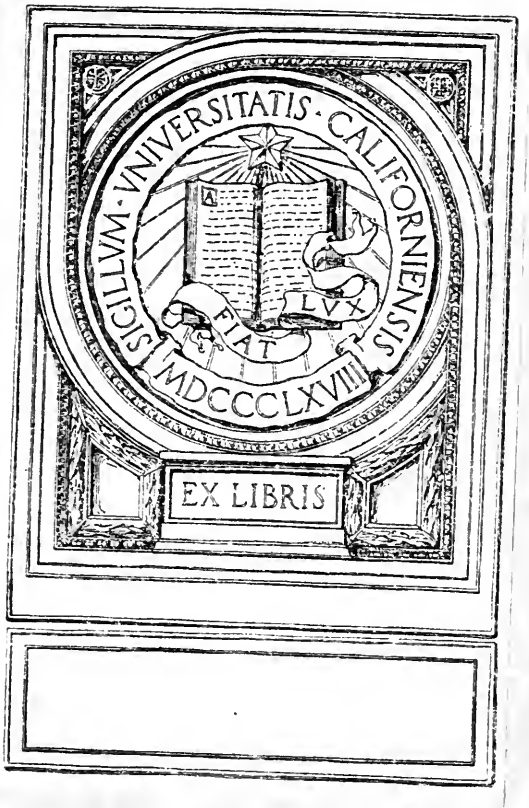
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THE

NEW LAND TAXES

AND

THEIR PRACTICAL APPLICATION

BEING AN

EXAMINATION AND EXPLANATION FROM A LEGAL POINT OF VIEW OF

THE LAND CLAUSES

OF THE

FINANCE (1909—10) ACT, 1910
[10 EDW. 7, CH. 8]

AND

THE REVENUE ACT, 1911
[1 GEO. 5, C. 2]

BY

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AND
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PUBLISHERS' NOTICE.

UNFORTUNATELY the Author, on account of a severe attack of illness, has been unable to furnish a Preface to this edition.

There being so many inquiries for the work, the Publishers have deemed it advisable to publish at once, and they are confident that it will be found to have been brought well up to date.

March, 1912.

PREFACE TO FIRST EDITION.

The Finance (1909—10) Act, 1910, opens a new chapter in the fiscal history of the United Kingdom. The task of arriving at the taxable entity, designated the site value, of land, which has been the subject of expenditure for years, and of applying the site value taxes to the intricate arrangements under which that land is held is one necessarily of magnitude and complexity. It is far greater and infinitely more complex than that involved in either of the two processes with which the law is now familiar, namely, that of arriving at annual value for the purpose of local taxation or income tax, or that of arriving at capital value for the purpose of imperial taxation on death. The law relating to it must enter far more largely into the ordinary work of a legal practitioner than that relating to either of the two methods of taxation referred to, because every sale, or lease for over fourteen years of land, as well as every death, may be an occasion on which one of the new duties, the increment value duty, may have to be paid. The levying of that duty involves an application of all the complicated provisions relating to site valuation contained in the new Finance Act.

The difficulties of successfully framing Acts of Parliament, dealing with the mysteries of Conveyancing Law, are well known. A popular assembly is not the body best adapted for considering one of the most technical subjects in the universe. But when behind the technicalities of a Bill great principles are believed to be at stake which excite the utmost passions of party, those difficulties are multiplied a hundred-fold. In consequence,

lucidity is often, as it were, of necessity sacrificed to compression. Legislation by incorporation of prior enactments, not exactly fitting the new arrangements, reigns triumphant. The interpretation of a statute thus compounded is necessarily very difficult and somewhat uncertain. In his study of the Finance (1909—10) Act, 1910, the writer has been fully conscious of this fact, but he has felt also that his work would be worthless if he did not boldly, almost to the verge of presumption, grapple with the difficulties of his subject. He has, therefore, not hesitated freely to express his opinion on the main points in the Act, which appear to him to be of doubtful meaning. Many of these opinions are probably mistaken, and for them he apologises; but at least their statement in these pages will have roused the critical faculties of more competent lawyers, whose views he will be only too grateful to receive.

Not much help, it is believed, is to be obtained from the analogy of legal decisions on existing systems of taxation. The present Act has different fiscal aims from the statutes which have previously settled the imperial and local taxation of the country. The Courts will interpret it according to its spirit. For this reason attention is mainly given in the following pages to the principles of the Act, their probable application, and the practical consequences which will result from them; and not to uncertain analogies between this and former Acts of Parliament.

The writer's sincere thanks are due to his friend, Mr. H. F. Chettle, of Gray's Inn, for his labour and care in the preparation of the Index and Table of Cases.

T. B. N.

7, NEW SQUARE,
LINCOLN'S INN,
May, 1910.

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NOTES ON THE PRACTICAL WORKING OF THE LAND CLAUSES OF THE FINANCE (1909–10) ACT, 1910.

The following note was originally written as the first edition was passing through the press, by special request, and in the hope that it might be of some assistance pending the settlement of the practice under the Act, and especially before the original site valuation (under s. 26) had been made. It is retained with a good deal of modification and much addition, as its use is not thought to be exhausted.

CONTENTS OF PRACTICAL NOTE.

I. Vendors and Purchasers and Increment Value Duty.

Practice on assessment.

The increment value duty (referred to in this note as I.V.D.) is payable on all site value increment which has accrued since April 30, 1909. But in many cases the valuation has not yet been made of site value as on that date. Such valuation will not in some cases be made and settled for years. Nevertheless, a vendor will have to pay I.V.D. on the difference (being an increase in value) between the site value of the property sold as on April 30, 1909, and as on the date of sale. The practice as to the assessment for I.V.D. is at present substantially as follows. The vendor, in compliance with the regulations, either presents the instrument, usually the conveyance, on which he desires the I.V.D. stamp placed, together with a copy or abstract of the instrument (see Regulation 3, p, 488), or he presents the copy or abstract without the instrument, under the language of s. 4 (2) as "reasonable particulars thereof." The abstract is usually furnished by filling in the official non-compulsory form I.V.D. (B) (see p. 496), which, however, may have to be supplemented by a claim for deductions. A receipt is given for these documents. Usually one of the three stamps

referred to in s. 4 (3) is ready to be impressed by the Commissioners within one or two days at most after the lodging of the documents referred to. The stamp commonly impressed is (*b*) "denoting that all particulars have been delivered to the Commissioners which, in their opinion, are necessary for the purpose of enabling them to assess the duty." Sometimes, though it seems rarely, stamp (*c*), denoting that upon the occasion in question no increment value duty is payable, is impressed. The readiness of the authorities to impress stamp (*b*) on instruments without requiring security for the duty has greatly facilitated the working of the Act, and has removed certain legitimate apprehensions that transactions would necessarily be delayed. The stamp impressed affords, it is thought, security to the purchaser that I.V.D. has been assessed and therefore paid (s. 4 (4)) up to the date of his conveyance (see note on p. 85). It does not, however, seem to secure the purchaser against an under-assessment of I.V.D., arising from either (1) an under-calculation of the consideration, (2) an over-allowance for deductions which could not be sustained in the future; or (3) a mistake in giving an exemption which is not sustained on future occasions.

What stamp impressed.

The valuation under ss. 1 and 2.

The authorities practically give credit to the vendor for the I.V.D. till the original site value has been fixed and the formal assessment, if there is increment value, can be made. The particulars of the instrument requiring the stamps are sent to the district valuer, who either has already made, or will shortly make, the original site valuation (see Report of Commissioners of Inland Revenue, 1911, pp. 161, 163). Whether this is the case if the sale is of a house in a neighbourhood known by all men to be decaying, as a Brixton or Holloway by-street, does not appear. It may be that in such a case the particulars are passed without further inquiry as disclosing no increment. Whether the district valuer, in all cases sent to him, reports the amount of the original site value, and the value then arrived at (under s. 2 (2)) as on the sale, or whether, when in his opinion there is no increment value, he simply reports that opinion without giving details, either of the original valuation or of the then value is not known. Nor is it known how far the information furnished to the Commissioners is really tabulated and recorded for future use in cases where there is clearly at the moment no increment.

Informal intimation of increment.

If it appears to the district valuer that there has been increment, he usually gives an informal intimation of the figures he has arrived at to the vendor with a view to arriving at an agreement before an assessment is formally made by the Commissioners in pursuance of his report (see Report for 1911, p. 161). Either as the result of agreement or otherwise an assessment is finally made. The liability for I.V.D. may thus be hanging over the head of the vendor for some time, though he does not seem to have much score to complain on this head, since the Crown cannot claim interest on the duty. But assuming the value of

the consideration properly arrived at, and that no improper deductions are made, the purchaser appears to be safe.

Deductions must be claimed.

As soon as any intimation is conveyed to a vendor that a claim for I.V.D. is to be made, he must carefully consider the question of deductions, and especially have regard to the deductions already claimed for on the original valuation. All those deductions, so far as still applicable, and also all value added since 30th April, 1909, by expenditure either before or since that date, should be claimed for, in order to reduce the increment value.

Deductions should be claimed on stamping.

It appears advisable in all cases where a claim for I.V.D. is likely to be made, and where deductions are claimable, that the abstract before referred to, I.V.D. (B.) should refer to the fact that deductions will, if necessary, be claimed. This course doubtless suggests that increment value is probable. In many cases, however, it is clear that from the amount of the consideration that a claim must arise, and in these cases a special letter might be written and accompany the form I.V.D. setting, out such deductions. It seems advisable that they should be before the valuer when making his valuation under s. 2 (2) (*a*) in the first instances and not brought before him for the first time after he has sent the "informal intimation" of his figures (referred to at p. 161 of the Commissioners Report for 1911) to the vendor. But there is no time expressly, and there appears to be no time impliedly fixed by the Act within which deductions may be claimed. It seems that deductions not claimed on I.V.D. (B), or not claimed in reply or in negotiations relating to the "informal intimation" preceding the report of the valuer, could still be claimed from the Commissioners before formal assessment, and could even be claimed after that assessment on appeal. In the last mentioned case, even if the deduction were allowed, the expenses of the appellant on appeal (s. 33 (3)) would probably not be allowed, and he might be ordered to pay those of the Crown.

Security for duty.

If the Commissioners, being satisfied with the particulars furnished, should nevertheless require security to be given under s. 4 (3) (*b*) for the amount of the duty, the vendor must perforce give that security.

Position of purchaser.

The purchaser appears to have no "say" before the Commissioners in the fixing of the duty, though it is to his interest that it should be fully assessed to date. If the consideration is not fully stated, or if deductions not sustainable on future occasions are allowed, the site value on the occasion in question will come out lower than it ought to be. When the purchaser in his turn sells the property, the true site value may emerge, and the former purchaser, who is then the vendor, will have to pay duty which ought to have been paid by his vendor Amongst the deductions in which a purchaser is interested is that in s. 25 (4) (*a*), the ascertainment of which involves gross and full site valuations under s. 25 (1) and (2). If either the gross valuation is too high, or the full site valuation is too low, the difference between the two which is the non-site element of the property represented by the deduction 4 (*a*)

Can a purchaser appeal?

will be too large, and the site value, which is the result of this and the other deductions mentioned in s. 25 (4) from the value of the consideration (s. 2 (2) (*a*)) will be too low. Whether a purchaser is a "person aggrieved" within s. 33 (1) by the fixing of a too low site and increment value on an occasion under ss. 1 (*a*) and 2 (2) (*a*), must be treated as a doubtful point. It may be that his interest would be thought to be too remote; but he might die or sell next day and the full duty then be charged.

The position of a vendor who has sold his land before the original site valuation has been made, the Commissioners placing stamp (*b*) on the deed, may be a little difficult.

Difficulties of vendor and purchaser before original valuation.

He will have ceased to be the owner when that valuation is made. The purchaser will have had his conveyance. It might be the interest of the purchaser, having regard to the undeveloped land duty, to cause the site to be valued as low as possible. The vendor's interest is a high site value. The lower the original site value the more I.V.D. will the vendor have to pay; and yet apparently he is not a person interested in the land within the meaning of s. 27 (5) who may object to the valuation.* It appears, however, from rule 11 of the Land Values (Reference) Rules of December 5, 1910, regulating appeals under s. 33 to a referee (see p. 378), that as a person "otherwise interested in the appeal" he may be allowed by the referee to put his case before the referee and to take part in any consultation with reference to the appeal. But if, in such a case, the vendor has his difficulties, the purchaser has his also. He may wish to have a low original site value because he intends holding as undeveloped land. Therefore he must ascertain from the vendor all the facts necessary to enable him to claim all the deductions and allowances which may be made from total value in order to ascertain assessable site value under s. 25 (4). Further, he must at all events obtain, if not legal proof of such expenditure, such evidence as will satisfy the Commissioners thereupon.

The moral of these considerations is that in a contract of sale or lease entered into previously to the original site valuation, full consideration should be given to the probability of a claim for I.V.D. In the absence of provisions relating to the question it would appear that both vendor and purchaser might in certain eventualities be prejudiced.

Sale after original valuation.

On a sale after the original site valuation has been made it will still be the interest of the vendor or lessor to minimise so far as possible the value of the consideration given for the purchase or lease. Under s. 2 (2) that value, subject to the statutory deductions, is taken to be the then site value of the property from which the original site value must be deducted to obtain the amount (if any) of increment value. It is not clear by any means what can be taken into consideration by the Com-

* See an interesting case of this nature discussed in the House of Commons on July 25, 1911, Parliamentary Debates, pp. 1536—7.

missioners as being part of the value of the consideration. It is not even certain that anything else than money payments (except in the two cases referred to in s. 32 (2), see p. 353), is to be reckoned as consideration, or included as part of the consideration, in the case of a sale or lease. It is true that the official form, I.V.D. (B) (see p. 496), requires certain particulars to be given in cases of sale or lease: see especially Requisition 8, *i.e.*, "Covenants by the purchaser to build or improve property; or to form, make, maintain, or contribute towards cost of roads," and "any other covenant or condition affecting the value of the interest created or transferred," which suggest that, in the official view, site value on the occasion of sales or leases may be measured by the value of the whole real consideration, whether stated in terms of money or otherwise. Even in contracts entered into after the original site valuation has been made, it would appear wise for the purchaser in those cases in which the consideration comprises covenants for expenditure by himself, or some thing given, or to be done, by himself, other than a money payment, to take precautions to secure that the consideration which is the test of the then value of the property is fully explained to the Inland Revenue. In such cases the interest of the purchaser is also to see that deductions are not obtained by the vendor under s. 25 (4) which will not be sustainable on future occasions. It should be observed that the amount of the deduction (s. 25 (4) (*a*)) which must be made on any occasion for payment of I.V.D., since it represents the non-site element in the property (see commentary, pp. 305—309), depends on the difference between the gross and full site values.* It is the interest of persons paying I.V.D., *i.e.*, vendors and lessors, that this difference should be great, *i.e.*, that the gross value should be high and the full site value low, since this will give a larger sum to deduct under s. 25 (4) (*a*) from the value of the consideration, etc., and so lessen the assessed site value. The interest of a purchaser in this respect will not necessarily be adverse to that of the vendor, since when he sells or dies the same proportion between gross and full site values will most probably be preserved.

As to the subject of vendor and purchaser, see further notes on the Regulations as to payment of I.V.D., pp. 493—5.

II. Special Points Relating to the Sale and Purchase of Minerals.

Difficulty of matter.

Both vendors and purchasers must walk warily in the matter of the sale and purchase of minerals and increment value duty. No general advice on the subject can be given in measurable compass of space, since the following factors are all of moment. Has an original capital value been placed on the minerals? Or is that capital value "*nil*" under s. 23 (2)? If no original capital value has been placed on the minerals

* See the instructions by the Inland Revenue to their valuers recently published as a Parliamentary paper (p. cl).

what was the original site value of the land? Was it a site value equal to, or less than, the value of the land together with the minerals? Has any increment value duty been paid on this site value? The questions for consideration are not of great difficulty in a plain case where it is quite clear, or almost clear, that there are paying minerals, and that they can be got with very little disturbance to the surface. They are of great difficulty in the many cases in which land with mineral deposits of doubtful quantity or quality is in the market. One or two things seem plain. It is the interest of the purchaser of minerals to have the consideration apportioned on the sale between site and minerals, so that the duty up to date on both is paid by the vendor. This may operate hardly on a vendor whose original site value may have been fixed on the basis that the land would not be injured by mining operations, and who now finds that site value practically valueless, while at the same time he has to pay a heavy increment value duty on the minerals which were estimated at *nil*. Thus, supposing the original site value of ten acres near the town of X. were 10,000*l*., the minerals then considered not to be a paying product being put at "*nil*." If in 1918 the proprietor sells his minerals for 12,000*l*. with surface rights which practically destroy the value of the land for building purposes, he has to pay 2,400*l*. for increment value duty on his minerals, and cannot set off any part of this sum against the decrement of his surface. But on the other hand, if he sells the whole property as a single parcel of land for 12,000*l*., not specifically mentioning the minerals, he would only have to pay increment value duty on 2,000*l*., *i.e.* 400*l*. The latter method of dealing with the transaction would not, however, suit the purchaser.

Interest of purchaser on sale of surface and minerals.

Illustration.

He will probably want to work or lease the minerals. Then he will have to pay annual increment value duty under s. 22 (3). That duty is one-fifth of the excess of the rent on the lease or the hypothetical rent on the working fixed under s. 20 (2) (*b*) over $\frac{2}{25}$ of the original capital value of the minerals, or of the capital value of the minerals on the last preceding occasion on which increment value duty had been collected on the minerals as a lump sum, if there has in fact been such an occasion. The purchaser therefore wishes the increment value duty on the minerals to be fully paid up to the date of his purchase, so that the annual increment value duty which he will pay may be less. Practically, therefore, as between vendor and purchaser the question ought to be one of bargain. What the position would be if the matter is left open, that is if there is a sale for, say, 12,000*l*. of Blackacre, comprising unworked mineral deposits, no stipulation being made in the contract as to increment value duty, depends partly on the action of the Crown. Suppose that the original site value of Blackacre was 10,000*l*., and the original value of the minerals *nil*. Then the vendor will desire to treat the sale as a sale of Blackacre as a whole for 12,000*l*., and to escape with paying increment value duty on 2,000*l*. The purchaser

Position under open contract.

will wish to have the consideration of 12,000*l.* apportioned between the site value of, and the minerals comprised in, Blackacre, so that the vendor shall pay the increment value duty to the date of the sale on the minerals, which of course may be a heavy sum. As between vendor and purchaser it would seem that in the absence of special stipulation as to the increment value duty the vendor would have fulfilled his obligations under the contract see (s. 4) by producing a conveyance stamped with one of the three stamps referred to in s. 4 (3). This must, however, be taken for the present as matter of opinion. But it appears doubtful whether the Crown can require the apportionment of consideration so beneficial to the purchaser. If it can, it seems that the vendor must pay increment value duty on the value of the minerals as indicated by the apportioned consideration. On the other hand the Crown may prefer to take its increment value duty later when the minerals are leased or worked by the purchaser. The result is that every contract of sale of surface and minerals, the latter having an original capital value of *nil*, should (a) either apportion the price or (b) have regard to the fact that the whole price may otherwise be attributable to the surface, and that therefore no increment value duty at all will be paid in respect of the minerals on the sale, leaving one-fifth of their value to be paid as increment value duty in the future. It will also be remembered that both the powers and the policy of the Crown as to requiring the consideration to be apportioned in such a case are not clear.

The view of the Crown.

In the case of a contract to sell land and minerals therein as a whole, the original site value of which land. and the original capital value of the minerals under which land, were separately valued on the original site valuation, it would seem to be clear that the Crown would be entitled under s. 32 (3) to apportion the consideration between site and minerals and to assess the duty on each separately. Nevertheless, to prevent any doubt arising, it would be advisable that the contract should plainly state what is to be done.

Right of Crown to apportion consideration.

It will of course be remembered that under s. 1 of the Revenue Act, 1911, a contract throwing the liability for increment value duty on the purchaser is void. It is not thought that this section prohibits an agreement between vendor and purchaser for non-apportionment of consideration between site and minerals (with an original capital value of *nil*), whereby all the purchase-moneys become attributable to site only, leaving increment value duty to be paid in the future on the whole realised value of the minerals.

The position may thus be summarised from a purchaser's point of view. A person may buy minerals apart from the surface. He must then require the vendor to pay increment value duty in the ordinary way. The minerals will be treated as a separate parcel of land (s. 23 (2)); their capital value will be ascertained under s. 23 (1) on the occasion by applying the process indicated in s. 2 (2) (*a*). Their original capital value will either have been separately ascertained under s. 23 (1), (2),

The purchase of minerals apart from surface.

and ss. 26 and 27, or will be *nil*, and in either event increment value duty will be arrived at as in the case of land not comprising minerals, but with the necessary modifications owing to the nature of the subject (s. 23 (1)).

The purchase of both surface and minerals. Consideration apportioned.

A person may buy minerals together with the surface, apportioning in the contract and the conveyance the consideration between the surface and the minerals. In that case increment value duty will be paid separately on surface and minerals exactly as if there were two separate transfers on sale of separate parcels of land. Two *ad valorem* stamps under s. 4 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), and probably two increment value duty stamps under s. 4 (3) of the Act of 1910, will be necessary.

Purchase of land containing minerals. Consideration not apportioned.

There is yet a third class of cases in which a man buys land believed by him to contain minerals, and where neither in the contract nor conveyance is there any reference to the minerals. The minerals, it is assumed, have not been valued as a separate parcel of land on the original site valuation, and no increment value duty has therefore been paid before the sale in respect of the minerals. The construction of the Act may well be that all the purchase-money will in the absence of apportionment be treated as having been paid in respect of value other than mineral value; that the minerals will be considered to have been treated as of no value on the original valuation (s. 23 (2)), and as of no value on the sale to the purchaser, and that consequently the whole of the consideration money received by him on a future sale or lease of the minerals, apart from the surface or the principal value of the minerals on a death valuation under the Finance Act, 1894, will (subject to statutory deductions) be treated as increment. Whether relief to any extent could be obtained by getting the Commissioners to apportion under s. 32 (3) former considerations, and under s. 3 (1) former payments of increment value duty (if any), seems extremely doubtful.

The conclusion is that on a purchase of land for the sake of its minerals it will be wise for a purchaser to insist on treating the minerals apart from the land, and to have the consideration apportioned between surface and minerals. This is a matter which should be provided for in the contract. It would probably be too late to raise the question on the settlement of the conveyance. For the vendor to concede the request of the purchaser to apportion the consideration might be to make himself liable to pay increment value duty on minerals valued on the original site valuation as worth nothing.

As to effect of s. 4 (1).

It may be a question whether in the case of a sale of land containing minerals, but without mention of the minerals in the contract, the purchaser can by virtue of s. 23 (2) require the Commissioners to assess increment value duty on the minerals as a separate parcel of land under s. 23 (2). If, indeed, the purchaser has this power, it will clearly be wise in him to use it, since he thereby clears the minerals of duty to date.

III. INCREMENT VALUE DUTY ON DEATH.

No special difficulty seems to arise in relation to the practice as to the payment of this duty on death. The circular letter of July, 1910, from the Commissioners (see p. 94 and Appendix, p. 538) makes it plain that in the first instance it is unnecessary to present any accounts relating to this duty other than the affidavit and accounts furnished for estate duty purposes. If the Commissioners from a perusal of the accounts in question suspect increment, they will themselves raise the question and call for a further account.*

Under s. 2 (2) (*c*) the site value of the property on a death occasion is, subject to deduction, the principal value of the land as ascertained for the purposes of estate duty. It might therefore be considered that no valuation would be necessary under s. 25 in order to fix the site value on a death occasion. This is not the case. In order to ascertain the amount of the deduction under s. 25 (4) (*a*), one of the matters which by virtue of s. 2 (2) must be deducted from the principal value in order to ascertain the site value, it is evidently necessary that the gross and full site valuations should be ascertained under s. 25 (1) and (2). The difference between these two valuations represents the non-site element in the property, and must under s. 25 (4) and s. 2 (2) be deducted from the principal (which on a death occasion represents the total (s. 25 (3)) or selling value of the property in order to arrive at the site and increment values. It is to the interest of the taxpayer that on such an occasion gross value should be high and full site value should be low, since the greater the difference between them the larger the sum to be deducted from the principal value, and the less the site and increment values. As a matter of practice, however, gross value will no doubt be based upon principal value by the valuers for either Crown or taxpayer. The full site value will be the crux of the process, and it will be the interest of the subject to keep this as low as possible.

Of course all deductions under s. 25 (4) (*b*) to (*e*) will be claimed for on a death occasion exactly as on the occasion of a sale.

IV. RETURNS FOR ORIGINAL VALUATION.—FORM 4.

The forms under s. 26 (2) have for some time been in the hands of owners and persons receiving rent, requiring them to give particulars with reference to their land for the purpose of enabling the Commissioners to make the original total and site valuations under s. 26 (1) of the whole of the land in the United Kingdom.

The unit of taxation is the property of an owner in a separate occupation (s. 26 (1)). In other words the Commissioners must require a return from an owner for each piece of property in a separate occupation, whether that occupation be the occupation of the owner or of his tenant

The unit of taxation.

* When the original site value has not been fixed there is often much delay in getting an intimation from the Inland Revenue that duty will not be claimed. They are waiting for the report of their district valuer.

or licensee. They may not divide up property in a single occupation and require returns to be made as to the divided portions. Nor may they lump together two or more pieces of property in separate occupations and require a joint return for the aggregate. If the Commissioners require a return for a divided occupation, or two or more aggregated occupations, it is thought that the owner need not fill in the Form 4 served upon him, and would not be liable to the penalty imposed by s. 26 (2) for not doing so. He should in such a case write to the Commissioners, stating clearly his objections to the validity of their notice and the required return. If the Commissioners persist in requiring him to make the return in dispute, he may, it is thought, bring an action grounded on *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410, C. A. (see pp. 319 and 510), and *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139 (see p. 347), for a declaration that he is not bound to make the return;* or he may await and defend an action for the penalty under s. 26 (2). If an owner does object to an unauthorised unit of taxation it seems tolerably clear that he should not fill in the form IV. sent to him in relation to that unit. If he does so, especially if he does so without taking written objection to the proposed unit, he may find it too late to make an objection later.

Exceptions to the rule: (1) Part of occupation.

In two cases the owner may cause the unit of taxation to be varied. Under s. 26 (1), "if the owner so requires any part of any land which is under separate occupation shall be separately valued." It is clear that if this provision is to be taken literally an agreement of owners could render the valuation clauses unworkable. The owners of Whitehall or Queen Anne's Mansions are, however, not likely to split up the dozen or so storeys of their buildings into an infinite number of irregularly shaped and sized pieces of land and require each piece to be separately valued. But even where owners act, as they will, reasonably, it is quite evident that difficult questions might arise as to buildings let in chambers and flats. For convenience' sake and to avoid controversy, owners will agree and are agreeing to the valuation of such buildings as a whole, notwithstanding that different portions thereof may be in divers occupations.

(2) Joint valuation.

The second exception arises under s. 5 of the Revenue Act, 1911 (p. 588), under which in certain cases at the request of the owner a joint valuation of properties under separate occupations may be allowed. This is fully treated of at p. 315 of the Commentary. Special attention should be given to the time within which the request should be made. The exception applies mainly to urban properties likely to be rebuilt at an early date with a better class of buildings than is at present upon them.

Quære high or low original site value wanted.

One of the first things which an owner receiving Form 4 must ask himself is whether he wants a high or a low site valuation. The advantage of a high valuation is that on a future sale or lease

* But it appears that even if successful in such an action he cannot get his costs against the Crown (see p. 157 of the case last above cited). These cases have now been affirmed on appeal. [1911] W. N. p. 232.

the increment value will be less than on a low original valuation. The same will be the case on the death of the owner. But if the land is liable to undeveloped land duty, the lower the site value the less duty will be charged. This balancing of considerations is, however, applicable only to undeveloped land. As to land fully developed, as, for example, a house in a London square, it is better, it seems, that the original site value should be high. Increment value in the future will be less. At the same time it must be remembered that site value is a consequence of certain deductions from total value. It might be difficult to support a low principal value on death of the total hereditament as ascertained for the purposes of Part I. of the Finance Act, 1894, on which not only increment value duty but estate duty would be paid, in the face of a high total value, perhaps the owner's own estimate under s. 26 (3).* This consideration is not, however, applicable in the case of bodies corporate and unincorporate who do not pay death duties, but who pay either income tax or corporation duty, which are both taxes on income.

Many owners will therefore be much exercised as to whether they shall avail themselves of the provision just referred to (s. 26 (3)), and place before the Commissioners their estimates of total and site value. The only advice which can be given them is to review the whole probabilities of the future of the land (see hereon p. xxxiv). Remaindermen and reversioners should note the practical advice in the note to s. 27 (5) (see p. 328).

Owners will remember that no time is fixed within which the expenditure on the statutory deductions in s. 25 (4) need have been made. The value added by embankment works made in the reign of Queen Anne can apparently be claimed to-day. Especially must they note that it is not the expenditure, but the result of the expenditure on site value, which may be deducted. The results of extensive advertising must not be overlooked. The cost of clearing the land under s. 25 (4) (*e*) may be an item which ought to be claimed.

No time limit for expenditure.

Attention is specially directed to s. 12 (see p. 148), by virtue of which, unless deductions capable of being claimed on the original site valuation are so claimed, they cannot be claimed on any occasion on which increment value duty becomes payable. This will, of course, affect all owners of land, but it specially demands the attention of purchasers of land before the original site valuation is made, as the vendors may be indifferent. Deductions will usually be claimed for in full, at all events in the case of undeveloped land, since they will reduce its assessable site value. Although a high original site value is advisable so far as increment value duty is concerned, yet deductions

Note specially s. 12.

* See a case discussed in the House of Commons, 25th July, 1911, Parliamentary Debates 1534 and onwards, in which the Treasury undertook to refund estate duty paid on a valuation exceeding the original site valuation and made about the same time.

allowed on the original site valuation may be claimed and will be allowed on all occasions under s. 1 for payment of increment value duty.

Original site value unalterable.

It must be noted that the original site value upon the increment of which duty is payable is for ever unalterable. But the true value for undeveloped land duty is fixed only till April 30, 1914, and is to be quinquennially revalued. Deductions not claimed in 1911 on the original site valuation can yet be claimed in 1914, on the quinquennial valuation, for purposes of undeveloped land duty (sections 12 and 28). A mistake is not irrevocable. It must, however, be added that if an owner entitled to claim deductions did not do so on the original site valuation, and thereby obtained a high original site value, and then in 1914 piled on deductions unclaimed on the original valuation for the purpose of obtaining a low quinquennial valuation for undeveloped land duty, he might be pursuing a risky course. In the view of the writer, however, which of course may be mistaken, except as concerns the deduction in s. 25 (4) (*a*), the right to claim deductions is a privilege of the subject under the Act, which may be exercised how and when he pleases, and in such a way as to lessen his own taxation to the fullest extent possible. It is thought that the Crown has no right to make deductions *meri motu*, and no right, except in the case provided for by s. 12, to refuse to allow them because they have not been claimed on a former occasion when they might have been claimed.

It is of course clear that all the deductions claimed for in fixing original site value can be claimed for in fixing site value on occasions for payment of increment value duty under s. 1, so far as the benefit of the expenditure is continuing. As regards undeveloped land it is therefore safer to claim deductions to the fullest extent, in order to keep down the undeveloped land duty.

Deductions should be claimed for on Form 7 (see Appendix, p. 514), which will be sent to the owner if (*v*) on Form 4 (see p. 503) is filled in with an expression of his intention to claim for deductions. He should not wait till after the provisional valuation is served upon him and then claim for deductions by way of objection under s. 27 (2), or of appeal under s. 27 (4) and s. 33. It is not clear whether after the provisional valuation is made deductions can be claimed for, though, if the necessity should arise for doing so, there is a strong argument in favour of holding such a claim to be valid.

The attention of owners of land which comprises minerals is directed to the difficulty of their position on the first valuation, in the Introduction (see p. cxv), and in the commentary on the text (see pp. 216 and 246). Great caution is clearly necessary on their part in the return which they will make to the Commissioners under s. 26 (2). It must not be lost sight of that some of the substances referred to, s. 20 (5) (p. 226), exempted from mineral rights duty, are doubtless minerals under the valuation clause, s. 23 (p. 246), as to minerals.

V. THE PROVISIONAL VALUATION.

Provisional valuations are at the present time being daily served on owners of land under s. 27 (1). They should be scrutinised with some care.

Four classes of cases :— (1) Developed sites unlikely to appreciate.

They may be divided into four classes: (1) Valuations of developed (built upon) sites, where there is no probability of an increase in site value, and where there is no liability to undeveloped land duty. These are for the most part the sites of dwelling-houses in the side streets and roads of urban and quasi-urban places. It is notorious that they rarely increase in value. Nevertheless it must be remembered that at the present time (December, 1911) there is admittedly a great wave of depression in the market for properties of the kind in question. Nine out of ten towns in the United Kingdom are overbuilt. The increase of travelling facilities in recent years has brought into the markets thousands of acres available for houses, and the movement in all industrial places has been from the centre to the circumference. This movement will in time exhaust itself, and some revival of site values may be expected within a measurable distance of time. The owners of the class of houses under consideration will therefore be wise in objecting to, and if necessary appealing from, an unduly low original site value. They will also consider whether they are able to avail themselves of the provisions of s. 2 (3) of the Act of 1910 and s. 2 of the Revenue Act, 1911, for the substitution of a higher site value, based on previous dealings with the property. They must remember that a high original site value is their defence against claims for increment value duty. A higher site value substituted under the provisions just referred to is not of course dangerous from the point of view of the death duties, since it is admittedly a fictitious value and not the real value of the site on April 30, 1909. But a site value fixed, apart from these provisions, at an unduly high figure may involve an unduly high total value, and so be dangerous when a claim arises for estate duty. The limits of time, three months after the original site value has been finally settled, or before July 1, 1911, as the case may be, under s. 2 (3) of the Finance Act, 1910, and s. 2 of the Revenue Act, 1911, for the applications referred to should be noted.

(2) Urban sites likely to appreciate.

(2) Valuations of urban properties which being in main streets or near the centre of populous towns are likely to appreciate in value. Dwelling-houses are often at a small expenditure turned into shops, and their rental value greatly increased. Squares and streets are rebuilt, with bigger houses and palatial hotels. Witness the recent transformation scenes in Chelsea and Bloomsbury. The like is happening in many provincial towns. In cases where this is likely to happen, it is wise to have as high an original site value to start with as possible. No doubt in such cases some part of the rise in site values may be met by deductions under s. 25 (4) (*b*), (*c*), and (*d*). Nevertheless it is not advisable to allow a site likely to be affected by an imminent improvement

to be valued on its former basis. The provisional valuations of these properties, and especially their full and assessable site values, must therefore be carefully scrutinised.

(3) Purely agricultural land not near the building line.

(3) The original site value of purely agricultural land not near the building line may seem almost to be a matter of indifference. For the moment it is by virtue of ss. 7 and 17 of the 1910 Act liable neither to increment value nor to undeveloped land duty.

The consideration of liability to increased death duties seems to be hardly counterbalanced by the possibility that the original site value of April 30, 1909, may at some future date be used as a new departure for taxation. On the whole it would seem that in this class of cases a low site value is desirable.

(4) Land on the building line.

(4) Land on or approaching the building line presents the greatest difficulties to an owner. He hardly knows whether he wants a high or a low site value. A high natural site value, that is a site value not made high because of expenditure on, or in connection with the site, is a protection against future claims for increment value duty. But it exposes the owner to a higher undeveloped land duty. A low natural site value means that the undeveloped land duty is less, but may mean that more increment value duty becomes payable in the future. Clearly this may be the case on occasions of sale or lease, where the test of total value is the consideration. It may be the case even on a death occasion, or on a periodical occasion in the case of a body corporate or unincorporate, since there is nothing in the Act to bind the Crown on such occasions to the figures of the original gross and total valuations. It will usually be advisable for owners to claim for all the deductions they are entitled to, since while they lower the site value for purposes of undeveloped land duty, they can again be claimed for on all future occasions of payment of increment value duty (s. 12). Though it is thought that deductions need not be allowed at the same amounts on an occasion as on the original valuation, and on a later as on a former occasion, yet in most cases it seems probable that they will be allowed at the same or approximately the same amounts. Deductions are usually of a permanent nature. Some deductions, however, may not be of such a nature. It may indeed, in cases where the land is likely to be at once sold, so that there is no practical liability for undeveloped land duty, be advisable to claim no deductions at all. But it will of course be remembered that if this is done the expenditure antecedent to April 30, 1909, can never be claimed either by the present or by future owners on occasions for payment of increment value duty (s. 12).

Further, it must be remembered that undeveloped land duty ($\frac{1}{2}d.$ in the £ on the capital value) can be paid for very many years before it equals an increment value duty of 4*s.* in the £. Whether on the whole it will be cheaper to have a higher site value by, say, 100*l.* and pay 4*s.* 2*d.* a year more for an indefinite number of years, rather than to pay 20*l.* more increment value duty at some uncertain time, involves

a calculation in which owners will sometimes have to seek the aid both of actuaries and surveyors. The probable time it will take to dispose of the land, the possibility of a death occasion, and various problems as to interest and discount are elements of that calculation, as for example, in how many years will 4*s.* 2*d.* a year accumulated at, say, 4 per cent. compound interest amount to 20*l.* It is clear, however, that if the probable sale of the land is anywhere near at hand, it is better to claim the high natural site value. Stress is laid on the word "natural" since the same expenditure which reduces original site value will generally be available to reduce site value on an occasion.

If it is determined to object to the provisional valuation, the provisions of s. 27 must be carefully followed (see pp. 320 to 333). Note also s. 33 (1) (*a*).

VI. REVERSION DUTY.

When some duty clearly payable.

If, when a lease has determined, some reversion duty is clearly payable, the lessor should apply to the Commissioners for their form of account in relation to that duty (see Appendix, p. 523) and should fill in and return the form. The return on this form is not apparently obligatory, but as the particulars required by the form do not seem in substance to exceed those which may properly be required under s. 15 (3), the return on the form is a convenient means of fulfilling the statutory obligation.

Examination of form of account.

The account required by the form in question requires some examination. Items or requisitions 1 to 7 thereof present no difficulty. Item 8 can only as a rule be answered from the lease itself; but it is possible that the existence of old agreements or documents held with the title deeds may enable either (*a*) or (*b*) to be answered in the affirmative, in the absence of which a negative answer, or an answer stating want of knowledge, would have to be given. It is important that (*a*) should if possible be answered in the affirmative, since the greater the "rent reserved and *payments made in consideration of the lease*," the less the taxable value of the benefit accruing to the lessor by reason of the determination of the lease (s. 13 (1)). (*b*) of No. 8 is only of importance where a "nominal rent only" is reserved by the lease; a nominal rent is not defined by the Act. The term is thought to be used in its popular sense and to mean a rent of trifling amount. It is not thought that a rent of, say, 25*l.* a year for premises worth 100*l.* is a nominal rent.

Whether No. 9 is *ultra vires*.

No. 9 is perhaps justified on the ground that it is an index of the present total value of the premises. It may be that the validity of this requirement depends on the determination of the point raised in *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410 (see Appendix, p. 510), as to the validity of requisition (*i*) in Form 4.

With regard to No. 10 the reader is referred to the Commentary on s. 13 (2), *post*, pp. 158 and 159.

How total value arrived at.

No. 11 theoretically involves a gross valuation under s. 25 (1) as well

as a total valuation under s. 25 (3) of the unincumbered fee simple of the property. Substantially total value is selling or market value of the fee simple as it stands, subject to all easements, fixed charges and burdens, public and private rights, and restrictive covenants, but subject as to the latter to the modification as to restrictions entered into after April 30, 1909, contained in s. 25 (3). Gross value has a meaning and plays an operative part in the ascertainment of increment value duty on an occasion for the collection of that duty (see p. 306). But apparently it has no real meaning and plays no part in the ascertainment of total value on the determination of a lease. Nevertheless for form's sake a valuer answering No. 11 should arrive first at the gross value of the property and then find the amount by which that value would be diminished if the land were sold subject to the various incidents referred to in s. 25 (3). This amount deducted from the gross value gives the total value to be entered on the space opposite requisition 11. The gross value and the deduction need not be referred to in the answer, but must be ascertained for the purpose of supporting the total valuation on any appeal.

Claim for deductions and compensation.

Deductions and compensation will of course be claimed under No. 12, where possible. Expenditure by the lessee for which he is practically repaid by the lessor through the operation of a reduction of rent should be claimed. As to expenditure generally see the Explanatory Summary, p. lxxxix, and the Commentary on the text, p. 157.

The answer to No. 13 will be the mathematical result of the answers to the three preceding questions and requires no comment.

Claims for exemption. Duty to account.

No comment is required on No. 14. No. 15 gives rise to some difficulty. The reader is referred to the commentary on s. 15 (2) contained on p. 176. The following additional remarks may be made. It is thought that if exemption is claimed on the ground, for example, allowed in s. 14 (1) (purchase of reversion within forty years), or on the grounds (a) that the land is agricultural land at the time of the determination of the lease (s. 14 (2)), (b) that the lessor's interest does not exceed twenty-one years (s. 14 (2)), an intimation to the Commissioners that the lease in question has determined and that exemption is claimed on the ground stated is all that is necessary, and that the form of account, and especially Nos. 9 to 13 thereof, need not be answered. If exemption is claimed under s. 14 (5) (deficient mortgage security), the account showing the basis of the claim can clearly be called for by the Commissioners. In this case the Commissioners' form of account should be fully filled in and returned to them, accompanied by the mortgagee's account showing the deficiency relied on to confer exemption.

Allowances under s. 14 and Revenue Act, 1911.

The only allowance which, since the passing of the Revenue Act, 1911, can be claimed under s. 14 is that conferred by sub-s. (4) (identity of "benefit accruing" with increment value on which increment value duty has been paid and *vice versâ*). The allowance which could formerly

have been claimed under sub-s. (3) of s. 14 (reduction of 2½ per cent. per annum of the duty on leases determined and renewed) has been superseded and the sub-section repealed by s. 3 (2) and (5) of the Revenue Act, 1911 (*post*, p. 167), under which a more liberal application of the system of discounts for prematurely determined leases has been introduced. If the provisions of the Revenue Act are relied on for an allowance from the full duty the Commissioners' form of account should be fully complied with.

If exemption is claimed under s. 3 (3) of the Revenue Act, 1911 (purchase of reversion of small holdings, *post*, p. 169), it is thought that strictly no intimation need be given of the determination of the lease, but in order to prevent any question arising it is suggested that, pending the settlement of the practice, a short intimation should be given to the Commissioners stating the material facts. Sect. 3 (3), Revenue Act, 1911.

It should be noted that notwithstanding the exemption from reversion duty conferred by s. 3 (4) of the Revenue Act, 1911, upon the determination of a trust lease by surrender to the lessor prior to the division of the same property through a number of new leases from the same lessor amongst the *cestuis que trust*, an account must be delivered by the lessor under s. 15 of the Act of 1910, "in the same manner as if reversion duty were payable on the determination of the lease." This provision is not without weight in leading to the conclusion that exemption from duty is under the Act exemption from liability to account. Sect. 3 (4), Revenue Act, 1911.

VII. UNDEVELOPED LAND DUTY.

The practical points to be noted in relation to this duty are few. A low site value is of course desirable, but a high agricultural value under s. 26 is also desirable, because this duty is paid on the excess of site over agricultural value (s. 2). Deductions to the fullest extent should be claimed even if the full site value without the deductions is clearly under 50*l*. The site value may increase from natural causes, and deductions claimable but not claimed on the original or a quinquennial site valuation may be looked upon with some suspicion when claimed on a subsequent quinquennial valuation.

Deductions are claimed on Form 7 (see *post*, p. 514). One of the items on such form (No. 10) has reference to the 100*l*. expenditure per acre exemption allowed by s. 16 (2) (*b*) (see p. 182) and s. 4 of the Revenue Act, 1911 (see p. 182). It seems that expenditure on roads and sewers, already referred to under item No. 5 on Form 7, must again be referred to under 10 with the additional particulars required. There is a note on these provisions on p. 190 from which it appears that care should be taken to derive the greatest benefit from the conjoint effect of s. 16 (2) (*b*) of the Finance Act, 1910, and s. 4 of the Revenue Act, 1911, on the one hand, and s. 25 (4) (*b*) of the Act of 1910 on the other hand. It seems impossible to give any useful advice in general terms on the subject, particularly as the problem is compli-

cated by the existence of probable claims to increment value duty as to the same property. Each case must be worked out on its own merits.

It is thought that the "agricultural value" as found by the provisional valuation cannot be appealed against, but is not conclusive (see note on p. 312).

The proviso of sub-s. (3) of s. 16 must not be overlooked, under which payments on account of increment value duty multiplied five times may be deducted from the site value. This provision will be of great value to buyers of building land.

VIII. APPEALS TO A REFEREE.

For the rules relating to such appeals see p. 376 and comments thereon (p. 371). Immediate practical points to bear in mind are:

Times within which made.

(1) The respective times within which the appeal must be made according as the appeal is against a provisional valuation or is in respect of some other matter. If the time for appealing has expired, application may still be made in writing under r. 5 to the Reference Committee for an extension of time for appeal. No grounds are stated by the rules for such an application. Apparently there is no appeal to the Court from the refusal in the exercise of their discretion by the Reference Committee to allow an extension of time, but of course they must exercise their discretion.

Notices of appeal.

(2) Printed notices of appeal can be obtained from the Commissioners or a district valuer or other authorised person. The notice must be in one of these or similar form.

Grounds to be stated.

(3) The notice must show the grounds of appeal to which the appellant will be limited, but the referee has powers to allow the notice of appeal to be amended at any time. There is nothing in the Act or rules to directly limit the grounds of appeal to the same grounds as the objections made to the provisional valuation under 27 (2). It is true that an appeal cannot be made against that valuation "except on the part of a person who has made an objection"; but that is not the same thing. Objection may be made only on one ground, but it is possible that appeals may lie on more than one ground by a person who has made one objection. It seems that as soon as the appellant has had notice from the Commissioners of the name of the referee selected, that referee is the person to whom application should be made to amend the notice of appeal. Before the referee is appointed, if the notice is thought insufficient, it may be withdrawn under s. 3 (4) and a new notice substituted. No penalty as to costs seems to be incurred thereby. The notice of appeal is to "give particulars of the grounds of the appeal" (r. 3 (1)). The grounds according to the form of notice given in the schedule may be very briefly stated (see the forms on pp. 379 to 381).

Grounds of appeal. Form A.

In relation to Form A (appeal against a provisional valuation), it

seems that the figures proposed to be substituted need not be stated. Having regard to the fact that it is not known what views the respective referees may adopt as to costs, it seems advisable that the prescribed form of notice should be literally followed. If, as is not likely to be the case, the Commissioners do not as a matter of fact know the actual figures proposed to be substituted, and want to know them, they can ask for them. If asked for they should be given.

Grounds of appeal. Form B.

With regard to Form B of appeal, the following may serve as an illustration :—

County, Middlesex. Parish, Finchley. No. of hereditament, 1.

To the Reference Committee [or *to the Commissioners of Inland Revenue*].

I hereby give notice of my intention to appeal against the assessment of reversion duty under Part I. of the Finance Act.

The particulars of my grounds of appeal are as follows :—

The said assessment is excessive. The value of the benefit accruing to the lessor on the determination of the lease is not 1,000*l. as alleged by the Commissioners, but* 500*l. The total value of the hereditament at the time the lease determined was not* 1,500*l. as alleged by the Commissioners, but* 1,200*l. The Commissioners ought to have allowed the sum of* 500*l. for a new storey built by the lessor during the term, in lieu whereof they have allowed only* 300*l.*

(*Signed*) *T. Jones,*
Acacia Villa, Finchley.
Date, July 1, 1911.

The notice of appeal having been framed must be posted as directed by r. 13 (p. 379).

The Reference Committee will then inform the appellant of the name and address of the referee selected by them to hear the appeal.

Suggested preliminary consultation.

Probably a formal letter will be sent by the referee to the Commissioners and the taxpayer, informing them of his appointment and making suggestions as to the consultation with reference to the appeal which must take place (r. 7 (1), p. 378). It would seem sometimes advisable that a preliminary meeting of both parties and the referee should be held, not being the actual hearing of the appeal, for the purposes (1) of defining, if necessary, more closely than the notice of appeal the actual differences between the parties; (2) ascertaining whether the referee requires any further documents or any information (see r. 7 (2)); (3) ascertaining generally what course of procedure the referee proposes to adopt (r. 7 (3)), that is whether he will hear Counsel, or expert evidence, though it seems there is no power to take this on oath, and, if he will, how many witnesses on each side; whether he proposes himself to view the property, and, if so, when, and accompanied by whom. Advantage might be taken of such a preliminary meeting to discuss the question in the presence of the referee as to the necessity for proving outlay, and the kind of proof to be given. Generally the object of

such a meeting should be to facilitate the arrival at the real points of difference and to minimise the cost of evidence. The referee must hear and "consult" with any persons nominated by the Commissioners and appellants respectively, but it is not thought that this would give a right to compel the referee to listen to a string of expert witnesses, if he did not wish to hear them. The position of the referee seems to be intended to be rather that of a conciliator than of a judge or arbitrator, and unless treated in this manner by both parties his intervention will lose most of its usefulness.

Posting of notice of appeal.

The notice of appeal may, it is thought, be sent by post both to the Reference Committee and to the Commissioners (r. 13). As to this provision see s. 26 of the Interpretation Act, 1889 (p. 350).

Notice to be given of appeal to owners and persons interested.

In the case of an appeal by one of several owners the Commissioners are to give notice thereof to the other owners, *i.e.*, persons from whom returns have been required under s. 26 (2), and in all cases of appeal they are to give notice to any person who has applied to the Commissioners for a copy of the provisional valuation of the land under sub-s. 5 of s. 27 (r. 11 (1)). Any one of such persons, as well as any other person who appears to the referee to be interested in the land in respect of which the appeal is made, or be otherwise interested in the matter of the appeal, may ask the referee for an opportunity of putting his case before the referee in writing, and of taking part in any consultation with reference to the appeal (r. 11 (2)). These provisions will cover the cases (*inter alia*) of—

(1) A remainderman in tail or fee who objects to the low original site value wanted by the tenant for life. He fears mainly increment value duty whilst the tenant for life fears chiefly undeveloped land duty. The tenant for life is appealing.

(2) A mortgagee who wishes to be present at the fixing of the values in question.

(3) (Probably). A *cestui que trust* who also wishes to be present.

(4) A leaseholder whose term is less than fifty years in possession. He is not an owner (s. 41).

(5) A leaseholder with a term of over twenty-one years unexpired in reversion where the owner is a lessee with a term of over fifty years (s. 27 (7)). It is doubtful whether the term of over twenty-one years unexpired must be reckoned from the date of valuation or the expiry of the prior term of over fifty years, but the latter is thought to be the case (see note on p. 331).

(6) The reversioner entitled in fee where the owner is a leaseholder with a term of over fifty years unexpired (s. 27 (7)).

Rights of such persons to support or oppose appeal.

The persons above referred to and all other persons who appear "to be interested in the matter of the appeal" may make the application above referred to, and, it seems, either support the appeal or oppose it, though an appeal could not be initialed by them unless they had made an objection to the provisional valuation (s. 33 (1) (*a*)). They

should in the first instance write to the referee stating their position and desire, and asking for the opportunity or opportunities before mentioned. It would seem that there is no such discretion in the referee to refuse the request as would prevent an appeal from the refusal. It is thought an appeal could be made as to whether a person was or was not interested in the land, or in the matter of the appeal, and as to whether it was necessary that he should take part in the consultation. These two points being established, the right to be heard necessarily follows under s. 11 (1).

Expenses of appeal.

As the referee has power over the expenses of the appeal (s. 33 (3)), his direction should, where they are a matter of importance, be taken by the appellant as to any course involving extraordinary or perhaps even ordinary but substantial expenditure. For instance the costs of counsel will not doubtless be allowed in all cases. So the costs of the expert evidence of surveyors, etc., may only be allowed to a limited extent. This point emphasises the necessity for an early preliminary consultation between the parties and the referee, except in the simplest cases. If a referee does not himself suggest such a conference, the appellant might well do so.

Appeals to Court from referee.

Appeals to the Courts from the decision of the referee must be made within one month from the date of the decision of the referee (see Rules of Supreme Court (Finance (1909–10) Act, 1910), dated January 16, 1911, *post*, pp. 383—386). No time is fixed under the Referee Appeal Rules (r. 9) within which copies of the decision of the referee must be furnished to the Commissioners and appellant. All parties to the appeal should therefore arrange with the referee to have their copies immediately after his decision is made and dated.

It is not proposed to extend these practical notes to the appeal to the High Court. For the purposes of such an appeal the best expert legal assistance will naturally be sought. The rules relating to appeals to the High Court are on pp. 383 to 386 inclusive.

The rules relating to county court appeals from the referee will be found in the Appendix, p. 622.

THE NEW LAND TAXES.

AN EXPLANATORY SUMMARY OF THE NEW TAXATION.

CONTENTS OF EXPLANATORY SUMMARY.

I. THE NEW TAXES.

THE new land taxes are four in number, namely :—

(1) THE INCREMENT VALUE DUTY (I.V.D.).
(2) THE REVERSION DUTY (R.D.).
(3) THE UNDEVELOPED LAND DUTY (U.L.D.).
(4) THE MINERAL RIGHTS DUTY (M.R.D.).

The incidence of the taxes.

The first two are taxes on capital values, levied directly on owners or persons who practically stand in the position of owners using that word in its vulgar and non-technical sense. This statement is subject to a nominal, but perhaps not a real exception in the case of the annual increment value duty payable in respect of minerals comprised in a mining lease commencing after the 30th April, 1909, or which have been begun to be worked after that date

NOTE.—The object of this Introduction is to give a general, but it is hoped a correct, outline of the new taxation; and not to supersede for practical purposes in concrete cases, a careful study of the Act, and Notes.

by the proprietor. The undeveloped land duty is also levied directly on the owner, and, though payable annually, is fixed by its relation to capital value. The mineral rights duty is an annual duty payable in respect of rental value and is levied on the proprietor (in other words the owner) of the minerals if he is working them himself, and in any other case on the immediate lessor of the working lessee. The immediate lessor, who is a lessee and pays rent, is entitled to deduct from his rent the duty paid by him in respect of that amount of rent. Agreements by owners of undeveloped land and proprietors of minerals with their tenants that the latter shall pay the respective duties are void (sects. 19 and 21). The term "owner" under sect. 41 means the person "entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease, or if there are two or more such leases, the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid." In this sense of the term both increment value duty and reversion duty are sometimes payable by persons who are not owners. The increment value duty is the only one of the new taxes which is payable on death, and death is only one of the events upon which it is payable.

II. INCREMENT VALUE DUTY.

INCREMENT VALUE.

Increment Value Duty (I.V.D.) is a wholly novel tax. The theoretical basis of the duty or tax is clear, however difficult may be its practical application to the complex arrangements under which English land is held.

Increment Value under the Finance (1909-10) Act, 1910, is an increase accruing after the 30th April, 1909, in the site value of land (sects. 1 and 2); but (1) the expression "site value" has a technical meaning given to it, and (2) it is not every increase in site value which gives rise to the increment value, the subject of the tax.

SITE VALUE.

The rise in site values.

The rough idea of site value running through the Act is that of the value of the land, as a cleared site, ready for building and trade purposes. It is asserted that, as population and industry grow, the value of land in England for such purposes steadily, automatically, and inevitably increases. That increase is quite apart from, and in addition to, any increase arising from the expenditure, skill, or foresight of the owner or occupier. It is a perpetual stream of communal wealth deposited from year to year on the property of the fortunate owners of land in, or near, the growing towns and villages of the country. Hence that land is said to be specially and naturally the legitimate subject of national as well as local taxation. These arguments, or assertions, may be right or wrong; there may or may not be material differences for purposes of

taxation between land and other things, but it is necessary to understand them if the theory of the increment value and the undeveloped land duties is to be grasped. No doubt the same arguments which support the taxation of urban and quasi-urban sites are capable of being applied in theory to the growth in the value of agricultural land, arising from the increase in population, the consequent greater demand for produce, and the resulting higher prices and higher rents. But agricultural value is either wholly, or almost, excluded from the new taxation. It is recognised that, owing to the fact that there has, in modern times, sprung up a world market for, and a world price of, most agricultural produce, the value of purely agricultural land in the United Kingdom has in recent years greatly declined. Agricultural land, on the average, sells to-day in England at 20 to 25 per cent. less than it did in the year 1878. It is the expressed intention of the authors of the new land taxes that until agricultural land has recovered its former value it should not be the subject of the new taxes. But it is not suggested that the grounds on which those taxes are defended are not, in abstract theory, as applicable to agricultural as to urban land, nor, if its lost value should be regained by the former class of land, has anything been said in parliamentary debate by the authors of the new taxes which would be inconsistent with an extension of the taxes to such land.

FULL SITE VALUE.

Definition of site value.

Full site value, under the Act is in fact, though the idea is expressed in a very complicated manner (sect. 25 (2) (4)), the value which the unincumbered fee simple of the land, if sold in the open market, free from any burden, charge, or restriction (except rates and taxes), by a willing seller,*

* It is suggested that the words "by a willing seller" neither add to, nor detract from, nor alter the meaning of the sentence as it would stand without them (see note on p. 275).

might be expected to realise if the land were divested of buildings and other structures appurtenant to buildings (including fixed or attached machinery) on, in, or under the surface, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon. (Sect. 25 (2).)

ASSESSABLE SITE VALUE.

The essential deductions.

But the result of this valuation is not the site value which is the subject of the tax. The real or selling value of the site may be less than the full or cleared site value, because in the estimate of the latter no account is taken of easements, profits, restrictions by way of covenant, or fixed charges, such as rent charges, affecting the land. Moreover the valuation of the full site referred to may include the results of much expenditure on the land. It may have been drained, or levelled. Roads may have been made through or near to it. A well may have been sunk to supply it with water. The land tax, or tithe upon it may have been redeemed. Open spaces may have been dedicated in order to increase its amenities. Advertisements may have given it a vogue, or popularity. The diminution in value of the full site owing to the existence of the fixed charges, easements, profits, or restrictions, as well as the value added to the site by any works executed or capital expenditure, together with the cost of clearing the land from buildings, trees, etc., must be deducted from the value of the full or cleared site before the taxable entity known as the "assessable site" is discovered. (Sect. 25 (4).)

We have now arrived at the meaning of "assessable site value." It is called "assessable" to distinguish it from "full" site value, on which no duties are levied. As there is no time limit within which the antecedent expenditure need have been made to entitle it to deduction, assessable site value is perhaps not unlike what is popularly known

as "prairie value." It may indeed be that assessable site value is a minus quantity, as where the nominal value of a rent charge issuing out of the land, either itself or with the cost of roads, drainage or embankment exceeds the selling value of the land free from that charge.

Increment value is the amount of the increase in this assessable site value on a date when a claim for increment value duty arises, over that value on the 30th day of April, 1909 (sect. 2 (1)).* Exactly the same kind of deductions, but brought up to date as to amount, are to be made in ascertaining the site value on the later as on the earlier day (*ib.*, sub-s. (2)). On this increment value, thus ascertained, the duty is payable at the rate afterwards mentioned.

THE OCCASIONS WHEN THE DUTY BECOMES DUE.

Increment Value Duty is collected on the following occasions (sect. 2), *i.e.*:—

(1) On a transfer on sale of the fee simple of the land,† or of any interest in the land, or the grant of a lease of over fourteen years, unless the contract for the sale or lease were made before the commencement of the Act, *i.e.*, the 29th April, 1910.

(2) On the death of any person dying after the commencement of the Act where the fee simple of the land or any interest in the land is subject to estate duty on such death under the Finance Act, 1894, as amended by any subsequent Act, which doubtless includes the Act of 1910 itself.

* It is not overlooked that under s. 25 (4) site value on an occasion for payment of duty is not termed assessable site value; but this it is thought is a mere drafting provision and does not affect the substantial accuracy of the above statement.

† Land includes "messuages, tenements and hereditaments, houses and buildings of any tenure" (see Interpretation Act, 1889, s. 3), but does not under this Act include "any incorporeal hereditament issuing or granted out of the land" (s. 41).

(3) If the fee simple of the land or any interest in the land is held by a body corporate or a body unincorporate, as defined by sect. 12 of the Customs and Inland Revenue Act, 1885, then the duty is collected on the 5th April, 1914, and every subsequent fifteenth year; but the body in question may, if they so desire, pay the duty by fifteen equal yearly instalments, and the first instalment is due immediately after the assessment of the duty. (Sect. 6 (1), (3)).

Increment value duty payable in respect of interests other than fee.

The duty thus becomes due not only on sale, etc., of the fee simple of the land, but of "any interest in the land." The expressions "fee simple" and "interest" have, however, a conventional meaning placed upon them. By the definition clause (sect. 41) the expression "fee simple" means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession. By the same clause the expression "interest" in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not amongst other things include any other interest in expectancy or an incumbrance as defined by the Act or a lease for a term of years not exceeding fourteen years. Thus increment value duty will, *if increment value exists,* be payable on the sale of a leasehold house with a term of fourteen years and a day unexpired. Whether it is so payable if the original term were longer than fourteen years, but the transfer is made within the last fourteen years of the term, appears not quite clear. It is thought that it is so payable. It is not payable on the sale of a remainder, whether expectant on a life estate, or an estate for years, nor is it payable on the sale of an executory interest. It is not payable on a mortgage or on a transfer of mortgage. But it is payable

on the death of a tenant for life, where in such case estate duty is payable in respect of the land in question.

Each interest separately assessed.

The wording of sect. 1, fixing the occasion on which the duty becomes due, is by no means clear. Is it the amount of duty on the land and every interest in the land which is fixed, on the transfer either of the land or of one of those interests? For example, suppose that A. is the reversioner in fee simple, expectant on a lease to B., of which eighteen years are unexpired, if B. sells and transfers his lease, then if there is increment value B. must, of course, pay duty on it, calculated on its enjoyment for a period of eighteen years. In order to arrive at the amount of B.'s duty (under sect. 2, sub-s. (b)) the value of the fee simple of the land at the date of the transfer of the lease has to be deduced from the consideration given for the lease—perhaps a somewhat difficult calculation. Having by this method arrived at the value of the fee simple of the land, the proper deductions as to buildings, expenditure, etc., are made (by means of the complicated process of sect. 25), and the site value of the fee simple on the occasion appears. From this the leasehold site value for the remainder of the lease may and has to be deduced, and the duty calculated on it. But a serious point which has been raised is whether in any way the elaborate calculation which is necessary to arrive at B.'s duty also fixes the amount of duty to which the fee simple in reversion will at some time or other be made liable.

Notwithstanding the ambiguous language of sect. 1, it is submitted that sect. 3 (2) and (3) make it clear that only the interest in respect of which the occasion has arisen is liable to increment value duty on that occasion. The ascertainment of the value of the fee under sect. 2 (2) is necessary simply in order to arrive at the value of the interest which is being dealt with

or has passed on death. Moreover it seems reasonably plain that the site value of the fee simple then ascertained does not in any way affect the owner of the fee simple reversion when an occasion arises for the payment of increment value duty in relation to that reversion, as for example when it is sold, or passes upon death. When that event happens a wholly new set of valuations, deductions, and calculations must be made for the purpose of ascertaining the site value on that occasion, and these of course may, even allowing for changed circumstances, differ widely from those made on the former occasion.

No doubt curious results may occur if this view is correct. Increment value duty may be due on the devolution of a short leasehold interest, and yet not be due on the devolution a few years later of the fee simple of the same land ; or *vice versâ*.

It further seems clear that on the grant of a lease of over fourteen years the grantor, whether he himself is a freeholder or a leaseholder, will pay duty only on the increment apportionable to the term created (sect. 3 (3)).

Since the first edition of this work was published the Commissioners of Inland Revenue have issued the "Regulations" or "Rules" for the collection of increment value duty under the powers conferred upon them by sect. 3 (2) and (3) (see *post*, p. 53), which are in accordance with the views expressed in the foregoing pages.

THE AMOUNT OF THE DUTY.

The duty is at the rate of One Pound for every full Five Pounds of the increment value of the site accruing after the 30th day of April, 1909 (sect. 1).

THE FIXING OF ORIGINAL SITE VALUE.

Increment value, as we have seen (p. xliv), is the amount of the increase in site value on a date when a claim for increment value duty may arise over that value on the 30th April, 1909. This site value on the 30th April, 1909, is the original site value. It is ascertained in the following manner.

A universal valuation.

The Commissioners of Inland Revenue are, as soon as may be after the passing of the Act, to cause all the land in the United Kingdom to be valued. This valuation is to be of agricultural as well as of urban land. The "total value" and the "site value" (both of which phrases have a technical meaning under the Act) of each piece of land are to be separately shown; and in the case of land used in agriculture, the value of the land for agricultural purposes, where that value is different from the site value.

Unit of valuation.

The unit of valuation is separate occupation, but an owner can require any part of any land which is under separate occupation to be valued separately. Under the Revenue Act, 1911, sect. 5, he has a very limited power of requiring properties under different occupations to be valued as a single property. For the forms and instructions as to answering the same issued by the Commissioners under the powers of sect. 26, see Appendix, pp. 500 to 518. The value is to be estimated as on the 30th day of April, 1909 (sect. 26 (1)).

Returns by owners.

Owners and "any person receiving rent in respect of any land" are obliged, if required, to furnish full particulars to the Commissioners of all matters within their knowledge relating to the land (*ib.*, sub-s. (2)) (see *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410, W. N. 231, and note thereon in Appendix, at p. 510). An owner may, if he pleases, furnish to the Commissioners his own estimate of either total or

site value, or both ; and the Commissioners in making their valuation are bound to consider the estimate so furnished by the owner (*ib.*, sub-s. (3)).

Objections.

Provisions are contained in the Act securing, not only to the owner but to all persons interested (a phrase the exact meaning of which is perhaps doubtful, but under which the authorities in practice include mortgagees), the right of objecting to the Commissioners' valuation, and of appealing from it, in the first instance to a practical surveyor or land agent known as a Referee, and in the second from the Referee to the High Court.

In this manner the original site value is fixed. It would unnecessarily encumber this Introduction if an attempt were made in this place to analyse closely the provisions of sect. 25 under which assessable site value is defined or explained.

Object of valuation section.

It is sufficient for this Introduction to state that the various valuations there directed to be made are intended first to ascertain the total or real selling value of the hereditament free from incumbrances in the open market, and when that has been done to ascertain the amount of value which has been added to the naked or cleared site by the buildings and by all other expenditure, except expenditure adding only agricultural value. The value added to the site by all such buildings and expenditure (which may be termed the non-site value of the property) is then deducted from the total or selling value of the property, and the result is the original assessable site value. It is important to note that the value of the total hereditament is not the value of the site plus the value of or amount spent upon the buildings and improvements, but is the value of the site plus the value added to that site by the buildings and improvements. Original site value having thus been fixed and recorded in the Domesday books of the Commissioners, the problem next to be considered is :

THE FIXING OF SITE VALUE ON THE OCCASIONS ON WHICH THE DUTY IS COLLECTED.

The method of ascertaining site values varies according to the occasion on which the duty becomes due.* Roughly speaking, the method of the Act is to ascertain, as laid down in the Act, the value of "the land," *i.e.*, the total hereditament, including buildings and improvements on the land, and to deduct from this value the value attributable to the various matters presently mentioned, all of them being matters of the nature just referred to as creating or contributing to the non-site value of the property. Where the occasion of the payment of duty is the sale of the fee simple of the land, the value of the total hereditament is taken to be the value of the consideration for that sale. Where the occasion is the grant of any lease of the land or the transfer on sale of any interest in the land, such as a leasehold, in, or the reversion expectant on a lease of, the land, the value of the total hereditament is taken to be the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest (sect. 2 (2) (*a*) and (*b*)). In this case it is possible, without in the least straining probabilities, to imagine cases in which the consideration for the grant of a lease for fifteen years, or the sale of a reversion which will fall into possession in fifty years, would not be an appropriate basis upon which to calculate the value of the fee. Where the occasion is death—and the fee simple is property passing on death—the value of the total hereditament is taken to be the principal value of the land, as ascertained for the purposes of Part I. of the Finance Act, 1894, and there is a corresponding provision as to the

Value on sale.

Value on lease.

On death.

* See p. xlvii for the statement of the occasions on which increment value duty is payable.

On a periodical occasion.

valuation of interests in land so passing (*ib.* (*c*)). Where the occasion is a periodical occasion on which the duty is due in respect of land held by a body corporate or unincorporate, as defined by sect. 12 of the Customs and Inland Revenue Act, 1885, the value of the total hereditament is taken to be the value of the fee simple of the land, as ascertained under the general valuation clauses of the Act of 1910 (*ib.* (*d*))

The deductions on the occasion.

The value on the "occasion" of the total hereditament having by one or other of these diverse methods been fixed, there must, in order to arrive at the site value on that occasion, be deducted from that value so fixed the value of everything which, in the purview of the Act, is not an element of site value. This is expressed in the Act by the direction to make the like deductions from the value of the total hereditament, as ascertained by one of the methods just mentioned, as are made under the general provisions of Part I. (imposing the new land taxes) as to valuation, for the purpose of arriving at the site value of land *from* the *total* value (sect. 2 (2)).

General provisions as to valuation.

The general provisions of the Act as to valuation thus referred to are those contained mainly in sect. 25, but also in the succeeding sections up to and including sect. 32, and have already been briefly referred to on p. xxxiii. The provisions of sect. 25 are applicable in their entirety to the original valuation. They are also applicable to the ascertainment of site value on an occasion for payment of increment value duty, with the single exception that instead of a direct valuation of the "total value" of the land under sect. 25 (3), that total value is taken to be, or to be represented by, the value of the property as ascertained in one of the several ways just referred to and expressed in sect. 2 (2). They are of an involved nature. In this Introduction it is thought better to state what is believed

to be their real effect in a rough, but it is hoped, a correct manner, rather than to encumber what is intended to be a plain and practical statement of outlines with too much detail.

Total value.

The total value of land is the amount which the fee simple might be expected to realise if sold at the time in the open market, in its actual condition, free from incumbrances, but subject (*a*) to any rent-charges and other similar burdens or charges called in the Act "fixed charges"; (*b*) to any public rights of way and user; (*c*) to any rights of common, and easements; and (*d*) to any restrictive covenants entered into before the 30th April, 1909, or with certain restrictions after that date (sect. 25 (1) and (3)). The "total value" of the property within the meaning of the Act corresponds, as will be seen, very nearly if not entirely with the "value" of the property, as the word would be used by the man in the street. That which is valued to arrive at total value is not a hypothetical but a real thing, with all its legal incidents, and such as people actually buy and sell; although it must be admitted that sect. 25 does not state this as plainly as it might.

Deductions to arrive at site value.

(1) Non-site value.

From the "total value" of the property as thus ascertained certain deductions are to be made under sect. 25 (4) for the purpose of arriving at site value. They are (1) the difference between the total value just arrived at, and the value which the unincumbered fee simple of the same property might be expected to realise, if sold at the time in the open market, as a cleared site, or in the words of sect. 25 (2) as divested of any buildings, and of any other structures, or machinery, on, in, or under the surface, appurtenant to, or used in connection with, any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon, free from incumbrances,* but subject

* This is understood to be the case, though not expressed in s. 25 (2).

to the same matters *a*, *b*, *c*, and *d* referred to on p. lv, as deductions from total value. This difference thus deducted is the value added to the site by the buildings, structures, machinery, timber, produce, etc., which are actually in, on, or under the land. In other words it is the non-site value of the property which must necessarily be deducted from the value of the property as a whole in order to arrive at the cleared site value. The anomaly of the definition (for which, however, there is a reason) is that the result (the cleared site value) is necessarily ascertained before the process the object of which is to obtain that result is set in motion.*

(2) Expenditure. (2) Any part of the total value directly attributable to works or expenditure of a capital nature (including expenses of advertisement), incurred for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry, other than agriculture. This deduction of course represents value created by expenditure other than that which has been the subject of deduction under (1). It is expenditure on or in relation *to the cleared site*, and not on or in relation to anything

(3) Open spaces. (buildings or produce) on that site. (3) Any part of the total value directly attributable to the appropriation or gift of any land for the purpose of streets, roads, squares, gardens, or other open spaces for the use of the public. Under this clause the various garden city and similar undertakings will be able to avoid taxation on an increment

(4) Redemption of fixed charges, etc. created at their own cost. (4) Any part of the total value directly attributable to money spent on redeeming the land tax or any fixed charge, or enfranchising copyholds, or

(5) Goodwill. effecting the release of restrictive covenants. (5) Any part of the total value directly attributable to goodwill,† or

* This is perhaps not quite an unimpeachable statement of the effect of s. 25. The difference referred to in the text might conceivably not be exactly the same as the difference referred to in s. 25 (2) and (4) (*a*).

† The question of deductions for goodwill is one of some difficulty (see notes on pp. 276 and 295).

any other matter personal to the owner, occupier, or other person interested for the time being in the land. This deduction will, though it is not perhaps quite certain, secure an owner who has carried on a successful business, and the site value of whose premises has thereby been increased, from being charged on so much of the increment as is attributable to his personal exertions and ability. (6) Any sums necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it would be necessary to divest the land for the purpose of realising the full site value (sect. 25 (4)). This deduction is applicable in cases where the materials of old buildings, or where growth, which would have to be removed before the site could be fully utilised, have no saleable value, and the owner would have to pay for the removal. If a person would cart away the materials or produce for the gift of them, no deduction could be claimed.

(6) Cost of clearing.

It will be observed that what is to be deducted is not the amount of the expenditure referred to, but the value added to the site by that expenditure ; so that the expenditure of 1,000*l.* may result in a deduction of more or less than that sum. A sea wall may add fifty times its cost to the value of the land which it protects. Without it the land might be worth nothing and the site value be zero.

Amount of deduction.

Further, the value added by the same expenditure may be different in amount on different occasions when a valuation is made for the purposes of the Act.

When these deductions have been made from total value the entity called "assessable site value" is reached.

In describing the process by which "assessable site value" is fixed all reference to the two elements of "gross value" and "full site value" has been designedly omitted (sect. 25). That has been done for the purpose of simplicity of explanation only. In the view of the writer, which of

Gross value and full site value.

course may be mistaken, the subject has not been simplified by the introduction on the Report stage in the House of Commons of these two elements. It may be admitted that the new elements have an effect in tempering the tax to the realised benefits (see p. 308). The result nevertheless is a scheme too complicated and subtle for the understanding of the common man whose property is subject to its operation. Gross value is simply "total value" without any allowance or deduction for such of the elements *a*, *b*, *c*, and *d*, referred to on p. lv, as in fact affect or depress the value of the property. Full site value is simply "assessable site value" without any deduction either for the same elements, or for value added to the site under the heads (2) to (6) inclusive set out on pp. lvi to lvii, although the value of the cleared site may have been enhanced by one of the matters therein referred to.* For reasons explained in the notes to sect. 25, in the body of the work, the words "willing seller" in sect. 25 (1) and (2) have been treated as not affecting the question of value.

Some deductions on occasions as on original valuation.

The deductions above referred to which are made from the total value of the land as part of the original valuation under sect. 26, the result of which is the fixing of original assessable site value, are also made on an occasion of payment of increment value duty from the value of the land as ascertained under the rules referred to on p. liii (sect. 2) for the purpose of fixing the site value on that occasion. Of course on an "occasion" there may be deductions claimable in addition to those allowed either on the original site valuation or on a former "occasion." Expenditure on or in relation to the land of the nature referred to may have been made since the original valuation or the former payment of duty. Even if a deduction is not claimed on an occasion when it was claimable, it may still be claimed on a

* The deduction under head No. (1) being the value of the non-site element is necessarily made from "gross value" in order to arrive at "full site value."

later occasion, but subject to this important limitation, that if the deduction is one which could have been, but was not, claimed on the original site valuation, it may never be claimed for the purpose of ascertaining the site value of the land on any occasion on which increment value duty becomes payable (sect. 12). It is of course obvious that if this were not the case owners would be tempted to keep back claims for deductions in respect of expenditure made previously to the 30th of April, 1909, for the purpose of counter balancing the natural increment of the land. No such corresponding rule is made to apply to undeveloped land duty. That duty is levied on the results of a quinquennial valuation.

The site value on the "occasion" on which the duty is to be collected having been ascertained in manner pointed out, the amount of the original site value is deducted from it, and the balance is increment value, on which the duty is levied (sect. 2 (1)).

THE LIABILITY OF INCREMENT VALUE TO DUTY.

Increment value is not liable to duty unless it accrued after the 30th April, 1909 (sect. 1).

The 10 per cent. allowance.

By a sub-section (sect. 3 (5)), which is not altogether without difficulties, it is believed to be enacted as follows :— Unless the increment value, on the first occasion after the passing of the Act, when an event happens on which increment value duty can be claimed under the Act, exceeds 10 per cent. of the original site value, no duty is payable. If on such first occasion the increment value exceeds 10 per cent. of the original site value, duty must only be paid on the increment value which remains after deducting therefrom 10 per cent. of the original site value. If on a second or any subsequent occasion there is increment value, but such increment value does not exceed 10 per cent. of the site value on the last occasion when

increment value duty became collectable under the Act, no duty is payable ; and if on such second or subsequent occasion the increment value exceeds 10 per cent. of the site value on the last occasion on which increment value duty became collectable, duty must be paid on this the latest increment value, subject to a deduction therefrom of 10 per cent. of the last site value. But no deduction is to be made which will cause the total amount of the deductions in this respect during the last five years to exceed 25 per cent. of the site value of the land on the last occasion for the collection of increment value duty before that period of five years ; or if there has been no such occasion, 25 per cent. of the original site value. Roughly speaking, this means that the owner of land has a site value margin of 10 per cent. on which he pays no duty, a margin intended to cover any expenses to which he may be put by the Act, and also the contingencies of mistakes in estimating increment values.

Increment value duty is not payable on any future rise in a site value unless such rise makes the site value greater than the original site value on 30th April, 1909. Thus, suppose the site value of Blackacre is 1,000*l.* on 30th April, 1909 ; is 800*l.* on 30th April, 1912, on the occasion of a sale of Blackacre ; and again is valued on the death of the purchaser on 30th April, 1915, at 999*l.* Increment value duty is not payable, although since the last "occasion" there has been a rise in site value to the extent of 199*l.* (sect. 2 (1)).

RELIEF FOR OWNERS OF SITES DEPRECIATED ON 30TH APRIL, 1909.

On the date referred to many site values were worth less than they had been at some previous time. It is the interest of owners of site values that their site value on the 30th April, 1909, should be a high one on the register,

so far as increment value duty is concerned. The higher the value on that day, the less the future increment value and the duty on such value will be. To some extent the case of owners of depreciated site values was met by sect. 2 (3) of the Act of 1910. Where it is proved that the site value of any land at the time of a transfer on sale or mortgage of that land, or of any interest in the land made within twenty years before the 30th April, 1909, exceeded the original site value of the land on the 30th April, 1909, the former site value is, on an application, to be substituted for the latter for the purposes of increment value duty (sect. 2 (3)). It is to be noted that the fact giving rise to the relief is not purchase or mortgage by the owner or person seeking the relief, but apparently *any* transfer on sale, or mortgage made by the present owner or his predecessors in title within the period. It is further to be noted that the grant of a lease of the land within twenty years before the 30th April, 1909, is not a circumstance which will give rise to the claim for relief, though very curiously the transfer on sale of such a lease will enable the claim to be made. Lastly, it is to be noted that an application for the relief afforded by the sub-section must be made within three months after the original site value has been finally settled. The limitation of the right of substitution to a period of twenty years antecedent to the 30th April, 1909, has now by sect. 2 of the Revenue Act, 1911 (1 Geo. 5, c. 2), been removed, so far as transfers on sale (but *quære* as to mortgages) to existing owners are concerned. Persons desiring to avail themselves of this section must have applied, if their original site value was finally settled before the passing of the Act, within three months from the 31st March in the present year (1911). If their original site value was not so settled, they must apply within the three months above referred to (see *post*, p. 46).

Amendment by Revenue Act, 1911.

ALTERATIONS OF ORIGINAL SITE VALUES.

The method of fixing original site value has been considered (see p. li). On the original valuation, each piece of land which is under separate occupation, and if the owner so requires, *any part of any land* which is under separate occupation, is to be separately valued (sect. 26 (1)). When an owner sells in the future the whole of a piece of land thus separately valued, no difficulty arises as to the amount of the original site value. The original site value is recorded on the register. The site value on "the occasion" is ascertained as previously described (p. liii). The excess of the latter over the former is the increment value, on which, subject to the 10 per cent. deduction, duty is paid.

Illustration of apportionment.

Let us now take a more complicated case. Suppose that Blackacre, the original site value of which is ascertained as a whole as on 30th April, 1909, is at that time a large field, just coming into the market as building land. What is the position in the year 1912, when the estate is well within that category, and is "ripe," as it is phrased? (1) A portion (A) fronts a main road, is suitable for shop plots, and is worth 8*l.* a foot frontage ; (2) another portion (B) is best developed as a side street for small houses, and naturally fetches a lower price, say 5*l.* a foot frontage ; and (3) the remaining portion (C) is land on a slope or in a valley, which must be levelled or filled up before it is possible to build upon it, and even then cannot be utilised for building under local bye-laws for, may be, ten years. When the owner sells a plot, or part, of the land in either of the categories A or C referred to, and has to pay increment value duty, either (*a*) the owner or (*b*) the Commissioners will not be content with spreading the original site value of Blackacre equally over the whole of the original Blackacre. If land in category A is sold, the owner would object to the averaging of the original site value, because it would tend in this case to

increase the increment value. He would wish the original site value to be as high as possible. If land in category C is sold, the Commissioners would object to the averaging of the original site value, because it would tend to lessen the increment value. They would wish the original site value to be as low as possible. In order to meet the difficulty thus arising, it is provided that the Commissioners shall make such apportionments and re-apportionments of original site value, or any site value fixed on a periodical occasion, as they consider necessary for the purpose of the collection or assessment of increment value duty, or undeveloped land duty, or which they may be required to make on the application of any person entitled to the fee simple of any land, or to an interest in any land (sect. 29 (1)); and further that any duty may be assessed on or in respect of any such pieces of land, whether under separate occupation or not, as the Commissioners think fit (sect. 29 (1)).

In the case referred to the Commissioners will first apportion the original site value amongst the various categories A, B, and C, under sect. 29 (2), and will then assess the duty on the occasion under sub-s. (1) on the piece as to which the occasion has arisen.

Owner may apply for apportionment at any time.

It further appears from sect. 29 (2), just referred to, that an owner need not wait until an occasion has arisen on which increment value duty has become due to obtain an apportionment of that original site value on the various portions of his land. He may, at any time, himself require the Commissioners to make an apportionment, and apparently will not have to bear any of the Commissioners' expenses in relation to such apportionment. But, of course, every such apportionment is an occasion when disagreement may arise between owner and Commissioners, which may result in the former having to incur the costs of professional advice and

assistance. It does not, however, appear that there is any power in the Commissioners so to apportion or re-apportion the original site value as to alter the aggregate amount of the original site value of the whole plot. All that they can do is to fix, or vary, the proportions in which that aggregate rests on the particular portions of the plot in question. Once the original site value of a given area has been fixed, that area, however it may be afterwards divided, is, it is thought, for ever, as an aggregate, stamped with that original site value. The importance, therefore, of obtaining in the first instance an accurate original site value cannot be exaggerated.

THE UNIT OF TAXATION.

From the foregoing paragraphs two things will have become plain. First, that the original unit of valuation (which is separate occupation unless an owner has required property in a single occupation to be valued in portions, and except in cases falling within sect. 5 of the Revenue Act, 1911 (1 Geo. 5, c. 2)) is not necessarily the unit in respect of which increment value duty may ever be assessed ; and, secondly, that the unit in respect of which the duty will be assessed is to be fixed (subject, of course, to appeal) by the Commissioners. No rules or principles are laid down for their direction or guidance in this task. Doubtless in ninety-nine cases out of one hundred the proper unit of taxation will be unmistakably fixed by the physical condition of the property, and a splitting up of that unit will be either practically impossible, or wholly immaterial in its effect upon the yield of the tax. When a house is sold, it is clear that only one unit of taxation is possible. But in the hundredth case the revenue may benefit by the adoption of one unit of taxation rather than of another ; and these are the cases which will give rise to controversy. Roughly

speaking, it may be said that small units of assessment are likely to benefit the Crown, and large units the subject. The increment of one portion of an estate may be reduced by the decrement of another. The low capital value of one portion of the property may reduce the average value of the whole to a sum below the 50*l.* per acre which is the limit of the undeveloped land duty (sect. 17 (2)).* The valuation of minerals as a separate parcel of land (sect. 23 (2)) may have the effect of subjecting the owner to increment value duty on a sale of the minerals while giving him no compensation for any decrement to the surface necessarily accompanying mining operations. Of course an owner may desire to sell or lease a small portion, which has not incremented, of a large estate which, taken as a whole, has incremented. In that case he will require apportionment of site value under sect. 29 (2), and the Commissioners must make such apportionment. If an owner is selling or leasing land the subject of original valuation as a whole, part of which has incremented and part of which has decremented, it seems that the Commissioners have the power to apportion the original site value and the consideration, and then to assess the duty on each part separately, leaving the owner to pay his duty on the incremented land and bear his loss on the decremented land. It is, however, impossible to believe that an arbitrary assessment of this kind would either be attempted by the Commissioners or allowed by the High Court on an appeal. Limits will no doubt be laid down in practice, on the one hand, as to the splitting up of land for taxation by the Commissioners, and, on the other, as to the rights or privileges of owners to treat adjacent or, adopting the language of sect. 5 of the Revenue Act, 1911, "contiguous" land, acquired in separate pieces as a single

* As to this it must, however, be noted that a large unit of taxation may tend to increase the aggregate capital value of the land and its liability to undeveloped land duty.

unit. It is not conceived that the laying down of such limits will present problems of greater difficulty than are daily decided by the Courts.

GENERAL PROVISIONS AS TO THE COLLECTION OF INCREMENT VALUE DUTY.

Duty must often be apportioned.

The Commissioners are to collect the duty on the occasions on which it is due. For that purpose they are to make such apportionments and re-apportionments of duty paid on previous occasions as are necessary to enable them to ascertain the duty then due (sect. 3 (1)). It is clear that just as original site value must be apportioned on the cutting up by sale, lease, or devolution of the piece of land originally valued as an aggregate, so must previous payments of duty in respect of that piece as a whole be apportioned amongst the various portions into which it has been divided. Under the scheme of the Act the duty is levied on the difference between the original site value and the site value on each occasion on which it is collected. That duty must be paid on each such occasion, except in so far as it has already been paid, or is deemed to have been paid, under one of the various sections of the Act (sect. 1). Hence it is essential that on the division of a piece of land the duty already paid on that land as an aggregate should be divided amongst its separated portions.

The amount of the duty payable on any occasion is, subject to appeal, determined by the Commissioners, and is to be collected by them in accordance with rules made by them for the purpose (sect. 3).

The rules as to apportionment.

The Rules made by the Commissioners under the section referred to will be found in the text (p. 53). From these it appears that the theory upon which the Commissioners have proceeded is to consider the duty, that is one fifth

part of the difference between the original site value and the site value on the particular occasion for collection of the duty, as payable in respect of the fee simple of the land. From this sum the duty paid on previous occasions, which comprises duty deemed to have been paid under one or other of the various sections of the Act under which duty is to be deemed to have been paid, is to be deducted. The balance is the duty then unsatisfied. If the occasion for payment of the duty is one which affects the fee simple in the conventional meaning of that phrase assigned to it by sect. 41, *i.e.*, the fee simple in possession not subject to any lease, and not being simply an undivided share in a fee simple in possession, the whole amount of the unsatisfied duty is to be paid (see rule 2 (1) and (2), pp. 57 and 58)). It is of course quite clear that such an assessment is correct. The whole interest in the property is in one hand, and that hand must pay the whole duty. If on the other hand the occasion is one which affects an "interest" (as explained by sect. 41) in the land, such as a reversion expectant upon a term of years, or a leasehold interest, or an undivided share in fee simple, the calculation is one of greater complexity. The theory upon which Rule 3 (see p. 58) appears to be based is that each of the separate interests shall pay a sliding proportion of the increment value duty from time to time becoming due. As a term of years diminishes in length, the proportion of the unsatisfied duty, which it pays on sale, lease, or passing on death, diminishes in exact proportion to the diminished duration of the term. In the case of the reversion expectant upon that term a converse process is going on. By an ingenious arrangement payments of duty are, at all events in the first instance, confined to the franking of the interest in respect of which they are made (see rule 3). The rules are difficult to understand in more than one particular, and an explanatory pamphlet,

with practical illustrations, to be issued by the Commissioners, is almost a necessity of the future.

Increment Value Duty is a Stamp Duty (sect. 3 (6)).

COLLECTION AND RECOVERY ON TRANSFERS ON SALE AND ON LEASE.

To be collected as a stamp duty.

In these cases the duty is to be collected on the instrument by means of which the transfer or lease is effected, or agreed to be effected, and is to be paid by the transferor or lessor as the case may be (sect. 4 (1)).

It is the duty of the transferor or lessor, enforced by penalties under the section, to present to the Commissioners, in accordance with regulations made by them, either the instrument intended to be stamped or reasonable particulars thereof for the purpose of the assessment of duty thereon. It is thought that, in addition to the option to present reasonable particulars, sect. 4 (2) gives the transferor or lessor an option to present for assessment either the agreement for the transfer on sale or the lease, or the document, *i.e.*, the conveyance or lease, carrying out such agreement. The Commissioners, however, while willing, as a matter of grace, to allow this option in the case of a transfer on sale, require by regulation any agreement for a lease or particulars of such agreement to be presented for stamping (see Regulations under sect. 4, Appendix, p. 489 (No. 7), and comment thereon, p. 494).

The three alternative stamps.

The instrument by which the transfer or lease is effected, or agreed to be effected, is not to be deemed to be duly stamped, so as to be admissible in evidence, unless it is stamped—

(*a*) either with a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment ; or

(*b*) with a stamp denoting that all particulars have been delivered to the Commissioners which, in their

opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security ; or

(*c*) with a stamp denoting that upon the occasion in question no increment value duty was payable ;

but where an instrument is so stamped, it is, notwithstanding any objection relating to the increment value duty, to be deemed to be duly stamped so far as respects that duty (sect. 4 (3)).

Comparison between *ad valorem* and increment value duty stamps on conveyances and leases.

The increment value duty stamp is thus assimilated to the ordinary *ad valorem* stamp as a necessary condition of the admission in evidence of a document. But there is this possible distinction between the consequences of the omission to get the increment value duty stamp placed on the document and the omission to get the *ad valorem* stamp placed upon it: that in the latter case, by paying the amount of the unpaid duty, the penalty, and a further 1*l.*, the document may be admitted at the trial at which it is objected to for defect of stamping (see sect. 14 of the Stamp Act, 1891), while in the former (the omission of the increment value duty) it is doubtful whether the document can be admitted at all at the trial in question, first because it may be that as a matter of law the provisions of sect. 14 just referred to do not cover the increment value duty stamps under sect. 4 (3) of the Act of 1910, and, secondly, because as a matter of fact it is impossible to go through the complicated process of assessing the duty at the trial, a process which requires valuations as well as calculations. No doubt, as a matter of practice, deeds defective as to stamping are admitted in evidence on the undertaking of a solicitor to pay the duty and penalties, and it may be said that the same could be done in relation to the increment

value duty stamps. The acceptance of the undertaking in lieu of payment is, however, simply to economise the time of the Court. If it were necessary, the Court could usually determine the amount of the *ad valorem* stamp to be placed on a deed, but it is not likely that the Legislature ever contemplated that the Courts could or would determine the amount of increment value duty payable on a sale which may have taken place years before the trial. For these reasons the omission to get placed on a conveyance or lease one of the three stamps referred to on p. lxviii is even more dangerous than the omission to stamp such a conveyance with its proper *ad valorem* duty.

It seems, however, to be clear that the deed can be stamped at any time after execution by the Commissioners under the provisions of sect. 4 (2) of the Act of 1910, as well as under sect. 15 of the Stamp Act, 1891.

A second difference.

A second point of difference between the effect of the ordinary *ad valorem* stamp on a conveyance or lease and an increment value duty stamp is that the sufficiency of the former stamp (unless accompanied by a denoting stamp under sect. 12 (4) of the Stamp Act, 1891) is a matter of which the Court must under sect. 14 of the Stamp Act take notice, while the presence on the conveyance or lease of one of the stamps referred to in sect. 4 (3) is under that sub-section conclusive upon the Court that the instrument is duly stamped so far as respects the increment value duty.

Increment value duty is a debt due from transferor.

Any duty assessed by the Commissioners is to be a debt due to the Crown from the transferor or lessor, as the case may be, and for the purpose of calculating the amount of increment value duty due on any subsequent occasion is to be deemed to have been paid (*ib.*, sub-s. (4)). It seems, therefore, that increment value duty, arising on the occasion of a sale, or lease, is not a charge on the land so as to be capable of being enforced against the land, in the hands of

a purchaser or lessee, even with notice that the duty has not been paid. It is no more a charge on the land than the ordinary *ad valorem* transfer duty.

Sect. 1 of the Revenue Act, 1911 (1 Geo. 5, c. 2), invalidates all contracts entered into after the 31st March, 1911, for payment of increment value duty by the transferee or lessee, including (so it seems) contracts indirectly designed to effect that object.

Conveyances or leases of purely agricultural land as to which there is no suspicion of taxable increment value must nevertheless be stamped in accordance with (*c*).*

Regulations to be made as to stamping.

The Commissioners may make regulations † with respect to the mode in which any instrument executed on a sale or lease is to be presented to them in order to be stamped, and also for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in the form of a periodical payment, and the Commissioners are to deal with any instrument presented to them and to allow payment by instalments in accordance with those regulations. The regulations are to provide that where the duty due on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due are to be remitted, and that in that case the amount of duty which is deemed to have been paid is to be reduced by the amount of the instalments so remitted (*ib.*, sub-s. (5)).‡

In any case where increment duty has been paid on the occasion of a proposed transfer on sale or lease, but the transaction in respect of which the duty shall have been paid is subsequently not carried into execution, the duty is to be returned to the transferor or lessor on his making application to the Commissioners within two years in accordance with

* See Regulation 10 (p. 490). † See Regulations 1 to 13 (p. 487).
‡ See Regulation 16 (p. 491).

regulations to be made by them as in the Act mentioned (*ib.*, sub-s. (6)).*

Where any agreement for a transfer or agreement for a lease is stamped in accordance with the Act, it is not to be necessary to stamp any conveyance, assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners are, if requested, to denote on the conveyance, assignment, or lease the amount of duty paid (*ib.*, sub-s. (7)). This will render it unnecessary that the agreement should be produced for the sole purpose of proving payment of the duty.

Apportionments.

The increment value tax is expected to be most productive as applied to building land on the margin of populous and growing places. In many cases it may be desired to complete, without delay, a contract for the purchase of a portion of an estate in the course of development. Difficulties may first arise in the matter of apportioning or re-apportioning the original site value placed on the land in question. Owing to the development of other estates, or to public improvements, or deterioration in a neighbourhood, even if the site value were originally carefully and accurately apportioned over the various parts of the estate, re-apportionment may have become necessary.

Expenditure.

The original site value difficulty having been got over, there may arise an even greater difficulty in the apportionment to the land sold of the value added to that land by the expenditure not only on that land itself but on the estate generally. This added value is to be deducted from the purchase price in order to ascertain the site value on the occasion of the sale (sects. 2 (2), 25 (4)). The added value is not to be measured solely by the cost of the improvements, though doubtless the cost of the improvements is one of the elements in ascertaining the added value. The added value may

* See Regulation 17 (p. 491).

certainly be less than the cost of the improvement ; but may it be more ? Is skill and taste and ingenuity in planning and laying out a building estate to count, and to what extent ? It is submitted that as a matter of construction of the Act the answer to this question should be in the affirmative. It is thought that the discernment of the man who by making a road and sewers, by laying out gardens, open spaces, and the like, has added four times their cost to the value of the land, is a fact recognised in the deductions allowed by sect. 25 (4) (*b*) and (*c*).

Form I. V. D. (B).

It should be specially noted by vendors and lessors that the form of the abstract suggested by the Commissioners, I. V. D. (B) (see Appendix, p. 496), in which application for an increment value duty stamp may be made (apparently the form is not compulsory, see Regulation 3, p. 488), affords no facilities for the making of claims for deductions arising under sect. 25 (4) in order to ascertain the site value on the particular occasion. If use is made of this form, it should be accompanied by a statement of any claim for deductions, which statement might also be referred to by a note on the filled-in form.

The Commissioners have to be satisfied that the proposed apportionment or re-apportionment, if one is necessary, of original site value, and the proposed deductions for expenditure, are fair and reasonable. The determination of these questions must often be difficult, and take time. Even if the stamp referred to in alternative (*b*) of sect. 4 (3) (see p. lxviii) is proposed to be placed on the deed, it may not be easy, within a short time, to satisfy the Commissioners that "all the particulars which are necessary for the purpose of enabling them to assess the duty" have been furnished.*

* It should, however, be added that this stamp is in practice freely placed on conveyances, and that the Commissioners appear to be relying almost entirely on their personal remedies against the vendor for the duty. It cannot be said that the duty is often a cause of delay in the completion of purchases.

COLLECTION AND RECOVERY OF DUTY IN CASE OF DEATH.

Uncertainty as to provisions applicable.

Section 5 of the Act provides that the provisions as to the *assessment, collection, and recovery* of estate duty *under* the Finance Act, 1894, are to apply as if increment value duty were estate duty. A difficulty arises as to what sections of the Finance Act, 1894, actually are included in this provision. Sections 6 to 9 inclusive of that Act are headed "Collection and Recovery of Duty and Value of Property," but there is no section or group of sections in that Act headed with the title or marginal note "Assessment." The sections of the Finance Act, 1894, and of the subsequent Acts amending it, which are thought by the writer to be incorporated in the Act of 1910, will be found in the body of the work (see notes to sect. 5, p. 90), where they are discussed, and also in the Appendix (see pp. 589 to 604). It is sufficient to point out in this place that there are interests in land which either pass, or are deemed to pass, on a death within the meaning of sects. 1 and 2 of the Finance Act, 1894, so that they give rise to a claim for estate duty under that Act, but which do not at the same time give rise to a claim for increment value duty. Only when the "fee simple of the land or any interest in the land," as fee simple and interest are defined or explained by sect. 41 of the Act of 1910, is comprised in the property so passing, or deemed to pass, does a claim for increment value duty arise under the joint effect of the Finance Act, 1894, sects. 1, 2 (1) (*a*), (*b*), and (*c*), and (3), and the Finance Act, 1910, sect. 1 (*b*). Neither an interest in remainder expectant on a freehold or a term of years, nor an interest in reversion expectant on a freehold, is the fee simple of or an interest in the land within the meaning of the Finance Act, 1910 (sect. 41). It is further to be noted

that the provisions thus made applicable to increment value duty are not only those contained in the Act of 1894, but include those contained in subsequent Acts relating to the assessment, collection, and recovery of the estate duty imposed by the 1894 Act.

I. V. D. accounts not usually required.

It is to be noted also that personal representatives need not, unless specially required by the Commissioners, furnish to them any account for the particular purpose of increment value duty payable on death. In a circular to solicitors issued by the Commissioners and dated July, 1910 (see Appendix, p. 538), it is stated that the necessary valuations for increment value duty will be made by reference to the affidavit and accounts furnished for estate duty purposes, and that a further account for the purpose of increment value duty will only be called for in cases where there is a *primâ facie* liability to that duty.

Purchasers from personal representatives, heirs-at-law, or devisees will not, it is thought, incur any responsibility for increment value duty payable on the death of the testator or intestate, provided that one of the three stamps referred to in sect. 4 (3) (*ante*, p. lxviii), is impressed on their conveyance.

BODIES CORPORATE AND UNINCORPORATE.

The periodical occasion.

Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by sect. 12* of the Customs and Inland Revenue Act, 1885, the occasions on which increment value duty is collected are the 5th of April in the year 1914, and in every subsequent fifteenth year (sect. 6 (1)).

Position of bodies corporate, etc.

A body corporate never dies, and a body unincorporate, as defined by sect. 12* of the Customs, etc., Act, 1885,

* The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom

is treated as analogous to a body corporate. The Act, therefore, provides for a periodical collection of increment value duty in the case of such bodies, counterbalancing the collection at death in the case of individuals. The duty is to be accounted for in the annual account which such bodies have to furnish under sect. 15 of the Customs, etc., Act, 1885, on or before the 1st October in every year (sect. 6 (2)); but of course increment value duty is to be accounted for only in the year 1914, and every subsequent fifteenth year. Under the Customs, etc., Act, 1885, with many other exceptions, most of which find their analogues in the Finance Act, 1910, the 5*l.* per cent. income duty thereby imposed on bodies corporate and unincorporate is not to be charged in respect of any property being or constituting the capital of such a body established for any trade or business (48 & 49 Vict. c. 51, s. 11 (5)). The reason is, of course, that such a body pays income tax and its members pay legacy and succession duties. Under the Act of 1910 such bodies are chargeable with increment value duty on land employed in trade or business, whether they are chargeable with the 5*l.* per cent. income duty under the 1885 Act or not (sect. 1 (*c*)). The method and incidents of accounting for the 5*l.* per cent. duty contained in sects. 13 to 18, sub-s. (1) of sect. 19, and sect. 20 of the 1885 Act (with the exception of the provision relating to appeals) are by the Act of 1910 applied to increment value duty (sect. 6 (3)). These sections are fully set out in the notes to sect. 6 (pp. 121 to 130), and the Appendix, p. 610.

Charge of duty.

It must be noted that by virtue of sect. 14 of the Customs and Inland Revenue Act, 1885, applied to increment value duty by sect. 6 (3) of the Finance Act, 1910, this periodical

respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty (48 & 49 Vict. c. 51, s. 12 (1)).

duty is made a first charge on all the property in respect whereof the same is payable while such property remains in the possession or under the control of the body chargeable, or of any person acquiring the same with notice of any such duty being in arrear. For reasons explained in the text (see p. 126) it is not thought that this incorporated provision materially affects the position of a purchaser from such a body.

Land companies will pay increment value duty.

The ordinary trading company, whether specially a "land" company or not, which is liable to pay income tax on its profits and does not pay the corporation duty under sect. 11 of the Customs, etc., Act, 1885, will nevertheless account for and pay increment value duty accruing on the dates above mentioned, under the Finance Act, 1910. All other corporations and companies, clubs, committees, and associations, however constituted, holding the fee simple of land or an interest in land in such a manner or on such permanent trusts that the land or interest is not liable to death duties will, subject to the numerous and important exceptions laid down in the Act of 1910, pay this periodical increment value duty. Of course if the body in question is simply a trustee for an individual, so that when the latter dies a claim for increment value duty may arise, the periodical duty is not payable. The death of the Public Trustee (6 Edw. 7, c. 55, s. 1) will not cause increment duty to be payable in respect of the trust property vested in him. Increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment is to be due immediately after the assessment of the duty (sect. 6 (3)). Any part of any duty so payable by instalments may be paid up at any time. A body corporate or unincorporate is, notwithstanding the periodical assessment for increment value duty to which it is subject, bound to pay that duty, just as an individual is, on

the grant of any lease, or the transfer on sale of any land or interest in land (*ib.*, sub-s. (5)). Periodical occasions stand in the place of death occasions.

EXEMPTIONS FROM INCREMENT VALUE DUTY.

(*a*) *Agricultural Land.*

Increment value duty is not to be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only (sect. 7). The privilege thus conferred does not at first sight seem to be a complete exemption of agricultural land from increment duty. If the agricultural value on the 30th April, 1909, was 70*l.* per acre, and that was the highest price which the land at that date would have fetched, and the original site value on the same day was 60*l.* per acre, while on the 30th April, 1912, the first occasion on which a claim for increment value duty had arisen, the site value for building or trade purposes had risen to 90*l.* per acre, the value for agricultural purposes having also risen to 80*l.* per acre, it is clear that the increment value is the sum of 30*l.*, and, subject to the 10 per cent. deduction under sect. 3 (5), that will be the sum on which increment value duty will be paid. It is said in support of this provision that this is not then a duty payable on agricultural land, but on building land employed in agriculture. The land has, it is said, entered into a different class or category. It is probable that if the increment were exempted from taxation up to the highest limit of the value for "agricultural purposes only," as was strongly urged in Parliament, a large part of the proceeds of the tax, which will to a great extent fall on land in the neighbourhood of towns passing at the moment from the class of agricultural into that of building land, would be lost to the Treasury.

It is thought that by agricultural land is meant land really employed or used in agriculture (which has a very wide meaning given to it by sect. 41) for the purpose either of profit or of something akin to profit, such as experimental or model farming, or even of pleasure. It is clear from sect. 7 that a use for "sporting purposes" is not an agricultural use. Probably either directly or by analogy the same provision would prevent land used as golf links, as a cricket field, and so forth, being considered agricultural land. Park land might no doubt often give rise to a difficult question, to be determined on a nice balance of considerations.

The rather important question as to whether the value of the farm buildings on agricultural land is to be taken into account in estimating its value is discussed at some length in the notes (see p. 131).

(*b*) *Small Owners.**

HOUSES.—Increment value duty is not to be charged on the increment value of the site of a dwelling-house which, immediately before the occasion on which the duty is to be collected, was, and had been for twelve months previously, used by the owner as his residence (sect. 8). But this exemption is only secured if the annual value of the house as adopted for the purpose of income tax, under Schedule A, does not exceed in London 40*l.*, in boroughs and urban districts with a population of 50,000 26*l.*, and elsewhere 16*l.* (*ib.*, sub-s. (1)).

(*c*) *Small Holdings.**

AGRICULTURAL LAND.—Nor is increment value duty to be charged on the increment value of any agricultural land,

* Owner under this exemption includes a person who holds land under a lease which was originally granted for a term of 50 years or more. He may therefore be in fact a lessee with a term of the shortest duration; but of course in that event the increment value duty payable in respect of his interest is equally small in amount.

where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total amount of that land, together with any other land belonging to the same owner, does not exceed 50 acres, and the average total value of the land does not exceed 75*l.* per acre (sect. 8 (2)). As has just been seen, when agricultural land attains a building or trade value, and increment value duty becomes payable thereon, it is payable on the total amount of increase over the original site value. In other words, the datum line is the original agricultural site value of the land.* But this provision as to small holdings is intended entirely to exempt the land in question from increment value duty, notwithstanding that it may in fact be saleable for building purposes. The limitation of the average total value to 75*l.* per acre will, however, prevent the exemption seriously affecting the amount raised by the tax. It is, however, to be noted that the exemption does not apply to any land occupied with a dwelling-house the annual value of which dwelling-house apart from the land under Schedule A exceeds 30*l.* (*ibid.*). This exception will, to a great extent, deprive the owners of small country properties kept more for pleasure than for profit of the benefit of the section.

(*d*) *Land Used for Games and Recreation.*

Body corporate or unincorporate holding such land.

Increment value duty is not to be collected on any periodical occasion (*i.e.* the year 1914, and every subsequent fifteenth year) in respect of land held by any body, corporate or unincorporate, without any view to the payment of any dividend or profit out of the revenue of such land, for the purpose of games or other recreation (sect. 9). A

* The expression "agricultural site value" is rather a descriptive than accurate expression. It is not authorised by the Act.

necessary condition for the benefit of this exemption is that the Commissioners should be satisfied that the land is used for such games or recreation under some agreement with the owner, which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used (*ibid.*). Nevertheless, on any sale, or lease for over fourteen years, of the land by the body corporate or unincorporate, increment value duty will be payable in the usual way. In reality, therefore, this exemption is rather a postponement of the payment of increment value duty than an exemption from payment. On sale or lease by the body the increment value duty will be increased by the amount which would have been paid on any periodical occasion or occasions if the exemption had not been created. But a site value may recede between a periodical assessment and an actual sale, and then the exemption would prove to be of value. The provision does not give any exemption to land held by private individuals and let by them for the purpose of games or recreation, even although it has been so let on a permanent tenancy and at a rental much below its real value. On the death of such individuals increment value duty must be paid under sect. 1 (*b*). But the exemption will no doubt apply to most of the great cricket and similar games and sports grounds of the country. It will be remembered that the periodical occasion under sect. 1 (*c*) is in relation to bodies corporate and unincorporate the counterpart of the death occasion under sect. 1 (*b*) in relation to individuals.

(*c*) *Crown Lands.*

The position of Crown lands.

Any increment value duty in respect of land held by or in trust for the Crown or any department of Government is not to be collected on any occasion under sect. 1, but is to be

deemed to have been paid (sect. 10 (1)). It appears, therefore, and the point should receive the attention of purchasers from the Crown, that on a sale by the Crown or a department of Government a calculation should be made by the Commissioners as to the amount of increment value which has accrued, and duty on this amount should be credited to the increment value duty account of the property in question. This section is really a provision for the benefit of the purchaser, who would otherwise be liable to pay on a future occasion the duty which had accrued during the Crown's ownership. The Crown, of course, is not bound by the taxing provisions of the clauses unless such provisions are evidently intended to extend to the Crown. On sales or leases to or for the benefit of the Crown or any Government department it is specially provided that nothing contained in certain Acts referred to is to prevent increment value duty being collected in the ordinary way (sect. 10 (2)).

(*f*) *Flats.*

Flats and other separate tenements in one building.

Increment value duty does not become payable on the grant of a lease, or the transfer on sale or passing on death of a lease, of a separate tenement, flat, or dwelling forming part of a building divided into separate tenements, flats, or dwellings, and such duty is not charged on a periodical occasion against a body corporate or unincorporate which is the owner of a leasehold interest in any such separate tenement, flat, or dwelling (sect. 11). This provision does not exempt the owner of the fee simple or a leasehold interest in such a building from increment value duty, either on transfer on sale of the freehold or leasehold of the whole building, or on the grant of a lease of the whole building; nor does it exempt his estate on his death from payment of increment value duty in

respect of either the freehold or leasehold of the building as a whole. Similarly a body corporate or unincorporate the owners of the freehold or leasehold interest in the whole building are liable to increment value duty on a periodical occasion. The provision is one which is almost essential from the nature of the case in question, since to apportion the site value of, say, Queen Anne's Mansions, a building with about fourteen stories, amongst the various separate sets of chambers composing it, would be a task of difficulty even for the experienced valuers employed by the Treasury.

(*g*) *Land held by Rating Authorities.*

Complete exemption from increment value duty of rating authorities.

No increment value duty is chargeable in respect of any land, or interest in land, held by a rating authority, in which phrase is included any statutory combination, such as the Metropolitan Water Board, representative of two or more local or rating authorities. Increment value duty which would have been collected from such an authority is, as in the case of purchases from Government, for the purposes of the Act to be deemed to have been paid (sect. 35). On a purchase or lease from such an authority the purchaser or lessee should therefore see that the usual calculation is made as to increment value, and that the duty thereon is credited to the account of the property. The exemption under this head extends to duty payable either on sale or lease, or on a periodical occasion.

(*h*) *Land held for Charitable Purposes.*

A wide class of exemptions.

While land is held by or on behalf of any governing body constituted for charitable purposes increment value duty is not to be collected on any periodical occasion in respect of such land, whether it is occupied or used by the governing body or not. But on sale, or lease, by that body, the duty will be collected in the usual way.

The expression "governing body constituted for charitable purposes" has a very wide signification. It includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the naval or military forces of the Crown), and also any corporation sole, and all universities, colleges, schools, and other institutions for the promotion of literature, science, and art (sect. 37 (1)). "Corporation sole" will doubtless include rectors and vicars in relation to glebe lands.

(*i*) *Company formed not for Profit.*

Exemption applicable to various Clubs and Societies.

The last-mentioned exemption applies to land held by a company within the meaning of the Companies (Consolidation) Act, 1908, or any body of persons incorporated by special Act, if such company or body are by their memorandum, or Act, precluded from dividing any profit amongst their members, as if the purposes of that society, company, or body, were charitable purposes. This provision secures to such institutions, being duly constituted, as political and other clubs, professional and scientific societies, and similar associations, exemption from increment value duty on periodical occasions (*ib.*, sub-s. (2)). It does not apply to companies incorporated only by Royal Charter without a special Act.

(*j*) *Registered Friendly and Similar Societies.*

Friendly Societies, Trade Unions, etc.

The above exemption as to land held for charitable purposes applies also to friendly societies and any societies which are registered, such as trade unions, or whose rules are certified or registered, by a registrar of friendly societies, and who by their rules make provision for the benefits set out in sect. 8, sub-s. (1), of the Friendly Societies Act, 1896,

where the contract between the society and the member is of a permanent character (sect. 37, sub-s. (2)).

(*k*) *Statutory Companies.*

Limited exemption of Statutory Companies.

Increment value duty is not charged in respect of any land whilst it is held by a statutory company for the purposes of its undertaking, and which cannot be appropriated by the company except for those purposes. It is, however, payable when any such land is sold or ceases to be held by the company for the purposes of its undertaking. Under this section, statutory companies, which include railway, canal, dock, water, and similar companies authorised to carry out works under special Acts and Provisional Orders, are exempt from paying increment value duty on periodical occasions in respect of lands acquired by them for the purposes of their undertaking (sect. 38).

III. REVERSION DUTY.

The theory of the duty.

REVERSION DUTY (R.D.), like increment value duty, is an entirely novel form of taxation. The theory upon which it rests appears to be the following: It usually happens that on the expiration of a building lease the owner of the fee simple expectant upon the lease comes into a property worth much more than the fee simple of the property at the time when his predecessor in title made the lease. The predecessor owned a plot of land worth, say, 200*l.*, and leased it for eighty years, on a ground rent of 10*l.* a year, to a builder who had already, in pursuance of a building agreement, erected, or who was under covenant, duly fulfilled, with the predecessor to erect, a house on the land worth at least (house and land) 1,000*l.* It is argued that the freeholder has received a safe interest for eighty years on the original value of his property, and that now at the end of that period he gets back not only the site which he leased, but a house the capital value of which (with the site) may be worth five, six, or seven hundred pounds. The falling in of the reversion, the so-called windfall to the freeholder, is considered to be a legitimate occasion upon which the State may demand from him for its necessities a small share of his good fortune.

THE AMOUNT OF THE REVERSION DUTY.

Its amount.

The amount of the duty is One Pound for every complete Ten Pounds of the value of the benefit accruing to the lessor by reason of the determination of the lease (sect. 13 (1)).

VALUE OF THE BENEFIT ACCRUING TO THE LESSOR.

Value of benefit to lessor.

That value is deemed to be the amount (if any) by which the total value of the property at the determination of the lease exceeds the total value of the land at the time of the original grant of the lease (sect. 13 (2)). The total value of the land at the time of the original grant is to be ascertained, not under the valuation clause (sect. 25, *ante*, p. lv) of the Act of 1910, but on the basis of the rent reserved, and payments made in consideration of the lease (*ibid.*). In other words, the problem before the valuer is, assuming the rent, fixed many years ago at the commencement of the lease, to be, say, 50*l.* a year, and taking into account any premium paid to the lessor, what was the value of the fee at the time of the original grant. No directions are given to the valuer as to the rate of interest he should assume as the basis of his calculation ; nor is it clear whether he is entitled to take into consideration in respect to a lease, say, for twenty-two years the fact that the buildings would not last much longer. The total value at the determination of the lease is, subject to the deductions to be presently mentioned, the total value, as defined by the general provisions of the Act contained in sect. 25 (3) ; that is the amount which the fee simple of the property with its buildings and all things growing thereon might be expected to realise, if sold in the open market, by a willing seller, in its then condition, free from incumbrances, but subject to fixed charges (as defined by sect. 41), to public rights, and to easements, and, with some reservation, to all covenants and agreements restricting its user. The deductions to be made from the gross total value* at the determination of the lease in order to obtain the net total value at that period are (1) any part of the total value which is attributable to

* Not to be confused with gross value in s. 25 (1).

any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease; and (2) all compensation payable by such lessor at the determination of the lease.

The questions therefore as to whether reversion duty is due on the determination of a lease, and as to its amount, will resolve itself into some such calculation as follows:—

Illustration of incidence of duty.

Gross total value of land*, buildings, fixtures, etc., at determination of lease, under sect. 25 (3)		£2,000 0 0
Less increased value attributable to expenditure by lessor since commencement of lease in building a wing to house ...	£300 0 0	
Less compensation for fixtures left by lessee, payable by lessor in pursuance of covenant in lease	£200 0 0	
Total deductions		£500 0 0
Net total value at determination of lease		£1,500 0 0
Deduct total value at time of original grant of lease, *i.e.*,		
Premium paid by lessee ...	£300 0 0	
Yearly rent of 20*l.* capitalised at 25 years' purchase (under sect. 32 (1)) ...	£500 0 0	
Total value at time of original grant of lease		£800 0 0
Benefit accruing to lessor, liable to duty at 10 per cent.		£700 0 0

Duty = 70*l.*

* See footnote on last page.

The "total value" at the time of the original grant is thus seen to be ascertained by the special method pointed out by sect. 13; the "total value" at the determination of the lease by the general method adopted for all valuations under the Act, subject to the special deductions mentioned in sect. 13.

Different meanings of "total value."

COVENANT IN LEASE FOR EXPENDITURE BY LESSEE.

When a lessee covenants in a lease to erect buildings, or to expend any sums upon the property, it is probably a justifiable assumption that the covenant in question was a part of the consideration given by him. Probably he got the land at a somewhat lower rent, because he entered into the covenant. To exclude, as is enacted by sect. 13 (2), the value of that covenant as part of the consideration for the lease, except where only a nominal rent is reserved, seems hardly fair to the lessor. In the cases where a substantial but not a full rent is reserved, and such a covenant is entered into, no doubt the value of the covenant at the date of the lease, which may be for ninety-nine years, may not be great.* But for what it is worth, it might well have been taken into account in fixing the total value of the land at the time of the original grant of the lease. In the not uncommon case of a lease from twenty to forty years in duration, where a large part of the consideration for the lease is the creation of improvements by the lessee, the matter is of importance.

Covenant to erect buildings, etc., in lease.

MODIFICATIONS OF AND EXEMPTIONS FROM REVERSION DUTY.

If the lease which has determined is an underlease, so that the lessor who is to be taxed is not the freeholder,

Determination of underlease.

* As the erection of buildings adds to the security of the rent, it is not easy to suggest the measure of damages for the breach of such a covenant.

the value of the benefit, as so ascertained, is to be reduced in proportion to the amount by which the value of the lessor's interest is less than the value of the fee simple (sect. 13 (2)). The exact meaning of the words "value of the lessor's interest" is not clear (see p. 160) ; and accordingly it will be wise for lessee reversioners called upon to pay this duty to give attention to the calculations on which their liability is based by the authorities. If indeed the lessor's interest is a leasehold interest not exceeding twenty-one years, no reversion duty is chargeable in respect thereof (sect. 14 (2)).

Purchase before 30th April, 1909, of reversions of less than forty years.

Reversion duty is not payable in respect of a reversion purchased before the 30th April, 1909, when the lease is determined (otherwise than by agreement between the lessor and the lessee) within forty years of the date of the purchase (sect. 14 (1)). But if the lease would naturally have determined within the forty years, an agreement for earlier determination will not cause duty to be payable. The theory of this exemption, as gathered from the discussions in the House of Commons during the passage of the Bill, is that when a man buys a reversion upon a lease with forty years or more to run he buys rather for immediate return, or investment, than for a future capital benefit, and that in such a case the reversion duty will not bear heavily upon him, but that if he buys a reversion on a lease with not more than forty years to run he has the accrued benefit at the end of the lease in his contemplation, that is he has bought not only for investment, but for return of an increased capital, and that therefore it would be hard upon him to take away 10 per cent. of that return. It is understood that in valuing freehold ground rents, after the leasehold interests are within fifty years of determination, some substantial addition is usually made by valuers to the purchase-money, calculated on an interest-producing basis, for the future

benefit to be derived from the rack rent at the end of the term. It is not clear from the Act whether this exemption from taxation is personal to the actual purchaser of the reversion before the 30th April, 1909, or whether the personal representatives, heirs, devisees, voluntary grantees of, or purchasers for value from, that purchaser are also entitled to the exemption (see p. 165).

Other exemptions from reversion duty.

No reversion duty is chargeable on the determination of a lease (1) the original term of which did not exceed twenty-one years ; (2) where the lessor's interest expectant on its determination does not exceed twenty-one years ; (3) of land which is at the time of the determination agricultural land (sect. 14 (2)) ; (4) being a mining lease of minerals other than the substances exempted from mineral rights duty by sect. 20 (5) (sect. 22 (1)) ; (5) where the reversioner is a rating authority (sect. 35) ; (6) where the reversion is held for charitable purposes within the wide definition and extension of those purposes in sect. 37 (see *ante*, p. lxxxiv), and the land is occupied and used for those purposes ; (7) where the reversion is held by a statutory company for the purposes of its undertaking, and cannot be appropriated except to those purposes (sect. 38).

Premature determination of lease.

Provision is made for a reduction of the duty in cases where a lease is determined before the expiration of the term of the lease by the vesting of the lessor's interest and the lessee's interest in the same person. In such a case the amount of the reversion duty is not to be the full duty, but such an amount as would, with compound interest at 4 per cent. per annum for the residue of the term for which the lease was granted, produce the amount of the full duty (Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3 (2), (5), repealing sub-s. (3) of sect. 14 of the Finance Act, 1910).

Overlapping of two of the new duties.

The Act contains a provision intended to exempt the same benefit accruing to a lessor from being the subject both of

increment value duty and of reversion duty. For example, suppose that the benefit accruing to a lessor on the determination of a lease is 1,000*l.*, but that some time before that determination the lessor, on succeeding to the reversion, either under a will or an intestacy, had paid increment value duty on the reversion to the site value up to the date of his predecessor's death, it is clear that the latter duty may have been paid in respect of something which formed an element in the value of the benefit accruing to the lessor on the determination of the lease. The Act, therefore, properly enacts that in assessing either duty the Commissioners shall take into practical consideration what has been already paid on account of the other duty (sect. 14 (4)). But the difficulty of determining, say on a death in 1930, how much increment value had been included in the taxation in 1920 of the benefit accruing by reason of the determination of a lease is a little appalling.

Protection of mortgagee who has foreclosed.

In a certain limited way a mortgagee receives protection against this duty. If the mortgage is executed before the 30th of April, 1909, and the mortgagee has foreclosed before the lease determines, he is not liable to pay reversion duty except to the extent by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure (sect. 14 (5)). For comments on this difficult sub-section see the notes thereto (p. 173).

RECOVERY OF REVERSION DUTY.

Reversion duty not a charge.

Reversion duty is not a charge on the property, but is recoverable by the Crown from the lessor to whom the benefit accrues. A section (sect. 3 (1)) of the Revenue Act, 1911, makes it clear that, in cases where a lease is determined by merger, by the term "lessor" as used in the

Land Clauses is intended the person who was in common parlance the former landlord, so that where a lessee buys the reversion, thereby merging the term, the landlord and not the purchasing tenant is liable to the duty. The Crown has no priority in respect of the duty (sect. 15 (1)).

Obligation of lessor to disclose the determination of lease.

It is the duty of a lessor, within three months after the determination of a lease, on the determination of which reversion duty is payable, to deliver an account to the Commissioners, setting forth the particulars of the property and the estimated value of the accruing benefit (*ib.*, sub-s. (2)). A heavy penalty is affixed to the non-delivery of this account. The Commissioners possess under sect. 17 of the Customs and Inland Revenue Act, 1885, which is applied to this duty by sect. 15 (4) of the Act of 1910, very wide powers of enforcing accounts from lessors, and, if dissatisfied with those accounts, of themselves causing accounts to be taken in respect of reversion duty by their own nominees (*ib.*, sub-s. (3) and (4)).

Apparently, unless reversion duty is actually payable, *i.e.*, there is something due on taking the account, no account need be delivered (sect. 15 (2)). But this is not absolutely clear. It seems advisable, therefore, for a lessor whose only objection to pay duty is that there is no benefit accruing to him, and who does not rely on one of the express statutory exemptions from duty set out on pp. xci and 155, to send in an account on the Commissioners' form (see Appendix, p. 523), so filling it in as to make the true position clear. If the exemption claimed is one of the statutory exemptions referred to, it seems clear that an account cannot be demanded under the section. At the same time there are cases, as for example those numbered 3 and 6, on p. xci, where the evidence as to the actual state of things conferring exemption might not be so clear in the future as immediately upon the determination of the lease, and where therefore it

might be prudent to tell the Commissioners that the lease had determined, claim exemption, and leave them to take their own course.

The actual form referred to (see p. 523) is not thought to be obligatory on the lessor; but it seems to be a convenient vehicle by which he can fulfil his statutory obligation under sect. 15 (2) above referred to.

IV. DUTY ON UNDEVELOPED LAND.

THIS is the third new duty placed upon land by the Finance Act, 1909. The theoretical or economic basis of the tax appears to be that it is the duty of every one to be willing to sell his land for building or trade purposes as soon as it attains a value for those purposes. If he does not do so, but holds for a greater rise in value, the land pays rates only on its agricultural value, while its capital value is being increased by the general growth of the community, and by improvements made at the public expense. Hence it is said to be a fitting subject for moderate taxation on that excess of capital value over the agricultural value of the land. The duty is not confined to one year, but is to be levied and paid for the financial year ending the 31st March, 1910, and every subsequent financial year until it is removed or altered (sect. 16 (1)). It is levied in respect of the *site value*, that is the assessable site value of undeveloped land, as defined by the Act (sect. 25 (4)), and is at the rate of one halfpenny for every twenty shillings of that site value (sect. 16 (1)). It is a duty payable by the owner of the land, and he cannot agree with the tenant [? or any other person] to pay the duty in lieu of himself. It is not a charge on the land, but a personal debt to the Crown from the owner for the time being (sect. 19). It is called undeveloped land duty (U. L. D.).

Nature of duty.

"UNDEVELOPED" LAND.

That land is deemed to be undeveloped which has not been developed either (*a*) by the erection of dwelling-houses, or

Description of undeveloped land.

(*b*) of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or (*c*) is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture (sect. 16 (2)). Where land having been once so developed or used reverts to the condition of undeveloped land, and remains undeveloped for one year, it is again liable to undeveloped land duty until it is once more developed (*ib.*, sub-s. (2) (*a*)). If an owner of land, included in any scheme of land development, is able to prove that he or his predecessors in title have, with a view to developing his land, incurred expenditure on or in connection with roads or sewers, that land is to the extent of one acre for every complete 100*l.* of that expenditure to be treated as developed land, although it is not actually so developed. But no expenditure can be taken into account under this head if twenty years have elapsed since the date of that expenditure (Revenue Act, 1911, sect. 4). Where the amount of such expenditure does not cover the whole of the land included in the owner's scheme of development, the part to be franked by the expenditure is to be determined by the Commissioners (*ib.*, sub-s. (2) (*b*)). It seems that this expenditure on roads and sewers may serve the double purpose of exempting completely land to the extent stated, and of reducing proportionately the site value of that and other land which it has benefited.

Expenditure freeing from duty.

THE EXEMPTIONS FROM THE DUTY.

These may be summarised as follows :—

(*a*) Exemptions arising from the nature of the property—

Site value not over 50*l.* per acre.

(1) Land the site value of which does not exceed 50*l.* per acre (sect. 17 (1)). This exemption exists even

if the agricultural value of the land is less than the site value of the land for building or trade purposes, and even if the land be lying waste and unused.

Limited exemption of agricultural land.

(2) Where the site value of land employed in agriculture exceeds 50*l.* per acre, undeveloped land duty is charged only on the amount by which the site value of the land exceeds the value of the land for agricultural purposes (*ib.*, sub-s. (2)). Thus if the agricultural value of Blackacre is 500*l.* whilst its site value is 1,000*l.*, duty is charged on 500*l.* only. If owing to the growth of a neighbouring town and the consequent demand for market gardens and nursery grounds the agricultural value goes up to 700*l.*, whilst owing to the same growth and the consequent demand for building land the site value goes up to 1,500*l.*, undeveloped land duty is charged on 800*l.*, the difference between the two values at the time in question. It will be remembered that in contrast with this arrangement increment value duty on Blackacre will be paid on the rise from the original agricultural value, whether 500*l.* or less than that amount (sect. 7, *ante*, p. lxxviii).

Spaces open to public as of right.

(3) The site value of any parks, gardens, or open spaces which are open to the public as of right (*ib.*, sub-s. 3 (*a*)). These for the most part are exempted under other provisions of the Act (sects. 35 and 37).

Spaces to which the public have access.

(4) The site value of any woodlands, parks, gardens, or open spaces, reasonable access to which is enjoyed by the public or by the inhabitants of the locality (including the Forces of the Crown for regular training or exercise), where *in the opinion of the Commissioners* that access is of public benefit (*ib.*,

sub-s. 2 (*b*)). The extent of the access which is to give exemption under this provision is uncertain (see p. 198).

Garden city, etc., exemption.

(5) The site value of any land where it is shown to the Commissioners that the land is being kept free of buildings in pursuance of any definite scheme, whether framed before or after the passing of the Act, for the development of the area of which the land forms part, and *in the opinion of the Commissioners* it is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings (*ib.*, sub-s. 3 (*c*)). This is an exemption inserted at the instance of persons interested in garden cities.

Land used for games and recreation.

(6) The site value of any land which is used for the purpose of games or other recreation where the Commissioners are satisfied that the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where, *in the opinion of the Commissioners*, other circumstances render it probable that the land will continue to be so used (*ib.*, sub-s. 3 (*d*)). This provision is intended to exempt from undeveloped land duty the various playing fields in, or in the neighbourhood of, towns and large villages. It applies to land belonging to individuals as well as to bodies corporate and unincorporate. The corresponding exemption relating to increment value duty (see p. lxxx) exempts bodies corporate and unincorporate only, and exempts them only in respect of the increment value duty collectable on the periodical collections in the year 1914 and every subsequent fifteenth year. This

exemption will apply as well to land owned by the club or association which plays or organises the games as Lord's and county grounds owned by county cricketing clubs as to land rented by clubs or associations for the purposes of games. It would appear also to apply to the private cricket, football, and golf, etc., grounds of individuals "where in the opinion of the Commissioners circumstances render it probable that the land will continue to be so used"; but perhaps this is not certain.

As to the exemptions above mentioned, being Nos. 4, 5, and 6, it must be noted that the opinion of the Commissioners in respect to the matters left to their opinion is final, and not subject to any appeal.

Land occupied with house not exceeding one acre.

(7) Any land not exceeding an acre in extent occupied together with a dwelling-house (*ib.*, sub-s. (4)). The land need not, it seems, be used as a garden or pleasure ground, but may be a paddock, or a fowl run, or waste land.

Further exemption of land occupied with house not exceeding five acres.

(8) The site value of any land, being gardens or pleasure grounds, occupied with a dwelling-house, which do not exceed five acres in extent, when the site value of the gardens and pleasure grounds, together with the site value of the dwelling-house, does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A (*ib.*). This exemption will protect the owners of most large suburban houses from liability to the duty, though it will not do so when the land attached to them is of a very high capital value compared with the letting value of the premises. If the lands, gardens, or pleasure grounds exceed five

acres in extent, those five acres are to be exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connection with the house.

Agricultural land in lease at passing of Act.

(9) Agricultural land at the time of the passing of the Finance Act, 1910, held under a tenancy originally created by a lease or agreement made before the 30th day of April, 1909, is not during the original term of the lease or agreement while the tenancy continues thereunder liable to the duty, but the exemption under this provision does not apply after the earliest date after the commencement of the Act at which the tenancy of the land can be discontinued at the option of the landlord (*ib.*, sect. 3 (5)). In other words, if a landlord, not being obliged under the existing lease or agreement to do so, renews a lease, or tenancy, or if he has not given notice to quit to a yearly tenant to take effect as soon as is legally possible after the 30th April, 1910, then the landlord becomes liable to undeveloped land duty as soon as the existing lease or tenancy determines, or, in the case of a tenancy from year to year, from the date when the landlord might have got possession, if he had given the tenant notice to quit the day after the commencement of the Act, *i.e.*, 30th April, 1910. Of course, when the land in question does become liable to the duty, it is only liable to the extent to which the site value of the land exceeds its value for agricultural purposes (*ib.*, sub-s. (2)).*

Small holdings.

(10) The site value of any agricultural land, occupied and cultivated by the owner thereof, where the total value of that land, together with any other land

* This sub-section is mainly responsible for the small assessment of the undeveloped land duty (10,330*l.*) for the financial year ending March 31, 1911.

belonging to the same owner, does not exceed 500*l.* It does not appear clear whether the value of any buildings is to be reckoned as part of the 500*l.* value, but it is thought that it must be reckoned. "Owner" in this regard includes a person who holds land under a lease which was originally granted for a term of fifty years or more (sect. 18). Under the general definition of owner in sect. 41 a lessee is not "owner" unless more than fifty years of his lease are unexpired. For the corresponding exemptions in relation to increment value duty see *ante*, p. lxxix.

(*b*) Exemptions arising from the special character of the owners—

(11) Land held by rating authorities (sect. 35). Rating authorities.

(12) Land held by or on behalf of a governing body constituted for charitable purposes while used and occupied by such body for the purposes of that body. This exemption includes a corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art (sect. 37 (1)). Charities.

(13) Land held by a "registered society," *i.e.*, any society or body of persons who are registered (such as trade unions) or whose rules are certified or registered by a Registrar of Friendly Societies in pursuance of an Act of Parliament, and who by their rules make provision for the benefits set out in sect. 8, sub-s. (1), of the Friendly Societies Act, 1896, and where the contract between the society and the member is of a permanent character (*ib.*, sub-s. (2)). Registered societies.

(14) Land held by a company within the meaning of the Companies (Consolidation) Act, 1908, or any body of persons incorporated by special Act, if that Companies and corporations not dividing profits.

company or body are by their memorandum or Act precluded from dividing any profit amongst their members (*ib.*). This exception will cover the numerous trade, professional, scientific, and artistic societies and political clubs registered under the Companies Acts or incorporated by a special Act of Parliament, but it will apparently not include those bodies which have only a Royal Charter and are not registered and have no special Act.

Statutory companies.

(15) Land held by a statutory company for the purposes of their undertaking and which cannot be appropriated except to those purposes. This will include land which such a company has acquired, but pending the carrying out of the works for which it was so acquired is using for other purposes. Statutory companies mean railway, canal, dock, water, and other companies authorised under special Acts or Provisional Orders having the force of Acts to carry out their respective works (sect. 38).

THE SITE VALUE OF UNDEVELOPED LAND.

The original site value.

The site value of undeveloped land is the value adopted as the original site value by the process before explained in the section on increment value duty (*ante*, p. liii), or, where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained (sect. 16 (3)). Provisions are contained in the Act for a quinquennial valuation of all undeveloped land, whether (it seems) that land is or is not exempted from the undeveloped land tax. This in effect means that all the agricultural land of the country is to be valued every five years (sect. 28). If increment value duty has been paid in respect of the increment value of any undeveloped land, the site value of

that land, for the purposes of the assessment and collection of undeveloped duty, is to be reduced by a sum equal to five times the amount paid as increment value duty (sect. 16 (3)). This provision is intended to avoid the imposition of a double tax on the increment value of land. Reduction of site value.

For the purposes of undeveloped land duty, undeveloped land does not include the minerals (sect. 16 (4)). By this it is understood is meant that the site value of land containing minerals is to be valued as if the land did not contain those minerals. It is clear that, if the minerals are valued at all, they are to be valued as a separate parcel of land (sect. 23 (2)), with the liabilities of such a parcel to payment of increment value duty.

TIME OF PAYMENT.

The duty is payable at any time after the 1st January for the year for which it is charged (sect. 19). It will be payable for the year ending 31st March, 1910 and 1911, as soon as an assessment is made. It may be assessed and demanded on the original provisional valuation, an adjustment being made after the valuation has been finally settled (sect. 27 (6)). If at any time the duty is not assessed within the year for which it is charged, owing to there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason, the duty may be assessed at any time, and is payable at any time after the expiration of two months from the date of the assessment, so, however, that no such duty is to be assessed more than three years after the expiration of the year for which it is payable (sect. 19). Practically, therefore, it is possible for four years' arrears to be recovered by the Crown. When the duty is payable.

It is recoverable from the owner of the land "for the time being," a phrase which is ambiguous, but may possibly mean the time at which process is commenced by the Crown for the purpose of recovering the duty (see a note on p. 206). Purchasers of undeveloped land are therefore interested in ascertaining that all duty assessed to date has been paid. There is no express and probably no implied provision in the Act for apportionment of duty according to the periods of ownership of vendor and purchaser.

V. MINERALS AND MINERAL RIGHTS DUTY.

"Land" within the meaning of the Finance Act, 1910, undoubtedly includes minerals. If minerals are sold out and out, apart or separately from the surface, they are subject, like all other land, to a claim for increment value duty. That duty is assessed upon the increment of their capital value as a separate parcel of land (sect. 23 (4)). If minerals are sold incidentally, as it were, that is as simply part of the property included in the description of the land, and no increment value duty is paid specially in respect of them, no original capital value having been placed on them (sect. 23 (2)), then when they are sold for the first time apart from the surface, or become the subject of a mining lease, duty will be payable, and their original capital value will apparently be considered to have been nothing. This subject is later discussed at length (p. cxi).

Special duty on minerals and wayleaves.

Apart from the liability of minerals to increment value duty as ordinary parcels of land, a special scheme of taxation is made for minerals and mineral wayleaves. There is to be levied for the financial year ending the 31st March, 1910, and every subsequent financial year, on the rental value of all rights to work minerals and of all mineral wayleaves, a "mineral rights duty" at the rate of 1*s.* for every 20*s.* of that rental value (sect. 20 (1)). The duty is to be paid by the proprietor of the minerals. The term "proprietor" is apparently applied by the Act of 1910 to the owner of the minerals when he is being considered in relation to the special scheme of taxation of minerals contained in sects. 20 to 24 inclusive. Where minerals are treated as an ordinary parcel of land for the purpose of original valuation under sect. 26, it is the owner and not the proprietor who must

make the statutory return (see the form of such return, Appendix, p. 533). The distinction in the Act between owner and proprietor seems more confusing than important (see p. 265). The rental value on which the 1*s.* in the pound duty is to be paid is, where the minerals are in lease, the amount of rent paid by the working lessee in the last working year (sect. 20 (2)). The "last working year" is the year ending on the 30th September immediately before the 1st day of January in any financial year for which the duty is paid (sect. 24).* Where the minerals are not in lease but are being worked by the proprietor, the rental value is the sum which the Commissioners determine would have been the rent if a lease customary in the district had been made, and the minerals had been worked by the lessee to the same extent and in the same manner as they had in fact been worked by the proprietor (sect. 20, sub-s. (2) (*b*)). In the case of a mineral wayleave the rental value on which the duty is to be levied is the amount of rent paid by the working lessee in the last working year in respect of such wayleave (*ib.* (*c*)). There is a provision under which, if in any special case the proprietor of the minerals has expended on development sums usually spent by a lessee and the rent is thereby increased, the Commissioners may reduce such rental value for the purpose of the duty (sect. 20 (2)). The proprietor is in such a case really getting in an increased rent a return for capital spent in developing the minerals. Proprietors and persons receiving mineral rents must under penalties furnish particulars to the Commissioners on request (sect. 20 (3)). As between the immediate lessor—*i.e.*, the lessor of the working lessee—and that lessee the duty is to be borne by the immediate lessor notwithstanding any contract to the

Special expenditure by proprietor.

Incidence of duty.

* But it may be the year ending on such other day as may in any case be approved by the Commissioners (*ib.*).

contrary whether made before or after the passing of the Act (*ib.* (4)).*

The duty is not to be charged in respect of common clay, common brick clay, common brick earth or sand, chalk, limestone, or gravel (*ib.*, sub-s. (5)), which, or some of which, nevertheless may be minerals within the Act (see p. 212). Immediate lessors paying the duty who are themselves lessees may deduct a proportionate amount thereof from the rent they pay (sect. 21). Reversion duty is not to be charged on the determination of a mining lease (sect. 22 (1)).

Exemptions.

Deduction by underlessor.

No reversion duty on determination of mining lease.

INCREMENT VALUE DUTY ON MINERALS.

The provisions relating to increment value duty on minerals are somewhat complicated. It has already been stated (p. cv) that when minerals are sold apart from the land, as a separate parcel of land, they will be liable to increment value duty on their original *capital** value, just as land is liable to increment value duty on its original *site* value. So when minerals pass on death a claim for increment value duty may arise on that capital value if they are not then being worked, in which case the duty appears to be the annual duty hereafter explained. We have now to consider (*a*) what is the liability to increment value duty of minerals which were on the 30th April, 1909, actually in lease or being worked, and (*b*) what is the liability to that duty of minerals neither in lease nor being worked at that date, but which subsequently to that date are either leased or worked.

(*a*) If on the 30th April, 1909, minerals are either comprised in a mining lease or are being worked by the proprietor, increment value duty will not be charged as long as the minerals are for the time being either comprised in such a lease or are

When increment value duty not charged.

* For explanation of the total and capital values of minerals, see *post*, p. cxiii.

being so worked (sect. 22 (2)). The meaning of this appears to be that if comprised in a mining lease on the day in question, they will not be subject to increment value duty so long as they are either comprised in a lease, whether that lease or another lease, or, if not comprised in a lease, are being worked by the proprietor; and if being worked by the proprietor on the date in question, then that they will not be liable to increment value duty so long as they are either worked by that proprietor, or are comprised in a mining lease. Even if they cease for a temporary period to be comprised in a mining lease or to be worked, so long as that period does not exceed two years, the exemption will continue to apply (*ib.*). In other words, if either owner or lessee dies, or sells his reversion or leasehold interest, as the case may be, no claim for increment value duty arises under sect. 1 so long as the lease or working in question endures. Nor in case either owner or lessee is a body corporate or unincorporate is the periodical collection of increment value duty every fifteenth year under sect. 1 (*c*) to be made so long as lease or working endures. The owner of the minerals by having begun to work or leased them before 30th April, 1909, is considered to have realised his minerals just as where he has sold land out and out before that date.

If temporarily unworked or not on lease.

(*b*) If, however, on the 30th April, 1909, the minerals are neither comprised in a mining lease nor are being worked by the proprietor, but they are subsequently leased [*for over fourteen years] or commenced to be worked [*and an occasion for payment of increment value duty arises under sect. 1], then increment value duty, in respect, of course, of increment value only which has accrued since 30th April, 1909, will be payable. It is not, however, in this case payable either as a lump sum, or as a sum payable

If worked or leased after 30th April, 1909, increment value duty is payable.

How calculated.

* It is doubtful whether the words in square brackets are conditions of liability to duty.

by instalments, as in the ordinary case of a lease of lands (sect. 4). It is charged as a duty payable annually (sect. 22 (3)). In this case the increment value is to be taken to be the sum (if any) by which in each year the rental value on which mineral rights duty is charged to the lessor (see p. cvi) exceeds the annual equivalent of the original capital value* of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty; and the annual equivalent of any such capital value of the minerals is to be taken to be two twenty-fifth parts of that capital value (*ib.*, sub-s. (3)). The effect of this provision appears to be that in a case where the rent is a varying rent, dependent upon the amount gotten in each year, and a large proportion of the minerals are, in fact, gotten in any single year, the increment value and the corresponding duty will for that year be very high. As is attempted to be indicated by the brackets in the first sentence of this paragraph, it is not quite clear whether to give rise to the liability to increment value duty (1) the lease must be for more than fourteen years, and (2) the working must be accompanied by the happening of one of the occasions referred to in sect. 1 as being occasions for payment of increment value duty (sect. 22 (3)).

Annual equivalent of capital value.

Increment value duty payable annually under the before-mentioned provisions is payable by the proprietor of the minerals, where he is working them, and in any other case by the immediate lessor of the working lessee (*ib.*, sub-s. (5); sect. 20 (4)). It may, like mineral rights duty, be deducted from the rent paid by the immediate lessor to his lessor, so far as it falls upon the latter (sect. 22 (5); sect. 20 (4); sect. 21 (1)). It is thought that each lessor and sub-lessor will pay the duty in proportion to the amount of

Increment value duty in the case of a sub-lease at a profit.

* For the definition of capital value of minerals see p. cxiii.

the increment which he retains (sect. 23 (5)), but it must be confessed that difficult questions may arise in cases where minerals are sub-leased at a profit, and too complicated for full treatment in this place.

Set-off of increment value duty against mineral rights duty.

Any proprietor or lessor of any minerals who pays increment value duty by means of an annual sum is entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty (sect. 22 (6)). Practically, therefore, in respect of any given year he pays either mineral rights duty or increment value duty, whichever is the greater. But a payment of increment value duty in one year will not relieve him from any mineral rights duty in a succeeding year. He had, therefore, from this point of view, better realise his increment gradually.

When minerals being worked or in lease on 30th April, 1909, are to be valued.

When minerals cease to be comprised in a mining lease, or to be worked within the meaning of section twenty-two, the capital value of the minerals at the time is to be specially ascertained in accordance with the provisions of the Act, and the capital value as so ascertained is treated as the original capital value of the minerals (*ib.*, sub-s. (7)). This provision appears to refer only to minerals which were on the 30th April, 1909, either comprised in a mining lease or were being worked by the proprietor. It can hardly apply to minerals which were not so comprised or being worked but are leased or commenced to be worked after that date, since the original capital value of such minerals must necessarily have been ascertained on the original valuation under sect. 26.

Original capital value of minerals not being worked or in lease on 30th April, 1909.

Under sect. 23 (2), minerals not comprised in a mining lease, and not being worked [on 30th April, 1909], are to be treated as having no value as minerals, unless the owner in his return* to the Commissioners specifies their nature, and

* For the form of return (Form 4), see Appendix, p. 508.

his estimate of their capital value. The original capital value therefore of the minerals not comprised in a mining lease or being worked on the 30th April, 1909, is, apparently, either nothing or the sum estimated as their value by the owner of the land, but *quære* whether that estimate must be accepted as their original capital value by the Commissioners. If it must be accepted, of course by putting a high original capital value on minerals, an owner could minimise any future claims for increment value duty, but he would have to consider the death duties. It is, however, possible that the placing an estimate upon the minerals in the original return opens out the whole question, and enables the Commissioners to determine their value under sect. 26.

Increment value duty on sale of minerals.

Assuming that minerals are sold outright, whether as part of the land or separately from the land, then it would appear that increment value duty is payable as a lump sum, that is, provided they are not at the time of sale being worked or included in a mining lease. Minerals are, it is assumed, "land" within the meaning of sect. 1, which creates the charge of the duty on increment value. References in the Act to the site value of land are to be construed, so far as respects minerals, as references to the capital value of the minerals (sect. 23 (4)). Sect. 2 (1) will, therefore, it is submitted, cause the increment value of minerals to be the amount by which the capital value of the minerals on the occasion on which increment value duty is to be collected exceeds the original capital value of the minerals. The last words in sect. 2 (1) "as ascertained in accordance with the general provisions of this part of this Act as to valuation" seem at first sight inappropriate to a valuation of minerals, since by sect. 25 (5), the section apparently referred to under the words "general provisions as to valuation," it is enacted that "the provisions of this section are not applicable for the purpose of the valuation of minerals."

But nevertheless it is submitted they cannot countervail the other indications in the Act, that minerals sold in fee are to pay increment value duty, and it may well be that the general provisions as to valuation of minerals may be considered to be comprised in sect. 23 (1) and (2), and not in sect. 25. If this view is correct, minerals will pay increment value duty as a lump sum calculated on their capital value in the event of their transfer on sale and passing on death respectively, assuming in each case that they are not being worked by the proprietor or comprised in a mining lease. For definition of the "capital value of minerals" see the next sub-division.

GENERAL PROVISIONS AS TO MINERALS.

General provisions as to valuation not to apply to minerals.

The provisions of Part I.* of the Act with respect to valuation are not to apply to minerals which were on the 30th of April, 1909, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor (sect. 23 (3)). This provision is apparently simply intended to carry out the exemption from increment value duty of the minerals in the cases mentioned. We have already seen (*ante*, p. cviii) that when such minerals cease to be comprised in a mining lease or to be worked, then their capital value is to be ascertained in accordance with the provisions of the Act, and that capital value is to be treated as the original capital value of the minerals (sect. 22 (7)); so that when again leased or sold the *terminus a quo* increment value is calculated as that valuation, and not a valuation as on 30th April, 1909.

The special provision for valuation of minerals.

Minerals to be valued apart from land.

For the purposes of valuation under Part I. of the Act, all minerals are to be treated as a separate parcel of land, and as above stated (p. cx), where the minerals are not

* Part I. is the part of the Finance (1909-10) Act, 1910, comprising the land clauses.

comprised in a mining lease or being worked, they are to be treated as having no value as minerals, unless the owner of the land in which they are comprised, in his return to the Commissioners, specifies the nature of the minerals and his estimate of their capital value (sect. 23 (2)). Practically the effect of this section appears to be that in valuing either the total value or the site value of his *land*, for the purposes of his original return under sect. 26 (2), an owner must in all cases leave out of account the minerals. If these minerals are not comprised in a mining lease or being worked at the date of the original valuation the owner may estimate their capital value as minerals, but as a separate parcel of land. Whether this estimate is binding on the Commissioners or not does not appear clear. Nor is it distinctly stated that any estimate or sum which may be substituted therefor by the Commissioners is to be considered the original total or capital value of the minerals, though it seems that this is the case. Minerals which are comprised in a mining lease or are being worked are to be treated as a separate parcel of land not only for the purpose of valuation but also for the purpose of the assessment of duty under Part I. of the Act (sect. 23 (2)). In other words, increment value duty must be levied on sale, or on death, on minerals comprised in a mining lease, or on minerals being worked, not as being part of the land with the surface, but as a separate parcel of land altogether. This, indeed, would seem to be a necessary consequence of the fact that the duty on the land, not comprising the minerals, is payable as a lump sum, whilst the duty on the minerals is an annual payment.

When treated as of no value.

To be separately assessed.

The total value of minerals means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to

The total and capital values of minerals.*

* Sect. 25, defining or explaining the total and site values of land, does not apply to minerals (sub-sect. 5).

realise, and the capital value of minerals means the total value, after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred bonâ fide by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or where the minerals have been partly worked, such deduction as is, in the opinion of the Commissioners, proportionate to the amount of minerals which have not been worked (sect. 23 (1)). It is this capital value of minerals which, as will appear from a later paragraph, is the subject of the increment value duty payable in respect of minerals when such duty is paid as a lump sum under sect. 1. Capital value is, in short, the site value of minerals. Increment value as to minerals means increment in capital value. When increment value duty is payable as an annual sum for minerals leased or commenced to be worked after 30th April, 1909, it has been pointed out (see p. cix) that capital value is one of the factors in fixing the amount of such duty. Having regard to increment value duty the owner of minerals should aim at a high *original* capital value. It would seem, therefore, that he need not be anxious to claim for deductions on account of "works executed or expenditure incurred . . . for the purpose of bringing the minerals into working," since the lower the original capital or site value the greater the probable amount of increment value, whether the same be collected as a capital or an annual sum in the future. The claim or non-claim for deductions on the original site valuation is, however, a matter requiring most careful consideration. If a deduction could be but is not claimed on the original site valuation, it cannot be claimed on any occasion for the payment of increment value duty (sect. 12, see notes on pp. 149 to 151). If a deduction is claimed and allowed on the original valuation, it can be claimed and will doubtless

be allowed to the same extent, having regard to any change in its effectiveness, on occasions for payment of increment value duty as a capital sum. But where increment duty is paid as an annual duty, the higher the original capital value the less the annual duty. The rental value is not subject to deductions. From the estate duty point of view deductions seem immaterial. Estate duty is paid on the total or selling (principal) and not on the capital (or site) value (sect. 23 (1)).

Quite different considerations apply to the later mineral valuations on occasions for payment of increment value duty as a capital sum under sect. 1. In these cases it is the interest of the seller, or the representatives of the deceased owner, to make the deductions from the consideration money, or from the principal value under the Finance Act, 1894, as heavy as possible. The less the capital value at the date, the less the increment value.

Site value and capital value.

Except where the context otherwise requires, any reference to the site value of land is, in cases where the land consists solely of minerals, or comprises minerals, to be construed, so far as respects the minerals, as a reference to the capital value of the minerals (sect. 23 (4)).

Definitions specially relating to minerals.

The definitions in sect. 24 relating to minerals are of considerable importance and must be carefully studied in considering the working of the Act.

PRACTICAL SUGGESTIONS AS TO MINERALS.

Where minerals being worked or on lease at commencement of Act.

The case of the proprietor of minerals actually being worked by himself or let on a mining lease at the date of the commencement of the Act presents no difficulties. He must pay his mineral rights duty, and until the minerals cease to be either worked or comprised in a mineral lease he is not liable to increment value duty. When the minerals cease for a period exceeding two years to be either worked or comprised in such a lease

they must be valued in accordance with the rules laid down in the Act (sect. 22 (7)). The value so ascertained will be their original capital value. If afterwards the minerals are sold out and out and it is found that increment value exists, duty must be paid under sect. 2 (2) (a). If they are so sold together with the surface and soil, the consideration may be apportioned between the minerals and the surface and soil (sect. 32 (3)). If they are not sold, but leased or worked, then increment value duty is payable, if increment value exists, as an annual duty in manner before described (p. cix). Possibly the lease must be for over fourteen years, and in the case of working possibly an occasion must have arisen under sect. 1 to make the increment value duty payable. But these are doubtful points.

Where minerals unworked and unleased at commencement of Act.

The case of the proprietor who has minerals on his land unworked and unleased at the date of the commencement of the Act presents more difficulties. If valued at all on the original valuation, they are to be valued as a separate parcel of land (sect. 23 (2)). But they need not be valued unless the proprietor chooses to put a value on them in his return to the Commissioners on the occasion of the original valuation (*ib.*). If he puts no value on them he pays, as is thought, increment value duty on the full amount of the purchase-moneys, or rent subsequently obtained by him, as if all that purchase-money or rent were increment value. Therefore it seems that, so far at least as increment value duty is concerned, he would be wise to put the highest value upon his minerals which he honestly could put. Nevertheless he must remember that this valuation will confront his representatives on his death, when a claim for estate duty will arise. Further, the Commissioners are, it appears, not bound to accept the proprietor's valuation, but may put their own valuation on the mines.

No attempt has, from want of space, been made in this summary to define or discuss the anomalous position of the substances exempted by sect. 20 (5) from mineral rights duty, *i.e.*, common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel. Some of such substances are doubtless in some circumstances minerals. Possibly in other circumstances the same sorts of substances are not minerals. So far as space would allow, questions relating to these substances are fully discussed in the text (see especially pp. 212 to 215).

VI. VALUATION.

Immediate compulsory valuation of all land.

PERHAPS the most striking of the Land Clauses is the provision, already to some extent explained or discussed (see *ante*, p. li), for the immediate compulsory valuation of the site values as on the 30th April, 1909, of all the land in the United Kingdom (sect. 26 (1)). The total value of such land, as before explained, is also to be ascertained by the Commissioners (*ib.*), but the ascertainment of total value has long been an ordinary incident of imperial finance.* If the land is employed in agriculture, and its value for agricultural purposes differs from its site value, the agricultural value is also to be found (*ib.*). It would seem that this provision renders necessary the finding of both site and agricultural value, even in the case of land which, to use the wording of the Act, "has no higher value than its value for agricultural purposes only." Site value may be more than agricultural value, or it may be less. It is seldom that the site value is in fact exactly the same as agricultural value, though the wording of sect. 26 (1) rather indicates that this view may not be in accordance with that of the legislature. The land employed in a dairy farm near a large town may have an agricultural value of 80*l.*, and a value as a cleared site for building of 300*l.* an acre. The land used as a Kentish hop garden may have an agricultural value of 130*l.* an acre, and a site or building value of 100*l.* an acre. Site valuation involves the hypothetical removal of all things

Site value not the same as agricultural value.

* No attempt has been made in this place to explain the mysteries of the gross and full site valuations of sect. 25 (1) and (2) (both steps in the ascertainment of site value). To have made such an attempt would have been to have unduly incumbered this summary with obscure technicalities. Every effort has been made in the text (see pp. 305 to 309) to bring out the real object and meaning of the two valuations referred to.

placed or fixed on in or under the surface or growing upon the land (sect. 25 (2)). This site valuation in the case of land which to-day has no higher value than its value for agricultural purposes is necessary under the scheme of the Act, for the purpose of taxing the same land, in case, in the future, it comes to possess a higher value than its value for agricultural purposes. In the case of such land the increment value to be taxed is the increment to the original site value, although the land itself may at the date of such original valuation, *i.e.*, 30th April, 1909, have had no higher value than its value for agricultural purposes (sect. 7). The undeveloped land duty, on the other hand, is levied only on the excess of the site value of the land over its value for agricultural purposes (sect. 17 (2)).

Why all land must be taxed under the scheme of the Act.

The original site valuation is for all time to be the starting point or datum line of the increment value which is liable to duty. On that original value, undeveloped land duty will be assessed and paid until after the end of the year 1914. In that year, and in every subsequent fifth year, a valuation is to be made of undeveloped land (for explanation of undeveloped land see the section on Undeveloped Land Duty, *ante*, p. xcv), showing the site value as on the 30th April in that year (sect. 28). If site value is in practice arrived at according to the methods prescribed in sect. 25, this ascertainment of site value will also necessarily entail the quinquennial ascertainment of total value as well as gross and full site values.

The datum line of increment value.

The quinquennial valuation.

Each piece of land which is under separate occupation is to be separately assessed, and the owner may require any part of any land to be separately assessed (sect. 26 (1)), but he cannot require land in different occupations to be aggregated for the purpose of valuation, except in the case provided for by sect. 5 of the Revenue Act, 1911 (1 Geo. 5, c. 2); *i.e.*, where the pieces of land

Separate valuations.

being contiguous do not in the aggregate exceed 100 acres, and in the opinion of the Commissioners a joint valuation is in the special circumstances equitable. The request for such joint valuation must be made before the valuation of the separate pieces or before the 1st July, 1911. It is doubtful if this provision extends to any valuation other than the original valuation under sect. 26.

Information to be furnished by owners, persons, etc.

Owners and persons receiving rent must, when required by the Commissioners, and under penalty for default, furnish them with such information as is in their power and as bears on the question of the value of the land (sect. 26, sub-s. (2)) (see *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410, C. A.; W. N., p. 232, and note thereon in the Appendix, p. 510).

Persons paying rent in respect of land, and agents receiving rent, must, on request, furnish to the Commissioners the names and addresses of the persons to whom the rent is paid, or on behalf of whom it is received (sect. 31 (1)). The Commissioners are thus able to ascertain the names of the owners of the land. For a case on Form 8, issued under the powers of this section, see *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139; W. N., p. 231, a full note of which will be found on p. 347, *post*.

Commissioners may have inspection.

In order to carry out their duties as to valuation the Commissioners may give authority to any person to inspect any land and report to them the value thereof, and that person must be allowed, on production of his authority, to inspect the land in question (sect. 31 (2)).

The provisional valuation.

The Commissioners are to make a provisional valuation of the land (sect. 27 (1)). Regulations are contained in the same section for service of this valuation on the owner, and for delivery of copies on request to persons interested in the land who are not owners within the meaning of the Act. For the meaning of the words "persons interested," see

p. 326. The Commissioners allow them in practice to include mortgagees. To such persons is given the opportunity of objecting to the provisional valuation. That valuation as finally settled by the Commissioners, whether previously amended by them or not, subject to appeal, fixes the total and site values as stated therein (sect. 27).

These powers and duties of the Commissioners are, with perhaps the exception under the Revenue Act, 1911, above referred to, applicable both to the original and the subsequent quinquennial valuations (sect. 28).

It has already been pointed out (*ante*, pp. liii and liv) that the principal valuation clause, namely, sect. 25, is largely utilised under sect. 2 (2) for the purpose of ascertaining the deductions to be made from the value of the consideration and the principal value, etc., under that section on an occasion for the payment of increment value duty.

How the valuation clauses are utilised.

The valuation clauses are utilised in the Act for the purposes (1) of fixing original site value, the *terminus a quo* of increment value duty (sect. 2), and upon which undeveloped land duty is levied till the year 1915 (sect. 16 (3)); (2) of ascertaining the increment value on an occasion under sect. 1 for payment of that duty (sect. 2); (3) of fixing the quinquennial site value in the year 1914 and every subsequent fifth year upon which undeveloped land duty is paid after the year 1914 (sect. 16 (3)); (4) of apportioning original or quinquennial site value (sect. 29 (2), (3), (4)); and (5) of ascertaining the "total value" on the determination of a lease for the purpose of reversion duty (sect. 13 (2)).

Sect. 25, the clause defining and explaining total and site values, does not apply to minerals, as to which the corresponding clause is sect. 23 (1) (*ante*, pp. cxiii to cxvii).

THE REGISTER.

The new Domesday Book.

The Commissioners must keep a record of all assessments, valuations, apportionments, and reapportionments made by them, and of all duty paid, and of all deductions allowed by them in determining any value (sect. 30 (1)). This necessarily involves, if the section is put into operation in its widest sense, the establishment of a Land Registry practically comprising the whole land of the country, and containing particulars of all changes of ownership, and most if not all, permanent expenditure on the property. The magnitude of the change thus introduced has perhaps hardly yet been realised. A person interested in the land, or any one authorised by him, but apparently no one else, is entitled to a copy of the entries in such register, for which he has to pay a small fee (*ib.*, sub-s. (2)). It may often be desirable for these entries to be inspected by persons who have agreed to buy the land, and for that purpose a purchaser should require a special stipulation in his contract binding the vendor to give him the necessary written authority to inspect the register.

The present practice.

The great majority of conveyances and leases are at present stamped by Somerset House with the increment value duty stamp referred to in paragraph (*b*) of sect. 4 (3), *i.e.*, the stamp denoting that all particulars have been delivered to the Commissioners which are necessary to enable them to assess the duty (*ante*, p. lxviii). In most cases it is clear that there has been no increment value since the 29th April, 1909, and there is therefore no assessment of duty, and no allowance of deductions made by them. *Mutatis mutandis*, this remark is applicable to the passing of much property on death. It may be, though sect. 30 (1) seems not quite clear, that the Commissioners are not bound by it to record any particulars as to the transactions and

passings on death in question. They may not be bound to value in order to see that there is no increment value duty to assess. But if they so please, it seems that they *might* value for that purpose, and having valued they must record. Nor is it by any means clear that the present time of receding site values will be indefinitely prolonged. A day of improving values may arrive, and the powers of the Act may then be rigidly enforced. The result would be that a real history of urban properties would be recorded on the register.

VII. APPEALS.

An extensive right of appeal.

THE right of appealing from decisions of the Commissioners is a very wide one. An appeal to a referee, and from the referee to the Court, is given against every decision within the time and in the manner provided by rules laid down under the Act (sect. 33). The exceptions from this right are appeals—

The exceptions: (1) Certain exemptions from undeveloped land duty.

(1) As to certain matters which by sect. 17 (3), creating exemptions from undeveloped land duty, are expressed to be matters *for the opinion of the Commissioners*. These are (*a*) whether access under the circumstances to woodlands, parks, etc., is of public benefit; (*b*) whether the keeping land free from buildings in pursuance of a definite scheme is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood; and (*c*) whether it is probable that land will continue to be used for the purposes of games or recreation (see *ante*, pp. xcviii and xcix).

(2) Provisional valuation of total or site value.

(2) Against the provisional valuation of the total or site value of any land unless the appellant has given to the Commissioners, in accordance with the Act, notice of objection to the provisional valuation (sect. 33 (1) (*a*)).

(3) Original total or site value or an assessment of duty.

(3) As to the original total and site value, and the site value as ascertained under any subsequent valuation, which can be questioned only by means of an appeal against the determination by the Commissioners of

that value, and cannot be questioned on an appeal against the assessment of duty (sect. 33 (1) (*b*)).

Instances where appeal allowed.

All other decisions of the Commissioners, such as those relating to (1) the amount of any assessment of duty ; (2) the allowance, or the amount of any deduction claimed ; (3) the apportionment of the value of the land or the duty ; (4) the assessment or apportionment of the consideration on any transfer or lease ; (5) any other of the numerous matters which may arise in the working of the clauses, are subject to an appeal, grounded on either law or fact, under the Act (sect. 33 (1)).

It will be observed that the effect of the exemption numbered 3 on p. cxxiv is to emphasise the importance of a correct original site value and to a lesser extent of a correct site value on a quinquennial valuation. The original site value is the starting point of all future claims for increment value duty, and fixes the undeveloped land duty up to January, 1915. The site value fixed on a quinquennial valuation determines the latter duty for the period during which it is in force. Neither valuation can be questioned on an occasion for payment of duty. It can only be questioned by appeal from the decision of the Commissioners in the performance of their duty of making a general valuation under sect. 26 or sect. 28, as the case may be. This rule is analogous to that affecting local rates established by the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1, and is clearly a matter of administrative convenience.

Appeal in first instance to a referee.

The appeal in the first instance is to a referee (*ib.*, sub-s. (2)). A referee is one of a number of persons who have either been admitted Fellows of the Surveyors' Institution or have had experience in the valuation of land, and have been appointed for England, Scotland, and Ireland, respectively, by the Reference Committee under the Act, to

form a panel of persons to act as referees in the three countries respectively (sect. 34 (1)). The appeal to the referee is of a somewhat informal nature. He has to determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively (sect. 33 (3)). Apparently it is intended that this appeal should be rather of the nature of a round-table conference than the hearing of a dispute, but there appears to be nothing to prevent a formal hearing of the matter if a consultation is not excluded. It is not thought that the provisions of the Arbitration Act, 1888, are applicable to a reference under the Act, and it would seem that the referee has no power to administer an oath. The referee may order the expenses of either party to be paid by the other, and this order may be enforced by the High Court (*ib.*). Any person, who need not necessarily be counsel or a solicitor, may represent either the Commissioners or the appellant (*ib.*). If a point of law has been raised on the appeal, the referee may, if he pleases, state his award in the form of a special case for the opinion of the Court (rule 9A, p. 378). Referees are to be paid such fees or remuneration as the Treasury directs (sect. 34). The rules regulating appeals to a referee will be found on p. 376.

This is of an informal nature.

Appeal from referee to High Court.

From the decision of the referee there is an appeal either by the Commissioners (see Revenue Act, 1911, s. 7), or by the subject, to the High Court upon the conditions and within the times laid down by rules of that Court (sect. 33 (4)). For these rules see p. 383. An appeal by the Commissioners is not provided for in the rules, which will, however, no doubt be amended in this respect,* but in one case, *i.e.*, on the question whether a

* The rules were made before the Revenue Act, 1911, giving an appeal to the Commissioners, was passed.

restrictive covenant or agreement shall be taken into account as lessening "total value," on the ground that it was "desirable in the interests of the public, or in view of the character or surroundings of the neighbourhood," there is under sect. 25 (3) no appeal from a referee. From the High Court, by leave either of that Court or of the Court of Appeal, an appeal lies to the Court of Appeal, and from the Court of Appeal an appeal lies of right to the House of Lords. If the total or site value, as alleged by the Commissioners, of the property in respect of which a dispute has arisen does not exceed 500*l.*, the appeal may be—though it is not said that it must be—to the County Court within the jurisdiction of which either the appellant resides or the property is situated, and from the County Court either party may appeal to the Court of Appeal (*ib.*, sect. 33 (4)).

To County Court.

There are separate Reference Committees appointed for England, Scotland, and Ireland respectively; that for England consisting of the Lord Chief Justice, the Master of the Rolls, and the President of the Surveyors' Institution. The duties of these committees are to establish a panel of referees and to make rules, subject to the approval of the Treasury, regulating appeals from the Commissioners to the referees (sect. 33 (2) and (5)).

The Reference Committee.

VIII. MISCELLANEOUS PROVISIONS OF LAND CLAUSES.

Apportionments.

IT is evident that when pieces of land originally valued as a whole are divided on the occasion of sales, leases, or devises by the owners, it is necessary, for the purpose of estimating the amount of increment value and undeveloped land duties, that the original site value of the whole piece should be apportioned amongst its divided parts. If increment value duty has already been paid on the aggregate piece on any former occasion, it is also clearly necessary that that payment should be allocated amongst the divided pieces. When property held under two or more original site valuations is purchased for an aggregate sum, it is necessary that that sum should, for the purpose of ascertaining the duty then due in respect of each portion, be divided amongst the several portions of the property so separately valued. It is believed that sufficient powers are vested in the Commissioners under sects. 3 (1), 29, and 30, for enabling them to carry out these necessary apportionments as occasion may arise.

Overlapping duties.

It further appears to be the intention of the Act that the same piece of land, or the same interest in land, should not at one and the same time be subject to more than one of the new duties. The increment value of minerals is not to be charged with both mineral rights duty and increment value duty, which in the case of minerals in lease or being worked is a yearly duty (sect. 22 (6)). Reversion duty is not to be paid in respect of a benefit which has already paid increment value duty, and *vice versâ* (sect. 14 (4)). If increment value duty has been paid in

respect of land liable to undeveloped land duty, the latter duty is proportionably reduced (sect. 16 (3)). A succession of payments of increment value duty may have the effect of considerably reducing the site value upon which undeveloped land duty is charged. Payments on account of undeveloped land duty, which is an annual charge, are not, however, allowed in reduction of the increment value of the land.

Capital betterment charges.

Capital sums paid to local or rating authorities in respect of increased value of land due to any improvements made or other action taken by the authority may be deducted (*a*) from the increment value of the land for the purposes of the calculation of increment value duty, (*b*) from the site value of the land for the purposes of the calculation of undeveloped land duty, and (*c*) from the value of the benefit accruing to the lessor for the purposes of reversion duty. Under this provision capital sums paid in respect of betterment charges, and also possibly sums paid to a local authority under sect. 257 of the Public Health Act, 1875 (" Recovery of expenses by local authorities from owners "), may be deducted from the respective values mentioned. The sums so paid are analogous to the ordinary expenditure in the improvement of a site for which deductions may be made in arriving at site value under sect. 25 (4) (sect. 36).

Payments of increment value duty and reversion duty by trustees, etc.

Provision is made in the Act by which trustees or tenants for life who have paid increment value duty or reversion duty are enabled to charge their payments upon the land or interest in land in respect of which they were made. A mortgagee is also entitled to add to his security any sum which he may himself be liable to pay as increment value duty or reversion duty in respect of the mortgaged property (sect. 39 (1) and (4)).

Copyholds analogous to freeholds.

In the application of the Land Clauses to the class of copyholds in which the tenant has an interest analogous to the ownership of freehold land—that is in the case of

copyholds of inheritance and those held for a life or lives or for years where the tenant has a right of renewal, and in the case of customary freeholds—

(*a*) The total or site values of the land are to be ascertained as if that land were freehold land subject to a deduction of such an amount as it would cost to enfranchise the land.

(*b*) References to the fee simple of the land are to be treated as references to the whole copyhold or customary interest or estate.

