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

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

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

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

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

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

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

HOUSE OF LORDS.

Tuesday, December 1, 1914.

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

COMMISSIONERS OF INLAND REVENUE *v.* BROOKS.

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

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

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

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

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

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

When one Act requires a particular figure to be fixed by one set of men, and then requires a larger whole which includes that particular figure to be fixed by another set of men, the specific direction will prevail. Therefore the sole question is whether, on the construction of the Act of 1909-10, which brought super-tax into existence, the Special Commissioners are obliged to accept the determination of the General Commissioners.

It was argued that the whole of the Income Tax Acts are incorporated with the Act creating super-tax, and that therefore section 57 (10) must be applied, and the determination of the General Commissioners on the figure in question is final and binding on the Special Commissioners. It is quite possible, indeed probable, that this was intended, but when I look at section 57 (10) it seems to me that it does not say more than that the determination is final as regards an assessment for that tax, and no further appeal upon it is to be entertained by that tribunal. The language used is as follows—"Appeals once determined by the General Commissioners or by the major part of them present on the day appointed for the hearing of appeals shall be final, and neither the determination of the Commissioners nor the assessment then and there made thereupon shall be altered at any subsequent meeting or at any other time or place except by order of the High Court when the case has been referred as provided by this Act."

It does not say that the determination is to be final for all purposes. When, therefore, another tax is imposed by another statute, whether it be a duty of income tax or not, and a different tribunal is directed to estimate the same figure as part of a greater whole, I do not read the section as imposing upon the new tribunal a duty to accept the determination of the old. It seems a great pity that such a piece of work should be done over again, an unnecessary vexation and expense to the Crown, but the possibility has been left open in the wording of a difficult Act dealing with an intricate subject.

I think this appeal should be dismissed.

Lord Atkinson—I concur. The respondent was, in respect of the balance of the profits of his business for the year ending the 5th April 1909, assessed to income tax under Schedule D in the sum of £400 by a first assessment, and in the further sum of £3600 by a second assessment. He appealed against this second assessment to the Commissioners for general purposes for the division of Middleton, in Lancashire, who raised his assessment to £6331. He did not apply under section 59 of the Taxes Management Act 1880 to have a case stated, but paid the tax on this sum of £6331.

On the 10th June 1910 the Special Commissioners required him to make a return of his income from all sources for the purpose of assessment for super-tax for the year ending the 5th April 1910 in pursuance of section 72, sub-section 2, of the Finance Act 1910.

The respondent in reply to this requisition declared that his income from his business was £400 per annum, and his income from all sources to be £2039, 3s. 4d. per annum.

The Special Commissioners being dissatisfied with this return, in exercise of their powers under sub-section 5 of section 72, assessed him in the sum of £8064 as his total income, including the sum of £6331 in which he had already been assessed by the said Commissioners for General Purposes.

In reference to this last item, it was, on behalf of the appellants, contended that this assessment so made upon appeal was, as it were, a *chose jugée*, and that the Special Commissioners were bound under the provisions of section 66, sub-section 2, of the Act of 1910 to take that sum as the income of the respondent from his business for the purposes of the super-tax for the year ending the 5th April 1910.

The Commissioners yielded to this contention, and held themselves precluded from receiving the evidence which the respondent tendered to show that this assessment was erroneous, and that his true income from his business was £400 as he had declared.

The sole question for decision upon this appeal is whether these Commissioners were, upon the true construction of this sub-section 2, right in so holding, or whether they were not bound to estimate *de novo* for themselves the amount of the respondent's income from all sources, including his trade and business.

By section 66 an additional income tax, styled a super-tax, for the year commencing on the 6th April 1909, on the excess over £3000 per annum of the income of any individual whose total income from all sources exceeds £5000 per annum, is imposed.

It may well be, and no doubt often is, that the only source of income of such a person is the balance of the profits and gains of his trade, business, or profession in respect of which he is assessable to ordinary income tax under section 100, Schedule D, of the Act of 1842. No indication, however, is given in this section that the amount of these profits and gains determined for the purposes of that schedule is to be accepted without investigation by the Special Commissioners as the true amount of the taxpayer's income from the profits of his trade or business. On the contrary, sub-section 2 of section 66 prescribes "that the total income of any individual from all sources shall be taken to be the total income from all sources, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions under the Income Tax Acts." No distinction is here made as to the manner in which the income from different sources, assessed under the different schedules of the Act, is to be dealt with. The total is to be "estimated."

