquisite."

LORD PRESIDENT—This appeal relates to income tax assessed upon the respondent under Schedule E for four years prior to the date when the Income Tax Act of 1918 came into operation. The decision must therefore turn on section 2 of the Act of 1853 which contains the schedule, and on section 146 of the Act of 1842 which contains the rules. The respondent was manager of an incorporated company. This office came within the third rule of Schedule E, and subjected him to taxation under it. By the terms of his appointment his remuneration consisted in part of an annual salary of fixed amount, and in part of a commission or percentage upon the profits of the company in each year during which his appointment lasted. The question raised in the case is whether that part of his remuneration which consists in a commission on the company's annual profits falls to be assessed under Rule 1 of Schedule E, or under one or other of the methods prescribed by Rule 4. If it falls to be assessed under Rule 1, the tax payable in each year will have to be assessed with reference to the commission on the profits of that year, involving recourse to the cumbrous method of supplementary assessment, instead of to the commission on the profits of the preceding year or on those of the three preceding years as provided in Rule 4.

The first rule of Schedule E contains a comprehensive description of the taxable emoluments of offices or employments of profit—"salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices." As is usual in a clause defining the extent of the charge, the net is spread as widely as possible, and words of broad import are employed. It is obvious that where an office or employment of

profit is concerned, the amount of the remuneration attached to it may either be fixed by the terms of the officer's appointment, or it may be variable according to circumstances arising in the course of executing the office or employment. Thus it may take the form of a fixed termly payment, or again it may take the form of casual payments or dues receivable by the officer at times and in amounts dependent on the occurrence of certain contingencies, or on the performance of certain services. So far as the rules go—other than Rule 4—every one of the different denominations of remuneration enumerated in them (except perhaps the first)—salaries, fees, wages, perquisites, profits whatsoever—may be fixed and definite, or variable and uncertain in amount. It will be observed that Rules 5 and 6 (dealing with employees of the Crown and of a subject respectively) apply the method of deduction at source to all of them indifferently. Yet it seems plain that this method could not be practically carried out at all in the case of many of the variable and uncertain forms of remuneration, and would be at least very difficult of application to most of them. Now when I come to Rule 4 I find that certain classes of remuneration, therein described or defined as "perquisites," are withdrawn from the mode of assessment which would have to be followed under Rule 1, and are made assessable by reference to their amount in the preceding year, or to their average amount during the three preceding years.

I do not think anybody can read Rule 4 without seeing that it has suffered some misfortune during the process of birth in Parliament, for the first half dozen lines cannot be read grammatically. At first sight the rule seems designed to make another cast of the fiscal net by providing a wide definition of "perquisites," thus enlarging the sweep of Rule 1, which includes "perquisites," by name among the various forms of remuneration brought into charge. But when you come to look at the substance of the rule it is clear that that is not the object of the definition of "perquisites" in it, because the definition adds nothing to Rule 1. The definition is "profits arising from fees or other emoluments payable in the course of executing such offices"; all such profits are already comprehended under Rule 1. It seems to me to follow that the definition of "perquisites" in Rule 4 is a definition for the special purposes of that rule. So reading it I arrive at this result, that certain classes of profit from offices or employments—conveniently enough grouped under the term "perquisites"—may be estimated either on the basis of the preceding year or on the fair and just average of the three preceding years, which could not be done under Rule 1. It is not legitimate to construe the Act of 1842 by the consolidating Act of 1918; but I cannot help observing that that is the result more clearly expressed in the consolidation Act. In short, the word "perquisites" is defined as a shorthand way of describing certain classes of remuneration (already covered under Rule 1) which may be assessed in a special way—those, namely, which "arise from fees or other emoluments in the course of executing such offices or employments." I think Mr Skelton was right in treating the words "either by the Crown or the subject" as parenthetical. It remains to discover what profits are meant by this description. I think they are those which are dependent for existence and amount on circumstances arising during the execution of the office or employment, as distinct from those whose amount is fixed and ascertained by the terms of the officer's appointment. That seems to me the only reading of the rule that can be given to it consistently with the rest of the schedule. It is supported by the circumstance that assessment by reference to past years is specially appropriate and convenient to the case of variable or casual elements of remuneration as opposed to fixed and permanent ones.

Rule 4 therefore has the effect—as I read it—of withdrawing from the mode of assessment which would have to be applied under Rule 1 all remuneration of the holders of public offices or employments which consists of profits the amount of which is not fixed by the terms of the appointment but depends upon the events and experiences of the actual execution of the office. If that is right, there is no doubt as to the category to which the case of the present respondent belongs. The amount of his commission on the annual profits is not fixed by his appointment. On the contrary it is only ascertainable as his service proceeds, and according as it happens that the company makes a profit or not, and how big that profit is. The appeal does not raise any question as to whether the assessment should be made with reference to the immediate preceding year or to the average of the three preceding years.

My opinion therefore is that the decision arrived at by the Commissioners was perfectly right, and that no sufficient ground has been advanced for disturbing it.

LORD SKERRINGTON—I concur.

LORD CULLEN—The ratio of Rule 4 appears to me to be that the species of profits called perquisites falling under that rule are profits which vary from year to year and the amount of which cannot be ascertained in any particular year until the close of it. None other has been suggested. The ratio seems to me to apply as much to the case of a commission such as is paid to the respondent as to any other class of payment which on the view for the Crown would admittedly fall within the meaning of the word "perquisities." I accordingly concur with your Lordships.

LORD MACKENZIE did not hear the case.

The Court affirmed the determination of the Commissioners.

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

Counsel for the Respondent—Moncrieff, K.C.—Normand. Agents—Webster, Will, & Company, W.S.