(*c*) "The owner" is considered to be the person entitled to the rents and profits as tenant by copy of court roll or customary tenure instead of the person "entitled to the rents and profits of the land in virtue of an estate of freehold," as is the case with regard to freeholds.

Copyholds without right of renewal.

In the case of copyholds held for a life or lives or for years where the tenant has not a right of renewal the Land Clauses of the Finance Act, 1910, are to apply as if the land itself were freehold land of which the lord was the owner and the copyhold were a leasehold interest (sect. 40).

Differences of treatment.

As to the former class of copyholds it is clear that the copyholder in fee or with a perpetual right of renewal who can compel enfranchisement are really the owners of the property, subject to the rights of the lord to be paid the proper sums for enfranchisement under the Act. The copyholder is accordingly so treated under the Act, the value of the lord's interest being deducted as if it were in fact a fixed charge.

In the latter class of copyholds, few examples of which probably now remain, the position of the copyholder is clearly analogous to that of an ordinary lessee, and he is so treated by the Act.

IX. THE CONSTRUCTION AND EVASION OF STATUTES IMPOSING TAXATION.

Alleged special canons of construction.

It is thought that a short section dealing with the two important matters of the construction and the evasion of statutes imposing taxation may be useful. It is, of course, clear that most of the accepted rules of interpretation are applicable to Revenue as to other statutes ; and for these the well-known authorities, such as Craies' Statute Law and Maxwell on the Interpretation of Statutes, may be consulted.

But it is sometimes said, and often implied, that there are special rules for the interpretation of Revenue statutes more favourable to the subject than the rules for the interpretation of ordinary Acts. These special rules are said to be, in effect, (1) that Revenue statutes are construed strictly against the Crown and in favour of the subject ; and (2) that revenue statutes may legally be the subject of successful evasion more readily than other statutes. It is hardly possible to test these propositions by decided cases, since the *ratio decidendi* of any given case can rarely be exclusively attributed to the direct application of, or the refusal to apply, either of these so-called rules or principles of interpretation. The following dicta may, however, be useful to the subject seeking to avoid some of the inconveniences of the Land Clauses, and will also draw attention to the principal cases in which the questions have been discussed.

I. CONSTRUCTION.

The weight of authority is in favour of the view that statutes imposing taxation or taking away rights are construed more strictly than most other legislation. There is

perhaps no direct statement that this is the case, but it seems to be a legitimate implication from some of the dicta given below.

> "The party who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it. He must so to speak hit the bird in the very eye. We can make no intendments in favour of the liability."

Phillips v. *Morrison*, 13 L. J. Ex. 212.

> "It is a well-established rule that the subject is not to be taxed without clear words for that purpose."

In re Micklethwaite (1855), 11 Ex. 452, per Lord Wensleydale, at p. 456.

> "The intention to impose a charge on the subject must be shown by clear and unambiguous language."

Spoken of as a rule in the judgment of the Privy Council in *Oriental Bank Corporation* v. *Wright*, 5 App. Cas. 482. See also to the same effect *Coltness Iron Co.* v. *Black* (1881), 6 A. C., p. 315, per Lord Blackburn, at p. 330. Approved by Lord Herschell in *Colquhoun* v. *Brooks*, [1889] 14 A. C. 493, at p. 505.

Tennant v. *Smith*, [1892] A. C. 150.

> "This is an Income Tax Act, and what is intended to be taxed is income. And when I say 'what is intended to be taxed,' I mean what is the intention of the Act as expressed in its provisions, because in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed.
>
> "Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation."

Tennant v. *Smith*, [1892] A. C. 150, per Halsbury, L.C., at p. 154.

In *Attorney-General* v. *Beech*, [1898], 2 K. B. 147, the dictum of Lord Halsbury in the last-mentioned case formed the basis of the judgment of the Court of Appeal (see pp. 150—155). Lord Justice Chitty says at p. 155 :— *Attorney-General* v. *Beech*, [1898] 2 Q. B. 147.

> "It is incumbent on the Crown when claiming the tax to make out affirmatively that the case falls within the statute. The principles applicable to the interpretation of a taxing Act are laid down by the Lord Chancellor in the passage already cited. You must see that the tax is expressly imposed ; the subject is not to be taxed without clear words, and the Act, like every other Act, must be read according to the natural construction of the words."

At p. 157 the same learned judge, after giving examples of cases which would not fall within the taxing section (sect. 2 (1)) of the Finance Act, 1894, adds :—

> "Much was said upon opening the door to evasion. Would these be cases of evasion ? Certainly not. Indeed the whole argument on evasion of the Act is fallacious. The case either falls within the Act or it does not. If it does not, there is no such thing as an evasion. If a tax is imposed on using a crest or coat of arms and a man who has previously used them ceases to use them in order to be free from the tax, there is no evasion of the Act in any sense of the term legitimately used."

See *post*, p. cxxxiv, as to "evasion."

> "As I understand the principle of all fiscal legislation it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

Partington v. *Attorney-General* (1869), 4 H. L. 100.

See also to the same effect, Lord Cairns in *Partington* v. *Attorney-General* (1869), 4 H. L. 100, at p. 122 ; and Farwell, L.J., in *Dyson* v. *Attorney-General*, [1912] 1 K. B. D.*

The judicial dicta are not, however, all in the same direction. Inconsistent dicta.

* Volume not issued at date of going to press.

In an income tax case (*Clerical, Medical and General Life Assurance Society* v. *Carter* (1889), L. R. 22 Q. B. D. 444, Lord Esher, M.R., said at p. 448 :—

> "After all we must construe the words of Schedule D according to the ordinary canon of construction, that is to say, by giving them their ordinary meaning in the English language as applied to such a subject-matter, unless some gross and manifest absurdity would be thereby produced."

Attorney-General v. *Carlton Bank*, [1899] 2 Q. B. 158.

See also per Lord Russell of Killowen, C.J., in *Attorney-General* v. *Carlton Bank*, [1899] 2 Q. B. 158, at p. 164, as follows :—

> "In the course of argument reference was made on both sides to supposed special canons of construction applicable to Revenue Acts. For my part I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely, to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to what the Legislature has said."

If the subject is claiming special exemption from a general rule or liability, it is for him to establish the exemption (*Rex* v. *Skeffington*, 3 B. & A. 382 ; *Chanter* v. *Dickenson*, 12 L. J. C. P. 147).

II. EVASION.

Akin to the question of the construction of a Revenue statute is that of its "evasion." The expression "evasion" is obviously an ambiguous expression. In a case turning on the meaning of the word "evade" in a Revenue statute of Victoria, which made conveyances "with intent to

evade the payment" of certain death duties ineffectual to do so, Lord Lindley said:—

"The discussion and the decision which took place in the Privy Council in the case of *Simms* v. *Registrar of Probate*, L. R., [1900] A. C. 323, show the ambiguity of the expression. . . . As I have said, there are two ways of construing the word 'evade': one is that a person may go to a solicitor and ask him how to keep out of an Act of Parliament—how to do something which does not bring him within the scope of it. That is evading in one sense, but there is nothing illegal in it. The other is when he goes to his solicitor and says, 'Tell me how to escape from the consequences of the Act of Parliament although I am brought within it.' That is an act of quite a different character." *Bullivant* v. *Attorney-General*, [1901] A. C. 196.

Bullivant v. *Attorney-General*, [1901] A. C. 196, at p. 207.

It is evasion in the first of the two senses referred to in the speech of Lord Lindley, which is relevant to the subject-matter of this work. This is quite permissible. *Smale* v. *Burr* (L. R. 8 C. P. 64), and *Ramsden* v. *Lupton* (L. R. 9 Q. B. 17), were cases in which the statutory requirement of registration within twenty-one days of a bill of sale (required by the 17 & 18 Vict. c. 36) was successfully evaded by the substitution of second and further bills, each executed in substitution for the immediately preceding bill and within the period of twenty-one days of the execution of that bill. In the Exchequer Chamber, 9 Q. B. at p. 28, Bramwell, B., is reported as saying:—

Evasion in bills of sale cases.

"It is manifest that there was nothing illegal in the agreement made between the plaintiff, on behalf of Mr. Englebach, and Whyte, the borrower of the money. There is nothing in the Bills of Sale Act which prohibits what was done and agreed between these parties. There is nothing in the statute that prohibits or enjoins anything. It only says unless certain things happen certain consequences shall follow. That being the case, it is impossible to make out this transaction to be illegal. Then the suggestion is, 'Well, but it is contrary to the policy and spirit of the Act.' But if there are no enjoining or prohibitory clauses in the Act, I do not see how it can be said that one must examine whether it is contrary to the policy and spirit of the Act. No doubt, to a certain extent, the Act may be evaded; but, as it has been observed, an Act evaded is an Act not *Ramsden* v. *Lupton*, L. R. 9 Q. B. 17.

broken. I am clearly of opinion that there is nothing in any sense illegal in this transaction, and that it was not within the Act of Parliament in such sense that the non-registration of the first bill of sale and the agreement, taken altogether, rendered the parties to it subject to the consequences which, as pointed out in the Act of Parliament, are to take place where a bill of sale is not registered when it ought to be registered."

Keating, J., said at p. 30 :—

"That being so, I am at a loss to discover how in this case it is at all an illegal agreement. I can perceive that it is undoubtedly a mode of escaping from revenue burdens. As such it is not at all to be commended; and, as my brother Bramwell has pointed out, the parties who do enter upon such arrangements must look out for difficulties which may arise."

Grove, J., said at p. 33 :—

"As I thought in the case of *Smale* v. *Burr*, L. R. 8 C. P. 64, I cannot help thinking that in that sense the statute has been evaded; the mischief the statute intended to remedy has been produced, or was capable of being produced, while the words of the statute are complied with, and there is no actual disobedience to it. That is saying in effect, that the statute has not provided a full and adequate remedy for the mischief it intended to remedy. That, of course, is a matter for the Legislature, not for us; and therefore I am confirmed in the opinion which I was reluctant in coming to, that the judgment we were giving in *Smale* v. *Burr* was right."

Hiring agreement and bill of sale.

In *Yorkshire Railway Company* v. *Maclure*, 21 Ch. D. 309, speaking of a hiring agreement which was held not void as a bill of sale, Lindley, L.J., at p. 318 said :—

"It is said to be an evasion of the Act of Parliament really to borrow the money. There is always an ambiguity about the expression 'evading an Act of Parliament.' In one sense you cannot evade an Act of Parliament; that is to say, the Court is bound so to construe every Act of Parliament as to take care that that which is really prohibited may be held void. On the other hand, you may avoid doing that which is prohibited by the Act of Parliament, and you may do something else equally advantageous to you which is not prohibited by the Act of Parliament. It appears to me that the transaction falls under the last of these two classes, it is a transaction as useful for the railway company as the other, but it is a real transaction, and is not struck at by the Act of Parliament at all.

"I never understand what is meant by an evasion of an Act of Parliament; either you are within the Act, or you are not within it;

if you are not within it you have a right to avoid it, to keep out of the prohibition."

See *Edwardes* v. *Hall,* 25 L. J. Ch. 84, per Lord Hatherley, also at p. 84. The case was on the Mortmain Act. For a case of successful evasion of sect. 1 of the Finance Act, 1894, see *Attorney-General* v. *Richmond* ([1909] A. C. 466). The gap in the Act was at once stopped by the Finance (1909—10) Act, 1910, s. 57.

For cases with a contrary tendency, see *Fox* v. *Bishop of Chester,* 2 B. & C. 635 ; *Wright* v. *Davies,* 1 C. P. D. 638.

Problems which may arise on the construction of the Finance Act, 1910, to which the above dicta may be applicable, might be as follows :—

(1) Would a series of separate leases, the one in possession, and the others in reversion, executed contemporaneously, each for not more than fourteen years together, constitute a lease for a term exceeding fourteen years, so as to cause increment value duty to become payable under sect. 1 ?

(2) Would the surrender of a lease to a trustee for the lessor or to the lessor himself with a declaration against merger bring about a determination of the lease so as to cause reversion duty to become payable ?

(3) Would the employment in his business of an unnecessary amount of land, although the same was actually employed in the business, exempt the owner from undeveloped land duty, that being the real object of the employment ?

Illustrations might be multiplied, and doubtless much ingenuity will be legitimately expended in trying to evade in the commendable sense of that word the taxing provisions of the Act.

X. PROCEDURE IN RELATION TO DUTIES AND PENALTIES.

The first step.

IN all cases the Commissioners in the first instance determine (1) the liability to duty, and (2) the amount of the duty. If the taxpayer disputes that determination on either of these points he may, subject to the exceptions contained in the last paragraph of sect. 17 (3), and paragraph (*b*) of the proviso in sect. 33 (1), appeal to a referee within the time laid down by the rules regulating such appeals (see p. 376). The appeal may be either based on law or as to the facts. If it is based on law the referee may either decide it himself, or state his award in the form of a special case for the opinion of the Court (see rule 9A, p. 378). It appears that the decision of the Court on the case would then be treated as that of the referee: and rule 12 (see p. 379) would come into operation. But *quære* as to who should give notice to the Commissioners of the decision of the Court (see rule 9, p. 378). From the decision of the referee there is an appeal either by subject or Commissioners to the High Court, that is to a single Judge of the King's Bench Division, though by special order the petition of appeal may be heard by a Judge of the Chancery Division or at Assizes (rule 6, p. 384). By leave of the High Court or the Court of Appeal there is a further appeal by either Crown or taxpayer to the Court of Appeal (see p. 368); and yet a further appeal, as of right, by either to the House of Lords.

Appeal to referee.

From referee to Court.

Court of Appeal and House of Lords.

How the subject's liability is enforced.

But the result of these proceedings is not, it seems, an operative judgment or order for payment of duty. It is simply a determination of the liability of the subject either by the Commissioners or one of the four Appeal Courts. It establishes or creates a debt due to the Crown. To get their money, unless voluntarily paid, the Commissioners must

either have got the duty paid or secured under rule 14 of the rules regulating appeals to the High Court (see p. 383), or they must sue by information filed by the Attorney-General for the amount determined to be due to them on the appeal. Informations are either at law, that is, are "Latin informations," or in equity, that is, are "English informations." Both were formerly brought on the Revenue side of the old Court of Exchequer, and are now brought on the Revenue side of the King's Bench Division. There is a special and different procedure for each. The English or equitable information is perhaps most used by the Crown in claims for duties where accounts have to be taken (see *Attorney-General* v. *Duke of Richmond* (*No.* 2), [1907] 2 K. B. 940). Where a sum of duty not involving accounts, or a penalty is sued for the Latin information as the simplest appears to be used by the Crown. (For a full account of the procedure in respect to informations consult Robertson's "Civil Proceedings by and against the Crown," 1908, a most useful and luminous treatise.) The precise effect on the information proceedings of the previous determination of the Commissioners or the referee under the Act of 1910 that duty was due or that a particular sum was due seems not to be quite clear. Would that determination on some point of law, as, for example, that a lease exceeded twenty-one years, which was not appealed against and which was clearly wrong, be binding on the taxpayer in an information of debt for payment of reversion duty? It is thought not, and that it is open to the subject on such an information to raise all the points not actually adjudicated upon by the Court in the proceedings under the 1910 Act. So far as any decision on law had been given by a Court (not including the referee) under the Act, it would of course be binding on the Court hearing the information, and it may be that the subject is actually estopped by the former

The two kinds of information.

Information following assessment.

Quære as to decisions in former proceedings.

decision, though it is thought he would not be estopped by the decision of the Commissioners (or ? of the referee). If there had been an appeal under the Act of 1910 on matters of fact from the Commissioners, it may be that the appellant is estopped in any proceedings by information to enforce payment of duty from denying the facts so found by the Court (*quære* as to the referee), but not it is thought by the Commissioners. The question is, however, of some difficulty, but, having regard to rule 14 (1) (p. 385), perhaps not of great importance. It is referred to here, since its consideration may be important in determining what course should be taken by the subject on assessments which are objected to. It may well be that the subject may prefer not to utilise the appeals from the Commissioners or the referee provided by the Act of 1910, but to await a claim for duty brought by information in the usual way.

If the Crown sues by equitable or English information for any duty, it must waive the right to sue for penalties (see Robertson, p. 145).

Recovery of increment value duty payable on death.

Increment value duty arising on the occasion of a death may, it is thought, by reason of sect. 5 of the Act of 1910 incorporating sect. 8 (1) of the Finance Act, 1894, be recovered by the Commissioners, suing in their own names, by writ of summons issued out of the King's Bench Division under either section, sect. 55 or sect. 56, of The Crown Suits Act, 1865 (28 & 29 Vict. c. 104) (see p. 99).

The Crown and costs.

The rule or practice that the Crown does not usually either receive or pay costs does not now apply to Revenue or Stamp Cases (22 & 23 Vict. c. 21, s. 21 ; 16 & 17 Vict. c. 51, s. 50 ; 54 & 55 Vict. c. 39, s. 13), and costs are given to and against the Crown as in ordinary actions between subjects.

Writ of immediate extent.

In addition to the remedy by information the Crown has another remedy, not often used in modern times, for the

recovery of its debts, namely, that known as "a writ of immediate extent." An ordinary writ of extent is simply the Crown's method of levying execution on a judgment or record against the body, and all the property, lands, goods, and choses in action of the debtor. A "writ of immediate extent" is exactly the same thing except that the writ may be issued before any judgment is obtained, or even an action commenced; but it can only be issued under the fiat of a judge, obtained on an affidavit that the Crown's debt is in danger of being lost, unless some more speedy course than the ordinary method of procedure be taken to recover it. It is the practice that the application for the writ should be authorised by the Attorney-General. Under the writ the sheriff may take the alleged debtor into custody, but in modern times this is usually not required by the Crown. The sheriff summons a jury, who inquire and find what property the debtor possesses, and this finding is it seems equivalent to a delivery in execution. The alleged debtor may of course dispute the debt, and in that case must enter an appearance and if required by the Crown must deliver a pleading (see rule 49 of the Exchequer Rules, Revenue Side, 1860). The procedure might doubtless be applied to the duties established by the Act of 1910.

Writ of *diem clausit extremum.*

The writ of *diem clausit extremum* is shortly described as a writ of immediate extent, so far as regards lands, chattels, and choses in action issued after the death of the alleged debtor. The practice in relation to it is similar to that in relation to the immediate extent. It is thought to be seldom employed in modern times.

Scire facias

The writ of *scire facias* is a summary process by which the Crown is enabled to recover by execution its debts of record. As the duties arising under the Finance (1909—10) Act, 1910, are not such debts, it is not necessary to discuss this writ.

The foregoing processes have been briefly referred to in order that the position of the subject may be fully realised. For detailed information as to the practice, consult Robertson's Civil Proceedings, and The Annual Practice, 1912, Vol. II., pp. 1097 to 1264.

Subject may sometimes attack Commissioners.

It is clear that in some cases the subject need not wait for the attack of the Commissioners, but may himself take the offensive, and by proceedings in the High Court ask for a declaration that the Commissioners are exceeding their powers. (See the cases of *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410; W. N. 232, and note thereon on p. 510, *post;* and *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139; W. N. 231, and note on p. 347, *post.* Such a declaration is not, however, made as a matter of course. It is "discretionary, and the jurisdiction should be exercised with great care and after due regard to all the circumstances of the case" (*per* Warrington, J., at p. 156 of the decision last cited). Both in *Dyson* v. *Attorney-General* and in *Burghes* v. *Attorney-General* the point at issue was one which affected not only the individual plaintiff, but numbers of other people. In each case there was a question whether the requirement of certain information in a return to be made to the Commissioners under a penalty in default was authorised by the statute. It does not follow, therefore, that because the two actions in question were entertained, the Courts will entertain other claims galore, as, for example, a claim that a series of leases for fourteen years, one in possession and the others in reversion immediately expectant upon one another do not together constitute an occasion under sect. 1 (*a*) for payment of increment value duty (see p. 13); or that the working of his minerals by a proprietor, apart from any other act or event, does not give rise to an occasion for payment of annual increment value duty under sect. 22 (3) (see p. 235); or that a purchaser is not liable for the undeveloped land

But only in special cases

duty under sect. 19 for the two previous years left unpaid by his vendor (see p. 204), notwithstanding that demands or threats for payment or penalties have been made by the Commissioners. The Courts may well say, "After all the Act has provided a special tribunal for the settlement of these matters, and unless you show the Court that the matter necessarily affects in a material manner a large number of people, or that your rights will be prejudiced before you can get a decision under the procedure established by the Act we shall not exercise our discretion in your favour." This reasoning, it is however thought, would not apply to cases where the Commissioners were attempting to do something not authorised by the Act, as, for example, to utilise their powers of inspection under sect. 31 (2) for purposes "other than the exercise of their powers in the performance of their duties under" the land clauses.

Costs in such cases.

It is to be noted that there seems to be no power in such an action to give costs against the Attorney-General to the Crown (see *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139, at p. 157), so that it may be treated as a litigant's luxury.

The diverse penalty clauses.

Under various sections of the land clauses penalties are enacted for various defaults by owners and others: sect. 4 (2), sect. 8 (6) and (14) of the Finance Act, 1894 (probably incorporated by sect. 5) (see pp. 101, 102), sect. 18 (1) and (2) of the Customs and Inland Revenue Act, 1885 (incorporated by sect. 6) (see p. 127), sect. 15 (3), sect. 20 (3), sect. 21 (3), sect. 26 (2), sect. 31 (3), and sect. 94. As to all these penalties, proceedings for the recovery thereof must be commenced in the High Court unless the section imposing the penalty allows it also to be proceeded for summarily (Inland Revenue Regulation Act (53 & 54 Vict. c. 21), s. 22). Such proceedings cannot be commenced unless ordered by the Commissioners, and must be in the name of an officer, or in England and Ireland of the

Attorney-General of the country in question, and in Scotland in the name of the Lord Advocate (*ibid.*, sect. 21 (1)). Proceedings for the recovery of any fines relating to Inland Revenue must be commenced within two years after the fine is incurred (*ibid.*, sect. 22 (2)). Such proceedings if not summary will usually be by information in the name of the Attorney-General. The only case in which summary proceedings may be taken under the land clauses is for the penalty enacted by sect. 4 (2).

Their diverse operative words.

The penalty clauses above referred to widely differ from each other in the words which impose the liability, and will of course be carefully examined by the subject. In sect. 4 (2) the operative words are, "fails to comply." In sect. 8 (6) and (14) of the Finance Act, 1894 (incorporated by sect. 5), the operative words are in each sub-section, "wilfully fails to comply." In sect. 18 (1) and (2) of the Customs, etc., Act, 1885, the operative words are, "wilfully neglecting." In sect. 15 (3) of the Act of 1910 the words are, "knowingly fails"; in sect. 20 the words are, "and in default" of making the required return, etc. Sect. 21 (3) runs, "if any person refuses to allow" a certain deduction of duty. In sect. 26 (2) the operative words are, "fails to make such a return," etc. In sect. 31 (3) the words are, "wilfully fails to comply." In sect. 94 they are, "knowingly makes any false statement," etc. Of course in every case the nature of the act or omission upon which the penalty is imposed must be considered. There is, it is hardly necessary to add, a substantial amount of case law on penalty clauses, which, if necessary, must be consulted.

Limitation increment value duty.

In relation to the duties themselves as distinguished from the penalties it will be noted that the Crown is not bound by any Statutes of Limitations which do not clearly and expressly include it (*R.* v. *Bayly* (1841), 1 Dr. & War. 213). Turning to the land duties imposed by the Finance

(1909—10) Act, 1910, it appears that there is as a rule no limit of time placed on the Crown's claim to increment value duty. But sect. 5 probably imports sect. 8 (2) of the Finance Act, 1894, into the Act of 1910 so far as regards increment value duty payable on death, and sect. 8 (2) carries with it sects. 13 and 14 of the Customs and Inland Revenue Act, 1889 (see p. 615), under which claims for death duties are in certain cases barred after six years from the date of notice to the Commissioners of the fact, which gives rise to an immediate claim to such duty. Sect. 12 (1) of the same Act of 1889 relates only to the exemption by lapse of time from duty of purchasers and mortgagees ; but it is thought that increment value duty is not in any case a charge on the lands in the hands of a purchaser or mortgagee.

Reversion duty.

So it seems that the reversion duty could be recovered from the person originally liable to pay the same at any length of time. It is not charged on the land, and the liability to pay does not run with the land after the lease has determined.

Undeveloped land duty.

It is thought that undeveloped land duty can be recovered at any length of time from the person liable, provided that it has been assessed, but it can only be assessed within three years after the expiration of the year for which it is charged (sect. 19).

It is thought that arrears of mineral rights duty can be recovered by the Crown at any length of time.

Repayment.

Repayment of over-paid duty must in general be sought by petition of right (*Re Nathan* (1884), 12 Q. B. D. 461; *Winans* v. *R.* (1907), 23 T. L. R. 705).

Under the joint effect of sect. 33 (4) of the Act of 1910, sect. 10 (4) of the Finance Act, 1904, and rule 14 of the rules regulating appeals to the High Court under the former Act (see p. 383), the amount of the duty claimed by

the Commissioners may have been paid into Court, or security may have been given for its payment in case the appellant fails. It is presumed that the order for payment or for security (see rule 14 (3)) will make provision for repayment or vacation of the security as the case may be. No doubt the Commissioners will give a proper undertaking. The object of this provision is to obviate a decision in favour of the Crown which still left it to recover the duty by information or action. There is no power under the Finance (1909—10) Act, 1910, to order payment of the duty.

Mandamus

Where there is a duty to the public, or a member of the public, cast on public officials, and there is no other adequate remedy for the breach of that duty, the high prerogative writ of *mandamus* will be issued by the King's Bench Division commanding the performance of the duty. It has often been issued against Departments of Government, as the Local Government Board (*R.* v. *Local Government Board*, L. R. 9 Q. B. 148), the Woods and Forests (*R.* v. *Commissioners of Woods and Forests*, 17 L. J. Q. B. 341). There seems to be no doubt that in a proper case the writ would be issued against the Commissioners of Inland Revenue (see the cases collected at p. 117, Robertson's Civil Proceedings by and against the Crown). Usually formal objection has been taken by counsel for the Crown that a *mandamus* will not lie against the Commissioners, and is then waived. It is of course clear that a *mandamus* will not lie against the Commissioners if the subject has any other sufficient remedy. Thus the return of overpaid probate duty must not be sought by application for a *mandamus* but by petition of right (*Re Nathan* (1884), 12 Q. B. D. 461).

Would lie against Commissioners.

But not if other adequate remedy.

Unlikely to be applied to Land Clauses.

It is a little difficult to see how the subject's remedy by *mandamus* could practically be required under the Act of 1910. If the Commissioners were, for example, to refuse to make a separate valuation of a portion of land required by

the owner under sect. 26 (1), or to make any apportionment required by him under sect. 29 (2), or to record or furnish copies of particulars of any deductions allowed by them under sect. 30 (1), they will so refuse on the ground that on the interpretation of the statute they were not obliged to do the specific act required, and they would express their willingness, which probably would be assumed by the Court, to do the act if their view of the statute was mistaken. In these circumstances it might well appear to the Court that the procedure on appeals contained in sect. 33 was an adequate remedy, and that there was no need for *mandamus*. There is, however, no provision in the Act of 1910 for compelling the Commissioners to fulfil their duties, and if, after a declaration on appeal as to the law, the Commissioners were not to act in accordance with that decision, a wholly inconceivable supposition, a *mandamus* would probably then be issued.

Two cases on the subject of *mandamus*.

Two recent cases may be briefly referred to, showing views as to granting a *mandamus* taken by the Court in respect to statutes, in which, as under the Finance Act, 1910, a special method of appeal is conferred against the authority sought to be *mandamussed*.

In *R.* v. *Assessment Committee of the City of London Union*, [1907] 2 K. B, 764, C. A., a *mandamus* directed to the defendants to compel them to insert in the quinquennial valuation list the rateable values of certain properties was refused by the Court of Appeal (reversing the Divisional Court) on the double ground, (1) that the Corporation of the City of London (who were the applicants), as a rating authority, might have appealed to quarter sessions under sect. 32 of the Valuation (Metropolis) Act, 1869, against the omission, which remedy would have been an effective one, and (2) that even if that view were mistaken and the Corporation had no right of appeal, the safeguards provided

by that Act as a whole were amply sufficient to protect the interests of all parties interested, and the Court ought not by granting a *mandamus* to insert further safeguards in the Act. The latter ground practically assumed that the interests collectively represented by the City Corporation could have appealed in their own right separately. *R.* v. *Stepney Corporation*, [1902] 1 K. B. 317, before Alverstone, C.J., and Darling and Channell, JJ., was a case in which a *mandamus* was granted ordering the defendants to take into consideration and apply their discretion to the facts of the case, which they had not done, or at least done properly, notwithstanding that there was an appeal from the defendants to the Treasury. The real ground of the decision appears to have been (see the C. J., pp. 322, 323, Channell, J., p. 325), that the defendants, the local tribunal, were the best fitted to investigate the case. The appeal to the Treasury was a remedy but not a remedy "equally convenient and adequate," see p. 324, per Channell J. (see also *Pasmore* v. *Oswaldtwistle Urban Council*, [1898] A. C. 387 ; and consult cases cited in Robertson's Civil Proceedings by and against the Crown, pp. 109—122). Whether any special case arising under the Act of 1910 will afford ground for an application for a *mandamus* against the Commissioners can only be decided after its most careful consideration. The presumption will doubtless be that the appeal clauses will afford an adequate and equally convenient remedy. But consider the cases of *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410 ; W. N. 232 ; and *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139 ; W. N. 231, *ante*, p. cxlii, which, however, only indirectly affect the question discussed. It must further be noted that the issue of the writ is discretionary and will not be granted to persons who do not apply *bonâ fide*, or are themselves in fault (*R.* v. *Wilts and Berks Canal Navigation*, 3 Ad. & E.

477; *R.* v. *Great Western Railway Co.*, 62 L. J. Q. B. 572; *R.* v. *Wimbledon Urban Council, Hatton, Ex parte*, 77 L. T. 599; 62 J. P. 84).

Cost of *mandamus*.

When the Crown appears to oppose an application for the prerogative writ of *mandamus*, it neither pays nor receives costs (*R.* v. *Archbishop of Canterbury*, [1902] 2 K. B. 503). But in the case cited the Divisional Court distinctly stated that they expressed no opinion as to the cases in which the writ was "applied for by or against the officers of executive departments of the public service in relation to their statutory or other duties."

Prohibition.

If the Commissioners in purporting to act under judicial or quasi-judicial powers exceed their statutory jurisdiction, a writ of Prohibition will be issued againt them. But it is otten difficult to distinguish between an excess of jurisdiction and a mistaken exercise of admitted jurisdiction (*R.* v. *Commissioners of Taxes for Clerkenwell*, [1901] 2 K. B. 879).

LAND VALUATION.*

See footnotes on pp. 36, 272, 306, and 308.

COPY OF INSTRUCTIONS ISSUED BY THE INLAND REVENUE DEPARTMENT TO VALUERS, DATED THE 21ST DAY OF JANUARY, 1911.

FINANCE (1909–10) ACT, 1910.

ASCERTAINMENT OF SITE VALUE ON "OCCASIONS."

Firstly—Ascertain the value of the fee simple on the basis of the value of the consideration in accordance with section 2 of the Act.

Secondly—By an independent calculation and without *necessarily* being bound by the actual consideration paid, ascertain the gross value *at the time, i.e.*, on the occasion, in accordance with the definition contained in sub-section (1) section 25.

Thirdly—As an independent calculation and without *necessarily* being bound by the actual consideration ascertain the full site value *at the time* as defined in sub-section (2) section 25.

The difference between these two figures ascertained under sub-sections (1) and (2) of section 25 respectively will then give the amount of the first deduction to be made in accordance with the provisions of sub-section (4) of section 25.

Any other site value deductions must of course also be made.

* These Instructions were only made public after this work was partly through the press. They are referred to on the pages mentioned in the margin.

By this method the following results should be achieved :—

(1) The transferor will not be called upon to pay increment value duty in respect of any recovery in the value of buildings.

(2) Increment value duty would be collectible in all cases where there has been either—

(*a*) an increase in the value of the site as compared with the original site value ; or

(*b*) the unit of valuation (or an interest therein) has actually been sold for more than it is worth at the time.

21st January, 1911.

Note on Above.

The first instruction is obvious and requires no comment, though no doubt it will sometimes be difficult to apply in practice (see pp. 31 to 34)

The second and third instructions are intended to elicit the non-site element of the property (sect. 25 (4) (a)), which has to be deducted from the value of the fee simple as ascertained under instruction 1. The sum then remaining is not necessarily the site value on the occasion, but represents or occupies the place of full site value on a valuation wholly under sect. 25, such as the original or the quinquennial site valuation. From this sum must be deducted any further deductions falling under sect. 25 (4) (b) (c) (d) or (e) which are appropriate to the site in question. The result is the site value on the occasion.

The second and third instructions recognise the fact that the consideration for the sale is an element which the valuer will naturally take into account in arriving at gross value (see notes on pp. 305 to 309). In doing so it is, of course, understood that where the property is subject to any of the various elements mentioned in sect. 25 (3), *i.e.*, fixed charges, easements, profits, etc., which depress the value and are taken account of in the total value, and no doubt also were taken account of in the value of the consideration, the gross value will be increased by the sum by which those elements depress the real value of the property. But the important point is that the valuer is not to ascertain gross value by rule of thumb merely, that is, by taking the value of the fee simple as ascertained under instruction 1 and adding to it the sum by which the real value of the property is lessened owing to the existence of the depressing elements referred to. He may use that method of valuing as one of the tests he employs to arrive at gross value, but he is to use other tests. If the property has been slackly sold, he is to put gross value at a higher figure

than that represented by the value of the consideration plus the sum representing the depressing elements. If it has been sold at more than its real value, he is to put gross value at less than the aggregate of the two sums based on consideration and the depressing elements respectively. Thus he is to find the real gross value. On the same lines he is to find real full site value. He then can arrive at the real non-site value element in the property. This is, of course, under sect. 2 (2) deducted (with any other applicable deductions) from the value of the consideration, etc., and the balance is the site value on the occasion.

The effect of this, however, as pointed out by the Instructions, is that the subject pays duty not only on realised increases in site value, but also on the difference between the real value of the total hereditament and the higher price he has obtained. The same conclusion had been reached in this work before the Instructions were published (see p. 208).

It also appears from the Instructions, as is of course evident from a careful study of sects. 2 and 25, that neither an increase nor decrease in the value added by the buildings (owing to variations in the cost of building) affects the value of the site. The bigger the gross value, the full site value remaining constant, the greater the non-site element to be deducted under sect. 25 (4) (a). So that, as has been pointed out (p. 305), it does not often really matter for purposes of ascertaining site value wholly under s. 25 whether the gross value is £1,000, £10,000, or £10,000,000.

The result No. 1 referred to in the Instructions would it seems be more accurately expressed if the words "increase or" were placed before the word "recovery." There may be an increase in the value added by the buildings without any antecedent fall in that value.

The Instructions, though not in terms so expressed, are clearly limited to cases falling within sect. 1 (a).

LAND CLAUSES OF THE FINANCE (1909-10) ACT, 1910

(10 Edw. 7, c. 8),

WITH WHICH IS INCORPORATED SECTIONS 1—7 OF

THE REVENUE ACT, 1911 (1 Geo. 5, c. 2),

AND THE RULES AND REGULATIONS ISSUED THEREUNDER.

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions. A.D. 1910.

[29 *April*, 1910.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.

Duties on Land Values.

Increment Value Duty.

SUMMARY OF CONTENTS OF SECTIONS 1—12 OF THE FINANCE ACT, 1910.

Sects. 1—12 deal entirely with Increment Value Duty.

Sect. 1 establishes the duty, fixes its rate, and declares the occasions on which it is to be paid.

§ 1

Sect. 2 defines or describes the increment value (of the site) which is the subject-matter of the tax, and explains the manner in which site value is to be ascertained for the purpose of arriving at increment value on the various occasions on which under s. 1 it is payable.

Sect. 3 contains powers and directions relating to all occasions on which duty is payable, for enabling the Commissioners to apportion the duty amongst the various interests in the land, and to make such apportionments as to duty paid on previous occasions as are necessary. It further enacts a general exemption from duty on each occasion to the extent of 10 per cent. of the last site value.

Sects. 4, 5, and 6 respectively relate to the collection of duty under the three heads of

(*a*) Transfers on sales and leases (s. 4);

(*b*) death (s. 5);

(*c*) the payment of duty on periodical occasions by bodies corporate and unincorporate (s. 6).

In each case the method of payment is pointed out directly or by reference to existing statutes.

Sects. 7 to 11 inclusive contain exemptions from the payment of duty.

Sect. 12 is an important provision as to deductions from site value vitally affecting the original site valuation.

Sects. 1 and 2 of the Revenue Act, 1911, also affect this duty.

SECTION 1.

Duty on increment value.

1. Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid on the increment value of any land a duty, called increment value duty, at the rate of one pound for every complete five pounds of that value accruing after the thirtieth day of April, nineteen hundred and nine, and—

(*a*) on the occasion of any transfer on sale of the fee simple of the land or of any interest in the land, in pursuance of any contract made after the commencement of this Act, or the grant, in pursuance of any contract made after the commencement of this Act, of any lease (not being a lease for a term of years not exceeding fourteen years) of the land; and

(*b*) on the occasion of the death of any person dying after the commencement of this Act, where the fee simple of the land or any interest in the land

§ 1.

is comprised in the property passing on the death of the deceased within the meaning of sections one and two, subsection one (1) (*a*), (*b*), and (*c*), and subsection three, of the Finance Act, 1894, as amended by any subsequent enactment; and 57 & 58 Vict. c. 30.

(*c*) where the fee simple of the land or any interest in the land is held by any body corporate or by any body unincorporate as defined by section twelve of the Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, on such periodical occasions as are provided in this Act, 48 & 49 Vict. c. 51.

the duty, or proportionate part of the duty, so far as it has not been paid on any previous occasion, shall be collected in accordance with the provisions of this Act.

Introductory note.

Increment Value Duty is a new tax, charged on the increase in site value of land, calculated according to the provisions of the Act. It is charged only on site value, and not on buildings, produce, or improvements. It is in theory a tax on the value which has been added to land not by the expenditure, the skill, or the foresight of the owner, but through the general growth and industry of the community. This added value is due not only to the progress of the community in the immediate neighbourhood of the land in question, but to progress generally throughout the country and even throughout the world. In a sense it is correct to say that an owner of land is taxed, not on his own, but on his neighbour's improvements.

Subject to the provisions of this Part of this Act, *i.e.*, ss. 1—42 inclusive—

Charged, Levied, and Paid.—"Charged" does not necessarily mean charged in the sense of being secured on or by the thing charged. Increment Value Duty is sometimes charged in the sense of secured on the land the subject of the tax, as where the occasion on which it is payable is death (s. 5); and possibly where it is payable in respect of land held by a body corporate or unincorporate (s. 6, incorporating s. 14 of the Customs and Inland Revenue Act, 1885: see the note on p. 125). But the effect of sub-s. 4 of s. 6 of the Act of 1910 as to the latter case must not be overlooked. Where Increment Value Duty is payable on the occasion of a transfer on sale or a lease it is apparently not charged in the sense of secured on the land (see note on p. 84) (s. 4); but the point might certainly have been made clearer.

§ 1. "**Levied.**"—The enforcing by the proper authority of the amount of duty to be paid in respect of any particular increment. In relation to a rate it has always been understood that to "levy" merely means to take all necessary steps to enforce payment (*R.* v. *Southampton, etc.*, 30 L. J. Q. B. 244, per Blackburn J., at p. 251).

"**Paid.**"—Increment value duty is a stamp duty collected and recovered as pointed out by the Act (s. 3 (6)), but *quære* as to the annual increment value duty in respect of minerals (s. 22 (1) (3)). Sect. 3 apparently does not apply to it. When due on the occasion of a transfer on sale or lease, the conveyance or lease or the agreement for the conveyance or lease must be stamped with a stamp denoting (1) either that the duty is paid; (2) or that all necessary particulars have been delivered to the Commissioners and security (if required) given for the duty; (3) or that no increment duty is payable (s. 4 (3)).

When the increment value duty becomes due on death, it is to be treated as if it were estate duty. By the Finance Act, 1894, s. 6 (1) and s. 8 (16), the estate duty is made a stamp duty, and may be collected by means of stamps or such other means as the Commissioners prescribe.

When the increment value duty is due on a periodical occasion in respect of the property of a body corporate or unincorporate, then the duty is a stamp duty (s. 6 (3); Customs, etc., Act, 1885, s. 13).

Hence it is probable that the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), and the Stamp Act, 1891 (54 & 55 Vict. c. 39) (see Appendix, pp. 617 to 620), apply to the duty; see also a discussion on the subject, p. 351.

"**Increment Value.**"—For definition of increment value, see s. 2 (1), p. 26. It is shortly an increase in site value between the date of the original valuation and the date on which the duty is payable.

Interpretation Act.

Any Land.—Under the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 3), and unless the contrary intention appears, "land includes messuages, tenements, and hereditaments, houses and buildings of any tenure," but does not in this Part (Part I.) of the Finance Act relating to the new taxes include "any incorporeal hereditament issuing or granted out of the land" (s. 41) (see note on p. 435). Land, therefore, *primâ facie* includes mines and minerals, but the provisions of the Act relating to them are of much complexity, and in any case where minerals are or may be an element in a valuation, careful consideration must be given to the mineral clauses, ss. 20—24 and to s. 25 (5). Especially must s. 23 (2), under which for the purposes of valuation "all minerals shall be treated as a separate parcel of land," be borne in mind. The further point must not be overlooked that though common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel are under s. 20 (5) exempted from mineral rights duty, some of these substances may in the special circumstances of the particular land be minerals. There is no definition of minerals in the Act. In *Midland Railway Co* v *Haunchwood, etc.*

Co., 20 Ch. D. 552, brick and fire clay were held by Kay J. to be minerals under the Railways Clauses Act, 1845 (8 Vict. c. 20), s. 77, and in *The Earl of Jersey* v. *Neath Union Sanitary Authority*, 22 Q. B. D. 555, brick earth and clay were held by the Court of Appeal under the reservations in a deed of all "minerals whatsoever except stone quarries," there being nothing in the context to show that the reservation should have a more limited meaning, to be minerals (see, further, notes to s. 20, pp. 210 to 217 and Tables). The point is specially mentioned in this place because it would seem that the site value of the land may sometimes be affected by the question as to whether the exempted substances are or are not "treated as a separate parcel of land." (See pp. 259 and 260.)

The unit of taxation.

The land to be taxed, under s. 1 (*a*) is the land transferred or leased, under (*b*) the land passing on death, under (*c*) all the land held by the body in question. An important point for consideration is the unit of taxation. If the unit is large there is more chance of a decrement in one part neutralising an increment in another part. Under s. 29 (1) "Any duty may be assessed on or in respect of any such pieces of land whether under separate occupation or not as the Commissioners think fit." Under s. 32 (3) the Commissioners may apportion a consideration. *Primâ facie* this would give the Commissioners power to split up land included in one transfer or lease for a single consideration, part of which has incremented, whilst the rest has decremented, and to charge full duty on the former part without any set off of decrement. This might seem to be an unfair exercise of their taxing powers. But suppose two portions of land agreed to be so sold or leased are in separate occupations? The normal unit of taxation is apparently intended to be "separate occupation" (s. 26 (1)), though this provision is not in terms extended to increment value duty payable on the occasions mentioned in s. 1. Supposing the two portions, though in the same occupation and adjoining, were acquired at different times? Supposing the two portions in the same occupation were near to each other, but not adjoining? Supposing they were two widely separated estates? Would it or would it not in each of these cases, either on a sale or death, be fair to split the land up for purposes of calculating occasion duty? These queries serve to indicate the questions which may arise as to the unit of taxation. It is impossible to discuss them here at length.

Is the unit of taxation in case (*c*), *i.e.*, that of the body corporate or unincorporate, "separate occupation"; subject of course to the power of the Commissioners under s. 29 (1) to assess the duty on such pieces of land as they think fit? It would seem so, for (*a*) "separate occupation" is a sort of natural unit of taxation, so far as English law is concerned, and (*b*) s. 26 (1) requiring, on the original site valuation, valuation of each separate occupation points to assessment of the same unit. (See, further, notes to s. 29 (1), p. 336.)

Fee simple, and interest.

The definitions or explanations of the expressions "fee simple" and

§ 1. "interest in relation to land" (see s. 41, pp. 446, 457) are relevant to the meaning of the term "land" where it occurs in the Act. "Land" used without qualification in some places clearly means the fee simple of the land, *e.g.*, s. 1 Pr., s. 2 (1), "the increment value of any land"; s. 7, "while that land has no higher value than its market value," etc.; s. 16, "the site value of undeveloped land"; s. 25 (2), "the full site value of land." On the other hand, "'interest' in relation to land" appears sometimes to include the "fee simple" of land, though usually it is used in contradistinction to that expression; s. 25 (4) (*b*) (*c*), "any person interested in the land"; s. 30 (2), the Commissioners shall furnish to any person "interested" in any land, etc; s. 41, par. "the expression fixed charge" see the words "otherwise than by a person interested in the land," etc.; but as the definition of "interest in relation to land" is not in form exclusive, there is no violence of construction in interpreting "a person interested" as including the owner of the fee simple in the conventional sense of that term created by s. 41.

These remarks are made at the outset of this commentary in order that attention may be directed in each case, where in the Act the term "land" or "interest in land" is used, to its exact meaning.

The exemptions from increment value duty.

Exceptions to "land" subject to increment value duty are (1) agricultural land, while that land has no higher value than its market value at the time for agricultural purposes only (s. 7).

(2) Small houses in owners' occupation (s. 8 (1)).

(3) Small holdings in owners' occupation (s. 8 (2)).

(4) Land held by bodies corporate or unincorporate not with a view of profit, for games, are exempt from duty under (*c*) (s. 9).

(5) State land (s. 10).

(6) Separate tenement or flats (s. 11).

(7) Land belonging to a rating authority (s. 35).

(8) Land held for charitable (including educational) purposes has a limited exemption (s. 37 (1)).

(9) Land held by a registered society or a company precluded from dividing profits amongst its members has a limited exemption. Registered societies are those registered or whose rules are certified or registered by a registrar of friendly societies in pursuance of any Act of Parliament, and which make provision by their rules for specified friendly society benefits (s. 37 (2)).

(10) Land held by statutory companies has also a limited exemption (s. 38).

Accruing after the 30th day of April, 1909.—The datum line from which increment value is to be reckoned is the day mentioned—the day after the Budget Speech of 1909, in which Mr. Lloyd George, the Chancellor of the Exchequer, announced the proposed taxation. The intention seems to be that none of the site value existing before the proposals were known should be taxed. But if that were the case April 29 should have been fixed as the datum. It is open to the Crown to

contend that the announcement of the tax on the 29th caused an immediate depreciation in site values, so that they were worth less on the 30th than on the 29th.

It may be anticipated, however, that the Crown will consent to estimate original site value on the basis that the Budget proposals had not affected values up to the close of April 30, 1909. Some depreciation in site values may conceivably have been brought about earlier by the usual rumours as to the intentions of the Government; but it may be expected that if such were the case (the writer has no knowledge at all on the subject), the Crown would not press its right to an increased increment value duty arising from such a fall in values.

The point must be firmly grasped, that the lower the site value on April 30, 1909, the greater the increment value on the occasion when increment value duty is chargeable. In respect of this tax, therefore, a high original site value should be aimed at by the owner. But a high site value may be disadvantageous otherwise, since it may increase the amount upon which undeveloped land duty will be charged under s. 16 (p. 191), and may have an influence upon estate duty.

When the duty is payable.

(*a*) **On the Occasion of any Transfer on Sale.**—There is no definition or explanation of "transfer on sale." The duty is apparently not due until the transfer is made. But it may be paid by means of a stamp on the agreement for sale (s. 4 (2)). It is submitted that the meaning of the words commented upon, read in the light of s. 4 (*post*, p. 72), is that increment value duty cannot be claimed by the Crown, though it may be voluntarily paid, before actual transfer in the sense that the property (whether a legal or equitable interest in land) intended or agreed to be sold has actually vested in the transferee. Suppose, however, that after a written contract for the sale of land, where a conveyance is necessary to complete the legal title of the purchaser, the title is accepted, but no conveyance is made, the vendor in equity being thereupon constituted a trustee for the purchaser. It is suggested that nevertheless there has been a "transfer on sale." *Chesterfield Brewery Co.* v. *Inland Revenue Commissioners* ([1899] 2 Q. B. 7) is an authority to the effect that a transaction whereby what was virtually a sale of shares in a company in consideration of other shares carried out by means of a declaration of trust by the vendor for the purchaser of the shares purchased was a conveyance on sale within the meaning of s. 54 of the Stamp Act, 1891. Sect. 54 no doubt says that "the expression conveyance on sale includes every instrument whereby . . . any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf, or by his direction"; and the Act of 1910 contains no corresponding clause; but the reason of Wills J., upon which his judgment was partly based, that "the real intention of the parties was that this agreement should be the new company's only document of

§ 1. title, and that it should not be followed by a legal transfer of the shares in the old company" (see p. 13), appears equally applicable to any transaction whereby land is in fact and substance equitably transferred on sale, whether the original intention was or was not that there should be a conveyance of the legal estate. There does not in this Act appear to be any necessity to construe the words "transfer on sale" as meaning a transfer whereby the legal estate in the land is conveyed. Note that in the Stamp Act, 1870 (s. 70), conveyance on sale "includes every instrument . . . whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser." In the corresponding section 54 of the Stamp Act, 1891, the words "legally or equitably" are dropped. Neither are those words in the relevant sections of the Act of 1910. As equitable interests in land are admittedly subject to the *ad valorem* duties imposed on conveyances on sale by the Stamp Act, 1891 (quite apart from s. 59 of that Act), it seems that the Legislature since the Judicature Acts looks upon equitable conveyances as being real conveyances in the eye of the law.

Equitable estates.

An equitable estate in land may be conveyed by writing not under seal. It therefore appears, if the above view is correct, that increment value duty may be payable on such a writing transferring on sale an equitable estate, or interest in lands in cases where if the estate or interest were legal, and conveyed by deed, increment, value duty would be payable.

A sale carried out by means of a declaration of trust would therefore doubtless be a transfer on sale within the meaning of s. 1 (*Chesterfield Brewery Co.* v. *Commissioners of Inland Revenue*, [1899] 2 Q. B. 7).

Compulsory sales.

Compulsory sales under the Lands Clauses Acts are clearly transfers on sale within s. 1 (*a*) not only because the point is probably covered by *Commissioners of Inland Revenue* v. *Glasgow and South Western Railway Co.* (12 A. C. 315), but because s. 38 (3) of the 1910 Act (p. 402) implies that such is the case.

What are transfers on sale.

The question whether transactions such as those in *Commissioners of Inland Revenue* v. *Maple & Co.* ([1908] A. C. 22), where there was a transfer of assets by the old company to the new company, the consideration being shares in the new company, together with numerous other transactions decided to be "transfers on sale" within the meaning of the Stamp Act, 1891, are also transfers on sale within the meaning of the 1910 Act must await determination by the Court.* The same remark applies to the question whether the words "transfer on sale" in s. 1 cover "a decree or order for, or having the effect of an order for foreclosure" under the provision of the Finance Act, 1898

* In the following cases, transactions of the nature referred to were held to be sales within the Stamp Acts requiring *ad valorem* stamps: *Great Western Railway Co.* v. *Inland Revenue* ([1894] 1 Q. B. 507, C. A.); *Foster (John) & Sons, Ld.* v. *Inland Revenue* ([1894] 1 Q. B. 516, C. A.); *J. & B. Coats Ld.* v. *Inland Revenue* ([1897] 2 Q. B. 423). See also the Finance Act, 1895, s. 12, for the stamping of Acts of Parliament operating as transfers on sale.

(61 & 62 Vict. c. 10), s. 6, whereby the definition of "conveyance on sale" in the Stamp Act was declared to include such a decree or order. As to this provision, however, it would be a little difficult to determine whether the value of the consideration for the transfer under s. 2 (2) (*a*) should be arrived at by applying paragraph (*a*) of s. 6 of the Act of 1898, or otherwise. § 1.

Increment value duty is not payable on voluntary conveyances, or exchanges, or partitions, or mortgages. As to the meaning of "transfer on sale" see, further, the cases cited in Highmore's Stamp Laws, 2nd edition, pp. 126—132, and Alpe's Stamp Duties, 11th edition, pp. 104 to 112, which must be referred to in cases of doubt. See, further, notes on s. 3 (6), p. 70, and on s. 32, p. 350.

The duty must be paid by the vendor and cannot be thrown by contract upon the purchaser. (1 Geo. 5, c. 2, s. 1.)

(*a*) **Fee Simple of the Land.**—Note the highly conventional meaning of the term "fee simple." "Fee simple means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession" (s. 41). It does not therefore include interests in expectancy.

The increment value of the fee simple must always be ascertained in order to deduce therefrom the duty payable on the lesser interests, as a life estate, or estate for years. (S. 2 (2) (*b*) and (*c*).)

(*a*) **Or of any Interest in the Land.**—(See note on "The expression 'interest' in relation to land" to s. 41, *post*, p. 447.) Contrasted with fee simple, is an "interest in land." "The expression interest in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance as defined by this Act or any fixed charge as defined by this Act or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years, or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts" (s. 41). For a definition of "interest in expectancy," see the Finance Act, 1894, s. 22 (1) (j), *post*, p. 600. Technical meaning of "interest in the land."

It will be noticed that "interest" in land is expressed not to include a reversion or remainder expectant on a freehold, or a remainder expectant on a leasehold. It seems, therefore, that it is not intended to collect increment value duty either on transfer or on the passing on death of such a reversion or remainder. It is not a fee simple, and it is not an interest in land. But a reversion expectant on the determination of a lease (see definition in s. 41) is an interest in land. Therefore when either an owner in fee, or a tenant for life, or person having the powers of a tenant for life under the Settled Land Acts sells the fee he is transferring either the "fee simple" in the conventional meaning of that term under this Act, or an "interest in the land," according as there

§ 1. is or is not a subsisting lease of the land sold. It must be noted that, although increment value duty is not collected on the sale of a reversion or remainder expectant on a freehold or of a remainder expectant on a leasehold, the liability to increment value duty is not escaped. Its payment is merely postponed. If the tenant for life sells the fee he must pay the increment value duty on the fee, and then may charge it on the subject of the settlement (s. 39 (1)). If the tenant for life sells only his life interest, that life interest is doubtless an "interest" in land within the meaning of the Act, and the tenant for life must pay increment value duty on that interest only. In such a case increment value duty will, on the tenant for life's death, be payable in respect of the reversion or remainder under s. 1 (*b*), and will be borne by the reversion or remainder itself (s. 5). A purchaser or mortgagee of a reversion or remainder expectant on an estate of freehold, or of a remainder expectant on a leasehold, must take into account the fact that the property he is buying may be subject to increment value duty, as well as to estate duty. Unlike the purchaser of a fee simple or leasehold in possession liable to the duty, he does not get the property cleared of increment value duty to the date of the transfer under s. 4 (4).

Undivided shares.

Increment value duty is payable on the transfer on sale of the fee simple or on the lease of an undivided share of land. Such a share is treated not as "the land," but as "an interest in the land" (s. 41, p. 446). Probably also an undivided share in a life estate is an "interest in land," since the definition of "interest" in relation to land does not purport to exclude matters not specifically mentioned. It is probable that some interesting cases may arise in practice, relating to increment value duty on undivided shares. For example, suppose increment value duty is first paid on one undivided moiety, and then the property recedes in value, but there is still left increment value, and then duty becomes collectable on the other undivided moiety. Is the latter entitled to claim that the overpaid duty on the first moiety franks, so far as it will extend the second moiety? The Commissioners will apparently have to determine this and similar questions under s. 3 (1), subject to appeal under s. 33.

Limit of duty chargeable.

It is submitted, however, that the increment value duty collectable on any occasion, on any interest in the land, can never, with the amounts previously paid, or deemed to be paid, on the same and all other interests in the land exceed in the aggregate one fifth part of the total increment value of the fee simple. It appears that the Rules made by the Commissioners under s. 3 (3), the section empowering them to make rules determining the proportionate part of the duty to be collected (see *post*, p. 53), recognise, but it is thought that they do not fully meet, the difficulty propounded. Applying rule 3 of those Rules to the illustration of the undivided moieties just given, it seems to the writer (who, however, may be mistaken) that the Commissioners might demand more duty than under the Act they are entitled to claim from the owner of the second moiety, and that (*b*) of rule 3 does not apply to the case in question.

§ 1.

Quære whether a term of years originally exceeding fourteen years, but with less than fourteen still to run at the date of transfer, is an interest in land on the sale and transfer of which increment value duty is payable? It is submitted that it is, but the point is not clear. See note on p. 451, "or any leasehold interest, &c."

Lease with less than 14 years to run.

(*a*) **In pursuance of any Contract made.**—By this it is clearly not intended that a written contract antecedent to the "transfer on sale" is a condition precedent to the happening of the occasion. The transfer after the commencement of the Act is itself a contract, and the only contract which is necessary, though doubtless it is a contract which merges a pre-existing written contract, which is enforceable, or a pre-existing verbal contract, which is usually not enforceable.

(*a*) **After the commencement of this Act,** *i.e.*, April 29, 1910.—For definition of "commencement" of an Act, see 52 & 53 Vict. c. 63, s. 36. It is "The time at which the Act comes into operation." "If . . . an Act is silent as to the date of its coming into operation, it comes into operation at the date of its passing," see per Lord Alverstone in *Rex* v. *Smith*, [1910] 1 K. B. 17, at p. 24. See also 33 Geo. 3, c. 13, as to the indorsement of the date of passing.

(*a*) **Grant . . . of any Lease of the Land.**—Lease includes an underlease and an agreement for a lease or underlease (s. 41).—Is increment value duty payable on the grant of a lease for over fourteen years in reversion? A reversion in fee expectant on a lease is included in the expression "interest in land" (s. 41). An "interest in the land" seems to be contrasted with a lease of "the land." In this section increment duty is expressed to be payable on the grant of any lease "of the land," but not of any lease of "an interest in the land," and a reversion is an "interest in the land." On the whole, however, it is thought that the grant of a lease in reversion for over fourteen years is an occasion under s. 1. Lease includes an agreement for a lease, and therefore the fact that a reversionary lease creates only an *interesse termini* (*Lewis* v. *Baker*, [1905] 1 Ch. 46; *Llangattock* v. *Watney & Co.*, [1910] A. C. 394)* and does not give a present interest in the land seems to be not material. The real contrast in s. 1 is not between the land and an interest in the land, but between the "fee simple of the land" and an "interest in the land." Although the expression "land" is doubtless frequently and perhaps generally used, when not qualified, throughout the Act to signify the fee simple of the land (see especially ss. 2 (1) and (2), 7, 12, 16 (1), 17 (1) and (2), 26 (1), 28, 35, 37 (1)), there is no direct statement that it is always to be so interpreted. Apart from the section, an agreement to grant a reversionary lease is clearly an agreement to grant a lease of land. It is therefore thought that there is no necessity to adopt the narrow view which would exclude the grant of a reversionary lease from the dutiable occasions because it is a lease of an "interest in land" within the special meaning of that phrase assigned to it by s. 41 (as distinguished from a lease of land). It must, nevertheless, be remembered

Reversionary lease.

* See also *Knight* v. *City of London Brewery Co.*, [1912] 1 K. B. 10.

§ 1. that to avoid an occasion of paying duty is not to escape paying it altogether. The original site value stands for ever as a landmark, and with it the comparison of present site value is to be made on each appointed occasion. In so far as duty has not been previously paid, or is not deemed under the Act to be paid, it must then be paid on the increment value of the site, or of the interest in the site under taxation. But no doubt it may be advisable in some cases to postpone payment of increment value duty as long as possible. Site values, like Stock Exchange securities, may be temporarily inflated. Therefore, if the making of a lease in reversion is not an occasion on which a claim for duty can arise, leases will be renewed, or new leases will be made, during the currency of former leases, where in the usual course of events such former leases would be allowed to expire before the later leases were made.

Sub-lease. Again, is increment value duty payable on a sub-lease exceeding fourteen years? The lease in question is a lease of an "interest in land"; the occasion on which duty becomes due is a lease of "the land," not of "an interest" in the land. But in fact the sub-lease is a lease of land, and it is perhaps not essential that the same meaning should always be placed on the same word in the same clause, if common sense points to a different meaning. Furthermore, under s. 41 (see p. 443), "lease" includes an underlease, which perhaps settles the point.

Undivided share. The same point is involved in the lease of an undivided share of the fee simple of land. That also is an interest in land. It is submitted that the lease of such a share is a lease of the land within s. 1 (*a*). If this be not the case, a lease, which if made by an owner in fee of the entirety would be an occasion for collection of duty, would not be such an occasion if made by two tenants in common in fee, each seised of an undivided moiety of the premises.

The duty on the lease must be paid by the lessor and cannot be thrown by contract upon the lessee (1 Geo. 5, c. 2, s. 1).

(*a*) **Not being a Lease for a Term of Years not exceeding Fourteen Years.**—In other words, the grant of a lease for fourteen years or under is not an occasion for the payment of increment value duty. Questions may arise as to what is a lease for a term of years not exceeding fourteen years. In the ordinary case of a formal lease the term is defined by the habendum (*Strickland* v. *Maxwell*, 2 Cr. & M. 539). Thus a lease to hold to A. for twenty-one years with a proviso that it may be determined at the end of fourteen years by either the landlord or the tenant as the case may be (but not by both) is a lease for twenty-one years. It seems that even if the lease is determinable by each of the parties at the end of fourteen years it is still a lease for twenty-one years (see the dictum of Lord Campbell C.J. in *Bird* v. *Baker*, 1 E. & E. 12; 28 L. J. Q. B. 7); but it cannot perhaps be said that the last cited case is conclusive on the question whether the grant of a lease for twenty-one years determinable by both parties by a notice expiring at the end of fourteen years is a lease for a term exceeding fourteen years so as to be an occasion on which increment value duty

is payable. On the whole it seems probable that increment value duty is payable in the case of such a lease, especially having regard to the definition of the "term of a lease" next referred to.

Calculation of term.

Under s. 41 (see p. 444) "the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed." It seems, therefore, that a lease for fourteen years with a covenant by the landlord for renewal for a further period would be a lease for a term exceeding fourteen years, even if in fact the lease is not so renewed.

There seems to be no doubt that the length of the term "not exceeding fourteen years" is to be calculated from the date fixed for the commencement of the lease (whether before or after the date of the lease) by the habendum, and not from the date of the lease if that differs from the date so fixed. If no date is fixed either expressly or impliedly, the term commences from the delivery, which is usually the date of the lease (see Woodfall's Landlord and Tenant, 18th ed., p. 173; Foa's Landlord and Tenant, 3rd ed., p. 96).

Evasion of Act.

The question arises whether an occasion for payment of increment value duty may be avoided by splitting up the term, being more than fourteen years intended to be vested in the lessee, into several terms granted by several leases, each of them not exceeding fourteen years and taking effect one after the other. Such an attempt would no doubt, if it succeeded, be an evasion of the Act. But taxing and restricting statutes may doubtless be evaded, using the word "evasion" in the sense of "the intentional avoidance of something disagreeable," and not as suggesting "underhand dealing" (see per Lord Hobhouse in *Simms* v. *Registrar of Probates*, [1900] A. C. 323, at p. 334: and also cases collected in the Explanatory Summary, *ante*, p. cxxxiv). Refer also to *Smale* v. *Burr* ((1872) L. R. 8 C. P. 64), in which the Bills of Sale Act, 1854, was successfully evaded; and to *Lord Llangattock* v. *Watney & Co.*, [1910] A. C. 394, as to the strict construction of legal language; a case not without bearing on the point under discussion.*

It is not easy to imagine a series of such leases made for any other purpose than to avoid duty; and it is possible that the Court might hold that the grant of a lease for fourteen years followed by an immediate reversionary lease for seven years to the same person was in substance a lease for a term exceeding fourteen years, although effected by two documents and although the later lease created only an *interesse termini* (see *ante*, p. 11). If evasion is to be attempted, it would be wise to allow one day to elapse between the two terms and to make some substantial difference between the covenants of the two documents and perhaps a slight difference in the two rents. To do this would make it somewhat more difficult for the Court to hold the transaction to be a single lease. The gap of one day between the terms appears to the writer to be the most useful of these suggestions.

Leases for lives.

Leases for lives are not now very common. It may be that, by

* See also *Knight* v. *City of London Brewery Co.*, [1912] 1 K. B. 10.

§ 1. the joint effect of s. 1 (*a*) and the paragraph of s. 41 beginning "The term of a lease" (*post*, p. 444), the question whether increment value duty is payable on such a lease is to be determined by the length of the mean expectation of life of the lessee or youngest lessee. It is not, however, clear that the paragraph referred to applies to any leases except those containing covenants for renewal, and if that be the case, a lease for life (not renewable) will be an occasion for the collection of duty irrespective of the length of the lessee's expectation of life; unless, indeed, the paragraph in question should be applied by analogy to a non-renewable lease. This perhaps might be done, since it seems absurd to think that the Legislature could have contemplated two different methods of calculating the length of the leases for lives.

Extent of duty payable in various events (*a*) to (*c*).

Lastly, what is the extent of the duty which is payable under (*a*) to (*c*) respectively? This question is answered by s. 3. If the fee simple is the subject of the transfer [on sale?] or passing on death, the whole unsatisfied duty is to be paid (s. 3 (2)). In other words, the duty on the full difference between the original and the then site value is chargeable except so far as on some previous occasion it has been paid (or it is deemed to have been paid?). If the grant, or transfer on sale, or passing on death of a lease, or other interest in land, is the occasion on which a claim for increment value duty arises, then under s. 3 (3) a "proportionate" part only of the [unsatisfied] duty is to be collected. If a man makes a lease for fifteen years, he realises only a part of his site value. He therefore pays only on the part realised. If a lessee sells and transfers his lease for the residue of an original term exceeding fourteen years, he is to pay a "proportionate" part of the duty. In each case the proportionate part is to be determined by the Commissioners in accordance with rules to be made by them for the purpose (*ib.*) It may be assumed that the problem which the Commissioners will answer is—"Given the 'increment value' of the fee simple, what proportion of that value is fairly attributable to the lease or interest created or transferred or passing on death?" The Regulations made by the Commissioners under s. 3 (2) and (3) will be found together with notes thereon on p. 52.

(*b*) **Where the Fee Simple of the Land or any Interest in the Land is comprised in the Property passing on Death.**—Note that it must be either the fee simple of the land as defined by s. 41, that is the fee simple in possession, not subject to any lease, or an interest in land as explained by the same section, which is comprised in the property passing on death, in order to create an occasion for payment of increment value duty. Therefore if A. is entitled to the fee simple of Blackacre in remainder expectant on the determination of B.'s life estate in the same property, and A. dies, whether testate or intestate, in the lifetime of B., increment value duty is not payable in respect of Blackacre on A.'s death. A remainder in fee simple is neither "the fee simple of the land," nor an "interest in the land," within the meaning of s. 1 (*b*) (see s. 41). Of course when B. dies the fee simple

would be property passing on the death of B. within the meaning of the Finance Act, 1894, and increment value duty might be claimed in respect of the fee simple of Blackacre. § 1.

(*b*) Property passing on the Death of the Deceased within the meaning of ss. 1 and 2 (1) (*a*), (*b*), and (*c*) and (3) of the Finance Act, 1894.

The sections of the Finance Act referred to read as follows :—

Grant of estate duty.

s. 1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "estate duty," at the graduated rates herein-after mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

What property is deemed to pass.

s. 2.—(1) Property passing on the death of the deceased shall be deemed to include the property following (that is to say):—

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property, as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

44 & 45 Vict. c. 12. 52 & 53 Vict. c. 7.

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than *twelve months** before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

For full notes on these sections see Austen-Cartmell, 5th edition, pp. 5 to 44, and Hanson's Death Duties, 6th edition, pp. 75 to 114.

The phraseology of s. 1 (*b*) is peculiar. First, as we have seen, the words "fee simple of" and "interest in" the land limit the interests in the property the passing of which on death is an occasion for payment of duty to property covered by the definitions of those two phrases in s. 41 of the 1910 Act.

Secondly, it is to be noted that the fee simple interest must be

* Under s. 59 of the Finance Act, 1910 (see p. 475), this period is made three years.

§ 1. comprised in the property passing on death within the meaning of the specified sections of the Act of 1894, as amended by subsequent enactments. The sections in question, as a reference to them will prove, are in general or abstract terms. Sect. 1 says estate duty shall be paid on property passing on death, and s. 2 mentions various wide classes of property, which it says shall be deemed to be included in property passing on death. Other sections in the Act of 1894 and in subsequent amending Acts enact that certain other and usually narrower classes of property shall either be, or shall not be, deemed to be included in the property passing on death (Finance Act, 1894, s. 3, s. 15 (1), s. 21 (5); Finance Act, 1896, s. 14, s. 15; Finance Act, 1900, s. 11). It is apprehended that the meaning of clause 1 (*b*) is that the fee simple of or an interest in any property which is so brought within, or excluded from the charge of estate duty effected by section 1 of the Act of 1894, shall correspondingly be liable to or exempt from the collection of increment value duty on death.

Sect. 22 (1) (*l*) of the Finance Act, 1894, provides that "the expression 'property passing on the death' includes property passing either immediately on the death or after an interval either certainly or contingently, and either originally or by way of substitution, limitation, and the expression 'on the death' includes at a period ascertainable only by reference to the death."

What are interests in land?

There seems to be no doubt that land directed by will to be sold is liable to increment value duty on the death of the testator. The question whether a gift by will of the proceeds of sale of land directed by some previous instrument to be sold, and as to which there is still in existence an effective trust for conversion, gives rise to a claim for increment value duty is part of the larger question as to what are "interests in land" within the meaning of the definition clause in s. 41. If there is a life tenant in existence, clearly no such claim can arise. A remainder or reversion expectant on a life tenancy is not an interest in land (s. 41). But suppose the gift be of an absolute interest in an undivided share of the proceeds of sale of lands, or of an immediate interest in the surplus proceeds of sale of lands which must be sold to pay incumbrances. It is suggested that increment value duty is not payable in such cases, and that so long as there is on foot an effective trust for conversion the fee simple of or the interest in the land, as the case may be, is not "comprised in the property passing on the death of the deceased," etc. s. 1 (*b*)) (see, further, note to s. 41, par. "the expression 'interest' in relation to land," *post*, p. 446).

Note on ss. 1 and 2 of the Finance Act, 1894.

Perhaps the clearest exposition of the two sections of the Finance Act, 1894, set out above is contained in the judgment of Lord Macnaghten in *Cowley* v. *The Commissioners of Inland Revenue*, [1899] A. C. 198, at p. 210: "The principle on which the Finance Act, 1894, was founded is that whenever property changes hands on death the State is entitled to step in and take toll of the property as it passes without regard to its destination or to the degree

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of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding. Sect. 1 gives effect to that principle. Subject to certain exceptions or savings, it imposes a duty called estate duty upon the principal value of all property 'settled or not settled' which passes on death. Sect. 2 is merely subsidiary and supplemental. It was intended apparently to sweep in a few cases which were thought perhaps to be within the spirit though not within the letter of the proposed enactment, or else were supposed likely to lead to evasion if not made equally subject to estate duty. Sect. 2 therefore declares that the expression 'property passing on the death of the deceased' shall be '*deemed* to include property classified' under four different heads, to no one of which rightly understood is that expression literally applicable. The rest of the Act deals with matters of detail, valuation, and machinery. The first section contains the pith and substance of the enactment. It is comprehensive, broad, and clear." Although the passage cited was apparently a dictum only and the case could have been decided without adopting Lord Macnaghten's view as to the mutually exclusive nature of ss. 1 and 2, the dictum has been accepted, in later decisions of the House of Lords, as binding (see *Attorney-General* v. *Montagu*, [1904] A. C. 316, at p. 320, per Lord Davey; *Inland Revenue* v. *Priestley*, [1901] A. C. 208, at p. 215, per Lord Davey).

Land which belonged to the deceased in fee simple in possession and leaseholds to which the deceased was absolutely entitled in possession will fall within s. 1 of the Act of 1894 and be liable to a claim for increment value duty. Property will pass under s. 1 although settled. On the death of the tenant for life the land the subject of the settlement passing to the remainderman is liable to duty under this section.

Finance Act, 1894, s. 1.

Land would pass under s. 2 (1) (*a*) so as to become liable to a claim for increment value duty where the deceased had a general power of appointment over it (see *Inland Revenue* v. *Priestley*, [1901] A. C. 208); or where he was tenant in tail in possession; or probably where he was a joint tenant so far as regards his interest; or where he was competent to dispose of the land only by virtue of s. 33 of the Wills Act (*In re Scott, Langton* v. *Scott*, [1901] 1 Q. B. 228). For definition of phrase "competent to dispose," see Finance Act, 1894, s. 22 (2) (*a*), *post*, p. 114. So it is thought that land of which he was seised in fee simple but subject to an existing term of years would fall under s. 2 (1) (*a*) and not under s. 1 (*Inland Revenue Commissioners* v. *Priestley*, [1901] A. C. 208, at p. 213).

Ib., s. 2 (1) (*a*).

With regard to paragraph (*b*) of s. 2 (1) of the Finance Act, 1894, it is not easy to see how this paragraph applies to claims for increment value duty on the basis of Lord Macnaghten's interpretation of sections 1 and 2. Under paragraph (*b*) estate duty becomes payable on the cesser of life annuities and rent-charges charged on or issuing out of

§ 1. property. It is difficult to see how the cesser of such annuities and rent-charges can give rise to any claim to increment value duty with respect to the property which is augmented by the cesser.

Rent-charges and annuities charged on land are expressly declared not to be "interests in land" (s. 41, pars. "the expression 'interest' in relation to land"; "the expression 'fixed charge'"; "the expression 'rent-charge'").

Amendments of Finance Act, 1894.

In the notes to s. 5 (commencing p. 88) there will be found an examination of the various Finance Acts amending the Act of 1894 so far as their provisions bear on increment value duty. The following amendments relate to the classes of property passing on the death of the deceased:—59 & 60 Vict. c. 28, ss. 14 and 15 (p. 115); 61 & 62 Vict. c. 10, s. 13 (p. 117); 63 Vict. c. 7, s. 11 (p. 117); 10 Edw. 7, c. 8, ss. 55, 59 (pp. 474—475).

The Customs and Inland Revenue Act, 1881, s. 38 (see appendix, p. 609), as amended by s. 11 of the Customs and Inland Revenue Act, 1889 (*ib.*, p. 613), and as further amended and applied by the Finance Act, 1894, s. 2 (1) (*c*) and (3), and the Finance Act, 1900, s. 11 (p. 603), has been summarised as follows:— *

(i.) Any property taken as a *donatio mortis causâ* made by any person dying after August 1st, 1894, or taken under a disposition made by any person so dying purporting to act as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been made *bonâ fide* twelve months before the death of the deceased, and also property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

(ii.) Any property which a person so dying, having been absolutely entitled thereto, has caused or may cause to be transferred to or vested in himself and any other person, or has purchased or invested by himself alone, or in concert or by arrangement with any other person, so that the beneficial interest therein passes or accrues by survivorship on his death to such person;

(iii.) Any property and the proceeds of sale of any property, passing under any past or future settlement made by any person so dying by deed or any other instrument not taking effect as a will, and any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, whereby an interest in such property for life, or any other period determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property.

* See the Finance Acts, 1894 to 1907, 5th edition, p. 22, by J. A. Cartmell, by whose permission this summary is extracted; see also Hanson's Death Duties, 6th edition, p. 96, for an excellent summary.

§ 1. Increment value duty and voluntary gifts.

By s. 59 (1) of the Finance Act, 1910 (see p. 475), the period of twelve months before the death of the deceased fixed by (1) in the summary is extended to three years. But gifts made before April 30, 1908, and gifts for public or charitable purposes, are excepted from the extension of the period of one year to three years enacted by s. 59 (1). (*Ib.* sub-s. (2)).

Examples illustrating summary of Finance Act, 1894, s. 2 (1) (*c*), and amendments.

Therefore increment value duty may be payable on A.'s death under the various headings (i.), (ii.), and (iii.) of the extract from Mr. Cartmell's book in the following cases, amongst others.

(i.) (*a*) A. conveys by deed of gift to B. within three years before his (A.'s) death the fee simple of or an interest in freehold land, or leasehold land, the original lease having exceeded fourteen years.

(*b*) Within the same period A. voluntarily declares himself to be a trustee for B. of similar property.

(*c*) A. more than three years before his death voluntarily conveys to B. a house, reserving to himself the use for his life of two rooms in the house so conveyed. (*Attorney-General* v. *Earl Grey*, [1900] A. C. 124).*

(*d*) A. more than three years before his death makes a voluntary declaration of trust of similar property in favour of B. with the same reservations. (*Ib.*).*

(ii.) (*a*) A., being the owner in fee simple of freeholds, and absolutely entitled to leaseholds the original term of which was over fourteen years, conveys the same into the names of himself, A., and his son B. as joint tenants and dies before B.

(*b*) A. buys freeholds, or leaseholds the original term of which was over fourteen years and takes a conveyance to himself and his son B. as joint tenants and dies before B.

(iii.) (*a*) A., in consideration of 500*l.* paid to him by his father, conveys freeholds or leaseholds the original term of which was over fourteen years to trustees upon trust for himself (A.) for life and after his death upon trust for his eldest son in fee and absolutely. In this case increment value duty would be payable on A.'s death as well under s. 1 of the Finance Act, 1894.

(*b*) In the last-mentioned illustration if the settlement were wholly voluntary the result would be the same, and s. 1 of the Finance Act, 1894, would also apply.

(*c*) A. conveys freeholds and leaseholds the original term of which was over fourteen years to trustees upon trust for B. for life, and after his death upon trust for C. in fee simple and absolutely, and reserves to himself the power to revoke the trusts of the settlement and appoint the property on other trusts on A.'s death. Increment value duty will be payable.

* See also *Crossman* v. *The Queen*, 18 Q. B. D. 256. But duty would not be payable if the reservation were not enforceable. (*Attorney-General* v. *Seccombe*, [1911] 2 K. B. 688; *Re Weir and Pitt's Contract*, (1911) 55 S. J. 536.)

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(*d*) The result would be the same if in lieu of the power of revocation a general power of appointment was reserved to A. overriding the trusts of the settlement.

Increment value duty and gifts in consideration of marriage.

The provisions of sub-s. (2) of s. 59 (see p. 476) must be noted in this connection. It had been held in *Attorney-General* v. *Holden*, [1903] 1 K. B. 832, that a gift in consideration of marriage was subject to the payment of estate duty under the Finance Act, 1894, s. 2 (1) (*c*) (head No. i. on p. 19), in case the donor died within twelve months of the gift.*

If the analogy of that case applied, the land comprised in a settlement in consideration of marriage, if given by a third party not one of the consorts, would, in case of the death of the donor within three years (s. 59 (1)) of the settlement, be the subject of a possible claim for increment value duty. But the case in question is no longer law, since s. 59 (2) of the present Act provides that so much of s. 2 (1) (*c*) of the Finance Act, 1894, as makes gifts *inter vivos* property which is deemed to pass on death shall not apply to gifts which are made in consideration of marriage.

Modification of former law by s. 52 (3).

Sub-sect. (3) of s. 59 of the Act of 1910 further modifies paragraph (i.) of Mr. Cartmell's summary, including s. 2 (1) (*c*) and (3) of the Finance Act, 1894, by providing that where property is deemed to be property passing on the death of the deceased, by reason only that the property was not as from the date of the disposition, surrender, assurance, or divesting retained to the entire exclusion of the deceased, or a person who had any estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for the period of three years preceding the death of the deceased. See notes to s. 59, p. 477.

Evils of incorporation by reference, illustrated by s. 1 (*b*).

The incorporation by reference of one Act of Parliament into another seems almost to have reached the limits of human endurance in the example afforded by this section. Certain duties are enacted by the Customs and Inland Revenue Act, 1881. In respect thereto such Act is amended by the Customs and Inland Revenue Act, 1889. Both Acts are, as to analogous duties, amended by and incorporated by reference in, the Finance Act, 1894; are again amended by the Finance Act, 1900, s. 11; and, finally, the Finance Act, 1894, is, as to another analogous duty, incorporated with all its amended incorporations, in the Finance Act, 1910, and is by that Act further amended.

A branch of law of death duties.

When increment value duty is payable on death it really becomes a branch of the law relating to the death duties. Under s. 1 of the Finance Act, 1910, the property in respect of which it can be claimed at death is determined by the Finance Act, 1894, and the amendments

* See also the recent case of *In re Hartland, Banks* v. *Hartland*, [1911] 1 Ch. 459.

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of that Act, subject to the property being either the fee simple or an interest in land within the meaning of s. 41 of the Act of 1910. Under s. 2 of the Finance Act, 1910, the site value on the occasion on which a death claim for increment value duty arises is arrived at by, amongst other things, ascertaining the principal value of the land as ascertained for the purposes of the Finance Act, 1894. By s. 5 of the Act of 1910 the provisions as to "assessment, collection and recovery" of estate duty under the Finance Act, 1894, are to apply as if increment value duty were an addition to the estate duty.

Question as to s. 3 of the Finance Act, 1894.

With reference to the property in respect of which a claim for estate duty may arise, see Cartmell's Finance Acts, 1894, etc. (5th edition), pp. 2—44. It is clear that increment value duty is a duty which, like estate duty, is payable on the passing of land on death from one person to another, irrespective of any power of disposition possessed by the deceased. But it is not quite clear whether s. 3 of the Finance Act, 1894, which limits the right of the Crown to estate duty in certain cases, also applies by way of limitation to claims for increment value duty. Sect. 3 runs as follows :—

A.D. 1894. Exception for transactions for money consideration.

> *3.—(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.
>
> (2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

Land may be not subject to the duty imposed by ss. 1 and 2 of the Act of 1894, simply because it is excluded by s. 3 of that Act. But if it is enacted by a subsequent Act that land which passed under ss. 1 and 2 shall be subject to a certain additional duty, and no reference is made to s. 3, which cuts down the classes of land to be included in the former sections, there is at least an ambiguity.

Up to the present point, the application of ss. 1 to 3 inclusive of the Finance Act, 1894, to increment value duty has been considered. Sect. 4 of that Act relates to the aggregation of property so as to form one estate for the purpose of duty, and is obviously inapplicable to increment value duty. Sect. 5 of that Act, which relates to settlement estate duty as well as to estate duty, is referred to under the notes to

* For the meaning of and notes on this section, see Cartmell, 5th edition, p. 45 ; and Hanson's Death Duties, 6th edition, p. 115.

§ 1. s. 3 (4) of the 1910 Act (see p. 65). The remaining sections, together with the various amendments of the original Act by subsequent legislation, so far as considered to be relevant, are commented on in the notes to s. 5 of the 1910 Act (see pp. 90 to 121). It is to be noted that there is no section of this Act which applies generally to increment value duty the whole of the provisions of the Finance Act, 1894. Sect. 1 (*b*), s. 2 (*c*), s. 3 (4), and s. 5 of the Act of 1910, each incorporate parts of the earlier Act.

It is evidently a matter of some little difficulty to determine the extent to which it is desirable in a text-book on the new land duties to embody the law relating to the death duties. Increment value duty payable on death is but a fringe of the law relating to the estate duties. The plan adopted in this work, so far as possible, is not to cover the same ground in relation to increment value duty as is comprised in the standard text-books on the death duties, but to treat only of special points in connection with increment value duty payable on death.

(*b*) **As amended by any subsequent Enactment.**—The subsequent enactments thought to be material to increment value duty are discussed in the notes to s. 1 (*b*) (see *ante*, pp. 14 to 22), to s. 3 (4) (see *post*, pp. 65 to 68), to s. 5 (see *post*, p. 90; see also Appendix of Statutes, pp. 589 to 604). It must be noted that future amendments of the sections referred to in s. 1 (*b*) are probably covered by these words.

(*c*) **Body Corporate or by any Body Unincorporate . . . 1885.**—The term "body corporate" of course includes corporations both aggregate and sole, civil and ecclesiastical. Practically every company, whether established by charter, by letters patent, by special Act, or under the general Acts relating to companies which from time to time have been and some of which still are in force, is a body corporate and *primâ facie* liable to duty under this section. Ecclesiastical corporations sole, such as bishops, rectors, and vicars, are doubtless included under the phrase.

But the scope of paragraph (*c*) of s. 1 is narrowed by the exceptions to the liability to the duty under the following heads of the exceptions mentioned on p. 12: 2, 3, 5, 6, 7, and 8. Under heads (3) and (5) state and municipal etc. lands are wholly exempt, that is, are exempt under both paragraphs (*a*) and (*c*) of s. 1. Under the remaining heads exemption is conferred so far as regards paragraph (*c*) only. That is, of course, no real exemption, but merely a postponement of collection until actual realisation of the increment.

By s. 12 of the Customs and Inland Revenue Act, 1885, it is provided as follows:—

> The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall

belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty. § 1.

The term therefore includes any group of persons not incorporated owning property. A cricket club owning its cricket field, and an unregistered missionary society owning its offices and premises in the names of their respective trustees, are examples of bodies unincorporate. A partnership is not such a body because on the death of a partner his share of the assets is liable to death duties.

(*c*) **In such a Manner or on such Permanent Trusts that the Land . . . is not liable to Death Duties.**—Such a body may be a trustee for persons beneficially entitled; as, for example, the Public Trustee. Where such is the case the property will be liable to estate duty in the ordinary course, and increment value duty may be payable on death. It is, therefore, not collected on the periodical occasions.

(*c*) **Death Duties.**—Under the Finance Act, 1894, s. 13 (3), and First Schedule, the expression "death duties" means the (1) estate duty under that Act; (2) probate duty under the Customs, etc., Act, 1881; (3) the account stamp duty under the Customs, etc., Act, 1881, s. 38, as amended by the Customs, etc., Act, 1889, s. 11; (4) the temporary estate duties under the Customs, etc., Act, 1889, ss. 5 and 6; (5) the legacy and succession duties (note the alterations in those effected by s. 58 of the Finance Act, 1910); (6) the additional succession duties imposed by s. 21 of the Customs, etc., Act, 1888; (7) duties payable on representations or inventories under any Act in force before the Customs, etc., Act, 1881.

There is no other definition of death duties in any of the Finance Acts, and no section in this Act embodying in it the above definition. It is not, however, likely that any practical difficulty of construction will arise.

(*c*) **On such Periodical Occasions as are provided in this Act.**—The occasions are April 5, in the year 1914, and in every subsequent fifteenth year (s. 6 (1)). But if the body so desires, increment value duty may be paid by fifteen equal yearly instalments (*ib.*, sub-s. (3)), and the first instalment shall be due immediately after the assessment of the duty. Any part of any duty so payable by instalments may be paid up at any time (*ib.*).

A body corporate or unincorporate will, of course, pay increment value duty under (*a*) of s. 1 in exactly the same events as an individual would pay it.

Exceptions are created to the payment of increment value duty under (*c*) in the cases of— Exemptions of body corporate or unincorporate from duty.

(1) Agricultural land held by a body corporate or unincorporate, while that land has no higher value than its value for agricultural purposes only (s. 7).

§ 1. (2) Land, or an interest in land, held by a body corporate or unincorporate without any view to profit for the purpose of games, etc., has a limited exemption under the prescribed conditions (s. 9).

(3) State land or interests in land (s. 10).

(4) Leasehold interests in separate tenements, flats, or dwellings, forming part of a building (s. 11).

(5) Land, or interests in land, belonging to rating authorities (s. 35).

(6) Land, or an interest in land, held by any governing body, constituted for charitable (including educational) purposes has a limited exemption (s. 37 (1)).

(7) Land, or an interest in land, held by a registered society or company precluded from dividing profits has the same exemption. Registered societies are those registered or whose rules are certified or registered by a registrar of friendly societies (*ib.*, (2)).

(8) Land held by a statutory company for the purposes of its undertaking has a limited exemption (s. 38).

It will be noted that in ss. 9, 10, 35, and 37 the words "interest in land" are to be found, whilst they are not found in s. 38, probably, *per incuriam;* s. 11 relates only to leasehold interests.

The Duty or Proportionate Part of the Duty . . . shall be Collected.—The Act appears to contemplate the duty as accruing *de die in diem* with the increment value. The duty is that which is due, but apparently not necessarily immediately payable. Every 5*l.* of increment value subject to exemption allowances under s. 3 (5) consists of 1*l.* of duty and 4*l.* of owner's money. This duty is not actually payable till an occasion arises (*a*), (*b*), or (*c*). Even then the Act studiously refrains from saying that it is "due." It is to be "collected." This word is used persistently throughout the operative sections of the Act. Its use suggests that the duty is to be considered "due" as soon as the increment value exists, and is to be collected on the occasions stated in s. 1. But this construction is not in harmony with the fact that increment value having accrued may disappear before an occasion of payment of duty arrives, and having disappeared is not liable to duty. A field worth 1,000*l.* on April 30, 1909, may be worth 1,500*l.* on April 30, 1919, and 800*l.* on April 30, 1929, on which day the first "occasion" of payment of increment value duty may arrive. Whether any practical consequences will result from the peculiar use of the words "the duty" and "collected" cannot at present be seen.

See the exception to this section in s. 22 (3) and (5).

Proportionate Part of the Duty.—The duty is apparently that which is charged on the fee simple in possession, that is, on the fee not subject to any lease. If this fee simple is sold either by the owner in fee or under the powers of the Settled Land Acts or under powers contained in a will or deed, then the "duty," *i.e.*, the whole duty, is collected so far as it has not been paid on any previous occasion (s. 3 (2)).

If a life estate or a leasehold interest (the original term of which was

§ 1.

over fourteen years), or an undivided share of a fee simple, that is to say, if an "interest" in the land is sold, then a "proportionate part" only of the duty is collected, so far as it has not been paid on any previous occasion (s. 3 (3)). If, as has already been stated, a reversion expectant on a freehold, a remainder, or any incorporeal hereditament such as a right of shooting, a *profit à prendre*, or an easement is sold, no duty is payable. The amount of duty to be paid is determined by the Commissioners (s. 3 (1)).

It appears that in the case of a lease, whether by the owner in fee or by the owner of a leasehold interest, increment value duty is payable, not on the whole interest of the lessor (whether the fee or a lesser interest), but only on so much as is included in the lease (see s. 3 (3)). The lessor pays on the realised increment.

Since the first edition of this work was published, rules have been made by the Commissioners under s. 3 (2) and (3) for the purpose of determining the amount of duty unsatisfied, and the amount to be collected on the several occasions on which duty is payable. See *post*, p. 53.

So far as it has not been paid on any previous Occasion.—These words appear further to elucidate the meaning of "the duty." The duty appears to be the sum of 1*l.* for every complete 5*l.* of the increment value existing on the occasion when it is collected, quite irrespective of the amount (if any) which has already been paid on account of that duty. The increment value is the amount by which the site value on the occasion on which the duty is claimed exceeds the original site value on April 30, 1909, and this is the case, not only on the first occasion on which a claim for increment value duty arises, but on every later occasion. That which is collected on any occasion is therefore not the duty, but the duty minus previous payments in respect thereof (s. 3 (1)). Further, in certain circumstances "dut" is "deemed to have been paid" (see s. 3 (5)), s. 4 (4), s. 6 (4), s. 8 (5), s. 10 (1), s. 35 (1), s. 36, when in fact it has not been paid.

It is thought that the words "so far as it has not been paid," in s. 1, mean "so far as it has not been paid or is not deemed to have been paid."

There may on any one of the "occasions" (*a*), (*b*) or (*c*) referred to in s. 1 be increment value, *i.e.*, the site value on the occasion may be greater than the original site value, yet no duty may be payable, since it may in fact have been paid on former occasions for payment of duty.

Collected in accordance with the Provisions of this Act.—For these provisions see ss. 3—6 inclusive; subject of course to the reductions or allowances under ss. 3 (5), 10, 14 (4), and 35.

SECTION 2.

Introductory note.

The effect of s. 1 has been (a) to enact a duty to be levied on the "increment value of any land"; (b) to fix its rate; and (c) to declare the occasions on which it is to be collected. Incidentally it has indicated

§ 2 (1). in its closing words that the duty is apportionable amongst the various interests in the land, and may be collected on successive occasions.

Sect. 2 defines or explains the meaning of the "increment value" which is the subject of the duty. It indicates generally how the original site value is to be ascertained, and more specifically how the site value is to be ascertained on each of the occasions (*a*), (*b*), and *c*) referred to in s. 1, being the occasions on which the duty is collectable.

Definition of increment value.

2.—(1) For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation.

For the purposes . . . Act.—The words seem neither to add to nor subtract from the meaning of the sentence. Increment value is not touched upon in the other Parts of the Act, except incidentally in s. 62.

Of any Land.—That is, it is understood, of the fee simple of the land.

Shall be deemed to be.—This section defines the **increment value** which is the subject of the duty. Increment value is a thing of convention, to be ascertained by the rules laid down in the Act, though doubtless a reality lies behind the conception. The way to find the increment value of a site is to deduct the original site value, that is the site value on April 30, 1909 (see s. 26), from the site value on the particular occasion (being one of those referred to in s. 1 (*a*), (*b*), or (*c*)). The result will be the increment value. If the site value at the later date is less than the original site value there is no increment value and no tax.

The Site Value of the Land.—Note that this site value on the occasions (*a*) to (*d*) in sub-s. (2) is not termed "assessable site value" (s. 25 (4)). "Assessable site value" is the result of a process described in s. 25, first of "full site" valuation, and then of deductions. The site value on the several occasions (*a*), (*b*), (*c*), and (*d*) referred to in this section is the result of various processes described or referred to in the section, subject to the like deductions as are made from total value in order to arrive at "assessable site value." The object of every such process is to arrive at the then value of the same thing (*i.e.*, the site) which was valued as on April 30, 1909.

The Occasion on which Increment Value is to be collected.—See s. 1 (*a*), (*b*), and (*c*) for the occasions on which increment value duty is to be collected. If there is a difference between the amount of increment

at the date of the contract and of the conveyance, it is thought that the former is the critical date. § 2 (1).

The original Site Value of the Land as ascertained in accordance with the general Provisions of this Part of this Act as to Valuation.—See ss. 25, 26, 27, as to the method in which original site value is arrived at. These sections are certainly amongst the general provisions of this part of this Act as to valuation, but probably in the phrase "general provisions" other sections are comprised. There is no heading of any portion of the Act as "general provisions," and those words are not used in any side-note to any section. Sects. 25 to 32 are, however, headed "Valuation for purposes of Duties on Land Values," and the whole of those sections are, it is suggested, "general provisions . . . as to valuation," although some of them, such as s. 28, providing for the periodical valuation of undeveloped land, s. 29 (2), (3), and (4), providing for apportionment and reapportionment of site values, and s. 32, providing for the determination of the value, and the apportionment of considerations, are clearly not applicable to the ascertainment of original site value. As to valuation of minerals (see s. 23 (1)).

The original site value may be the substituted original site value under sub-s. (3) of this section, or s. 2 of the Revenue Act, 1911 (see pp. 43 to 48).

Note that on an appeal as to the amount of increment value under this section the original site value cannot be questioned, but only the site value on the occasion (s. 33 (1)).

(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be—

(*a*) where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and

(*b*) where the occasion is the grant of any lease of the land, or the transfer on sale of any interest in the land, the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; and

(*c*) where the occasion is the death of any person, and the fee simple of the land is property passing on that death, the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894, and where any interest in 57 & 58 Vict. c. 30.

§ 2 (2). the land is property passing on that death the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained; and

(*d*) where the occasion is a periodical occasion on which the duty is to be collected in respect of the fee simple of any land or of any interest in any land held by a body corporate or unincorporate, the total value of the land on that occasion to be estimated in accordance with the general provisions of this Part of this Act as to valuation;

subject in each case to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value.

The Site Value of the Land on the Occasion on which Increment Value Duty is to be collected.—Whatever may be the occasion on which the increment value duty is collected, whether on a sale, a lease, a death, or a periodical occasion, the site value **at that time** of the fee simple of the land and not of any interest on the land is that which is to be ascertained in the first instance. If the occasion on which the duty is collected is that of the sale of an interest in the land, *e.g.*, a lease having more than fourteen years to run, or, probably, a lease the original term of which was more than fourteen years whatever may be the unexpired residue, a reversion expectant upon a lease, or an undivided share of the fee simple expectant on such a lease, the Commissioners must fix the proportionate part of the duty to be paid in respect of that interest in accordance with rules made by them for that purpose (s. 3 (3)).* This is equivalent to causing the amount of site value apportioned to the lease to be determined by the Commissioners. It is to be noted that the site value on the occasion has to be ascertained afresh by an entirely new series of valuations on every occasion on which increment value duty becomes collectable. It follows that the amount of the site value on a prior occasion has no effect upon, or relation to the site value on a later occasion, except in so far as it is the determining factor of the amount of duty paid on the first-mentioned occasion, and therefore is also a determining factor of the amount left to be paid on the later occasion, and except so far as the 10 per cent. deduction calculated on the amount of the prior site value under s. 3 (5) has the effect of diminishing the amount of increment value duty to be paid on the later occasion. It follows also that the site value upon which duty is paid

* For these rules see p. 53.

in respect of one of the interests in the land may be greater or less than when an occasion arises for the payment of duty in respect to some other interest in the land. But though this is the legal position, the records of previous valuations and deductions preserved under s. 30 (1) will no doubt be before the Government valuers on the later occasions, and will not be ignored. As a matter of practice, the amounts allowed for deductions will, it is thought, often be followed.

(*a*) **Where the Occasion is a Transfer on Sale of the Fee Simple, the Value of the Consideration for the Transfer.**—The case contemplated is a sale of the fee simple in possession not subject to any lease, and not being the sale of an undivided share in a fee simple in possession (s. 41 ; see p. 457).

The value of the consideration, not merely for the site value, but for the fee simple of the land, *i.e.*, the total hereditament, is that which is the basis of the calculation. One method of ascertaining the site value is adopted by the Act in the fixing of original site value ; another in the fixing of site value on the occasion of a claim for duty. In the former case—ascertainment of original site value—the plan adopted is, roughly speaking, to value the site as a naked site, without buildings or growth of any kind, and to deduct from the amount of such valuation any value directly attributable to permanent works executed, or expenditure of a capital nature incurred for the purpose of improving the value of the land as building land, or for the purpose of any trade or industry other than agriculture ; and also the estimated cost of clearing the land of buildings and trees and other things of which it is taken to be divested for the purpose of arriving at the full site value, and of which it would be necessary to divest the land for the purpose of realising the full site value, and also various other sums which are stated in s. 25 (4) (see p. 294).

In the latter case, that of ascertainment of site value on an occasion when duty is claimed, it is considered that there is a more certain method of site valuation.

It is considered that the value of the consideration for a sale or lease affords an adequate test of the value of the whole hereditament, and that the site value is best ascertained by making the proper deductions from that consideration if paid for the fee simple, s. 2 (2) (*a*), or from the value of the fee simple as ascertained on the basis of that consideration, if it is paid for less than the fee simple, s. 2 (2) (*b*). This method, however, cannot be applied to cases (*c*) and (*d*), in which a valuation of the total hereditament is therefore necessary. Further, this method does not do away with the necessity of a bare site valuation at the time under s. 25 (2), as will be evident when the deductions referred to in the last lines of sub-s. (2) are being considered. One of these deductions, namely, (*a*) in s. 25 (4), necessarily involves a bare site valuation under s. 25 (2), as well as a valuation of gross value under s. 25 (1). It will further be noticed that the "value of the consideration for the

§ 2 (2). transfer" under sub-s. (2) (*a*), "the value of the fee simple of the land" under sub-s. 2 (*b*), and the "principal value of the land" and "the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained" under sub-s. (2) (*c*) are the equivalents, for the purpose of ascertaining site value on an occasion, of the "total value" defined in s. 25 (3), which is necessarily found on the original site valuation. Where, as in sub-s. (2) (*d*), there is no dealing with the land as in (*a*) and (*b*), affording a test of value, and there is also no valuation as in (*c*) for the purposes of the Finance Act, 1894, total value is necessarily adopted for the purpose of ascertaining occasional site value.

Value of the Consideration.—Sect. 32 is material to this section, and runs as follows:—

Determination of value of consideration.

> (1) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment.
>
> (2) If the Commissioners are satisfied that any covenant or undertaking or liability to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners shall allow such sum as they think just in respect thereof as an addition to the value of the consideration.
>
> (3) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine.

Is it not possible that there may be a "transfer on sale" where the consideration is neither the "payment of a capital sum," nor "a periodical money payment," nor one of the covenants referred to in sub-s. (2) of s. 32? This is by no means clear; but if it is the case, then the decisions on what is a "conveyance or transfer on sale" within the meaning of the Stamp Act, 1891, become relevant (see note on p. 8). If it is not the case, a wide field for postponement of payment of duty is no doubt opened. See, further, notes to s. 32, p. 350.

(*b*) **Where the Occasion is the Grant of any Lease of the Land, or the Transfer on Sale of any Interest in the Land the Value of the Fee Simple of the Land.**—In ascertaining increment value duty on the occasion of the grant or transfer on sale of a lease a somewhat complicated process has thus to be gone through. First, the value of the consideration for the grant or transfer of the lease must be ascertained (see s. 32 above as to this). Next, from and on the basis of this value must be calculated the value of the fee simple of the land (total hereditament). Thirdly, from this sum the deductions referred to later

in the clause, that is, the like deductions as are made, under s. 25 (4), for the purpose of arriving at the site value from the total value, must be made. The result is the site value of the fee simple. The amount of the duty is assessed on this value. Then in case of a transfer of a lease or the sale of a reversion or any other interest in the land, the Commissioners determine a proportionate amount of this duty to be the duty payable in respect of the transfer under s. 3 (3) (p. 51) and the rules under that section (p. 53). The same is the case if a lease is granted under s. 3 (3). The lessor pays not on the increment value of the fee which he retains, but on the increment value so far as it passes under the lease which he grants, that is, on the realised increment.

Calculated on the Basis of the Value of the Consideration for the Grant of the Lease or Transfer of the Interest.—The problem is to find the value of the fee simple in possession of the total hereditament (not the site value of the hereditament), on the assumption that the consideration for the lease, or the transfer of the lease or interest, is a true index to that value; in other words, that that consideration represents the true value of the interest dealt with. The governing words are "on the basis." But do these words import a necessity for deducting mathematically, where that is possible, the value of the fee from the consideration given for the lease? For example, if a house and land are leased for fifteen years at a certain rent, must the valuer assume that that rent, taken at whatever number of years he may consider appropriate, represents the value of the fee, or may he reduce or increase that value, according to the circumstances of the case, and neighbourhood, as for example, that it is likely that at the end of fifteen years the neighbourhood will have improved, or deteriorated, or that at the end of that period the house will, owing to its present age, be obsolete and will no longer command the same rent? It is submitted that the latter is the true construction. "On the basis" does not, it is thought, mean "on that basis only," but on the basis that the granted or transferred interest is in fact worth so much and no more. It is submitted that the valuer is entitled to take all the facts of the case into consideration, including the provisions of the lease itself, and is not limited to the single fact of the consideration for the grant or transfer.

Meaning of "on the basis."

A point certain to arise for early consideration is the matters which are to be taken as items in fixing "the value of the consideration for the grant of a lease." Premium, and the capitalised value of the rent, under s. 32 (1) clearly form part of the value of the consideration. But under sub-s. (2) of s. 32 (p. 30) the value of onerous covenants, as for the erection of buildings or the formation of roads, etc., on the property by the lessee, is, it seems, not to be taken into account as part of the consideration except in cases where a nominal rent only has been reserved, and then only in respect to the particular matters specified in s. 32 (2), *i.e.*, covenants or undertakings to erect buildings, or to expend any sums

Items included in fixing value of the consideration.

§ 2 (2). upon the property. Difficulties seem likely to arise on this state of the law. A lease for thirty years is made at a substantial rental of 30*l.* per annum, being a rental of 10*l.* less than the real value of the property, because the tenant has covenanted to build an addition to the existing house on the land. The value of the consideration on the grant of the lease is therefore calculated only on the 30*l.* rent without any addition for the value of the covenant (s. 32 (2)).

The effect of this is that the difference between gross value and full site value is under s. 25 (4) (*a*) deducted from a sum, being the capitalised rent of 30*l.*, say 600*l.*, which is much less than the real value of the property, which is 800*l.*, or the capitalised value of 40*l.*, *i.e.*, the real rental value. The result of this deduction will be that the site value on the occasion of the lease will probably be *nil*, because the real value of the consideration for the grant of the lease has been made to appear as 600*l.* instead of as 800*l.* On a subsequent sale, or sub-lease at a rack rent, or on the passing on death of the leasehold interest, the site will be found to have jumped back again to its true value. It is clear that this may make the then leaseholder liable to a large amount of increment value duty. A similar result will, however, only happen in case of the reversion gradually—that is, as the leasehold term runs out and the value of the reversion increases. If there is really any increment occurring in the site, the calculation of subsequent duty in relation to reversion and leasehold interest respectively seems likely to be interesting and confusing. At this stage of the working of the Act it is not necessary to pursue the apparent results of s. 32 (2) more fully.

This note must be taken subject to the remarks in the next paragraph arising out of the consideration of the case of *Swayne* v. *Commissioners of Inland Revenue* ([1900] 1 Q. B. 172, C. A.) in its relation to increment value duty.

Consideration for transfer of lease.

A problem no less difficult arises when the occasion is the transfer on sale of a leasehold interest in the land. What is the consideration for such a transfer? No. 1, Blank Square is held under a lease for twenty-one years, of which fifteen years are unexpired, at a rent of 300*l.* a year. The rent is practically a rack rent, and the premium (50*l.*) payable on the sale is a nominal premium. It is clear that, so far as regards the ordinary stamp duty on a transfer on sale under the Stamp Act, 1891, the consideration is the 50*l.* only, and not the 50*l.* plus the liability undertaken by the purchaser to pay the annual rent of 300*l.* (*Swayne* v. *Commissioners of Inland Revenue*, [1899] 1 Q. B. 335; [1900] 1 Q. B. 172). Is the "value of the consideration" for the sale to be one kind of value for the ordinary *ad valorem* stamp, and quite another kind of value for the increment value duty stamp? It must be so, unless this section is to lead to absurdity. The site value of a house in a London square, the annual value of which is 300*l.*, may fairly be taken to be at least 1,200*l.* But 50*l.* is under the Stamp Act the "value of the consideration" for the transfer of the house as well

§ 2 (2).

as the site for fifteen years. On this basis the value of the fee simple of the whole property, house and site, would be rather over 100*l*. This result would of course play havoc with the scheme of the Act. The site value of that house would on that sale go down with a bang. It seems, therefore, that "the value of the consideration" for the transfer on sale of a leasehold interest is at least intended to include the liability assumed by the purchaser to pay the future rent. Then under s. 32 (1) (see p. 350) the Commissioners will, it is presumed, estimate the capital value of that liability, notwithstanding that that sub-section seems to point more directly to a periodical money payment to the grantor than to such a payment to a third party by way of indemnity to the grantor. The result of the conclusion thus reached, if it be correct, points to the exercise of caution in applying decisions founded on the Stamp Acts to increment value duty.

Sale of reversion.

It would seem extremely difficult to calculate the value of the fee simple on the basis of the value of the consideration for the sale of a reversion expectant upon a leasehold interest with say 50 years to run, for the consideration is almost wholly based on the ground rent, incident to that reversion, which may be no index at all to the then value of the total hereditament.

Fresh valuation on each occasion.

The question arises whether the ascertainment of site value on an occasion of the transfer on sale of an interest, for example a leasehold interest in land, in any way concludes persons entitled to other interests, as, for example, persons entitled to the fee simple in reversion, from disputing, when "an occasion" arises in reference to their interests, the site value arrived at on the occasion of the former transfer. On each "occasion" it is thought that a wholly independent valuation must be made; and this it seems is the view accepted by the authorities (see the Rules under s. 3 (2) and (3), *post*, pp. 57, 58). Clearly the value of the fee simple as ascertained under this section may often be different on different occasions, and the deductions, even that under s. 25 (4) (*a*), may also be different. It is only in the case of a deduction which could have been, but was not, claimed on the fixing of the original site value that the omission to claim is irrevocable (s. 12). A person entitled to one of the different interests in the land may not be aware of the outlay of another person so entitled, or of the predecessors in title of that other, on the land.

Deductions

Moreover, the same effect on value cannot be attributed to the "deduction" on every occasion. Deductions are mainly expenditure (s. 25 (4)). As time passes the value added originally to the site by certain expenditure may become less; the improvement may be exhausted, in whole or in part. Conversely, the value added may be greater. Each year after the building of a sea wall may add to the value of the protected land as a building site. It may be anticipated that the word "deduction" in s. 12 will not be construed so as to mean the actual expenditure claimed as a deduction, but in accordance, as is thought, with s. 25,

§ 2 (2). as the value added by the improvement or transaction in respect of which a pecuniary amount, varying it may be on various "occasions," is claimed as a deduction.

(*c*) **Where the Occasion is the Death.**—In this case a valuation is made of the fee simple of the land under the Finance Act, 1894. There is no actual sale or lease to operate as an assumedly accurate test of value. The section of the Finance Act, 1894, which is referred to is s. 7 (5). For the sections of that Act material to the Finance Act, 1910, see *ante*, p. 15, *post*, pp. 89 to 112, and Appendix, pp. 589 to 604. For a discussion of these sections, see notes to s. 5, p. 91. The effect of s. 60 of the Act of 1910 (see p. 604) upon s. 7 (5) of the Finance Act, 1894, must not be overlooked. The value of the fee simple of the total hereditament is in this case also to be calculated on the basis of the value of the lesser interest, as a lease, passing on the death, and the same process has to be gone through to ascertain the site value apportionable to the lease as in the case of a transfer or sale (see note to (*b*), *ante*, p. 31, "**calculated on the basis**," &c.).

It is difficult, however, to see why in this case, in order to ascertain the principal value of the fee, the principal value of the lesser interest should be first ascertained by valuation, and the former then deduced from the latter. The natural course would appear to be to ascertain the larger interest by a direct valuation of that interest, for in this case the value of that larger interest cannot be checked or tested, as in the case of an actual sale of a lesser interest, by the amount realised for that lesser interest. There must be a valuation in any event of principal value; and the only question is whether the more certain test of the value of the fee simple is a direct valuation of the fee or a valuation of a subordinate interest, and a calculation based on the amount so ascertained of the value of the fee. It seems to be no real objection that in valuing the fee simple you are valuing some one else's property, because in any event that must be done on the same occasion to ascertain gross and full site values (s. 25 (1) and (2)).

The point is, however, probably one of form rather than of substance, for in ascertaining the principal value of a leasehold interest under s. 7 (5) of the Finance Act, 1894, the valuer will, it is thought, usually first ascertain, at all events in his own mind, the value of the fee.

(*c*) **Fee Simple.**—See note on p. 9, *ante*, and on p. 457, "the expression 'fee simple,'" as to the meaning of this term.

(*c*) **Property passing on that death.**—See *ante*, p. 15.

(*c*) "**Any Interest in Land**" (see notes on "The expression 'interest' in relation to land" and on "the expression 'fee simple,'" s. 41, *post*, pp. 446 and 457; also note on "Land," *ante*, p. 4).—These words must be construed according to the definition or explanation of "'interest' in relation to land" contained in s. 41 of this Act. They are, when applied to

future interests, not equivalent to the expression "interest in expectancy" as explained by the Finance Act, 1894, s. 22 (*j*). Under that Act the expression "'interest in expectancy' includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases." But under this Act all remainders and also reversions expectant on estates of freehold are not included under the term "interest" in land, and reversions expectant on the determination of leases are included. Under the Finance Act, 1894 (s. 7 (6)), estate duty is to be paid on interests in expectancy (*inter alia*, reversions expectant on estates of freehold and remainders) at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate, or when the interest falls into possession. Under the Finance Act, 1910, increment value duty is apparently not payable at all at death upon such reversions and remainders belonging to the deceased. They are not interests in land. Under the Finance Act, 1894, estate duty is payable at the death of the owner on reversions expectant on leases for years, and no option to postpone is allowed in such a case. They are not interests in expectancy. Under the Finance Act, 1910, increment value duty is also payable at death on the same reversions. They are interests in land.

(*d*) **Where the Occasion is a Periodical Occasion**, *i.e.*, April 5, in the year 1914, and every subsequent fifteenth year. Note that in this case, as under (*c*), the taxation is on an estimated and not a realised increment. There is, however, no provision for repayment of duty in case of overpayment as under the Finance Act, 1894, s. 8 (12), though *quære* whether this sub-section applies to increment value duty payable on death (see *post*, p. 104).

(*d*) **Body Corporate or Unincorporate.**—See note to s. 1, *ante*, p. 22. Note the exceptions to the payment of duty by bodies corporate and unincorporate in ss. 9, 10, 35, 37, and 38 (p. 24).

(*d*) **Total Value.**—For definition of "total value" see s. 25. Total value as ascertained by s. 25 in the case of the periodical assessment under s. 2 (2) (*d*) represents, or occupies the like position as, (1) the value of the consideration for the transfer under s. 2, 2 (*a*); (2) the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest under s. 2 (2) (*b*); and (3) either the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894, or the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained under s. 2 (2) (*c*), according as the fee simple or any interest in the land is the property passing on death.

The total value must be specially ascertained every fifteenth year, but as the first periodical valuation is to be in the year 1914 (s. 6 (1)), the same year as the first quinquennial valuation under s. 28 of site

§ 2 (2) value (and therefore necessarily of total value), for the purpose of undeveloped land duty, and as each succeeding periodical occasion for the payment of increment value duty by a body corporate or unincorporate must necessarily fall in a year of quinquennial valuation, it may perhaps be assumed that so far as regards the undeveloped land of a body corporate or unincorporate the quinquennial valuation will be adopted for the purposes of increment value duty payable under s. 2 (2) (*d*). But of course developed land (s. 16 (2)) which is liable to increment value duty will have to be specially valued in order to ascertain the total value.

(*d*) **In Accordance with the General Provisions of this Part of this Act as to Valuation.***—The general provisions are contained in ss. 25 to 32, inclusive (see note on p. 27); as to minerals it is thought that s. 23 is a general provision as to valuation. See other references to the general provisions as to valuation (s. 2 (1), s. 13 (2)). Compare with s. 28, "provisions of this Act as to the ascertainment of value," and with s. 29 (3), "the provisions relating to the procedure on the valuation of land."

There are thus three, or possibly four, different methods of ascertaining site value on the occasion of claims arising for increment value duty. The element common to all three methods is that the value of the fee simple of the whole hereditament, which represents or corresponds with "total value" on the original valuation, is first ascertained, and then the statutory deductions are made from that value. (1) If the fee simple is sold the value of the whole hereditament is the value of the consideration for the sale. (2) If a lesser interest than the fee is sold, or a lease is made, the value of the consideration is to be used as a test or basis for valuing the fee. (3) If the property passes on death, the provisions of the Finance Act, 1894, in relation to valuation for death duties apply. (4) If increment value duty is collected from a body corporate or unincorporate on a periodical occasion, then the general provisions of this Act as to valuation are to apply, and these (see s. 25 (3)) involve the determination of the value of the fee simple, that is, the total value.

The Like Deductions.—These are contained in s. 25, and for detailed comment upon such deductions see the notes to that section (p. 272). But it must be noted that to arrive at one of these deductions, *i.e.*, that involved in s. 25 (2) and directed to be made in sub-s. (4) of the same section, a valuation of the cleared site is necessary. The general scheme of the Act as to ascertaining increment value duty is plain. The problem is to find the difference between the site value on January 30, 1909, and the site value on the one of the "occasions" referred to in ss. 1 and 2, which has actually happened. Site value as on January 30, 1909, is arrived

* For instructions published after this book was nearly through the press by the Inland Revenue to its valuers as to the ascertainment of occasional site value, and a note thereon, see *ante*, p. cl.

at under ss. 25 and 26, by first ascertaining "the total value" of the land, which, roughly speaking, corresponds to its value in the market with all its buildings and improvements, and then deducting from that total value the difference between that value and the value of the land as a cleared site, and also any portion of that total value which has been added by the various kinds of expenditure set out in s. 25, and also the expenses of clearing the site of the buildings, trees, fruit bushes, etc., thereon. These deductions give the **original** site value.*

To ascertain the sum which corresponds to "total value" on the "occasion" of a payment of duty, one of the three or four methods pointed out in s. 2 (2) must be adopted according to the nature of the occasion. This being ascertained, the same classes of deductions, including deductions made on the original site valuation, and all former occasions on which increment value duty was paid, so far as applicable, are made from that sum, as in the case of the original site valuation are made from total value. The result is the site value on the occasion. From this result is deducted the original site value. The balance is the increment value on which, subject to the 10 per cent. remission under s. 3 (5), and to any deduction under s. 36 (*post*, p. 389), duty is payable.

GENERAL NOTE ON SECT. 2 (1) AND (2).

Complications might have been avoided.

The question will no doubt arise in the mind of the reader whether it would not have been simpler to have avoided the complicated methods of arriving at site value on an occasion involved in s. 2 (2), and to have relied simply on a revaluation under s. 25 (2) of the cleared site as at the date of the occasion in question. Such a revaluation is under the present scheme actually necessary, because the deduction (*a*) in sub-s. (4) of s. 25, which has to be ascertained on all occasions mentioned in s. 2 (2) under the last lines thereof, necessarily involves a full site valuation under s. 25 (2). Under the scheme of valuation, on an occasion arriving for payment of increment value duty under s. 1 (*a*), instead of the total value of the fee simple under s. 25 (3) at the time of the original valuation, there is substituted for the purpose of ascertaining site value the value based upon the consideration for the sale or lease. The effect of this is that if a vendor or lessor has realised more for the property as a whole than its real "total value" he pays increment value duty on that additional realised increment, which is of course fair so far as he is concerned (see p. 308). The whole excess price over real or total value, it will be noticed, is treated as site value and is taxable. On the other hand, if he gets less for his property than its real or total value, he pays only, if there is increment value, on a smaller amount of site value than in reality exists. Thus the burden is eased to the

* This description of site value was given in a somewhat shorter form in the first edition of this book, but with some sacrifice of accuracy to lucidity. To combine the two in relation to s. 25 is impossible.

§ 2 (2). back at the expense of logical consistency. But the doubt will occur whether the scheme is not too involved and too hypothetical to secure the comprehension, and therefore to gain the confidence, of the man in the street. If total value had been left to be fixed on the occasion of sales and leases, just as on the original valuation, as a matter of fact the consideration for the sale or lease would have usually been the principal determining feature in fixing gross and therefore total value. But the uniformity and consequently the simplicity of the valuation clauses would have been preserved. Indeed, if this simpler plan had been followed the cumbrous and complicated addition to s. 25 of gross and full site values might well have been avoided.

Apportionments sometimes necessary.

These sections must read subject to the following general observations. Firstly, in either case (*a*) or (*b*) of sub-s. 2 the property agreed to be sold or leased may be a portion of a property originally valued as a whole, in which case an apportionment of original site value under s. 29 (2) will be necessary. Further if since the original site valuation increment value duty has been paid on the whole original property, that payment must be apportioned under s. 3 (1) between the part retained and the part agreed to be sold. Secondly, in either case (*a*) or (*b*) the property agreed to be sold or leased may consist of two or more properties comprised in entirely separate original site valuations. In this case the Commissioners must apportion the consideration given on the then sale or lease, under s. 32 (3) for the purposes of (*a*) or (*b*). Thirdly, both the suppositions firstly and secondly just suggested may be simultaneously realised, and two or more portions of properties separately valued may be the subject of the same sale or lease, in which case there may be necessary (*a*) apportionment of original site values, (*b*) apportionment of increment value duty paid on one or more previous occasions, and (*c*) apportionment of the consideration then paid amongst the various properties, so as to fix the then site value of each.

Other qualifications of section.

Fourthly, the sub-sections must be read subject to the provisions of (*a*), the next sub-section, s. 2 (3), and s. 2 of the Revenue Act, 1911 (see p. 44), allowing in certain cases a higher original site value to be substituted for the site value on April 30, 1909, (*b*), s. 3 (5) allowing also in certain cases a 10 per cent. reduction of the duty, (*c*), s. 14 (4) allowing to be credited as a payment on account of increment value duty payments made in respect of reversion duty paid on the same increment, and (*d*), s. 36 allowing capital sums paid by way of betterment charge to be deducted from the amount of increment value as ascertained under this section.

ILLUSTRATIONS OF THE APPLICATION OF SECT. 2.

(See the note at the end of the illustrations.)

(1) The original site value of Whiteacre on April 30, 1909, is 500*l.* It is sold on January 1, 1912, for 1,000*l.*, which, there being no

deductions, is taken to be the site value. The increment value, therefore, is 500*l.* (s. 2 (2) (*a*)). The whole duty, 100*l.*, is collected (s. 3 (2)).

(2) The original site value of Blackacre is 500*l.* It is leased on January 1, 1912, for twenty-one years at 75*l.* a year. On the basis of the value of this rent, the value of the fee simple and the site value is fixed by the Commissioners at 1,250*l.*, subject to deductions. The increment value on January 1, 1912, subject to deductions, is 750*l.* (s. 2 (2) (*b*)). The lessor will of course only pay the proportion of duty apportionable to the lease (s. 1, p. 2; s. 3 (3), p. 51).

(3) The lease of Blackacre referred to (No. 2) is on January 1, 1913, sold for 200*l.* On the basis of the value of this sum and the liability undertaken by the purchaser to pay the rent during the remainder of the lease (the two amounts being the consideration for the transfer of the interest in the land), the Commissioners fix the value of the fee simple, *i.e.*, the site value, of Blackacre at 1,450*l.*, subject to deductions. The increment value on January 1, 1913, subject to deductions, is 950*l.* (s. 2 (2) (*b*)). Again only a proportion of the duty will be paid by the transferor of the lease (s. 1; s. 3 (3)). There is, however, in this case a serious question, based on *Swayne* v. *Commissioners of Inland Revenue*, [1900] 1 Q. B. 172, as to whether the agreement to pay the rent forms part of the consideration (*ante*, p. 32).

(4) On January 1, 1914, the owner of the reversion of Blackacre expectant on the twenty-one years lease referred to in illustrations 2 and 3 sells his reversion for 1,300*l.* On the basis of the value of the consideration for the transfer of the interest (*i.e.*, the reversion), the Commissioners fix the value of the fee simple (as defined by s. 41), which is the site value subject to deductions, at 1,550*l.* The increment value on January 1, 1914, subject to deductions, is 1,050*l.* (s. 2 (2) (*b*)). Again only the proportion of the duty apportionable to the reversion is collected (s. 1; s. 3 (3)).

(5) The original site value of Whiteacre on April 30, 1909, is 1,000*l.* On January 1, 1912, the owner in fee dies, whether testate or intestate is not material. The principal value of Whiteacre as ascertained for the purposes of Part I. of the Finance Act, 1894 (s. 7 (5)), is 1,500*l.*, and that is the site value on the occasion subject to deductions. The increment value on January 1, 1912, subject to deductions, is 500*l.* (s. 2 (2) (*c*)). The whole duty is collected.

(6) The original site value of Blackacre on April 30, 1909, is 1,000*l.* At that date it is in lease to A. for twenty-one years unexpired at a rent of 50*l.* a year, and subject to such lease B. is the owner in fee. On January 1, 1912, A. dies, whether testate or intestate is not material. The principal value of A.'s interest as ascertained for the purposes of Part I. of the Finance Act, 1894, is (say) 600*l.*; the value of the fee simple of the land (which, subject to deductions, is the site value) calculated on that basis is 1,200*l.* The increment value is therefore on January 1,

§ 2 (2). 1912, 200*l.*, but subject to deductions. Only the due proportion of the duty apportionable to the term is collected.

(7) Referring to Blackacre, the subject of illustration 6. B., the reversioner in fee, dies on January 1, 1914, whether testate or intestate is not material. The principal value of B.'s interest as ascertained for the purposes of the Finance Act is (say) 700*l.*, and on the basis of that value the value of the fee simple (as defined by s. 41) of the land is ascertained by the Commissioners to be 1,300*l.*, which, subject to deductions, is the site value. The increment value is 300*l.*, subject to deductions (s. 2 (2) (*c*)). Only the duty in respect of the reversion is collectable (s. 3 (3)).

(8) The original site value of Whiteacre, which belongs to a body corporate or unincorporate, is 1,000*l.* On April 5, 1914, being the first periodical occasion for the collection of increment value duty in the case of such a body (s. 6 (1)), the total value under s. 25 (3) is 1,500*l.* The increment value on April 5, 1914, is therefore, subject to deductions, 500*l.* (s. 2 (2) (*d*)). The whole duty is collectable.

(9) The original site value of Whiteacre is 500*l.* On January 1, 1912, it is leased to the X. Company for twenty-one years at a rental of 50*l.* a year. On the periodical occasion, April 5, 1914, the total value under s. 25 (3) of Whiteacre is ascertained at the sum of 1,200*l.*, which will be the site value on the occasion, but subject to deductions. The increment value on April 5, 1914, is 700*l.*, subject to deductions (s. 2 (2) (*d*)). But the X. Company will of course only pay its proper proportion of duty on this increment (s. 3 (3)).

(10) Exactly the same method of valuation will apply in case the X. Company are the owners in fee of the reversion and not the owners of the lease. The company will of course pay only the duty apportionable in respect of the reversion.

Note to the above illustrations.—It will be seen that what has been compared for the sake of simplicity in the above illustrations is original site value, which is assessable site value ascertained under s. 25 (*post*, p. 272) with the value of the whole hereditament (buildings and improvements included). The last-mentioned value is ascertained in the various methods, according to the nature of the occasion, directed by s. 2. But what has to be specially noted is that in each case from the value so ascertained are to be made exactly the same deductions which are to be made from "the total value of the land" as ascertained by s. 25 (3) in order to arrive at the original site value. In other words, "total value" under s. 25 (3) on the original site valuation occupies the place of, in s. 2 (2) (*a*), the value of the consideration, in s. 2 (2) (*b*) the value of the fee simple, in s. 2 (2) (*c*) the principal value of the land as ascertained for the purposes of the Finance Act, 1894, or the value of the fee simple of the land calculated on the basis, etc. In s. 2 (2) (*d*) there is no sale, or lease, and no death valuation. So there is a "total" valuation under s. 25 (3), and in this case original

§ 2 (2).

site value is compared with the site value on the occasion, through an exactly identical process of valuation.

Deductions may be predominant partner.

Very often, of course, the deductions are the predominant partners in the valuation process. A country mansion built on agricultural land may have a total value of 10,000*l.* and a site value of 100*l.* Nevertheless you must get at the two site values, original and occasional, just as you get at the site of a Cheapside house, the total value of which is 11,000*l.* and the site value 10,000*l.*

In each case you take the value of the whole and deduct from it the value of all that is not natural site value, that is, not only buildings but improvements of the site itself (s. 25 (4)).

In the above illustrations no account has been taken of the 10 per cent. deduction under s. 3 (5).

The fact that in all cases increment value is calculated on the fee simple of the land will be duly noted, though duty is only payable in respect of the specific interest as to which the occasion has arisen (s. 1).

(3) Where it is proved to the Commissioners on an application made for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April, nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Part of this Act shall apply accordingly.

Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgage for the consideration.

An application for the purpose of this section must be

§ 2 (3). made within three months after the original site value of the land has been finally settled under this Part of this Act.*

ILLUSTRATION OF SECT. 2 (3).

The original site value of Blackacre is fixed at 500*l.* But on a sale on May 1, 1889, its site value was 600*l.* The owner may by application within three months of the final settlement of the original site value get 600*l.* substituted for 500*l.* as the original site value. The substituted site value is arrived at by reference to the consideration for the sale just as under s. 2 (2) (*a*) (see *ante*, pp. 29 to 33).

The site value of a property may, within the twenty years prior to April 30, 1909, have been greater than the site value on that day. For the purpose of increment value duty it is the interest of an owner to have a high original site value. The higher the original site value, the less the increment value and the increment value duty. An owner would feel it to be a hardship if he had to pay increment value duty on an increment which was merely a recovery from a fall in site value taking place after he or his ancestor had bought the property. The section within the limitations laid down obviates this hardship. Indeed, as will be seen, the relief under this sub-section, but not under s. 2 of the Revenue Act, 1911, extends to cases where the higher value existed, in the hands of a person who had sold to the owner being charged, or his predecessor in title.

Proved to the Commissioners.—Subject to an appeal in the usual way under s. 33. The section does not necessarily mean that strict legal proof will be required. The Commissioners are the Commissioners of Inland Revenue (s. 96 (2)), who are subject to the control of the Treasury, and whose constitution and duties are regulated by the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21).

On an Application.—The application must be specially made. It is obvious that it cannot be made strictly in the owner's return furnished under s. 26 (2), because that is a return antecedent to and for the purpose of fixing of the site value, and the sub-section says the application must be made within three months after the original site value has been finally settled. But it is possible that, to save a multiplicity of applications, the Commissioners may afford facilities for furnishing the information in such return which would enable them to act upon this sub-section.† Apparently the application may be made either by the owner or by a person interested within the meaning of s. 27.

Any Transfer on Sale of the Fee Simple of the Land or of any Interest in the Land.—The bare fact that the site value at some time within the

* Sub-s. (3) and the notes thereon must be read with s. 2 of the Revenue Act, 1911, in mind (*post*, p. 44).

† This seems to have been partially done. Form 4 (*q*) apparently has this object in view. See also Forms 43, 44, and 45 *post*, p. 543.

twenty years exceeded the value on April 30, 1909, does not give a right to the relief given by the sub-section. The higher value must exist at the time, which, it is assumed, means the date of execution, of a transfer on sale. The property may have fluctuated in value, but unless the higher value is proved by the transfer the sub-section does not apply. The grant of a lease for over fourteen years within the period of twenty years does not apparently bring the sub-section into force, although such a grant is an occasion for collection of increment value duty. But the transfer of such a lease, even though only a year of the term be unexpired, which is an interest in land does bring the section into force, which is a remarkable result of the sub-section. The sale of the reversion, however long the lease may be, would bring the section into play.

The transfer under this sub-section need not have been a transfer to the owner applying for the benefit of the sub-section or to his ancestor. It may have been a transfer to a predecessor in title from whom he or his ancestor may have bought it, or to a donor to himself by deed or will. The transfer of the interest in land may apparently have been a transfer of an underlease derived out of a lease granted by a predecessor in title. The consideration for that underlease is evidence of the value of the property. But to obtain the benefit of the extension of this section given by the Revenue Act, 1911, s. 2 (*post*, p. 44), the transfer must have been to the person who is the owner at the time of the application.

Transfer in this sub-section does not, it seems clear, include "passing on death."

If the property has been sold half-a-dozen times within the twenty years, it is apprehended that the taxpayer may select the occasion when the site value was highest. The words of the section are "at the time of any transfer," etc.

If the property being valued was included with other property in the antecedent sale, the consideration on that sale must be apportioned by the Commissioners under s. 32 (3).

Original Site Value of the Land as Ascertained under this Act.—That is, under ss. 25 to 27 (see pp. 272 to 333).

For the Purposes of Increment Value Duty.—This provision applies only to increment value duty, and not to undeveloped land duty. In case of the latter tax the owner wishes to keep his site value as low as possible. There may thus be two original site values, one for increment value duty purposes, and one for undeveloped land duty purposes; but the latter is only in force till after the quinquennial assessment for the year 1914 has been made (s. 28, and s. 16 (3)).

Site Value shall be Estimated . . . by Reference to the Consideration on the Transfer, etc.—The test of the former site value is the consideration then given for the property, less, of course, the statutory deductions (see notes on s. 2 (2) (*a*) and (*b*)).

§ 2 (3). If the application under the section be to increase the original site value of a leasehold with, say, twenty-five years to run, on the ground that the site value of the land was on the sale of that leasehold in the year 1900 greater than on April 30, 1909, the same complicated process must be gone through as was described in the note to sub-s. (2) (*b*) of this section (see p. 30).

A Mortgage.—The amount lent on mortgage is not a trustworthy test of the value of the property. The owner or person interested as well as the mortgagee may, nevertheless, use the test of mortgage to show that the value was not less at the date of the mortgage than the amount secured by the mortgage. If the property being valued was a portion only of the property mortgaged, could the Commissioners apportion the consideration (*i.e.*, mortgage money) under s. 32 (3)? Their powers under that sub-section are confined to "properties included in any transfer or lease." If not, is the whole of the mortgage money to be deemed consideration?

Amount Secured.—The words would *primâ facie* include interest and other sums covenanted to be paid, and which could be retained out of the proceeds of a sale of the land, or which would form part of the amount found due on an account taken in pursuance of a judgment for foreclosure *nisi*. They might even include further advances. Must not the words "amount secured," etc., be construed to mean the "principal sum"? Supposing the amount advanced, technically spoken of as "secured," vastly exceeds the value of the property, as often is the case where the security is simply collateral. There may clearly be difficulties in the application of the sub-section.

Finally Settled.—It is thought that the original site value is finally settled either when it is "adopted" under s. 27 (see p. 320, and note on p. 324), or if there is an appeal, after the appeal; but the precise time in the latter case is not apparent.

THE REVENUE ACT, 1911 (1 GEO. 5, c. 2, s. 2).

Amendment of s. 2 (3) of the principal Act.

2.—Sub-section (3) of section two of the principal Act (which relates to the definition of increment value) shall apply to the case of any transfer on sale of the fee simple of the land or of any interest in the land which took place twenty years or more before the thirtieth day of April nineteen hundred and nine, and which was a transfer to the person who is the owner of the land or any interest in the land at the time when an application is made under that provision, as it applies to the case of a

transfer on sale which took place within twenty years before the thirtieth day of April, nineteen hundred and nine. § 2 (3).

In the cases where the original site value has been finally settled before the passing of this Act, an application may be made, notwithstanding anything in sub-section (3) of section two of the principal Act, under that sub-section, for the purpose of giving effect to this provision within three months after the date of the passing of this Act, and the Commissioners shall in such a case alter the original site value as finally settled in such manner (if any) as may be necessary to give effect to the amendment made by this provision, and, in cases where any amount has been paid on account of duty the Commissioners shall make such repayment as may be necessary to adjust the amount paid to any alteration of value made in pursuance of this provision.

The main points to be noted in this section seem to be as follows :— General note on sub-section.

(1) The period of twenty years limited by s. 2 (3) of the Finance (1909–10) Act, 1910, within which the transfer on sale must have been made is indefinitely extended backwards, provided that such transfer was made to the "person who is the owner of *the land or any interest in the land* at the time when an application is made under" s. 2 (3), that is within three months after the original site value has been finally settled. "Owner" seems not used in the sense defined by s. 41, par. "the expression 'owner'" (see p. 458). Indefinite extension backwards of s. 2 (3).

(2) It seems probable that the privilege is personal, and that neither volunteers under a deed, nor heirs at law, nor devisees under a will deriving title from a person who purchased more than twenty years before April 30, 1909, are within the section. In this respect the section differs from s. 2 (3) (see notes on pp. 42 and 43). But probably "person" includes a body corporate (Interpretation Act, 1889, ss. 2, 19). A personal privilege.

(3) It is thought that the extension is limited to a sale beyond the twenty years, and does not include a mortgage, but this perhaps is not quite clear. As to a mortgage.

(4) It seems that, if a leasehold or any other interest in the property had been transferred on sale more than twenty years before April 30, 1909, and the transferee was the actual person possessed of that interest at the time of the application under s. 2 (3) of the Act of 1910, and s. 2 of the Revenue Act, 1911, those facts would enable either that person or the owner or any other person interested to avail himself of the provisions of the latter section, notwithstanding that only one Curious result of s. 2 of the 1911 Act.

§ 2 (3). year or even one day of the leasehold interest were unexpired at the time when the application for that purpose was made. *Sed quære.*

When application to be made.

(5) If the original site value of a property had not been "finally settled" before March 31, 1911, the application to fix the original site value by reference to the sale beyond the twenty year limit must be or have been made within the time fixed by the last paragraph of s. 2 (3) of the Act of 1910. If the original site value had been finally settled before March 31, 1911, the application must have been made before June 30, 1911.

Increment although the property has depreciated.

(6) It must be noted as to the joint provisions, and especially as to s. 2 of the Revenue Act, 1911, that it is perfectly possible that there may be increment value on a sale after April 30, 1910, where the property has realised less than the amount for which it was purchased antecedent to that date. For example, a house may have been purchased for 1,000*l.* in the year 1870 by the present owner, at which date the site value may have been 180*l.* On April 30, 1909, the total value of the house on the original site valuation may be 950*l.*, while the value of the site may then be 230*l.* The thirty-nine years wear and tear of the buildings may easily have reduced the value added by them to the site from 820*l.* to 720*l.* The owner cannot claim the benefit of s. 2 of the Revenue Act, 1911, because the site value on the sale in 1870 did not exceed the original site value on April 30, 1909 (Finance Act, 1910, s. 2 (3)). If, therefore, he sells the house on January 1, 1912, for 990*l.*, when the site value is fixed at 260*l.*, he will have to pay increment value duty on 30*l.*, less 10 per cent. deductions on 230*l.*, under s. 3 (5), that is, he will have to pay increment value duty on 7*l.*; but as the duty is 1*l.* for every complete 5*l.* of increment value, he will only pay 1*l.*

Avoidance of contracts for payment of increment value duty by transferee or lessee.

1. Any contract made after the passing of this Act between a transferor and transferee or a lessor and lessee for the payment by the transferee or lessee, as the case may be, of increment value duty, or any expenses incurred in connection with the payment or assessment of the duty, or for the repayment or reimbursement by the transferee or lessee to the transferor or lessor in any manner of any payments made by the transferor or lessor in respect of that duty or any such expenses, shall be void.

Compare the above section with s. 19, p. 203, as to undeveloped land duty; and s. 20 (4), p. 225, and s. 21 (2), p. 228, as to mineral rights duty.

This section is extremely comprehensive, and it will be difficult to escape it. The amount of increment value duty payable on a sale or lease is a matter the particulars as to which are usually in the vendor's

§ 2 (3).

or lessor's knowledge, and not usually in the purchaser's or lessee's. Those particulars may be numerous, complicated and disputable from the point of view either of the Crown or the subject. Hence probably the section.

The provision applies to contracts entered into after but not to those entered into before March 31, 1911, the date of the passing of the Act. It probably vitiates only the stipulation for payment of increment value duty and not the whole contract.

FINANCE (1909—10) ACT, 1910, SECT. 3.

GENERAL NOTE ON SECT. 3.

By ss. 1 and 2 the amount of the duty has been fixed and its nature has been generally described.

Sect. 3 points out the persons whose duty it is to exercise the taxing powers created by the Act. Under s. 96 (2) the reference in Part I. of the Act to "the Commissioners" is to the Commissioners of Inland Revenue. But the section not only does this; it also confers substantive powers not elsewhere expressly or impliedly given. Such is the power to apportion or reapportion duty previously paid. This power must be read in connection with s. 29 of the Act relating to apportionments of site value (see p. 338). Again, this section makes it clear by sub-ss. (2) and (3) that the duty which is to be collected on an occasion (*a*), (*b*), or (*c*), referred to in s. 1, is the duty payable in respect of the interest only in reference to which the occasion arises, and not the duty on the whole of the interests in the land. Thus if a leasehold interest (liable to increment value duty) is sold, duty is paid on that interest only, and not on the reversion in fee.

Further, sub-s. (1) gives the Commissioners power to determine the amount of duty which is to be deemed unsatisfied on any occasion for payment of duty, after giving credit for the amount of duty paid on previous occasions. Apparently the Commissioners interpret this power as enabling them, for the purpose doubtless of doing justice as between the interests in the land, and so far as possible to decline to allow payments in respect of one interest in the land to be credited when an occasion arises in respect to another interest. See the Rules under s. 3 (2) and (3), *post*, p. 58, rule 3 (1).

This section is a general section which relates to increment value duty whether paid under paragraph (*a*), (*b*), or (*c*) of s. 1. The following sections 4, 5, and 6 respectively relate to payments of duty under (*a*), (*b*), and (*c*) respectively.

General provisions as to collection of increment value duty.

3.—(1) On each occasion on which increment value duty is collected on the increment value of any land, such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine, after giving credit for

§ 3 (1). the amount of duty paid on previous occasions. The Commissioners shall make such apportionments and re-apportionments of any duty paid on previous occasions as they think necessary for the purpose of giving effect to this provision.

On each Occasion being one of the occasions set forth in s. 1 (*a*), (*b*), and (*c*).

Such an Amount of Duty.—The duty is one-fifth of the increment value subject to the 10 per cent. deduction under s. 3 (5).

Deemed to be Unsatisfied as the Commissioners Determine.—The determination must, of course, be a judicial determination, and is subject to the appeal under s. 33. In this respect, however, s. 33 (1) (*b*), which prevents original total value and original site value, and the site value as ascertained under any subsequent periodical valuation, being questioned on an appeal against an assessment of duty, must be noted. See, further, note at head of section.

After giving Credit for the Amount of Duty paid on Previous Occasions.—On each occasion when a claim arises the same process must be gone through. Deduct the original site value from the then site value. The balance is *primâ facie* increment value. Then it must be considered whether there are any deductions under sub-s. (5) of this section to be made from that *primâ facie* increment value in order to arrive at the taxable increment value. The taxable increment value being thus arrived at, the Commissioners, it would seem from this sub-section, will determine the amount of duty thereon (not apparently a difficult matter), and so far as such duty has not been already paid on previous occasions, or is not deemed to have been paid under one of the provisions in the Act to that effect (see s. 3 (5), s. 4 (4), s. 8 (5), s. 10 (1), s. 35 (1), s. 36), will claim it from the person liable on the occasion to pay, *i.e.*, the vendor, lessor, personal representative, etc. But it is clear that only the amount apportionable in respect of his interest can be claimed (sub-ss. (2) and (3)). If increment value duty has once been paid in respect of the fee on an increment it will never again be payable on the same increment however often the property may change hands. It is a duty payable on the rise in value of each site affected above the 1909 line, and once paid, or deemed to be paid, it franks that site up to the value on which it has been so paid, or is so deemed to be paid. The site may fall in value, and rise again to its old level. Till it passes its former high level, increment value duty is not again to be collected.

The Amount of Duty Paid.—Probably these words cover duty "deemed to be paid" in the various cases in which it is so deemed. See the last note.

Such Apportionments and Re-apportionments.—This paragraph must be read in connection with s. 29. **§ 3 (1).**

An illustration of apportionment.

It will be a comparatively easy matter to fix the original site value of the fee simple in possession of a particular plot of land, and then at a later date, on the sale in fee in possession of that plot, to fix its incremented value minus 10 per cent. of the original site value. Complications will necessarily arise in three ways. First, the original plots will be divided, and the original and possibly the later site values will have to be apportioned amongst such divided plots. The problem, when in the year 1920 the reversion of a large plot is being split up into four portions on a sale, will be, not what is the site value at the date of division of portions A, B, C, and D of the plot—that will be easily ascertained under s. 2 (2)—but what was the original site value on April 30, 1909, of each of those portions, and what were their respective site values in the years, say, 1912 and 1915 respectively, when increment value duty was paid on the aggregate of the larger plot. The next problem is the apportionment of the amounts paid in 1912 and 1915 as increment value duty amongst the respective portions A, B, C, and D. Apparently each such payment of increment value duty must be divided amongst the portions in proportion to their respective increment values on the occasion on which such payment was made. These respective values may as compared with each other have varied between the years 1912 and 1915, and again since the year 1915, and, in consequence, the different portions (A, B, C, and D) of the original plot are paid up in respect of increment value in different proportions. A third question of difficulty may arise from the division of the original fee simple in possession into a lease for a term of years exceeding fourteen, and a reversion, and in this case also a practical apportionment of the duty to be borne in respect of both interests will arise on an "occasion" in relation to either. It may indeed be necessary to carry back inquiries into former values and payments on many past "occasions" extending over a long series of years, during which the proportionate values of A, B, C, and D may have varied.

Apportioning and re-apportioning site value.

The first matter of difficulty above referred to, that of apportioning original or subsequent site value, is met, wholly or partially, by s. 29 (2), which gives the Commissioners power to apportion and re-apportion either original site value or site value fixed on a periodic valuation under s. 28; but apparently confers no power to apportion site value fixed on an "occasion" on which increment value duty was collected; although it would seem to be necessary to apportion site value fixed on an occasional valuation in order to apportion the amount of duty paid on that occasion. It is suggested that the concluding sentence of s. 3 (1) gives an implied power to the Commissioners to apportion occasional site value, since without such apportionment it seems impossible that they should apportion duty paid on previous occasions. The sub-section under consideration (s. 3 (1)) gives power to apportion duty paid on

§ 3 (1). previous occasions (thereby meeting the second difficulty), and doubtless this will be done so as to distribute the former payments proportionably to the increment of the different parts. Sub-sect. (3) of the same section meets the third difficulty by giving power to the Commissioners to make rules which will have the practical effect of apportioning the duty amongst the various interests in the land. See *post*, p. 51.

Complexity of problems to be solved.

It is obvious that problems of extraordinary complexity of fact and of difficulty in applying the law to the facts can be imagined as arising out of the imposition of increment value duty. Some of such problems are certain to arise in substantial numbers. But the amounts at stake will usually be so small that it will not often be worth the subject's while to contest the matter with the Crown.

The provisions of s. 30 (1) are material to the understanding of the working of this sub-section.

> The Commissioners shall record particulars of all valuations, apportionments, re-apportionments and assessments made by them under this Part of this Act and of any deductions allowed in determining any value, and of the amount of any duty paid under this Part of this Act in respect of any land.

Under sub-s. (2) of the same section any person interested in the land is entitled to obtain on a small payment copies of such particulars.

It seems clear from ss. 1, 2, 3, 4, 5, 25, 28, and 32, and the incidental provisions of the Act, that, if the authorities so desired to work the Act, it would be possible under its provisions to create a tolerably complete record and history from the year 1909 of the title to, and dealings with, capital expenditure on all the land of this country. There seem, however, up to the time of going to press with the second edition, to be no signs that the powers of the Act are being otherwise used than for the purpose of obtaining the actual duties imposed by the Act.

(2) Where increment value duty is collected on the occasion of the transfer or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate, the whole amount of the duty which is determined to be unsatisfied shall be collected by the Commissioners in accordance with rules made by them for the purpose.

Transfer or Passing on Death of the Fee Simple of any Land.—The occasion on which the duty is due is one which affects the whole estate and interest in the land, and therefore the whole increment value. The difficult question of apportioning site value and increment value and

the duty thereon amongst the various interests does not arise. "Fee simple" means, it will be remembered, "fee simple in possession, not subject to any lease," and does not include an undivided "share in a fee simple in possession" (s. 41).

By a Body Corporate or Unincorporate.—But see s. 6 (3), under which the duty payable by such a body may be paid by fifteen equal yearly instalments.

The whole Amount of the Duty which is determined to be Unsatisfied.—The duty is the difference between original site value and the site value on "the occasion." But portions of that duty may have been paid or be deemed to have been paid on previous occasions. To the extent to which this has been the case the duty is satisfied. The Commissioners determine the amount which has not been so satisfied.

In accordance with Rules . . . Purpose.—These words form the concluding words of both sub-s. (2) and sub-s. (3). For the rules and comment thereon, see p. 52.

A wide latitude is apparently left to the Commissioners in framing the rules. They cannot, it is true, increase the aggregate charge on the site considered as a whole. But they can lay down rules which will distribute it as they think fit amongst the various interests in the site. But these rules (under s. 93) must be laid before Parliament and may be disallowed if an address is presented asking for disallowance by either House.

(3) Where increment value duty is collected on the occasion of the grant of a lease, or on the transfer or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, such proportionate part of the duty shall be collected as may be determined by the Commissioners to be payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose.

Such Proportionate Part of the Duty.—The duty is clearly contemplated by the Act as accruing on the whole value of the site fee simple. Sometimes it is collected in respect of the whole fee, as when the owner sells the fee simple in possession. It is sometimes collected in respect of a portion of that fee, and not of the rest, as when the owner in fee simple in possession makes a lease for over fourteen years. He then pays increment value duty calculated on the number of years for which the lease has to run. He has in fact realised his increment to

§ 3 (3). this extent. If he dies during the currency of the lease, increment value duty will be collected in respect of the reversion in fee to the date of his death, but in calculating the amount of such duty *primâ facie* under s. 3 (1) it would seem that credit should be given for what was paid by the deceased when the lease was made. Supposing in this case increment value duty has also been paid on a transfer of that lease by the lessee, then it would also seem under s. 3 (1) that credit must be given for that payment on the occasion of the death of the owner in fee of the reversion. This, however, does not seem to be the view which the Commissioners take of sub-ss. (1) and (3) of s. 3 (see the Rules of the Commissioners issued under sub-ss. (2) and (3), *post*). From rule 3 (1) of those Rules it appears that in fixing the "proportionate part of the duty determined by the Commissioners to be payable in respect of the interest in land created, transferred, etc.," the Commissioners will not give credit for sums paid in respect of any other interests in land, except an interest out of which the interest under taxation was derived (see notes on the Rules (p. 59)). Rule 3 is, however, so difficult to interpret that until it is seen how it is applied in practice by the Commissioners it is hazardous to make conjectures as to its meaning. It seems at all events clear that at no single moment of time is the Crown entitled to claim from any owner or persons interested any sum in respect of duty which will bring the amount paid as increment value duty to more than 20 per cent. on the increment value of the fee simple at the time of demand. If this view is correct it follows that if land is held on lease, either lessee or reversioner in fee may by a payment of duty in respect of his interest, followed by a fall in site value, relieve the person entitled to the other interest from payment of increment value duty. The latter's duty will have been satisfied, or satisfied *pro tanto*. The following note on the Rules under sub-ss. (2) and (3) will, it is hoped, prove useful.

RULES MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER S. 3 (2) AND (3) OF THE FINANCE (1909—10) ACT, 1910, AND NOTES THEREON.

INTRODUCTORY NOTE.

Sect. 3 is the section under which the Commissioners are authorised to determine and where necessary to apportion the increment value duty to be paid on an occasion arising under s. 1 for its payment. The occasion may be one affecting the fee simple in the conventional meaning of that term, *i.e.*, "the fee simple in possession not subject to any lease" and not including "any undivided share in a fee simple in possession" (see s. 41, "the expression 'fee simple' etc.," p. 457); or the occasion may be the grant of a lease, or a transfer on sale, or the passing on death of an interest in land as defined or cut

§ 3 (3).

down by s. 41 (see p. 446, "the expression 'interest,' etc."); or the occasion may be the holding either of a fee simple or an interest by a body corporate or unincorporate on a periodical occasion. Where the occasion affects the fee simple, the problem of determining the amount of duty to be paid, or, as the Act phrases it, to be collected, is comparatively simple. Under s. 3 (2) in such case the whole amount of the duty which is determined to be unsatisfied is to be collected by the Commissioners in accordance with rules made by them for the purpose. When the occasion arises in relation to the grant of a lease or to the transfer or passing on death of an interest (*e.g.*, a reversion) in land, the apportionment of the duty amongst the various interests will not always be a simple matter. In such cases s. 3 (3) provides that "such proportionate part of the duty shall be collected as may be determined by the Commissioners to be payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose." It will be observed that most of the following rules are made under sub-s. (3) for the purpose of determining the proportionate part of the unsatisfied duty to be paid on occasions arising in respect of such interests as freehold and leasehold reversions and leases and underleases. It will also be recollected (*ante*) that the Act appears to contemplate the duty as an incident which attaches as it were automatically to the accrued increment value; and this notwithstanding the fact that owing to a recession of value it may never be collectable. The duty exists and is unsatisfied before it is collectable. On an "occasion" relating to the fee the whole of the unsatisfied duty is to be collected. On an "occasion" relating to an "interest" in land a portion of that unsatisfied duty is paid, the remaining portion or portions being subsequently paid, if the increment lasts, when "occasions" arise in relation to the other interest or interests in the land. The effect of this, of course, is that as the various interests in the site are automatically waxing and waning as time goes on, the interest of a reversioner becoming greater and that of a lessee becoming less, the proportion of the unsatisfied duty to be paid by each on the happening of an occasion for payment is a constantly varying one.

Further, a recession of site values after payments have been made on account of increment value duty in respect of one or more of the interests requires special provision. Hence it necessarily follows that there is some complexity in the following rules.

THE RULES AND NOTES THEREON.

1. For the purposes of these rules,

Rule 1, sub-rule (1).

(1) The expression "proper proportion" means the ratio of the present value of an annuity for the term of the interest under review to the present value of the same annuity in perpetuity.

§ 3 (3). When the only estate or interest in the land (*i.e.*, the assessable site value of the land) is a fee simple in the sense in which that term is defined by s. 41 (see p. 457) this sub-clause is inapplicable. No question of "proper proportion" arises. The whole unsatisfied duty (subject, of course, to any deduction under s. 3 (5)) is paid by the one estate or interest, namely, the fee simple. Where there is a leasehold interest in existence, where there is a life estate, where the fee is held in undivided shares, and an occasion for the payment of duty arises in respect of any one of those interests (which are given as illustrations only), the question arises (see rule 3 (2), p. 59), what is the "proper proportion" of the unsatisfied duty which should be borne by that interest? This rule 1 (1) answers that question.

Illustration of proper proportion.

Subject to a lease the unexpired term of which is twenty-five years and the present lessee of which is A., Blackacre is vested in B. in fee. A. transfers his interest on sale. How will the amount of duty to be paid by A. be ascertained? We must first assume that the site value has been ascertained in manner directed by s. 2 (2) (*b*). Assume that that value is 1,000*l.* Assume further that the increment value on the whole land is 200*l.* In what proportion is the duty on that increment value to be allocated as between A.'s and B.'s respective interests in the land for purposes of determining the amount of increment value duty to be paid on this occasion by A.? Answering, in the language of rule (1) 1, "In the proportion which the present value of an annuity for the term of A.'s interest (twenty-five years) bears to the present value of the same annuity in perpetuity," the question at once arises, how do you determine what is the amount of that annuity? This is answered by sub-clause (4) of r. 1 (see *post*, p. 56). The calculation for the "purposes of ascertaining the proper proportion shall be based on the 4 per cent. tables for the purchase of leases, estates or annuities." You are therefore to assume that the site value of 1,000*l.* produces an annuity of 40*l.* The next step is to ask what is the present value of an annuity of 40*l.* for the term of twenty-five years? This is approximately the sum of 625*l.** One of the two factors to be compared has thus been ascertained. What is the other? It is under the sub-clause "the present value of the same annuity in perpetuity." On the 4 per cent. table this is 1,000*l.* We have now got the two factors to be compared. What is the ratio of 625*l.* to 1,000*l.*? We find it to be as 5 to 8. This is therefore the "proper proportion" of the unsatisfied duty of 200*l.* to be paid by A. in respect of his unexpired term of twenty-five years. Five-eighths of 200*l.* is 125*l.*

Whatever may be the nature of the "interest" as to which the occasion has arisen, the same question must always be asked, what is the "proper proportion" of the unsatisfied duty which falls to be paid by that interest? There is no need, however, in practice, to ascertain the actual amount of the annuity in question. It is sufficient to know

* See the 4 per cent. Tables, p. 548, and note appended thereto.

(*a*) the amount of the duty unsatisfied (see r. 3 (1)) and (*b*) the proportion which the value of 1*l.* on the 4 per cent. tables for the "term of the interest" (see r. 1 (2)) bears to 1*l.* in perpetuity. This is the proportion of the unsatisfied duty which will be borne by the interest under taxation. **§ 3 (3).** Rules for calculating duty.

"**Interest under Review**" means the interest as to which an occasion for payment of increment value duty has arisen, and which is being taxed. It is not defined expressly by these rules.

(2) The expression "term of the interest" means— Sub-rule (2).

(*a*) where the interest is an interest in possession, a term equal to the residue of the interest for the time being outstanding;

(*b*) where the interest is a reversion expectant on the determination of a lease, a term equal to the term of the reversion deferred for the period of the outstanding term of the lease.

To ascertain the proper proportion of duty unsatisfied we must know three things—

(1) the amount of an annuity on the 4 per cent. tables calculated on the site value (see sub-rule (4));

(2) the present value of that annuity "for the term of the interest under review" (sub-rule (1));

(3) the present value of that annuity in perpetuity (*ib.*).

We can then calculate the ratio of 2 to 3 which represents this proper proportion.

But in order to ascertain No. 2 we must know what is meant by "the term of the interest under review." If the interest under review, namely, the interest in respect of which the duty is being paid, is an interest in possession, say a lease originally for ninety years, twenty of which are then unexpired, the "term of the interest" is under sub-rule (2) (*a*) twenty years. If the term of the interest under review is a life estate, sub-rule (3) of r. 1 (*post*, p. 56) points out what length of years is to be attributed to that life estate. Meaning of term of the interest.

If the "term of the interest" is an interest in reversion expectant on the determination of a lease, as, for example, an unexpired residue of a term then having fifty years to run, immediately expectant on the determination of an existing term with twenty years to run, then it is thought that the term of the interest under (*b*) practically amounts to the number of years by which the reversionary term exceeds the term of the underlease, but this is perhaps not quite clear. If this is so, the value of the annuity in the case just mentioned will be the present value of an annuity for thirty years, the commencement of which annuity is deferred till after the expiration of the twenty years of the underlease. So if A. is a tenant for life, whilst B. is a lessee in

§ 3 (3). Rules for calculating duty.

possession for an unexpired term of fifteen years. Then the term of A.'s interest will be determined under sub-rule (3), and its value will be the present value of an annuity for that number of years (less fifteen years it is thought) deferred till the expiration of the fifteen years unexpired of B.'s lease.

Sub-rule (3). Terms for life.

(3) Where the term of an interest is a term dependent on life, the term shall be taken to be a term equal to the mean expectation of life of the person on whose life the interest is dependent or, where the interest is dependent on more than one life, of the youngest of the persons on whose life it is dependent.

For the purpose of ascertaining the mean expectation of life, the mortality tables, based on the Northampton experience, shall be adopted :

This rule practically adopts the method of calculating the term of a life according to the paragraph of s. 41, "The term of a lease" (*post*, p. 444). The case contemplated is where lands are held by A. for his life or for the lives of, say, A., B., and C. If in the latter case an occasion for the payment of duty arises in respect of that lease, the term of the interest will be the number of years of the mean expectation of life of the youngest of A., B., or C. (so it is understood) *who shall be then living.* The Northampton Tables on which the mean expectation of life is to be calculated are to be found at p. 62, immediately following these rules.

Sub-rule (4).

(4) The calculations for the purpose of ascertaining the proper proportion shall be based on the 4 per cent. tables for the purchase of leases, estates, or annuities : *

Assuming the total increment value of the site to be 1,000*l.*, on the 4 per cent. tables that would produce an annuity of 40*l.* a year. If the term of the interest under review is, say, a lease for ten years in possession, the present value of an annuity of 40*l.* a year for ten years, being approximately 324*l.*, would represent the interest of the lessee in the increment value. The same interest in perpetuity would of course be 1,000*l.*, and the proper proportion of the duty to be paid by the lessee would be the ratio of 324*l.*, the present value of the annuity of 40*l.* a year for ten years, to 1,000*l.*, being the present value of the same annuity in perpetuity (sub-rule (1)).

Sub-rule (5).

(5) The expressions "duty to be collected" and "duty paid" mean the duty which, for the purposes of future calculations, is to be deemed to have been paid :

The meaning of this clause will be found by referring to sub-r. 2 of rr. 2 and 3. The duty "to be collected" on occasions arising for the

* On the 4 per cent. Tables note appended. See *post*, p. 548.

purposes of those rules includes any allowance made under s. 3 (5) and any other duty which is to be deemed to have been paid on former occasions or which is deemed to be paid on the present occasion (see *ante*, p. 25). Rules for calculating duty.

(6) A lease for a term of which 99 or more years remain unexpired shall be treated as a fee simple, and a reversion expectant on the determination of such a lease shall not be treated as an interest in land : Sub-rule (6).

Under this rule, if the lessee of a term of which at least ninety-nine years remain unexpired dies, or assigns his interest, r. 2, and not r. 3, will apply. It is to be treated as if it were the fee simple.* As a corollary to such rule the conveyance or passing on death of the reversion expectant on such a lease is not considered as giving rise to a claim for duty. It is so remote an interest that it is treated as being valueless. It must be remembered that what is being dealt with is present interest in site value, which is quite another thing to a landlord's right to his rent.

(7) Where the land is a copyhold of inheritance, or a copyhold held for a life or lives or for years where the tenant has a right of renewal, or a customary freehold, references in these rules to the fee simple of the land shall be treated as references to the whole copyhold or customary interest or estate, and in the case of copyhold land held for a life or lives or for years, where the tenant has not a right of renewal, these rules shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest. Sub-rule (7).

This sub-rule simply applies the provisions of s. 40 of the Act (*post*, p. 428) to these rules.

2.—(1) The amount of increment value duty unsatisfied on the occasion of the transfer on sale or passing on death of the fee simple of any land, or on the occasion of the grant of any fee of any land, or the creation of any ground annual thereon, or on any periodical occasion in the case of the fee simple of any land held by a body corporate or unincorporate, shall be one-fifth of the increment value of the land after deducting from that one-fifth the amount of increment value duty which may have been paid on any previous occasion. Rule 2, sub-rule 1.

* An annuity for 100 years on the 4 per cent. Tables = $\frac{49}{50}$ of the same annuity in perpetuity.

§ 3 (3). Rules for calculating duty.

This rule is intended to carry out the provisions of sub-s. 2 of s. 3, which are as follows:—"Where increment value duty is collected on the occasion of the transfer or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate, the whole amount of the duty which is determined to be unsatisfied shall be collected by the Commissioners in accordance with rules made by them for the purpose." The first thing to do in applying the Act to increment value duty is to find what is the amount of the increment value of the land. That is done by the process pointed out in s. 2 of deducting the original site value of the land from the site value of the land on the occasion on which duty is to be collected. The process is to be again gone through afresh on every successive occasion for the payment of increment value duty. One-fifth of that increment value represents the duty on the increment value. Under r. 2 (1), if duty has never been previously paid on the increment value of the land, or none is deemed under any of the sections referred to on p. 25 to have been paid (see r. 1 (5)), the whole of that one-fifth must be paid. If duty has been previously paid or is deemed to have been paid (see r. 1 (5)), the amount of that duty, which is in fact one-fifth of the increment value on the occasion on which duty was so paid, is to be deducted from the one-fifth of the increment value so found (s. 3 (1)). The amount which is to be so paid is the amount of the duty unsatisfied.

Sub-rule(2).

(2) The amount of increment value duty to be collected on any such occasion shall be the whole of the amount of the duty which is unsatisfied.

It is of course obvious that in the case of the fee simple, which means, it will be remembered, the fee simple in possession not subject to any lease and not including an undivided share in a fee simple in possession, the whole duty unsatisfied is what is to be paid.

Rule 3, sub-rule (1).

3.—(1) The amount of increment value duty unsatisfied on the occasion of the grant of a lease or transfer on sale or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, shall be one-fifth of the increment value of the land after deducting from that one-fifth one-fifth of the increment value on the last occasion (if any) on which duty was paid in respect of the interest under review.

This rule deals with the cases in which duty is collectable in respect of interests in land less than the fee simple. In this case again the increment value of the land must first be ascertained. Then the duty is ascertained by taking one-fifth of that increment value. Then the duty unsatisfied is ascertained by deducting from that one-fifth of the

§ 3 (3). Rules for calculating duty.

increment value *one-fifth of the increment value on the last occasion (if any) on which duty was paid in respect of the interest under review.* The italics mark a striking difference between the language of r. 3 (1) and that of r. 2 (1). Thus, suppose A. is the owner in fee of land subject to an unexpired term, then of thirty years, vested in B. Suppose that an occasion for the payment of duty arose in respect of the leasehold interest by reason of the death of B. Assume that the increment value duty on the whole land, *i.e.*, the fee simple, on that occasion is 2,000*l.* Suppose that duty has been paid on various occasions in respect both of A.'s interest and of B.'s interest, but on the last occasion on which duty was paid it was paid in respect of A.'s interest. In calculating the amount of the duty unsatisfied on B.'s death there is to be deducted from the 2,000*l.* not one-fifth of the increment value payable on the last occasion when it was paid in respect of A.'s reversion, but one-fifth of the increment value on the last occasion on which it was paid in respect of the leasehold interest. Whether this is in strict accordance with s. 3 (1), which says that such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine "after giving credit for the amount of duty paid on previous occasions," may be a question. Apparently the Commissioners have interpolated after the words "duty paid" in the quotation the words "in respect of the interest under review." Whether that be so or not, the view of the Commissioners seems more in accordance with justice, and prevents payments in respect of one interest enuring for the benefit of another interest in the land.

Sub-rule (2).

(2) The duty to be collected on any such occasion shall be the proper proportion at the date of the occasion of the duty unsatisfied:

Provided that—

(a) where duty has been paid on the creation of an inferior interest created out of the interest under review, and duty has not subsequently been paid in respect of that interest, and the proper proportion on the occasion under review exceeds the proper proportion immediately after the creation of the inferior interest, the duty to be collected shall be reduced by a proportion—equal to such excess—of the increment value duty determined to have been unsatisfied on the creation of the inferior interest;

(b) where the amount of duty to be collected on any occasion in accordance with this rule is such that if paid the total amount of duty paid in respect of any interest (including all interests created thereout whether still subsisting or not) would exceed the duty which would have been payable on the creation of the interest had the site value of the land on that occasion been the highest site value revealed on any occasion since the creation of

§ 3 (3). Rules for calculating duty.

the interest, the amount to be collected shall be reduced by the amount of such excess, and for the purpose of this proviso any interest or interests which existed on the thirtieth day of April nineteen hundred and nine shall be deemed to have been created, or to have been successively created, immediately after that date;

(c) where the amount of duty to be collected in accordance with this rule on any occasion when the interest under review is a freehold reversion is such that, if paid, the total amount of duty paid in respect of all interests, whether still subsisting or not, would exceed the duty which would have been payable had the fee simple of the land been transferred on sale at the time when the site value of the land was the highest site value revealed on any occasion since the thirtieth day of April nineteen hundred and nine, the amount to be collected shall be reduced by the amount of such excess.

Where duty is payable in respect of an interest in the property it is clear, of course, that the whole duty is not payable, but only a proportionate part of the duty (see s. 3 (3)). The proper proportion to be paid is stated in r. 1 (1), explained by the following sub-rules (2) to (7).

With regard to the provisoes (a), (b), and (c), they all appear intended to prevent injustice in various cases which will arise in course of time.

(a) The difficulty of interpreting this rule, (1) in the absence of any illustrations showing its possible application, (2) having regard to the uncertain reference of the words "that interest," is so great that the writer, although he could suggest several alternative meanings, respectfully but regretfully declines the attempt.

(b) is apparently intended to prevent duty being collected on an interest in land, *i.e.*, a lease or a reversion expectant on a lease, to a greater extent than would have been collected if at the date of the creation of such interest the site value of the property had been at the highest point it had touched since the creation of that interest. Thus if at the date of the creation of a lease for eighteen years the "proper proportion" of the increment value duty then payable in respect of that lease was one half the unsatisfied duty then due, increment value duty can never be charged in respect of that leasehold interest (or any sub-leases created out of it) to a greater aggregate amount than it would have been charged if the whole increment which has accrued since the lease was made had actually existed on the day it was made.

(c) is apparently intended to guard a reversioner against payment of increment value duty in cases where such payment would make the aggregate of the various payments of duty made in respect of the reversion and the other interests in the land greater than the amount payable on the highest site value which the land has touched since April 30, 1909.

It is evident that for some time to come these provisoes will not be of

much practical moment, and detailed comment upon their complex nature is therefore deferred. **§ 3 (3).** Rules for calculating duty.

(3) Any duty paid on the creation of an interest shall, for the purpose of this rule, be deemed to have been paid in respect of the interest so created, and not in respect of the interest out of which it was created. Sub-rule (3).

An example of this is as follows:—A., the owner in fee simple, in the year 1912 grants a lease for seventeen years. The increment value of the land on the occasion of the grant of such lease is 1,500*l.* No duty has previously been paid. The amount of the duty unsatisfied on the grant of the lease is therefore 300*l.* It is assumed that the proper proportion to be paid by A. on the grant of the lease under r. 1 (1) is approximately 146*l.* In 1917 B., the lessee, dies. The increment value of the land is then 2,500*l.* The amount of the duty unsatisfied on the death of B. (under r. 3 (1)) is then one-fifth of the increment value of 2,500*l.*, that is 500*l.*, from which is to be deducted under (3) one-fifth of the increment value (1,500*l.*) existing at the date of the grant of the lease, that is 300*l.*; so that the amount of the unsatisfied duty is 200*l.* B.'s proper proportion of this duty will be ascertained by the application of r. 1 (1), (2), and (4).

Suppose in the case of the lease last mentioned A., and not B., dies in 1917. Then the amount of increment duty unsatisfied will not be the same as in the illustration just given. The duty will still be one-fifth of the increment value, but not subject to the deduction of the one-fifth of the increment value paid in 1912. By virtue of r. 3 (3) the duty paid when the lease was made in 1912 was paid in respect of the leasehold interest and not of the reversion. The amount of the unsatisfied duty, therefore, is in this case 500*l.*, and A. will bear his "proper proportion" of this sum.

ILLUSTRATIONS OF SUB-SECTS. (1) TO (3) OF SECT. 3 AND THE RULES RELATING THERETO.

(1) The original site value of Whiteacre is 500*l.* On a sale of the fee on January 1, 1920, its site value is found to be 1,000*l.* *Primâ facie* the increment value is 500*l.*, and the duty to be paid 100*l.* But on the last occasion duty was paid on an increment value of 400*l.* It need only be paid now on 100*l.*, and the Commissioners therefore determine the amount of duty unsatisfied to be 20*l.*, the whole of which is collected (s. 3 (1) and (2); r. 2 (2)).

(2) Whiteacre, the original site value of which was 500*l.*, is held by A. for a term of years of which forty are unexpired, and subject thereto B. is the owner in fee. On January 1, 1912, A. transfers his lease on sale. The Commissioners ascertain under s. 2 (2) (*b*) the value of the fee simple of Whiteacre, and by that means the site value on the

§ 3 (3).

TABLE OF MORTALITY.

SHOWING THE MEAN EXPECTATION, OR AVERAGE DURATION, OF LIFE BASED ON THE NORTHAMPTON EXPERIENCE.

(Referred to in the Rules (r. 1 (3)) made by the Commissioners of Inland Revenue under s. 3, sub-ss. (2) and (3), *ante*, p. 56.)