Section 72 of the Act of 1910 prescribes that the super-tax shall be assessed and charged by the Commissioners for the special purposes of the Act relating to income tax referred to as the Special Commissioners. It is upon them the duty is

cast of "estimating" the taxpayer's total income. To aid them in this the taxpayer is required to make a return of his total income. That must, I think, mean what he, according to the best of his belief and judgment, considers his total income to be, and not what some persons other than those Special Commissioners may have decided that it or any part of it is. And if he fails to make this return or the Special Commissioners are not satisfied with any return he may make, then they are empowered to make an assessment of the super-tax, not, be it observed, according to what some other body or some other persons may have determined, but to the best of their own judgment.

In the case of a man whose business or profession is his sole source of income, it is obvious that if the contention of the appellants be right the Special Commissioners would estimate nothing, make no assessment according to the best of their own judgment, but without thought, investigation, or inquiry merely adopt and register the conclusion of others.

Some reliance was placed on the provisions of section 57, sub-section 10, of the Taxes Management Act 1880, to the effect that the decision on appeal of the Commissioners for General Purposes shall be final, and that neither their determination "nor the assessment then and there made thereon shall be *altered at any subsequent meeting* or at any time or place except by order of the High Court, when a case has been required as provided by that Act." The italics are mine.

This is by no means the only or the earliest provision as to the finality of such determinations and assessments, though perhaps it is the most explicit.

By section 126 of the Income Tax Act of 1842 the decisions on appeal of the Commissioners for General Purposes in reference to Schedule D are made final and conclusive. So likewise, by section 130, are the decisions of the Special Commissioners on the same matters when the appeal is made to them instead of to the former Commissioners.

When one turns to the special sections of the Act of 1842 dealing with the claims to exemptions, numbered 163-167 inclusive, one finds a system of procedure prescribed which takes no account whatever of the determinations and assessments declared by the earlier sections to be final and conclusive; on the contrary, they clearly indicate that a new inquiry and investigation into the merits of the claim is to take place under the set of supplementary and special rules set forth in section 164.

But the system of procedure thus prescribed is the very thing which, according to the provisions of section 66, sub-section 2, of the Act of 1910 is to be followed in estimating the total income of the taxpayer for the purposes of the super-tax.

This section 164 requires that the person claiming an exemption shall serve upon the assessor of his parish a notice of his claim, together with a declaration and statement in such form in effect as is by section 190 directed, declaring and setting forth all the sources of his income, the particular amount arising from each source, any interest or payment charged thereon whereby the claimant's income would be diminished, and every sum which the claimant may have charged or be entitled to charge or to deduct or retain under the authority of the Act.

When Schedule G, referred to in section 190, head 17, is looked at, it will be found that the declaration must contain, amongst other things, a declaration of the amount of value or property or profits returned or for which the claimant has been or is liable to be assessed.

If the inspector or surveyor who is entitled to inspect and take copies of this declaration should not, within a time specified, object to it, the Commissioners may allow the claim, and if he should object to it on the ground that he has reason to believe that the income of the claimant, and the other particulars required by the Act to be declared or set forth, are not truly or fully declared or set forth in any specified particular, then the merits of the claim for exemption are to be heard and determined upon appeal before the Commissioners for General Purposes, under and subject to such rules and regulations and penalties as other appeals are under the Act heard and determined.

It would certainly appear to me that if the claimant should state and declare that he was extravagantly assessed under Schedule D, the Commissioners for General Purposes would wholly fail to discharge the duty imposed upon them if they merely accepted the assessment already fixed upon appeal under this latter schedule, and refused to permit any inquiry into its justness or correctness. That would not be a hearing and determination of the merits of the claimant's claim, and in the case where the claimant's sole source of income was the profits of his trade would be little more than a mockery.

In my view, therefore, the provisions as to the finality of the determination of the Commissioners for General Purposes, or of the Special Commissioners on appeal, contained in sections 126 and 130 of the Act of 1842, as well as those contained in section 57, sub-section 10, of the Taxes Management Act of 1880, do not mean that the determinations respectively referred to are to be final and conclusive, not only in the particular matter in which they were actually pronounced, but in all other matters and for all other purposes.

As Mr Ryde for the respondents put it, correctly I think, section 57 (10) simply means that there shall be no further proceedings before the Commissioners in the particular matter of dispute or inquiry which is the subject of the appeal. I think the words in the sub-section, "and neither the determination of the Commissioners nor the assessment then and there made shall be altered at any subsequent meeting, or any other time or place, except by order of the High Court," go to show this.