Completed age.	Number of years expectation of life.	Completed age.	Number of years expectation of life.	Completed age.	Number of years expectation of life.	Completed age.	Number of years expectation of life.
0	25·18	31	27·76	54	16·06	77	5·83
5	40·84	32	27·24	55	15·58	78	5·48
10	39·78	33	26·72	56	15·10	79	5·11
11	39·14	34	26·20	57	14·63	80	4·75
12	38·49	35	25·68	58	14·15	81	4·41
13	37·83	36	25·16	59	13·68	82	4·09
14	37·17	37	24·64	60	13·21	83	3·80
15	36·51	38	24·12	61	12·75	84	3·58
16	35·85	39	23·60	62	12·28	85	3·37
17	35·20	40	23·08	63	11·81	86	3·19
18	34·58	41	22·56	64	11·35	87	3·01
19	33·99	42	22·04	65	10·88	88	2·86
20	33·43	43	21·54	66	10·42	89	2·66
21	32·90	44	21·03	67	9·96	90	2·41
22	32·39	45	20·52	68	9·50	91	2·09
23	31·88	46	20·02	69	9·05	92	1·75
24	31·36	47	19·51	70	8·60	93	1·37
25	30·85	48	19·00	71	8·17	94	1·05
26	30·33	49	18·49	72	7·74	95	·75
27	29·82	50	17·99	73	7·33	96	·50
28	29·30	51	17·50	74	6·92	97	0
29	28·79	52	17·02	75	6·54	98	0
30	28·27	53	16·54	76	6·18	99	0

§ 3 (3). Illustrations of s. 3 and the rules.

occasion, which is found to be 700*l.* This shows a *primâ facie* increment value on the fee of 200*l.* and a duty of 40*l.* It is further found that the increment value on the grant of the lease was 100*l.*, of which one-fifth (20*l.*) must be deducted from the 40*l.*, leaving 20*l.* duty unsatisfied. Such proportionate part of the 20*l.* is on the sale of the lease to be collected from A. as the Commissioners determine in accordance with the foregoing rules (s. 3 (3); rr. 1 and 3).

(3) On January 1, 1914, B. sells his reversion in Whiteacre referred to in the last illustration to C. for 1,200*l.*, and the same process having been gone through as to valuation, the site value of the fee on such occasion is ascertained to be 900*l.* The increment value on this occasion is therefore *primâ facie* 400*l.*, of which one-fifth is 80*l.* From this there is no deduction, since increment value duty has never been paid in respect of the reversion. The two payments on the grant and sale of the lease were in respect of the leasehold interest (r. 3 (3)). The duty unsatisfied will therefore be one-fifth of 400*l.*, or 80*l.*, and the Commissioners will determine the proper proportion to be paid by B. under rr. 1 and 3 (s. 3 (3)).

(4) The original site value of Whiteacre, which belongs to A. in fee simple, is 500*l.* On January 1, 1912, A. sells Whiteacre to B. in fee for 1,600*l.*, when the site value is found to be 600*l.*, the increment value being 100*l.* A. must pay increment value duty on 100*l.*, that is, he must pay 20*l.* (s. 3 (1); r. 2).

(5) On January 1, 1914, B. sells the same Whiteacre to C. in fee for 1,800*l.*, and the site value is then fixed at 800*l.* The increment value is thus 300*l.*, and the duty is 60*l.* But 20*l.*, *i.e.*, one-fifth of the increment value as in (4), has previously been paid, and therefore B. must pay 40*l.* (s. 3 (1); r. 2).

(6) On January 1, 1916, C. leases the same Whiteacre to D. for twenty-one years at a rental of 100*l.* per year. On the basis of this rental the Commissioners fix the value of the fee simple of Whiteacre on the occasion of the lease at 2,000*l.* (s. 2 (2) (*b*)), and when deductions are made the site value of the fee is ascertained to be 1,000*l.* This gives an increment value of 500*l.*, or a duty of 100*l.* But duty has already been paid to the extent of 60*l.*, being one-fifth of the increment value on the last occasion in (5). Therefore only 40*l.*, is to be considered unsatisfied (s. 3 (1)). The Commissioners under rr. 1 and 3 determine what proportion of this 40*l.* is to be paid in respect of the twenty-one years lease (s. 3 (3)).

(7) On January 1, 1918, D., the lessee of the twenty-one years lease of Whiteacre, sells that lease to E. for 200*l.* (the latter of course becoming liable for the 100*l.* rent). The Commissioners determine that the value of the fee simple on this basis (s. 2 (2) (*b*)) is 2,200*l.* After deductions the site value on the occasion is found to be 1,200*l.* The increment value is therefore 700*l.*, of which one-fifth is 140*l.* From this must be deducted (r. 3 (1)) one-fifth of the increment

§ 3 (3). Illustrations of s. 3 and the rules

value on the last occasion on which duty was paid in respect of the lease, that is one-fifth of 500*l.* (as appears in (6)). 100*l.* must therefore be deducted from 140*l.* 40*l.* is therefore the unsatisfied duty under r. 3 (2), and the Commissioners under rr. 1 and 3 determine what proportion of this is to be paid by D.

(8) On January 1, 1920, C., the lessor and reversioner (see No. 6 above) dies, whether testate or intestate is not material. The value of the fee simple of Whiteacre is calculated on the basis of the principal value of the reversion as ascertained under the Finance Act, 1894, and is found to be 2,400*l.* The site value after deductions is 1,400*l.* The increment value is therefore 900*l.*, of which one-fifth is 180*l.* From this must be deducted one-fifth of the increment value on the last occasion on which duty was paid in respect of the reversion (r. 3 (1)). This occasion was on January 1, 1914 (see No. (5) above), the increment value being then 300*l.*, of which one-fifth is 60*l.* Deducting this 60*l.* from 180*l.* there results 120*l.* as the amount of duty unsatisfied on the occasion. The proportionate part of this duty payable by C.'s representatives will be determined by the Commissioners in accordance with rr. 1 and 3.*

NOTE ON THE FOREGOING ILLUSTRATIONS.

In the illustrations numbered (4) to (8) it has been assumed for the sake of simplicity that the deductions are constant throughout all changes of ownership at 1,000*l.* But naturally this would not in real transactions be the case. The value of the buildings must decline with their growing age. Old expenditure, as drainage, may develop increased value, years after it is first made. Advertisements may bring the land into requisition.

For the same reason of simplicity, no reference has been made to the 10 per cent. reduction of duty which is allowed on each occasion under s. 3 (5); nor to the question whether that reduction on an occasion arising with reference to one interest, as the reversion, ought to be calculated on the site value as ascertained on the last previous occasion which has arisen with reference to *any* interest, *i.e.*, to the leasehold interest as well as to the reversion, or ought to be calculated only on the site value as ascertained on the last previous occasion which has arisen with reference to the interest under taxation, the latter being the doubtful but equitable solution adopted by the rules.

Nor have any of the difficult questions arising out of the apportionment of site value and the consequent apportionment of duty been illustrated. To have added any of these matters to the foregoing hypothetical illustrations would, it is thought, have introduced a complexity into the cases given which would have destroyed their practical value, at the moment. The questions arising out of these necessary adjustments will emerge in the future.*

* The 4 per cent. Tables for calculating the proper proportion will be found on p. 548.

§ 3 (4).

(4) Where on the occasion of the death of any person the property passing on the death comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, then—

(*a*) if the subject of the settlement at the time of the death is the fee simple of the land, increment value duty shall be collected as if the fee simple of the land passed; and

(*b*) if the subject of the settlement at the time of the death is any other interest in the land, increment value duty shall be collected as if that interest passed;

but that duty shall not be collected on any such occasion if under the provisions of section five of the Finance Act, 1894, as amended by any subsequent enactment, estate duty is not payable in respect of the settled land.

Settled Land.—There is no definition in this Act of settled land. Under the Finance Act, 1894, s. 22, "'settled property' means property comprised in a settlement." "'Settlement' means any instrument whether relating to real property or personal property which is a settlement within the meaning of s. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust."

For s. 2 (1)—(7) inclusive of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), see Appendix, p. 605. It may probably be assumed that the expression "settled land" would be held in the Act of 1910 to have the same meaning as in the Finance Act, 1894.

(a) and (b).—The intention of sub-s. (4) (*a*) is apparently to make it clear that increment value duty is to be charged on the occasion of death on the increment in the fee simple of the site, whatever may be the interest of either predecessor or successor, provided that the fee simple is the subject of the settlement. And on the same principle under sub-sect. (4) (*b*) it is to be charged on the like occasion on the whole interest (less than the fee simple) comprised in the settlement, notwithstanding that either predecessor or successor may take only a life interest in the settled property. If it were not for this clause it might be contended that under s. 3 (3) on the death of a tenant for life increment value duty was payable only in respect of the life interest. This subsection renders it payable in respect of the fee simple in analogy to estate duty under s. 1 of the Finance Act, 1894.

Shall not be Collected.—The duty is not, however, to be collected if

§ 3 (4). the property itself is exempt from estate duty under the Finance Act, 1894. Sect. 5 of that Act is as follows :—

> 5.—(1) Where property in respect of which estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—
>
> (*a*) a further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate herein-after specified,* except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but
>
> (*b*) during the continuance of the settlement the settlement estate duty shall not be payable more than once.
>
> (2) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property [and who, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property].
>
> (3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.
>
> (4) Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* stamp duty (if any) charged on the settlement in respect of that property.
>
> (5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of estate duty, in like manner as for the purpose of succession duty.

Words in brackets added by Finance Act, 1898, s. 15.

For comments on this section, see Cartmell, 5th edition, pp. 56 to 58; Hanson, 6th edition, pp. 122 to 136.

Effect of s. 5 of the Finance Act, 1894, on increment value duty.

The payment of the additional estate duty called settlement estate duty has in the cases mentioned in sub-ss. (2) and (3) of s. 5 of the Act of 1894 the effect of exempting the settled land from certain further payments of estate duty. In these cases, under s. 3 (4) of the Act of

* The rate was fixed by s. 17 of the Act of 1894 at 1 per cent. and was increased by the Finance (1909—10) Act, 1910, s. 54, to 2 per cent.

1910 (see *ante*, p. 65), increment value duty is also not to be collected. The cases may thus be stated or illustrated :— § 3 (4).

(*a*) **Sub-s. (2).**—Where there has been (1) a settlement by deed of the land, (2) the death of a person entitled (say for life) under that settlement, (3) payment of estate duty, and therefore of increment value duty, on that death, then estate duty, and therefore increment value duty, will not again be payable on the death of another life tenant under that settlement, but will only be payable on the death of a person who besides being, or having been, *sui juris*, was at the time of his death, or had been at some time during the continuance of the settlement, competent to dispose of such property. As to compound settlements, see *A.-G.* v. *Hay*, [1899] 2 Q. B. 245.

(*b*) **Sub-s. (3).**—Where (1) there has been a settlement of the land, (2) one of the life tenants in remainder under that settlement dies during the life of a previous life tenant in possession, and (3) there are other persons entitled under the settlement after the death of the existing life tenant, estate duty, and therefore increment value duty, is not payable on the death of the life tenant in remainder (*A.-G.* v. *Wood*, [1897] 2 Q. B. 102).

Sub-s. (5) does not exempt lands settled by Act of Parliament or royal grant, and thereby rendered inalienable from estate duty (*In re Bolton Estates Act*, 1863, [1904] 2 Ch. 639), though it does exempt them from settlement estate duty. It causes those lands to be valued for the purposes of the former duty as lands are valued for the purpose of succession duty (see 16 & 17 Vict. c. 51, ss. 21 to 26). In other words, their value is measured by the interest of the successor, and is not the principal value of the property under s. 7 (5) or s. 18 (3) of the Finance Act, 1894. This, however, will not, it is thought, exempt them from increment value duty, though the point is not quite plain. Such estates are clearly under s. 5 (5) of the Finance Act, 1894, above set out, "property passing on the death," and therefore it seems property so passing within the meaning of s. 1 of the Act of 1894. If that is so, then increment value duty is payable under s. 1 (*b*) of the Act of 1910 ; the principal value being ascertained as for succession duty, and not under s. 18 of the 1894 Act.

As Amended by any Subsequent Legislation.—Enactments already passed amending s. 5 of the Finance Act, 1894, are the Finance Act, 1898, s. 13, the effect of which is given on p. 63, and s. 55 of the Finance Act, 1910 (*post*, p. 474), which is as follows :—

> For the purpose of any claim to relief from estate duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, [*i.e.*, the Finance Act, 1894], in the case of persons dying on or after the thirtieth day of April, nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall

§ 3 (4). not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

Sub-s. (1) of s. 21 of the Act of 1894 relates exclusively to personal property which has paid the old probate duty in force before the Finance Act, 1894, or the old account stamp duty under the Act of 1881. It has no bearing on increment value duty.

Effect of s. 55.

The effect of s. 55 of the Act of 1910 upon sub-s. (2) of s. 5 of the Finance Act, 1894, and through that sub-section upon increment value duty, appears to be as follows. Assume that land is settled upon trust for A. for life, and after his death upon trust for A.'s wife B. for life, with remainder to such uses as B. shall by deed or will appoint, and that B. dies in A.'s lifetime, having exercised the power of appointment by will. On B.'s death estate duty is paid under s. 2 (*a*) of the Finance Act, 1894, on the principal value of the property in respect of the estate in expectancy arising under the exercise of her power of appointment. A. then dies. Under the decision of the House of Lords in *Inland Revenue* v. *Priestley*, [1901] A. C., p. 203), estate duty having once been paid upon the settled property since the date of the settlement, *i.e.*, upon B.'s death, s. 5 (2) of the Finance Act, 1894, exempts the settled property from estate duty until the death of a person who was at the time of his death or had been at some time during the continuance of the settlement competent to dispose of the property. As A. the husband is not such a person, estate duty is not payable on his death. Although in the case cited B. the wife was in fact the settlor, the decision has been applied in practice by the Commissioners to cases in which the property was either settled by A. the husband or a third party. Sect. 55 of the 1910 Act now provides that the payment of estate duty in respect of the interest in expectancy shall not frank the property under s. 5 (2) of the Act of 1894 from payment of estate duty on the death of A. unless the expectancy on which it was paid was an estate in expectancy passing on the *death of the settlor*. The decision in *Inland Revenue* v. *Priestley* (*supra*) will therefore still remain good, but its application will be restricted. That is, on A.'s death (after B.'s death and payment of increment value duty on that death), increment value duty will not again be paid if B. was the settlor of the property, but it will be paid if B. was not the settlor. This explanation is given, not because the point is thought to be more than just material to the subject of increment value duty, but simply in order that the concluding words of s. 3 (4) of the 1910 Act may not be left in obscurity.

(5) For the purpose of the collection of duty on the increment value of any land under this section, the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty

§ 3 (5).

by an amount equal to ten per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to ten per cent. of the site value on the last preceding occasion for the collection of increment value duty, and the amount of duty to be collected shall be remitted in whole or in part accordingly.

Any duty which by reason of this provision is remitted on any occasion shall not be collected and shall be deemed to have been paid :

Provided that no remission shall be given under this provision on any occasion which will make the amount of the increment value on which duty has been remitted during the preceding period of five years exceed twenty-five per cent. of the site value of the land on the last occasion for the collection of increment value duty prior to the commencement of that period or of the original site value if there has then been no such occasion.

For the Purpose of the Collection of Duty on the Increment Value of any Land.—The train of reasoning which has led to this section seems to be somewhat as follows: There has been increment value; therefore increment value duty is due and payable. But the Legislature does not want to make people pay increment value duty unless there has been more than 10 per cent. of increment value, and then only on the excess over 10 per cent. Therefore it does not *collect* duty on 10 per cent. of the (increment) value accruing since the original valuation or the last occasion, as the case may be. The duty, or rather the collection of the duty, is remitted. The duty appears not to be really remitted, although the sub-section speaks of it as being so, but to be "deemed to have been paid." The increment value on which the duty is remitted will appear in the calculation on each occasion on which increment value duty is payable. On each such occasion the increment value duty is fixed (1) by ascertaining increment value, (2) by calculating the duty at one-fifth that value, (3) by deducting from the amount of such duty the amount paid (including amounts deemed to be paid) on previous occasions: s. 24 (1). The remitted 10 per cent. will therefore appear under (1) as increment value actually existing. It is only for the purpose of the collection of the duty that the increment value is deemed to be reduced; under (2) as part of the duty payable in respect of such increment value, and (3) as deemed to be paid on account of such duty. It is considered by the authorities that this section cannot be applied to minus site values.

§ 3 (5). **Illustration.**—The original site value of Cecil villa and garden is 600*l.* On January 1, 1912, the villa is sold and the site value ascertained to be then 660*l.* No increment value duty is payable, the increment not exceeding 10 per cent. on the original site value. On January 1, 1914, the villa is again sold and the site value is ascertained to be at that time 726*l.* Again no increment value duty is payable. The increase in site value (66*l.*) since the sale of January 1, 1912, is not more than 10 per cent. of the site value on that day. On December 1, 1916, the villa is again sold, the site value being 800*l.* Increment value duty is payable on the site value above 750*l.*, that sum being the amount of the original site value with 25 per cent. of that value added as being duty free: that is, it is payable on 50*l.* Any higher remission would make the amount of the increment value on which duty has been remitted exceed 25 per cent. of the original site value of the land. If the proviso did not exist, there would under the earlier paragraph of this sub-section have been another 10 per cent. remission: 72*l.* 12*s.* In that case the gross increment value before the reduction would have been 200*l.* From this 200*l.* would have had to be deducted the three deductions of 60*l.*, 66*l.*, and 72*l.* 12*s.*, or 198*l.* 12*s.* in all, leaving a sum of 1*l.* 8*s.* net increment value, on which increment value duty would have been payable.

The first Occasion.—The sub-section applies to all the various occasions, transfer on sale, lease, death, and periodical assessment of bodies corporate, &c.

Any subsequent Occasion.—It appears that the two "occasions" may be in respect of different interests in the property, and apparently each gets the benefit of the other's "occasion"; but *quære?* See note on p. 61. The Commissioners do not think so.

It is thought that this sub-section does not strictly apply to the annual increment value duty payable under s. 22 (3) on a lease of minerals; but *quære.* (See note on p. 239.)

(6) Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act.

Consequently, the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), the Stamp Act, 1891 (54 & 55 Vict. c. 39), and the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), will apply to this duty. Stamp duties are not necessarily collected by means of stamps.

Compare Finance Act, 1894, s. 6 (1) and s. 8 (16).

"All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained . . ." (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 2). Compare this section with the language of sub-s. (6) above. The

following are some of the problems which seem to arise on the two enactments. Does the above s. 2 of the Stamp Act, 1891, apply to the increment value duty stamp? Probably; it is charged upon an instrument, though the amount of the duty need not appear from the stamp (s. 4 (3)). Exactly what provisions are thereby applied is the problem to be solved. Sect. 4 (3) of the 1910 Act also recognises the fact that some at least of the provisions of the Stamp Act are applicable to increment value duty. Do the words of s. 2 above quoted, "paid . . . according to the regulations in this Act," import into the Act of 1910 such sections of the former Act as sections 55, 56, and 57 (see Appendix, p. 619), all relating to the method of ascertaining the money value of the consideration on which *ad valorem* duty is payable on conveyances on sale. Under s. 2 (2) (*a*) and (*b*) of the Act of 1910 the value of the consideration for the sale or lease is the basis of the process which results in the ascertainment of site value. Sect. 32 of the same Act gives some scanty directions for determining or ascertaining the "value of any consideration." It is difficult to imagine any one drafting that section who thought that the detailed provisions of ss. 55, 56, 57, 76 and 77 of the Stamp Act, having the like object in view of ascertaining value of consideration, were applicable or capable of being applied to the new land duties. The critical words of neither Act seem conclusive on the subject. Under the 1910 Act increment value duty is a "stamp duty collected and recovered in accordance with the provisions of this" (1910) "Act" (s. 3 (6)).

Discrepancies between Stamp Act of 1891 and this Act.

Applying s. 2 of the Stamp Act, 1891, to increment value duty, it is "to be paid and denoted according to the regulations in this Act" (the 1891 Act) "contained." Looking at the contents of the compared sections as to the value of the consideration, some of the sections of the Stamp Act are consistent with s. 32 (1) and (2) of the Act of 1910, whilst others, *i.e.*, s. 56 (2) and (3), are thought not to be so consistent.

Sect. 54 of the Stamp Act, 1891, is as follows:—"For the purposes of this Act the expression 'conveyance on sale' includes every instrument and every decree or order of any Court or of any Commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser or any other person in his behalf." Does this section of the Stamp Act either directly, by virtue of s. 2 of the same Act, or by forcible analogy, apply so as to import into the expression "transfer on sale" as used in the 1910 Act (see ss. 1, 2, 3, 4, and elsewhere) the definition attached by it to "conveyance on sale"? The writer would have thought not, but whether that be so or not, decisions as to what is and what is not a "conveyance on sale" within the meaning of the Act of 1891 may be relevant to what is a transfer on sale within the meaning of the Act of 1910. It must nevertheless be considered doubtful for the present whether anything is a transfer on a sale or lease within the meaning of the Act of 1910 so as to give rise to a claim for increment value duty

§ 3 (6). where the consideration is not either a capital sum or a periodical payment or one of the matters comprised in s. 32 (2).

Again, if the general provisions of the Stamp Act, 1891, apply to increment value duty, there appears to be a contradiction between s. 58 (1) of that Act and s. 32 (3) of the 1910 Act. Under the former Act the parties themselves may apportion a single consideration amongst the several properties for which it is given. Under the latter "the consideration shall be apportioned by the Commissioners in such manner as they shall determine." The later Act would no doubt be considered to establish an exception to the rule laid down in the earlier. The remaining sub-sections of s. 58 of the Stamp Act may, or most of them may, be capable of application to increment value duty. See, further, note to s. 32, p. 350.

Sect. 13 of the Act of 1891, relating to appeal from the Commissioners by way of case stated by them, is not quite in harmony with s. 33 of the Act of 1910, though of course it is possible that there should be two methods of appeal from the same decision. As to s. 15 of the Stamp Act, see *post*, p. 83.

§ 4 (1).

SECTION 4.

GENERAL NOTE ON SECT. 4.

Sects. 1 and 2 having explained the meaning of the term increment value duty, and stated the occasions on which it is payable, and s. 3 having laid down some general rules or principles regulating its collection on all the occasions referred to in s. 1, this section (4) contains provisions regulating the collection in cases falling within s. 1 (*a*). The two succeeding sections 5 and 6 contain corresponding provisions relating to collection in cases (*b*) and (*c*) of s. 1.

Sect. 4 fixes the persons to pay (sub-s. (1)), the time and method of payment and the penalty for non-payment (sub-s. (2)), renders documents unstamped inadmissible in evidence (sub-s. (3)), protects future owners from a claim for duty assessed in the past (sub-s. (4)), provides for payment of duty by instalments in certain cases (sub-s. (5)), provides also for a return of duty when transactions have fallen through (sub-s. (6)), and allows duty paid on agreements to be denoted on conveyances or leases made in pursuance thereof (sub-s. (7)).

Collection and recovery of duty in cases of transfers and leases.

4.—(1) On any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, increment value duty shall be assessed by the Commissioners and paid by the transferor or lessor, as the case may be.

§ 4 (1).

On any Transfer on Sale, etc., see notes on p. 7 as to transfer on sale. If before conveyance there is a resale by the first purchaser, two doses of duty might be due on the conveyance.

Increment value duty is payable by the transferor or lessor as the case may be. It is (sub-s. (4)) a debt due to the Crown from him, and is recoverable by information on the Revenue Side of the King's Bench Division as an ordinary Crown debt. There appears to be no provision that increment value duty payable on sale or lease may be recovered by writ on the Revenue Side of the King's Bench Division under 28 & 29 Vict. c. 104, ss. 55 and 56, as well as by information, though possibly this last-mentioned enactment is by virtue of s. 5 of the Finance Act, 1910, incorporating s. 8 of the Finance Act, 1894, applicable to the recovery of increment value duty *in the case of death.*

There is no doubt at all that as between vendor and purchaser and as between lessor and lessee the vendor and the lessor are bound to discharge the increment value duty; and that this liability cannot by agreement be thrown upon the purchaser or lessee (see the Revenue Act, 1911, (1 Geo. 5, c. 2), s. 1, *ante*, p. 46).

What "transferor" includes.

Transferor or Lessor.—By s. 41, the expressions "transferor" and "lessor" do not include any persons who join in the execution of the instrument by which the transfer or lease is effected or agreed to be effected, for the purpose only of conveying any estate vested in them as trustees or incumbrancers, or of acknowledging the receipt of the consideration money, or giving consent. "Transferor" will therefore under s. 4 include (1) an owner in fee simple or in fee tail, whether in possession, or in reversion expectant upon a lease, conveying on sale the fee or an interest in the land; or (2) a tenant for life of freehold land whether subject to a lease or not, conveying on sale either—

(*a*) his life estate, or

(*b*) under the Settled Land Act, the fee simple.

(3) A leaseholder, whether entitled absolutely or as tenant for life exercising the powers of the Settled Land Acts, and in either case, whether absolutely entitled in possession, or entitled subject to a lease, assigning on sale the whole leasehold interest or reversion, and a tenant for life of leaseholds whether in possession or reversion expectant on a lease, assigning only his life interest therein.

(4) A tenant in fee or in tail of freeholds, a person absolutely entitled to leaseholds, a tenant for life of either freeholds or leaseholds under the powers of the Settled Land Act, and in all the above cases, whether subject to a lease for years or not, conveying by way of sale an undivided share of the land.

(5) A mortgagee of the fee simple in freeholds, and of the absolute interest in leaseholds, or of a life estate or interest in either, whether subject to an outstanding lease or not, transferring, in exercise of his power of sale, the land the subject of the mortgage.

(6) A trustee selling under a power or trust for sale.

§ 4 (1).

What it does not include.

But it will not include—

(1) A mortgagee who joins in a conveyance by the mortgagor, if he does not receive any portion of the purchase-money; *sed quære*, if he both conveys and receives all or part of the purchase-moneys (see below).

(2) A trustee of the settlement, for the purposes of the Settled Land Acts, if he joins only for the purpose of acknowledging the receipt actually receiving) the purchase-moneys.

(3) A trustee, or person in whom a bare legal estate is vested, who joins solely to convey such legal estate to a purchaser and does not receive any of the purchase-moneys.

It is doubtful whether it will include a mortgagee who joins with the mortgagor in conveying the land to a purchaser and receives all or part of the purchase-moneys.

The classes of persons included in the term "lessor" will be sufficiently evident from the above.

The above-mentioned paragraph of s. 41 proceeds: "And sections 59, 60, and 62 of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics) shall apply to the exercise of the powers of an owner under this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act." The sections are given *in extenso* on p. 426. The provisions, however, of s. 4 of the 1910 Act impose duties and do not confer powers. But s. 39 (3) (*post*, p. 425) assumes that the persons upon whom powers are conferred by ss. 59, 60, and 62 of the Settled Land Act, 1882, and who exercise them will become liable to increment value duty and reversion duty, as if they were owners in fee or tenants for life, since it empowers them to charge their payments in respect of these duties on the land. It is therefore reasonably clear that persons exercising the powers of the Settled Land Acts under the sections of the Settled Land Act, 1882, referred to will be deemed transferors or lessors, as the case may be, within the meaning of s. 4 of the 1910 Act, and will be subject to the obligations and fines imposed by that section.

Under s. 41 lessor includes an underlessor and the person for the time being entitled to the reversion, whether freehold or leasehold expectant, on the determination of the lease.

(2) It shall be the duty of the transferor or lessor, on the occasion of any transfer on sale of the fee simple of any land or of any interest in land or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by means of which the transfer or the lease is effected or agreed to be effected or reasonable particulars thereof for the purpose of the

assessment of duty thereon, and, if the transferor or lessor fails to comply with this provision he shall be liable on summary conviction to a fine not exceeding ten pounds, and to pay interest at the rate of five per cent. per annum on any duty ultimately payable by him as from the date on which the instrument has been executed, but any person aggrieved by any conviction or order of a court of summary jurisdiction under this provision may appeal therefrom to a court of quarter sessions. § 4 (2).

It shall be the Duty of the Transferor or Lessor, etc.—Points to note on the sub-section are: (1) It is obligatory on the transferor or lessor. He cannot get rid of his liability to the Crown for the penalty by agreeing with the transferee or lessee that the latter shall pay the duty; and by the Revenue Act, 1911, s. 1, such a stipulation is made void (*ante*, p. 46). (2) It is immaterial that the land is clearly exempt from increment value duty, as, for example, that it is agricultural land worth not more than 10*l.* an acre capital value and without a suspicion of building value about it (s. 7), or that it is free from increment value duty under s. 8 or s. 9, exempting small houses and properties in owner's occupation, or under s. 35, exempting land held by rating authorities. But a mining lease or the transfer of such a lease need not be presented (see regulation (1), p. 487). Such a lease or transfer is not an occasion for the payment of the increment value duty as a lump sum, though it is a lease of land. A special form of increment value duty in the shape of an annual duty based on rental value is charged in respect of minerals comprised in such a lease (s. 22). But if mines are leased as part of the ordinary soil the lease or transfer must be presented. (3) Either the instrument or reasonable particulars thereof must be presented to the Commissioners. The subject has an option which he will present; but as sooner or later he will wish to have the lease or transfer stamped, since otherwise it cannot be given in evidence (s. 5 (3)), he is under some inducement to present it in the first instance. (4) What is to be presented (except in cases where the alternative of particulars is adopted) is apparently an operative document, one by which the transaction is effected or agreed to be effected; not a draft or copy of a document by which it is proposed to be effected; but under regulation 3 of the Commissioners' Regulations under this section (see p. 488) it seems that the Commissioners will not in all cases require the instrument to be actually executed. (5) The deposit of the instrument, or the furnishing of reasonable particulars thereof, will not necessarily disclose the whole of the facts necessary to enable the Commissioners to definitely ascertain the duty. But either will enable the Commissioners to make a claim and a *primâ facie* assessment. (6) The burden of showing

Payment of increment value duty.

§ 4 (2). the proper deductions under s. 2 (2) from the consideration for the transfer or lease rests with the vendor or lessor. He will naturally make those deductions as heavy as he is able.

It must be noted that the Commissioners' form of abstract (I. V. D. (B)), in which under their Regulations (see pp. 488 and 496) they suggest that particulars should be given by a transferor or lessor for the purpose of the assessment of increment value duty, does not contain any reference to deductions from site value claimable under s. 2 (2) and s. 25 (4) by the transferor or lessor. A claim for such deductions should of course be made at the time the form "Increment value duty (B)" is presented, and might be referred to in that form in a note.

Regulations have been issued by the Commissioners under this section. See *post*, p. 487, and the notes on such Regulations.

Purchasers and increment value duty.

It must not be overlooked by purchasers and lessees that they have an interest in a high assessment of increment value at the date of their purchases and leases. When they, in their turn, sell or lease or die, a claim for increment value duty may again arise. The amount of the increment value will then be fixed by deducting the original site value from the then site value as ascertained under s. 2 (2). Increment value duty is then payable on this increment value, less such amount of duty as has been paid on previous occasions. The more duty paid by former owners, the less remains to be paid by later. A purchaser or lessee should therefore ascertain that his vendor or lessor is stating the full site value of the land on the occasion of the sale or lease as ascertained under sections 2 and 32. Since the passing of the Revenue Act, 1911 (1 Geo. 5, c. 2, s. 1, p. 46), it may not be part of the bargain between vendor and purchaser or between lessor and lessee that the purchaser or lessee shall pay the increment value duty. Whether a purchaser may appeal as a "person aggrieved" under s. 33 (1) from an assessment under s. 2 (2) (*a*) on the ground that the site value on the occasion is fixed too low is a difficult question. The Act provides no machinery for informing the purchaser but only the vendor (see regulation 15, p. 491) of the amount of the assessments (see rule 4 of the Rules as to appeals to a referee, *post*, p. 377).

Costs of complying with s. 4 (2).

It is generally thought that the extra expenses of the vendor caused by presentation of the conveyance, or agreement, for stamping under this section, and of assessing the increment value duty, are not covered by the scale fee payable to the vendor's solicitors under the Solicitors Remuneration Act, 1881, and the general order made thereunder (see Order No. 4 of the General Order made in pursuance of the Solicitors Remuneration Act, 1881). Probably a solicitor who has paid duty should not include it in his bill of costs, but in his cash account (see *Re Kingdon, etc.*, [1902] 2 Ch. 242, a case on estate duty).

The Instrument by means of which the Transfer or Lease is

effected or agreed to be effected.—The language is not quite plain. Possible interpretations of it are— § 4 (2).

(1) That both the agreement or particulars thereof and the transfer or particulars thereof must be presented.

(2) That the subject has an option and may present either the agreement or particulars thereof on the one hand, or the transfer or particulars thereof on the other, according as he pleases.

(3) That the question whether both agreement and transfer are to be presented, or only one of them, and which of them, is to be presented, is a matter to be determined by the Regulations of the Commissioners. Fortunately the Regulations have made it clear that the Commissioners do not adopt No. 1 of the above suggested readings.

But it is thought to be clear that, unless there is in fact a "transfer" of the property on sale or the grant of a lease, it is not obligatory on a person appearing on the face of a contract to be an intending vendor or lessor to present the agreement for sale or lease. In other words, no claim under s. 4 (2) could be made by the Crown for penalties so long as the contract remains unexecuted. If, however, the parties were to carry out the transaction in fact resting on the contract as the only executed legal document, it is thought that there would in fact have been, as the case may be, a "transfer on sale" or the grant of a lease within the meaning of s. 1 (*a*) and s. 4 (2), and that the contract ought in that case to be stamped. (See note on p. 7.)

Is regulation 7 *intra vires?*

These views of the effect of the sections in question appear to be nearly but not quite those adopted by the Commissioners. By No. 7 of the Regulations of the Commissioners issued under this section (see p. 489), it is prescribed that "if . . . an agreement for a transfer is intended to be followed shortly by an actual conveyance the Commissioners will not require the agreement or particulars thereof to be presented under these Regulations, but will accept the presentation in due course of the actual conveyance or particulars thereof as a compliance with the provisions of the Act. But an agreement for a lease, or particulars thereof, should be presented without waiting for the actual lease." This regulation therefore waives in favour of the subject the question whether the Commissioners are entitled to require both agreement and conveyance to be presented. But there still remains some doubt whether the requirement that an agreement for a lease intended to be followed shortly by a lease must be presented is authorised by sub-s. (4); or whether the subject has not in all cases an option to present either the agreement or the deed (whether lease or conveyance) carrying out the agreement. Lease, it is true, under s. 41 (see p. 443), includes an agreement for a lease, but only "unless the context otherwise requires." It is suggested that s. 1 (*a*) and s. 4 (1) are a context which requires otherwise.

The direction of the Commissioners that an agreement for a lease

§ 4 (2). should be presented for the increment value duty stamp, without waiting for the actual lease, will undoubtedly prove troublesome in the case of building leases, to which it seems as applicable as to other leases. It is precisely where a building lease is granted that increment value may be expected; and it frequently happens that agreements for the grant of building leases are not wholly carried out. This eventuality is partially provided for by sub-s. (6) of s. 4.

In the case of a transfer on sale of copyholds it would seem that either (1) the agreement, or (2) the covenant to surrender, or (3) the surrender itself might properly carry the increment value duty stamp.

See regulation 3 of the Regulations under this section (*post*, p. 488) for the requirements of the Commissioners with reference to the presentation of instruments.

Note that the word "instrument" is used, not "agreement or conveyance." So that Acts of Parliament, as in *Great Western Co.* v. *Inland Revenue*, [1894] 1 Q. B. 507; and *Attorney-General* v. *Felixstowe Gas Co.*, [1907] 2 K. B. 984, may have to be stamped with an I. V. D. stamp. See the Finance Act, 1895, s. 12, for Acts of Parliament operating as transfers on sale.

Or reasonable Particulars thereof for the Purposes of the Assessment of Duty.—The subject has the option of presenting either the instrument by means of which the transaction is effected or agreed to be effected or "reasonable particulars." These reasonable particulars are regulated by r. 11 of the rules under the section (p. 490). The particulars are in substance the abstract which is to be furnished under regulation 3 in cases where the "instrument" itself is presented.

See further note on page 79 as to particulars and penalty.

If the Transferor or Lessor fails to comply.—It seems clear that a mere omission through inadvertence, ignorance, or negligence to comply with the sections will render the transferor or lessor liable (see the recent case of *Attorney-General* v. *Till*, [1910] A. C. 50, on s. 55 of the Income Tax Act, 1842). Compare with the varying language of the other penalty clauses s. 18 (1) and (2) of the Customs, etc., Act, 1885 (p. 127), s. 8 (6) of the Finance Act, 1894 (p. 103), s. 15 (3), s. 20 (3), s. 26 (2), s. 31 (3), s. 94. (See a note on p. cxliv., *ante*.)

He shall be Liable on Summary Conviction to a Fine, etc.—A question may arise whether fines under this sub-section are recoverable only on summary conviction or may be recovered by information in the name of the Attorney-General in England, and in Scotland in the name of the Lord Advocate. Under the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 22 (1), "any fine or penalty incurred under any Act relating to inland revenue may be sued for and recovered . . . in the High Court." It seems, therefore, that although s. 4 (2) of the 1910 Act does not first impose the penalty and then confer the right of

recovering it on summary procedure, but apparently limits the liability to a liability on summary conviction, fines under this sub-section can be sued for by information in the ordinary way as debts due to the Crown (*Attorney-General* v. *Bradlaugh*, L. R. 14 Q. B. D. 667), *sed quære*. Proceedings must be commenced by order of the Commissioners and in the name of an officer, or in England in the name of the Attorney-General for England. Such proceedings must be commenced within two years next after the fine or penalty is incurred (53 & 54 Vict. c. 21, s. 22). **§ 4 (2).**

As from the Date on which the Instrument has been Executed.—The date in question may, or may not, be that on which the vendor receives the purchase-money. It is apparently open to a vendor either to present an agreement for sale for stamping, or to wait till the conveyance is executed, and then present the conveyance (see sub-ss. (1) and (7) of this section). If he does neither, then from what date will interest be payable? It may perhaps be assumed that when a contract is followed by a conveyance the Crown would only ask for interest from the date of the conveyance when the increment value is actually realised.

Particulars and penalty.

The presentation of particulars in lieu of the instrument itself will free the transferor or lessor from liability to the fine imposed by sub-s. (2). Nevertheless that presentation will not make the instrument "duly stamped" so as to be admissible in evidence. For this it is essential that one of the stamps referred to in sub-s. (3) under paragraphs (*a*), (*b*), or (*c*) should be placed on the document. If, therefore, the transferor presents particulars only in the first place, either he or the transferee should present the conveyance later for the impressment of one of the stamps referred to under regulation 12 of the Regulations issued under this sub-section (see p. 490). The appropriate stamp will be impressed at any future date if the instrument and the receipt for the particulars are lodged for the requisite length of time at the Head Office for England, Scotland, or Ireland, as the case may be.

Any Person Aggrieved.—"Person" includes any body of persons corporate or unincorporate (Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 2 and 19). But it seems that the Crown could not appeal against a refusal to convict (*Reg.* v. *Justices of London*, L. R. 25 Q. B. D. 357).

Court of Summary Jurisdiction.—For definition or explanation, see Interpretation Act, 1889, s. 13 (11).

(3) Any such instrument shall not, for the purposes of section fourteen of the Stamp Act, 1891, and notwithstanding anything in section twelve of that Act, be deemed to be duly stamped unless it is stamped— 54 & 55 Vict. c. 39.

(*a*) either with a stamp denoting that the increment

§ 4 (3).

value duty has been assessed by the Commissioners and paid in accordance with the assessment; or

(*b*) with a stamp denoting that all particulars have been delivered to the Commissioners, which, in their opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security; or

(*c*) with a stamp denoting that upon the occasion in question no increment value duty was payable;

but where an instrument is so stamped, it shall, notwithstanding any objection relating to the increment value duty, be deemed to be duly stamped so far as respects that duty.

For the Purposes of Section Fourteen of the Stamp Act, 1891, and notwithstanding anything in Section Twelve.—Sects. 12 and 14 so far as material are as follows:—

s. 12.—(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions:

(*a*) Whether it is chargeable with any duty;

(*b*) With what amount of duty it is chargeable.

(2) The Commissioners may require to be furnished with an abstract of the instrument, and also with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein.

(3) If the Commissioners are of opinion that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it is not chargeable with any duty.

(4) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.

(5) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence and available for all purposes notwithstanding any objection relating to duty.

§ 4 (3).

(6) Provided as follows:—

(*a*) An instrument upon which the duty has been assessed by the Commissioners shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment.

Existing law as to unstamped documents.

s. 14.—(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence saving all just exceptions on other grounds.

(2) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the Commissioners may appoint the money received by him for the duty and penalty.

(3) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

(4) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

Phraseology of sub-s. (3) is difficult.

It is not quite easy to understand the phraseology of sub-s. (3) in relation to these two sections of the Stamp Act, 1891. One would have thought the simple course would have been to have said that increment value duty was a duty payable by way of a stamp, within s. 14 of the Stamp Act, and that in so far as either section 12 or 14 of that Act is inconsistent with the provisions of this Act as to increment value duty, the latter shall prevail. Apparently there is nothing in s. 12 which is not capable of being harmonised with s. 4 of the 1910 Act, and the words "notwithstanding anything in section 12," etc., are possibly inserted simply *ex majori cautela*.

It is, however, clear that an additional stamp has become necessary on every—

(1) Conveyance on sale of the fee simple of lands as defined by this Act (s. 41);

(2) Conveyance on sale of an interest in lands as defined or explained by this Act (s. 41);

§ 4 (3). (3) Grant of any lease of lands for a term exceeding fourteen years; lease includes underlease (s. 41), but *quære* it would seem that it does not in sub-s. (2) and (3) of s. 4 include "agreement for a lease or underlease," although comprised in the definition in s. 41, "The expression 'lease.'" (See *ante*, p. 77.)

The additional stamp must be on the instrument, however clear it may be that increment value duty cannot possibly be payable. The deed may be a conveyance of agricultural land, which shows on its face that the price is less than 10*l.* per acre, and which by comparison with the last conveyance discloses that the price is a falling one. Nevertheless, the stamp must be there, or the deed cannot be used in evidence.

Stamping of agreement in specific performance action.

Further, it might at first sight seem, and it has been suggested, that neither an action for specific performance nor for damages for breach of an agreement to sell land can be brought unless the contract is stamped with one of the three stamps specified in sub-s. (3). If this is the case a very serious state of things may arise. A purchaser cannot in many cases supply the necessary information for enabling the Commissioners to assess the duty on either contract or conveyance. He has no knowledge of the deductions which may under s. 25 (4) be claimed by the vendor. Possibly he cannot even send a valuer on to the property so as to ascertain the full site value under s. 25 (2), which is the basis of the principal deduction (*a*) under sub-s. (4) of the same section. If, however, the action is for damages only, it seems that no occasion of "a transfer on sale" under s. 1 (*a*) has ever arisen. There has not been, and by hypothesis will not be, any such transfer. But if the action is for specific performance that cannot be said. It is submitted that the reasonable interpretation of sub-s. (3) is that the words "any such instrument" do not mean or include every agreement for the sale of land, but every agreement which ought to be stamped under sub-s. (2), or at all events under that sub-section and the regulations issued thereunder, and that under that sub-section the subject has an option of stamping either the agreement or the conveyance.

Can duty be paid in court?

It seems probable that s. 14 of the Stamp Act, 1891, cannot be applied in such a way as to enable increment value duty to be paid in the proceeding (*i.e.*, at the hearing of the trial or application) in which the document is rejected on the ground of the want of an increment value duty stamp. The officer of the court has no machinery for assessing the duty. *Quære* whether sub-s. (3) does not forbid it to be so applied?

The remark may perhaps without impropriety be made in this place that in a judgment for specific performance at the suit of the purchaser it may often be necessary to have special directions with reference to the payment by the vendor of increment value duty.

Precautions by purchaser.

Notwithstanding any Objection relating to the Increment Value Duty, etc.—It will be as important for a purchaser in the future to

§ 4 (3).

assure himself that the increment value duty stamp is on all assurances on sale forming a link in the title as to ascertain that such deeds are stamped with the proper *ad valorem* stamps on sale. But, while as to the latter stamps he has to see that they are of the proper amount, unless an adjudication stamp is also on the document, as to the increment value duty stamps, he has merely to see that a stamp of one of the three categories mentioned in sub-s. (3) is on the deed, and no calculation or research will be necessary on his part. It would be an impossible burden upon a purchaser or lessee to require him to verify the increment value of his vendor or lessor.

The stamps are not necessary in the case of conveyances or leases made in pursuance of contracts entered into before the commencement of the Act (s. 1).

It is clearly necessary for a purchaser or lessee to examine the stamps on the title deeds evidencing former transactions to see whether the requirements of this section have been complied with. Though the unpaid duty is not, it is thought, a charge on the property except perhaps in the case of increment value duty payable on death (s. 5) and payable by a body corporate or unincorporate on a periodical occasion (s. 6, incorporating ss. 13 to 15 of the Customs and Inland Revenue Act, 1885), the title deed in question cannot under s. 14 of the Stamp Act, 1891, set out above, be given in evidence unless it is stamped with one of the stamps described under (*a*), (*b*), and (*c*).

Stamp may be impressed at any time.

If sub-s. (2) has not been complied with on an occasion, and consequently no stamp under sub-s. (3) is on the instrument, application may apparently at any time be made to get the duty assessed, and it is thought that no penalty is attached other than that enacted by sub-s. (2). In other words it is thought that the Commissioners cannot refuse to stamp the document until the 10*l.* penalty and interest by way of penalty are paid under s. 15 (1) of the Stamp Act, but that if they wish to get interest for non-payment on the occasion of the increment value duty then due, they must get it under sub-s. (2) of s. 4 of the 1910 Act. Sect. 15 (1) of the Stamp Act seems to apply only to documents which ought to be stamped before or within a limited period after execution. It is thought that this is not the case with reference to the documents referred to in s. 4 (2) of the 1910 Act. It is not, however, quite clear that this is so. It is possible that s. 15 (1) of the Stamp Act, 1891, and the penalties there imposed may apply to applications by the subject to the Commissioners to stamp the document, while the fine enacted by s. 4 (2) of the 1910 Act applies to active proceedings by the Commissioners quite apart from any question of the immediate stamping of the document.

(4) Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor, as the case may be, and for the pur-

§ 4 (4). pose of calculating the amount of increment value duty to be collected on any subsequent occasion shall be deemed to have been paid.

Debt due to the Crown.—It seems that the Crown will have priority in bankruptcy under 51 & 52 Vict. c. 62, s. 1 (1) (*a*), notwithstanding s. 150 of the Bankruptcy Act, 1883, and under ss. 107 and 209 (1) (*a*) of the Companies (Consolidation) Act, 1908, but it is not quite clear. Those sections give priority only in respect of taxes "assessed . . . up to the 5th day of April next before" the date of the receiving order or winding-up, as the case may be, language not very appropriate to increment value duty, and perhaps referable only to annual taxes of the kind specifically referred to in the sub-section, *i.e.*, land tax, property or income tax. In the administration of a deceased's estate by the Chancery Division the Crown's debt arising in the lifetime of the deceased for increment value duty will have priority against all other simple contract debts (*In re Henley*, (1878) 9 Ch. D. 469; *In re Galvin*, [1897] I. R. 520; *Attorney-General for New South Wales* v. *Palmer*, [1907] A. C. 179); but not against specialty debts owing to subjects (*In re Bentinck*, [1897] 1 Ch. 673). But if the estate is insolvent, so that s. 10 of the Judicature Act, 1875, applies, *quære* whether the priority of the Crown is not taken away, except so far as it exists in bankruptcy? (*In re Whitaker*, [1901] 1 Ch. 9, C. A.; *In re Whitaker*, [1904] 1 Ch. 299).

The Crown has priority for increment value duty collectable on death as against the property liable to that duty (s. 5), and has perhaps a charge on that property (see *post*, p. 117), but has no general priority against the assets of the deceased (s. 5). As the property must be ample to answer increment value duty, the point seems of no importance. See also ss. 5, 15, 19, and 20 (4) of the 1910 Act as to the priority or equality of other revenue debts under this Act.

The Crown sues by information for debts due to it (see *ante*, p. cxxxix).

And for the Purpose of calculating the Amount of Increment Value Duty . . . shall be deemed to have been . . . paid.—The duty is thus not a continuing charge on the site or site increment. If a document is stamped according to (*b*) (sub-s. (3)), an assessment being made, as doubtless it would be, then, notwithstanding that the Crown does not get its increment value duty, neither the purchaser nor any one claiming through him has to pay. But *quære* does the latter part of sub-s. (4) apply, in the unlikely event of the document being stamped according to (*b*), but no assessment of duty being made? On the exact language there may be a doubt. The word "assessed" has been interpreted as meaning "reckoned on their value" (*In re Floyd*, [1897] 1 Ch. 633, per Rigby, L.J.). But perhaps the Commissioners, having all necessary particulars, must be deemed to have done their duty and made an

assessment; still the language is not clear. Further, what is the position of a purchaser if there is no stamp at all and no assessment; in other words, supposing both vendor and purchaser ignore the increment duty altogether? The purchaser apparently is not personally liable for the duty, nor is the duty directly a charge upon the land. But in case of a sale by the purchaser, or his death, it seems that the duty thus temporarily escaped will have to be paid, and in case of a lease by the purchaser that it will have to be paid in proportion to the interest leased. The usual comparison of original site value and site value on the occasion on which duty becomes due will disclose the concealed increment value, and there will have been no payment or credit of duty to frank it. But suppose that in the meantime between the date when the payment of increment value duty was avoided and the subsequent occasion on which it became due the site value has receded. Is the then owner of the land bound to pay on the basis of the former increment value, or on the reduced value of the moment? It is submitted that the latter is the true construction of the Act. The Crown has its penalties. § 4 (4).

(5) Regulations may be made by the Commissioners with respect to the mode in which any instrument is to be presented to them in order to be dealt with under this section, and for dispensing with the presentation of any instrument, or particulars thereof, in cases where arrangements are made for obtaining those particulars through any registry of lands, deeds, or title, or through a Register of Sasines, and with respect to the mode in which any application for a return of duty under this section is to be made, and for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in the form of a periodical payment; and the Commissioners shall deal with any instrument presented to them and allow payment by instalments in accordance with those regulations. The regulations shall provide that where the duty to be collected on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due shall be remitted, and that in that case the amount of duty which, under this section, is deemed to have been paid shall be reduced by the amount of the instalments so remitted.

§ 4 (5). **Regulations . . . with respect to, etc.**—For regulations under this sub-section, see Appendix, p. 487.

And for dispensing with the Presentation . . . Register of Sasines.—It is hoped that where there are registers of title as in Scotland and London various formal particulars may be obtained from them, and persons thus saved the expense and trouble of supplying them a second time to a State authority. But the provision can only be really useful in perfectly simple cases. The real points of difficulty relating to increment value duty, such as the valuations, the apportionment of increment value between the fee and the various derivative interests, the deductions to be allowed for expenditure, and for restrictive covenants, must clearly be dealt with by the Commissioners. They are matters which do not arise on the ordinary registration of title. As to the Register of Sasines, see s. 42 (4), p. 473.

And for the Payment of any Increment Value Duty by Instalments in the Case of any Lease on Transfer on Sale, etc.—The case of a premium or fine, on the grant of a lease, is provided for by the regulations (No. 16, p. 87). The purchaser of a fee simple reversion expectant on a lease, the increment value duty in respect of which is being paid by instalments, must consider his position. It is to be hoped and expected that a purchaser will be considered a person interested in the land under s. 30 (2) and able to obtain a copy of the Commissioners' records as to the land and the duty. If this is the case, and if the record shows, as doubtless it will, the particulars of the arrangement as to the payment by instalments of the increment value duty on the lease, the purchaser will then have to consider whether it will fall upon him or his vendor to pay the remaining unpaid instalments of the increment value duty. It would seem that the vendor is bound to pay this part of the increment value duty as well as the portion payable in respect of the reversion (s. 4 (1)). If the vendor will pay up in full at once, all difficulty is of course at an end, but if he will not do so, and will not allow the purchaser to deduct the amount of the unpaid instalments from the purchase-money, or enter into a covenant to pay them when due, a difficult situation will arise. The legal position might—it is not confidently asserted that it would—be affected by the knowledge of the purchaser, before entering into the contract to buy, of the arrangement as to the payment of increment value duty. It might be argued that, knowing the increment value duty was payable by instalments, the purchaser took the risk of the vendor not paying such instalments.

Again, it may be that the purchaser runs no risk at all in such a case. If under sub-s. (4) of this section the duty has been assessed, it is, for the purpose of calculating the amount of increment value duty to be collected on any subsequent occasion, to be deemed to have been paid. But this is the only point which appears of importance so far as the purchaser is concerned. The duty is not, it is submitted, charged on

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the land. The purchaser is not personally liable to pay it until indeed he becomes a vendor, and then under sub-s. (4) it is deemed to have been paid.

If, however, the land and the purchaser are not liable and the duty is deemed to have been paid on all future occasions when increment value duty is collected, what is the position of the Crown? Under sub-s. (5) it appears doubtful whether, if the consideration is in the form of a periodical payment, the Commissioners are not bound to allow payment by instalments. If they are, they must trust for their duty to the solvency of the vendor. Even if they are not, some special regulations will be necessary to protect the Crown, and will doubtless be made.

The regulations under s. 4.

The above note was first printed before the regulations under s. 4 were issued (see Appendix, p. 487), but since it draws attention to a matter which is of daily practical moment, it is thought better to leave it, though the points raised by it are to a certain extent met by the regulation numbered 16 (*post*, p. 491), the most material parts of which are as follows:—

> (16) In the case of any lease or transfer on sale where the consideration is in the form of a periodical payment, the Commissioners may, if they think fit, allow payment of the increment value duty assessed to be made by instalments in accordance with the following regulations:—
>
> (I.) Where the consideration consists wholly of a periodical payment,
>
> The duty shall be payable by five equal annual instalments, and the first instalment shall fall due one year after the date of the grant of the lease or the transfer of the interest, and the subsequent instalments on the same date in each successive year.
>
> (III.) In any case in which the person liable to the payment of any increment value duty may and does elect to pay such duty by instalments, he shall furnish security to the satisfaction of the Commissioners for the payment of the whole amount of the duty payable.
>
> (IV.) If any person, on being required by the Commissioners to furnish such security, fails to do so within two months he shall forfeit his right to pay the duty by instalments, and the whole of the duty shall be deemed to be due on the expiration of two months from the date on which notice was given by the Commissioners of their requirement.
>
> (V.) If any instalment remains unpaid for a period of thirty days after it falls due, or if the person liable to the payment dies or becomes bankrupt, the whole balance of the duty unpaid shall forthwith become due and payable.

The effect of the regulations conceding only five annual instalments, and requiring security for these, is greatly to simplify and lighten the position of purchasers.

And the Lease is determined before all such Instalments have fallen due, the Instalments which have not fallen due shall be

§ 4 (5). **remitted.**—Where the duty is payable by instalments there is to be, or at least there may be, a remission of unpaid instalments; but where the duty is paid in a lump sum (as the lessor might wish to pay it) there is no return of any part of the duty. This may not be logical, but as the duty paid in full in respect of the determined lease will serve to frank the land in the future, the irregularity is not so great as at first sight appears. It does not seem that the case of determination of the lease after payment in full of the increment value duty payable on the grant of the lease is met by the next sub-section ((6)), but if the lease is determined within two years after the payment of the duty, an attempt might be made to recover a proportion of the increment value duty paid from the Commissioners. See regulation 16 (VII.), Appendix, p. 491, as to remission of instalments.

(6) In any case where increment value duty shall have been paid under the provisions of this section, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor or lessor on his making application to the Commissioners within two years after the payment of the duty in accordance with regulations to be made by them under this section, and in that case the duty returned shall not be deemed to have been paid for the purposes of this section.

But the Transaction was subsequently not carried into Execution.—With this sub-section compare s. 9, paragraph 7, of the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), amended by 61 & 62 Vict. c. 46, s. 13, and s. 59 (6) of the Stamp Act, 1891 (54 & 55 Vict. c. 39). See also "Regulations" under this section (r. 17), Appendix, p. 491.

The sections of the Acts referred to provide for the return of stamp duty in case the instrument is void or ineffectual. The exact words of the enactments must be consulted where necessary. If the provisions of the Stamp Acts are applied to the increment value duty stamp generally by s. 1 of the Stamp Management Act, 1891, and s. 2 of the Stamp Act, 1891, s. 4 (6) may be superfluous except as to the provision that duty returned shall not be deemed to have been paid. But at all events it places the right of the subject to a return of duty in the circumstances referred to in the sub-section beyond doubt. Compare also with s. 27 (6), *post*, p. 329; also with the Finance Act, 1894, s. 8 (12), and s. 10 (3), as to interest on the returned duty.

Illustrations of the application of sub-s. (6):—

Escrow. (1) Increment value duty on a sale has been paid and the stamp under sub-s. (3) (*a*) impressed on the conveyance. The conveyance is

held by the vendor's solicitor as an escrow. The transaction is never completed. The duty paid can be recovered.

Mutual consent.

(2) Increment value duty on a sale has been paid on the contract for sale which has been stamped under sub-s. (3) (*a*). By mutual consent the contract is rescinded. It is assumed that the duty can be recovered.

It is not apprehended that the omission by the vendor to enforce an agreement which he is able to enforce would prejudice his right to recover increment value duty provided that the application be made within two years after the payment of the duty.

But is not the limit of two years out of all necessity too short? An action for specific performance, in which there was an appeal, might easily extend to a date later than two years from the contract, and the ultimate result might be rescission of the contract. However, the vendor might apply before the action was determined.

Vendors will not often, it may be presumed, pay increment value duty on the contract of sale. They will wait to pay till their profit is realised.

(7) Where any agreement for a transfer or agreement for a lease is stamped in accordance with this section, it shall not be necessary to stamp any conveyance, assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners shall, if an application is made to them for the purpose, denote on the conveyance, assignment, or lease the amount of duty paid.

Compare with this sub-section s. 59 (3) of the Stamp Act, 1891 (54 & 55 Vict. c. 39).

But for the last words of the sub-section, if the conveyance, etc., is not stamped with one of the stamps referred to in s. 3 (3), the agreement so stamped would necessarily be a link in the title.

SECTION 5.

This section relates to the collection of increment value duty on death. It is a continuation of the scheme the first portions of which are to be found in s. 1 (*b*) and s. 2 (2) (*c*).

Collection and recovery of duty in case of death. 57 & 58 Vict. c. 30.

5. The provisions as to the assessment, collection, and recovery of estate duty under the Finance Act, 1894, shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but where any interest in land in respect of which increment value duty is payable is property passing to the

§ 5. personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative, setting forth the particulars of the increment value in respect of the property :

Provided that in respect of all property of the deceased, other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment value duty, rank pari passu with the other creditors of the deceased.

ESTATE DUTY AND INCREMENT VALUE DUTY.*

Assessment, Collection and Recovery.—It is not easy to say what are the exact provisions of the Finance Act, 1894, which are intended to be applied to increment value duty. It is clear that many if not most of the provisions relating to the assessment of increment value on death must be found in the Finance Act, 1910. Such are those relating to the ascertainment of taxable increment value (ss. 2, 3, 7, 8, 11, 12, 25, 29, 33, 40). Again the Finance Act, 1910, contains general provisions as to the "collection" of increment value duty, which includes increment value duty payable on death (s. 3). On the other hand the property chargeable with the duty is to be ascertained by an application of the provisions of the Finance Act, 1894, to s. 1 (*b*), which creates the charge of the duty. Sect. 2 (2) (*c*) may be treated perhaps as a specific case of the general rule laid down by s. 5 that the provisions as to the assessment, collection, and recovery of estate duty under the Finance Act, 1894, are to apply as if the increment value duty to be collected on death were estate duty. The problem under s. 5 is to read into the Act of 1910 all the provisions as to the assessment, collection, and recovery of estate duty of the Finance Act, 1894, which are not inconsistent with the provisions of the 1910 Act. But as the duty established by the later Act is in many respects from its nature dissimilar to the duty established by the earlier Act, a large number of the provisions of the earlier Act are either wholly or in part inapplicable to the later duty, or are inconsistent with the provisions of the Act creating it. When to this is added the further fact that nowhere in the sub-titles or marginal notes to any of the sections of the Act of 1894 is "assessment" mentioned, and that the word "assessment" can hardly be said in English law to have obtained a definite technical meaning, it becomes evident that questions of great difficulty must arise in relation to s. 5. It seems important to

* Pp. 90 to 119 relate to the application under s. 5 of the existing law as to estate duty to increment value duty.

approach the section with a full appreciation of the words "shall apply as if increment value duty . . . were estate duty." § 5.

On this section the Solicitor-General, Sir Samuel Evans (now the President of the Probate, Divorce and Admiralty Division), said in the House of Commons, July 14, 1909: "The clause is really one dealing with machinery, and all the machinery of the Act of 1894, in effect, is incorporated in this clause. We have incorporated the machinery both as regards the assessment, collection, and recovery of the duty, and amongst these is the provision for payment by instalments" (see the Finance Act, 1894, s. 6 (8), *post*, p. 95). Of course this utterance has no legal weight, and is merely given that the reader may know what apparently was intended.

FINANCE ACT, 1894 (57 & 58 VICT. c. 30).*

Sects. 1 to 5 inclusive of the Finance Act, 1894, do not fall within the title "assessment, collection and recovery"; they are headed by the title "Grant of Estate Duty" (see Appendix, p. 589, for the Act *in extenso* so far as thought to be material). Finance Act, 1894, ss. 1—5.

s. 1. Contains the imposition of "estate duty," the then new duty, on "property passing on death," and the exemption of property paying it from the existing duties mentioned in the First Schedule to the Act. See *ante*, p. 15, and also *post*, Appendix, p. 589. This section is of course important as defining the property as to which an occasion arises on death for payment of increment value duty.

s. 2. Defines or explains what is included in property passing on death. See *ante*, notes to s. 1, p. 15, and Appendix, p. 589. This section is important for the same reason as s. 1.

s. 3. Exempts from estate duty certain transactions for valuable consideration. It is possible that this section may be incorporated into the Finance Act, 1910. In so far as it can be applied to claims for increment value duty, see notes to s. 1, p. 21, and Appendix, p. 590.

s. 4. Relates to the aggregation of property for the purpose of charging estate duty, and is clearly not applicable to increment value duty.

s. 5. Imposes settlement estate duty, and creates certain exceptions to the payment of estate duty (see *ante*, p. 66). It seems clear from s. 3 (4), *ante*, p. 61, that s. 5 of the Act of 1894 is for the purposes of exempting property from increment value duty incorporated in the Act of 1910. Its incorporation is, however, by way of explanation of s. 1 (*b*), indicating the property liable to increment value duty on death, and not as a provision which relates to "assessment."

Up to this point the Act of 1894 has been dealing with the creation

* The notes from this point up to p. 119 are directed mainly to the question as to what sections of the Acts relating to estate duty are incorporated by s. 5 of the Act of 1910, and not, except where absolutely necessary, to the construction of such incorporated sections. For that question Cartmell or Hanson must be consulted.

§ 5. of the estate and settlement estate duties, the property chargeable therewith, and certain exemptions from the duty. These provisions would seem to relate to the assessment of increment value duty, if provisions as to assessment include provisions defining the property to be assessed, but not otherwise.

The group of sections (6—10 inclusive) of the Finance Act, 1894, headed "Collection and Recovery of Duty and Value of Property," is now reached, and requires consideration in detail.

Finance Act, 1894, s. 6.

s. 6.—(1.) Estate duty shall be a stamp duty, collected and recovered as herein-after mentioned.

This sub-section is probably applicable to increment value duty, and is in harmony with s. 3 (6) of the Act of 1910.

Sub-s. (2).

(2) The executor of the deceased shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

This sub-section seems applicable to the increment value duty on leaseholds, and is apparently so considered by the authorities. In a circular letter dated July, 1910 (see Appendix, p. 538), the Commissioners, after calling attention to s. 5 and expressing their desire to make the procedure as simple as possible, state that they have decided not to require executors and others to render *in the first instance* a separate account for the purposes of increment value duty. They add that the necessary valuations will be made by reference to the affidavit and accounts furnished for estate duty purposes, and that a further account for the purpose of increment value duty will only be called for in cases where there is a *primâ facie* liability to that duty.* Sub-s. (2) of s. 6 of the Finance Act, 1894, is of course qualified by s. 5 of the Finance Act, 1910, which enacts that "where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate." Estate duty on property passing to the executor as such—for example, leaseholds—is, under the Finance Act, 1894, payable by the executor according to due course of administration, and is not charged on the particular property in question (*Re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251; *Att.-Gen.* v. *Dodd*, [1894] 2 Q. B. 150). But increment value duty chargeable on or payable in respect of leaseholds is, under s. 5 of the Finance Act, 1910, payable out of the particular property out of which

Finance Act, 1894, s. 6 (2).

* The affidavit referred to is that which must be sworn before probate can be obtained (44 Vict. c. 12, s. 39). The account is that referred to either in s. 5 of the 1910 Act, or in s. 8 (4) of the Finance Act, 1894.

§ 5.

the increment value arises. The result therefore appears to be that the personal representative must pay the increment value duty, and either raise it under an implied power to be deemed to be conferred by s. 5 of the 1910 Act out of the land in question (see also s. 39 (1)), or possibly recover it under s. 9 (4) of the Finance Act, 1894, from the trustee or owner of the property. It is, however, doubtful whether this latter alternative is open to the personal representative. It seems probable that sub-s. (4) of s. 9 applies only to the recovery of duty payable in respect of the property referred to in sub-s. (1) of the same section, *i.e.*, "property which does not pass to the executor as such" (see *per* North, J., *In re Webber*, *Gribble* v. *Webber*, [1896] 1 Ch. 914, at p. 922). It seems clear, however, (1) that the personal representative must pay the duty; (2) that the duty is not payable primarily out of the general estate, but out of the property itself. It is, of course, under the proviso to s. 5, secondarily payable out of the general estate, but only *pari passu* with other debts.

Property of which deceased competent to dispose.

If, as is probable, sub-s. (2) of s. 6 of the Finance Act, 1894, is applicable to the payment of increment value duty, it will render the personal representative liable to pay increment value duty, not only in respect of property passing to him as such, *i.e.*, leaseholds, but also in respect of property "of which the deceased was competent to dispose at his death" (see s. 22 (2) (*a*) of the Finance Act, 1894; for definition of "competent to dispose," *post*, p. 114). This will, it is apprehended, include leaseholds over which the deceased had a general power of appointment which he has not exercised. Certainly it includes leaseholds over which the testator has by his will exercised a general power of appointment, which are in addition "property passing to the personal representative as such" (see *In re Hadley*, *Johnson* v. *Hadley*, [1909] 1 Ch. 20, settling by the decision of the C. A. a much controverted point).

Property under control of executor.

So under the words of sub-s. (2) of s. 6 of the Finance Act, 1894, "and may pay in like manner the estate duty in respect of any *other property* passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor," it is apprehended that the personal representative may pay increment value duty on real estate devised to him on trust to sell and pay debts, or on real estate vested in him by virtue of the Land Transfer Act, 1897, ss. 1 and 2. It is now settled that the latter does not vest in the personal representative as such (*Re Sharman*, *Wright* v. *Sharman*, [1901] 2 Ch. 280).

Lastly, under the words of s. 6, sub-s. (2), of the Finance Act, 1894, "or in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment," he may pay the increment value duty at the request of specific or residuary devisees of freehold property devised by his testator's will, or at the request of the heir-at-law.

In the interpretation of the Finance Act, 1894, "the expression 'executor' means the executor or administrator of a deceased person,

§ 5. and includes as regards any obligation . . . any person who takes possession of or intermeddles with the personal property of a deceased person" (s. 32).

Finance Act, 1894, s. 6 (2). In the cases where increment value duty is paid by the personal representative in respect of land not passing to him as such, but either under his control or as to which he is requested by the persons accountable to pay the increment value duty, he can, it is thought, recover the same from the trustees or owners under sub-s. (4) of s. 9 of the Finance Act, 1894, or under sub-s. (5) of the same section raise the amount of the duty and interest and expenses by sale or mortgage of or terminable charge on the property or any part thereof.

It has been assumed in the foregoing notes that the proviso to s. 5 of the Finance Act, 1910, "Provided that in respect of all property of the deceased other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment value duty, rank *pari passu* with the other creditors of the deceased," applies only to increment value duty payable in respect of land passing to the personal representative as such. But it is quite possible, notwithstanding the provisions of s. 9 of the Finance Act, 1894, that the proviso may be held to extend to all increment value duty payable on death whether in respect of land passing or not passing to the personal representative as such. If this be the true construction of the proviso, it would appear that the personal representative is not only not entitled, but is bound to pay increment value duty whenever required by the Crown to do so in respect of all property passing on death within the meaning of s. 1 (*b*).

Ib., sub-s. (3). (3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

Ib., sub-s. (4). (4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

These two sub-sections would, it is thought, *mutatis mutandis* apply to increment value duty payable on death.

Ib., sub-s. (5). (5) This sub-section, which relates to accrued income, is thought to be obviously inapplicable to increment value duty on death. . . .

Ib., sub-s. (6). (6) Interest *at the rate of three per cent. per annum* on the estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit, or account, or the expiration of six months after the death, whichever first happens, *and shall form part of the estate duty.*

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Sect. 40 of the Finance Act, 1896, coupled with Part III. of the Schedule to that Act, repeals the words in italics in sub-s. (6) of s. 6 of the Finance Act, 1894, which provided in effect for compound interest, and by s. 18 of the Act of 1896 it is provided that "Simple interest at the rate of 3 per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or where the duty is payable by instalments or becomes due at any date later than six months after the death from the date at which the first instalment on the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty." (See also sub-ss. (2) and (3) of s. 18 of the Finance Act, 1896, *post*, p. 117.)

Finance Act, 1896, ss. 40 and 18.

Probably s. 18 is a provision as to the "assessment" and "recovery" of estate duty under the Finance Act, 1894, and, therefore, applicable under s. 5 of the Finance Act, 1910, to increment value duty.

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

Ib., 1894, s. 6 (7).

This sub-section may be applicable to increment value duty.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, *less income tax*, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Ib., sub-s. (8)

This sub-section will also probably be applicable (see *per* Sir Samuel Evans, then Solicitor-General, in the House of Commons, July 14, 1909. Vol. 7, Hansard, p. 2256).

Sect. 40 of the Finance Act, 1896, coupled with Part III. of the Schedule to such Act, repeals the words in italics.

s. 7 (1) to (4) inclusive, which relate to allowances for debts and to property in a foreign country, do not seem to be applicable to increment value duty, and are not therefore set out.

Ib., s. 7 (1)—(5).

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

[Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and

Repealed by s. 60 of the Act of 1910.

§ 5. making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.]

Sub-s. (5) relates apparently to "value of property" (see title of group of sections 6 to 10, referred to on p. 92; and see also side-note to s. 7 in the Act of 1894, both of which contain the words "value of property") and not to "assessment, collection and recovery," but it is material, because under s. 2 (2) (*c*) the site value on the occasion of death is to be the principal value of the land, or is to be based on the principal value of the interest in the land, as ascertained for the purposes of Part I. of the Finance Act, 1894. In this relation s. 60 (1) (2) of the Finance Act, 1910, must be noted (see notes on p. 478):—

Amendment as to value of property by Act of 1910.

s. 60.—(1) In the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the proviso to subsection (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under subsection (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time.

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

Sect. 61 (1) of the Act of 1910 is as follows. It is probably not material:—

Special provisions with respect to certain classes of property.

s. 61.—(1) Notwithstanding anything in the last preceding section, the proviso to subsection (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

Principal value.
Total value.

The principal value under the Finance Act, 1894, seems to be *primâ facie* the same thing as the total value under s. 25 (3) of the Finance Act, 1910, but it must not be assumed that differences between the two may not emerge in the course of time. The only two cases which appear to have been decided on s. 7 (5) of the Act of 1894 are *Attorney-General* v. *Jameson* ([1905] 2 I. R. 218]), on the meaning of the words "open market" as applied to shares in a company, and *Inland Revenue* v. *Marr's Trustees* (44 Sc. L. R. 647), as to the time of the valuation in relation to cattle, neither of which appears to throw much

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light on the subject of the present work. The deduction under s. 7 (1) of the Act of 1894 of incumbrances from the value of the land subject thereto, for the purpose of fixing estate duty, as compared with the fact that under s. 25 (3) of the Act of 1910 "total value" is to be ascertained as if the land were free from incumbrances, is not, of course, material, since principal value, for the purposes of s. 2 (2) (*c*), is doubtless to be ascertained under s. 7 (5) as if the land were free from incumbrances. If this is not the case the scheme of s. 2 (2) for ascertaining increment value duty on death is unworkable.*

Sect. 16 of the principal Act (Finance Act, 1894) is the section limiting the amount of the estate duty to small fixed sums in the case of estates, the gross value of which is under 500*l.* See *post*, p. 112.

Finance Act, 1894, s. 7 (6).

(6) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

The sub-section up to the first "possession" may possibly be material, but the rest of the sub-section relates to aggregation, and is not material.

The application of the former portion of the sub-section to increment value duty requires consideration. Increment value duty is not payable on reversions expectant on estates of freehold, or on remainders expectant, either on freeholds or on leaseholds passing on death, because they are neither "the fee simple of the land" nor interests in the land within the meaning of s. 1 (*b*); see the definitions of the two expressions in s. 41. A reversion expectant on a lease is "an interest" in land under the Finance Act, 1910, but under the Finance Act, 1894, s. 22 (1) (*j*), it is not an "interest" in expectancy, while all other reversions and remainders are interests in expectancy. It seems, therefore, that this sub-section is not applicable to increment value duty on reversions expectant upon freeholds and remainders expectant on freeholds and leaseholds, because they are not subject to increment value duty on death, and is perhaps not applicable to reversions expectant upon leases, because they are not interests in expectancy within the meaning of the section of the Act of 1894, but this latter point is by no

* "Principal value" is a phrase taken from the Succession Duty Act, 1853 (16 & 17 Vict. c. 51). See sections 16, 18, 26, 27.

§ 5. means clear. On the whole it is suggested that no part of the sub-section applies to increment value duty.

Finance Act, 1894, s. 7 (7).

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

It is difficult to prophesy whether sub-s. (7) is applicable to increment value duty. In so far as it is, the cases intended to be met by it are probably also covered by the provisions of s. 3 (4) of the Act of 1910. Under the Finance Act, 1894, this sub-section applies (1) to cases where pure personal property is held upon trusts for a life or lives, and the life or lives come to an end, and (2) to cases of annuities charged on land or other property and rent-charges issuing out of land (see Austen-Cartmell, p. 113, 5th ed.). In these cases estate duty is payable on the cesser of the "interests" just referred to. But increment value duty is not payable on the cesser of an annuity charged on land, or of a rent-charge, since it is only payable when, on the death of a person, the fee simple of or an interest in the land is property passing on his death (s. 2 (2) (*c*)). "The expression 'interest' does not include an incumbrance as defined by this Act," or "any purely incorporeal hereditament" (s. 41). "The expression 'incumbrance' includes . . . a charge of a portion, annuity, or any capital or annual sum." For these reasons (*b*) of sub-s. (7) seems to have no application to increment value duty. It is possible that under (*a*) might be included a case where trustees are seised of land upon trusts for sale and investment and payment of the income to A. for life and upon his death to B. absolutely; but for reasons already submitted (*ante*, p. 16) it has been suggested that increment value duty is not by virtue of s. 1 (*b*) payable in respect of land already subject to an effective trust for conversion.

Ib., sub-s. (8).

(8) Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

Sub-s. (8) seems applicable to increment value duty, but covers the same ground as s. 31 (2) of the Finance Act, 1910. See p. 348.

Ib., sub-s. (9).

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

Sub-s. (9) may possibly be applicable. § 5.

(10) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death. Finance Act, 1894, s. 7 (10).

Sub-s. (10) does not seem applicable.

8.—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act. *Ib.*, s. 8 (1).

This sub-section would seem to be applicable. For the "existing law and practice relating, etc.," the standard authorities must be consulted. The following remarks may, however, be made.

Procedure by Crown, etc.

The sub-section would seem to apply to increment value duty payable on death the procedure under the Crown Suits, etc., Act, 1865 (28 & 29 Vict. c. 104), by which duty is recovered by the Crown. For the practice on English information, which is the usual method in which the Crown recovers either a debt or penalty, see ss. 1—17 of that Act, and Annual Practice, 1912, Vol. 2, pp. 1097 and 1103. For summary proceedings by the Commissioners for an account and payment of duty, under s. 55, see Annual Practice, p. 1157, *ib.* For payment after assessment, there being no appeal against the assessment, or dispute as to the liability to assessment, see s. 56. For appeals in such cases, see s. 59, and Orders 58 and 68, r. 2 (2) (*e*), of the Rules of the Supreme Court. Questions of repayment would, it seems, be determined under s. 8 (12) of the Finance Act, 1894, (*post*, p. 104; and s. 33 of the Act of 1910, *post*, p. 358); and if those sections were not applicable any overpaid duty could, it is thought, be recovered by Petition of Right. *In re Nathan* (1884), 12 Q. B. D. 461; *Crossman* v. *Regina* (1886), 18 Q. B. D. 256. The exemptions of the property of common seamen, marines, or soldiers from estate duties are by s. 8 made applicable to increment value duty. Under various Acts of Parliament, sufficiently referred to in the text-books on the death duties, exemptions from the necessity of taking out probate are established in relation to sums not exceeding in some cases 100*l.*, and in others 50*l.*, and in these cases estate duty is understood not to be payable. It would seem also that in such cases, by virtue of this sub-section, increment value duty is also not payable, but the matter is not without doubt. Probably the sections as to provision for legacy and succession duties in administration actions are applied directly or will apply by analogy to increment value duty. (See 36 Geo. 3, c. 52, s. 25; 16 & 17 Vict. c. 51, s. 53.)

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Finance Act, 1894, s. 8 (2) 52 & 53 Vict. c. 7. 54 & 55 Vict. c. 66.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

Protection by lapse of time.

The provisions of ss. 12 to 14 of the Customs and Inland Revenue Act, 1889, relate to the protection by lapse of time of purchasers for value and mortgagees against claims for succession duty, and of personal representatives against claims for legacy and succession duty. It seems probable that, by virtue of s. 5 of the Act of 1910, they are applied to increment value duty, and they are therefore set out in the Appendix (see p. 614). It must, however, be noted that the protection of a purchaser from the personal representative or devisee against a claim for increment value duty arising on death seems to be sufficiently secured by the presence on his conveyance of one of the stamps referred to in s. 4 (3). "Where an instrument is so stamped it shall notwithstanding any objection relating to the increment value duty be deemed to be duly stamped as far as respects that duty" (*ib.*). The duty assessable on the occasion of a sale is 20 per cent. on the difference between the site value, on the occasion of the sale, and the original site value, after making all proper deductions, including any which may be claimed under s. 3 (5). The duty is clearly not only the amount actually paid on the occasion, but is 1*l.* for every complete 5*l.* of increment value accruing after April 30, 1909, and on the occasion of the sale the duty is to be collected, so far as it has not been paid on any previous occasion (s. 1). When assessed, under s. 4 (relating to increment value duty on sales and leases), for the purpose of calculating the amount of increment value duty to be collected, on any subsequent occasion it is deemed to have been paid (s. 4 (4)). If, however, this view is mistaken and the stamp in question does not operate as a protection, the position seems to be as follows: The duty payable on death seems clearly charged on the land, under s. 5 of the Act of 1910, where the land is property passing to the personal representative as such, and probably also under s. 9 (1) of the Finance Act, 1894, where the land does not pass to the personal representative as such, but, for example, to a devisee. There is in the Finance Act, 1910, no provision exempting a *bonâ fide* purchaser for value without notice from liability to the duty. But there are such provisions in relation both to property which does and property which does not pass to the executor as such in the Finance Act, 1894 (see s. 8 (18); s. 9 (1)). So far as regards the former species of property, as estate duty is not a charge upon it, the provision (s. 8 (18)) was perhaps not necessary; but if applied by s. 5 of the 1910 Act to increment value duty, which it is thought is charged upon such property, it may be useful. "Without notice" must, at all events until the Courts have decided to the contrary, be taken to mean without notice of facts which

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may give rise to a claim for duty, that is without notice of the death, and not merely without notice that the duty has not been paid in respect of an occasion known to have arisen on which duty is due. So far, therefore, as sections 8 (18) and 9 (1), of the Finance Act, 1894, are concerned, a purchaser of land from a personal representative or devisee should inquire whether increment value duty has been paid and inspect the certificate of payment of the Commissioners under s. 9 (2) of the Act of 1894, if the land falls within s. 9. Note that there is no provision as to duty assessed on a death occasion corresponding with s. 4 (4), and s. 6 (4) as to duty assessed under s. 1 (*a*) and (*c*). Possibly this sub-section incorporates as to estate or increment value duty the provisions of s. 25 of the Legacy Duty Act, 1796, and s. 53 of the Succession Duty Act, 1853, under which the Court in administration actions must provide for payment of those duties.

Sect. 47 of the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), is set out in the Appendix, p. 616.

> (3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

Finance Act, 1894, s. 8 (3).

This sub-section seems to be applicable.

There is no difficulty at all in applying it to increment value duty up to the second "deceased"; and the rest of the sub-section appears to fit in fairly with s. 5 of the Act of 1910. Under s. 8 (3) of the Act of 1894 the executor is accountable out of the general assets for the estate duty on leaseholds, but under s. 5 of the Act of 1910 increment value duty is payable by the executor out of the leaseholds themselves "in exoneration of the rest of the deceased's estate." Apparently, "in exoneration of" does not mean "in discharge of," since the second paragraph of s. 5 recognises that there may be a claim by the Crown for increment value duty against the general assets of the deceased. In such case this sub-section—*i.e.*, s. 8 (3) of the Finance Act, 1894—would be applicable.

The increment value duty for which the executor is accountable includes that due in respect of personal property "of which the deceased was competent to dispose." This no doubt would include increment value duty on leaseholds over which the deceased had a general power of appointment by deed or will, which he had died without having executed, and over which he had a general power of appointment which he had actually exercised by will. (See *ante*, p. 93.)

But if, as is possible, the proviso to s. 5 of the Finance Act, 1910, extends to increment value duty payable in respect of property which

§ 5. does not pass to the executor as such, as well as to property which does so pass, the personal representative is made liable in respect of the general assets for all increment value duty payable on the deceased's death.

As to the duty of the executor to specify in accounts annexed to the Inland Revenue affidavit all the property in respect of which the increment value duty is payable upon the death of the deceased, see the circular of July, 1910, to solicitors, from the Commissioners of Inland Revenue (Appendix, p. 538, *ante*, p. 92). In that circular the Commissioners state that they have decided not to require executors and others to render in the first instance a separate account for the purposes of increment value duty; and that the necessary valuations will be made by reference to the affidavit and accounts furnished for estate duty purposes, and a further account for the purposes of increment value duty will only be called for in cases where there is a *primâ facie* liability for that duty. This circular makes it plain that executors have only to make the affidavit and furnish the accounts in the same manner as they would have done before the Act of 1910, and that the initiative in relation to any increment value duty assessment will rest with the Commissioners.

Finance Act, 1894, s. 8 (4).

(4) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

Compare this sub-section with section 44 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51). It is, probably, applicable to increment value duty. Under it devisees of legal and equitable estates, including tenants for life and in tail, and persons with other limited interests, trustees, guardians and committees in whom the legal estate may not be vested, but who have the management of the property, persons to whom the property has been voluntarily transferred by devisee and others, are accountable for increment value duty. As to purchasers for value from devisees, see note to s. 8 (2) Finance Act, 1894, *ante*, p. 100. Note that mere agents or bailiffs are not accountable. It seems that an executor is under this section accountable for increment value duty on real estate which vests in him by virtue of ss. 1 and 2 of the Land Transfer Act,

1897 (*In re Sharman, Wright* v. *Sharman*, [1901] 2 Ch. 280). Under this section a remainderman would be liable to pay increment value duty on the death of a tenant for life. (See also on this point s. 3 (4), *ante*, p. 64.) § 5.

Finance Act, 1894, s. 8 (5)—(9).

(5) Every person accountable for estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars, together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

Sub-sects. (5) and (6), and possibly, but not probably, sub-ss. (8) and (9) may apply to increment value duty. It is thought that sub-s. (7) is not applicable. The first sentence in that sub-section down to the word "but" is at all events inappropriate to increment value duty.

Ib., sub-s. (10), repealed.

Sub-sect. (10) of s. 8 of the Finance Act, 1894, which is as follows :—

(1) *Interest on arrears of estate duty shall be paid as if they were arrears of legacy duty*

is repealed by s. 40 of the Finance Act, 1896 (see *ante*, p. 95), and for it is substituted s. 18 of that Act (*ib.*).

Ib., sub-s. (11).

(11) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the

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Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

Finance Act, 1894, s. 8 (12).

(12) Where it is proved to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

Does sub-s. (12) apply to increment value duty? Is a subsequent realisation at a lower value than that placed by the Commissioners on the land evidence "that too much increment value duty has been paid" on the death? It would seem that increment value duty is payable under s. 1 of the Act of 1910, even though the increment is merely temporary and has disappeared on a subsequent occasion. The real question is therefore what was the value at the death. If duty was paid on the value at the death, it is thought that it was rightly paid and cannot be recovered if that value was not maintained (*Wishart, &c.* v. *Lord Advocate*, 8 S. S. C., 4th S., 74).

Ib., sub-ss. (13)—(18).

(13) Where any proceeding for the recovery of estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

44 & 45 Vict. c. 12.

(17) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

All these sub-sections are or may possibly be applicable to increment value duty. A very useful note will be found on sub-s. (18) in Austen-Cartmell's Finance Act, 5th ed., p. 134. But for reasons already stated (*ante*, p. 100), it has been submitted that the purchaser of land from an executor, trustee, or devisee who takes care that one of the increment value duty stamps referred to in s. 4 (3) is placed on his conveyance is practically secure (s. 4 (4)). Still sub-s. (18) of s. 8 of the Act of 1894 might be useful in this respect, that it might protect a person who

was a purchaser in a broader sense than is implied by the words "transfer on sale" in s. 1 (*a*). As to notice and purchasers, see the Conveyancing Act, 1882, s. 3 (3).

Finance Act, 1894, s. 9 (1).

9.—(1) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

This sub-section is probably applicable to increment value duty. If it is so, that duty is by this sub-section made a first charge on land "which does *not* pass to the executor as such." By s. 5 of the Finance Act, 1910, increment value duty is "payable out of" an interest in land which passes to the personal representative as such, in exoneration of the rest of the "deceased's estate." Is there any material distinction between the two forms of expression? A sum payable out of an interest appears in effect to be charged on that interest. The word "first" in the Act of 1894 must, of course, not be lost sight of. That word, however, appears not to have the effect of conferring priority on the Crown's claim for estate duty over incumbrances or charges on the property created by the deceased in his lifetime, since sub-s. (3) of s. 9 of the Finance Act, 1894, gives the person who has properly paid the Crown, and who presumably steps into the shoes of the Crown, a certificate which is "conclusive evidence that the amount of duty named therein is a first charge on the lands . . . after the debts and incumbrances allowed as aforesaid," that is the debts and incumbrances allowed under s. 7 (1) of the Act of 1894. In the case of increment value duty, however, the position is somewhat different. This duty is not created by the death, but death is an occasion for its collection. It would, it is apprehended, be payable by a mortgagee who had sold the property the day before the death of the mortgagor (see p. 452, "Note on the position of mortgagees"), even though the effect of the payment were to cause his security to become deficient. It would of course be payable by the owner if he had sold in his lifetime. Estate duty would not be payable by an owner who had *bonâ fide* sold out and out, or by a mortgagee who sold in the lifetime of the mortgagor. There then seems to be no reason why, if s. 9 (1) of the Finance Act of 1894 does, as is thought, apply to increment value duty payable on death, full effect should not be given to the words "first charge" in the case of increment value duty.

Although s. 9 (1) of the Act of 1894 is important in relation to estate duty, since it shows clearly that that duty is in the case of specific devises of realty and legacies charged on realty to be borne by the estate or legacy and not by the general personalty, it is not so important in relation to increment value duty, which by virtue of s. 5 of the Act

§ 5. of 1910 is always a charge on (payable out of) the specific property, and never to be borne by the residue in the first instance.

It cannot, however, be taken to be quite certain that s. 9 (1) applies to increment value duty, since the phraseology is not particularly well adapted to meet the case of this duty. Increment value duty is not, like estate duty, payable in respect of the whole estate, composed of different properties. Each unit pays its own duty separately calculated from the rest of the whole. The question, however, does not, having regard to s. 5, appear to be of great importance; since the result would probably be the same in any event.

Three classes of cases must be distinguished in relation to estate duty and increment value duty.

Three classes of cases.

(1) Leaseholds passing to the personal representative as such. (*a*) Estate duty is payable by the personal representative out of the general assets and is not charged on or payable out of the leaseholds (Finance Act, 1894, s. 6 (2), s. 8 (3)). (*b*) Increment value duty is payable out of the leaseholds by the personal representative in exoneration of the rest of the deceased's estate, and subject thereto out of the rest of the estate (Finance Act, 1910, s. 5).

(2) Land not passing to the personal representative as such, as freeholds devised by will or descending on an intestacy or passing under the Land Transfer Act, 1897, ss. 1 and 2. (*a*) Estate duty is charged on the property itself (Finance Act, 1894, s. 9 (1)) and is payable by the devisees, whether beneficially entitled or entitled in trust or the heir to the extent of the property (*ib.*, s. 8 (4)), and is not payable out of the general assets. (*b*) Increment value duty is charged on the land as if it were estate duty, and probably both s. 9 (1) and s. 8 (4) of the Finance Act, 1894, apply. It is doubtful whether under the proviso to s. 5 of the Act of 1910 increment value duty is in this case payable out of the general assets in case it is not paid out of the specific property in respect of which it arises.

(3) There is, under the provisions of the Finance Act, 1894, yet a third species of property in respect of which there is a charge of the duty on the property itself, and the executor is also liable to pay the duty out of the general assets. Leaseholds over which the deceased had a general power of appointment, which he had died without exercising, are at the same time personal property of which the deceased was "competent to dispose" under s. 6 (2) and s. 8 (3) of the Finance Act, 1894 (s. 22 (2) (*a*)), and in respect of which the executor is therefore liable to pay the increment duty out of the general assets, and also property which "does not pass to the executor as such," and in respect of which therefore that duty is, under s. 9 (1) of the Act of 1894, a first charge on the property. As to the proviso at the end of s. 9 (1) of the Act of 1894, see the note on pp. 100 and 105. For the reasons there stated it is submitted that a purchaser from a devisee obtaining a conveyance stamped with one of the three stamps described in s. 4 (3),

is practically safe from claims arising either on the occasion of the death or the sale, though it must be admitted that this is not made as plain as could be wished. § 5.

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of estate duty, the Commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property. Finance Act, 1894, s. 9 (2).

Sub-sect. (2) may be applicable *sub modo* so far as relates to the increment value duty. It is not possible to speak with any certainty on the point. The grant of a certificate that increment value duty has been paid may be a provision relating to its "collection and recovery." Probably the whole of s. 9 of the Finance Act, 1894, is confined to property not passing to the executor as such (*In re Webber, Gribble* v. *Webber*, [1896] 1 Ch. 914).

(3) Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate. *Ib.*, sub-s. (3).

Sub-sect. (3) may also be appropriate to increment value duty, but *quære*, only in respect of property which does not pass to the executor as such. (See last note; see also note on sub-s. 1 of this section.)

(4) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interests as are in this Act mentioned. *Ib.*, sub-ss. (4) —(6).

(5) A person authorised or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.*

(6) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge,

* The tenant for life must keep down the interest on such a mortgage (*Re Howe's Estates*, [1903] 2 Ch. 69).

§ 5. as if the estate duty in respect of that property had been raised by means of a mortgage to him.

These three sub-sections may also be applicable, but it is by no means clear that they are. They are hardly provisions as to "assessment, collection and recovery under the Finance Act, 1894." The provisions of s. 39 of the Act of 1910 (see p. 412) cover part of the same ground as sub-ss. (5) and (6), and this is some slight argument against the applicability of the latter to increment value duty. But the general title of the block of sections 6 to 10 inclusive of the 1894 Act must not be forgotten, *i.e.*, "Collection and Recovery of Duty and Value of Property," and conceivably this may conclude the question.

For payment by instalments referred to in sub-s. (4), see Finance Act, 1894, s. 6 (8), *ante*, p. 95.

Finance Act, 1894, s. 9 (7).

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

Possibly this provision also applies to increment value duty, but it seems doubtful.

Ib., s. 10 (1). **10.**—(1) Sub-sect. (1) gives an appeal from the Commissioners as to estate duty direct to the High Court, and is superseded so far as regards increment duty by s. 33 of the Act of 1910 (*post*, p. 358), and also as regards the value of real and leasehold property in relation to estate duty by s. 60 (3) of the same Act.

Ib., sub-s. (2). (2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

This and the two following sub-sections are expressly incorporated in the procedure as to appeals under the 1910 Act by s. 33 (4) (*post*, p. 367). It may be noted in passing that this special incorporation is an indication, not perhaps decisive, that s. 10 is not applied by s. 5 to increment value as a provision relating to "assessment, collection and recovery of estate duty under the Finance Act, 1894." But s. 10 is one of the group of sections (6 to 10) of the 1894 Act under the title "Collection and Recovery of Duty and Value of Property." This would point to the conclusion that sections 6 to 10 are not therefore applied by s. 5 of the Act of 1910 in the lump to increment value duty, but that discrimination has to be used in their application.

Ib., sub-ss. (3), (4). (3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

The Crown is not apart from special contract or statute liable to pay interest on money paid to it in error (*Re Gosman*, 17 Ch. D. 771). § 5.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

See the note above on sub-s. (2) of s. 10.

Sub-sect. (5) gives an appeal as to estate duty where the value of the property in respect of which the dispute arises is under 10,000*l.* to the county court. This provision is clearly superseded as to increment value duty by s. 33 (4) of the present Act, under which the limit of the county court jurisdiction is 500*l.* total or site value, as alleged by the Commissioners. Finance Act, 1894, s. 10 (5).

Sub-sect. (6) empowers county and county borough councils to appoint county valuers, and to provide for their remuneration, and empowers the Court to refer questions of disputed value to them. It is one of the clauses which *primâ facie* seem to relate to "assessment," but if, as seems probable, the whole of s. 10 is excluded with the exception of ss. 2, 3, and 4, which are expressly incorporated by s. 33, this sub-section is not applicable to increment value duty. *Ib.*, sub-s. (6).

It is further to be noted that by s. 60 (3) of the Act of 1910 (see p. 479) the appeal under s. 10 of the Finance Act, 1894, where the question in dispute is a question of the value of real or leasehold property, is taken away, and in lieu thereof an appeal is given as to such value in manner prescribed by the Finance Act, 1910.

There now follows a block of provisions (ss. 11—15 inclusive), the title of which is "Discharge from and Apportionment of Duty." They, or some of them, may be incorporated into the 1910 Act by s. 5. Provisions relating either to the discharge or to the apportionment of duty may fairly be considered as relating to "collection and recovery" within the meaning of s. 5. An apportionment is often an essential preliminary to, and a discharge is a necessary sequel of, the collection of duty. For these reasons it is thought that the provisions of ss. 11 to 15 must be a little more fully considered than was the case in the first edition of this work.

s. 11.—(1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for estate *Ib.*, s. 11 (1).

§ 5. duty the property shown by the certificate to form the estate or part thereof as the case may be.

There seems no reason why this sub-section should not apply to increment value duty, but it seems of little practical use. For there is the register (s. 30), of which copies may be obtained for a small fee; and further, there is the increment value duty stamp which a purchaser would require to have placed on his conveyance under s. 4 (2).

Finance Act, 1894, s. 11 (2). Sub-sect. (2) relates to the determination of the rate of estate duty arising from the aggregation of estates and is clearly not material.

Ib., sub-s. (3). (3) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for.

This relates to the certificate referred to in sub-s. (1) and may have a possible application.

Ib., sub-s. (4). (4) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

This sub-section also relates to the certificate referred to in sub-s. (1). See note on that sub-section.

Ib., s. 12. Sect. 12 relates to the commutation of duty on interest in expectancy and is almost certainly not applicable to increment value duty.

Ib., s. 13. Sect. 13 gives power to the Commissioners to accept a composition for death duties and is probably not applicable to increment value duty.

Ib., s. 14 (1). **s. 14.**—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person who, being authorised or required to pay the estate duty in respect of any property, has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

This section is given because sooner or later it will have to be decided whether it is applicable. It is of some importance.

ILLUSTRATION.

A. devises the home farm by will to B. and charges it with payment of a legacy of 1,000*l.* to C. and an annuity of 50*l.* to D.

It is clear that B. and C. will have to bear the proper rateable part of the estate duty in respect of their respective gifts (*In re Parker-*

Jervis, [1898] 2 Ch. 643; *Berry* v. *Gaukroger*, [1903] 2 Ch. 116); but will they also have to bear a proportionate part of the increment value duty? The question, it is thought, could only be answered after close examination of the nature and incidents of that duty. There is a difference in the natures of the two duties, especially in the fact that increment value duty is payable on land only, while estate duty is payable in respect of all property. It may be also noted that s. 14 does not relate to "assessment, collection or recovery," which are acts in which the State is concerned, but simply to adjustment *inter se* of the rights of parties, the duty on whose joint property has been paid by one of them. On the other hand the words of s. 5 of the 1910 Act are: "The provisions as to the assessment, collection and recovery of estate duty under the Finance Act, 1894, shall apply *as if increment value duty to be collected on the occasion of the death of any person were estate duty*"; but of course the question is whether s. 14 is one of the provisions in question. If it is, there would not seem to be greater difficulty in apportioning the increment value duty amongst the various interests in the land than in apportioning estate duty. It is clear that where land is directed by will to be sold and the proceeds are bequeathed amongst several persons in certain shares, the increment value duty must of necessity be apportioned amongst those shares, there being no special direction in the will for payment otherwise. § 5.

Even if the effect of the proviso to s. 5 is that as to land not passing to the executor as such increment value duty is payable out of the general assets as a subsidiary and secondary source of payment, not much additional light is thrown upon the subject. In case the executor pays duty under that proviso, it may probably be recovered by him from the devisees of the land (*i.e.*, the trustees or owners) under s. 9 (4) of the Act of 1894, and they in turn could recover from the person entitled to the charge or annuity. On the whole it is thought, with some hesitation, that the sub-section is applicable to increment value duty.

(2) Any dispute as to the proportion of estate duty to be borne by any property or person may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than 50*l.*, by a county court for the county or place in which the person recovering the same resides or the property in respect of which the duty is paid is situate. Finance Act, 1894, s. 14 (2).

For the order regulating proceedings in the High Court, see Order 55, r. 9 (*c*).

For the county court procedure, see County Court Rules, 1903, Order 42, r. 12.

Whether this sub-section applies to increment value duty or not involves the question discussed in the note to s. 14 (1).

(3) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valua- *Ib.*, sub-s. (3).

§ 5. tions as settled between the person entitled to recover the same and the Commissioners.

See last note.

Finance Act, 1894, s. 15. Sect. 15 relates to certain exemptions of property (including an advowson) from estate duty and is not material.

Ib., s. 16. Sect. 16 substitutes in the case of small estates not exceeding 500*l.* in value a fixed duty for the ordinary estate duty, and exempts from the provisions as to aggregation for estate duty estates not exceeding 1,000*l.* in value. It seems not material to increment value duty, but the point is obscure, and since it seems unlikely to be of any practical moment is therefore not discussed.

Ib., ss. 17—21. Sect. 17 fixes the rates of estate duty and settlement estate duty, but has been amended by the Finance Act, 1907, s. 12, and the Finance (1909-10) Act, 1910, s. 54, and is not applicable.

Sect. 18 relates to valuation for the purposes of succession duty and is not material.

Sect. 19 relates to a local taxation grant out of the estate duty derived from personal property and is clearly not material.

Sect. 20 contains provisions exempting from estate duty property in British possessions, and is not material.

Sect. 21 (1) (2) (3) and (4) contain certain exemptions from estate duty not material, it is thought, to increment value duty.

Ib., s. 21 (5). (5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

This is not, it is thought, a provision relating to "assessment, collection or recovery," but it is believed to be material because it operates by way of exception to or limitation of ss. 1 and 2 of the Finance Act, 1894, and therefore in all probability of s. 1 (*b*) of the Act of 1910. It seems that what is incorporated in s. 1 (*b*) is that which is included in sections 1 and 2 (1) (*a*) (*b*) and (*c*) and (3) of the Finance Act, 1894, as cut down or modified by subsequent sections of that Act. It would be almost absurd to think that the Legislature meant those sections to be incorporated, subject to subsequent enactments amending them, which it clearly did by the very words of s. 1 (*b*) of the Act of 1910, and yet that it did not mean them to be incorporated with the modifications, provisoes, and exceptions of the original Act itself.

ILLUSTRATION OF SECT. 21 (5), FINANCE ACT, 1894.

A., the owner in fee of Blackacre, before the Finance Act, 1894,

§ 5.

conveys it to the use of B. his wife for life, remainder to A. for life, remainder to their children in fee. B. dies in A.'s lifetime, in 1912. Increment value duty is not payable on B.'s death. If the ultimate remainder taking effect were to A. in fee, it seems the sub-section would not apply (*Attorney-General* v. *Strange* [1898] 2 Q. B. 39).

Finance Act, 1894, s. 22 (1).

s. 22.—(1) In this Part of this Act, unless the context otherwise requires: —

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act.

(*b*) The expression "will" includes any testamentary instrument.

(*c*) The expression "representation" means probate of a will or letters of administration.

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person.

(*e*) The expression "estate duty" means estate duty under this Act.

This probably does not include the "fixed duty" payable under s. 16 of the Finance Act, 1894. See *ante*, p. 112.

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale.

(*g*) The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farmhouses, and mansion houses (together with the lands occupied therewith), as are of a character appropriate to the property.

Compare with this definition the paragraph in s. 41 of the 1910 Act beginning "The expression 'agriculture'" (*post*, p. 463). The proviso to s. 7 of the 1894 Act is for practical purposes relating to increment value duty repealed by s. 60 (1) of the 1910 Act, but having regard to the context of the various sections in the Act of 1910 specifically referring to agricultural land, agriculture, and agricultural purposes, *i.e.*, s. 7, s. 8 (2), s. 13 (2), s. 16 (2), s. 17 (1), (3), and (5), s. 18, s. 25 (4), s. 26 (1), it is possible that some difficulties may arise from the non-identity of the definition clauses.

(*h*) The expression "settled property" means property comprised in a settlement.

(*i*) The expression "settlement" means any instrument whether relating to real property or personal property which is a settlement within the meaning of s. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section and includes a settlement effected by a parol trust.

See the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, for the provision referred to (Appendix, p. 599). The doctrine of "compound settlements" must not be overlooked.

§ 5. (*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases.

See note on the difference between "interest" under the Act of 1910 and "interest in expectancy" in the above clause (*ante*, pp. 34 and 97).

(*k*) The expression "incumbrances" includes mortgages and terminable charges.

See note on the definition of "incumbrances" in the 1910 Act (*post*, p. 451).

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death."

See notes on s. 1, *ante*, p. 15.

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue.

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto.

(*o*) The expression "prescribed" means prescribed by the Commissioners.

Finance Act, 1894, s. 22 (2).

(2) For the purposes of this Part of this Act—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would if he were *sui juris* enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will or both but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee.

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required.

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(*a*) and (*b*) and possibly (*c*) of this sub-section seem clearly to apply to increment value duty as explaining what is included in property passing on the death of the deceased within the meaning of sections 1 and 2 (1) (*a*) (*b*) (*c*) and sub-s. 3 of the Finance Act, 1894 (s. 1 (*b*)). As to (*c*) see note to s. 14 (1) of the Act of 1894, *ante*, p. 110.

Ib., sub-s. (3).

(3) This Part of this Act shall apply to the property in which the wife or husband of the deceased takes an estate in dower or by the

curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased. § 5.

It would seem, therefore, that where on her husband's death his widow is entitled to dower, an occasion for payment of increment value duty would arise in respect of an interest, *i.e.*, an undivided third share for the widow's life, in the lands, and so when the husband becomes entitled as tenant by the curtesy to a life estate in the entirety of his wife's lands an occasion for the payment of increment value duty in respect to that interest would also arise.

The exact object of the section as applied to estate duty is not quite evident. It would seem that it does not add to the events on which estate duty would be payable under s. 1 of the Finance Act, 1894. An ingenious and probably correct suggestion as to its object will be found in Freeth's Death Duties, 4th ed., p. 240.

Amendments of Act of 1894.

It seems clear that subsequent statutory amendments of the Finance Act, 1894, are material to the subject of increment value duty on death, first, because what is charged by s. 1 is the fee simple of or an interest in land which is comprised in the property passing on the death of the deceased within the meaning of ss. 1 and 2, sub-s. (1) (*a*), (*b*), and (*c*), and sub-s. (3) of the Finance Act, 1894, *as amended by any subsequent enactment* (s. 1); and, secondly, because, under s. 5, "the provisions as to the assessment, collection and recovery of estate duty *under* the Finance Act, 1894," are to apply, that is, such provisions as for the time being are in force, whether contained in the Finance Act, 1894, or in subsequent legislation, for the purpose of the assessment, etc., of estate duty which becomes due under the Finance Act, 1894. Turning, therefore, to the subsequent enactments:

FINANCE ACT, 1896 (59 & 60 VICT. c. 28).

Finance Act, 1896, s. 14.

s. 14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the Principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

ILLUSTRATION.

A. settles land by deed upon himself for life, with remainder to B. his wife for life, with remainder to himself in fee simple. B. predeceases A.

Increment value duty is not payable on B.'s death. If the estate had been settled by A. upon himself for the joint lives of himself and B., the section would not have applied, and duty would have been payable (see *per* Cozens-Hardy, (then) L.J., in *Attorney-General* v. *Glossop*, [1907] 1 K. B. 163, at p. 177).

§ 5.
Finance Act, 1896, s. 15 (1).

s. 15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property, is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the Principal Act to pass by reason only of its reverter to the disponer in his lifetime.

ILLUSTRATION.

A. being the owner in fee of a freehold house conveys a life estate therein to B., who enters into possession and thenceforward retains possession thereof, to the entire exclusion of A. or of any benefit to A. by contract or otherwise. B. predeceases A.

Increment value duty is not payable on B.'s death. But if B. had agreed to let A. live in the house, and A. had done so during B.'s life, the sub-section would not have applied, and increment value duty would have been payable* (*Attorney-General* v. *Penrhyn*, 83 L. T. 103; see also on this section *Attorney-General* v. *Glossop*, [1907] 1 K. B. 163).

Ib., s. 15 (2)—(4).

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by s. 1 of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the Principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

Sub-sections (2) and (3) are probably applicable. Sub-section (4) can only be material in the case of a woman married before January 1, 1883, and then entitled to the land otherwise than as separate estate.

By s. 1 of the Succession Duty Act, 1853, "The term 'real property' shall include all freehold, copyhold, customary, leasehold and other hereditaments and heritable property whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments."

Ib., s. 18 (1).

s. 18.—(1) Simple interest at the rate of three per cent. per annum

* But probably duty would not be payable if the arrangement were not legally enforceable (*Attorney-General* v. *Seccombe*, [1911] 2 K. B. 688).

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without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment on the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

See note on s. 6 (6) and (8) of the Finance Act, 1894, *ante*, p. 95.

Finance Act, 1896, s. 18 (2), (3).

(2) The foregoing provision shall apply to the interest on all death duties as defined by s. 13 of the Principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

Sub-sects. (1) and (3) are probably applicable to increment value duty, but sub-s. (2) does not affect the payment of increment value duty.

FINANCE ACT, 1898 (61 & 62 VICT. c. 10).

Finance Act, 1898, s. 13.

s. 13. Section 5, sub-section 2, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof: "and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property."

See note on s. 5 (2) of the Finance Act, 1894, *ante*, pp. 66—67.

FINANCE ACT, 1900 (63 VICT. c. 7).

Finance Act, 1900, s. 11 (1).

s. 11.—(1) In the case of every person dying after the 31st day of March, 1900, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting or disposition was *bonâ fide* made or effected twelve months before the death of the deceased and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

See pp. 18 to 20, notes on s. 1 (*b*).

The period of twelve months before the death of the deceased necessary to prevent the claim for increment value duty arising is extended by s. 59 of the Finance Act, 1910 (see p. 475) to three years. See the notes to that section (*post*, p. 475).

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ILLUSTRATION.

A. is tenant for life and B. is tenant in fee simple in immediate remainder of the Blank estate. A. surrenders his life estate to B. two and a half years before A.'s death.

Increment value duty is payable on A.'s death.

Practically the section as amended by s. 59 of the 1910 Act makes every form of conveyance of a life estate in land to or for the benefit of any person entitled to any estate therein in remainder or reversion liable to increment value duty on the death of the life tenant, unless the following conditions take effect.

(1) The conveyance is *bonâ fide* made three years before the death of the life tenant; and

(2) possession and enjoyment are assumed immediately upon the execution by the grantee; and

(3) are thenceforth retained to the death of the life tenant to the entire exclusion of the transferor, and of any benefit to him by contract or otherwise.

Sect. 59 (3) of the Act of 1910, *post*, p. 477, further amends the section by providing in effect that even if conditions 2 and 3 are not observed immediately on the execution of the conveyance, yet if subsequently, by means of the surrender of the benefit reserved or otherwise, the land is enjoyed to the entire exclusion of the transferor and of any benefit to him for three years before his death, then on his death increment value duty will not be payable.

Finance Act, 1900, s. 13 (2).

s. 13.—(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act without requiring that statement to be verified on oath.

This is probably a provision as to the assessment, collection, or recovery of estate duty under the Finance Act, 1894, which by virtue of s. 5 of the Act of 1910 is applied to increment value duty.

Ib., s. 14 (1), (2).

s. 14.—(1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding 150*l.* in any one case, the whole or any part of the death duties (within the meaning of sub-s. 3 of s. 13 of the Finance Act, 1894) leviable in respect of property passing upon the death of the deceased to his widow or lineal

descendants if the total value for the purpose of estate duty of the property so passing does not exceed 5,000*l.* § 5.

(2) This section shall take effect in the case of any person dying since the 11th day of October, 1899.

It seems doubtful whether this section applies to increment value duty.

FINANCE ACT, 1907 (7 EDW. 7, C. 13).

s. 14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-s. (2) of s. 11 of the Principal Act (which relates to discharge from claims for estate duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section. Finance Act 1907, s. 14.

It is thought that this section has no application to increment value duty. See note on s. 11 (2), *ante*, p. 110.

Time only can show what provisions of the earlier Finance Acts are by the joint operation of s. 1 (*b*), s. 2 (2) (*c*), and s. 5 of the Finance Act, 1910, to be read into or incorporated with the last-mentioned Act. In the meantime the foregoing notes must be taken to be an effort not indeed so much to solve as to open out for discussion the many interesting points which arise on the Act.

To the foregoing must be added the provisions of the Finance Act, 1910, affecting estate duty, *i.e.*, s. 55, *ante*, p. 67; and s. 56, which runs as follows:

s. 56.—(1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person. Finance Act, 1910, s. 56 (1)—(3).

(2) No stamp shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

It seems probable that section 5 of the Act of 1910 will apply to increment value duty, the provisions of s. 59 (*post*, p. 475), and s. 60 (*post*, p. 478) of the same Act.

SECTION 5 OF THE FINANCE (1909—10) ACT, 1910 (*see* p. 90).*

Property passing to the Personal Representative as such (see note on p. 92).—Therefore in every case where an interest in land *Ib.*, s. 5.

* The commentary on s. 5 is now resumed (*see* footnote on p. 90).

§ 5. passes to the personal representative the increment value duty is payable out of that interest. If the interest passes to the executor *as such*, as in the case of leaseholds (*In re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251), increment value duty is payable out of that interest under s. 5 of the Act of 1909 in exoneration of the rest of the deceased's estate. If the interest does not pass to the executor *as such*—as, for example, freeholds passing to him under the Land Transfer Act, 1897, (*In re Sharman, Wright* v. *Sharman*, [1901] 2 Ch. 280, or land devised to him on trusts), the increment value duty is under s. 9 (1) of the Finance Act, 1894, a first charge on that property. In this case it appears to be doubtful whether increment value duty is payable out of any other part of the deceased's property except that out of which it arises. See Finance Act, 1894, s. 6 (2), (4) ; s. 8 (3), (4).

Finance Act, 1910, s. 5.

Shall be Payable out of that Interest.—That is, it is assumed in the absence of directions in the will to the contrary. If a testator says in so many words, "increment value duty on the estate passing on my death is to be paid out of my residuary estate," there is, it is thought, nothing in the section which would prevent the executor carrying out such a direction, though of course that direction could not affect the rights of the Crown to a charge. Perhaps, however, this cannot be considered as certain. Under the Finance Act, 1896, s. 19 (2), an analogous provision making settlement estate duty payable out of the settled legacy or property is expressed to take effect "unless the will contains an express provision to the contrary." Assuming, however, an absence of intention in the present statute to interfere with testamentary freedom, and that the words just quoted must be read into the present section, the question arises whether the ordinary direction to pay "testamentary expenses" would include a direction to pay increment value duty. The cases on settlement estate duty appear to be in point. The conclusion to be deduced from those cases seems to be that if there is a direction to pay "estate duty" or "duties" out of general estate, or a particular fund (other than the subject of the duty), this direction will include duties thrown, in the absence of direction, on the specific property; but that a bare direction to pay "testamentary expenses" includes only those expenses which are by law thrown on the personal representative. *In re Lewis, Lewis* v. *Smith*, [1900] 2 Ch. 176 ; *In re King, Travers* v. *Kelly*, [1904] 1 Ch. 363 ; *In re Pimm, Sharpe* v. *Hodgson*, [1904] 2 Ch. 345 ; *In re Cayley, Awdry* v. *Cayley*, [1904] 2 Ch. 781 ; *In re Turnbull, Skipper* v. *Wade*, [1905] 1 Ch. 726 ; *Porte* v. *Williams*, [1911] 1 Ch. 188 ; *In re Hudson, Spencer* v. *Turner*, [1911] 1 Ch. 206.

And shall be Collected upon an Account, &c.—See the circular letter of the Commissioners (*post*, p. 538), and the note on p. 92, *ante*. The Commissioners are authorised to prescribe a form of account by s. 8 (14) of the Act of 1894 (*ante* p. 104).

The Crown shall . . . rank pari passu with Other Creditors of the Deceased.—As to the property out of which the increment value duty arises, the Crown has priority and a charge for the duty. But does this proviso mean that the Crown has a claim against the general assets for increment value duty in respect of land which does not pass to the executor as such, as well as in respect of land which does so pass? It would appear so from this proviso. But the analogy of the Finance Act, 1894, as to property which does not pass to the executor as such is against this construction, and the provisions of that Act as to assessment, collection, and recovery are "to apply as if increment value duty . . . were estate duty." § 5.

SECTION 6.

This section regulates the collection of increment value duty under s. 1 (*c*), that is from bodies corporate and unincorporate, on periodical occasions. § 6 (1).

6.—(1) Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by section twelve of the Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, the occasions on which increment value duty is to be collected shall be the fifth day of April in the year nineteen hundred and fourteen and in every subsequent fifteenth year.

Collection and recovery of duty in case of property held by bodies corporate or unincorporate. 48 & 49 Vict. c. 51.

Fee Simple of any Land or any Interest in Land.—For definitions of fee simple of land and interest in land, see s. 41 (*post*, pp. 457 and 446), and notes to s. 1 (*ante*, p. 9).

By any Body Corporate or by any Body Unincorporate as defined, &c.—See the note on "Body Corporate, &c.," p. 22, *ante*, and on exemption from duty of such, p. 23. Sect. 12 of the Customs and Inland Revenue Act, 1885, is as follows:—

> **s. 12.** In the construction and for the purposes of this Part of this Act:—
>
> The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trust, that the same shall not be liable to legacy duty or succession duty.
>
> The term "accountable officer" means every chamberlain, treasurer, bursar, receiver, secretary, or other officer, trustee, or member of a body corporate or unincorporate by whom the annual income or

§ 6 (1). profits of property, in respect whereof duty is chargeable under this Act, shall be received, or in whose possession, or under whose control, the same shall be.

In such a Manner . . . not liable to Death Duties.—See notes to s. 1 (p. 23).

Note also the exceptions to the liability of bodies corporate and unincorporate to increment value duty contained in ss. 9, 10, 11, 35, 37 and 38; see note on p. 23.

In every subsequent Fifteenth Year.—If the body corporate or unincorporate avails itself of the permission conferred by sub-s. (3) to pay increment value duty by fifteen yearly instalments it practically, and after the system gets into full working order, pays each instalment of increment value duty (assuming that year by year the increment is the same in amount) fifteen years after it has accrued. As changes of ownership by death happen on the average about once every thirty years, when the duty is paid in full, each year's increment value duty is in this case also on the average paid fifteen years after it has accrued. This it is understood is the theory of the fifteen year periods (see speech of Attorney-General in House of Commons, July 19, 1909, Hansard, p. 48, vol. 8, 1909).

(2) The account to be delivered under section fifteen of the Customs and Inland Revenue Act, 1885, shall, in the case of the account to be delivered in the year nineteen hundred and fourteen and in every subsequent fifteenth year, contain an account of the increment value of the land, as on the preceding fifth day of April, and that section shall, save as in this Act is hereafter provided, apply for the purpose of increment value duty, whether the body corporate or unincorporate are chargeable with duty under Part II. of the Customs and Inland Revenue Act, 1885, or not.

An Account of the Increment Value of the Land.—Sect. 15 of the Customs, etc., Act, 1885, runs as follows:—

> **s. 15.**—(1) Every body corporate or unincorporate chargeable with the duty hereby imposed shall, on or before the first day of October in every year, deliver, or cause to be delivered, to the Commissioners or their officers, a full and true account of all property in respect whereof any such duty shall be payable, and of the gross annual value, income, or profits thereof accrued to the same body in the year ended on the preceding fifth day of April, and of all deductions claimed in respect thereof, whether by relation to any of the before-mentioned exemptions from such duty or as necessary outgoings.

§ 6 (2).

(2) The account shall be made in such form and shall contain all such particulars as the Commissioners shall by any general or special notice require, or as shall be necessary or proper for enabling them fully and correctly to ascertain the duty due, and every accountable officer herein-before made answerable for payment of duty in respect of any property chargeable under this Act, shall be answerable also for the delivery to the Commissioners of such full and true account as aforesaid of and relating to such property.

The expression "account of the increment value of the land" in s. 6 (2) of this Act may, having regard to s. 15 (2) of the Customs, etc., Act, 1885, it is conceived, be taken to be a comprehensive term which would include all such accounts as are necessary to enable the Commissioners to arrive at the increment value of the land. For definition of the term increment value of land see s. 2 (1). "Account" must necessarily include "a valuation" or estimation of all claimed deductions as well as all the four valuations rendered necessary by s. 25, *i.e.*, gross, full site, total and assessable site values, and, it may be, other valuations, unless indeed the Commissioners accept a recent valuation or valuations under one of the other provisions of this Act. The property may recently have been valued on a lease for more than fourteen years under s. 1, or on a periodical valuation under s. 28, and in such cases it may perhaps be assumed that the Commissioners would not require a wholly new valuation. It is not indeed improbable that the quinquennial valuation under s. 28, although in theory for the purposes of undeveloped land duty, will be generally utilised as the basis on which bodies corporate and unincorporate will pay increment value duty on undeveloped land on periodic occasions. It will be noted that both the valuations, *i.e*, that under s. 6 (2) of the increment value of such a body, and that under s. 28 of undeveloped land, are to be made as on different days in April of the year 1914, and that succeeding periodical valuations will all fall to be made in the April of the same year in which the quinquennial valuations are to be made for purposes of undeveloped land duty.

It will also be noted that under s. 6 the account of increment value is to be taken as on April 5, though such account need not be delivered under s. 15 (1) of the Act of 1885 till the following 1st October.

If the body owns only an interest in the land, it will of course pay only the proper proportion of the duty (s. 1).

Save as in this Act hereafter provided, refers to the exceptions above mentioned, *i.e.*, ss. 9, 10, 11, 35, 37 and 38.

Whether the Body Corporate or Unincorporate are Chargeable, etc., . . . or not.—The exemptions from the land taxes imposed by the Act are not the same as the exemptions contained in the Customs, etc., Act, 1885, s. 11, from the duty thereby imposed. For the last mentioned exemptions see s. 11 in the Appendix (p. 610). Perhaps the most important difference between the exemptions from the duty imposed by

§ 6 (2). the earlier Act and those imposed by this Act is contained in s. 11 (5) of the Act of 1885, *i.e.*, "property belonging to or constituting the capital of a body corporate or unincorporate established for any trade or business, or being the property of a body whose capital stock is so divided and held as to be liable to be charged to legacy duty or succession duty." This exemption includes all trading companies, syndicates and partnerships; and was intended to cover all such bodies as paid income tax on their trade profits and whose members paid legacy and succession duties on death. The machinery of the Customs, etc., Act of 1885 has been adopted probably not so much because it is the most convenient machinery but because to apply it required less of the time of the Legislature than to devise a new course of procedure.

(3) The provisions of sections thirteen to eighteen, of sub-section (1) of section nineteen, and of section twenty of the Customs and Inland Revenue Act, 1885 (with the exception of any provisions relating to appeals), shall have effect for the purpose of the assessment and recovery of increment value duty as they have effect for the purpose of the duty charged under section eleven of that Act:

Provided that increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment shall be due immediately after the assessment of the duty.

Any part of any duty so payable by instalments may be paid up at any time.

The sections and sub-section referred to are given below (with the exception of ss. 12 and 15, previously set out on pp. 121 and 122).

Any Provisions relating to Appeals.—These also are set out (see p. 127, *post*), since the scope of the exception in relation to them is perhaps not quite clear. It is clear that any appeal as to the amount of the land taxes from the Commissioners will be under the provisions of the Act of 1910, and not of the Customs, etc., Act, 1885.

Customs, etc., Act, 1885, s. 11.

The Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), Part II. is as follows:—

s. 11 imposes the 5*l.* per cent. income duty in respect of all real and personal property belonging to bodies corporate or unincorporate and states the exemptions; No. 5 of such exemptions having been stated

above (p. 124). The other exemptions are fully set out at p. 121, Appendix. **§ 6 (3).**

s. 12 set out above (see p. 121).

s. 13. The duty hereby imposed shall be considered as a stamp duty, and shall be under the care and management of the Commissioners of Inland Revenue, herein-after called the Commissioners, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are vested in them for the collection, recovery, and management of the succession duty, and shall have all other powers and authorities requisite for carrying this Part of this Act into execution. Customs, etc., Act, 1885, s. 13.

Compare s. 3 (6) (see p. 70) of the Finance Act, 1910. The powers and authorities for the collection, recovery, and management of succession duty are contained in the 16 & 17 Vict. c. 51, and especially in sections 45 to 49 inclusive of that Act. Note that under s. 49 production of books and documents can be enforced. But note also that under s. 13 of the Act of 1885 the authorities are to "have all other powers and authorities requisite for carrying this Part of this Act into execution." If these words are applied to increment value duty, and if they are interpreted in their *primâ facie* meaning, the Commissioners will not have much difficulty in obtaining their periodical increment value duty from bodies corporate and unincorporate. Legislation in this concise form would then undoubtedly have the merit of saving much time of the Legislature and of the Courts, whatever might be the effect on the persons or bodies alleged to be taxpayers. This precedent is one of 1885 and does not (except for the incorporation in the Act of 1910) appear to have been followed in other statutes.

s. 14. The duty hereby imposed shall be a first charge on all the property in respect whereof the same shall be payable while such property shall remain in the possession or under the control of the body corporate or unincorporate chargeable with such duty, or of any party or parties acquiring the same, with notice of any such duty being in arrear, and every such body corporate or unincorporate, and every accountable officer, shall, to the full extent thereof, be answerable to Her Majesty for the payment of the duty charged thereon. *Ib.*, s. 14.

This section of the Customs, etc., Act, 1885, must be carefully considered in reference to the paragraph of s. 6 (3) allowing periodical increment value duty to be paid by a body corporate or unincorporate by fifteen yearly instalments.

Sub-s. (3) of s. 6 of the Finance Act, 1910, applies s. 14 of the Customs and Inland Revenue Act, 1885, to the "assessment and *recovery* of increment value duty." For that purpose the last-mentioned section is to have the same effect as it has "for the purpose of the duty charged under s. 11 of that Act." Sect. 14 of that Act makes the duty "a first charge on all the property in respect whereof the same shall be

§ 6 (3). payable" while such property is in the possession of the body or of any purchaser of the same with notice of the duty being in arrear. It is difficult to reconcile sub-s. (3) of s. 6 of the Act of 1910, incorporating s. 14 of the Customs and Inland Revenue Act, 1885, with sub-s. (4) of s. 6 (p. 129). Under the latter sub-section when once the Commissioners have assessed the duty on an account delivered in pursuance of the Customs and Inland Revenue Act, 1885, that duty, whether actually paid or not, is on any future collection of increment value duty to have been deemed paid. Up to such a collection under sub-s. (3) of s. 6 of the 1910 Act, and s. 14 of the Act of 1885, it apparently remains a charge on the land capable of being enforced. The mere fact of another occasion for increment value duty arising on a subsequent sale seems thus to cause a former and unpaid increment value duty "to be deemed to have been paid." Conceivably the real construction is this, that for the purpose only of "determining the amount" to be collected on the subsequent occasion, *i.e.*, the sale, the former duty is to be considered to be paid. But not being paid, the remedies for enforcement still remain to the Crown, *i.e.*, the charge on the property remains, the purchaser having notice that the duty has not been paid. When collected it is collected as duty due on a former occasion. But this construction is somewhat forced.

In any event, it seems improbable that the Commissioners having on a sale by a corporate or unincorporate body stamped the purchase deed under the provisions of s. 4, sub-s. (3), would assert any claim to unpaid instalments of duty against the property in the hands of a purchaser or lessee.

On a purchase from such a body the purchaser should nevertheless, till the law or practice is clearly established, consider his position as to any unpaid instalments of increment value duty. It may be, notwithstanding sub-s. (4) of s. 4, that the unpaid instalments still remain a charge on the land itself. For the purpose of assessing the new duty arising on the sale, those instalments are under sub-s. (4) deemed to have been paid. But it may be for that purpose only.

For definition of accountable officer see s. 12 of the Act of 1885 (*ante*, p. 121), and for a note on his personal liability to pay the duty see note to s. 16 of the Act of 1885, *infra*.

For s. 15 of the Customs, etc., Act, 1885, see *supra*, p. 122.

Customs, etc., Act, 1885, s. 16.

> **s. 16.** Every accountable officer shall be at liberty to retain or raise out of any moneys of any body corporate or unincorporate which shall be held by him, or shall come to his hands, the full amount of all moneys which he shall pay or have paid on account of the duty hereby imposed, and all reasonable expenses incident to such payments.

Note that under ss. 12 and 14 of the 1885 Act the accountable officer (for definition of accountable officer see s. 12 of that Act (*ante*, p. 121)) is brought face to face with the Crown, and is personally

answerable to the Crown for the duty to the full extent of the income or profits received by him or in his possession or under his control as such officer. Sect. 16 gives him the right to retain or raise out of that income and those profits the amount of duty which he "shall pay or have paid" with his reasonable expenses incident to such payment.

Customs, etc., Act, 1885, s. 17.

s. 17.—(1) It shall be lawful for the Commissioners to assess the duty upon the footing of any account rendered to them, or if dissatisfied with such account to cause an account to be taken by any person or persons appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account * *subject to appeal to a Court in the same manner as in any case of succession duty as herein-after provided.*

(2) If the duty so assessed shall exceed the duty assessable according to the account rendered to the Commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account on any funds liable to such duty as an addition thereto and part thereof, and to recover the same accordingly; but if there shall be an appeal against such assessment, then the payment of such expenses shall be in the discretion of the Court.

(3) The duty shall be payable immediately after the assessment, and notwithstanding any appeal therefrom; provided that in the event of the amount of the assessment being reduced by the order of the Court, the difference in amount shall be repaid with such interest (if any) as the Court may allow.

The powers conferred by this section are very great. It must be assumed that they are to be exercised, not arbitrarily, but in accordance with the rules as to valuation and other matters laid down in the Finance Act, 1910. The "account" which may be taken by persons appointed by the Commissioners necessarily involves a power to order valuations to be made. The appeal given by sub-s. (1) is excluded by s. 6 (3) of the Finance Act, 1910, and appeals by bodies corporate and unincorporate will be under s. 33 of the Finance Act, 1910.

The powers of the section seem to be more appropriate to the case of the bodies corporate or unincorporate, the property of which is subject to the duty known as the corporation duty, charged by the Customs and Inland Revenue Act, 1885, than to the case of the ordinary commercial land and investment company, which, as well as the former kind of body, is liable to pay increment value duty on a periodical occasion.

Ib., s. 18.

s. 18.—(1) Every body corporate or unincorporate, and every accountable officer hereby required to deliver any such account as aforesaid and wilfully neglecting so to do on or before the first day of October in any year, shall be liable to pay to Her Majesty a sum equal to ten pounds

* Excluded by s. 6 (3) of the 1910 Act.

§ 6 (3). per centum upon the amount of duty payable in respect of the property required to be comprised in such account, and a like penalty for every month after the first month during which such neglect shall continue.

(2) Every body corporate or unincorporate, and every accountable officer hereby required to pay any duty, and wilfully neglecting so to do for a space of twenty-one days after the same shall have become payable, shall be liable to pay to Her Majesty a penalty equal to ten pounds per centum upon the amount of such unpaid duty, and a like penalty for every month after the expiration of the said period of twenty-one days during which such neglect shall continue.

See note as to penalties on pp. 78 and cxliv.

s. 19.—(1) The Commissioners shall, for the purposes of this Part of this Act, have the same powers in relation to proceedings to enforce the delivery of accounts, and in relation to the verification of accounts, and the production and inspection of books and documents, as they have in relation to succession duty under the law now in force.

Customs, etc., Act, 1885, s. 19.

Sect. 19. "As they have in relation to succession duty under the law now in force." For these powers see 16 & 17 Vict. c. 51, ss. 45, 47, 49, and 52 Vict. c. 7, s. 10 (3). They include powers to the Commissioners to take accounts themselves if dissatisfied with the accounts placed before them (s. 45), to take summary proceedings to compel the furnishing of an account (s. 47),* and to compel the production of books and vouchers (s. 49). See also the Crown Suits Act, 1865 (28 & 29 Vict. c. 104), s. 55, under which a writ will issue from the King's Bench Division at the suit of the Commissioners for an account. This provision will probably apply to the recovery of increment value duty from a body in question.

Ib., s. 20.

s. 20. In the case of any proceeding in any Court for the administration of any property chargeable with duty under this Act, such Court shall provide out of any such property in its possession or control for the payment of the duty to the Commissioners.

"Pay duty" in the payment schedule of an order of the Court will, therefore, probably now include "pay increment value duty" in all cases where land or an interest in land belonging to a body corporate or unincorporate is being sold under order of the Court. Such cases will include increment value duty payable on sales of a company's land in a winding-up or in a debenture holder's action. The subsection would, it is also apprehended, require the Court to pay increment value duty in respect of a company's land which fell due on a periodical occasion during the winding-up or the pendency of the action and before sale.

(4) Any increment value duty assessed by the Commissioners on an account delivered in accordance with

* Sect. 47 is replaced by the 28 & 29 Vict. c. 104, s. 55.

this section shall, for the purpose of determining the amount of increment value duty to be collected on any subsequent occasion, be deemed to have been paid. § 6 (4).

General note on sub-section.

A doubt has been already raised (see *supra*, p. 126) as to whether this sub-section means, that if once the Commissioners have assessed the duty under s. 6 on one of the periodical occasions there referred to, but such duty has not been paid, or being payable by instalments has not been fully paid, then a subsequent purchaser having notice that it has not been paid takes free from that duty. Clearly, if the deed is stamped under s. 4 (3), he takes free from the increment value duty payable on his purchase, s. 4 (4). Does the above sub-section mean more than that in order to arrive at the amount of the later increment value duty payable on the sale you are to consider the former assessed but unpaid increment value duty as paid, but that, unless that former increment value duty is in fact paid, it remains a charge on the property in the hands of the purchaser with notice, by virtue of s. 14 of the Customs and Inland Revenue Act, 1885. Till the point is decided a purchaser should see that the former increment value duty is paid. If he buys from a body corporate, for example a land company, he has notice that increment value duty may have been payable, assuming that the company has been in possession on April 5 in a year of collection. It appears, therefore, that he should require either evidence of the payment of the duty or should be satisfied that no increment value duty was in fact payable at the date in question. No doubt in some cases to obtain such satisfaction may not be easy. It is therefore to be hoped that the Commissioners will make it known that a purchaser from a company will not be asked to pay any increment value duty assessed but not paid by a body corporate or unincorporate. Many such bodies will doubtless avail themselves of the option to pay by instalments under s. 6 (3). Land near urban centres is uniformly rising in value, and the point will in the year 1914 be one of practical moment.

(5) Nothing in this section shall affect the collection of increment value duty on the occasion of the grant of any lease or the transfer on sale of the fee simple of any land or any interest in land by a body corporate or unincorporate, or oblige an account to be delivered of the increment value of any land on any periodical occasion if under the subsequent provisions of this Part of this Act increment value duty in respect thereof is not to be collected on that occasion.

Nothing . . . shall affect the Collection . . . on the Occasion of

§ 6 (5). **the Grant, etc.**—As previously mentioned, bodies corporate and unincorporate are liable to pay increment value duty on sale or lease of land or interests in land just as private individuals. The periodic collection provided for in this section corresponds with collection at the death in the case of individuals.

Or oblige an Account to be delivered . . . collected on that Occasion.—This relates to the exceptions to the payment of increment value duty created by ss. 9, 10, 11, 35, 37, and 38 in the case of bodies corporate or unincorporate. It must, however, be noted that the 10 per cent. reductions under s. 3 (5) may be lost in some cases by the non-payment on periodical occasions.

SECTION 7.

§ 7. This is the first of a group of sections (7 to 11 inclusive) creating exemptions from liability to increment value duty. The exemption in s. 7 relates to agricultural land.

Exemption for agricultural land.

7. Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only :

Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only, except where the value for any such purpose exceeds the agricultural value of the land.

Agricultural Land.—For definition of "agriculture" and "agricultural land" see s. 41 (p. 463) and note as to the land included in the latter term.

It is submitted that the reference is to land actually used or employed in agriculture on the occasion when increment value duty is claimed. But supposing that there has been a temporary diversion of land usually employed in agriculture to other than agricultural purposes. It is submitted that it still remains agricultural land.

While that Land has no Higher Value than its Market Value at the Time for Agricultural Purposes only.—There may be increment value in the land considered as building land, but if the increased value does not, on an occasion when increment value duty is claimable, exceed the then market value of the land as agricultural land, increment value duty is not payable. It is submitted that the contrast in the section is between the value, not the site value of the land, for agricultural purposes, and the higher value, not the higher site value, of the land for other purposes.

§ 7.

How is value for agricultural purposes only to be ascertained.

No specific directions are contained in the Act for ascertaining "the market value at the time for agricultural purposes only"; and there is no reference in the Act connecting this market value with the scheme of values comprised in s. 25. Doubtless of the four values referred to in that section the "market value at the time for agricultural purposes only" is most nearly allied to total value (s. 25 (3)). But total value includes value for all purposes, *i.e.*, building, trade, sporting and any other possible value, which are, of course, excluded from the market value for agricultural purposes only. It cannot be doubted that the land must be valued free from incumbrances, but subject to any public rights of way or user, and to any rights of common and to any easements affecting the land (s. 25 (3)). Rent obtained is no doubt an element of great importance in ascertaining its value, but should not, it is thought, be conclusive.

There may perhaps be a doubt as to whether it is to be sold free from "fixed charges," which are also deductions to be made under s. 25 (3). It does not, however, seem to be very material whether any particular deductions are or are not made in ascertaining agricultural value, since probably the same deductions must be made in ascertaining the "higher value" with which the agricultural value is to be compared as in ascertaining the latter value. A high agricultural value is desirable.

Does market value include agricultural buildings?

Whether the market value of the agricultural land includes the value of the buildings, *i.e.*, the farmhouse and other buildings, is not quite clear. If it does, the land will of course remain free from increment value duty until the higher value resulting from the inclusion of the buildings in the valuation of the land is passed. Thus, if on an occasion for payment of duty the site value is 2,300*l.*, the market value of the land for agricultural purposes without reckoning the value added to the land by the buildings is 2,000*l.*, and the market value of the land together with the value added to the land by the buildings is 2,700*l.*, the question whether increment value duty is or is not payable may depend upon whether 2,000*l.* or 2,700*l.* is the market value at the time for agricultural purposes. In support of the view that the added value of the buildings must be included, it may be urged that what is to be valued is the land in its ordinary sense, which would include buildings of all kinds (see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3). The contrast between the two values is, it may be suggested, that in the one case the valuer is to find the price which the land "in its then condition," to use the words of s. 25, with all its buildings and fixtures, would fetch if it were by law made incapable of being used for any purposes, except those of agriculture, whilst in the other he is to find the price which the land in the same sense (with its buildings) would fetch if it were free from any such restriction. Of course the value attributed by a valuer to the buildings under the two valuations may be different. It would seem that the very buildings which increase

§ 7. the value for agricultural purposes only may depress the value for the other purposes giving rise to the higher value.

Difficulties of the subject.

But it is not quite clear that this construction is right. Under the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, it is only "unless the contrary intention appears" that in Acts passed after the year 1850 land is to "include messuages, tenements, and hereditaments, houses and buildings of any tenure." Is not the contrast in s. 7 between two hypothetical values of the bare soil in question, the hypothetical value it would possess if uncovered by buildings and under a statutory limitation unable to be used except for agriculture, and the hypothetical value of the same unbuilt upon soil, if legally able to be used for all ordinary purposes? Somewhat the same question arises on the construction of s. 17 (2) (see *post*, p. 194). "In the case of agricultural land of which the site value exceeds £50 per acre, undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes." In this case it seems on first consideration that what is being compared is the real "site value" (which includes the site value for all purposes), but which of course excludes buildings, and the value of the land (without buildings) for agricultural purposes.

Same question arises on s. 17 (2).

Sect. 17 (2), however, must be read in the light of s. 16 (2), by virtue of which buildings for the purposes of agriculture do not take the land out of the category of undeveloped unless such buildings are glasshouses or greenhouses. In other words, all agricultural land is "undeveloped" for the purposes of undeveloped land duty, whether built on or not, unless the buildings are "dwelling-houses, glasshouses, or greenhouses." It seems difficult to rule out agricultural buildings for the purpose of making land undeveloped and yet not to bring them in for the purpose of increasing the agricultural value of the land as undeveloped and so enabling it to escape wholly or in part the undeveloped land duty. It cannot, however, be said that this argument is conclusive on the question raised in s. 17 (2). It certainly is not on the question in s. 7, and the determination of the point must clearly await judicial decision or further legislation.

Glasshouses and greenhouses.

The question as to whether the value of the buildings is to be included in the value for agricultural purposes only assumes its most acute form in relation to glasshouses and greenhouses in market gardens (see note on market gardens, *post*, p. 467). It is, however, only in relation to increment value duty that the matter is of importance, since the erection of glasshouses and greenhouses causes land to be "developed" and not liable to undeveloped land duty (s. 16 (2)).

Relation of s. 29 (1) to the question discussed.

If the value of buildings is to be included in the market value for agricultural purposes only, the effect of s. 29 (1), which enables the Commissioners to assess duty on any such pieces of land, whether under separate occupation or not, and to make such apportionments of site value as they think fit, must not be lost sight of. Whether in any event

the authorities would be justified in assessing the land on which the buildings stand, apart from the rest of the farm, so as to reduce the market value of the latter for agricultural purposes only with a view to obtaining increment value duty may be doubted. It is submitted that in fairness the farm should be assessed as a whole, and that the powers of ss. 29 and 32 (3) ought not to be exercised so as to render nugatory the spirit of the direction of s. 26 (1) to value separately each piece of land which is under separate occupation. It is, of course, clear that that direction only applies in form to the original general valuation under s. 26, and possibly to the quinquennial valuation under s. 28.*

Illustration.—The original total value on April 30, 1909, of Blackacre, which is used as agricultural land, was 150*l.* Its value for building purposes was the same. In 1912, being still used in agriculture, it is sold for 200*l.*, which is its value for agricultural purposes, its value for building purposes again being the same amount (200*l.*). By virtue of this section it is exempt from increment value duty.

Supposing the building value only had increased to 200*l.* between the original valuation and the sale in 1912, the agricultural value remaining at 150*l.*, then increment value duty would be payable in respect of 50*l.*, less 15*l.*, the 10 per cent. reduction under s. 3 (4)—that is in respect of 35*l.* It is assumed in this illustration that the site value increased proportionately with the total value. But supposing the building value having risen to 200*l.* the agricultural value had risen to 180*l.*, upon what sum would increment value duty be payable—upon 35*l.* calculated as above mentioned, or upon 5*l.*, *i.e.*, 20*l.*—15*l.* reduction under s. 3 (4), being the amount upon which increment value duty would be payable, if it is payable, only on the difference between building and agricultural values? It is submitted that it is payable upon 35*l.* As soon as the building value exceeds the value for agricultural purposes only, the exemption created by s. 7 ceases to apply. The theory apparently is that increment value duty is charged on all increment value, subject to this, that if the building value is not higher than the agricultural value, or, in other words, if it is clear that by being employed in agriculture the land is not being immediately put to a less profitable use in anticipation of a future higher price, then increment value duty is not payable.

Building value.

"Building value," as used in this note, is not of course an accurate expression. The values contrasted are (*a*) agricultural and (*b*) non-agricultural values; but the expression "building value" is convenient, for it draws attention to the real object of the section.

An interesting question may arise in relation to the person who is

* The "higher value" with which the market value for agricultural purposes is contrasted, is, it is thought, practically though not nominally the total value of s. 25 (3).

§ 7. liable to pay the increment value duty when, for the first time, after several prior sales on other occasions for paying increment value duty as showing a rising site value, but still an agricultural value only, land comes to possess a higher value than its value for agricultural purposes only. For example, Blackacre, a five-acre field, has an original site value of 120*l.* It is sold in 1910 by A., the owner in fee, to B. for 130*l.*, a moderate agricultural value. In 1914 its agricultural value has risen owing to the growth of a neighbouring town and a consequent demand for dairy produce and the like, and it is sold by B. for 180*l.* to C., its site value being then 170*l.* The town continues rapidly to grow and to spread in the direction of Blackacre, and in 1920 it is sold by C. to D. for 300*l.*, which is 100*l.* more than its then value for agricultural purposes. Increment value duty is for the first time to be collected; and it is to be collected on the increment value, which under s. 2 (1) is the amount by which the site value on the occasion of the sale to D., which works out at 290*l.*, exceeds the original site value of 120*l.* It would seem that C. must pay increment value duty on the whole of this increment value, although to the extent of 60*l.* the increment took place before he became the owner. In particular cases the hardship falling on the vendor who is thus called upon to pay increment value duty for the original site value may be great, since the rise in site value for agricultural purposes antecedent to his ownership and the consequent increment value may be considerable in comparison with the final rise in site value in his own hands, which has brought the land within the scope of the tax.

Curious result as to liability for duty.

It further seems doubtful whether, in the illustration referred to above, the 10 per cent. allowance under s. 3 (5) must not be calculated on 120*l.*, the original site value, rather than on 170*l.*, the site value on the occasion of the sale to C.

How the 10 per cent. under s. 3 (5) is to be calculated.

Land belonging to a private person, and laid down to pasture, is turned into golf links and let by the owner at a rent of 5*l.* an acre, its rental value for agricultural purposes being 2*l.* per acre. Is increment value duty payable by the owner on a sale? It would appear that it is, because the fact that it can be let at a higher rent for golf links no doubt increases its capital value, so that it has in fact a higher value than its market value for agricultural purposes only. This may be quite independent of the fact that much of the land in England used as golf links is on the way to being used for building purposes, and for that reason possesses a higher value than its value for agricultural purposes. But the owner might doubtless be able to show that the letting was a short one, not likely to be renewed, since the land had been found not suitable for golf links, and that, as a matter of fact, the permanent capital value of the land as evidenced by the price was not really greater than that of the neighbouring agricultural land. This would be an answer to the claim for increment value duty.

Special cases, as golf links, etc.

A second reason why land used as golf links is thought to be liable

to this duty is that such land is probably not "agricultural land." It appears to be the purpose to which the land is put which causes it to be agricultural or not agricultural, and not the external condition or surface of the soil (s. 41). It is true that sheep and horses are often grazed on golf links; but that is a subsidiary use of them, and generally a use intended for the benefit of the links. § 7.

These remarks apply to the case of land used for purposes akin to that of golf links, as for example to land used for racecourses, cricket or football fields, bowling greens, tennis courts, athletic grounds, hockey fields, etc. And similar land.

It is thought that the time for ascertaining the "market value, &c. . . . for agricultural purposes only" is the date of the occasion for payment of duty, and not the date of the original (s. 26) or the last quinquennial (s. 28) valuation.

Provided that . . . exceeds the Agricultural Value of the Land.—The proviso is very difficult to understand. Perhaps what is intended is that the *user*, not the "*value*" of the land for sporting purposes, etc., is to be treated as a *user* "for agricultural purposes only, except where the value for any such purposes exceeds the agricultural value of the land." But then, if the land is in fact, as is assumed in the proviso, agricultural land, it is, by virtue of the first paragraph of the section, without any aid from the second, not subject to increment value duty, unless its capacity for other or additional uses for sporting, etc., purposes, gives it a higher value than its value for agricultural purposes. Literally construed, the proviso seems to say that if the agricultural value (not including the shooting) of a piece of land is say, 100*l.*, then if the shooting would sell in perpetuity for 99*l.*, the land is still agricultural, its agricultural value being 199*l.*, and is exempt from increment value duty, but that if the shooting were worth 101*l.* in perpetuity then the land is not agricultural, and is liable to increment value duty. Thus it seems clear that a deer forest might have a value in excess of the agricultural value of the land in question and be subject to increment value duty. It would, however, seem to be a question whether a deer forest is not liable to increment value duty because it is not agricultural land, and therefore not within the exemption of s. 7. The answer to that question depends upon whether the use as a deer forest is also the use as "woodland" within the last paragraph of s. 41 ("the expression 'agriculture'"). There is no definition of "sporting purposes" in the Act of 1910. For a definition of "right of sporting," see 37 & 38 Vict. c. 54, s. 6 (1); and of "sporting rights," see 3 Edw. 7, c. 37, s. 13 (2).

Purposes dependent upon its Use as Agricultural Land.—This phrase is difficult to understand, but it seems that light is thrown upon it by the indication that "sporting purposes" are considered to be purposes dependent upon the use of the land as agricultural land. It

§ 7. is of course clear that sporting purposes are inconsistent with the use of the land as building land or (usually) as land employed in a business. But though often consistent with, it would seem that they do not always depend upon the "use" of the land for agriculture. For example a deer forest would seem to be dependent upon the non-user of the land for agricultural purposes, unless indeed the same kind of trees are both planted for profit as woodland (see s. 41, last paragraph) and for the purposes of forming part of a deer forest. Clearly the use of land as a grouse moor or as a rabbit warren is not dependent on its "use" as agricultural land. There may perhaps be more doubt about the use of land as coverts for pheasants and partridges, since the same kind of "woodlands," the cultivation of which may produce profit and be deemed an agricultural use of the land, may add to its value for shooting purposes. The use of land as golf links or as a racecourse is not dependent on its "use" as agricultural land, though it may be consistent with its use as such. The words "dependent, etc.," used in a proviso, evidently intended to lighten the burden of the subject, might possibly be construed as meaning that wherever land is as a fact used in agriculture, and at the same time subserves a further use, as that of a "shoot," or as golf links or a racecourse, then increment value duty shall not be payable except where the value for such further use by itself and of itself exceeds the agricultural value of the land. But it seems doubtful whether this construction of the proviso does really extend the exemption conferred by the first paragraph of s. 7.

For a note on "sporting purposes" see the notes on s. 41, *post*, p. 438.

Covenant against user otherwise than as agricultural land.

Further, it would seem that however valuable the land may be as a physical thing if it is prevented by an enforceable covenant, entered into before April 30, 1909 (s. 25 (3)), from being used otherwise than as agricultural land, its value can hardly under this section, whether it is to be valued under s. 25 on a "total value" (s. 25 (3)) basis or not, be higher than its value for agricultural purposes. If such a covenant has been entered into after April 30, 1909, then some difficult questions will arise, as, for example, is the value under this section (7) to be ascertained as total value under s. 25 (3) (p. 287)? or is it to be ascertained as if that section did not affect it? If the former, then the Commissioners will have to consider whether a deduction should be allowed from total value on the ground that the restraint imposed by the covenant was, when imposed, desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood (*ib.*). The Commissioners, in such event, might decide that the covenant was not desirable and that no deduction should be allowed. This would, in case of a claim for increment value duty on death, or on a periodical occasion, be a serious matter for the owners, for they would be charged increment value duty on an increment which they could not apparently realise.

If the value under s. 7 is to be ascertained as if s. 25 (3) did not

affect the matter, then no doubt a difficult question arises. Of course, if such a covenant were a mere trick for the purpose of escaping duty, and not intended to be enforced, it would probably be rightly neglected in valuing, but it would be difficult to prove this. It must be remembered that sooner or later the land in question may be available as building land by the covenants becoming unenforceable, and then the whole increment from the original site value will be taxable. To escape an occasion for the collection of increment value duty is not to evade it altogether. It may be added, though the remark is not strictly germane to the present section, that a covenant entered into after April 30, 1909, not to use land otherwise than as agricultural land, might under s. 25 (3) be negligible on a valuation under s. 25 (3) and s. 28 for undeveloped land duty, on the ground that it seemed expressly designed to counteract the secondary object of the tax, *i.e.*, to discourage the employment in agriculture of land for which there is a demand for other purposes at a price higher than the agricultural value; but this is not certain. § 7.

SECTION 8.

The second of the exemptions referred to on p. 130 relates to property held by small owners. § 8.

Exemption of small houses and properties in owner's occupation.

8.—(1) Increment value duty shall not be charged on the increment value of any land, being the site of a dwelling-house, where immediately before the occasion on which the duty is to be collected the house was, and had been for twelve months previously, used by the owner thereof as his residence, and the annual value of the house, as adopted for the purpose of income tax under Schedule A., does not exceed—

(*a*) in the case of a house situated in the administrative county of London, forty pounds; and

(*b*) in the case of a house situated in a borough or urban district with a population according to the last-published census for the time being of fifty thousand or upwards, twenty-six pounds; and

(*c*) in the case of a house situated elsewhere, sixteen pounds.

The section is for the purpose of exempting the resident owners of small houses from increment value duty.

Site of a Dwelling-house.—Increment value duty is payable in

§ 8 (1). respect of all sites of buildings subject to the exemptions in the Act. Sub-s. (1) is in form limited to the site of the dwelling-house only; but under sub-s. (4) (*b*) this site includes any offices, courts and yards and gardens not exceeding one acre in extent occupied together with the dwelling-house.

Owner.—The definition of "owner" as applied to a lessee in the definition section (41) is extended or varied by sub-s. (4) (*a*) of this section, so far as this section is concerned. Exemption is limited to the occupying owner.

As his Residence.—*I.e.*, probably he must sleep there more or less regularly (see *Powell* v. *Guest*, 34 L. J. C. P. 69, a case on registration law).

The word "residence" denotes a place where an individual eats, drinks, and sleeps, or where his family and servants eat, drink, and sleep; see per Bayley, J., in *R.* v. *North Curry* (4 B. & C. 959), a rating case. "A man's residence is where he habitually sleeps" (*Barlow* v. *Smith*, Fox, 293).

Annual Value of the House as adopted for the Purposes of Income Tax under Schedule A.—The Schedule A. or property tax assessment is therefore conclusive as to value. That value is ascertained in places other than London under 5 & 6 Vict. c. 35, s. 60; 16 & 17 Vict. c. 34, s. 37 (the Income Tax Acts, 1842 and 1853), and the rules appended thereto; and in London under 32 & 33 Vict. c. 67 (Valuation (Metropolis) Act, 1869).

(2) Increment value duty shall not be charged on the increment value of any agricultural land where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total amount of that land, together with any other land belonging to the same owner, does not exceed fifty acres, and the average total value of the land does not exceed seventy-five pounds per acre:

Provided that the exemption under this provision shall not apply to any land occupied together with a dwelling-house the annual value of which, as adopted for income tax under Schedule A., exceeds thirty pounds.

This sub-section differs from s. 7, in that the exemption is complete under it. However much the site value may exceed the agricultural value on an occasion, no duty is payable. Under s. 7, as soon as the

value of the land exceeds the value for agricultural purposes only, increment value duty is payable on the increment to the original site value.

Agricultural Land.—See definition of agriculture and agricultural land in s. 41, and notes thereon, and on s. 7.

Occupied and Cultivated.—Probably the owner need not reside or sleep on the farm (*R.* v. *Justices of West Riding*, 2 Q. B. 505; 11 L. J. M. C. 80).

Owner.—The note on this word in sub-s. (1) is repeated.

Any other Land.—The locality of the "any other" land is immaterial. Probably it must be in Great Britain or Ireland. But does "land" in this context include buildings? It is thought so. Does it include any land other than land employed in agriculture? It is thought not; but it seems very doubtful. Probably the amount of taxation at stake is so small in individual cases under this section that these questions will never be legally decided, and the Commissioners will determine as they think just.

Average Total Value of the Land.—For definition of total value see s. 25 (1) and (3), pp. 272, 287. It seems that this limit of 75*l.* per acre refers to the average total value of the land constituting the small holding in respect of which exemption is being claimed, and not of the small holding + the other land, considered as an aggregate; but this is by no means certain.

Provided that . . . a Dwelling-house the Annual Value of which as adopted, etc., exceeds.—It is understood that it is the fact of the dwelling-house by itself exceeding 30*l.* annual value which deprives the land of the exemption, and that the sub-section does not mean that when the house and the land occupied therewith jointly exceed that value exemption is not given. See the next sub-section for a provision for apportioning the annual value between the house and the additional land occupied therewith.

(3) Where a dwelling-house is valued for the purposes of income tax under Schedule A. together with other land, and it is necessary for the purpose of this section to determine the annual value of the dwelling-house, the total annual value shall be divided between the dwelling-house and the other land in such manner as the Commissioners may determine.

The division may be necessary either under sub-s. (1) or sub-s. (2).

§ 8 (4). (4) For the purposes of this section—

(*a*) the expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more; but in such a case nothing in this section shall prevent the collection of increment value duty so far as it is payable in respect of any other interest in the land other than that leasehold interest; and

(*b*) the site of a dwelling-house shall include any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.

The expression "Owner" includes a Person who holds Land under a Lease which was originally granted for Fifty Years or more.—Under s. 41 the expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold except that where land is let on lease for a term of which more than fifty years are unexpired the lessee under the lease, or if there are two or more such leases the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid. There may therefore be two owners of land a lease of which to the occupying owner falls under this section, *i.e.*, (1) the owner of the fee or of a lease with a term unexpired of more than fifty years; (2) the occupying owner whose term was originally more than fifty years and who may only have left unexpired a year or a day of that term.

ILLUSTRATIONS.

A. is the occupying lessee of a term originally granted for fifty-one years, but with only one year unexpired. He is an owner within this section.

A. is the occupying lessee of a term originally granted for forty-nine years, of which forty-eight years are unexpired. He is not an owner within this section.

The question whether the lessee is owner is mainly important with respect to valuation. See ss. 26 and 27, *post*, pp. 309 and 320.

If the original term of the lease was under fifty years, the lessee is not an owner and receives no exemption under either sub-ss. (1) or (2).

(*a*) **Nothing in this Section shall prevent the Collection of Increment Value Duty so far as it is payable in respect of any other Interest in the Land . . . other than that Leasehold Interest.**—If

§ 8 (4).

the site of a house or land falling within sub-s. (1) or sub-s. (2) of this section is held on a lease originally granted for a term of at least fifty years, and has so increased in value that but for this section increment value duty would be payable, then on the sale of the reversion or the death of the reversioner in fee increment value duty will be payable on his interest. The interest only of the resident owner in possession is exempted.

(*b*) **The Site of a Dwelling-house shall include, etc.**—Does this indicate that sub-s. (1) means that if more than one acre is occupied with the house the exemption cannot be claimed; or does it mean that an apportionment of the land must in such a case be made by the Commissioners under sub-s. (3) and partial exemption given, the land over one acre being liable to increment value duty? The latter construction would widen the application of the section; but it is difficult to see whence the power to apportion is derived. It is thought that the area which may be included in the site of a dwelling-house is house, offices, courts, and yards, + gardens not exceeding one acre "occupied, etc."; and that the meaning is not that the site of house, offices, courts, yards, and gardens must not jointly exceed one acre.

(5) Any increment value duty which would, but for this section, be charged shall, for the purpose of the provisions of this Act as to the collection of the duty, be deemed to have been paid.

Be deemed to have been Paid.—It is thus necessary on a sale or lease by a small owner, or on his death, that the process of ascertaining increment value should be carried out. Only if that is done can the amount of increment value duty exempted by the section from being charged be ascertained, and so deemed to have been paid. Unless it were so "deemed to have been paid," it would necessarily have to be paid on the next occasion when the increment value duty is arrived at in the usual way, *i.e.*, by deducting the original site value from the then site value, and charging duty on the difference.

SECTION 9.

§ 9.

The third of the exemptions referred to on p. 130 relates to property held by a body corporate or unincorporate for the purpose of games or other recreation.

Special provision for increment value duty in the case

9. Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of, or any interest in, any land which is held by any body corporate

§ 9. of land used for games and recreation.

or unincorporate, without any view to the payment of any dividend or profit out of the revenue thereof, bonâ fide for the purpose of games or other recreation, if the Commissioners are satisfied that the land is so used under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used, without prejudice, however, to the collection of the duty on any other occasion.

For a corresponding section, relating to undeveloped land duty, see s. 17 (3) (*d*).

On any Periodical Occasion.—For these occasions see s. 6 (1) (*ante*, p. 121). Note, however, that under s. 6 (5) no account under sub-s. (2) of s. 6 need be delivered of land falling within the exemption created by s. 9.

It is further to be noted that the absence of collection on periodical occasions deprives the owners of the benefit of a 10 per cent. reduction of site value under s. 3 (5) (*ante*, p. 68). If land is rising steadily in value, the oftener increment value duty is paid, the less is paid; but of course not more than 25 per cent. increment value in any period of five years can escape by reason of the proviso to s. 3 (5).

Body Corporate or Unincorporate.—For definition see notes to s. 6, p. 121. Note that this section (9) applies only to land held by a body corporate or unincorporate, but s. 17 (3) (*d*) above referred to relates to land held by individuals as well as by such bodies. The section does not exempt from increment value duty all land held for games and recreation.

For (1) it applies only to land held by a body corporate or unincorporate;

(2) That body must not take or intend to take dividends or profits out of the revenue derived from it; though otherwise it may make profits, and it seems it may be holding the land for a rise in capital value.

(3) The user must be either under (1) the agreement or (2) the circumstances set out in the section.

It is to be noted that it seems to be the user of the land as on April 5 in the year 1914 and in every subsequent fifteenth year, and not the intermediate user, which decides the question of exemption (s. 6 (1)).

(4) There is no exemption from increment value duty in the case of a sale or lease for over fourteen years either to or by the body.

Without any View to the Payment of any Dividend or Profit.—Questions may arise as to the meaning of "profit." It is apprehended

that the net receipts arising from the great cricket grounds, such as Lord's and the Oval, and which are mainly devoted to the encouragement of the game, are not profits within the meaning of the section.

The profits contemplated are profits which are to be "paid," it is presumed, to members of the body in question. They are coupled with "dividends."

The fact that members of a club are entitled to valuable privileges as to seats, tables, and stands for matches is not thought to deprive the club of this exemption. Compare the exemption from local rates conferred upon scientific, literary, and fine art societies by 6 & 7 Vict. c. 36, s. 1: Provided that, *inter alia*, such society "shall not, and by its laws may not, make any dividend, gift, division or bonus in money unto or between any of its members"; and see thereon *Liverpool Library* v. *Liverpool Corporation* (5 H. & N. 526; 29 L. J. M. C. 221); *Earl Clarendon* v. *Rector of St. James* (10 C. B. 806; 20 L. J. M. C. 213), for the application of the words in inverted commas.

Bonâ fide.—The meaning of *bonâ fide* probably is that the games or other recreation must not be merely a cloak or device for avoiding payment of increment value duty. But if the games or recreation are a reality, the fact that one of the reasons which induced the body so to use the land was the knowledge that increment value duty would be thereby avoided on a periodical occasion would not seem to take away the exemption (see *ante*, p. cxxxi., Explanatory Summary, section IX., "The Construction of Statutes imposing Taxation").

Or Other Recreation.—There is no statement that the recreation must be of an outdoor character. There may, indeed, be cases in which the exemptions conferred by this section and s. 37 (1) may overlap.

If the Commissioners are satisfied.—It is thought that an appeal could be made from the opinion of the Commissioners on this point. Compare s. 17 (3) (*d*), *post*, p. 199, a corresponding provision relating to undeveloped land duty, in which sub-section practically the same words occur, and in which a distinction is apparently drawn (see last paragraph of the sub-section) between these words and the words "in the opinion of the Commissioners," an appeal being expressly denied as to matters which are expressed to be "matters for the opinion of the Commissioners."

So used under some Agreement with the Owner which as originally made could not be determined for a Period of Five Years.—Does this mean that the agreement must provide that it shall be so used; or is a simple lease or agreement of tenancy for five years, unaccompanied by stipulations as to user, sufficient to secure exemption? The former would appear to be the true construction, but the alternative, "other circumstances," would doubtless in most cases secure the exemption. It is possible that a verbal agreement as

§ 9. to user not embodied in the written lease or agreement might be sufficient.

Probable that the Land will continue to be so used.—That is, it is understood, to be so used for the present, not necessarily for any great, or even certain, period.

Without Prejudice to the Collection of the Duty on any other Occasion.—If the body corporate owners were to lease the land for a term exceeding fourteen years on the express terms that it should be used for games only, it appears that a claim for increment value duty could be raised if in fact increment value existed.

SECTION 10.

§ 10 (1). Provision as to Crown lands, etc.

10.—(1) Any increment value duty in respect of the fee simple of, or any interest in, any land held by, or in trust for, His Majesty or any department of Government, which would have been collected on any occasion had it been held by a private person, shall for the purposes of the provisions of this Act as to the collection of increment value duty be deemed to have been paid.

Held by or in Trust for His Majesty or any Department of Government.—It would not perhaps have been necessary to exempt the Crown expressly from increment value duty if it were not for s. 119 of the Stamp Act, 1891, which provides that "except where express provision to the contrary is made by . . . Act, an instrument relating to property belonging to the Crown, or being the private property of the Sovereign is to be charged with the same duty as an instrument of the same kind relating to property belonging to a subject." Income value duty is a stamp duty (s. 3 (6)). The Crown is not charged by a tax or rate unless expressly named (*Jones and Others* v. *Mersey Docks*, 11 H. L. Cases, 443; 35 L. J. N. S. (M. C.) 1, a case on poor rates). The exemption applies also to property occupied by servants of the Crown for public purposes, such as the Post Office (*Smith* v. *Birmingham Union*, 7 El. & Bl. 483; 26 L. J. (M. C.) 105); the Admiralty (*R.* v. *Stewart*, 8 El. & Bl. 360); the War Office (*Amherst* v. *Somers*, 2 T. R. 372); a county court (*R.* v. *Manchester Overseers*, 3 El. & Bl. 336); a prison (*R.* v. *Shepherd*, 1 Q. B. 170); assize courts and county police station (*Coomber* v. *Justices of Berks*, (1883) 9 App. Cas. 61); houses acquired by county associations and used as residences for officers of the Territorial Force (*Wixon* v. *Thomas*, [1911] 1 K. B. 43). Whether the words "department of Government" in s. 10 cover as wide a class of exemptions as "the government of the country, including under that head the police, and the administration of justice,"

§ 10 (1).

being the language in which the exemption was described by Blackburn, J., in *Jones and Others* v. *Mersey Docks* (see p. 10 of the report in 35 L. J. N. S. (M. C.)), may perhaps be doubted. But having regard (1) to the general current of authorities conferring exemptions at common law, apart from express statutory exemption, and to s. 35 of this Act, *i.e.*, the section exempting rating authorities from increment value duty, it is thought that practically complete exemption from increment value duty is conferred on all land held for a purpose falling within the language of Lord Blackburn above quoted. Further, under s. 35 exemption is given to the sites of buildings used for administrative county purposes, such as were held in *Middlesex County Council* v. *St. George's Union* ([1897] 1 Q. B. 64, C. A.) and *Worcestershire County Council* v. *Worcestershire Union* ([1897] 1 Q. B. 481, C. A.) not to be exempt from poor rate.

Purchase by Crown subject to charge.

It seems, however, that if the Crown purchases land subject to a charge, as land tax, attached to the land, it will be liable to the charge (*Colchester* v. *Kewney Local Board*, 1 Ex. 368, at p. 380). It is not, however, conceived that increment value duty is a charge on the land. At all events this sub-section makes the question quite clear so far as Crown lands, which include lands held for the various branches of the Executive Government, are concerned. But does the exemption extend to duty payable on periodical occasions under s. 1 (*c*) as well as to duty payable under s. 1 (*a*)? The section speaks of duty "which would have been collected on any occasion had it been held by a private person:" The words, however, seem to be sufficient to protect a purchaser from the Crown, because the duty to be collected on the sale in fee simple by a private individual is "the whole amount of the duty which is determined to be unsatisfied." But see the notes to s. 4 (4), *ante*, p. 84. See also the definition of "person" in the Interpretation Act, 1889, s. 19.

Precautions by purchaser from Crown.

This sub-section does not entirely exempt a purchaser or lessee of lands from the Crown or a department of Government from the necessity of considering the question of the increment value of the land purchased or leased as ascertained at the date of his purchase or lease. When he himself sells, or leases for over fourteen years, or dies, a claim for increment value duty may arise. Under s. 2 the increment value is the amount by which the site value of the land at the date of the resale, lease, or death, as the case may be, exceeds the original site value, and the duty is one-fifth part of this amount, all proper deductions under s. 3 (5) having been made. *Primâ facie* this duty must then be paid, except so far as it has already been paid (s. 3 (1) (2)). Assuming that there appears on the resale, or lease by the purchaser or lessee from the Crown, or on his death, to be an increment value in the land, it is obviously the interest of the person then liable for increment value duty that this increase should be deemed to have occurred rather whilst the Crown was the owner than since the purchase or lease from

§ 10 (1). the Crown, because the duty on the former portion of the increase only is under s. 10 (1) deemed to have been paid. A purchaser or lessee from the Crown should therefore, so far as possible, satisfy himself that on his purchase or lease the full value of the consideration given by him is taken into account in fixing, under ss. 2 and 32, the then increment value of the land. The greater the site value when he took his interest from the Crown, the more increment value duty is deemed to have been paid, and the less will have to be paid on the resale, etc. The register under the Act (s. 30) will, no doubt, state the increment value at the date of the purchase or lease, and the amount of the increment value duty deemed to have been then paid, and, in addition, all such details as to expenditure on the property (s. 25 (4) (*b*) (*c*) and (*d*)) as would be stated, if a private owner were the vendor or lessor, and had, in fact, paid the increment value duty, or been exempted from its payment. It appears, therefore, that even Crown land will have to be valued under s. 26; otherwise the original site value could not be ascertained, and increment value duty could never be deemed to be paid on the sale by the Crown, and could never be paid at any time after the sale by the Crown. It is of course clear that increment value duty will be payable on the sale, and passing on death, and on a periodical occasion, in respect of a reversion expectant on a lease which is vested in or in trust for the Crown or a department of Government. Conversely lessees of the Crown will be liable to increment value duty in respect of their interest in the site.

10 Geo. 4, c. 50. 8 Edw. 7, c. 48.

(2) Neither section seventy-seven of the Crown Lands Act, 1829, nor section thirty-eight of the Post Office Act, 1908, nor any other enactment exempting from stamp duty any document made or executed on behalf of, or for the purpose of, the Crown or any Government department, shall apply so as to prevent increment value duty being collected on any instrument by which the transfer on sale of the fee simple of, or any interest in any land, or the grant of any lease of any land, to the Crown or to any Government department, or to any officer on behalf of, or for the purposes of the Crown or any Government department, is effected or agreed to be effected.

Increment value duty is a tax or duty on the vendor, and there is no reason for exempting a vendor from the obligation to pay the duty when he happens to realise his increment by sale or lease to the Crown. The enactments referred to simply exempt from ordinary stamp duties conveyances to or by the Commissioners of Woods and Forests and the Post Office authorities.

SECTION 11.

This exemption includes flats, chambers, and the like. **§ 11.**

11. Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease of any such separate tenement, flat, or dwelling, and the transfer on sale or passing on death of any lease of any such separate tenement, flat, or dwelling, shall not be an occasion on which increment value duty is to be collected under this Act, nor shall duty be collected on any periodical occasion from a body corporate or unincorporate where the interest held by the body is only a leasehold interest in any such separate tenement, flat, or dwelling. Special provision as to flats.

Building used for the purpose of Separate Tenements.—It was said in Parliament by the Attorney-General (see Hansard, September 30, 1909 (Cd. 1437)), but speaking with diffidence, that (except in Lincoln's Inn) a fee simple cannot be created in a horizontal portion of a building divided into flats, chambers, or other tenements, and the section appears to adopt this view of the law. See, however, Co. Litt. 48b. where the contrary is directly stated: "a man may have an inheritance in an upper chamber, though the lower buildings and soil may be in another, and seeing it is an inheritance corporeall it shall pass by livery." Coke cites in support Keilway, 98, but the reference to Keilway shows that the opinion attributed to two judges of the King's Bench in the reign of Henry the Seventh was not directly on the point in question, though it may have logically involved it. This section exempts leases, and transfers and devolutions on death of leases of separate flats, etc., from increment value duty, but it does not include in its exemption dealings with the building as a whole. Transfers on sale, whether of the fee simple of, or of interests in, the land, according to the technical meaning of "fee simple" and "interest" under s. 41, leases, and passings on death of the building as a whole will therefore give rise to claims for increment value duty in the ordinary way. Though there is nothing directly in the section to render the freeholder liable to pay duty in respect of the leasehold interests in the building, he seems to be often practically so liable. Questions of this kind must necessarily arise in the application of this section: Assume that of a building containing eight sets of chambers, four are in the possession of the freeholder, and the remaining four are let by him for terms of which in each case at least twenty-one years are unexpired. The freeholder sells all his interest in the building as a whole. The site value at the date of the sale is fixed under s. 2 (2) by reference to the consideration. Assume there is increment value. On what does Flats or dwellings.

§ 11. the freeholder pay? Certainly, in respect of the fee simple in possession of four sets of chambers in hand, but not in respect of the leasehold interest in the four sets leased, the increased value of which he may never have enjoyed. But he probably also pays on the freehold reversion to the four sets leased.

There is no provision in this section that the duty from which exemption is given shall be deemed to be paid, and therefore it seems that the whole amount of increment value duty will fall on the freeholder $\frac{and}{or}$ the lessee of the whole building, and be paid by him or them as the leases or sub-leases of the various flats, etc., run out and the reversion becomes more valuable. Such payment will take place in fact when either the freeholder or leaseholder sells or leases the building as a whole or dies (s. 1 (*a*) and (*b*)). Either freeholder or leaseholder may also by payment of reversion duty under s. 13 on the expiration of the separate leases relieve it from a payment later of increment value duty (see s. 14 (4), *post*, p. 169). If as a matter of fact it is a mistake to think that estates in fee simple cannot be created in the various storeys of other buildings than Lincoln's Inn Chambers, increment value duty will be payable on the transfer on sale or passing on death of the fee in such separate storeys in the usual way. If such be the case, perhaps no apology is needed for the absence of any attempt in this work to apply the provisions of s. 25 (2), which is the keystone of the ascertainment of site value, to a flat on the seventh storey of a Victoria Street, Westminster, building. It is to be hoped that the able Treasury valuers will fully explain the principles upon which any valuation of such a seventh storey site is made by them.

Note that the "use" of the building for the purpose of separate tenements, etc., "and the grant" etc., of a lease of any such separate tenements brings the section into play. No questions of "structural division" can, it is thought, arise as on other Acts, such as the 48 Geo. 3, c. 55, Schedule B., r. 14.

Nor shall Duty be collected on any Periodical Occasion from a Body Corporate or Unincorporate, etc.—If the body owns either the freehold or the leasehold, and whether either is owned in possession, or in reversion expectant on a lease, of the whole building, it will have to pay increment value duty as on April 5 in the year 1914 and in every subsequent fifteenth year. But, it is thought, if only one of the separate tenements of the building is not owned by the body increment value duty is not payable by the body.

SECTION 12.

§ 12. **12.** A person shall not be entitled to claim any deduction for the purpose of ascertaining the site value of any land on any occasion on which increment value duty

Provisions as to claims for deductions.

becomes payable if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land. **§ 12.**

General note on section.

This provision which relates to valuation has probably been placed here because it applies only to increment value duty. For the deductions which may be claimed from total value in order to ascertain site value see s. 25 (4), and to ascertain the capital value of minerals see s. 23 (1). For the direction to ascertain original site value and the procedure thereon see ss. 26 and 27. It is in the course of this procedure that these deductions must be claimed for. Form 4, which is that in which owners are required to make their statutory return under s. 26 (2) (see Appendix, p. 504), requests the owner (see v. iii. in Form 4) to state whether he intends to claim any deductions. If in the return he says he does, then Form 7 (see Appendix, p. 514) is sent to him. It is on this form that all deductions from site value must be claimed which can be claimed, under the consequences that, if not so claimed, they will never in future be allowed to depress site values for purposes of increment value duty. All deductions allowed are to be recorded by the Commissioners (s. 30). Were it not for this section deductions would not be claimed on the original site valuation, because so far as increment value duty is concerned a high site value is then wanted; but they would be claimed on future occasions when increment value duty became collectable, so as to balance or outweigh the natural increment value subject to duty. For the directions as to ascertainment of site value on an occasion on which increment value duty may be payable and the deductions in ascertaining that site value, see s. 2 (2) and s. 25 (4).

A Person shall not be entitled to claim any Deductions.—It is apparently only deductions claimable, but not claimed, on the *fixing of original site value* that can never afterwards be claimed. Deductions not claimed on an "occasion" arising after the original site value or on a periodical valuation under s. 28 can apparently be claimed on the next "occasion" or valuation. One of the reasons for this may well be that on the fixing of original site value all the interests in the land will, or at all events may, be before the Commissioners at one and the same time (see s. 27 (1), (2), (4), (5) and (7)). On later "occasions" when claims arise for increment value duty, they may arise in respect of one out of several interests in the land, and the owner of that particular interest may not have a knowledge of expenditure on the property since April 30, 1909, by the owner of another interest. The lessee under a lease for over fourteen years, who is transferring his lease on sale, may not have been aware that before the grant of the lease the freeholder spent a large sum in levelling and draining the land, which the lessee was entitled to deduct under s. 25 (4). On making the lease, it may have been clear that at that date no claim for increment value duty

§ 12. could arise, even without the claim by the lessor of the benefit of that deduction, and hence the lessor did not mention or claim that deduction. There is, therefore, no record of the expenditure in the books of the Commissioners (s. 30 (1)). The lessee transfers his lease, and pays increment value duty, not claiming the benefit of the expenditure in question. The freeholder then sells his reversion, and increment value duty is claimed from him. It is only fair that he should be entitled to a deduction on account of this expenditure.

Application of section to undeveloped land duty.

This section applies only to claims for increment value duty. It is suggested, therefore, that in respect of the undeveloped land duty for which a low site value is desirable an allowance may be claimed for expenditure at any periodical valuation under s. 28, even though it has not been, but could have been, claimed on the original site valuation. This leads to some curious results. If it is desired to have a high original site value, so as to avoid questions of increment value duty in the future, deductions may not be claimed on the original site valuation under s. 26. In such a case there seems to be nothing in the Act to prevent the owner claiming deductions on the first quinquennial valuation in 1914 to an extent which would wipe out the site value of the land altogether. For example, suppose land reclaimed from the sea is worth 300*l.* an acre as building land, the whole value being due to a sea wall. It seems that if the owner neglected to claim deductions on the original site valuation, thus getting an original site value of 300*l.* an acre, and then on the valuation for undeveloped land duty in the year 1914 made his claim for the deductions which he had on the original site valuation ignored, that claim must be allowed. As, however, the deduction allowed on the original valuation could be claimed on subsequent occasions for payment of increment value duty, the total result may not be really altered.

Advertisements as a deduction.

Difficult questions may arise on this section. A land development company has, before the commencement of the Act, spent large sums in advertising its property, but up to that date without apparent effect. The land is not selling. It is not the amount spent in advertisements which may be claimed as a deduction under s. 25 (4), but the value proved to be directly attributable to that expenditure. This value is by hypothesis at the time of the original site valuation, little or nothing, and no deduction for it is claimed. Shortly after the original valuation, without additional expenditure in advertisements, the land market improves, and this estate sells specially rapidly and at improved prices. This is to a great extent the result of the former advertising, which has brought the estate well before the public. It is suggested that notwithstanding this section a deduction can be claimed on future sales and leases by the company, and on periodical occasions under s. 6, for the value added by the advertising. The deduction, which is the added value, not the cost of advertising, could not have been claimed at the fixing of the original site value, because it did not then exist. But it would certainly be

advisable that in all cases where money has been spent on or in relation to land which would be the subject-matter of a deduction if thereby value had been added to the land, a claim should be made on the original valuation in respect of such expenditure, even if it be a nominal claim only. Such a claim would obviate a possible construction of s. 12, namely, that the words "any deduction" mean not the value added by the expenditure, but the benefit of the fact that such expenditure has been made. **§ 12.**

The value of expenditure may be an increasing, though oftener, no doubt, it will be a diminishing value. On each "occasion" it will strictly be necessary to consider all prior expenditure in relation to the question of its increased or diminished worth as an element of full site value (s. 25 (2)). Doubtless in the case of fully developed property there will usually, from "occasion" to "occasion," be no change, or but little change, in the value added by this expenditure. But the centres of large towns, as well as the principal streets of suburbs, are everywhere undergoing a gradual alteration of character, evidenced by replanning of sites and rebuilding of premises. In these cases difficult questions as to the value of expenditure claimable as deductions under s. 25 must constantly arise.

REVERSION DUTY.

Summary of ss. 13 to 15 of the Finance Act, 1910, and s. 3 of the Revenue Act, 1911.

Sects. 13, 14, and 15 of the Finance Act, relate to reversion duty, but sub-s. (4) of s. 14 of the Finance Act and incidentally s. 3 of the Revenue Act, are also concerned with increment value duty.

Sect. 13 establishes the duty, fixes its amount, and defines or describes "the value of the benefit accruing to the lessor" which is the subject-matter of the duty.

Sect. 3 (1) of the Revenue Act, 1911, explains the meaning of the term lessor in relation to the duty.

Sect. 14 enacts certain exemptions from reversion duty; a provision intended to prevent the charge of both increment value duty and reversion duty on the same increment value; and a modification of the duty to meet the case of a deficient mortgage security made prior to April 30, 1909.

Sect. 15 lays down the obligations of lessors in relation to the duty and the methods of enforcing those obligations.

Sect. 3, sub-ss. (2), (3), (4) of the Revenue Act, 1911, explain or amend the law as to the person liable to pay reversion duty, and as to the amount of duty payable, on the merger of a lease in the reversion.

SECTION 13.

13.—(1) On the determination of any lease of land there shall be charged, levied, and paid, subject to the **§ 13 (1).** Reversion duty.

§ 13 (1). provisions of this Part of this Act, on the value of the benefit accruing to the lessor by reason of the determination of the lease a duty, called reversion duty, at the rate of one pound for every complete ten pounds of that value.

On the determination of any lease.

A lease may be determined in various ways :—

Effluxion of time.

(1) By effluxion of time; that is by the term running out in the ordinary way. In the case of a lease for a life or lives, to which probably s. 13 applies, as well as to a lease for years, the determination of the lease will be the death of the life or the last of the lives for which the lease was made. It is not thought that the paragraph in s. 41 "the term of a lease" affects the length of the term in this respect. Under that paragraph, where the lease contains an obligation to renew the lease, the term of the lease is to be deemed to include the period for which the lease may be renewed. A lease, therefore, for twenty-one years, renewable at the option of the lessee for seven years, appears, therefore, to be a lease the original term of which exceeds twenty-one years, whether it is in fact renewed or not, and on the determination of which reversion duty is payable. This is a curious result and perhaps cannot be accepted without question (see also note on p. 12, "**Not being a lease, etc.**"

Forfeiture.

(2) By forfeiture to the lessor under the conditions of the lease. Of course the forfeiture must be final. If relief is obtained against the forfeiture under s. 14 (2) of the Conveyancing Act, 1881, that relief is given "in the form that no forfeiture has taken place" (see *Dendy* v. *Evans*, [1910] 1 K. B. 263, per Farwell, L.J., at p. 270; *Nind* v. *Nineteenth Century, etc., Society*, [1894] 2 Q. B. 226, per Lord Davey, at p. 233), and therefore no duty becomes payable.

Merger.

(3) By merger* of the term of years in the freehold. This may happen in several ways. The most usual is the purchase by the lessee of the fee simple reversion immediately expectant on his lease. This

Purchase of reversion by lessee.

almost certainly gives rise to a claim for reversion duty. Under s. 13 (1) of the Act of 1910, in the absence of agreement to the contrary, the purchaser of the reversion, *i.e.*, the lessee, was thought to be the person liable to pay the duty, which was payable "on the determination" of the lease (s. 13 (1)); by the lessor (s. 15 (1)); and under s. 41 lessor includes "the person for the time being entitled to the reversion."

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* For definitions and explanations of merger see the ordinary elementary text-books; noting, however, that since the Judicature Act there is no merger by operation of law of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity (Act of 1873, s. 25 (4)).

§ 13 (1).

But this view of the law has been altered by the provision contained in the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3 (1), set out on p. 174, immediately following s. 15 of the 1910 Act. In such a case the former owner of the reversion is made liable to pay the duty. The "person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or if the lease has determined before that event immediately before the transaction or event in consequence of which the lease has determined, is the lessor for the purpose of s. 15 of the" Act of 1910, "and is the person to whom any benefit accrues from or by reason of the determination of the lease for the purpose of the other provisions of that Act relating to reversion duty" (Revenue Act, 1911, s. 3 (1)).

It seems, however, that even now there is no prohibition in the Act similar to those in s. 19 (*post*, p. 203) in relation to undeveloped land duty, and in s. 20 (4) (*post*, p. 225) in relation to mineral rights duty, and in s. 1 of the Revenue Act, 1911 (p. 46), in relation to increment value duty, against the insertion in leases containing options to purchase the fee, or in other contracts for the purchase of the fee by the lessee, of a clause that the reversion duty payable under the Act of 1911 shall be an addition to the purchase price, or shall otherwise be repaid by the lessee to the lessor.

How to avoid reversion duty on sale of reversion to lessee.

If on a purchase by the lessee of a reversion it is desired to avoid payment of reversion duty altogether, as well by the lessor as by the lessee, it is thought that it may be accomplished by taking the conveyance of the reversion in the name of a trustee for the purchaser, and that the vendor might stipulate accordingly. It is not thought that this is anything but a justifiable evasion of the immediate payment of the duty (see *ante*, p. 13, and cases there cited). It may not be even an evasion of the duty (as to evasion of duty, see Explanatory Summary, p. cxxxiv.), since the purchaser may *bonâ fide* desire to have the option of dealing with either the leasehold or the freehold interest apart from the other of those interests. But as by s. 3 (2) of the Revenue Act, 1911 (see p. 168), the duty is reduced on the premature determination by merger of the lease, the inducement to plan an escape from duty by troublesome conveyancing devices is lessened. Whether a simple declaration in a conveyance of the fee to the lessee, that there shall be no merger, would prevent merger is not quite plain. On the whole it is thought that it would. Merger was never favoured in Courts of Law, and still less in Courts of Equity (Co. Litt. 338 b, n. (4)). Since the Judicature Act, 1873 (s. 25 (4)), there is no merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in Equity. In Equity, merger of estates as well as of charges, depends upon intention (*Ingle* v. *Vaughan Jenkins*, [1900] 2 Ch. 368; *Thellusson* v. *Liddard*, *ib.* 635; *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, C. A., at p. 652, per Cozens-Hardy, L.J.).

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As to purchases of reversions by mortgagors.

Again, if a leasehold interest is mortgaged by assignment, and the mortgagor buys the freehold reversion, it seems clear that there is not, and was not before the Revenue Act, 1911, any merger on the purchase of the reversion, and equally clear that on the reconveyance of the leasehold interest to the mortgagor there is such a merger as will attract reversion duty. In this case s. 3 (1) of the Revenue Act, 1911 (1 Geo. 5, c. 2), would not, it seems, protect the mortgagor against the payment of reversion duty; but he would have the benefit of sub-s. (2) of the same section, which, if the term, had many years to run, would be almost as protective to him. Of course the reconveyance could be made to a trustee for the mortgagor, which would prevent merger.

If a mortgage of leaseholds is effected by demise, and during the continuance of the mortgage, the mortgagor purchases the reversion in fee and takes a conveyance direct to himself, it would seem that there is a merger of the head lease, and that reversion duty is (subject to the discount allowed by s. 3 (2) of the Revenue Act, 1911) payable by the lessor under s. 3 (1) of that Act. On the surrender by the mortgagee to the mortgagor, the mortgage money having been paid off, there will be no reversion duty payable, since the sub-lease was "created solely for the purpose of securing money," and is not therefore included in the term "lease" until it has become vested in some person free from any equity of redemption (s. 41).

Surrender.

Merger of the leasehold interest may take place through the surrender of the term to the lessor. This may either be express, *i.e.*, by deed (8 & 9 Vict. c. 106, s. 3), or implied, *i.e.*, by conduct, as where a lessee goes out of possession and allows the lessor or a new tenant to occupy the premises (*Reeve* v. *Bird*, 1 C. M. & R. 31; *Phené* v. *Popplewell*, 12 C. B. N. S. 334), or where a lessee during the continuance of the lease accepts a new lease from the lessor. There seems to be no doubt where merger of a lease takes place as the result of surrender that reversion duty is payable by the lessor. The case is not affected by the 1 Geo. 5, c. 2, s. 3 (1). It is thought that in this case also reversion duty can be avoided by the surrender being made to a trustee for the lessor, and such a surrender could be accompanied by a power of attorney given by the trustee enabling the reversioner to convey the term to himself or his assign. As to a declaration in the surrender that there shall be no merger, see p. 152.

Merger on death.

If the owner of the fee simple reversion appoints the person in whom the term is legally and beneficially vested his executor and gives him the reversion by will, then, when the debts of the testator are paid, it would seem there is a merger of the term (3 Preston on Conveyancing, 310, 311). But it would, it is thought, be open to the executor to prevent merger by assigning either the reversion or the term to a trustee for himself at some time before his ownership of the reversion *qua* executor ceased and his ownership *qua* devisee began.

Disclaimer.

(4) Disclaimer under the Bankruptcy Act by the trustee in bank-

ruptcy of the lessee (see Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 55)), determines the lease. Disclaimed leases are not often likely to give rise to claims for reversion duty, since the lease is probably disclaimed because the rent is a rack rent.

Definitions of lease, lessor and lessee.

By s. 41 (see p. 443) the expression "lease" includes an underlease and an agreement for a lease or underlease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption.* And the expressions "lessor" and "lessee" include an underlessor and underlessee, and the expression "lessor" includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease, and the expression "lessee" includes executors, administrators, and assigns of the lessee. (*Ib.*, p. 461. See also the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3 (1) (p. 174), as to the lessor and reversion duty.

Term of a lease.

By s. 41 (p. 444) also the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and in the case of a lease for life or lives shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or in the case of a lease granted for lives of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined.

Subject to the Provisions of this Part of this Act, *i.e.*, subject to ss. 14, 22 (1), 35, 36, 37, and 38, and subject also to s. 3 of the Revenue Act, 1911 (1 Geo. 5, c. 2). *I.e.*: (1) the original term of the lease must have exceeded twenty-one years (s. 14 (2)). (2) The reversion must be either a freehold, or a leasehold interest exceeding twenty-one years (*ib.*). (3) The land must not at the time of the determination of the lease be agricultural land (*ib.*). (4) The lease must not be a mining lease (s. 22 (1)), but this probably does not apply to the exempted substances referred to in s. 20 (5) (see s. 22 (8)). (5) If the reversion has been purchased before the 30th day of April, 1909, and the lease determines within forty years from the date of purchase, reversion duty is not payable (s. 14 (1)). (6) If the lease is prematurely determined by merger the amount of reversion duty is reduced by what is in fact a discount of 4 per cent. per annum compound interest (s. 3 (2) of the Revenue Act, 1911). (7) A mortgagee before 30 April, 1909, of a reversion who has foreclosed receives some exemption (s. 14 (5)). (8) There is a provision against paying reversion duty and increment value duty on the same benefits (s. 14 (4)). (9) Rating authorities being reversioners are not liable to reversion duty (s. 35). (10) Nor are holders of land held for "charitable purposes" within the wide extension of that term given to it by s. 37. (11) Nor are statutory

* See a note on terms created solely for securing money and reversion duty on p. 444.

§ 13 (2). companies whilst the land is held for the purposes of their undertaking and cannot be otherwise appropriated (s. 38). (12) Under s. 36 capital sums paid to rating authorities in respect of "betterment" and similar charges may be deducted from the value of the benefit accruing to the lessor.

Value of the Benefit.—See sub-s. (2) for explanation of this.

(2) For the purposes of this section the value of the benefit accruing to the lessor shall be deemed to be the amount (if any) by which the total value (as defined for the purpose of the general provisions of this Part of this Act relating to valuation) of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property), but, where the lessor is himself entitled only to a leasehold interest, the value of the benefit as so ascertained shall be reduced in proportion to the amount by which the value of his interest is less than the value of the fee simple.

For the Purposes of this Section the Value of the Benefit, etc.—No doubt what is really meant is for the purposes of Part I. of the Act, since the value of the benefit is dealt with expressly as well as impliedly not only in this section, but in others (*i.e.*, s. 14 (4), (5), and s. 3 (2) of the Revenue Act, 1911), and in no case is any other meaning attached to the phrase than that given to it by this sub-s. (2).

Accruing to the Lessor.—The term "lessor" in this clause is apparently used in a sliding sense, and means the lessor for the time being (see definition of lessor, *ante*, p. 155, and s. 41). Thus the lessor at the time the lease determines may not be the same person as the lessor who has increased the total value during the term by works

executed, or expenditure of a capital nature incurred. The provision of s. 3 (1) of the Revenue Act, 1911 (1 Geo. 5, c. 2), must not be overlooked. See note on p. 175. **§ 13 (2).**

Total Value as Defined for the Purpose of the General Provisions, etc.—For definition of "total value" here referred to see s. 25 (3). The total value is that of the whole hereditament, buildings as well as site; probably also the value of any goodwill which may be attached to the premises, as distinguished from mere personal goodwill (see note on goodwill, *post*, pp. 278, 300). It is the total value of the fee simple of the land. It is the total value at the date the lease determines and not at the date of the original valuation under s. 26.

Of the Land.—Land here plainly includes the buildings, landlord's fixtures, and all else that is part of the land comprised in the lease. But it does not, it is thought, include minerals (s. 25 (5)), though s. 23 (1) is probably a general provision of the Act relating to the valuation of minerals. It is not thought that the Crown will contend that land does include minerals in this section, and hence there is no need to enter into a rather complicated argument to show that it does not. Under sub-s. (41) "the expression 'land' does not include any incorporeal hereditaments issuing or granted out of the land." Is the effect of this definition that the total value of the land at the end of the lease does not include the value of any easement attached to the property, *i.e.*, that the valuer must assume that no rights of light, of support, or of way, etc., are attached to the premises, whatever may be the real facts? For reasons stated on p. 282 and in the note to "the expression land" in s. 41 (see p. 436) it is submitted that this is not the effect.

At the time the Lease determines.—Note the provision of s. 3 (2) of the Revenue Act, 1911 (1 Geo. 5, c. 2), in this respect (*post*, p. 168). If a lease is determined by merger before its natural determination by effluxion of time, the total value is, for the purpose of calculating the full duty payable on the value of the benefit accruing to the lessor, to be ascertained at the date of the merger. This would probably have been the case in any event under s. 13 (2) of the 1910 Act. From the duty calculated on the value of the benefit thus ascertained is deducted the discount allowed by s. 3 (2) of the Act of 1911.

Works Executed or Expenditure of a Capital Nature incurred by the Lessor.—If a landlord has built a motor house or executed any other improvement voluntarily for his tenant during the term, it is clearly equitable that he should not be charged reversion duty on his own expenditure; but suppose he covenanted in the lease to build the motor house or execute the improvement, and that the rent was based on the assumption that he would do so. The original total value, which is based on rent and premium, goes up, and the reversion duty goes down, because of the

§ 13 (2) enhanced rent attributable to the agreement to build the motor house. If the landlord had built the motor house before the commencement of the lease he would have got the same rent, and he would not have been allowed to deduct its value at the end of the lease. It will therefore be advisable in the future for landlords to make improvements after and not before the execution of their leases. Sect. 32 (2) (see below) does not seem to affect this point. Note that it is not the expenditure which is the subject of the deduction, but the value added by such expenditure. There seems to be no doubt that there may be a deduction on account of the expenditure of any person who was in the position of the lessor for the time being when the expenditure was made (see definition of lessor, *ante*, p. 155, and s. 41). Purchasers of reversions therefore should, if possible, ascertain before completion whether any expenditure has been made by their vendor or his predecessors in title.

The words "expenditure of a capital nature incurred" are found also in s. 25 (4) (*b*) (see note thereon on p. 297).

During the Term of the Lease.—For definition of the term of a lease see s. 41, paragraph "The term of a lease shall, etc."

And of all Compensation payable . . . Lease.—Similar reasoning applies to this deduction as to the deduction for works. The more compensation is agreed to be paid by the lessor the higher will the rent tend to be. The higher the rent the less will be the reversion duty. The moral for landlords is, "make your rents very high and your compensation very liberal." At the expiration of the lease they will therefore have a high total value at the time of the original grant of the lease to deduct from a total value at the expiration of the lease reduced by the compensation which increased their rent. The "compensation" payable by the lessor is understood to be money payable to the lessee either under the lease itself, or under some agreement with the lessee for acts done or expenditure in relation to the property. Of course compensation under the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 26), ss. 1 to 14, or under the Small Holdings Act, 1908 (8 Edw. 7, c. 36), s. 47, is not likely to be the subject of any deduction, since reversion duty is not payable in respect of land which at the time of the determination of the lease is agricultural land (s. 14 (2)).

To be Ascertained on the Basis of the Rent reserved and Payments made in consideration of the lease.

Sect. 32 is as follows, and is material to the understanding of this sub-section :—

Determination of value of consideration.

(1.) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment.

(2.) If the Commissioners are satisfied that any covenant or under-

taking to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners *shall* allow such sum as they think just in respect thereof as an addition to the value of the consideration.

(3.) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine.

With these words "to be ascertained on the basis of the rents reserved or payments made in consideration of the lease" compare the somewhat similar language of s. 2 (2) (*b*) as to the ascertainment of site value where the "occasion" for payment of increment value duty is the grant or transfer of a lease, *i.e.*, "the value of the fee simple of the land calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest," and see note thereon (*ante*, p. 31). It may perhaps be assumed that the only valuation or calculation which will in the majority of cases be made under these words is "at what rate per cent. should the rent be capitalised." That rate fixed, the value at the time of the original grant is a mere question of arithmetic. Nevertheless it is suggested that the nature of the property when leased, involving the security for and permanence of the rent, is a matter which the valuer should take into consideration. Rents reserved by a lease sometimes represent more than the annual ground value. The lessor buys an improved rent paying the building lessee a capital sum for the amount of the addition to the true ground rent. Nevertheless, "the rent reserved" is the basis of the calculation. Possibly parol evidence can be given explaining the facts if it is obtainable.

Including in Cases where a Nominal Rent only has been reserved, the Value of any Covenant or Undertaking to erect Buildings or to expend any Sums upon the Property.—It is difficult to see why such a covenant should not be considered an element increasing the original value in cases where a substantial as well as a nominal rent is reserved. It is perhaps supposed that attempts would be made to elude the duty by taking covenants from lessees at a full ground rent,to expend sums largely in excess of what was in fact intended, and then claiming that the rent plus the value of the covenant was the original value of the land. The curious result is thus arrived at that if a lessor demises for, say, forty-two years, the consideration being a nominal rent and a covenant to erect buildings worth 1,000*l.*, being thus content to realise wholly the value of his land by the deferred enjoyment of an improved property, he will be entitled to have the value of the building covenant estimated and deducted from the value of the property to be taxed; yet if he demises at an annual rent of, say, 25*l.*, and a covenant to erect buildings worth 500*l.*, thus partly realising at once and partly deferring his enjoyment of the value of his property, he will have to pay

§ 13 (2). reversion duty on the full increased value at the end of the lease added to the property by the buildings, without any deduction for the value of the covenant. The value of the covenant to a lessor is not only that he becomes entitled at the end of the term to a building, but that during the continuance of the term he has security, other than the personal covenant of his lessee and the annual value of the bare land, for payment of the rent. It is clear that the value of the rent, that is the number of years' purchase which it would sell for, depends upon the value of the property upon which distress or re-entry can be made. No doubt in the ordinary case of a building lease the house is erected before the lease is granted, and therefore the lessor has a secured rent, which may be valued to-day as having been a well-secured rent "at the time of the original grant" of the lease. Even an ordinary covenant to repair in a new lease of old premises may involve a certain amount of rebuilding and may really form a substantial part of the consideration (see *Lurcott* v. *Wakeley*, [1911] 1 K. B. 905, C. A.).

Where the Lessor is himself entitled only to a Leasehold Interest the Value of the Benefit shall be reduced in proportion to the Amount by which his Interest is less than the Value of the Fee Simple.—These words contemplate a reversion in the lessor of more than twenty-one years (see s. 14 (2)). When that reversion comes to an end the superior landlord will in his turn be liable for the duty. If the leasehold reversion has less than twenty-one years to run, it will not be liable to reversion duty. The duty will then fall later on the superior landlord, assuming him either to be the immediate reversioner in fee, or to be the reversioner in fee, without the interposition of a leasehold term with more than twenty-one years unexpired between his estate and the determined lease. To determine what proportion of the value of the benefit is to be subject to reversion duty in the case of a leasehold reversion of, say, twenty-five years, some such process as this seems to be contemplated. Take first the total value of the fee simple at the time the lease determines, and assume that to be 1,000*l.*; next take the value of the twenty-five years term of the leasehold reversion, allowing, it is thought, for rent and covenants; assume that to be 200*l.* The value of the reversioner's interest is one-fifth of the value of the fee simple. Therefore it is thought the benefit on what he pays will be one-fifth of the total benefit. The problem of the amount to be paid by the leasehold reversioner may be put in the form of a sum in proportion. As the value of the fee is to the value of the leasehold reversion so is the total value of the benefit to the value of the benefit on which the leasehold reversioner must pay reversion duty. But this construction, though literal, may be open to doubt (see illustration 4 on p. 166 and note).

ILLUSTRATIONS OF SECTION 13.

1. On January 1, 1820, A., the owner in fee, leased to B. a plot of land and house, No. 1, Blank Terrace, S.W., for ninety-nine years at a

§ 13 (2).

rent of 10*l.* a year, the house having been previously built by B. under a building agreement. On the determination of the lease on January 1, 1919, the Commissioners determine the total value of the fee simple of the premises under s. 25 of the 1910 Act at that date to be 400*l.* They further determine the total value of the land at the time of the original grant of the lease as ascertained on the basis of the 10*l.* rent to have been 200*l.* They capitalise this rent under s. 32 (1) at twenty years' purchase. 200*l.* is therefore the value of the benefit accruing to the lessor, *i.e.*, the person who is the reversioner at the expiration of the lease. He must pay a duty of 10 per cent., or 20*l.* on this sum.

2. On January 1, 1820, A., then owner in fee of a house, No. 1, Blank Square, S.W., leased it to B. for ninety-nine years at a rent of 50*l.* a year and a premium paid in cash of 1,000*l.* During the currency of the lease B. or his assignees rebuilt the premises with the assent of the owner for the time being of the reversion. On the determination of the lease on January 1, 1919, the Commissioners determine the total value under s. 25 to be 4,000*l.* They further determine the total value of the land (*i.e.*, the total hereditament) at the time of the original grant of the lease as ascertained on the basis of the 1,000*l.* premium and the 50*l.* rent capitalised under s. 32 (1) at twenty years' purchase to have been 2,000*l.* 2,000*l.* is therefore the value of the benefit accruing to the lessor. The duty is 200*l.*

3. For a case in which deductions are made from the value of the land at the time the lease determines, on account (*a*) of works executed or expenditure of a capital nature incurred by the lessor, and (*b*) compensation payable by the lessor at the determination of the lease, thereby diminishing the value of the benefit accruing to the lessor and the consequent duty, see *ante*, p. lxxxvii. of the Explanatory Summary.

4. On January 1, 1860, A., the owner in fee, leased to B. No. 2, Blank Square, S.W., for ninety-nine years at a rental of 100*l.* a year. On January 1, 1875, B. sub-leased the premises to C. for sixty years from that date in consideration of a premium of 300*l.* and a rent of 120*l.* On the expiration of the lease to C. on January 1, 1935, the Commissioners determine the total value of the fee simple of the premises on that date to be 3,500*l.* They further determine the total value of the land at the time of the original grant of the lease to C. to have been 2,700*l.*, *i.e.*, the premium 300*l.* and twenty years' capitalised value of the rent of 120*l.* The value of the benefit accruing to B. or his successor in title would therefore, if he were the reversioner immediately entitled in fee simple, be 800*l.* But B. is only a leaseholder with an unexpired term of twenty-four years, and therefore under the concluding words of sub-s. 2 the value of the benefit so ascertained is to be reduced in proportion to the amount by which the value of B.'s interest is less than the value of the fee simple. The Commissioners determine that B.'s interest in the premises (being subject to a rent of 100*l.* a year) is worth only one-third of what the fee simple would be worth.

§ 13 (2). The value of the benefit accruing to B. is therefore 266*l.* 13*s.* 4*d.*, or one-third of the benefit, 800*l.*, which would have accrued to an owner in fee. The duty is therefore 26*l.* 13*s.* 4*d.* But there is some doubt about this construction. It is not clear whether the rent paid by B. should be taken into account as diminishing the value of his interest, or whether B. must not be treated as having the enjoyment for twenty-five years of the value of the whole benefit of 800*l.* This, it is thought, is what was intended, but the last words of the sub-section do not clearly appear to give effect to that intention.

5. In the example last given B.'s lease determines on January 1, 1959. The Commissioners determine that the total value under s. 25 is on that date 3,700*l.* They further determine that the total value at the time of the original lease of January 1, 1860, was, on the basis of the rent of 100*l.*, the sum of 2,000*l.* The value of the benefit accruing to the reversioner, the owner of the fee simple, at the expiration of B.'s lease is therefore 1,700*l.*, and the duty 170*l.*

Analysis of increased value at the end of a lease.

Note on foregoing Illustrations.—The increased value at the end of the term may arise from divers causes, and the effects will be different in different cases.

(1) The increased value may be due to building or other expenditure by the lessee. In that case it pays its full reversion duty of 10*l.* per cent.

(2) The increased value may be due to expenditure during the term of the lease by the lessor, and in that case it is exempt from duty under s. 13 (2).

(3) The increased value may be due simply to an increase in site value. In that case reversion duty is payable subject to the provisions of s. 14 (4), under which sums already paid as increment value duty may be deducted from, or treated as being also payments on account of, reversion duty in respect of that increment. Conversely, if the reversion duty is actually paid, and later on increment value duty becomes payable in respect of the increment on which reversion duty has been so paid, the payment of the latter is to be treated as being also a payment on account of the increment value duty. It therefore appears that a sum of, say, 1,000*l.* of reversion duty *primâ facie* due on the determination of a lease may be divided into three parts. One of these may have been already satisfied by a prior payment of increment value duty in respect of the reversion. One may be due in respect of expenditure by the lessee, and therefore entitled to no benefit of set-off. The third part when paid may be utilised by the reversioner (or his representatives or assigns) as a payment on account of increment value duty becoming payable after the determination of the lease.

And of elements of reversion duty.

A probable case in practice of hardship.

The following is an illustration of a case the like of which it is thought must sometimes occur in practice. A. leases Whiteacre, a building site, to B. in 1850 for ninety-nine years at a ground rent of 20*l.* a year. B. builds a house costing 1,600*l.* on Whiteacre, and sub-

§ 13 (2).

leases to C. in 1860 for the residue of the term of ninety-nine years less one day at 100*l.* a year. C., having made no further expenditure, subleases to D. in 1890 for 150*l.* a year for the residue of the term of ninety-nine years less two days. In the year 1913 B., for a sufficient consideration, surrenders his term of ninety-nine years to A., the freeholder. The surrender merges or determines the head lease, but does not, of course, affect the two underleases, which continue to run (*Parker* v. *Jones*, [1910] 2 K. B. 32). A. is clearly liable to pay reversion duty both under the Act of 1910 and the Revenue Act, 1911 (1 Geo. 5, c. 2). s. 3 (1). But how is the value of the benefit accruing to A. to be calculated? It may, for the sake of illustration, be assumed that "the total value of the land at the time of the original grant of the lease" is twenty years' purchase of the original rental of 20*l.*, that is 400*l.* But what is the "total value . . . of the land at the time the lease determines," from which latter total value the former total value has under s. 13 (2) to be deducted in order to arrive at the value of the benefit? Sub-s. (2) says in effect that the total value at the time the lease determines is to be ascertained under s. 25. Assume, for the sake of this illustration, that the rent payable by D. to C., *i.e.*, 150*l.*, represents the real annual value of the property and that twenty years' purchase of this rental, or 3,000*l.*, is the "total value" as ascertained under the process indicated by s. 25. If that be the case, *primâ facie* the value of the benefit accruing to A. would be 3,000*l.* less 400*l.* = 2,600*l.* But as a matter of fact it is clear that 3,000*l.* is more than the value of the property to A. in the year 1913, for that value is fixed on the basis of a rental of 150*l.*, and A. is only entitled until the determination in the year 1949 of the term of ninety-nine years (less one day) to a rental of 100*l.* a year. In that year A. will have again to pay reversion duty. The total value of the land to A. in the year 1913, when the original lease has determined, clearly lies somewhere between 1,600*l.* and 3,000*l.*, and probably nearer to the former than the latter figure. The result of thus strictly applying the words of sub-s. (2), *i.e.*, "the total value (as defined for the purpose of the general provisions of this Part of this Act relating to valuation) of the land at the time the lease determines," points to the necessity, if justice is to be done to a lessor in A.'s position, of placing some other construction on those words. What is doubtless intended is that A. should pay, not on the theoretical total value of the land as determined under s. 25, but on so much of that total value, less the original total value, as on the determination of the lease giving rise to the claim for duty accrues to himself.*

* The above illustration was in type before the passing of the Revenue Act, 1911. Sect. 3 (2) of that Act has not altered the inequality of the principle upon which A. is taxed, but has greatly mitigated its practical application by the discount allowed by that sub-section.

SECTION 14.

§ 14 (1). Exemptions from reversion duty, and allowances.

14.—(1) Where, in the case of a reversion to a lease purchased before the thirtieth day of April nineteen hundred and nine, the lease on which the reversion is expectant determines within forty years of the date of the purchase, no reversion duty shall be charged under this Part of this Act on the determination of the lease. Provided that this exemption shall not apply where the lease is determined within forty years by agreement between the lessor and the lessee, whether express or implied, not contained in the lease itself, unless the lease would, apart from any such agreement, have determined within that period.

General note. Under this sub-section any reversion purchased before April 30, 1909, expectant on a lease with a term to run of not more than forty years at the date of the purchase, is exempt from reversion duty on the determination of the lease.

Illustrations.—On January 1, 1869, A. bought a reversion expectant on a lease having then forty-two years to run and which therefore determines in the ordinary course on January 1, 1911. A. will be liable to pay reversion duty in 1911.

On January 1, 1909, A. bought a reversion which will in the ordinary course determine on December 31, 1949. A. will not, unless the Finance Act, 1909, is altered, be liable to reversion duty in 1949 on such determination.

The theory of the sub-section is that a reversion expectant on a lease with less than forty years to run is bought with a view to the enhanced value of the reversion, and to tax that enhanced value would be to disappoint expectation. If the term is longer than forty years at the time of the purchase it is considered that the purchaser looks rather to present income than to future increment. No doubt the line must be drawn somewhere.

A Reversion to a Lease purchased.—It is thought that by a reversion purchased is meant a reversion bought out and out, and not a reversion acquired by way of mortgage, or mortgage and foreclosure, or devise, and that "purchase" is not used in the wide sense of all methods of acquisition other than descent. It is thought that the same date, whether it be that of the agreement or the conveyance, must be taken as the date both for deciding the question whether the reversion was purchased before April 30, 1909, and for fixing the *terminus a quo* the forty years are to be reckoned. It is suggested, but with

diffidence, that if an agreement of purchase, valid on its face and antecedent to the conveyance, is produced, the date of that agreement will be the date of the purchase, but that if no such agreement is produced, the date of the conveyance will be the date of the purchase. If the date of the conveyence be in all cases the date of the purchase, those persons who had agreed to buy reversions before the Act came into force, but had not yet had their conveyances, would be deprived of the benefit of the exemption, though they are thought to be within its equity. Probably the Crown will accept the date of the conveyance of the reversion as entitling to exemption from duty if that is within forty years of the determination of the lease, and will not inquire into the question as to whether there was an antecedent agreement. **§ 14 (1).**

Scope of exemption.

The scope of the exemption is not quite clear. "Purchased" by whom? Does a purchase before April 30, 1909, of a reversion expectant on a lease which at the date of purchase had less than forty years to run exempt the owner for the time being of that reversion, if he be not the same person who purchased before April 30, 1909, but a person who purchased after that date from that purchaser? Probably the only person intended to be exempted is the original purchaser who bought before April 30, 1909. But are persons deriving title from him otherwise than for value exempt also, as heirs, devisees, voluntary grantees? It would seem that their rights cannot well be less than his; and that, whether their title has accrued either before or after April 30, 1909.

The alternative to holding that only a person who purchased before April 30, 1909, is exempt, *i.e.*, to hold that purchasers after that date from purchasers who had bought before that date were also exempt, would be equivalent to holding that every existing reversion with less than forty years to run at the date of a purchase before April 30, 1909, is exempt from reversion duty into whosesoever hands the same may come. This may possibly be the real construction of the sub-section.

If it is not so, and only those persons who themselves purchased before April 30, 1909, [and their representatives] are exempted by the sub-section, would a purchaser after April 30, 1909, of a reversion, who instead of taking a conveyance of the reversion took only a declaration of trust by the vendor, be able to claim the benefit of the exemption under cover of the legal ownership of his vendor? It is the lessor (s. 15 (1)), not the person entitled in equity only to the reversion, who is liable to pay the duty, and the term "lessor" does not include a person only equitably entitled to the reversion. The declaration of trust could of course be accompanied by a power of attorney to assign the legal interest to himself if the purchaser so desired.

Provided that this Exemption, etc.—The proviso is thus understood. If lessor and lessee agree to determine a lease the reversion on which has been purchased by the former before April 30, 1909, within the

§ 14 (1). period of forty years from the purchase, and if the lease were for a period exceeding forty years from the date of the purchase, then, notwithstanding the determination of the lease by surrender or merger, within the period of forty years reversion duty will, with the benefit, of course, of s. 3 (2) of the Revenue Act, 1911, be payable; but if the lease had not more than forty years to run at the date of the purchase, or if having more than forty years to run its determination was under a power in the lease itself, reversion duty is not payable.

Illustrations.—(1) On January 1, 1909, A. leases land to B. for ninety-nine years on a building lease. B. builds a house. On January 2, 1909, A. sells the reversion to C. On January 1, 1920, C. takes a surrender of the lease from B. Reversion duty is payable, but subject to the discount under s. 3 (2) of the Revenue Act, 1911 (see p. 168).

(2) On January 1, 1909, A. leases a house to B. for sixty years. The lease contains a proviso that at the end of the first thirty years the lessee may determine the lease on notice. On January 2, 1909, A. sells the reversion in fee to C. The lessee gives notice determining the lease on January 1, 1939. Reversion duty is not payable.

(3) On January 1, 1909, A. leases land to B. for ninety-nine years on a building lease. On January 2, 1909, A. sells the reversion in fee to C. B. builds a house. On January 1, 1911, B. incurs a forfeiture of the premises by assigning without licence, and C. exercises his power of re-entry. Is reversion duty payable?

It is thought not. Either the forfeiture is not incurred in consequence of an agreement, or if it is, the agreement is in the lease.

(4) If in case No. 1 there had been no express surrender, but C. had gone into possession with B.'s consent, this would have been a determination of the lease by implied agreement, and reversion duty would have been payable, subject as before mentioned.

(2) No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land, nor on the determination of a lease, the original term of which did not exceed twenty-one years, nor shall reversion duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

Which is at the Time of the Determination Agricultural Land.—Illustration.—Whiteacre is leased on building lease to B. at a rent of 8*l.* per annum for eighty years from January 1, 1840. B. builds a house which falls into decay. The house is then removed and the site used for a hop

garden. At the expiration of the lease it is worth, as hop land, 10*l.* per annum. No reversion duty is payable. § 14 (2).

It is thought that it is immaterial that at the date of the determination of the lease the land has "a higher value than its value for agricultural purposes only"; and that the sole question is, is it being used as agricultural land? And it is thought that a temporary falling out of cultivation would not cause it to cease to be agricultural land.

It is thought that agricultural land covered with buildings actually used for agricultural purposes would be entitled to the benefit of the exemption.

The Original Term of which did not exceed Twenty-one Years.—See s. 4: "The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed." Therefore a lease for fourteen years, with an option to the lessee to renew it for another fourteen years, will be a lease the original term of which does exceed twenty-one years, and apparently reversion duty will be payable on its determination, even if it be not renewed. But supposing A. leases to B. for twenty-one years, and at the same time grants a second and reversionary lease to B. of the same premises to commence immediately on the expiration of the former lease and for the same term, and so on for a succession of, say, five leases amounting to 105 years in all. Can the Crown insist on treating the original term as 105 years? It is thought not, and that there must be fresh legislation to stop the gap (*Lewis* v. *Baker*, [1905] 1 Ch. 46; *Lord Llangattock* v. *Watney, Combe & Co.*, [1910] 1 K. B. 236, C. A.; *Knight* v. *City of London Brewery Co.*, [1912] 1 K. B. 10).

If the original term exceeded twenty-one years, it is quite immaterial that it is determined by forfeiture, surrender, merger, or disclaimer within the twenty-one years. Reversion duty is payable on its determination, subject to discount under s. 3 (2) of the Revenue Act, 1911 (see below), and also subject to sub-s. (1).

[(3) *Where a lease of any land is determined before the expiration of the term of the lease by agreement between the lessor and the lessee, whether express or implied, and a fresh lease of the land is then granted to the lessee the term of which extends at least twenty-one years beyond the date on which the original lease would have expired, the Commissioners shall make an allowance in respect of the reversion duty payable of two and a half per cent. of the duty for every year of the original term of the lease which is unexpired when the lease is determined, and any sum so allowed shall be treated as having been paid:*

Provided that the allowance shall not exceed fifty per cent. of the whole duty payable.] Repealed by 1 Geo. 5, c. 2, s. 3 (5). *See* p. 168.

§ 14. [THE REVENUE ACT, 1911 (1 GEORGE 5, c. 2), s. 3 (2), (4).

Explanation and amendment of law as to reversion duty.

3.—(2) Where, whether before or after the passing of this Act, a lease of any land determines on the vesting of the lessor's interest and the lessee's interest in the same person before the expiration of the term for which the lease was granted, the amount of the reversion duty (if any) payable shall not be the full duty, but such an amount as would, with compound interest at the rate of four per centum per annum for the residue of the term for which the lease was granted, produce the amount of the full duty.

For the purposes of this provision the full duty means the duty (if any) which would have become payable if the lease had not determined until the expiration of the term for which it was granted, and if the total value of the land were at that time the same as it is when the lease actually determines.

. . . . . .

See p. 167. —(5) Sub-section (3) of section fourteen of the principal Act shall cease to have effect and shall be deemed never to have had effect.

A Lease of any Land.—It is assumed that but for this section reversion duty would be payable in full on the determination of the lease, that is that the lease is not exempt under any of the exempting provisions collected on p. 152.

Determines on the Vesting of the Lessor's Interest and the Lessee's Interest in the same Person before the Expiration, etc.—The case contemplated is the determination by conveyance, devise or bequest, forfeiture, surrender, or other act or event bringing about a merger or disclaimer, of a leasehold interest before it has expired by effluxion of time. In all such cases the value of the benefit is to be ascertained as provided by s. 13 (2), the "total value at the time of the determination of the lease" within that sub-section being the value at the time of the actual merger. On that "value of the benefit" the full duty of 10 per cent. is calculated. The duty actually to be paid is the sum which, with 4*l.* per cent. compound interest thereon for the residue of the term for which the lease was granted, would produce the amount of the full duty. Practically this is equivalent to a discount of 4 per cent. per annum for every year of the earlier payment of the duty.

§ 14.

This sub-section is intended to facilitate purchases of the freehold by lessees, the surrender of old leases for the purpose of the grant of new leases, and so forth.

The Full Duty.—That is the 1*l.* for every complete 10*l.* of the value of the benefit (s. 13 (1)) as ascertained at the date of the merger.

The Term for which the Lease was granted.—See the definition clause, s. 41, paragraph "The term of a lease," under which the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed. It is thought that where the lease is for twenty-one years, with an option to the lessee to renew it for seven years, the term for which the lease was granted under this sub-section is twenty-eight years.

The Revenue Act, 1911 (1 Geo. 5. c. 2), s. 3 (3).

—(3) "No reversion duty shall be charged on the determination of any lease of land where the lease is determined in pursuance of an agreement between the lessor and the lessee for the acquisition by the lessee of the lessor's interest, if at the time of the determination of the lease—

"(*a*) the lease has at least fifty years of its term to run; and

"(*b*) the total value of the land does not exceed five hundred pounds."

In pursuance of an Agreement between the Lessor and Lessee for the Acquisition.—Doubtless the word "agreement" is intended to mean an agreement for sale, which may probably be either in pursuance of an option in the lease or otherwise. The limitations (*a*) and (*b*) will be duly noted. The object of the clause is evidently to encourage lessors to sell the reversion to small owners.

The Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3 (4).

—(4) "Where a lease of any land held upon trust for any body of persons is determined before the expiration of the term of the lease by the surrender thereof to the lessor upon the terms that he shall grant to those persons severally leases of various plots of land representing in the aggregate the whole of the land comprised in the original lease, for a term in each case equal to the unexpired term of the residue of the original lease, and at rents amounting in the aggregate to but not exceeding

§ 14. the rent reserved by the original lease, no reversion duty shall be payable on the determination of the lease.

Provided that the lessor shall in any case to which this provision applies deliver an account under s. 15 of the principal Act in the same manner as if reversion duty were payable on the determination of the lease.]

General note. It is sufficiently evident from the text that this sub-section is intended to meet generally cases of some such nature as the following. A lease of a large plot of land is taken by a society or company, or by trustees, for the purpose of dividing it amongst individuals who are to build houses on the divided portions. By this means the land is obtained at a rather cheaper rate by the builders than if each plot were separately leased. It may be arranged that when the full number of houses is erected the original lease shall be surrendered and a separate lease at a separate rent granted to each builder, thereby relieving him from liability to forfeiture for the acts or defaults of other lessees. Reversion duty is not to be payable in such a case if the conditions of the above section are observed.

Finance Act, 1910, s. 14 (4). (4) Where on any occasion on which increment value duty is due in respect of any increment value it is proved to the satisfaction of the Commissioners that reversion duty has been paid in respect of any benefit accruing to a lessor, or part of such a benefit, which is identical with the increment value, such sums as the Commissioners determine to have been paid in respect of the benefit or part of the benefit shall be treated as being also a payment on account of increment value duty; and where on any occasion on which reversion duty is due in respect of any benefit accruing to a lessor, it is shown to the satisfaction of the Commissioners that increment value duty has been paid on any increment value which is identical with that benefit or any part of that benefit, such sums as the Commissioners determine to have been paid in respect of that value shall be treated as being also a payment on account of the reversion duty in respect of that benefit or part of a benefit.

General note. If a lease expires and the lessor pays reversion duty, part of that duty may be payable in respect of an increased site value of the property

comprised in the lease (see note on p. 162). If the lessor dies after paying such reversion duty, his representatives are entitled to set off against a claim of the Crown for increment value duty on the site formerly comprised in the lease the amount so paid as reversion duty in respect of increased site value. The amount set off must, however, it is conceived, be a payment of reversion duty in respect of "value of benefit" accruing during the period in respect of which the claim for increment value duty arises. Similarly, if A.'s estate pays increment value duty on the site value of land comprised in a lease on the determination of which A. is entitled in fee, and subsequently the lease determines, A.'s representatives are entitled to set off against the Crown's claim against them for reversion duty the amount of the increment value duty, in respect of the land comprised in the lease, already paid by them, or, it is submitted, by A.'s predecessors in title, the reversioners during the continuance of the lease, and also by the lessees under the lease. The onus of proof as to identity of increment value and of benefit is on the subject. The determination of the Commissioners under the sub-section is subject to appeal. **§ 14 (4).**

ILLUSTRATIONS OF SECTION 14 (4).

(1) On January 1, 1912, A. buys Blackacre, which is subject to a lease expiring on January 1, 1920. On the expiration of that lease A. pays 200*l.* reversion duty. On January 1, 1925, A. sells Blackacre. The increment value duty is then assessed at 60*l.* At the request of A. the Commissioners determine that 20*l.* of the 200*l.* reversion duty paid by A. in 1920 was paid in respect of a rise in site value occurring between January 1, 1912, and January 1, 1920. A. is entitled to a deduction of 20*l.* from the increment value duty of 60*l.*

(2) On January 1, 1912, A. buys Blackacre, which is subject to a lease expiring on January 1, 1930. On January 1, 1920, A. sells Blackacre to B., on which occasion he pays 60*l.* increment value duty. When the lease expires on January 1, 1930, the amount of the reversion duty payable by B. is fixed at 200*l.* On B.'s application the Commissioners determine that 30*l.* of this duty is payable in respect of a rise in site value which occurred between January 1, 1912, and January 1, 1920, as to which increment value duty to the extent of 60*l.* has already been paid. The Commissioners will probably determine that 30*l.* of the 60*l.* shall be treated as being a payment on account of reversion duty.

Note on Illustrations.—It appears that there is no limit to the period within which a running account between the two duties may be kept up. At the end of a long lease, every payment, either by lessor or lessee, during its currency on account of increment value duty can be set off against the reversion duty on the portion of the value of the benefit which is derived from the increase of site value. But it seems from the nature of the case that after the first payment of increment value duty on the fee simple after a payment of reversion duty there can be no

§ 14 (4). further set-off unless a new lease has been made. The whole of the increment value duty has been paid up to date.

On any Occasion.—See s. 1 (*a*), (*b*) and (*c*) for the occasions. The payment will, it seems, when once proved, be available as a set-off on all future occasions.

Proved to the Satisfaction of the Commissioners.—It is not thought that these words exclude an appeal on the ground that the Commissioners ought to have been satisfied and were not.

Any Benefit . . . identical with the Increment Value.—The meaning seems plain, though not the phraseology. One of the items which may make up the increased value on the determination of the lease, from which results "the benefit accruing to the lessor," may be a rise during the currency of the lease in site value. This of course is common enough in the centre of towns. But on this rise in site value increment value duty will from time to time be paid by both lessor and lessee. When at the end of the term reversion duty comes to be payable, it is conceived that the lessor is entitled to set off against the claim for that duty the whole of the increment value duty paid during the continuance of the term by any one interested in the land, whether as lessor or as lessee. The "benefit" is really "identical with the increment value," because it is the same added value which when viewed from the point of view of increment value duty is "increment value," and from the point of view of reversion duty is "benefit accruing to the lessor."

Such Sums as the Commissioners shall determine to have been paid.—It would seem, where the order of payment is first reversion duty and secondly increment value duty, that half the increment value duty up to the date of the determination of the lease is *primâ facie* covered by the reversion duty then paid, and that therefore the Commissioners should estimate the site value at that date, and charge increment value duty accordingly. So where the order of payment is first increment value duty which is paid both by landlord and by tenant during the continuance of the lease, and secondly reversion duty, it is thought that the whole of the payments of increment value duty, whether paid by landlord or by tenant during the continuance of the lease, can be set off against the reversion duty. In this case the value of the benefit must have been increased by the increment on which increment value duty has been paid.

(5) Where a reversion has been mortgaged before the thirtieth day of April nineteen hundred and nine, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines, the mortgagee

shall not be liable to pay reversion duty in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

Where a Reversion has been Mortgaged before the Thirtieth Day of April, 1909, and the Mortgagee has Foreclosed.—The object of the sub-section is apparently to protect a mortgagee who has advanced money on a reversion before the Act came into force against the chance of his security becoming insufficient to answer the mortgage debt by reason of the deduction of the reversion duty. In order to bring the section into force, however, (1) the mortgagee must have foreclosed; (2) he must have done so before the lease determines. Then he is only liable to pay an amount in respect of reversion duty which is not greater than the amount by which the total value of the land at the time of the determination of the lease (that is, the value of his security) exceeds the amount due to him on his mortgage at the date of his foreclosure. In other words, his liability to pay reversion duty is limited to the amount of his profit (in addition, it is assumed, to his agreed interest) on the transaction.

The Mortgagee has Foreclosed.—Suppose the mortgagee does not foreclose but sells the reversion under his power of sale whether statutory or contained in the mortgage. Assume that the security is not sufficient to meet the mortgage debt. The purchaser will, it is assumed, buy subject to reversion duty. There seems to be nothing to give him the benefit of the mortgagee's exemption. He will, therefore, pay a sum for the property, equal in amount to the anticipated reversion duty, less than he would pay if reversion duty did not exist. The tax will therefore in such a case fall on the mortgagee, notwithstanding the sub-section. This will induce him to keep his foreclosed property till after the lease has determined.

Supposing the lease determines before the mortgagee of the reversion has foreclosed, the sub-section suggests by implication that the mortgagee is not liable to the Crown to pay the reversion duty. But is this so? Under s. 15 (1) reversion duty is recoverable from the lessor. Under s. 13 (1) that duty is leviable "on the value of the benefit accruing to the lessor." Under s. 41 the expression lessor "includes the person for the time being entitled to the reversion whether freehold or leasehold expectant on the determination of the lease." Certainly in the case of a legal mortgage that person is the mortgagee. Of course, if the mortgagee pays reversion duty he may add it to his security (s. 39 (4)), but the sub-section contemplates a case where the security is by hypothesis deficient. It exempts the mortgagee from reversion duty in such a case where he has foreclosed and is therefore owner. But it apparently does not do so when he has not foreclosed.

§ 14 (5). **Amount payable under the Mortgage at the Date, etc.**—Lastly, what is meant by "the amount payable under the mortgage"? Presumably it includes all arrears of interest. No penalty is placed on a mortgagee who has allowed interest to become hopelessly in arrear. Further, it would, it is believed, include all such sums as a mortgagee is entitled to add to his security, and his costs, charges, and expenses. Perhaps the Court may take as the "amount payable under the mortgage" the amount found due in the Master's certificate in pursuance of the foreclosure order *nisi* (see Seton on Decrees, vol. 3, p. 1895, 6th edition) and mentioned in the final order for foreclosure (*ib.*, p. 1990).

At the Date of the Foreclosure.—*I.e.*, the final order for foreclosure.

SECTION 15.

§ 15 (1). Recovery of reversion duty.

15.—(1) Reversion duty shall be recoverable from any lessor to whom any benefit accrues from the determination of a lease as a debt due to His Majesty, but shall rank pari passu with all other debts due from such lessor.

[THE REVENUE ACT, 1911 (1 GEORGE 5, c. 2), s. 3 (1).

Explanation and amendment of law as to reversion duty.

3.—(1) It is hereby declared that in relation to a lease which has determined the person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or if the lease has determined before that time, immediately before the transaction or event in consequence of which the lease has determined, is the lessor for the purpose of section fifteen of the Finance (1909–1910) Act, 1910 (in this Act referred to as the principal Act), and is the person to whom any benefit accrues from or by reason of the determination of the lease for the purpose of the other provisions of that Act relating to reversion duty.]

10 Edw. 7, c. 8.

It is thought advisable to treat the above section of the Revenue Act, 1911, concurrently with s. 15 of the original Act, of which it is simply explanatory.

From any Lessor.—The duty is payable by the lessor, which "includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease" (s. 41).

§ 15 (1).

It will be observed that the wording of s. 15 (1) is a little curious. Though there could be no doubt that by the term "lessor" in that sub-section was meant the person who was in the position of the lessor just before the determination of the lease, yet, strictly speaking, that person had ceased to be lessor the moment the lease determined. The duty becomes due "on the determination of" the lease (s. 13 (1)), *i.e.*, at the same moment that there ceased to be a lessor. Probably it would have been considered to be so obvious that the person who was the lessor immediately before the determination of the lease was the person meant by "the lessor" in s. 15 (1), that no new legislation would have been considered necessary, if it had not been also perceived that, when the lessee purchased the reversion with the intention of merging the lease in the reversion and becoming entitled in fee in possession, he became under s. 41 "the person for the time being entitled to the reversion," and must be considered as being, at all events for a moment of time, "the lessor"; for otherwise there could not have been a merger, which admittedly there was. The purchaser or former lessee being the lessor, within the meaning of s. 41, immediately before the determination of the lease, was therefore under s. 15 (1) liable to pay the reversion duty; and the vendor of the reversion who was intended to be hit by the duty was not liable. This has now been altered by the above sub-section of s. 3 of the Revenue Act, 1911. Under that sub-section the reversioner who has sold his reversion to the lessee, thereby creating a merger, is liable to reversion duty, and the purchasing lessee is not liable. No such difficulty arose in the case either of the purchase of the leasehold interest by the reversioner, or of the forfeiture of the lease, or of its disclaimer by a trustee in bankruptcy of the lessee, creating in each case a merger. The lessor in all those cases was liable to duty under the necessary interpretation of the word "lessor" as used in s. 15 (1). See the note to s. 14 (5) as to the position of a legal mortgagee. A mortgagee who has not got the legal estate is probably not liable for reversion duty.

The reason for s. 3 (1) of the Revenue Act, 1911.

The question whether a covenant by the lessee in a lease to pay the reversion duty is valid, (a) notwithstanding s. 15 (1), and (b) so as to bind the assign of the lease, is not quite unpractical even at this early stage of the Act's operation, since a lease may determine by surrender, merger, or forfeiture at any time after its grant. There seems to be no reason why the lessee should not be bound by such a covenant. There is no provision in the 1910 Act or in the Revenue Act, 1911, rendering such an agreement void, or unenforceable, comparable with s. 19 as to undeveloped land duty and s. 22 (4) as to mineral rights duty. But as to the assign the case seems to fall within the third rule in *Spencer's Case* (5 Rep. 16), and not to bind the assign, since it concerns merely a collateral obligation of the lessor based upon a certain benefit he derives when the lease is at an end. It is not like a covenant to discharge the lessor *de omnibus oneribus ordinariis et extraordinariis* (*Dean*

Covenants by lessees to pay the reversion duty.

§ 15 (1). *of Windsor's Case*, 5 Rep. 25), *i.e.*, to pay rates, taxes, and assessments accruing due during the term. *Sed quære.*

Any benefit accrues.—That is a benefit within the meaning of the words "value of the benefit" defined by s. 13 (2). But it must be understood that the benefit does not accrue from an exempted lease. See the cases of exemption from reversion duty collected on p. 155.

Debt due to His Majesty, but shall rank pari passu.—Recoverable by information. See *ante*, p. 84.

The Crown has no priority for the debt arising therefrom. There is apparently no charge on the property for the duty. So that subsequent purchasers of the property need not inquire whether it has been paid.

As to trustees, mortgagees, and tenants for life who have paid reversion duty, see s. 39, *post*, p. 412.

It is hereby declared, etc.—These words do not necessarily import that the section is merely declaratory of the previous law. It may include an amendment of such law (*Harding* v. *Commissioners of Stamps for Queensland*, [1898] A. C. 769, at p. 775).

Transaction or event, *i.e.*, the conveyance of the fee to the lessee, or the surrender of the term to the lessor, or the forfeiture.

(2) Every lessor shall, on the determination of a lease on the determination of which reversion duty is payable under this section, deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease.

Every lessor.—See notes to last sub-section and Revenue Act, 1911, s. 3 (1).

On the Determination of which Reversion Duty is payable under this Section.—The meaning notwithstanding the words "under this section" is apparently that either (1) if the reversion is wholly exempted from duty by reason of any of the various provisions collected on p. 155, conferring complete exemption, or (2) if the reversioner being liable to duty in case there is any benefit accruing to the lessor within s. 13 (2), there is in fact no such benefit, then in neither of those cases need any account be delivered. Of course in each case the non-delivery of the account is at the risk of incurring the penalty imposed by sub-s. (3). It is therefore suggested that the Commissioners' Form of Account relating to this duty (see p. 523 and notes thereon) should be complied with in all cases where the exemption depends solely on there being no benefit accruing to the lessor. In other clear cases of exemption, as where the lease or the reversion does not exceed twenty-one years, no account need, it is thought, be sent in. In the latter cases

it is suggested that for the present, and until the practice becomes settled, an intimation of the determination of the lease should be sent to the Commissioners, accompanied by a statement that exemption is claimed on the ground, for example, "that the land was at the time of the determination of the lease agricultural land," or "that the lessor's interest expectant on the determination of the lease did not exceed twenty-one years." If the lease which has determined did not exceed twenty-one years, it is suggested that no intimation need be sent to the Commissioners, otherwise a heavy burden would be placed upon the subject. For advice as to filling in the Form of Account, see Notes on Practice, *ante*, p. xxxv.

If exemption exists because the lessor claims the benefit of s. 37 (charitable, etc., purposes), or s. 38 (statutory companies), it is thought that no intimation of the determination of the lease need strictly be given.

The fact is not overlooked that the Form of Account on p. 523, below referred to (see Requisition, No. 15), indicates that the Commissioners do not take quite this view of the subject's liability. For further discussion on this question, see "Practical Note," *ante*, p. xxxv. See the next sub-sect. and notes thereon.

Particulars of the Land and Estimated Value of the Benefit.—This information in itself would not always enable the Commissioners to assess the duty. The pith of this section is in sub-s. (4). The Form of Account asked for by the Commissioners will be found on p. 523; but it is not thought that the use of this form is obligatory, if such particulars are given as enable the Commissioners fairly to judge how the estimated value or estimated no value of the benefit is arrived at.

Compare s. 15 (2) with s. 20 (3), under which the return for mineral rights duty must be made "in the form required by the notice." Compare also with s. 26 (2).

(3) If any person who is under an obligation to deliver an account under this section knowingly fails to deliver such an account within the period of three months after the determination of the lease, he shall be liable to pay to His Majesty a sum not exceeding ten per cent. upon the amount of any duty payable under this section, and a like penalty for every three months after the first month during which the failure continues.

If any person.—Person includes body corporate or uncorporate (Interpretation Act, 1889, s. 19).

Who is under an Obligation to deliver an Account under this Section.—See the notes to the last sub-section "on the determination

§ 15 (3). of which reversion duty is payable." There is, it is thought, no obligation under this section to deliver an account unless reversion duty is payable, but as that is a question which can only be determined after an account is taken under s. 13 (2), showing the total value of the land at the time the lease determines and at the time of the original grant of the lease respectively, which account may involve certain subsidiary valuations arising out of expenditure by the lessor and compensation payable by him, it is considered to be safer for the subject always to deliver an account, unless he can claim exemption on one of the grounds conferring exemption, whatever may be the value of the benefit accruing.

An information will probably lie to enforce the obligation to deliver an account, as in *Attorney-General* v. *Duke of Richmond* (No. 2) ([1907] 2 K. B. 940). If in such a case it is found that, though in fact no duty is payable, the subject has unreasonably declined to furnish information to the Commissioners, the result may be unfortunate as to costs.

"Knowingly fails," etc.—What do these words mean? Do they mean that if the lessor does not know of the section at all, he is not liable in case of default in compliance on the ground that not knowing of the section he does not knowingly fail to comply with it? Supposing he knows, in a general sort of way, that there is a section of this nature, and takes no trouble to ascertain its terms, does he knowingly fail? And again, supposing he once knew all about the section and his future liability under it, but forgot about it at the critical time, is he liable to the penalty? Is he liable if, knowing all about the section, he deliberately abstained from delivering an account on the ground that he *bonâ fide* believed that no duty was payable? These questions are probably more practical than most of an analogous nature. The dictum of Neville, J., in *Burton* v. *Bevan*, [1908] 2 Ch. 240, at p. 247, is against the lessor in all these cases; but that was an action for damages at the suit of a private individual and not for a penalty payable to the Crown. See also *Tait* v. *MacLeay* [1904], 2 Ch. 631, C. A. The speeches in the recent case in the House of Lords (*Attorney-General* v. *Till*, [1910] A. C. 50) relating to penalties under the Income Tax Act, 1842, ss. 52 and 55, in which sections, however, the word "knowingly" does not occur, is, however, not an authority in favour of non-liability to penalty, though, as the language of s. 55 of the Act of 1842 is very different from that of s. 15 (3) of the Act of 1910, it is perhaps not to be treated as a direct authority the other way. See notes on p. 78 and p. cxliv. *ante*.

Three Months, *i.e.*, calendar months (Interpretation Act, 1889, s. 3).

He shall be Liable to pay . . . a Sum not exceeding ten per cent. upon the Amount of any Duty payable.—This penalty is not recoverable summarily and must therefore be sued for by information. It seems clear from these words, even if it is not so otherwise, that the

Commissioners have power to assess the duty even if no account is delivered. See note to sub-s. (4). **§ 15 (3).**

(4) Section seventeen of the Customs and Inland Revenue Act, 1885 (which relates to the power to assess duty according to accounts rendered, and to obtain other accounts), shall apply with respect to any account delivered under this section (with the exception of any provisions relating to appeals). 48 & 49 Vict. c. 51.

Section 17 of the Customs . . . Act, 1885.—This section, which is set out in full on p. 127, is thus made applicable to the accounts of private individuals. Under the Customs Act, 1885, and under s. 6 (3) of this Act, it can be used only against bodies corporate and unincorporate. It enables the Commissioners to cause an account to be taken by their own agents, if dissatisfied with the account furnished by the lessor, and to assess the duty on such account.

It does not give the right to the Commissioners to compel the production of books, vouchers and documents for the purpose of making their own account: these powers are conferred upon the Commissioners in relation to the periodical assessment of increment value duty against a body corporate or unincorporate under s. 6, by virtue of s. 19 of the Customs and Inland Revenue Act, 1885, incorporated by s. 6 (3) of the Act of 1910. Sect. 19 of the Act of 1885 applies to the collection of increment value duty from a body corporate or unincorporate on a periodical occasion: the powers of s. 49 of the Succession Duty Act, 1853, which relate to the production and inspection of books and documents (see *ante*, p. 128); but s. 19 of the Act of 1885 is apparently not applied by the Finance Act, 1910, to the collection of reversion duty. Once an account is delivered the Commissioners can assess the duty "upon the footing" thereof (s. 17 of the Customs, etc., Act, 1885). If the account is knowingly false in any particular it is a summary offence under s. 94 of the Act of 1910. But if the lessor refuses or neglects to deliver any account or to furnish any information the Commissioners may be in some difficulty. But assuming, as is thought to be the case, that they have power to assess the duty even before the account is rendered, on an account drawn by themselves at a venture under s. 17 of the Act of 1885, they will do so, and in any appeal from their assessment they will be able to arrive at the true figures. These must almost necessarily be disclosed by the lessor on appeal to a referee. On appeal to the High Court an order for discovery against the lessor may be made (see rule 9 (2) of the Rules of the Supreme Court under s. 33 (4), *post*, p. 384). A lessor who obstructed the Commissioners by declining to furnish an account, and who was really liable to reversion duty, would probably not gain in the end by so doing. The duty being fixed

§ 15 (4). by proceedings under the Act can be recovered by Latin information, and the penalties can also be recovered in the same way.

It is further probably the case (see *ante*, p. 178) that an equitable or English information will lie at the suit of the Attorney-General for an account, in which discovery can be obtained; but *quære* in this case, must not the penalties be waived?

Undeveloped Land Duty.

SUMMARY OF SECTIONS 16 TO 19.

Sects. 16 to 19 inclusive relate to undeveloped land duty.

Sect. 16 establishes the duty, fixes its amount, defines or describes the undeveloped land which is the subject of the tax, fixes the method of ascertaining the site value for the purposes of the duty, creates an important exemption from the duty in relation to the development of building estates, permits payments of increment value duty to be taken into account in charging undeveloped land duty, and excludes minerals from any computation in relation to the duty.

Sects. 17 and 18 establish various exemptions from the duty.

Sect. 19 relates to the time of payment of the duty, and the liability of the owner in respect thereto.

SECTION 16.

§ 16 (1) Duty on site value of undeveloped land.

16.—(1) Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid for the financial year ending the thirty-first day of March nineteen hundred and ten, and every subsequent financial year in respect of the site value of undeveloped land a duty, called undeveloped land duty, at the rate of one half-penny for every twenty shillings of that site value.

Subject to the Provisions, etc.—See ss. 16—19 inclusive, ss. 35—38 inclusive, and s. 40.

Charged, levied, and paid.—Undeveloped land duty is a tax on site value, and is payable by the owner, who may not by contract throw the burden on to the occupier (s. 19). It is not a charge on the land (but see the notes to s. 19, *post*, p. 205). In addition to the raising of revenue, the duty is supposed, and intended, to present inducements to owners to develop their site values by the erection of buildings, or the use of the land for trade purposes. For the person liable in case of change of ownership see notes to s. 19 (p. 205).

For the Financial Year ending March 31, 1910.—As the Act did not receive the Royal assent till after the expiration of the financial year referred to, no assessment of site value was made under its provisions

during the currency of such year. Under s. 19, nevertheless, the duty is payable at any time after the 1st day of January for which it is charged. Under the same section the duty may be assessed at any later time and is payable at the expiration of two months from the date of assessment, but the duty may not be assessed more than three years after the expiration of the year for which it is charged. The effect of this provision seems, therefore, to be that four years of duty can be recovered by the Crown. See further as to assessment on the provisional valuation, subject to adjustment on the values being finally settled, s. 27 (6), *post*, p. 329. The financial year is the year from April 1 to March 31 inclusive (see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3). **§ 16 (1).**

And every subsequent Financial Year.—The tax is a permanent yearly tax until altered or remitted by Act of Parliament.

In respect of the Site Value.—For definition of assessable site values, see s. 25 (2), (4). It is to be noted that it is a piece of ground cleared not only of buildings and other structures, but also of timber, fruit trees, and other things growing thereon, which is contemplated as "a site." Apparently even the herbage must be hypothetically stripped off the soil for the purpose of the valuation. The reason is that the valuation is of land which should or might be used for a dwelling-house or a building for the purposes of some business, trade, or industry other than agriculture, or used otherwise for such purposes. The duty is payable on the original site value till the first quinquennial valuation in the year 1914, and afterwards on the site value then ascertained (s. 16 (3)). If no site value is ascertained in 1914 it will continue to be payable on the original site value (s. 16 (3)).

Undeveloped Land.—For definition of this, see next sub-section. The term is purely a conventional one adopted for the purpose of the duty.

(2) For the purposes of this Part of this Act, land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used bonâ fide for any business, trade, or industry other than agriculture:

Provided that—

(*a*) Where any land having been so developed or used reverts to the condition of undeveloped land owing to the buildings becoming derelict, or

§ 16 (2). owing to the land ceasing to be used for any business, trade, or industry other than agriculture, it shall, on the expiration of one year after the buildings have so become derelict or the land ceases to be so used, as the case may be, be treated as undeveloped land for the purposes of undeveloped land duty until it is again so developed or used; and

(*b*) Where the owner of any land included in any scheme of land development shows that he or his predecessors in title have, with a view to the land being developed or used as aforesaid, incurred expenditure on roads (including paving, curbing, metalling, and other works in connexion with roads) or sewers, that land shall, to the extent of one acre for every complete hundred pounds of that expenditure, for the purposes of this section, be treated as land so developed or used although it is not for the time being actually so developed or used, but for the purposes of this provision no expenditure shall be taken into account if [*twenty* years] have elapsed since the date of the expenditure, or if after the date of the expenditure the land having been developed reverts to the condition of undeveloped land, and in a case where the amount of the expenditure does not cover the whole of the land included in the scheme of land development, the part of the land to be treated as land developed or used as aforesaid shall be determined by the Commissioners as being the land with a view to the development or use of which as aforesaid the expenditure has been in the main incurred.

20 substituted by 1 Geo. 5, c. 2, s. 4, for 10.

[THE REVENUE ACT, 1911 (1 GEO. 5, c. 2), s. 4.

1 Geo. 5, c. 2, s. 4. Amendment of s. 16 (2) (*b*) of the principal Act.

Twenty years shall be substituted for ten years as the limit of time for taking expenditure into account for

the purposes of paragraph (*b*) of sub-section two of section sixteen of the principal Act.] **§ 16 (2).**

If it has not been developed.—Some stress, perhaps, should be laid upon the word "developed." The construction of that word does not appear toreceive any light from decided cases. For two cases relating to the development of railway traffic see *Clonmel Traders, etc.* v. *The Waterford and Limerick Railway Co.*, 4 Railway and Canal Traffic Cases, 92; *Midland Great Western Railway of Ireland Co., ib.* 145 (referred to in Stroud's Judicial Dictionary, vol. 1, p. 522, 2nd edition), which, however, are very far afield from the provisions of s. 16 of the Act of 1910.

Dictionary definitions of "development" may be referred to. Murray's New English Dictionary, Clarendon Press, 1897, includes the following:—

1. A gradual unfolding, a bringing into fuller view; a fuller disclosure, or working out of the details of anything, as a plan, or scheme, the plot of a novel.

3. (*c*) The bringing out of the latent capabilities (of anything).

The Imperial Dictionary, edited by John Ogilvie, LL.D., Blackie, includes:

(3) The exhibition of new features.

Quære if stress is on "development."

It may, however, be that the development which is necessary in order to give exemption from the duty is not something which is or may be the result of the erection of dwelling-houses and buildings for the purposes of business, trade, or industry, or the user otherwise for those purposes, but is simply the fact that dwelling-houses or such buildings have been erected, or that the land is so used. If that be the case, "developed by" is simply equivalent to "used for." The matter may be important in relation to the erection of buildings or the user of land for purposes of business, trade, or other industry. For instance, an advertisement hoarding has been held a building in some cases (see *post*, p. 184), and in others not a building. The latter view is not unlikely to be applied to the construction of s. 16, if the words "developed by" mean something more than simply "used for." On the whole it is suggested that the word does mean something more, and points to a new and useful employment of the land, but exactly what force is to be attributed to it can only be ascertained by judicial decision.

Two questions appear to be left in great obscurity. First, is land becoming developed between April 1 and January 2 (on which date the duty may be claimed) liable for the whole or any part of the duty? Secondly, is an inchoate development as the digging of the foundations of a house sufficient to create exemption?

By the Erection of Dwelling-houses or of Buildings for the Purposes of any Business, Trade, or Industry other than Agriculture, etc.—The land occupied together with a dwelling-house is dealt with in

§ 16 (2). s. 17 (4). Apparently it is only the actual land covered with buildings (not being dwelling-houses) which is exempted. For example, if the owner of a boathouse on the river (there being no attached dwelling-house to bring the case within s. 17 (4)) has a garden or open space adjacent to his boathouse, this garden or open space would probably not be land "developed" within the meaning of the section. But if he lets out boats for hire and allows his customers to use this open space for sitting or lounging, it would probably be exempted from the tax under the later words of the first paragraph of sub-s. (2) as being used for the purposes of the business of letting out boats.

The garden attached to a golf club house, not being a dwelling-house, is land not developed and therefore seems *primâ facie* liable to the tax, unless it could be brought within s. 17 (3) (*d*), which may depend on circumstances. If the steward lives in the club house it may perhaps be considered a dwelling-house and entitled to the benefit of s. 17 (4).

It is easy to imagine difficult cases arising on these words. Is the use of land as an advertisement station a *bonâ fide* use for a business? And a use of how much of the land? Some advertisements require a large foreground for the suitable display of their merits (see *Heard* v. *Stuart*, [1908] 24 T. L. R. 104; *Tubbs* v. *Esser*, [1909] 2 T. L. R. 145).

Land is not undeveloped under the sub-section if

(1) it has been developed by the erection
  (*a*) of dwelling-houses; or
  (*b*) of buildings for the purposes of any business, trade, or industry, etc., or if
(2) it has been otherwise used *bonâ fide* for any business, trade, or industry.

What is a building?

Buildings.—Decisions as to what is or is not a building are of course numerous. They occur mainly in connection with covenants and Acts of Parliament, and turn to a very large extent upon the special words and general scope of the document to be construed. They are not, therefore, thought to throw much light upon the use of the term in s. 16 (2). For example, an advertisement hoarding was held to be "a building or erection," within the meaning of a covenant not to erect buildings or erections in *Pocock* v. *Gilham* (1 Cab. and Ellis 104), and in *Nussey* v. *Provincial Bill Posting Co.* ([1909] 1 Ch. 734 (Moulton, L.J., however, dissenting)), a trellis screen was held a building within the meaning of a similar covenant in *Wood* v. *Cooper* ([1894] 2 Ch. 671); while on the other hand an advertisement hoarding was held not a building within the meaning of a covenant regulating the character of buildings in *Foster* v. *Fraser* ([1893] 3 Ch. 158), and not a "building" within the meaning of s. 157 of the Public Health Act, 1875, in *Slaughter* v. *Mayor of Sunderland* (65 L. T. 250). In *Boyce* v. *Paddington Borough Council*

([1903] 1 Ch. 109), at p. 116, Buckley, J., is reported as saying: "From these cases* I can derive no principle other than this, that a hoarding may or may not, according to the context, be a building." An arch used as a storehouse has been held to be a building within the Gasworks Clauses Act, 1847 (*Thompson* v. *Sunderland Gas Co.*, 46 L. J. Ex. 710; L. R. 2 Ex. D. 429). A cowhouse, it seems, may be a "building" within the meaning of s. 27 of the Representation of the People Act, 1832, the words of which are "house, warehouse, counting-house, shop or other building" (*Whitmore* v. *Wenlock*, 13 L. J. C. P. 55), but not a tool shed (*Powell* v. *Boraston*, 34 L. J. C. P. 71). **§ 16 (2).**

An unfinished house has been held a building within the statute 24 and 25 Vict. c. 97 (Malicious Injuries to Property Act, 1861), s. 6 (*R.* v. *Manning*, 1 C. C. R. 338). In *Commissioners of Hanley* v. *Lord Granville* (10 Bingham, 69) sheds which protected engines for the convenient working of a mine were held liable to be rated as buildings under a local watching and lighting Act. A greenhouse has been held to be a house or building under s. 92 of the Lands Clauses Act, 1845 (*Salter* v. *Metropolitan District Railway Co.*, 1870, L. R. 9 Eq. 432); to be a building under s. 3 of the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), and entitled to acquire rights to light thereunder (*Clifford* v. *Holt*, [1899] 1 Ch. 698); and to be a building under the Agricultural Rates Act, 1896 (*Smith* v. *Richmond*, [1899] A. C. 488), and not exempt from half rates. A covered-in reservoir has been held to be a building or structure under the London Building Act, 1894 (*Moran* v. *Marsland*, [1909] 1 K. B. 744), and a railway embankment a building under a covenant not to erect any building other than private dwellings (*Long Eaton Recreation Grounds* v. *Midland Ry. Co.*, [1902] 2 K. B. 574; see the remark of Collins, M.R., on p. 581, "a building is not necessarily limited to a structure of bricks and mortar"). Further decisions as to buildings.

The above cases are referred to simply as giving some idea of the kind of way in which the term "building" has been construed, and therefore may in future be construed, in English law. Probably the word as used in s. 16 will not often be the subject of decision, since the later words of the sub-section, "or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture," will often remove any doubt which might exist.

As to the effect of a covenant not to use land otherwise than as agricultural land, see *ante*, notes to s. 7 (p. 136).

For the amount of land other than the actual site of the dwelling-house itself, which is exempted, see s. 17 (4), under which the site value of "any land" not exceeding one acre occupied with the dwelling-house, and the site value of "gardens or pleasure grounds" up to five acres (subject to an important qualification as to the comparative values of house and land), are exempted from undeveloped land duty. Amount of land exempted with dwelling-house or building.

* *I.e.*, those cited in the text together with *Wilson* v. *Queen's Club* ([1891] 3 Ch. 522).

§ 16 (2). Probably no land other than the site of the building itself is exempted under the words "buildings for the purposes of any trade business, or industry," but the land immediately contiguous to the buildings in question and occupied therewith, if a necessary or proper adjunct thereto, seems clearly to be land "used *bonâ fide*" for a business, etc.

Buildings not specially exempted.

It seems clear that the site value of buildings which are neither dwelling-houses nor buildings for the purposes of any business, trade, or industry other than agriculture is not exempt from undeveloped land duty. In other words the site value of buildings for agricultural purposes (not of course the farmhouse and possibly the buildings occupied therewith, such as stables, but *quære* as to cart and cow sheds, etc.) may be liable to undeveloped land duty, but the point appears to be almost negligible as a matter of practical importance. Further, such buildings as an ordinary members' club do not appear to be exempt, unless perhaps the club has bedrooms and is a dwelling-house, or the case falls within s. 37. But it is thought that there is no intention of treating the sites of the Pall Mall, St. James's Street, Piccadilly, and Northumberland Avenue clubs and the halls of the various City Companies as undeveloped, or of levying this duty, in cases where the land is built upon permanently and usefully.

Amount of land exempted.

Questions as to the quantities of land which may be considered to be used *bonâ fide* for the purpose of businesses, trades, or industries do not seem to present any greater difficulties than the majority of questions involving degree and *bona fides*. It is not thought that the Commissioners or the Courts would ask the question whether more land was so used than was necessary for or beneficial to the business, but simply whether in fact the land was, however mistakenly, yet honestly, used in or for the promotion of the business, and was not merely being so used as a cloke or device for escaping undeveloped land duty. When the motives are mixed, it is thought that exemption should be given. For example, the proprietor of tea gardens may retain a portion of his land unsold and continue to carry on his refreshment business thereon, although the curtailment of his garden would not diminish but would really increase his profits, the reason which finally determines him not to curtail his gardens being the fear of undeveloped land duty. It is submitted that, quite apart from the questions whether s. 17 (3) (*d*) or s. 17 (4) apply to the case, he is entitled to the benefit of the exemption, on the ground that his land is *bonâ fide* used for his business.

What is a business?

Business, Trade, or Industry other than Agriculture.—Numerous cases might be cited showing what has and what has not been considered to be a business within the meaning of various Acts of Parliament and of divers covenants in deeds and other contracts. It is conceived that such decisions throw but little light on the above words in the present Act, but the following short references may possibly be of service. The word "business" has a more extensive meaning than trade (see *Harris* v. *Amery*, L. R. 1 C. P. 148; 35 L. J. C. P. 89), in which case

Willes, J., (at p. 154) instanced farming and banking as businesses, but not trades, a passage cited with approval by Jessel, M.R., in *Smith* v. *Anderson*, 15 D. 247, at p. 259. It has, however, been said that "ordinarily speaking business is synonymous with trade, and means, in my opinion, the process of buying and selling or manufacturing or the like" (*Delany* v. *Delany*, 15 L. R. Ir. 55, per Chatterton, V.C., at p. 67). Nevertheless it is clear that so far as restrictive covenants not to carry on business are concerned the word comprises some undertakings which are not trades, such as an out-patient branch of a hospital (*Bramwell* v. *Lacy*, 10 Ch. D. 691; 48 L. J. Ch. 339), and a school (*Doe* d. *Bish* v. *Keeling*, 1 M. & S. 95; *Kemp* v. *Sober*, 20 L. J. Ch. 602). The carrying on a school has in several cases been held to be carrying on a business within the meaning of a covenant (*Doe* d. *Bish* v. *Keeling*, (1813) 1 M. & S. 95; *Wauton* v. *Coppard*, [1899] 1 Ch. 92). It therefore seems to follow that the whole of the playing fields attached to the school, even in excess of five acres (see s. 17 (4)), are exempt from this duty.

What is a trade?

Trade appears to have the primary meaning of buying and selling (*Harris* v. *Amery*, L. R. 1 C. P. 148), but includes manufacturing and selling. "Trade in its largest sense is the business of selling, with a view to profit, goods which the trader has either manufactured or himself purchased": See per Lord Davey (*Grainger* v. *Gough*, [1896] A. C. 325, at p. 346).

The meaning of "Industry."

Industry is apparently a word of wider signification than either business or trade. There seems to be no attempt to define "an industry" in the cases. From its primary meaning of "diligence" it has come to mean (see the Oxford English Dictionary, edited by J. A. H. Murray, 1901) "an application of skill, cleverness or craft"; . . . "systematic work or labour; habitual employment in some useful work, now especially in the productive arts or manufactures"; . . . "a particular form or brand of productive labour; a trade or manufacture."

It is thought that a wide meaning would probably be attached to the word in the Finance Act. The stress in the clause (if the expression is permissible) seems to be laid on the useful employment of the land otherwise than in agriculture, glasshouses and greenhouses being treated for the purposes of the section as non-agricultural buildings.

Agriculture. See s. 41 (p. 463) for definition and notes.

But including Glasshouses or Greenhouses.—Land on which glasshouses or greenhouses are erected is expressly stated to be developed, and not liable to undeveloped land duty. The words were probably thought to be necessary because land employed in agriculture is undeveloped, and under s. 41 "agriculture includes the use of land . . . for market gardens," etc.

Glasshouses and greenhouses have been held not to be agricultural land

§ 16 (2). within the meaning of that term in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 1, so as to be exempted from payment of half the rates which are charged upon buildings (*Smith* v. *Richmond*, [1899] A. C. 448), but on the other hand they have been held entitled to a somewhat similar exemption from rates conferred upon market gardens or nursery grounds by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (*Purser* v. *Worthing Local Board*, L. R. 18 Q. B. 818). There seems to be no real discrepancy between the two cases viewed in relation to their subject-matter.

Bonâ fide.—By this is understood that the use for business purposes is a genuine use for those purposes, and not merely a colourable use, as for example the leaving of a large open space round a factory under the guise of a recreation ground, but which is never genuinely used as such. That one of the motives for using the land in business, etc., was to avoid undeveloped land duty is thought to be immaterial provided there was a real user in fact (*Attorney-General* v. *Duke of Richmond*, [1909] A. C. 466).

Proviso (*a*), p. 181.

(*a*) **Owing to the Buildings becoming Derelict.**—There seems to be no legal definition or explanation of the word "derelict" as applied to land. That word is thus defined in Murray's New English Dictionary, Oxford, 1897:

"Forsaken, abandoned, left by the possessor or guardian, especially of a vessel abandoned at sea."

Dereliction is also defined as "the action of leaving or forsaking (with intention not to resume)."

As applied to goods, "'*Bona waviata seu derelicta*' are goods which are stolen and waived by the thief in the flight" (Coke's Reports, *Foxley's Case*, 5, 109b).

Perhaps the test of dereliction is "intention not to resume" possession.

It is submitted that the remaining unlet for some, even for many, years will not make a building derelict, if reasonable endeavours have been made to let it, $\frac{\text{and}}{\text{or}}$ if any repairs have been *bonâ fide* effected. It is not thought that it must necessarily be repaired if in any other way an animus of non-abandonment is shown.

Buildings in the proviso seem to include dwelling-houses.

(*a*) **Or owing to the Land ceasing to be used for any Trade, Business, etc.**—This will be a question of fact not to be determined only by the *ipse dixit* of the owner, or the surface appearance of things.

(*a*) **On the Expiration of One Year after the Buildings have so become Derelict or the Land ceases to be so used.**—Apparently in the ordinary course the duty for the current financial year must be assessed before March 31, the conclusion of that year (s. 19). It would seem that if at any time previously to March 31 a year of twelve calendar months had expired after the cesser of user or the dereliction began, the duty can be

assessed for the financial year current at the expiration of the said period of twelve calendar months. It would also seem that if the duty has not been assessed before March 31, it can under s. 19 be assessed later subject to the limitations in that section. It will then be assessed on the original site value, unless the site value has been ascertained under a subsequent periodical valuation for the time being in force, and in that case on such subsequent valuation. See sub-s. (3) and note. **§ 16 (2).**

(*b*) **Included in any Scheme of Land Development.**—To entitle to the exemption the following requisites appear necessary :— Proviso (*b*), p. 182.

(1) There must be a "scheme of land development." It is not, perhaps, necessary that it should be a formal scheme, or even a written scheme.

(2) The expenditure must have been made for the purpose of developing, etc., the land.

(3) The expenditure must have been on or in connection with roads or sewers. It is thought that sewers will not include the connecting house drains referred to in s. 4 of the Public Health Act, 1875. Expenditure on sinking wells, embanking, diverting streams, filling in holes and pits, and the like, confers no exemption.

(4) It must have been made within the twenty years next preceding the date of the claim for exemption. In other words, assume the assessment to be made for the financial year ending March 31, 1912. The duty is payable on January 2, 1912, or as soon after as demanded. It is thought that the whole of the expenditure on roads and sewers made since January 1, 1892, can be taken into account. Whether some date in the year antecedent to January 2, 1912, as, for example, April 30, 1911 (see s. 28), should be taken as the date of assessment, and as the starting point for twenty years backwards, so that expenditure after that date must be carried over to the next year's account, is not plain; but it is thought not.

(5) The expenditure must have been by "the owner" (for definition of "owner" see s. 41) or his predecessors in title. It is not probable that expenditure of this nature would be made by a person having a term of not more than fifty years unexpired. It would seem difficult to bring expenditure by a local authority incurred in default of the owner paving, repairing and sewering, and recovered from him under s. 150 of the Public Health Act, 1875, or s. 19 of the Public Health Amendment Act, 1907, or similar provisions within the sub-section.

(6) The land must not, having once been developed, have reverted at the date of assessment to the condition of undeveloped land.

(7) If the expenditure does not amount to 100*l.* per acre over the whole of the estate the Commissioners must select the part which is to be exempted, "as being the land with a view to the development or use of which . . . the expenditure has been in the main incurred."

Questions may no doubt arise as to how far expenditure in relation to certain land may enure for the benefit of adjacent land subsequently acquired. It is of course clear that the benefited or exempted land

§ 16 (2). need not, and usually will not, be the land upon which the expenditure has actually been made. Supposing 3,000*l.* is spent in roads and sewers on an estate of 20 acres, and then within the twenty years limit the owner buys ten other adjacent acres—are they exempt, the expenditure being just sufficient to cover them? It is very doubtful whether they are. They were not within the original "scheme." The money was not spent with a view to their development. Nevertheless, it would be reasonable that they should be exempted. The owner has proved himself a *bonâ fide* land developer and not a "holder up." It is to be expected that the Commissioners will take broad views on these and similar points.

A problem likely to arise

The following question must, it is thought, quickly arrive for decision:—Expenditure of 4,000*l.* in roads and sewers on an estate of 80 acres. Exemption from undeveloped land duty under the sub-section is given by the Commissioners in respect of 40 acres out of the 80. The owner then sells 40 acres, 20 acres being part of the exempted portion. What is the position of the original owner and the purchaser respectively as to the tax? It is thought that the original apportionment of the expenditure and consequent exemption is final, and runs with the land into the hands of purchasers, and that the original owner is not entitled to claim that the whole expenditure shall, during the unexpired remainder of the twenty years' limit, be allocated in respect of his retained lands; but it must be admitted that this is simply one of several possible interpretations of the sub-section.

Complete exemption conferred by (*b*).

Note that the concession comprised in (*b*) is complete exemption from undeveloped land duty. If the expenditure is not within the twenty years' limit it can still be brought in as a deduction from total value under s. 25 (4) (*b*), thus reducing site value. Some difficult questions may arise on the inter-relation of s. 16 (2) (*b*) and s. 25 (4) (*b*). Can the same expenditure on roads and sewers, *e.g.*, 10,000*l.*, be used to exempt wholly 100 acres of a 200 acre building estate, and to reduce the site value of the whole 200 proportionally? Or is the expenditure deemed to be exhausted by the allocation under s. 16 (2) (*b*), to purposes of complete exemption? It is submitted that the former is the true construction of the statute, though probably not what was really intended by its authors. Perhaps this point may not be of much practical importance, since it may not often happen that the area of increase in site value will exceed the area of complete exemption.

Date from which twenty years runs back.

It is not clear whether the twenty years limit is to run back from the assessment of the duty for the financial year, or from the last general valuation, whether original or quinquennial (s. 16 (3)). The determination of this question may be very material, since the whole of the exempting expenditure may have been made since the last general valuation, and the land becoming developed well within the twenty year limit, the owner may receive no equalising extension of exemption at a later date. It is thought that on the general valuation no

notice should be taken of the right or claim to exemption under s. 16 (2) (*b*), but that the site value of the land should be ascertained in the usual way, and that a claim for exemption should be made yearly, if possible before assessment, or, if that cannot be done, immediately after assessment. It is not thought that this view, which is adopted in the succeeding illustration, conflicts with s. 33 (1) (*b*). **§ 16 (2).**

ILLUSTRATION OF SECTION 16 (2).

In 1886 the owners in fee of the estate, consisting of 100 acres, began to develop it. They spent between 1886 and December 31, 1912, 3,000*l.* in roads (of which 1,000*l.* was spent before December 31, 1892), 3,000*l.* in sewers (of which 1,000*l.* was spent before December 31, 1892), 2,000*l.* in diverting a stream, and 1,000*l.* in sinking a well and erecting a pumping station and machinery. From time to time they have sold off portions of their land, and on December 31, 1912, they have left 70 acres, having sold 20 acres since December 31, 1892. They claim on that date complete exemption from undeveloped land duty for the financial year ending March 31, 1913, to the extent of 40 acres on account of the 2,000*l.* for roads, and the 2,000*l.* for sewers spent during the last twenty years, but do not claim exemption in respect of the other expenditure. The Commissioners on the other hand give them exemption only for 20 acres, holding that the expenditure in question (4,000*l.*) must to the extent of 100*l.* per acre be allocated to the land which has been sold "as being the land with a view to the development of which . . . the expenditure has been in the main incurred"; 2,000*l.* then only remains for the retained land, and this is allowed to give exemption to 20 acres selected by the Commissioners, on the principles of the words just cited from s. 16 (2) (*b*).

Note on Illustration.—It seems clear that *all* the expenditure will have to be spread over all the land in respect of which it was originally made and deducted from total value for the purpose of ascertaining site value under s. 25 (4). The two processes of ascertaining complete exemption and reduction of site value will be contemporaneous.

(3) For the purposes of undeveloped land duty, the site value of undeveloped land shall be taken to be the value adopted as the original site value or, where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained:

Provided that where increment value duty has been paid in respect of the increment value of any undeveloped land, the site value of that land shall, for the purposes of the assessment and collection of undeveloped land duty,

§ 16 (3). be reduced by a sum equal to five times the amount paid as increment value duty.

The Value adopted as the Original Site Value.—The duty is levied on the basis of the original site value until the first periodical valuation has been made, and then on the basis of that and any subsequent periodical valuation for the time being in force. For the adoption of the original site value, see *post*, s. 27 (2), (4), and (6). It would seem, therefore, impossible to escape three years' arrears of the duty (s. 19), since the original site value may practically be fixed at any time (s. 26 (1)).

Original Site Value ascertained according to ss. 25, 26, and 27.

Subsequent Periodical Valuation. See s. 28.

Provided that . . . Increment Value Duty.—Illustration.—The original site value of undeveloped land is 500*l.* The site value on January 1, 1912, being the first occasion on which increment value duty becomes due, is 600*l.* Deducting the 10 per cent. from 500*l.* under s. 3 (4), the sum of 50*l.* is the increment value on which duty at the rate of 1*l.* for every complete 5*l.* (s. 1 (1)), that is, the sum of 10*l.*, has been paid; 50*l.* is also, under this sub-section, the amount by which the value of the site is reduced for the purpose of the undeveloped land tax, which is therefore payable on the sum of 550*l.* But if, as is possible, the amount paid as increment value duty within the meaning of the sub-section includes the duty remitted under s. 3 (4), which by that sub-section is "deemed to have been paid," then the site value will be reduced by a further sum of 50*l.*, and undeveloped land duty will be payable only on 500*l.*

The effect of this provision appears to be that on any occasion on which undeveloped land duty is assessed the site value, as fixed at the last general valuation under s. 26 or s. 28, must be reduced by the amount of increment value up to the last payment of increment value duty. If the increment has occurred since that valuation, undeveloped land duty will be paid on a site value reduced below that of the general valuation, which is a curious result. An alternative but less probable construction is that the existing five-yearly valuation is not to be disturbed, and that the reduction in site value is only to take place after the next quinquennial valuation. But this construction ignores the fact that the second paragraph is a proviso or modification of the first paragraph, and that the reduction is not for purposes of valuation, which is quinquennial, but of "assessment and collection," which are annual.

Payments on account of undeveloped land duty do not in any way go to reduce subsequent payments of increment value duty. But it is evident that the undeveloped land duty paid in respect of all rises in site value after April 30, 1909, is only in fact so paid till the first payment of increment value duty, after which by virtue of this sub-section it ceases to be paid.

§ 16 (3).

It would be advisable for the purchaser of undeveloped land, whose vendor paid increment value duty, at once to give notice to the district valuer, or to the Commissioners, claiming to have the assessment reduced in pursuance of this section. It is possible that after assessment a claim may be too late. It is, however, submitted that this is not the case, and that in any event it is the duty of valuers to obtain from the registry of the Commissioners particulars of increment value duty paid before assessing undeveloped land duty.

The sub-section is in pursuance of the general policy of the Act of not placing two of the new land taxes on the same values.

(4) For the purposes of undeveloped land duty undeveloped land does not include the minerals.

Does not include the Minerals.—Minerals and mineral royalties are the subjects of a special tax which is leviable whether the surface is or is not subject to the undeveloped land duty (ss. 20 to 24). It is assumed that the sub-section means that undeveloped land does not, for the purposes of estimating its value for the purposes of the tax, include the value of the minerals. Probably this would have been clear without this sub-section. Under s. 23 (2), "For the purpose of valuation under this part of this Act, all minerals shall be treated as a separate parcel of land; but where the minerals are not comprised in a mining lease, or being worked, they shall be treated as having no value as minerals, unless the proprietor of the minerals, in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value. Minerals which are comprised in a mining lease, or are being worked, shall be treated as a separate parcel of land, not only for the purpose of valuation, but also for the purposes of the assessment of duty under this part of this Act."

Case where full value of surface and minerals cannot be realised.

In some cases it may be impossible that the full value of the surface as developed land, and of the minerals under that surface, should both be realised. If the minerals are taken, the surface may necessarily be injured or destroyed, and if the surface be preserved intact, the minerals, or some of them, may not be able to be gotten. It is difficult to say whether under ss. 23 and 25 there is anything to compel or even to allow a reduction on this account in site or capital value. That may not always be prejudicial to the subject, since a high original site value both as regards land and minerals is a protection against increment value duty. It is true that as regards undeveloped land duty the high site value will increase the duty; but the duty will cease or decrease when the surface is destroyed or rendered less valuable. In cases where it is probable that a valuable surface will be sacrificed to more valuable minerals, it is suggested that it would be fair to value the surface for the purposes of undeveloped land duty accordingly at a low figure, since it is practically not available for being developed. The difficulty will arise in cases

§ 16 (4) where it is uncertain whether the owner will or will not elect to destroy his surface, by getting his minerals, and in these cases it seems that the owner will probably have to pay undeveloped land duty until he actually by mining operations takes his land out of the category of undeveloped.

It is, of course, clear that surface land actually used for mining purposes is not undeveloped.

SECTION 17.

§ 17 (1). Exemptions from undeveloped land duty, and allowances.

17.—(1) Undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed fifty pounds per acre.

For a classified list of exemptions from this duty see the Explanatory Summary, pp. xcvi. to cii., *ante*.

Site Value.—As ascertained under s. 25, site value is not the same thing as agricultural value. The value of growing timber, fruit trees, fruit bushes, and other things growing thereon must be considered to be non-existent in estimating site value (s. 25 (2)), and any cost of divesting the land of these must be deducted from total or real value as ascertained under s. 25, in order to arrive at assessable site value. The further deductions from gross site value in order to arrive at net or assessable site value under s. 25 will be considered under that section. It is enough here to point out that there is a distinction, and there may be a considerable difference in value between the site value and the agricultural value of land. The agricultural value of land may exceed its site value, as where land, without buildings, is worth 100*l.* per acre for use as fruit or hop land, but for building purposes is worth only 80*l.* If the agricultural value does thus exceed the site value, but the land is not agricultural land, *i.e.*, land used or employed in agriculture, but is used, say, as a deer forest, or is lying idle, the land will be taxed on the site value, provided that the site value exceeds 50*l.* per acre. In this case the whole site value will be taxed, and not only the excess of site value over agricultural value, or over 50*l.* value. If the land is actually employed in agriculture and the site value does exceed 50*l.* per acre, the next section applies.

(2) In the case of agricultural land of which the site value exceeds fifty pounds per acre, undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes.

Illustration.—The total or selling value of land employed as a hop garden is 80*l.* an acre, as ascertained under s. 25 (1) and (3), and this is

the value of the land for agricultural purposes. The site value of the land is 70*l.* an acre as ascertained under s. 25 (2) and (4). Undeveloped land duty is not chargeable on the land. The site value is less than the value for agricultural purposes. If the site value had been 100*l.* an acre, then undeveloped land duty would have been chargeable on 20*l.*, the duty being 10*d.* § 17 (2).

Agricultural Land of which the Site Value exceeds £50 per Acre.—For a note on the valuation of agricultural land, see notes to s. 7 (*ante*, p. 130); see also general note on agricultural land (s. 41), *post*, p. 463. The site value of the land is not the site value at the date of the assessment, but up to January 1, 1915, the site value as ascertained on the original site valuation under s. 26, and thenceforward the site value on the quinquennial valuation next preceding the date of assessment (s. 16 (3); s. 28). It is thought that the value of the land for agricultural purposes is the value at the date of assessment, and that the value as ascertained on the general valuation is only a *primâ facie* value; but this is doubtful (s. 26 (1); s. 33 (1) (b)). See note on p. 135.

By which the Site Value of the Land exceeds the Value of the Land for Agricultural Purposes.—"Site value" is contrasted with value for agricultural purposes. In arriving at site value you must imagine the land stripped not only of buildings, but of "all growing timber, fruit trees, fruit bushes and other things growing thereon" (s. 25 (2)). In arriving at the value of the land for agricultural purposes, it would seem that you value the land as it actually stands with its trees, bushes, and other things growing thereon. But "land," in its legal signification, includes houses, buildings, etc., on the land.

Are you then in arriving at "the value of the land for agricultural purposes" to value the land composing a farm with the farmhouse and farm buildings as part of the land. If so, the assessment will of course be materially diminished, because the agricultural value will be increased. This is no doubt the *primâ facie* meaning of the sub-section. It may, however, be suggested that the contrast in this sub-section is between the value of the land in its natural and non-legal sense, not including the buildings thereon, and considered as capable of being used in agriculture only, and the site value of the same land considered as capable of being used for all purposes. A third view may be taken, and perhaps this may be the right interpretation of the sub-section, namely, that the equitable method of applying the undeveloped land duty to a farm is to separate the farmhouse and the buildings forming part of that house, *i.e.*, the buildings in the same curtilage, from the rest of the farm, treating them as developed land and not subject to the duty, and to assess the duty (under s. 29 (1), *post*, p. 335) in respect of the value of the rest of the farm, including in that value the value of the farm buildings. See also the notes to s. 7, p. 131, and s. 26, p. 311.

§ 17 (2). Compare this sub-section with s. 7, a corresponding provision exempting agricultural land from increment value duty. The exemption conferred by this sub-section is wider than that given by the former. Increment value duty (under s. 7) is payable on the whole increment, from the datum line of April 30, 1909, when once the land has risen to a higher value than its value for agricultural purposes, even though all but the last few pounds of that increment took place when it had no higher value than its agricultural value, and was in fact agricultural increment. Under this sub-section undeveloped land duty is chargeable only on the difference between the agricultural value and the higher value for building or trade purposes.

It seems clear that the ordinary roadside piece of apparently waste building land, provided that it is worth more than 50*l.* per acre, is chargeable with duty on its whole capital value. It is not agricultural land, but of course it is entitled to the benefit of any exemption under s. 16 (2) (b).

(3) Undeveloped land duty shall not be charged—

(*a*) On the site value of any parks, gardens, or open spaces which are open to the public as of right; or

(*b*) On the site value of any woodlands, parks, gardens, or open spaces reasonable access to which is enjoyed by the public or by the inhabitants of the locality (including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise) where, in the opinion of the Commissioners, that access is of public benefit;

(*c*) On the site value of any land where it is shown to the Commissioners that the land is being kept free of buildings in pursuance of any definite scheme, whether framed before or after the passing of this Act, for the development of the area of which the land forms part, and where, in the opinion of the Commissioners, it is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings; or

(*d*) On the site value of any land which is bonâ fide

used for the purpose of games or other recreation where the Commissioners are satisfied that the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where, in the opinion of the Commissioners, other circumstances render it probable that the land will continue to be so used. § 17 (3).

Where any land kept free from buildings in pursuance of any definite scheme has received the benefit of an exemption from undeveloped land duty by virtue of this section, that land shall not be built upon unless the Local Government Board give their consent, on being satisfied that it is desirable in the interests of the public that the restriction on building should be removed; and any such consent may be given subject to such conditions as to the mode in which the land is to be built upon as the Local Government Board think desirable under the circumstances.

The opinion of the Commissioners as to matters which are expressed to be matters for the opinion of the Commissioners under this subsection shall be final and not subject to any appeal.

(*a*) **Parks, Gardens, or Open Spaces open to the Public as of Right.**—Probably this means to all and not a limited section of the public, as the inhabitants of a certain town. But does the exemption frank a park through which there is a public footpath, or which is interspersed with such footpaths? In the House of Commons, Viscount Haldane, the Secretary for War, said not (see Parliamentary Debates, August 11, 1909, p. 536). It would seem that this exemption is of very limited scope, since most parks, gardens, and open spaces open to the public as of right obtain exemption under s. 35 (Rating Authorities) or s. 37 (Land held for charitable purposes). Again it will be difficult to find a park, garden, or open space which obtaining exemption under (*a*) would not also obtain exemption under (*b*). Woodlands are not mentioned in (*a*), but being in (*b*) the omission appears of no importance.

There are definitions of open spaces in the Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 1; the Open Spaces Act, 1906 (6 Edw. 7, c. 25), s. 20, the Town Planning Act, 1909 (9 Edw. 7,

§ 17 (3). c. 44), s. 73 (4), and the Development, etc., Act, 1909 (9 Edw. 7, c. 47) s. 19 (1), which might be consulted if any question arises on this sub-section as to what the Legislature has intended in prior legislation by an open space, but their bearing seems remote on the present sub-section.

A golf course has been an "open space" within the improvement section (s. 25, xvii.) of the Settled Land Act, 1882 (*De La Warr's Settled Estates*, 27 T. L. R. 534), but the decision is hardly in point.

For a decision as to what is a "park" within the meaning of 5 & 6 Will 4, c. 50, s. 54, a Highway Act, see *R.* v. *Bradford*, [1908] 1 K. B. 365.

(*b*) **Reasonable Access to which is enjoyed . . . Amenity of the Locality.**—Under this exemption the enjoyment need not be as of right. Difficult questions will arise. Access daily or once or twice a week? What if there is a small charge, the proceeds of which are given to local charities? The right to roam at will or only to walk on specified paths, etc.? What is comprised in the phrase "inhabitants of the locality"? all the inhabitants of the neighbouring town or villages, or a selected few, as those who live in the parish of St. Peter's, or in John Street, or within a distance of one mile from the park, etc.? It is clear that while it is a condition of exemption under (*a*) that the whole public should be admitted, the admission of some narrower class will satisfy (*b*). There must be (1) reasonable access; and (2) that access must make the locality a pleasanter or healthier one to live or be in, *i.e.*, it must be of public benefit.

It will be noted that the Commissioners, in addition to their other duties under the Act, are to be judges of whether the access enjoyed by any of the naval or military forces of the Crown, for the purposes of training or exercise, is of public benefit (sub-s. (3) (*b*)).

(*c*) **Definite Scheme . . . for the Development.**—It does not appear that such scheme must be legally incapable of being altered. All that seems requisite is that the owner of the estate *bonâ fide* intends to keep certain land free of buildings in the course and for the purpose of developing that estate in a certain way. Note in this respect the paragraph following (*d*) in this sub-section. Compare also with s. 16 (1) (b) "in any scheme of land development."

(*c*) **Reasonably Necessary** is perhaps equivalent to advisable.

(*c*) **In the Interests of the Public.**—Probably as adding to the amenities or health of the neighbourhood.

(*c*) **Or in View of the Character of the Surroundings or Neighbourhood.**—Even if there are plenty of open spaces, yet if the land in question is in character with the neighbourhood it may claim exemption.

(*d*) **Bonâ fide used for the purpose of Games.**—Compare with s. 9 (see p. 141), relating to increment value duty and an analogous exemption limited to bodies corporate or unincorporate.

(*d*) **Under some Agreement with the Owner . . . which could not be determined for . . . at least Five Years, or . . . other Circumstances render it probable . . . will continue to be so used.**—These words will hit the two different classes of cases, *i.e.*, (1) where the land is hired from the owner and the person or body hiring it controls the games or recreation as in the case of the ordinary cricket, etc., club renting land; and (2) where the owner, whether private individual, or club controls the games or recreation as in the case of Lord's, the Oval, and many well-known clubs. The circumstances rendering it "probable," etc., as a reason for exemption, are not, however, confined to class 2, but apply as well to class 1. § 17 (3).

It must be noted as to class 1 that the five years limitation relates only to the commencement of the term. The land is exempt in the fifth as much as in the first of the five years. Even if the agreement does not itself specifically provide that the land shall be used for games, the alternative of probability that it will be so used may give the exemption.

This section would seem to cover the case of a private golf course in a park or fields. In such a case it might be more difficult to show those "other circumstances" which render it probable that the land will continue to be so used than in the case of a club. Still it is submitted that the owner can often make out such a case.

That Land shall not be built upon unless . . . removed.—This provision seems stringent, but is intended to prevent attempts to evade the duty. Conditions as to the class of buildings to be erected and the like are doubtless aimed at in the paragraph.

The Opinion of the Commissioners . . . shall be Final and not Subject to any Appeal.—It is difficult to see why this limitation is placed on appeal as to the specific matters mentioned. Many of them may involve large sums of money since they will give rise to decisions which may, and usually will, decide taxation for years. At all events there ought to be an appeal to a referee. The matters certainly include the questions (1) whether the access under (*b*) is of public benefit; (2) whether under (*c*) it is reasonably necessary in the interests of the public or in view of the character of the surroundings or neighbourhood that the land should be kept free from buildings; and (3) whether under (*d*) it is probable that the land will continue to be used for games, etc. It is doubtful whether the question as to the existence of an agreement with the owner of the nature indicated in (*d*) is one of the matters as to which there is no appeal from the Commissioners. As to all other findings involved in (*a*), (*b*), (*c*), and (*d*), as for example whether a park is open to the public as of right, or whether reasonable access is enjoyed to a park, or whether there is a definite scheme under (*c*), or the land is being kept free from buildings in pursuance of such a scheme, all such are subject to appeal in the ordinary way, first to a referee and then to the High Court.

§ 17 (4). (4) Undeveloped land duty shall not be charged on the site value of any land not exceeding an acre in extent occupied together with a dwelling-house or on the site value of any land being gardens or pleasure grounds so occupied when the site value of the gardens and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A. :

Provided that the exemption under this provision shall not apply so as to exempt more than five acres, and where the land, gardens, or pleasure grounds occupied together with a dwelling-house exceed five acres in extent, those five acres shall be exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connexion with the dwelling-house.

Where the dwelling-house, gardens, and pleasure grounds are valued for the purpose of income tax under Schedule A., together with other land, the total annual value shall be divided between the dwelling-house, gardens, and pleasure grounds and the other land in such manner as the Commissioners may determine.

Any Land not exceeding an Acre in Extent occupied together with a Dwelling-house, etc.—The exemptions under this section are two in number:—

(*a*) An exemption of any land not exceeding an acre in extent occupied together with the dwelling-house. If more than one acre is so occupied the exemption can only be given on satisfying the conditions as to (*b*). Whether the yards and stables, etc., will be part of the dwelling-house or are to be reckoned in the acre is not clear. It is thought that they are part of the dwelling-house, because in the latter part of the first paragraph the site value of the gardens, pleasure grounds, and dwelling-house is treated as being exhaustive of the unit of taxation, and a relation is established between their site value and their annual value under Schedule A, which includes the value of the yards and stables. Yards and stables are certainly not gardens and pleasure grounds, and therefore must, it is submitted, fall under the term "dwelling-house." This exemption is independent of any relation between site value and annual value under Schedule A.

(*b*) The second exemption is of a dwelling-house with more than one

acre of land, being gardens or pleasure grounds, attached. Exemption is given to the extent of five acres in respect of land being gardens and pleasure grounds (but *quære* if the land is not so used, but is, for example, a field or paddock), provided that the site value of the gardens and pleasure grounds together with the site value of the house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted under Schedule A. If the land, gardens, or pleasure grounds exceed five acres in extent, those five acres are to be exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connection with the dwelling-house. It seems doubtful whether any land not being used as a garden or pleasure ground is entitled to the benefit of the exemption, even if it be "adapted" (? adaptable) for use as such.* **§ 17 (4).**

Under Schedule A.—See note on s. 8, p. 138.

When the Site Value . . . does not exceed Twenty Times the Value, etc.—Example.—The site value of Cecil Villa and grounds, between four and five acres in extent, is 2,000*l.* The annual value of the same property as adopted for the income tax under Schedule A. is 130*l.*; twenty times this value is 2,600*l.* Unoccupied land duty is not therefore payable on the grounds. But if the site value of the grounds and house had been 2,700*l.*, which is 100*l.* more that the Schedule A value, duty would have been payable on the full site value, 2,700*l.*, of the house and grounds. The effect of the sub-section is therefore to give exemption only to gardens and pleasure grounds of which the site value is not very great as compared with the rental value of the property as a whole. Undeveloped land duty will therefore usually be paid on the grounds (over one acre) attached to a comparatively small, or at all events inexpensive, house in a neighbourhood where site values are high.

(5) Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the thirtieth day of April nineteen hundred and nine, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. Provided that where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be

* It also seems doubtful whether the site and annual values to be compared are those of the whole property, or only of the dwelling-house and five acres selected. The last paragraph of the section does not seem necessarily decisive.

§ 17 (5). deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power.

Agricultural Land.—See the definition of "agriculture" in s. 41. Of course if the site value of the agricultural land in question does not exceed 50*l.* per acre, then under sub-s. (1) it will be exempt; and in any event it will have exemption under sub-s. (2) up to the limit of its agricultural value.

Held under a Tenancy.—The owner, *i.e.*, the freeholder or leaseholder for an unexpired term of over 50 years, is the person liable to undeveloped land duty. Hence the exemption is given to the landlord by this sub-section.

The Original Term.—If this sub-section were read without reference to the definition clause, it would seem that if the lease contains an option of renewal by the tenant, which is exercised, the exemption from undeveloped land duty is at an end. The landlord is thenceforward during the renewed lease to pay the duty. But under s. 41 "the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed." The word "original" in this sub-section, though perhaps not necessary, seems used to distinguish a holding under the lease, including a holding under a renewed term granted in pursuance of a covenant in the lease, from a holding over on a tenancy from year to year on the terms of that lease, or any prolongation of that lease by agreement subsequent to the date of the Act. This construction, no doubt, would be fairer than a construction which would make the landlord liable to undeveloped land duty, although he would have no power to get possession of the land for the purpose of developing it.

It is clear from the proviso that if the landlord has power to determine the lease or agreement, and does not do so, the exemption is at an end, and he must pay undeveloped land duty. Therefore a landlord who has not given notice to his tenant to quit on the first date after April 30, 1910, for which he could legally so give notice will not be able under this sub-section to claim exemption from duty leviable after the date for which notice might have been so given. If he has let the land since April 30, 1909, he cannot claim exemption whether he has given notice or not.

It would further seem that a landlord whose tenant has not carried out an agreement with him to do something which would prevent the land continuing to be undeveloped will nevertheless be liable to the duty. His remedy will be against his tenant.

SECTION 18.

§ 18. Exemption of small holdings from undeveloped land duty.

18. Undeveloped land duty shall not be charged on the site value of any agricultural land, occupied and cultivated by the owner thereof, where the total value of that land, together with any other land belonging to the same owner, does not exceed five hundred pounds.

For the purposes of this provision the expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more.

The corresponding provision relating to increment value duty is s. 8 (2). See p. 138.

Site Value.—See s. 25 for ascertainment of site value.

Agricultural Land.—See definition of "agriculture" in s. 41, and notes on pp. 463—471.

Occupied and cultivated by the Owner.—It does not seem that the owner need reside on the land. Occupation does not necessarily imply residence as in s. 8 (1) (*R.* v. *Justices of West Riding*, 2 Q. B. 505). Payment of rates would doubtless be sufficient *primâ facie* proof of occupation.

Total Value.—Probably this total value is to be ascertained under s. 25 (3). If so, it necessarily includes the value of the buildings. The Commissioners will be able to obtain from their district collectors and from the Registry to be established under s. 30 particulars of the total value of the "other land."

Any other Land belonging . . . Owner.—The "other land" need not be adjacent. Its situation is immaterial, but it probably must be in the United Kingdom. In terms it need not be agricultural land, but *quære?* It would seem that the other land is to be valued with its buildings, since they are included in total value (s. 25 (3)).

The expression "Owner" in this section differs from its meaning as defined by s. 41. A leaseholder with an unexpired term of a year or a day is an owner under this section if the term was originally for fifty years or more.

SECTION 19.

§ 19. Recovery of undeveloped land duty.

19. Undeveloped land duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January of the year for which the duty is

§ 19. charged, and any such duty for the time being unpaid shall be recoverable from the owner of the land for the time being as a debt due to His Majesty, and shall be borne by that owner notwithstanding any contract to the contrary.

If at any time undeveloped land duty is not assessed within the year for which it is charged, owing to there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason, the duty may be assessed at any time, and shall be payable at any time after the expiration of two months from the date of the assessment, so, however, that no such duty shall be assessed more than three years after the expiration of the year for which it is charged.

Importance of s. 29 (1) as to undeveloped land duty.

Undeveloped Land Duty shall be assessed by the Commissioners.—It is in relation to undeveloped land duty that the power of the Commissioners under s. 29 (1), *post*, p. 335, to assess any duty "on or in respect of such pieces of land whether under separate occupation or not" as they think fit is most likely to give rise to controversy. In the case of increment value duty, reversion duty, and mineral rights duty, the subject of taxation will usually be also the natural unit of taxation. It would savour somewhat of unfairness to split up a piece of land on a transfer on sale or on death for the purpose of preventing the natural set-off of the decrement of one part of that land against the increment of another. But in the case of undeveloped land duty there will probably not be much reluctance on the Crown's part to assess separately all land which passes the 50*l.* and agricultural value limits, notwithstanding that if such land were assessed together with all the other land in the same occupation the average value of the whole would be on the right side of the taxable limit.

Meaning of "shall be assessed."

By the words "shall be assessed" it is understood is meant, "shall be fixed on a valuation previously made," that is on either the original (s. 26) or the quinquennial (s. 28) valuation, or the provisional valuation antecedent to either (s. 27 (6)). It is not thought that the words in question give any independent power of valuation at the time of assessment to the Commissioners. But the point is perhaps not of much importance, since if a piece of land escaped original site valuation for twenty years, and then the Commissioners found it out, it is probable that they could even then make the original site valuation under s. 26, on which undeveloped land duty is to be paid until the site value has been ascertained under a quinquennial valuation (s. 16 (3)). There is no proviso attached to s. 26 or s. 27 similar to

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that in s. 28, suggesting that unless the valuation be begun to be made in the quinquennial year of valuation it cannot be made at all.

Site value settled by the general valuation.

It must not be forgotten that the owner cannot raise, against an assessment of undeveloped land duty by the Commissioners, any objection questioning the site value on which the duty is levied. That is determined by the original or the quinquennial valuation as the case may be, and can be questioned only on an appeal against the determination of the Commissioners in relation to such general valuation (s. 33 (1), proviso (*b*)). But it is thought that the value for agricultural purposes found on the general valuation can be questioned on the assessment (see p. 195, *ante*).

Shall be payable at any Time after the First Day of January for the Year for which the Duty is charged.—Like income tax, undeveloped land duty is charged for the financial year which ends March 31. Up to and including January 1 no duty is payable, and it is conceived, but not with confidence, that an owner who sells his land before January 2 incurs no liability to the Crown for the duty which becomes payable on January 2. It is further thought that a purchaser who buys land liable to undeveloped land duty before January 2 has no right, in the absence of agreement, to call upon his vendor to pay an apportioned part of that duty (see next note).

Any such Duty for the Time being unpaid shall be recoverable from the Owner of the Land for the Time being.—The expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that, where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease, or, if there are two or more such leases, the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid (s. 41).

Tenants for life and in tail in possession are therefore owners as well as tenants in fee. *Quære* whether the equitable tenant for life or the trustee is the owner for the purposes of this duty (see the note on p. 460, *post*)?

The occupier is not liable for or concerned with the tax, which is in no way charged on or payable out of the land.

Liability to duty when land sold.

The question will undoubtedly arise, who is liable to pay the duty for the financial year ending March 31 when the land has been sold after January 1, after which date the duty "shall be payable." It is not clear, on the words of s. 19, that the duty is payable after that date unless and until it is demanded, but it may be assumed that the assessment is duly made and a demand note for payment on January 2 duly served. On January 3 A., the owner in fee, sells his interest to B. On April 3, the duty being still unpaid, B. sells his interest to C. (1) Who is liable to the Crown? (2) As between A., B. and C. who must pay the duty?

§ 19. "The owner of the land for the time being" is liable to the Crown. But what time is meant by "the time being"? Four constructions at least are possible. The time being may be January 2, the date the duty is payable, and the owner on that day may be the one person liable. Secondly, the time being may be the interval between January 2 and April 1, the commencement of the next financial year, and any one who has owned the land between those two dates may be suable by the Crown. Thirdly, it may be that the duty accrues *de die in diem*, and each owner is liable for the amount accrued during his period of ownership. Fourthly, the owner for the time being may be the person who is the owner at the time of the commencement of proceedings by the Crown to recover the duty, and he may be liable to all the duty, including all the arrears of duty unpaid at the commencement of the proceedings. If it is thought that a text-writer should express his view on so difficult a point, that of the writer, for what it is worth, is that the true construction of the words is either that first or that fourthly suggested; and he inclines to take the former.

Who is liable as between vendor and purchaser?

Secondly, as between A., B., and C., who is the person liable to the duty? If the view fourthly above suggested is correct, it would seem that as between vendor and purchaser the duty, including all arrears thereof, must be borne by the purchaser, at all events if no proceedings have been commenced by the Crown before the contract of purchase, for its recovery from the vendor. If the statute makes ownership at the commencement of the action the test of liability, the vendor can be under no obligation towards the purchaser either to pay the duty up to completion, or to disclose the fact that it is unpaid. The duty is not a charge on the land, but if it were, it is a public or notorious charge of which the purchaser has notice. Intending purchasers, therefore, should make full inquiry from their vendors before contract as to any arrears of undeveloped land duty. Especially should this be done until it becomes reasonably certain that the 1909–10 and 1910–11 assessments, which may not at the time of writing have yet been made, have been discharged. If the view firstly above suggested is correct, A., the vendor, is alone liable to the duty, and it would seem has no right of recoupment from B.

Analogy from law of rating.

Little light is thrown upon the question as to the liability of a purchaser for unpaid undeveloped land duty by the analogy of the law of rating. It appears that the person in occupation at the time the rate was made was liable to the full poor rates under the statute 43 Eliz. c. 2, even though he went out of occupation before the expiration of the period for which it was made. This liability for rates covering a period when out of possession was abolished, in the case where one occupation immediately succeeded the other, by s. 12 of 17 Geo. 2, c. 28, but remained so long as the premises continued unoccupied during the period in question (*Edwards* v. *Rusholme*, (1869) 4 Q. B. 554). After an ineffectual statutory effort (32 & 33 Vict. c. 41,

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s. 16) to remedy this hardship, frustrated by decisions of the Courts (*Overseers of St. Werburgh, Derby* v. *Hutchinson*, (1879) 5 Ex D. 19; *Hare* v. *Overseers of Putney*, (1881) 7 Q. B. D. 223), it was finally provided by 45 & 46 Vict. c. 20, s. 3, that "such outgoing occupier shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant." But it should be noted that the Poor Relief Act, (43 Eliz. c. 2), creates the liability to pay rates in language quite other than that of s. 19 of the Act of 1910.

Liability for arrears of duty.

Under the second paragraph of this section the amounts of undeveloped land duty becoming due on January 2, 1910, January 2, 1911, January 2, 1912, and January 2, 1913, respectively, can all be assessed up to March 31, 1913, and can be assessed on the provisional valuation (s. 27 (1)) if the original site valuation to be made under s. 26 has not then been finally settled. Purchasers of land liable to undeveloped land duty may therefore, if the view fourthly suggested be correct, for the next few years be undertaking a substantial liability in respect of such duty.

Debt due to His Majesty.—There are no words taking away the Crown's priority. See note as to increment value duty and that priority (p. 84). It seems more probable that undeveloped land duty, which is an annual duty, is included in the words of the statutes there referred to, so as to give the Crown priority in bankruptcy and the winding up of companies, than increment value duty, which is an occasional duty.

Notwithstanding any Contract to the Contrary.—It seems reasonably clear that these words invalidate any agreement entered into after the commencement of the Act whereby a tenant covenants with the landlord to pay undeveloped land duty. But *quære* as to any existing covenants by tenants to pay taxes, etc., couched in language wide enough to include undeveloped land duty, unless prevented from including it by this section. It is thought that the section is retrospective in this respect, and that the tenant cannot be made to reimburse the duty to the owner. But compare s. 20 (4) (p. 225); compare also the statutes relating to Property Tax (5 & 6 Vict. c. 35), s. 60, Schedule A, No. 4, rr. 9, 73, 103, and 16 & 17 Vict. c. 34. See also *Wooler* v. *North Eastern Breweries*, [1910] 1 K. B. 246, and the remarks at p. 251 of Mr. Justice Darling.

Contract by purchaser to pay duty.

Do these words invalidate a contract with a purchaser that the vendor shall pay the duty outstanding then actually payable; or, assuming that the interpretation put on the words "owner for the time being" in the note on p. 205 is incorrect, do they prevent the vendor agreeing with the purchaser that the latter shall pay the duty due at the date of the contract? These are difficult questions. It seems so incredible that the Legislature could have intended to invalidate an agreement between

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vendor and purchaser of the nature referred to, that until it has been decided that such is really the case, it will be submitted that the section does not relate to contracts between persons interested in the land as "owners," but between persons so interested and tenants of the land.

If at any Time, etc.—The second paragraph of the section establishes a quasi-statute of limitations for the recovery of undeveloped land duty. The duty must be assessed (not recovered) within three years after the expiration of the year for which it is charged, or it cannot be assessed at all. It is charged by this Act (s. 16) for every future financial year until the charge is taken away or altered by Parliament. If land strictly liable to the charge has managed to escape assessment, it can still be assessed for three back years and the year in which the assessment is made. It may have become developed when the assessment is made, but the former arrears within the prescribed limits may still be recovered. Once assessed the duty can apparently be recovered at any length of time.

Second paragraph applicable at present time.

The same paragraph precisely hits the present position of all undeveloped land in the country. Under s. 16 (1) the duty was to be levied for the financial ending March 31, 1910, but during that year no valuation was either provisionally made or finally settled for that year. Many provisional valuations upon which undeveloped land duty will be payable were not made on March 31, 1911, the end of the second financial year in respect of which undeveloped land duty is payable.

Every assessment will be made on the original site valuation, unless a subsequent periodical site valuation has been made, and then the assessment will be on the later valuation (s. 16 (3)). It seems, therefore, that land originally valued under s. 26 (1) will not necessarily escape undeveloped land duty even for a year, by being omitted from periodical valuation under s. 28.

With this section compare s. 27 (6) (*post*, p. 329), under which duty is to be assessed on the original provisional valuation until the original valuation is finally settled, when there is (if necessary) to be an adjustment of the duty. The second paragraph of s. 19 applies in case the duty is not assessed owing to there being "no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason." Apparently then, even if the value is shown in a provisional or settled valuation, but owing to carelessness of the officials no assessment is made, the paragraph will apply.

Under the combined effect of the two sections (s. 19 and s. 27 (6)) it would appear that as soon as an original provisional valuation is fixed, say in the month of March, 1913, duty can be assessed thereon for practically four years back. Thus the duty charged for the year ending March 31, 1910, can be assessed on a provisional valuation together with the duty for the years ending March 31, 1911, 1912, and 1913, up to but not later than March 31, 1913, and will be payable by the "owner of the

land for the time being" (*ante*, pp. 205 and 206) whatever may be the meaning of that phrase. § 19.

Shown in the provisional Valuation.—For the provisional valuation see s. 27, *post*, p. 320.

Value . . . finally settled.—For the final settlement of the valuation see s. 27 (4), (5), (6), and notes thereon, *post*, pp. 325, 326, 329.

Shall be payable at any Time after the Expiration of Two Months from the Date of the Assessment.—If the duty for the financial years ending March 31, 1910, 1911, 1912, and 1913, is not assessed till March 31, 1913, it will be payable on June 1, 1913.

Mineral Rights Duty and Provisions as to Minerals.

SUMMARY OF SECTIONS 20 TO 24.

Sects. 20 to 24 relate to duties affecting minerals.

Sect. 20 creates mineral rights duty, fixes its amount and incidence, defines or describes the "rental value" on which it is levied, empowers the Commissioners to obtain the necessary information to enable them to levy it, and exempts certain substances from its operation.

Sect. 21 regulates the incidence of the duty as between lessors and underlessors.

Sect. 22 exempts mineral leases from reversion duty, creates a special method of levying an annual increment value duty on minerals subsequently leased or commenced to be worked, and provides for the incidence of that duty in the case of underleases, exempts from increment value duty all minerals in lease or being worked on April 30, 1909, provides against payment both of increment value duty and mineral rights duty on the same rental value, and establishes a special method of ascertaining the original capital value of minerals in lease or being worked on April 29, 1909.

Sect. 23 defines or describes the total and capital (site) value of minerals and contains various provisions with respect to the valuation of minerals.

Sect. 24 defines or describes the various terms used in the Act in relation to minerals.

SECTION 20.

20.—(1) There shall be charged, levied, and paid for the financial year ending the thirty-first day of March nineteen hundred and ten and every subsequent financial year on the rental value of all rights to work minerals and of all mineral wayleaves, a duty (in this Act referred to as a mineral rights duty) at the rate in each case of one shilling for every twenty shillings of that rental value. § 20. Mineral rights duty.

§ 20 (1). **For the Financial Year ending March 31, 1910, and every subsequent Financial Year.**—The duty is a continuing one. The contrast of "financial year" for which the duty is charged with "working year" in respect of which it is paid will be noted. The first payment of duty is for the taxes of the financial year ending March 31, 1910. It is payable at any time after January 1, 1910. It is actually paid in respect of the receipts during the working year ending on September 30, 1909, or on such other day before January 1 (in the financial year) as may be approved by the Commissioners (s. 24, par. "The expression 'working year'"). There is no provision in relation to this duty similar to the second paragraph of s. 19. Can it be assessed after the financial year for what it is payable has expired?

Rental Value.—See sub-s. (2) for definition of.

Rights to Work.—There is no definition of the phrase "rights to work." It clearly includes rights to work minerals arising from ownership of the minerals and rights to work arising under a lease or a licence. For the definition and extensive meaning of "mining lease" see s. 24.

But is a mere trespasser who has carried off another person's minerals liable to the duty? Does it make any difference whether he took them *bonâ fide* believing he had the right to take them, or *malâ fide* knowing that he had no such right? The person who is to pay the duty is the proprietor (s. 20 (4)). The proprietor is defined as "the person for the time being entitled in possession to the minerals" (s. 24). Does entitled in possession mean "rightly entitled," or does it merely indicate the fact of possession? Probably the latter, but the ambiguity is perhaps hardly worth solving. A defence to a claim for duty of the nature of "I stole them," or even "I took them by mistake," is not likely.

Minerals.—There is no definition of minerals in the Act, but sub-s. 5 of this section exempts common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel, from the category of minerals subject to mineral rights duty, and sub-s. (8) of s. 22 exempts the same substances from the annual increment value duty charged in respect of minerals which are comprised in a mining lease made after April 30, 1909, and of minerals which are commenced to be worked after that date. Nevertheless, in so far as such substances are in fact minerals, they will have to be treated as such for the purposes of the Act except where, as in the above instances, the contrary is expressly provided. For instance, the provisions of s. 23 (1) as to the ascertainment of their total value and their capital value; of s. 23 (2), that for the purposes of valuation they are to be treated as a separate parcel of land; of s. 23 (3), that if comprised in a mining lease on April 30, 1909, or being worked by the proprietor on that date, so long as they are for the time being so comprised, or worked, etc., they are not to be subject to valuation under the Act; and of s. 23 (4), that, except where the

context otherwise requires, references in the Act to the site value of land shall, where the land consists of or comprises minerals, be construed as references to the capital value of such minerals, all apply to such of the exempted substances as are in fact minerals. § 20 (1).

The following extract from a well-known standard authority gives a general notion of what is included in the term "minerals" in British law:— What are minerals?

"It has been held that in a legal sense the word minerals *primâ facie* includes not merely coal and ironstone and freestone, but fire clay and china clay or porcelain clay and asphalt or pitch, and also every kind of stone, flint, marble, granite, slate, brick earth, chalk, gravel, and sand; if workable to a profit. And in this respect, it has been held immaterial that the article in question is usually worked or can only be profitably worked by open quarrying. One might summarise these decisions and say a mineral need not be metallic. It need not be subjacent; it need not be worked by a mine; it need not be in any one particular distinguished from any part of the substance of the earth, using the word 'earth' as applicable to every portion of this habitable globe. Even the word 'organic' must be rejected if referred to some of the substances which form part of the earth. On the other hand, stone not workable to a profit has been held not to be a mineral."—MacSwinney on Mines, 3rd ed., pp. 10, 11.

No authorities need be cited establishing the mineral character of such substances as any of the precious metals, coal, iron, tin, or copper. It may be taken as certain that whether the document in reference to which the term "minerals" has to be construed is a conveyance or a lease, or is a special Act of Parliament, or is an Act of Parliament of general application, such as the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 77; the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 18 (containing a provision identical with that in the last-mentioned Act); or the Quarries Act, 1894 (57 & 58 Vict. c. 42), s. 1, the substances just referred to would be considered to be minerals.

On pp. 212 to 215 will be found two Tables. The first gives the effect of the principal decisions as to certain substances, not being minerals in the plain and popular sense, but also not being substances specially exempted from mineral rights duty by virtue of sub-s. 5 of s. 20 of the Act of 1910, and from the annual increment value duty by virtue of s. 22 (8) of the same Act. The second Table gives the effect of the decisions as to the exempted substances.

§ 20 (1).

TABLE I.

NON-EXEMPTED SUBSTANCES.

Substance.	Document to be Construed.	Held to be Minerals in	Held not to be Minerals in
Freestone .	Conveyance of land with reservation of "all mines or seams of coal and other mines, metals or minerals."	*Bell* v. *Wilson* (1866), L. R. 1 Ch. 303.	
Ditto . .	Sect. 70 of the Railway Clauses Consolidation (Scotland) Act, 1845. .	*Jamieson* v. *North British Rail. Co.* (1868), 6 Sc. L. R. 188.	
Ditto . .	Ditto.		*Caledonian Railway* v. *Symington*, [1911] S. C. 552 (Ct. of Sess.)
Stone . .	Special Canal Act reserving mines and minerals.	*Midland Rail. Co.* v. *Checkley* (1867), L. R. 4 Eq. 19.	
Slate . .	Gift in will of all shares in mines of which testator died possessed . .	*Cleveland* v. *Meyrick*, 37 L. J. Ch. 125. Decided apparently on ground that working was by underground mining operations.	
Granite . .	Inclosure Act of 1812, reserving "mines, ores, minerals, coal, limestone, or slate"	*Attorney-General* v. *Welsh Granite Co.* (1887), 35 W. R. 617, C. A.	
Coprolites	Under copyhold lands of a manor .	*Attorney-General* v. *Tomline* (1877), 15 Ch. D. 750.	
Sandstone .	Conveyance reserving all coal, ironstone and other mines and minerals (including fireclay) "lying or being within or under" the land .	*Greville* v. *Hemingway*, [1902] 87 L. T. 443.	
Fireclay . .	Sect. 70, Railway Clauses Consolidation (Scotland) Act, 1845.	*Caledonian Rail. Co.* v. *Glenboig Union Fireclay Co.*, [1911] A. C. 209.	

NON-EXEMPTED SUBSTANCES—*continued.*

Substance.	Document to be Construed.	Held to be Minerals in	Held not to be Minerals in
Sandstone .	Sect. 70 of the Railway Clauses Consolidation (Scotland) Act, 1845, which corresponds to s. 77 of the Railway Clauses Consolidation (England) Act, 1845 .		*North British Railway Co.* v. *Budhill Coal, etc., Co. and Others*, [1910] A. C. 116.
Whinstone .	Sect. 70 of the Railway Clauses Consolidation (Scotland) Act, 1845, which corresponds to s. 77 of the Railway Clauses (England) Act, 1845 . . .	*Forth Bridge Railway* v. *Dunfermline Guildry* (1909), S. C. 493.	
China clay .	Conveyance of freehold by lord to copyholder. Reservation of "all mines and minerals within and under" the premises .	*Hext* v. *Gill* (1872), L. R. 7 Ch. 699.	
Ditto . .	Railway Clauses Consolidation Act, 1845, ss. 77, 78 .	*Great Western Railway Co.* v. *Carpalla Co.*, [1910] A. C. 83.	
Redrock (although not workable at profit) . .	Lease reserving "all mines and minerals within or under the said land" . . .	*Johnstone* v. *Crompton & Co.*, [1899] 2 Ch. 190.	

TABLE II.

EXEMPTED SUBSTANCES (SECT. 20 (5)).

Substance.	Document to be Construed.	Held to be Minerals in	Held not to be Minerals in
Common clay, common brick clay . . .	Sect. 77 of the Railway Clauses Act, 1845 . .	*Midland Railway Co.* v. *Haunchwood Brick, etc., Co.* (1882), 20 Ch. D. 552.	
Ditto . .	Sect. 77 of the Railways Clauses Act, 1845 . .	*Loosemore* v. *Tiverton, etc., Railway* (1882), 22 Ch. D. 25.	

§ 20 (1). EXEMPTED SUBSTANCES (SECT. 20 (5))—*continued.*

Substance.	Document to be Construed.	Held to be Minerals in	Held not to be Minerals in
Common clay, common brick clay . . .	Conveyance reserving "all mines of coal, culm, iron, and all other mines and minerals whatsoever except stone quarries" . .	*Earl of Jersey* v. *Neath Union Rural Authority* (1889), 22 Q. B. D. 555.	
Ditto . .	Waterworks Clauses Act, 1847, s. 18. Undertakers not to be entitled to "any mines of coal, ironstone, slate, or other minerals under any land" . . .		*Glasgow* (*Lord Provost*) v. *Farie* (1888), 13 App. Cas. 657.
Ditto . .	Railway Clauses Act, 1845, ss. 77, 78. . . .		*Great Western Railway Co.* v. *Blades*, [1901] 2 Ch. 624.
Ditto . .	Railway Clauses Act, 1845, ss. 77, 78. . . .		*In re Todd, Birleston & Co.* v. *North Eastern Railway Co.*, [1903] 1 K. B. 603.
Clay not commercially workable . . .	Conveyance of a certain mine, vein, bed, or stratum of coal, ironstone, and pot pipe and fire clay, "and all other mines and minerals lying and being under the defendants' land" . . .		*Skey* v. *Parsons* (1909), 101 L. T. 103.
Common brick earth . .	Conveyance reserving "all mines of coal, culm, iron, and all other mines and minerals whatsoever, except stone quarries" .	*Earl of Jersey* v. *Neath Union Rural Authority* (1889), 22 Q. B. D. 555.	
Sand and gravel	Sect. 1 of the Quarries Act, 1894 . . .	*Scott* v. *Midland Railway Co.*, [1901] 1 K. B. 317.	

EXEMPTED SUBSTANCES (SECT. 20 (5))—*continued.* § 20 (1).

Substance.	Document to be Construed.	Held to be Minerals in	Held not to be Minerals in
Sand . .	Reservation by deed of minerals .		*Staples* v. *Young*, [1908] 1 Ir. R. 135, C. A.
Limestone .	Partition deed reserving mines of lead and coal and other mines and minerals . .		*Darvill* v. *Roper*, 24 L. J. Ch. 779. On ground that minerals did not include stone worked as this was from surface.
Ditto . .	Railway Clauses Act, 1845 (8 & Vict. c. 20) . .	*Midland Railway Co.* v. *Robinson*, L. R. 15 App. Cas. 19.	
Ditto . .	Conveyance of lands reserving "all mines and minerals" . .	*Fishbourne* v. *Hamilton* (1890), 25 L. R. Ir. 483, C. A.	

In various cases, as for example *Salisbury* v. *Gladstone* (6 H. & M. 123), *Church* v. *Inclosure Commissioners* (11 C. B. N. S. 664), *Cowley* v. *Wellesley* (1 Eq. 656), questions relating to minerals have been litigated as between lord of the manor and copyholder, which are decisions rather on the question of waste than of what substances, part of the freehold, are minerals.

The foregoing are the main decisions on the question. In various cases judicial definitions, statements, or explanations of what is intended by minerals have been given. See especially the following :—

Judicial definitions of minerals.

Per Lord Romilly, in *Midland Railway Co.* v. *Checkley*, L. R. 4 Eq. 19, at p. 25 ; *per* Mellish, J., in *Hext* v. *Gill*, L. R. 7 Ch. 699, at p. 712 ; *per* Lord Watson, in *Provost of Glasgow* v. *Farie*, 13 App. Cas. 657, at p. 679 ; *per* Lord Herschell, at p. 683, and *per* Lord Macnaghten at pp. 689 and 690, in the same case ; *per* Lord Esher, M.R., Bowen and Fry, L.JJ., in *Earl of Jersey* v. *Neath Poor Law Union*, L. R. 22 Q. B. D. at p. 555 (see the judgments generally) ; *per* Moulton, L.J., in *Great Western Railway Co.* v. *Carpalla, etc., Co.*, [1909] 1 Ch. 218, at p. 231.

The latest authorities.

It is obvious that no very clear test of what are minerals can be gathered either from decided cases or from dicta. But the recent case of *North British Railway* v. *Budhill, etc., Co.*, [1910] A. C. 116, must, until the question be again considered by the House of Lords, be

§ 20 (1). accepted as laying down the test of what is a mineral. In that case, which was decided on s. 70 of the Railway Clauses (Scotland) Act, 1845, which corresponds to s. 77 of the Railway Clauses (England) Act, 1845, it was laid down by Lord Loreburn, L.C., at p. 127, that the true test is that laid down by Lord Halsbury in *Provost of Glasgow* v. *Farie*, 13 App. Cas. 657. The Court has to determine "what these words meant in the vernacular of the mining world, the commercial world, and landowners at the time when the purchase was effected, and whether the particular substance was so regarded as a mineral." Lord Atkinson agreed with the judgment of the Lord Chancellor, as well as with that of Lord Gorell, next delivered, and with the reasoning of those judgments. Lord Gorell said that in his view the words of exception in s. 70 are used "in the ordinary sense in which they are understood and used by landowners and those engaged in mining and commerce" (p. 133). Lord Shaw agreed with the judgments of the Lord Chancellor and Lord Gorell. In *Great Western Railway Co.* v. *Carpalla Co.*, [1910] A. C. 83, judgment in which was delivered by the House of Lords a month later than the decision in the Budhill case, it was held that china clay, not being part of the ordinary composition of soil in the district, and its presence being rare and exceptional, was a mineral within s. 77 of the Railway Clauses Act, 1845. From these two cases just decided in the highest Court it may be laid down that the present test of a mineral within the Railway Clauses Act, 1845, is (1) that it must not be part of the ordinary composition of the soil, and that its presence must be rare and exceptional; (2) that it must be understood by landowners and those engaged in mining and commerce to be a mineral. These decisions will doubtless govern many cases other than those arising under the Railway Acts. The exception in s. 77 is of "mines of coal, ironstone, slate, or other minerals under any land," a very general form, identical in effect with the language of many deeds. It may therefore be assumed that, unless some distinction of meaning can be shown between the particular grant or exception under examination and the words of s. 77, the two authorities referred to will govern all cases in which the question as to what is a mineral arises.

The fact that the present Act is a taxing statute, and therefore to be construed strictly, does not seem, having regard to the language of the Act, to be a very material consideration. The exemption of certain substances from the two special duties affecting minerals (s. 20 (5), s. 22 (8)) is in language which it is thought throws no light upon the question whether the term "minerals" is to have a wide or a narrow construction. It would therefore seem that any question as to whether a substance is or is not a mineral must be decided on general principles and the cases referred to.

Practical solution will usually rest with owner.

The question whether any particular substance *of a doubtful nature* is or is not for the purposes of increment value duty, to be considered a mineral is one to which the phrase *solvitur ambulando* will usually be

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applicable. The determination really rests to a large extent with the proprietor or owner. If he puts an original capital value under s. 23 (2) in his return made under s. 26 (2) upon any substance, he thereby elects to treat it as a mineral, and it is hardly conceivable that the Commissioners will not agree to this election and will not charge increment value duty upon it as a separate parcel of land when an occasion arises under s. 1. If an owner or a proprietor puts no original capital value on a substance of the nature referred to, it seems that it is not likely to be treated—perhaps it cannot under the Act be treated—as a mineral, until it is either sold apart from the ordinary soil as a separate parcel of land, or is worked as a mineral, or until it becomes the subject of a mining lease in the sense put upon that term by s. 24. When any one of these events happens the proprietor is obviously himself treating it as a mineral, and in that case it is unlikely that it would not be so treated by the Commissioners for all purposes, including payment of mineral rights duty, payment of increment value duty, and separate valuation and assessment under s. 23. It will be seen that if an owner sells the fee simple of his land, which includes minerals, for a lump sum, the value (including the increment value) of the minerals, which is naturally reflected in the price, will be charged with duty under s. 2 (2) (*a*) in the ordinary way. There is no power under sub-s. (4) of s. 25 or any other sub-section to deduct the value of the minerals from the value of the consideration under s. 2 (*a*). Even in the case of death the principal value under s. 2 (2) (*c*) and the Finance Act, 1894, will stand in the place of the value of the consideration on a sale under s. 2 (2) (*a*), and the same considerations therefore apply. The Commissioners, therefore, in doubtful cases are likely to be indifferent as to whether the minerals are valued apart from the land or as part of the land. Nevertheless it may be the case that the Commissioners are entitled, where an occasion for payment of increment value duty arises, to insist under s. 29 (1) on assessing increment value duty separately in respect of surface and minerals, and for that purpose to apportion the consideration under s. 32 (3). The difficulties of such an apportionment would be great if the minerals were not clearly ripe for development, since it would be unfair for the purpose of obtaining increment value duty on the minerals to attribute to them a value which could only be realised by the destruction of the surface (see note to s. 16 (4), *ante*, p. 193).

Mineral Wayleaves.—For definition of mineral wayleave see s. 24 (p. 268).

(2) The rental value shall be taken to be—

(*a*) Where the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year in respect of that right; and

§ 20 (2). (*b*) Where minerals are being worked by the proprietor thereof, the amount which is determined by the Commissioners to be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and the minerals had been worked to the same extent and in the same manner as they have been worked by the proprietor in that year;

Provided that the Commissioners shall cause a copy of their valuation of such rent to be served on the proprietor; and

(*c*) In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave:

Provided that if in any special case it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any proprietor of the minerals which would ordinarily have been borne by the lessee, the Commissioners shall substitute as the rental value of the right to work the minerals or the mineral wayleaves, as the case may be, such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee.

The Rental Value.—The rental value of the right to work is the subject of the tax, but it is a realised value which is intended to be taxed. In sub-s. (*a*) it is the actual rent *received* which is taxed. In sub-s. (*b*), where there is no real rent, it is a hypothetical rent representing the rent which might have been obtained if the proprietor had, instead of working the minerals himself, let them on mineral lease, but still it is a tax on value actually realised (with perhaps a slight exception: see note "**Which would have been received as Rent, etc.,**" on p. 221).

(*a*) **Mining Lease.**—See definition in s. 24, paragraph "The expression 'mining lease.'" Note that it must be a lease "for mining

purposes"; but it need not exceed fourteen years. Note also the paragraph of the same section beginning "Minerals shall be deemed," showing that minerals may for the purpose of duty be deemed to be comprised in a lease which has in fact expired. The words "mining lease" do not cover a sale of minerals with the surface in fee simple, or as a separate parcel of the fee. They seem to include the lease of a mineral wayleave. Questions have in practice been raised as to whether the rents of surface lands payable under mining leases are liable to mineral rights duty. Something may of course turn on the special form of the lease, but where one of the ordinary forms of mining lease is adopted, under which a fixed rent is reserved for every acre of surface land occupied, power being given to the tenant to occupy such of certain surface land as he requires for the purpose of getting the minerals, with a covenant by him to restore the land and render it fit for cultivation after he has done using it, it seems probable that it would be held that the rent is paid in respect of a right to work minerals under s. 20 (2) (*a*). It is a rent arising from the exercise of one of the rights leased to work the minerals and is paid in respect of that right. It therefore seems to fall within sub-s. (2) (*a*). Further, "mining lease" means a lease for mining purposes, that is, for working, getting, etc., mines and minerals, or "purposes connected therewith" (s. 24).

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Surface rents.

If this is the case it would seem to follow that a proprietor working his own minerals may be charged under sub-s. (2) (*b*) mineral rights duty on a hypothetical surface rent based on the quantity of surface land actually used by him for the purpose of getting his minerals.

In some mining leases surface lands may be taken not only for purposes of direct working, that is for sheds, furnaces, offices, tramroads, railroads, etc., but for the purpose of building houses for workmen. If the above view is right, it would seem that even the rent paid in respect of lands taken for the last-mentioned purpose is subject to mineral rights duty.

It is not clear whether by the device of taking a separate lease of the surface rights mineral rights duty would be escaped. "The expression 'a mining lease' means a lease for mining purposes, that is, for searching for, &c. . . . mines and minerals or purposes connected therewith" (s. 24). It is possible that, so far as regards the erection of workmen's houses, such a separate lease, limited to that one object, might not be considered to be a "lease of the right to work the minerals" under sub-s. (2) (*a*), whilst it might be held to be such a lease if it included the right to use the surface for purposes connected with the raising and storage of the minerals.

Separate lease of surface.

A lease of surface rights for mining purposes from a person not also leasing (s. 20 (2) (*a*)) the minerals might be a mining lease, but the right to work the minerals would not be the subject of that lease, and therefore it is submitted that mineral rights duty is not payable in respect of the rent of such a lease.

§ 20 (2). **Amount of Rent paid by the Working Lessee.**—Under s. 41 of this Act rent has the same meaning as in the Conveyancing and Law of Property Act, 1881, and does not include a rent-charge. Under the Conveyancing and Law of Property Act, 1881, s. 2 (1), "Rent includes yearly or other rent, toll duty, royalty, or other reservation by the acre, the ton, or otherwise." Under s. 24 of this Act, "Rent includes yearly or other rent, and shall, in addition to the meaning assigned to it for the general purposes of this Part of this Act, be construed as including any fine, premium, or foregift, and any payment, consideration, or benefit, in the nature of a fine, premium, or foregift. Where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof." Not that it is the actual sum paid as rent by the lessee in the working year, which is the subject of the tax. That may be less than the reserved rent, or it may include arrears and be more.

Working Lessee.—For definition of, see s. 24 *post*, p. 267.

Working Year.—This is defined by s. 24 (*post*, p. 268) as follows: "The expression 'working year' means the year ending the thirtieth day of September, or such other day as may in any case be approved by the Commissioners; and the expression 'last working year' means the working year completed immediately before the first day of January in any financial year for which the duty is paid."

ILLUSTRATION OF PARAGRAPH (*a*) OF SECTION 20 (2).

A mining lease is granted by A., the proprietor, to B., the lessee, on January 1, 1911, at a premium of 5,000*l.*, a dead rent of 1,000*l.*, payable quarterly, and a royalty of 1*s.* per ton of the mineral raised, the dead rent to cover the first 20,000 tons. The 5,000*l.* premium is paid on the grant of the lease; four quarterly sums of 250*l.* are paid as rent in the months of April, July, and October, 1911, and January, 1912; a further sum of 200*l.* is paid for excess royalties on account in August, and a further sum of 250*l.* excess for royalties in October. It is thought that the lessor is liable on January 2, 1912, to pay mineral rights duty on all sums received by him up to September 30, 1911, that is on the premium 5,000*l.*, the two quarters' rent paid in April and July respectively, and the sum of 200*l.* additional royalties paid in August. It is thought that the two quarters' rent paid in October, 1911, and January, 1912, will be subject to the duty levied for the financial year ending March 31, 1913, together with all further sums received, whether by way of dead rent or additional royalties, before October 1, 1912.

Duty during first year.

It has been assumed in the illustration just given that if rent has been paid within the last working year it is subject to mineral rights duty, even although the lease under which the rent was paid had not

been in force a full year on the expiration of the working year. If as appears possible this assumption is incorrect, the lessor will escape duty on all sums received by him in the interval between the date of the lease and the next September 30 after that date, since it is clear that in the succeeding year's assessment he can only be charged sums received since the September 30 immediately after the lease.

Alteration of working year.

It does not appear that the power to alter the date of the "working year" conferred in s. 24 (*post*, p. 268) can be exercised by the Commissioners without the consent of the proprietor, but if this is not so, and the Commissioners can in any particular case appoint any day they choose as the end of the working year, they would of course solve the difficulty just referred to, and prevent any escape from duty by fixing the day on which the first year of the lease expires as the end of the working year in respect of that lease.

(*b*) **Are being Worked.**—Minerals which are being won for the purpose of being immediately worked are to be deemed to be minerals which are being worked (s. 24).

To win a mineral is to put it "in a state in which continuous working can go forward in the ordinary way": *per* Lord Hatherley, L.C., in *Lewis* v. *Fothergill*, L. R., 5 Ch. 103, at p. 111; see also *Rokeby* v. *Elliot*, 13 Ch. D. 277.

By the Proprietor.—For the definition of proprietor see s. 24 and notes thereon. The term does not include a lessee for years, unless s. 65 of the Conveyancing Act, 1881 (Appendix, p. 604), applies to his term. There may, however, be a question whether "proprietor" does not include a lessee who is also a lessor, but it is thought not. When the person entitled to the property in the minerals is being dealt with by the Act in relation to the special mineral taxes, *i.e.*, mineral rights duty and the annual increment value duty, he appears to be usually termed not the "owner" but the "proprietor" (see generally ss. 20—23 inclusive). But land certainly includes minerals, and the proprietor of the minerals is almost certainly the owner. Subject to s. 23, s. 26 which directs the original site valuation of land, applies to minerals; and sub-s. (2) of the last-mentioned section, requiring owners of land and persons receiving rent in respect of land to furnish returns as to such land, appears to apply to owners of minerals, even if owned apart from the ordinary soil. The term "proprietor" is not, it seems, inconsistent in the scheme of the Act with the term "owner" as applied to minerals, except that the latter includes a lessee for a term of years of which more than fifty are unexpired (s. 41), and it is thought that "proprietor" does not include any lessee, even if he is also a lessor and entitled to the rents and profits or a part of the rents and profits (s. 24).

Which would have been received as Rent . . . in the District.—The discretion of the Commissioners appears wide. Rent is a factor of letting which varies with other conditions. The Commissioners must fix

§ 20 (2). a hypothetical rent, which would be the proper rent, having regard to the length of the term and to certain hypothetical conditions which they determine and which must be customary in the neighbourhood in such a lease, and the rent and term must also be customary. But having done this, the amount of duty to be paid is determined not entirely by the rent so fixed, but partly or wholly, as the case may be, by the extent of the working. The Commissioners, having fixed the rent, are to determine the question how much rent would have been due within the working year if the proprietor had been a lessee at the rent on the terms fixed and had worked the minerals as lessee exactly as he has worked them as proprietor. But the curious result may follow that a proprietor may be charged on a hypothetical rent which is in excess of the actual amount of working. If it is customary in the district to lease with a dead or fixed rent, to be paid in any event, and representing the royalty on a certain quantity of minerals gotten, it would seem that this must be considered a term of the hypothetical lease, and that the proprietor must pay duty on the hypothetical fixed rent, even if he has not got minerals to the extent covered by such rent; but of course in this case he would in succeeding years be entitled to the benefit of any customary provision for making up "shorts." Possibly for the sake of simplicity, as well as equity, the Commissioners may charge only on quantities actually worked.

Note in respect to the customary rent the last paragraph of s. 24, that "where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district."

Copy of their Valuation.—To facilitate, it may be presumed objection to the assessment or an appeal. Unless the valuation contains particulars or details—and there is no direction that it shall do so—it would not appear to be of much use.

It seems that this valuation ought to be served each year. If that is so, it may, of course, vary from year to year with the cost of working, price of minerals, etc. It may therefore be that persons interested in the reversion or remainder, other than the proprietor charged, would not be persons aggrieved so as to be entitled to appeal from the valuation or the assessment in pursuance thereof (s. 33 (1)), since they would have their remedy when they came into possession.

There is nothing to make the valuation so served binding on the proprietor so as to prevent his taking objection to an assessment based on the valuation analogous to the provision of s. 33 (1) (*b*) in relation to total and site value and assessments of duty. But it would be unwise not to appeal at once from the valuation, if it is objected to, and if an

appeal will lie, and to leave the appeal till the assessment. It may, however, be that no appeal will lie from the valuation since it does not seem to be in the nature of an order, or a decision by the Commissioners, but simply to be information, that the proprietor may know on what basis he is assessed.

To be Served on the Proprietor.—See s. 31 (4) as to methods of service where, however, proprietor is not specifically mentioned.

(*c*) **In the Case of a Mineral Wayleave.**—Where the proprietor of the minerals is using a way through or over his own property other than the mine itself to get his minerals to bank, the hypothetical rent on which he will be charged mineral rights duty will be fixed having regard to the advantages of such way. It is not in fact a wayleave at all, but is part of the property hypothetically leased. Where a wayleave is granted on lease to a mining lessee, whether a lessee of a mine belonging to the grantor of the wayleave, or of some other proprietor or lessor, the duty will be paid by the lessor on the rent and royalties received under the wayleave, as in the case of a lease of minerals under (*a*). The remaining case which may happen is where a wayleave is leased to the owner in fee of mines, who is working them. If that owner is within the meaning of s. 20 (2) (*c*) "the working lessee," then the lessor of the wayleave will pay duty as in the case of a lease of minerals under (*a*). Under s. 24, "The expression 'working lessee' means as respects mineral wayleaves the lessee who is in actual enjoyment of the wayleave." It is submitted that the words "lessee who is in actual enjoyment of the wayleave" mean the lessee *of the wayleave* who is in actual enjoyment of the wayleave, and accordingly include the owner in fee of minerals who is actually enjoying a wayleave for such minerals as lessee under a lease of such wayleave. The words "actual enjoyment" are intended to distinguish the rent payable for the wayleave on the last underlease from the rent payable on an intermediate lease.

Provided that, etc.—The rent paid by the lessee practically includes interest on and a contribution to a sinking fund in respect of the proprietor's expenditure on such matters as boring, shaft sinking, buildings, ways, railways, etc. These sums are not, economically considered, mining rents, and duty is therefore not to be paid on them. Compare with this sub-section s. 22 (4). It appears that this proviso would not cover expenditure by a lessee who had sub-leased. The words are expenditure on the part "of any proprietor"; and proprietor under s. 24 means the person entitled in possession, etc., but does *not* include a lessee. On the strict language of the proviso its benefit would not seem to be claimable by a proprietor working his own minerals, who is charged with a rent, yet that hypothetical rent would apparently include a return for the expenditure referred to.

(3) Every proprietor of any minerals and every person

§ 20 (3). to whom any rent is paid in respect of any right to work minerals or of any mineral wayleave shall, upon notice being given to him by the Commissioners requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the minerals, particulars as to the minerals worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

General note on section.

Two other sections should be considered in connection with this sub-section. Under s. 26 (2) (*post*, p. 317) various particulars must be furnished to the Commissioners by owners and persons receiving rent in respect of any land, but only "for the purpose of the valuation of the land." It seems that such sub-section does not therefore apply for the purposes of ascertaining mineral rights duty, though doubtless it does apply to the original valuation of minerals under s. 26 as a separate parcel of land, which, however, has no connection with mineral rights duty. The other section referred to is s. 31 (*post*, p. 346), requiring persons who pay rent in respect of any land, or who as agents for others receive rent, to furnish the names and addresses of the persons to whom they pay, or for whom they receive rent (*ib.*, sub-s. 1), and giving the Commissioners power to employ persons to inspect the land and report the value thereof (*ib.*, sub-s. 2). It is thought that probably s. 31 applies to the ascertainment of mineral rights duty. Sub-s. (2) of s. 31 may perhaps be useful for the purpose of fixing a rent under s. 20 (2) (*b*). But curiously enough in sub-s. (4) of s. 31, providing for the service of notices, etc., "proprietor" is not specifically mentioned. No doubt the proprietor is either the owner or a person interested in the land, and is therefore included. Documents or notices may be served on the proprietor under s. 20 (2) (*b*) and (3).

Proprietor.—See definition, s. 24, and note on p. 221, *ante*.

Every Person to Whom any Rent is paid. — This will include lessees, who are not proprietors (see s. 24). Doubtless it will also include trustees, and probably receivers, agents, etc.

Upon Notice being given to him.—See s. 31 (4) as to service of notices and general note above immediately following sub-s. (3) of s. 20.

Not of the amount received.

To give Particulars as to the Amount received.—Not "of the amount received." The words would, it is thought, include the persons by whom payable, the exact allocation of the payments, and probably other material matters.

A Return in the Form required by the Notice.—For this form (No. 5) see p. 519, Appendix. It must be read in the light of the recent decision of Mr. Justice Warrington in *Burghes* v. *Attorney-General* ([1911] 2 Ch. 139) on s. 31 (1).* But there are evident differences between the two sections. § 20 (3).

(4) Mineral rights duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January in the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable as a debt due to His Majesty from the proprietor of the minerals, where the proprietor is working the minerals, and in any other case from the immediate lessor of the working lessee. As between the immediate lessor and the working lessee, the duty shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act.

Recoverable as a Debt due to His Majesty from the Proprietors.—There is no charge on the property, and the priority of the Crown is preserved (see note on p. 84). Is the immediate lessor who has received the rent and the proprietor who has himself worked the minerals liable for the duty on the real and hypothetical rents received by them respectively, and only on those rents? Probably this is so, but the sub-section is not clear. This is the sub-section of the Act which says who is to pay the duty, and that which it *primâ facie* says is that whenever any mineral rights duty is unpaid in respect of mines being worked, then it is recoverable from the proprietor, if he is working the minerals, and from the immediate lessor (who may be proprietor), if the proprietor is not working the minerals. Arrears of mineral rights duty, therefore, left unpaid by (a) a former proprietor, (b) a former immediate lessor, whether accruing for the current or a past working year possibly may be payable by the present working proprietor or the present immediate lessor. Until it has been decided that this is not the construction of the Act, proprietors taking over workings and purchasers of the interests of immediate lessors must take steps to protect themselves, in respect of mineral rights duty in arrear, and accruing during the current working year. The sub-section is very obscure and many questions might be raised upon it.

The Duty shall be borne by the Immediate Lessor, notwithstanding any Contract to the contrary, whether made before or after the passing of this Act.—For definition of "immediate lessor" see s. 24.

* On appeal, W. N. [1911] p. 231.

§ 20 (4). The most usual covenant in a mining lease as to payment of rates or taxes is, perhaps, in the form, "To pay all rates and taxes which now are or may at any time hereafter be assessed or charged upon the demised premises or the owner or occupier in respect thereof." (See Prideaux, Precedents in Conveyancing, 20th ed., vol. 2, p. 164, and Key and Elphinstone's Conveyancing, 8th ed., vol. 1, pp. 717 and 842.) It is, perhaps, doubtful whether such a covenant would, in the absence of a statutory provision forbidding it to have that effect, cover mineral rights duty. That duty is not assessed or charged upon the premises. Whether it is charged upon the owner "in respect thereof" is a more difficult question. It is certainly charged upon him in respect of the rent received from the premises. There may, of course, be in existence covenants by lessees in a wider form which would clearly cover the new duty. In that case the interference with existing contracts is similar to that enacted by Sir Robert Peel in the year 1842 on the reimposition of the income tax (see 5 & 6 Vict. c. 35, s. 73), which was also retrospective. Having regard to s. 20 (4) and s. 21 (1) there can, it is conceived, be no doubt that an agreement by a lessee to pay his lessor's proportion of the duty cannot be enforced by action, and that notwithstanding any such agreement the lessee may deduct the same from his rent.

(5) Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel.

Mineral Rights Duty shall not be charged. — It is to be noted that the sub-section does not say that for the purposes of the Act the substances in question shall not be deemed minerals, but merely that mineral rights duty shall not be charged in respect of such substances. They may, of course, be the subject of a claim for increment value duty. But is that claim a claim in respect of the capital value of the minerals (s. 23 (4)), or the site value of the land? The point may arise on the lease by an owner of land with a soil composed of one of the minerals or substances referred to in sub-s. (5), with liberty to the lessee to get and use that substance. Is increment value duty in such a case to be calculated under s. 22 (3), the clause creating an annual increment value duty on minerals, or under s. 2 (2), the clause as to land generally? The answer seems clear. Sub-s. 8 of s. 22 provides that nothing in that section shall apply to minerals which are exempt from mineral rights duty under the Act. It appears, therefore, that increment value duty must be calculated on the lease under s. 2 (2), difficult as it may be in such a case to apply (s. 2 (2) (*b*)).

Again, the question arises whether the provisions of s. 23 apply to such of these substances as are minerals. Are they to be treated as a

separate parcel of land under s. 23 (2); and are they to be assessed for increment value duty on capital value as defined in s. 23 (1)? The answer to these questions, it is thought, should be in the affirmative. Sub-s. 8 of s. 22, which exempts these substances from the provisions of that section, suggests that, if it is necessary to expressly exempt them from that section, they will be within s. 23, unless expressly exempted from it, which is not the case. Again, it seems from s. 22 (8) that the Act considers the exempted substances, or some of them, to be in fact minerals. It would also seem that the second paragraph of s. 23 (2) would apply to such of these exempted substances as are in fact minerals, and that if comprised in a mining lease or in course of being worked they are to be treated as a separate parcel of land not only for the purposes of valuation, but also of assessment. The meaning of this apparently is that if minerals, other than those comprised in sub-s. (5), not in lease and not being worked on April 30, 1909 (within the meaning of s. 23 (3)), are subsequently leased [? for more than fourteen years], or commenced to be worked [? in the latter case an occasion for increment value also arising], so that the lease or working brings the annual increment value duty created by s. 22 (3) into play, then on a sale by the reversioner of the fee of the land (including the surface, the soil, and the minerals), or on the death of the reversioner, the minerals are to be assessed separately for increment value duty for the surface. This, of course, is inevitable in the case of minerals subject to the annual increment value duty under s. 22 (3), since increment value duty on the land (excluding the minerals) is payable as a lump sum, whilst increment value duty on the minerals is payable as an annual duty (s. 22 (3)). But although increment value duty may as a matter of practice be assessed on the minerals exempted under sub-s. (5), and the land itself as an aggregate, it seems clear that by virtue of the second paragraph of s. 23 (2) it ought strictly to be separately assessed on each as a separate parcel of land. (See further on p. 245.)

§ 20 (5).

SECTION 21.

21.—(1) Any immediate lessor who under this Act pays any mineral rights duty, and is himself a lessee of the right to work the minerals or of the wayleave in respect of which the duty is paid, shall be entitled to deduct from the rent paid by him in respect of the right to work the minerals or the wayleave, as the case may be, to his lessor a sum equal to the mineral rights duty on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent

§ 21 Deduction of duty in case of intermediate leases of minerals.

§ 21 (1). paid by him in respect of the right to work the minerals or in respect of the wayleave, as the case may be.