I am clearly of opinion, therefore, that the claimant was not estopped by statute from questioning, in these proceedings for

the estimation of the super-tax to which it was sought to make him liable, the correctness of the antecedent determination as to the amount of the balance of the profits and gains of his business under Schedule D.

It was not suggested, as I understood, that he was estopped at common law. It may be very absurd or illogical that the amounts of these profits and gains should be inquired into for a second time. But this is a taxing statute, and taxes cannot be imposed upon the subject under it unless in strict accordance with its provisions. The evil, if it be one, must be cured by legislation.

In my opinion, therefore, the decree appealed from was right and should be affirmed, and this appeal be dismissed with costs.

LORD PARKER—I too am of opinion that this appeal fails.

The ordinary income tax for the year beginning the 6th April 1909 is imposed by sub-sec. 1 of the 65th section of the Finance (1909-10) Act 1910, and sub-sec. 2 of that section provides that all enactments relating to income tax in force on the 5th April 1909 shall, subject to the provisions of the Act, have full force and effect with respect to any duties of income tax thereby granted.

Section 66 of the Act imposes an additional duty of income tax called a super-tax. It is chargeable for the year commencing the 6th April 1909, in respect of the income of any individual the total of which from all sources exceeds £5000, at the rate of 6d. for every pound of the amount by which the total income exceeds £3000. The total income of any individual for the purposes of super-tax is to be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purpose of exemption or abatement under the Income Tax Acts.

If the Act had contained no further provisions, it can hardly be doubted that the authority responsible for estimating the total income of the individual and assessing the duty thereon would, by virtue of sub-sec. 2 of the 65th section, have been the same as the authority responsible for the assessment of ordinary income tax, and that all the provisions of the Income Tax Acts relating to ordinary income tax would have been applicable to super-tax. But the Act does contain further provisions. It is provided by the 72nd section that the super-tax is to be assessed and charged in all cases by the Commissioners for the special purposes of the Acts relating to income tax. These Commissioners may serve a notice on any person requiring him to make a return of his total income, and every person so served is bound to make such return in the form required by the notice. If default is made in sending in such return, or if the Special Commissioners are dissatisfied therewith, they are to make an assessment according to the best of their judgment. Finally, all the provisions of the Income Tax Acts relating, *inter alia*, to assessments, appeals, and cases stated for the opinion of the High Court, are by sec. 72 (6) made applicable to assessments of super-tax, so that the party assessed may appeal against the assessment made by the Special Commissioners, and, if he does so, any determination of the Special Commissioners on such appeal and any assessment made thereupon is by virtue of sec. 57 of the Taxes Management Act 1880 final and binding, except that a Special Case may be required on a point of law.

So far there can be no dispute, but it is contended on behalf of the Crown that sec. 57 of the last-mentioned Act has, by virtue of secs. 65 (2) and 96 (4) of the Act of 1910, a further effect with regard to super-tax.

The argument on which this contention rests may be stated as follows:—For super-tax purposes total income is to be estimated in the same way as total income is estimated for the purposes of exemption and abatement. This refers us back to secs. 163, 164, and 190, Schedule G (xvii), of the Act of 1842. If those sections be examined it will, it is said, be found that where a person claiming exemption or abatement has been assessed in respect of the profits and gains of a business on an amount determined by the assessing authority upon appeal for the purposes of Schedule D, he is bound to return, in respect of such gains and profits, the amount so determined, and the estimating authority is bound to accept such return, the determination being, under sec. 57 of the Act of 1880, binding on all persons and for all purposes. Similarly it is said that where for the purposes of Schedule D the amount of profits and gains has been determined on appeal, this determination is binding for the purposes of super-tax, and neither the party assessed nor the Special Commissioners in estimating the total income can go behind such determination.

I am far from being satisfied that the determination on appeal of the profits and gains of a business for the purposes of Schedule D is binding on the authority responsible for estimating total income for the purposes of exemption and abatement. Assuming, however, that it is so binding, it does not, in my opinion, follow that it is binding on the authority responsible for estimating total income for the purposes of super-tax. Total income for the purposes of exemption and abatement may consist wholly of the gains and profits of a business, and if the amount of these profits and gains had already been determined on appeal for the purposes of Schedule D, the estimating authority would, on the assumption I am making, be precluded from themselves making an estimate at all, and be bound by an estimate made by another authority.