Example.—A. leases minerals to B. at certain rents and royalties. B. sub-leases to C., the working lessee, at increased rents and royalties. Consequently, the rent in any given year payable to B. is greater than the rent payable by B. to A. Under s. 20 (4), B., who is the immediate lessor, must pay the whole duty. He may deduct from the rent which he pays to A. an amount calculated on that rent at the rate of the duty. It is possible that he may make this deduction before he himself has paid the mineral rights duty in respect of the rent he has received. Any immediate lessor "who under this Act pays any mineral rights duty" may mean who under this Act is liable to pay, etc., but it is doubtful whether this is the right view of the sub-section. And a similar process will apply in case there is more than one underlease. But it seems somewhat clearer that if an immediate lessor does not deduct the duty at 1*s.* in the pound on the rent he pays to his lessor, the latter paying rent to a superior landlord has no right of deduction in respect of that rent.

It does not, appear to have been foreseen that it is possible (though it is not likely) that the underlease to the working lessee may have been at a reduced rental, in which case, under the strict language of the section, it would seem that the immediate lessor would be entitled to deduct a duty which he has not paid. Moreover, as mineral rights duty is paid only on rent actually received, it is possible that even if the ultimate rent paid by the working lessee is the highest of all the rents, yet in any particular year less rent may be received from the working lessee by the immediate lessor than the latter actually pays to his lessor, and from which he deducts duty. The deduction is not limited to a deduction out of the next payment of rent as a similar deduction is under the Income Tax Acts. See Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, No. 4, rule 9, and Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40. Sub-sect. (2) makes it quite clear that an agreement by a lessee with his lessor to bear the mineral rights duty is not capable of enforcement. It is thought that the underlessee has no right to recover the duty by action from his lessor. See *Andrew* v. *Hancock*, 1 Br. & B. 37.

(2) Any person in receipt of rent from which a deduction may be made under this section shall allow the deduction, and the person making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

Any Person in Receipt of Rent includes proprietor, lessee, or agent.

§ 21 (2).

Any Contract . . . without allowing such Deduction shall be void.—It is submitted that, taking into consideration s. 20, sub-s. (4), as to contracts between the immediate lessor and the working lessee, and sub-s. (1) of this section, the words commented upon apply to contracts existing at the date of the commencement of the Act. See note on s. 20 (4), *ante*, p. 225. The contract to pay the rent will usually be good, but the deduction must be allowed (see *Gaskell* v. *King* (1809), 11 East, 165, and many other decisions on analogous statutory provisions).

(3) If any person refuses to allow a deduction which he is required to allow under this section, he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Where in any special case mineral rights duty has been charged on a rental value based on a rent which has been substituted under the provisions of this Act for the rent actually payable by the working lessee, or where in any special case the rental value with reference to which increment value duty is charged has been reduced under the provisions of this Act for the purposes of the collection of that duty, the Commissioners shall, on the application of any lessor from whose rent a deduction may be made in respect of mineral rights duty or increment value duty, as the case may be, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

General note on sub-section.

This sub-section refers first to the proviso in s. 20, sub-s. (2). A. leases minerals to B. at 150*l.* per annum, which is 50*l.* higher than the customary rent payable in the district, because A. has sunk the shafts and partly opened out the mine. (The figures are given in lump sums for the sake of simplicity.) B. sub-leases to C. at 200*l.* per annum, having himself spent nothing on the property. Under the proviso in s. 20, sub-s. (2), B. is entitled to claim to be taxed on a rent of 150*l.* The expenditure need not have been by B. himself to entitle him to the reduction. It is under the proviso of s. 20 (2), "expenditure on the part of any proprietor," which gives the right to the reduction of duty. B. having paid mineral rights duty on a rental of 150*l.* therefore becomes entitled under sub-s. (1) of this section to deduct from the rent payable to A. a sum equal to the mineral rights duty on the rent of 100*l.* per annum, himself bearing the duty on the profit rental of 50*l.*

§ 21 (4). A., as well as B., is by virtue of this sub-section entitled to the benefit of the reduction. If the expenditure had been by B. and not by A. and the rents nevertheless the same, it is probably the intention of the Act that B. should be entitled to a reduction of 50*l.* in respect of his 200*l.* rent, which would represent interest on B.'s capital expenditure, but that A. should pay the duty in respect of the full rental obtained by him of 150*l.*, since that rent does not represent any interest on capital expenditure. B., having in fact no profit rental, ought, it seems, to pay no duty. But it seems that the Act fails to carry out this intention. It is only expenditure on the *part of any proprietor* under the proviso of s. 20 (2) which may give rise to a claim for the substitution of a lower rent, and proprietor does not include lessee (s. 24, p. 265), except a lessee of a long term without rent equivalent to a freehold under s. 65 of the Conveyancing Act, 1881. The sub-section therefore does not seem to apply to this case. Expenditure on the part of B. the lessee does not under s. 20 (2) give rise to a right in any one to reduction, and A. the proprietor has spent nothing and is not entitled to a reduction. Probably the Commissioners will see what Parliament evidently intended and manage to do justice, in spite of the sub-section, to the parties concerned.

The second case to which this sub-section refers is an analogous case relating to annual increment value duty arising under s. 22 (4) (see p. 240), Under sub-s. (3) of that section (p. 235) increment value duty is payable in respect of minerals comprised in a mining lease, or being worked, as an annual duty of one-fifth of the amount by which the rental value on which mineral rights duty is paid in that year exceeds the annual equivalent of the original capital value of the minerals or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty. Sub-s. (4) of s. 22 (p. 240) provides that if the rental value on which the mineral rights duty has been paid represents in part a return to certain capital expenditure mentioned in the sub-section made by a lessor within fifteen years, such rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return. S. 21 (4) would enable this reduction to be obtained by A. as well as by B. in the illustration first given where A. had made the expenditure. It must be confessed that the application of the clause is a little speculative, and the writer does not profess to fully understand it.

SECTION 22.

§ 22 (1). Special provisions as to increment value duty

22.—(1) No reversion duty shall be charged on the determination of a mining lease, and no increment value duty shall be charged on the occasion of the grant of a

mining lease or in respect of minerals which are comprised in a mining lease, or are being worked, except as a duty payable annually in manner provided by this Act. § 22 (1). and reversion duty in the case of minerals worked or leased.

Note that nothing in this section is to apply to the substances exempted by s. 20 (5) from mineral rights duty (sub-s. (8)).

No Reversion Duty shall be charged.—The mine is usually worth less on the determination of the lease than at the time of its grant. But it may not be. The lessee may have sunk shafts and opened passages, thus greatly adding to its value, and then forfeited his lease. Nevertheless reversion duty is not payable. But reversion duty is of course payable in respect of a non-mining lease of land containing minerals, in which case the lessee could not get the minerals, since that would be to commit waste. Practically in the case of a lease of the latter kind the value of the minerals would be neglected both at the date of the grant and on the determination of the lease. They would not be taken into account in fixing the total value under s. 13 (2) at the commencement of the lease, or the total value under s. 25 (3) and (5) at its determination. So reversion duty might be payable on the determination of a lease of the substances exempted by s. 20 (5) from mineral rights duty (see sub-s. (8) of this s. 22). But it is obvious that it is not often that there will be any "benefit" accruing to the lessor on the determination of such a lease. There would usually be great difficulty in arriving at the value of the benefit. The exception in the last sentence of the sub-section does not apply to reversion duty, which is not included in sub-s. (3), but only to increment value duty, which is included.

No Increment Value Duty shall be charged . . . except as a Duty payable annually.—Increment value duty will apparently be payable in a lump sum either (1) on a transfer on sale out and out of minerals under s. 1 (*a*), or (2) on their passing on the occasion of death under s. 1 (*b*) or (3) on a periodical occasion under s. 1 (*c*), provided that in each case they were not on April 30, 1909, either comprised in a mining lease or being worked by the proprietor, or, if so comprised or worked, that they were not at the time the claim for increment value duty arises either so comprised or worked, and provided also that they were not entitled to the benefit of the proviso at the end of sub-s. (2) of this section. If, however, subject to the proviso at the end of sub-s. (2) of this section, minerals are leased after April 30, 1909, or apparently if minerals are commenced or recommenced (subject to the proviso at the end of sub-s. (2)) to be worked after that date by the proprietor himself, their increment value duty is, if there is increment value and if an occasion under s. 1 arises, payable annually as provided by sub-s. (3) of this section. It does not seem that mere working, unless on one of the occasions for payment of increment value duty arising under s. 1 the

§ 22 (1). minerals are being so worked, is an occasion for payment of increment value duty. But this point is doubtful. It is thought also (but with hesitation) that unless a mineral lease exceeds fourteen years (see s. 1 (*a*)) it is not an occasion for payment of increment value duty. If this is so, it may be that by a lease in possession followed by a lease or leases in reversion, all for less than fourteen years, the payment of increment value duty on mining leases may be avoided (see note on p. 13).

Increment value duty and sales of minerals.

The effect of s. 23 (2) upon increment value duty payable on a sale of minerals appears to be as follows: If the owner does not, under that section, which it is presumed refers to the original valuation enacted by s. 26 (1), estimate the value of his minerals, then on a subsequent sale or lease of such minerals, not falling within the exception established by s. 22 (2), the minerals are to be considered as of no original capital value. The consideration for the sale of the minerals, less any deduction under ss. 2 (2) and 23 (1), will therefore practically be all increment value, and duty will be payable thereon, either in a lump sum, if the minerals are sold, or annually under sub-s. (1) and (3) of this section (22), if they are leased. But supposing the owner does on the original valuation estimate under s. 23 (2) the capital value of the minerals, then it seems that the Commissioners may either accept that estimate or make their own valuation under s. 26, subject, of course, to appeal under s. 33. This sum so fixed by the Commissioners will then be the original capital value of the minerals.

If the minerals are either comprised in a mining lease or being worked by the proprietor on April 30, 1909, then they are not to be valued so long as they are either in lease or being worked by the proprietor (s. 22 (2)). Apparently, if a new lease of the minerals were made before the old lease expired, the exemption from valuation would continue. Under sub-s. (7) of this section (s. 22), where minerals cease to be comprised in a mining lease, or to be worked by the proprietor "within the meaning of this section," words which seem to incorporate the proviso to sub-s. (2) of s. 22, the capital value of the minerals at the time is to be specially ascertained in accordance with the provisions of the Act, and the capital value so ascertained is to be treated as *the original capital value* of the minerals. It seems doubtful whether this provision relates only to leases in existence or workings in operation on April 30, 1909, in respect of which increment value duty is not payable in any shape, or whether it also applies to leases made and workings commenced after that date, which pay an annual duty fixed, by reference, amongst other things, to an original capital value already fixed. Although it is difficult to see how the sub-section can apply to the latter class, which is a class of minerals the capital value of which *ex hypothesi* has been already fixed, it may be that the intention is that, whenever a lease, or series of leases, or a working, or series of workings, has come to an end by the happening of a period of two years during which there has existed neither lease nor working, that a new

start should be made, and increment value duty be paid in the future on any increases in capital value happening after the close of the old workings. If this is the intention, the capital value ascertained at the end of the last lease or the close of the workings will be *substituted* for the sum fixed on the general valuation as the original capital value of the minerals the lease or working of which so commenced after April 30, 1909. If the lease or working commenced before that day, it will of course be the original capital value, since no other original value will have been previously ascertained (s. 23 (3)). § 22 (1)

(2) Increment value duty shall not be charged in the case of any minerals which were, on the thirtieth day of April nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as the minerals are for the time being either comprised in a mining lease, or being worked by the proprietor:

Provided that the exemption under this section shall continue to apply in the case of any minerals, although they cease for a temporary period to be comprised in a mining lease or to be worked, so long as the period does not exceed two years.

General not on sub-section in relation to scheme of taxation.

It is understood that if the minerals were on April 30, 1909, "comprised in a mining lease," then so long as they are either comprised in the same or another mining lease, there being no gap longer than two years between the leases, or are worked by the proprietor, there being no greater interval between the expiration of the last lease and the commencement of the working, exemption is given under the sub-section. Conversely, if minerals are being worked by the proprietor on April 30, 1909, and are subsequently leased, there being no cessation of working longer than two years before the lease is made, the exemption also continues. The proviso in effect allows a temporary interval between any two exempting incidents so long as that interval does not exceed two years.

The principle of the sub-section.

The principle on which the sub-section is based appears to be that by having leased his minerals, or commenced to work them before April 30, 1909, the proprietor has really shown his intention before that date to realise his minerals. The lease, or the commencement to work, as the case may be, is an act for this purpose analogous to a contract of sale of land which if made before the commencement of the Act (April 30, 1910) exempts a transfer in pursuance thereof from increment value duty (s. 1).

Consequent provision as to valuation of minerals.

Consequent upon this sub-section is s. 23 (3), exempting minerals which on April 30, 1909, were either comprised in a mining lease or being worked by the proprietor, so long as they are either so comprised or worked, from the provisions of the Act as to valuation, with a similar

§ 22 (2). allowance for a temporary cessation of being in lease or being worked. The only reason for an original capital valuation in the case of minerals is for purposes of increment value duty; but increment value duty is not payable in respect of minerals in this category. Therefore original capital valuation is not necessary. Moreover, original capital valuation for the purpose of a future sale or lease is likely to be useless for the purpose of obtaining increment value duty. The paying minerals are in all probability about to be wholly gotten under the present lease or working. Increment value charged on the basis of original capital value is probably impossible. It may, however, be that after the lease or working or consecutive series of leases, or workings, entitling to the exemption of s. 22 (2), have come to an end, and more than two years have expired from the date at which the minerals so ceased to be worked or be comprised in a mining lease, the minerals are again leased or are again worked by the proprietor. Prices of the mineral produce may have gone up, and what was at the end of the last lease or working unpayable ore may have become a valuable product. If increment value duty on the new lease were to be charged on the difference between an original capital (site) value of 1909 and the value when the new lease was granted, there would seldom be any increment value, since mines grow *less* valuable as they are worked. So the comparison in this case is to be between a capital value ascertained at the end of the series of leases or workings (of minerals in lease or being worked on April 30, 1909), and the value at the date of the new lease or the new working (when the latter is a working on an occasion giving rise to a payment of increment value duty). For this purpose it is provided by sub-s. (7) of s. 22 that where minerals cease to be comprised in a mining lease or to be worked within the meaning of s. 22, their capital value *at the time* is to be specially ascertained, and is to be treated as the original capital value of the minerals. On the new lease or the new working, therefore, the increment value will (under sub-s. (3) of s. 22) be arrived at by a deduction of the annual equivalent of the original capital value thus ascertained from the rental value on which mineral rights duty is paid under the new lease. This represents the real annual increment.

Doubt as to extent of this valuation.

It ought to be added that it is not quite clear whether the process of valuation at the expiration of lease or working just referred to is limited to minerals in lease or being worked on April 30, 1909, or whether it extends to minerals not then in lease or being worked, but which were subsequently leased or worked. The former is thought to be the true construction of the clause; but it is possible that the capital value so ascertained may be intended to be *substituted* for the original capital value of the minerals not in lease or being worked on April 30, 1909, but subsequently so leased or worked. There seems to be exactly the same reason for the application of the clause to the latter class of minerals as to the class of minerals in lease or being worked on April 30, 1909. See note on p. 232, *ante*.

§ 22 (2).

Minerals.—Under sub-s. (8) of this clause the term "minerals" in this clause does not include the substances exempted from mineral rights duty under s. 20, sub-s. (5). Increment duty would therefore be payable as a lump sum on leases, sales of both the lease and the reversion of such minerals, and on the passing on death of either; but as under s. 23 (3) such of the exempted substances as are minerals and are either comprised in a mining lease, or are being worked on April 30, 1909, are exempt from valuation, so long as so comprised or worked, and for a further period of two years, it is difficult to see how the original capital value of such minerals is to be fixed. It seems, therefore, that they will escape increment value duty as minerals, though as part of the soil they will be liable to it.

Comprised in a Mining Lease.—See s. 24. "Minerals shall be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease although the lease has expired."

Or being worked by the Proprietor.—See the following two paragraphs of s. 24 for the extensive meaning of minerals being worked.

"Where any minerals are at any time being worked by means of any colliery, mine, quarry or open working, all the minerals which belong to the same proprietor of the minerals are being worked by the proprietor or which the lessee has power to work if the minerals are being worked by a lessee, and which would in the ordinary course of events be worked by the same colliery, mine, quarry or open working, shall be deemed to be minerals which are being worked at that date."

"Minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked."

The Proprietor.—For definition of proprietor see s. 24. Note that it does not include a lessee, except under a term of years convertible into a freehold under s. 65 of the Conveyancing Act, 1881 (Appendix, p. 604).

(3) Increment value duty in respect of the increment value of minerals which are comprised in a mining lease or are being worked shall, where that duty is chargeable, be charged annually; and the increment value shall, instead of being estimated as a capital sum, be taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the

§ 22 (3). minerals exceeds the annual equivalent of the origina capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked; and the annual equivalent of any such capital value of the minerals shall be taken to be two twenty-fifth parts of that capital value.

Minerals which are comprised in a Mining Lease or are being worked, etc.—See notes to last sub-section (p. 235) on these words.

Where that Duty is chargeable, *i.e.*, where the minerals do not fall within sub-s. (2) of this section; and possibly, but it cannot be said that this is clear, provided that the lease is for a longer original period than fourteen years, and that in the case of minerals being worked an occasion has arisen in relation thereto under s. 1. It is doubtful whether the working of minerals in itself gives rise to a liability to increment value duty. It seems that once the payment has begun it will go on until the working stops, or until any subsequent lease comes to an end.

The following are cases in which annual increment value duty will be chargeable on minerals not exempted from mineral rights duty under s. 20 (5) and comprised in a mining lease or worked:—(1) Where the minerals being not so comprised or worked on April 30, 1909, are subsequently to that date leased [? for more than fourteen years]. (2) Where minerals not so comprised or leased on April 30, 1909, are subsequently commenced to be worked, [? and an occasion for payment of duty arises under section 1, *e.g.*, the proprietor dies]; or in the case of minerals of which a body corporate, etc., is the proprietor, a periodical occasion happens. (3) Where minerals were either comprised in a mining lease or were being worked on April 30, 1909, and have ceased since that date to be either so comprised or worked for a period exceeding two years (in which case their capital value at the time is to be ascertained under sub-s. (7), and is to be treated as their original capital value), and since the expiration of the two years either (a) a new lease [? exceeding fourteen years] has been made of them, or (b) a new working of such minerals has been commenced [? and an occasion for the payment of duty under s. 1 as stated above in relation to (2) has arisen].

It is for the most part assumed in the commentary (1) that increment value duty is not chargeable even as an annual duty on a mineral lease, unless the term of the lease exceeds fourteen years; and (2) that mere working of the minerals does not give rise to a claim

for annual increment value duty, unless and until one of the events mentioned in s. 1 (*a*), (*b*), or (*c*) happens so as to create an occasion. But neither of these propositions is clear, and the authorities may dispute them.* § 22 (3).

If a proprietor working his minerals sells them, how is increment value duty to be paid? As a lump sum under s. 1 (*a*) or under sub-s. (3) of s. 22? It seems under the latter sub-section. In that case increment value duty on the ungotten minerals is paid by the purchaser only nominally. He will deduct the probable capitalised annual increment value duty from the price he agrees to pay.

As a Capital Sum.—As in the ordinary case of a sale or lease of land. In the case of minerals comprised in a mining lease or being worked, the payment of increment value duty must be annual.

In each Year during which the Tenancy continues or the Minerals are being worked.—In each year (which it is thought means each "working year") the deduction of the "annual equivalent of the original capital value of the minerals, etc.," from the "rental value on which mineral rights duty is charged" must be made in order to arrive at the increment value in respect of which for that year increment value duty is to be paid. During every working year of the continuance of the lease this process must be gone through. A usual form of mining lease reserves a dead rent to cover a certain amount of minerals brought to the surface, with a royalty on the excess, a power to make up shortages, and a cesser of rent on payment either by rent or royalty of a certain sum being the estimated value of the minerals or the mine. In the case of such a lease it is possible, under the provisions of this section, that increment value duty may in some cases exceed the dead rent, and in others be nothing at all. The proprietor will often pay far more by way of increment value duty under the provisions of this section than he would do if he paid on a capital sum.

The Rental Value on which Mineral Rights Duty is charged.—Where the annual increment value duty is paid in respect of minerals comprised in a mining lease, this rental value will under s. 20 be the amount of rent paid by the working lessee in the last working year. It is the sum actually paid in that year, whether greater or less than the dead rent reserved, and it may comprise rent in arrear for a period antecedent to that working year (see note on p. 220). Where the annual increment value duty is paid in respect of minerals which are being worked by the proprietor, the rental value is the hypothetical rent fixed under s. 20 (2) (*b*). From the rental value in any year

* On the one hand minerals would often escape increment value duty altogether if the two assumptions are correct. On the other hand, it certainly cannot be said that it is clear that the assumptions are not correct. The charge of annual increment value duty is no where clearly expressed in the Act.

§ 22 (3). arrived at in either of these two ways is deducted the annual equivalent, *i.e.*, $\frac{2}{25}$ths, of the original capital value of the minerals. The resulting figure is the increment value for that year, on which duty is paid at 20 per cent.

Original Capital Value.—See ss. 22 (7) and 26 (1) for arriving at original capital value; see s. 23 (1) for definition of capital value of minerals.

If the minerals were not in lease or being worked on April 30, 1909, the original capital value will be that fixed under the original site valuation of all land as on April 30, 1909 (s. 26). In that case, if the proprietor has placed no value on his minerals in his return to the Commissioners in pursuance of s. 26 (2), the minerals will be considered to have had no original capital value (s. 23 (2)). The whole rental value, whether real and actually paid under s. 20 (2) (*a*), or hypothetical under s. 20 (2) (*b*), will therefore be increment value and subject to a duty of 20 per cent. under s. 22 (3).

If the minerals, on the other hand, on April 30, 1909, were either in lease or were being worked, then, as already pointed out, no increment value duty is payable during the existing succession of leases or workings (see s. 22 (2) and note on p. 233), and no original capital valuation under s. 26 is to be made (s. 23 (3)) (see notes on p. 255).

Or the Capital Value of the Minerals on the last preceding Occasion on which Increment Value Duty has been collected otherwise than as an Annual Duty.—Minerals not in lease or being worked on April 30, 1909, may have been sold in fee whilst unleased and unworked, or the owner of such minerals may have died, or as to such minerals of which a body corporate, etc., is owner a periodical occasion may have happened, and increment value duty may have been paid in each case as a lump or capital sum. So minerals in lease or worked on April 30, 1909, may have ceased to be leased or worked for more than two years, may have had their original capital value fixed under s. 22 (7), then may have paid increment value duty as a lump sum as above mentioned under s. 1 and s. 2, and finally may have a second time become included in a mining lease for over fourteen years or have been again commenced to be worked. In both these sets of cases that which is to be deducted from the rental value on the subsequent lease on working giving rise to a claim for annual duty is not the annual equivalent of the original capital value, whether fixed under s. 26 (1) or s. 22 (7), but the annual equivalent of the capital value on the last preceding occasion on which increment value duty was paid as a lump or capital sum.

A difficulty in the construction of the sub-section.

It ought perhaps to be added that the fact that the words "comprised in a mining lease" just before the last semicolon in sub-section (3) create some difficulty as to the manner of applying the sub-section to minerals which were leased or worked on April 30, 1909, and have, after a period of over two years during which they ceased to

be in lease or to be worked, again become leased or worked. It is thought that the word "the" instead of "a" would have been more appropriate to the presumed meaning of the sub-section. **§ 22 (3).**

ILLUSTRATION OF S. 22 (3).

The original capital value of A.'s minerals is 12,500*l.* The annual equivalent of this under the sub-section is 1,000*l.*, *i.e.*, $\frac{2}{25}$ths. The capital value rises to 15,000*l.*, and when they are at that value A. leases them to B. at a rental of 1,200*l.* a year and a royalty on the coal gotten over a certain quantity, say 48,000 tons, taken to represent 1,200*l.* The rent is to stop after 15,000*l.* has been paid. The rental value of the coal gotten in the first three years of the lease is in each year 2,000*l.*, which is paid by B. to A. In each of those years, therefore, the increment value under the section is taken to be the sum by which 2,000*l.*, the rental value on which A. pays mineral rights duty, exceeds 1,000*l.*, the annual equivalent of the capital value of the minerals, *i.e.*, the sum of 1,000*l.* The increment value duty on this sum amounts to 200*l.* for one and 600*l.* for three years.

A., however, would under sub-s. (6) of this section be entitled to be relieved from all mineral rights duty, which in each of the three years would amount to 100*l.*

It appears that substantially the same immediate result from taxing on capital value and on an annual equivalent fixed at $\frac{2}{25}$ths of capital value can only be obtained when during each of twelve and a half years equal quantities in money value of the minerals are gotten, and these quantities, therefore, exactly equal the capital sum of which they are the annual equivalents. The quicker the mineral is paid for, the heavier the duty.

Does the 10 per cent. reduction of site value apply.

Does s. 3 (5), which allows a 10 per cent. reduction on original and subsequent site values for the purpose of collecting increment value duty, apply to increment value duty payable in respect of minerals. That sub-section runs (see p. 68): "For the purpose of the collection of duty on the increment value of any land *under this section* the increment value shall be deemed to be reduced," etc. Sub-sects. (1), (2), and (3) of s. 3 and the proviso to sub-s. (5) appear to be as applicable to the collection of increment value duty in respect of minerals on a sale out and out under s. 1 (*a*), or a death valuation under s. 1 (*b*), or a periodical valuation under s. 1 (*c*), as to the like occasion in the case of ordinary land. But none of those sub-sections appear to be applicable to the annual increment value duty, as a close reading of them will show. Indeed they are probably expressly excluded, either in whole or in part, from applying to annual increment value duty by s. 22 (5): "Increment value duty payable annually under this section shall, instead of being collected, as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty with the same right of deduction." But however this may be, it is open to the authorities to remedy in practice the possible omission of the Act to extend the 10 per cent. allowance to

§ 22 (3). the annual increment value duty, and to treat the annual increment value duty collectable under s. 22 (3) as if it were collected under s. 3, and therefore entitled to the 10 per cent. deduction by virtue of s. 3 (5).

Suggested equitable construction of s. 3 (5) as applied to annual increment value duty.

It is suggested that this can be done by so construing the latter sub-section as in effect to cause in sub-s. (3) of s. 22 the words "plus 10 per cent. of that original capital value" to follow immediately after the words "the annual equivalent of the original capital value of the minerals," and also to cause the words "plus 10 per cent. of such capital value" to follow immediately after the words "otherwise than as an annual duty." It is impossible to argue this rather important matter at length in a treatise of this nature, but it is submitted shortly that under the suggested reading in the language of s. 3 (5) the increment value would be deemed to be reduced on the first occasion for the collection of increment value duty [as an annual duty] by an amount equal to 10 per cent. of [the annual value of] the original capital value and so on. The two sub-sections (3) (5) and s. 22 (3) would not, it must be acknowledged even then completely dovetail into each other, as is evident from the second and third paragraphs of sub-s. (5) of s. 3. It is therefore thought, that except by an act of grace on the part of the Commissioners the annual increment value duty is not entitled to the exemption.

(4) If in any case it is shown to the Commissioners that the rental value on which mineral rights duty is charged represents in part a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return.

General note.

See note on p. 223 as to the matter dealt with by this sub-section.

This sub-section is a correlative of the proviso at the end of s. 20 (2). The increment value duty payable under sub-s. (3) of this section increases with the rental value on which mineral rights duty is charged. If that rental value partly represents a return to capital expenditure by the lessor, it is clearly not the subject of increment value duty within the scope and intention of the Act. Note that the expenditure in this case is expenditure by a lessor, who may or may not be the proprietor, whilst under s. 20 (2), giving partial exemption from mineral rights by duty, it must be a proprietor.

Note, also, that this sub-section is more limited as to the expenditure which is allowed to give exemption than s. 20 (2). The money must have been spent within fifteen years, and it must have been spent in boring or otherwise proving the minerals, neither of

which limitations is applicable to the corresponding section for the reduction of mineral rights duty. § 22 (4).

The Rental Value on which Mineral Rights Duty is charged.—It is understood that this would include a rental value substituted by virtue of the proviso to s. 20 (2) (*ante*, p. 218) for the rental value based on rent. If this is so, then under the combined effect of this sub-section and s. 20 (2) there may be two sets of reductions from the rent payable under a lease, in order to arrive at the rental value from which the deduction of the "annual equivalent" is to be made. (1) There is the reduction under s. 20 (2) of the portion of the rent (*a*) which represents any expenditure which would ordinarily have been borne by the lessee, (*b*) which expenditure may have been made at any previous time without limit, and (*c*) which expenditure will, however, only give rise to a reduction if made by the proprietor. (2) There is the reduction under this sub-section of the portion of the rent (*a*) which represents specific expenditure in boring or otherwise proving the minerals, quite irrespective of whether such expenditure would ordinarily have been borne by the lessee, and only such expenditure; (*b*) which expenditure must have been made within the last preceding fifteen years; and (*c*) which expenditure may have been made by any lessor, which term would include the proprietor if he had leased the premises, but not otherwise. It seems that, so far as a proprietor is concerned he is protected from an unduly swollen rental value by s. 20 (2), and s. 21 (4) gives him no additional protection. But it is difficult to see why the proviso in s. 20 (2) should have been limited to expenditure by a proprietor. It would seem that the rental value on which mineral rights duty and annual increment duty are paid might sometimes be different, so far as paid by an intermediate lessor.

(5) Increment value duty payable annually under this section shall, instead of being collected as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty, with the same right of deduction.

Instead of being collected as provided in other Cases.—See for collection of increment value duty generally, ss. 1 and 3; for collection on sales and leases s. 4; for collection on death s. 5; for collection from a body corporate or unincorporate on a periodical occasion s. 6. In all the above cases it is a stamp duty (see *ante*, pp. 70 and 92). Whether the application of s. 1 (a) is excluded from relation to the annual duty by these words seems doubtful. Unless it is excluded a lease of minerals not exceeding fourteen years is probably not liable to duty (see notes on pp. 232 and 236).

Recoverable in the same manner as Mineral Rights Duty with the same Right of Deduction.—Under s. 20 (4) it must therefore

§ 22 (5). be paid by the immediate lessor. But what is his right of deduction under s. 21 from the rental value which he has to pay to his lessor? He can deduct, it is submitted, all the increment value duty he has paid, less the amount properly apportionable to the increment value of which he is the owner—*i.e.*, the value which has accrued between the creation of his own lease and the sub-lease made by himself. Thus, if the annual equivalent of the original capital value be 1,000*l.*, the rent paid in a year by A., the first lessee, to the proprietor be 1,200*l.*, and the rent paid by the working lessee to A. be 1,400*l.*, it is submitted that A. having paid the increment value duty on 400*l.*—*i.e.*, 80*l.*—to the Crown is entitled to deduct the duty on 200*l.*—*i.e.*, 40*l.*—from his payment to the proprietor. It seems that the right of deduction would exist even if the proprietor had taken a covenant from the immediate lessor that the latter should not deduct the duty (s. 21 (1) to (3)).

(6) Any proprietor or lessor of any minerals who pays increment value duty in pursuance of this provision shall be entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty.

For the purposes of this provision, a deduction of any amount from the rent payable to a lessor on account of mineral rights duty shall be deemed to be a payment of that duty, and the relief may be given either by allowance or repayment or both of those means, as the occasion may require.

Entitled to be relieved in any Year.—The relief is limited to increment value duty paid in the same year as the mineral rights duty is *primâ facie* payable. Year, it is thought, means "financial year" (ss. 20 (1) (*a*), 22 (3), 24). If the construction placed by this work on sub-s. (3) is correct (see *ante*, p. 239), it may be that there may during the existence of the same lease be payments on account of increment value duty which in the aggregate might exceed the whole amount of mineral rights duty payable during the lease, and yet in certain years increment value duty being little or nothing, mineral rights duty might still be payable. An analogous state of circumstances might also arise in case of a proprietor working his own minerals. The increment value should not be realised so strictly that there is no increment value duty to set off in later years against the full mineral rights duty.

Relief may be given either by Allowance or Repayment or both of those Means.—If he has paid increment value duty, and the mineral rights duty is greater than the increment value duty, the payment of

increment value duty will be allowed and may be deducted from the payment of mineral rights duty. § 22 (6).

If both increment value duty and mineral rights duty have been paid by intermediate lessors and deducted from his rent he can recover back the proper amount from the Commissioners.

ILLUSTRATIONS OF THE WORKING OF SECTION 22 (6).

It cannot be said that the operation of the above sub-section is very clear, but the following illustrations are, it is hoped, correct.

(1) The original capital value of the minerals of which A. is the owner in fee is 12,500*l.* In 1911 A. leases the minerals to B. for thirty years at rents and royalties amounting for the working year ending September 30, 1920, to 2,000*l.* In 1915 B. sub-leases the minerals to C. for the residue of the term of thirty years, less one day at increased rents and royalties amounting for the same working year ending September 30, 1920, to 3,000*l.* C., the working lessee, pays his rent (3,000*l.*) in full (less property tax) to B. the immediate lessor. B. settles with the Government for both mineral rights duty and annual increment value duty. The mineral rights duty on a rental value (s. 20 (1) (*a*)) of 3,000*l.* is 150*l.* The increment value on which increment value duty is paid is the sum by which in the working year ending September 30, 1920, the rental value on which mineral rights duty is paid, *i.e.*, 3,000*l.*, exceeds the annual equivalent, *i.e.*, $\frac{2}{25}$ths of the original capital value, *i.e.*, 12,500*l.*—that is, exceeds the sum of 1,000*l.* (s. 22 (3)). 2,000*l.* is therefore the increment value for the working year in question, and the annual increment value duty is 400*l.* B. is therefore entitled under s. 22 (6) to be entirely relieved of the payment of mineral rights duty. B. is entitled to deduct from the 2,000*l.* rent he pays to A. the mineral rights duty on that sum (s. 21 (1), if he has paid it, and the increment value duty, on the difference between 1,000*l.* (the annual equivalent of the original capital value) and 2,000*l.*, the rent under the lease from A. to B. (so it is assumed is the effect of s. 22 (5)), if he has paid it. But he has only paid the latter duty, since under s. 22 (6) he is relieved from the former. Therefore he can only deduct from the rent he pays to A. the sum of 200*l.* or the increment value duty on the increment value of 1,000*l.* A. is not himself liable for mineral rights duty, since the deduction of 200*l.* on account of increment value duty also wipes out the 100*l.* mineral rights duty payable by him.

(2) The original capital value of the minerals of which A. is the owner in fee is 12,500*l.* In 1911 A. leases the minerals to B. for thirty years at rents and royalties amounting in the working year ending September 30, 1920, to 1,200*l.* In 1915 B. sub-leases the minerals to C. for the residue of the term of thirty years less one

§ 22 (6).

day at increased rents and royalties amounting for the same working year ending September 30, 1920, to 2,000*l.* C. pays his rent (2,000*l.*) in full (less property tax) to B. The mineral rights duty on the 2,000*l.* received by B. is 100*l.* (s. 20 (1) (*a*)), but the increment value duty on the excess (1,000*l.*) of rental value (2,000*l.*) over the annual equivalent (1,000*l.*) of the original capital value (12,500*l.*) is 200*l.* Therefore B. pays the latter sum, which under s. 22 (6) wipes out his liability for mineral rights duty. Then B. has to consider what he is entitled to deduct from the rent he pays to A. He can deduct the mineral rights duty on a rent of 1,200*l.*, that is 60*l.*, if he has paid it. He can also deduct increment value duty on the sum of 200*l.*, the increment value realised by A., that is 40*l.*, if he has paid it. But B. has been relieved from any payment of mineral rights duty because he has paid increment value duty in excess of the amount of mineral rights duty due from him. On the other hand A. is liable for 60*l.* mineral rights duty and 40*l.* increment value duty, but the payment of the latter relieves him from the former to the extent of that payment (40*l.*). In any event, therefore, A. must pay 60*l.*, and B. may therefore, it is thought, deduct 60*l.* from the 1,200*l.* rent he pays, *i.e.*, 40*l.* on account of increment value duty, and 20*l.*, being 60*l.*, the full mineral rights duty deductible under s. 21 (1) less 40*l.* paid by B. for the increment value realised by A.

(7) Where minerals cease to be comprised in a mining lease or to be worked within the meaning of this section, the capital value of the minerals at the time shall be specially ascertained in accordance with the provisions of this Act, and the capital value as so ascertained shall be treated as the original capital value of the minerals.

See notes involving an explanation of this sub-section, *ante*, pp. 232, 260, 311. A point of doubt is whether this sub-section applies only to minerals comprised in a mining lease or being worked on April 30, 1909; or whether it applies as well to minerals leased or worked for the first time after that date. A further doubt is whether s. 23 (2) is to be read altogether with this sub-section, so that the minerals will have no capital value as minerals unless the proprietor estimates that value in his return?

Capital Value.—In accordance with the provisions of this Act. —See s. 23 (1), p. 245.

(8) Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act.

§ 22 (7).

There is some difficulty in ascertaining the exact position under the Act of the exempted minerals (s. 20 (5)). Under s. 23 (2), for the purposes of valuation they are to be treated as a separate parcel of land. Does that mean that the land is to be valued as if the substance in question did not exist and that the substance is to be valued apart from the land? If so, the operation will often be a difficult one in relation to these substances. Probably the substances in question will usually be treated as having no value as minerals (s. 23 (2)). The land will be sold and resold and increment value duty paid as if minerals were not involved. If at any time there should be a sale or lease of the substance in question, as of the right to take away all the chalk from a certain field (within a limited time), then a claim for increment value duty may arise. The first question will be, What was the original capital value of the minerals? That is answered by s. 23 (2). That original capital value is nothing unless the proprietor has in his [original?] return to the Commissioners [under s. 26 (2)?] specified the nature of the minerals and his estimate of their capital value. The value of the consideration for the sale or lease (s. 32 (1)) represents the capital (site) value on the occasion. Therefore practically increment value duty is payable on the whole consideration. When, however, the owner comes to sell the land itself without the substances, no doubt he will be less likely to have to pay increment value duty, since he will obtain less for his land. Obviously the position of an owner of an exempted substance, which either may or may not in the future be sold apart from the fee, is a little difficult and requires care.

Liable to increment value duty but not as minerals.

It seems certain that substances referred to in s. 20 (5), so far as they are minerals, have no general exemption from increment value duty conferred upon them. They are "land" within the meaning of s. 1. Sect. 20 (5) exempts them from mineral rights duty, and s. 22 (8) exempts them from the special form of increment value duty as an annual charge which is created by s. 22 (3). If in lease or being worked on April 30, 1909, they are exempt from valuation so long as they are either comprised in a mining lease or being worked by the proprietor, and for a further period of two years (s. 23 (3)); but at the expiration of that period they are not, like other minerals in lease or being worked on April 30, 1909, to have their original capital value ascertained under s. 22 (7), since under s. 22 (8) they are wholly exempt from all the provisions of s. 22. It is difficult to see how increment value duty can ever in future be charged on them as minerals. Perhaps the theory is that when brick clay, chalk, or gravel have once been worked, and the working has come to an end, it is not worth while looking for increment value in the future. See, further, notes on pp. 212 to 217, 226, and 263.

SECTION 23.

§ 23 (1).

23.—(1) For the purposes of this Part of this Act, the total value of minerals means the amount which the fee

Application of provisions as

§ 23 (1) to total and site value to minerals.

simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise, and the capital value of minerals means the total value, after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred bonâ fide by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or where the minerals have been partly worked, such deduction as is, in the opinion of the Commissioners, proportionate to the amount of minerals which have not been worked.

GENERAL NOTE ON SECTION 23 (VALUATION OF MINERALS).

Underlying assumptions of note.

It is assumed as the basis of the question now being discussed that the general valuation "of all land in the United Kingdom" which has under s. 26 (1) (see *post*, p. 309) to be made as soon as may be after April 30, 1910, includes a valuation of all minerals. It is further assumed that all the provisions of the Act coming under the title in the Act, "Valuation for purposes of duties on land values," and being ss. 25 to 32 inclusive, except where expressly (s. 25 (5)) or impliedly (s. 28) excluded, or obviously inapplicable, or varied by the section (s. 23) now under consideration, apply to the valuation of minerals.

The valuation provisions.

Sect. 25 (p. 272), is expressly excluded from being applicable to minerals (sub-s. (5)), but probably may be utilised for the purpose of analogical reasoning, where an analogy plainly exists.

Sect. 26 (1), (p. 309), requiring a valuation of all lands showing the total value and the site value thereof, is governed in its application to minerals by s. 23, which (1) has a special definition for total value of minerals not identical with total value of other land (sub-s. 1); (2) makes the reference to site value in s. 26 (1) a reference to capital value (sub-s. 4), which it defines in sub-s. (1); (3) renders it obligatory upon the Commissioners to value all minerals (when valued on the original valuation under s. 26) as a separate parcel of land; (4) but expressly states that when such minerals are not comprised in a mining lease or being worked [presumably on April 30, 1909] they are to be treated as having no value as minerals unless their proprietor in his return furnished under s. 26 (2) specifies the nature of the minerals and his estimate of their capital value (sub-s. (2)), in which case it is presumed their original capital value will be fixed under s. 27; (5) exempts from valuation under s. 26, and from all other valuation under the Act, minerals which were on April 30, 1909, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor, for a further period of two years (sub-s. 3). It will be remembered that

these receive their original site valuation on the expiration of the lease or the cesser of the working under s. 22 (7).

Sect. 27 (p. 320), relating to the procedure on the original site valuation, applies to the original valuation of minerals when there is an original capital valuation of them, that is, of minerals not in lease or being worked by the proprietor on April 30, 1909, and probably also to the valuation just referred to under s. 22 (7) of minerals in lease or being worked on April 30, 1909, substituting, of course, for references to site value references to capital value as defined by s. 23 (1).

Sect. 28 (p. 333), referring to the quinquennial valuation for the purposes of undeveloped land duty, has no bearing on the valuation of minerals.

Sect. 29 (p. 335), giving the Commissioners a general power of assessing duty on such pieces of land, whether under separate occupation or not, as they think fit, and of apportioning and reapportioning original and quinquennial site value, will doubtless *mutatis mutandis* apply to minerals, excluding of course quinquennial site value, which has nothing to do with minerals, and translating site value into capital value (s. 23 (4)). But the principles upon which the powers are to be exercised may not necessarily be the same for minerals as for other land.

Sect. 30 (p. 344), directing the Commissioners to keep a record of all transactions under the Act, s. 31, a purely machinery clause, and s. 32, a clause giving the Commissioners powers of estimating and apportioning consideration, will doubtless apply to minerals.

It also seems that s. 12 (p. 148), providing that a deduction for the purpose of ascertaining site value can only be claimed on an occasion for payment of increment value duty if claimed on the original site valuation, provided it could have been so claimed, applies to the valuation of minerals with the substitution of capital value for site value.

The way is now cleared for considering the provisions of s. 23.

Total Value of Minerals.—The four capital values, gross, full site, total, and assessable, which are essential parts of the scheme of the Act for ascertaining site value, are, as reflection will show, inapplicable to and unnecessary for the taxation upon minerals. Nevertheless the root idea of both the mineral rights duty (s. 20) and the annual increment value duty on minerals (s. 22) is that of a tax on something which is valuable, or has grown more valuable without any expenditure of money upon it by the owner or others interested in it. If a mineral proprietor expends capital on the mine which is usually spent by a lessee he is exempted from mineral rights duty (s. 20 (2)) and annual increment value duty (s. 22 (4)) on the results of that expenditure. In this respect these two duties resemble the ordinary increment value duty. Whether this idea is logically carried through the Act, so that on the sale in fee of minerals not in lease and not being worked the vendor is under s. 2 (2) (*a*) entitled to a deduction from the value of the

Expenditure exempt from taxation.

§ 23 (1). consideration of expenditure made by him which has added to the value of the minerals, is a difficult question, but it is thought that the concluding words of s. 2 (2), "subject to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of the land from the total value," refer as well to the deductions from the total value of minerals, the subject of s. 23 (1), for the purpose of arriving at capital value, as to the deductions mentioned in s. 25 (4) from the total value of land other than minerals, for the purpose of arriving at site value.

Total value not taxable.

Total value of minerals is not taxable. It resembles or is analogous to either gross value or full site value in the case of ordinary land, *i.e.*, something which expenditure has made more valuable than it was in its natural state. But if nothing has been spent on minerals their total value is the same as their capital value, just as the gross value, the full site value, the total value, and the assessable site value of a cleared and bare piece of land may be the same (see notes on s. 25, p. 271).

Of Minerals —That is, of the minerals considered as a separate parcel of land (see sub-s. (2)). Note that minerals in this section include such of the substances exempted under s. 20 (5) from mineral rights duty and under s. 22 (8) from annual increment value, etc., as are in fact minerals. In all cases, whether the minerals are the substances exempted under s. 20 (5) from mineral rights duty, or are minerals chargeable with that duty, or whether they were or were not on April 30, 1909, either comprised in a mining lease or being worked by the proprietor, they are not as minerals to be included in the value of the land, whether at the original or at a subsequent periodical valuation (s. 23 (2)). If on April 30, 1909, they were comprised in a mining lease, or were being worked by the proprietor, then, so long as either of those conditions continue, they are not to be valued at all (see sub-s. (3) of this section). But if those minerals, not being exempted substances under s. 20 (5), cease for a period exceeding two years (see s. 22 (2)) to be under either of those conditions, then they must be valued for the purpose of ascertaining their original capital value (s. 22 (7)).

Fee Simple of the Minerals.—Fee simple in possession not subject to any lease, but not including an undivided share in a fee simple in possession (s. 41).

If sold in the Open Market by a willing Seller in their then Condition might be expected to realize.—Substantially these are the conditions of the valuation of all land under the general valuation clause, s. 25: (see sub-ss. (1) and (2)), which, however, does not apply to minerals (sub-s. (5)). The words "at the time," present in s. 25 (1) and (2), and not present in s. 23 (1), do not appear to create any material difference between the two sets of provisions. The sale would, of course, be free from incumbrances, and may be presumed to be subject to such conditions of sale as a prudent vendor would naturally attach to the sale.

§ 23 (1).

For discussions as to the meanings to be attached to the words on which this note is written, see *post*, pp. 275 to 283, notes to s. 25 on "**at the time**," "**open market**," "**willing seller**," "**in its then condition**," "**might be expected to realize**," and see generally the notes on sale under s. 25, which are often as applicable to minerals as to other land.

Capital Value may perhaps be defined as sale (total) value less the expenditure which has been made on the minerals for the purpose of bringing the minerals into a condition in which they are capable of being worked. The deduction of this expenditure is analogous to the deductions under s. 25 (2) and (4) for the purpose of arriving at site value.

After allowing such Deduction, etc.—Just as a high original site value of land is desirable as a protection against future liability to increment value duty, so a high original capital value is advisable for the same reason. Therefore on the original capital valuation of minerals either under s. 26 (1) or s. 22 (7) proprietors may probably not trouble greatly about deductions. But when unworked and unleased minerals are sold in fee, or when an owner of such minerals dies, and increment value duty is payable under s. 1 (*a*) and (*b*), and the capital value on the occasion is arrived at under s. 2 (2) (*a*) and (*c*), the proprietor will wish to make the deductions, *i.e.*, the allowance for works executed or expenditure "of a capital nature incurred," etc. (see next note), as large as possible. On this occasion he wishes the capital value to be low. Hence no doubt s. 12 applies to the valuation of minerals (see p. 149). Estate duty is payable on total or selling value, and deductions do not affect it.

Works executed or Expenditure of a Capital Nature incurred.—Note that these must be for the purpose of bringing the minerals into working. The works, etc., need not be on the same vertical area of land in which the valued minerals are situate, so that lines of rails laid through adjoining land, and sheds, engine-houses, and other buildings, erections, and machinery on adjoining land would come within the clause. Nor need the expenditure be on adjoining land. A line of pipes miles long, or a shed half a mile away, would fall within the allowance.

Compare the deduction allowed by this sub-section with the deductions allowed from total value under s. 25 (4) in order to arrive at site value, especially (*b*) of that sub-section, "Any part of the total value . . . directly attributable to works executed or expenditure of a capital nature incurred." Under that paragraph the deduction is measured by the added value and clearly not by the amount of expenditure. Under s. 23 (1) the deduction is "such deduction (if any) as the Commissioners may allow for any works executed," and therefore is not so clearly to be measured by "added value." This seems to be a specially important matter in relation to minerals, since the value of the minerals may be very small till expenditure (it may be little in amount) has proved them

§ 23 (1). to be very valuable. It is further to be noted that it is only expenditure "for the purpose of bringing the minerals into working" as distinguished, it is conjectured, from expenditure for the purpose of proving the existence of the minerals. Two questions therefore here present themselves for solution. First, are the Commissioners bound to allow the whole added selling value caused by expenditure of the nature in question? Secondly, if minerals are known to exist, but it is not known whether it would pay to work them, is expenditure for the purpose of ascertaining this fact also expenditure "for the purpose of bringing the minerals into working"?

It is thought that the probable answer to the first question is that the Commissioners are not bound to allow the whole added selling value, and that if the workings cause the discovery of unexpected quantities or qualities of the minerals the deductions will be such sums as under all the circumstances it is reasonable should be allowed. It is thought that the answer to the second question is that if the expenditure for the purpose of discovery or an equivalent expenditure would have had to be made in any event for the purpose of working, then, but not otherwise, it is an expenditure for the latter purpose, and should be allowed.

Bonâ fide.—See note on p. 188 on this expression. It is difficult to see what device to avoid or lessen the burden of the taxation is being aimed at by this expression in this sub-section. Perhaps it may mean that expenditure for the purpose of prospecting and proving the minerals must not be treated as expenditure for the purpose of bringing the minerals into working, and as so giving rise to a deduction.

By or on behalf of any Person interested in the Minerals.—Not only by or on behalf of the proprietor, but of any lessee, or even, it is suggested, by or on behalf of any person beneficially interested in the property as an equitable mortgagee, a *cestui que trust*, and the like. It is thought that the words cover expenditure by all predecessors in title.

For the Purpose of bringing the Minerals into working.—See note above on the words "**works executed or expenditure of a capital nature incurred.**" For an explanation as to what minerals are included in "minerals . . . being worked," see s. 24, *post*, pp. 268 and 269, pars. "Where any minerals" and "Minerals which are being won." The former paragraph may have the effect of causing the deduction to be spread over a larger area of minerals than otherwise it would be.

Where the Minerals have been partly worked such Deduction as is in the Opinion of the Commissioners proportionate to the amount of Minerals which have not been worked.—It is of course right that, if, say, 10,000*l.* has been spent in sinking pits, putting down machinery, etc., and half the estimated produce of the mine has been realised, and then an occasion arises under s. 1 (*a*) or (*b*) for payment of increment value

duty on the remaining and unrealised half of the minerals, that only 5,000*l.* should be deducted from the total value of the remaining half of the minerals in order to arrive at their capital value. § 23 (1).

(2) For the purposes of valuation under this Part of this Act, all minerals shall be treated as a separate parcel of land; but where the minerals are not comprised in a mining lease or being worked, they shall be treated as having no value as minerals, unless the proprietor of the minerals, in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

Minerals which are comprised in a mining lease or are being worked shall be treated as a separate parcel of land, not only for the purposes of valuation, but also for the purpose of the assessment of duty under this Part of this Act.

For the Purposes of Valuation . . . all Minerals shall be treated as a Separate Parcel of Land.—Valuation of minerals under the Act may apparently take place on the following occasions:—(1) Minerals not in lease and not being worked on April 30, 1909, are to be valued on the original site valuation under s. 26 (subject, of course, to the provisions of s. 23 (2) from the semicolon in the first paragraph of that sub-section). (2) When minerals not in lease and not being worked pass on death, they are, it seems, liable to increment value duty under s. 1 (*b*) and must have their capital value ascertained; but when such minerals are sold and increment value duty is payable under s. 1 (*a*) it does not appear that there need be any valuation, since if increment value duty is then payable all that is necessary to ascertain the then capital value is, it is thought, to make the deductions referred to in s. 23 (1) from the value of the consideration under s. 2 (2) (*a*). (3) Minerals in lease or being worked on April 30, 1909, are to be valued at the expiration of the leasing or cesser of the working [and the lapse of two years] under s. 22 (7). (4) Possibly, but not certainly, minerals under head No. 1 are liable to be valued under s. 22 (7), after the expiration of leases and cesser of workings made or begun after April 30, 1909, and the additional period of two years. (5) On a periodical occasion under s. 1 (*c*) it is apprehended that the total and capital values of minerals not in lease nor being worked must be ascertained according to s. 23 (1). (6) Apportionments or reapportionments of the original capital value of minerals may be made under s. 29 (2), which will bring s. 23 (1) into play (s. 29 (2)).

In many of these cases the minerals will be naturally a separate Where naturally

§ 23 (2). a separate parcel.

parcel of land. The proprietor or owner of the minerals may not be the owner of the surface, and it is ownership and not occupation which is the subject of the new taxes. In other cases the occupation which is the normal unit of, the taxation of owners (s. 26 (2)) will be different in the case of the minerals to the occupation of the rest of the fee. Sub-sect. (2) is therefore mainly operative when the owner in fee, or his lessee is in possession of both land and minerals, and the minerals were not on April 30, 1909, comprised in a mining lease or being worked (s. 23 (3)).

There is no direction that minerals are to be treated as a separate parcel of land for the purposes of assessment of duty as well as of valuation, unless the minerals are either comprised in a mining lease or are being worked. It is, of course, obvious that in the latter classes of cases, when surface and minerals are sold together, the assessment must be separate, because the respective duties on surface and soil are paid at different times and by different persons. Where minerals not in lease and not being worked are sold together with the surface, increment value duty on both surface and minerals is payable at the same time by the vendor. See notes to sub-s. (2), "shall be treated," etc., *post*, p. 253.

Where the Minerals are not comprised in a Mining Lease or being worked.—If the minerals on April 30, 1909, are comprised in a mining lease, or are being worked, then under s. 22 (7), at the time when they cease to be in one of those conditions (but not temporarily so as to be protected by the proviso to s. 22 (2)), their original capital value is to be ascertained.

If, however, they are not comprised in such a lease, and are not being worked on the date in question, this sub-section will apply. Two questions then arise: (1) What is the effect of the owner of the land in his return not specifying any value as that of the minerals? He is clearly not obliged to specify any value (s. 26 (3)). The sub-section says that in such a case they shall be treated as having no value as minerals. Apparently this means that the original capital value of his minerals is *nil*, and that if the owner sells or leases his minerals separately from his land, the whole purchase price or rent will be increment value on which duty, subject to deductions, is chargeable. But supposing he sells his land including minerals, how are the minerals then to be treated? It may be suggested that they are still to be considered as of no value, but that is hardly possible. Supposing the purchaser gave a higher price for the land because it included the minerals? The vendor must, it is thought, in one way or another, pay increment value duty in respect of the minerals. That result may possibly be arrived at in one of two ways. Either the minerals may apparently be wholly left out of consideration, and the sale treated as of land only, in which case increment value duty will be payable in the usual way under sub-s. (2) (*a*); or in the alternative the Commissioners, treating the minerals as a separate parcel of land under

s. 23 (2), may apportion the consideration under s. 32 (2). In that case the whole of the consideration apportioned to the minerals will be increment value. The value of the surface may at the same time have greatly decremented, but there will be no right of set-off. In an extreme case the owner might get only a price equal to the original total valuation of land and minerals as an aggregate and yet have to pay a heavy sum for increment value duty on the minerals. The second question which arises is, what is the consequence if the owner does "specify the nature of the minerals and his estimate of their capital value"? Perhaps the true view is that in such a case the Commissioners are, under s. 23 (4) and s. 26 (1), bound to value the minerals as being land under s. (1), and as a separate parcel of land under s. 23 (2), and to fix their original capital value. If this is so, what will be the position when the site and the minerals are subsequently sold as a whole? The Commissioners may probably apportion the consideration under s. 32 (3) for the purpose of arriving at the increment value of the surface and minerals respectively. The result would be that if you have an increment on the minerals and a decrement on the surface, you cannot set off the decrement against the increment. If so, is not this unfair to the owner? It is a very different thing to the decrement of plot A being allowed as a set-off against the increment of plot B. The same result might spring from a mining lease. The owner might have to pay increment value duty on a mineral rent, which partly arose from the destruction of his surface. § 23 (2).

As having no Value as Minerals.—That is, they will be looked upon as an ordinary constituent of the soil, without any *special* value.

Unless the Proprietor . . . in his Return.—This must clearly refer to the return under s. 26, applicable to the ownership of all land, and is so treated by the Commissioners. For copy of return required see Form IV., *post*, p. 504. Probably the return could be amended at any time before the provisional valuation, and possibly even after and before that valuation is finally settled, as to which see p. 324.

Nature of the Minerals and his Estimate of their Capital Value.—Great difficulties may arise where a piece of land contains mines of various kinds, the extent and quality of each kind being hypothetical. The original capital values once fixed cannot be altered, and there is no set-off of an increment on iron ore against a decrement on coal.

It is perhaps not necessary that the capital value of each class of minerals should be stated, if the value of the whole of the minerals is given, since apportionment of capital value might be made later. But this is not certain (see Form IV. at p. 509, *post*).

Shall be treated as a Separate Parcel of Land, not only for the purposes of Valuation, but also for the purpose of the Assessment of Duty.—This is so almost of necessity. Increment value duty when payable is payable as an annual duty on minerals in lease or being

§ 23 (2). worked, s. 22 (s. 22 (3), while it is payable as a lump sum on the land other than the minerals. Each subject must naturally and of necessity be separately assessed. But where the minerals are not comprised in a mining lease or being worked, increment value duty is payable in respect of them as a lump sum at the same rate as it is payable on the rest of the land, and though surface and minerals may be valued separately, the duty may apparently be assessed on the joint product. The inner meaning of this sub-section possibly is that if an owner of minerals not in lease or being worked on April 30, 1909, puts no value on his minerals, and later on sells his land in fee (including, but without special mention, his minerals), the purchaser giving a bigger price because of the presence of minerals, the Commissioners may be able to assess jointly land and minerals, and to charge increment value duty under s. 2 (2) (*a*) on the purchase price (less deductions), nominally ignoring the minerals.

The sub-section may also mean that the minerals so comprised in a lease or being worked are to be assessed separately from other minerals of the same proprietor, either not in lease or not being worked, or in a different lease or a different working. Probably this would be done under s. 26 (1) and s. 29 (1) in any event.

This paragraph cannot of course apply to minerals either in lease or being worked on April 30, 1909, so long as the leasing or working continues, and for a period of two years afterwards (sub-s. (3)), but it will apply to a leasing or working renewed after the two years has expired.

(3) The provisions of this Part of this Act with respect to valuation shall not apply to minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor, nor shall such provisions apply to any minerals which cease for a temporary period to be comprised in a mining lease or to be worked so long as the period does not exceed two years.

The Provisions . . . with respect to Valuation.—These provisions will be ss. 26, 27, 29, 30, 31, 32, and the present section. Probably also s. 12. Sect. 25 does not apply to minerals. The reason why these provisions are not to apply to the class of leased and worked minerals referred to in the sub-section until the expiration of the periods referred to is because under s. 22 (2) increment value duty is not payable in respect of such minerals until the expiration of such periods. Valuation for purposes of increment value duty is therefore not needed. As

§ 23 (3).

to mineral rights duty, if the minerals are in lease the amount of the duty is fixed automatically by the payments under the lease (s. 20 (2)). If worked by the proprietor it is fixed by the amount of the workings considered as having been made under a hypothetical rent, for the ascertainment of which the total and capital values are not utilised in the scheme of the Act. Original valuation is therefore unnecessary for mineral rights duty, but see s. 20 (2) (*b*) for the special valuation for that duty.

When valuation clauses apply.

But when the minerals have ceased either to be comprised in a mining lease or to be worked for a period of two years, then the valuation clauses apply, and a valuation *must* be made under s. 22 (7), which is to be treated as the original capital value of the minerals (see *ante*, pp. 232 and 244).

Exempted substances.

This sub-section (s. 23 (3)) applies to the substances exempted under s. 20 (5) from mineral rights duty and under s. 22 (8) from increment value duty, if any of such substances are to be treated as minerals. But curiously enough s. 22 (7), requiring a valuation of such substances at the end of the lease or working and the two years, does not apply to those substances (s. 22 (8)). So that if in lease or being worked on April 30, 1909, they never would get an original capital value, and the Commissioners would therefore never be able to calculate their increment value. The point does not appear to be of much importance, because the capital value of substances coming under s. 20 (5) comprised in a lease allowing them to be taken away or being worked is not likely to increase so as to become liable to increment value duty.

(4) Except where the context otherwise requires, any references in this Part of this Act to the site value of land shall, in cases where the land consists solely of minerals, or comprises minerals, be construed, so far as respects the minerals, as a reference to the capital value of the minerals.

Except where the Context otherwise requires.—As for example in ss. 7, 8, 9, 16—19 inclusive, 25, 28, 36, the references in which to increment value are really references to site value as distinguished from capital value.

References . . . to the Site Value of Land.—The application to minerals of the general valuation clauses (ss. 25 to 32 and s. 12) has been considered on p. 254. An attempt is now made to point out the principal cases in which references in the Act to land and site value are to be construed as references to minerals and their capital value.

It is premised that the exceptions established by s. 23, *i.e.*, that increment value duty is not to be charged in the case of minerals which were on April 30, 1909, either comprised in a mining lease or being worked so

§ 23 (4). long as they are so comprised or worked, and for a period of two years subsequently, and also that increment value duty is not to be charged on the occasion of the grant of a mining lease or in respect of minerals comprised in a mining lease or being worked except as an annual duty under sub-s. 3 of s. 22, will be borne in mind in the perusal of the following note.

Sect. 1. There seems to be no doubt that the charge of duty on the increment value of land in this section includes a charge on the increment value of minerals.

Sect. 2. The definition or explanation of the increment value of land in this section is thought to apply also to the increment value of minerals. The words "capital value" must be substituted for "site value" in ss. 1 and 2. The "general provisions of this part of this Act as to valuation," referred to in ss. 1 and 2, are so far as regards minerals, it is believed, contained in s. 23. Whether sub-s. 3 of s. 2, of the Act of 1910, and s. 2 of the Revenue Act, 1911, relating to the substitution of a higher site value for the site value on the 30th April, 1909, as ascertained under the general valuation clauses, apply to the capital value of minerals is not quite clear. It is thought that the provisions referred to do apply.

Sect. 3. The first four sub-sections of s. 3 may all be useful, and are probably therefore applicable to the collection of increment value duty as a lump sum in respect of minerals. The question has been discussed whether sub-s. 5 of the same section, relating to the 10 per cent. reduction of site value for the purpose of collecting increment value duty, applies to the capital value of minerals in respect of which increment value duty is being paid as an annual duty (see p. 239). It is thought that it does not apply.

Sect. 4. All the sub-sections of s. 4 seem in whole or in part to be applicable to sales; but it is very difficult to say how far they apply to leases of minerals.

Sect. 5. Sect. 5, relating to the assessment, collection, and recovery of increment value duty on death, seems clearly to be applicable to minerals; subject of course to s. 22.

Sect. 6. Sect. 6, relating to the collection and recovery of increment value duty on property held by bodies corporate or unincorporate, is applicable to minerals. By virtue of s. 23 (2), where the minerals of a body corporate or unincorporate are not comprised in a mining lease or being worked, they are to be treated as having no value as minerals, unless the proprietor of the minerals in his return furnished to the Commissioners specifies the nature of the minerals and his estimate of their capital value. It seems doubtful whether by virtue of this sub-section, if a body corporate declines to put any value on its minerals in its original return, they will be exempt from periodical increment value duty until they are actually sold or leased. It is possible, however, that the first paragraph of s. 23 (2) only applies to the date of the original site

valuation, and that it is open to the Commissioners at any subsequent time when an occasion happens to put a real value on the minerals. The point is very obscure, and it must be remembered that to postpone the payment of increment value duty is not necessarily to escape it. **§ 23 (4).**

Sect. 7, being an exemption from increment value duty of agricultural land without any higher than agricultural value; s. 8, being an exemption of small houses and property in the owner's occupation; and s. 9, containing special provisions relating to collection of increment value duty in the case of land used for games and recreation, are obviously not applicable to minerals. Sects. 7, 8, and 9.

Sect. 10, relating to the increment value duty on land held by the State, doubtless will apply to minerals. Sect. 10.

Sect. 11, being an exemption from increment value duty in the case of flats, clearly does not apply to minerals. Sect. 11.

Sect. 12 has already been considered amongst the valuation clauses as being probably applicable to minerals. Sect. 12.

Sects. 13 to 15 inclusive relate to reversion duty. It is provided by s. 22 (1) that no reversion duty is to be charged on the determination of a mining lease. This clause, however, does not apply (s. 22 (8)) to the minerals which are exempt from mineral rights duty under s. 20 (5), in so far as they have been the subject of a mining lease. There is not, however, for obvious reasons, likely to be any value in the benefit accruing to the lessor at the determination of such a lease (see s. 13 (2) for definition of "value of the benefit," *ante*, p. 156). Sects. 13 to 15.

Sects. 16 to 19 inclusive relate to the undeveloped land duty. It is only necessary with reference to these sections to refer to sub-s. 4 of s. 16, which provides that for the purposes of undeveloped land duty undeveloped land does not include the minerals. Sects. 16 to 19.

Sects. 20 to 24 inclusive relate especially to minerals. Sects. 20 to 24.

Sects. 25 to 32 inclusive are the general valuation clauses, the application of which to minerals has already been discussed (see *ante*, p. 254). Sects. 25 to 32.

Sect. 33 relates to appeals and applies to minerals. Having regard to the fact that there is an appeal against the determination of the Commissioners upon any matter, with the exceptions mentioned in s. 33, it is not necessary to attempt to enumerate any of the cases in which in respect to minerals there may be such an appeal. It will be noted that under s. 33 (1) (*a*) there can be no appeal against the provisional valuation made by the Commissioners of the total or capital value of any minerals except on the part of a person who has made an objection to the provisional valuation in accordance with s. 27, and that under (*b*) the original total value and original capital value of minerals [? and their capital value as ascertained under any subsequent valuation] are to be questioned only by means of an appeal against the determination by the Commissioners of that value, where there is an appeal under the Act, and is not to be questioned in any case of an appeal against an assessment of duty. Sect. 33.

§ 23 (4). Sect. 34, creating a panel of referees, applies to minerals.

Sect. 34. Sect. 35 exempts minerals held by rating authorities (if there are any
Sect. 35. cases of such) from all duties under the Act.

Sect. 36. Sect. 36, relating to the deduction from increment value of sums paid to rating authorities in respect of improvements, cannot, it is thought, affect minerals.

Sect. 37. Sect. 37 exempts governing bodies constituted for charitable purposes, to which phrase an extremely wide signification is given, registered societies, and companies which are unable to divide profit from reversion duty and undeveloped land duty while the land is occupied and used by the body for the purposes of the body, and from increment value duty on periodical occasions, but without prejudice to the collection of the latter duty on other occasions. The section, so far as regards increment value duty under s. 1, is doubtless applicable to minerals, but it will be noted that it does not give exemption from mineral rights duty, nor doe it seem to apply to annual increment value duty under s. 22 (3).

Sect. 38. Sect. 38 (1) exempts land held by a statutory company for the purposes of their undertaking so long as it cannot be appropriated by the company except for those purposes from increment value duty, reversion duty, and undeveloped land duty, but not from mineral rights duty, though when the land is sold or ceases to be so held increment value duty is payable. This sub-section would apply to increment value duty on minerals so far as any are held by statutory companies as defined in sub-s. (4). Sub-s. 2 of s. 38, as to returns by a statutory company, would apply to minerals so held by the company. Sub-s. (3) of s. 38 enacts that "For the purposes of the Lands Clauses Acts, as incorporated with any special Act, the amount (if any) payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor." If, therefore, a statutory company having power to do so compulsorily acquires the minerals for the purpose of its undertaking as well as the surface, and increment value duty is payable on the minerals, the vendor to the company would not be entitled, either as part of his compensation or as part of his costs and expenses, to the amount so paid by him for increment value duty.

Sect. 39. Sect. 39 (1) and (2), giving power to trustees and tenants for life paying or liable to pay increment value duty to charge the same on the land, will doubtless apply to increment value duty on minerals. Sub-s. (3) of the same section, relating to the exercise of powers on behalf of infants and lunatics, will also apply to minerals. So will sub-s. (4), which gives power to a mortgagee to add increment value duty which he is liable to pay to his security.

Sect. 40. Sect. 40 relates to copyholds and customary freeholds, the minerals under which usually belong to the lord of the manor. As the lord cannot, in the absence of special custom, enter upon the land to get the

minerals, it is probable that he will usually place no value upon them. If subsequently he arranges with the copyholder for rights of entry for the purpose of getting the minerals, he will have to pay increment value duty on the full capital value of the minerals; but it is suggested that the consideration given to the tenant for the rights of entry would be treated as capital expenditure under s. 23 (1). § 23 (4).

Sects. 41 and 42 are the definition clauses. Sects. 41 and 42.

Sect. 60 (2), relating to the ascertainment of the principal value of property on death under s. 7 (5) of the Finance Act, 1894, probably applies to minerals. So does sub-s. (3) of s. 60, which substitutes an appeal under the Act of 1910 for an appeal under s. 10 of the Act of 1894, when a question arises as to the value of real or leasehold property. Sect. 60.

Where the Land consists solely of Minerals or comprises Minerals.—It is easy to follow the meaning of these words as applied to a sale or lease of minerals alone, the surface being not comprised in the sale or lease. Then "the land consists only of minerals." It is not so easy to follow the meaning when applied to a case where land and minerals are sold as a single unit, *i.e.*, where "the land . . . comprises minerals." If the minerals have an original capital value of "*nil*" (s. 23 (2)), and the land is sold without mention of minerals, but realises a higher price because of the possibility or probability that it comprises minerals it seems that under these words the Commissioners ought strictly to apportion the consideration under s. 32 (3), value the minerals under s. 23 (1), and assess increment value duty on the whole apportioned price of the minerals as increment value under s. 1 (*a*). But how are the Commissioners to apportion the consideration between the unproved minerals and the site, which if the minerals prove unpayable will be valuable, but which if the minerals are payable and worked will be a howling waste? Probably in such a case they will assess the site and the minerals as a whole, ignoring the fact that there are minerals, the result of which might sometimes, so far as regards increment value duty, be the same as that arrived at by apportionment of the consideration and separate assessment. The latter speculative process might indeed be more favourable to the Crown than a single assessment of site and minerals jointly, since the site value might have gone down since the original valuation, which would cause more of the purchase price to be apportioned to the minerals, and would thereby evolve a larger taxable increment value.

GENERAL NOTE ON INCREMENT VALUE DUTY IN RELATION TO MINERALS.

The following series of propositions arising out of the somewhat complicated provisions of s. 22 (1), (2), (3), (5), and (7), and s. 23 (2), (3), and (4), considered in relation to the charging and operative clauses as to increment value duty, namely, ss. 1 and 2, is attempted with some diffidence.

1. All minerals, including the substances exempted from mineral All minerals

§ 23 (4). rights duty by s. 20 (5), are liable to pay increment value duty as a lump sum on the occasions mentioned in s. 1, ascertained by the process pointed out by s. 2 (2) (*a*) and (*b*), subject to the following exceptions and modifications.

pay increment value duty except as hereinafter stated.

2. Whenever minerals not exempted under section 20 (5), which are hereinafter referred to as the "non-exempted minerals," are the subject of a mining lease, or whenever such minerals are being worked by the proprietor, then the increment value duty payable in respect of them, *whenever an occasion, other than a lease, arises under s.* 1 (*c*)*—that is, either on a conveyance of the reversion in fee under s. 1 (*a*), or on the death of the owner and proprietor under s. 1 (*b*), or the owner and proprietor being a body corporate or unincorporate on a periodical occasion under s. 1 (*c*)—takes the form (under s. 22 (3)) of an annual payment by the proprietor or immediate lessor with power of deduction as in the section mentioned, and no other increment value duty in any shape or form is payable by any one whether proprietor, intermediate or immediate lessor, or working lessee, so long as the lease or the working continues (s. 22 (1)).

Minerals in lease or being worked pay the annual increment value duty only.

3. If on April 30, 1909, non-exempted minerals were (*a*) either comprised in a mining lease or (*b*) being worked by the proprietor, no original valuation under s. 26 is to be made by the Commissioners, and no increment value duty, annual or otherwise, is payable so long as the minerals remain either the subject of the same or another lease, or so long as they are being worked by the proprietor. Ceasing for a temporary period to be comprised in a mining lease or to be so worked, so long as that period does not exceed two years, does not take away the exemption (s. 22 (2)). The exemption is understood to mean that not only is no increment value duty payable in respect of the leased term by the lessor, or of the worked minerals by the proprietor, but that none is payable under s. 1 (*a*) if the reversion in fee is sold, or under s. 1 (*b*) if the owner or the intermediate lessor or the tenant dies during the existence of the term, or under s. 1 (*c*) if a periodical occasion happens for the payment of increment value duty by a body corporate or unincorporate, whether owner or lessee. The owner has in fact realised his interest before the Act came into force, by making the lease or beginning to work the minerals. It is also thought that no increment value duty is payable by the tenant on assigning his lease at any time after April 30, 1910, or on the death of the tenant.

But not if in lease or being worked on April 30, 1909.

4. When two years have elapsed from the end of the lease or the cesser of the working of non-exempted minerals which were comprised in a lease or were being worked on April 30, 1909, the capital value of those minerals is to be ascertained under s. 22 (7), and this will be their original capital value; that is, it will be the *terminus a quo* their future

Until two years have elapsed since the last lease or working.

* It seems doubtful whether merely working on a lease for less than fourteen years gives rise to the claim for duty (see *ante*, pp. 223 and 232).

increment value will be measured when a future occasion arises for either payment of increment value duty under s. 1, or s. 22 (3).

Minerals not in lease, &c., on April 30, 1909.

5. When such non-exempted minerals are not on April 30, 1909, either comprised in a mining lease or being worked by the proprietor, increment value duty will be payable as a lump sum under s. 1 (*a*) on a conveyance in fee of those minerals, under s. 1 (*b*) on the death of the proprietor, and under s. 1 (*c*) on a periodical occasion by a body corporate, etc., provided that in all these cases the proprietor is not working the minerals and has not made any existing lease of them since April 30, 1909. In all these cases where the increment value duty is paid as a lump sum the capital value of the minerals will under s. 23 (2) be valued as a separate parcel of land. The original capital value of the minerals, (which will be *nil* unless the owner has put a value on the minerals in his original return (s. 23 (2)), or which, if the owner has put a value in such return, will (it seems) have been fixed on the original valuation under s. 26), will be deducted from the capital value on the occasion as ascertained under s. 2 (2) (*a*), (*b*), or (*c*), as the case may be, and s. 23 (1).

Lease after April 30, 1909, of minerals not then in lease or being worked.

6. If a lease [? for over fourteen years] is made after April 30, 1909, of these minerals which were not in lease or being worked on April 30, 1909, the annual increment value duty established by s. 22 (3) becomes payable. In such case the provisions expressed in No. 2 of these propositions come into force, and no increment value duty will be payable on any occasion or by any one interested in the minerals so long as the minerals continue in that lease. After the minerals cease to be comprised in that lease, it appears doubtful whether the capital value is to be ascertained under s. 22 (7) and is to be treated as their original capital value. It seems that, as they have an original capital value already, and as s. 22 (7) is capable of being construed so as to relate only to minerals in lease or being worked on April 30, 1909, its provisions will be confined to the latter class of minerals.

Working in similar case.

7. If the proprietor of non-exempted minerals not in lease or being worked on April 30, 1909, begins himself to work those minerals, it is doubtful whether increment value duty is payable until one of the occasions mentioned in s. 1 (*a*), (*b*), and (*c*) occurs. When that takes place, the consequences referred to in proposition No. 6 as happening on the occasion of a lease ensue, and the doubt there expressed as to valuation on the expiration of the lease is equally applicable to valuation on the cesser of the working.

Points of doubt.

The following are, amongst others, the principal points of doubt which seem to arise out of the foregoing series of propositions.

Increment value duty paid by purchaser, not by vendor, or sale of reversion.

1. If (as supposed in proposition 2, p. 260) it is the fact that the conveyance of the reversion in fee expectant on a mining lease is not the occasion of any claim for increment value duty, other than the duty being paid on the lease, and if, as is the case, increment value duty is recoverable in the same manner as mineral rights duty, that is from the

§ 23 (4). immediate lessor (s. 22 (5)), it would follow that the increment value duty on the sale of a reversion in fee is from thenceforth to be borne not by the vendor as ordinary increment value duty, but by the purchaser. This is perhaps not anomalous, since the realised increment is an annual occurrence represented by rent (s. 22 (3)).

Or of minerals being worked.

2. The same consequences would follow where the proprietor who has commenced to work minerals after April 30, 1909, not being worked or in lease on that date, sells his mine and minerals as a going concern. In this case the purchaser would pay annual increment value duty under s. 22 (3).

Exemption from increment value duty of working lessee.

3. The working lessee is exempted from increment value duty by virtue of s. 22 (1), although the value of his minerals may have greatly incremented during the period of his lease. The rent and royalties being fixed amounts and not depending on the price of the produce, the whole of this increment would go to the lessee, but on his assigning his lease or on his death it appears that increment value duty would not be payable under s. 1 (*a*) or (*b*) (s. 22 (2) and (3)). If he were to make an underlease for over fourteen years, it would seem that increment value duty would be payable under ss. 1 (*a*) and 22 (3).

Is *mere* working an occasion?

4. It does not seem that there is anything in the Act directly rendering the mere working by a proprietor of minerals not comprised in any lease or commenced to be worked on April 30, 1909, an occasion for the payment of duty. But this is a very difficult and doubtful question, and no definite opinion is expressed upon it.

Quære as to s. 22 (7).

5. It appears doubtful whether the provisions of s. 22 (7) apply to minerals not in lease or being worked on April 30, 1909, but subsequently leased or worked.

Doubt as to s. 2 (2).

6. The application of s. 2 (2) to the ascertainment of the capital value of minerals on an occasion is not quite plain, since the sum which is to be taken as the site value (in the case of minerals as the capital value, s. 23 (4)) is subject "in each case to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of the land from the total value." The provisions referred to are contained principally in s. 25, but sub-s. (5) of that section says that "the provisions of this section are not applicable for the purpose of minerals." Further, the site value of the land where an occasion arises under s. 2 (2) (*d*), that is, on the periodical occasion applicable to a body corporate, etc., is to be taken to be "the total value of the land on that occasion to be estimated in accordance with the general provisions of this part of this Act as to valuation." Those are the same general provisions which, at all events as to s. 25, the principal of them, are expressly made not applicable to minerals. It is, of course, possible that it might be held that no increment value duty is payable in respect of minerals except as an annual duty under s. 22 (3), and the decision might be based on the fact that there are no intelligible directions for the valuation of minerals in fee

simple on an occasion arising under s. 1. But this is unlikely, because the term "land" undoubtedly includes minerals unless the context shows that it does not (s. 41; sect. 3, Interpretation Act, 1889). Sect. 22 (1) would hardly have said that increment value duty was not to be charged on minerals comprised in a mining lease or being worked, except as a duty payable annually, if it were never to be charged upon any minerals otherwise than as an annual duty. Further, it is easy to see that many of the provisions of s. 25 could not possibly be applicable to minerals, and that therefore they were excluded by s. 25 (5) from applying to them. It is further thought that s. 23 (1) is a general provision of the Act as to valuation of minerals, and as such is referred to when the capital value of minerals is to be ascertained under s. 2 (1) and (2). For these reasons it is thought that minerals are liable to increment value duty payable as a lump sum in the circumstances referred to.

Mining lease not exceeding fourteen years.

7. It is doubtful whether increment value duty is payable in respect of the grant of a mining lease for not more than fourteen years. The duty is charged under s. 1. But (*a*) of s. 1, which enacts the exception of leases not exceeding fourteen years relates only to "collection" of duty. Sect. 22 (5) (see p. 241) establishes a special method of collection of annual increment value duty. It is possible that s. 22 (5) only applies the machinery of ss. 20 (4) and 21 to annual increment value duty, thus impliedly ruling out ss. 3 and 4 as to collection, but not ruling out s. 1 (*a*), which in substance relates to the occasions for rather than to the methods of collection.

EXEMPTED MINERALS.

It is not easy to determine whether it is worth while hazarding a series of propositions relating to the position of the substances exempted from mineral rights duty and annual increment value duty under s. 20 (5) and s. 22 (8). There is some ground for believing that the Inland Revenue authorities do not attach much importance to those substances from the point of view of mineral revenue, and will be content to treat them as part of the ordinary soil. The following propositions may perhaps be accepted, with relation to these exempted substances.

Any one may be a mineral.

(1) Any one of them, even common clay, may conceivably be a mineral, if and when it is an exceptional substance not the ordinary rock or soil of the district (*Great Western Railway Co.* v. *Carpalla*, [1910] A. C. 83, at p. 86, and *North British Railway Co.* v. *Budhill*, [1910] A. C. 116, at pp. 127).

A question of fact.

(2) What is or is not the ordinary rock or soil of the district is a question of fact in each case to be determined by evidence. But it is submitted that, if the soil of a district is composed in varying but sub-

§ 23 (4). stantial parts of all or some of the seven exempted substances, none of such substances in that district are minerals. Apparently the presence of a substance must be "rare and exceptional" to constitute it a mineral (see *Great Western Railway Co.* v. *Carpalla, etc., Co.*, [1910] A. C. 83, at p. 86). So far as the earlier cases (cited on pp. 208 to 211) are contrary to the two 1910 House of Lords cases just referred to, they are probably not now law. If this view is correct, an exempted substance can seldom be treated as a mineral, unless the owner himself wishes so to treat it.

Greatly an option of owner.

(3) An owner may doubtless, if he pleases, in his original return under s. 26 (1) treat his unleased and unworked gravel, limestone, etc., as a mineral (for the form of the return as to minerals, see p. 531), and have it valued as such, but, in view of the apparent difficulties of the Crown in relation to the recovery of increment value duty on these substances, he is not advised to adopt this course.

A difficult problem.

(4) If the owner did not treat the substance as a mineral in his original return, but did subsequently sell or let it with the site, as where a field of brick earth is let on lease for more than fourteen years with liberty to take all the brick earth off the land at a royalty per ton, and the Commissioners then claim increment value duty, several very interesting questions will arise, such as, (1) Is increment value duty to be paid on the lease under s. 1 (*a*) and s. 2 (2) (*b*), as on the lease of a site, or is it to be paid as on the lease of a mineral, bringing into play s. 23 (1) and (2)? (2) How in either event is the value of the fee simple of the land to be ascertained under s. 2 (2) (*b*) when the amount of royalty payable is quite uncertain? Sect. 22 (7), of course, does not apply (*ib.*, sub-s. (8)). These comments have been made lest it should be thought that the points involved had been overlooked, and they might be continued *ad infinitum*. In the view of the writer, however, it is not worth the reader's while losing his head in a legal edition of "Alice in Wonderland" until it is certain that the Treasury mean to treat the exempted substances as to minerals to the extent at least that they are to be valued as separate parcels of land.

Comprises leases to fourteen years.

(5) To avoid questions of payment of increment value duty on exempted substances it is at all events advisable that a lease of them should not exceed fourteen years. This will confine the difficulties of increment value duty in relation to these substances to death and the periodic assessment of a body corporate, etc. On a conveyance out and out of the fee, including the substances, probably the Commissioners will treat the transaction as an ordinary sale of land. Under s. 2 (2), applying s. 25, there is in such a case no deduction from the value of the consideration, by virtue of sub-s. (4) (*a*), of the value of the minerals. The authorities would therefore probably fix the gross value approximately the same as the consideration and obtain increment value duty on the full increment value of the land, including the minerals considered simply as part of the soil.

SECTION 24.

24. For the purpose of the provisions of this Act as to minerals— **§ 24.** Definitions for purpose of mineral provisions.

The expression "proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which section sixty-five of the Conveyancing and Law of Property Act, 1881, applies; 44 & 45 Vict. c. 41.

The Expression Proprietor means the Person entitled . . . in possession to the Minerals or any Part of those Rents and Profits.—Tenants in fee, and in tail, and the various kinds of life tenants, tenants in common, and joint tenants in fee, tail, or for life are thus proprietors. Possibly a person in possession without a title is a proprietor.

This definition should be compared with that of owner in s. 41. Both mean the person entitled in possession to the rents and profits. But "owner" includes a person entitled as lessee to an unexpired term of fifty years, whilst "proprietor" does not include a person entitled as lessee other than the owner of a long term to which s. 65 of the Conveyancing Act, 1881, applies.* It does not seem that it is possible to construe "proprietor" as including a lessor who is also a lessee, though if it could be done it would remove some difficulties in the Act. See s. 20 (2), proviso, *ante*, p. 217, and s. 21 (4), *ante*, p. 229.

The proprietor will then usually, if not without exception, be the same person as the owner of the minerals considered as a separate parcel of land. He must then make both returns, *i.e.*, that as to ownership under s. 26 (1), either Form IV., p. 498, or Form VI., p. 533, and that as to the minerals specially, *i.e.*, rental value, etc., Form V., *post*, p. 519. Difference between "owner" and "proprietor."

One at least of the reasons why the term "proprietor" is defined as not including a lessee of lands including minerals for a term of over fifty years unexpired is because an ordinary lease does not entitle the lessee to get the minerals. To get the minerals would be to commit waste. He therefore cannot be liable to mineral rights duty or the annual increment value duty. The definition of "owner" seems, however, to be important only (1.) so far as regards undeveloped land duty

* *I.e.*, a term of not less than 200 years unexpired, etc. (see Appendix, p. 604), which may be enlarged into a fee simple with the right to get the minerals.

§ 24. as to which a lessee with a term of over fifty years unexpired is owner; (2) for the purpose of valuation under sections 26 and 27 (3) and for the purposes of sections 8 and 18.

In the case of a lease for over fifty years unexpired the lessee would seem to be the owner, but he is not the proprietor, of the minerals. The lessee ought therefore to make the original return on Form VI. under s. 26 (2) as well as the freeholder as a "person receiving rent" under the same section.

Long Term of Years to which Section 65, etc., applies.—This is the kind of term which may be enlarged into a fee simple under s. 65 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41). See Appendix, p. 604, for that section, and s. 11 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), an amending provision.

The expression "rent" includes yearly or other rent, and shall, in addition to the meaning assigned to it for the general purposes of this Part of this Act, be construed as including any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

Where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof;

In Addition to the Meaning assigned, etc.—By s. 41, rent has the same meaning as in the Conveyancing and Law of Property Act, 1881, and does not include a rent-charge. Under s. 2 (ix.) of the Conveyancing and Law of Property Act, 1881, rent *includes* (not *means*) yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise.

Mining lease. The expression "mining lease" means a lease for mining purposes, that is, for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals, or purposes connected therewith, and includes an agreement for such lease, or any tenancy or licence, whether by deed, parol, or otherwise for mining purposes, and the expressions "lessor"

and "lessee" shall in addition to the meaning assigned to them for the general purposes of this Part of this Act be construed so as to include respectively a licensor and a licensee; § 24.

Mining Lease means a lease expressly for "mining purposes." An ordinary lessee by implication of law is not allowed to commit waste, and mining is waste. It is extremely unlikely that a lease should be made without impeachment of waste, and yet not intended to be an ordinary mining lease under which the lessee was expected to mine. No question is therefore likely to arise on this score.

Mining lease seems to include mining underlease (see paragraph "The expression 'lease,'" s. 41, p. 443, which is probably applicable). Mining lease is stated by the paragraph under comment to include an agreement for a mining lease.

Or Purposes connected therewith.—This gives a somewhat wide meaning to the term "mining lease," (see notes on pp. 218 and 219). It probably renders a lease of the surface (in a separate document from the lease by the same person of the mines), for the purpose of works and conveniences connected with mining operations, a mining lease. Possibly even a lease of the surface of Blackacre by A. for the purposes of the mines leased to the same lessee by B. may be a mining lease, even if the mines are not in Blackacre.

Licence, whether by deed, parol, or otherwise, does not, as is well known, confer any interest in land, and is revocable at any moment (*Wood* v. *Leadbitter*, 13 M. & W. 838), subject to any claim for damages for breach of contract, but of course royalty or toll or other reservation (see above note on rent) could be reserved under it, so that the mineral rights duty came into play.

The expressions "Lessor" and "Lessee."—See the paragraph commencing with these words in s. 41 (p. 461).

The expression "working lessee" means as respects the right to work minerals the lessee who is actually working the minerals, or who would have the right actually to work the minerals if the minerals were worked, and as respects mineral way-leaves the lessee who is in actual enjoyment of the way-leave, and the expression "immediate lessor" shall be construed accordingly; Working lessee.

The Expression "Working Lease," etc.—A., a tenant for life of minerals the subject of a settlement, leases the minerals to B. for thirty

§ 24. years at a dead rent of 100*l.* a year and a royalty of 1*s.* a ton for every ton over 2,000 tons gotten in each year. B. sub-leases the same minerals to C. at increased rents and royalties, and C. sub-leases on improved terms to D. D. is the working lessee. C. is the immediate lessor. B. is an intermediate lessor. A. is the proprietor.

As respects Mineral Way-leaves.—As to mineral way-leaves leased to proprietors working their own minerals and the payment thereon of mineral rights duty, see *ante*, p. 223.

Working year.

The expression "working year" means the year ending the thirtieth day of September, or such other day as may in any case be approved by the Commissioners; and the expression "last working year" means the working year completed immediately before the first day of January in any financial year for which the duty is paid;

The mineral rights duty charged for the year 1910 is calculated on the results of the working year ending September 30, 1909, or such other day in the year 1909 as may in the particular case be approved by the Commissioners, and so in all succeeding years. It is doubtless intended that the conclusion of a working year for purposes of taxation should be made to fit in with the usual working year of the business. It is not thought that under this provision the Commissioners can fix another day for the end of the working year without the consent of the lessors and proprietor, but the point is not plain.

Mineral way-leave.

The expression "mineral way-leave" means any way-leave, air-leave, water-leave, or right to use a shaft, granted to or enjoyed by a working lessee whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals.

Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if the minerals are being worked by the proprietor, or which the lessee has power to

work if the minerals are being worked by a lessee, and which would, in the ordinary course of events, be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date. § 24.

Illustration.—A., before April 30, 1909, owned land including minerals, but did not sink a shaft and in no manner attempted to work the minerals. He subsequently bought, also before April 30, 1909, a mine in working operation adjacent to this land and from which the minerals originally owned by him could naturally and conveniently (*i.e.*, "in the ordinary course of events") be worked together with the minerals of the last purchased mine. In working the latter he is deemed to be working the minerals he originally owned. Therefore it is thought that the original as well as the more recently acquired minerals are by virtue of s. 22 (2) exempt from increment value duty so long as either A. himself works the last purchased minerals, or so long as both sets of minerals are leased to the same lessee. So also the minerals originally owned by A. would seem to be exempt from original capital valuation under s. 26 and s. 23 (1).

Minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked.

Are being won.—See notes to s. 20 (2), p. 221, under words "**are being worked.**"

Minerals shall be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease, although the lease has expired.

Under the Terms.—Doubtless a variation in particulars of the terms would not alter the position. But it probably would not matter if it did, provided two years did not intervene between the workings, since the definition of mining lease (*ante*, p. 266) seems to cover every arrangement under which minerals could be worked so as to produce rent.

Where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily

§ 24. represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district.

This refers to the proviso to s. 20 (2), see p. 218.

VALUATION FOR PURPOSES OF DUTIES ON LAND VALUES.

Sects. 25 to 32 inclusive of the Act of 1910, and s. 2 of the Revenue Act, 1911, establish a code of principles and procedure with respect to valuation for purposes of the new land taxes. See comment on p. cxvii.

Sect. 25 defines or describes the four values—(*a*) gross, (*b*) full site, (*c*) total, and (*d*) assessable site value—which all land (except minerals) possesses.

Sect. 26 lays the duty upon the Commissioners of making a general valuation of all land in the country as on April 30, 1909, showing separately total and site value, and in the case of agricultural land its value for agricultural purposes. It lays the duty upon owners and others of making returns to the Commissioners, and permits owners, if they think fit, to furnish for the consideration of the Commissioners their own estimate of value. Sect. 5 of the Revenue Act, 1911 (1 Geo. 5, c. 2), allows the subject in certain cases to have land in diverse occupations aggregated for the purpose of valuation.

Sect. 27 relates to the procedure on valuation, the provisional valuation, and the method of objecting thereto by owners and others interested in the land.

Sect. 28 enacts a periodical site valuation of all undeveloped land for the purposes of undeveloped land duty on April 5 in the year 1914 and in every subsequent fifth year.

Sect. 29 confers upon the Commissioners the wide power of assessing duty under the Act on such pieces of land as they please, and the power of apportioning and reapportioning site values, and gives the owner and persons interested the power to require the Commissioners to make such an apportionment.

Sect. 30 requires the Commissioners to record all valuations, apportionments, and assessments, etc., made, and deductions allowed by them, and provides for the furnishing of copies of such records to persons interested.

Sect. 31 contains certain incidental powers and provisions vested in the Commissioners and otherwise for facilitating valuations.

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Sect. 32 empowers the Commissioners to fix the value of certain considerations, and to apportion considerations, etc.

General note on valuation.

Sect 25 deals with the important subject of the valuations upon which the new duties are to be assessed. It defines or explains the subject-matter of the various taxes. Increment value duty and undeveloped land duty are levied on site value only. This section points out what is site value, or, in other words, how site value is to be arrived at. Reversion duty is leviable on "total value" at the time of levy, less a prior "total value." The former total value, that at the time of levy, is to be ascertained under s. 25 (s. 13 (2)). The total value at the earlier date is to be ascertained by the special process set forth in s. 13 (2).

The earlier editions of the clause in Parliament contained definitions only of total value and "site value." The later added one entirely new definition and divided that of "site value" into two categories. "Gross value" is the addition; "full site value" and "assessable site value" are the two divisions into which site value is split up. It may be doubted whether the additional definitions have added to the lucidity of the scheme. On p. 308 it is attempted to explain one at least of the reasons why the four values were introduced into the valuation scheme.

The view of the layman not the legal view.

To the layman it seems an easy task to determine the taxable value of, on the one hand, the house and land considered as an aggregate, and of the land contemplated as a site cleared of all that industry has added to it or placed upon it on the other. But the numerous incidents which are attached to land and buildings in the process of meeting the complex requirements of civilisation make the task, which seems so easy to a layman, one of greater difficulty to a lawyer. The value of lands and buildings is affected by all sorts of things, invisible, as well as visible to the onlooker. Rates and taxes, private and public rights of way, easements of many other kinds, restrictive covenants, rent-charges, and charges under public or private improvement schemes are examples, not exhaustive, of the things which count as elements of value. Further, the Finance Act of 1910 creates by definition a new taxable entity, never before known to the law, which has seldom existed in fact, and will seldom exist in the future, except in imagination, and which is called in the Act "the assessable site value."*

The four values.

"Total value," defined in sub-s. (3), and "assessable site value," in sub-s. (4), play an operative part in the machinery of the Act. They are the values upon which the new taxes are levied. "Gross value," defined in sub-s. (1), and "full site value," in sub-s. (2), appear to be mere steps in the ascertainment of "total value" and "assessable site value." Conceivably there may be no difference at all between the amount of all four values. The "gross value" of a bare piece of land on which

* This statement is not intended to criticise the tax on site values, which would be outside the scope of this work. It is intended only to assist the reader in grasping the idea of the subject-matter of the tax.

§ 24. there are no buildings and there is no growth, which is subject to no burdens, charges, or restrictions, easements, public or private rights, and in respect of which no money has been spent in any of the ways mentioned in the section, is the same as its "total value," its "full site value," and its "assessable site value." But little of the land of the country is in this position. Whenever fixed charges, easements, public or private rights, or restrictive covenants affect a piece of land, its "total value" is different from and less than its "gross value." Whenever there are buildings, erections, or growing produce on land, its "full site value" differs from its "gross value," and its assessable site value from its total value, except, indeed, in the possible case of the cost of clearing the land exactly balancing the additional value conferred upon it by the buildings, erections, or produce. If the buildings are so dilapidated that the cost of clearing them away would exceed the value arising from their existence, the full site value is actually greater than the gross value. "Full site value," again, differs from and is greater than "assessable site value" whenever (1) the land is subject to any burden, charge or restriction, easement, public or private right, or (2) there has been any expenditure adding value to the land and falling under any of heads (*b*) to (*e*) in sub-s. (4). Enough has been said to indicate the complexities of the system of values introduced by the Act. At this point it will be sufficient to emphasise (*a*) the paragraph of sub-s. (4) providing that any reference in the Act to "site value" (other than the reference to the site value of land on an occasion on which increment value duty is to be collected) is to be deemed a reference to the assessable site value of the land as ascertained in accordance with this section, and (*b*) sub-s. (5), which provides that the provisions of this section are not applicable for the purpose of the valuation of minerals.

SECTION 25.

§ 25. Definition of values of land.

25.—(1) For the purposes of this Part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise.*

This section does not apply to the valuation of minerals (sub-s. 5).

* See *ante*, p. cl., for copy of instructions published after this book was passing through the press, by the Inland Revenue to its valuers as to the ascertainment of site value on an occasion and note thereon.

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Gross Value.—"Gross value," as contemplated by the section, appears to be the value of a property held in fee without any visible or invisible deduction from the fullest and most complete rights of ownership known to English law. When the "man in the street," not being a lawyer or a valuer, estimates the value of a house which he is looking at from the street, the value present to his mind is probably that which is intended in s. 25 (1) by "gross value." He knows the house is subject to rates and taxes: he does not recur to the fact that it may be subject to easements, fixed charges, restrictions arising out of contract, and many other burdens; or he assumes that it is not so subject. Gross value is, however, in many cases a purely hypothetical value which does not exist in fact. It is not identical with "principal value" referred to in the valuation clause of the Finance Act, 1894, s. 7, which is as follows:—

"The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased." That clause is a definition of the value of a real and not a hypothetical subject-matter.

A step to total and site values.

Gross value is a step in the ascertainment of original total (or real) value and original site value under ss. 26 and 27 (see s. 26 (1) and s. 27 (4)). The gross value of the land must be first ascertained, because its total value is arrived at by deducting from the gross value the amount by which the hypothetical gross value would be diminished, if the land which, in arriving at gross value, is valued free from its actual burdens as mentioned in sub-s. (3) were valued subject to those burdens. In other words, assume that the gross value of a piece of land is 1,000*l.*, but that the land is, as a matter of fact, subject to a land tax of 1*l.* a year, and a certain easement of way attached to a neighbouring property; assume further that the land if sold subject to the land tax and the easement would fetch 200*l.* less than if sold free from them. Then the total value under sub-s. (3) = 1,000*l.* − 200*l.* = 800*l.* This is a roundabout way of arriving at total value, because, as is seen by considering the above figures, you have in fact to arrive at total value before you can find the sum which under sub-s. (3) you have to deduct from gross value to arrive at total value. The process as described in sub-ss. (1) and (3) of s. 25 may thus be stated algebraically.

Let a = gross value
x = total value
Then $a = x + (a - x)$
and $x = a - (a - x)$.

Gross value is also a step in arriving at original assessable site value, because, as will presently be seen (sub-s. (4) (*a*), p. 294), assessable site value is arrived at by deducting from total value the same amount as is to be deducted for the purpose of arriving at full site value from gross value.

§ 25 (1). That amount is one which can only be determined under sub-s. (2) after gross value has itself been determined.

"Gross value" for similar reasons must also be ascertained as a step in the process of ascertaining assessable site value under s. 28 or the quinquennial valuation for the purposes of undeveloped land duty.

Must be ascertained on occasions under ss. 1 and 2.

Gross value must also be ascertained on the occasion of a payment of increment value duty under ss. 1 and 2. On each of the occasions (*a*), (*b*), (*c*), and (*d*) mentioned in s. 2 (2), the site value on the occasion (which is to be deducted from the original site value in order to ascertain the increment value) is a certain sum, arrived at in different ways, according to the nature of the occasion, from which is to be deducted in each case "the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of land from the total value." Those deductions are set out in sub-s. (4) of s. 25, and the first of them (*a*) is "the same amount as is to be deducted for the purpose of arriving at full site value from gross value." This, as already stated, involves the ascertainment of gross value.

On apportionment.

Gross value for reasons which will now be tolerably apparent must also be ascertained on the apportionment or reapportionment of original or periodical site value under s. 29 (2).

On payment of reversion duty.

It is also necessary to ascertain gross value in the case of an occasion for payment of reversion duty under s. 13 (2) in order to arrive at "the total value (as defined for the purpose of the general provisions of this part of this Act relating to valuation) of the land at the time the lease determines."

Generally.

It will be unnecessary to repeat these remarks under sub-ss. (2), (3), and (4) of s. 25, if it is now said that whenever assessable site value has to be arrived at, that is on the original and the quinquennial valuations, and on apportionments and reapportionments of original and periodical site values under s. 29 (2), gross value, full site value, and total value must, as steps in the process of valuation, be ascertained; that whenever site value (not designated *assessable* site value (s. 25 (4)) on an occasion of payment of duty under ss. 1 and 2 has to be ascertained, both gross value and full site value must also be ascertained; and that whenever total value at the time of the determination of a lease has to be ascertained for the purposes of reversion duty, gross value should in theory be ascertained. Total value has not to be ascertained on "an occasion arising for payment of duty under s. 1," except under s. 1 (*c*), because the "value of the consideration for the transfer" under s. 2 (2) (*a*), "the value of the fee simple of the land calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest" under s. 2 (2) (*b*), and "the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894," etc., under s. 2 (2) (*c*), are respectively taken as better tests of total value than a valuation under s. 25 (3).

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Fee Simple means, under s. 41, the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession. The definition is vital.

At the Time.*—The time at which the value is to be ascertained, *i.e.*: (*a*) Under s. 26 all land in the United Kingdom is to be valued *as soon as may be after the passing of the Act, and the original total and site values are to be estimated as on April* 30, 1909. (*b*) Under s. 28 *in the year* 1914 *and in every subsequent fifth year* a valuation is to be made of undeveloped land, showing the site value, which presupposes valuations showing gross value, full site value, and total value as on *April* 30 *of that year.* (*c*) Under s. 29 apportionments and reapportionments of original and periodical site values may be made, and this sub-section (s. 25 (1)) will again be applicable *as at the date of the original or periodical valuation.* (*d*) On occasion for payment of increment value duty arising on sale, lease, or death under s. 1 the time will be the date of the occasion in question. (*e*) In the case of periodic payments of increment value duty under s. 1 (*c*) and s. 6 the account to be furnished by the body "shall contain an account of the increment value of the land *as on the preceding 5th day of April*" (*ib.*, sub-s. (2)). (*f*) Under s. 13 for purposes of reversion duty the total value of the land has to be ascertained *at the time the lease determines.*

The valuer must under these words, it is thought, take into consideration the cost of erecting the buildings at the time. All increase or decrease of values of built-over land is not necessarily referable to site value. The value of the buildings as applied to that land may vary with the cost of building. But the permanency of the variation must also be considered.

In the Open Market, *i.e.*, not by offers confined to or made by a selected class, but not necessarily by auction. Probably the words mean nothing more than is implied in every ordinary valuation. For the same words see the Finance Act, 1894, s. 7 (5), and the Licensing Act, 1904, s. 2 (2). As to the meaning of these words as applied not to land but to shares, with peculiar incidents attaching, see *Attorney-General* v. *Jameson*, [1905] 2 I. R. 218. It is thought that it must be assumed by the valuer that proper steps have been taken to put the property on "the open market," *i.e.*, that notice boards have been put up, that it has been in the hands of agents, or advertised to a reasonable and average extent.

Willing Seller.—The word "willing" does not seem really to add to the meaning of the clause. Probably it is inserted to guard against certain possible methods of valuing. It may be intended, on the one

* The notes on the following words in sub-s. (1) of s. 25, "at the time," "in the open market," "by a willing seller," "might be expected to realise," are to a large extent as applicable to sub-s. (2) as to sub-s. (1).

§ 25 (1). hand, to prevent any lowering of the value on the assumption that the vendor is bound to sell against his will and that buyers know it and take advantage of his necessities. It may, on the other hand, be intended to prevent any inflation of the value on the ground that not being a willing seller he must be tempted by a high price, or ought to receive *compensation*, as under the Lands Clauses Acts, for the loss of his property. It is submitted, however, that the words "by a willing seller" do not alter or add to the meaning of the sub-section, and that the value of a property "in the open market" is quite independent of the state of mind of the seller. The sub-section says nothing about a willing buyer, but it must be assumed by the valuer that there is such a person, because he is to assume that the property is actually sold. At a price there is always a willing buyer, for if there is not there is no value "at the time" in the land. The real test of the value of land is, it is submitted, what a hypothetical buyer, who is necessarily a willing buyer, would give, and the hypothetical willingness or unwillingness of the seller seems to have nothing to do with the matter in a valuation, which is not an actual offering of the property for sale, when the personal elements involved in the higgling of the market have an influence.

In its then Condition, *i.e.*, with all its buildings and all its growth—"as it stands." The contrast is with the valuation of a hypothetical thing as in sub-s. (2), *i.e.*, the full site value. But the words probably include the then condition of the surroundings of the property, so far as such condition influences its value. A house in good repair itself, but surrounded by dilapidated buildings, is thereby depreciated in value.

Future development to be allowed for.

But the words do not, it is thought, mean that the valuer is to assume that the property is to be deemed always to remain in its then condition. Full consideration must be given to the possibilities of value in the future. A house on the line of Kingsway, or other wide and handsome street, may be dilapidated and out of character with its surroundings. It is submitted that the fact that the cleared site would command a higher sum than the existing site and building is a matter which the valuer should take into account. A terrace of suburban houses could, with small expenditure, be transformed into shops for which there is a demand. The same reasoning would apply. A probable fall in value must be considered by the valuer. It is, of course, needless to add that there is no analogy in this respect between the value on sale under the Finance Acts of either 1894 or 1910 and the annual value for rating purposes, or the annual value for income tax under Schedule A. The latter values are expressly based on the letting value of the property as it stands at the moment, without regard to its possibilities in the future.

Free from Incumbrances.—For definition of "incumbrances," see s. 41, p. 451. In all four values the land is valued as free from incumbrances.

Other than rates or taxes.—Must not the valuer allow a deduction for increment value duty and reversion duty under these words? Surely he must take into account the undeveloped land duty! § 25 (1).

Might be expected to realise.—The amount which a property "might be expected to realise" depends largely upon the number of similar properties in the market at the same time, but not in the least upon the number of similar valuations which are at that time being made. It would therefore appear that the problem which the valuer has to solve is simply what would this property probably fetch if it were added to the number of existing properties actually on sale, and if it had to be sold *then*. Full weight ought to be given to any temporary depression as well as temporary inflation of the land market. For example, if there has just been a commercial crisis and the rate of interest is 10 per cent. with no immediate prospect of a reduction, it would probably need a low price to tempt a buyer to come forward; but that low price—it is thought—is the value under those circumstances.

Cases under the Lands Clauses Act.

Cases under the Lands Clauses Act, 1845, are perhaps not of much value as authorities on s. 25. Under that Act the owner is to be compensated for the loss to himself of his property, and the test of that compensation is neither solely market value, nor is it the value of the property to the promoters (*Stebbing* v. *Metropolitan Board of Works*, (1870) L. R. 6 Q. B. 37). Under s. 25 of the Act of 1910 the values to be ascertained are not the values to the owner, but the market values. The following cases, however, may be mentioned as not irrelevant.

Future possibilities.

The probability that agricultural land near a town may be required for buildings generally (*R.* v. *Brown* (1867), L. R. 2 Q. B. 630), that land near a reservoir may be required for building mills which could use the reservoir (*Ripley* v. *Great Northern Railway Co.* (1875), 10 Ch. App. 435), the fact that the land has a special adaptability for the construction of a reservoir (*In re an Arbitration between Gough and the Aspatria Water Board*, [1904] 1 K. B. 417, C. A.; *In re an Arbitration between Lucas and the Chesterfield Gas and Water Board*, [1908] 1 K. B. 16, C. A.), the fact that the land was the only land suitable in the neighbourhood for a school which it was in evidence there was an intention to build (*Bailey and Isle of Thanet Light Railways*, [1900] 1 Q. B. 722) have all been held to be matters proper to be taken into account in assessing compensation payable by promoters. It would seem tolerably certain that not only considerations of the nature of those referred to, but all other matters which could reasonably be thought to influence buyers, must be the subject of the valuer's consideration under s. 25, as for example that a railway is projected, or that it is probable that a railway will be projected, or that it is likely that factories may be established in the neighbourhood and that the land may be wanted for workmen's houses. So it is thought it would be a proper matter for

§ 25 (1). the valuer's consideration that a superior class of property is being built on the demolition of old property in the neighbourhood.

Value to owner himself.

The special value of the property to the owner himself ought perhaps to be taken into consideration, as where a piece of land in separate occupation and being separately valued forms part of a larger property. It is a more difficult question whether, in the valuation of, for example, a shop, the probability that the owner and occupier who had established a business would be a bidder should be taken into account. It seems that it should, under the words "in the open market," but that the deduction under sub-s. (4) (*d*) of any part of the total value which is proved to the Commissioners to be directly attributable to (*inter alia*) goodwill or any other matter which is personal to the owner, occupier, or other person interested in the land would bring about a reduction in the site value of so much of the additional price caused by considering the owner or occupier as a buyer as was attributable to goodwill. There is indeed a question arising on sub-s. (4) (*d*) whether the goodwill which is to be deduced is only personal goodwill, that is goodwill arising from personal connection (see *Trego* v. *Hunt*, [1896] A. C. 7, at p. 17; *Ginesi* v *Cooper* (1880), 14 Ch. D. 596), or includes goodwill connected with the premises (*Ex parte Punnett*, 16 Ch. D. 226; see also *Commissioners of Inland Revenue* v. *Muller & Co.*, [1901] A. C. 217). As to the further difficult problem—viz., where the line of difference between local and personal goodwill is to be or can be drawn in such a case see per Lord Lindley in the case last cited at p. 235. Corner plots are thought to be specially suitable for doctors' residences and public-houses.

Goodwill.

Large buildings and undertakings.

No doubt difficult cases will seemingly arise in relation to the gross value of certain large buildings, whether of a public or private nature. Persons familiar with rating law know that mills, electric lighting and gas works, railway stations, public halls, libraries, university buildings, and the like, not occupied by tenants paying rent, are often valued for rating purposes by estimating the sum which it would cost to replace the building and then charging interest on that sum (see Ryde on Rating, 2nd ed.). A little reflection will, however, show that the value put upon the buildings as included in gross value is of comparatively small (if of any) importance in the complicated scheme of s. 25, except in case of reversion duty, where the tax is placed on "total value" (s. 13 (2)). In all other cases the crux of the valuation is site value. This is fully worked out later (see note on p. 305). Again, many of the buildings thus subject to special treatment in rating are either exempt from the new duties under s. 35 or partially exempt under ss. 37 and 38, or are practically exempt because they are both developed and quite out of the range of incrementing in value. The site value of an East-end factory is not likely to grow presently more valuable. For these reasons it is thought that there will not be much difficulty in arriving at the gross value of the large buildings referred to. The full site value, which is

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the really important matter, will be ascertained on the principles already referred to.

Licensed premises.

It is thought that the value of the licences must be taken into account in ascertaining the gross value of licensed premises. In rating cases it is clear that that value must be taken into account in ascertaining annual value (*R.* v. *Bradford*, 4 M. & S. 317). If that is the case also under s. 25 it would seem that evidence of the amount of trade which can be and has been actually done on the premises would be admissible (*Cartwright* v. *Guardians of Sculcoates Union*, [1900] A. C. 150). The case referred to was a rating case, but the speeches (see especially that of Lord Morris at p. 155) seem to be applicable to a valuation for sale in the open market. It does not, however, follow that evidence of such takings will be admissible in all cases of valuation of public-houses under s. 25, since *Dodds* v. *South Shields Union* ([1895] 2 Q. B. 133, C. A.), in which evidence of weekly takings was rejected, was not in express terms overruled by the House of Lords in *Cartwright* v. *Guardians of Sculcoates Union*, though the speeches of Lord Davey (see p. 159) and Lord Bramwell (pp. 160, 161) must, it is thought, have greatly weakened its authority.* The amount of compensation payable on the refusal of a licence under s. 1 of the Licensing Act, 1904 (4 Edw. 7, c. 23), is, by virtue of s. 2 (2) of that Act and s. 7 (5) of the Finance Act, 1894, to be based in default of agreement on the price which such property would fetch "if sold in the open market." In *Re Ashby's Cobham Brewery Co., etc.*, [1906] 2 K. B. 754, it was held by Mr. Justice Kennedy that in estimating the value of licensed premises it was material to inquire into the quantity and quality of the trade previously done, since possible purchasers in the open market would be brewers, and the price which they would be willing to pay would depend upon the profits which they might fairly expect to make by the supply of liquor to the licensed premises. From the result of this inquiry would be ascertained "the annual profit, which according to the ordinary course of the brewer's trade, may be treated as likely to be derived from the supply of liquors to the licensed premises" (p. 764). But tenants' profits arising out of the retail supply were not to be taken into consideration, because (*inter alia*) they were not "factors in the calculation of the market price of the premises" (p. 765). If this decision is correct, it would seem to lay down a rule for valuing licensed premises under s. 25. An extremely difficult legal question will arise as to the valuation of tied houses, but this will occur in the ascertainment of total and not of gross value. Gross value must be ascertained free from the tie. The tie would seem to be a "covenant or agreement restricting the use of the land" within the meaning of sub-s. (3). But

* But see the case of *Re an Arbitration between the London County Council and the City of London Brewery Co.*, [1898] 1 Q. B. 387. It was, however, decided before the *Sculcoates Case* above referred to, and on a statute very specially worded.

§ 25 (1). *quære* do these words apply to covenants or agreements affecting only leasehold interests. If they do not, the tie, it seems, must be disregarded in finding "total value." If they do (subject to the question as to the desirability of the tie in cases where it is created after April 30, 1909) (sub-s. (3)), the value of the premises is diminished by the tie to every one in the world except the brewer in whose favour the tie is given. But as he must, it is thought, when gross value is being ascertained, be considered a possible purchaser in the open market, the total value, which is regulated by gross value less the deductions mentioned in sub-s. (3), will not, it seems, necessarily be diminished by the existence of the tie. It seems that in rating cases the annual value of the house is not considered to be affected by the existence of a tie (*Overseers of Sunderland near the Sea* v. *Sunderland Union*, 34 L. J. M. C. 121; *Bradford-on-Avon Committee* v. *White*, [1898] 2 Q. B. 630).

Profits of businesses.

It is thought that evidence as to the takings and profits of businesses other than licensed premises carried on upon the land is not usually material in ascertaining market value, the question being what would an ordinary buyer give (see per Lord Esher, M.R., in *Dodds* v. *South Shields Union*, *supra*, at p. 135; *Mersey Docks* v. *Liverpool*, L. R. 9 Q. B. 84). In certain exceptional cases the practice adopted in rating cases of admitting evidence of takings or profits may perhaps be followed (see *Mersey Docks* v. *Birkenhead Union*, [1901] A. C. 175, and cases there referred to).

But such cases will be comparatively few in number as compared with the like class of cases in relation to the law of rating. Sects. 35 (exemption of rating authorities) and 38 (special provisions for statutory companies) will confine the number of such cases to a comparatively few private undertakings.

Licences and total site values.

If the value added to premises by licences and profits to be derived by a trade carried on upon the premises is to be taken into account under gross value, it would seem that this must be the case in arriving at full site value under s. 25 (2)* and total value under sub-s. (4). But in calculating assessable site value under sub-s. (4) there must probably be some deduction under (*d*) in respect of "good-will or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land." Exactly what this deduction will include in the case of licensed premises it is difficult to prophesy. The view expressed in the first edition of this work (p. 136), that "in estimating the value of the vacant site of a formerly well-known hotel there is to be deducted any extra value arising from the fact that a new hotel there would probably obtain some of the custom of the old hotel," is on further consideration thought to be of doubtful correctness. From the words in s. 25 (4) (*d*) "or any other matter

* But as to full site value compare *London County Council and City of London, etc., Co.*, [1898] 1 Q. B. 387.

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which is personal to the owner," etc., it seems that the goodwill to be deducted under (*d*) may be only the personal goodwill derived from the peculiar skill and energy of the owners and occupiers which have caused the house to be more profitable than under average ownership and management (see *Ginesi* v. *Cooper*, 14 Ch. D. 596, at p. 599, for the distinction between "personal" and "local" goodwill as explained by Jessel, M.R.). The goodwill of a public-house may, it seems, include several elements: (1) The value of the business owing to the skill and attention of owner and occupier being more than the average applied to such a business; (2) the value of a specially advantageous situation; (3) the value of the licence.

Elements of public-house goodwill.

As to No. (1) it is thought that it clearly ought to be deducted under (*d*). As to No. (3) it is thought that it ought not to be deducted so long as the licence lasts and therefore the added value continues. As to No. (2) it is thought that it ought not to be deducted. It is thought that the general scheme of the clauses is to tax increases in value arising otherwise than from the expenditure or exertions of owners. Unless, therefore, you find a clear direction to deduct from the real selling value of a site in the open market the amount of the value added to that site by the licence, it is submitted that that value ought not to be deducted (see note on goodwill, *post*, p. 300).

Is value of licence attributable to capital expenditure?

It may, however, be urged that the added value of the licence is within (4) (*b*) "value directly attributable . . . to expenditure of a capital nature . . . incurred . . . for the purpose of improving the value of the land . . . for the purpose of the business of a public-house," and that therefore all original value and all subsequent increases in value derived from the existence of the licence ought to be deducted. The capital expenditure might be suggested to have been the costs of the applications to the magistrates for the licence, which are often considerable, and the fact that expenses of advertisement are classed by (*b*) as capital expenditure shows that the expenditure is not limited to material objects. But it is doubtful whether this view would prevail.

State of repair of buildings.

In estimating gross value the state of structural repair of the buildings is of course an important element, and this is so to a greater extent than in rating cases, where the question is what rent a tenant could pay from year to year.

Fixtures.

Gross value must clearly include irremovable fixtures.

The value will be fixed, it is thought, without any deduction for the expenses of the hypothetical sale.

Influence of restrictive covenants in enhancing value.

The question of depression in values caused by restrictive covenants is dealt with by sub-s. (3) of this section and is referred to in the note on such sub-section. But is the valuer in valuing for purposes of s. 25 (1) to take into consideration the fact that the mutual covenants of all the owners or lessees of a certain defined area of land have had the total effect of raising the value of the land he is appraising? Assume that the value of the land composing a building estate of

§ 25 (1). twenty acres has been increased, on account of a covenant inserted in the conveyance of the fee of every lot that no house should be built upon it the prime cost of which did not exceed £1,500. In the valuation for "total value" under sub-s. (3) an owner is entitled to a deduction on account of that restriction (under the limitations of the sub-section) if in fact it does detract from the value of his land. If you are to imagine all the rest of the estate free from the condition, while the owner whose property is being valued is subject to it, then the condition does, probably, reduce the value of his lot. But surely the condition must be taken with its corresponding advantages, which it is submitted must form an element in the value arrived at under sub-s. 1.

Easements attached to the land.

Again, is the valuer bound to take into account the existence of easements appurtenant or attached to the property, such as rights to light, rights to support, and rights of way, which in fact increase the value of the property? Unless he does so the "gross value" of a property within the meaning of the Act would in many cases be hopelessly out of relation to the real facts of the case, and the whole scheme of the Act would become absurd. Conceive the valuation of a house situate in a court off Threadneedle Street, and let its gross, total, and site values be ascertained as on April 30, 1909, as if it had no rights of light, support, or access. Assume it sold in a few years for its real value. The purchase price would then represent total value under s. 2 (2) (*a*). The consequence would be that its site value would appear enormously greater, though in fact it had not increased in the least, and increment value duty would be payable on a large sum.

No conflict with s. 41.

It is submitted that to value the land with its easements is not to do anything which conflicts with the paragraph of s. 41 which runs as follows: "The expression 'land' does not include any incorporeal hereditament assessed or granted out of the land." The meaning of that is, it is suggested, that you are not to value as a separate parcel of land an easement or a rent-charge, or sporting rights over or issuing out of the land. So where in the clause of s. 41 beginning "the expression 'interest' in relation to land" it is enacted that "interest" does not include "any purely incorporeal hereditament," it is submitted that what is meant, is, that such hereditaments are not considered as separate parcels of land to be the subject of the increment value duty or undeveloped land duty.

The valuation of land comprising minerals which may or may not be so worked as to destroy the surface will be of some difficulty.

Finance Act, 1910, s. 60.

The provision of s. 60 (2) of the Finance Act, 1910 (see p. 478), ought not perhaps to be overlooked. That section provides that "in estimating the principal value of any property under sub-s. (5) of s. 7 of the Finance Act, 1894, in the event of any person dying on or after April 30, 1909, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not

§ 25 (1).

make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time." This enactment relates only so far as the new duties are concerned to valuation for purposes of increment value duty on death under s. 2 (2) (*c*).

Principal value compared with gross value.

"Principal value" under the Finance Act, 1894, is not, however, the counterpart of "gross value" under the Finance Act, 1910, but takes the place, on an occasion arising for payment of increment value duty on death, of "total value" (sub-s. (3)) on the original site valuation. When that duty is payable on death under s. 1 (*b*), and the increment value on the occasion is being ascertained under s. 2 (2) (*c*), the gross value of the land as well as the full site value have to be ascertained under s. 25 (1) and (2), and the difference between these two values is, by virtue of the concluding words of s. 2 (2), deducted, with any other proper deductions under s. 25 (4), from the principal value of the land as ascertained under the Finance Acts, 1894 and 1910 (s. 60). Nevertheless it seems that s. 60 (p. 478) can hardly be ignored by the valuer in estimating gross value on a death occasion for payment of increment value duty, since it would be absurd to make a reduction such as is referred to in s. 60 from gross value, and yet not to make such a reduction in estimating principal value. It seems, however, that this question is one of theoretical rather than of practical importance, since if the reduction is made in estimating gross value, it must also be made in estimating full site value under s. 25 (2), and it is the difference between these two values which is to be deducted from principal value under s. 2 (2) and s. 25 (4) (*a*) in order to ascertain assessable site value on the occasion of death. It is obvious that this difference is not affected if a similar reduction is made under both sub-sections.

(2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon.

"**Full Site Value.**"—Full site value, for reasons which will be found stated on p. 305, is the value which is the basis of the calculation

§ 25 (2). determining the amount of the increment value duty and of the undeveloped land duty which may from time to time be payable in respect of land. It is suggested that "full site value" is simply "the value which the fee simple of the land if sold . . . growing thereon," and that "assessable site value" is simply "full site value" less the deductions to be allowed from that value in respect of any of the matters mentioned in sub-s. (3) and in sub-s. (4) (*b*) to (*e*) inclusive which affect the site in question.

An involved definition.

The first point which strikes the reader is that the definition seems to be very involved. The "full site value" is in fact "the value which the fee simple of the land, if sold, . . . growing thereon." That, in any event, must be found by the valuer. Assume that the gross value has been found under sub-s. (1) to be 1,000*l.*, and that "the value which the fee simple, etc., might be expected to realise if the land were divested, etc.," has been found to be 200*l.* Is it not rather a circumlocutory use of language to explain the latter sum (200*l.*) as the amount which remains after deducting from 1,000*l.* the difference between 1,000*l.* and itself (200*l.*), *i.e.*, 800*l.*? The explanation is probably that it was desired to have the difference which represents the non-site element of the property as an ascertained amount to use under sub-s. (4) (*a*) for the purpose of arriving at assessable site value (see notes on pp. 295—309).

It is the value of a cleared site.

"Full site value" appears to be the value of the site as a cleared site—that is, as a site without any buildings or erections or natural or artificial growth of any kind upon it. It further seems that its value as a cleared site is to be estimated on the supposition that it is "free from incumbrances and from any burden, charge or restriction (other than rates or taxes)." The sub-section does not indeed say so, as it does with reference to gross value in sub-s. (1). But what is obviously being compared in sub-ss. (1) and (2) is the value of the total hereditament with the value of the cleared or naked site, and it is therefore thought that if the one is to be taken as free from incumbrances, etc., so must the other.

But includes artificial value.

"Full site value," unlike assessable site value, includes value created by artificial means, such as drainage and levelling. It includes value added to the land by any of the methods or works or in any of the ways referred to in sub-s. (4) (*b*), (*c*), (*d*), as well as in any other manner. It is nevertheless in many cases a purely hypothetical value, for in arriving at it, it is (probably) to be assumed that the site is free from incumbrance, burden, charge, or restriction other than rates or taxes; and it is to be valued as a cleared site when it may in fact be covered with buildings, crops, or vegetation. The problem for the valuer is, what would that site sell for at that moment if offered free from incumbrances, as a cleared site ready to be built upon, and assuming the actual conditions then existing in the neighbourhood?

As to the buildings.

Full site value is not necessarily gross value less the then value of the

buildings. That may be the case where the buildings on the site are buildings suited to the site, but if the buildings are not good enough for the site it will be found that the site value is greater than the gross value—minus what is called the value of the buildings. Though a site can be, and is, every day valued without its buildings, it may be doubted whether there can be any intelligible valuation of buildings apart from their site. And this seems clearly to be the view of the Act. There is gross or total value under sub-ss. (1) and (3), which is the value of the whole hereditament, site and buildings, either subject or not to the usual incidents of and burdens on property, and there is site value either subject or not to the same incidents (sub-ss. (2) and (4)). All the gross or total value which is not full site value is non-site value. This non-site value is not necessarily the value of the buildings, but is the difference between the value of the hypothetically cleared site and the value of the whole hereditament, site and buildings, as it stands.

Bearing this in mind, it can now be seen what is the reason for having "gross" and "full site" valuations under the scheme of increment value duty.

Reason for gross and full site valuations.

The real, perhaps the only, object of finding "gross value" and "full site value" appears from the consideration of the process of ascertaining site value under s. 2 (2) on an occasion arising for payment of increment value duty. In order to arrive at that site value, which under s. 1 (*a*) and s. 2 (2) (*a*) and (*b*) is either a realised sum or a value based on a realised sum, minus certain deductions, you must find the amount which represents the value added to the full or cleared site by the buildings, that is you must find the non-site value, and then deduct that sum from the value of the consideration, etc., under s. 2 (2) (*a*) and (*b*).

The value so added by the buildings to the cleared site is found by ascertaining under s. 25 (1) the gross value, *i.e.*, the value of the total hereditament as it stands without deductions for easements, etc.; and under sub-s. (2) the value of the site as a cleared site, and of course without deductions for easements, etc. The difference between these two values is the value added to the site by the buildings, which is not, as before stated, necessarily the same as that which is often loosely spoken of as the value of the buildings. This is the sum which, under the last sentence of s. 2 (2), must be found and deducted as one of the deductions under the general provisions, that is under s. 25 (4) (*a*) from the value of the consideration, or the value of the fee simple calculated on the basis of the value of the consideration, in order to arrive on an occasion under s. 2 (2) (*a*) and (*b*) at the site and increment values. This is also the sum which must be deducted from the principal value of the land as ascertained for the purposes of the Finance Act, 1894, on a death occasion under s. 2 (2) (*c*) for payment of increment value duty, and from the total value of the land as ascertained under s. 25 (3) where the occasion is a periodical one under s. 2 (2) (*d*) affecting the land of a body corporate or unincorporate.

§ 25 (2). **The Difference (if any) between that Value and the Value, etc.**—Usually the gross value will be greater than the full site value. Even the gross value of pasture land will be greater than its full site value. There will then be a difference to deduct under the sub-section. It is understood, however, that in many cases for purposes of the original site valuation the Government valuers are treating the gross and full site values of pasture land as the same. For practical purposes this will often be convenient and immaterial. But where undeveloped land duty is to be charged, it seems there should be some substantial deduction, varying with the quality of the herbage, from gross value to arrive at full site value. So far as increment value duty is concerned the course adopted by the valuers is favourable to the subject. Full site value will often be really the same as gross value, as in the case of bare land, unbuilt upon and uncultivated. So where it would just pay to remove dilapidated buildings for the sake of the materials, which consequently have no selling value, the two values will be the same. If the materials would fetch a price, that price is the excess of gross over full site value. If a contractor must be paid a sum to remove them, the gross value will be less by that amount than the cleared site value, and there will be no difference to deduct.

Fee Simple
Open Market
Willing Seller
Might be expected to realise

See notes on sub-s. (1), pp. 275 to 277, which for the most part are applicable to sub-s. (2).

Divested of any Buildings.—See note on p. 184 as to buildings Herein lies the contrast with gross value which is the value of the property "in its then condition." But all the surroundings are for purposes of full site value assumed to be in their then condition, though not necessarily to remain so for ever.

Any other Structures . . . on, in, or under the Surface which are appurtenant to or used in connection with any such Buildings.—A structure is distinguished from a building. The land for the purposes of the hypothetical valuation is deemed to be divested of buildings and "of any other structures . . . *appurtenant to or used in connection with any such buildings.*" But what about structures not being buildings, and not appurtenant to or used in connection with buildings on the land? A gymnasium is hardly a building, but is composed of a number of structures. It is not necessarily "appurtenant to or used in connection with" a particular building. A roundabout, a wooden grand stand, and a wooden shed are, it is thought, structures at all events when "structures" are contrasted with buildings. If the land is to be valued to ascertain full site value, with such structures considered as being part of it, then may the value added by such structures to the site be deducted by virtue of sub-s. (4) (*b*) from the total value, in

order to arrive at assessable site value? The last words of (*b*) would probably be sufficient to authorise deduction where the structures were erected for the purpose "of improving the value of the land for the purpose of any business, trade or industry other than agriculture." § 25 (2).

It is thought that such things as wells, drains, and bridges are aimed at by the words "appurtenant to or used in connection with any such buildings." As to structures not "appurtenant to or used in connection" with buildings (as for example the culvert which depressed the value in *Shepherd* v. *Croft*, [1911] 1 Ch. 621), it seems they must be considered to be on or under the land; but nevertheless it is thought not as the irremovable subjects or instruments of any easement, burden or restriction (see sub-s. (1)), as for example gas or water pipes. So far as they affect the physical conformation of the land they may reduce its full site value; but only to the extent of the cost of physically remedying the defect. But the sense is by no means plain. For a statutory definition of "structure," see the London Building Act, 1894, s. 102; see also *London County Council* v. *Pearce*, [1892] 2 Q. B. 109, and *Moran* v. *Marsland*, [1909] 1 K. B. 744, decisions on the word "structure" under the London Building Acts, which, however, are not much assistance.

Under the Surface.—There may be supports to buildings perhaps not strictly a part of the buildings.

And all Growing Timber . . . growing thereon.—Thus it is clear that the site value of agricultural land is not the same thing as the value of that land for agricultural purposes. In ascertaining the site value of pasture land the Commissioners have to find, it is submitted, the value of the land stripped of its pasture, *i.e.*, to value it as bare soil. But they must, it is submitted, under sub-s. (1) give full effect to the inherent capacity of the land for agricultural purposes, since that is an element of market value. The sub-section does not, it is true, use either the word "grass" or the word "herbage"; but it is thought that both are included in "other things growing thereon."

(3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the thirtieth day of April nineteen hundred and nine, and to any covenant or agreement restricting the use of the land entered into or made on or after that

§ 25 (3). date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the referee, whose decision shall be final.

"**Total Value.**"—The root notion of total value appears to be "gross value" less the easements, burdens, and restrictions to which the property is subject either under the general law of the land, or under Acts, deeds, or agreements specially affecting this property, or under some customary or prescriptive claim. Rates and taxes are, of course, taken into account in arriving at "gross," and therefore at "total" value. In other words, just as "gross value" appears to be the value of a property held in fee without any visible or invisible deduction from the full and complete rights of ownership, "total value" is that value subject to all deductions, whether visible or invisible, which in fact affect the property. But, as in the case of "gross value" so in the case of total value, no deduction is under the actual language of the clause to be made in respect of incumbrances. For the purpose of raising the new taxes, incumbrances are to be considered non-existent.

Total value when the subject of taxation.

Total value, except in the case of reversion duty (s. 13 (2)), is not a value which is taxed. With site value it has to be ascertained on the original site valuation under s. 26 (2). But it has to be ascertained then as a step in or towards the ascertainment of site value. It has also to be ascertained in the same way on the quinquennial valuation for undeveloped land duty under s. 28, on the periodical valuation of the land of a body corporate or unincorporate for increment value duty under s. 1 (*c*), s. 2 (2) (*d*), and s. 6, and on the apportionment or reapportionment of site values under s. 29 (2), (3), and (4). In cases of reversion duty the tax is placed on the excess of the total value calculated under s. 25 (3) at the determination of the lease over the total value calculated as laid down in s. 13 (2) at the commencement of the lease.

How total value is arrived at.

In order to arrive at total value the valuer must in theory first ascertain gross value and then ascertain the amount which is to be deducted under the sub-section from gross value. For example, if a field is subject to a public right of way, the valuer must fix its selling value, as if it were not subject to such right. This is its gross value, which is, say, 100*l*. He is then, under sub-s. (3), to deduct from that value "the amount by which the gross value would be diminished if the land were sold subject to" that right of way. Strictly speaking he ought to say, "I think so much, say 5*l*., would be the amount by which the value of the land would be diminished if it were sold subject to the right of way,"

and then to deduct that 5*l.* from the gross value, thus arriving at 95*l.* total value. But how is the 5*l.* arrived at as the proper sum to deduct under sub-s. (3). It is thought that that sum can only be arrived at by valuing the land subject to the right of way and deducting its value considered as subject to that right from its gross value. But this is in fact first to ascertain total value by valuation, and then, in order to comply with the directions of sub-s. (3), to go through the formality of ascertaining that same total value by deducting from gross value the difference between gross value and total value. **§ 25 (3).**

Total value in the case of a fee simple in possession is really the selling or market value of the property as it stands. This is clear from the definition in s. 25 (3). It is gross value, subject to the actual burdens, charges, and restrictions, which are ignored in gross value. In order to arrive at original site value there has to be deducted from this total value (1) all that is not site value, which is represented by the deduction (s. 25 (4) (*a*)); (2) all value that has been added to the land by expenditure under s. 25 (4) (*b*), (*c*), and (*d*); and (3) the cost of clearing the land so as to realise the full site value. In order to arrive at the increment value, and necessarily therefore at the site value, on an occasion for payment of increment value duty under ss. 1 and 2, exactly the same deductions as are made from total value for the purpose of ascertaining site value on the original valuation must be made from the sum arrived at by one of the various ways pointed out in s. 2 (2) (*a*), (*b*), (*c*), and (*d*). That sum in each case really represents the selling or market value of the fee simple in possession of the land on the occasion, just as total value represents its selling or market value on the original valuation as on April 30, 1909. In case s. 2 (2) (*a*), a sale of the fee, the sum in question is the market value actually realised; in case s. 2 (2) (*b*) the market value of the fee is deduced from the realised value of the lesser interest; in case s. 2 (2) (*c*) the valuation for death duties under s. 7 (5) of the Finance Act, 1894, and s. 60 of the Finance (1909–10) Act, 1910, is adopted as the market value; and in case s. 2 (2) (*d*), where there is no test arising from realised value, and no valuation for purposes of death duties, the market value is the "total value" at that date, as ascertained under s. 25 (3). Total value is the market value.

But total value is not necessarily the same as the selling value of the reversion. The real or total value of the property may be greater or less than the value represented by the rent reserved by the lease. A reversion falling in in thirty years' time to a property let on lease at 100*l.* per annum, the rack rental of which is 300*l.*, is worth considerably less than the fee simple in possession of the property. The total value is the combined values of all the interests in the property. Total value not the same as the selling value of the reversion.

Fixed Charges.—By s. 41 the expression "fixed charge" means any rent-charge as defined by this Act, and any burden or charge arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties

§ 25 (3). under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land. See notes on this definition on pp. 450 and 456. Under s. 41 (*post*, p. 440) "'rent-charge' means tithe or tithe rent-charge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land."

If rent-charges reserved by deed as the consideration on the sale of land are fixed charges, then their value must on valuations after they are created be deducted from the gross value of the land in order to arrive at total and site values. This, of course, would greatly reduce the site value of the land for purposes of undeveloped land duty, and might lead to the extension to other parts of the country of the practice in Manchester, Liverpool, and elsewhere of selling land on chief rent. But it does not appear quite certain whether such rent-charges, *i.e.*, rent-charges reserved on sales, are fixed charges, or only rent-charges "as defined by this Act . . . arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land, or in consideration of any advance to any person interested in the land" are fixed charges (s. 41, pp. 440, 456). Further, a rent-charge, it seems, may be an incumbrance which under s. 41 includes, *inter alia*, "a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act," and to arrive at total value it seems clear that the land must be valued free from incumbrances. The true explanation may possibly be that to arrive at total value you must value the land as free from rent-charges which are in the nature of incumbrances or securities for money, but not free from rent-charges which are reserved as consideration on and for the sale of the land, or which otherwise are of the nature of "fixed charges" as defined by the Act.*

Fixed charges will doubtless include charges by local authorities under s. 257 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), for expenses incurred under the Act by the authority in relation to the premises, and analogous charges under other public and local Acts. But fixed charges do not include charges in pursuance of the exercise of any powers or the performance of any duties by a person interested in the land or in consideration of any advance to any person interested, as for example charges by tenants for life or trustees under s. 39 of the present Act of the amount of increment value duty or reversion duty which they have become liable to pay. (As to fixed charges see further, *post*, s. 41, p. 456, note on "The expression 'fixed charge.'")

* The existence of a rent-charge may often cause the land to have a minus total or site value (see House of Commons Debates, July 25, 1911, p. 1573). The authorities are of opinion that increment value duty is chargeable on an increment on that minus quantity even though the site value may not reach a plus quantity of 5*l*.

To any Public Rights of User.—Examples of public rights of user are the right to use a village green for games, to use a common for horse-racing or for booths at a fair. Many examples of this species of right have been proved in the Courts, and others may exist.

Any Covenant or Agreement restricting the Use of the Land.—If the covenant or agreement has been entered into before April 30, 1909, the valuer must consider whether its existence diminishes the value of the property, and if it does, he must allow such deduction for it as he considers proper. He has not to consider in this case, as he has when the covenant or agreement was entered into after that date, whether it was when imposed desirable on the grounds mentioned later in the sub-section. But he may have to decide whether in fact it is binding at the time upon the then owner of the property. Covenants restricting the use of the land may have ceased to be binding upon it or its owner, because there is no property in respect of which the benefit of those covenants is capable of being enforced. Again, by the general acquiescence of all parties entitled to enforce them, the breaches of such covenants may have been so waived that the covenants are legally unenforceable (*Sayers* v. *Collyer*, L. R. 28 Ch. D. 103). There are also cases to the effect that where the character of the neighbourhood has been so altered that the object for which the covenant was originally entered into must be considered at an end, then the Court will not enforce that covenant (*Duke of Bedford* v. *Trustees of British Museum*, 2 M. & K. 552; *Roper* v. *Williams*, T. & R. 18). Whether such cases are not really either instances of acquiescence, or cases in which, the original object of the covenant being incapable of being carried out, the Court declines to afford equitable relief, may be doubted (*German* v. *Chapman*, L. R. 7 Ch. D. 271; *Knight* v. *Simmonds*, [1896], 2 Ch. 294, see *per* Lindley, L.J., at p. 298; *Osborne* v. *Bradley*, [1903] 2 Ch. 446). It is at all events certain that there are many estates in and near the towns of this country where restrictive covenants, once binding and capable of being enforced by injunction, have ceased to be effective. These are often cases very difficult for even the trained lawyer to decide after hearing the plainest evidence on oath.

Negative restrictions only within the sub-section.

It is not every kind of covenant affecting land in respect of which a deduction may be claimed. It must be a covenant "restricting the use of the land." In other words, it must be a negative covenant. The reason for this distinction is perhaps not far to seek. A covenant to build a wall round a certain piece of land is affirmative. It binds the original covenantor, being a purchaser of the fee, to build, and if he does not do so the covenantee may sue him for damages. But if the first purchaser sells the land, the second purchaser is not bound either to build the wall or to pay damages to the original vendor (*Haywood* v. *Brunswick Building Society*, 8 Q. B. D. 403). The burden of an affirmative covenant does not, except as between landlord and tenant,

§ 25 (3). run with the land. But the burden of a negative or a restrictive covenant does run with the land into the hands of purchasers with notice of such covenant. The draftsman seems to have assumed that the only case in which a covenant will in fact diminish the market value of land is when the fee simple of the land is subject to a negative covenant either by the present or a former owner. Hence, he has not thought fit to allow any deduction to be made for affirmative covenants, which, though not binding on assignees of the covenantor, are binding on the original covenantor and may detract from the value of his property. When the latter sells the land the subject-matter of the covenant, he will have for self-protection to take a covenant from the purchaser to fulfil the obligation which he himself has entered into with his vendor; and this covenant will naturally diminish the price obtained by him for the land. Such covenants may involve the expenditure of money on the site in a manner which may actually diminish the value of the site, as, for example, a covenant to build a wall high enough to shut out a charming prospect over the lessor's land, or a covenant to reduce the level of the site to that of the neighbouring land, or a covenant to put a building on the site unsuitable to it. These covenants detract from the value of the site, and yet the Commissioners have no power to allow a deduction in respect of them.

No deduction for affirmative covenants.

Whether the words "covenant or agreement restricting, etc.," will cover the class of cases in which a negative covenant is, in the absence of an express covenant between the parties, implied from a general building scheme, as between the different purchasers and their assigns with notice, will no doubt be a question raised upon this sub-section. It is submitted that although such an agreement is enforceable against a subsequent purchaser only on the ground of the equity arising from the fact of the purchase of the property affected by it, with notice of that agreement, yet it is a "covenant or agreement restricting the use of the land."

Covenants implied from building scheme.

A difficult case will be where the covenant or agreement affects only a leasehold interest in the land. For example, A. the owner in fee has leased to B. for ninety-nine years; B. has sub-leased to C. for the same term less ten days with a covenant that no buildings erected on the land shall be used as shops, but as private dwellings only. At the date of the valuation the original term has thirty years to run. The premises would be worth as much again if converted into shops, the expense of which would be slight. The restriction does not affect the freeholder, but he cannot release it, and is not entitled to possession for thirty years.

Covenants affecting leasehold interest only.

The question arises whether the restriction is to be taken into account at all. Are not the only restrictions referred to in sub-s. (3) such as affect the fee simple and every interest in the land equally? Is it not plain that the owner and all other persons interested in the land by combining can abolish the restrictions, and is not the subject-matter of the valuation the total combined interests of all these persons, *i.e.*, the fee simple in possession?

And the Opinion of the Commissioners shall be subject to an Appeal to the Referee, whose Decision shall be Final.—Under s. 33 (1) there is a general right of appeal from all determinations of the Commissioners (subject to the provisoes in the section) first to the referees and from them to the High Court or the county court, as the case may be. Under this sub-section the right to appeal from the referee to the Court as to the matters left to the opinion of the Commissioners is taken away, and the decision of the referee is to be final. It appears that this limitation of the right to appeal affects only the question whether the restraint imposed by the covenantor was, when imposed, desirable, and does not affect the prior question as to whether the covenant, etc., is still binding, or, in other words, whether there is in fact a covenant. § 25 (3).

When imposed.—The Commissioners must precipitate their point of view backwards to the date when the restraint was first imposed, however long ago that may have been. They must obtain a map as well as a picture of the neighbourhood and its external features at the time in question. Then when they have done this, they will still be faced with the difficulty of the construction of the sub-section, *i.e.*, whether evil results to the public arising, as time goes on, from the restrictions are proof that it was not, when imposed, desirable; or whether, if it was at the moment of imposition beneficial to the public, that is sufficient, whatever later evils may have arisen, to justify a deduction; or whether, as a third alternative, the general opinion at the moment of imposition that it was desirable is to justify the deduction, notwithstanding that in fact, and owing to a better understanding of sanitary or similar facts, it has never in fact been desirable, either then or since.

Desirable in the Interests of the Public or in view of the Character and Surroundings of the Neighbourhood.—The mere fact that the covenant or agreement has been entered into and is capable of being enforced against the land does not apparently justify the valuer in taking it into account by way of reducing value unless, in the opinion of the Commissioners, the restraint imposed by it was "when imposed desirable in the interests of the public or in view, etc." As a matter of fact, the existence of a restrictive covenant may very seriously diminish the value of the site, and at the same time may not fulfil the conditions of the sub-section necessary to obtain a deduction on account of its existence. For example, a covenant that no houses of less cost price than 1,000*l.* each shall be erected on a certain piece of land may practically prevent the development of that land as a building site. There may be no demand, and may never be likely to be one, for houses costing as much in that locality. How can it be said that such a restraint was, when imposed, desirable either "in the interests of the public or in view of the character and surroundings of the neighbourhood"? There can, therefore, be no deduction in respect of such a covenant entered into after April 29, 1909. The land will be valued as

§ 25 (3). if the covenant did not exist, and it will be valued as if it were capable of being used for the purpose of building the houses required in the district. But for that purpose the owner is unable to use it. He will therefore pay undeveloped land duty on a higher value than the land really has for all practical purposes. It is of course possible that at some time or other the covenant or agreement in question may cease to be binding, owing to the doctrines of equity respecting the enforcement of restrictive covenants (see *ante*, p. 291); then, but not till then, will the owner be able to realise the full site value on which he has been taxed.

A distinction is drawn by the sub-section between what is desirable "in the interests of the public" and what is so "in view of the character and surroundings of the neighbourhood." It would seem therefore that a restriction might give rise to a deduction because it was desirable in view of the character and surroundings of the neighbourhood, as, for example, that no houses of less value than 200*l.* per annum or with less land attached than two acres should be built. Nevertheless such a restriction might be very undesirable in the interests of the public, as there might be a great demand for houses of a lesser rental value.

(4) The assessable site value of land means the total value after deducting—

(*a*) The same amount as is to be deducted for the purpose of arriving at full site value from gross value; and

(*b*) Any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred bonâ fide by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture; and

(*c*) Any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public; and

(*d*) Any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and § 25 (4).

(*e*) Any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land and of which it would be necessary to divest the land for the purpose of realising the full site value.

Where any works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, the works or expenditure shall, for the purpose of this provision, be treated as having been executed or incurred also for the latter purposes.

Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section.

Assessable Site Value.—This is the value which is the subject-matter of the undeveloped land duty. It is also the value which, taken as on April 30, 1909, is the *terminus a quo* all future claims for increment value duty are based. But "assessable site value" is not (nominally,

§ 25 (4). at least) the "site value" on an occasion on which increment value duty is to be collected under s. 2 (2) (see the last paragraph of this sub-section and note thereon on p. 303); though it appears to be in fact though not nominally the chargeable entity on the occasion of a periodical collection under s. 2 (2) (*d*) of increment value duty in the case of a body corporate or unincorporate. For notes on the relations of the various values see *post*, p. 303.

After deducting.—Deduction (*a*) seems one which the Commissioners are bound to make in any event, but the remaining deductions, it is thought, cannot be made unless the subject claims them. This is a doubtful, but very important point, in relation to the original valuation.

(*a*) **The Same Amount as is to be deducted for the Purpose of arriving at Full Site Value from Gross Value.**—To arrive at "assessable site value," "gross value" must first be ascertained under sub-s. (1). "Full site value" must next be ascertained under sub-s. (2), by deducting from "gross value" the difference between gross value and the value of the site as a cleared site, *i.e.*, the non-site value.

"Total value" is then ascertained as in sub-s. (3), and then under sub-s. (4) (*a*) as the first deduction from "total value," in order to arrive at "assessable site value" the difference referred to in sub-s. (2) and the last paragraph must be deducted.

Illustration.—Let the gross value be 8,000*l.*, and the cleared or full site value 2,000*l.* The difference under s. 25, sub-s. (2), between gross value and the value as a cleared site is therefore 6,000*l.* Let the total value be 7,500*l.* From this must be deducted that difference, *i.e.*, 6,000*l.*, leaving an assessable site value of 1,500*l.* The amount to be deducted under sub-s. (4) (*a*) is always the same as the amount to be deducted under sub-s. (2). It is always the non-site value of the hereditament.

(*b*) **Any Part of the Total Value which is proved to be directly Attributable to Works . . . executed for the Purpose of Improving, etc.**—It is not the amount expended which is to be deducted, but the value added to the site by that expenditure, which may be either more or less than its amount. Increment value is often, owing to expenditure and general development, in unascertainable proportions. A sea wall and the growing town may jointly cause land to become valuable. It will be difficult to apportion the weight to be attached to the two elements.

(*b*) **Directly.**—The word must be noted. It is not "solely."

An indirect benefit to the land may arise from capital expenditure on adjoining property, and may cause a rise in total value *directly* attributable to that indirect benefit. A., having a building estate, lays out money on roads and sewers in the centre of that estate, and builds on plots adjoining the roads and sewers. He conducts his operations at a

loss, but he had in view, when expending his capital, the fact that the start thus given to the development of the estate would probably render the rest of his land more marketable; and this is in fact the case. It is submitted that he is entitled to some deduction, but it will be very difficult to suggest any basis for arriving at the amount of that deduction. Still some effect must be given to the word "directly," though it is difficult to suggest in theory any limitation of the right to deduction which might not seriously impair that right. **§ 25 (4).**

(*b*) **Works executed or Expenditure of a Capital Nature . . . incurred.**—The works and expenditure are those incurred either for the purpose (1) of improving the value of the land as building land, or (2) for the purpose of any business, trade, or industry other than agriculture. The deduction is not of the value added by the buildings, since that with all other non-site value has been deducted under (*a*). Such works as drainage, embankment from the sea or river, the making of roads, the sinking of wells, the diversion of streams, would be examples of the expenditure contemplated.

(*b*) **Capital Nature.**—Difficult questions may arise as to what is expenditure of a capital nature. A land company sinks a well, makes a reservoir, and installs expensive pumping machinery. The yearly cost of pumping exceeds the annual water rents obtained from purchasers and tenants. Can that annual excess of expenditure over income be treated as expenditure of a "capital nature"? It is intended to facilitate the sale of the remaining portion of the company's land by securing to purchasers a water supply. It is suggested that it is really expenditure of a capital nature, though it is incurred at periodic intervals and the water accounts are made up yearly. For a case (not much in point) on the words "expenditure of a capital nature" in the Education Act, 1902, s. 18 (1) (*c*), see *R.* v. *Wraith*, [1907] 2 K. B. 756. It seems indeed that it is immaterial whether there is a deficit, or a profit, on the works. Even if there is a profit, so that the only expenditure of a capital nature is paying in itself, it may well be that that expenditure has added to the total value; and that the value so added may be deducted under sub-s. (4) (*b*). There is nothing in clause (*b*) to rule it out. It is to be noted that the expenditure contemplated by (*b*) need not be *on* the benefited land. A water tower may have been erected a mile away. There is no limit as to the time within which such expenditure has been made. The value added by an embankment made in the reign of Queen Anne may be deducted. Probably legal expenses as the cost of obtaining a release of a right of way or other easement should be included; but not, it is thought, the initial expenses of the purchase of the land.

(*b*) **Including any Expenses of Advertisement.**—No limit is placed upon the time within which the advertisements may be issued. It is perhaps rather strange to consider the capital value of building land as

§ 25 (4). being enhanced by advertisement. But the capital value of such land may well be considered to be composed, amongst other things, of the extent to which the fact that it is on sale is known to the public. Advertisements may give it a vogue. It is common to run special trains to seaside resorts at fares which sometimes do not repay the vendors for the cost of the trains, and to provide gratuitous refreshments to persons who will, it is hoped, under their influence, become purchasers of the land. It is hardly thought that expenditure of this kind is included in "expenses of advertisement." A case nearer the line seems to be where a company of more or less distinguished men, as M.P.'s, are taken down gratuitously to inspect the development of a garden city, or other quasi-philanthropic undertaking, and are entertained at a luncheon, the speeches at which are reported in the newspapers.

(*b*) **By or on behalf of or solely in the Interests of any Person interested in the Land.**—That is, by a person interested himself, or by his agent, or by a person with the sole intention of benefiting a person interested, *i.e.*, not by the owner of other land to improve his own property, or by a local authority. "Person interested" would doubtless include owner of the fee simple in possession. By that phrase is no doubt meant "person interested at the time of the expenditure." Expenditure by a predecessor in title can be deducted.

(*b*) **For the Purpose of Improving the Value of the Land as Building Land or for the Purpose of any Business, Trade, or Industry other than Agriculture.**—See paragraph on "agriculture" in s. 41. Note that expenditure which has improved the value of the land for agriculture only cannot be deducted. The reason is that so long as the value of the land is not in excess of its value for agricultural purposes neither increment value duty nor undeveloped land duty is chargeable. The last paragraph but one of this sub-section must be noted in relation to these words. Suppose a man improves his land for the purposes of letting the same out in cricket pitches, or for games of bowls, is this expenditure an allowable deduction? Does he carry on the business of letting cricket pitches, etc.? It is submitted that he does, and that (*b*) deduction should be allowed.

It is thought that in order to obtain a deduction under this sub-section expenditure "for the purpose of any business, trade, or manufacture" is not enough, and that the expenditure must be "for the purpose of improving the value of the land . . . for the purpose of any business, trade, or manufacture." See the last paragraph but one in the sub-section, in which the same words occur in a less ambiguous context.

(*c*) **Any Part of the Total Value.**—This is a garden city clause, but of course may extend to other cases. The whole clause is governed by the last words, "for the use of the public." Are the flower beds and plantations which dot the roads and open spaces of the garden cities "for the use of the public"? It is submitted that they are.

(*c*) **The Appropriation of any Land or to the Gift of any Land.**—The appropriation may be unaccompanied by any change of ownership, as in the ordinary case of the formation of streets and squares by an owner. The gift is illustrated by the conveyance of a public park to the local authority, having the effect of increasing the site value of the rest of the donor's property. It is of course clear that either under this paragraph (*c*) or under paragraph (*b*) the added value arising from the expenditure of money on the roads, paths, etc., by the appropriators or donors can be claimed as a deduction. It seems clear that value added in respect of the dedication of land as public roads or spaces, even though the ownership remains in the dedicator, must be deducted.

It is sometimes the case that builders appropriate land for tennis courts adjacent to the estate they are developing. But whether such courts are used for the purpose of a tennis club to which all who pay and are elected are admitted, or whether they may be gratuitously used by the occupiers of the builders' houses, it is not thought that they give rise to any deduction. The appropriation is not "for the use of the public." Even if they are legally appropriated the same is thought to be the case. They may of course be entitled to exemption under s. 9 and s. 17 (5) (*d*).

(*c*) **Open Spaces.**—There is no reason to suppose that the definitions of an "open space" referred to in the note on p. 197 would have influence on the interpretation of the words in this Act, but the existence of those definitions may be noted.

(*d*) **The Expenditure of Money on the Redemption of any Land Tax, etc.**—It would seem that the expenses of redemption might be allowed in addition to the actual payment for the charge, as for tithe rent-charge, if the valuer was of opinion that the increased value included these.

(*d*) **Fixed Charge.**—See definition of fixed charge, s. 41, *post*, p. 456, paragraph "The expression 'fixed charge'"; see also note on fixed charge, *ante*, p. 290. It would seem that money expended in redeeming a perpetual chief rent, which is a rent-charge (s. 41, paragraph "The expression 'rent-charge'"), and therefore under the definition above referred to, a fixed charge may be deducted, but not money expended in redeeming a jointure rent-charge, which is not a perpetual rent-charge (see definition of rent-charge above referred to), but is probably an incumbrance (s. 41, paragraph "The expression 'incumbrance'").

(*d*) **The Enfranchisement of Copyhold Land.**—Till enfranchisement, the owner may not be able to clear the land which is a valuable building site of trees so as to utilise his site for building purposes, since to cut down timber trees would be waste. It is nevertheless not thought that more than approximately the costs of enfranchisement could be claimed as a deduction. As enfranchisement can be compelled, the market

§ 25 (4). value is the value of the land as if it were freehold, minus the cost of enfranchisement.

(*d*) **Effecting the Release of any Covenant or Agreement . . . which may be taken into Account, etc.**—The limitation implied by the words "which may be taken in account, etc.," applies to such covenants as were entered into on or after April 30, 1909, which in the opinion of the Commissioners were "when imposed" not "desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood." If they were not "desirable, etc.," when imposed, they may not be allowed as reducing total value, and therefore money paid for getting them released may not be deducted from site value. If the covenants or agreements were entered into before April 30, 1909, or if being entered into after that date they were "desirable in the interests of the public or in view of the character and surroundings, etc.," the value added by expenditure in obtaining a release from them may be deducted.

(*d*) **Goodwill.**—The exact nature of the deduction in respect to goodwill which may be made is a little difficult to arrive at. The clause appears to suggest that the value to be deducted is in respect of goodwill which is "personal to the owner." This might therefore seem to exclude a deduction of the kind of goodwill which in *Ex parte Punnett* (16 Ch. D., p. 226, C. A.), the case of a public-house, was held not to be a personal goodwill, but a goodwill which passed on the sale of the property, *i.e.*, the benefit of the habit on the part of a section of the public of resorting to that house for refreshment. There are three different kinds of value attached to premises which may possibly be of the nature of the goodwill. There is purely personal goodwill of the nature referred to by Jessel, M.R., in *Ginesi* v. *Cooper* ((1880), 14 Ch. D. 596, at p. 599), and by Cotton, L.J., in *Cooper* v. *Metropolitan Board of Works* (25 Ch. D. 472, at p. 479). The value of this, it seems clear, must be deducted under sub-s. (4) (*d*). There is the kind of value which arises from the suitability of the land for a particular trade or profession, as of a corner plot for a pawnbroker's or a publican's business, or for a doctor's residence. This value, it is thought, is not goodwill at all, and ought to be given full effect to in arriving at site value. Lastly there is the kind of goodwill which attaches to the premises as in *Chissum* v. *Dewes* (5 Russ. 29; 29 R. R. 10) and *Ex parte Punnett* (*supra*).* A particular site may have an increased value for a public-house site, not only because it is a corner plot, but because people have been accustomed to go there for drinks (see p. 280). Of a similar nature is the kind of goodwill arising from the attachment of a trade to a wharf or depôt (see per Jessel, M.R., in *Ginesi* v. *Cooper*, *supra*, at p. 599; see also *Austen* v.

* See also *Commissioners of Inland Revenue* v *Muller's Margarine*, [1901] A. C. 217.

Boys, 27 L. J. Ch. 714). It is thought that this last species of goodwill is not intended to be deducted, but is to be treated as site value. Unless this is the case, it is difficult to see how site values in, say, Regent Street or Cheapside, or any of the principal streets in the larger cities, are to be valued. But it must be admitted that the point is not clear.

In *Llewellyn* v. *Rutherford* (L. R. 10 C. P. 156) the distinction between an increase in the value of the goodwill of a public-house owing to the increased value of property in the neighbourhood generally, and an increase owing to other causes, was clearly recognised in all the judgments.

In contracting to buy premises to which goodwill is attached, as for example public-houses, it would seem advisable to have separate considerations for the premises and goodwill. If there were one consideration only, it is possible that the Commissioners would claim the right to apportion it under s. 32 (3) (*post*, p. 357) in a manner which would increase the increment value duty on the land more than the vendor approved. Further, the purchaser may improve the goodwill and will wish when he sells not to run the risk of being charged increment value duty on his improved goodwill. That the goodwill of a public-house (including the licence) may be sold apart from the premises, see *West London Syndicate* v. *Inland Revenue*, [1898] 2 Q. B. 507.

It may be that, if the consideration is originally fixed in the contract as a single sum for premises and goodwill, it nevertheless might be apportioned by the parties between the two in separate conveyances by virtue of s. 58 (1) of the Stamp Act, 1891 (54 & 55 Vict. c. 39). But it is not certain that that section applies to an apportionment for purposes of increment value duty (see note on p. 72). The section in question seems primarily intended to meet a case where it is really immaterial from the revenue point of view how the consideration is apportioned, because duty has to be paid on the full consideration however divided at the fixed *ad valorem* scale. Moreover, s. 32 (3), *post*, p. 357, must be reckoned with. That sub-section, however, appears to apply only to cases where a document is presented for stamping with an unapportioned consideration, and to have nothing to do with any antecedent agreements.

(*d*) **Personal to the Owner, Occupier, or other Person interested for the time being in the Land.**—This would exclude value arising from sentimental considerations, such as family associations. It would also seem to exclude value arising from the fact that for private reasons not common to other people it is specially necessary or advantageous to a particular person that he should own a certain site. But this is not quite clear (see *ante*, p. 278, note on "Value to owner himself").

(*e*) **Any Sums which in the Opinion of the Commissioners, etc.**—This sub-division is the corollary of s. 25 (2). To ascertain "full site value" the site is to be valued as a cleared one. To ascertain the value of the site on which the tax is to be levied, the owner must be allowed

§ 25 (4). the deduction of the cost necessary to place him in the position of being able to realise or utilise that site. A purchaser who wanted a site to build upon would, in the price he was prepared to give, allow for the cost of clearing the site, and this cost is therefore a just deduction from the present value of the site. Sub-s. (2) and sub-s. (4) (*e*) do not, however, exactly correlate with each other. Under sub-s. (2) all the specified things erected or produced on the land are to be deemed off it. But under (*e*) the owner is only to be allowed the cost of clearing away those things "of which it would be necessary to divest the land for the purpose of realising the full site value." Trees may actually improve a site for building purposes. But under sub-s. (2) they are to be deemed cleared away. Under sub-s. 4 (*e*) the owner is not entitled to a deduction of the expense of doing that which would prevent his realising the full site value. By reason of clause (*c*) a site value may come out as a minus quantity. The whole value of the site may be due to an embankment and the house built on it may be ruinous.

(*e*) **Necessary to expend.**—The sub-section does not, it is conceived, give the owner of land, the site value of which is being ascertained, the absolute right to a deduction in all cases of the cost of clearing the site by pulling down the buildings or grubbing up the trees. If a person would give anything for the materials of the buildings or the trees as they stand, taking them away at his own cost, or if a person would be willing to clear them away for their own value, then it would not be necessary for the owner to expend anything for that purpose, and he will probably not be entitled to a deduction.

(*e*) **Of which it is to be taken to be divested for the Purpose, etc.**, *i.e.*, see sub-s. (2), *ante*, p. 283, and notes on that sub-section. Note that it is not to be deemed to be divested of "structures" as distinguished from buildings "on, in, or under the surface" which are not "appurtenant to or used in connection with such buildings." Therefore in valuing the site value of land in which the main water or gas pipes of undertakers are placed there is to be no deduction for the cost of their removal. The same is the case in valuing land subject to an easement of carrying water through pipes to or from a neighbour's land. The reason, it is thought, is that the site cannot in such cases be treated as if it were free from these easements, which either in total value (s. 25 (3)), or on an occasion under s. 1, will naturally depress the value.

Where any Works executed . . . latter Purposes.—See note on (*b*) of this sub-section, *ante*, p. 297. If an owner drains and levels his private park for purposes of residential amenity, and also as an agricultural improvement, and subsequently sells it for building land, and the levelling has improved the site value, is the improved value to be allowed him as a deduction under this provision? The answer would seem to be in the affirmative. Under s. 41 agriculture includes the use of land as meadow or pasture land.

§ 25 (4).

Any reference in this Act to Site Value (other than . . . on an Occasion on which Increment Value Duty is to be collected) shall be deemed to be a Reference to the Assessable Site Value as ascertained in accordance with this Section.—This paragraph is probably intended to prevent the confusion which it was perhaps thought might arise from the special method of arriving at site value on an occasion arising under ss. 1 and 2 for payment of increment value duty. Two taxes only are put on site value, *i.e.*, increment value duty and undeveloped land duty. As to the latter no difficulty arises, since it is always charged on "assessable site value" as ascertained by direct valuation and deduction under s. 25 (s. 16 (1)). Increment value duty is payable in respect of "increment value" (s. 1), that is of the amount by which the site value on the occasion on which increment value duty is to be collected exceeds the original site value (s. 2 (1)). Now the original site value, ascertained on the original site valuation under s. 26, is ascertained wholly under clause 25 and is "assessable site value." The term is indeed a misnomer as applied to original site value from the point of view of increment value duty, for increment value duty, unlike undeveloped land duty, is not payable on original site value, but only on the increment of the original site value. But the point is that under s. 2 (1) the original site value is ascertained by the direct application of s. 25, in the process of applying which gross, full site, and total values must be ascertained as preliminary steps to ascertaining "assessable site value." The site value on the occasion on which increment value duty is collected is not called "assessable site value" (though in fact it is the site value which contains the increment which is assessed). Nevertheless it is ascertained exactly as "assessable site value" is ascertained, with one important exception. Total value is not on such an occasion to be ascertained by the process of deduction from gross value enacted in s. 25 (3). Now total value is estimated market value of the land as it stands. But on "an occasion" of sale or lease the consideration for the sale or lease is realised market value. This, the value of the fee simple calculated on the basis of the realised consideration for the sale of a derivative interest in, or for the lease of, the land, is the value or amount which on an occasion arising under s. 1 (*a*) and s. 2 (2) (*a*) and (*b*) is substituted for the total value which has to be *estimated* on the original site valuation under ss. 25 and 26. Hence it is from this realised sum, or this sum calculated on the basis of a real consideration, that to arrive at site value on an occasion there must be deducted (s. 2 (2)) "the like deductions as are made under the general provisions of this part of this Act as to valuation, for the purpose of arriving at the site value of the land from the total value." The general provisions specially referred to are in s. 25 (4). It now appears why on "an occasion" gross value and full site value must be ascertained. This is so because the first of the deductions of s. 25 (4) is "(*a*) the same amount as is to be deducted

Difference between assessable site value and site value on an occasion.

§ 25 (4). for the purpose of arriving at full site value from gross value." That amount is the amount referred to in s. 25 (2). It is, as has been shewn (*ante*, p. 296), the difference between the gross value and the full site value. When found it represents the non-site value element of the property. It is the value which is added to the full site by the buildings or growth. When it is deducted (with the other deductions mentioned in s. 25 (4) (*b*), (*c*), (*d*), and (*e*)) from total value on the original or the quinquennial site valuation the result is "assessable site value." When it is so deducted on "an occasion" under s. 2 (2) from either (*a*) the value of the consideration, (*b*) the valuation of the fee simple calculated on the basis, etc., (*c*) the principal value on death as ascertained under the Finance Act, 1894, or (*d*) the "total value" as ascertained under s. 25 in the case of periodical occasions relating to the land of bodies corporate, etc., as the case may be, the result is not "assessable site value," but "site value on the occasion."

It will now, it is thought, be clear that the only difference between the method of arriving at "assessable site value" and "site value on an occasion" is that while in the former case there is a valuation to ascertain the real or selling (total) value, in the case of sale or lease the consideration, and in the case of death the principal value on which estate duty is paid, is taken as the test available at hand of that total value. In the remaining case of a "periodical occasion," as there is no consideration and no existing valuation, total value is ascertained as in s. 25. There would, therefore, certainly be on the periodical "occasion" no difference between the two methods of arriving at site value, and in theory at least there ought not to be any difference in the case of the death occasion, for principal value under the Finance Act, 1894, is really the same thing as total value under s. 25 (3).

Object of paragraph summarised.

The principal, perhaps the only, reason for the last paragraph of sub-s. (4) was probably to make it quite clear that the site value mentioned in s. 3 (5) (relating to the 10 per cent. reduction of increment value), other than the "original site value" there mentioned, was to be ascertained as "on an occasion," and not by finding total value under s. 25 (3), and that subject to that qualification site value as used throughout the land clauses means assessable (sub-s. (4)) and not full site value (sub-s. (2)).

(5) The provisions of this section are not applicable for the purpose of the valuation of minerals.

It is obvious that the code as to valuation contained in this section is not applicable to minerals. For valuation of minerals, see s. 23 and note on pp. 246 to 264. It is thought that on occasions for payment of increment value duty on minerals as a lump sum under ss. 1 and 2 the reference at the end of sub-s. (2) of the latter section to "the general provisions of this Part of this Act as to valuation" is to s. 23 (1) and

not to s. 25. This sub-section is an indication that ss. 26 to 32 (but, of course, not s. 28) do apply to minerals. **§ 25 (5).**

GENERAL NOTE ON RELATION OF GROSS VALUE TO THE OTHER VALUES OF SECTION 25.

It has been already said (*ante*, p. 278) that the gross value of any tenement is not under the general scheme of the Act as to valuation a matter of so much importance as at first sight may appear. That statement has now to be proved.

Gross value often immaterial.

Gross value has been considered in detail. Let us assume that the gross value of a house is 1,000*l.* In order to ascertain the full site value (p. 274) we must, under sub-s. 2, deduct from 1,000*l.* the difference between 1,000*l.* and the value of (what is termed for conciseness' sake) the cleared or full site. To do this we must ascertain the value of that at cleared site by valuation under the conditions of sub-s. (2). Assume the cleared site value to be 200*l.* Then to ascertain full site value according to sub-s. (2) we must deduct from 1,000*l.* the difference between 1,000*l.* and 200*l.*, that is we must deduct 800*l.* from 1,000*l.* The difference is 200*l.*, the cleared or full site value.

This may be expressed by the following simple formula :—

Let A = the gross value.
Let B = the full site value.
Then B = A — (A — B).

It will be seen that whatever actual value in the above equation, whether 1,000*l.*, 10,000*l.*, or 1,000,000*l.*, is given to A the gross value, the value of the cleared site remaining constant, B will still equal 200*l.*, and B is full site value. The bigger A or gross value is, the bigger of course total value is, for total value is A — certain deductions, also expressed in a roundabout manner (sub-s. 3). But then the bigger A is, at the same time B remaining constant, the greater is the difference between A and B, and it is the difference between A and B which has to be deducted under sub-s. (4) (*a*) from total value in order to arrive at assessable site value.

But not in the case of reversion duty.

It thus appears that on a valuation wholly under s. 25 gross value is, except in the case of reversion duty, where the tax is levied on total value, an immaterial value. It matters not whether the gross value of my house be 1,000*l.* or 100,000*l.* so far as site value is concerned. What is important is the cleared site value referred to in sub-s. (2).

Therefore on the original total and site valuations under s. 26, on the quinquennial valuation for undeveloped land duty under s. 28, and on the periodical valuation for increment value duty of the land of a body corporate or unincorporate under s. 2 (2) (*d*), it seems to be immaterial for the purpose of fixing site value whether gross value be high or low. Different considerations, however, exist when an occasion arises for payment of increment value duty under s. 1 and s. 2.

§ 25 (5). Gross value on occasions under s. 2 (2).

In the case of the payment of increment value duty on an occasion mentioned in s. 1 total value is not in three out of the four cases taken as the sum from which the deductions referred to in sub-s. (4) (*a*) of s. 25 must be made in order to arrive at the site value on the increment of which duty is leviable. Under s. 2 (2) (*a*), (*b*), and (*c*), instead of total value is substituted either (*a*) the actual sum realised for the property, or (*b*) the value of the property based on the sum realised for an interest in it, or (*c*) the principal value of the property as ascertained for the purpose of the death duties, as the case may be. But these values are in fact the total values as ascertained by the fact of sale, lease, or valuation under the Finance Act, and these total values must, it is thought in practice, though perhaps not theoretically, determine the gross values subject to the addition of the sums which the valuer would presume to have been deducted from gross value on account of any of the matters mentioned in s. 25 (3) in order to arrive at total value.*

Gross value will not therefore be in practice the most important part of the valuations even in cases of the ascertainment of occasional site value under s. 2 (2) (*a*), (*b*), and (*c*), while under (*d*) of the same sub-section it appears, as on the original site valuation, to be of no consequence at all. In cases (*a*), (*b*), and (*c*) it is, curiously enough, the interest of the taxpayer to keep gross value high as compared with full site value, and the interest of the Crown to keep it low. The greater the difference between gross value and full site value the bigger the sum to be deducted from the value of the property (the equivalent of total value) as ascertained under s. 2 (2) (*a*), (*b*), and (*c*), and the less the resultant site value to be taxed.

Indirect effect of gross value.

Nevertheless, as possibly gross value may in some way, not exactly foreseen at the moment, be used or tried to be used by the Crown as an admission or determination of value upon which principal value (under s. 7 (5) of the Finance Act, 1894) may subsequently be based for the levy of estate duty, it cannot be said that it is from that point of view an immaterial circumstance.

Gross value and reversion duty.

Gross value must be ascertained as a step in ascertaining "the total value . . . of the land at the time the lease determines" for the purpose of the assessment of reversion duty under s. 13 (2). In this case gross value is of nominal importance. Subject to the deductions referred to in sub-s. (3) of s. 25 it is in fact "total value," the excess of which over the total value at the time of the original grant of the lease is the taxable subject of the reversion duty. It would follow, therefore, that in the assessment of gross value for purposes of increment value duty, whether on sale, lease, death, or periodical occasion, the taxpayer should have in mind the question whether a claim for reversion duty may

* Since the above note was in type the Inland Revenue instructions to its valuers have been published (see p. cl.). They are in substantial accordance with the view above expressed as to the effect of the consideration in determining gross value.

shortly arise in respect to the property. If it may, he will desire on that account a low gross value. Though theoretically there must for reversion duty be an entirely fresh valuation on the determination of the lease, it stands to reason that a recent gross valuation on an occasion for payment of increment value duty, which will of course appear from the Commissioners' records, is likely to be consulted by, and will exercise a weighty influence on, the valuer for the reversion duty. § 25 (5).

The part which gross value plays in ascertaining assessable site value has been commented upon at some length. One further remark may be made. So far as the original site valuation is concerned it would, it seems, have been quite easy and much simpler to have defined assessable site value without the aid of gross and total values. It is thought that the following would (with obvious elaborations) be an adequate definition of the assessable site value which under s. 25 is the result of the processes carried out under that section. Gross, full site, and total values not necessary on original valuation.

"The assessable site value of land means the amount which the fee simple of the land, if sold free from incumbrances in the open market by a willing seller, might at the time be expected to realise, if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon, but subject to any fixed charges and other things mentioned in sub-s. (3) of s. 25. Provided that there shall be deducted from the value so ascertained any part of the total value proved to the Commissioners to be directly attributable to the matters mentioned in sub-s. (4) (*b*), (*c*), and (*d*), and any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested as aforesaid, and of which it would be necessary to divest the land for the purpose of realizing the site value thereof." Suggested definition of site value.

Total value could, of course, have been even more shortly and clearly expressed by combining sub-ss. (1) and (3).

If this be the case, it may properly be asked why the scheme of four values was adopted, and why a total value and a site value would not have answered all the purposes of the Act. No complete answer to these questions was ever given during the passage of the Bill through Parliament, and the writer does not pretend that he has satisfactorily solved them. The following is simply a possible or probable explanation. In cases where duty is to be based on a direct valuation of the total hereditament and of the site, as on the original total and site valuations under s. 26, on a quinquennial site valuation for undeveloped land duty under s. 28, and on a periodical valuation of the land of a body corporate, etc., under s. 1 (*c*), s. 2 (3) (*d*), and s. 6, in order to arrive at full site value, all that is necessary is to value the site. To arrive at the taxable site value, deductions under sub-s. 4 (*b*), (*c*), (*d*), and (*e*) would be made Why scheme of four values adopted.

§ 25 (5). from full site value. But when site value is to be valued on the occasion of a sale or lease under s. 1 (*a*) and s. 2 (2) (*a*) and (*b*), the test of that site value is thought to be the amount realised by the sale of the fee (s. 2 (2) (*a*)), or the amount of the value of the fee calculated on the basis of the consideration for the grant of the lease or the sale of the reversion or leasehold interest (s. 2 (2) (*b*)). The question then arises, how much of that amount is to be apportioned to the site value? To find that out you have to find how much of the value of the property as a whole is not site value. That is done (so it seems) by taking the gross value of the property and finding out under s. 25 (2) how much of that gross value is full site value. That being done, the difference between the two is of course the value added to the site by the buildings, etc., *i.e.*, the non-site value. This is the value which under sub-s. 4 (*a*) is to be deducted from the purchase price of the fee under s. 2 (2) (*a*), or the value of the fee simple calculated on the basis of the consideration for the lease, reversion, etc., under s. 2 (2) (*b*), in order to arrive at the taxable site value on the occasion. The method seems to be that you arrive by the gross and full site valuations at the value of the non-site element in the property, and then you deduct that from the value of the whole property evidenced by, or based upon, the sale or lease, and the balance is the then site value.

Merit of scheme.

This plan has the merit of taxing the subject fairly on his realised site increment, provided that the gross and cleared (full) site valuations are correct. Assume that on an occasion for payment of increment value duty, the gross value under sub-s. (1) of s. 25 of a property is 1,300*l.*, and its full or cleared site value under sub-s. (2) is 300*l.* The non-site value element is therefore 1,000*l.* Assume the real (or total) value of the property to be 1,200*l.*, but that it is sold slackly for 1,100*l.* If the seller were to be taxed on the basis of the real site value of the property sold, that site value, there being no deductions under s. 25 (4) (*b*) to (*e*) inclusive, would clearly by the process indicated in s. 25 be 200*l.* But under the scheme of the Act, which requires the non-site value of a property to be ascertained under s. 25 (1) and (2), this non-site value (*i.e.*, 1,000*l.*) is capable of being deducted from the actual amount (1,100*l.*) realised by the sale; and, therefore, though in reality the vendor has sold a site value worth 200*l.*, having made a foolish bargain he is only charged as on a site value of 100*l.**

Assume, on the other hand, that the vendor made a good bargain and sold his property for 1,400*l.*, or 200*l.* more than the real (total) value, the figures as to gross, full site, and real (or total) value being the same. In this case the non-site value, 1000*l.*, would be deducted from 1,400*l.*, and he would pay increment value duty as on a realised site

* Since the above note was written a copy of the instructions for the ascertainment of site value on an occasion issued by the Inland Revenue to its valuers has been laid before Parliament, and will be found on p. cl., *ante*, with a note thereon.

value of 400*l*. Of course in each of the above cases increment value duty would only be payable if there were increment value. § 25 (5).

A few of the results arrived at may now be summarised :— Summary of results.

1. The reason for the ascertainment of gross and full site values is to find the non-site element which is to be deducted from total value on (*a*) the original valuation under s. 26 ; (*b*) the quinquennial valuation under s. 28 (*c*), and the occasional valuation under s. 2 (2) (*d*) ; and which is to be deducted from the several values which represent or stand in the place of total value on an occasion under s. 2 (2) (*a*), (*b*), and (*c*).

2. The amount of gross value is immaterial on the original site valuation and the quinquennial valuations, except in so far as it may be used as a precedent for or test of the value on subsequent occasions for payment of increment value duty, reversion duty, or estate duty.

3. On occasional valuations under s. 2 (2) it is the interest of the subject to obtain a high gross value and a low full site value, so as to have a large difference to deduct under s. 25 (4) (*a*) from the value of the consideration, etc., under s. 2 (2) (*a*), (*b*), (*c*), and (*d*), thereby lowering the taxable site value.

4. On valuations for reversion duty it is the interest of the subject to have a low gross value, because that means a low total or taxable value. Site value in this case is immaterial.

5. On the original valuation a high site value is advisable if increment value duty is feared more than undeveloped land duty, a low site value if undeveloped land duty is feared more than increment value duty.

6. On quinquennial valuations a low site value is always to be aimed at.

SECTION 26.

26.—(1) The Commissioners shall, as soon as may be after the passing of this Act, cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land, and in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value. Each piece of land which is under separate occupation, and, if the owner so requires, any part of any land which is under separate occupation, shall be separately valued, and the value shall be estimated as on the thirtieth day of April nineteen hundred and nine. § 26 (1). Valuation of land for purposes of Act.

§ 26 (1). **As soon as may be after the passing of this Act.**—There is, therefore, no limit of time for the original valuation. But as to assessment for undeveloped land duty see *ante*, s. 19, p. 203.

Cause a Valuation to be made.—This valuation fixes the original site value of all land in the United Kingdom for the purposes of increment value duty, and the site value for the purposes of undeveloped land duty until after the assessment in the year 1914 comes into force. It also fixes the original capital value of all minerals not being comprised in a mining lease, and not being worked by the proprietor on April 30, 1909 (s. 23 (1)). It also fixes the total value of both land and the minerals above referred to, which, however, is not a taxable entity. The total value on which reversion duty is paid under s. 13 (2) is the total value at the date of the determination of the lease, and not the total value as fixed on the original or a quinquennial valuation under s. 28.

The valuation is that of the Commissioners, though of course they may accept that of the owner under sub-s. (3) of this section.

Of all Land.—There is to be a valuation even of land not at the moment liable to any of the new taxes, *i.e.*, agricultural land with no element about it of value for other purposes, and land exempted from duties under ss. 8, 9, 16 (2) (*b*),* 17, 35, and 37. Probably also Crown lands must be valued, for though the Crown is not bound unless expressly, or by necessary implication, yet the provision of s. 10 that increment value duty on the sale of Crown lands shall be deemed to have been paid presupposes an original site valuation of Crown lands (see *ante*, s. 10, and notes thereon, p. 144). If that is the intention of the Act it appears immaterial how far officers and servants of the Crown are legally bound to make the returns required by the Act under sub-s. (2). They will naturally be made. As to Statutory Companies, see s. 38 (2). It may perhaps be assumed that, where there is not at the time of valuation, and it seems that in all probability there will not within a long period of time be, any value in land other than agricultural value, then the valuation, especially of site value, will be of a somewhat perfunctory nature. Nevertheless it must be remembered that as soon as agricultural land comes to obtain a building or trade value it is considered to pass out of the one category and into the other, and increment value duty is payable on all increment to the original site value, even if that increment is below the building or trade value (s. 7).

The importance of this clause can hardly be overrated. The site valuation is, except as to developed land, to be kept up to date, for by clause 28 a quinquennial valuation is to be made of "undeveloped land." Undeveloped land is, under s. 16, all land, "if it has not been developed by being built upon or by being used *bonâ fide* for any business, trade

* Amended by 1 Geo. 5, c. 2, s. 4.

§ 26 (1).

or industry other than agriculture." It is not material that the undeveloped land duty is not charged upon it, because it comes within one of the various exemptions contained in s. 17. It is still undeveloped land. This is confirmed by the language of the proviso of s. 28, which refers to "any undeveloped land which is liable to undeveloped land duty." All undeveloped land is indeed potentially subject to undeveloped land duty.

Valuation of minerals.

Land includes minerals, but the section must be read in relation to minerals subject to s. 23 (4), under which references to "site value" are references to the capital value of minerals, and to sub-s. (2) of the same section, under which all minerals are to be treated as a separate parcel of land, but where not comprised in a mining lease or being worked are to be treated as of no value unless the proprietor, in his return to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

It would seem that it is only under the *original* valuation that there is to be a general valuation of minerals. The quinquennial valuation under s. 28 is "for the purpose of obtaining a periodical valuation of undeveloped land," and is a valuation of "undeveloped land." By s. 16 (4) "for the purpose of undeveloped land duty undeveloped land does not include the minerals."

But the valuation of minerals, which being in a mining lease or being worked by the proprietor on April 30, 1909, have ceased to be either in such a lease, or to be worked (s. 22 (7)), must not be overlooked. Since increment value duty is not to be charged on minerals so in lease, or being worked, a valuation as on April 30, 1909, is not necessary for the time being. The appropriate time for fixing the datum line as to them is when the present possibilities of successful working may be considered exhausted, and this is done by s. 22 (7). See notes on pp. 244 and 260.

"Land," of course, will include land covered by water, as a pond or reservoir, and land on the sea-shore down to low water mark, and the bed of rivers.

Showing separately the Total Value and the Site Value respectively.—This is the "assessable site value" (s. 25 (4)). For definition of total value, see s. 25 (3), and of assessable site value, *ib.*, sub-s. (4). On the face of the section, gross value and full site value (s. 25 (1) and (2)) have apparently disappeared, but they must necessarily be ascertained to arrive at total value and assessable site value (see notes to s. 25).

And in the Case of Agricultural Land the Value of the Land for Agricultural Purposes where that Value is different from the Site Value.—For notes on the value of land for agricultural purposes, see *ante*, notes on pp. 130 and 195. It is thought that the value of the land for agricultural purposes must in this section mean the value of the land with its agricultural buildings. Whether this be the case or not is

§ 26 (1). perhaps not so important as may seem, since the Commissioners under s. 29 (1) may assess any duty on or in respect of any such pieces of land whether under separate occupation or not as they think fit, and may therefore separate land with buildings upon it from the rest of the farm. It is not thought that the "value of the land for agricultural purposes" means the site value of the land for those purposes, since it is ordinary market value at the time of the land for agricultural purposes, which under s. 7, at all events, is the test as to exemption from increment value duty. Under s. 17 (2), as to undeveloped land duty, it is apparently the excess of the site value of the land for purposes other than agriculture over the [market] value of the land [at the time] for agricultural purposes upon which undeveloped land duty is charged. The words in brackets are not in s. 17 (2), but are thought to be implied.

To render the two valuations necessary, (1) the land must be agricultural land, *i.e.*, used or employed in agriculture, and (2) its value for agricultural purposes must be different from its site value. In the case of pasture land, of land used as orchards and hop gardens, and in other cases the agricultural value may be greater than the site value, and will be greater if the land has no value higher than its value for agricultural purposes.

It is thought that the "value of the land for agricultural purposes" as ascertained under s. 26, is not like total and site values so ascertained as conclusive on an assessment by virtue of s. 33 (*b*), at all events as to the agricultural value at the date of the assessment as distinguished from the date of the valuation under s. 26.

Neither increment value duty, reversion duty, nor undeveloped land duty are charged in respect of land used in agriculture which has no higher value than its value for agricultural purposes. Reversion duty, indeed, is not charged on any land which is at the time of the determination of the lease employed in agriculture (s. 14 (2)).

The reason why the two values must be ascertained are, (1) because under s. 7 increment value duty becomes payable on land the value of which exceeds its market value at the time for agricultural purposes only. In such a case, as has been seen (p. 133), the whole increment value starting from the original site value is subject to the duty; and (2) because under s. 17 (2) undeveloped land duty is charged on the amount by which the site value of land employed in agriculture and exceeding a value of 50*l.* per acre also exceeds its value for agricultural purposes. A high agricultural value is therefore desirable, because it limits the amount of the duties.

Each Piece of Land which is under Separate Occupation.—It is thought that "piece of land" in this context is not so used as to cause the sentence to mean that each portion of land with marked boundaries is to be separately valued, so that, for example, a garden and an adjoining

paddock would be treated as two pieces of land. It is thought that what is to be valued is the totality of the adjoining land belonging to the same owner in a single occupation. § 26 (1).

And if the Owner so requires, any Part of any Land which is under Separate Occupation.—The sense seems clear. The units which are to be valued are determined by the fact that they are property belonging to one owner, and in one occupation. But an owner may require the Commissioners to split up any property so occupied into as many parts as he indicates, and to value each such part separately. Compare s. 43 of the Succession Duty Act (16 & 17 Vict. c. 51), 1853.

Separate occupation in rating and franchise cases.

There is a great deal of law relating to what is technically called "separate or exclusive occupation" mainly arising with respect to poor law rating and franchise cases. In regard to the former the usual question is whether A. is liable to pay the poor rates tax; in regard to the latter, whether A. is entitled to vote.* Indirectly the question usually arises, if A. is not liable to pay or entitled to vote, who is or may be so liable or entitled? No such question arises under s. 26. There is no doubt that the *owner* or person exercising the rights of ownership must pay. The only question is how is his property to be massed or carved up for the purpose of assessing it. Sub-sect. (1) of s. 26 says or implies (1) that the Commissioners are to value separately each piece of land under separate occupation; (2) that the owner may require any part of any separate occupation to be separately valued; (3) but that neither owner nor Commissioners are entitled to lump together two separate occupations for the purpose of valuation. This latter incident has, however, been altered by s. 5 of the Revenue Act, 1911 (1 Geo. 5, c. 2), under which the Commissioners may, on the request of the owner of any pieces of land which are contiguous, value those pieces together, although under separate occupation (see p. 315 for the full section).

Comparatively unimportant under s. 26.

As under s. 29 any duty may be assessed on or in respect of any such pieces of land, whether under separate occupation or not, as the Commissioners think fit, for which purpose they may make such apportionments and reapportionments of site value as they consider necessary, the question of the unit of valuation loses something of its importance.

Unoccupied land.

It is not thought that any land can escape valuation because it is not occupied. The direction is to value all land whether occupied or not. The owner will, it is submitted, be in occupation, if there is no tenant (*Holywell Union* v. *Halkyn Drainage Co.*, [1895] A. C. 117). The direction to value separately land under separate occupation may cause uncertainty as to the unit of valuation in particular cases, but none as to the obligatory nature of such valuation. For this reason the decisions upon "occupation" in rating law seem to have comparatively little importance in relation to s. 26. It may, nevertheless, be noted

* See the recent case of *Young & Co.* v. *Liverpool Assessment Committee*, [1911] 2 K. B. 195.

§ 26 (1) that occupation does not necessarily involve residence (*R.* v. *Justices of West Riding*, 2 Q. B. 505).

Valuation of separately occupied land as an aggregate.

If the Commissioners value two separate occupations as a unit except at the request of the owner, under s. 5 of the Revenue Act, 1911, then, although it may be that they are entitled to assess duty on such an aggregate when obtained by separate valuations (under s. 29 (1)), it is thought that the assessment would be bad. The assessment of the two occupations as a unit may be different from that of the combined sum of the separate assessments of the two occupations. On the other hand the owner may, as we have seen, get separate valuations of different portions of a property in a single occupation, and those separate valuations may in the aggregate amount to less than the sum of a single valuation of the whole property. In this case it is thought that the Commissioners must be content with the smaller amount arising from the separate valuations.*

In cases of undeveloped land duty where the value of various pieces of land may be increased by the fact that such pieces are in one ownership, it may be advisable for the owner to obtain separate valuations. Nevertheless it is not quite clear that such separate valuations are to be on the basis of separate ownerships. The present owner may be a possible purchaser (see p. 278). It must also be remembered that sometimes a high and not a low *original* site value is desirable.

Unlimited power of requiring separate valuation.

The power of the owner to require land in one occupation to be split up for purposes of valuation is apparently unlimited, so that *primâ facie* an owner of a block of flats could say "value separately every square yard of my property [for the whole seven storeys of my building?]"; or the owner could send a plan of his property to the Commissioners with the land cut up into divers fancy and irregular pieces, and require them to find the four values of each piece. It is not thought that any device of this kind could ultimately be successful in eluding taxation, and such a device might be dangerous from the point of view of the costs of any proceedings on appeal, but it seems certain that any *bonâ fide* desire to have any portion of his property separately valued must be complied with by the Commissioners, although in their opinion that desire may be unreasonable. The effect of this is that an owner having two pieces of land occupied either by himself or a single tenant, the value of one or of both of which is increased by the fact that they are in the same ownership, will require them to be separately valued, if he wishes

* It is difficult, however, to see how the directions of s. 26 are to be strictly applied to a block of buildings let out as offices or flats. Probably by consent of the owner, the buildings will be valued as a whole. If Form IV. is returned by the owner for the whole building it is possible he may be considered to have consented to its valuation as a whole. So if the owner has returned several Forms IV. for land in different occupations, which under s. 5 of the Revenue Act, 1911 (*post*, p. 315), he might be entitled to have jointly valued, he may, subject to the temporary grace allowed by that section, be precluded from requiring joint valuation.

for a low site valuation ; but if he wishes for a high site valuation he will of course acquiesce in the joint valuation of the two as being in one occupation. **§ 26 (1).**

Compare with this sub-section the provisions of s. 29 (2), under which apportionments and reapportionments of original site value may be made.

THE REVENUE ACT, 1911 (1 GEO. 5, c. 2), s. 5.

Revenue Act, 1911, s. 5.

Notwithstanding anything in sub-section one of section twenty-six of the principal Act the Commissioners may, on the request of the owner of any pieces of land which are contiguous, and which do not in the aggregate exceed one hundred acres in extent, value those pieces of land together for the purposes of that Act, although those pieces of land are under separate occupation, if they are satisfied that in the special circumstances of the case it is equitable to do so; and any such valuation may be made under this provision, although any of the pieces of land have been valued before the passing of this Act, if the request for the valuation under this provision is made by the owner of the land within three months after the passing of this Act, and in that case any valuation previously made shall be of no effect.

The Commissioners may on the Request of the Owner, etc.— To bring this section into play, (1) there must be a request by the owner, which, though not compulsorily so, will naturally be made in writing ; (2) the pieces of land required to be valued as an aggregate must be contiguous ; (3) the Commissioners must be satisfied that there are special circumstances which render joint valuation equitable. What such circumstances will be it is not easy to prophesy.

Application to increment duty.

A case given in Parliament, to which it seemed there was a general consensus that it would be equitable that the section should apply, is as follows. The leases on an urban estate are on the point of expiring and the buildings are dilapidated. When all the leases have fallen in it is probable that the sites will be cleared by the owner, and the land let for new and larger buildings. The aggregate value of the sites let as a whole, or in larger areas than those held under the expiring leases, will probably greatly exceed the total value of the separate sites separately valued. This will be the case, it was said, because, amongst other obvious reasons, the various easements affecting and reducing the value of the various sites, such as easements of light and support, will have disappeared

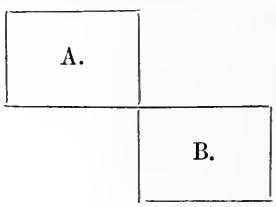
§ 26 (1). in the ownership of the whole in fee simple. It is thought that it is fair that the owner, the person entitled to the fee simple on reversion, should be able to obtain from the Commissioners an original site value of the whole estate, as an aggregate, as a defence against an excessive claim for increment value duty on a resale or on the new leases. See Official Report of Parliamentary Debates, March 27, 1911, vol. 23, No. 37, pp. 998 and 999.

And to undeveloped land duty.

Whether it would be "equitable" so to apply the clause as to reduce or get rid of the liability of land A. to undeveloped land duty by valuing it as an aggregate together with land B., the value of which is under 50*l.* an acre, is a matter to be determined by the Commissioners. The question must, it is thought, depend upon the particular facts of each case. But the limit of one hundred acres is placed on the aggregate extent of all the pieces of which a joint valuation may be requested.

There are probably cases in which land naturally forming an aggregate has, under exceptional circumstances, come to be in diverse occupations. A paddock attached to a house may have been separately let either by the owner or lessee of the house. The value of the site of the house and paddock valued together may exceed the aggregate of the separate values of each. In such a case it *may* be advisable for the owner to endeavour to utilise this section as providing a buffer against a claim for increment value duty on the sale of the house and paddock for a single consideration.

Which are Contiguous.—If an angle of field A. touches an angle of field B., as in the following diagram, are the fields contiguous?



Although any of the Pieces have been Valued before the passing of this Act.—If it is clear that the pieces have not been so valued before the passing of the Act, as, for example, where the owner's return under sub-s. (2) has not yet been made, an immediate request, or a request accompanying the return, which should at once be made, should be given to the Commissioners for the joint valuation desired. If the pieces have been so valued, the notice referred to in the section must be given within the specified time. It is not, however, clear at what moment of time the pieces must be considered to "have been valued." Is it the date of service of the provisional valuation under s. 27 (1); or the moment when the Government valuer has made for his own purposes

the valuation, or sent it on to the Commissioners; or the moment the Commissioners have adopted that valuation by directing it to be inserted in the provisional valuation; or not till that valuation is finally settled (see p. 324). There seems to be a strong argument for the last mentioned date. § 26 (1)

And in that Case any Valuation previously made shall be of no Effect.—That is if the request is acceded to, not simply made.

(2) Any owner of land and any person receiving rent in respect of any land shall, on being required by notice from the Commissioners, furnish to the Commissioners a return containing such particulars as the Commissioners may require as to the rent received by him, and as to the ownership, tenure, area, character, and use of the land, and the consideration given on any previous sale or lease of the land, and any other matters which may properly be required for the purpose of the valuation of the land, and which it is in his power to give, and if any owner of land or person receiving any rent in respect of the land is required by the Commissioners to make a return under this section, and fails to make such a return within the time, not being less than thirty days, specified in the notice requiring a return, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court. Finance (1909—10) Act, 1910, s. 26 (2).

Any Owner.—See definition of owner (s. 41, *post*, p. 458). A tenant for life as well as a lessee with a term of which more than fifty years are unexpired is an owner within the meaning of this sub-section. The owner of minerals is also within the section (see Forms IV. (p. 504) and VI. (p. 533)). Form V. (p. 519) is the return to be made under s. 20 (3) in respect of minerals being worked); although in relation to the special mineral duties the owner is termed in the Act "proprietor" and the valuation of the minerals will be under s. 23 (1) and (4) and not under s. 25 (see *ante*, pp. 246 and 255). The extended meaning of the term "owner" in s. 27, created by sub-s. (7) of that section, does not apply to s. 26.

See also s. 41, paragraph beginning "The expressions 'transferor,'" (p. 461), under which ss. 59, 60, and 62 of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), are to apply to the exercise of the powers of an owner under the land clauses of the Finance Act, 1910, in the same manner as they apply to

§ 26 (2). the exercise of the powers of a tenant for life under the Settled Land Act. Under the sections referred to (see p. 426), in the case of an infant the trustees of the settlement, or, if there are none, a person appointed specially by the Court, and in the case of a lunatic, the committee of his estate, are to exercise the powers of the Settled Land Act, and therefore, under s. 41, the powers of an owner under this Act. It would seem, therefore, by implication that they would be subject to the liabilities of an owner, including that of making a return under this sub-section. In any event, in so far as trustees receive rent on behalf of infants or committees for lunatics, they come within the words "any person receiving rent."

Any Person receiving Rent.—Such persons, as distinguished from owners, will include the person entitled to the fee simple expectant upon the determination of a lease with over fifty years unexpired, the lessee of a leasehold reversion expectant upon a like term, the lessee of a term of less than fifty years unexpired, who is therefore not the owner, and will possibly include agents of all kinds, receivers under the Court, and possibly under powers contained in mortgage or other deeds, and even persons without any title other than possession, etc. No limitation can safely be placed upon them.

With this sub-section must be compared s. 31 (1) (see *post*, p. 346). The two sections appear so far as the receipt of rent by an agent to cover the same ground; since it does not appear that there is any other reason than the fact of the duplication by two separate clauses of the liability for suggesting that s. 26 (2) does not apply to agents generally. More particularly is this the case if the words "and which it is in his power to give" refer to all the particulars enumerated in s. 26 (2), and not only to "any other matters."

Rent has the same meaning as in the Conveyancing and Law of Property Act, 1881, and does not include a rent-charge (s. 41). The Conveyancing and Law of Property Act, 1881, s. 2 (ix.), is as follows:—

> (ix.) Rent includes yearly or other rent, toll, duty, royalty or other reservation by the acre, the ton, or otherwise, and fine includes premium or foregift, and any payment, consideration or benefit in the nature of a fine, premium or foregift.

The sub-section would doubtless apply to mineral rents; see s. 24 (*ante*, p. 265).

On being required by Notice.—For the manner in which notices may be served on owners and persons interested, see s. 31 (4). But *quære* whether a "person receiving rent" under s. 26 (2) is necessarily a "person interested" under s. 31 (4). If the unit of valuation adopted by the Commissioners is objected to, the return should not be filled in; otherwise the owner runs the risk of being considered to have assented to the unit. The person served should in such case, having expressed his objections to the Commissioners, either await an action for penalties under the sub-section, or possibly himself bring an action grounded on

Dyson v. *Attorney-General*, [1911] 1 K. B. 410, and *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139, *post*, p. 347, and appendix, p. 510, for a declaration that he is not bound to make the return as demanded. § 26 (2).

A Return containing, etc.—Compare the return required under this sub-section with the returns or particulars required by the Income Tax Act, 1842, ss. 48 and 53, and the Finance Act, 1894, s. 8 (sub-s. 5). On p. 504 will be found a copy of the return (Form IV.) required to be made under this sub-section, and a note thereon.

And as to the Ownership, Tenure, Area, Character, and Use of the Land, and the Consideration given on any Previous Sale or Lease of the Land.—These particulars are certainly very searching, and it is easy to see that they cannot all be always within the knowledge of a receiver or agent. It does not appear certain that the later words of the section, "and which it is in his power to give," qualify anything else except the words "any other matters, etc."

It has been decided under this sub-section and Form IV. (see above), that a statement of claim in an action for a declaration that the form is illegal, unauthorised, and *ultra vires* as to certain of the particulars required, brought by the owner against the Attorney-General, as representing the Crown, will not necessarily be struck out under Order 25, r. 4, on the ground that it discloses no reasonable cause of action (*Dyson* v. *Attorney-General*, [1911] 1 K. B. 410). For an examination of this case, see the note thereon in the Appendix immediately following Form IV. (*post*, p. 504). One of the points decided was that the particulars under head (*i*) in Form IV. could not be required.

And which it is in his Power to give.—*Quære*, is he bound to get information not at the moment of inquiry in his possession? Apparently not, as to these "other matters" to which alone the qualification grammatically refers. But supposing he has the information in his power, but it requires calculation to place it in a comprehensible form, is he bound to work out such calculation?

Fails to make, etc.—Not "refuses" or even "neglects." But simply does not do so, whatever may be the reason, such as ill-health, inevitable absence from home, etc. (See *Attorney-General* v. *Till*, [1910] A. C. 50.) See p. 78 for note on penalties.

A Penalty not exceeding £50, etc.—Not recoverable summarily, but probably subject to the provisions of the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), which relate to the procedure in proceedings by the Crown to recover stamp duties. See ss. 21 to 27, 33, 36.

(3) Any owner of land may, if he thinks fit, furnish to the Commissioners his estimate of the total value or site value or both of the land, and the Commissioners, in

§ 26 (3). making their valuation, shall consider any estimate so furnished.

Before making their valuation the Commissioners require a return under sub-s. 2 from the owner or person receiving the rent (see Form IV., *post*, p. 504), asking for the particulars which they require for the purpose of making their valuation.

In such form (see p. 508) the Commissioners draw attention to sub-s. (3), and give the owner the opportunity of stating his own valuation of both total and site value. This must be considered by the Commissioners before making their valuation. It must be remembered that minerals not in lease or being worked on April 30, 1909, are to be treated as having no capital value unless the proprietor in his return under this section specifies their nature and his estimate of their capital value (s. 23 (2), *ante*, p. 251).

SECTION 27.

§ 27 (1). Ascertainment of the original site value of land.

27.—(1) The Commissioners shall cause a copy of their provisional valuation of any land to be served on the owner of the land, and unless objection is taken to the provisional valuation in manner provided by this section, the values shown in the provisional valuation shall be adopted as the original total value and the original site value respectively for the purposes of this Part of this Act.

Their Provisional Valuation, *i.e.*, the valuation made under s. 26 (1), after considering the estimate of the owner (if he has made an estimate) under sub-s. (3) of s. 26. (For form of valuation, see p. 546, and for note thereon, see p. xxxiii., *ante*.) Unless objection is taken in manner provided by the section, or unless the Commissioners without objection amend it, the valuation which was originally provisional becomes absolutely binding. The whole section appears to apply to a valuation of minerals, substituting of course capital value for site value.

To be served on the Owner.—It must be noted that where the lessee is the owner within the meaning of the Act (s. 41), that is, has an unexpired term of more than fifty years, this section applies as if the person entitled to the fee simple reversion, and also to any leasehold reversion exceeding twenty-one years, were the owner as well as the lessee (sub-s. 7); so that the provisional valuation may have to be served on more than one person. For service on an owner or person interested, see s. 31 (4).

Unless Objection is taken to the Provisional Valuation in Manner provided by this Section.—See as to the manner of taking objection,

sub-s. (2) of this section. It is to be noted that under s. 33 (1) (*a*) an appeal to a referee and from him to the High Court will not lie against a provisional valuation, except on the part of a person who has made an objection to the provisional valuation.

Original Total Value.—See s. 25 (3) for definition of total value. This original total value is not in itself a taxable entity. It is necessary that it should be ascertained in order that original site value should be deduced from it. Original total value is, it is conceived, in the case of agricultural land on which are no buildings and which has no higher value than its value for agricultural purposes, identical with the agricultural value of the land.

Original Site Value.—See s. 25 (4) for description of site value, a reference to which is deemed to be to the assessable site value, except a reference on an occasion on which increment value duty is to be collected, as to which see s. 2 (2). Original site value is the *terminus a quo* increment value is calculated and upon which increment value duty is payable in future. It is the taxable entity of undeveloped land duty until the year 1915.

As to the agricultural value and the provisional valuation.

It will be noted that though under s. 26 (1) the Commissioners have to find in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value, yet there is no provision in sub-s (1) of s. 27 making their estimate of agricultural value binding, as in the case of total and site values. As the undeveloped land duty is charged on the excess of site value over agricultural value, it would at first sight seem convenient if the agricultural value of the land were also found. But on reflection it will be seen that the agricultural value of the land at the date of the original valuation is under the Act probably immaterial. Under s. 7, the section exempting agricultural values from increment value duty, and s. 17 (2), the section exempting them from undeveloped land duty, it will be seen that it is apparently the agricultural value at the date of assessment which determines the exemption. There is nothing in the Act to render the original or a periodical valuation of agricultural land binding on occasions for payment of duty, as there is in relation to original total value and original and quinquennial site value (s. 16 (3) and s. 33 (1) (*b*)). In each case when exemption is claimed, either under s. 7 or s. 17 (2), there must, it is thought (though it is not quite clear), be a new valuation of agricultural value. As to undeveloped land duty it is quite probable that in most cases the general valuation for agricultural purposes will only be altered at long intervals. It seems not clear, however, that s. 28 applies to the quinquennial valuation the provision of s. 26 under which the Commissioners must find the value of the land for agricultural purposes. Gross, full site, and total values are necessarily found before assessable site value can be ascertained, but value for agricultural purposes is nominally independent of s. 25.

§ 27 (2) (2) If the owner considers that the total or site value, as stated in any provisional valuation, is not correct, he may, with a view to an amendment of the provisional valuation, within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow, give to the Commissioners notice of objection to the provisional valuation, stating the grounds of his objection and the amendment he desires, and, if the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the total and site value as stated in the amended valuation shall be adopted as the original total and the original site value for the purposes of this Part of this Act.

Owner.—See s. 41 for definition, and also sub-s. (7) of this section, and notes, *ante*, pp. 317 and 320.

Date on which the Copy of the Provisional Valuation is served.—For service of valuation, see s. 31 (4), p. 348.

Or such extended Time, etc.—It is thought that there is an appeal from the refusal of the Commissioners to allow an extension of time. See s. 33, p. 358.

Give to the Commissioners.—The notice should be addressed to the Commissioners, and not to the District Valuer (compare *Burghes* v. *The Inland Revenue*, [1911] 2 Ch. 139).

Stating the Grounds of his Objection and the Amendment he desires.—The valuation, under s. 26 (1), need only show (1) total value, (2) site value, and (3) in the case of agricultural land the value of the land for agricultural purposes, where that value is different from the site value. Apparently no reasons for, or particulars as to, the manner in which the values are arrived at need be given to the owner under s. 27 (1), but as a matter of fact such particulars are to a certain extent given in the provisional valuation (see *post*, p. 546, for form of provisional valuation). * In particular, gross and full site values and particulars of deductions under s. 25 (3) and (4) are stated. The grounds of objection by the owner and the amendment desired must, where no particulars are given in the valuation, necessarily be equally concise, as for example—"That the assessable site value is not, as alleged, in the valuation 300*l.*, but is 250*l.*, and that the valuation be amended

* For a practical note on the provisional valuation see explanatory summary, p. xxxiii.

§ 27 (2).

by substituting the sum of 250*l.* for the sum of 300*l.* as the assessable site value." But, as appears to be intended to be the case, if the valuation contains details of the deductions from total value made in order to arrive at site value, exception should be taken to the particular details which are disagreed with, and the amendments desired in details, including consequential amendments in totals, should be stated. In giving notice of objection to the Commissioners as to the provisional valuation it will be advisable so far as possible and as the nature of the case will allow to follow the same course and forms as are prescribed in the case of an appeal to the referee (see Rules and Forms as to that appeal, *post*, p. 376).

It is thought that the whole question of the values is open on the objections to the provisional valuation, and that owners who have not claimed for deductions under Form IV. (p. 504) and Form VII. (p. 514) can still do so. But this is not certain.

As to an objection to agricultural value as **found by the** provisional valuation, see note on p. 321, "Original site value." But clearly owners are in a difficulty until the question there raised is decided.

Personal hearing.

It is not thought that there is any right in an objector to insist on a personal hearing by himself or agent in objection to the valuation, since (1) there is no provision in this Act equivalent to s. 19 of the Union Assessment Act, 1862 (25 & 26 Vict. c. 103), relating to poor rates, under which union assessment committees are bound to hold meetings for hearing objections, and to give prescribed notice thereof, and "may at such meeting hear and determine such objections"; (2) when personal hearing is required, as in the case of appeal to referees, the right is specifically given (s. 33 (3)); and (3) the general course of procedure in other matters of an analogous nature before the Commissioners (Stamps, Income Tax, etc.) against the right.

All Persons making Objections.—For the persons who may make objections, other than the owner, see sub-s. (5), *infra*. Supposing the Commissioners amend the provisional valuation so as to be satisfactory to all persons "making objections," but that the effect of these amendments is to render the valuation unsatisfactory to the owner or to persons interested, who have not made objections to, but were satisfied with, the provisional valuation. Their time for objecting (sixty days from service upon them of the copy of the provisional valuation) has almost certainly gone by. The point is, perhaps, intended to be met by sub-s. (3) of this section. The amended provisional valuation is to be deemed a provisional valuation. It is thought that it must be served on the owner under sub-s. (1) and all persons interested who have already applied under sub-s. (5) for copies of the provisional valuation, and it is thought (but with some hesitation) that all parties so served have another sixty days from service to make objections. See further the note to sub-s. (3).

§ 27 (2). **The Total and Site Value as stated on the . . . Amended Valuation shall be adopted, etc.**—"Adoption" of total and site values is, it is assumed, the correlative of the final settlement of the provisional valuation referred to in sub-s. (3). The same act finally settles the valuation by adopting the values. The language used is ingeniously calculated to raise doubts as to whether the whole meaning of the phraseology has been grasped.

(3) The Commissioners may amend any provisional valuation, whether objected to or not, before it is finally settled, and the amended provisional valuation shall be deemed to be a provisional valuation for the purposes of this section.

Before it is finally settled.—The final settlement of the provisional valuation appears to be (*a*) where no objection is taken either by the owner under sub-s. (2), or by any person interested under sub-s. (5) within the sixty days of service on the owner or the delivery of the copy valuation under sub-s. (5) to the person interested, as the case may be, but *quære* whether the person interested has sixty days from service on himself or must appeal within the owner's sixty days and any further time he can get under sub-s. (2); (*b*) where objections are taken either by owner or person interested, and the Commissioners amend the valuation, or where they amend the valuation of their own accord without objection, and in either case serve such amended valuation on the owner [it would seem also on all parties who have applied under sub-s. (5)], and there is no further objection on the part either of the owner or those parties within the sixty days from the service of the amended valuation; (*c*) where objections being taken the Commissioners overrule them, and there is no appeal to a referee within the time fixed by Rule 4 of the Appeal Rules (*post*, p. 377); (*d*) where there is an appeal and that appeal is either allowed or overruled and there is no further appeal, or the time for such a further appeal has expired.

Shall be deemed to be a Provisional Valuation for the Purposes of this Section.—Does this mean that the amended valuation shall be re-served under sub-s. (1), and that the owner and any other persons interested shall have a right to object under sub-s. (2) to the amended valuation? Probably it does; and indeed this procedure may be only fair to owners and others interested. But this may necessitate delay. In the case where the Commissioners give full effect to an owner's objection it is difficult to see why he should have sixty more days to object again. At the same time, if by giving effect to the objection of one of the several owners (see sub-s. (7) of this section), or parties interested (sub-s. 5), a new objection is created on the part of another owner or a

party interested (sub-s. (5)), it is of course only fair that the latter should have time to formulate his objections. § 27 (3).

(4) If the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give a notice of appeal under this Act with respect to the valuation, but if no such notice is given, the total and site value as stated in the provisional valuation, subject to such amendments as may be made by the Commissioners in order to meet objections, shall be adopted as the original total and the original site value respectively for the purposes of this Part of this Act.

Any Objector, *i.e.*, the owner or persons objecting under sub-ss. (5) and (7) of this section.

Notice of Appeal under the Act, *i.e.*, to a referee (s. 33 (2)). For the form of the notice and the procedure on appeal see "Land Values (Referee) Rules, 1910," dated December 5, 1910 (*post*, p. 376). Rules 3, 4, and 5 relate to the form of notice of appeal and the time within which it must be given. If a provisional valuation is objected to, amended, and as amended still objected to, and not re-amended, it would seem that the latter valuation is that which must be appealed against (but compare *R.* v. *Justices of Derbyshire*, 19 W. R. 934). But to be quite safe the appeal may be directed to both valuations.

But if no such Notice is given, the Total and Site Value as stated . . . shall be adopted as, etc.—If an owner or person interested desires to appeal from the provisional valuation of original total or site value he must (1) make an objection under sub-s. (2) or (5) of this section (see s. 33 (1) (*a*)). Then if the Commissioners do not amend their provisional valuation in accordance with that objection he must give a notice of appeal under this sub-section. (For the rules as to appeals to a referee see *post*, p. 376). This is apparently the only way of challenging original total and site value (s. 33 (1) (*b*)). If a notice of appeal is not given now, the values as stated in the provisional valuation are to be adopted as the original total or site values respectively, and it seems that there is no appeal from such adoption. But ss. 27 (4) and 33 (1) (*a*) are not quite clearly consistent.

Notice of objection by A., one owner, overruled by the Commissioners will not entitle B., another owner, to appeal (s. 33 (1) (*a*), see p. 358).

It is thought that the persons mentioned in the note to sub-s. (2) (see p. 323), who, being satisfied with, have not given notice of objection to the original provisional valuation, but who have given notice of objection to the proposed amendment under sub-s. (3) of the original provisional valuation, are objectors within the meaning of sub-s. (4), and accordingly may give notice of appeal under that sub-section.

§ 27 (4). **Subject to such Amendments as may be made by the Commissioners, etc.**, *i.e.*, not a new set of amendments, but the amendments in the original provisional valuation already made at the date of the notice of objection.

Shall be adopted as the Original Total and Original Site Value respectively.—Apparently this adoption is conclusive. See note above.

(5) Any person interested in the land, not being an owner, may apply to the Commissioners for a copy of the provisional valuation of the land before it is finally settled, and shall then have the same right of giving notice of objection and of appealing as the owner.

Any Person interested in the Land.—It is not thought that the words "any person interested in the land" are to be limited by the definition of "interest" in relation to land in s. 41, but the point is not plain. Unless the meaning is not so limited, a remainderman, whether expectant on a term of years or on a freehold estate, a reversioner, whether in fee or for a term exceeding twenty-one years expectant on the determination of a life estate in possession, and a mortgagee are not entitled to object to and appeal from the provisional valuation. It is thought that none of such persons are "owners" within sub-s. (7) of this section as "being entitled to the fee simple reversion or to a leasehold reversion" expectant upon the determination of a lessee owner's term of over fifty years unexpired, and they have not an interest in land (s. 41, paragraph "The expression 'interest' in relation to land").

It appears, however, that mortgagees are considered by the Crown to be entitled to the benefit of this sub-section, and may obtain a copy of the provisional valuation by applying for it. See the speech of the Attorney-General in the House of Commons on February 14, 1911 (Parliamentary Debates, vol. 21, No. 8, p. 919).

See as to the position of persons interested not being appellants on appeal to the referee, the "Land Values (Referee) Rules, 1910," rule 11 (1) and (2) (*post*). There seems to be no special reference to such persons in the rules regulating appeals to the High Court from the referee (see the Rules of the Supreme Court (Finance (1909–10) Act), 1911, *post*, p. 383. Apparently unless appellants or respondents they have no right to be heard on that appeal.

Not being an Owner.—See sub-s. (7) of this section for the extended meaning of "owner" within the section and note thereon. Under the joint effect of sub-ss. (1), (5), and (7), and see s. 41, par. "The expression owner," and the interpretation put upon the term "person interested" by the Crown as including a mortgagee, the following propositions are thought to be correct—

§ 27 (5).

(1) Where there is (*a*) an owner in fee and (*b*) a mortgagee of the inheritance, the owner in fee must be served with a copy of the provisional valuation (sub-s. (1)), and the mortgagee may apply for a copy under sub-s. (5).

(2) Where there is (*a*) a lessee in possession for an unexpired term of over fifty years, (*b*) a lessee in reversion immediately expectant on that term for a term less than twenty-one years after its expiration, and (*c*) a reversioner in fee expectant on the twenty-one years' term, all three are owners and must be served under sub-s. (1).*

(3) Where there is (*a*) a lessee in possession for a term of less than fifty years unexpired, (*b*) a lessee in immediate reversion on that term for a term of less than fifty years unexpired, and (3) a reversioner in fee, the reversioner in fee only must be served as owner, and the two lessees may apply as persons interested under sub-s. (5).

(4) A. is tenant for life in possession, and, subject thereto, B. is tenant in fee in remainder. A. is the owner and must be served. It is doubtful whether B. is a person interested within sub-s. (5), but it is believed that the Commissioners will allow him to be so treated. He clearly has not an interest under the definition clause (s. 41).

(5) A. is lessee for a term of over fifty years unexpired, created by B., a deceased owner in fee simple in possession. By his will, B. has devised the land to C. for life, remainder to D. in fee simple. A. is the owner within sub-s. (1) of s. 27 (s. 41). It is doubtful whether either C. or D. is also an owner within sub-s. (7) of s. 27. Clearly C. is a party interested within sub-s. (5) of that section (see s. 41, par. "The expression 'interest' in relation to land"). D. is not a party interested, unless the wider view is taken of the meaning of the words in sub-s. (5).

(6) If in the last case (No. 5) A.'s lease had had only fifty years or less unexpired, C. would clearly have been owner; A. would have been a party interested, and the position of D. would have been as stated in No. 5.

Instances might be multiplied *ad infinitum*.

It appears that the authorities are of opinion that mortgagees whether of the fee simple in possession or of leaseholds for an unexpired term of over fifty years, the mortgage being way of assignment, are not owners within s. 27, notwithstanding the definition of owner in s. 41. Whether that view applies to a case in which the mortgagee has gone into possession is not known.

May apply to the Commissioners for a Copy of the Provisional Valuation . . . before it is finally settled.—There are no provisions for enabling a person interested to obtain knowledge that the

* Sub-s (7) is so interpreted. But it is possible that the words, "a term of years exceeding twenty-one," apply to its original erection, and not to its duration at the time of valuation.

§ 27 (5). provisional valuation has been made. If such a person desires to safeguard his position he should be prepared to take immediate steps to do so. The most critical time for him is the first valuation under the Act, which was commenced shortly after it received the Royal assent and has not yet been completed. Then the original site value is fixed, apparently for all eternity, probably for existing lifetimes at all events. If it is fixed too low, a reversioner or remainderman may find that he has to pay too much increment value duty. The existing owner may desire to keep site value low in order to keep undeveloped land duty low also; and he may be indifferent to increment value duty. Thus it is clear that for purposes of the new taxes there may be a marked divergence between the interests of tenant for life and remainderman or reversioner. In these circumstances, the latter may well desire to have an opportunity of considering, and if he thinks it advisable of objecting, either to the provisional valuation, or to alterations proposed to be made in that valuation on behalf of the tenant for life. This being the case, as the matter is urgent, it would seem advisable for remaindermen and persons entitled to future interests, who are not owners within the meaning of either s. 41 or s. 27 (7), and who are not acting in conjunction with the owners, as well as for mortgagees, to write to the Board of Inland Revenue informing them of the situation of the land in question, stating concisely their interest in the present ownership of that land, and their desire to have a copy of the provisional valuation in pursuance of their rights under s. 27 (5). The Board should be asked to state what, if any, further steps should be taken to secure and enforce those rights, and whether the applicants may be heard before the provisional valuation is made. It is oftener easier to get an original decision in one's favour than to vary in the same direction a provisional decision against one's interests. There is, however, apparently no right in persons interested, not being owners, to make representations to or be heard by the Commissioners before the latter have made their provisional valuation. As to when the valuation is finally settled, see *ante*, p. 324.

Although before this (the second) edition is issued the time will in many cases have elapsed within which "persons interested" could adopt the suggestion in the note as to the original total or site valuations, that suggestion will, with lesser force, be applicable to the provisional valuation for the purpose of the quinquennial valuation under s. 28. As to the latter valuation the interests of tenant for life and remainderman appear to be identical, namely to keep the site value low. This is clearly so in regard to undeveloped land duty, and if the quinquennial valuation is to have any indirect influence in fact upon the valuation of gross and full site value, on occasions when increment value duty is payable, it is the interest of both tenant for life and remainderman to keep gross value high as compared with site value, so as to have a large sum to deduct under s. 2 (2) and s. 25 (4) (*a*).

The same Right of giving Notice of Objection and of appealing as the Owner.—*Primâ facie* these words would mean that the objection must be made within the same time as an owner's objection. That objection must be made within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow (s. 27 (2)). Possibly in the case of the person interested the sixty days would run from the receipt of the copy. But the point is not clear. Sect. 33 (1) (*a*) is important in this connection. By virtue of its provisions an appeal will not lie against a provisional valuation of total or site value except by a person who has made objection to the provisional valuation in accordance with the Act. The importance of obtaining early an intimation of the provisional valuation to "persons interested" is thus emphasised. § 27 (5).

See note to s. 27 (3), *ante*, p. 324.

(6) Where the value to be adopted as the original total or the original site value of any land for the purposes of this Part of this Act has not been finally settled at the time when any duty under this Part of this Act becomes leviable, any duty under this Part of this Act shall be assessed as if the values as shown in the provisional valuation, or, if the provisional valuation has been amended by the Commissioners, as shown in the valuation as so amended, were the values adopted as the original total and site values for the purposes of this Part of this Act, and, on the values to be adopted being finally settled, if it is found that the amount which should have been paid as duty exceeds that actually paid, the excess shall be deemed to be arrears of the duty, except so far as any penalty is incurred on account of arrears, and, if it is found that the amount which should have been paid as duty is less than that actually paid, the difference shall be repaid by the Commissioners.

Has not been finally settled; either because the sixty days for objecting under sub-s. (1) has not expired, or because of an appeal, or because the Commissioners are considering proposed amendments, or for other reason. A careful consideration of the possible delays in settling the original values will show that, allowing for appeals, a very long time might elapse before the original site values of (say) a settled and mortgaged building estate were finally fixed. Hence the utility to the

§ 27 (6). Crown of this provision. See note on p. 324 as to the meaning of "**finally settled.**"

Compare with this section the second paragraph of s. 19 (*ante*, p. 204), under which, if there is no value either shown in the provisional valuation or finally settled on which undeveloped land duty can be assessed, so that that duty is not assessed within the year for which it is charged, it may be assessed at any time, but not more than three years after the expiration of the year for which it is charged (see note on p. 208). Section 27 (6) applies both to increment value duty and undeveloped land duty.

At the Time when any Duty under this Part of this Act becomes leviable.—The sub-section will apply to claims for increment value duty on an occasion arising under s. 1, and to claims for the undeveloped land duty leviable for the financial years ending March 31, 1910 and 1911, and for even subsequent years.

As to the former, if the provisional valuation were too high (the authorities looking chiefly to the undeveloped land duty), so that too little increment value duty was paid on the occasion, and on appeal the value was lowered, it is to be expected that the Commissioners would not allow a purchaser to be prejudiced because enough increment value duty had not been paid; but the strict legal position is not very clear (see s. 4 (4)).

If the Provisional Valuation has been amended.—See sub-ss. (2) to (5) as to amendments.

The Excess shall be deemed to be Arrears of the Duty.—Attention to the position created by this sub-section should be given by purchasers who buy after payment of duty on a provisional valuation (see note above on the words "**at the time, etc.**"). The question is too ephemeral for further discussion.

The Difference shall be repaid by the Commissioners; but apparently without interest. Compare with s. 4 (6), *ante* p. 88; also with Finance Act, 1894, s. 8 (12); s. 10 (3).

(7) Where a lessee is the owner of the land within the meaning of this Act, this section shall apply as if any person entitled to the fee simple reversion or to a leasehold reversion for a term of years exceeding twenty-one were the owner as well as the lessee.

Where a Lessee is the Owner of the Land.—For definition of owner see s. 41, par. "The expression 'owner,'" p. 458.

The object of this sub-section was doubtless to meet the simple case of a lease for a term of over fifty years unexpired, followed by an immediate reversion in fee on the one hand, or a long term of years on

the other. But these simple cases form only a portion of those to which the principle assumed to underlie the section is applicable.

It is difficult to see why a tenant for life interested in the reversion expectant on the determination of the lessee owner's term should not be treated as owner, if a lessee in reversion for a term of years exceeding twenty-one is so treated. As a matter of fact, the estate in reversion, on the expiration of the lessee owner's term, will often be a settled estate. There will probably be a tenant for life, or perhaps two successive tenants for life, and a tenant in tail, or several tenants in tail entitled one in remainder to the other in existence. The ultimate limitation of the fee (which may never take effect) after the determination of dozens of intermediate limitations may, or may not, be to the first living tenant for life.

It may be possible to read the words of sub-s. (7), "any person entitled to the fee simple reversion," as including not only an owner in fee simple entitled immediately expectant upon the lease, but also a person entitled as tenant for life [in possession] to the settled fee simple reversion, such a person being the person entitled to the rent payable by the lessee owner. It will of course be remembered that the procedure of sub-s. (5) of this section is open to persons interested who are not owners.

The Leasehold Reversion for a Term of Years exceeding Twenty-one.—That is, it is understood, from the date of the expiration of the lessee owner's term, and not for the date of the valuation, *sed quære.*

GENERAL NOTE ON SECTIONS 26 AND 27. PROCEDURE ON VALUATION.

As the settlement of the original total and site values is at the present moment occupying the attention of owners, it is thought that the following summary of ss. 26 and 27 may be useful.

The Commissioners have now issued Form 4 (see p. 504), requiring the return under s. 26 (2), and involving at the option of the taxpayer a claim for deductions on Form 7 (see p. 514). Form 4 may be served not only upon owners in the strict sense of the term, but on "any person receiving rent" (s. 26 (2)), the exact meaning of which words is not certain (see notes on p. 318). At any time, it seems even after the return of Form 4 and before the provisional valuation is made, the owner, but not, it seems, a person receiving rent (s. 26 (2)), a person "interested" in the land (s. 27 (5)), or an owner in the extended sense of that term placed upon it by s. 27 (7) as distinguished from the owner in the sense defined by s. 41, paragraph "The expression 'owner,'" may, if he wishes, require a separate valuation of any part of his land which is separately occupied. Whether he may do so after the provisional valuation is made is doubtful. It is thought not. He may further avail himself of s. 5 of the Revenue Act, 1911 (see p. 315 relating to joint valuation), where applicable. In making his return,

§ 27. or probably at any time before the provisional valuation is made, the owner, in the narrow sense of that term as defined by s. 41, may, if he thinks fit, furnish his estimate of the total or site value, or both, of the land, which must be considered by the Commissioners in making their valuation (s. 26 (3)). The Commissioners having made their provisional valuation serve a copy of it on the owner of the land (s. 27 (1)), and if that owner is a lessee with an unexpired term of over fifty years they also serve with a copy of the valuation any person entitled to the fee simple reversion or to a leasehold reversion for a term of years exceeding twenty-one (s. 27 (7) and note thereon). Such persons have the rights of an owner within s. 27 (*ib.*). An owner may then, if he considers the total or site value as stated in the provisional valuation is not correct, within sixty days from the service of the provisional valuation or such extended time as the Commissioners may in any special cases allow, give the Commissioners notice of objection, stating the ground of his objection and the amendments he desires. Several owners of or persons interested in the same land may make different objections. If the Commissioners amend the provisional valuation so as to satisfy all persons making objections, then the total and site values in that amended valuation are to be adopted as the original total and site values. If the Commissioners do not amend the valuation so objected to, or amend it in such a way that it is not satisfactory to any one of the persons who has made an objection, then the dissatisfied person may appeal. If no person gives a notice of appeal within the time fixed by rule 4 of the Appeal Rules (see *post*, p. 376), then the amended provisional valuation becomes absolutely binding (sub-s. 4).* Even if no one objects to the provisional valuation, the Commissioners may amend it of their own motion, but in that case it is apparently to be served on all owners as if it were the original provisional valuation, and such owners have apparently the same rights of objecting as if it were a provisional valuation, *i.e.*, within sixty days of service.

Persons "interested in the land (which term in practice will include mortgagees), not being owners, though not entitled without application to a copy of the provisional valuation, may apply to the Commissioners for such a copy. Having done so, they have the same right of giving notice of objection [*i.e.*, within sixty days from receipt by them of the copy, *sed quære*] and of appealing as the owner (sub-s. (5)). If the Commissioners amend a provisional valuation in response to the application of persons interested in the land, it seems that the provisional valuation as so amended must be served on the owners (sub-s. (3)) and other persons interested as if it were an original provisional valuation, and they would, it is thought, then have sixty days for giving notice of objection. But this is not quite certain. It is at all events unlikely

* But under rule 4 (1) (*b*) the time for appeal is unlimited, unless the Commissioners give the notice referred to in such sub-rule.

§ 27.

that the Commissioners would amend a provisional valuation on the application of either owners or persons interested without giving the other owners and other persons interested the opportunity of objecting to such amendments. In any event it would seem that notice of objection to an amended provisional valuation must be given after the amendment has been made by either an owner or person interested as a condition precedent to an appeal (s. 33 (1) (*a*)).

SECTION 28.

§ 28. Periodical valuation of undeveloped land.

28. For the purpose of obtaining a periodical valuation of undeveloped land the Commissioners shall, in the year nineteen hundred and fourteen and in every subsequent fifth year, cause a valuation to be made of undeveloped land showing the site value of the land as on the thirtieth day of April in that year, and, for the purpose of ascertaining the value at that time, the provisions of this Act as to the ascertainment of value shall apply for the purpose of ascertaining value on any such periodical valuation as they apply for the purpose of ascertaining the original value:

Provided that if on any such periodical valuation the valuation of any undeveloped land which is liable to undeveloped land duty is for any reason begun but not completed in the year of valuation, the Commissioners may complete the valuation after the expiration of the year of valuation, subject to an appeal under this Act.

For the Purpose of obtaining a Periodical Valuation of Undeveloped Land.—The valuation enacted by this section is only of undeveloped land, *i.e.*, land not developed by the erection of dwelling-houses or of buildings for the purpose of any business, trade, or industry other than agriculture, or not otherwise used *bonâ fide* for any business, trade or industry, other than agriculture (s. 16). It is not therefore a provision for universal site valuation. The valuation apparently is not intended to be utilised for the purpose of increment value duty payable on death, or in the case of bodies corporate and unincorporate, on a periodic occasion, but only for undeveloped land duty during the time it is in force (s. 16 (3)). But in practice it will no doubt often be so utilized when occasions occur shortly after the general land valuation.

As to land exempted by expenditure.

It appears doubtful whether land falling within s. 16 (2) (*b*) (see p. 182), as amended by the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 4 (*ibid.*),

§ 28 must be valued under this section. The exception thereby established (arising where certain expenditure over 100*l.* per acre has been made) is an exception *for the purposes of s.* 16. But s. 16 is the section which imposes the duty and defines the meaning of the term "undeveloped land." To say, as s. 16 (2) (*b*) does, that certain land for the purposes of that section shall be treated as developed land is apparently to exempt it from the charge altogether and from valuation under s. 28. It is nevertheless doubtful whether it must not be valued under this section, since, as soon as at any moment there ceases to have been expended on any such exempted land within the last twenty years the sum of 100*l.* per acre, the exemption comes to an end. In such a case, even if it has not been valued under s. 28, the provisions of ss. 19 and 27 (6) respectively may probably be applicable.

Agricultural land.

Apparently all agricultural land is undeveloped land (s. 16 (2)), though duty is not charged on the exempted categories in s. 17 (3) (*a*) to (*d*) inclusive (see p. 196), and on any land the site value of which does not exceed 50*l.* per acre. If the site value does exceed that sum, then it is to be charged only on the amount by which the site value of the land exceeds the value of the land for agricultural purposes (s. 17 (1) and (2)). This site value is the site value as ascertained on the original, or the quinquennial valuation under s. 28 (s. 17 (3)). If this view is correct, then all agricultural land must strictly, by virtue of s. 28, be revalued every five years, including the various categories of duty-free land existing under the provisions of s. 17. As, however, under s. 19 and the second paragraph of this section (28), the duty may be assessed at any time within the practically four years' limit of s. 19 for the purposes of the Act, there seems to be little object in revaluing at the quinquennial periods any land or site values obviously unlikely to become assessable to the duty within the quinquennial period. Nevertheless, the terms of the section are mandatory. "The Commissioners shall . . . cause a valuation to be made, etc."

The proviso.

The proviso of the second paragraph of s. 28 must be noted. It draws a distinction between undeveloped land which is and undeveloped land which is not liable to undeveloped land duty. The valuation of the former may, but by inference the valuation of the latter may not, be completed after the year of the quinquennial valuation.

Minerals.

This section does not direct or authorise a quinquennial (see p. 335) valuation of minerals. What is to be valued is "undeveloped land." "For the purposes of undeveloped land duty, undeveloped land does not include the minerals" ((s. 16 (4)). Further, "for the purposes of valuation, all minerals shall be treated as a separate parcel of land" (s. 23 (2)).

Showing the Site Value of the Land as on April 30 in that Year.—It is to be noted that there is no express direction in s. 28, as there is in s. 26, to the Commissioners to value "in the case of agricul-

tural land the value of the land for agricultural purposes where that value is different from the site value," unless, indeed, inferentially that direction is imported by the latter part of the first paragraph of s. 28 into that section, which seems doubtful. It also seems doubtful whether, though the site value is fixed for the quinquennial period, the value for agricultural purposes only is also fixed for that period, or whether such value has not to be ascertained afresh in each year of assessment. Note that the provisions of s. 29 as to assessing duty on or in respect of such pieces of land, and apportioning and reapportioning site value as the Commissioners think fit, apply to site values as fixed under this section. § 28.

The Provisions of this Act as to . . . for the Purpose of ascertaining the Original Value.—The sections thus referred to are ss. 25, 26, and 27. At each quinquennial valuation, therefore, the process of ascertaining site value must be gone through by the Commissioners just as on the ascertainment of the original site value, and persons interested have the same rights of objection under s. 27. But s. 26 (1) cannot be literally applied, though it is thought that directions as to the unit of valuation would apply to valuation under s. 28. *

Total value must be ascertained as well as site value at each such valuation, since assessable site value is arrived at by deductions from total value. Gross value and full site value, though not of practical moment, must also be ascertained as steps to total and full site value (s. 25).

Is for any Reason begun but not completed in the Year of Valuation.—Apparently the valuation is intended to be completed in each of the calendar years 1914, 1919, 1924, and so on. If the valuation is not even begun in such a year, it seems it cannot be begun later. If the valuation of any particular piece of land is begun but not finished, then, if the land in fact is liable to undeveloped land duty, the valuation can be completed, but not, it seems, otherwise. As there is no limit to the time within which the original valuation may be made under s. 26 (1), except that implied in the words "as soon as may be," it would seem that the original valuation might be made at any time even after the year 1914. In such case escape from valuation under s. 28 in 1914 would not be of much avail (s. 16 (3)), except in so far as the value on April 30, 1909, was lower than at the date of the quinquennial valuation.

Subject to an Appeal, etc.—It is difficult to understand the significance of these words.

SECTION 29.

29.—(1) Any duty under this Part of this Act may be § 29. Assessment of duty on

* It is not thought that s. 5 of the Revenue Act, 1911 (p. 315), is applied.

§ 29. separate parcels of land and apportionment of valuation.

assessed on or in respect of any such pieces of land whether under separate occupation or not, as the Commissioners think fit.

Pieces of Land.—It is difficult to say what meaning is to be given to the phrase "pieces of land." It is used in s. 26 (see note, *ante*, p. 312). In s. 23 (4) the phrase "separate parcel of land" is used. Perhaps it is equivalent to "portion of land." The section *primâ facie* confers great power on the Commissioners. It would doubtless be possible to increase the productiveness of increment value duty and undeveloped land duty by a skilful selection of the "pieces" on which the taxes were levied. But of course the Commissioners will be reasonable and judicial.

Comparison with valuation provision.

Compare with this section the provisions of s. 26 (1), under which on the general valuation "each piece of land which is under separate occupation, and, if the owner so requires, any part of any land, which is under separate occupation, shall be separately valued"; and of s. 5 of the Revenue Act, 1911 (1 Geo. 5, c. 2), under which the Commissioners may, if satisfied that in the special circumstances it is equitable to do so, on the request of the owner, value together contiguous pieces of land not exceeding in the aggregate one hundred acres. The owner may require separate or joint valuation, but the Commissioners determine as to assessment. The power of the Commissioners to carve up the land for the purposes of assessing different rates of duty on different portions renders the owner's power of requiring separate valuation subordinate to the Commissioners' power of imposing taxation as within the limits of the Act, and subject to appeal, they think proper. Nevertheless, the owner's right of requiring separate valuation, though subordinate to the Commissioners' power of dividing the land for the purposes of duty, as they think proper, may affect the totals, and also be useful to him in the estimates which he may make for his own purposes.

Illustration of application of sub-s. (1).

It is obvious that the site value of a ten-acre field, on the slope of a hill, purchased originally for a lump sum as agricultural land, may a few years after the purchase comprise land of various values. The land on the frontage of the road, at the crest of the hill, may be well within the building line of values, and liable to undeveloped land duty. The back land, towards the foot of the hill, near the brook which drains the valley, may have no building value. There may be no demand in the district for the small houses, for which alone it could be used as building land; or for houses so large that it would suitably form their kitchen garden or paddock. Whether the owner likes it or not, in such a case the Commissioners have, under this section, the power to draw a line of demarcation between the different portions of the field, and charge undeveloped land duty accordingly. The fact that the whole field is

§ 29 (1).

under one occupation is immaterial. It seems that this power can be exercised at any time, and that the Commissioners are not compelled to exercise it at the first assessment after a general valuation. Again, on the sale of the whole estate giving rise to the first claim for increment value duty under the Act, the Commissioners may, it appears, determine to treat the land in two sections, the one liable to increment value duty and the other exempt. But the power is obviously a dangerous one.

Set-off of decrement against increment.

Assume, as is quite possible, that while one portion of a field or estate heretofore assessed as a whole has appreciated in value, or shows taxable increment value, the rest of the field or estate has depreciated in value. The question arises whether the Commissioners on a sale of the property as a whole are, under this sub-section, entitled to split it up into two portions for purposes of taxation, charging increment value duty on the appreciated portion, and thus depriving the owner of the set-off of the decrement of part against the increment of other part, which would have been the natural consequence of assessing the field as a whole. It is submitted that, though such an assessment is within the language of the Act, it would be so contrary to equity that it would neither be made by the Commissioners, nor, if made, upheld on appeal.

Assume that in the case referred to the owner sold first the depreciated portion of the property, and later the appreciated portion. Assume further that there is a small claim for increment value duty on the later sale, but the amount of depreciation on the first sale is equal to or greater than the amount of increment value. It is clear that there can be no set-off. The owner must pay the increment value duty on the appreciated portion. But though the net result is the same as if the Commissioners had, on a sale of the whole field, split it up as suggested, that result is due to and necessarily follows from the act of the owner, and not to the exercise in a special manner of the taxing powers of the Act.

It would seem to be within the powers of the Commissioners under this sub-section to assess for undeveloped land duty portions of two or more holdings of different tenants of the same owner as an aggregate. In such case the site values of the different holdings would have to be apportioned, and the aggregate of the site values of the portions of such different holdings making up the site of the assessed unit would be the site value of that unit. But such an assessment would of course be liable to an appeal.

Probably a power on its face as apparently arbitrary as this was thought necessary, since it was obviously impossible to lay down at once an exhaustive code of rules for the imposition of a method of taxation quite novel, and giving rise to great complications.

No doubt this sub-section applies to minerals.

See note as to this sub-section in relation to undeveloped land duty (s. 19, *ante*, p. 203).

§ 29 (2). (2) The Commissioners shall make such apportionments and re-apportionments of any original site value or any site value fixed on a periodical valuation as they consider necessary for the purpose of the collection or assessment of increment value duty or undeveloped land duty, or which they may be required at any time to make on the application of any person entitled to the fee simple of any land or to an interest in any land.

On any such apportionment or re-apportionment for the purpose of the collection of increment value duty on the occasion of the transfer on sale of the fee simple of the land or any interest in the land, or on the occasion of the grant of any lease of the land, the consideration for the transfer, or for the grant of the lease, shall be treated as one of the matters to which regard must be had in making the apportionment or re-apportionment.

Apportionments and Re-apportionments of any Original Site Value or any Site Value fixed on a Periodical Valuation.—A portion of a field, the original site value of which has been fixed as a whole, is sold, *e.g.*, the best part of the ten-acre field referred to in the note to sub-s. (1) (see p. 336). It is necessary in such a case that the original site value of the field should be apportioned for the purpose of the increment value duty. The Commissioners would in any event find it necessary to make that apportionment when the conveyance was presented to them for the purpose of fixing the increment value duty. But the owner in fee, or a tenant for life, or in tail in possession, or other person having an interest in the field within the meaning of s. 41, might, it seems, under this sub-section, before sale require such an apportionment of site value. Apparently the application may be made at any time, and must be complied with at the expense of the Crown. The apportionment to be made is clearly of the site value (original or periodic) as at the time of the valuation in question, whether that be the original or a quinquennial valuation.

In the case of the ten-acre field referred to on p. 336, five years after the sale of the first portion and the apportionment of original site value, a second portion (being part of the back, or formerly inferior land) is sold. In that five years considerable variations in value have arisen owing to a general deterioration of the neighbourhood, and the erection of a smaller class of houses. The inferior back land has become more valuable. The superior front land is, relatively to that back land, though not absolutely, less valuable than it was at the time of the first sale. On the second sale the owner finds himself faced with a heavy increment value duty on the

original site value of the back land at the figure at which it then stands. He applies to the Commissioners for a re-apportionment under this section, *i.e.*, for an increase of original site value on the back land, and a decrease of that on the front land so far as it has been retained by him. The Commissioners must, it appears, under the second paragraph of this section, in making this re-apportionment, take into consideration the fact that the increased price obtained for the back land shows that its value was really greater than was formerly supposed. But it is not quite clear that this reading of the second paragraph is accurate.

On this second sale, a further re-apportionment of original site value must be made between the part of the inferior land retained by the vendor and the part then sold; and such apportionment need not, it is submitted, be on the basis that an equal amount of original site value shall be allocated to each similar unit in area of the back land. It may be evident that on April 30, 1909, certain portions of the back land were more valuable than certain other portions.

To what extent original site value can be altered.

It is suggested that once the amount of the original site value of a certain area is fixed by an apportionment, or re-apportionment of the original site value of a larger area, then all that can be done under s. 29 (2) is to redistribute the amount of the apportioned or re-apportioned site value in varying proportions over that smaller area. The aggregate amount of the site value of the smaller area cannot, it is thought, be either increased or diminished. Possibly if all the portions of a divided area are in the same hands, or if the persons entitled to all those portions consent, a redistribution of site value over that area is within the section, but otherwise it is suggested that the Commissioners have no right, or, if they have, would not exercise the right, to re-apportion the already apportioned original site value. If it be not so all finality of valuation will be impossible, which can hardly be the intention. It is of course quite clear that, the original site value of an area being fixed, there is no power in the subject to compel the Commissioners, by way of rectification of the register (to be kept under s. 30) or otherwise, to alter that original site value, nor can the Commissioners alter it themselves. Possibly by agreement of owner and Commissioners an alteration might be made, provided that the rights of third parties were not affected. *

Apportionments of site values, fixed at quinquennial periods, may be made for various purposes in connection with undeveloped land duty, and also, perhaps, for purposes of increment value duty, payable by bodies corporate or unincorporate on periodical occasions (see s. 6), if the quinquennial valuation is to be used as a practical index to the value on such occasions. Under s. 28 that valuation is, as has been seen, in theory only for the purpose of undeveloped land duty.

* It may be added that there is a similar absence of power to rectify a quinquennial valuation under s. 28.

§ 29 (2).

Apportionment of occasional site value.

No power is expressly given to the Commissioners to apportion the site value fixed on an occasional valuation for the payment of increment value duty. Thus, suppose the original site value of Blackacre is 500*l.*, and its site value on January 1, 1912, when it is sold as a whole, is 800*l.*, and duty is then paid or credited under s. 3 (5) on 300*l.* (*i.e.*, 60*l.*), and suppose that on January 1, 1914, portion A of Blackacre is sold, and it is clear that portion A has incremented since April 30, 1909, more than B, the remaining portion of Blackacre. In order to ascertain the amount of increment value duty due on A the following processes must be gone through :—

(1) Apportion original site value of Blackacre between A and B (s. 29 (2)).

(2) Arrive at site value of A on January 1, 1914, by the process described in s. 2 (2) (*a*).

(3) Deduct the amount of the original site value of A from the amount arrived at under process (2). The balance is the increment value of A on January 1, 1914 (s. 2 (2) (*a*)).

(4) Divide this increment by 5, and the result is the duty on A (s. 1).

(5) From this duty deduct (*i.e.*, give credit under s. 3 (1) for) the amount of duty paid on the one prior occasion, January 1, 1912, on which duty has been paid on A (s. 3 (1)).

But duty never was paid on A considered as a unit of taxation; 60*l.* duty was paid on the site value of Blackacre, comprising A and B, as ascertained on January 1, 1912. To ascertain how much duty was paid in respect of A, the occasional site value of January 1, 1912, must be apportioned between A and B, because the duty was paid in proportion to the increment value, and the increment value depended upon the site value on the occasion.

It is suggested that, as under s. 3 (1) the Commissioners "shall make such apportionments and re-apportionments of any duty paid on previous occasions as they think necessary for the purpose of" determining the amount of duty unsatisfied on any occasion, the words in inverted commas will be deemed to carry an implied power of apportioning site value fixed on prior occasions of payment of duty.

Apportionment and minerals.

There seems to be no reason to doubt that this sub-section applies to minerals, so far as regards increment value duty. It would apparently apply to the case of the division of minerals comprised in a mining lease on which annual increment value duty is payable under s. 22 (3).

There is apparently no special form in which the application for an apportionment must under the statute be made, but no doubt the Commissioners will supply forms of a suitable nature, on which it will of course be advisable that applications should be made.

On the Application of any Person entitled to the Fee Simple of any Land, or to an Interest in any Land.—A lessee of a portion of a building estate may wish to have the site value apportioned amongst his

various lots. The freeholders, his vendors, have, and he himself has not, the details of the expenditure on the various portions of the site. Can the necessary information for apportionment be obtained under the joint effect of sub-s. (3) of this section and s. 26 (2) (see p. 317)? Possibly it may be, but it is not quite clear that it can be, since it may be that the whole of s. 26 is confined to the original site valuation as on April 30, 1909, and the subsequent quinquennial valuation under s. 28. In some cases the record to be kept by the Commissioners, under s. 30, will no doubt be useful, but that record may not always sufficiently distinguish the expenditure and its effect on value in relation to the various parts of the land.

Apportionment on sale of reversion.

On a sale of the reversion in a portion of the premises it may be necessary for the vendor to have apportioned and ascertained the respective original site values of the land the reversion of which is sold, and of the land the reversion of which is retained, and similar remarks would apply to such a case. It may be noted, however, that s. 26 (2), even if it applies, places the duty of supplying information only on owners and persons receiving rent. The lessee, under a lease, is not an owner unless his term has more than fifty years to run and he is not as lessee a person receiving rent. It is not, therefore, quite clear how a reversioner is to obtain information of expenditure on the site by the lessee. No doubt in some cases, under the joint operation of s. 29 (3) and s. 27 (5), the lessee may voluntarily place his views as to value before the Commissioners, but he is not obliged to do so, and may choose to be indifferent.

Nevertheless, it is to be expected that before any apportionment or re-apportionment of site value is made the Commissioners will require all persons interested in the land to have notice of the proceedings, and will give them an opportunity of stating their views, and protecting their own interests, so far as that can be done consistently with the provisions of the Act.

Commissioners bound to apportion if required.

The Commissioners are bound to make the apportionments when required. The site value to be apportioned is that of the fee simple of the land. It would seem, therefore, that a lessee of the whole of a property originally valued as an aggregate could alter the taxable position of the owner of the fee by requiring an apportionment of original site value. Such an apportionment might possibly deprive the owner of the fee of the practical setting off of the decrement of one part of the property against the increment of another on an occasion where increment value duty was claimable. It might also deprive him of the advantage of the joint assessment of low valued land and high valued land in reducing the liability of the latter to undeveloped land duty. Conversely, the reversioner could in the same manner prejudicially affect the position of the lessee. Further, the site value must necessarily be apportioned on a sale or lease by either lessee or reversioner of a portion of the land, and probably on a devise or bequest by will of different

Curious consequences.

§ 29 (2). portions of either leasehold interest or reversion to divers devisees or legatees.

Apportionments of site values may involve apportionments of duty previously paid. But while under s. 3 (1), *ante*, p. 47, the Commissioners *may* apportion such duty, there is nothing in that sub-section and nothing expressed in s. 29 to compel them to apportion such duty on request. Perhaps the last-mentioned sub-section may imply a duty in the Commissioners, and at all events they will act reasonably, and it would not be reasonable to apportion the site values and not the duties.

The sub-section essential to the taxes.

If this section is being correctly interpreted, the Act admits of an indefinite sub-division of original site values, and an interminable series of combinations by the Commissioners of such sub-divided site values for the purpose of the assessment of duty. On reflection it will be seen that without these two factors it would be impossible to fit the duties to their subject-matter.

It will be noted that the application for apportionment or re-apportionment may be made not only by the person entitled to the fee simple, but by any person "entitled . . . to an interest" in the land, as the tenant for life in possession, lessee in possession, tenant in fee subject to a lease, etc. (see s. 41, *post*, p. 446, paragraph commencing "The expression 'interest'"). The expression used is not as in many other cases "person interested" (s. 27 (5); s. 30 (2); s. 31 (4)), and it may therefore be assumed that only a person entitled to an "interest" as limited by s. 41 has the right created by the sub-section.

The Consideration for the Transfer.—It appears therefore that in apportioning and re-apportioning original site value for the purpose of the collection of increment value duty the actual present value of the site (which is presumedly represented by the consideration for the transfer or lease, subject to deductions) must be taken into account. This is to interpret the value of land in the past, not by its then value, but by events. But the consideration is, it will be noted, only one of the matters to which regard must be had. It is only for the purpose of the collection of increment value duty that the consideration is to be regarded. But of course the consideration for a former sale is one of the elements which must inevitably be considered in valuing either originally or periodically for purposes of undeveloped land duty.

(3) The provisions relating to the procedure on the valuation of land for the purposes of this Part of this Act shall apply with respect to the apportionment or re-apportionment of site value under this section as they apply with reference to the ascertainment of the original site value of land.

The Provisions relating to the Procedure on the Valuation of Land.—Sects. 25 to 32 inclusive, but probably excluding s. 28, relating only to the quinquennial valuation, and parts or the whole of s. 26, which may relate only to the original valuation. It may be doubtful whether s. 25 is a provision relating to "procedure on the valuation of land," but it will be clearly necessary to use it. But it does not follow that every provision will necessarily have to be applied to a particular case or to any case of apportionment or re-apportionment. When there is a single owner of land entitled in possession and in fee simple apportionments will be comparatively simple. In the case of settled estates, and of land split up into leaseholds and reversionary interests, more difficulty and some delay may be anticipated in carrying out an apportionment. **§ 29 (3).**

On a sale by a tenant for life of part of a field the original site value of which has been ascertained as a whole, it becomes necessary to apportion that original site value. This sub-section incorporates into the proceedings for apportionment, which may involve revaluation, the provisions of s. 27, which provide, amongst other things, for a provisional valuation, and for objections thereto by persons interested in the land. The uncertainty as to the time within which objection may be made by persons interested under this sub-section has already been referred to (see p. 329). At all events, whatever the strict construction of the section may be, such persons must have a reasonable time within which to object to the proposed apportionment. In the meantime the sale cannot in ordinary course be completed until the increment value duty payable is ascertained. In some cases the Commissioners may be able to stamp the deed with a stamp under s. 4 (3) (*b*).* Apportionment, therefore, so far as possible, relating to lands likely to be sold in the near future should be at once effected. It is not possible, especially at the commencement of a new system, to foresee all the causes of delay which may result from a simple application to apportion an original site value forming part of a settled estate and subject to leasehold interests and possibly also to mortgages.

(4) The value attributed on any such apportionment or re-apportionment to each part of the land shall, for the purposes of this Part of this Act, be treated as the original site value or the site value of the land, as the case may be.

This sub-section is probably implied in sub-s. (2).

* It appears that this is the course usually adopted by the Commissioners for the purpose of facilitating business, when the increment value duty cannot be ascertained at once. They give credit to the vendor for the duty.

SECTION 30.

§ 30. Duties of Commissioners as to keeping records and giving information.

30.—(1) The Commissioners shall record particulars of all valuations, apportionments, re-apportionments, and assessments made by them under this Part of this Act, and of any deductions allowed in determining any value, and of the amount of any duty paid under this Part of this Act in respect of any land.

The Commissioners shall record.—The sub-section is mandatory. It has been said to create a new Domesday Book. Clearly there will be, as a result of this and other sections (26 and 27), a record of the total and site values of all landed property on April 30, 1909. But it is not clear that this will, so far as regards site value at least, be kept up to date.

There will be a record every fifteen years of the total and site values of land held by bodies corporate and unincorporate, except where those bodies are exempted from duty on such an occasion (ss. 10, 35, 37, 38), in which case under s. 6 (5) no account of the increment value of their land is to be taken. (But *quære* as to s. 35, in which case the increment value duty payable on a periodical occasion is "deemed to have been paid.")

There is the occasional estimate or valuation under s. 2 (2) on sale, lease, or death. But, apparently, unless increment value is suspected, no estimate or valuation of the site value is at present attempted to be made (see the Regulation under s. 4, No. 14, p. 490; Circular letter to solicitors, p. 538). Perhaps this is because so short a time has elapsed since April 30, 1909, that increment value will rarely have happened. The practice may be altered as time passes and as the staff is enlarged to meet the requirements of increased stringency of collection. In the meantime the quinquennial valuation under s. 28 of undeveloped land (whether liable to undeveloped land duty or not) will afford an index to the rise and fall in site value of all but developed land.

Nothing is known as to the kind of records which will be kept by the Commissioners under this section. The section is capable of being used as establishing an historical record of the land of the country. But as the greater part of that land will not in any appreciable distance of time come within the range of the new taxes, it is not thought that the Commissioners will be at pains to record particulars of sales and death devolutions, except in relation to property likely to yield revenue. The centres and circumferences of towns will be the hunting-grounds of the Treasury for increment value duty, and the circumferences for undeveloped land duty. The intermediate and generally depreciating zones will not attract its attention, except in the event, as sometimes happens, of shopping centres developing here and there. Ninety-nine

hundredths of the agricultural land of the kingdom will be as free from the new taxes as it is from gold deposits. **§ 30 (1).**

Note Rule 12 of the rules regulating appeals to a referee (*post*, p. 379) under which the Commissioners are to make such alterations in the particulars of any valuations, apportionments, re-apportionments, assessments or other documents as may be necessary to carry out the decision of the referee.

Particulars of Valuations.—See ss. 2 (2), 2 (3), 20 (2) (*b*), 23 (1), 25, 26, 28, 29 (3).

Apportionments, Re-apportionments. — See ss. 3 (1), (3), 29 (2), 32 (3).

Assessments made.—See ss. 3, 4 (1), 5, 6, 15, 19, 20 (4), 22 (3).

Deductions allowed. — See ss. 2 (2), 3 (5), 12, 23 (1), 25 (4), 40 (1) (*a*).

Amount of any Duty paid.—See ss. 3 (5), 4 (1), 4 (4), 5, 6 (4), 10 (1), 15 (1), 19, 20 (4), 22 (3), (5), (6), 35, 36. This will doubtless include duty deemed to be paid.

(2) The Commissioners shall furnish to any person interested in any land, or to any person authorised by any person so interested, on his application and on payment of such fee, not exceeding two shillings and sixpence, as the Commissioners may fix with the approval of the Treasury, copies of any particulars so recorded by them relating to the land, certified, if required, by a Secretary or Assistant Secretary to the Commissioners.

Any Person interested.—It is suggested that these words are not to be confined to persons who have an "interest" in land, as that word is defined by s. 41, but that they include the owner in fee simple within the meaning of s. 41 (see pp. 446 and 457), and also all persons who in common legal language would be said to have an interest, as, for example, a remainderman in fee, or a mortgagee, neither of whom have an "interest" in land within the meaning of s. 41. A question may arise as whether they include a person who has entered into a written contract to buy the land. At all events an intending purchaser should agree with his vendor that the latter should give him an authority under the sub-section, which had better be in writing.

The sub-section does not prevent the Commissioners furnishing other persons than those referred to with copies, or information as to the contents, of the register. For example, the Commissioners are not prevented from giving the local authority information which would facilitate that authority's negotiations for, or support its case in, an arbitration relating to the acquisition of the land for public purposes.

§ 30 (2). It is not known what view the Commissioners would take of an application from a local authority for this purpose. It is thought to be quite certain that no private individual or private undertakers would be allowed to obtain information as to the contents of the register for the purposes of the acquisition of property. On the other hand there seems to be no doubt that the information on the register will be available for all the departments of the Inland Revenue, including those having charge of income tax and death duties. Further, the provisions of s. 16 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), must not be overlooked, under which all public officers must allow the Commissioners to have inspection of the books, etc., under their control. Up to March 31, 1911, no application had been made under sub-s. (2). (Commissioners' Report, 1911, p. 166.)

SECTION 31.

§ 31. Information as to names of owners of land.

31.—(1) Every person who pays rent in respect of any land, and every person who as agent for another person receives any rent in respect of any land, shall, on being required by the Commissioners, furnish to them within thirty days the name and address of the person to whom he pays rent or on behalf of whom he receives rent, as the case may be.

Rent.—See notes to s. 20 (p. 220); also s. 41 (*post*, p. 442). Probably, rent due on a mining lease is included.

Every Person who as Agent for another Person receives, etc. . . . shall furnish, etc.—A man who pays rent on his own behalf must furnish the name and address of the person to whom he pays it. A person who receives rent as agent for another must give the name and address of the person for whom he receives it. But it does not appear that a person who receives rent as agent for the payer, as where a person gives his solicitor money with instructions to pay it as rent to the client's landlord, is bound to furnish to the Commissioners the name and address, etc. The words "every person who pays rent in respect of any land" seem to mean every person who pays rent on his own behalf; because they are immediately followed and contrasted with the words "and every person who as agent for another person receives," etc. If this view be correct, the solicitor in the above illustration seems not bound to furnish the name, either of the landlord or the tenant. But it is clear that the client, through his solicitor as his agent, has paid the landlord, and must, therefore, give the landlord's name.

This sub-section must be compared with s. 26 (2) (*ante*, p. 317) and s. 20 (3) (*ante*, p. 223). Sect. 31 (1) is a sub-section which relates to a preliminary stage in the process of valuation, and is intended to enable the Commissioners to find out the person who is to

be subsequently required to make the returns referred to in s. 26 (2) and s. 20 (3). It is thought that an agent is within s. 26 (2), and possibly within s. 20 (3), and therefore may be required either under those sub-sections to give the particulars required by them, or under s. 31 (1) simply to give the name and address of his principal.

Forms "No. 8, Land," "No. 8a, Land," with accompanying instructions, have been issued by the Commissioners under this sub-section (see Appendix, pp. 537 and 541). It is clear that the Act does not make an answer on the form itself obligatory. All the agent has to do is to furnish the name and address, and he may do so in whatever intelligible form he pleases. It does not seem that such furnishing need even be in writing.

For a case on Form 8 and the notice accompanying it, see *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139; [1911] W. N. p. 232. The form of action was based on *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410, C. A. (see Appendix, *post*, p. 510), and was for a declaration that the form and notice were unauthorised, and that the plaintiff was not bound to comply with them. Objections were taken to the form and notice on the ground that the latter required the form to be filled in in respect of land not specifically mentioned in the form, but described simply as "land situate within or partly within the parish or place of Plaistow South"; in other words that it amounted to a roving inquiry as to the plaintiff's payments and receipts. Other objections were that the thirty days mentioned in the sub-section meant thirty days after the *receipt* of the notice, and not thirty days from the date of notice; that there was in fact no civil "parish or place of Plaistow South," although there was an income-tax parish with that title, and that the return was not to be made to the Commissioners themselves, but to one Mr. Anstey, their district official.

Mr. Justice Warrington held ([1911] 2 Ch. 139) that the notice and form were unauthorised, and that the plaintiff was not bound to comply with the form on the grounds (1) that the notice purported to require the agent to give the description and precise situation of the land; (2) that the form required the agent to furnish particulars as to any land in the district, and was not, as it ought to have been, confined to land specifically referred to; and (3) that the Commissioners had no right to require the plaintiff to send the return to any one but themselves, though they might permit him to do so. He further held, on the authority of *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410 (see p. 510, Appendix), that the Court had, under Order 25, rule 5, of the Supreme Court Rules, a discretionary power to entertain an action against the Attorney-General for a declaration as claimed, and that in the circumstances the procedure was a convenient one, "enabling the Commissioners to be informed how far they may go, and relieving the plaintiff from the doubt and perplexity into which he has been cast," and should be allowed. The plaintiff did not ask for costs, and the

§ 31 (1). Judge thought that he could not have given them. As this edition was passing through the press this decision was affirmed by the Court of Appeal on the points, Nos. (1) and (2), just referred to, and on the further ground that the plaintiff was entitled to, and had not had, thirty days from the receipt of the notice to answer (W. N., 1911, p. 231.) The effect is that all forms 8 not already complied with are waste paper and cannot be enforced. (See further the notes on *Dyson* v. *Attorney-General*, *post*, p. 510).

(2) For the purpose of the exercise of their powers or the performance of their duties under this Part of this Act in reference to the valuation of land, the Commissioners may give any general or special authority to any person to inspect any land and report to them the value thereof, and the person having the custody or possession of that land shall permit the person so authorised, on production of the authority of the Commissioners in that behalf, to inspect it at such reasonable times as the Commissioners consider necessary.

This sub-section may be compared with a corresponding section in the Finance Act, 1894, s. 7 (8) (see Appendix, p. 594). See also sections of similar purport in the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 4, and the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 78. It is implied by the sub-section that the authority must be a written one.

(3) If any person wilfully fails to comply with the provisions of this section he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

Wilfully fails to comply.—Note the word "wilfully," which is absent from sections 4 (2), 20 (3), 21 (3), and 26 (2). Compare also with section 15 (3) of the 1910 Act, section 8 (6) and (14) of the Finance Act, 1894, and section 18 of the Customs Act, 1885 (see p. 127). For the meaning of "wilfully," see *Re Young's Contract*, 31 Ch. D. 168, at p. 175; *Re The Mayor of London and Tubbs' Contract*, [1894] 2 Ch. 524.

(4) Any notice requiring a return for the purpose of valuation, any copy of a provisional valuation, and any other notice or document which is required to be given or sent to an owner or a person interested in land under this Part of this Act by the Commissioners shall be

sufficiently given or sent if sent by post to the address of the owner or person interested furnished to the Commissioners under the powers given by this section, or, if the address cannot be so ascertained, by leaving the notice or a copy of the document addressed to the owner or person interested with some occupier of the land, or, if there is no occupier, by causing it to be put up in some conspicuous place on the land. § 31 (4).

Any Notice requiring a Return.—See ss. 20 (3), 26 (2), 28, and 29 (3).

Any Copy of a Provisional Valuation.—See ss. 27, 28, and 29 (3).

Any other Notice or Document which is required to be given or sent.—See s. 20 (2) (*b*).

To an Owner or Person interested.—These words would not seem to include an agent under sub-s. (1).

Furnished to the Commissioners under the Powers, etc.—See s. 31 (1).

If sent by Post.—The notice, it appears, will be served (1) if, being sent by the Commissioners, it, in any way, reaches the hands of the owner.

(2) If it is sent by the post to the address of the owner, *i.e.*, furnished to the Commissioners under the powers of sub-s. (1) of this section.

But *quære*, in this case, must the Commissioners prove that the address furnished was in fact the address of the owner, or does the sub-section mean that posting to the address furnished under sub-s. (1) by the rent payer as the address of the owner, etc., is sufficient?

And further, *quære*, is posting a letter addressed to the address furnished (being the real address of the owner) sufficient if it is not in fact received? The cases of posting and non-receipt in relation to contracts (see *Harris's Case*, 7 Ch. App. 587; *Henthorn* v *Fraser*, [1892] 2 Ch. 27; *Re London and Northern Bank*, [1900] 1 Ch. 220) proceed on the ground that the one party has authorised the other to send his answer by post (see *Household Fire Insurance Co.* v. *Grant*, 4 Ex. D. 216, C. A.), or, to put the matter in another way, that "it must have been within the contemplation of the parties that according to the ordinary usages of mankind the post might be used as a means of communicating the acceptance of an offer" (see *per* Lord Herschell in *Henthorn* v. *Fraser*, [1892] 2 Ch. 27, at p. 33).

This sub-section perhaps puts the owner in the same position as the contracting party so referred to, and in that case it would seem that even if the notice is not received by the post it will have been duly served (*Household Fire, etc., Co.* v. *Grant*, 4 Ex. D. 216, C. A.). Further,

§ 31 (4). this question seems to be answered by the words of the sub-section, "sufficiently given or sent if sent by post." See also s. 26 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which, though material, seems not to be decisive as to the question under discussion.

The words "sent by post" in s. 37 of the Solicitors Act, 1843, refer to the time when, in the ordinary course of post, the bill would be delivered, and not to the time of posting (*Browne* v. *Black*, [1911] 1 K. B. 975).

(3) If the real address of the owner cannot be ascertained, then, whether the rent payer has furnished an address or not, by leaving the notice addressed to the owner with some occupier of the land. In this case it seems to be immaterial that the notice does not reach the owner.

(4) If there is no occupier, by causing the notice to be put up in some conspicuous place on the land. In this case as well as in No. 3 it appears doubtful whether a notice addressed to "the owner" and not mentioning his name, or similarly to "the lessee," would be good service.

SECTION 32.

§ 32. Determination of value of consideration.

32.—(1) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment.

General note on s. 32 (1), (2).

Where the Value of any Consideration . . . is to be determined.—An inference, which may or may not be correct, from sub-ss. (1) and (2) of s. 32 is that only money payments (sub-s. (1)) and the additional considerations mentioned in sub-s. (2) are to be considered "consideration" for the purposes of the land clauses.

What is to be estimated as consideration?

Unless the whole consideration, whether one or more of the kinds of consideration mentioned in s. 32 (1) and (2), or something else not there mentioned, as the compromise of an action, or the dissolution of a partnership, is valued on the occasion of a transfer on sale under s. 1 (*a*) and s. 2 (2) (*a*) and (*b*), the site value on the occasion will come out at less than it is really worth; and on the next occasion when there is sale for cash, or a death, or valuation under s. 2 (2) (*c*) and (*d*), there would be a great jump in site value, possibly involving a payment of increment value duty on an increment which had wholly accrued before the earlier sale on which the consideration had not been fully estimated. This result would be a defect in the scheme of the Act, which is to make

each vendor pay on the increment value he puts into his pocket, and one of the alternative conclusions seems to be preferable, that is, that either (*a*) all considerations are to be valued by the Commissioners, whether mentioned in s. 32 (1) and (2) or not, and treated as part of the consideration; (*b*) that no sales or leases are to be considered transfers on sale or leases and occasions for payment of increment value duty unless the whole consideration consists of either (*a*) a capital sum, (*b*) a periodical payment, or (*c*) a covenant, undertaking, or liability to discharge an incumbrance, or partly of one and partly of the other of such alternatives. It seems difficult to conclude that all considerations are to be estimated in money value by the Commissioners when express power is given to them to put a value upon certain considerations only.* On the other hand the latter alternative, if correct, might have a serious effect upon the immediate collection of increment value duty. If, for instance, it is the case that a sale for Consols is not within the Act, it would often pay to buy Consols for the purpose of using them to pay for the purchase of land. Yet seriously as the construction, that only money transactions and covenants to discharge incumbrances are contemplated as being sales, and that consequently ss. 55, 56, and 57 of the Stamp Act, 1891† (which deal with considerations for sales other than for cash), do not apply to the estimate of the consideration under this Act, would affect the working of the Act, it cannot be overlooked (1) that s. 32 (1) and (2) of the 1910 Act is not consistent with s. 56 or probably with s. 57 of the Stamp Act; (2) that it is extraordinary that if the more unusual considerations were intended to be considered as making a transaction a sale, they are ignored in s. 32 (1), which deals with the simpler case of money payments, as to which a provision of the kind in sub-s. (1) seems hardly necessary; (3) that two specified cases of such unusual considerations are dealt with by s. 32 (2) (but *quære* in the case of a lease only) whilst the general class of such considerations is ignored as to both sales and leases; (4) that the portion of s. 32 (2) which deals with agreements to discharge incumbrances is, if the sections referred to of the Stamp Act, 1891, apply to the 1910 Act, already enacted in a more sweeping form in s. 57 of the former Act, and is therefore unnecessary. For these reasons the conclusion briefly stated in the first edition of this work, that it is doubtful whether anything is a transfer on sale within the meaning of the Act so as to require the value of the consideration to be ascertained under s. 2 (2) (*a*) and (*b*) for purposes of increment value duty where the consideration is not either expressed in the form of money or is not a covenant, etc., to discharge an incumbrance within s. 32 (2), is again repeated (see further note to s. 3 (6), p. 70. This may, indeed, be the case without seriously upsetting the scheme of the

Doubt as to meaning of transfer on sale.

* Curiously enough they may estimate the money value of a mining rent payable in kind or in service, etc. (s. 24, par. "Where any rent," p. 266).

† See Appendix, pp. 617 to 621, for the principal sections of the Stamp Act, 1891, thought to be relevant sections.

§ 32 (1). Act. There is not a complete analogy between increment value duty and ordinary *ad valorem* stamp duty. If increment value duty is not paid to-day it will (unless there is a recession of site value) have to be paid to-morrow. To avoid an occasion of paying ordinary stamp duty may be to escape it altogether.

When value of consideration requires determination.

The value of a consideration has to be determined—

(1) Under s. 2 (2) (*a*) to fix the site value of land for increment value duty on the occasion of a transfer on sale of the fee simple.

(2) Under s. 2 (2) (*b*) to fix the site value for the same duty on the occasion of the grant of a lease of the land or the transfer on sale of an interest in the land.

(3) To fix, under s. 2 (3) of the Act of 1910, and s. 2 of the Revenue Act, 1911, the site value of the land on a purchase or mortgage made before April 30, 1909, at the date of such purchase or mortgage in cases where the site value had gone down on April 30, 1909, and the site value at the date of the purchase or mortgage is substituted for the site value as on April 30, 1909, for the purposes of increment value duty.

(4) To ascertain, under s. 13 (2), for the purposes of the reversion duty the total value of the land at the time of the original grant of the lease.

(5) To ascertain on an apportionment or re-apportionment, under s. 29 (2), for the purpose of the collection of increment value duty on a sale or lease, the value of the consideration for the transfer or for the grant of the lease.

(6) To determine the value of a mining rent paid otherwise than in money or money's worth (s. 24, paragraph, "Where any rent," p. 266).

In all the above cases the amount of duty depends upon the value of the consideration.

Cases under Lands Clauses Acts.

When lands are purchased under the provisions of the Lands Clauses Acts, the whole purchase-money paid by the company, although including compensation for loss of business, is liable to *ad valorem* stamp duty as consideration for the sale (see *Inland Revenue* v. *Glasgow and South Western Railway Company* (1887), 12 App. Cas. 315). If, as is possible, that decision applies to the value of the consideration for the purpose of the assessment of increment value duty, it would seem that there should be some deduction from that consideration under s. 25 (4) (*d*) for goodwill (*Pile* v. *Pile*, 3 Ch. D. 36) (see notes on pp. 278 and 300). The amount of that deduction must necessarily depend upon the construction placed on the word "goodwill" in that sub-section.

Compensation for goodwill.

For severance.

Whether a sum explicitly and separately paid as damages for severance, either found by a jury under s. 49 of the Lands Clauses Act, 1845, or by an arbitrator under that Act, or fixed by agreement and so expressed in the conveyance of land to a company under the Lands Clauses Act, and whether such a sum not separately ascertained from the purchase-moneys of the land, which are expressed in the conveyance, as is usual,

"to include compensation for severance, etc.," is part of the consideration so as to increase the increment value duty, are difficult questions which cannot be adequately discussed in this note. **§ 32 (1).**

It is thought that, if a sum of money was expressly allocated either by a jury (under s. 49 of the Lands Clauses Act, 1845), or by an arbitrator, or by agreement in respect of the "injuriously affecting" lands not taken, but held with the taken lands, this sum should not be treated as part of the consideration on the sale of the taken lands. If such sum is not separated from the rest of the purchase-money, which is expressed, as is usual, to be "in full satisfaction and discharge of all claims for injuriously affecting other lands," a more difficult question arises, for it may be said that the onus is on the vendor to get his purchase-money apportioned, and if he does not do so, it must all be treated as payment for the land. Therefore it is clear that in this case also the purchase-money should be apportioned in the conveyance. It is thought that the additional percentage for compulsory sale is a part of the consideration. For injuriously affecting other lands.

So far as the Consideration consists of the Payment of a Capital Sum be taken to be the Amount of that Capital Sum.—But if it is a capital sum payable by instalments, as in the case of the purchase of building land is not now uncommon, the real consideration is less than the aggregate of the actual instalments which include interest on deferred payments. In such a case it seems that the consideration is not strictly a "periodical money payment," and that the aggregate of the instalments is the capital sum, but this is not quite clear.

A Periodical Money Payment.—As the rent reserved by a lease or a sale in consideration of the original reservation or regrant of a rent-charge, usually known as a chief rent. If, however, the transaction is a sale of land held subject to a chief rent or rent-charge, as is often the case in sales of land in or near Manchester, Liverpool, and Bristol, the purchaser covenanting to pay the rent-charge and indemnify the vendor therefrom, a difficult question arises. It would appear that such rent-charge is within the decision in *Swayne* v. *Inland Revenue*, [1899] 1 Q. B. 335; [1900] 1 Q. B. 172; and if that case applies to conveyances under s. 1 (*a*) of the Finance Act, 1910, would not form part of the consideration on sale (*ante*, p. 32). The words "so far as the consideration consists of a periodical payment" may be held to mean "so far as the consideration consists of a periodical payment or an indemnity given to the vendor against his liability for such a payment."

(2) If the Commissioners are satisfied that any covenant or undertaking or liability to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect

§ 32 (2). buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners shall allow such sum as they think just in respect thereof as an addition to the value of the consideration.

If the Commissioners are satisfied that any Covenant . . . has formed part of the Consideration . . . the Commissioners shall allow, etc.—This is in form a concession not likely to be snatched at by vendors and lessors, one of whose objects is to keep down the value of the consideration on a sale or lease, and thereby to diminish their own liability for increment value duty.

They will not, therefore, try to satisfy the Commissioners by increasing their own liability. Possibly the words "shall allow" amount in effect to a direction to the Commissioners to add sums in respect of the matters referred to the value of the consideration. It must be remembered that, on the other hand, it is the interest of purchasers and lessees, so far as increment value duty is concerned, to make the consideration appear as large as possible, since the increment value depends largely upon that factor, and it is to their interest that the vendor or lessor should pay the full duty.

It is, however, to the interest of the lessor on the determination of a lease with a nominal rent (a rare event) to get the allowance of the value of a covenant to build, etc., as an addition to the value of the consideration for the grant of the lease, thereby increasing the total value at the time of the original grant of the lease (s. 13 (2)).

Covenant or Undertaking or Liability to discharge any Incumbrance.—On the sale of an equity of redemption in land, when the purchaser either expressly covenants to discharge the mortgage debt and indemnify the vendor therefrom, or is implied so to covenant (*Bridgman* v. *Daw*, 40 W. R. 253), such debt forms part of the consideration, and should therefore be added under s. 57 of the Stamp Act, 1891, to the amount of the purchase-moneys. This section has been applied to cases where one company took over under a private Act of Parliament the whole of the undertaking and assets of the other company, and undertook the liability to pay off its debentures (*Great Western Railway Company* v. *Inland Revenue*, [1894] 1 Q. B. 507). The *ad valorem* duty was charged on the amount of such debentures. (See other cases on s. 57 of the Stamp Act, 1891, collected in Alpe, Stamp Duties, 12th edition.) The language of s. 57 is, however, far wider than that of sub-s. (2). (See Appendix, p. 620.)

Sale of land subject to rent-charge or chief rent.

It would seem that on the sale of land subject to a rent-charge, the purchaser covenanting to pay the rent-charge and indemnifying the vendor therefrom, the question whether the rent-charge forms part of the

consideration may depend upon whether it is or is not an incumbrance. This, of course, is on the assumption that *Swayne* v. *Inland Revenue*, [1899] 1 Q. B. 353, is applicable (see *ante*, p. 32), which is by no means certain. Under s. 41 (see *post*, p. 451) incumbrance includes (*inter alia*) "a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act." *Primâ facie*, a rent-charge issuing out of land seems to be a charge on land of an annual sum, and therefore to be an incumbrance. But incumbrance does not include a "fixed charge as defined by this Act." As defined by this Act (s. 41, *post*, p. 466), "*fixed charge means any rent-charge as defined by this Act*, and any burden or charges (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land." § 32 (2).

As defined by this Act (s. 41, *post*, p. 450), "'rent-charge' means . . . any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land." The question, therefore, is whether a rent-charge or chief rent issuing out of the land, and subject to which the land is sold, falls under the words in the definition of incumbrance, "a charge of a portion, annuity, or any capital or annual sum," in which case it may form part of the consideration under s. 32 (2), or whether it falls under the words in the definition of rent-charge, namely, "fee farm rent . . . chief rent . . . or any other perpetual rent or annuity granted out of land," in which case it does not form part of the consideration because it is then a fixed charge, which is not an incumbrance. As the words quoted from the definition of "incumbrance," *i.e.*, "a charge of a portion, annuity, or any capital or annual sum," might be interpreted to refer to "annual sums" charged on land, such as jointures and other life annuities not being in the technical sense rent-charges, it is thought that rent-charges strictly so called, *i.e.*, fee farm rents, chief rents, perpetual rents or annuities granted out of land, would not be incumbrances, but would be fixed charges.

But this does not quite exhaust this problem, for if, as is possible (see p. 289), fixed charges include only rent-charges "arising by operation of law or imposed by any Act of Parliament," and do not include rent-charges created by act of the parties, rent-charges so created are not fixed charges, and not being fixed charges, there is nothing in the Act to say that they are not incumbrances; and even if they are not expressly included in the meaning of incumbrances under the words "a charge of . . . any capital or annual sum," they may still be incumbrances as a matter of ordinary construction of law, since the definition of incumbrances in s. 41 is not exclusive. "The expression incumbrance includes, etc." It is thought, however, that as a matter of construction of the clause all rent-charges, whether arising by operation

§ 32 (2). of law or created by express grant or reservation, are included in the definition of fixed charge, and are therefore not incumbrances.

A practical question.

The point discussed is not of an academic nature, as the following illustration will show. The original site value of a cleared plot of building land is 1,000*l.* It is sold, still unbuilt upon, on May 1, 1911, on a chief rent of 40*l.* per annum, which the purchaser covenants to pay. The site value on that day is still 1,000*l.*, the capitalised value (under s. 32 (1)) of the chief rent. It is again sold, being still unbuilt upon, but nothing giving rise to a deduction under s. 25 having been spent upon it by the first purchaser, to a second purchaser on May 1, 1912, for the sum of 300*l.*, with a covenant by the latter to pay the chief rent and indemnify purchaser No. 1 against liability for its payment. If the chief rent is not an incumbrance within s. 32 (2), and if it is not, under the analogy of *Swayne* v. *Inland Revenue*, [1899] 1 Q. B. 335; [1900] 1 Q. B. 172 (*supra*, pp. 32 and 353—5), a part of the consideration consisting of a periodical money payment within sub-s. 1 of s. 32, the value of the consideration for the sale under s. 2 (2) (*a*) will be only 300*l.*, and the site value cannot be more than 300*l.* In reality the site value has gone up 300*l.* since the sale on May 1, 1911, as is evident, and is now 1,300*l.*, and the consideration for the sale is really equivalent to a cash payment of 1,300*l.*

Or in Cases where a Nominal Rent only has been reserved.—It is difficult to see why the covenant to erect buildings or to expend money on the property is to be deemed part of the consideration only in the case of a lease where a nominal rent has been reserved, and not in all cases where such covenant in fact forms a part of the consideration. To limit the effect upon value of such covenants is surely to ignore realities. Thousands of leases are granted every year at substantial rents, but still at rents less than the real annual value of the property in consideration of the covenants by the lessee to erect buildings or otherwise to spend money on the property. On the other hand, it very seldom happens that a nominal rent accompanies such a covenant.

This sub-section is no doubt intended to be consistent with s. 13 (2). (See *ante*, p. 156.)

It must not be overlooked that the effect of the section will be, under s. 2 (2) (*a*), (*b*), to keep down the site value on "an occasion" when duty might be payable, as on a lease, or sale on "chief rent," the lessee or purchaser covenanting to build a house or otherwise to expend money on the property.

Shall allow such Sum as they shall think just.—The liability or the incumbrance may be uncertain, or the incumbrance may comprise other properties. *Quære* how far in that case sub-s. (3) of this section would apply. The Commissioners have a discretion as to the amount, but appealable, it is thought.

(3) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine. § 32 (3).

Necessary to apportion any Consideration.—Properties A and B are separately assessed by the Commissioners as on April 30, 1909. Later they are purchased together for a single lump sum. For the purpose of ascertaining the site value of each property under s. 2 (2) (*a*) for increment value duty payable on such sale it is necessary to apportion this sum between properties A and B. Apportionment is necessary, or strongly advisable, because one property may have incremented more than another, and on a future occasion, when the properties may again be sold separately, it will be necessary to know how much increment value duty has been paid on each. So where land and chattels are bought at an aggregate sum, the Commissioners must be satisfied that the usual apportionment for ordinary stamp duty purposes is fair for the purposes of this Act. So where the goodwill of a business is bought with the premises it is clearly necessary either to (*a*) apportion the consideration, making no deduction for goodwill under s. 25 (4) (*d*), or (*b*) not to apportion the consideration, but to deduct a sum for goodwill under that sub-section (see notes as to goodwill on pp. 278 and 300). Having regard to the fact that the exact nature of the goodwill the value of which is to be deducted under s. 25 (4) is uncertain, it is suggested that contracts for the sale of premises and goodwill should themselves apportion the consideration, and also define what they include in goodwill.

SECTION 33.

*Appeals.**

Sects. 33 and 34 deal with the question of appeals.

Sect. 33 gives an appeal to a referee against all determinations of the Commissioners subject to the exceptions laid down in that section. It further gives an appeal to the subject from the referee to the High Court, with an option in small cases to appeal to the county court. It establishes and nominates a reference committee for each of the three kingdoms.

Sect. 34 establishes a panel of referees and provides for their remuneration.

By the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3, it is declared that the Commissioners of Inland Revenue, if dissatisfied with the decision

* For notes as to the practice on appeal, see "Notes on the Practical Working," *ante*, p. xxxviii.

§ 33 (1) of a referee, have under sub-s. (4) of s. 33 of the principal Act a right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision.

§ 33. Appeals to referees.

33.—(1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(*a*) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

Except as expressly provided.—There seems no reason to doubt that appeals in respect of claims for increment value duty on death fall

within this section, and are not by virtue of s. 5 (*ante*, p. 89) to be made under the Finance Act, 1894. See also s. 60 (3) (p. 478).

The exceptions to the right to appeal are (*a*) and (*b*) in this sub-section, and the exemptions from undeveloped land duty in s. 17 (3), (*b*), (*c*), (*d*) (see p. 196), so far as respects the matters left to the opinion of the Commissioners.

There is no appeal from the *adoption* of the total and site values as stated in the provisional valuation under ss. 26 and 27 (see s. 27 (4)) as the original total and site values, unless an appeal has been made from such provisional valuation (see s. 27 (4), *ante*, p. 325); but this appears to be only another way of stating (*a*) (see above). Again, there is no appeal from a referee in the case of deductions in respect of the covenants or agreements referred to in the latter lines of s. 25 (3) (p. 287).

Appeals may be either as to fact or as to the law, and, it is thought, as to freedom from or liability to duty as well as to amount.

Any Person aggrieved.—Many cases might be cited on these words. Stroud's Judicial Dictionary, title "Aggrieved," contains a fair summary of them. It is thought that if a person is, or may reasonably expect to be, injured by a decision of the Commissioners, he is a "person aggrieved." Examples are:—

(1) An owner in fee simple in possession who disagrees with the Commissioners' original or subsequent valuation whether of total or site value.

(2) A tenant for life in possession who thinks the original site value is fixed too high, so that he has to pay more than he ought by way of undeveloped land duty. He does not so much care about increment value duty, which the remainderman may have to pay on his death.

(3) A remainderman in fee, *i.e.*, person interested under s. 27 (5), who thinks that the original site value is fixed too low (see note on that sub-section, *ante*, p. 326, as to person interested). He may have to pay increment value duty on the death of the tenant for life.

(4) The grantor of the fee simple of land or any interest in it, who denies that a particular transaction is as claimed by the Crown "a transfer on sale" within the meaning of s. 1 (1) (*a*). He alleges that the so-called sale is merely a family arrangement for the division of property part of a residuary estate on which increment value duty has already been paid.

(5) A devisee who is liable to pay increment value duty under s. 5, and who alleges that the site value on the occasion is fixed too high.

(6) A donee of property conveyed to him in a deceased's lifetime whom the Crown alleges to be liable for increment value duty under s. 1 (*b*) of this Act, incorporating the Finance Act, 1894, s. 2 (1) (*c*) (incorporating s. 38 of the Customs and Inland Revenue Act, 1881, s. 11 of the Customs and Inland Revenue Act, 1889) and s. 11 of the Finance Act, 1900, on the ground that the donor, under a secret agreement, retained and enjoyed the land or a benefit therefrom during his lifetime.

(7) A body corporate or unincorporate entitled in fee, or to any interest which in the case of an ordinary person would give a right of appeal, alleging that the site value on a periodical occasion under s. 6 is fixed too high, and that therefore too much increment value duty is payable.

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(8) An owner who, having borrowed money within twenty years before April 30, 1909, on the property, claims under s. 2 (3) to have the site value of the land at the time of the advance substituted for the purposes of increment value duty for (or considered as) the original site value.

(9) A tenant under a lease with less than fifty years to run who thinks the original site value is fixed either too high or too low (s. 27 (3)).

(10) A reversioner, whether he be (*a*) an owner in fee or tail, (*b*) a tenant for life of any of the various kinds of life tenants, or (*c*) a tenant for years having a reversion or remainder of more than twenty-one years, as to the amount of the reversion duty, on the grounds either (1) that the total value of the land at the time of the grant of the lease is fixed too low, or (2) that the total value at the determination of the lease is fixed too high.

(11) A mortgagee who has foreclosed and therefore ceased to be a mortgagee under the difficult sub-s. (5) of s. 14, as to whether the amount of reversion duty with which it is sought by the Commissioners to charge him is in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

(12) A purchaser who alleges that the site value on the occasion of his purchase is fixed too low, so that the vendor is charged too little increment value duty under s. 2 (2) (*a*). But *quære* whether he is a "person aggrieved."

In the above examples for site value of land may often be substituted capital value of minerals (s. 23 (4)).

Examples might be multiplied *ad infinitum*.

"'Person' includes any body of persons corporate or unincorporate" (Interpretation Act, 1889, s. 19).

Within such Time and in such Manner as is provided by Rules made under this Section.—Under sub-s. (5). For the rules see *post*, pp. 376 and 383.

First or any subsequent Determination . . . of the Total Value or Site Value of any Land.—That is (1) on the original valuation under s. 26; (2) on the quinquennial site valuation under s. 28; (3) on the occasional ascertainment of site values under s. 1 and s. 2 (2) (*a*), (*b*), (*c*), and (*d*); (4) on the apportionment or re-apportionment of site values under s. 29 (2) (included also expressly in the sub-section).

Total value on a general valuation under s. 26 or s. 28 is only a step in the ascertainment of site value, but it is nevertheless quite possible that a site value which the owner accepts may be accompanied by a total value which he does not accept; as, for example, the total value may be placed too high (a fact which, in view of the death duties, the owner regards as dangerous), and yet, because an over-liberal allowance has been made in the matter of deductions, a true site value may have emerged. His position is then a difficult one, since it does not follow (though it may not be unlikely) that the same liberal allowance will again be made for deductions on an occasion happening for payment of

increment value duty, while the total value will stand against him for death duties. In such a case, if the interests involved are substantial, he had better appeal from both total value and the amount at which the allowance of the deductions is fixed, but of course he must be careful, for he might get his deductions diminished and his site value increased in consequence (which he might not want), but his total value left as it is. "Gross value" and "full site value" are not specifically mentioned as subjects of appeal; though there seems no doubt that under the words "the determination of any other matter" an appeal will lie from the determination of the Commissioners as to those values. An appeal from total value or assessable site value will, however, usually, though not necessarily, involve an appeal from gross value or full site value; and in cases where the total and assessable site values are correct, it is difficult to see what manner of errors as to gross or full site value can be injurious. It may perhaps be assumed that where an error in finding gross or full site values is balanced and rendered nugatory by a further error in deducing total value from gross value, or assessable site value from total value, an owner who allowed these errors to go unchallenged on a general valuation would not be prejudiced in setting up the true facts as to gross and full site value on future occasions, if it should ever prove useful to him to do so. Nevertheless it would seem to be his right not to have any incorrect values found against him, and in a case where he might *possibly* be prejudiced in the future, it is conceived he would be justified (so far as regards being held entitled to his costs) in appealing to get the matter set right, even if the appeal did not materially alter the immediate liability to taxation.

Against the Amount of any Assessment of Duty.—It is a little difficult to follow the logical co-ordination of the matters as to which there is an appeal. An appeal against "the first or any subsequent determination by the Commissioners of the total value or site value of any land" would seem indirectly to confer an appeal in all cases of error in the elements which go to make up that value, unless errors in any particular elements are expressly excluded as grounds for appeal. Thus a mistaken refusal to make an allowance, or a sufficient allowance, for drainage, whereby a swamp had been turned into a building estate, would vitiate the determination of site value.

An appeal against an assessment of duty is under (*b*) of this section not to include an appeal against original total or site value, or site value as ascertained under any subsequent valuation.

Assessments of duty are made by the Commissioners as follows:—Of increment value duty by virtue of ss. 2, 3, 4, 5, and 6; of reversion duty by virtue of ss. 13 and 15; of undeveloped land duty by virtue of ss. 16 and 19; of mineral rights duty by virtue of s. 20; of the annual increment value duty charged on minerals by virtue of s. 22 (3).

Provisional assessments of increment value and undeveloped land duties may be made under s. 27 (6).

§ 33 (1). **Or against the Refusal of the Commissioners to make any Allowance or to make the Allowance claimed.**—For the power or duty of the Commissioners to make deductions on the occasion of fixing site value for increment value duty, see ss. 2 (2) and s. 25 (4); as to allowances to a lessor in relation to reversion duty, see s. 13 (2) and Revenue Act, 1911, s. 3 (2); as to the 100*l.* expenditure per acre for the purpose of complete exemption from undeveloped land duty, see s. 16 (2) (*b*) and Revenue Act, 1911, s. 4; as to an allowance of increment duty, in the case of undeveloped land duty, s. 16 (3), proviso; as to deductions from the total value of minerals for the purpose of ascertaining capital value, s. 23 (1). As to deductions for purpose of ascertaining site value generally, see s. 25 (2), (3), and (4). As to allowances in estimating the value of the consideration, see s. 32 (2); as to copyholds, s. 40 (1).

Possibly the term "allowance" may not be construed simply by reference to the term as used in previous sections, but in a broad and liberal sense. The sentence immediately before proviso (*a*) in this sub-section supports such a view. In that case the relief to the taxpayer afforded by s. 2 (3), s. 3 (5), s. 4 (5), s. 14 (4) and (5), s. 20 (2), proviso, s. 21 (4), s. 22 (4) and (6), and s. 36, may be considered to be in the nature of an allowance. But the point seems unimportant, as if an appeal in respect to such matters does not lie under the "allowance" sentence of s. 33 (1), it does lie under the "any other matter" sentence. The form of the sentence indicates that an allowance is a thing to be claimed and not to be made if not claimed. The distinction suggested may be important to the taxpayer who may not wish to claim an allowance under s. 23 (1) or s. 25 (4), whereby his original site and capital values will be decreased, or under s. 32 (2), whereby the value of the consideration and the increment value may be increased.

Any Apportionment of the Value of Land.—Does this mean (in any event it probably includes) apportionment of site value under s. 29 (2), *supra*, p. 338? It is difficult to see what else it can include.

Or of Duty.—This may be apportioned under s. 3 (1) and may also be consequent on an apportionment of site values between properties. There is practically an apportionment of duty under the concluding sentence of s. 13 (2).

Or any Assessment or Apportionment of the Consideration on any Transfer or Lease.—*E.g.*, for the purpose of fixing site value under s. 32 (3) (*ante*, p. 357).

Against the Determination of any other Matter . . . Act.—With the important exceptions above mentioned, every determination of the Commissioners is open to appeal, whether on a point of disputed fact or disputed amount, or on the ground that the Commissioners are wrong in point of law (see *ante*, p. 359). *

* It is thought that there is an appeal on the ground that there is no duty due, and not only as to the amount due, as is the case under s. 50 of the Succession Duty Act, 1853, and possibly under s. 10 of the Finance Act, 1894.

§ 33 (1).

(a) **An Appeal shall not lie against a Provisional Valuation of the Total or Site Value of any Land except on the Part of a Person who has made an Objection to the Provisional Valuation.**—Sect. 27 is the part of the Act referred to (see p. 320). The persons who may object to the provisional valuation are (1) the owner (sub-s. (2)); (2) where a lessee with a term of over fifty years unexpired is the owner, then any person entitled either to the fee simple reversion, or to a leasehold reversion for a term of years exceeding twenty-one, is also an owner, and may object (sub-s. (7)); (3) any person interested in the land not being an owner (sub-s. (5)). (See notes on pp. 325 to 333.)

Appeal by persons interested.

The intention is that a person must put his objections before the Commissioners if he intends to appeal from their decision. But there are no automatic provisions securing that notice of the provisional valuation *shall* be given to all persons interested (see note to s. 27 (5), *ante*, p. 326). There is therefore all the more reason for immediate action on behalf of persons interested as recommended in the note last referred to. But the referees may hear and receive information from any one interested in the land or in the matter of the appeal, and the Commissioners when they receive notice of an appeal against total or site value on a provisional valuation are to give notice of the appeal to any person from whom a return has been required or who has applied to the Commissioners for a copy of the provisional valuation under s. 27 (5) (see rule 11, *post*, p. 378). If, therefore, persons interested object under that sub-section to the provisional valuation, they are entitled themselves to appeal under s. 33 (1), and to be served by the Commissioners with notice of the appeal of an owner or any other person interested. The service of this notice apparently does not confer an absolute right to be heard by the referee on the appeal. The person served must appear "to the referee to be interested in the land in respect of which an appeal is made, or to be otherwise interested in the matter of the appeal" (see rule 11 (1)). It also seems that even if a person interested has not made an objection to the provisional valuation, and has not therefore been served by the Commissioners with notice of the appeal under rule 11 (2), he may nevertheless be heard by the referee if he falls within the category of persons referred to in rule 11 (1) by the words above quoted.

Objections and appeals

Quære, must the objection made to the provisional valuation be that which is the subject of the appeal? or may an owner or person interested having made an objection on one point appeal on another? Common sense is against his right to do so, but the sub-section is not very clear. "*An* objection" are the words used, not "*the* objection" in respect of which an appeal is made. Since the foregoing portion of this paragraph was written the rules issued by the Reference Committee under sub-s. (4) of s. 33 have been published. For rules see *post*, p. 376. They provide by rule 8 that the appellant shall not, on the consideration of his appeal, be allowed to rely upon any grounds of appeal not specifically

§ 33 (1). set out in his *notice of appeal*, but that the referee may, if he thinks it just under the circumstances, allow the notice of appeal to be amended at any time. The query raised is therefore not answered. It may be that if an objection is taken on one point only, on that point only will an appeal lie.

An appeal, it seems, would not lie even as regards gross or full site values, if in any case it should be advisable to appeal from them or either of them without appealing from total and assessable site value, unless objection has been made to the provisional valuation: *sed quære?*

It appears, as will be seen from the note on the words "the original total value, etc.," in (*b*) (see next note), that it is not contemplated by the rules of appeal issued by the Reference Committee under sub-s. (5) of this section that a provisional valuation under s. 27 is required by the Act to be made on the occasion of a payment of increment value duty under s. 1 and s. 2 (2). Clause (*a*) of s. 33 will therefore not apply to an ascertainment of total or site values under (*a*), (*b*), (*c*), and (*d*) of s. 2 (2), but only to general valuations under s. 26 and s. 28.

For an analogous provision relating to appeals against poor rates, under which a person cannot appeal to quarter or special sessions from a rate made in conformity with the valuation list, approved by the assessment committee, unless he has first given to that committee notice of objection to the valuation list and has failed to obtain relief, see the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.

In accordance with this Act.—See s. 27 (2), p. 322, and notes thereon, and also notes on p. 331. Within sixty days after service on him of the copy of the provisional valuation (but *quære* as to the time when the appellant is a party interested as distinguished from an owner), or such extended time as the Commissioners may allow, he must give notice to them of objection to the provisional valuation, stating the grounds of his objection and the amendment he desires.

(b) The Original Total Value and the Original Site Value and the Site Value as ascertained under any subsequent Valuation.—For definition or explanation of total value and site value, see s. 25.

For the original valuation, see s. 26.

For the procedure to arrive at original total and original site value, see ss. 26 and 27.

For the subsequent quinquennial site value valuations, see s. 28.

The ascertainment of site value on an occasion of payment of increment value duty, where that occasion is a sale or lease, is probably not referred to in the words "the site value as ascertained under any subsequent valuation." The process of ascertaining site value under s. 2 (2) (*a*), (*b*) is not a "valuation" of the total or site values, though it may involve incidental valuations of value added to the site by buildings and expenditure. This opinion, expressed in the first edition

of this work, appears to be in accordance with the rules and forms issued by the Reference Committee under sub-s. (5) of this section, in which a "provisional valuation" is treated as a valuation in which total value must necessarily be ascertained (see pp. 373 and 378).

But is the site value of the property which must be found under s. 2 (*d*), for purposes of ascertaining increment value duty payable by a body corporate or unincorporate, on a periodical occasion, comprised in these words? It is submitted that it is not—and that the language of s. 33 points plainly to the general valuations under ss. 26 and 28. See the last paragraph of s. 25 (4), "any reference, etc."

Perhaps the point may be looked at in another way. Will not determination of site value on every occasion under s. 2 (2) be naturally contemporaneous with assessment, so that clearly no provisional valuation under s. 27 is intended to be made. For these reasons it is thought that there is no substance in the doubts expressed in Parliament as to there being an appeal for the determination of site value under s. 2 (2) (see Parliamentary Debates, July 25, 1911, pp. 1542 and 1548.)

Where there is an Appea under this Act.—For cases where there is no appeal as to the ascertainment of total and site values, see notes on this sub-section, *ante*, p. 359.

And shall not be questioned . . . . Duty.—The ascertainment of original site value, in which that of original total value is a step under s. 26, and of quinquennial site value under s. 28, is the groundwork and basis of increment value duty and undeveloped land duty. It is convenient, therefore, to put these common factors of every assessment under the Act into a category as to appeal by themselves. The "value of the land for agricultural purposes" under s. 26 and s. 28 is not put into the same category (see notes on pp. 312 and 321).

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

An Appeal under this Section.—For some practical notes as to such appeal, see *post*, p. 371, and *ante*, p. xxxviii.

Panel of Referees.—See s. 34 for the persons to compose the panel. The Act appears to contemplate exclusively a non-legal tribunal of appeal in the first instance. Although many difficult points of law

§ 33 (2). have arisen, appeals have been singularly few even to referees. Under rule 9A of the Appeal to the Referee Rules (*post*, p. 378) it is provided that in the event of any question of law being raised by any party to an appeal the referee may, if he thinks fit, state his award in the form of a special case for the opinion of the Court.

The tribunal is intended to be independent of the Crown. The panel is selected by the Reference Committee, a wholly independent authority (sub-s. (5)).

Selected in Manner provided by Rules under this Section.—See rule 6 of the rules made by the Reference Committee (*post*, p. 377).

Shall be given in the Form provided by the Rules, etc.—This is provided for by rule 9 in the schedule to the rules (*post*, pp. 378 and 379).

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

In Consultation with the Commissioners and the Appellant or any Persons nominated by the Commissioners and the Appellant respectively for this Purpose.—The theory of the appeal to a referee is that a question of fact and usually of value is to be determined by an independent valuer. The referee is to be the same kind of person as usually is the arbitrator or umpire in compensation cases. But the appeal to the referee is not necessarily to be heard with the formalities of an arbitration. It would further seem that the appeal to a referee is not an arbitration within the meaning of s. 24 of the Arbitration Act, 1889, so as to cause all the provisions of that Act to apply. This view is apparently taken by the Reference Committee, since certain of the rules (9A and 10, see p. 378) cover the same ground as certain sections (7 (*b*), and 5 (*b*) and (*d*)) of the Arbitration Act, 1889, and would not be required if that Act applied to the appeal. But, curiously enough, rule 9A speaks of the "award" of the referee, a term not used in the Act or elsewhere in the rules. There seems, however, to be nothing in the section to prevent the formalities of an arbitration being adopted by a referee, except that he appears to have no power to take evidence

§ 33 (3).

on oath. In any event, the referee must consult with the Commissioners and appellants, or *any persons nominated by them.* It is not thought that he could consult *separately* with either or both of the parties. But this not quite clear. See rule 7 as to procedure before the referee (*post*, p. 378).

Thus both parties, the Commissioners and the appellants, may employ land agents or surveyors, solicitors, or counsel to consult with the referees. There seems to be no reason why the section should be considered to authorise only the appointment of a single representative by each side. The form of the proceeding seems to be elastic, and may vary according to the referee's determination (rule 7 (3)) (see notes on p. xxxviii., *ante*).

Order that any Expenses . . . be paid, etc.—The word "expenses" is used, and the word "costs" is not used. This is another point of distinction between the referee's tribunal and an ordinary court of law or arbitration. The power is to order that any expenses incurred, etc., be paid. It seems that the referee might order specified costs to be paid as expenses; and the Commissioners may be ordered to pay the expenses of the appellant.

The order of the referee as to expenses having been made a rule of court may be enforced by execution as if it were a judgment. See Judicature Act, 1873, s. 100, "'Order' shall include rule," and Order 42, rule 24, Supreme Court Rules.

The rules contain no provisions relating to costs or expenses.

A copy of the rules, with some notes thereon, will be found on p. 376.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and subsections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

57 & 58 Vict. c. 30.

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were

§ 33 (4). the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

THE REVENUE ACT, 1911 (1 GEO. 5, c. 2, s. 7).

Right of Commissioners of Inland Revenue to appeal against decision of referee.

7. [It is hereby declared that the Commissioners of Inland Revenue, if dissatisfied with the decision of a referee, have under sub-section (4) of section thirty-three of the principal Act a right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision.]

Any Person aggrieved . . . may appeal.—But there is no appeal from the decision of a referee under s. 25 (3). As to "person aggrieved," see p. 359.

It is thought that a person aggrieved would include not only an owner and a person interested in the land who had had an opportunity under rule 11 of the rules relating to appeals to a referee (see *post*, p. 378) of putting his case before the referee in writing, etc., but also a person who was in fact interested in the land and had not had such an opportunity. But this cannot, of course, be taken as certain till so decided, and in any event, unless such a person had made an objection to a provisional valuation, it seems he could not appeal as to total or site value as found by that valuation (s. 33 (1) (*a*)). Clearly a person who could not appeal from the Commissioners by reason of s. 33 (1) (*a*) might yet be entitled to appeal from the decision of the referee varying the provisional valuation.

It was thought that the Commissioners were not persons "aggrieved" within the meaning of s. 33 (4), and therefore could not appeal against the decision of a referee. At all events the original rules for appeals to the High Court from the referee under this section, made by the most eminent judges and counsel, proceeded on this assumption. This has now been altered by the above section of the Revenue Act, 1911.

Further appeals.

Both the subject and the Commissioners have, under s. 19 of the Judicature Act, 1873, as modified by s. 10 (2) of the Finance Act, 1894 (see below), applied to the Finance Act, 1910, by this sub-s. (4) of s. 33 of that Act, a right of appealing from the High Court to the Court of Appeal.

Further it seems that either Commissioners or subjects may appeal as of right from the Court of Appeal to the House of Lords (Appellate Jurisdiction Act, 1876, s. 3).

Including Conditions enabling the Court to require the Payment of or the giving of Security, etc.—So that the duty is secured to the Commissioners (if due) without the necessity of their having to sue for it. See rule 14, p. 385, and s. 10 (4) of the Finance Act, 1894 (below).

Within the Time directed by Rules of Court, . . . and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply.—For the High Court rules and comments see *post*, p. 382. For the County Court rules, see Appendix, p. 622. § 33 (4).

The sub-sections of s. 10 of the Finance Act are as follows:—

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal. Application must be made in the first instance to the High Court. Probably an appeal to the Court of Appeal would lie from the refusal of the Divisional Court to give leave.

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

Where the Total or Site Value as alleged by the Commissioners . . . does not exceed Five Hundred Pounds.—The following points may be noted with respect to the appeal to the county court:—

(1) It is not obligatory to go to the county court. The appellant may at his option go there or to the High Court.

(2) The county court having jurisdiction is the court for the county or place in which either (a) the appellant resides, or (b) the property is situate.

(3) The test of jurisdiction is the allegation by the Commissioners and not the contention of the subject as to the amount of the total or site value.

(4) The allegation as to total or site value by the Commissioners may, according to the nature of the occasion, be contained either in a provisional valuation made under ss. 26 or 28, or under an assessment made under ss. 2, 3, 15, 19, 20 (4), 22 (3), 29, or any other section under which an assessment may be made under the Act of 1910.

(5) It is thought that where the site value of the property as alleged by the Commissioners does not exceed 500*l.*, then, although the total value exceeds that sum, the appeal may be to the county court, but this is not clear, and several alternative constructions of the limitation are possible.

§ 33 (4).

(6) The section is to apply as if "the county court were the High Court"; for which reason it is thought that ss. (3) and (4) of s. 10 of the Finance Act, 1894, apply (see *ante*, p. 369).

(7) It is thought that there is no appeal from the county court to a Divisional Court of the High Court under s. 120 of the County Courts Act, 1888, but only to the Court of Appeal under s. 33 (4) of the Act of 1910, and that either the Commissioners or the subject may appeal.

(8) It is thought, notwithstanding the application by s. 33 (4) of sub-s. (2) of s. 10 of the Finance Act, 1894, to appeals from the High Court to the Court of Appeal, under the Finance Act, 1910, that, under the concluding words of sub-s. (4), there is an appeal as of right to the Court of Appeal, and that sub-s. (2) of s. 10 of the Finance Act, 1894, does not apply; but this is not clear. Compare s. 10 (5) of the Finance Act, 1894.

(9) The appeal need not be as to the amount of total or site value. It may be as to a deduction, or a partial or total exemption, or as to anything else as to which there is an appeal under s. 33 (1). Total or site value is only the test of jurisdiction.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the

Rolls in Ireland, and the President of the Surveyors' Institution. § 33 (5)

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

By Rules under this Section.—For these rules see *post*, p. 376.

SECTION 34.

34.—(1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel. § 34 (1). Appointment of referees to hear appeals.

Persons having Experience in the Valuation of Land.—Probably the panel will be made up on the basis of a selection for each locality of persons of experience in land values in that locality. It is to be noted that the panel is not necessarily to be confined to surveyors and land agents. For the first panel of referees see the Report of the Commissioners for the year ending 31st March, 1911.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.

APPEAL TO REFEREES FROM COMMISSIONERS.

NOTE ON THE RULES RELATING TO APPEALS TO REFEREE UNDER S. 33 OF THE FINANCE (1909–10) ACT, 1910.

(See the rules on p. 376. See also the "Notes on the Practical Working, &c.," *ante*, p. xxxviii., for a practical note on appeals to a referee.

These are the Rules which regulate appeals to Referees, *i.e.*, the first of the two successive appeals given by s. 33.

§ 34 (2). The rules regulating appeals from Referees to the High Court are given on p. 383.

The notice of appeal.

Rule 3 (1) provides that the written notice of appeal, which must be sent both to the Commissioners and the Reference Committee, must give "particulars of the grounds of the appeal." The notice must be in the form in the Schedule to the Rules (p. 379), or in a form to the like effect, and forms may be obtained gratis from the Commissioners. Rule 8 provides that "the appellant shall not on the consideration of his appeal be allowed to rely upon any grounds of appeal not specifically set out in his notice of appeal, but the referee may, if he thinks it just under the circumstances, allow the notice of appeal to be amended at any time." It is clear, therefore, that the notice of appeal ought, having especial regard to the word "specifically" in Rule 8, to be most carefully considered. It must not be assumed that the power of amendment will be exercised by the referee, except on those well-known terms as to costs upon which amendments are allowed in the High Court. A notice of appeal may be withdrawn (r. 3, sub-rule (4)).

Times for giving notice.

The times within which a notice of appeal must be given are stated in Rule 4, and under Rule 5 an absolute discretionary power is given to the referees to extend such times, and such power may be exercised even after the expiration of the prescribed time for appealing.

The time for giving notice of appeal depends upon whether the appeal relates to total value or site value *on a provisional valuation* (*i.e.*, Form "A"), or relates to some other matter (*i.e.*, Form "B"). Gross value, as found by the provisional valuation, is almost unimportant (see note on p. 305), but an error in full site value will vitiate assessable site value. With relation to the former class of appeal, "A"—

Appeal "A."

(1) An appellant can never give notice of appeal before the expiration of thirty days after he has given notice of objection to the provisional valuation. He must wait and see whether his objection is allowed.

(2) After the thirty days have expired he can give it at any time, and without any limit of time; but if § 34 (2).

(3) The Commissioners give him notice that they do not propose to amend, or further amend, their provisional valuation (as the case may be) in order to meet his objections, then he *must* give notice within *thirty days* after the receipt of the Commissioners' notice.

In all cases not relating to an appeal against total or site value on a provisional valuation, that is, in case "B," notice of appeal must be given within thirty days after the Commissioners have given notice to the appellant of their decision on the matter in question. Appeal "B."

The reason for the difference in the times of giving notice will be appreciated, if it is remembered that in other cases than a provisional valuation under s. 27 no objections have to be carried in as under that section to the decision of the Commissioners, and there is no condition precedent to an appeal as in s. 33 (1) (*a*) that the appellant should have carried in such objections. Extensions of time for appealing may be obtained as provided by rule 5.

Form "A" (p. 379) relates only to appeals against total or site value fixed by a provisional valuation. This is the valuation to be made as a step (a) in the universal valuation under s. 26 of all land as on the 30th April, 1909, and (b) in the quinquennial valuation for the purpose of undeveloped land duty under s. 28. Whether the occasional valuation made on the occasion of claims for increment value duty under ss. 1 and 2 is one which involves the making of a provisional valuation under s. 27 was thought to be doubtful (see p. 364), but can be considered so no longer. From the perusal of the form annexed to "A" it would appear that the Reference Committee are of opinion that the procedure of s. 27 as to provisional valuations does not apply to the occasional valuation under ss. 1 and 2. The deductions are by that form made from total value, not from the "value of the consideration," "the value of the fee simple," and "the Appeal under ss. 1 and 2 falls under "B."

§ 34 (2). principal value of the land," as referred to in s. 2 (2). Incidentally this annexed form is that which it may now be assumed will be used by the Commissioners for the purpose of the provisional valuation. It will be observed that the notice does not require actual figures to be suggested in lieu of those against which the appeal is made, and that it is sufficient to object that a figure is excessive or insufficient as the case may be. For the moment "A" will apparently only be used in appeals from valuations under s. 26. Later questions may arise whether it is to be used on apportionments of site value under s. 29 (2) and (3), and on the periodical occasions for the collection of increment value duty on land held by bodies corporate and unincorporate under s. 1 (*c*), (2) (*d*) and s. 6; but as to the latter case possibly the matter is concluded by the exclusion of appeals under s. 1 (*a*) and (*b*), s. 2 (2) (*a*), (*b*), and (*c*), being analogous cases from the use of Form "A."

Examples of appeal "B." Form "B" (p. 381) is the form of an appeal notice in all other cases than of an appeal in respect of total or site value on a provisional valuation. Some (amongst many) immediate occasions on which it may be useful are as follows. (1) A vendor or lessor appeals from an excessive assessment of the "value of the consideration" under s. 2 (2), or from an insufficient deduction under s. 25 (4) on a sale or lease, thereby unduly increasing the increment value appearing on the occasion. (2) An heir-at-law or devisee appeals from an excessive valuation of the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894, whereby the increment value duty payable on the death is increased. (3) A lessor appeals from the decision of the Commissioners as to the value of the benefit which has accrued to him by reason of the determination of the lease on the grounds (amongst others) (a) that the Commissioners have underestimated the "total value" at the time of the original grant of the lease; or (b) that they have overestimated the total value of the land at the time the lease

determines. (4) An owner may appeal from the determination of the Commissioners that his land is liable to undeveloped land duty on the ground that it is exempted by one or other of the provisions of s. 17 (3). (5) A proprietor working his own minerals may appeal from an assessment of mineral rights duty on the grounds (a) that the rent on which he is assessed by the Commissioners under s. 20 (1) (*b*) is excessive, or (b) that the substance being worked is one of the substances exempted from duty by s. 20 (5). The foregoing are illustrations only. Form B applies to all appeals except those against total value or site value on a provisional valuation. See p. xxxix., *ante*, for a suggested form of an appeal under "B." § 34 (2).

Under rule 9A, in the event of any question of law being raised, the referee may, if he thinks fit, state his award in the form of a special case for the opinion of the Court, but he does not appear to be bound to do so. *Quære* whether such case will be within O. 34, r. 7, of the Supreme Court Rules? "Matter" shall include every proceeding in the court not in a cause" (Judicature Act, 1873, s. 100). Rule 10 will be noted, under which the Reference Committee may, in case of the death or incapacity of the referee originally selected, or, if it is shown to the Committee that it is expedient so to do, in any other case, at any time before the decision of an appeal by the referee, revoke the reference to the selected referee, and select another referee to hear the appeal. The last-mentioned ground for this substitution of a referee is doubtless intended to meet such cases (amongst others), as the discovery that the referee originally selected was from his position a person interested in the question at issue, or was likely to be biassed, or the misconduct of the referee, or the existence of some other reason which would in the case of an arbitrator be a ground for his removal.

It is to be noted that both the Commissioners and the appellant are to furnish the referee on his request with any document or other information which it is in their or his power to furnish (Rule 7 (2)).

§ 34 (2). Rule 11, allowing the views of interested parties, such as (it is thought) mortgagees and remaindermen, reversioners and lessees (where not owners), to be placed before the referee will no doubt be of utility. Its guarded phraseology should be noted, but the interested parties are not limited, it is thought, either to owners within the extended meaning of that term in s. 27, or to persons interested who have applied under sub-s. (5) of that section for copies of the provisional valuation. For the position of persons interested, such as are referred to in the rule, see *ante*, notes on pp. 326, 328, and 363. As to rule 13 and the service of notices, see s. 31 (4), *ante*, p. 348, and s. 26 of the Interpretation Act, 1889.

STATUTORY RULES AND ORDERS, 1910.

No. $\frac{1339}{\text{L. } 37}$.

LAND VALUES DUTIES.

GENERALLY.

THE LAND VALUES (REFERENCE) RULES, 1910, DATED DECEMBER 5, 1910, MADE BY THE REFERENCE COMMITTEE FOR ENGLAND UNDER SECTION 33 OF THE FINANCE (1909–10) ACT, 1910 (10 EDW. 7, c. 8).

In pursuance of section thirty-three of the Finance (1909–10) Act, 1910, the Reference Committee for England constituted under that section hereby make the following Rules :—

Short title. 1. These rules may be cited as the Land Values (Referee) Rules, 1910.

Interpretation. 2.—(1) In these rules, unless the context otherwise requires,—

"The Act" means the Finance (1909-10) Act, 1910.

"The Commissioners" means the Commissioners of Inland Revenue.

(2) The Interpretation Act, 1889, applies for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

Notice of appeal. 3.—(1) An appeal to a referee under the Act may be made by sending to the Reference Committee and to the Commissioners, within the time prescribed by these rules, a written notice of appeal showing the matter to which the appeal relates and giving particulars of the grounds of the appeal.

(2) The notice of appeal shall be in the form set out in the Schedule to these rules, or in a form to the like effect.

(3) The Commissioners shall cause printed forms of notice of appeal to be furnished gratis to any person who desires to appeal and applies

for a form either to them or to a district valuer, or to any other person authorised by the Commissioners to furnish the forms.

(4) Notice of withdrawal of appeal may be in the form set out in the Schedule hereto.

Time for notice of appeal.

4. The following provisions shall have effect as respects the time of giving notice of appeal :—

(1) In the case of an appeal against total value or site value on a provisional valuation—

(a) A notice of appeal shall not be treated as an effective notice of appeal if given sooner than thirty days after notice of objection to the provisional valuation has been given by the appellant;

(b) After the expiration of that time notice of appeal may be given at any time unless notice is given by the Commissioners to the objector that they do not propose to amend their provisional valuation, or do not propose to make any further amendment in their provisional valuation to meet his objection, and in that case notice of appeal must be given within thirty days after notice is so given by the Commissioners.

(2) In the case of an appeal against any assessment of duty, or against any refusal of the Commissioners to make any allowance or to make the allowance claimed, or against any apportionment, or against the determination of any other matter by the Commissioners, notice of appeal must be given within thirty days after the Commissioners have given notice to the appellant of their assessment, refusal, apportionment, or determination, as the case may be.

Extension of time for giving notice by appellant.

5.—(1) The Reference Committee may, on the application of any person desiring to appeal, extend the time for appeal prescribed by the foregoing rule, as they, in their absolute discretion, think fit, and may so extend the time although the application is not made until after the expiration of the time prescribed.

(2) Any application for an extension of the time for appeal must be made in writing to the Reference Committee, and must state the grounds of the application, and a copy of the application must be sent to the Commissioners by the applicant.

(3) The Reference Committee shall give the Commissioners reasonable opportunity for laying before them in writing any objections which the Commissioners may have to any such application for an extension of time, and shall consider any such objections.

Selection of referee.

6. The referee to whom an appeal is to be referred shall be selected by the Reference Committee, and the Reference Committee shall, as soon as they have selected the referee, inform the Commissioners and the appellant of the name and the address of the referee selected.

§ 34.

Consideration of appeal by referee.

7.—(1) The referee selected shall, as soon as may be, proceed with the determination of the appeal, and arrange with the Commissioners and the appellant the time and place for consultation with the Commissioners and the appellant with respect thereto.

(2) The Reference Committee shall furnish the referee with a copy of the notice of appeal, and the Commissioners and the appellant shall furnish to the referee on his request any document or other information which it is in their or his power to furnish, and which the referee may require for the purpose of the determination of the appeal.

(3) Subject to the provisions of the Act and of these rules, the proceedings on the consideration of an appeal shall be such as the referee, subject to any special directions of the Reference Committee, may in his discretion direct.

(4) In this rule any reference to the Commissioners or to the appellant includes a reference to any person nominated by the Commissioners or the appellant respectively under sub-section (3) of section 33 of the Act.

Appellant limited to grounds of appeal.

8. The appellant shall not, on the consideration of his appeal, be allowed to rely upon any grounds of appeal not specifically set out in his notice of appeal, but the referee may, if he thinks it just under the circumstances, allow the notice of appeal to be amended at any time.

Decision of referee.

9. The decision of the referee shall be in the form contained in the Schedule to these rules, or in a form to the like effect, and the referee shall cause copies of his decision to be furnished to the Reference Committee, the Commissioners, and the appellant.

9A. In the event of any question of law being raised by any party to an appeal the referee may, if he thinks fit, state his award in the form of a special case for the opinion of the Court.

Power to select another referee.

10. The Reference Committee may, in the case of the death or incapacity of the referee originally selected, or if it is shown to the Committee that it is expedient so to do, in any other case, at any time before the decision of an appeal by a referee, revoke the reference of the appeal to the selected referee, and select another referee for the purpose of determining the appeal.

Appearance of third parties.

11.—(1) On the consideration of any appeal, the referee shall on the application of any person who appears to the referee to be interested in the land in respect of which the appeal is made, or to be otherwise interested in the matter of the appeal, give him an opportunity of putting his case before the referee in writing, and, if necessary, of taking part in any consultation with reference to the appeal.

(2) The Commissioners, when they receive notice of any appeal against total or site value on a provisional valuation, shall give notice of the appeal to any person from whom a return has been required for the purpose of the valuation, and to any person who has applied to the Commissioners for a copy of the provisional valuation of the land under sub-section (5) of section 27 of the Act.

§ 34.

12. The Commissioners shall as soon as may be on receiving notice of the decision of the referee on any appeal make such alterations in the particulars of any valuations, apportionments, reapportionments, assessments, or other documents as may be necessary to carry out the decision of the referee.

Alteration of valuations, &c., by Commissioners.

13. Any notice or other document required or authorised to be sent to any person for the purpose of these rules shall be deemed to be duly sent if sent by post addressed to that person at his ordinary address, and the address of the Reference Committee shall for this purpose be—J. Johnston, Esq., Secretary to the Reference Committee, Room 174, Royal Courts of Justice, Strand, W.C.

Provision as to sending of notices.

14. Any failure on the part of any authority or any person to comply with the provisions of these rules shall not render the proceedings on a reference to a referee, or anything done in pursuance thereof, invalid, unless the referee so direct.

Informalities not necessarily to invalidate proceedings.

SCHEDULE.

1.—FORMS OF NOTICE OF APPEAL.

A.

Finance (1909–10) *Act*, 1910, *s.* 33.

NOTICE OF APPEAL TO REFEREE AGAINST TOTAL OR SITE VALUE ON A PROVISIONAL VALUATION.

To the Reference Committee.

[*Or*, To the Commissioners of Inland Revenue.]

I hereby give notice that I intend to appeal against (*a*) the total value and site value fixed on the annexed provisional valuation, on the ground that (*a*) the items numbered in the annexed provisional valuation are excessive and that the items numbered in the annexed provisional valuation are insufficient.

(*b*) Signed _____

Address _____

Dated

(*a*) If the appeal is against total value only or site value only, or if the ground of appeal is that certain items are excessive only or are insufficient only, the unnecessary words will be deleted.
(*b*) If an agent, the name of and address of the principal on whose behalf he acts must be stated.

PROVISIONAL VALUATION.

County	Parish	No. of hereditament

1. GROSS VALUE.	

§ 34. DEDUCTIONS FROM GROSS VALUE.

(a) To arise at Full Site Value.			(b) To arise at Total Value.		
2	Difference between Gross Value and Value of the Fee Simple of the Land divested of Buildings, Trees, &c.	3	Fee Farm Rent, Rent Seck, Quit Rent, Chief Rent, or Rent of Assize	Fixed Charges.	
		4	Other Perpetual Rent or Annuity		
		5	Tithe or Tithe Rent Charge . .		
		6	Burden or charge arising by operation of Law or imposed by Act of Parliament		
		7	If Copyhold, Cost of Enfranchisement		
		8	Public Rights of Way or User . .		
		9	Rights of Common		
		10	Easements		
		11	Restrictions under Covenant or Agreement		
Total Deductions .			Total Deductions . .		
FULL SITE VALUE .			TOTAL VALUE . .		

DEDUCTIONS FROM TOTAL VALUE TO ARRIVE AT ASSESSABLE SITE VALUE.

12. Deductions from Gross Value to arrive at Full Site Value (as above)	
13. Works executed	
14. Capital expenditure	
15. Appropriation of Land for streets, roads, open spaces, &c.	
16. Redemption of Land Tax or Fixed Charge . . .	
17. Enfranchisement of Copyholds	
18. Release of Restrictive Covenants	
19. Goodwill or personal elements	
20. Cost of clearing Site	
Total Deductions	
ASSESSABLE SITE VALUE	

SPECIAL FORM FOR MINERALS TREATED AS A SEPARATE PARCEL OF LAND. § 34.

1. TOTAL VALUE.	
Less—	
2. Deductions on account of works executed or expenditure of a capital nature incurred	
CAPITAL VALUE	

B.

Finance (1909–10) *Act*, 1910.

NOTICE OF APPEAL TO REFEREE IN RESPECT OF ANY MATTER OTHER THAN TOTAL OR SITE VALUE ON A PROVISIONAL VALUATION.

County Parish No. of hereditament

To the Reference Committee.

[*Or*, To the Commissioners of Inland Revenue.]

I hereby give notice of my intention to appeal against (*a*)
The particulars of my grounds of appeal are as follows :—

(*b*) Signed_____

Address_____

Dated

(*a*) Here insert the matter appealed against, *e.g.*, "The assessment of duty under Part I. of the Finance Act," "The refusal of the Commissioners to make an allowance in respect of," &c., &c., *or* "The determination by the Commissioners in respect of the following matter, namely"—
(*b*) If an agent, the name and address of the principal on whose behalf he acts must be stated.

C.

Finance (1909–10) *Act*, 1910.

NOTICE OF WITHDRAWAL OF APPEAL TO REFEREE IN RESPECT OF ANY MATTER.

County Division Number

To the Reference Committee.

[*Or*, To the Commissioners of Inland Revenue.]

I hereby withdraw my notice of appeal, dated the 19
against (*a*)

(*b*) Signed_____

Address_____

Dated

(*a*) Here insert the matter appealed against, *e.g.*, "The assessment of duty under Part I. of the Finance Act," "The refusal of the Commissioners to make an allowance in respect of," &c.," &c., *or* "The determination by the Commissioners in respect of the following matter, namely"—
(*b*) If an agent, the name and address of the principal on whose behalf he acts must be stated.

§ 34. 2.—FORM OF DECISION OF REFEREE.

Finance (1909–10) *Act*, 1910.

DECISION OF REFEREE ON APPEAL.

The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows (*a*):—

Signed_____
Referee.

Dated

(*a*) If the notice of appeal is in Form A., the decision should be stated by reference to the items complained of in the particulars of the grounds of appeal. Any variations in those items, with the consequential alterations of the totals, should be stated.
If the notice of appeal is in Form B., the decision should follow as far as possible the form of the notice of appeal.

Pursuant to the powers contained in section 33 of the Finance (1909–10) Act, 1910, we have made the above amended rules and forms in substitution for the rules and forms dated 25 July, 1910.

Alverstone, C.J.; *Herbert H. Cozens-Hardy*, M.R.; *Leslie R. Vigers.*

5 *December*, 1910.

Approved by the Treasury,

Wedgwood Benn; Percy H. Illingworth.

APPEALS FROM REFEREE TO HIGH COURT.

NOTES ON THE RULES RELATING TO THE APPEALS FROM A REFEREE TO THE HIGH COURT UNDER SECTION 33 (4).

(See the Rules on p. 383.)

Important features as to these rules are—

1. There is no appeal from the referee in the case of deductions from total value under s. 25 (3), based on restrictive covenants entered into after April 30, 1909 (see *ante*, p. 287), but an appeal lies in all other cases from the decision of the referee.

2. The appeal is heard by a single judge on the Revenue side of the King's Bench Division, but the Court or a judge may order it to be heard by a judge of the Chancery Division, or at the Assizes (rules 5 and 6).

3. Apparently it is assumed that the Commissioners have no power to appeal from the referee. "Any person aggrieved" is assumed under the rules to be any person other than the Commissioners (rules 1—5 inclusive). But the law has now been altered (by means of a declaratory provision) by the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 7 (see p. 368), which really confers upon the Commissioners the right to appeal against the referee. It is thought that the rules will be altered or amended without delay to provide for the appeal by the Commissioners.

4. The petition of appeal must be filed within one [calendar*]

* See Interpretation Act, 1889, s. 3.

§ 34.

month from the date of the decision of the referee (rule 2), but an extension of time may be given (rule 11). The appellant is limited to the facts and law alleged in the petition (rule 8).

5. A copy of the petition must be served on the Commissioners within seven days of the filing. (For service on the Commissioners see rule 15.) The petition may by lease be amended (rule 12).

6. Full discovery of documents on both sides is provided for (rule 9), and evidence other than is strictly admissible may be given by leave of the Court under rule 10.

7. With rule 14 (1) compare Finance Act, 1894, s. 10 (4), and Rule 12 of the rules issued thereunder. Rule 14 (1) is authorised by s. 33 (4), and secures the duty.

8. *Quære* whether parties interested in the appeal supporting either the Crown or the appellant can be added to the proceedings under O. 16, r. 11, and Judicature Act, 1873, s. 100? There seems to be no machinery under these rules for enabling them to put their contentions before the Court.

9. Costs may be given to or against the Crown (16 & 17 Vict. c. 51, s. 50; 22 & 23 Vict. c. 21, s. 21; 54 & 55 Vict. c. 39, s. 13).

STATUTORY RULES AND ORDERS, 1911.

No. $\frac{14}{\text{L. 1}}$.

SUPREME COURT, ENGLAND.

PROCEDURE.

THE RULES OF THE SUPREME COURT (FINANCE (1909–10) ACT) 1910, DATED JANUARY 16, 1911, REGULATING PROCEEDINGS IN APPEALS TO THE HIGH COURT IN ENGLAND UNDER SECTION 33 (4) OF THE FINANCE (1909–10) ACT, 1910 (10 EDW. 7, c. 8).

Appeal to be by petition.

1. Any person aggrieved by the decision of a referee under the Finance (1909–10) Act, 1910, who desires to appeal to the High Court against the decision, shall proceed by filing in the King's Remembrancer's Department of the Central Office a petition setting forth specifically the several facts and contentions of law upon which he alleges that the decision of the referee was erroneous, and stating an address at which documents may be served upon him.

Time for appealing.

2. A petition of appeal under these rules must be filed within one month from the date of the decision of the referee, and a copy of the petition must, within seven days after the filing of the petition, be served by the appellant upon the Commissioners of Inland Revenue.

Notice of admissions by respondents

3. Within ten days after the service of a copy of the petition upon the Commissioners of Inland Revenue, the Commissioners shall serve upon the appellant a notice stating whether, and to what extent, they admit the facts stated in the petition.

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Notice to be given by respondents of facts and contentions of law relied on.

4.—(1) Within twenty-eight days after the service of a copy of the petition upon the Commissioners of Inland Revenue the Commissioners shall serve upon the appellant a further notice stating the facts and the contentions of law upon which they themselves intend to rely at the hearing, and (if they so think fit) requiring the appellant to admit those facts.

(2) The appellant, if he is so required to admit facts shall, and in any case may, within ten days after service upon him of the notice required to be served by the Commissioners under this rule, serve upon the Commissioners a notice stating whether, and to what extent, he admits the facts stated in the notice served by the Commissioners.

Setting down petition for hearing.

5. Upon the expiration of ten days after the service of the notice required to be served by the Commissioners under the last preceding rule all matters shall, except to the extent admitted by both parties, be deemed to be at issue, and upon the expiration of seven days after the date on which the matter is deemed to be at issue, the appellant, or the Commissioners, may set the petition down for hearing upon the Revenue side of the King's Bench Division of the High Court.

Power to order petition to be heard in Chancery Division or at Assizes.

6.—(1) The Court or a judge may order that the petition shall be heard before a judge of the Chancery Division of the High Court, the judge to be ascertained by rota in the usual way, or at Assizes.

(2) Where an order is made that a petition shall be heard at Assizes, Order XXXVI., Rules 22B and 28, of the Rules of the Supreme Court, 1883, shall apply, and for the purpose of those Rules as so applied the appellant shall be deemed to be the plaintiff.

Evidence at hearing.

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

Parties limited to grounds stated in petition and notice.

8. The appellant shall not without the leave of the Court be entitled to rely upon any facts or contentions of law other than those stated in the petition, and the Commissioners shall not without the leave of the Court be entitled to rely upon any facts or contentions of law other than those stated in the notice required to be served by them under these rules.

Discovery of documents.

9.—(1) It shall be the duty of the appellant and the Commissioners of Inland Revenue respectively to exchange lists of all documents in their possession relating to the matter at issue, and to give to each other inspection at all reasonable times of any of those documents which may not be protected by any privilege, and, if so required, to provide copies thereof on the usual terms.

(2) If the Commissioners are dissatisfied with the list so supplied by the appellant they may apply to the Court or a judge for an order for discovery of documents in the same manner and to the same extent as a party to an action in the High Court, but in considering any such application the Court or judge shall take into account the willingness or otherwise of the Commissioners to disclose, or allow inspection of, any documents in their possession.

§ 34.

Admission of certain material as *primâ facie* evidence.

10. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, order that any material, whether strictly admissible as evidence or not, which in the opinion of the Court or judge ought, having regard to the question of costs or otherwise, fairly to be admitted as *primâ facie* evidence of any fact, shall be *primâ facie* evidence of that fact so as to shift the burden of proving the contrary on to the other party.

Extension of time for appealing and for serving documents.

11. The Court or a judge may extend the time for filing or serving a petition of appeal, or for serving any notice, under these rules upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these rules.

Amendment of petition.

12. The Court or a judge may at any stage of the proceedings allow the amendment of the petition, or of any notices under these rules, upon such terms as the Court or judge may think right.

Petition to be pleading within Order XIX., Rule 27.

13. A petition of appeal under these rules shall be deemed to be a pleading within Order XIX., rule 27, of the Rules of the Supreme Court, 1883, and that rule shall apply accordingly.

Power to stay proceedings till duty paid or secured.

14.—(1) Where the Commissioners of Inland Revenue claim that any sum is due from the appellant by way of duty they may apply for an order that proceedings on the appeal shall be stayed until the appellant has paid, or has given security for, the duty claimed.

(2) Any such application shall be by summons before a judge at chambers, and the Commissioners shall deliver to the appellant, together with the summons, a copy of any affidavit which they intend to use at the hearing of the summons.

(3) The judge shall make such order on any such summons as seems to him reasonable in the circumstances of the case, and any order so made may, on a like application made either by the Commissioners or the appellant, be subsequently varied or discharged.

Service of documents.

15. Any notice or other document required or authorised to be served upon or sent to the Commissioners of Inland Revenue under these rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to the Solicitor of Inland Revenue, Somerset House, London, W.C., and any notice or other document required or authorised to be served upon or sent to an appellant under these rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to him at his address for service as stated in his petition, and, unless the contrary is proved, any notice or document sent as aforesaid shall be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

Affidavits.

16. All affidavits to be used in any proceedings under these rules shall be filed in the King's Remembrancer's Department.

Saving for right of Crown.

17. Nothing in these rules shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative.

§ 34 Short title and commencement

18. These rules may be cited as the Rules of the Supreme Court (Finance (1909–10) Act), 1911, and shall come into operation on the first day of February, 1911.

The 16th of January, 1911.

[Here follow the signatures of the Committee.]

SUPPLEMENTAL.

SECTION 35.

Sects. 35 to 42 contain certain exemptions, complete or partial as the case may be, from the new taxes, and certain miscellaneous and supplemental provisions, and also definition clauses applicable to England and Ireland on the one hand and to Scotland on the other.

Sect. 35 exempts land held by a rating authority, meaning thereby any body which has power to raise a rate or administer money raised by a rate, from any duties imposed by the Act.

Sect. 36 allows a deduction from increment value duty, undeveloped land duty, and reversion duty in respect of capital sums paid to rating authorities by way of "betterment" and similar charges.

Sect. 37 confers certain exemptions from reversion duty, undeveloped land duty, and increment value duty on "governing bodies constituted for charitable purposes," to which phrase a very wide meaning is given.

Similar exemptions are conferred upon societies providing friendly society benefits and registered, or whose rules are registered under, the Friendly Societies Act, and upon companies precluded by their Act or Memorandum from dividing profits.

Sect. 38 contains certain exemptions from increment value duty, reversion duty, and undeveloped land duty accorded to statutory companies, which latter phrase has a technical meaning attached to it.

Sect. 39 confers upon trustees and tenants for life a power of charging payments made by them in respect of increment value duty or reversion duty upon the settled property, and confers upon a mortgagee who has paid either duty a corresponding right as to the mortgaged premises.

Sect. 40 applies the Act with necessary adjustments to copyholds and customary freeholds.

Sect. 41 is a definition clause, mainly adapted to English and Irish law

Sect. 42 is a clause of a similar nature adapted to Scotch law.

§ 35. Exemption for land held by rating authorities.

35.—(1) No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities, and any increment value duty in respect of any such land which would have been collected from the

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authority (whether on the occasion of the transfer on sale of the land, or any interest in the land, or the grant of a lease of the land or on the periodical occasions provided in this Act) shall, for the purposes of the provisions of this Act as to the collection of increment value duty, be deemed to have been paid.

No Duty.—The exemption applies to all the four new duties, including the annual increment value duty on minerals under s. 22.

Rating Authority (see sub-s. (2)).—Amongst such authorities are—

Parish Councils.
Parish Meetings.
Urban District Councils.
Boards of Guardians.
Rural District Councils.
County Councils.
Municipal Corporations.
London Borough Councils.

See note on p. 388, "**Applicable to public local purposes.**"

Or any Statutory Combination representative of Two or more Local or Rating Authorities.—Such as the Metropolitan Water Board (2 Edw. 7, c. 41); united districts formed by provisional order under s. 279 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), for sanitary purposes, etc.

Be deemed to have been paid.—On a sale by a local or rating authority or on the periodical occasion established by ss. 1 (c) and 6, it seems that the calculation or valuation under s. 2 (1) must be made and the increment value must be arrived at; the 10 per cent. under s. 3 (5) must be allowed, and increment value duty must be calculated as if the exemption established by this section did not exist. The Commissioners having arrived at the amount of that increment value duty, an entry will be made in Domesday Book that it is deemed to be paid. If after a sale by the local or rating authority the value recedes and then again advances to a value still not 10 per cent. in excess of the site value on the sale by the rating authority, no increment value duty will be payable. The site is franked up to the amount of duty which is deemed to be paid on the sale by the authority. It will be noted that the exemption under this section is complete. It is an exemption as to increment value duty not only on periodical occasions, but on the only other occasions on which increment value duty can become due from such a body, *i.e.*, on occasions arising under sales or leases. In this respect it is contrasted with the limited exemptions from duty on periodical occasions conferred by s. 9 (games), s. 37 (charitable purposes), and s. 38 (statutory companies). It is similar to the exemption conferred

§ 35. on, or recognised by s. 10 (1) as to, departments of Government. An ingenious suggestion has been made (see Evans and Barton's "Land and Mineral Taxes," p. 185) that the words at the end of sub-s. (1), "for the purposes of the provisions of this Act with respect to collection of increment value duty," prevent the fictitious payment of increment value duty under this section from operating for the purpose of the deduction of five times its amount (under s. 16 (3), see *ante*, p. 191). from the site value of undeveloped land for the purpose of undeveloped land duty, and from being used by way of set-off under s. 14 (4) as against reversion duty covering the same period. At p. 82 of that work it is pointed out that the language of s. 4 (4), s. 8 (5), and s. 10, is the same as s. 35, and differs from the language of s. 3 (5) and s. 36, in which it is simply stated that the remitted duty "shall be deemed to be paid," the words "for the purposes, etc.," being omitted.

It is clear, therefore, that for purposes of increment value duty there must be an original site valuation under s. 26 of land belonging to a rating authority.

(2) For the purposes of this section the expression "rating authority" means any body who have power to raise a rate or administer money raised by a rate; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression "rate."—The definition is the same as that in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 9.

Applicable to public local purposes.—These words would exclude for the benefit of the section any bodies having power to apply the proceeds of a rate for the benefit of themselves or their own members; but if the rates were to be applied solely to promote public objects of the rating body, as to improve a harbour or a dock, it is thought that there would be exemption.

Though obtained in the First Instance by a Precept, etc.—As the county rate, which is obtained by the county council precept from the local authority, by whom it is actually raised by rate; or the poor rate which is obtained by the guardians by precept from the borough or urban district council.

SECTION 36. § 36.

36. Where in pursuance of any public general or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from any increment value of the land for the purposes of the collection of increment value duty and from the site value of the land for the purposes of the collection of undeveloped land duty, and from the value of the benefit accruing to the lessor for the purposes of reversion duty, and in the case of increment value duty the duty on the amount deducted shall be deemed to have been paid.

Deduction from increment value of sum paid to rating authority in respect of increase in value.

Any Public, General, or Local Act.—Under certain local Acts of Parliament (as to London, see local Acts 58 & 59 Vict. c. 80, s. 36; 60 & 61 Vict. c. 252, s. 42; 62 & 63 Vict. c. 266, s. 61; 63 & 64 Vict. c. 269, s. 52; 1 Edw. 7, c. 272, s. 41; 2 Edw. 7, c. 219, s. 52; as to Manchester, see 57 & 58 Vict. c. ccix.) sums may become payable to a corporation, county council, or other rating authority as reimbursement for improvements executed by that authority which have enhanced the value of the payee's property. For example, assume that the K. improvement in the city of Y. has increased A.'s site value to the extent of 1,000*l.*, and that under the Act authorising the improvement a charge known as a "betterment charge" in favour of the corporation of Y. to the extent of 500*l.* has arisen, then if A. has paid the 500*l.*, he is entitled to a deduction of that sum from any increment value on which he becomes liable to pay duty. He is not so entitled unless and until he has paid the 500*l.* He is not entitled to deduct the 500*l.* from the increment value duty he becomes liable to pay, but only from the amount of increment value on which increment value duty is to be paid, so that his betterment payment of 500*l.* exempts him to the extent of 100*l.* only. It is in fact treated as if it were an expenditure by himself on the property. Similarly, 500*l.* may be deducted from the site value for the purpose of the liability to undeveloped land duty under s. 16, *ante*, p. 180, and from the benefit accruing to a lessor for the purposes of reversion duty (under s. 13, *ante*, p. 151).