Similarly total income for super-tax purposes may consist wholly of the gains and profits of a business already determined on appeal for the purposes of Schedule D, and if the estimating authority be precluded from making an estimate and similarly bound, it can only be by treating a statutory provision precluding an estimate in certain cases as part of the manner in which the estimate is to be made. I do

not think that is a sound method of construction.

"Estimate" implies coming to a conclusion on the amount which has to be estimated after considering all the relevant facts. The Special Commissioners have to estimate total income for super-tax purposes. They are expressly told to estimate it in the same manner as another authority has to estimate total income for a different purpose. This must, I think, mean that they are to proceed as the other authority would have to proceed when making an estimate, and not as the other authority would proceed when precluded from making an estimate. I am therefore of opinion that the contention fails, nor do I think that the provisions of secs. 65 (2) and 96 (4) of the Act of 1910 taken alone could be held to override the express provisions requiring the Special Commissioners to estimate the total income, that is, to determine the amount after considering the relevant facts.

It was further suggested that on the general principles of law governing estoppels, neither the subject nor the Crown ought to be at liberty to go behind the amount of profits and gains when once determined by any competent authority. I do not dispute these general principles, but it seems to me that where there is a statutory provision requiring an estimate to be made for a statutory purpose and by a statutory authority, the principle of estoppel cannot be invoked to render the provision nugatory in cases where such principle might otherwise have applied.

The appeal in my opinion fails.

LORD SUMNER—Super-tax is "an additional duty of income tax" payable "in respect of the income of any individual the total of which from all sources exceeds" the prescribed sum, and "for the purposes of super-tax the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purpose of exemptions or abatements under the Income Tax Act." The question on this appeal is whether the Commissioners for Special Purposes, sitting at Birmingham, when making this estimation for the purposes of super-tax for the year 1909-10, were bound to take that constituent of the respondent's income from all sources, which consisted of profits or gains from his trade, at the figure at which it had been taken by the Commissioners for General Purposes for the division of Middleton in Lancashire, when assessing him to income tax under Schedule D for the year ending the 5th April 1909.

The answer depends entirely on the construction of the relevant sections of the Finance (1909-10) Act 1910, and of the Acts incorporated with it, and it applies equally whether the General Commissioners were right or wrong, whether a patent mistake had been made in the facts or the exact truth had been discovered to several places of decimals, whether the conduct both of the taxpayer and the General Commissioners was impeccable, or whether misconduct of any kind were imputable to either or both of these parties.

Section 96 (4) of the Finance (1909-10) Act 1910 clearly incorporates with these enactments relating to super-tax many prior enactments, and particularly section 57 of the Taxes Management Act 1880. It is, however, purely an incorporating section, and the effect of that incorporation in this case is to be decided by reading and construing together sections 163, 164, and 190 of the Income Tax Act 1842, section 57 of the Taxes Management Act 1880, and section 66 of the Finance (1909-10) Act 1910.

The case for the Crown involves two propositions. The first is that in estimating a subject's total income from all sources for the purpose of exemptions or abatements under the Income Tax Acts, as they stood prior to 1910, the General Commissioners would be bound to reject evidence of his actual profits or gains from his business and to adopt exclusively the figure at which they had been, in fact, taken for the purpose of assessing him to income tax under Schedule D.

The second is that the Commissioners for Special Purposes are equally so bound when estimating his total income from all sources for the previous year for the purpose of assessing him to super-tax.

Even assuming the first proposition to be true, the second is only established if either (*a*) the finality prescribed by section 57 (10) of the Taxes Management Act 1880 leads to this result; or (*b*) if the enacting part of section 190 of the Income Tax Act 1842, coupled with paragraph xvii (1) of the schedule to that section, substitutes the amount "for which the claimant hath been assessed," in cases where he has been assessed, for "the amount of value or property or profits returned."

I am quite unable to see how section 57 of the Taxes Management Act 1880 can have this result. The section occurs in the part of the Act entitled "assessment," and the tenor of the whole of its ten sub-sections shows that it is, what it is called in the heading, a section about "appeals." It prescribes the procedure which a person aggrieved by an assessment upon him is to follow before and at the hearing of his appeal by the General Commissioners. Then the last sub-section, No. 10, provides that when the Commissioners have determined the appeal their determination is final. Neither they nor anyone else can reopen it except under an order duly made by the High Court.