By s. 58 (3) of the Housing, Town Planning, etc., Act, 1909 (9 Edw. 7, c. 44), it is provided that "where, by the making of any town planning scheme any property is increased in value, the responsible authority, if

§ 36. they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Local Government Board), shall be entitled to recover from any person whose property is so increased in value one half the amount of that increase." Probably sums paid to the responsible authority (*i.e.*, the local authority) under this sub-section come within the above section.

Under s. 150 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), where streets in urban districts are not sewered, levelled, paved, etc., to the satisfaction of the local authority, and the owners of the adjoining premises do not comply with the requirements of the local authority, such authority may execute the works in question and may recover the cost from the owners, or may declare the expenses so incurred to be private improvement expenses. Under s. 257 of the same Act the expenses are to be paid, with interest, by the owner at the time when the works are completed, and until so paid are to be a charge on the premises. It seems that such a capital payment would satisfy the conditions of the section under either of the heads "improvements made" or "other action taken," and this would also probably be the case even if the local authority under the last paragraph of s. 257 declared the expenses to be payable by annual instalments.

Sect. 150 of the Public Health Act, 1875, may be applied to rural districts through the machinery of s. 276 of the same Act.

Within the same category would be, it is thought, any payment made under s. 12 of the Private Streets Works Act, 1892 (55 & 56 Vict. c. 57), substituted where it applies for s. 150 of the Public Health Act, 1875. Sect. 12 applies s. 257 of the Public Health Act, 1875, to expenditure by a local authority in respect of making streets, lighting, sewering, etc.

Any Capital Sum or Instalment of a Capital Sum.—Under the London Betterment Acts (see above) the charge is an annual sum redeemable on payment of thirty-three times its amount (see London County Council Tower Bridge, etc., Act (58 & 59 Vict. c. xxx., s. 36 (4), (18), (19)). On redemption, but not, it seems, until redemption, it would fall within this section. In valuing under s 26 for original site value, or under s. 28 for undeveloped land duty, probably the annual payment would be considered to be a fixed charge (see s. 41, *post*, "The expression 'fixed charge'"). So in arriving at increment value duty under ss. 1 and 2 it will be seen that such a charge would practically make itself felt either by way of diminution in consideration under s. 2 (2) (*a*) and (*b*), or in diminished principal value under (*c*), or in diminished total value under (*d*). But when redeemed it would cease to be a fixed charge, though it might in equity be considered to remain in existence for the benefit of the person who had redeemed it, even if he were the owner of the fee simple. It is not, however, thought that a deduction

§ 36.

of a sum falling under the section as a fixed charge could be made in ascertaining total value under s. 25 (3) or (4) for the purposes of undeveloped land duty under s. 28, or of reversion duty under s. 13 (2), and then that the same sum could again be deducted under and by virtue of this section.

Betterment charges under the London County Council's Acts before referred to are land charges under the Land Charges Registration and Searches Act, 1888 (58 & 59 Vict. c. cxxx., s. 36 (16)).

Rating Authority.—See definition for purposes of s. 35 only, *ib.*, sub-s. (2).

It is conceived that it is almost impossible for any question to arise under s. 36 as to what is a rating authority having regard to the nature of the section.

Increased or enhanced Value of any Land due to any Improvements made . . . by the Authority.—The charge in the London Acts (see above note) is in respect of "the enhanced market value derived by the said lands from the improvement" after deductions for increased rates and taxes, etc. (58 & 59 Vict. c. cxxx., s. 36 (4)).

Or other Action taken by the Authority.—It is suggested that these words are illustrated by the cases referred to (p. 389) of s. 58 (3) of the Housing Town Planning, etc., Act, 1909, s. 150 of the Public Health Act, 1875, and s. 12 of the Private Streets Works Act, 1892.

Shall be deducted.—*Quære* are the sums referred to in this section sums which if not claimed as deductions on the original site valuation under s. 26 cannot by virtue of s. 12 subsequently be claimed for the purpose of ascertaining the site value of the land on an occasion when increment value duty becomes payable under s. 1? There is some argument based on the exact language of the two sections in support of the view that the query should be answered in the negative; but that argument may be overcome by the absurdity of the consequences if it were held valid.

Shall be deemed to have been paid.—It is probable that the effect of s. 4 (3) and (4) and s. 6 (4) is to render it unnecessary for a purchaser of land to which this section (36) applies to see that a credit of the duty or the betterment payment is duly entered on the register of the Commissioners. But until the practice is settled he should not assume that such is the case.

SECTION 37.

§ 37. Special provision for land held for charitable purposes, &c.

37.—(1) No reversion duty or undeveloped land duty under this Part of this Act shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes while

§ 37 (1). the land is occupied and used by such a body for the purposes of that body, and increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land held for the purposes of such a body, whether it is occupied or used by that body or not, without prejudice, however, to the collection of the duty on any other occasion.

The expression "governing body constituted for charitable purposes" includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the naval or military forces of the Crown), and includes any corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art.

Held by or on behalf of any Governing Body.—That is either by the charitable corporation, company, or body in its own name, or by the governing body of such corporation, company, or body in the names of the governing body, or by trustees on behalf of either corporation, etc., or governing body. The body need not be a body corporate. Apparently the term may include the trustees of an unincorporated charity; but they must at least be "constituted for charitable purposes." Even the trustees of a charitable devise by will or a charitable trust of lands created by deed might, it seems, be a governing body. But this is, of course, only a suggestion.

The word "held" is a popular not a technical term. No doubt land is "held" for the purposes of a governing body when the body is a *cestui que trust* of that land. See further note on p. 397, "The expression Governing Body, etc."

Constituted for Charitable Purposes.—The phraseology of this section must be carefully noted, for it appears to conceal some pitfalls. It seems doubtful, notwithstanding the second paragraph of sub-s. (1), whether the mere fact that a governing body holds land upon trust for a charity, or for charitable purposes, entitles it to the benefit of the exemptions. It must be "constituted for charitable purposes." That seems to mean that it must be founded or established to carry out charitable purposes, whether they are the sole purposes for which it is constituted or not, but this does not necessarily mean that to add, after it is first constituted, such purposes to its existing functions would not

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confer the benefit of the exemption. The idea of permanency in its charitable functions seems to be implied in being "constituted" for charitable purposes, but that word, it is thought, does not mean originally constituted. It seems clear that the governing body need not be constituted for charitable purposes only, since by the second paragraph of sub-s. (1) the phrase includes "any person or body of persons who have the right of holding or any power of government of or management over *any* property appropriated," etc. The section does not say, though it probably implies, and the marginal note (which, however, seems not to be part of the Act) supports the implication, that only the property held for the *charitable* purposes of the body is exempted.

What are charitable purposes.

It is, of course, impossible to discuss at any length in the notes to this section what are and what are not charitable purposes. In cases of doubt or difficulty one of the standard works (such as Tudor's Charitable Trusts, 4th edition) must necessarily be consulted; but it must not be assumed, because in particular cases arising on the construction of other statutes or on deeds or wills certain objects or purposes have been held to be or not to be charitable objects and purposes, that therefore the same construction will necessarily be put on the same or similar words in s. 37. Sect. 37 is expressed in language peculiar to itself, and the general objects and scope of the Act of 1910 may cause particular words to be interpreted otherwise than in cases decided on the construction of other statutes or other documents. The following notes are therefore written merely for the purpose of drawing attention to what it is thought are the chief considerations arising on the surface of the sections.

Generally.

Charitable purposes are either those objects mentioned in the preamble to the statute 43 Eliz. c. 4 (repealed by the Mortmain and Charitable Uses Act, 1888, the preamble nevertheless being expressly preserved by s. 13 (2)), or such objects as by analogy are deemed to be within its spirit or intendment (*Morice* v. *Bishop of Durham*, 10 Vesey, 405). The preamble to the statute of Elizabeth enumerates the following charitable objects: "The relief of aged, impotent, and poor people, the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities, the repair of bridges, ports, havens, causeways, churches, seabanks, and highways, the education and preferment of orphans, the relief, stock or maintenance for houses of correction, marriages of poor maids, supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed, the relief or redemption of prisoners or captives, and the aid or ease of any poor inhabitants concerning the payment of fifteens, setting out of soldiers and other taxes." There are usually said to be four heads of objects considered charitable within the meaning of the statute, namely, (1) the relief of poverty, (2) education, (3) the advancement of religion, and (4) other purposes beneficial to the community not falling

§ 37 (1). under any of the preceding heads. These may be conveniently termed "general public purposes" (see *Special Commissioners of Income Tax* v. *Pemsel*, [1891] A. C. 531, at p. 583; also Tudor on Charities, 4th ed., 1906, p. 37).

Gifts for public purposes generally.

Charitable purposes must be of a public character, but a gift for public purposes generally is void for uncertainty. "Where charitable purposes are mixed up with other purposes of such a shadowy and indefinite nature that the Court cannot execute them (such as 'charitable or benevolent,' or 'charitable or philanthropic,' or 'charitable or pious purposes'), or where the description includes purposes which may or may not be charitable (such as 'undertakings of public utility'), and a discretion is vested in trustees, the whole gift fails for uncertainty" (see *Hunter* v. *Attorney-General*, [1899] A. C. 309, *per* Lord Davey, at p. 323; *Grimond* v. *Grimond*, [1905] A. C. Sc. 124, where the reasons for the rule are stated by Lord Halsbury, L.C., at p. 126; *Blair* v. *Duncan*, [1902] A. C. Sc. 37; *M'Conochie's Trustees* v. *M'Conochie*, [1909] S. C. 1046). On the other hand, a "trust for public works, or objects of public utility at a particular place, is sufficiently certain, definite, and limited to be valid" (*In re Allen*, *Hargreaves* v. *Taylor*, [1905] 2 Ch. 400, *per* Swinfen-Eady, J., at p. 405).

For charitable purposes generally.

But a gift for charitable purposes generally, although uncertain, or to "charitable and deserving objects," is good (*Attorney-General* v. *Herrick*, Amb. 712; *In re Sutton*, *Stone* v. *Attorney-General*, 28 Ch. D. 464; 54 L. J. Ch. 613; 33 W. R. 519; *Hay's Trustees* v. *Baillie*, [1908] S. C. 1224, Ct. of Session; *Paterson's Trustees* v. *Paterson*, [1909] S. C. 485, Ct. of Session); and in *Mackinnon's Trustees* v. *Mackinnon*, [1909] S. C. 1041, Ct. of Session, a gift of residue "to such charitable or philanthropic institutions, one or more, in Glasgow or the West of Scotland as my trustees may select as in their opinion the most deserving" was held good as a bequest in favour of charitable institutions, and was not void for uncertainty. But see *Grimond* v. *Grimond*, [1905] A. C. 124, in which a similar gift in favour of "charitable or religious institutions and societies" was held void.

The cases are not, indeed, wholly consistent as to the extent to which other objects not *primâ facie* distinctly charitable can be joined with a trust for charitable purposes generally without rendering the gift void for uncertainty, but the cases in the House of Lords, *Hunter* v. *Attorney-General*, *Blair* v. *Duncan*, and *Grimond* v. *Grimond*, above cited, are at present the ruling authorities.

Charitable purposes under Income Tax Act.

"Charitable purposes" under the Income Tax Act (5 & 6 Vict. c. 35, s. 61, No. VI., Schedule A), whereby exemptions are given in respect of the rents of lands "belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes," are not restricted to the meaning of "relief from poverty," but must be construed according to the legal and technical meaning given to those words by English law (*Special*

§ 37 (1).

Commissioners of Income Tax v. *Pemsel*, [1891] A. C. 531 ; *R.* v. *Income Tax Commissioners, Ex parte University College of North Wales*, (1909) 78 L. J. K. B. 576 ; 100 L. T. 585). *Primâ facie* the words of s. 37 (1), "land held by or on behalf of any governing body constituted for charitable purposes while the land is occupied and used by such a body for the purposes of that body," would appear to have the same wide meaning as the words in the Income Tax Acts, but this is not quite clear. The Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, imposing the corporation duty upon the annual value of property vested in any body corporate or unincorporate, exempts from that duty (sub-s. (2)) "property which shall be legally appropriated and applied for the benefit of the public at large, or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly prescribed by Act of Parliament," and sub-s. (3) property which . . . shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts. In *Inland Revenue* v. *Scott*, [1892] 2 Q. B. 152, it was held that the wide meaning of "charitable purposes" as applied to the Income Tax Acts by the decision in *Special Commissioners of Inland Revenue* v. *Pemsel*, [1891] A. C. 531 (*ante*, p. 394), was not applicable to the same words as used in s. 11 (3) of the Inland Revenue Act, 1885, since in the latter Act the words in question were placed "between specific exemptions which, if used in their widest sense, they (*i.e.*, *the words 'charitable purposes'*) would be sufficient to cover" (see *per* Lord Herschell at p. 165). The second paragraph of s. 37 (1) might, it is thought, be held to have the same effect in confining the meaning of the words "charitable purposes" in the sub-section to purposes of an eleemosynary nature, as the specific exemptions of the like nature contained in s. 11 (2) and (3) of the Customs Act of 1885 had, in *Inland Revenue* v. *Scott*, upon the corresponding words in that section. Nevertheless, even if this be the construction of the words "charitable purposes" in sub-s. (1) of s. 37, the extension by sub-s. (2) of the exemptions conferred by the section to registered societies, companies, etc., will have the effect of including a large number of the same objects as would have fallen under the wider interpretation of the words in question.

As applied to corporation duty.

It may, perhaps, further be noted that the inclusion of "corporations sole" in the expression "governing body, etc.," by the second paragraph of the sub-section is a remote indication that certain ecclesiastical persons holding property for religious purposes, such as rectors and vicars, are intended to be comprised in the expression "charitable purposes." Corporations sole for secular objects are rare (the Sovereign and the Public Trustee are examples). Religious purposes, if included, would confer exemption on sites of churches and chapels. If religious purposes are included, so likewise may other purposes not of an eleemosynary character be included.

§ 37 (1). If the narrow construction of *Inland Revenue* v. *Scott* (*supra*), and not the wide construction of *Inland Revenue* v. *Pemsel* (*supra*), be adopted as to s. 37, a number of objects already held to be charitable in the wider sense of the term, and which are not either covered by the extension given to the term charitable purposes in the second paragraph of s. 37 (1) or included in sub-s. (2) of the section, will not be entitled to the exemption conferred by that section. Such objects may perhaps be illustrated by such cases as *London University* v. *Yarrow* (1 De G. & J. 72), where a bequest for an animal sanatorium was held a good charitable bequest; *In re Foveaux*, *Cross* v. *London Anti-Vivisection Society*, [1895] 2 Ch. 501, where an anti-vivisection society was held to be a charity; *In re Charlesworth*, *Robinson* v. *Cleveland*, [1910] W. N. 18), where the gift of a fund to provide clergymen members of a clerical society with a good dinner after quarterly meetings for mutual counsel and the discussion of practical questions connected with their work, was held by Eve, J., to be a charitable bequest, on the ground that the payment helped to increase the attendance at the meetings, thus adding to the usefulness and efficiency of the society.

While the Land is Occupied and used by such Body.—This limitation of the exemption applies only to reversion duty and undeveloped land duty. Occupation as playing fields for a school, or as a college or hospital garden, would doubtless be a user as well as an occupation for the purposes of the body. So if a piece of land is occupied as a lodge or an allotment garden, and as part of his wages or salary by an employee of the body, it is submitted that this is such an occupation and user as would confer exemption.

Mere occupation is not enough to secure exemption. There must be user as well. For example, it is submitted that the body may not, while remaining in nominal occupation, practically treat the land as vacant and intended only for building purposes. It must, it is submitted, be *bonâ fide* employed in carrying out the objects of the body. If the land is let on agreement or on lease it is conceived that undeveloped land duty is payable. It is submitted that the class of cases illustrated by *London and North Western Railway Company* v. *Buckmaster* (L. R. 10 Q. B. 444) and *Reg.* v. *St. Pancras Assessment Committee* (2 Q. B. D. 581), in which for purposes of the poor rate persons occupying premises under contracts not of service, over which premises the owners retained control of a more or less defined and extensive nature, have been held not in possession, while the owners have been held in possession, have no application to the kind of occupation and user contemplated by this section. The question to be determined is whether the governing body both *occupies and uses* the land. If it does not it must pay the duty. Reversion duty is equally not to be charged while the land is occupied and used by that body for the purposes of that body. It is apprehended that this means that if on the determination of a lease the body goes into possession of and uses

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the premises they will be exempt from the reversion duty payable on the determination of that lease. But the duty became charged (s. 13) "on the determination" of the lease, so that it was due *before* the reversioners had, strictly speaking, any occupation or use of the land. The duty became due at the same moment the right to occupy the land accrued. The intention appears clear, however, though not well expressed.

It is to be noted that there is no exemption under this section from mineral rights duty (s. 20).

Increment Value Duty shall not be collected on any Periodical Occasion.—For collection of increment value duty on periodical occasions see s. 1 (*c*), s. 2 (2) (*d*), and s. 6. The exemption is rather an exemption from occasions for payment of, than from liability to increment value duty, since the duty is to be paid on sale or lease under s. 1 and s. 2 (2) (*a*) and (*b*), when of course it must be paid on all increment, so far as actually realised up to date. But the exemption conferred by this sub-section relieves the body from the possibility of paying increment value duty on a value which ultimately is never realised. It thus incidentally relieves the body from the gentle pressure to sell created by the periodical assessment. On the other hand, it may lose a certain amount of the benefit of the 10 per cent. reduction of site value under s. 3 (5), and it may be, therefore, that in some cases it will not be wise in the body to claim exemption at the periodic assessment.

The exemption from increment value duty exists even if the body is not in occupation and user of the land, as, for example, when it is let by them under such circumstances that undeveloped land duty is being paid by the body.

Held for the Purposes of such a Body—that is, it is presumed, the charitable, etc., purposes of such a body, since it may be that such a body has non-charitable as well as charitable purposes; for example, the Royal College of Surgeons (see *Re Royal College of Surgeons*, [1899] 1 Q. B. 871, and compare *Inland Revenue Commissioners* v. *Forrest*, (1890) 15 A. C. 334).

Without Prejudice, however, to the Collection of the Duty on any other Occasion.—See note above on words "**Increment value duty shall not be collected, etc.**" Because increment value duty is to be collected on sale and lease, there is no provision in s. 37, as in s. 8 (1), (2), and (5), s. 10, and s. 35, that the duty which is temporarily exempt from collection is to be deemed to be paid.

The expression "Governing Body constituted for Charitable Purposes" includes, etc.—See note (p. 392), "**Constituted for Charitable Purposes.**"

To the above note the following propositions may, it is thought, be added, deducible from the second paragraph of s. 37 (1).

May be a single person.

(1) The governing body may be a single individual, as a trustee appointed by deed or will, and need not in such case be a corporation sole.

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May not have property.

(2) Even if the governing body have not got the legal estate in themselves or in a person admittedly a trustee for them, yet if they have the "right of holding," *i.e.*, of bringing a successful action to recover the land, the exemption exists.

May be two bodies.

(3) The land may be held by or on behalf of one governing body while another governing body has the power of government of or management over the lands, and then there is a double ground of exemption.

Powers need not be either exclusive or extensive.

(4) The power of government or management of the governing body need not be exclusive or even extensive. A governing body may exist which has only, say, a power of leasing, or of cultivating, It is difficult to see what practical conclusion is likely to flow from this factor of the definition, since in almost all cases it would seem that the remaining rights or powers constituting full ownership would be vested in some other governing body within the section.

Meaning of "appropriated, etc."

(5) Property appropriated for "charitable purposes" means, in all probability, property the main and chief object of which is charitable purposes (see *Writers to the Signet* v. *Inland Revenue*, 14 Sess. Cases, 4th Series, p. 34; *Inland Revenue Commissioners* v. *Forrest*, 15 App. Cas. 334, both cases on s. 11 (2) of the Customs, etc., Act, 1885, in which the equivalent words are "legally appropriated and applied for . . . any charitable purpose"; for the sub-section *in extenso*, see *ante*, p. 395).

Land not exclusively "appropriated, etc."

(6) If, however, the land is not exclusively appropriated for charitable purposes, or is not appropriated in the sense that the main object for its application is charitable, but there are several main objects, as in the *Royal College of Surgeons' Case* ([1899] 1 Q. B. 871), where one of the objects was the advancement of surgical science, and the other the promotion of the professional interests of surgeons, then it is thought that the principle of that case, also decided on s. 11 (2) of the Customs, etc., Act, 1885, would be followed, and the exemption would extend only to so much of the property as is in fact appropriated for the charitable purposes.

Appropriation must be legally binding.

(7) Appropriation to a charitable purpose must, it is thought, be a legally binding appropriation, notwithstanding the absence of the word "legally" which is in s. 11 (3) of the Customs Act, 1885. It is not enough to confer exemption that trustees of a property in fact devote some part thereof to charitable purposes, unless the charitable purpose be one of the objects of the trust.

Religious corporations sole.

(8) Whether ecclesiastical corporations sole, as rectors and vicars, hold their glebe lands for "charitable purposes," and so are entitled to the exemption conferred by the sub-section, seems to depend upon whether the wide interpretation of those words (as in *Commissioners of Income Tax* v. *Pemsel*, [1891] A. C. 531), or the narrow interpretation (as in *Inland Revenue* v. *Scott*, [1892] 2 Q. B. 152) is adopted. See *ante*, note on p. 395.

Including Property appropriated for the Purpose of any of the Naval or Military Forces of the Crown.—A bequest to the officers' mess of a particular regiment for the maintenance of a library for the

use of the officers of the mess for ever is apart from this section a valid charitable gift (*In re Good, Harington* v. *Watts*, [1905] 2 Ch. 60; 74 L. J. Ch. 512; 92 L. T. 796; 53 W. R. 476). So is a legacy for the mess of a regiment of the Army Reserve (*In re Donald, Moore* v. *Somerset*, [1909] 2 Ch. 410; 78 L. J. Ch. 761; 101 L. T. 377). These two cases would, it is apprehended, subject to the Mortmain Act, apply to a gift of lands for the same purposes. It seems, therefore, that apart from the express terms of this section such gifts would (if the term "charitable purposes" is used by the section in the wider sense) be entitled to the exemptions conferred by it.

Other Institutions for the Promotion of Literature, Science, or Art.—Former statutes have contained exemptions from taxation of property held for similar purposes. For example, under 6 & 7 Vict. c. 36, s. 1, lands, etc., "belonging to any society instituted for purposes of science, literature, or the fine arts exclusively" are exempted from rates, "provided that such society is supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money amongst its members." As is at once apparent, there are several important points of difference between s. 1 of this Act and the above section (37 (1)), and most of the cases in the books relating to the exemption turn upon the subject-matter of such differences, such as the word "exclusively," the provisions as to voluntary subscriptions, and the prohibition of the division of profits amongst members. The absence in s. 37 (1) of the word "exclusively" as applied to the objects of an institution is rather emphasised by the fact that a governing body under that sub-section includes any body having "the right of holding, or a power of government of or management over *any* property appropriated for charitable purposes," thus indicating that it is not the nature of the original constitution of the body, but of the trust impressed upon any property held by it which determines the question of exemption. It is, therefore, thought that the principle of such cases as *Reg.* v. *St. Martin's in the Fields Overseers* (21 L. J. M. C. 53; S. C. *sub nom. Reg.* v. *Cockburn*, 16 Q. B. 480), *Reg.* v. *Brandt* (16 Q. B. 462), *Reg.* v. *Institution of Civil Engineers* (5 Q. B. 48), and other cases turning on the word "exclusively," does not apply, quite apart from the fact that the language of s. 37 (1) prior to "literature, science, or art" includes in the exemption many institutions not exempted from rates by 6 & 7 Vict. c. 36.

6 & 7 Vict. c. 36. Exemption from rates.

The exemption from the corporation duty imposed by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11 (3), has already been referred to (see p. 395, *ante*). It is as follows: "Property which, or the income or profits whereof shall be legally appropriated and applied for any purpose connected with any religious persuasion, for any charitable purpose, or for the promotion of education, literature, science, or the fine arts." The absence of the word "legally" before the word

48 & 49 Vict. c. 51, s. 11 (3). Corporation duty.

§ 37 (1). "appropriate" in s. 37 (1) of the 1910 Act and its presence in the 1885 Act does not appear to create any material difference between the two classes of exemptions. There must be power to appropriate before it ought to be appropriated in fact, and then it is legally appropriated. The word "exclusively," which is in the 1843 (6 & 7 Vict. c. 36) Act, is neither in the 1885 nor in the 1910 Act. On the construction of the 1885 Act it has been held by the House of Lords that property which was appropriated and applied substantially for the promotion of a scientific object within s. 11 (3) was entitled to the exemption, although incidentally the action of the society so applying it also benefited the profession to which its members belonged (*Inland Revenue* v. *Forrest*, (1890) 15 App. Cas. 334, *per* Lord Macnaghten, at p. 356). On the same statute it was also decided by the Court of Appeal in *In re the College of Surgeons' Case*, (1889) 1 Q. B. 871, that in so far as the property of that body was legally appropriated and applied to the promotion of the science of surgery, one of the main objects of the society, it was exempt from duty, but that in so far as it was so appropriated and applied in promotion of the interests of those practising surgery as a profession, the other of the society's main objects, it was entitled to no exemption. Probably the two decisions just cited are material to s. 37.

17 & 18 Vict. c. 107. Exemption from Mortmain Acts.

The Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), exempts from the Mortmain Act, and affords facilities for the grant of land to, and the management of land by, certain institutions which in s. 33 are defined or described as institutions "for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs." It will be observed that there is no condition that the institution must exist *exclusively* for the promotion of the objects mentioned, as in s. 1 of the 6 & 7 Vict. c. 36, exempting from rates; nor are the other conditions of s. 1 repeated in the Act of 1854. It has been held that the last-mentioned Act is not confined to institutions of a public or charitable nature, but includes private institutions established for the purposes of the Act (see *Russell Literary and Scientific Institution, In re; Figgins* v. *Baghino*, [1898] 2 Ch. 72; 67 L. J. Ch. 411; 78 L. T. 588—North, J.). The decision just cited seems not wholly irrelevant to the present sub-section, since s. 32 of the Literary, etc., Act, 1854 (17 & 18 Vict. c. 112), contains a definition or description of the governing body of the institution, which like the second paragraph of s. 37 (1) of the Act of 1910 is of a wide and somewhat loose character. It is to be noted also that the same institution which in *In re the Russell Literary, etc., Institution* (*supra*) was held within the Literary, etc., Act of 1854 (17 & 18 Vict. c. 112) was, on the ground that it was not *exclusively* devoted to literature, art, or science

within the meaning of s. 1 of the 6 & 7 Vict. c. 36, held not entitled to the exemption from rates conferred by that section.

The words "other institutions for the promotion of literature, science, or art" will not, it is submitted, be confined to such institutions as are charitable objects within the usual and wide meaning of that term given to it in *Income Tax Commissioners* v. *Pemsel*, [1891] A. C. 531, if in fact there are institutions of such a nature which are not charities (see for a suggested case, where this view might perhaps apply, *In re Ogden, Taylor* v. *Sharp*, 25 T. L. R. 382—C. A.).

Applied science.

Science in the exemption conferred by s. 11 (3) of the Customs, etc. Act, 1885, is not confined to pure or speculative science or science generally, but includes various branches of science (*Inland Revenue* v. *Forrest*, [1890] 15 App. Cas. 334). The society claiming exemption in the case cited was the "Institution of Civil Engineers," and the character of the science giving rise to the claim was what is known as "applied science." Probably the same view would be followed in respect to the use of the term in s. 37.

(2) This section shall apply to the fee simple of, or any interest in, any land held by a registered society or by a company within the meaning of the Companies (Consolidation) Act, 1908, or any body of persons incorporated by special Act, if that company or body are by their memorandum or Act precluded from dividing any profit amongst their members, as if the purposes of the society, company, or body of persons were charitable purposes.

8 Edw. 7, c. 69.

In this provision the expression "registered society" means any society or body of persons who are registered, or whose rules are certified or registered, by a registrar of friendly societies in pursuance of any Act of Parliament, and who by their rules make provision for the benefits set out in section eight, sub-section one, of the Friendly Societies Act, 1896, and where the contract between the society and the member is of a permanent character.

59 & 60 Vict. c. 25.

This Section shall apply to, etc.—*I.e.*, the exemptions conferred upon "governing bodies" by this section shall apply also to the fee simple of, or any interest in, land held by registered societies and companies "within the meaning of the Companies (Consolidation) Act, 1908." Some bodies will doubtless fall within both sub-ss. (1) and (2).

§ 37 (2). **Registered Societies.**—See note on p. 404.

A Company within the meaning of the Companies (Consolidation) Act, 1908.—See s. 285. "'Company' means a company formed and registered under this Act or an existing company." "'Existing company' means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862." "'Joint Stock Companies Acts' mean the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable joint stock banking companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require, but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria chapter one hundred and ten, intituled an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies."

Incorporated by Special Act.—Note that a company incorporated by Royal Charter is not included in the sub-section.

If that Company or Body are by their Memorandum or Act precluded from dividing, etc.—The societies principally referred to are those the subject-matter of ss. 19 and 20 of the Companies (Consolidation) Act, 1908. They are companies which have the advantage of limited liability under the Act, the Board of Trade being empowered by licence to direct their registration without the addition of the word "Limited" to their respective names. Leaving out of consideration the many companies, with clearly and purely charitable objects, registered under those sections, such as hospitals and religious missions, institutions of the following characters amongst others are widely so registered *i.e.*, chambers of commerce, commercial exchanges, clubs political and otherwise, professional institutions, such as law societies, accountants' institutes, the Institute of Chemistry, the Institute of Marine Engineers, etc., scientific societies, as the Philological Society, the Physical Society of London, etc.

Associations of the same or kindred nature may of course be incorporated by special Act as well as under the Companies Acts, and may then be equally entitled to the exemptions conferred by this section.

In order to obtain the benefit of exemptions under this heading, it is therefore necessary for a newly formed body not dividing profit amongst its members either to register under the Companies Act, 1908, or to obtain incorporation under an Act precluding it from dividing profits among its members.

A necessary condition to the exemption under this section of a limited joint stock company registered under the Companies Act, 1908, if the objects of an association be not clearly charitable within the meaning of sub-s. (1) of this section, is that the company should be precluded by its *memorandum* from dividing any profit amongst its members. This is not, under s. 20 of the Companies Act, 1908, an essential condition of

registration without the addition of the word "Limited," though under sub-s. (2) of that section the Board of Trade may, and does in practice, make it such a condition. **§ 37 (2).**

The position of one of the class of associations referred to, not charitable within the meaning of sub-s. (1) of this section, but at the same time not dividing profits amongst its members, at the passing of this Act registered as a limited company without the addition of the word "Limited," but with a memorandum, which does not in terms preclude the company from so dividing profit, will require serious consideration if it is desired that it should receive the benefits of the exemption conferred by this section. Apparently it must get its memorandum altered by the insertion of such a provision if it is to realise its wish. But is the particular alteration one which it is possible to effect under the Companies (Consolidation) Act, 1908? That appears somewhat doubtful. Whether the insertion of a provision precluding the company from dividing profits might in individual cases be brought within s. 9 (1) (*a*) or (*e*) of that Act may well be worth consideration. But it is by no means certain that those clauses can always be relied on to obtain the sanction of the Court, which is necessary, for the alteration of the memorandum. If that is the case the association will, it is feared, either lose the benefit of the exemption or have to reconstruct and re-register itself. Can the memorandum be altered to comply with sub-s. (2)?

There is, however, no necessary connection between the permitted registration of a company under the Act of 1908, without the addition of the word "Limited," and the benefits of this sub-section. The company may be registered with the word "Limited" as part of its title under the Act of 1908, and yet because by its memorandum it is precluded from dividing profits amongst its members it is entitled to the benefits of this section. The requirements of the registrar under ss. 19 and 20 of the Act of 1908 for registration without the word "Limited" go far beyond the simple prohibition of dividing profits amongst members. But, of course, companies prohibited from dividing profits almost invariably desire to get rid of the word "Limited," which is supposed to import a trading company. Word "Limited" not material.

For the kind of benefit to a member which would apparently not be illegal under a memorandum or special Act precluding a company from dividing profits amongst its members, see such cases as *Liverpool Library* v. *Corporation of Liverpool*, 29 L. J. M. C. 221, and *Royal College of Music* v. *Westminster Vestry*, [1898] 1 Q. B. 809. Of course the test of exemption is the memorandum or Act, and not the practice of the company. But the point now being considered is what sort of benefits could be allowed to members by the terms of a memorandum or Act which also in terms expressly prohibited the division of profits, without so cutting down the prohibition as to render it nugatory within the meaning of s. 37 (2). What are profits?

If the Purposes of the Society, etc., . . . were Charitable

§ 37 (2). **Purposes.**—"Charitable purposes," whether the words are used in a wide or in a narrow sense, have exemption under sub-s. 1. Such a society, company, or corporation as is referred to in sub-s. (2), whatever may be its objects, whether charitable or not, is to have the same benefits under the section as if its objects were charitable purposes under sub-s. (1), whatever may be the class of objects included under those words.

The sub-section clearly does not exempt non-charitable bodies incorporated by Royal Charter.

Registered or whose Rules are certified or registered . . . in pursuance of any Act of Parliament.—Societies formed under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), ss. 4—8, are registered by a registrar of friendly societies, but it is understood that their rules do not usually make provision for the benefits set out in s. 8, sub-s. (1), of the Friendly Societies Act, 1896. Trade unions are registered with the registrars of friendly societies (34 & 35 Vict. c. 31, s. 17); and their rules usually make provision for some of such benefits. Building societies under 37 & 38 Vict. c. 42, s. 17, are registered with a registrar of friendly societies, but do not make provision for the benefits referred to. The rules of unincorporated benefit building societies (6 & 7 Will. 4, c. 32, s. 4), loan societies (3 & 4 Vict. c. 110, s. 4), societies instituted for purposes of science, literature, or the fine arts (6 & 7 Vict. c. 36, s. 2), savings banks (39 & 40 Vict. c. 52), and friendly societies (59 & 60 Vict. c. 25) are certified or registered by a registrar of friendly societies in pursuance of Acts of Parliament (see Friendly Societies Act, 1896 (59 & 60 Vict. c. 25, ss. 2 and 4), but none of these societies except friendly societies in the ordinary way provide for the benefits necessary to bring them within the exemptions conferred by s. 37.

To obtain exemption under the second paragraph of sub-s. (2) of s. 37 it is necessary—

(1) That either the society or body should be registered, or that its rules should be certified or registered by a registrar of friendly societies in pursuance of an Act of Parliament.

(2) That its rules should make provision for the benefits set out in the Friendly Societies Acts, 1896, s. 8 (1), and 1908, s. 1 [or some or one of them].

(3) That the contract between the society and the member should be of a permanent character.

Make Provision for the Benefits set out.—Apparently this would mean all the benefits, and the omission of a single benefit would take away the exemption, but it is possible that the section of the Finance Act means either any one of the benefits set out in s. 8 of the Act of 1896 (see below), or any class (a, b, c, d, e, or f) of those benefits (see *Knowles* v. *Booth*, 32 W. R. 432).

Sect. 8 of the Friendly Societies Act, 1896, is as follows:—

The following societies may be registered under this Act:—

(1) Societies (in this Act called friendly societies) for the purpose

§ 37 (2).

of providing by voluntary subscriptions of the members thereof with or without the aid of donations, for—

(a) the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans during sickness or other infirmity, whether bodily or mental in old age (which shall mean any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority ; or

(b) insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning ; or

(c) the relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of a shipwreck, or loss or damage of or to boats or nets ; or

(d) the endowment of members or nominees of members at any age ; or

(e) the insurance against fire, to any amount not exceeding fifteen pounds, of the tools or implements of the trade or calling of the members. Provided that a friendly society which contracts with any person for the assurance of an annuity exceeding fifty pounds per annum or of a gross sum exceeding two hundred pounds shall not be registered under this Act.

By s. 1 of the Friendly Societies Act, 1908 (8 Edw. 7, c. 32), it is provided that to the above description of societies the following shall be added after (e) :

"or (f) guaranteeing the performance of their duties by officers and servants of the society or any branch thereof."

Where the Contract between the Society and the Member is of a Permanent Character.—Will these words exclude from the benefit of the section friendly societies which at the end of the year divide up their benefits? In the discussions in the House of Commons the Chancellor of the Exchequer (see "Parliamentary Debates," September 28, 1909, vol. 2, p. 1054) said these words would not exclude dividing societies. The word "permanent" is one of much ambiguity.

SECTION 38.

§ 38 (1). Special provision for statutory companies.

38.—(1) Neither increment value duty, reversion duty, nor undeveloped land duty shall be charged in respect of any land whilst it is held by a statutory company for the purposes of their undertaking and cannot be appropriated by the company except to those purposes; but nothing in this provision shall prevent the collection of increment value duty when any such land is sold or ceases to be so held.

§ 38 (1). This provision shall not be construed so as to exclude from the benefit thereof land held by a statutory company which is intended to be ultimately appropriated for the purpose of works forming or to form part of the company's undertaking, but, pending the carrying out of those works, is used for other purposes.

Neither Increment Value Duty, Reversion Duty, nor Undeveloped Land Duty.—Statutory Companies, the definition of which term is contained in sub-s. 4 of the section, would but for this exemption be liable to pay increment value duty on periodical occasions as bodies corporate or unincorporate under s. 1 (*c*). They would also be liable to reversion duty under s. 13 and to undeveloped land duty under s. 16. They receive, it is presumed, the exemption conferred by this section from the new taxes, because they have no free power of dealing with their land. The assumption appears to be that they are established for the public welfare. They buy land only in pursuance of their statutory duties, and they are obliged to hold it to carry out those duties. If the company can legally use the land for purposes other than its authorised statutory undertaking (which seems impossible), the exemption is at an end. When it sells the land or the land "ceases to be so held," increment value duty is chargeable, but only in a modified form; see sub-s. (2). The exact meaning of the words in inverted commas is not quite clear. They may refer to leases unconnected with the undertaking and to superfluous lands under s. 127 of the Lands Clauses Act, 1845.*

Increment value duty not deemed to have been paid.

The increment value duty collectable under s. 1 (*c*) and s. 2 (2) (*d*) on a periodical occasion is not, as is the case with Crown lands (s. 10) and lands held by a rating authority (s. 35), deemed to be paid, but will have to be paid if and when the lands are sold, subject to the special provision of sub-s. (2) of this section as to the original site value.

Minerals.

As minerals are included in land, a company which under its special Act and the Railways Clauses or Waterworks Acts had purchased the minerals with the land might have to pay a substantial sum as increment value duty on sale of the land, and the minerals. But, of course, so long as the minerals are retained by the company for the purposes of its undertaking, they would have the benefit of the exemption of s. 38 (1); and even if they were not to be treated as having no value as minerals, by virtue of s. 23 (2), it does not seem probable that the Crown would be entitled to claim duty on them on periodical occasions on the ground that the support afforded by the minerals was not in fact necessary.

As to lands exempted from increment value duty by the section, no

* As to what are superfluous lands, see, as leading cases, *Betts* v. *G. E. Ry.*, 49 L. J. Ex. 197; *Hooper* v. *Bourne*, 5 A. C. 1; *Macfie* v. *Callander and Oban Railway Company*, [1898] A. C. 270.

periodical account under s. 6 (2) need be delivered by the company (s. 6 (5)).

Reversion duty when possibly payable.

Reversion duty would but for this section be payable on the expiration of a lease, the requisite conditions existing (see ss. 13, 14, and 15), the reversion of which the company had purchased for their undertaking. It would be payable not only when the company bought the reversion, and then awaited the natural determination of the lease by effluxion of time before taking possession of the land, but also, subject to s. 3 (2) of the Revenue Act, 1911, whenever the company acquired both lease and reversion, and thus brought about a merger of the term. It will not often happen that a company will lease or be entitled to lease its lands for over twenty-one years so that reversion duty is payable on the determination of the lease; but such a transaction is conceivable (see *Macfie* v. *Callander and Oban Railway Company*, [1898] A. C. 270, in which case, however, the lease was only for five years). It would seem that when the land is within the exemption of this section no account under s. 15 (2) as to reversion duty need be delivered.

Undeveloped land duty

Undeveloped land duty would also be payable by a statutory company, the requisite conditions under s. 16 existing. Railway and other companies often retain land unbuilt upon adjoining their premises for the purpose of future extensions (*Brown* v. *North British Railway Company* (8 F. 534, Ct. of Sess.). If such land is in the meantime used or let as agricultural or occupation land, the company might but for this provision have to pay undeveloped land duty.

Mineral rights duty.

A statutory company is not exempted from mineral rights duty. This section seems to give exemption from the annual increment value duty (s. 22 (3)).

Held by a Statutory Company.—For definition of statutory company see sub-s. (4). It is thought that land would be "held by a statutory company" for the purposes of its undertaking if it were let by the company to persons for objects naturally and directly in connection with the company's undertaking, as for bookstalls, refreshment rooms, dressing rooms, etc., even if the lease were for more than 14 years.

For the Purposes of the Undertaking and cannot be appropriated by the Company except to those Purposes.—See s. 2, Lands Clauses Act (England) for a definition of "undertaking." What the undertaking of the company is depends upon its special Act, read in connection with any general Act which it may incorporate (*Simpson* v. *South Staffordshire Water Works*, 4 De G. J. & S. 679; 34 L. J. Ch. 380; *Metropolitan Water Board* v. *New River Company*, 20 T. L. R. 687—H. L. (E.)). The wide question of *ultra vires* is therefore involved in the word, as to which to cite a few special cases could only be misleading. But *Betts* v. *Great Eastern Railway*, 49 L. J. Ex. 197, may be referred to.

It is difficult to think legally of land held by a statutory company for

§ 38 (1). the purposes of its undertaking, which yet can lawfully be appropriated by the company to purposes other than those of its undertaking. The reference may possibly be to superfluous lands, *i.e.*, lands which ought to be sold by the company, and which under s. 127 of the Lands Clauses Act, 1845, vest in the adjoining owners if not sold within the period mentioned in that section. It seems clear that after the period referred to these lands are not held for the purposes of the company, because they are superfluous and do not in law belong to the company (*Great Western Railway Co.* v. *May*, L. R. 7 H. L. 283, at p. 298). Whether within the period referred to they could be said to be held for the purposes of the undertaking, since they ought to be sold for the company's benefit, and can be appropriated to purposes other than the purposes of the undertaking is a more difficult question.

Is sold. — But ceasing of itself will not necessarily cut short the exemption, since the leasing may be for the purposes of the undertaking. The words "ceases to be so held" are probably intended to cover the case of a lease which is not for the purposes of the undertaking.

Or ceases to be so held.—See last note. These words may also be intended to cut short the exemption at the moment when lands enter into the category of "superfluous," *i.e.*, when it becomes clear that the land in question is no longer needed for the undertaking.

(2) The Commissioners shall not require a statutory company to make any returns with respect to any such land for the purpose of the provisions of this Part of this Act as to valuation other than as to the actual cost to the company of the land, and that cost shall for the purposes of this Part of this Act, be substituted for the original site value of the land.

Any Returns.—For the return which may be required on the ascertainment of original site value, see s. 26 (2), p. 317 ; of original capital value of minerals, see s. 23 (2), p. 251 ; as to undeveloped land on quinquennial valuations, see s. 28, p. 333 ; as to the account relating to the periodical increment value duty, see s. 6 (2), p. 122. All these returns may be included in the words "any returns." There being no exemption from mineral rights duty, a statutory company working or receiving rent for mines would have to make the return under s. 20 (3).

Actual Cost to the Company of the Land.—The sub-section seems adapted only to the purchase by the statutory company of land uncovered by buildings. In such a case it is quite easy to understand that the cost of the land should be accepted as the original site value. But land includes buildings unless the contrary intention appears (Interpretation

Act, 1889, s. 3). It is not thought that there is any such contrary intention in s. 38. Nor does it seem that the case falls within s. 32 (3) so that the Commissioners could apportion the cost to the company between the site and the buildings. **§ 38 (2).**

And that Cost shall . . . be substituted for the Original Site Value of the Land.—*Primâ facie* "the actual cost . . . of the land" would, it is apprehended, comprise the cost of the buildings on the land. The purchases of statutory companies are not confined to cleared sites. Suppose that a railway company has statutory power conferred upon it to purchase certain houses to enlarge its station, and does so, but purchases a house within its powers, which it does not, in the event, require for the enlargement. It subsequently, under s. 127 (Superfluous Lands) of the Lands Clauses Consolidation Act, 1845, sells the house for not more than it gave for it. It is, of course, clear that the company does not on that sale pay increment value duty. But it seems that the purchaser would usually be able to realise a profit on the sale by himself of that house, it may be of very considerable amount, without becoming liable for increment value duty. The original site value is, under this sub-section, the total value (*i.e.*, cost to the company) of land and house. Before increment value duty is payable the value of *the site* on the occasion in question must exceed the former total value of the whole property, as evidenced by its cost to the company plus any 10 per cent. allowances under s. 3 (5). It is possible that the words "the actual cost of the land" might mean that the price given by the company for the total hereditament was to be apportioned, so as to fix an amount as the cost of the land. But the difficulties of such a construction are not small. The question, of course, will affect but few properties.

(3) For the purposes of the Lands Clauses Acts, as incorporated with any special Act, the amount (if any) payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor.

Increment value duty is evidently intended to fall upon vendors. The vendor under ss. 1 (*a*), 2, and 4 is to pay the duty. This sub-section carries out that intention. Counsel for a claimant is not to be entitled, in addressing an arbitrator, or a jury in a compensation case under the Lands Clauses Acts, to point out that his client will at once have to pay one-fifth part of his net site value increment to the Government. The claimant is not entitled to that amount either (*a*) on taxation by way of costs, charges, or expenses under s. 82 of the Lands Clauses Act, 1845, or (*b*) by way of compensation from a jury or arbitrator under that Act.

§ 38 (3). For definition of Lands Clauses Acts, see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23.

(4) For the purposes of this section the expression "statutory company" means any railway company, canal company, dock company, water company, or other company who are for the time being authorised under any special Act to construct, work, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised; and the expression "special Act" includes any Provisional Order or order having the force of an Act of Parliament.

Statutory Company.—The company must be authorised (1) by a "special Act" (see below); (2) to carry out a public undertaking, and (3) the term "company" includes a single individual or body of persons so authorised but not incorporated. The company may be formed under the Companies Act, 1908, or any other general Act, but the authority to construct, etc., must be given by a special Act in the wide meaning annexed to that phrase by the section.

Special Act.—There is no definition in this Act of the phrase "special Act." It is the common legal term applied to private Acts of Parliament. In reference to companies and bodies authorised to construct works of public utility, as to which general legislation exists, it means an Act specially relating to that company or body incorporating with or without amendment all or some portions of the general Act. See s. 2 of the Lands Clauses Act, 1845, defining "special Act" in relation to the Act of 1845. See also Craie's Statute Law, 2nd ed., p. 63.

To construct, work, or carry on, etc.—Companies not authorised by "special Act," including in that term provisional order, and order having the force of an Act of Parliament, but formed under the Joint Stock Companies Acts (see note on p. 402), or incorporated by charter (if any such there be), with powers in their memorandum of association, charter or other governing document, as the case may be, to construct, work, or carry on, etc., a public undertaking of the nature referred to in sub-s. (4), are not entitled to the exemptions conferred by the section.

Or other Public Undertaking.—Such as a gas or electricity supply, or tramway undertaking.

Provisional Order or Order having the force of an Act of Parliament.—Most of the Departments of Government, the Local Government Board and Board of Trade more particularly, are now authorised by statutes to make provisional orders. Generally such orders require confirmation by Act of Parliament before they are binding, and this is usually

obtained by embodying them in an omnibus Bill promoted by the Department making the order. The orders of the Local Government Board relate to matters which involve the acquisition of land mainly by local authorities, as for constituting a local authority the sanitary authority of a port (38 & 39 Vict. c. 55, s. 287). In this case the land acquired for the purpose in question will receive the exemption from all the new duties conferred by s. 37. The Board of Trade grants provisional orders for, amongst other things, establishing gas and water undertakings (33 & 34 Vict. c. 70; 36 & 37 Vict. c. 89, s. 12), tramway undertakings (33 & 34 Vict. c. 78, s. 4), electric light undertakings (45 & 46 Vict. c. 56), both to local authorities and companies. Land acquired by the undertakers to whom such provisional orders are granted, who are local authorities, will of course be exempt under s. 35 as well as under s. 38.

An order having the force of an Act of Parliament may be made by the Light Railway Commissioners under the Light Railways Act (59 & 60 Vict. c. 48) authorising a light railway. The order requires confirmation by the Board of Trade (s. 8).

THE REVENUE ACT, 1911 (1 GEO. 5, c. 2), s. 6.

Saving in respect of the payment of increment value duty by certain statutory companies.

Notwithstanding anything contained in the principal Act, where under the provisions of any lease or agreement any statutory company are required to pay over any part of the increment value of any land to His Majesty, or to any person on behalf of His Majesty, or any Department of Government, that part of the increment value shall, for the purposes of the provisions of the said Act as to the collection of increment value duty, be treated as increment value arising in respect of land held by His Majesty.

Where under the Provisions of any Lease or Agreement.—This section was inserted in the Act to meet the special case of the Humber Conservancy Board, who are a statutory company as above defined, and are leaseholders from the Crown, under a 999 years lease, of the foreshore of the Humber estuary. The lease contains a reservation that on any sale of the foreshore a third of the price that is paid is to go to the Board of Trade (see Parliamentary Debates, House of Commons, Vol. XXIII., No. 38, col. 1175). The effect of this section is to relieve the Conservancy from the payment of increment value duty in proportion to the amount (one-third) of the purchase-moneys which goes to the Government. It is not known whether any other statutory companies are in a position to fall within the section.

FINANCE (1909—10) ACT, 1910.

SECTION 39.

§ 39 (1). Power to charge duty on land in certain cases. 45 & 46 Vict. c. 38.

39.—(1) Where the fee simple of any land, or any interest in land, in respect of which increment value duty or reversion duty is charged, is settled land within the meaning of the Settled Land Act, 1882, or is vested in a trustee, and the tenant for life or persons having the powers of a tenant for life, or the trustee, is the person who is liable to pay any sums on account of either of these duties, he shall be entitled to charge by deed upon the land or interest in land any amount paid by him, or which he may then be or may thereafter become liable to pay, in respect of either of these duties, and the amount of any expenditure which he may have reasonably incurred in connection with the valuation, and the benefit of any such charge, may be transferred in like manner as a mortgage.

General note. Analogous provisions of the Finance Act, 1894, s. 9 (5), (6), will be found on p. 107. Whether such provisions relate to increment value duty payable on death appears doubtful. Under sub-s. (6) the tenant for life has a charge for the duty without expressly creating such charge. Under the Finance Act, 1910, the tenant for life, or trustee, in order to obtain a charge, must execute a deed creating such charge.

Fee Simple of any Land or any Interest in Land . . . is Settled Land within the Meaning of the Settled Land Act.—For definitions of fee simple and interest, see s. 41, pp. 446 and 457. Reversions expectant on leases, leaseholds, non-renewable copyholds held for lives (s. 40), undivided shares of freeholds or leaseholds, are examples, not exhaustive, of interests in land which may be "settled land" within the meaning of the Settled Land Act, 1882 (see s. 2 of that Act, Appendix, p. 605). If any of these interests is transferred on sale, or is leased for more than fourteen years, by a tenant for life, or person having the powers of a tenant for life under the Settled Land Act, or by a trustee, a claim for increment value duty may arise. So on the determination of an underlease (*i.e.*, a lease of land or an interest in land (s. 41)), or on the determination of a lease of an undivided share of land, the reversion in each case being an interest in land which is settled land, one or more of the same persons will be the person who is liable to pay the reversion duty. There is no definition of "interest in land" in the Settled Land

Acts. This is perhaps naturally the case where it is not intended, as in the land clauses of the Act of 1910, to cut down the meaning of the term by excluding a portion of its ordinary content. By s. 2 (3) of the Settled Land Act, 1882, "Land, and any estate or interest therein, which is the subject of a settlement, is for the purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land"; and by sub-ss. (1) and (2) of the same section "settlement" is defined or explained (see p. 605). **§ 39 (1).**

Increment Value Duty or Reversion Duty.—These duties are occasional taxes on capital values, and a tenant for life paying them is given a charge on the land for the amount so paid by him. Undeveloped land and mineral rights duties are levied annually, and are taxes on income, though the amount of undeveloped land duty is determined by capital value; therefore a tenant for life pays those taxes during his lifetime, and is not entitled to a charge for his payments. *Quære* whether s. 39 (1) applies to annual increment duty under s. 22 (3). The question is one of difficulty.

Or is vested in a Trustee.—The cases covered by this section appear to be three.

(1) Where the increment value duty or reversion duty is payable by a legal tenant for life or person legally entitled having the powers of a tenant for life in respect of land which is settled land within the meaning of s. 2 of the Settled Land Act, 1882 (see Appendix, p. 605).

(2) Where the duty in question is payable by a person in whom the land is vested as trustee, and the land is not settled land, as for example where land or an interest in land is devised by will to A. upon trust to sell and divide the proceeds between X., Y., and Z. In this case A. on selling would be liable under s. 4 to pay increment value duty on a sale. He would also be liable to pay reversion duty if a claim arose in respect thereof before the sale.

(3) Where the land is settled land and is also vested in trustees, as where land is devised or conveyed to A. and B. in fee simple, and so as to vest the legal estate in them, upon trust to pay the rents to X. for life, with remainder upon trust for X.'s children as tenants in common in fee, and with a power of sale given to A. and B. In this case X. is tenant for life within the meaning of the Settled Land Acts and can sell or lease under those Acts. If he does so he must pay increment value duty under s. 4 of the Finance Act, 1910. The trustees A. and B., though they receive the purchase-moneys under the Settled Land Act, are not transferors within the meaning of s. 4 (see s. 41, "The expressions 'transferor,' etc."). But the trustees A. and B. may also, with X.'s consent, sell the land (Settled Land Act, 1882, s. 56 (2)). If they do so, no doubt

§ 39 (1). they are transferors within s. 4, and must pay the increment value duty. In this case, if reversion duty becomes due either during X.'s life or afterwards, and before sale, the trustees would be liable to pay it as lessors under s. 15 (1) and the definition of lessor in s. 41 (see paragraph, "The expression 'lessor'").

All these classes of cases are covered by the section. In any case the paying person (whether tenant for life or trustee) may charge his actual [and prospective] payments in respect of the two duties in question on the land (see below).

The Tenant for Life.—For definition of tenant for life see Settled Land Act, 1882, s. 2 (5), (6), and (7), Appendix, p. 605. It is to be noted that a tenant for life within the meaning of the Settled Land Act may be either legal or equitable.

Or Persons having the Powers of a Tenant for Life.—For persons having the powers of a tenant for life see the following sections of the Settled Land Act, 1882: ss. 58, 59, 60, 61, 62, 63 (Appendix, p. 606).

Or the Trustee.—As stated above (see note "or is vested in a trustee"), a trustee may be the person to pay either increment value duty or reversion duty, whether the subject-matter in respect of which the duty is payable is or is not settled land.

Any Sums.—Any sum or sums.

He shall be entitled to charge by Deed.—It may be taken for granted that, even if this sub-section had not formed part of the Act, a trustee, and probably a tenant for life, who had properly paid either increment value duty or reversion duty, would have had a lien on the trust estate, whatever might be its form and condition, to recoup himself for that payment. This sub-section, therefore, *primâ facie* gives him only the additional benefit of a charge which can be transferred as a document representing money's worth.

Any Amount paid by him or which he may then be, or may thereafter become liable to pay in respect, etc.—Thus a tenant for life would be entitled to execute a deed charging generally on the estate—

(1) All sums which he has already paid either for increment value duty or reversion duty.

(2) All sums which he is liable to pay at the moment but has not actually paid in respect of such duties.

(3) All sums which thereafter at any time during his life he may become liable to pay in respect of those duties. Whether the deed of charge could be executed before a liability to make a present payment has actually accrued is perhaps doubtful, but the point is not of real importance.

§ 39 (1). Interest on charge.

No question as to interest on such a charge, as to which the section is silent, would arise during the tenant for life's lifetime, because he is bound to keep down the interest thereon (*Re Howe's Settled Estates*, [1903] 2 Ch. 69), but after his death the payment of interest would seem to be equitable. Interest at 4 per cent. is implied on an equitable mortgage by deposit of title deeds, because such a deposit imports an agreement to execute a legal mortgage of the property comprised in the deeds with interest (*In re Kerr's Policy*, L. R. 8 Eq. 331). In *In re Drax, Savile* v. *Drax*, [1903] 1 Ch. 781, Cozens-Hardy, L.J., said at p. 796: "I am not aware of any case in which the Court has refused to give interest on an equitable lien or charge, and I think the view taken by Bacon, V.-C., in *Lippard* v. *Ricketts*, 14 Eq. 291, is the correct one." In that case the Vice-Chancellor held that a charge given by an order of Court silent as to interest nevertheless carried interest, saying that "it seems to follow that when the Court has once decided that there is a charge, the sum charged must bear interest." The case in favour of interest is, it may be, stronger under the language of s. 9 (6) of the Finance Act, 1894, which gives the payer "the like charge as if the estate duty . . . had been raised by means of a mortgage to him." Probably an express charge of interest by the tenant for life would not affect the question.

A trustee who has paid either increment value duty or reversion duty, whether he executes such a charge or not, is, it is thought, entitled to interest on any payment so made by him (*Finch* v. *Prescott*, L. R. 17 Eq. 554).

And the Amount of any Expenditure which he may have reasonably incurred in connection with the Valuation. — It is not certain whether these words will give the tenant for life all his expenses. The word "valuation" is possibly not the equivalent of "assessment." Would the tenant for life be entitled to the costs of disputing an apportionment which he considered unfair to the settled property; or of disputing a determination of the Commissioners under s. 2 (2) (*a*) or (*b*) as to the value of the consideration or of the fee simple, or in contesting any other point arising in the assessment of the duty but not being strictly a matter of valuation?

It is suggested that he would be entitled, and that the word "valuation" is here used not in the narrow sense of the ascertainment of gross value, full site value, or total value (under s. 25), but in the wider sense of the whole process by which the amount of the increment value under ss. 1 and 2, or the "value of the benefit accruing to the lessor, etc." under s. 13 (1), is ascertained. It will be noted that the words used are not expenses "of the valuation," but "incurred in connection with the valuation."

It is probable that the sub-section is not really needed for the reimbursement of either tenants for life or trustees. By s. 21, p. 606,

§ 39 (1). of the Settled Land Act, 1882, capital money arising under the Act, subject to the payment of claims properly payable thereout, and to the application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one or partly in one and partly in another or others of the following modes, namely (*inter alia*), "in payment of costs, charges and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act."

Further, it cannot be doubted that under the ordinary rules or practice of the Chancery Division a tenant for life acting in a matter in which his duties were fiduciary, and a trustee, are entitled to a complete indemnity for all expenditure properly made by them (see Settled Land Act, 1882, s. 53, as to the fiduciary position of a tenant for life).

"The valuation" must (it is thought) mean the valuation on each occasion when the duty so paid is assessed. It is, however, a possible construction of the section that the words "and the amount of any expenditure which he may have reasonably incurred in connection with the valuation" do not refer to any valuation for the assessment or ascertainment of the duties, but refer to the original site and total valuation under s. 26, But it is thought that this view would not prevail, since the section seems clearly limited to valuations connected with the actual payments of the duties in question.

For reasons already stated it is not thought that a tenant for life or trustee who acts reasonably for the protection of the estate, and in accordance with the well-established rules of equity, is in any danger of being held not entitled to his expenses incurred in relation to the payment of the duties imposed by the Act.

And the Benefit of any such Charge may be transferred in like manner as a Mortgage.—So that the transferee of such a charge would be enabled to take proceedings to enforce it without the necessity of joining the person or the representatives of the person in whose favour the charge was originally created, at all events if the charge were for a sum named in the charge and paid before or on the execution thereof.

It is thought that the present is the appropriate place for the following note on the position of trustees in relation to the new duties.

NOTE ON THE POSITION OF TRUSTEES IN RELATION TO THE NEW DUTIES.

INCREMENT VALUE DUTY.—SALE BY TRUSTEES.

Sale by trustee.
Increment value duty.

On a sale by a trustee under s. 1 (*a*), whether the legal estate is vested in him on trust for sale, or he sells under a power of sale contained in a settlement, or as trustee for an infant under s. 60 of the Settled Land Act, 1882, increment value duty is payable in the usual way. The trustee is in these cases a transferor under s. 4 (1) and (2). He is liable to pay the duty under sub-s. (1), to present the instrument or reasonable

particulars thereof for assessment under sub-s. (2), and in default to pay the penalty imposed by that sub-section. **§ 39 (1).**

If, however, a trustee merely joins in a conveyance for the purpose of conveying any estate, legal or otherwise, vested in him, as where A. is seized in trust for B. in fee simple, and B. sells as equitable owner and receives the purchase-money, A. joining in the transfer to the purchaser for the purpose of conveying the legal estate, then under s. 41 (see the paragraph commencing "The expressions 'transferor,' etc.") he is not a transferor within the meaning of the Act and is not liable for increment value duty on the occasion of the sale in question. Where trustee not liable.

So also where the trustees of a settlement, whether acting under the powers of the Settled Land Acts or of a settlement, join in a conveyance by a tenant for life or other owner having the powers of a tenant for life for the purpose only of receiving and giving a receipt for the consideration money, they are by virtue of the same paragraph of s. 41 not transferors within the meaning of this Act, and therefore not liable under s. 4 for the increment value duty.

Turning now to the case of a trustee who is a transferor, it is clear that the probable amount of the liability on a sale for increment value duty is one of the matters which he must take into his general consideration in determining (if he has a discretion) whether he will sell or not, just as he must take the usual expenses of a sale into consideration. On selling it will be his duty to take care that appropriate clauses are inserted in the contract or conditions of sale, as the case may be, in reference to increment value duty. The calculation of increment value duty may take some time. Difficulties may arise in assessing the duty; the purchaser may desire to have some say as to the amount of increment value duty on the occasion, for he is clearly interested in the question of the amount then paid. All these matters must be considered by the trustee before selling. Precautions to be taken by trustee paying increment value duty.

He must at all events guard himself against delay in the completion of the contract through the assessment of increment value duty, that is, he should provide in the contract that the purchaser should not be entitled to be discharged in case the completion is delayed, and possibly might also stipulate that the purchaser should pay interest on his purchase-moneys in case of delay, other than that caused by the vendor's wilful default in the payment of increment value duty. He should further stipulate by the agreement, or provide in the conditions of sale, that the purchaser shall be satisfied with the stamp referred to in (*b*) of s. 4 (3).* He cannot any more than if he were a person selling otherwise than as a trustee agree that the liability to pay the increment value duty shall be taken over by the purchaser, for such an agreement is void under s. 1 of the Revenue Act, 1911 (p. 46). Further, it is the duty of the Must guard against delay in completion. Must claim for deductions.

* The present obliging practice of Somerset House in quickly placing Stamp (*b*) of s. 4 (3) on the document may not be permanent when increment becomes more common.

§ 39 (1). trustee to claim for all allowable deductions from the consideration, and the value of the fee simple, as the case may be (s. 2 (2) (*a*) and (*b*)), in respect of expenditure made whether prior to or since April 30, 1909.

The calculation of deductions is on all "occasions" an entirely new one. Expenditure creating improvements and allowed for as deductions on a former occasion may, on this occasion, be more or less productive than formerly. A trustee must not therefore overlook the fact that an expenditure made by any predecessor in title, but not before allowed, may, and therefore in the case of a trustee must, be specially claimed for, if the increased value has only become evident and therefore capable of deduction since the last occasion on which increment value duty was paid. All deductions formerly allowed will again be claimed for by the trustee, and may be allowed at a greater or less amount.

Even this statement of the duty of the trustee in relation to deductions does not quite cover the whole position, for it appears that any deduction may be claimed on any occasion, even though it might have been but was not claimed on a former occasion, except a deduction falling under s. 12 (see p. 148), which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land. It would not, however, seem reasonable to expect trustees to inquire into the existence of deductions capable of having been claimed but not actually claimed on occasions previous to that on which the trustee is under a liability to pay increment value duty.

Must not overstate consideration.

A trustee for sale must also be careful not to overstate in the conveyance the value of the consideration on the sale, so as unnecessarily to increase the amount of increment value and of increment value duty.

As to ascertainment of gross and full site values.

The amount of increment value duty payable on the occasion of a sale or transfer necessarily involves the ascertainment of gross value and full site value under s. 25 (1) and (2). The remarks subsequently made as to the duty of trustees in relation to the original valuation of the property may be taken as applicable *mutatis mutandis* to the valuations and calculations made on the occasion of a sale (see p. 421). The trustee should see that the assessment of the Commissioners gives proper credit under s. 3 (1) for the amount of duty paid on previous occasions. The duty is always treated as the excess of site value over the site value on April 30, 1909, less the amount of duty paid [or deemed to have been paid] on previous occasions (s. 2 (2); s. 3 (1)).

The 10 per cent. reduction under s. 3 (5).

A trustee must take care to see that the 10 per cent. reduction of increment value under s. 3 (5) is duly allowed. He should further consider whether in case the consideration is in the form of a periodical payment he should avail himself of the option to pay by instalments afforded by s. 4 (5) and the regulations issued thereunder (see p. 491).

Rights of trustee who has paid increment value duty.

A trustee is under s. 39 (1) "entitled to charge by deed upon the land or interest in land any amount paid by him or which he may then be or may thereafter become liable to pay in respect of" increment value duty or reversion duty, and the amount of any expenditure which

he may have reasonably incurred in connection with the valuation. In case of a sale by trustees the increment value duty, even apart from this section, may, it is submitted, be paid by them out of the proceeds of sale of the land. It would seem to be just as much a part of the expense of selling the land as the preparation of the conveyance and the ordinary stamp duty. If a trustee or tenant for life does execute a charge under s. 39 before selling the land, which, however, seems to be a somewhat unnecessary proceeding, such charge is, it is conceived, an incumbrance "affecting the inheritance of the settled land" within the meaning of s. 21 (2) of the Settled Land Act, 1882, and trustees may therefore it is thought apply capital moneys, including those arising from the sale of the land in respect of which the increment value duty is paid, in discharge thereof (see s. 21 (4), s. 22 (5), Settled Land Act, 1882). **§ 39 (1).**

It is submitted with deference that the same is the case even if the formality of executing a charge is not gone through.

Although s. 39 contains no reference to interest on such a charge, it is conceived that it will carry interest (see note on p. 415).

Extent of charge.

It is apprehended that the express power to charge on the land the amount of any expenditure which the trustee or tenant for life may have reasonably incurred "in connection with the valuation" does not in any way cut down his right to a full indemnity out of the trust estate for all expenses properly incurred by him in relation to all other matters connected with the new taxation.

Utilisation of s. 39.

The charging provisions of s. 39 will be used by trustees who pay increment value duty on the death of a tenant for life under a will or settlement, or who on a sale or lease are content not to repay themselves out of the proceeds of the sale or rent of the land, but to take a charge on other land subject to the same settlement. There are, however, difficulties on the express language of the section as to the right of a trustee to a charge on portion A of land subject to a settlement for duty paid by him on the sale of portion B of the same land and as to the priority of any such charge. But it will not be conceived that there is any doubt that either under the express words of s. 39, or under the rules of the Courts as to the lien of trustees, a trustee who has properly paid increment value duty will be entitled either out of the land itself or the proceeds of sale of such land, or out of the other property subject to the same trusts, to reimburse himself his payment. It is submitted that as to payment of increment value duty a tenant for life is by virtue of s. 53 of the Settled Land Act, 1882, in the same position as a trustee for sale.

A trustee for sale must consider whether the land is entitled to any one of the various exemptions from increment value duty (see p. 6).

Apportionment.

It may be the duty of the trustee before selling to require under s. 29 (2) an apportionment of the original site value, and under s. 3 (1) an apportionment of any duty previously paid. It is impossible here to

§ 39 (1). consider the numerous cases under which such a duty might arise. It may also be the duty of the trustee to consider any apportionments of duty made by the Commissioners under s. 3 (1) at the instance of other persons with a view to appealing from the same if they are thought to be unfair to the trust estate.

Trustee leasing.

The special duties of a trustee who is exercising a power of leasing in relation to increment value duty can be sufficiently gathered in outline from the foregoing remarks as to sales by trustees.

INCREMENT VALUE DUTY.—PURCHASE BY TRUSTEES.

Purchase by a trustee.

If a trustee in pursuance of his trust purchases property, the question arises what precautions (if any) he should take to secure that his vendor pays increment value duty to the full amount due at the date of the transfer on sale. The amount of increment value duty then payable depends mainly upon the valuations under s. 25 (1) and (2) of gross value and full site value, the estimate of the value of the consideration for the transfer under s. 2, and the deductions to be allowed from that value under s. 25 (4).

As to the statement of the consideration.

The value of the consideration for the transfer must be stated by the vendor, *i.e.*, the transferor, under s. 4 (2), to the Commissioners. Apparently there is nothing in the Act giving the purchaser power to inform the Commissioners as to the value of the consideration, so that he seems to have no power to check an under-estimate by the vendor. The gross value and full site value are ascertained by the Commissioners themselves, subject of course to appeal by the vendor. The purchaser appears again to have no *locus standi* to be heard on the assessment by the Commissioners under s. 2 (2) (*a*) and (*b*), involving an application of s. 25. Assuming for a moment that the case is otherwise, then the question arises whether the purchaser, being a trustee, ought to check the Commissioners' gross and full site valuations, and also to ascertain that the full value of the consideration has been stated to the Commissioners. If any duty is placed upon a purchasing trustee in respect of either of these two matters, his position will be very difficult. For the present perhaps the only general advice which can be given him is that he should first ascertain what increment value duty, if any, is proposed to be paid by his vendor, and then, if there is nothing to give him notice that either the consideration has not been fully stated, or that a mistake, prejudicial to the purchaser, has been made in the valuation of gross and full site values, that he need not take any steps in relation to the proposed payment of increment value duty, but may assume that the duty has been fairly assessed. An action by his *cestui que trust* in the future to render a trustee liable because he did not compel his vendor to pay the full amount of increment value duty, whereby a larger amount of duty remained to be paid out of the trust estate on a future occasion, presents many features of difficulty, and it is not thought that purchasing trustees who act with a reasonable

Must the valuations be checked?

amount of prudence are incurring any responsibility in relation to the payment of increment value duty. **§ 39 (1).**

If duty omitted to be assessed under s. 4.

Although s. 4 (4), providing that any duty actually assessed by the Commissioners under the section is on subsequent occasions where increment value duty is claimed to be deemed to be paid, would seem not to cover a case in which a document has been stamped with the stamp referred to under (*b*) of s. 4 (3), unless the Commissioners have also assessed the duty (sub-s. (4)), yet it is thought that the Commissioners would not claim, and the Court would probably not enforce any claim by them for duty in respect of which a stamp under (*b*) had been placed on a document. It is thought that the Commissioners would be considered to have done their duty and made the assessment. It is therefore thought that a trustee-purchaser may accept safely a document stamped with the stamp referred to under (*b*).

Trustee-purchasers must carefully consider the vendor's proposals in the contract or conditions of sale as to payment of increment value duty before they agree to buy. Whether they should assent to a clause making them pay interest until completion in case of delay (other than that arising from the vendor's wilful default) caused by the assessment of increment value duty should be a matter of careful consideration.

If such a clause is accompanied by a stipulation on the part of the vendor to furnish the Commissioners with all reasonable diligence with such particulars as the Commissioners require to enable them to put the stamp under s. 3 (4) (*b*) on the conveyance, it is suggested that it could be accepted.

VALUATIONS—ORIGINAL (SECT. 26) AND PERIODICAL (SECT. 28).

Duties as to the original valuation.

The duties of a trustee in relation to the general valuations under clauses 26 (original) and 28 (quinquennial) require careful consideration. The Government valuation will show the four values of the property referred to in s. 25 (1) to (4). The first two values, gross value and full site value, must necessarily be shown, because they are steps in the ascertainment of total value and assessable site value. In order to ascertain these values a return will be required from the owners under s. 26 (2), and this return must be properly filled in by the trustees. The unit of valuation is separate occupation. If the owner so requires, any part of any land which is under separate occupation is to be separately valued. The trustees must, therefore, carefully consider this right of the owner to separate valuation. Nevertheless, usually owners' interests do not point to small units of valuation. For the purposes of undeveloped land duty the larger the unit of valuation the better for the owner; the greater the chance of coming below the 50*l.* per acre limit and of reducing the average value of the unit valued. For the purpose of increment value duty this is also for the most part the case. The increment on one portion of the property may thus naturally come to be set off against the decrement on another portion in case of a sale

§ 39 (1). of the whole. But if there has been no decrement on any of the property, then it is immaterial for the purposes of increment value duty whether the property is valued as a whole or in portions. Owners, it will be noted, have now a certain limited power of requiring contiguous land in separate occupations to be valued as an aggregate (see the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 5). Trustees must consider whether they can utilise this provision (see *ante*, p. 315).

As to the estimate of original total or site value.

The trustees must also consider whether under s. 26 (3) it is advisable for them to furnish to the Commissioners their estimate of the total value or the site value, or both, of the land. If without expert advice as to the value of the land they hesitate to place a value upon it on the original valuation, they must then consider whether from a pecuniary point of view it is worth while incurring the cost of expert evidence. They should, it is thought, on this point consult such of their *cestuis que trust* as are of full age. It would seem that expenses of the original valuation should not be paid out of income, but out of capital, although in practice if those expenses are slight they will probably be usually paid by trustees out of income. This view, however, must be considered to be simply a suggestion by the writer.

One consequence of placing an estimate upon the land is that it is quite possible that the owner's estimate will be accepted by the Commissioners on the original valuation.

Nevertheless, as the interests of tenant for life and remainderman may not always be identical so far as regards increment value duty and undeveloped land duty, trustees will be cautious in any estimate of value made by them. No rule can be attempted to be laid down as to whether trustees should or should not put an estimate on the land. Whether they shall do so or not must depend on a careful consideration of all the facts.

Claim for deductions.

Trustees must carefully consider what deductions they propose to claim for on the original site valuation (see Form 7, Appendix, p. 514). If they fear mainly increment value duty, they will not be specially anxious as to claiming for deductions for expenditure previous to April 30, 1909. They will wish the original site value to be a high one. But of course those deductions can, if claimed on the original site valuation, be claimed on all subsequent occasions for payment of increment value duty. If, on the other hand, they chiefly fear the undeveloped land duty, they will desire a low site value, and will claim as on April 30, 1909, for as many deductions as possible. It may, however, be pointed out that to elect for a low site value is more risky than to elect for a high site value. The original low site value may be increased in five years' time on the periodical valuation (under s. 28) for the purposes of undeveloped land duty. For the purposes of increment value duty it will remain for ever.

The provisional valuation.

When the Commissioners have made their provisional valuation under s. 27 (1) it must carefully be considered by the trustees, and the

question of expert advice on the subject will again arise. If the trustees consider it proper to make objections to the provisional valuation, and if these are overruled by the Commissioners, they may have to consider whether an appeal should be made to the referee. The matter must be considered by them on the same lines as they would consider the commencement of an action in relation to the trust estate. If their *cestuis que trust* are all *sui juris*, and approve an appeal, they will make it with their formal consent. If the consent of all the *cestuis que trust in esse* and *in posse* cannot be obtained, then, unless the matter is too clear for any question to be raised in the future, the trustees should, before appealing, obtain the direction of the Court on an originating summons under Order LV., r. 3. Before the trustees think of appealing to the referee they should do their best by negotiation to get the Commissioners to alter the provisional valuation. **§ 39 (1).**

Trustees of interest in remainder.

If the trustees take only an interest in remainder in the land, they should under s. 27 (5) (see note to such section relating to the status of remaindermen in relation to the valuation, *ante*, p. 328) apply for a copy of the provisional valuation, and the remarks in the last paragraph will then generally apply to their duties in relation to such valuation.

REVERSION DUTY.

Trustees' duty to pay reversion duty.

When the reversion expectant on a lease is vested in trustees, and the lease determines, the trustees should comply with s. 15 (2), and, unless the case is clearly within one of the exemptions referred to on p. 155, should deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit (if any) accruing to the lessor by the determination of the lease (see the Form on p. 523); and if they do not do so they will incur the penalty enacted by sub-s. (3) of the same section. In such a case they would probably not be entitled to reimburse themselves the penalty out of the trust estate. In the return they must properly and to the best advantage of the trust estate set forth the total value of the land at the time of the original grant of the lease, based on the matters referred to in s. 13 (2). Premiums are sometimes paid on the grant of leases and not mentioned on the face of the leases themselves. Trustees should, if possible (it will generally not be possible), ascertain whether this was the case in respect of the lease in question. With regard to the ascertainment of the total value of the land at the time the lease determines the remarks on p. 421 with reference to the position of the trustees as regards the general valuation will *mutatis mutandis* apply. The trustees will be careful to ascertain whether any part of the total value at the expiration of the lease is attributable to works executed, or expenditure of a capital nature incurred, by the lessor during the term of the lease, and they will, of course, deduct any compensation payable by them at its determination (s. 13 (2)). They should consider whether they are able

As to ascertainment of total value on determination of lease.

§ 39 (1). to avail themselves of any of the exemptions from or mitigations of duty contained in s. 14. If they claim exemption on the ground that there was no benefit accruing to them on the determination of the lease, they had better send in the account, setting out the figures upon which they arrived at their conclusion.

Charge for reversion duty paid by trustee.

Under s. 39 (1) a trustee who has paid reversion duty is entitled to charge the amount paid by him together with the amount of any expenditure which he may have reasonably incurred in connection with the valuation on the settled land. As to the scope of this power see *ante*, p. 414.

UNDEVELOPED LAND DUTY.

This duty, being an annual duty, and there being no power in a trustee or tenant for life who has paid it to charge the property with the amount so paid, as in the case of increment value duty or reversion duty under s. 39 (1), it is conceived must be paid by the trustees in whom the land is vested out of income. It will be the duty of the trustees to consider the various exemptions from or mitigations of duty contained in ss. 16, 17, and 18 with a view to claiming the benefit of any of them which may be applicable.

Equitable tenant for life in possession.

It has been assumed that trustees in whom land is vested come within the meaning of the expression "owner," which under s. 41 means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold. In certain cases, however, trustees are justified in placing, and the Court will even order them to place, an equitable tenant for life in possession of the land, so that he, and not the trustees, actually receives the rents and profits (see *Re Wythes*, *West* v. *Wythes*, [1893] 2 Ch. 430; *Re Bagot*, *Bagot* v. *Killoe*, [1894] 1 Ch. 177; *Re Newen*, *Newen* v. *Barnes*, [1894] 2 Ch. 297). If a tenant for life is let into possession under such circumstances that the Court would hold that he was entitled to possession (under the cases cited above), it is conceived that he is personally liable for the undeveloped land duty, and that the trustees are not liable; but this cannot be considered free from doubt.

If a tenant for life on a sale pays the increment value duty out of his own pocket, the trustees of the settlement will probably be justified in repaying it to him at once out of the proceeds of the property which is paid to them, without his going through the formality of executing a charge under s. 39 (1) (see Settled Land Act, 1882, s. 21 (*x*)).

The same remark is applicable *mutatis mutandis* to the payment of reversion duty by a tenant for life.

MINERAL RIGHTS DUTY.

This duty also appears to be in the same category with undeveloped land duty.

If the minerals are being worked by the trustees as proprietors thereof, they must carefully consider the rental value as fixed by the

Commissioners under s. 20 (2), and apply to its consideration the same principles as those which it is suggested on p. 421 they should apply to the consideration of the original valuation by the Commissioners. If they are immediate or intermediate lessors, who themselves pay a rent to a lessor for the minerals, they must of course make any deductions from the rent they pay which under s. 21 (*ante*, p. 227) they are entitled to make. The annual increment value duty on minerals payable under s. 22 (3) must in a case where it is payable by trustees be treated on similar principles as mineral rights duty, and the set-off conferred by s. 22 (6) must be claimed. Trustees may have to consider the questions raised (see p. 262) as to whether working alone, no occasion arising under s. 1, gives rise to a claim for this duty.

TRUSTEES FOR CHARITABLE PURPOSES.

These trustees must, in addition to noting the foregoing remarks, generally avail themselves of the special exemptions conferred upon them by s. 37 (1).

TRUSTEES FOR THE PURPOSES OF THE SETTLED LAND ACTS.

If a tenant for life has executed a charge on the settled property under the provisions of s. 39 (1), it will be the duty of these trustees to satisfy themselves that the charge has been executed to secure duties properly paid by the tenant for life. If in the opinion of the trustees this is not the case, they must dispute the charge by declining to pay out of capital moneys, and possibly with the consent of the Court, or all their *cestui que trusts*, by commencing proceedings to set it aside (see notes on p. 421).

(2) In the case of settled land a deed executed for the purposes of this section shall not take effect until notice thereof has been given to the trustees of the settlement for the purposes of the Settled Land Act, 1882.

A Deed executed, etc.—In order, it may be assumed, that the trustees may have an opportunity of disputing the charge as not warranted by this section. Of course if the trustees of the settlement have themselves sold and executed the charge, this sub-section is not capable of being applied.

Trustees of the Settlement for the Purposes of the Settled Land Act, 1882.—For the persons who are such trustees, see Settled Land Act, 1882, s. 2 (8), s. 38, s. 63 (1) (Appendix, p. 606); see also Settled Land Act, 1890, s. 16. If there are no such trustees in existence, then new trustees should be appointed either under the instrument creating the settlement, or under the statutory power of s. 10 of the Trustee Act, 1893, or by the Court under s. 38 of the Settled Land Act, 1882.

(3) Sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of

§ 39 (3). powers on behalf of infants and lunatics), shall apply to the exercise of the power under this section in the same manner as they apply to the exercise of the powers of a tenant for life under that Act.

Sections 59, 60, and 62 of the Settled Land Act, 1882, are as follows :—

> **s. 59.** Where a person who is in his own right seised of or entitled in possession to land is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.
>
> **s. 60.** Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.
>
> **s. 62.** Where a tenant for life or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor or other person instructed by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the power of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

Sections 60 and 62 are in fact the only sections of the three set out which actually relate to the exercise of powers on behalf of infants and lunatics. Sect. 59 makes that to be settled land in the case of an infant which would not except for that section be settled land. Sect. 39 (3) of the 1910 Act in effect provides that the powers exercisable by virtue of ss. 60 and 62 of the Settled Land Act, 1882, by the respective persons named in those sections in relation to the settled lands of infants and lunatics, are to include the power conferred upon trustees and tenants for life by s. 39 (1).

The question may arise whether s. 62 of the Settled Land Act, 1882, carrying with it the power conferred by s. 39 (1) of the Act of 1910, is one of the powers which may be exercised by virtue of s. 1 of the Lunacy Act, 1908, by a receiver of the property of a person not found a lunatic by inquisition and mentioned in s. 116 (1) of the Lunacy Act, 1890 (53 & 45 Vict. c. 5). It is submitted that it is, notwithstanding that it is a power created subsequently to the Act of 1908, and that *In re Baggs*, [1894] C. A. 2 Ch. 416, n., and *In re De Moleyns, etc., Contract*, [1908] 1 Ch. 110, are no longer law. An order in lunacy must be obtained for the exercise of such a power as provided by s. 1 of that Act.

(4) Where the fee simple of any land or any interest

in land in respect of which increment value duty or reversion duty is charged, is vested in a mortgagee who is liable to pay any sum on account of either of those duties, he shall be entitled to add to his security the sum for which he is so liable, including any costs or expenses properly incurred by him in respect of the payment of the duty. § 39 (4).

In respect of which Increment Value Duty or Reversion Duty is charged is vested in a Mortgagee who is liable to pay.—A mortgagee selling under his power of sale, or exercising his leasing powers when in possession, is doubtless a transferor, or lessor, as the case may be, liable to duty under s. 4 (1). But if he joins in the conveyance with the mortgagor solely for the purpose of conveying the legal estate, and does not receive any portion of the purchase-money, he is clearly not liable for increment value duty as a transferor (s. 41, paragraph "The expression 'transferor,' etc."). If he both conveys the legal estate and receives the purchase-moneys, it is still thought he is not liable for increment value duty, but that the mortgagor is alone liable; but this is not quite clear.

A mortgagee with the legal estate of the immediate reversion expectant upon a lease which has determined is probably, under s. 41, paragraph "The expression 'lessor,' etc.," liable to pay the reversion duty. This will be the case whether the reversion is freehold or leasehold, subject of course to the various conditions limiting liability under s. 14.

The substance of sub-s. (4) would probably be implied by the Court under existing law without the aid of the sub-section. A mortgagee in possession is, it is thought, liable to pay undeveloped land duty under the definition of "owner" in s. 41. Why then should this sub-section not have been extended to undeveloped land duty? It may, it is thought, be assumed that the Court will apply the usual rule as to payments in relation to the security by a mortgagee, and, if a mortgagee is obliged to pay undeveloped land duty, will allow him to add that payment to his mortgage. It is, however, to be noted that undeveloped land duty as well as increment value duty and reversion duty are not charges on the property, but collateral obligations on the person for the time being owner, transferor, or lessor, as the case may be. As, however, the mortgagee, if he be the owner, would be liable to process of execution for the unpaid undeveloped land duty, it is thought that he would be entitled to add it to his debt.

As to the position of mortgagees generally, see *post*, p. 452.

(5) In Scotland, where any person having a limited interest in the land or interest in land in respect of

§ 39 (5). which any duty under this Part of this Act is charged, is the person who is liable to pay any sums on account of the duty, he shall be entitled to charge such land or such interest in land by means of a bond and disposition or bond and assignation in security in his own favour which he is hereby authorised to grant.

SECTION 40.

§ 40. Application of Part I. to copyholds.

40. The following provisions shall have effect with respect to the application of this Part of this Act to copyholds, including customary freeholds :—

(1) In the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds—

(*a*) The total and site values of the land shall be ascertained as if the land were freehold land, subject to a deduction of such an amount as is proved to the Commissioners to be equal to the amount which it would cost to enfranchise the land ;

(*b*) References to the fee simple of land shall be treated as references to the whole copyhold or customary interest or estate ;

(*c*) In the definition of " owner," a reference to the person entitled to the rents and profits of the land as tenant by copy of court roll or customary tenure shall be substituted for the reference to the person entitled to the rents and profits of the land in virtue of an estate of freehold :

(2) In the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, this Part of this Act shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest.

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Copyholds, including Customary Freeholds.—"Copyholds have been commonly distinguished into two classes, namely, copyholds proper and customary freeholds, being respectively pure copyholds and privileged copyholds. But the distinction between the two is very slight in itself, and is of still lighter practical importance, consisting principally in this, namely, that copyholds proper are held not only according to the custom of the manor (*secundum consuetudinem manerii*) but also at the will of the lord (*ad voluntatem domini*), whereas customary freeholds are held according to the custom of the manor, but are not (or, at least, are not expressed to be) held also at the lord's will; and to that distinction there are incident some few distinctions of a technical character, relative to pleading and the like. But beyond that there are no grounds of distinction between pure and privileged copyholds when the latter are held by copy of court roll, and pass by surrender and admittance or by deed of grant or bargain and sale and admittance, the freehold, in the case of each, being vested in the lord and not in the tenant" (see Scriven on Copyholds, 7th ed., p. 43).

In the Case of Copyholds of Inheritance, and Copyholds held for a Life or Lives or for Years where the Tenant has a Right of Renewal.—Copyholds can only exist in lands which are held by copyhold tenants. If the lord of the manor acquires by escheat, forfeiture, purchase, or otherwise the estate of a copyholder, such estate is immediately merged in the lord's estate and extinguished (Burton, § 1341; 1 Cruise 6, 10, ch. 1, s. 62), that is, it becomes in the hands of the lord a freehold in possession. But the lord may, unless he has once made an alienation of the land as freehold, regrant it as copyhold (Burton, § 1344). This section therefore relates to the application of the Act to copyholds or customary freeholds which are held on copyhold or customary tenure by tenants of the manor.

Varieties of copyhold estates.

Originally all copyholds were estates at will. But by custom in almost all manors, copyholds of inheritance, *i.e.*, in (*quasi*) fee simple or (*quasi*) fee tail, exist, and where they exist the tenant has a customary estate analogous to an estate of the same name in lands of freehold tenure, but subject to any special customs of the manor in question. In the absence of any custom to the contrary the lord has the right to all mines and minerals under the land and to all trees and timber growing upon it. But the lord may not enter on the copyhold for the purpose either of opening the mines or cutting the timber. Further, the lord possesses other rights, such as the right to fines on alienation and to heriots on death. Sometimes he has a right to a small rent. These rights to timber, mines, rents, fines, heriots, and other things are the subject-matter of the deduction referred to in sub-s. (1) (*a*).

Tenant right estates.

In some manors, however, there exists no custom that copyholds may be held for *quasi* fee simple or fee tail estates. In such manors the place of such estates is taken by renewable life estates known as tenant right estates. By custom the tenant can from time to time compel the

§ 40. lord to renew the lives for which the estate is held. These estates are treated for the purposes of the Finance Act, 1910, in the same category with copyholds of inheritance (s. 40 (1) (*a*)), for clearly if the tenant has a perpetual right of renewal his interest is practically equivalent to such an estate, subject of course to any deduction which should be made from its value on account of the frequent fines which must be paid to the lord on the renewal of the lives.

Where the tenant is "owner."

In the case of these two classes of copyholds (together with customary freeholds) the copyhold tenant is treated by s. 40 (1) as being in the position of owner for the purposes of this Act (sub-s. (1) (*b*)). His position is, it is evident, more analogous to that of an owner of a freehold than to that of a lessee for a term of less than fifty years to run. But of course the value of the property to him is diminished by the existence of the lord's rights; and this is expressed by the direction in sub-s. (1) (*a*) that the original total and site values are to be ascertained as if the land were freehold land, subject to a deduction of the sum which it would cost to enfranchise the land. As the tenant has, under existing statutes, the right to compel enfranchisement, the value so found represents the real value to the tenant of the land (see note on p. 431).

So far as sub-s. (1) is concerned, the interest of the lord is practically considered to be something in the nature of a fixed charge within the meaning of s. 41, as applied to total value by s. 25 (3). Subject to this fixed charge the interests in the copyholds analogous to those in freeholds are treated as the taxable subjects of the duty.

Unrenewable life copyholds.

There is yet a third class of copyhold manor in which neither customary estates of inheritance nor life estates with perpetual rights of renewal are allowed, but where the only interest which a tenant can have is an interest for a life or lives or for years. When that interest once expires, the lord may resume possession of the land and hold the same for his own freehold. The writer does not know whether many instances of this wasteful tenure still remain. It is this third class of cases which is dealt with in sub-s. (2). The tenant's interest is treated as a leasehold interest. If he holds for a life or lives, the length of his term will be ascertained under s. 41, paragraph "The term of a lease." The lord is in fact the substantial owner of the fee subject to the lease to the copyholder. He is, subject as presently mentioned, the owner within ss. 26 and 27. He must make the return required by s. 26, and may require the separate valuation under sub-s. (1) of that section, and the joint valuation under s. 5 of the Revenue Act, 1911. He must be served with the provisional valuation under s. 27, and possess the rights of objection and appeal conferred upon owners thereby.

Where copyholder is owner.

If the length of the copyholder's term, calculated under the paragraph of s. 41, "The term of a lease," exceeds fifty years unexpired, probably the tenant is the owner, the lord being also the owner by virtue of sub-s. (7) of s. 27; but such a state of things is not, it is thought, likely often to exist.

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And Customary Freeholds.—Customary freeholds (see last note) clearly fall within the category of cases in which the tenant is substantially the owner, and is so treated by s. 40 (1).

The Total and Site Values shall be ascertained.—See s. 25 as to the ascertainment of total and site value.

As if the Land were Freehold Land.—That is, no deduction will be made under s. 25 (1) from gross value for the fact that the timber belongs to the lord, or that the tenant has to pay fines, and is liable to heriots and other copyhold incidents of tenure. The minerals, if there are any, do not form an element in "gross value," since under s. 23 (2) they are to be treated as a separate parcel of land. The deductions for timber and for fines, etc., are made subsequently to the ascertainment of total and site values under the following words of the sub-section commented on in the next note.

Subject to a Deduction of such an Amount as is proved to the Commissioners to be equal to the Amount which it would cost to enfranchise the Land.—Enfranchisement of copyholds may take place under the common law, or under the provisions of the Copyhold Act, 1894, ss. 1 to 41 inclusive. The former method is effected by a conveyance of the freehold to the tenant, or by a release to the tenant of all the lord's seignorial rights or interest in the land. Enfranchisement in this method usually arises from a bargain between lord and copyholder. The consideration, from an economic point of view, would doubtless be the sum which would be paid to the lord if the machinery for compulsory enfranchisement under ss. 1 to 13 of the Copyhold Act, 1894, were put into force.

It is this last-mentioned sum, together with perhaps the hypothetical expenses of enfranchisement under s. 34 (1) of the Copyhold Act, 1894 (57 & 58 Vict. c. 46), which is, it is suggested, the amount of the deduction to be made under s. 40 (1) (*a*) of the Act of 1910. Under s. 34 (1) the expenses of a compulsory enfranchisement are to be borne by the person who requires the enfranchisement; and under s. 34 (3) the expenses of a voluntary enfranchisement are to be borne by the lord and tenant in such proportions as they agree, or in default of agreement as the Board of Agriculture directs. The latter words of s. 40 (1) (*a*) of the 1910 Act seem to indicate that what is to be deducted is the amount which enfranchisement would cost a tenant, *i.e.*, the owner, who put into force the compulsory sections of the Act.

Matters to be taken into account on enfranchisement.

Sect. 6 of the Copyhold Act, 1894, points out the matters which the valuer or valuers must take into account for the purpose of ascertaining the compensation for a compulsory enfranchisement, *i.e.*, the facilities for improvements (which copyholders often cannot effect, except by committing waste and incurring a forfeiture), customs of the manor, fines, heriots, reliefs, quit rents, chief rents, the liability to forfeitures, and all other incidents whatsoever of copyhold or customary tenure,

§ 40. and all other circumstances affecting or relating to the land included in the enfranchisement, and all advantages to arise therefrom. But no exception or allowance is to be made from the value of the lord's right of escheat, which by s. 21 (1) (*b*) is preserved to the lord after enfranchisement. Nor is the lord's right to the minerals and any rights he may have of getting the minerals, limestone, clay, stone, and gravel taken away without his express consent in writing (s. 23 (1)). As, however, minerals are not included in either gross, full site, total, or assessable site values, as ascertained under s. 25, but are to be valued as a separate parcel of land under s. 25 (2), it seems clear that the absence of any deduction from total and site values on account of minerals does not affect the question. Difficulties may, however, possibly arise in estimating the total value of copyhold land containing clay, limestone, stone, or gravel, if not minerals, over which the lord may have rights. The provisions of s. 23 (1) of the Copyhold Act, 1894, are not in all respects easy of application to valuations under s. 40 (1) (*a*) of the Act of 1910, but want of space and the probability that difficulties will not often arise make it advisable not to do more in this place than draw attention to the section referred to. The provisions for the appointment of valuers and an umpire in the case of compulsory enfranchisement, where the lord and tenant do not agree the amount of compensation, are contained in s. 5 of the Copyhold Act, 1894.

It is submitted that it is a sum hypothetically fixed by such valuers or umpire and adopted by the Board of Agriculture as the basis of the compensation payable under their award of enfranchisement under s. 10 of the Copyhold Act, 1894, together with the expenses of enfranchisement, payable by the tenant under s. 34 (1), which would be the amount of the deduction to be made under s. 40 (1) (*a*).* But it would seem that if the copyholder wishes for a high original site value he need not claim the deduction, and it seems doubtful whether the Commissioners could then make it. The deduction is to be "proved to the Commissioners."

As assessable site value under s. 25 (4) and site value on an occasion arising for payment of duty under ss. 1 and 2 are arrived at by deducting, as the case may be, from total value and one of the values referred to in s. 2 (*a*), (*b*), or (*c*), taking the place of total value, the difference between the amount of the gross value and full site value, which will include the value of the timber and growth, care must, it is thought, be taken not to deduct any portion of the amount referred to in s. 40 (1) (*a*) more than once.

(*b*) **References to the Fee Simple of Land shall be treated as References to the whole Copyhold or Customary Interest or Estate.**—There is no real fee simple or fee tail, but only a *quasi* fee simple or fee

* For the matters to be taken into account in fixing the *compensation* payable to the lord on the enfranchisement of copyhold lands required under the Lands Clauses Act, 1845, see s. 96 of that Act. It is not thought that the section is applicable by analogy to valuations under the Act of 1910.

tail in copyholds. Further, the words are intended to cover the case of copyhold tenements held for lives or years with a perpetual right of renewal (see *ante*, p. 429). § 40.

(*c*) **Definition of "Owner."**—For the words in the general definition of owner (s. 41, p. 458) "person entitled to the rents and profits of the land in virtue of any estate of freehold" will be substituted, in the case of copyholds, "person entitled to the rents and profits of the land as tenant by copy of court roll, or customary tenure." Such a person may be either a *quasi* tenant for life, in tail, or in fee entitled in possession.

Paragraph (*c*) simply adjusts the definition of owner in s. 41 to copyhold lands. Except by special custom or licence of the lord, a copyholder may not lease his lands for a longer period than one year, without incurring a forfeiture. Long leases of copyholds are therefore rare, but where there is such a lease with over fifty years unexpired the lessee will be the owner within the meaning of the Land Clauses.

The position of the lord in relation to copyholds falling within s. 40 (1) appears to be this. He is seised of the freehold of the copyhold land as distinguished from the minerals. But under s. 40 (1) that copyhold land is apparently to be treated as if it were freehold and the tenant were the owner, subject to a sort of a fixed charge in the lord. The intention seems to be to ignore the lord's seignory altogether in respect of increment duty and not to treat it as land or an interest in land within ss. 1 and 2. But the point is very obscure.

The property in the minerals is in the lord, who may not get them except by special custom. It is thought that the minerals may be valued as a separate parcel of freehold land under s. 23 (2), but of course subject to the liability of the lords having to pay for the right to work them. If the tenant has by custom a proprietary right in the minerals (see p. 259), it is thought that he must be treated as owner in fee for the purpose of increment value duty.

The copyholder, therefore, in cases falling within s. 40 (1) is liable to pay increment value duty under s. 1, undeveloped land duty under s. 16, and in case the minerals by express custom belong to him, with the power of working and leasing them, probably also to pay mineral rights and annual increment value duty under ss. 20 and 22. It is extremely unlikely that he will be liable to pay reversion duty under s. 13, since he may not lease his lands without licence for more than a year, and buildings are rarely placed on copyhold lands.

(2) **In the Case of Copyhold Land held for a Life or Lives or Years where the Tenant has not a right of Renewal.**—In this case the lord of the manor is practically in the same position as the owner in relation to freehold lands. He is so treated by paragraph 2 of s. 40. He cannot be compelled to enfranchise the land (Copyhold Act, 1894, s. 96). He will be liable for increment value duty when an occasion arises in relation to

§ 40. his reversion or interest under s. 1. Even if the copyholder's estate is for a life or lives, this appears to be the case under the last words of sub-s. (2), notwithstanding that under s. 41 "interest" in relation to land does not include any other interest in expectancy, except "a reversion expectant on the determination of a lease." He also will be liable for undeveloped land duty under ss. 16 and 19, even, it is thought, if the copyhold tenant holds for a life or lives, and would in case the lands were freehold be the owner; but as to this, refer to the provisions of s. 17 (5) and see the next note. Theoretically he may be liable to reversion duty under s. 13, though it is not probable that the value of the benefit on the determination of the lease which accrues to him will ever be much. People do not build on land held for a life or lives or for a short term of years.

And the Copyhold Interest were a Leasehold Interest.—Where the copyhold interest is held for a life or lives the length of the term will probably be calculated according to s. 41, paragraph "The term of a lease, etc." Where this term so calculated originally exceeded (but see the note on that paragraph on p. 445) fourteen years, the tenant will have to pay increment value duty in relation to his interest on occasions arising under s. 1. If, as is improbable, in any case the term, calculated according to s. 41, paragraph "The term of a lease," should be over fifty years, the tenant will probably be "owner" under s. 41, and will be liable to the undeveloped land duty, and the lord would not be liable for that duty.

SECTION 41.

This is the definition clause of this Part of the Act so far as it relates to England and Ireland. It also nominally applies to Scotland, but is qualified by the following section (42).

§ 41. Definitions

41. In this Part of this Act, unless the context otherwise requires—

The expression "land" does not include any incorporeal hereditament issuing or granted out of the land;

Unless the Context otherwise requires.—These words are extremely important and may qualify advantageously what would otherwise be the meaning of the Act. For example see the question raised under s. 27 (5) (*ante*, p. 326) as to the meaning of the words "person interested"; see also the question raised on p. 282, and also below, as to whether easements attached to land and enhancing its value for building and other purposes are to be taken into consideration in valuing under s. 25.

§ 41.

The expression "Land."—Under the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, in every Act passed after 1850, unless the contrary intention appears, the expression "land shall include messuages, tenements, and hereditaments, houses and buildings of any tenure." In *In re Danson, deceased, Danson* v. *Bell* (11 T. L. R., p. 455), Mr. Justice Chitty is reported as saying that "in the definition of the Interpretation Act land, to put it shortly, was confined to corporeal hereditaments." But the learned judge may not have meant to exclude from the definition such incorporeal hereditaments as are directly connected with land, as easements, for in his judgment he was negativing a contention that money directed by will to be laid out in the purchase of lands was to be considered land within the meaning of s. 1 of the Accumulations Act, 1892 (55 & 56 Vict. c. 58), as interpreted by s. 3 of the Interpretation Act, 1889. At all events it is clear that by virtue of s. 41 "land" does not include incorporeal hereditaments considered as separate subjects of property. Thus a right of shooting in gross or a right to a pew in church, being incorporeal hereditaments, are not liable to the duties imposed by the Act.

Minerals.

Land, generally speaking, includes minerals, but in this Act a certain amount of "contrary intention" appears. In what places exactly "land" includes minerals can only be ascertained after a careful examination of the context. In valuing land under s. 25, minerals are clearly not included, for by sub-s. (5) of that section "the provisions of this section are not applicable for the purpose of the valuation of minerals"; and by s. 23 (2) "for the purposes of valuation minerals are to be treated as a separate parcel of land."

Land covered by water.

Land will, of course, include land covered by water within the territorial limits of the country; and though it may be thought unlikely, it might be the case that land forming the bottom of a pond might have a value for building purposes and be liable to either increment value duty or undeveloped land duty. So the definition will include land between high and low water marks on the seashore, which always formed part of the realm and of the county to which it was adjacent, but was only made part of the parish by 31 & 32 Vict. c. 122, s. 27; and will include an estuary.

Incorporeal Hereditament issuing or granted out of THE Land.—What is meant by the "*the*"? If "the land" is that being valued under the Act, such incorporeal hereditaments reduce the amount of the total value of the land under s. 25 (3), and are, of course, not included in the land. If the words of the clause simply mean that easements and profits à prendre are not to be taxed as land, the "the" has no force. If they mean that the value of land admittedly to be taxed is not to be increased by the value of easements over neighbouring land, the "the" is thought to be misleading.

Incorporeal hereditaments are therefore apparently not "land," so as

§ 41. to be the subject of taxation apart from the physical or actual land, and they are expressly declared not to be "interests" in land (see definition of "interest," *infra*, p. 446). Indeed from their nature it is clear that most incorporeal hereditaments cannot be the subject of the new taxes. Neither advowsons, tithes, rights of common, way, water and light, offices, dignities, franchises or rents, can physically be the subject-matter of increment value duty or undeveloped land duty (which are taxes on site values), and reversion duty is not an appropriate tax as to any of them.

Easements, etc., increase or decrease the value?

The important question, however, remains whether the existence of an easement or profit à prendre over or in the land is a matter which either increases the site value of the dominant or diminishes that of the servient tenement. It is easy to answer the latter alternative of the question. Under s. 25 (3) and (4) it is clear that to the extent to which the easement or profit diminishes the real value of the site to that extent the total and site value are to be considered as diminished. The former alternative of the question is not so easily answered. Assume that to a particular site is attached a right of way, which, if not a way of necessity, is yet a way adding greatly to amenities of the property, or a right to light which may add to the value of the site for purposes of rebuilding. Assume that in another and less probable case the only way to a valuable piece of building land is a way of necessity. Is the site in each case to be valued under s. 25 (2) as entitled, or as not entitled, to the easement? It is submitted, though the point is not quite clear, that the "site value of the land" means the site value of the land considered as land having the easements attached, which are, in fact, attached to it. The site value is in substance the value which the land might be expected to realise if sold at the time in the open market divested of buildings, machinery, and growing produce, but not without its ordinary natural rights, as that of support, or, it is submitted, without the easements attached to it. If it were otherwise, (1) its value might in some cases be practically destroyed as a taxable entity; *e.g.*, a right of way might be the only convenient method of approaching the property; (2) its taxable value would wholly differ from its real value; and (3) while the site over which the easement existed would be reduced in taxable value by its existence, the site to which the easement was attached would not be increased in value. It is of course evident that the point is one which concerns gross and total values also. As the value of the easements is of course included in (*a*) the value of the consideration, (*b*) the value of the fee simple of the land, and (*c*) the principal value as referred to in s. 2 (2), if such value were not included in gross and total value at the original site valuation under s. 25 (1) and (3), then on the first occasion on which increment value duty became payable under s. 2 (2) (*a*), (*b*), or (*c*), there would necessarily be an increase in site value over the original site value by an amount equal to the value added to the site through the existence of the

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easements, in addition to any other real rise in the site value. This would of course unduly increase the increment value. Further, a construction of the word land which did not include its easements might in some cases diminish the amount of undeveloped land duty.

Abnormal cases of increment.

Markets and bridges.

There may be cases in which the value of the land is increased by the rights attached to the land (usually by special Act of Parliament) to levy market or other tolls; see the facts of cases such as those relating to the Spitalfields Market, *i.e.*, *Horner* v. *Whitechapel Board of Works* (55 L. J. Ch. 289), *Attorney-General* v. *Horner* (55 L. J. Q. B. 193; 11 App. Cas. 66), *Horner* v. *Stepney Assessment Committee* (98 L. T. 450); see also, as to other markets, *Roberts* v. *Overseers of Aylesbury* (1 E. & B. 423), *Elwes* v. *Payne* (12 Ch. D. 468; 48 L. J. Ch. 831), *Lawrence* v. *Hitch* (37 L. J. Q. B. 209; L. R. 3 Q. B. 521), *Wilcox* v. *Steel* ([1904] 1 Ch. 212; 73 L. J. Ch. 217), *Goldsmid* v. *Great Eastern Railway Co.* (25 Ch. D. 511), and the Covent Garden cases, *Duke of Bedford* v. *Emmett* (3 B. & Ald. 360) and *Duke of Bedford* v. *St. Paul's* (51 L. J. M. C. 41). For the facts of cases relating to tolls derived from bridges or ways, see *Royal* v. *Yaxley* (20 W. R. 903), *Williams* v. *Bedminster Assessment Committee* (45 L. J. M. C. 117; 34 L. T. 795), *Reg.* v. *Salisbury* (*Marquis*) (8 A. & E. 716; 3 N. & P. 476), and to harbour dues, *Swansea Harbour Trustees* v. *Swansea Union* (97 L. T. 585). Interesting questions as to the liability of the owners of land on which a market is held, or on which a bridge rests on either side of a stream, and in respect of which the owners receive tolls, may arise in relation to increment value duty. This definition of "land" may then be material. In most cases, however, in modern times the land in question is either owned by a local or rating authority, in which case all the increment value duty becoming due in respect thereof during the ownership of the authority is deemed to have been paid (s. 35), or is owned by a statutory company, in which case increment value duty is not payable till the company sells or "ceases" to hold the land (s. 38 (1)). In the former case the land in question is morally certain never to leave the ownership of such authority. In the latter case, if there is any transfer on sale from the statutory company it will usually be under the authority of a special Act of Parliament to another company, in which case such Act will probably deal with the question of increment value duty. If there is no such Act, or such an Act does not deal with the question, the general provisions of this Act must be applied. In this case, as well as in the case of the transfer on sale from a private owner of a market, ferry, bridge, or other right to take tolls, the question will arise whether increment value duty is to be paid in respect of an increment of the land value owing to an increased productivity of tolls arising from the use of the land and not due to the expenditure of the owner, but to the general increase in population and wealth. But the cases where this will arise will be so rare, and the arguments on the question (especially arising out of s. 25

§ 41. and this paragraph of s. 41) are so speculative, that it is not proposed to discuss them at this early stage of the new system.

Springs and lakes.

Again there may be abnormal cases of increment value arising from the discovery on land of mineral springs, or from the fact that the value of land containing lakes or springs always known to exist has suddenly increased because the spring is wanted as water supply. *Primâ facie* it appears that these cases can be treated in the ordinary way and in accordance with both the spirit and the letter of the Land Clauses for purposes of increment value duty. There seems to be no reason why s. 25 (2) should not apply to the valuation of land containing a valuable spring of the kind the subject of the decision in *R.* v. *New River Co.* (1 M. & S. 503), nor why the proprietor of a Welsh lake who has realised a fortune by selling it to a thirsty midland town, should not pay his increment value duty like the rest of the world. It is not thought that in order to ascertain full site value under s. 25 (2) the land must be valued as divested of the spring, which is neither a building nor a thing growing on the land. But greater difficulty arises as to the undeveloped land duty. Assuming that the land out of which a spring arises is not used in the "industry" (see s. 16 (2)) of selling water, but is awaiting a purchaser at a price substantially above the agricultural value of the land, it is perhaps a little hard to charge the owner with undeveloped land duty for not building on his spring.

Shooting and sporting rights.

The position as to shooting and sporting rights in respect to the new duties appears to be as follows:

These rights considered as independent subjects of property are incorporeal hereditaments (*Bird* v. *Higginson*, 2 A. & E. 696; 4 N. & M. 505; *Ewart* v. *Graham*, 7 H. L. Cas. 331; 29 L. J. Ex. 88; *Webber* v. *Lee*, 9 Q. B. D. 315). A lease for over fourteen years of the shooting or sporting rights over land, apart from the land itself, is therefore thought not to be an occasion for payment of increment value duty (see above paragraph of s. 41). This seems clear. But the real difficulty arises when the questions are asked: (1) Does the existence of valuable sporting rights increase the site value of the land either (*a*) on the original site valuation or (*b*) on subsequent site valuations on occasions for payment of increment value duty under s. 1? (2) Does it increase the market value of the land "for agricultural purposes only" under s. 7 and s. 17 (2)?

Not included in site value.

(*a*) It is thought that the value of sporting rights (*i.e.*, capacities) must be included in original gross value. In such case (s. 25 (1)) the land is to be valued "in its then condition." The sporting rights in this case are not an incorporeal hereditament, but are part of the rights of ownership incident to the full ownership of the land. On the other hand the original assessable site value of all land (including agricultural land) is really the value of a cleared site (incompatible with most sporting purposes) ascertained under s. 25 (2), subject to certain deductions. It is therefore thought that (with certain possible exceptions) the deduction made

from total value under s. 25 (4) (*a*) will include the value of the sporting capacities of the land, which are therefore not included in the assessable site value (s. 25). The possible exceptions are those in which the site is adapted for purposes which might be held to be sporting purposes,* as for a race ground. (*b*) If this is the case it follows, from parity of reasoning, that sporting rights will, by virtue of s. 25 (4) (*a*), be deducted from the value of the consideration, etc., on an occasion for payment of increment value duty under s. 1 and s. 2, and will therefore not form an element in the site value on the occasion in question. If this reasoning be correct, increment value duty is not payable on an increase in value of the land owing to an increase in value in the sporting rights, and in calculating the site value of land under s. 17 (1) and (2) for the purposes of undeveloped land duty the value added to the land by the sporting rights must be deducted under s. 25 (2) and (4) (*a*). (3) The second question, *i.e.*, whether sporting rights are an element which may increase the value of the land for agricultural purposes only, involves a consideration of the almost unconstruable proviso to s. 7 (see note on p. 135). It is suggested that that proviso means that if you are considering the question whether the land has any higher value than its market value at the time for agricultural purposes, you are, subject as next mentioned, to add the sporting value to the purely agricultural value, and treat the aggregate as agricultural value only, on which no increment value duty will be payable, until the land obtains a higher and non-agricultural value; in other words, you are to value the land as it stands with all its advantages for agriculture and sport. But if you find, as in the case of some deer forests, that the sporting value in and by itself exceeds the agricultural value in and by itself, then you are for purposes of increment value duty to treat the land as having a higher value than "its market value at the time for agricultural purposes only." The exact amount of the higher value is immaterial, the point being that, having got the land out of the category of land with "no higher value than its market value at the time for agricultural purposes," it becomes liable to increment value duty on the increment to the original site value. But even if it is so liable the sporting rights do not (if the reasons above submitted under the answer to question 1 are valid) form part of the taxable site value, and the increment value duty will therefore be levied in the case just supposed on purely agricultural value, a really curious and unintended result. But it will be remembered that all this is conjecture on a most difficult proviso and may be quite mistaken.

Sporting rights and agricultural value.

The proviso of s. 7 is not applied to undeveloped land duty by s. 17. As undeveloped land duty is assessed on site value, if the above reasoning is correct, the value of sporting capacities (with the possible

Sporting rights and undeveloped land duty.

* *Quære* whether the definition of rights of sporting in s. 6 (1) of the Rating Act, 1874, would be analogically applied to the phrase "sporting purposes" in s. 7 of the Act of 1910 (see p. 135, *ante*).

§ 41. exception above referred to) is not a part of the value of the site which is assessed for that duty. The question remains whether the sporting value may be taken into account, in other words, added to the purely agricultural value for the purpose of determining under s. 17 (2), "the amount by which the site value of the land exceeds the value of the land for agricultural purposes"; which amount is the subject matter of the duty. Having regard to the definition of agriculture in s. 41, p. 463, it is thought that the sporting value cannot be taken into account, but must be neglected.

"Land" usually means fee simple.

The definition of land must be read in connection with the definitions contained in the same section of "fee simple" (see p. 457) and of "'interest' in relation to land" (see p. 446). "'Fee simple' means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession." But it seems tolerably clear that in many cases references in the Act to "land" mean the "fee simple of the land." For example this is the case in ss. 1 and 2 as to the words "the increment value of any land"; in s. 13 (2) as to the words "the total value (as defined . . .) of the land at the time the lease determines"; in s. 26 (1) as to the words, "cause a valuation to be made of all land." There may be other examples of the same kind, but, so far as the writer has at present been able to ascertain, the context usually renders the meaning tolerably plain. It is, however, considered advisable to note the fact for possible future use.

"The expression 'interest' in relation to land . . . includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy . . . or any purely incorporeal hereditament" (*post*, p. 446). A reversion expectant on a lease is an incorporeal hereditament, and with a remainder, and an executory interest is by some text-writers distinguished from a purely incorporeal hereditament such as an easement, a profit à prendre, a franchise, etc., by being called a mixed incorporeal hereditament (see Williams' Real Property, 19th ed., pp. 323, 409). The effect of the definition of "interest in relation to land" is, as has been seen, that on the sale of a reversion expectant on a lease, or on the passing on death of such a reversion, or in respect of such a reversion held by a body corporate or unincorporate on the happening of a periodical occasion, increment value duty may become payable (see s. 1, *ante*, p. 2, and note on p. 9, "or of any interest in the land"); while on similar occasions such duty is not payable in respect of reversions expectant on freehold estates or on remainders and executory interests.

"Person interested" in land may, however, it is clear, sometimes include the owner in fee simple (s. 25 (4) (*b*) and (*c*); s. 30 (2)).

The expression "rentcharge" means tithe or tithe rentcharge, or other periodical payment or rendering

in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land; § 41.

The expression "Rentcharge" means, etc.—The only two other places in the land clauses of the Finance Act of 1910 in which a direct reference to rentcharge occurs are in this section (s. 41). "The expression 'rent' . . . does not include a rentcharge" (see p. 442). "The expression 'fixed charge' means any rentcharge as defined by this Act," etc., etc. (see p. 456 and note on such paragraph). The point of substance as regards these definitions appears to be that a rentcharge as inclusively defined by this paragraph is a "fixed charge," and being a "fixed charge," the capitalised value thereof is to be deducted (amongst other things) from the "gross value" of land, under s. 25 (3), in order to arrive at the "total value," which is a factor to be ascertained in fixing (a) original site value under ss. 26 and 27; (b) site value on a periodical occasion on which increment value duty is payable by a body corporate or unincorporate under s. 2 (1) (*d*); (c) the value of the benefit accruing to the lessor on which reversion duty is payable under s. 13 (2); and the site value on the quinquennial valuation for the purposes of undeveloped land duty under s. 28.

It is not likely that there will often be any question as to whether a particular sum in the nature of a rentcharge is or is not a fixed charge, the decision of which question depends on the definition of "rentcharge" in this paragraph.

If a sum charged on the property does not fall within one of the categories of rentcharges enumerated in this paragraph, it still may be a "fixed charge" within the meaning of that term as defined in this section, in which case the result is the same. For this reason it is not proposed to try to elucidate the exact legal signification of the various categories of rent enumerated in the paragraph of s. 41, "The expression 'rentcharge.'" If any question arises thereon, reference will be made to such well-known elementary text-books as Williams and Goodeve on the Law of Real Property, Stephen's Commentaries vol. 1, Smith's Compendium of the Law of Real and Personal Property, or to Stroud's Judicial Dictionary.

Perpetual Rent or Annuity.—Must the annuity be perpetual to be a "rentcharge" within the section, or will an annuity for life or lives be a rentcharge? The grammar of the sentence appears to support the former conclusion.

Further, it seems probable that perpetual rents and annuities granted out of land are contrasted with life annuities in the valuation scheme of the Act. It is thought that the total value of the land under s. 25 (3) is to be ascertained as if the land were subject to the perpetual rentcharges (*i.e.*, fixed charges (s. 41, p. 456)) to which it is in fact subject,

§ 41. but not to rentcharges or annuities for lives, *i.e.*, jointures and pin-money annuities, which are, it is thought, intended to be treated as incumbrances, *i.e.*, charges on land of annual sums (s. 41, p. 451) not to be deducted in order to ascertain total value, If this view is correct, the annuity to be a "rentcharge" must be perpetual.

Compare with this definition the definition of a fixed charge in the same section (41) (see p. 456). The grammatical construction of the latter definition, having regard especially to the comma following the first "Act," points to the conclusion that all rentcharges, whether arising by operation of law or imposed by any Act of Parliament, etc., on the one hand, or created by persons interested in the land or in consideration of advances to such persons on the other, are considered to be fixed charges. This question is one of great importance, especially to owners of land in places like Manchester and Liverpool, where much land is conveyed in consideration of rentcharges. If such rentcharges are "fixed charges," their capital value must be deducted in ascertaining original total and site values under s. 25 (3), (4). In the like case that capital value must also be deducted on the collection of increment value duty on periodical occasions from bodies corporate and unincorporate under s. 2 (2) (*d*). But this strictly grammatical construction of the definition "fixed charge" is open to some doubt. For (1) incumbrances are not to be deducted under s. 25 from total or site value, and the expression "incumbrance" (see p. 451) includes "a charge of . . . [an] annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act"; (2) the scheme of the Act appears to be to treat the physical site of the land as the taxable entity (subject to State and communal liabilities and to subtractions from physical ownership in the way of easements and profits à prendre (see s. 25)); (3) if all rentcharges are "fixed charges" the undeveloped land duty may be gravely affected. Land will be sold for rentcharges. (4) Bodies corporate or unincorporate could by creating rentcharges keep down the total value of their land on the periodical occasions for the collection of increment value duty under s. 2 (2) (*d*) and s. 6 (1).

Since the first edition of this work, it has become clear that the Revenue Authorities adopt the grammatical construction of the Act with, of course, all its consequences. The subject will not feel inclined to quarrel with that view.

44 & 45 Vict. c. 41.

The expression "rent" has the same meaning as in the Conveyancing and Law of Property Act, 1881, and does not include a rentcharge;

See notes to s. 20 (p. 220), where the reference to the Conveyancing Act is given in full. See also s. 24 (p. 266) for a definition of rent in relation to a mining lease. That "rent" is not used in the Conveyancing Act, 1881, in its strictly legal sense of a rent for which a distress can

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be made (see *Brown* v. *Peto*, [1900] 2 Q. B. 653, C. A., at p. 664). References in the land clauses of the Finance Act, 1910, to "rent" *nominatim* are to be found in s. 13 (2), s. 20 (2), s. 21, s. 22 (3) and (4) (as implied in rental value), s. 24, s. 26 (2), s. 31 (1) and (3), and s. 32 (2).

The expression "lease" includes an underlease and an agreement for a lease or underlease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption;

The expression "Lease."—See the notes on s. 1 (pp. 11 and 12) under the heads "**Grant . . . of any Lease**" and "**Not being a Lease, etc.**"

Includes an Underlease and an Agreement for a Lease or Underlease.—This is one of the definition clauses in which the qualification at the commencement of the section "unless the context otherwise requires" seems specially necessary to be borne in mind. See the use of the word "lease" in s. 1 (*a*), where the grant of a lease is contrasted with a contract for the grant of that lease. See also s. 2 (2) (*b*) and s. 4 (1). Whether the grant of a lease within the meaning of the sections referred to includes a contract to grant a lease, not followed by an actual lease, is, no doubt, not quite clear. Having regard to s. 4 (2) it is thought that it does include it. See regulation 7, p. 489; see also the notes on pp. 74, 77 and 78.

So the grant of a reversionary lease for over fourteen years does not create or enlarge an existing term, but creates only an *interesse termini* (*Lewis* v. *Baker*, [1905] 1 Ch. 46). It nevertheless amounts to an agreement to grant a lease. In such a case the assessment for increment value duty will afford some points of interest.

Until the Term becomes vested in some Person free from any Equity of Redemption.—If the mortgagee either of freehold or leasehold land whose mortgage has been made by way of term of years or underlease respectively has sold under his power of sale, or has foreclosed or has obtained a title under the Statutes of Limitation to the equity of redemption, in all these cases the term becomes an ordinary leasehold subject to some of the usual incidents of leasehold land under the Act of 1910. So long as the term has more than fifty years to run the person in whom it is vested is the "owner," and liable to the undeveloped land duty under s. 16 (see paragraph "The expression owner," s. 41, *post*, p. 458). Whether the term has more or less than fifty years to run, he is liable to increment value duty on an occasion arising under s. 1, and to reversion duty under s. 13, unless he can claim the benefit of one of the exemptions in s. 14.

§ 41. Mortgagee of leaseholds must pay increment value duty.

It is thought (see *post*, p. 452, note on "Position of Mortgagees") that a mortgagee of freeholds, and of leaseholds where the mortgage is by assignment, who sells under his power of a sale is a transferor within s. 4, and responsible under sub-s. (4) of that section for increment value duty. Even if the mortgage of leaseholds is by way of underlease the same is thought to be the case. It is true that by virtue of this paragraph of s. 41 the sub-leasehold interest of the mortgagee is not a "lease" for the purposes of this Act, but nevertheless it is thought that the mortgagee by demise selling and conveying under his power of sale is the transferor of an "interest in the land" within the meaning of s. 1 (*a*), and liable to pay increment value duty under s. 4. It is thought that the paragraph of s. 41, "The expression 'lease,' etc.," is given effect to by interpreting it to mean that the creation of a term of years to secure money is not the "grant of a lease" within s. 1 (*a*) so as to give rise to a claim for increment value duty, but that such a term is nevertheless an interest in land within s. 1 (*a*). But the point is not clear. No help on the point seems to be afforded by a consideration of the effect of this paragraph of s. 41 upon claims for reversion duty under s. 13, since it seems clear from a consideration of ss. 13 to 15 inclusive that there is no intention in these sections to charge that duty on the determination of terms created to secure money.

Terms to secure money are usually surrendered on the payment of the debt, or if not surrendered, then cease and determine under the Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112), and no question can arise in such cases that by virtue of the definition clause they are not leases within the meaning of ss. 13 to 16. If a term is assigned to a purchaser by the trustees or mortgagees of the term, although it then becomes "vested in some person free from any equity of redemption," it is thought that reversion duty is not payable in the case of its surrender or merger or of its natural expiration by effluxion of time. The only terms of years comprised in s. 13 are, it is thought, those granted at a rent $\frac{\text{and}}{\text{or}}$ for a premium. Under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 65 (see p. 604), certain long terms of years, being usually in practice terms originally created for raising money, may be enlarged into estates in fee simple.

The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted

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for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined ;

The Term of a Lease.—The duration of a lease is a matter of importance under the Land Clauses, amongst other things for the purpose (1) of ascertaining whether increment value duty is payable under sections 1 to 6 inclusive, that is whether the lease is for a term exceeding fourteen years; (2) of fixing the proportionate part of the duty to be collected under s. 3 (3) on the grant, transfer, or passing on death of a lease, or in the case of a lease held by a body corporate or unincorporate on the happening of a periodical occasion; (3) of ascertaining whether a lease has determined under s. 13 (1) so as to give rise to a claim for reversion duty; (4) of ascertaining whether certain exemptions from the payment of reversion duty conferred by s. 14 (1), (2), and (3), and of undeveloped land duty conferred by s. 17 (5), can be claimed; (5) of ascertaining the interests of copyholders for years or lives under s. 40. This category, however, really falls under heads 1 and 2 above; (6) of ascertaining who is the owner of the lands, so as to be liable, under s. 19, for the undeveloped land duty, and, under s. 26 (2), to make the return for the original valuation, and so as to be entitled to the rights in relation to the provisional valuation conferred by s. 27 (7).

Where the Lease contains an Obligation to renew the Lease.—It seems doubtful whether these words do not govern the whole paragraph, so that there is no definition of the term of a lease, which does not contain an obligation to renew the lease (see note below).

Be deemed to include the Period for which the Lease may be renewed.—A lease for fourteen years with a covenant by the lessor to renew, if required by the lessee, for a further period of seven years is therefore a lease for twenty-one years and an occasion for payment of increment value duty. It matters not that the lease is in fact not renewed. A lease for twenty-one years with power to the lessee to determine at the end of fourteen years is thought also to be a lease for over fourteen years. See *Bird* v. *Baker* (1858), 1 E. & E. 12; also note on p. 12, *ante*.

And in the Case of a Lease for Life or Lives.—The meaning of this sentence appears not to be clear. Are the words "and in the case of a lease for life or lives" down to the second "granted" all governed by the earlier words of the sentence, "where the lease contains an obligation to renew the lease"? It is thought that on a strict construction they are,

§ 41. and that there is no express direction for translating the term of a lease for life or lives into years, except in cases where the lease contains an obligation to renew the lease. This seems to be the case (1) from the grammatical construction of the sentence, and (2) from the fact that the last words of the paragraph, "and a lease renewed," etc., like the first, seem to confine the paragraph to leases containing obligations to renew. Probably the Court would apply the same method of calculation in cases where there is no obligation to renew as in cases where there is such an obligation, on the ground that the Legislature could not have intended two different methods of calculation with respect to similar things.

The perplexities of the paragraph appear to arise (1) from the fact that two separate definitions or explanations are intermingled—(a) that of the term of any lease; (b) that of the basis upon which the length of a lease for life or lives is to be calculated; and (2) from the fact that the existence of a lease for life or lives not containing a covenant to renew is (it would seem) not under contemplation.

Equal to the Mean Expectation of Life.—Probably the Northampton Mortality Tables (see p. 62), adopted in the rules made under s. 3 (2) and (3) will be adopted by the Courts generally for calculating the term of a lease for life. For purposes of (1) the amount of increment value duty under s. 3 (3); (2) liability to reversion duty under s. 14 (3); and to undeveloped land duty under s. 19, the actual duration of the life or lives would seem to be immaterial.

Be deemed to be determined.—So as, *e.g.*, to give rise to a claim for reversion duty under s. 13 (see p. 151). See also s. 14 (2) (*ante*, p. 166), which provides (*inter alia*) that reversion duty shall not be charged on the determination of a lease the original term of which did not exceed twenty-one years; and s. 17 (5) (*ante*, p. 201), which provides that where agricultural land is held under a lease made before April 30, 1909, undeveloped land duty shall not be charged during the original term of the lease. In each of these cases the original term includes a renewed term granted under a covenant binding on the grantor to renew.

The expression "interest" in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance as defined by this Act or any fixed charge as defined by this Act or any purely incorporeal hereditament or any leasehold interest under a lease for a term of

years not exceeding fourteen years or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts; § 41.

The Expression "Interest" in relation to Land includes.—The word "interest" in relation to land is an important feature of the taxing clauses. Under ss. 1 and 2 increment value duty is payable on the transfer on sale and the passing on death of an "interest in land," and also in the case of a body corporate or unincorporate on periodical occasions in respect of such an "interest." Subsequent sections of the Act (3, 4, 5, and 6) contain provisions relating to the assessment and collection of duty in respect of "interests in land." Other sections contain express exemptions of interests in land from taxation (ss. 9, 10, 11, 35, 37). Certain sections, it is thought, impliedly, though not in express terms, exempt interests in land from taxation (ss. 7, 8, 38).

"Land" means fee simple.

But all the duties created by the Act appear to be charged in respect of the "land," and not in respect of interests in the land; and by "the land" it is thought (though it is not expressly stated) is meant the unincumbered fee simple in possession of the land (see s. 1 as to increment value duty; s. 13 (1) as to reversion duty; s. 16 (1) as to undeveloped land duty). In relation to increment value duty there must be a separate assessment of the proportion of the duty payable in respect of an "interest" in the land (ss. 1, 2 (2) (*a*), 3 (1) (4)). In relation to reversion duty, where the reversioner has only a leasehold interest, which is an "interest" in land, the amount of the duty is reduced as mentioned in s. 13 (2). In relation to undeveloped land duty, which is an annual duty, the whole duty is paid by a tenant for life, or tenant in tail in possession, who has not the fee simple of but an interest in the land (see paragraph in this section (s. 41), "The expression 'owner'").

Meaning of "interest in relation to land."

Logically, no doubt, the definition of fee simple should have preceded that of interest. Fee simple (see *post*, p. 457) "means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession." It is thus, strictly speaking, an inclusive as well as an exclusive definition. The definition of "interest in relation to land" is an exclusive definition in so far as it in terms excludes certain specific things which are usually in law termed interests in land from the purview of the term as used in this Act. Whether the phrase "person interested" in the land is to be confined to persons not excluded by the definition of "interest" in s. 41 is doubtful (see note to s. 27 (5), *ante*, p. 326). On the whole it is thought that the term should not be so confined. It seems at all events clear that "person interested," as used in s. 25 (4) (*b*) and (*c*) and s. 30 (2), includes the person entitled to the "fee simple" as defined by s. 41.

It is difficult to say what is the exact meaning of this phrase "interest" in relation to land as used in the Act of 1910. "Interesse

§ 41. is vulgarly taken for a terme or chattle reall, and more particularly for a future tearme, in which case it is said in pleading that he is possessed *de interesse termini*. But *ex vi termini* in legall understanding, it extendeth to estates, rights and titles, that a man hath of, in, to or out of lands; for he is truly said to have an interest in them; and by the grant of *totum interesse suum* in such lands, as well reversions as possessions in fee simple shall pass." Coke upon Littleton, 345 b. It is on the whole thought probable that "interest in land" is confined to actual estates or interests in the land, such as those referred to in the passage from Coke upon Littleton.

Interests in land under Mortmain Act.

"Interests in land" were forbidden by the Mortmain Act (9 Geo. 2, c. 36), repealed by the Mortmain Act, 1888 (41 & 42 Vict. c. 9), but substantially re-enacted as to land and "interests in land," to be given by will to charitable uses (ss. 4, 10 (i. & ii.)). Under this provision Metropolitan Consolidated Stock has been held an interest in land, the governing local authority of London being owners of land, and the stock being charged on those lands (*Cluff* v. *Cluff* (1876), 2 Ch. D. 222; *In re Crossley, Birrell* v. *Greenhough*, [1897] 1 Ch. 928). A legacy payable out of real and personal estate (*Walmsley* v. *Rice*, 29 S. J. 256), an equitable interest in money secured by mortgage of real estate (*Re Watts*, 29 Ch. D. 947), and a share of the proceeds of realty to be sold at a future date (*Brook* v. *Badley*, L. R. 3 Ch. App. 672) have all been held interests in land within the Mortmain Acts, and void as gifts to a charity by will.

Under Statute of Frauds.

Under s. 4 of the Statute of Frauds (29 Car. 2, c. 3) a contract for the sale of lands, tenements, or hereditaments, "or any interest in or concerning them," must be in writing. Under this section a debenture of a company, creating a floating security on its land (*Driver* v. *Broad*, [1893], 1 Q. B. 744), * a debt charged on land (*Jarvis* v. *Jarvis*, 63 L. J. Ch. 10; 69 L. T. 412), and sporting rights (*Webber* v. *Lee*, 9 Q. B. D. 315) have been held interests in land.

Under Dower Act.

Under the Dower Act, 1833 (3 & 4 Will. 4, c. 105), s. 9, it has been held that a gift to a widow of the income of a sum to arise from the sale of real estate is a gift of an "interest in land" so as to bar the widow's claim to dower (*In re Thomas, Thomas* v. *Howell* (1886), 34 Ch. D. 166).

Other statutes and cases could be referred to in which an "interest in land" has been construed to extend to an interest in money to arise from or secured on land. But enough has been written to prove that there is ample authority for holding that "interest in land" has a very wide meaning in law, and may under various statutes include an interest in the proceeds of sale of lands.

Analogies of foregoing statutes thought inapplicable.

Nevertheless it is thought that this wider construction of the term "interest in land" will not be contended for by the Crown and would not be adopted by the Courts. If it is asked why it is so thought, it

* But see now the Companies Consolidation Act, 1908, s. 93 (1) (iv.) *contra*.

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may be admitted that the answer is not easy, and perhaps not wholly satisfactory. It is really grounded on the fact that unless "interests in land" are confined to the definite and well-recognised estates and terms in land the Act is absolutely unworkable.

Assume that land is devised to trustees upon trust to sell and divide the proceeds amongst such of the children of A., a deceased person, as shall attain the age of twenty-five years, and that the will contains the usual power to postpone the sale at the discretion of the trustees. The power of sale will, it is conceived, last at least until the youngest child attains the age of twenty-five years, and possibly much longer (*In re Cotton's Trustees and School Board for London* (1882), 19 Ch. D. 624; *In re Jump, Galloway* v. *Hope*, [1903] 1 Ch. 129; *In re Lord Sudeley, and Baines & Co.*, [1894] 1 Ch. 334; *In re Horsnail, Womersley* v. *Horsnail*, [1909] 1 Ch. 631). As soon as any child attains twenty-one, that child can transfer on sale its contingent share, and as soon as the child attains twenty-five, its vested share in the proceeds of sale. The reader has only to try to apply the provisions of ss. 1, 2, and 3, and the Commissioners' rules under s. 3 (*ante*, p. 53), to transfers on sale or passings on death of the children's shares to be convinced that to hold such shares to be an "interest" in land within the Finance Act, 1910, would be to make increment value duty an unworkable tax. Increment value duty will, it is submitted, be payable when the trustees sell the land, and not when the beneficiaries die or sell their interests in the proceeds of sale of the land. For these reasons, which might of course be greatly amplified, it is thought that the term "interest" in land will not be extended to interests in the proceeds of the sale of lands.

It is thought, however, that equitable estates and interests in the land itself, whether they be for life, in tail, or in fee, as distinguished from such interests in the proceeds of sale of the land, would be "interests in land." It is of course implied that such equitable interests should not be remainders, or executory interests, or reversions expectant upon freehold estates.

It is, however, clear that as "interest in relation to land" does not include an incumbrance, and an incumbrance includes, amongst other things, "a lien and a charge of a portion, annuity, or any capital or annual sum" (s. 41), many things held under the former Acts already referred to to be "interests in land" are expressly excluded from being considered such under the Act of 1910.

Undivided Share in a Fee Simple in Possession.—It is material in relation to calculation and collection of increment value duty (see ss. 2, 3, and 4) to note that an undivided share of land in fee simple in possession is not land, but an interest in land. *À fortiori* an undivided share in a leasehold is an interest in land.

A Reversion expectant on the Determination of a Lease but not any other Interest in expectancy.—Therefore (a) on the sale or passing

§ 41. on death of a reversion expectant on an estate for life or in tail, (b) on the sale or passing on death of any remainder or executory interest, (c) or as to such reversions, remainders and executory interests held by bodies corporate or unincorporate on periodical occasions, increment value duty will not be payable under s. 1.

It has been suggested in the notes to s. 27 (5) (*ante*, p. 326) that the words "any person interested" in that sub-section, under which such a person, not being an owner, may apply for a copy of the Commissioners' valuation before it is finally settled, and then may give notice of objection, is not to be limited or interpreted by this paragraph of s. 41 so as to exclude a remainderman for life or in tail or fee from objecting to the original valuation, but the point is by no means clear, though it may be expected that the Revenue authorities will take the broader and more equitable view of s. 27 (5). It seems clear that the term "person interested" in the land is sometimes so used as to include a person entitled to the fee simple as defined by s. 41 (see s. 25 (4) (*b*) and (*c*); s. 30 (2)).

Interest in expectancy is not defined in this Act. For the definition in the Finance Act, 1894, s. 22 (1) (*j*), see *post*, p. 600.

Or an Incumbrance as defined by this Act.—See the definition of incumbrance by the next paragraph of s. 41. The effect of the words commented on appears to be that the transfer on sale, *i.e.*, ordinary transfer, or the passing on death, or holding on a periodical occasion by a body corporate or unincorporate of a mortgage or other incumbrance as defined below is not an occasion for the payment of increment value duty, because such an incumbrance is not an "interest in the land" within the meaning of s. 1. Of course the creation of a mortgage or other incumbrance is not an occasion for payment of increment value duty, since it is not made so by s. 1. But the fact that an incumbrance is not an interest in land does not, it is submitted, affect the question of the liability of a mortgagee transferor to pay increment value duty on selling under his power of sale (s. 4), or of a mortgagee to pay reversion duty when he is the reversioner on the determination of the lease, or undeveloped land duty when he is in possession. In these cases he is taxed not as incumbrancer, but as transferor (s. 4, *ante*, p. 72), reversioner, *i.e.*, lessor (s. 13 (1), *ante*, p. 155, and s. 41, paragraph "The expressions 'lessor,' etc.," *post*, p. 461), or owner (s. 19, *ante*, p. 203, and s. 41, paragraph "The expression 'owner,'" *post*, p. 458). See further the note "On the position of mortgagees, etc.," *post*, p. 452.

Or any fixed Charge as defined by this Act.—Consult the definition of "fixed charge," *post*, p. 456. The significance of these words commented on appears to be that the sale, or passing on death, or holding on periodical occasions by bodies corporate, etc., of rent-charges and other fixed charges affecting land does not give rise to any

claim for increment value duty under s. 1. Possibly the words are really not necessary, since rentcharges and probably all other fixed charges being interests in land under the general law are "purely incorporeal hereditaments," and expressly exempted from taxation under the first paragraph of s. 41, as well as under this paragraph. § 41.

Purely Incorporeal Hereditament.—*E.g.*, rights of shooting and of common, the right to a pew, all other easements and profits *à prendre*. The word "purely" is used to distinguish all other incorporeal hereditaments from reversions, remainders, and executory interests, which are said to be of a mixed nature.

Or any Leasehold Interest under a Lease for a Term of Years not exceeding Fourteen Years.—By these words it is understood that the test of whether a leasehold is or is not an "interest" in land is not what is the length of the unexpired term, but what was the length of the term when originally created. It is thought that the words "not exceeding fourteen years" qualify the words "term of years," and not the words "any leasehold interest." If the term when originally granted was not more than fourteen years in duration, then even if thirteen years are still unexpired, those thirteen years are not an "interest" in land. If the term as originally granted was ninety-nine years, and one day remains unexpired, that one day is an "interest" in land. *Sed quære.*

The expression "incumbrance" includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act;

This definition is the same as the definition of "incumbrance" in the Conveyancing Act, 1881, s. 2 (vii.) down to and including the words "annual sum." It is not an exclusive definition, and does not, therefore, exclude other things not mentioned from being held "incumbrances."

The Expression "Incumbrance."—The only references in the Land Clauses to incumbrances under that designation are those contained in s. 25 (1), valuation "free from incumbrances"; s. 32 (2), "covenant to discharge an incumbrance as part of the consideration"; s. 41, paragraph "The expression 'interest,'" which "does not include . . . an incumbrance as defined by this Act."

It seems clear that for the purpose of ascertaining the amount of each of the duties, increment value duty, reversion duty, undeveloped land duty, and mineral rights duty, incumbrances on the land, or on interests in the land, are to be disregarded (see s. 25 (1) in arriving at gross total and site values).

"Incumbrance," it is submitted, includes an equitable mortgage by

§ 41. deposit of title deeds. As to whether a liability to repair a highway *ratione tenuræ* is an incumbrance within s. 21 (ii.) of the Settled Land Act, 1882, see *In re Stamford and Warrington's* (*Earl*) *Settled Estates*, [1911] 1 Ch. 648. Possibly under this Act it is a fixed charge (see p. 449).

Includes a . . . charge of . . . [an] Annuity or Annual Sum.—A rentcharge is a charge of an annuity or annual sum on land, and would therefore appear to be an incumbrance. Incumbrances are not to be deducted in arriving at any of the four values in s. 25, and therefore it is submitted that rentcharges are not to be deducted, except such rentcharges as are "fixed charges" within the meaning of this section (41) (see p. 456). Those, it is possible (but not probable), are only "rentcharges arising by operation of law, etc." See the note to the "expression 'rentcharge'" (*ante*, p. 441). That "fixed charges" are to be deducted see s. 25 (3) (*ante*, p. 287).

NOTE ON THE POSITION OF MORTGAGEES IN RELATION TO THE NEW DUTIES.

Objection to Valuation.

It is not clear that a mortgagee, whether in possession or not, is entitled to object to the original provisional valuation of the Commissioners and to appeal from the original valuation as made by them. That depends upon whether the mortgagee is a "person interested in the land" within the meaning of s. 27 (5). Under the definitions clause, s. 41, "'interest' in relation to land . . . does not . . . include any . . . incumbrance as defined by this Act." It is understood that the words "persons interested" in sub-s. (5) of s. 27 are interpreted by the Revenue authorities so as to include mortgagees, and that in fact mortgagees are always allowed to be heard on the provisional valuation.

Increment Value Duty.

1. Increment value duty is not payable on a mortgage (s. 1).
2. Neither is it payable on a transfer of mortgage (*ibid.*).
3. Where a mortgagee of freeholds, or by assignment of leaseholds, sells under his power of sale he is a transferor within the meaning of s. 4, and is responsible for increment value duty under sub-s. (4) of that section. Whether a mortgagee by demise is so liable is discussed on p. 444, *ante*. See note on paragraph "The expression 'lease.'" It is thought that he is liable. That a mortgagee is liable for increment value duty appears to be the case, even though the consequence is that the payment of increment value duty makes his security insufficient. Blackacre, belonging to A., and being building land, may have an original site value on April 30, 1909, of 1,000*l.*, and on April 30, 1912, a real site value, not ascertained, indeed, under

Exercising power of sale.

the Act, since no occasion has arisen for such ascertainment, of 2,000*l.* On that day B. may lend A. on mortgage of Blackacre 1,500*l.* There is a slump in building land in the neighbourhood, and on April 30, 1913, the site value of Blackacre has receded in value to 1,500*l.* B. on that date sells under his power of sale at 1,500*l.* Allowing the 10 per cent. under s. 3 (5) on 1,000*l.*, and there being no other deduction claimable, B., it is thought, must pay increment value duty on 400*l.*, that is 80*l.*, notwithstanding that his security is thereby made deficient. Supposing that A. died on April 29, 1913, just before B. sold, B.'s position would, it seems, have been practically the same. It is at least probable that the Crown would have had a first charge on the property for the increment value duty due on A.'s death, taking precedence of B.'s mortgage by virtue of s. 9 (1) of the Finance Act, 1904, applied to increment value duty by s. 5 of the 1910 Act. See note on p. 105. The moral is that, in advancing money on property which has risen in value since the last occasion on which increment value duty was paid, mortgagees must take into account the Crown's prior claim for increment value duty.

4. If a mortgagee being in possession leases under s. 18 of the Conveyancing Act for a period exceeding fourteen years, he is a lessor within s. 4, and under sub-s. (4) of that section is liable for the increment value duty. Leasing.

5. If he joins with the mortgagor in conveying the property to a purchaser, then (even if he receives the purchase-money or a part of it) he is not liable to pay increment value duty as a transferor under s. 4 (see s. 41, definition of "transferor"). It is perhaps not quite clear on the definition of "transferor" whether a mortgagee, who both conveys and actually receives the purchase-money, is not a transferor, but it is thought that he is not. Joining in conveyance.

6. On the death of a mortgagee who has not foreclosed, increment value duty, it is submitted, is not payable, but it is payable on the death of a mortgagor. An incumbrance is not an interest in land (see s. 41, paragraph "The expression 'interest,'" p. 446). Death.

7. A mortgagee who has foreclosed is, of course, the owner, and on a sale, or lease, by him, or on his death, increment value duty is payable.

8. The same is the case where the mortgagee has acquired a title under the Statutes of Limitations.

REVERSION DUTY.

1. A mortgagee would seem to be a lessor within the meaning of s. 13 (see definition of "lessor" in s. 41). "The expression 'lessor' includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease." He would seem to be so even if he has not gone into As a lessor.

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possession. Certainly, if he has gone into possession, he will be so. Even if he is the mortgagee of a leasehold reversion by way of demise, he is, within the definition clause, s. 41, "the person for the time being entitled to the leasehold reversion expectant on the determination of the lease." (See note on p. 444.)

Limitation of liability.

2. If the reversion has been mortgaged to him before April 30, 1909, and he has foreclosed before the lease on which the reversion is expectant determines, he is not liable to pay reversion duty in excess of the amount by which the total value of the land as ascertained under s. 25 at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure (s. 14 (5)). [See comments on this sub-section, p. 173.]

UNDEVELOPED LAND DUTY.

Freeholds.

This is payable under s. 19 by the owner. Under s. 41 "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease, or, if there are two or more such leases, the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid. It is possible that a mortgagee in possession of a freehold estate is the "owner," and liable under s. 19 to pay undeveloped land duty. This, however, must not be absolutely assumed, because it certainly seems that the scheme of the Act relating to the duty is to make the owner in the ordinary and non-legal sense of the word the person liable to pay undeveloped land duty. Further, it is against this view that s. 39 (4), which gives a mortgagee who has paid or is liable to pay increment value duty or reversion duty power to charge the same on the land, does not extend to undeveloped land duty. Nevertheless, as the duty is nowhere made a charge upon the land, it is difficult to see how the Crown is to recover the duty in case the mortgagor disappears, and the mortgagee neither forecloses nor sells, nor acquires a title under the Statute of Limitations.

Leaseholds.

The remarks in the last paragraph are *mutatis mutandis* applicable to a mortgage by assignment of leaseholds with a term unexpired of more than fifty years. But they are not applicable to a mortgage by demise of leaseholds. Under such a mortgage the lands are not "let on lease" (see above definition of "owner") to the mortgagee. A lease "does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption" (s. 41, p. 443). But if the mortgagee in possession is not the owner it would seem that the mortgagor must be. But the mortgagor is not entitled in possession, or indeed at all, to the rents and

profits (see the definition). Still he is the lessee under the lease, and this may be sufficient to make him "owner" under the definition. § 41.

The mortgagee is from the date of the mortgage entitled in law to possession of the mortgaged estate, even although the mortgage money has not become due (*Rogers* v. *Grazebrook*, 8 Q. B. 895; see also *Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513). If the words "entitled in possession" in the definition of "owner" mean "entitled to possession," it is conceivable that a mortgagee could be liable for this duty even before taking possession. It is, however, thought that a mortgagor would be the person entitled in possession until the mortgagee had actually taken possession, or at all events had given notice of his intention to do so.

MINERAL RIGHTS DUTY.

A problem similar to the last arises upon this duty. Under s. 20 (4) it is payable by the "proprietor of the minerals where the proprietor is working the minerals, and in any other case by the immediate lessor of the working lessee." The "proprietor" by s. 24 means "the person for the time being entitled in possession to the minerals or to the rents and profits thereof." If the mortgagee has gone into possession and is himself working the minerals, or is receiving the mineral rent from the working lessee, he is (possibly) liable for mineral rights duty, either as proprietor, or as the "immediate lessor of the working lessee."

POWER OF ADDING TO SECURITY.

Under s. 39 (4), where the fee simple of any land or any interest in land in respect of which increment value duty or reversion duty is charged is vested in a mortgagee who is liable to pay any sum on account of either of those duties, he is entitled to add to his security the sum for which he is so liable, including any costs or expenses properly incurred by him in respect of the payment of the duty (see note on p. 427).

Land duty. It will be observed that there is no mention in this sub-section of either undeveloped land duty or mineral rights duty, both of which, if the view above taken as to the position of a mortgagee is correct, he may possibly in certain circumstances have to pay. It is submitted that under the ordinary practice or law of the Chancery Division all sums properly paid by a mortgagee in respect of any of the duties imposed by the Act may be added to his security in the usual way.

Equitable mortgagee. The position of an equitable mortgagee will, of course, be different from that of a legal mortgagee, and will depend to some extent upon the manner in which the mortgage is created; but may be worked out in detail by the practitioner. At all events it seems clear that an equitable mortgagee by deed exercising his power of sale will be a transferor and liable for increment value duty.

In case of realisation of a mortgage security under order of the Court it will probably be the practice of the Court to provide for the

§ 41. payment of increment value duty. It is, of course, the interest of the purchaser to see that one of the three stamps mentioned in sub-s. (3) of s. 4 is on the conveyance, but this may not be considered as absolving the Court from seeing that the duty is paid. In relation to the increment value duty payable by bodies corporate or unincorporate on periodical occasions, this has in all probability been already provided for by s. 20 of the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), incorporated in this Act by s. 6 (3). (See Appendix, p. 613.)

But does not include a Fixed Charge.—Fixed charge is defined in the next paragraph. "Incumbrance" is contrasted with "fixed charge" under the Land Clauses, since "total value," the importance of which in the valuation scheme has been pointed out (*ante*, p. 288), is ascertained under s. 25 by deducting from gross value (amongst other things) the capital value of the fixed charges on the land, but not the incumbrances on the land.

> The expression "fixed charge" means any rentcharge as defined by this Act, and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land;

The expression "Fixed Charge" means, etc.—The only references in the Land Clauses to fixed charges are (a) in s. 25 (1), where the word "charge" would probably include a fixed charge; (b) in s. 25 (3), under which the capital value of "fixed charges" is to be deducted (*inter alia*) from gross value in order to ascertain total value; (c) in s. 25 (4) (*d*), under which sums paid for the redemption of fixed charges are to be deducted from total value, in order to ascertain assessable site value; (d) in s. 30 (1), in which they are probably included in the words "deductions allowed in determining any value" which are to be recorded by the Commissioners; (e) in s. 41, paragraphs "The expression 'interest'" and "The expression 'incumbrance.'"

Any Rentcharge as defined, etc.—See note on p. 441.

Any Burden or Charge arising by Operation of Law or imposed by any Act of Parliament.—A "betterment" charge before payment would be a charge imposed by Act of Parliament (see s. 36 and note). Charges obtained by, or vested in, local authorities on lands and houses for road making, and other works under the Public Health Act, 1875 (see s. 257), and local Acts, are other examples of charges falling within the definition. The charge need not be an annual one.

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Charges under the various Drainage and Improvement Acts (27 & 28 Vict. c. 114, 33 & 34 Vict. c. 56, 34 & 35 Vict. c. 84, 62 & 63 Vict. c. 46, and others), under which money may be advanced for the purpose of the drainage or other improvement of estates, and is charged on the land by way of rentcharge lasting for a limited period, are probably within the last words of the paragraph and are not "fixed charges."

Charges under Drainage and Improvement Acts.

Mortgages by a tenant for life under the powers of the Settled Land Acts, *i.e.*, Act of 1882 (45 & 46 Vict. c. 38), ss. 5, 18, 24 (4), 47; Act of 1890 (50 & 51 Vict. c. 30), s. 11, are probably also not fixed charges.

Mortgages under Settled Land Acts.

A trustee's lien on land for costs, charges, and expenses is a more disputable matter, but it is thought that it is not a fixed charge. But possibly all incumbrances within the meaning of the definition of incumbrance in s. 41 are excluded from fixed charges. If that be the case, then such sums as charges under the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 38), s. 30, and the Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 36 to 40 inclusive, would be excluded from the definition of fixed charges.

Trustee's lien.

It must be admitted that in applying to the valuation section (s. 25) the definitions respectively of "rentcharge," "incumbrance," and "fixed charge" a good many questions of difficulty will arise. Perhaps this general statement may be accurate. Burdens and charges (including portions and jointure rentcharges) which are, or are akin to, mortgages may not be deducted (s. 25 (1)). Perpetual rentcharges, and charges which are imposed by law apart from the voluntary action of the parties, appear to be fixed charges and capable of deduction. But it is felt that this is the very roughest method of summarising the paragraphs in question. Although no fixed charges are included in the word "incumbrances," yet some things which are usually considered incumbrances may possibly be fixed charges, *e.g.*, a rentcharge granted out of land as a security for money.

Difficulties of construction.

> The expression "fee simple" means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession;

Fee Simple . . . not subject to any Lease.—The qualified meaning of "fee simple" is of great importance in construing the statute. Refer to ss. 1, 2, and 3, where there are constant differences of wording according as the "fee simple of" or merely an "interest in" the land is the subject of the enactment. See notes to s. 41, paragraphs "The expression 'land,'" *ante*, p. 434; "The expression 'interest' in relation to land," *ante*, p. 446. For application of the words "fee simple" to copyhold lands see s. 40 (*b*), *ante*, p. 428.

It seems clear that a sale, a lease, or a devise of his share of the fee

§ 41. simple by a joint tenant or a tenant in common gives rise to a claim for duty only in respect of the interest sold, leased, or devised (s. 3 (3)).

> The expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where and is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease, or if there are two or more such leases the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid;

The expression "Owner."—For definitions of owners in other statutes see the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4; the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 20; the London Building Act, 1894, s. 5 (29); the Public Health (London) Act, 1891, s. 141; the Lands Clauses Act, 1845, s. 3; the Railway Clauses Consolidation Act, 1845, s. 2; the Housing of the Working Classes Act, 1890, s. 29; and other Acts.

When owners taxed as such.

The only tax imposed by the Land Clauses upon "owners" *nominatim* is the undeveloped land duty (s. 19). Increment value duty is payable by the transferor of land, or an interest in land, who may not be the owner, but a mortgagee, or a lessee for a term with less than fifty years to run, etc. (s. 4 (1)). It is payable on the passing on death of land or an interest in land, but again the person to pay is not necessarily the "owner." So reversion duty is payable by a lessor who may have a term of only twenty-one years and a day (s. 14 (2)). Further, mineral rights duty is payable not only by a "proprietor," a word which has almost the same meaning in relation to minerals as "owner" in relation to other land (compare s. 24, paragraph "The expression 'proprietor,'" *ante*, p. 265, with the paragraph of s. 41 under comment), but also by lessees with less than a term unexpired of fifty years (s. 20 (4)).

Importance of definition in operative clauses.

Nevertheless, as will be seen from the following references to the use in the Land Clauses of the word "owner," the definition of "owner" affects all land to which those clauses apply.

(a) Sect. 8. Exemption of small houses and properties in owners' occupations. Note special extension by sub-s. (4) of the term "owner" for purposes of this section.

(b) Sect. 18. Exemption of small holdings occupied and cultivated by owners from undeveloped land duty. Similar special extension of term "owner" for purposes of this section.

(c) Sect. 19. Undeveloped land duty payable by owners.

(d) Sect. 26 (2). Owners of land to make returns on original

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valuation (sub-s. 2); may require separate valuation of any part of any land under separate occupation (sub-s. (3)); may require joint valuation of land in separate occupation under certain limited circumstances (Revenue Act, 1911, s. 5, *ante*, p. 315); and may furnish estimates of value (s. 26 (3)).

(e) Sect. 27. Right of owners to object to provisional valuation and extension of definition of owner for the purposes of the section (sub-s. (7)).

(f) Sect. 28, which applies to the quinquennial valuation for the purposes of undeveloped land duty the provisions of ss. 26 and 27, but probably not those of s. 5 of the Revenue Act, 1911 (p. 315).

(g) Sect. 31 (4), relating to service of notices, etc., on owners.

(h) Sect. 40 (1) (*c*), substituting a definition of "owner" in relation to copyholds for that contained in this paragraph.

Shifting of ownership.

A person may be the "owner" to-day because his lease has fifty years and one day unexpired, but to-morrow he will have ceased to be the owner, because his lease has only fifty years to run.

Comparison between legal position of owners and lessees not owners.

The following is a comparison between the respective legal positions of a lessee with, say, a term of forty-nine years to run, who is not an owner, and the person entitled to the fee simple in reversion who is the owner.

(1) The owner can, but the lessee cannot, on the original valuation (? as to whether the last sentence of s. 26 (1) applies to quinquennial valuations under s. 28) require land held under one occupation to be split up for purposes of valuation.

(2) The owner is always bound to furnish the particulars referred to in s. 26 (2); the lessee only if he receives rent. If he only pays rent he must comply with s. 31 (1).

(3) The owner can, but the lessee cannot, require the joint valuation of contiguous property under the limitations of s. 5 of the Revenue Act, 1911 (p. 315). Probably the section in question refers only to the original site valuation and not to the quinquennial valuation for undeveloped land duty.

(4) The owner is entitled, but the lessee is not entitled, to furnish to the Commissioners his estimate of total or site value, which must be considered by the Commissioners in making their valuation (s. 26 (3)).

(5) The owner is, but the lessee is not, liable to undeveloped land duty (s. 19).

(6) The provisional valuation must be served on the owner of land (s. 27 (1)), but on a lessee only if his term comes within sub-s. (7). In other cases he must apply himself for a copy of the provisional valuation under sub-s. (5).

(7) Notices may be served on both owners and lessees in the same manner (s. 31 (4)).

(8) Both are probably persons interested within the meaning of s. 25 (4) (*b*) and (*c*), and s. 30 (2).

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(9) Both may be persons aggrieved within the appeal section (s. 33).

(10) Each must pay increment value duty on occasions arising under s. 1 in respect of his interest in the land.

(11) Each may be liable to reversion duty (s. 13 (2)), and to mineral rights duty (s. 20 (4) and 21).

Position of reversioner who is not owner.

The position of the person entitled to the fee simple reversion expectant on a term with more than fifty years to run (the lessee under which is therefore the owner) appears to be as follows. (a) He has an interest in land on the sale or passing on death of which increment value duty is payable (see s. 41, paragraph "The expression 'interest,'" *ante*, p. 446). (b) He is not liable for undeveloped land duty (s. 19). (c) He cannot require separate valuation under s. 26 (1), or joint valuation under s. 5 of the Revenue Act, 1911 (p. 315). (d) As he receives rent he is bound to make the return referred to in s. 26 (2). (e) He is not entitled to have his estimate of the value of the land considered under s. 26 (3). (f) He is an owner within the meaning of s. 27 as to service of and objection to provisional valuation, by virtue of sub-s. (7) of that section. (g) He is a person interested within s. 25 (4) (*b*) and (*c*), and s. 30 (2). (h) He may be a person aggrieved within s. 33 (1). (i) He may become liable to reversion duty (s. 13 (2)). (j) He may be liable to mineral rights duty (s. 21), and annual increment value duty (s. 22 (3)).

ILLUSTRATIONS.

1. On January 1, 1870, A., the owner in fee of Blackacre, leases it to B. for ninety-nine years. On January 1, 1880, B. subleases to C. for the residue of the term of ninety-nine years, less one day. On January 1, 1912, C. is the owner. He has on that day a term unexpired of fifty-seven years, less one day.
2. Referring to example No. 1, on January 1, 1919, the term having on that day not more than fifty years to run, A. becomes and is thenceforward the "owner."
3. A., the tenant for life of a settled estate, demises Blackacre to B. for thirty-five years. A. is the owner.

Equitable tenant for life or years.

In the case where there is an equitable tenant for life or years in actual possession, the legal estate being vested in trustees, it appears doubtful who is the owner. The analogy of the meaning of owner in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4, does not help to any conclusion, since the definition in s. 4 of that Act expressly includes agents and trustees. On the whole it is thought that the tenant for life is the owner in such a case, but the opinion is hazarded without complete confidence. Supposing the trust is of such a nature that the equitable tenant for life is entitled to be put into possession and is so put by the trustees, and is himself receiving the rents and profits and

managing the property, who in such a case is the owner within the Act? It is suggested that the tenant for life is in that position. (See cases cited on p. 424.) As to mortgagees being owners, see p. 454. Compare *Tottenham Local Board* v. *Williamson* (1893), 62 L. J. Q. B. 322, noting difference between s. 4 of the Act of 1875 and this paragraph. § 41.

Let on Lease.—See definition of "lease" (*supra*, p. 443).

The expressions "lessor" and "lessee" include an underlessor and underlessee; and the expression "lessor" includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease; and the expression "lessee" includes executors, administrators, and assigns of the lessee;

Compare this paragraph with the paragraphs of the same section 41 commencing "The expression 'lease'" (*ante*, p. 443), "The term of a lease" (*ante*, p. 444), "The expression 'interest'" (*ante*, p. 446), "The expression 'owner'" (*ante*, p. 458). From these various paragraphs, read with the operative clauses of the Act, it is clear (a) that increment value duty is payable on the grant, transfer on sale, and passing on death of leases or underleases, and on periodical occasions in respect of the holding of leases or underleases by bodies corporate or unincorporate (see ss. 1 to 6 inclusive); (b) that reversion duty is payable by the reversioner for the time being, on the determination of either a lease or underlease, under s. 13, subject of course to the exemptions conferred by s. 14; (c) that undeveloped land duty is payable by a lessee or underlessee when such person is an "owner" (s. 19); (d) that mineral rights duty and annual increment value duty may be payable by lessors or underlessors (s. 20 (5), s. 21, s. 22 (5)); (e) that in all these cases the heirs, executors, administrators, or assigns, as the case may be, stand in the shoes of and are entitled to the rights and subject to the obligations of the original lessor and lessee. In the case of the "lessor" the words "the person for the time being entitled to the reversion" meet the case of a settled reversion, and in the case of the lessee the word "assigns" meets the case of the settlement of the lease.

The expressions "transferor" and "lessor" do not include any persons who join in the execution of the instrument by which the transfer or lease is effected, or agreed to be effected, for the purpose only of conveying any estate vested in them as trustees or incumbrancers, or of acknowledging the

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45 & 46 Vict. c. 38.

receipt of the consideration money, or of giving consent, and sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics) shall apply to the exercise of the powers of an owner under this Part of this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act;

The expressions "Transferor" and "Lessor" do not include, etc.—A trustee or mortgagee in whom a legal estate is outstanding, and who joins to convey it to a purchaser, on a sale by the persons beneficially entitled to the property, whether the instrument under which the legal estate was vested in him is that immediately under which the vendors derive title, or an earlier instrument, is not a transferor, and is not liable to pay increment value duty under s. 4 (1). A mortgagee under an existing mortgage who joins in a conveyance by the mortgagor is not a transferor, even although, it is submitted, he receives the purchase-moneys in discharge or part discharge of his debt.

The trustees of a settlement, whether acting under the powers of the Settled Land Acts or of the settlement itself, who merely join for the purpose of receiving and acknowledging the receipt of purchase-moneys, are not transferors or lessors (see further notes to s. 39, p. 412). A tenant for life who joins in a conveyance by trustees under powers in a will or settlement for the purpose of testifying his consent to the sale, as required by the terms of the power or of s. 56 of the Settled Land Act, 1882, is not a transferor.

Similar examples might of course be given in respect to leases. Where the exercise of the leasing powers conferred upon a mortgagor by s. 18 of the Conveyancing Act, 1881, is made, as is often the case, subject to the consent in writing of the mortgagee, it is submitted that the giving of such consent will not make the mortgagee a lessor within the meaning of s. 4 of the Act of 1910.

And Sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882, . . . shall apply.—For these sections see *ante*, p. 426, and the note thereon. The effect of the words commented upon is to give the trustees of the settlement, or if there are none, then the person appointed by the Court (subject to the directions of the Court) in the case of the land of an infant, and the committee of the estate in the case of the land of a lunatic, the same powers in relation to the exercise of the powers of an owner under this Act as such persons have in relation to the powers of a tenant for life under the Settled Land Acts. In other words, the persons who in the case of infants and lunatics have

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under the Settled Land Acts certain powers of exercising the powers of those Acts are to exercise the owner's powers under the 1910 Act. An owner's powers are, however, very limited under the 1910 Act. His obligations are more evident than his powers, and the paragraph does not state that the persons in question are subject to his obligations. Little practical difficulty, however, need be feared, since where the duties of the owner, *i.e.*, to pay undeveloped land duty (s. 19) and to make the return under s. 26 (2), are not enforceable against trustees of an infant's land, they can probably in almost all cases be carried out under the direction of the Court in proper proceedings. The powers of owners under the Land Clauses are really ancillary to their obligations. The express powers conferred by the Act upon "owners" *nominatim* appear to be limited to (a) requiring a separate valuation of part of land in a separate occupation (s. 26 (1)), and joint valuation under s. 5 of the Revenue Act, 1911; (b) requiring the owner's estimate of site or total value to be considered by the Commissioners in making their valuation (s. 26 (3)); (c) making objections to the provisional valuation (s. 27). But of course there may be many other unexpressed rights or powers which naturally arise from the implied limitations of an owner's duties, or from rights conferred in the statute upon classes of persons which necessarily include owners, such as the right to obtain particulars of the Commissioners' records under s. 30 (2), or the right to appeal as a person aggrieved under s. 33. Only experience of the working of the Act can show how far either from the point of view of the interests of the Crown or of the subject the working arrangements in relation to the taxation of infants' and lunatics land are satisfactory.

It is a little difficult to see why this clause relating to infants' and lunatics' land is tacked on to the paragraph "The expression 'transferor,'" etc., with which it appears to have little in common.

The expression "agriculture" includes the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments: and the expression "agricultural land" shall be construed accordingly.

The Expression "Agriculture."—References to "agriculture" will be found in s. 16 (2) (p. 181), s. 25 (4) (*b*) (p. 294), and the paragraph commencing "Where any works," etc. (p. 295).

The sections of the Land Clauses relating to agricultural land are as follows:—

Sect. 7 (p. 130), giving exemption from increment value duty to agricultural land having no higher value than it market value for agricultural purposes.

§ 41. Sect. 8 (2) (p. 138), wholly exempting small agricultural holdings in the owner's occupation from increment value duty.

Sect. 14 (2) (p. 166), exempting land being agricultural land at the determination of a lease from reversion duty.

Sect. 16 (2) (p. 181), providing in effect that buildings for the purposes of agriculture, other than dwelling-houses, glasshouses, or greenhouses, do not, like buildings, for the purposes of any other business, trade, or industry, exempt the land from liability to undeveloped land duty, and similarly use for agriculture does not, like use for any other business, trade, or industry, confer such exemption.

Sect. 17 (1) and (2) (p. 194), providing that undeveloped land duty is only to be charged on agricultural land of which the site value exceeds 50*l.*, and then only on the amount by which the site value of the land exceeds the value of the land for agricultural purposes.

Sect. 17 (5) (p. 201), giving an owner exemption from undeveloped land duty on agricultural land during tenancies existing at the passing of the Act, until the owner (landlord) is able to determine such tenancies.

Sect. 18 (p. 203), giving complete exemption from undeveloped land duty to small agricultural holdings occupied by their owners.

Sect. 25 (4) (p. 294), excepting from the expenditure for the purposes of business, trade, or industry, the value of which may be deducted from total value in order to arrive at "assessable site value," expenditure for the purpose of agriculture, except so far as such expenditure has improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture.

Sect. 26 (1) (p. 309), requiring, on the original valuation of agricultural land, that its value shall be found for agricultural purposes where that value is different from its site value.

Includes, etc.—The first point to consider is what land is "agricultural land" under the Land Clauses. Clearly the definition is not an exclusive definition. There is no statutory definition of agriculture in the Interpretation Act, 1891. The following are definitions contained in two of the most recent authoritative dictionaries.

> The science and art of cultivating the soil, including the allied pursuits of gathering in the crops, and rearing live stock, tillage, husbandry, farming in the widest sense; (b) restricted to tillage (rare). (Murray's New English Dictionary, Clarendon Press, 1888.)
>
> The art or science of cultivating the ground, including the harvesting of crops, and the rearing and management of live stock, tillage, husbandry, farming. (Webster's International Dictionary, Bell & Co., 1890.)

Coupling these dictionary definitions with the above paragraph of s. 41, it seems clear that agricultural land not only includes land employed in tillage, in which sense the term "agricultural land" appears

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to be used in the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28) (see s. 48, paragraph "Holding"), but also land employed in "agriculture" in the wider sense as defined or explained by the dictionary quotations.

It is not thought that the definitions contained in the following statutory provisions throw much light upon the meaning of the term "agricultural land" in the Act of 1910, since the object and scope of the Acts from which they are taken are different from those of the Finance Act, 1910.

Sect. 22 (1) (*g*) of the Finance Act, 1894 (57 & 58 Vict. c. 30), provides: "Unless the context otherwise requires . . . 'agricultural property' means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farmhouses, and mansion houses (together with the lands occupied therewith), as are of a character appropriate to the property."

Sect. 16 of the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), provides: "That unless the context otherwise requires . . . the expression 'agricultural land' means any land used as arable, meadow or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure grounds or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse."

Sect. 61 (1) of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), provides: "That for the purposes of this Act the expressions 'agriculture' and 'cultivation' shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like."

The Use of Land as Meadow, etc.—The words of the paragraph "includes the use of land as meadow," etc., point to the conclusion that only land actually used or employed in agriculture is agricultural land. If this is the case, a vacant piece of grass land, available for pasture, but not used as such, with a value for building purposes of over 50*l.* per acre, considerably in excess of its value as pasture land, will not, under s. 17 (2), be entitled to exemption from undeveloped land duty up to its value for purposes of pasture only.