Such a provision is no doubt very beneficial. It was said during the argument that finality is of the essence of the scheme of the Income Tax Acts, and that it is either the warp or the woof—your Lordships were not told which—of the tangled web which they have woven. I cannot feel that this much assists the dry interpretation of the section. In an appeal against an assessment to income tax, as the Legislature imposed it before 1910, the *litis contestatio* comes to an end at a certain point. Let it be assumed that the finality so attained

takes effect also in an application for exemption or abatement from income tax as so imposed. Why should it further take effect upon an initial estimation for the purpose of assessing another and a new tax—for super-tax is another and a new tax none the less though it is an additional duty of income tax. I see nothing in section 57 of the Taxes Management Act 1880 sufficient to subject an original assessment to a new tax to the special finality which in terms is created for appeals from an assessment to an old tax. There are no express words to this effect in the Finance (1909-10) Act 1910, and the bare incorporation of section 57 of the Taxes Management Act 1880 with Part 4 of the Act could not be held to have so extreme an effect, unless otherwise it would have no effect at all, which has not been and could not be contended.

Section 190 and rule xvii of Schedule G of the Income Tax Act 1842 seem to me inclusive in themselves. I will assume, without deciding, that when there is an amount "for which the claimant hath been assessed," then it is so far "applicable to the case" of such person as to make it his duty to state it in his declaration in order to obtain exemption. Still this is nothing but his statement. There is nothing to preclude him from also stating the amount of value or profits or property returned, so that both may come before the Commissioners. It is really section 164 that determines the matter, for it prescribes the powers and duty of the Commissioners by requiring them to hear and determine the merits of such claim for exemption, which, *pro tanto*, is exactly what they would not be doing if, disregarding the evidence before them or rejecting the evidence tendered, they simply took a figure fixed on another occasion by other persons for a different though analogous purpose. The incorporation of this machinery into the super-tax part of the Finance (1909-10) Act 1910 does not alter it or cause the provisions as to the form of the statement to be signed by the claimant to prevail over the provisions as to the determination of the claim by the Commissioners on the merits.

Again, the language of section 66 (2) of the Finance (1909-10) Act 1910 is that for the purposes of super-tax the total income in question is to be the "total income . . . estimated in the same manner" as in the case of a claim for exemption. To arrive at an arithmetical conclusion, consisting of an aggregate of various kinds of income, by taking the amount of one of those kinds of income from a figure fixed in another proceeding is to go much beyond anything suggested by an "estimation" or by the "manner of estimating," and I do not think the argument that estimation of the total is consistent with accepting one item without estimation is sufficient, upon so obscure an enactment, to preclude the taxpayer from the right of proving the facts.

Finally, it was argued that, in the language of Phillimore, L.J., "if the two parties to a controversy have had the matter in dispute finally determined between them by an ultimate tribunal, they ought not, nor ought either of them, to be allowed to reopen this dispute on any such ground as that the matter which has been decided subsequently becomes an item in another account, even though this other account has, in respect of its other items or its casting, to be inquired into by a fresh tribunal." With all respect I think this begs the question; whether the "matter in dispute," or some other matter, has been previously determined, whether a reopening of the dispute is involved, or rather an estimation, according to the facts, are questions depending entirely on the construction of the Act. For the rest this argument is a mere *argumentum ab inconvenienti*, and is in itself insufficient to entitle the Crown to prevail.

I think that the appeal should be dismissed.

Lord Parmoor—The respondent John Hamer Brooks, who for several years has carried on the business of a waste-paper dealer in Lancashire, was assessed under Schedule D by the Commissioners for General Purposes for the year ending the 5th April 1909, at a sum of £6331, in respect of the profits arising from his business. On the 10th June 1910 the Commissioners for the Special Purposes of the Income Tax Acts required the respondent to make a return of his total income from all sources for the purpose of assessment to super-tax for the year ending the 5th April 1910. The respondent delivered a return in which he declared his income from his said business at £400. The Special Commissioners were not satisfied with the return and made an assessment in respect of the profits arising from the said business at £6331, declining to take evidence, and holding that section 66 (2) of the Finance (1909-10) Act 1910 rendered it obligatory on them to accept the sum of £6331 as the respondent's income from his said business for the purpose of assessment to super-tax.

The question is whether this decision of the Special Commissioners is correct. Horridge, J., held that the Special Commissioners were not bound by the assessment of the Commissioners for General Purposes, and this judgment was affirmed by the Court of Appeal, Phillimore, L.J., dissenting.

Section 66 of the Finance (1909-10) Act 1910 imposes an additional duty of income tax, referred to in the Act as a super-tax. For the purposes of this tax the total income of the individual from all sources is to be taken to be the total income of that individual from all sources for the previous year "estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts," subject to certain special conditions which do not apply in the present case. There is not only a statutory duty imposed on the Special Commissioners to estimate the amount of the total income, but the manner in which the estimate shall be made is obligatory by statute.

If the only duty placed upon the Special Commissioners had been to estimate the amount of the total income for the purpose

of super-tax, in my opinion they would not have fulfilled this duty by declining to consider any evidence tendered by the subject, and adopting as conclusive the assessment of the Commissioners for General Purposes of the business profits under Schedule D at the sum of £6331. This, however, is not the only duty of the Special Commissioners. They have not only to make an estimate, but to make it in a specified manner. The manner is found in section 164 and section 190 (Schedule G, No. xvii) of the Income Tax Act 1842. These sections make it clear that the Special Commissioners should consider evidence properly tendered to them and make an independent estimate on their own authority after inquiry. I omit at this stage any reference to the argument founded on section 57 of the Taxes Management Act 1880, since, for the reasons hereinafter stated, that section does not, in my opinion, limit in any way the duties placed upon the Special Commissioners by section 66 of the Finance (1909-10) Act 1910.

Section 164 and section 190 (Schedule G, No. xvii) of the Income Tax Act 1842 contain a full machinery for inquiry and estimate when a claim for exemption is made against the Crown, and enable the particulars of all the figures to be investigated on which the claimant relies in support of his claim for exemption. The section enacts that, together with a signed declaration and statement, the claimant shall declare and set forth in his claim all the particular sources from whence his income arises, and the particular amount arising from each source. It would therefore be incumbent on the claimant, where a portion of his income was derived from profits of business, to declare and state the particular amount arising from such business. This declaration and statement every inspector or surveyor is at liberty to peruse or examine. If the inspector or surveyor does not object thereto, the Commissioners may allow such claim for exemption and discharge the assessment made upon any property or profits of the claimant. If the inspector or surveyor objects to any such claim in writing, and suggests that he has reason to believe that the income of such claimant, or any other particular required by this Act to be declared or set forth, is not truly or fully set forth in any specified particular, then the merits of such claim for exemption are heard and determined upon appeal before the Commissioners, under and subject to such rules, regulations, and penalties as other appeals under the Act are directed to be heard and determined. Thus under section 164 the Commissioners in the case of a claim for exemption have full power to inquire into the particulars on which the claim is based. They are further under an obligation, if the inspector or surveyor objects to the claim, to hear and determine the merits of the claim. The Special Commissioners for the purpose of super-tax are directed to estimate in the same manner as for the purpose of exemption or abatement, and cannot refuse to entertain evidence or to consider the merits in a case in which it is properly tendered for their consideration.

Section 190 (Schedule G, No. xvii) points to the same conclusion. It does not direct a declaration of the assessment made for the purpose of income tax under Schedule D, but a declaration of the amount of value or property or profits returned, or for which the claimant has been or is liable to be assessed. In other words, whether the claimant has been assessed or not, he is required to make a declaration of profits returned or for which he has been or is liable to be assessed, and on this information the Crown can claim full investigation.

The Attorney-General in his argument for the appellant relied on section 57 (3 and 10) of the Taxes Management Act 1880. It was contended that the effect of this section was to make the assessment of £6331 by the General Commissioners under Schedule D conclusive for all purposes. If this is the effect of the section, then the Special Commissioners for super-tax would have no option. Their decision to accept this figure would be right, and they would properly have rejected the claim of the respondent to adduce evidence in support of this case.

I do not doubt that this section applies to the whole series of Income Tax Acts, including the Acts of 1842 and 1910, but this leaves open the question of its true meaning and construction. Section 57 (3) gives a right of Appeal to the General Commissioners, and section 57 (10) provides that the determination of the hearing on such appeal shall be final, and that such determination of the assessment shall not be altered at any subsequent meeting, or at any other time and place, except by order of the High Court. In the present case there has been no order of the High Court. The section does no more than make the determination of the General Commissioners final in the case which comes before them on appeal. It has no reference to the powers and duties of the Special Commissioners, and in no way derogates from their obligation to estimate for the purpose of super-tax the total income from all sources in accordance with the statutory directions and requirements.

The questions involved in this case are simply questions of statutory interpretation. In my opinion the appeal fails.

Appeal dismissed.

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

Counsel for the Respondent—Ryde, K.C. — Brocklehurst. Agents — Rawle, Johnstone, & Company for J. Ogden Hardicker & Hanson, Manchester, Solicitors.