A question may arise as to whether the partial exemption conferred by s. 17 (2) from undeveloped land duty can be claimed for lands used as a park, in respect of which complete exemption cannot be claimed under s. 17 (3) (*a*), (*b*), or (4). The park, whilst contributing to the amenities of the mansion, may also be profitably employed in pasturing cattle. It is not thought that in order to secure the exemptions conferred on agricultural land by ss. 7 and 17 the primary object of

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Where, however, an agricultural use of the land is really incidental to the main use of the property, as where live stock are put on golf links to keep down the grass, it is thought that the land could not be called "agricultural land."

For the difficult question as to whether the "market value of the land at the time for agricultural purposes only," under s. 7, and the "value of the land for agricultural purposes," under s. 17 (2) respectively, include in those values the value of the buildings for agricultural purposes on the land referred to, see a note to s. 7 (p. 131).

Or Orchard.—A more difficult question is raised by the word "orchard." It is of course clear that an orchard detached from a house, which is cultivated as an orchard, is agricultural land. But a question may be raised as to whether an orchard attached to a house, the fruit of which is not sold by the occupier, but is consumed by his household, or given away, is "agricultural land" so as to be entitled to the partial exemption conferred by s. 17 (2). It must be assumed, of course, that complete exemption cannot be claimed for the orchard, under s. 17 (4), as being "land not exceeding an acre in extent occupied together with a dwelling-house." It is further probable that an orchard is not land "being a garden or pleasure grounds," so as to fall within the five-acre exemption of the same sub-section. Is it nevertheless entitled to exemption by the effect of s. 41? Or does such a case as *Viger* v. *Dudman* (L. R. 6 C. P. 470; 7 C. P. 72) apply to it? In that case pasture lands were made practically exempt from a modus commuting tithes under a private Act until "converted into tillage," and then were made subject to a substantial rent in lieu of tithe. A house was built on

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the land, and a garden and orchard made on the field, and it was held by the Court of Common Pleas and the Exchequer Chamber that the land had not been converted into "tillage," Willes, J., in his judgment, which was approved by the Exchequer Chamber, saying that the "gardens and orchards" were no more than the reasonable accessories of such a house as that now in question, and not to be classed amongst such gardens and orchards as might constitute an employment of the land for agricultural purposes. "They are not for example like a market garden . . . the garden and orchard were mere accessories of the house." It is submitted, though the matter is one of difficulty, that the actual use and employment of the land are the determining consideration, and that if there is a *bonâ fide* cultivation of an orchard for the purpose of growing fruit, the land is by virtue of s. 41 made within the meaning of the Act agricultural land, notwithstanding that the fruit is not sold for profit, and that the orchard adds, and was made for the purpose of adding, to the amenities of the house.

Or Woodland.—By the term "woodland" is understood to be meant land on which trees or underwood are cultivated for the purpose of producing a profitable commodity; see *Harrison* v. *Harrison*, 28 Ch. D. 220; *Dashwood* v. *Magniac*, [1891] 3 Ch. 306. It is suggested that it is quite immaterial whether in fact there is or is not a profit on the operations, or even whether the cultivation is carried on partly because it adds to the amenities of the residence.

The Rating Act, 1874 (37 & 38 Vict. c. 54), which contains in ss. 3, 4, 5, 10, and 12 certain provisions with regard to the rating of land used for "a plantation or wood, or for the growth of saleable underwood," does not, it is thought, throw any light upon the question as to what must be the nature of the "woodland," and of the cultivation applied to it in order to bring it within the definition of agricultural land in s. 41.

Or for Market Gardens, Nursery Grounds.—The position of land used for market gardens or nursery grounds appears to be as follows. Being agricultural land, increment value duty is by virtue of s. 7 not chargeable on an occasion arising under s. 1, so long as the land in question has no higher value than its market value at the time for agricultural purposes only. But directly the land reaches such higher value, increment value duty becomes payable as from the original site valuation.

ILLUSTRATIONS.

1. The original site valuation of Whiteacre, a pasture field, is 200*l.*, which is its value as agricultural land. After April 30, 1909, it is converted into a market garden, and then on January 1, 1912, it is sold. The site value on the occasion of the sale is 300*l.*, which is in fact its then market value for the purposes of a market garden, *i.e.*, "for agricultural purposes only." In other words,

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no larger sum than 300*l.* would be realised on the sale of Whiteacre without restrictions, other than those implied by law, as to the uses to which it may be put. Increment value duty is not payable on this sale.

2. On January 1, 1915, Whiteacre is again sold, and this time its site value is found to be 500*l.* The additional 200*l.* is obtained since it is thought that Whiteacre is now within the area of building land, that is, has a value "higher than its market value at the time for agricultural purposes only." Increment value duty is therefore payable on this sale, but it is payable (leaving out of consideration for simplicity of illustration's sake the 10 per cent. allowance under s. 3 (5)) on 300*l.*, being the increment value calculated on the original agricultural site value, and not on 200*l.*, the excess of building over agricultural site value.

Market gardens and undeveloped land duty.

As to undeveloped land duty, the position of market gardens is as follows. So long as the site value of the land does not exceed 50*l.* per acre, undeveloped land duty is not payable (s. 17 (1)). It may be that the true agricultural value is 40*l.* per acre, and that there is a site value for building purposes of 50*l.* per acre. Nevertheless there is complete exemption from the duty. If the site value of the market garden exceeds 50*l.* per acre, then undeveloped land duty is chargeable upon the amount by which the site value of the land [unrestricted as to its use] exceeds the value of the land for agricultural purposes (s. 17 (2)). It is thought that the last-mentioned "value" is meant literally, and that the comparison is of site value with the value, *not the site value* of the land for agricultural purposes.

ILLUSTRATIONS.

(a) The original site value of Whiteacre, a pasture field, is 200*l.*, which is its value as agricultural land. After April 30, 1909, it is converted into a market garden, and on April 30, 1914, at the first quinquennial valuation under s. 28, its value as a market garden, *i.e.*, its value for agricultural purposes only, is 400*l.* It would not sell for more than 400*l.* (*i.e.*, its site value does not exceed that sum) for building purposes. Undeveloped land duty is not payable on Whiteacre.

(b) On April 30, 1919, the occasion of the next quinquennial valuation, the site value of Whiteacre is 800*l.* Its value as a market garden has, however, gone up to 500*l.*, owing to the same advance of the neighbouring town, which gave it a building value in excess of its market garden value. Undeveloped land duty is payable on 300*l.*, *i.e.*, "on the amount by which the site value of the land exceeds the value of the land for agricultural purposes."

The foregoing remarks and illustrations will show that it is thought that the increased value of land for market garden and for all other agricultural products arising from a growth of population and the

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extension of towns is an increase in *agricultural* values, which, instead of increasing the liability of land to undeveloped land duty, has the contrary effect and serves to decrease that liability by limiting the margin between agricultural and building values. Thereby the liability for undeveloped land duty (s. 17 (2)), but not for increment value duty (s. 7), is reduced.

Glasshouses, greenhouses.

There can, it is thought, be no question that the land on which glasshouses and greenhouses, whether actually buildings or not, are erected or placed in connection with market gardens is agricultural land, and as such entitled to the limited exemptions of s. 7 and s. 17 (2). The case of *Smith* v. *Richmond* ([1899] A. C. 448), in which the House of Lords held that glasshouses, *if buildings*, must under the Agricultural Rates Act, 1896, be rated as buildings, and not as "agricultural land," which expression included (as in the Finance Act, 1910) market gardens and nursery grounds, has, it is submitted, no bearing on the Act of 1910. The object of the Agricultural Rates Act was to differentiate rating as between agricultural land and buildings whether agricultural buildings or buildings not agricultural (see s. 5). If the authority of cases decided on other Acts of Parliament with objects not similar to the Finance Act, 1910, be of value, *Purser* v. *Worthing Local Board* (18 Q. B. D. 818) may be referred to. The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (*b*), provides that occupiers of "land used as arable, meadow, or pasture ground only, or as woodlands, *market gardens or nursery grounds*," etc., are to be assessed for the general district rate at one-fourth only of the net annual value, and not as other hereditaments at their full net annual value. In *Purser* v. *Worthing Local Board* it was held that the greenhouses occupied by a market gardener and nurseryman, covering about one and a quarter acres of land, constituted a market garden or nursery ground within the meaning of s. 211 (1) (*b*). "I think that the land is not the less used as a market garden because these glasshouses have been placed upon it" (*per* Lord Esher, M.R., in the Court of Appeal, 18 Q. B. D. at p. 822).

Exempted from undeveloped land duty.

It will not be forgotten that the erection of glasshouses or greenhouses exempts the land on which they stand (whether agricultural or not) from undeveloped land duty (s. 16 (2)). The point is therefore only of importance in relation to increment value duty, and possibly in relation to reversion duty. If, contrary to the view here taken, land on which glasshouses and greenhouses stand is not agricultural land, increment value duty will be payable on any increase in value, whether the actual value of the land at the time when the occasion happens does, or does not, exceed its value for agricultural purposes only. In such a case no deduction could be made for expenditure in improving the quality of the soil (s. 25 (4) (*b*)). Reversion duty might also in a proper case be payable, since the exemption conferred upon land which is at the time of the determination of the lease agricultural land (s. 14 (2)) could not be claimed. But for the reasons already stated it is submitted that land covered by greenhouses or glasshouses is agricultural.

§ 41. The question already discussed on pp. 128 and 459, whether the value of agricultural land within the meaning of s. 7 (exemption from increment value duty of agricultural land) includes the value of the buildings, arises in an acute form in the case of glasshouses and greenhouses. If the buildings are to be valued along with the soil the area of exemption will be greatly extended. It may well be that the agricultural value of the land is more than doubled by the inclusion in its value of the buildings.

See the Agricultural Holdings Act, 1908, s. 48, for an unilluminating definition of "market garden."

Allotments.—Definitions of or references to allotments are contained in various Acts of Parliament. By s. 31 of the General Inclosure Act, 1845 (8 & 9 Vict. c. 118), in enclosing waste land the Commissioners may require as one of the terms of enclosure "the appropriation of such an allotment for the labouring poor as the Commissioners shall think necessary."

The Allotments Act, 1887 (50 & 51 Vict. c. 48) (now repealed by the Small Holdings and Allotments Act, 1908, s. 62), limited allotments to be provided thereunder to one acre (s. 7 (3)), and enacted that the expression "allotment" should include a field garden (s. 17).

Under the Allotment and Cottage Garden (Compensation for Crops) Act, 1887 (50 & 51 Vict. c. 26), s. 4, "allotment" means "any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm."

The Allotment Rating Exemption Act, 1891 (54 & 55 Vict. c. 33), s. 2, contains a definition almost identical with the last-mentioned Act.

Under the Small Holdings and Allotments Act, 1907 (7 Edw. 7, c. 54), s. 21 (1), five acres are to be substituted for one acre in s. 7 (3) of the Allotment Act, 1887, as the limit of the extent of an allotment which may be held by one person.

Under the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 27 (3), the limitation of allotments to five acres is repeated, but with an exception, and it is again enacted (s. 6 (1)) that "allotment" shall include a field garden.

Under the Housing and Town Planning Act, 1909 (9 Edw. 7, c. 44), s. 73 (4), the expression allotment means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

It is not thought that the term "allotment" is confined to any one of the specific statutory definitions which have been referred to. Probably any piece of land, whatever may be the area, cultivated with a view of obtaining produce therefrom by members of the labouring classes or persons in allied positions would be held an allotment. Whethersuch a piece of land cultivated by persons not of the labouring or allied classes would be considered an allotment may be doubted (see *Cooper* v. *Pearse*, [1896] 1 Q. B. 562). But it might be agricultural

land, even though it was not an allotment. The point is hardly likely to arise. The probable object of the insertion of the word "allotment" in clause 41 is to signify that allotments of the various natures referred to are not prevented from being considered agricultural land because they are allotments. § 41.

SECTION 42.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires :— § 42. Application of Part I. to Scotland.

(1) The expression "land" does not include teinds, titles or offices of honour, or any servitude, superiority, casualty, feu duty, or ground annual, or any incorporeal heritable right;

The expression "rent" includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton or otherwise; and for the purpose of section thirty-one of this Act includes feu duty and ground annual;

The expression "rentcharge" includes feu duty and ground annual;

The expression "interest" in relation to land includes the landlord's right of reversion to the subjects let on the determination of the lease, but does not include teinds, servitude, superiorities, any interest in expectancy, whether vested or not, heritable securities, bonds of provision, jointures, annuities, or other capital or annual sums, or other debts secured upon heritage, or any sporting right, or any lease thereof;

The expression "owner" means the fiar of the land, except that where land is let on lease for a term of which more than fifty years are unexpired, the tenant under the lease shall be deemed to be the owner, and includes an institute or heir of entail in possession;

The expression "freeholder" includes "fiar," "life-renter of land settled within the meaning of the Finance Act, 1894," and "institute or

§ 42.

heir of entail in possession," and the expression "freehold" shall be construed accordingly;

The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage, and the expression "incumbrancer" shall be construed accordingly;

"Servitudes" shall be substituted for "easements" and shall be deemed to include public rights;

"Local Government Board for Scotland" shall be substituted for "Local Government Board";

The expression "borough or urban district" means a royal, parliamentary or police burgh;

A reference to an appeal to quarter sessions shall not apply;

"Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in subsections (2), (3), and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court, and sheriff court shall be substituted for county court, and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final.

57 & 58 Vict. c. 30.

(2) Any order of a referee as to expenses shall be enforceable as a recorded decree arbitral.

(3) Subsection (2) of section two of this Act shall be construed as if after paragraph (*d*) thereof the

following paragraph were added (that is to say):— § 42.

(*e*) where the occasion is the grant of any feu of the land or the creation of any ground annual thereon, the value of the fee simple of the land calculated on the basis of the value of the consideration for such grant or creation, by way of feu duty, ground annual or otherwise.

Where increment value duty falls to be collected on a feu contract or feu charter or a contract of ground annual, it shall be paid by the person by whom or on whose behalf the feu is granted or the ground annual is created, and for the purposes of this Part of this Act that person shall be deemed to be the transferor or the transferor on sale and the contract or charter to be the instrument, and the expressions "transfer" and "transfer on sale" shall be construed accordingly.

The expressions "lessor" and "lessee" include a sub-lessor and sub-lessee and the heirs, executors, administrators, and assigns of a lessor and lessee respectively.

(4) Where arrangements are made under section four of this Act for dispensing with the presentation of any instrument or particulars thereof, it shall be the duty of the keeper of the general register of sasines, and of the respective keepers of burgh or other local registers, to furnish to the Commissioners particulars of instruments presented for registration or registered in their respective registers as may be prescribed by regulations of the Commissioners, and in such case the provisions of subsection (3) of section four shall not apply.

PART III.

DEATH DUTIES.

Sects. 55, 56, and 59 to 62 inclusive contain certain provisions relating to death duties which affect increment value duty payable on death.

SECTION 55.

§ 55. Limitation of relief from estate duty in respect of settled property.

55.—For the purpose of any claim to relief from estate duty under subsection (2) of section five or subsection (1) of section twenty-one of the principal Act,* in the case of persons dying on or after the thirtieth day of April, nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

See note on p. 67 as to the bearing of this section on increment value duty.

SECTION 56.

§ 56. Power to transfer land in satisfaction of estate duty, settlement estate duty, or succession duty.

56.—(1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

* The Finance Act, 1894.

Whether this section applies to increment value duty or not depends upon whether it is a provision as to the assessment, collection, or recovery of estate duty under the Finance Act, 1894 (see s. 5 of the 1910 Act and notes on pp. 91 and 119). It is thought that it is such a provision. § 56.

SECTION 59.

59.—(1) In the case of a person dying on or after the thirtieth day of April, nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (*a*) of subsection (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (*c*) of subsection (1) of section two of the principal Act),* subsection (3) of section two of the principal Act,* and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months: § 59. Provision as to gifts and dispositions inter vivos.

Provided that this section shall not apply to any gift inter vivos, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April, nineteen hundred and eight, or made or effected for public or charitable purposes.

This section is material to the subject of increment value duty, because it alters one of the events upon which a claim for that duty arises on death. It has already been seen (see notes to s. 1, p. 19) that certain gifts of a voluntary nature (*e.g.*, voluntary transfers or surrenders of land) made by a person within twelve months preceding his death give rise to a claim by the Crown on his death for increment value duty from the donees. That period of twelve months is by this section extended to three years. But under the proviso gifts made before April 30, 1908, are exempted from the burden of this section; that

* The Finance Act, 1894 (see Act of 1910, s. 96 (3)).

§ 59 (1). is, after the expiration of twelve months from the gift the donees are safe from any claim for increment value duty arising from the death, after that period, of the donor. If the donor dies within twelve months from the date of the gift, the donees are liable to such a claim under the law as existing before the Finance Act, 1910.

Further gifts made or effected for public or charitable purposes whether made before or after April 30, 1908, are wholly unaffected by this section. In respect to them the law remains as enacted by the statutory provisions mentioned in the text, as applied by ss. 1 and 2 of this Act (see pp. 2 and 18); that is, if the donor dies within twelve months from making them they are liable to increment value duty.

"Public purposes" has, it seems, a wider signification than "charitable purposes," and may include objects which are not charitable (see *Thomson* v. *Shakespear*, 29 L. J. Ch. 276; *In re Nottage, Jones* v. *Palmer*, [1895] 2 Ch. 649; and note on charitable purposes, *ante*, p. 392). For the purpose of calculating the increment value duty on such gifts it is thought that the site value must be taken as at the date of the death (Finance Act, 1894, s. 7 (5)), and not at that of the gift.

(2) So much of paragraph (*c*) of subsection (1) of section two of the principal Act* and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

Shall not apply to Gifts which are made in Consideration of Marriage.—It had been held that even gifts made in consideration of marriage were, in case of the donor's death within twelve months, liable to estate duty by virtue of the paragraph referred to (*Attorney-General* v. *Holden*, [1903] 1 K. B. 832).

The application of this state of the law to increment value duty would but for this sub-section be that if a father, on the marriage of his son, voluntarily transferred an estate to trustees upon trust for his son and the son's wife and children, and died at any time within three years after the transfer, the estate would be property passing on the death of the father within the meaning of paragraph (*c*) of sub-s. (1) of s. 2 of the Finance Act, 1894, and liable as well under that Act to estate duty as

* The Finance Act, 1894.

under ss. 1 and 2 of this Act to a claim for increment value duty. This sub-section renders the subject-matter of such gifts free of claims for duty under both Acts. A gift, including a transfer of land, if made in consideration of marriage, is not now liable to estate duty or increment value duty if the donor dies the day after making it. It is immaterial whether the gift is made by one of the consorts or by a third party. § 59 (2).

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

The case contemplated might conceivably affect the subject of increment value duty, and an illustration may therefore be given to show the meaning of the sub-section.

A. transfers by deed an estate to his son B., but remains in possession, and keeps for his own (A.'s) use the rents and profits. On A.'s death a claim would arise under s. 2 (1) (*c*) of the Finance Act, 1894, incorporating s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Customs and Inland Revenue Act, 1889, and s. 11 of the Finance Act, 1900, for estate duty, and under s. 1 (*b*) of this Act (incorporating s. 2 (1) (*c*) of the Finance Act, 1894, with its amended incorporations) for increment value duty. If, however, after receiving the rents A., at least three years before his death, gave them up to B., whether, it is thought, by formal deed, or simply by not taking them, and in either case allowing B. to take them for his own benefit, so that B. enjoyed the whole benefit of them for that period "to the entire exclusion of A.," this sub-section would apply, and the property would not be deemed to pass on A.'s death, and no claim would therefore arise on that occasion for either estate duty or increment value duty.

§ 59 (3). See further for the application of this sub-section to s. 11 of the Finance Act, 1900, *ante*, p. 475, and note thereon. See also the notes to s. 1, *ante*, pp. 18 and 19).

SECTION 60.

§ 60. Amendment as to value of property.

60.—(1) In the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the proviso to subsection (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

Sub-s. (5) of s. 7 of the Finance Act, 1894 (the principal Act), is as follows :—

> **s. 5.** The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased.
>
> Repealed proviso. [*Provided that, in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act*, 1853, *and making a deduction for expenses of management not exceeding 5 per cent. of the annual value so assessed.*]

This proviso affects the method of valuing purely agricultural land (*i.e.*, land where no part of the principal value is due to the expectation of an increased income from such property) for estate duty ; but because such land "has no higher value than its value for agricultural purposes only" (see s. 7), it does not affect valuation on death under ss. 2 (2) (*c*) and 5, so far at least as increment value is concerned.

See also the Finance Act, 1911 (1 & 2 Geo. 5, c. 48), as to the principal value of cottages, *post*, p. 621.

(2) In estimating the principal value of any property under subsection (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the Commissioners

that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account. § 60 (2).

In estimating the Principal Value.—This sub-section applies to valuations for increment value duty under s. 2 (2) (*c*) and s. 5 as well as to valuations for estate duty. Does it mean that if, in fact, the whole of the property is, under the express directions of the will, sold at once, at prices less than would have been realised by a gradual realisation, estate duty and increment value duty are to be paid on the hypothetical prices which might have been obtained by a gradual sale? It is thought not; and that the sub-section relates only to cases where the property has not been sold. For the "principal value" see note on sub-s. (1) of this section.

Where it is proved . . . that the Value of the Property has been depreciated by reason of the Death of the Deceased.—It is not thought that this sub-section has in substance much bearing upon increment value duty, since if any personal element of value is included in total or principal value under one of the valuations referred to in s. 2 (2) (*c*) and (*d*), then by virtue of s. 25 (4) (*d*), the words "goodwill or any other matter which is personal to the owner, etc.," the value of that element must, apart from this sub-section, be deducted. But of course care will be taken not to deduct the value of such things twice over, *i.e.*, once in ascertaining principal value under s. 2 (2) (*c*), and again in the deductions which must be made under the concluding words of s. 2 (2), incorporating s. 25 (4), in order to arrive at site value. The sub-section may be more important in relation to estate duty than to increment value duty.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I. of this Act, and the provisions as to appeals under that part of this Act shall apply accordingly.

The effect of this sub-section is to substitute the provisions of this Act (s. 33) for those of s. 10 of the Finance Act, 1894, in all questions relating to the valuation of real or leasehold property under that Act. An intermediate appeal, *i.e.*, to a referee, is added by this Act to the direct appeal to the High Court under the Act of 1894.

SECTION 61.

§ 61. Special provisions with respect to certain classes of property.

61.—(1) Notwithstanding anything in the last preceding section, the proviso to subsection (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

There is, of course, no increment value duty payable in respect of tenancies from year to year. Sect. 16 of the Finance Act, 1894, relates to the duty payable on small estates (see note on p. 112).

SECTION 62.

§ 62. Deduction of amount paid for increment value duty from value of estate for purposes of estate duty.

62. Where increment value duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under subsection (1) of section seven of the principal Act, for the amount of increment value duty so to be collected as if it were a debt.

This section relates rather to the subject of estate duty than to increment value duty.

SECTION 91.

§ 91. Payment of half the proceeds of the duties on land values for benefit of local authorities.

91.—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties).

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts,

audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine. § 91 (2)

Note on s. 91.—This section is suspended as from the date of the Act of 1910 by s. 16 of the Revenue Act of 1911 (1 Geo. 5, c. 2) (see p. 588), until Parliament shall otherwise determine, but not beyond the 31st day of March, 1914.

PART VIII.

SECTION 93.

§ 93. Laying of rules and regulations before Parliament.

93.—(1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commissioners of Customs and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

The following is a list of the Rules and Regulations already made under the Finance Act, 1910, affecting the subject of the new land taxation, and the reference to the page of this work where each set of such rules or regulations is printed:—

(1) Rules under s. 3 (2) as to the collection of increment value duty on the occasion of the transfer on sale or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate (*ante*, p. 53).

(2) Rules under s. 3 (3) as to the collection of increment value duty on the grant of a lease or on the transfer on sale or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate (*ante*, p. 53).

(3) Regulations under s. 4 (2) for the presentment to the Commissioners on the occasion of any transfer on sale or the grant of a lease exceeding fourteen years of the instrument by which the transfer or lease is effected or agreed to be effected, or reasonable particulars thereof, for the purpose of the assessment of duty thereon (*post*, p. 487, Appendix).

§ 93 (1).

(4) Regulations under s. 4 (5) providing, in addition to the regulations referred to under sub-s. (2) of the same section, for dispensing with the presentation of any instrument or particulars thereof, where the information can be obtained as mentioned in the sub-section, and for the payment of increment value duty by instalments where in the case of any lease or transfer, on sale, the consideration is in the form of periodical payments, etc. (*post*, p. 491).

(5) Regulations under s. 4 (6) as to the return of increment value duty on the ground that the transaction in respect of which it was paid has never been carried into execution (*post*, p. 491).

(6) Rules under s. 33 (4) made by the Rule Committee of the High Court regulating the appeal from the referee to the High Court (*ante*, p. 383).

(7) Rules under s. 33 (4) made by the Rule Committee of the county courts regulating appeals from the referee to those courts (Appendix, p. 622).

(8) Rules under s. 33 (5) to be made by the Reference Committee subject to the approval of the Treasury regulating appeals from the Commissioners to a referee (*ante*, p. 375).

It is of course clear that all rules and regulations made either by the Commissioners, the Reference Committee, or the Rule Committee must be authorised by the Act. It could not be contended that any authorities have power to dispense with or abrogate the provisions of the Act intentionally, and, if so, they cannot dispense with them *per incuriam* (see per Farwell, L.J., in *Sadler* v. *Whiteman*, [1910] 1 K. B. 868, C. A., at p. 888). The case cited was one in which certain regulations of the Commissioners of Inland Revenue respecting the registration of money-lenders made under s. 3 of the Money-lenders Act, 1900 (63 & 64 Vict. c. 51), were referred to as relaxing the stringency of the provisions of s. 2 of that Act. It is true that the actual decision of the Court of Appeal has since been reversed by the House of Lords ([1910] W. N. 193), but the dictum remains unaffected by that reversal and is of general application. This principle applies with equal force to any case in which rules may exceed a statutory power by making the burden on the subject heavier than is authorised by the Act (see also *King* v. *Henderson*, [1898] A. C. 720, a decision of the Privy Council, for a case in which a procedure rule was held *ultra vires* the statutory power).

It may perhaps be that Regulation No. 7, made under s. 4 (see Appendix, p. 489), requiring an agreement for a lease or particulars thereof to be presented for stamping with the increment value duty stamp, "without waiting for the actual lease," is not authorised, and that s. 4 (2) (see *ante*, p. 74) confers an option upon the subject of presenting either agreement for lease, or the lease, or reasonable particulars of either.

Since the foregoing note was written the decision of Mr. Justice Warrington in *Burghes* v. *Attorney-General* ([1911] 2 Ch. 139) has been delivered, and has been affirmed by the Court of Appeal, W. N.,

1911, p. 231. From such decision it appears that Form "No. 8," issued by the Commissioners under s. 31 (1) (see Appendix, p. 537), with its accompanying note of instructions, is *ultra vires* and void and need not be complied with (see note on this case, *ante*, p. 347). **§ 93 (1).**

For the construction of statutory rules and powers see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 31 and 32, which are as follows :—

s. 31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

s. 32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

SECTION 94.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary **§ 94.** Penalty for making false statement or representation.

§ 94. conviction to imprisonment for a term not exceeding six months with hard labour.

SECTION 95.

§ 95. Provision as to assessments, payments, etc. made on account of duty before passing of Act.

95.—(1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made on account of any such duty which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and if treated as such before the passing of this Act shall be deemed to have been properly so treated.

(3) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act,

but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made. § 95 (4).

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

Section 96.

96.—(1) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the Third column of that Schedule. § 96.

There appear to be no repeals by the Sixth Schedule which affect the subject of this work.

(2) Any reference to "the Commissioners" in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

(3) Part III. of this Act shall be construed together with the Finance Act, 1894. 57 & 58 Vict. c. 30.

(4) Part IV. of this Act shall be construed together with the Income Tax Acts, 1842 and 1853, and any other enactments relating to Income Tax, and those enactments and Part IV. of this Act are in this Act referred to as the Income Tax Acts. 5 & 6 Vict. c. 35. 16 & 17 Vict. c. 34.

(5) Part V. of this Act shall be construed together with the Stamp Act, 1891. 54 & 55 Vict. c. 39.

(6) Part VI. of this Act, so far as it relates to duties of Customs, shall be construed together with the Customs Consolidation Act, 1876, and the Acts amending that Act, and Parts II. and VI. of this Act, so far as they relate to duties of Excise, shall be construed together with the 39 & 40 Vict. c. 36.

§ 96 (6). Acts which relate to the duties of Excise and the management of those duties.

(7) This Act may be cited as the Finance (1909—10) Act, 1910.

Schedules 1 to 5 are concerned with various duties imposed by the Finance Act, 1910, not affecting the subject of this work.

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

There are no enactments repealed by the Schedule which affect the subject of this work.

REGULATIONS.

REGULATIONS OF COMMISSIONERS.*

FINANCE (1909—10) ACT, 1910.

Increment Value Duty.

Regulations made by the Commissioners of Inland Revenue under Section 4.

See p. 85, *ante*.

* And for notes on these Regulations, see *post*, p. 493.

Presentation of Instruments.

(1) Having regard to the provisions of the Finance (1909—10) Act, 1910, with respect to Increment Value Duty, it is necessary that, on the occasion of any transfer on sale of the fee simple of any land or of any interest in land, in pursuance of any contract made after the commencement of the Act, or on the grant, in pursuance of any contract made after the commencement of the Act, of any lease of any land, for a term exceeding fourteen years, *the transferor or lessor* shall present to the Commissioners of Inland Revenue the instrument by means of which the transfer or the lease is effected or agreed to be effected, or reasonable particulars thereof, for the purpose of the assessment of Increment Value Duty thereon. The land in question is only such as is situate within the United Kingdom. (Where a building is used for the purpose of separate tenements, flats or dwellings, the grant of a lease, or the transfer on sale of any lease, of any such separate tenement, flat, or dwelling, will not be an occasion requiring presentation of the instrument.—Section 11.)

These regulations do not apply in the case of the grant of a Mining Lease, as to which reference should be made to the special provisions contained in the Act.

(2) Under arrangements made by the Commissioners the instrument, or the required particulars thereof, may be presented at any of the following Stamp Offices:—

London (Somerset House, Wellington Street Entrance, or Telegraph Street, E.C.).
Edinburgh (Waterloo Place).
Dublin (Custom House and Four Courts).

Birmingham,	The Office of the Collector of Customs and Excise.			
Bolton	,,	,,	,,	,,
Bradford	,,	,,	,,	,,
Brighton	,,	,,	,,	,,
Bristol	,,	,,	,,	,,
Cardiff	,,	,,	,,	,,
Derby	,,	,,	,,	,,
Hull	,,	,,	,,	,,
Leeds	,,	,,	,,	,,
Leicester	,,	,,	,,	,,
Liverpool	,,	,,	,,	,,
Manchester	,,	,,	,,	,,
Newcastle-on-Tyne	,,	,,	,,	,,
Nottingham	,,	,,	,,	,,
Portsmouth	,,	,,	,,	,,
Sheffield	,,	,,	,,	,,
Southampton	,,	,,	,,	,,
Sunderland	,,	,,	,,	,,
Swansea	,,	,,	,,	,,
Wakefield	,,	,,	,,	,,
Wolverhampton	,,	,,	,,	,,
York	,,	,,	,,	,,
Glasgow	,,	,,	,,	,,
Belfast	,,	,,	,,	,,
Cork	,,	,,	,,	,,

The forms I.V.D. (A) and I.V.D. (B) referred to in these Regulations may be obtained at any of the above-mentioned offices, at any local Stamp Office, and at or through any Money Order Office authorised to transact Inland Revenue business.

See p. 493.

(3) If the instrument itself be presented the presentation should take place, if possible, after execution *by the transferor or lessor*. The instrument must be accompanied either by a copy, or by an abstract such (but containing the further particulars required) as is presented with an instrument lodged for adjudication under Section 12 of the Stamp Act, 1891. The abstract should set out fully, for purposes of identification, the description of the property sold or leased, and if the instrument contains or refers to a plan, a copy of such plan should be furnished. A full statement should be made of any easements or reservations affecting the land, of any covenant restricting its use, and of any agreement or obligation to repair, or to pay outgoings. Any covenant or undertaking or liability to discharge any incumbrance, and any covenant or undertaking to erect buildings or to expend any sums upon the property, should be set out in full. If the easement, covenant, etc., is set forth in some other document than the instrument itself, that document should be presented as well. The official form I.V.D. (A) of application for an increment value duty stamp, duly filled up and signed, should also be lodged. The official form of abstract I.V.D. (B) can be used if desired.

(4) The instrument, the abstract, and the form I.V.D. (A), when presented, will be retained by the proper Officer of the Commissioners for examination, a ticket being given, by way of receipt, to the person presenting them.

See p. 497.

(5) Assuming that the various documents or papers so presented are found on examination to contain the particulars necessary for the purpose

of enabling the Commissioners to assess the duty, and that if security, as hereafter mentioned (par. 14), has been required, such security has been given, the instrument will be impressed with one of the stamps (*a*), (*b*), (*c*) mentioned in Section 4 (3) of the Finance (1909—10) Act, 1910, and will be returned on presentation of the ticket after the expiration of the time mentioned therein. These stamps are :—

either (*a*) a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment:

or (*b*) a stamp denoting that all particulars have been delivered to the Commissioners which, in their opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security:

or (*c*) a stamp denoting that upon the occasion in question no increment value duty was payable.

(6) Where an instrument is so stamped it will, notwithstanding any objection relating to Increment Value Duty, be deemed to be *duly stamped* so far as respects that duty. But unless so stamped the instrument cannot, except in criminal proceedings, be given in evidence, or be made available for any purpose whatever.

(7) The Act (Sect. 4 (7)) provides that where any agreement for a transfer, or agreement for a lease, is stamped with one of the special stamps provided, it will not be *necessary* to stamp in a similar manner any conveyance, assignment, or lease made subsequently to and in conformity with the agreement. But, if desired, a corresponding stamp will be impressed on the conveyance, assignment, or lease, on presentation of both instruments at the selected Office. Similarly a duplicate of any instrument which has been stamped in accordance with the above section will be impressed with a corresponding stamp on both documents being produced at the Office for the purpose. See p. 494.

If, however, an agreement for a transfer is intended to be followed shortly by an actual conveyance, the Commissioners will not require the agreement, or particulars thereof, to be presented under these Regulations, but will accept the presentation in due course of the actual conveyance, or particulars thereof, as a compliance with the provisions of the Act. But an agreement for a lease, or particulars thereof, should be presented without waiting for the actual lease.

(8) The fact that an instrument has been presented under these regulations, and stamped with the appropriate stamp as regards Increment Value Duty, will not in any way affect the liability of the instrument to the ordinary Stamp Duty imposed by the Stamp Act, 1891, or any amending Act. It will be necessary therefore that the instrument, if not drawn on material duly stamped, be presented within thirty days of execution, to be impressed with the proper ordinary Stamp Duty. (Stamp Act, 1891, Section 15.) Should, however, the transferor or lessor desire to have this duty impressed at the same time as the stamp for Increment Value Duty, so as to avoid the necessity for a second presentation of the instrument, he should pay the amount of the duty when presenting the instrument, abstract, etc., at the Stamp Office selected.

(9) In the case of instruments lodged at the Head Office in London, Edinburgh, or Dublin, for adjudication under Section 12 of the Stamp Act,

1891, the application for an Increment Value Duty Stamp may be made at the same time, the application form I.V.D. (A) being accompanied by a separate copy or abstract of the instrument, any abstract to contain a full statement as regards easements, covenants, etc. The Increment Value Duty Stamp will then be impressed when the instrument is stamped with the adjudication stamp.

See p. 494. (10) Notwithstanding the exemptions from Increment Value Duty contained in Section 7 (Agricultural land), Section 8 (Small houses and properties in owner's occupation), and Section 35 (Land held by Rating Authorities), it will be necessary to present to the Commissioners any conveyance on sale, or lease for a term exceeding 14 years, of land of the description mentioned in those Sections, as the instrument will not be duly stamped unless it bears one of the special Increment Value Duty stamps mentioned in paragraph 5.

PRESENTATION OF PARTICULARS.

(11) If the instrument itself be not presented by the transferor or lessor for the purpose of the assessment of Increment Value Duty thereon, *reasonable particulars thereof*, in the form of the various documents mentioned in paragraph 3, must be furnished by him. Such particulars can be lodged at any of the Offices mentioned in paragraph 2, and a receipt will be given therefor. The transferor or lessor should at the same time lodge the form I.V.D. (A) duly filled up.

See p. 494. (12) The presentation of such particulars, in lieu of the instrument itself, will free the transferor or lessor from liability to the fine imposed by Section 4 (2) of the Finance (1909—10) Act, 1910. But the instrument will not be "duly stamped" until it bears, in addition to the ordinary Stamp Duty to which it is liable, one of the special stamps relating to Increment Value Duty mentioned in paragraph 5. Provided, however, the necessary particulars, as above, have been furnished by the transferor or lessor, the appropriate stamp will be impressed at any future date, if the instrument and the receipt for the particulars are lodged for the requisite length of time at the *Head Office* for England, Scotland, or Ireland, as the case may be.

PRESENTATION AT OTHER OFFICES.

(13) Where it is not possible or convenient to present the instrument or the required particulars at one of the stamp offices mentioned in paragraph 2 it will be open to the transferor or lessor to lodge the various documents (including Form A) at the local Stamp Office, or at any Money Order Office authorised to transact Inland Revenue business, with a request that they may be forwarded to the Head Office, in the same way as documents requiring to be stamped with the ordinary Stamp Duties may now be lodged. In such cases the examination of the documents will be made at the Head Office only, where any Increment Value Duty will be assessed, and in due course the conveyance or lease or agreement, stamped as regards such duty, will be returned to the Stamp or Post Office for delivery to the transferor or lessor on his personal application for it.

PAYMENT OF INCREMENT VALUE DUTY.

See p. 494. (14) If on the presentation of an instrument or of particulars thereof, the Commissioners have reason to consider that the occasion is one on which

a claim to Increment Value Duty has arisen, they may require security for the payment of duty, and in such a case the stamp referred to in paragraph 5 will not be impressed until the required security has been given.

(15) On an assessment of Increment Value Duty being made by the Commissioners, notice of such assessment will be given in writing to the transferor or lessor at the address furnished by him on form I.V.D. (A), and payment will be required in accordance with the terms of such notice.

(16) In the case of any lease or transfer on sale where the consideration is in the form of a periodical payment, the Commissioners may, if they think fit, allow payment of the Increment Value Duty assessed to be made by instalments in accordance with the following regulations:— See p. 495.

(I.) Where the consideration consists wholly of a periodical payment,

The duty shall be payable by five equal annual instalments, and the first instalment shall fall due one year after the date of the grant of the lease or the transfer of the interest, and the subsequent instalments on the same date in each successive year.

(II.) Where the consideration consists partly of a lump sum payment and partly of a periodical payment,

(*a*) There shall become due and payable at the date of the transfer or grant of the lease an amount bearing to the whole duty to be collected the same proportion as the lump sum bears to the total present value of the consideration calculated on the 4 per cent. tables.

(*b*) The balance shall be payable by instalments of the same amounts and at the same times as if the periodical payment constituted the whole of the consideration, and the balance were the whole of the Increment Value Duty to be collected.

(III.) In any case in which the person liable to the payment of any Increment Value Duty may and does elect to pay such duty by instalments, he shall furnish security to the satisfaction of the Commissioners for the payment of the whole amount of the duty payable.

(IV.) If any person, on being required by the Commissioners to furnish such security, fails to do so within two months he shall forfeit his right to pay the duty by instalments, and the whole of the duty shall be deemed to be due on the expiration of two months from the date on which notice was given by the Commissioners of their requirement.

(V.) If any instalment remains unpaid for a period of thirty days after it falls due, or if the person liable to the payment dies or becomes bankrupt, the whole balance of the duty unpaid shall forthwith become due and payable.

(VI.) For the purposes of these rules the term "interest in land" shall be deemed to include the "fee simple of the land."

(VII.) Where the duty due on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due will be remitted, and in that case the amount of duty which, under Section 4 of the Finance (1909—10) Act, 1910, is deemed to have been paid, will be reduced by the amount of the instalments so remitted.

(17) In any case where Increment Value Duty shall have been paid under the provisions of Section 4 of the Finance (1909—10) Act, 1910, but the See p. 495.

transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty will be returned to the transferor or lessor on his making written application to the Commissioners, the application being supported by a statutory declaration setting forth the circumstances under which the repayment is claimed. The application must be made within two years after the payment of the duty. In any case in which arrangements have been made for payment by instalments, the two years will run from the date on which the last instalment was paid.

CORRESPONDENCE.

(18) Should occasion arise for correspondence in connection with the presentation of an instrument or the delivery of particulars, the letter should be addressed to the Secretary, Inland Revenue, Somerset House, London, W.C.; or to the Comptroller of Stamps and Taxes, Edinburgh, or to the Comptroller of Stamps and Income Tax, Dublin, as the case may be, the envelope being marked in the left-hand corner "Increment Value Duty."

SCOTLAND.

(19) In Scotland, paragraphs 1 to 15 of the above Regulations shall not apply to instruments presented for registration in the General Register of Sasines or in any Burgh or other local register, and in lieu thereof the following regulations shall apply:—

(i.) *Where an instrument* is presented for registration in the General Register of Sasines or in the Burgh or other local register it shall not be necessary for the transferor or lessor or other accountable party to present such instrument to the Commissioners or furnish them with "reasonable particulars" thereof.*

(ii.) Nothing in these Regulations shall affect the liability of the instrument to the ordinary stamp duty imposed by the Stamp Act, 1891, or any amending Act.

(iii.) Where the Commissioners have reason to consider that the occasion is one on which a claim to Increment Value Duty has arisen, they may require security for the payment of the duty.

(iv.) On an assessment of Increment Value Duty being made by the Commissioners, notice of such assessment will be given in writing to the transferor or lessor and payment will be required in accordance with the terms of such notice.

IRELAND.

(20) In view of the special provisions of Section 4 (5) of the Finance (1909—10) Act, 1910, and of the arrangements and Regulations made thereunder, conveyances on sale of lands *to which the Land Purchase (Ireland)*

* Observe that (*a*) "Instrument" means any instrument executed on the occasion of a transfer on sale of land or interest in land or the grant of any lease for a term exceeding 14 years or any feu of land or the creation of any ground annual; and that (*b*) the expression "transferor" includes the person by whom or on whose behalf a feu is granted or a ground annual created (*see* Section 42 (3)).

Acts apply will, on presentation to the Registrar of Titles in the ordinary course, and subject to the provisions contained in paragraph 14 of these Regulations, be impressed with the appropriate stamp denoting that the necessary particulars have been delivered to the Commissioners.

With the above exception, these Regulations will apply in Ireland to all conveyances on sale and leases exceeding 14 years.

AUTHOR'S NOTE ON FOREGOING REGULATIONS.

(The figures refer to the number of the regulations.)

(3) The object of the requirements of No. 3 with its form I.V.D. (B), p. 496, is that the land and also the "value of the consideration" for the transfer may be ascertained (see s. 2 (2) (*a*) and (*b*)). Increment value duty is payable on the difference between the site value on the day of the transfer on sale and the original site value on April 30, 1909 (s. 2). The value on the former day depends in the case of a sale of the fee simple in possession on the consideration for the sale given by the purchaser (subject to deductions). (*Ib.*) The vendor, *who has to present the document or particulars* thereof, is interested in keeping down the site value on the sale. He wants to pay as little increment value duty as possible. On the other hand, the purchaser wants the vendor to pay as much increment value duty as possible, because there will then be less for him to pay on a future occasion. Under regulation 3 the vendor is required to give all such information as is referred to in the form I.V.D. (B) and is applicable to the subject-matter. Apparently a purchaser has no opportunity of checking the vendor's statements to the Commissioners. Take for example item No. 8 on I.V.D. (B) (see p. 498). A purchaser may agree, as part of the bargain, to make the whole of a road half a mile long on part of the purchased land between the rest of the land he is buying and land retained by the vendor. This would add some thousands of pounds to the "value of the consideration," and perhaps to the increment value; for in such an instance we are dealing with the kind of land which is the precise subject intended to be hit by the new taxation. Sooner or later this added value of the land will be hit by increment value duty. If the vendor does not pay to-day the purchaser must pay when he sells. Notwithstanding s. 32 (2), it may well be that an agreement similar to the one referred to ought to be deemed part of the consideration on the sale (see the notes to s. 32, *ante*, p. 350). Whether that be so or not, it is clear that purchasers are interested in seeing that the full consideration they are giving is disclosed to the Commissioners. As to the full statement referred to in (3) of the covenants affecting the property, and as to the plan, see the Circular Letter of the Commissioners dated July, 1910 (*post*, p. 538), modifying the apparent requirements of the regulation. Only those covenants which have directly influenced the consideration need be set forth, and a plan is only to be required where the description given in the instrument is not

sufficient to enable the property to be identified. Where a plan is required a rough tracing showing the boundaries of the property will suffice. The Commissioners seem to be of opinion that it is their duty to estimate the value of the whole consideration, whatever it may be, and no doubt this would be one way of settling a difficult question.

(5) Stamp (b) is in practice usually compressed, and the assessment (if any) takes place later. Credit is in effect given to the vendor for any duty which may be payable. Occasionally stamp (c) is impressed.

(7) Apparently the Commissioners adopt the view that they are entitled, under s. 4 (1), if they so desire, to require an agreement, intended to be followed by a conveyance, or other operative document to be presented for stamping under sub-s. (3) of that section; but they are content to waive their right in this respect, except as to leases. It is believed to be doubtful whether this view is correct, and whether the true construction of sub-s. (1) does not give an option to the subject of presenting either agreement or subsequent conveyance, or leases, or particulars of either.

(10) Purchasers should see that vendors comply with this regulation (see note on p. 76, *ante*).

(12) The case contemplated is presentation of the "reasonable particulars" under s. 4 (2) and regulation (11), the operative document not being left with the Commissioners to be stamped with one of the stamps referred to in sub-s. (3). The consequence is that there is no liability to the penalty under sub-s. (2), but that the document until stamped is inadmissible in evidence by virtue of s. 4 (3). It may under this rule be stamped at any subsequent time.

(14) As no increment value duty can be assessed until after the original site valuation of most properties is completed, this regulation may be a somewhat serious matter, but is clearly within the powers of the Commissioners (s. 4 (3) (*b*)).

On some sales since April 30, 1910, increment value duty will be payable in respect of increment value which has accrued since April 30, 1909. In such case, a vendor should take care that all the deductions which he is allowed under the Act (s. 25) to make are now claimed for. The form just issued, I.V.D. (B) (p. 496), does not appear to provide for such claims. The deductions will be in respect of expenditure whether made before or since April 30, 1909. Expenditure prior to April 30, 1909, ought to have been claimed for on the original site valuation, and, if not then claimed for, cannot be claimed for on an occasion for payment of increment value duty (s. 12), unless indeed the value added by that expenditure did not accrue until after April 30, 1909. In the latter case it is thought that that added value can be claimed, notwithstanding that no claim was made on the original site valuation.

Expenditure since April 30, 1909, not claimed on one occasion for payment of increment value duty can yet be claimed on later occasions. Purchasers whether before or after the original site value is fixed should

therefore take care to obtain from their vendors all such information as will enable them to make a claim for full deductions on the general valuations under ss. 26 and 28 on any later occasion when increment value duty may be payable. The vendor seems to be under no implied obligation to furnish this information. Contracts for the sale of building land should therefore contain a provision binding the vendor to furnish, and to verify, all such information as is in his power, and as the purchaser may reasonably require for any site valuation. Existing owners, indeed, will frequently have to apply to former owners [and pay] for this information.

Probably the Commissioners will give notice to the vendor in any case in which they "have reason to consider that the occasion is one on which a claim for increment value duty has arisen" within the meaning of the above regulation, but nevertheless neither vendors nor purchasers should lose sight of the question of duty in entering into the contract.

(16) See note to s. 4 (5), p. 87. This and the following regulation (17) are in pursuance of s. 4 (5).

(17) See note to s. 4 (6), p. 88.

FORMS UNDER S. 4 (I.V.D.).

FORM I.V.D. (A).

FINANCE (1909—10) ACT, 1910.

INCREMENT VALUE DUTY.

Statement to be furnished on Application for one of the Stamps mentioned in Sect. 4 of the Finance (1909-10) Act, 1910.

To be filled in by the Marking Official only.	
Name of Stamp Office.	Serial Letter and Number of Case.

NOTE.—The Instrument itself (if possible, executed by the Transferor or Lessor) and also a Copy or a sufficient Abstract thereof must accompany this Application. If an Abstract be furnished, it should contain a full description of the property. A copy of any plan should be furnished. A full statement should be made of any easements or reservations affecting the land, of any covenant restricting its use, and of any agreement or obligation to repair, or to pay outgoings. Any covenant or undertaking, or liability to discharge any incumbrance, and any covenant or undertaking to erect buildings, or to expend any sums upon the property, should be set out in full. If the easement, covenant, etc., is set forth in some other document than the instrument itself, that document should be presented as well. The official form of abstract I.V.D. (B) can be used if desired.

Date of Application	
Name and Address of Solicitor, Agent, or Applicant, which should also be written on the endorsement of the Abstract or Copy before presentation	
Name and Address of Transferor or Lessor	
Description and Date of the Instrument	
Names of Parties to the Instrument	1st Part 2nd Part 3rd Part

*DECLARATION.

I (*or* we) hereby declare that the particulars given in the Copy or Abstract are true and correct to the best of my (*or* our) knowledge and belief.

(Signature)_____

* To be signed by the Transferor or Lessor or by his Solicitor or Agent.

NOTE.—It is open to the Transferor or Lessor, in lieu of presenting the Instrument itself to be stamped under Sect. 4, to present reasonable particulars thereof. The particulars required will be the same as those necessary if the Instrument itself is presented. Presentation of particulars will relieve the Transferor or Lessor from liability to fine; but the Stamp "Particulars Delivered" will not be given unless and until the Instrument itself, accompanied by the official receipt for the particulars, is presented for the purpose at the HEAD OFFICE in London, Edinburgh or Dublin, as the case may be.

FORM—I.V.D. (B).

Serial Letter and No. _____

FINANCE (1909—10) ACT, 1910.

INCREMENT VALUE DUTY.

On the occasion of any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease for a term exceeding fourteen years, the following particulars, as far as they are applicable, are required to be furnished to the Commissioners of Inland Revenue in accordance with the provisions of Section 4 of the Finance (1909—10) Act, 1910.

1. Description of Instrument presented	
Date of Instrument . . .	
2. Situation of Land { Parish or Place	
{ County . .	
3. Names, addresses and descriptions of parties.	
Vendor (or Lessor) . .	
Purchaser (or Lessee) . .	
Sub-Purchaser (if any) .	
4. Consideration.	
To be set out in detail with full particulars of:—	
(*a*) Any Capital payment .	
(*b*) Any Mortgage or other debt, and state whether to be released or covenanted to be paid . .	
(*c*) Any periodical payment (rent charges, &c.). (See also No. 14) . .	
(*d*) Any term surrendered .	
(*e*) Any land surrendered or exchanged . . .	
(*f*) Covenants . . .	
(1) to redeem charges .	
(2) to make any outlay on or in respect of the property whether upon buildings or otherwise . .	
(*g*) Any other consideration, including reference to any law suit or dispute compromised, etc. . . .	
5. Parcels.	
The description should be an exact copy from the deed, and should set forth any dimensions given as well as the "General words" relating to the particular appurtenances. In all cases the description here given should, in conjunction with the plan, if any, be sufficient to enable the situation and boundaries of the land to be identified	
(If the space allowed is not sufficient, the description can be given on a separate sheet of paper.)	

6. Plan. Where there is a plan a Copy thereof should be furnished . .	
7. Exceptions and Reservations. These should be set out in detail, particularly where minerals, sporting rights, timber, easements, etc., may be reserved	
8. Covenants by the purchaser or lessee to build or improve property, or to form, make, maintain or contribute towards cost of roads, should be recited . .	
9. Restrictions. Any restrictions whatever which may be considered to affect the market value of the interest created or transferred should be set out in detail, including:— (*a*) Building restrictions . (*b*) Building line—position of (*c*) Any restrictions as to user of premises, *e.g.*, a covenant to use for only one trade in the case of business premises, or to use as a private dwelling only in a business neighbourhood, or not to convert into a shop without payment of a fine . .	
10. Easements, Rights of Common, etc. These should be referred to where they exist, and all latent defects should be disclosed . .	
11. Any other Covenant or Condition affecting the value of the interest created or transferred . . .	
12. Names and addresses of Solicitor and Surveyor	

Additional particulars to be furnished on the grant or on an agreement for the grant of any lease for a term exceeding fourteen years, or an assignment thereof.

13. Habendum. (*a*) Date of commencement of term	

	(*b*) Term granted . . .	
	(*c*) Any powers of renewal or extension	
	(*d*) Any powers to determine .	
14.	Rents. All rents reserved should be fully stated, also annuities, dower, existing rent charges, and apportioned rent charges, peppercorn rents, abated rents or penalties reserved	
15.	Lessee's or Transferee's Covenants. The following Covenants should be recited:— (*a*) To pay outgoings . . (*b*) To repair or maintain property. . . . (*c*) To insure — Who pays premiums and for what amount are premises insured or to be insured .	
16.	Lessor's or Transferor's Covenants. Covenants bearing on the following should be recited:— Payment of outgoings . . Improvement or maintenance of property . . . Insurance—Who pays premiums and for what amount are premises insured or to be insured .	

I hereby certify to the correctness of the above statements.

Solicitor to the Transferor or Lessor.

Address _____

_____

_____ day of _____ 191 .

APPENDIX OF THE PRINCIPAL PUBLISHED FORMS.*

(Up to January, 1912.)

NOTES ON FORM 4—LAND.

(For the Form see p. 504).

The first, "Form 4—Land," is the return to be made under s. 26 (2), see p. 317, by owners of land and persons receiving rent in respect of any land. The Form has been the subject of much heated controversy. Though it has probably now been served on all owners, its materiality will not be exhausted till all the valuations have been finally settled. It is therefore retained with the original notes thereon. There has already been one decision (*Dyson* v. *Attorney-General*, [1911] 1 K. B. 410; W. N. 1911, p. 232) upon this form, for the facts of and comment upon which see *post*, p. 510). The particulars required by paragraph (*p*), sub-heads 2 to 6, may often be difficult to give. Many, perhaps most, owners do not accurately know to what easements or rights their property is subject, and indeed never will know until after litigation on the subject. A town house, in a terrace, is probably subject to easements of light and support in favour of adjoining or adjacent buildings, but obviously the owner does not want to admit, and ought not to be required in any return to admit, that such is the case. Further a high original site value is, in the case of "developed" land, a buffer against claims for increment value duty, and the admission of easements on the property would tend to depress original site value. Having regard to these two sets of considerations, owners are advised to reply to (*p*) (2) to

* The numbering of the Forms is entirely a matter of the internal regulations of its own business by the Inland Revenue; and so far as the public is concerned is quite unsystematic and meaningless. Most of the forms are only "published" in the sense that they are issued to persons liable to make returns under the Act.

(5) inclusive, in cases where they cannot clearly deny the existence of the rights referred to, with caution, as for example by saying that probably or possibly easements, or public rights of such and such a nature, might be claimed by such and such persons or by the public, but that they are not admitted and would be resisted.

(*q*) must be answered, and if the property included in the return was only a portion of a larger property it must be so stated. In such a case the information would not be of much value, because there seems to be no obligation to describe the other property or its value.

As to (*u*) under "II.—Additional Particulars"; in cases where it is quite clear that neither increment value duty or undeveloped land duty are likely to be payable, as where the property is agricultural land, under the value of 50*l.* per acre, with no prospect of building value in the future, or is small house property in a declining neighbourhood, the owner may of course quite safely put his own value on the property, so far as relates to the two taxes in question. But if he puts too high a value on it, the record will stand, when a claim is made on his death for estate duty; and also if the property should ever become liable to reversion duty. If he puts too low a value on it, he may find that estimate a disadvantage on a sale to a public authority. If on the other hand increment value duty or undeveloped land duty is likely to be payable in the future, it may be wiser in many cases to leave the Commissioners to put their own estimate on the property, and then to appeal from that estimate if not satisfactory. But this should not be accepted as a general rule for action without careful consideration of each individual case. These are some of the factors which will bear on the situation. Undeveloped land duty may be paid for a period approximately between eight and nine years before the total amount so paid, with interest, equals the increment value duty on a 20 per cent. rise in site value. A tenant for life

who is an owner may fear undeveloped land duty, and not care about increment value duty, which may be paid after his death, and then will be paid out of capital. A remainderman may hold exactly converse views as to the two taxes. An estimate by an owner not plainly unfair is not unlikely to be accepted. The Revenue authorities are very busy just now. In cases of doubt it is better not to furnish an estimate. No general advice on the subject is worth much, and particular circumstances could only be discussed at length disproportionate to this note.

As to (*v*), if the owner desires to keep his site value down, he should apply for the form (No. 7) referred to in (*v*). (See later for this form.) It will usually be desirable in the case of undeveloped land to utilise this form where deductions can be claimed for, since the effect of the deductions will be to diminish the site value for purposes of undeveloped land duty, and the same deductions can be claimed for on an occasion for payment of increment value duty.

As to (*w*), see explanatory summary, p. cxii., and Commentary, p. 251. If there are minerals, it must certainly not be assumed that they have no capital value. That will only increase any increment value duty which may be payable in the future; but neither must a value lightly be placed upon them, for there is estate duty to be considered.

In this return, if the owner so desires it, he can call upon the Commissioners to value separately any part of any land in a separate occupation (see "Instructions for Making Returns," No. 5, p. 509). There are cases in which such a power might usefully be exercised; but as a rule, the greater the unit of assessment, the better for the taxpayer. The decrement of one part of the unit may reduce the increment of another part. The high value of Blackacre exposing it to undeveloped land duty may be neutralised by the low value of Whiteacre. Further, under s. 29 (2), either the person entitled to the fee simple of the land, or to an interest in

any land, may at any future time require an apportionment of original site value. Owners had therefore better "wait and see" before accepting the invitation to require land in one occupation to be split up for purposes of valuation.

It has now been provided by the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 2, that the Commissioners may on the request of the owner of any pieces of land, etc., which are contiguous, and which do not in the aggregate exceed one hundred acres in extent, value those pieces of land together, although those pieces of land are under separate occupation, if they are satisfied that in the special circumstances of the case it is equitable to do so. Any such valuation may be made, although any of the pieces of land have been valued before the passing of the Revenue Act, 1911, if the requisition for the valuation is made by the owner within three months after the passing of that Act, and in that case any valuation previously made is to be of non-effect. For a full explanation and comments upon this section see *ante*, p. 315.

REFERENCE : to be quoted in all communications.

FORM 4.—LAND.*

DUTIES ON LAND VALUES.

(*Finance* (1909–10) *Act*, 1910.)

RETURN TO BE MADE BY AN OWNER OF LAND OR BY ANY PERSON RECEIVING RENT IN RESPECT OF LAND.

(Penalty for failure to make a due Return, not exceeding £50.)

Reference to the accompanying Sheet of Instructions (Form 2—Land).		This space is not for the use of the person making the Return.
See Instruction 2.	Particulars extracted from the Rate Books. Parish . .	
	Number of Poor Rate . * . .	
	Name of Occupier . . .	
	Description of Property . .	
	Situation of Property . .	
	Estimated extent	Acres Roods
	Gross Estimated Rental (or Gross Value in Valuation List*) .	£
	Rateable Value .	£
	(* Applicable to the Metropolis only.)	
	IMPORTANT.—As the Land is to be valued as on 30th April, 1909, the particulars should be furnished, so far as possible, with reference to the circumstances existing on that date.	
See Instruction 3.	I. Particulars required by the Commissioners which must be furnished so far as it is in the power of the person making the Return to give them.	
See Instruction 4.	(*a*) Parish or Parishes in which the Land is situated .	

* For notes on this form see p. 500, *ante*, and note on *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410; W. N. 1911, p. 232, *post*, p. 510.

Reference to the accompanying Sheet of Instructions (Form 2—Land).					
	(*b*) Name of Occupier . .				
See Instructions 1 and 3.	(*c*) Christian Name and Surname and full postal address of the person making the Return .				
See Instruction 9.	(*d*) Nature of Interest of the person making the Return in the Land :— (1) Whether Freehold, Copyhold, or Leasehold. (2) If Copyhold, name of the Manor. (3) If Leasehold, (i.) term of lease and date of commencement (including, where the lease contains a covenant for renewal, the period for which the lease may be renewed), and (ii.) name and address of lessor or his successor in title . .	1 2 3 (i.) 3 (ii.)			
	(*e*) Name and precise situation of the Land . . .				
See Instruction 2.	(*f*) Description of the Land, with particulars of the buildings and other structures (if any) thereon, and the purposes for which the property is used. (House, Stable, Shop, Farm, &c.)				
	(*g*) Extent of the Land, if known.	Acres.	Roods.	Perches.	Yards.
	(*h*) If the Land is let by the person making the Return, state :— (i.) Whether let under Lease or Agreement, or (ii.) If there is no Lease or written Agreement, whether let by the Year, Quarter, Month, or Week.	(i.) (ii.)			

Reference to the accompanying Sheet of Instructions (Form 2—Land).		
	(*h*) If the Land is let by the person making the Return, state:—*continued.* (iii.) If let under Lease or Agreement— (*a*) Term for which granted . . (*b*) Date of commencement of term . (*c*) Whether granted for any consideration in money, paid or to be paid by the Tenant, in addition to the Rent reserved,* or (*d*) Upon any condition as to the Tenant laying out money in Building, Rebuilding, or Improvements.* (iv.) Amount of Yearly Rent receivable . . . (* If so, give full particulars.)	 (iii.) (*a*) (*b*) (*c*) (*d*) (iv.) £
	(*i*) If the person making the Return is also the Occupier, state the Annual Value; *i.e.*, the Sum for which the Property is worth to be Let to a Yearly Tenant, the Owner keeping it in repair. . .	Annual Value £
	(*k*) Amount of Land Tax (if any) and by whom borne .	£ borne by
	(*l*) Amount of Tithe Rentcharge, or of any payment in lieu of Tithes, for the year 1909, and by whom borne . .	£ borne by
	(*m*) Amount of Drainage, or Improvement Rate, or of any similar charge, and by whom borne	£ borne by
	(*n*) Whether all usual Tenants' Rates and Taxes are borne by the Occupier, and, if not, by whom.	

Reference to the accompanying Sheet of Instructions (Form 2—Land).		
	(*o*) By whom is the cost of Repairs, Insurance, and other expenses necessary to maintain the Property, borne?	
See Instructions page 1, footnote †.	(*p*) Whether the Land is subject to any :— (i.) Fixed Charges (exclusive of Tithe Rentcharge entered in space (*l*)), and, if so, the Annual Amount thereof. (ii.) Public Rights of Way (iii.) Public Rights of User (iv.) Right of Common (v.) Easements affecting the Land (vi.) Covenant or Agreement restricting the use of the Land, and, if so, the date when such Covenant or Agreement was entered into or made. (Full particulars should be given in each case.)	Annual Amount £ Date when made
	(*q*) Particulars of the last sale (if any) of the Land within 20 years before 30 April, 1909, and of Expenditure since the date thereof :— (i.) Date of Sale (ii.) Amount of Purchase-money and other consideration (if any). (iii.) Capital Expenditure upon the Land since date of Sale.	(i.) (ii.) (iii.)
See Instruction 5.	(*r*) Observations, with description, extent, and precise situation of any part of the Land which the Owner requires to be separately valued.	
	(*s*) If the person making the Return desires that communications should be sent to an Agent or Solicitor on his behalf, the name and full postal address of such Agent or Solicitor.	

Reference to the accompanying Sheet of Instructions (Form 2—Land).

See Instruction 6.

*(t) (i.) Does the person making the Return own the minerals comprised in the Land?	(i.)
(ii.) If so, state:—	
(a) Whether the minerals were, on 30 April, 1909, comprised in a mining lease or being worked by the proprietor.	(ii.) (a)
(b) Whether the minerals are now comprised in a mining lease or being worked by the proprietor.	(b)
(iii.) If not, state the name and address of the proprietor of the minerals.	(iii.)
(* Minerals not comprised in a mining lease or being worked, are to be treated as having no value as minerals, unless the proprietor of the minerals fills up space (w) below.)	

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of 191 .

_____ { Signature of person making the Return.

_____ { Rank, Title, or Description.

II. Additional particulars which may be given, if desired.

See Instructions 7, 8, and 9.

(u) Value of the Land as defined in Instruction 7, and estimated by the Owner, with particulars how arrived at:—	
(i.) Gross Value . . .	(i.) £
(ii.) Full Site Value . .	(ii.) £
(iii.) Total Value . . .	(iii.) £
(iv.) Assessable Site Value .	(iv.) £
(v.) Particulars how Values arrived at *. . .	(v.)
(* May be given on a separate sheet of paper, if desired.)	

Reference to the accompanying Sheet of Instructions (Form 2—Land).		
See Instructions 7, 8, and 9.	(*v*) If the Owner does not desire to furnish his estimate of the Value of the Land, but intends to claim a Site-value deduction under Instruction 7 (iv.), (*a*), (*b*), (*c*), or (*d*), or under Instruction 9 (i.), (*a*), the intention should be stated. A form will then be sent in due course for particulars of the claim to be given.	
See Instructions 6 and 10.	(*w*) Nature, and estimate of the Capital Value of any minerals not comprised in a mining lease and not being worked, which have a value as minerals.	Nature Capital Value £

_____ Signature

_____ Date.

DUTIES ON LAND VALUES.

INSTRUCTIONS FOR MAKING RETURNS ON FORM 4 (BEING THE LAST PRECEDING FORM).

I.—*Instructions relating principally to particulars which it is compulsory to furnish.*

1. The persons who are required to make this return are (a) the owner of the land, and (b) any person receiving rent in respect of the land.

The expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease, or, if there are two or more such leases, the lessee under the last created underlease, is deemed to be the owner instead of the person entitled to the rents and profits as aforesaid.

2. The expression "land" includes all buildings and other structures thereon, and all minerals, on, in, or under the surface of the land.

3. If any person who is not the owner of land, or a person receiving rent, is called upon to make a return, he should return the form to the officer named in the notice, stating the nature and extent of his own interest in the land, and the name and address of the owner, or of the

person to whom he pays rent. If any person called upon to make a return is unable to give all the information required, he should furnish all the particulars which it is in his power to give, and insert the words "Not known" in the spaces which he is unable to fill up.

4. If any piece of land under one occupation extends into two or more parishes, separate returns may, if the owner thinks fit, be made for the parts lying within each parish, or, one return, relating to the whole of the land, may be made in the parish in which the greater part of the land is situate. In the latter case, notes should be made on the forms for the other parish or parishes affected, "*Included in return for —— parish*" (stating the name of the parish in which the inclusive return has been made).

5. Attention is called to the fact that the owner has the option of requiring the Commissioners to value separately any part of any land. In cases in which it is desired to exercise this option, particulars of the division required should be entered in the space for "Observations" on the form of return.

6. For the purposes of valuation, minerals are to be treated as a separate parcel of land; but where the minerals are not comprised in a mining lease, or being worked, they are to be treated as having no value as minerals, unless the proprietor of the minerals, in his return, specifies the nature of the minerals and his estimate of their capital value.

II.—*Instructions relating principally to particulars which the owner may furnish, if he thinks fit.*

7. If the owner desires to furnish his estimate of the total value and the assessable site value of the land, the value to be returned is not merely the value of the interest or share belonging to the person making the return, but the whole value of the land, that is, the aggregate value of all the interests therein, subject only to the limitations specified below.

Here follow ss. 25, 12, 40, and 23.

DYSON *v.* THE ATTORNEY-GENERAL, [1911] 1 K. B. 410; W. N. 1911, p. 232.*

Return under Form 4—To whom Return should be made—Requisition (i) whether authorised or not?—Action against Attorney-General as representing the Crown—Declaratory Judgment—Rules of Supreme Court, 1883, Order XXV., rr. 4, 5.

This was an action in the King's Bench Division for a declaration that the Commissioners had no right to require the above-mentioned Form 4 to be delivered by the owner to one Hugh Bateson, their "appointed officer," on the ground that the Act requires the return to be furnished to the Commissioners themselves, that the requisition (i) contained in such form, *i.e.*, "If the person making the return is also the occupier

* For Form 4 see p. 504, and notes thereon, p. 500.

state the annual value, *i.e.*, the sum for which the property is worth to be let to a yearly tenant, the owner keeping it in repair," was *ultra vires* the powers of the Commissioners under s. 26 (2), and unauthorised; and that the full period of thirty days of his service for answering had not been allowed in the notice. The claim alleged that the Commissioners had threatened to enforce the penalty for non-compliance with the notice. The A.-G. took out a summons under Order 25, rule 4, to strike out the claim as disclosing no reasonable cause of action. The Master struck out the claim, and Lush J. affirmed this decision. The Court of Appeal (the Master of the Rolls and Fletcher Moulton and Farwell, L.JJ.) unanimously reversed this decision. The main point argued was whether the Attorney-General could be sued in such an action as representing the Crown. The Master of the Rolls in his judgment said: "It has been settled for centuries that in the Court of Chancery the Attorney-General might in some cases be sued as a defendant representing the Crown, and that in such a suit relief could be given against the Crown." The learned judge then referred to *Laragoity* v. *Attorney-General* (2 Price, 172) and *Deare* v. *Attorney-General* (1 Y. & C. Ex. 197), and based his judgment that the action would lie against the Attorney-General mainly on the subsequent case of *Hodge* v. *Attorney-General* (3 Y. & C. 342). He was further of opinion that a declaratory judgment might be given against the Attorney-General under Order 25, rule 5. Whether it ought to be given in the present case was, however, a matter not to be dealt with on interlocutory application. It was pre-eminently one for the trial. The judgment of Lord Justice Fletcher Moulton was mostly based on the fact that Order 25, rule 4, was intended to be only "very sparingly used, and rarely, if ever, excepting in cases where the action is an abuse of legal procedure." Stated in another way at p. 419 the learned judge thought that that procedure could not be used "excepting in cases where the cause of action was obviously and almost incontestably bad." The learned Lord Justice also appeared to be of opinion that the Attorney-General could be sued as representing the Crown. Lord Justice Farwell was clearly of opinion that the Attorney-General was a proper defendant, and on the ground of convenience or inconvenience he was of opinion that "the convenience in the public interest is all in favour of providing a speedy and easy access to the Courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government departments and Government officials, having regard to the growing tendency to claim the right to act without regard to legal principles and without appeal to any Court." The learned judge then added: "I will quote the Lord Chief Baron in *Deare* v. *Attorney-General*: 'It has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of proceedings for the purpose of bringing matters before a Court

of justice when any real point of difficulty that requires judicial decision has occurred.' I venture to hope that the former salutary practice may be resumed. If ministerial responsibility were more than a mere shadow of a name, the matter would be less important, but as it is, the Courts are the only defence of the liberty of the subject against departmental aggression."

This decision appears to cover the following points: (1) That Order 25, rule 4, permitting the striking out the claim as disclosing no reasonable cause of action, ought not to be used unless the claim is obviously and almost incontestably bad. This is only confirmatory of former decisions. (2) That that was not the case in relation to the two claims made by the plaintiff as to the person to whom the return should be furnished or as to requisition (i) of Form 4. (3) That the Attorney-General was rightly sued as representing the interest of the Crown. (4) That an action against the Attorney-General asking for a declaration might be a convenient form of raising the legal point as to whether the return required was authorised by the statute, and that the subject is not necessarily obliged to wait until he is sued for a penalty for non-compliance with the return.

In *Burghes* v. *Attorney-General*, [1911] 2 Ch. p. 139 (see *ante*, p. 347), this decision was followed as to the above points, provided (3) and (4) and Form 8 was declared invalid on the ground referred to on p. 347. *Dyson* v. *Attorney-General* was tried before Mr. Justice Horridge, before whom it was not argued but who pro formâ gave judgment that the notice was illegal and unauthorised, and that the plaintiff was not bound to comply with it.

On appeal (W. N., 1911, p. 232), after affirming their previous views as to the points numbered (3) and (4) above referred to, it was unanimously held by the Court of Appeal (1) that the direction to make the return to Hugh Bateson did not invalidate the notice, but (2) that requisition (i) was unauthorised and rendered the whole form as addressed to an owner who was also the occupier invalid, and (3) that inasmuch as the statutory period of thirty days within which to make his return had not been allowed to the plaintiff he was under no obligation to comply with any of the requisitions of the forms; at the same time (W. N. 1911, p. 231) the decision of Mr. Justice Warrington in *Burghes* v. *Attorney-General* was affirmed on the grounds (1) that the full period of thirty days was not allowed after service for answer by the notice, and (2) on the grounds notwithstanding (1) and (2) in the judgment referred to on p. 347, *ante*.

It seems clear that *Dyson* v. *Attorney-General* affects only owner occupiers. Further, it is thought that a person who has made his returns, without objecting to a requisition declared unauthorised by either case or and not-withstanding that the full period for reply has not been allowed by the notice, has waived any informality and cannot object even to the provisional valuation on the ground of such informality.

NOTE ON FORM 7.

(For Form see p. 514.)

This is the form referred to in "Form 4—Land," *ante*, under head "II. Additional Particulars, &c." It is only to be used when the owner desires to keep down site value; as to this see *ante*, p. xxxiii. to xxxv., Introduction. But it should generally be used, since it must be remembered that deductions where applicable which he can claim now, but does not claim, can never be claimed on any occasion of the payment of increment value duty. If an owner built a sea wall five years ago, although little benefit may have accrued up to 30th April, 1909, yet unless he claims now for that little benefit, it may be that on the construction of the Act he will not be entitled, on any occasion when increment value duty is payable, to claim any deduction at all, although by that time the sea wall may have added tenfold to the value of his land. He should at least claim a nominal deduction for the wall. This rule does not, however, apply to the quinquennial assessments under s. 28 for undeveloped land duty. For further comments on this point see notes on s. 12, p. 149.

This is the form which gives practical effect on a general valuation to the deductions under s. 25 (4) (*b*), (*c*) and (*d*) (see p. 294 and notes on the sub-section).

Note that there is no limit of time backwards within which expenditure must have been made to give rise to a deduction, and that expenditure by predecessors in title can be claimed. Note also that it is not the sum expended, but the value added by the expenditure which determines the amount of the deduction.

FORM 7.*

DUTIES ON LAND VALUES.

(*Finance* (1909-10) *Act*, 1910.)

REFERENCE: to be quoted in all communications.

CLAIM FOR SITE VALUE DEDUCTIONS.

Particulars to be furnished by an Owner of Land, or person receiving Rent in respect of Land, who desires to claim deductions in arriving at the Assessable Site Value of the Land.

IMPORTANT.—As the Land is to be valued as on 30th April, 1909, the particulars should be furnished, as far as possible, with reference to the circumstances existing on that date.

Attention is directed to the sections of the Finance (1909-10) Act, 1910, on the attached sheet.

When completed, the claim should be delivered or sent in the accompanying franked envelope to the District Valuer

1. Name, description, and precise situation of the Land . . .				
	Acres.	Roods.	Perches.	Yards.
2. Extent of the Land, if known .				
3. If the particulars given under heads (1) and (2) are not sufficient to identify the Land, (*a*) Annex a plan of the Land, or, (*b*) Quote the number or numbers of the Land on the 25 inch Ordnance Survey Map, or, (*c*) If it is desired to identify the Land on an official plan, the desire should be indicated here . . .				

	Particulars.	Amounts.
		£
4. Particulars and amounts of any deductions not specified below which are claimed for the purpose of arriving at the Assessable Site Value. [NOTE.—Particulars of deductions claimed under section 25, subsections 2 and 4 (*a*) of the Finance (1909-10) Act, 1910 (set out on the attached sheet), may be conveniently inserted here.]		

* For note see p. 513.

5. Portion of the Total Value directly attributable to—

(*a*) Works Executed :—

Date when Executed.	By whom executed and nature of his interest in the Land.	Particulars of Works.	Amount Expended on Works.	Value directly attributable thereto.
			£	£

(*b*) Expenditure of a capital nature (including Expenses of Advertisement) :—

Date of Expenditure.	By whom executed and nature of his interest in the Land.	Particulars of Expenditure.	Amount Expended.	Value directly attributable thereto.
			£	£

6. Portion of the Total Value directly attributable to the Appropriation of any Land or to the Gift of any Land for Streets, Roads, Paths, Squares, Gardens, or other Open Spaces for the use of the public :—

Date.	Name of person making the Appropriation or Gift and nature of his interest.	Particulars of Appropriation or Gift.	Value directly attributable thereto.
			£

7. Portion of the Total Value directly attributable to—

(*a*) Expenditure on Redemption of Land Tax :—

Date of Redemption.	Number of Redemption Contract.	Amount of Land Tax redeemed.			Amount of Redemption Money.	Value directly attributable thereto.
		£	*s.*	*d.*	£	£

(*b*) Expenditure on Redemption of any Fixed Charge:—

Date of Redemption.	Particulars of Charge redeemed.	Amount of Redemption Money.	Value directly attributable thereto.
		£	£

(*c*) Expenditure on Enfranchisement of Copyhold Land or Customary Freeholds:—

Date of Enfranchisement.	Cost of Enfranchisement.		Value directly attributable thereto.
	Particulars.	Amount.	
		£	£

(*d*) Expenditure on effecting the Release of any Covenant or Agreement restricting the use of the Land which may be taken into account in ascertaining the Total Value of the Land:—

Date when Covenant or Agreement entered into.	Date of Release of Covenant or Agreement.	Particulars of Covenant or Agreement.	Amount of Expenditure.	Value directly attributable thereto.
			£	£

(*e*) Goodwill, or any other matter which is personal to the Owner, Occupier, or other person interested for the time being in the Land:—

PARTICULARS.	Value directly attributable thereto.
	£

8. Sums which it would be necessary to expend in order to divest the Land of Buildings, Timber, Trees, or other things of which it is to be taken to be divested for the purpose of arriving at the Full Site Value from the Gross Value of the Land, and of which it would be necessary to divest the Land for the purpose of realising the Full Site Value :—

PARTICULARS.	Amount.
	£

9. If the Land is Copyhold or Customary Freehold Land :—

(*a*) Name of the Manor ... ...
(*b*) Date of birth of Copyhold Tenant
(*c*) Date of last Admittance ... ...

(*d*) Customs of Manor, viz. :—

Incidents of Tenure.	PARTICULARS.	When payable.	Amount.		
			£	*s.*	*d.*
Fines ...					
Heriots ...					
Quit Rents					

Other Incidents of Tenure, with particulars and amounts of any money payments :—

(*e*) Estimated Cost of Enfranchisement :—

PARTICULARS OF ITEMS.	Estimated Cost.
	£
Total Estimated Cost of Enfranchisement ...	

10. **Undeveloped Land Duty.**—Additional particulars of Expenditure (if any) incurred by the Owner of any Land included in any scheme of land development, or by his predecessors in title, with a view to the development of the Land or to its use for any business, trade, or industry other than agriculture, on Roads (including paving, curbing, metalling, and other works in connection with Roads) or Sewers (Section 16).

Precise Situation of Land included in Scheme of Development.*	Area of Land included in Scheme of Land Development.				Date of Expenditure.	Nature and Particulars of Expenditure.	Amount of Expenditure.
	Acres.	R.	P.	Y.			

* A plan should be annexed, if possible.

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

_____ { Signature of person making the Return.

_____ Rank, Title, or Description.

_____ } Address.

_____ }

Then follow extracts from the Finance (1909-10) Act, 1910, being sections 12, 16, 25, and 40.

NOTE ON FORM 5.

(See Form below.)

This is the form in which the return under s. 20 (3) by a proprietor of minerals being worked, or a person to whom rent is paid in respect of any right to work minerals, or of any mineral way-leave, must be made. See p. 225.

The objective of the form is mineral rights duty. But surely "K" is a mistake. The reduction referred to is allowed by s. 22 (4), and has nothing to do with mineral rights duty, but only with the annual increment value duty payable under s. 22 (3). The somewhat analogous reduction as to mineral rights duty is allowed by the Proviso to s. 20 (1), and may be claimed under L. ii. d.

For the form as to unworked minerals, to be made by a person not owner of the surface, see *post*, p. 533, Form 6.

FORM 5.

DUTIES ON LAND VALUES.

(*Finance* (1909-10) *Act*, 1910.)

MINERAL RIGHTS DUTY.

For the Financial Year 1909-10 (1*st April*, 1909, *to* 31*st March*, 1910).

Return to be made by a Proprietor of Minerals which are being worked, or by any person receiving rent in respect of any right to work Minerals or of any Mineral Wayleave.

(Penalty for failure to make a due Return, not exceeding £50.)

Reference to the Instructions printed on p. 522, *post*.	Particulars extracted from the Rate Books.	This space is not for the use of the person making the Return.
	Parish . .	
	Number of Poor Rate . .	
	Name of Occupier	
	Description of Property . .	
	Situation of Property. . .	
	Estimated extent	Acres . . . Roods
	Gross Estimated Rental (or Gross Value in Valuation List*). .	£
	Rateable Value .	£
	* Applicable to the Metropolis only.	
See Instructions 3, and 4 (i), (k), and (l).	(*a*) Parish or Parishes to which the Mineral Rights and Wayleaves extend . . .	
	(*b*) Name and Address of Working Lessee . . .	

Reference to the Instructions printed on p. 522, *post.*					
	(*c*) Christian Name and Surname and full postal address of the person making the Return				
See Instructions 1 and 2.	(*d*) Nature of Interest of the person making the Return in the Mineral Rights and Wayleaves:—				
	(1) Whether Freehold, Copyhold, or Leasehold . . .	1			
	(2) If Copyhold, name of the Manor	2			
	(3) If Leasehold, (i.) term of lease and date of commencement (including, where the lease contains a covenant for renewal, the period for which the lease may be renewed), and (ii.) name and address of lessor or his successor in title.	3 (i.) 3 (ii.)			
	(*e*) Name, and precise situation of the Land to which the Mineral Rights extend . .				
See Instruction 5.	(*f*) Nature of the Minerals to which the rights relate, and character of any Wayleaves included in the Return . .				
	(*g*) Superficial extent of the Land to which the Mineral Rights relate	Acres.	Roods.	Perches.	Yards.
	(*h*) (i.) Whether the right to work the Minerals is the subject of a Mining Lease . .	(i.)			
See Instruction 4.	(ii.) If so—	(ii.)			
	(*a*) Term for which granted . . .	(*a*)			
	(*b*) Date of commencement of term .	(*b*)			
	(*c*) Amount of yearly Rent in respect of Mineral Rights and Wayleaves paid by the Working Lessee in the last working year.	(*c*) £			
	(*d*) Particulars of any deduction from the rent paid by the Working Lessee, claimed under Instruction 4 (*c*) . .	(*d*)			

Reference to the Instructions printed on p. 522, *post.*		
See Instruction 4.	(*i*) If the Minerals are being worked by the proprietor, state :—	
	(i.) Quantity or Quantities, by the customary measure, of the minerals gotten in the last working year .	(i.)
	(ii.) Rate of rent and royalty customary in the district. . .	(ii.) £ *s.* *d.* per
	(iii.) Whether the minerals were comprised in a mining lease or being worked by the proprietor on 30th April, 1909	(iii.)
	(*k*) Particulars and amount of any money expended by the Lessor within the preceding fifteen years in boring or otherwise proving the minerals .	
	(*l*) Observations . . .	
	(*m*) If the person making the Return desires that communications should be sent to an Agent or Solicitor on his behalf, the name and full postal address of such Agent or Solicitor .	

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of 191 .

_____ { Signature of person making the Return.

_____ { Rank, Title, or Description.

The Instructions below are attached to Form 5 just set out.

DUTIES ON LAND VALUES—MINERAL RIGHTS DUTY.

INSTRUCTIONS FOR MAKING RETURNS.

1. The persons who are required to make this return are (a) the proprietor of minerals which are being worked, and (b) every person to whom any rent is paid in respect of any right to work minerals or of any mineral way-leave.

The expression "proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which section 65 of the Conveyancing Act, 1881, applies.

2. If any person, who is not a proprietor of minerals, or a person to whom rent is paid in respect of any right to work minerals, or of any mineral way-leave, is called upon to make a return, he should return the form to the officer named in the notice, stating the nature and extent of his own interest (if any) in the minerals, and the name and address of the proprietor of the minerals, or of the person to whom he pays rent. If any person called upon to make a return is unable to give all the information required, he should furnish all the particulars which it is in his power to give, and insert the words "Not known" in the spaces which he is unable to fill up.

3. If the land to which the mineral rights extend is situate in two or more parishes, a return, relating to the whole of the mineral rights, should be made in the parish in which the greater part of the land is situate, and notes should be made on the forms for the other parish or parishes affected, "*Included in return for —— parish*" (stating the name of the parish in which the inclusive return has been made).

4. Here follows the substance of s. 20 (1), (2), and (5), and certain relevant portions of s. 24, *inter alia*.

(k) Minerals which are being won for the purpose of being immediately worked are to be deemed to be minerals which are being worked.

(l) Minerals are to be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease, although the lease has expired.

5. Mineral Rights Duty is not chargeable in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel.

REVERSION DUTY FORM.

This is a form to be filled in by the lessor on the determination of the lease pursuant to sections 13 and 15 of the Act of 1910. The obligation of the lessor is to "deliver an account . . . setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease" (s. 15 (2)). The particulars required below are doubtless a liberal interpretation of the requirements of the section. But they probably do not go further than the Act authorises, except that it is difficult to see how No. 9 is authorised, especially since the repeal by the Revenue Act, 1911, s. 3, of s. 14 (3) of the Finance Act, 1910. The account must be an intelligible account, and must (it is thought) contain all such particulars as are necessary to enable the Commissioners to make their own calculations. If it is determined that a claim for duty cannot be resisted, no good object would appear to be served by not using this form. Perhaps the reason why it is not numbered is because it is not thought to be obligatory. For a further note as to answering this Form, see *ante*, "Notes on the Practical Working of the Land Clauses," p. xxxv.

See p. 176.

FORM.

(*Finance* (1909-10) *Act*, 1910.)

ACCOUNT TO BE RENDERED BY THE LESSOR ON THE DETERMINATION OF THE LEASE OF ANY LAND IN RESPECT OF WHICH REVERSION DUTY IS PAYABLE.

(1.) Parish or Parishes in which the Land is situated.	

(2.) Precise situation of the Land.	
(3.) Christian name and Surname and full postal address of the person making the return.	
(4.) Term for which the lease was granted.	
(5.) Date of commencement of term.	
(6.) Date of determination of the lease.	
(7.) Amount of yearly rent reserved under the lease.	
(8.)—(*a*) Whether granted for any consideration in money paid by the Lessee in addition to the rent reserved or (*b*) Upon any condition as to the lessee laying out money in building, rebuilding or improvements. If so, give particulars.	(*a*) (*b*)
(9.)—If a new tenancy has been created state— (*a*) The term. (*b*) The rent reserved. (*c*) Any other consideration.	
(10.) Estimated total value of the land at the time of the original grant of the lease. This value is to be ascertained on the basis of the rent received and payments made in consideration of the lease. (See sec. 13 (2).)	
(11.) Estimated total value of the land at the determination of the lease. (See sec. 25 (3).)	

(12.) Whether any deduction is claimed in respect of—	
(*a*) Any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease or	(*a*)
(*b*) Any compensation payable by the lessor at the determination of the lease.	(*b*)
[Full particulars of any such claims to deduction should be given.]	
(13.) Estimated value of the benefit accruing to the lessor by the determination of the lease.	
(14.) Nature of interest of the person making the return in the land.	
(*a*) Whether freehold, copyhold or leasehold.	(*a*)
(*b*) If leasehold, term of lease and date of commencement (including where the lease contains a covenant for renewal, the period for which the lease may be renewed).	(*b*)
(*c*) If dependent on life, the present age of the person on whose life the interest is dependent, and if dependent on more than one life, the present age of the youngest of the persons on whose life it is dependent.	(*c*)
(15.) Whether any exemption or allowance is claimed under section 14 of the Finance Act. If so, full particulars must be given.	

Here follow the sections of the Finance (1909–10) Act, 1910, which relate to Reversion Duty, *i.e.*, sections 13, 14, 15, and 25.

"FORM 3.—LAND."—STATUTORY COMPANIES.

NOTE ON FORM.

(For Form see p. 527.)

See p. 405.

The following form is that in which Statutory Companies which by s. 38 are to a certain extent exempted from increment value duty, undeveloped land duty, and reversion duty, are required to make their return under the provisions of that section (see notes to s. 38, p. 405). Sub-s. 2 of s. 38 provides that "the Commissioners shall not require a Statutory Company to make any returns with respect to any such land for the purpose of the provisions of this Part of this Act as to valuation other than as to the actual cost to the company of the land, and which cost shall for the purposes of this Part of this Act be substituted for the original site value of the land."

The information required by the form appears for the most part to be necessary for the purpose of enabling the Commissioners to determine whether the exemption conferred by s. 38 is applicable. The Commissioners might not, it is true, be able to enforce a penalty for failure to furnish some of the required information. But, if the information were not furnished in answer to this return, it might have to be furnished as a defence to proceedings for the recovery of the penalty at much greater cost to the company. It is, therefore, clear that no useful purpose can be served by a refusal to furnish the information required.

DUTIES ON LAND VALUES.

REFERENCE: to be quoted in all communications.

NOTICE TO MAKE RETURNS.

STATUTORY COMPANIES—INSTRUCTIONS FOR MAKING RETURNS—FORM 3.

1. This return is to be made by a Statutory Company being the owner of land, or receiving any rent in respect of land.

Here follow definitions of "Statutory Company" (s. 38 (4)) and "owner" (s. 41).

2. The expression "land" includes all buildings and other structures thereon, and all minerals on, in, or under the surface of the land.

3. If any Statutory Company who are not the owner of land, or receiving rent in respect of land, are called upon to make a return, the form should be returned to the officer named in the notice, and the nature and extent of the interest of the Company in the land, and the name and address of the owner, or person to whom rent is paid, should be stated. If any Statutory Company called upon to make a return are unable to give all the information required, they should furnish all the particulars which it is in their power to give, and insert the words "Not known" in the spaces which they are unable to fill up.

4. If any piece of land under one occupation extends into two or more parishes, it is desirable that separate returns should, if possible, be made for the parts lying within each parish. Where, however, this is not practicable, one return, relating to the whole of the land which cannot be subdivided, may be made in the parish in which the greater part of the land is situated. In the latter case, notes should be made on the forms for the other parish or parishes affected, "*Included in return for —— parish*" (stating the name of the parish in which the inclusive return has been made).

Here follow ss. 23 (2), 12, and 23 (1).

FORM 3.—DUTIES ON LAND VALUES.*

(*Finance* (1909-10) *Act*, 1910.)

RETURN TO BE MADE BY A STATUTORY COMPANY BEING THE OWNER OF LAND HELD FOR THE PURPOSES OF THE UNDERTAKING OF THE COMPANY.

(Penalty for failure to make a due Return, not exceeding £50.)

Reference to the Instructions printed on pages 526 and 527, *ante*.		This space is not for the use of the person making the Return.
See Instruction 2.	Particulars extracted from the Rate Books.	
	Parish	
	Number of Poor Rate	
	Name of Occupier	
	Description of Property	
	Situation of Property	
	Estimated extent	Acres Roods
	Gross Estimated Rental (or Gross Value in Valuation List*)	£
	Rateable Value	
	(* Applicable to the Metropolis only.)	

IMPORTANT.—As the Land is to be valued as on 30th April, 1909, the particulars should be furnished, so far as possible, with reference to the circumstances existing on that date.

* See note on Form on p. 526.

Reference to the Instructions printed on pages 526 and 527, *ante*.		
See Instruction 3.	I. Particulars required by the Commissioners, which must be furnished so far as it is in the power of the Company to give them.	
See Instruction 4.	(*a*) Parish or Parishes in which the Land is situated.	
	(*b*) Name of Occupier.	
See Instructions 1 and 3.	(*c*) Full name of the Statutory Company, and Christian Name and Surname, Description, and full postal address of the responsible officer of the Company making the Return.	
	(*d*) Nature of the undertaking of the Statutory Company.	
	(*e*) Reference to Special Act, Provisional Order, or Order having the force of an Act of Parliament, under which the Statutory Company were authorised to construct, work, or carry on their undertaking.	
	(*f*) Nature of Interest of the Statutory Company in the Land:—	
	(1) Whether Freehold, Copyhold, or Leasehold.	1
	(2) If Copyhold, name of the Manor.	2
	(3) If Leasehold, (i.) term of lease and date of commencement (including, where the lease contains a covenant for renewal, the period for which the lease may be renewed), and	3 (i.)
	(ii.) name and address of lessor or his successor in title.	3 (ii.)

Reference to the Instructions printed on pages 526 and 527, *ante*.					
	(*g*) Name and precise situation of the Land.				
See Instruction 2.	(*h*) Description of the Land, with particulars of the buildings and other structures (if any) thereon.				
	(*i*) Extent of the Land.	Acres.	Roods.	Perches.	Yards.
	(*k*) Is the whole of the Land held by the Company for the purposes of their undertaking?				
	(*l*) If not, give particulars as to use, situation, and extent of any part not so held.				
	(*m*) Give particulars as to use, situation, and extent of any Land included under head (*l*), which is held by the Company, and which is intended to be ultimately appropriated for the purpose of works forming or to form part of the Company's undertaking, but, pending the carrying out of those works, is used for other purposes.				
	(*n*) Can the Land be appropriated by the Company except to the purposes of their undertaking?				
	(*o*) Actual cost to the Company of the Land.	£			
See Instruction 5.	*(*p*) (i.) Do the Company own the minerals comprised in the Land? (* Minerals not comprised in a mining lease or being worked are to be treated as having no value as minerals, unless the proprietor of the minerals fills up space (*r*) below.)	(i.)			

Reference to the Instructions printed on pages 526 and 527, *ante*.		
	(ii.) If so, state— (*a*) Whether the minerals were on 30th April, 1909, comprised in a mining lease or being worked by the proprietor? (*b*) Whether the minerals are now comprised in a mining lease or being worked by the proprietor? (iii.) If not, state the name and address of the proprietor of the minerals.	(ii.) (*a*) (*b*) (iii.)
See Instruction 6.	(*q*) Observations :—	

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of 191 .

_____ { Signature of the person making the Return.

_____ Rank, Title, or Description.

II. Additional particulars which may be given, if desired.

See Instructions 5 and 7.		
	(*r*) Nature, and estimate of the Capital Value of any minerals not comprised in a mining lease and not being worked, which have a value as minerals.	Nature Capital value, £

_____ Signature.

_____ Date.

NOTE ON FORM 6.

(See Form, p. 533.)

This is the return which an owner of unworked and unleased minerals, who does not also own its surface, is, as an owner of land, required to make under s. 26 (2). It must also be made, if required by the Commissioners, by "any person receiving rent in respect of any" minerals, that is, it is understood, by such persons as trustees, mortgagees, receivers appointed by the court, committees of a lunatic. Whether the words include mere agents is doubtful, but they would include leaseholders whose unexpired term is less than 50 years. Leaseholders whose unexpired term exceeds 50 years come within the category of owners (see s. 41). This, it must be noted, is the return which is to be made in respect of minerals which are neither worked nor in lease. It is the correlative of Form 5 (see *ante*, p. 519), which is the return to be made in respect of minerals either in lease or being worked. The same person is, as the Act is interpreted, apparently termed the owner of the minerals so long as they are unworked and unleased, and the proprietor of the minerals when they are either worked or leased. It is thought that this form is wholly *intra vires*.

See p. 317.

FORM 6.—DUTIES ON LAND VALUES.

DUTIES ON LAND VALUES—UNWORKED MINERALS.

INSTRUCTIONS FOR MAKING RETURNS.

I. *Instructions relating principally to particulars which it is compulsory to furnish.*

1. The person required to make this return is the owner of the mineral rights. If the minerals are comprised in a mining lease or are being worked, no return in respect thereof is required to be made on this form.

Here follows definition of "owner" (s. 41).

2. The expression "land" includes all minerals on, in, or under the surface of the land.

3. If any person who is not the owner of mineral rights is called upon to make a return, he should return the form to the officer named in the notice, stating the nature and extent of his own interest in the mineral rights, and the name and address of the owner. If the minerals are comprised in a mining lease, or are being worked, he should return the form to the officer with a note to that effect, when the appropriate form for making a return will be sent to him. If any person called upon to make a return is unable to give all the information required, he should furnish all the particulars which it is in his power to give, and insert the words "Not known" in the spaces which he is unable to fill up.

4. If the land to which the mineral rights extend is situate in two or more parishes, separate returns may, if the owner thinks fit, be made in respect of the mineral rights relating to land lying within each parish; or, one return, relating to the whole of the mineral rights, may be made in the parish in which the greater part of the land is situate. In the latter case, notes should be made on the forms for the other parish or parishes affected, "*Included in return for —— parish*" (stating the name of the parish in which the inclusive return has been made).

Here follows s. 23 (2).

II. *Instructions relating principally to particulars which the owner may furnish, if he thinks fit.*

Here follow ss. 23 (1) and 12.

FORM 6.—DUTIES ON LAND VALUES.

(See note on p. 531.)

RETURN TO BE MADE BY AN OWNER OF MINERAL RIGHTS WHO IS NOT THE OWNER (AS DEFINED IN THE FINANCE (1909-10) ACT, 1910) OF THE SURFACE OF THE LAND TO WHICH THE MINERAL RIGHTS EXTEND.

(Penalty for failure to make a due Return, not exceeding £50.)

Reference to the Instructions printed on page 532, *ante*.		This space is not for the use of the person making the Return.
See Instruction 2.	Particulars extracted from the Rate Books, and relating to the Property to which the Mineral Rights extend.	Parish . . Number of Poor Rate . . Name of Occupier . . Description of Property. . Situation of Property . . Estimated extent: Acres ____ Roods ____ Gross Estimated Rental (or Gross Value in Valuation List)* . £ Rateable Value . £ (* Applicable to the Metropolis only.)
	IMPORTANT.—As the Minerals are to be valued as on 30th April, 1909, the particulars should be furnished, as far as possible, with reference to the circumstances existing on that date.	
See Instruction 3.	I. Particulars required by the Commissioners, which must be furnished so far as it is in the power of the person making the Return to them.	
See Instruction 4.	(*a*) Parish or Parishes in which the Land to which the Mineral Rights extend is situated	
See Instructions 1 and 3.	(*b*) Christian Name and Surname and full postal address of the person making the Return.	
	(*c*) (i.) Whether the Interest of the person making the Return, in the Mineral Rights, is a Freehold Interest .	(*c*) (i.)

Reference to the Instructions printed on page 532, *ante*.		
	(ii.) If not, give full particulars of the interest of the person making the Return, and state the name and address of the owner of the Freehold of the Mineral Rights.	(ii.)
	(*d*) Name, and precise situation of the Land to which the Mineral Rights extend.	
	(*e*) Superficial extent of the Land to which the Mineral Rights relate.	Acres. | Roods. | Perches. | Yards.
See Instruction 5.	(*f*) Whether the Mineral Rights have any value.* (* Minerals not comprised in a mining lease or being worked are to be treated as having no value as minerals, unless the proprietor of the minerals fills up space (*k*) below.)	
	(*g*) Particulars of the last Sale (if any) of the Mineral Rights, within 20 years before 30th April, 1909:— (i.) Date of Sale . . (ii.) Amount of Purchase-money and other consideration (if any) .	
	(*h*) Observations.	
	(*i*) If the person making the Return desires that communications should be sent to an Agent or Solicitor on his behalf, the name and full postal address of such Agent or Solicitor.	

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of 191 .

_____ { Signature of the person making the Return.

_____ { Rank, Title, or Description.

Reference to the Instructions printed on page 532, *ante*.	II.—Additional particulars which may be given, if desired.	
See Instructions 5, 6, and 7.	(*k*) Nature, and estimate of the capital value of any minerals not comprised in a mining lease and not being worked, which have a value as minerals.	Nature Capital Value £

_____ Signature.

_____ Date.

FORM 8 AND ACCOMPANYING CIRCULAR.

(For Form, see p. 537.)

This is a circular and form issued by the Commissioners in pursuance of their power under s. 31 (1) (see *ante*, p. 346) to require every person who pays rent in respect of any land, and who as agent for another person receives any rent in respect of any land, to furnish to them within thirty days the name and address of the person to whom he pays or on behalf of whom he receives the rent. For a note on the sub-section and on the case of *Burghes* v. *Attorney-General*, [1911] 2 Ch. 139; W. N. 1911, p. 231, in which it was held that the notice and form were *ultra vires* and unauthorised by s. 31 (1), see *ante*, p. 347.

NOTICE ACCOMPANYING FORM 8.

REFERENCE: to be quoted in all communications.

DUTIES ON LAND VALUES.

NOTICE TO FURNISH INFORMATION.

INLAND REVENUE,
SOMERSET HOUSE,
LONDON, W.C.,

_____, 1910.

To _____

SIR,

With reference to the provisions of the Finance (1909-10) Act, 1910, I am directed by the Commissioners of Inland Revenue to require you to furnish *within thirty days from this date* (I.), the name and address of every person to whom you pay rent in respect of any land situate within, or partly within, the parish or place of_____, and (II.) the name and address of every person on behalf of whom you, as agent, receive any rent in respect of any land situate within, or partly within, the aforesaid parish or place.

The expression "land" includes all buildings and other structures thereon, and all minerals on, in, or under the surface of the land.

Forms are provided on the other side in which the required information should be inserted. When completed, the returns should be forwarded in the accompanying franked envelope to the appointed officer.

Any person who is required to furnish the information specified above and wilfully fails to do so within the time limited in this notice, is liable to a penalty not exceeding 50l.

I am, Sir,
Your obedient Servant,
F. ATTERBURY,
Secretary.

FORM 8.—LAND.*

(This is issued under s. 31 (1).)

I.—FORM TO BE FILLED UP BY EVERY PERSON WHO PAYS RENT IN RESPECT OF ANY LAND WITHIN THE AFORESAID PARISH OR PLACE.

NOTE.—If you do not pay rent in respect of any land you should insert the word "*Nil*" on this form and sign the declaration below. It is not sufficient to leave this space blank.

Names of persons to whom rent is paid.	Addresses of persons to whom rent is paid.	Descriptions and precise situations of the lands in respect of which rent is paid.

II.—FORM TO BE FILLED UP BY EVERY PERSON WHO AS AGENT FOR ANOTHER PERSON RECEIVES ANY RENT IN RESPECT OF ANY LAND WITHIN THE AFORESAID PARISH OR PLACE.

NOTE.—If you do not receive any rent as agent for another person you should insert the word "*Nil*" on this form, and sign the declaration below. It is not sufficient to leave this space blank.

Names of persons on whose behalf rent is received.	Addresses of persons on whose behalf rent is received.	Descriptions and precise situations of the lands in respect of which rent is received.

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of , 191 .

_____ Signature.

_____ Address.

* See note on p. 536.

CIRCULARS TO SOLICITORS ISSUED BY THE COMMISSIONERS RELATING TO THE PAYMENT OF INCREMENT VALUE DUTY.

I.

FINANCE (1909–10) ACT, 1910.

Increment Value Duty.

See pp. 94 and 104.

The Commissioners of Inland Revenue desire to call the attention of Solicitors to the provisions of s. 5 of the above Act relating to the assessment, collection and recovery of Increment Value Duty in respect of land or any interest in land passing on death.

The Commissioners are anxious to make the procedure as simple as possible and they have decided not to require Executors and others to render in the first instance a separate account for the purposes of Increment Value Duty.

The necessary valuations will be made by reference to the affidavit and accounts furnished for Estate Duty purposes and a further account for the purpose of Increment Value Duty will only be called for in cases where there is a *primâ facie* liability to that duty.

By order of the Commissioners,
F. ATTERBURY,
Secretary.

INLAND REVENUE,
SOMERSET HOUSE,
LONDON, W.C.
July, 1910.

II.

Finance (1909–10) Act, 1910.

Increment Value Duty.

With reference to the Regulations made by the Commissioners of Inland Revenue under s. 4 of the Finance (1909–10) Act, 1910, it has been brought to the notice of the Commissioners that Regulation 3 has, in some quarters, been interpreted as requiring in every case the delivery of a full statement of any covenants affecting the property, whether contained in the instrument itself or not. The intention of the Regulation, however, is that only such covenants as may have directly influenced the consideration for the transaction should be set forth. In other cases a statement that the covenants have had no influence in fixing the consideration, or that they are the usual covenants for the benefit of the property, will be sufficient. See p. 493.

The Commissioners have decided to refrain from insisting in every case on a strict compliance with that portion of Regulation 3 which relates to the production of plans, and to require a plan to be supplied only in those cases where the description given in the instrument is not sufficient to enable the property to be identified. Where a plan is required, a rough tracing showing the boundaries of the property will suffice.

By order of the Commissioners,
F. Atterbury,
Secretary.

Inland Revenue,
Somerset House,
London, W.C.
July, 1910.

FORM 8A.—LAND.

See p. 346.

The following notice and form are issued under s. 31 (1). They are confined to rent paid or received in respect of minerals and mineral wayleaves. The form should be read in connection with Form 8 (see p. 537), issued under the same section, in relation to land other than mineral rights. Its object is to find out, either from a lessee who pays a mineral rent or from an agent who receives such a rent for a lessor, the name and address of the lessor, in order that the latter may be called upon to pay the mineral rights duty under s. 20.

The notice and form are somewhat ambiguous. It appears from the notice that the return required, No. 1, amounts to a roving inquiry as to the name and address of any person to whom any rent in respect of any mineral rights and wayleaves (not specified) is paid. If this is the true construction of the notice and form, this requirement would seem to be bad under Mr. Justice Warrington's decision in *Burghes* v. *Attorney-General* (Times, May 10, 1911 ; W. N., May 20, 1911, p. 122 * ; see *ante*, p. 347), that a notice under the section ought to be confined to land specifically referred to. The second requirement of the notice and form seems not to come within this decision, being confined to the receipt of rent in respect of certain specified land. It is possible that the description of the mineral rights, etc., might be set out in return No. 1 by the Commissioners before the notice and form were served. If that were done, it would perhaps be that Form 1 and the notice would be valid, the notice so far as regards 1 being read (notwithstanding the punctuation) as applying only to the specific mineral rights mentioned.

* Now reported in [1911] 2 Ch. 139, and affirmed by the Court of Appeal. See W. N. 1911, p. 231.

FORM 8A.

(See note on p. 540.)

DUTIES ON LAND VALUES.

NOTICE TO FURNISH INFORMATION.

MINERAL RIGHTS DUTY.

REFERENCE: to be quoted in all communications.

INLAND REVENUE,
SOMERSET HOUSE,
LONDON, W.C.

_____ 191 .

To_____

SIR,

With reference to the provisions of the Finance (1909-10) Act, 1910, I am directed by the Commissioners of Inland Revenue to require you to furnish *within thirty days* (I.), the name and address of every person to whom you pay rent, and (II.) the name and address of every person on behalf of whom you, as agent, receive any rent in respect of the mineral rights and wayleaves shown overleaf.

When completed, the return should be forwarded in the accompanying franked envelope to the appointed officer.

Any person who is required to furnish the information indicated above and wilfully fails to do so within thirty days is liable to a penalty not exceeding 50l.

I am, Sir, your obedient Servant,
F. ATTERBURY,
Secretary.

I.—FORM TO BE FILLED UP BY EVERY PERSON WHO PAYS RENT IN RESPECT OF ANY MINERAL RIGHTS OR WAYLEAVES.

NOTE.—If you do not pay rent in respect of any mineral rights or wayleaves you should insert the word "*Nil*" on this form, and sign the declaration below. It is not sufficient to leave this space blank.

Names of persons to whom rent is paid.	Addresses of persons to whom rent is paid.	Descriptions and precise situations of the lands to which the mineral rights and wayleaves extend, and in respect of which rent is paid.

II.—FORM TO BE FILLED UP BY EVERY PERSON WHO AS AGENT FOR ANOTHER PERSON RECEIVES ANY RENT IN RESPECT OF ANY MINERAL RIGHTS OR WAYLEAVES WITHIN THE AFORESAID PARISH OR PLACE.

NOTE.—If you do not receive any rent as agent for another person you should insert the word "*Nil*" on this form, and sign the declaration below. It is not sufficient to leave this space blank.

Names of persons on whose behalf rent is received.	Addresses of persons on whose behalf rent is received.	Descriptions and precise situations of the lands to which the mineral rights and wayleaves extend, and in respect of which rent is received.

I hereby declare that the foregoing particulars are in every respect fully and truly stated to the best of my judgment and belief.

Dated this day of , 191

_____ Signature.

_____ Address.

FORMS 43, 44, AND 45.

The following three Forms, 43, 44, and 45, relate to the substituted site value under s. 2 (3) of the Finance (1909–10) Act, 1910, and s. 2 of the Revenue Act, 1911 (see *ante*, pp. 41 and 44). They sufficiently explain themselves.

FORM 43.—LAND.

DUTIES ON LAND VALUES.

FINANCE (1909–10) ACT, 1910.

REFERENCE: To be quoted in all communications.

_____ 191 .

SIR,

_____

_____

With reference to the provisional valuation of the above-named hereditament, I am directed by the Commissioners of Inland Revenue to inform you that the site value to be substituted for the original site value for the purposes of increment value duty under s. 2 (3) has been estimated as follows:—

Particulars of transfer or mortgage prior to April 30th, 1909 . .	
Site value based thereon . . .	

I am, Sir,
Your obedient Servant,

District Valuer.

FORM 44.—LAND.

DUTIES ON LAND VALUES.

FINANCE (1909–10) ACT, 1910.

REFERENCE: To be quoted in all communications.

_____ 191 .

SIR,

_____

_____

With reference to the particulars of the sale given in reply to question (*q*) in the return on Form 4—Land, rendered in respect of the above-named hereditament, I am directed by the Commissioners of Inland Revenue to enquire whether it is desired to have a site value based upon the consideration for the sale in question substituted for the original site value for the purposes of increment value duty under s. 2 (3).

I am, Sir, your obedient Servant,

District Valuer.

NOTE.—Sect. 2 (3) enacts as follows :—

"Where it is proved to the Commissioners on an application made for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April, nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Part of this Act shall apply accordingly.

"Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

"This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgage for the consideration.

"An application for the purpose of this section must be made within three months after the original site value of the land has been finally settled under this Part of this Act."

FORM 45.—LAND.

DUTIES ON LAND VALUES.

FINANCE (1909-10) ACT, 1910.

DISTRICT VALUER'S OFFICE,
VALUATION DEPARTMENT,
INLAND REVENUE.

_____ 191 .

SIR,

Parish_____

Reference No._____

I am in receipt of your communication of the_____ with respect to the above provisional valuation, wherein you state that the property comprised therein has been the subject of a_____ within twenty years before April 30th, 1909, at a higher figure than that shown in the provisional valuation, and that you wish to take advantage of the power given under the Act to substitute for the original site value a site value based upon this amount for the purpose of increment value duty.

I shall be glad, therefore, if you will arrange to attend at this office by appointment to produce the deed of_____in question to enable your claim to be considered.

I am, Sir,
Your obedient Servant,

Valuer.

To_____

FORM 35.—DUTIES ON LAND VALUES.

CIRCULAR LETTER ENCLOSING PROVISIONAL VALUATION.

For some remarks on and advice in respect to the provisional valuation see the "Notes on the Practical Working of the Land Clauses," *ante*, p. xxxii.

For the provisional valuation and notes in respect thereto see s. 27, p. 320.

FINANCE (1909–10) ACT, 1910.

DUTIES ON LAND VALUES.

REFERENCE: To be quoted in all communications.

To_____

of_____

Date_____, 1911.

SIR,

By direction of the Commissioners of Inland Revenue I herewith send you a copy of their provisional valuation of the land mentioned therein, which has been made under the provisions of the Finance (1909-10) Act, 1910.

If the land or any interest in the land has been sold or mortgaged at any time within twenty years before April 30th, 1909, and the site value at the date of the sale or mortgage estimated by reference to the amount of the consideration or the amount secured by the mortgage exceeded the original site value on April 30th, 1909, the site value so estimated may be substituted for the original site value for the purposes of increment value duty. If you desire to avail yourself of this provision, full particulars of the sale or mortgage should be furnished without delay.

If you consider that the total or site value, as stated in the provisional valuation, is not correct, you may, with a view to an amendment of the provisional valuation, within sixty days of the date on which the copy of the provisional valuation is served, give to the undersigned notice of objection, stating the grounds of your objection and the amendment you desire. If the provisional valuation is amended so as to be satisfactory to all persons making objections, the total and site value as stated in the amended valuation will be adopted as the original total and the original site value for the purposes of Part I. of the Act.

The Act provides that if the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give notice of appeal under the Act with respect to the valuation.

Section 33 enacts as follows:—

"An appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a

person who has made an objection to the provisional valuation in accordance with this Act."

By order of the Commissioners of Inland Revenue,

District Valuer.

Address_____

FORM 36.—LAND.

FINANCE (1909–10) ACT, 1910.

DUTIES ON LAND VALUES.

The name of the parish and number of the hereditament should be quoted in all communications.

PROVISIONAL VALUATION.

Description of property	House, 36, Blank Street, Preston.			
Situation	County, Lancaster. Parish, Preston (South). No. of hereditament, .			
Name of occupier	Thomas Wilson.			
Extent	Acres	Roods	Perches	Yards

The Commissioners of Inland Revenue have caused to be made the following provisional valuation of the land described above:—

ORIGINAL GROSS VALUE . . . . . £	1,500.

DEDUCTIONS FROM GROSS VALUE.

(*a*) To arrive at Full Site Value.		(*b*) To arrive at Total Value.				
	£	Fixed Charges.	Fee farm rent, rent seck, quit rent, chief rent, or rent of assize.	£ Chief rent of £5 = £120.	Public rights of way or user.	£
Difference between gross value and value of the fee simple of the land divested of buildings, trees, etc.	1,100		Other perpetual rent or annuity.		Right of common.	
			Tithe or tithe rent-charge.		Easements.	
			Burden or charge arising by operation of law, or imposed by Act of Parliament.		Restrictions under covenant or agreement.	£100. Covenant not to use as shops.
			If copyhold, cost of enfranchisement.		Total deductions.	£220.
Original full site value, £	400	ORIGINAL TOTAL VALUE . . . . £				1,280.

DEDUCTIONS FROM TOTAL VALUE TO ARRIVE AT ASSESSABLE SITE VALUE.

	£		£
Deductions from gross value to arrive at full site value (as above)	1100	Enfranchisement of copyholds	
Works executed		Release of restrictive covenants	
Capital expenditure		Goodwill or personal elements	
Appropriation of land for streets, roads, open spaces, &c.		Cost of clearing site	
Redemption of land tax or fixed charge	5	Total deductions	1105
ORIGINAL ASSESSABLE SITE VALUE ... .£			175.
Value of agricultural land for agricultural purposes where different from assessable site value.....£			

Given under my hand this day of 1911.

_____ { Valuer appointed by the Commissioners of Inland Revenue.

_____ District.

FOUR PER CENT. TABLES.

See pp. 52 to 61.

The 4 per cent. Tables for the purchasing of leases, estates, or annuities (referred to in r. 1 (4) of the Rules made by the Commissioners under s. 3, sub-ss. (2) and (3), of the Finance (1909-10) Act, 1910).

Years.	Years' Purchase.	Years.	Years' Purchase.	Years.	Years' Purchase.
1	·962	35	18·665	69	23·330
2	1·886	36	18·908	70	23·395
3	2·775	37	19·143	71	23·456
4	3·630	38	19·368	72	23·516
5	4·452	39	19·584	73	23·573
6	5·242	40	19·793	74	23·628
7	6·002	41	19·993	75	23·680
8	6·733	42	20·186	76	23·731
9	7·435	43	20·371	77	23·780
10	8·111	44	20·549	78	23·827
11	8·760	45	20·720	79	23·872
12	9·385	46	20·885	80	23·915
13	9·986	47	21·043	81	23·957
14	10·563	48	21·195	82	23·997
15	11·118	49	21·341	83	24·036
16	11·652	50	21·482	84	24·073
17	12·166	51	21·617	85	24·019
18	12·659	52	21·748	86	24·143
19	13·134	53	21·873	87	24·176
20	13·590	54	21·993	88	24·207
21	14·029	55	22·109	89	24·238
22	14·451	56	22·220	90	24·267
23	14·857	57	22·327	91	24·295
24	15·247	58	22·430	92	24·323
25	15·622	59	22·528	93	24·349
26	15·983	60	22·623	94	24·374
27	16·330	61	22·715	95	24·398
28	16·663	62	22·803	96	24·421
29	16·984	63	22·887	97	24·443
30	17·292	64	22·969	98	24·465
31	17·588	65	23·047	99	24·485
32	17·874	66	23·122	100	24·50
33	18·148	67	23·194		
34	18·411	68	23·264		

N.B.—To ascertain the "proper proportion" multiply the annuity by the number of years' purchase and treat it as the numerator of a fraction of which twenty-five years' purchase of the same annuity is the denominator; or, and this is simpler, take the number of years' purchase of the unexpired interest as the numerator, and twenty-five as the denominator. This fraction of the increment value on the occasion will give the proportion of the duty to be paid in respect of the interest.

APPENDIX OF STATUTES.*

FINANCE (1909—10) ACT, 1910.

(10 EDWARD 7, c. 8.)

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions. [29th April, 1910.] A.D. 1910.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

DUTIES ON LAND VALUES.

Increment Value Duty.

1. Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid on the increment value of any land a duty called increment value duty, at the rate of one pound for every complete five pounds of that value accruing after the thirtieth day of April nineteen hundred and nine, and— Duty on increment value. P. 1.

(*a*) on the occasion of any transfer on sale of the fee simple of the land or of any interest in the land, in pursuance of any contract made after the commencement of this Act, or the grant, in pursuance of any contract made after the commencement of this Act, of any lease (not being a lease for a term of years not exceeding fourteen years) of the land ; and

* The pages indicated in the margin refer to the commentary on the Act in the text.

(*b*) on the occasion of the death of any person dying after the commencement of this Act, where the fee simple of the land or any interest in the land is comprised in the property passing on the death of the deceased within the meaning of sections one and two, sub-section (1) (*a*), (*b*), and (*c*), and sub-section three, of the Finance Act, 1894, as amended by any subsequent enactment; and

57 & 58 Vict. c. 30.

(*c*) where the fee simple of the land or any interest in the land is held by any body corporate or by any body unincorporate as defined by section twelve of the Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, on such periodical occasions as are provided in this Act,

48 & 49 Vict. c. 51.

the duty, or proportionate part of the duty, so far as it has not been paid on any previous occasion, shall be collected in accordance with the provisions of this Act.

Definition of increment value.

Pp. 25, 27.

2.—(1) For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation.

P. 27.

(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be—

(*a*) where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and

(*b*) where the occasion is the grant of any lease of the land, or the transfer on sale of any interest in the land, the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; and

(*c*) where the occasion is the death of any person, and the fee simple of the land is property passing on that death, the principal value of the land as ascertained for the purposes of Part I. of the Finance Act, 1894, and where any interest in the land is property passing on that death the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained; and

57 & 58 Vict. c. 30.

(*d*) where the occasion is a periodical occasion on which the duty is to be collected in respect of the fee simple of any land or of any interest in any land held by a body corporate or unincorporate, the total value of the land on that occasion to be estimated in accordance with the general provisions of this Part of this Act as to valuation;

subject in each case to the like deductions as are made, under the

general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value.

(3) Where it is proved to the Commissioners on an application made P. 41.
for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April, nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Part of this Act shall apply accordingly.

Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer with the substitution of the amount secured by the mortgage for the consideration.

An application for the purpose of this section must be made within three months after the original site value of the land has been finally settled under this Part of this Act.

General provisions as to collection of increment value duty.

3.—(1) On each occasion on which increment value duty is collected on the increment value of any land, such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine, after giving credit for the amount of duty paid on previous occasions. The Commissioners shall make such apportionments and re-apportionments of P. 47.
any duty paid on previous occasions as they think necessary for the purpose of giving effect to this provision.

(2) Where increment value duty is collected on the occasion of the P. 50.
transfer or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate, the whole amount of the duty which is determined to be unsatisfied shall be collected by the Commissioners in accordance with rules made by them for the purpose.

(3) Where increment value duty is collected on the occasion of the P. 51.
grant of a lease, or on the transfer or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, such proportionate part of the duty shall be collected as may be determined by the Commissioners to be payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose.

(4) Where on the occasion of the death of any person the property P. 65.

passing on the death comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, then—

(*a*) if the subject of the settlement at the time of the death is the fee simple of the land, increment value duty shall be collected as if the fee simple of the land passed; and

(*b*) if the subject of the settlement at the time of the death is any other interest in the land, increment value duty shall be collected as if that interest passed;

but that duty shall not be collected on any such occasion if under the provisions of section five of the Finance Act, 1894, as amended by any subsequent enactment, estate duty is not payable in respect of the settled land.

Pp. 68, 239.

(5) For the purpose of the collection of duty on the increment value of any land under this section, the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to ten per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to ten per cent. of the site value on the last preceding occasion for the collection of increment value duty, and the amount of duty to be collected shall be remitted in whole or in part accordingly.

Any duty which by reason of this provision is remitted on any occasion shall not be collected and shall be deemed to have been paid:

Provided that no remission shall be given under this provision on any occasion which will make the amount of the increment value on which duty has been remitted during the preceding period of five years exceed twenty-five per cent. of the site value of the land on the last occasion for the collection of increment value duty prior to the commencement of that period or of the original site value if there has then been no such occasion.

P. 70.

(6) Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act.

P. 72.

Collection and recovery of duty in cases of transfers and leases.

4.—(1) On any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, increment value duty shall be assessed by the Commissioners and paid by the transferor or lessor, as the case may be.

Pp. 74, 487 to 499.

(2) It shall be the duty of the transferor or lessor, on the occasion of any transfer on sale of the fee simple of any interest in land or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by means of which the transfer or the lease is effected or agreed to be effected or reasonable particulars thereof for the purpose of the assessment of duty thereon, and, if the transferor or lessor fails to comply with this provision, he shall be liable on summary

conviction to a fine not exceeding ten pounds, and to pay interest at the rate of five per cent. per annum on any duty ultimately payable by him as from the date on which the instrument has been executed, but any person aggrieved by any conviction or order of a court of summary jurisdiction under this provision may appeal therefrom to a court of quarter sessions.

(3) Any such instrument shall not, for the purposes of section fourteen of the Stamp Act, 1891, and notwithstanding anything in section twelve of that Act, be deemed to be duly stamped unless it is stamped— P. 79. 54 & 55 Vict. c. 39.

(*a*) either with a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment; or

(*b*) with a stamp denoting that all particulars have been delivered to the Commissioners, which, in their opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security; or

(*c*) with a stamp denoting that upon the occasion in question no increment value duty was payable;

but where an instrument is so stamped, it shall, notwithstauding any objection relating to the increment value duty, be deemed to be duly stamped so far as respects that duty.

(4) Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor, as the case may be, and for the purpose of calculating the amount of increment value duty to be collected on any subsequent occasion shall be deemed to have been paid. P. 83.

(5) Regulations may be made by the Commissioners with respect to the mode in which any instrument is to be presented to them in order to be dealt with under this section, and for dispensing with the presentation of any instrument, or particulars thereof, in cases where arrangements are made for obtaining those particulars through any registry of lands, deeds, or title, or through a Register of Sasines, and with respect to the mode in which any application for a return of duty under this section is to be made, and for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in the form of a periodical payment; and the Commissioners shall deal with any instrument presented to them and allow payment by instalments in accordance with those regulations. The regulations shall provide that where the duty to be collected on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due shall be remitted, and that in that case the amount of duty which, under this section, is deemed to have been paid shall be reduced by the amount of the instalments so remitted. Pp. 85, 491, 494.

(6) In any case where increment value duty shall have been paid Pp. 88, 492.

under the provisions of this section, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor or lessor on his making application to the Commissioners within two years after the payment of the duty in accordance with regulations to be made by them under this section, and in that case the duty returned shall not be deemed to have been paid for the purposes of this section.

Pp. 89, 494.

(7) Where any agreement for a transfer or agreement for a lease is stamped in accordance with this section, it shall not be necessary to stamp any conveyance, assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners shall, if an application is made to them for the purpose, denote on the conveyance, assignment, or lease the amount of duty paid.

Collection and recovery of duty in case of death. 57 & 58 Vict. c. 30.

5. The provisions as to the assessment, collection, and recovery of estate duty under the Finance Act, 1894, shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but, where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative, setting forth the particulars of the increment value in respect of the property:

Pp. 90 to 121.

Provided that in respect of all property of the deceased, other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment value duty, rank pari passu with the other creditors of the deceased.

P. 121.

Collection and recovery of duty in case of property held by bodies corporate or unincorporate. 48 & 49 Vict. c. 51.

6.—(1) Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by section twelve of the Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, the occasions on which increment value duty is to be collected shall be the fifth day of April in the year nineteen hundred and fourteen and in every subsequent fifteenth year.

P. 122.

(2) The account to be delivered under section fifteen of the Customs and Inland Revenue Act, 1885, shall, in the case of the account to be delivered in the year nineteen hundred and fourteen and in every subsequent fifteenth year, contain an account of the increment value of the land, as on the preceding fifth day of April, and that section shall, save as in this Act is hereafter provided, apply for the purpose of increment value duty, whether the body corporate or unincorporate are chargeable with duty under Part II. of the Customs and Inland Revenue Act, 1885, or not.

P. 124.

(3) The provisions of sections thirteen to eighteen, of sub-section (1) of section nineteen, and of section twenty of the Customs and Inland Revenue Act, 1885 (with the exception of any provisions relating to

appeals), shall have effect for the purpose of the assessment and recovery of increment value duty as they have effect for the purpose of the duty charged under section eleven of that Act:

Provided that increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment shall be due immediately after the assessment of the duty.

Any part of any duty so payable by instalments may be paid up at any time.

(4) Any increment value duty assessed by the Commissioners on an account delivered in accordance with this section shall, for the purpose of determining the amount of increment value duty to be collected on any subsequent occasion, be deemed to have been paid. P. 128.

(5) Nothing in this section shall affect the collection of increment value duty on the occasion of the grant of any lease or the transfer on sale of the fee simple of any land or any interest in land by a body corporate or unincorporate, or oblige an account to be delivered of the increment value of any land on any periodical occasion, if, under the subsequent provisions of this Part of this Act, increment value duty in respect thereof is not to be collected on that occasion. P. 129.

7. Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only: Exemption for agricultural land. Pp. 130, 439, 463.

Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only, except where the value for any such purpose exceeds the agricultural value of the land.

8.—(1) Increment value duty shall not be charged on the increment value of any land, being the site of a dwelling-house, where immediately before the occasion on which the duty is to be collected the house was, and had been for twelve months previously, used by the owner thereof as his residence, and the annual value of the house, as adopted for the purpose of income tax under Schedule A., does not exceed— Exemption of small houses and properties in owner's occupation. P. 137.

(*a*) in the case of a house situated in the administrative county of London, forty pounds; and

(*b*) in the case of a house situated in a borough or urban district with a population according to the last-published census for the time being of fifty thousand or upwards, twenty-six pounds; and

(*c*) in the case of a house situated elsewhere, sixteen pounds.

(2) Increment value duty shall not be charged on the increment value of any agricultural land where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total amount of that land, together with any other P. 138.

land belonging to the same owner, does not exceed fifty acres, and the average total value of the land does not exceed seventy-five pounds per acre:

Provided that the exemption under this provision shall not apply to any land occupied together with a dwelling-house the annual value of which, as adopted for income tax under Schedule A., exceeds thirty pounds.

P. 139. (3) Where a dwelling-house is valued for the purposes of income tax under Schedule A. together with other land, and it is necessary for the purpose of this section to determine the annual value of the dwelling-house, the total annual value shall be divided between the dwelling-house and the other land in such manner as the Commissioners may determine.

P. 140. (4) For the purposes of this section—

(*a*) the expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more; but in such a case nothing in this section shall prevent the collection of increment value duty so far as it is payable in respect of any other interest in the land other than that leasehold interest; and

(*b*) the site of a dwelling-house shall include any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.

(5) Any increment value duty which would, but for this section, be charged shall, for the purpose of the provisions of this Act as to the collection of the duty, be deemed to have been paid.

Special provision for increment value duty in the case of land used for games and recreation.
P. 141.

9. Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of, or any interest in, any land which is held by any body corporate or unincorporate, without any view to the payment of any dividend or profit out of the revenue thereof, bonâ fide for the purpose of games or other recreation, if the Commissioners are satisfied that the land is so used under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used, without prejudice, however, to the collection of the duty on any other occasion.

Provision as to Crown lands, etc.
P. 144.

10.—(1) Any increment value duty in respect of the fee simple of, or any interest in, any land held by, or in trust for, His Majesty, or any department of Government, which would have been collected on any occasion had it been held by a private person, shall for the purposes of the provisions of this Act as to the collection of increment value duty be deemed to have been paid.

10 Geo. 4, c. 50.
8 Edw. 7, c. 48.
P. 146. (2) Neither section seventy-seven of the Crown Lands Act, 1829, nor section thirty-eight of the Post Office Act, 1908, nor any other enactment exempting from stamp duty any document made or executed on behalf of, or for the purpose of, the Cr or any Government

department, shall apply so as to prevent increment value duty being collected on any instrument by which the transfer on sale of the fee simple of, or any interest in, any land, or the grant of any lease of any land, to the Crown or to any Government department, or to any officer on behalf of, or for the purposes of, the Crown or any Government department, is effected or agreed to be effected.

Special provision as to flats. P. 147.

11. Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease of any such separate tenement, flat, or dwelling, and the transfer on sale or passing on death of any lease of any such separate tenement, flat, or dwelling, shall not be an occasion on which increment value duty is to be collected under this Act, nor shall duty be collected on any periodical occasion from a body corporate or unincorporate where the interest held by the body is only a leasehold interest in any such separate tenement, flat, or dwelling.

Provision as to claims for deductions. P. 148.

12. A person shall not be entitled to claim any deduction for the purpose of ascertaining the site value of any land on any occasion on which increment value duty becomes payable if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land.

Reversion Duty.

Reversion duty. P. 151.

13.—(1) On the determination of any lease of land there shall be charged, levied, and paid, subject to the provisions of this Part of this Act, on the value of the benefit accruing to the lessor by reason of the determination of the lease a duty, called reversion duty, at the rate of one pound for every complete ten pounds of that value.

P. 156.

(2) For the purposes of this section the value of the benefit accruing to the lessor shall be deemed to be the amount (if any) by which the total value (as defined for the purpose of the general provisions of this Part of this Act relating to valuation) of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property), but, where the lessor is himself entitled only to a leasehold interest, the value of the benefit as so ascertained shall be reduced in proportion to the amount by which the value of his interest is less than the value of the fee simple.

Exemptions from rever-

14.—(1) Where, in the case of a reversion to a lease purchased before the thirtieth day of April, nineteen hundred and nine, the lease on which

sion duty, and allowances.
P. 164.

the reversion is expectant determines within forty years of the date of the purchase, no reversion duty shall be charged under this Part of this Act on the determination of the lease: Provided that this exemption shall not apply where the lease is determined within forty years by agreement between the lessor and the lessee, whether express or implied, not contained in the lease itself, unless the lease would, apart from any such agreement, have determined within that period.

P. 166.

(2) No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land, nor on the determination of a lease, the original term of which did not exceed twenty-one years, nor shall reversion duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

P. 167.
Repealed by 1 Geo. 5, c. 2, s. 3 (5), *ib.*

[(3) Where a lease of any land is determined before the expiration of the term of the lease by agreement between the lessor and the lessee, whether express or implied, and a fresh lease of the land is then granted to the lessee the term of which extends at least twenty-one years beyond the date on which the original lease would have expired, the Commissioners shall make an allowance in respect of the reversion duty payable of two and a half per cent. of the duty for every year of the original term of the lease which is unexpired when the lease is determined, and any sum so allowed shall be treated as having been paid:

Provided that the allowance shall not exceed fifty per cent. of the whole duty payable.]

P. 170.

(4) Where on any occasion on which increment value duty is due in respect of any increment value it is proved to the satisfaction of the Commissioners that reversion duty has been paid in respect of any benefit accruing to a lessor, or part of such a benefit, which is identical with the increment value, such sums as the Commissioners determine to have been paid in respect of the benefit or part of the benefit shall be treated as being also a payment on account of increment value duty; and where on any occasion on which reversion duty is due in respect of any benefit accruing to a lessor, it is shown to the satisfaction of the Commissioners that increment value duty has been paid on any increment value which is identical with that benefit or any part of that benefit, such sums as the Commissioners determine to have been paid in respect of that value shall be treated as being also a payment on account of the reversion duty in respect of that benefit or part of a benefit.

P. 172.

(5) Where a reversion has been mortgaged before the thirtieth day of April, nineteen hundred and nine, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines, the mortgagee shall not be liable to pay reversion duty in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

P. 174.
Recovery of

15.—(1) Reversion duty shall be recoverable from any lessor to whom

any benefit accrues from the determination of a lease as a debt due to His Majesty, but shall rank pari passu with all other debts due from such lessor. reversion duty.

(2) Every lessor shall, on the determination of a lease on the determination of which reversion duty is payable under this section, deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease. Pp. 176, 523.

(3) If any person who is under an obligation to deliver an account under this section knowingly fails to deliver such an account within the period of three months after the determination of the lease, he shall be liable to pay to His Majesty a sum not exceeding ten per cent. upon the amount of any duty payable under this section, and a like penalty for every three months after the first month during which the failure continues. P. 177.

(4) Section seventeen of the Customs and Inland Revenue Act, 1885 (which relates to the power to assess duty according to accounts rendered, and to obtain other accounts), shall apply with respect to any account delivered under this section (with the exception of any provisions relating to appeals). 48 & 49 Vict. c. 51. P. 179.

Undeveloped Land Duty.

16.—(1) Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid for the financial year ending the thirty-first day of March, nineteen hundred and ten, and every subsequent financial year, in respect of the site value of undeveloped land a duty, called undeveloped land duty, at the rate of one halfpenny for every twenty shillings of that site value. Duty on site value of undeveloped land. P. 180.

(2) For the purposes of this Part of this Act, land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used bonâ fide for any business, trade, or industry other than agriculture: P. 181.

Provided that—

(*a*) Where any land having been so developed or used reverts to the condition of undeveloped land owing to the buildings becoming derelict, or owing to the land ceasing to be used for any business, trade, or industry other than agriculture, it shall, on the expiration of one year after the buildings have so become derelict or the land ceases to be so used, as the case may be, be treated as undeveloped land for the purposes of undeveloped land duty until it is again so developed or used; and

(*b*) Where the owner of any land included in any scheme of land development shows that he or his predecessors in title have,

with a view to the land being developed or used as aforesaid, incurred expenditure on roads (including paving, curbing, metalling, and other works in connection with roads) or sewers, that land shall, to the extent of one acre for every complete hundred pounds of that expenditure, for the purposes of this section, be treated as land so developed or used although it is not for the time being actually so developed or used, but for the purposes of this provision, no expenditure shall be taken into account if ten years have elapsed since the date of the expenditure, or if after the date of the expenditure the land having been developed reverts to the condition of undeveloped land, and in a case where the amount of the expenditure does not cover the whole of the land included in the scheme of land development, the part of the land to be treated as land developed or used as aforesaid shall be determined by the Commissioners as being the land with a view to the development or use of which as aforesaid the expenditure has been in the main incurred.

P. 191. (3) For the purposes of undeveloped land duty, the site value of undeveloped land shall be taken to be the value adopted as the original site value or, where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained:

Provided that where increment value duty has been paid in respect of the increment value of any undeveloped land, the site value of that land shall, for the purposes of the assessment and collection of undeveloped land duty, be reduced by a sum equal to five times the amount paid as increment value duty.

P. 193. (4) For the purposes of undeveloped land duty undeveloped land does not include the minerals.

P. 194. **17.**—(1) Undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed fifty pounds per acre.

Exemptions from undeveloped land duty, and allowances.

(2) In the case of agricultural land of which the site value exceeds fifty pounds per acre, undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes.

P. 194.

P. 196. (3) Undeveloped land duty shall not be charged—

(*a*) On the site value of any parks, gardens, or open spaces which are open to the public as of right; or

(*b*) On the site value of any woodlands, parks, gardens, or open spaces reasonable access to which is enjoyed by the public or by the inhabitants of the locality (including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise) where, in the opinion of the Commissioners, that access is of public benefit; or

(*c*) On the site value of any land where it is shown to the

Commissioners that the land is being kept free of buildings in pursuance of any definite scheme, whether framed before or after the passing of this Act, for the development of the area of which the land forms part, and where, in the opinion of the Commissioners, it is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings; or

(*d*) On the site value of any land which is bonâ fide used for the purpose of games or other recreation where the Commissioners are satisfied that the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where, in the opinion of the Commissioners, other circumstances render it probable that the land will continue to be so used.

Where any land kept free from buildings in pursuance of any definite scheme has received the benefit of an exemption from undeveloped land duty by virtue of this section, that land shall not be built upon unless the Local Government Board give their consent, on being satisfied that it is desirable in the interests of the public that the restriction on building should be removed; and any such consent may be given subject to such conditions as to the mode in which the land is to be built upon as the Local Government Board think desirable under the circumstances.

The opinion of the Commissioners as to matters which are expressed to be matters for the opinion of the Commissioners under this subsection shall be final and not subject to any appeal.

(4) Undeveloped land duty shall not be charged on the site value of P. 200.
any land not exceeding an acre in extent occupied together with a dwelling-house or on the site value of any land being gardens or pleasure grounds so occupied when the site value of the gardens and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A.:

Provided that the exemption under this provision shall not apply so as to exempt more than five acres, and where the land, gardens, or pleasure grounds occupied together with a dwelling-house exceed five acres in extent, those five acres shall be exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connection with the dwelling-house.

Where the dwelling-house, gardens, and pleasure grounds are valued for the purpose of income tax under Schedule A., together with other land, the total annual value shall be divided between the dwelling-house, gardens, and pleasure grounds and the other land in such manner as the Commissioners may determine.

P. 201

(5) Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the thirtieth day of April, nineteen hundred and nine, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. Provided that where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power.

P. 203.

Exemption of small holdings from undeveloped land duty.

18. Undeveloped land duty shall not be charged on the site value of any agricultural land, occupied and cultivated by the owner thereof, where the total value of that land, together with any other land belonging to the same owner, does not exceed five hundred pounds.

For the purposes of this provision the expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more.

Recovery of undeveloped land duty.

P. 203.

19. Undeveloped land duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January of the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable from the owner of the land for the time being as a debt due to His Majesty, and shall be borne by that owner notwithstanding any contract to the contrary.

If at any time undeveloped land duty is not assessed within the year for which it is charged, owing to there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason, the duty may be assessed at any time, and shall be payable at any time after the expiration of two months from the date of the assessment, so, however, that no such duty shall be assessed more than three years after the expiration of the year for which it is charged.

Mineral Rights Duty and Provisions as to Minerals.

Mineral rights duty.

P. 209.

20.—(1) There shall be charged, levied, and paid for the financial year ending the thirty-first day of March, nineteen hundred and ten, and every subsequent financial year on the rental value of all rights to work minerals and of all mineral wayleaves, a duty (in this Act referred to as a mineral rights duty) at the rate in each case of one shilling for every twenty shillings of that rental value.

P. 217.

(2) The rental value shall be taken to be—

(*a*) Where the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year in respect of that right; and

(*b*) Where minerals are being worked by the proprietor thereof, the

amount which is determined by the Commissioners to be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and the minerals had been worked to the same extent and in the same manner as they have been worked by the proprietor in that year:

Provided that the Commissioners shall cause a copy of their valuation of such rent to be served on the proprietor; and

(c) In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave:

Provided that if in any special case it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any proprietor of the minerals which would ordinarily have been borne by the lessee, the Commissioners shall substitute as the rental value of the right to work the minerals or the mineral wayleaves, as the case may be, such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee.

(3) Every proprietor of any minerals and every person to whom any rent is paid in respect of any right to work minerals or of any mineral wayleave shall, upon notice being given to him by the Commissioners requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the minerals, particulars as to the minerals worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court. Pp. 223, 519.

(4) Mineral rights duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January in the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable as a debt due to His Majesty from the proprietor of the minerals, where the proprietor is working the minerals, and in any other case from the immediate lessor of the working lessee. As between the immediate lessor and the working lessee, the duty shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act. P. 225.

(5) Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel. P. 226.

Deduction of duty in case of intermediate

21.—(1) Any immediate lessor who under this Act pays any mineral rights duty, and is himself a lessee of the right to work the minerals or of the wayleave in respect of which the duty is paid, shall be entitled

leases of minerals.

P. 227. to deduct from the rent paid by him in respect of the right to work the minerals or the wayleave, as the case may be, to his lessor a sum equal to the mineral rights duty on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him in respect of the right to work the minerals or in respect of the wayleave, as the case may be.

P. 228. (2) Any person in receipt of rent from which a deduction may be made under this section shall allow the deduction, and the person making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

P. 229. (3) If any person refuses to allow a deduction which he is required to allow under this section, he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

P. 229. (4) Where in any special case mineral rights duty has been charged on a rental value based on a rent which has been substituted under the provisions of this Act for the rent actually payable by the working lessee, or where in any special case the rental value with reference to which increment value duty is charged has been reduced under the provisions of this Act for the purposes of the collection of that duty, the Commissioners shall, on the application of any lessor from whose rent a deduction may be made in respect of mineral rights duty or increment value duty, as the case may be, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

P. 230. **22.**—(1) No reversion duty shall be charged on the determination of a mining lease, and no increment value duty shall be charged on the occasion of the grant of a mining lease or in respect of minerals which are comprised in a mining lease, or are being worked except as a duty payable annually in manner provided by this Act.

Special provisions as to increment value duty and reversion duty in the case of minerals worked or leased.

P. 233. (2) Increment value duty shall not be charged in the case of any minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as the minerals are for the time being either comprised in a mining lease, or being worked by the proprietor:

Provided that the exemption under this section shall continue to apply in the case of any minerals, although they cease for a temporary period to be comprised in a mining lease or to be worked, so long as the period does not exceed two years.

P. 235. (3) Increment value duty in respect of the increment value of minerals which are comprised in a mining lease or are being worked shall, where that duty is chargeable, be charged annually; and the increment value shall, instead of being estimated as a capital sum, be

taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked; and the annual equivalent of any such capital value of the minerals shall be taken to be two twenty-fifth parts of that capital value.

(4) If in any case it is shown to the Commissioners that the rental value on which mineral rights duty is charged represents in part a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return. P. 240.

(5) Increment value duty payable annually under this section shall, instead of being collected as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty, with the same right of deduction. P. 241.

(6) Any proprietor or lessor of any minerals who pays increment value duty in pursuance of this provision shall be entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty. P. 242.

For the purposes of this provision, a deduction of any amount from the rent payable to a lessor on account of mineral rights duty shall be deemed to be a payment of that duty, and the relief may be given either by allowance or repayment or both of those means, as the occasion may require.

(7) Where minerals cease to be comprised in a mining lease or to be worked within the meaning of this section, the capital value of the minerals at the time shall be specially ascertained in accordance with the provisions of this Act, and the capital value as so ascertained shall be treated as the original capital value of the minerals. P 244.

(8) Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act. P. 244.

Application of provisions as to total and site value to minerals. P. 245.

23.—(1) For the purposes of this Part of this Act, the total value of minerals means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise, and the capital value of minerals, means the total value, after allowing such deductions (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred bonâ fide by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or

where the minerals have been partly worked, such deduction as is, in the opinion of the Commissioners, proportionate to the amount of minerals which have not been worked.

P. 251. (2) For the purposes of valuation under this Part of this Act, all minerals shall be treated as a separate parcel of land; but, where the minerals are not comprised in a mining lease or being worked, they shall be treated as having no value as minerals, unless the proprietor of the minerals, in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

Minerals which are comprised in a mining lease or are being worked shall be treated as a separate parcel of land, not only for the purposes of valuation, but also for the purpose of the assessment of duty under this Part of this Act.

P. 254. (3) The provisions of this Part of this Act with respect to valuation shall not apply to minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor, nor shall such provisions apply to any minerals which cease for a temporary period to be comprised in a mining lease or to be worked so long as the period does not exceed two years.

P. 255. (4) Except where the context otherwise requires, any references in this Part of this Act to the site value of land shall, in cases where the land consists solely of minerals, or comprises minerals, be construed, so far as respects the minerals, as a reference to the capital value of the minerals

Definitions for purpose of mineral provisions.

24. For the purpose of the provisions of this Act as to minerals—

P. 265. The expression "proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which section sixty-five of the Conveyancing and Law of Property Act, 1881, applies;

44 & 45 Vict. c. 41.

The expression "rent" includes yearly or other rent, and shall, in addition to the meaning assigned to it for the general purposes of this Part of this Act, be construed as including any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

Where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof;

The expression "mining lease" means a lease for mining purposes, that is, for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals,

or purposes connected therewith, and includes an agreement for such lease, or any tenancy or licence, whether by deed, parol, or otherwise for mining purposes, and the expressions "lessor" and "lessee" shall in addition to the meaning assigned to them for the general purposes of this Part of this Act be construed so as to include respectively a licensor and a licensee;

The expression "working lessee" means as respects the right to work minerals the lessee who is actually working the minerals, or who would have the right actually to work the minerals if the minerals were worked, and as respects mineral wayleaves the lessee who is in actual enjoyment of the wayleave, and the expression "immediate lessor" shall be construed accordingly; P. 267.

The expression "working year" means the year ending the thirtieth day of September, or such other day as may in any case be approved by the Commissioners; and the expression "last working year" means the working year completed immediately before the first day of January in any financial year for which the duty is paid;

The expression "mineral wayleave" means any wayleave, airleave, water-leave, or right to use a shaft granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals.

Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if the minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by a lessee, and which would, in the ordinary course of events, be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date.

Minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked.

Minerals shall be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease, although the lease has expired.

Where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district.

Valuation for Purposes of Duties on Land Values.

Definition of values of land.

Pp. 272, 295.

25.—(1) For the purposes of this Part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise.

Pp. 283, 295.

(2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon.

Pp. 287, 295.

(3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the thirtieth day of April, nineteen hundred and nine, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the referee, whose decision shall be final.

Pp. 294, 295.

(4) The assessable site value of land means the total value after deducting—

(*a*) The same amount as is to be deducted for the purpose of arriving at full site value from gross value ; and

(*b*) Any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred bonâ fide by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture ; and

(*c*) Any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public ; and

(*d*) Any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and

(*e*) Any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land, and of which it would be necessary to divest the land for the purpose of realising the full site value.

Where any works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, the works or expenditure shall, for the purpose of this provision, be treated as having been executed or incurred also for the latter purposes.

Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section.

(5) The provisions of this section are not applicable for the purpose of the valuation of minerals. P. 304.

Valuation of land for purposes of Act.

26.—(1) The Commissioners shall, as soon as may be after the passing of this Act, cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land, and in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value. Each piece of land which is under separate occupation, and, if the owner so requires, any part of any land which is under separate occupation, shall be separately valued, and the value shall be estimated as on the thirtieth day of April, nineteen hundred and nine. P. 309.

(2) Any owner of land and any person receiving rent in respect of any land shall, on being required by notice from the Commissioners, furnish to the Commissioners a return containing such particulars as the Commissioners may require as to the rent received by him, and as to the ownership, tenure, area, character, and use of the land, and the consideration given on any previous sale or lease of the land, and any other matters which may properly be required for the purpose of the valuation of the land, and which it is in his power to give, and, if any owner Pp. 317, 500, 510, 513, 522.

of land or person receiving any rent in respect of the land is required by the Commissioners to make a return under this section, and fails to make such a return within the time, not being less than thirty days, specified in the notice requiring a return, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

P. 319. (3) Any owner of land may, if he thinks fit, furnish to the Commissioners his estimate of the total value or site value or both of the land, and the Commissioners, in making their valuation, shall consider any estimate so furnished.

Ascertainment of the original site value of land.

27.—(1) The Commissioners shall cause a copy of their provisional valuation of any land to be served on the owner of the land, and, unless objection is taken to the provisional valuation in manner provided by this section, the values shown in the provisional valuation shall be adopted as the original total value and the original site value respectively for the purposes of this Part of this Act.

Pp. 320, 545.

P. 322. (2) If the owner considers that the total or site value, as stated in any provisional valuation, is not correct, he may, with a view to an amendment of the provisional valuation, within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow, give to the Commissioners notice of objection to the provisional valuation, stating the grounds of his objection and the amendment he desires, and, if the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the total and site value as stated in the amended valuation shall be adopted as the original total and the original site value for the purposes of this Part of this Act.

P. 324. (3) The Commissioners may amend any provisional valuation, whether objected to or not, before it is finally settled, and the amended provisional valuation shall be deemed to be a provisional valuation for the purposes of this section.

P. 325. (4) If the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give a notice of appeal under this Act with respect to the valuation, but, if no such notice is given, the total and site value as stated in the provisional valuation, subject to such amendments as may be made by the Commissioners in order to meet objections, shall be adopted as the original total and the original site value respectively for the purposes of this Part of this Act.

P. 326. (5) Any person interested in the land, not being an owner, may apply to the Commissioners for a copy of the provisional valuation of the land before it is finally settled, and shall then have the same right of giving notice of objection and of appealing as the owner.

P. 329. (6) Where the value to be adopted as the original total or the original site value of any land for the purposes of this Part of this Act has not been finally settled at the time when any duty under this Part of this Act becomes leviable, any duty under this Part of this Act shall

be assessed as if the values as shown in the provisional valuation, or, if the provisional valuation has been amended by the Commissioners, as shown in the valuation as so amended, were the values adopted as the original total and site values for the purposes of this Part of this Act, and, on the values to be adopted being finally settled, if it is found that the amount which should have been paid as duty exceeds that actually paid, the excess shall be deemed to be arrears of the duty, except so far as any penalty is incurred on account of arrears, and, if it is found that the amount which should have been paid as duty is less than that actually paid, the difference shall be repaid by the Commissioners.

(7) Where a lessee is the owner of the land within the meaning of this Act, this section shall apply as if any person entitled to the fee simple reversion or to a leasehold reversion for a term of years exceeding twenty-one were the owner as well as the lessee. P. 330.

Periodical valuation of undeveloped land.

28. For the purpose of obtaining a periodical valuation of undeveloped land the Commissioners shall, in the year nineteen hundred and fourteen and in every subsequent fifth year, cause a valuation to be made of undeveloped land showing the site value of the land as on the thirtieth day of April in that year, and, for the purpose of ascertaining the value at that time, the provisions of this Act as to the ascertainment of value shall apply for the purpose of ascertaining value on any such periodical valuation as they apply for the purpose of ascertaining the original value : P. 333.

Provided that if on any such periodical valuation the valuation of any undeveloped land which is liable to undeveloped land duty is for any reason begun but not completed in the year of valuation, the Commissioners may complete the valuation after the expiration of the year of valuation, subject to an appeal under this Act.

Assessment of duty on separate parcels of land and apportionment of valuation.

29.—(1) Any duty under this Part of this Act may be assessed on or in respect of any such pieces of land whether under separate occupation or not, as the Commissioners think fit. P. 335.

(2) The Commissioners shall make such apportionments and re-apportionments of any original site value or any site value fixed on a periodical valuation as they consider necessary for the purpose of the collection or assessment of increment value duty or undeveloped land duty, or which they may be required at any time to make on the application of any person entitled to the fee simple of any land or to an interest in any land. P. 338.

On any such apportionment or re-apportionment for the purpose of the collection of increment value duty on the occasion of the transfer on sale of the fee simple of the land or any interest in the land, or on the occasion of the grant of any lease of the land, the consideration for the transfer, or for the grant of the lease, shall be treated as one of the matters to which regard must be had in making the apportionment or re-apportionment.

(3) The provisions relating to the procedure on the valuation of land for the purposes of this Part of this Act shall apply with respect to the P. 342.

apportionment or re-apportionment of site value under this section as they apply with reference to the ascertainment of the original site value of land.

P. 343. (4) The value attributed on any such apportionment or re-apportionment to each part of the land shall, for the purposes of this Part of this Act, be treated as the original site value or the site value of the land, as the case may be.

P. 344. Duties of Commissioners as to keeping records and giving information. **30.**—(1) The Commissioners shall record particulars of all valuations, apportionments, re-apportionments, and assessments made by them under this Part of this Act, and of any deductions allowed in determining any value, and of the amount of any duty paid under this Part of this Act in respect of any land.

P. 345. (2) The Commissioners shall furnish to any person interested in any land, or to any person authorised by any person so interested, on his application and on payment of such fee, not exceeding two shillings and sixpence, as the Commissioners may fix with the approval of the Treasury, copies of any particulars so recorded by them relating to the land, certified, if required, by a Secretary or Assistant Secretary to the Commissioners.

Information as to names of owners of land. Pp. 346, 512, 535, 540. **31.**—(1) Every person who pays rent in respect of any land, and every person who as agent for another person receives any rent in respect of any land, shall, on being required by the Commissioners, furnish to them within thirty days the name and address of the person to whom he pays rent or on behalf of whom he receives rent, as the case may be.

P. 348. (2) For the purpose of the exercise of their powers or the performance of their duties under this Part of this Act in reference to the valuation of land, the Commissioners may give any general or special authority to any person to inspect any land and report to them the value thereof, and the person having the custody or possession of that land shall permit the person so authorised, on production of the authority of the Commissioners in that behalf, to inspect it at such reasonable times as the Commissioners consider necessary.

P. 348. (3) If any person wilfully fails to comply with the provisions of this section, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

P. 348. (4) Any notice requiring a return for the purpose of valuation, any copy of a provisional valuation, and any other notice or document which is required to be given or sent to an owner or a person interested in land under this Part of this Act by the Commissioners shall be sufficiently given or sent if sent by post to the address of the owner or person interested furnished to the Commissioners under the powers given by this section, or, if the address cannot be so ascertained, by leaving the notice or a copy of the document addressed to the owner or person interested with some occupier of the land, or, if there is no occupier, by causing it to be put up in some conspicuous place on the land.

Determination of value of consideration.

32.—(1) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment. P. 350.

(2) If the Commissioners are satisfied that any covenant or undertaking or liability to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners shall allow such sum as they think just in respect thereof as an addition to the value of the consideration. P. 353.

(3) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine. P. 357.

Appeals.

Appeals to referees. P. 358.

33.—(1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of the Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(*a*) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

P. 365. (2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act, as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

P. 366. (3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

P. 367. (4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and subsections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal :

57 & 58 Vict. c. 30.

Pp. 367, 622. Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

P. 370. (5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief

Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

Appointment of referees to hear appeals.

34.—(1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel. P. 371.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct. P. 371.

Supplemental.

Exemption for land held by rating authorities.

35.—(1) No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local rating authorities, and any increment value duty in respect of any such land which would have been collected from the authority (whether on the occasion of the transfer on sale of the land, or any interest in the land, or the grant of a lease of the land, or on the periodical occasions provided in this Act) shall, for the purposes of the provisions of this Act as to the collection of increment value duty, be deemed to have been paid. P. 386.

(2) For the purposes of this section the expression "rating authority" means any body who have power to raise a rate or administer money raised by a rate; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined. P. 388.

Deduction from increment value of sum paid to rating authority in respect of increase in value.

36. Where in pursuance of any public general or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from any increment value of the land for the purposes of the collection of increment value duty and from the site value of the land P. 389.

for the purposes of the collection of undeveloped land duty, and from the value of the benefit accruing to the lessor for the purposes of reversion duty, and in the case of increment value duty the duty on the amount deducted shall be deemed to have been paid.

Special provision for land held for charitable purposes, etc.

P. 391.

37.—(1) No reversion duty or undeveloped land duty under this Part of this Act shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes while the land is occupied and used by such a body for the purposes of that body, and increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land held for the purposes of such a body, whether it is occupied or used by that body or not, without prejudice, however, to the collection of the duty on any other occasion.

The expression "governing body constituted for charitable purposes" includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the naval or military forces of the Crown), and includes any corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art.

P. 401.

(2) This section shall apply to the fee simple of, or any interest in, any land held by a registered society or by a company within the meaning of the Companies (Consolidation) Act, 1908, or any body of persons incorporated by special Act, if that company or body are by their memorandum or Act precluded from dividing any profit amongst their members, as if the purposes of the society, company, or body of persons were charitable purposes.

8 Edw. 7, c. 69.

In this provision the expression "registered society" means any society or body of persons who are registered, or whose rules are certified or registered, by a registrar of friendly societies in pursuance of any Act of Parliament, and who by their rules make provision for the benefits set out in section eight, subsection one, of the Friendly Societies Act, 1896, and where the contract between the society and the member is of a permanent character.

59 & 60 Vict. c. 25.

Special provision for statutory companies.

Pp. 405, 526.

38.—(1) Neither increment value duty, reversion duty, nor undeveloped land duty shall be charged in respect of any land whilst it is held by a statutory company for the purposes of their undertaking and cannot be appropriated by the company except to those purposes; but nothing in this provision shall prevent the collection of increment value duty when any such land is sold or ceases to be so held.

This provision shall not be construed so as to exclude from the benefit thereof land held by a statutory company which is intended to be ultimately appropriated for the purpose of works forming or to form part of the company's undertaking, but, pending the carrying out of those works, is used for other purposes.

P. 408.

(2) The Commissioners shall not require a statutory company to

make any returns with respect to any such land for the purpose of the provisions of this Part of this Act as to valuation other than as to the actual cost to the company of the land, and that cost shall for the purposes of this Part of this Act, be substituted for the original site value of the land.

(3) For the purposes of the Lands Clauses Acts, as incorporated with any special Act, the amount (if any) payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor. P. 409.

(4) For the purposes of this section the expression "statutory company" means any railway company, canal company, dock company, water company, or other company who are for the time being authorised under any special Act to construct, work, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised; and the expression "special Act" includes any Provisional Order or order having the force of an Act of Parliament. P. 410.

Power to charge duty on land in certain cases. 45 & 46 Vict. c. 38.

39.—(1) Where the fee simple of any land, or any interest in land, in respect of which increment value duty or reversion duty is charged, is settled land within the meaning of the Settled Land Act, 1882, or is vested in a trustee, and the tenant for life, or persons having the powers of a tenant for life, or the trustee, is the person who is liable to pay any sums on account of either of these duties, he shall be entitled to charge by deed upon the land or interest in land any amount paid by him, or which he may then be or may thereafter become liable to pay, in respect of either of these duties, and the amount of any expenditure which he may have reasonably incurred in connection with the valuation, and the benefit of any such charge, may be transferred in like manner as a mortgage. P. 412.

(2) In the case of settled land a deed executed for the purposes of this section shall not take effect until notice thereof has been given to the trustees of the settlement for the purposes of the Settled Land Act, 1882. P. 425.

(3) Sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the power under this section in the same manner as they apply to the exercise of the powers of a tenant for life under that Act. P. 425.

(4) Where the fee simple of any land, or any interest in land, in respect of which increment value duty or reversion duty is charged, is vested in a mortgagee who is liable to pay any sum on account of either of those duties, he shall be entitled to add to his security the sum for which he is so liable, including any costs or expenses properly incurred by him in respect of the payment of the duty. P. 426.

(5) In Scotland, where any person, having a limited interest in the P. 427.

land or interest in land in respect of which any duty under this Part of this Act is charged, is the person who is liable to pay any sums on account of the duty, he shall be entitled to charge such land or such interest in land by means of a bond and disposition or bond and assignation in security in his own favour which he is hereby authorised to grant.

Application of Part I. to copyholds.
P. 428.

40. The following provisions shall have effect with respect to the application of this Part of this Act to copyholds, including customary freeholds:—

(1) In the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds—

(*a*) The total and site values of the land shall be ascertained as if the land were freehold land, subject to a deduction of such an amount as is proved to the Commissioners to be equal to the amount which it would cost to enfranchise the land;

(*b*) References to the fee simple of land shall be treated as references to the whole copyhold or customary interest or estate;

(*c*) In the definition of "owner," a reference to the person entitled to the rents and profits of the land as tenant by copy of court roll or customary tenure shall be substituted for the reference to the person entitled to the rents and profits of the land in virtue of an estate of freehold:

(2) In the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, this Part of this Act shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest.

Definitions.
P. 434.

41. In this Part of this Act, unless the context otherwise requires,—

The expression "land" does not include any incorporeal hereditament issuing or granted out of the land;

P. 440.

The expression "rentcharge" means tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land;

44 & 45 Vict. c. 41.
P. 442.

The expression "rent" has the same meaning as in the Conveyancing and Law of Property Act, 1881, and does not include a rentcharge;

P. 443.

The expression "lease" includes an under-lease and an agreement for a lease or under-lease, but does not include a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption;

P. 444.

The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease

may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined;

The expression "interest" in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance as defined by this Act or any fixed charge as defined by this Act or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts; P. 446.

The expression "incumbrance" includes a mortgage in fee or for a less estate, and a trust for securing money and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act; P. 451.

The expression "fixed charge" means any rentcharge as defined by this Act, and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land; P. 456.

The expression "fee simple" means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession; P. 457.

The expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease or if there are two or more such leases the lessee under the last created under-lease shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid; P. 458.

The expressions "lessor" and "lessee" include an under-lessor and under-lessee; and the expression "lessor" includes the person for the time being entitled to the reversion, whether freehold or lease-hold, expectant on the determination of the lease; and the expression "lessee" includes executors, administrators, and assigns of the lessee; P. 461.

The expressions "transferor" and "lessor" do not include any persons who join in the execution of the instrument by which the transfer or lease is effected, or agreed to be effected, for the purpose P. 461.

only of conveying any estate vested in them as trustees or incumbrancers, or of acknowledging the receipt of the consideration money, or of giving consent, and sections fifty-nine, sixty, and sixty-two of the Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the powers of an owner under this Part of this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act;

45 & 46 Vict. c. 38.

P. 463.

The expression "agriculture" includes the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments; and the expression "agricultural land" shall be construed accordingly.

Application of Part I. to Scotland.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires,—

P. 471.

(1) The expression "land" does not include teinds, titles or offices of honour, or any servitude, superiority, casualty, feu duty, or ground annual, or any incorporeal heritable right;

The expression "rent" includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; and, for the purpose of section thirty-one of this Act, includes feu duty and ground annual;

The expression "rent charge" includes feu duty and ground annual;

The expression "interest" in relation to land includes the landlord's right of reversion to the subjects let on the determination of the lease, but does not include teinds, servitudes, superiorities, any interest in expectancy, whether vested or not, heritable securities, bonds of provision, jointures, annuities, or other capital or annual sums, or other debts secured upon heritage, or any sporting right, or any lease thereof;

The expression "owner" means the fiar of the land, except that where land is let on lease for a term of which more than fifty years are unexpired, the tenant under the lease shall be deemed to be the owner, and includes an institute or heir of entail in possession;

The expression "freeholder" includes "fiar," "life-renter of land settled within the meaning of the Finance Act, 1894," and "institute or heir of entail in possession," and the expression "freehold" shall be construed accordingly;

The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage, and the expression "incumbrancer" shall be construed accordingly;

"Servitudes" shall be substituted for "easements" and shall be deemed to include public rights;

"Local Government Board for Scotland" shall be substituted for "Local Government Board."

The expression "borough or urban district" means a royal, parliamentary or police burgh;

A reference to an appeal to quarter sessions shall not apply;

"Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the Judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in subsections (2), (3), and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court. "Sheriff Court" shall be substituted for "County Court," and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final. 57 & 58 Vict. c. 30.

(2) Any order of a referee as to expenses shall be enforceable as a recorded decree arbitral. P. 472.

(3) Subsection (2) of section two of this Act shall be construed as if after paragraph (*d*) thereof the following paragraph were added (that is to say):— P. 472.

(*e*) where the occasion is the grant of any feu of the land or the creation of any ground annual thereon, the value of the fee simple of the land calculated on the basis of the value of the consideration for such grant or creation, by way of feu duty, ground annual, or otherwise.

Where increment value duty falls to be collected on a feu contract or feu charter or a contract of ground annual, it shall be paid by the person by whom or on whose behalf the feu is granted or the ground annual is created, and, for the purposes of this Part of this Act, that person shall be deemed to be the transferor or the transferor on sale and the contract or charter to be the instrument, and the expressions "transfer" and "transfer on sale" shall be construed accordingly.

The expressions "lessor" and "lessee" include a sub-lessor and sub-lessee and the heirs, executors, administrators, and assigns of a lessor and lessee respectively.

(4) Where arrangements are made under section four of this Act for dispensing with the presentation of any instrument or particulars thereof, it shall be the duty of the keeper of the general register of sasines, and of the respective keepers of burgh or other local registers, to furnish to the Commissioners particulars of instruments presented for registration or registered in their respective registers as may be prescribed by regulations of the Commissioners, and in such case the provisions of subsection (3) of section four shall not apply. P. 473.

PART III.

DEATH DUTIES.

P. 474.
Limitation of relief from estate duty in respect of settled property.

55. For the purpose of any claim to relief from estate duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, in case of persons dying on or after the thirtieth day of April, 1909, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

P. 474.
Power to transfer land in satisfaction of estate duty, settlement estate duty, or succession duty.

56.—(1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

Provision as to gifts and dispositions inter vivos.
P. 475.

59.—(1) In the case of a person dying on or after the thirtieth day of April, nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting, or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (*a*) of subsection (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (*c*) of subsection (1) of section two of the principal Act), subsection (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months :

44 & 45 Vict. c. 12.
52 & 53 Vict. c. 7.
63 & 64 Vict. c. 7.

Provided that this section shall not apply to any gift inter vivos, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April, nineteen hundred and eight, or made or effected for public or charitable purposes.

P. 476.

(2) So much of paragraph (*c*) of subsection (1) of section two of the principal Act and this section as makes gifts inter vivos property which

is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section. P. 477.

Amendment as to value of property. P. 478.

60.—(1) In the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the proviso to subsection (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under subsection (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time : P. 478.

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I. of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly. P. 479.

Special provisions with respect to certain classes of property.
P. 480.

61.—(1) Notwithstanding anything in the last preceding section, the proviso to subsection (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

Deduction of amount paid for increment value duty from value of estate for purposes of estate duty.
P. 480.

62. Where increment value duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under subsection (1) of section seven of the principal Act, for the amount of increment value duty so to be collected as if it were a debt.

PART VII.

PROVISIONS AS TO PAYMENTS TO LOCAL AUTHORITIES AND TO ROAD IMPROVEMENT ACCOUNT.

P. 480.
Payment of half the proceeds of the duties on land values for benefit of local authorities.
P. 480.

91.—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one-half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties).

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts, audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine.

PART VIII.

GENERAL.

Laying of rules and regulations before Parliament.
P. 481.

93.—(1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commissioners of Customs and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable,

shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to re-assess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

Penalty for making false statement or representation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

P. 483.

Provision as to assessments, payments, etc. made on account of duty before passing of Act.

95.—(1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated.

P. 484.

(3) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

P. 485.

Repeal, construction,

96.—(1) The Acts specified in the Sixth Schedule to this Act are

and short title.

P. 485.

hereby repealed to the extent mentioned in the Third column of that Schedule.

(2) Any reference to "the Commissioners" in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

57 & 58 Vict. c. 30.

(3) Part III. of this Act shall be construed together with the Finance Act, 1894.

P. 486.

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

SCHEDULES 1—5 inclusive.

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

THE REVENUE ACT, 1911

(1 GEO. 5, c. 2).

An Act to amend the Law relating to Inland Revenue (including Excise) and the National Debt, and for other purposes connected with Finance. [31st March, 1911.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

DUTIES ON LAND VALUES.

Avoidance of contracts for payment of increment value duty by transferee or lessee.

P. 46.

1. Any contract made after the passing of this Act between a transferor and transferee or a lessor and lessee for the payment by the transferee or lessee, as the case may be, of increment value duty, or any expenses incurred in connexion with the payment or assessment of the duty, or for the repayment or reimbursement by the transferee or lessee to the transferor or lessor in any manner of any payments made by the transferor or lessor in respect of that duty or any such expenses, shall be void.

Amendment of s. 2 (3) of the principal Act.

P. 44.

2. Sub-section (3) of section two of the principal Act * (which relates to the definition of increment value) shall apply to the case of any transfer on sale of the fee simple of the land or of any interest in the land which took place twenty years or more before the thirtieth day of April nineteen hundred and nine, and which was a transfer to the person who is the owner of the land or any interest in the land at the

* The Finance (1909-10) Act, 1910; see s. 3 (1), *infra*.

time when an application is made under that provision, as it applies to the case of a transfer on sale which took place within twenty years before the thirtieth day of April, nineteen hundred and nine.

In the cases where the original site value has been finally settled before the passing of this Act, an application may be made, notwithstanding anything in sub-section (3) of section two of the principal Act, under that sub-section, for the purpose of giving effect to this provision within three months after the date of the passing of this Act, and the Commissioners shall, in such a case, alter the original site value as finally settled in such manner (if any) as may be necessary to give effect to the amendment made by this provision, and, in cases where any amount has been paid on account of duty, the Commissioners shall make such repayment as may be necessary to adjust the amount paid to any alteration of value made in pursuance of this provision.

Explanation and amendment of law as to reversion duty.

3.—(1) It is hereby declared that in relation to a lease which has determined the person in whom the lessor's interest was vested immediately before the expiration of the term for which the lease was granted, or, if the lease has determined before that time, immediately before the transaction or event in consequence of which the lease has determined, is the lessor for the purpose of section fifteen of the Finance (1909–10) Act, 1910 (in this Act referred to as the principal Act), and is the person to whom any benefit accrues from or by reason of the determination of the lease for the purpose of the other provisions of that Act relating to reversion duty.

P. 174.

10 Edw. 7, c. 8.

(2) Where, whether before or after the passing of this Act, a lease of any land determines on the vesting of the lessor's interest and the lessee's interest in the same person before the expiration of the term for which the lease was granted, the amount of the reversion duty (if any) payable shall not be the full duty, but such an amount as would, with compound interest at the rate of four per centum per annum for the residue of the term for which the lease was granted, produce the amount of the full duty.

P. 168.

For the purposes of this provision the full duty means the duty (if any) which would have become payable if the lease had not determined until the expiration of the term for which it was granted, and, if the total value of the land were at that time the same, as it is when the lease actually determines.

(3) No reversion duty shall be charged on the determination of any lease of land where the lease is determined in pursuance of an agreement between the lessor and the lessee for the acquisition by the lessee of the lessor's interest, if at the time of the determination of the lease—

P. 169.

(*a*) the lease has at least fifty years of its term to run; and

(*b*) the total value of the land does not exceed five hundred pounds.

(4) Where a lease of any land held upon trust for any body of persons is determined before the expiration of the term of the lease by the surrender thereof to the lessor upon the terms that he shall grant

P. 169.

to those persons severally leases of various plots of land representing in the aggregate the whole of the land comprised in the original lease, for a term in each case equal to the unexpired term of the residue of the original lease, and at rents amounting in the aggregate to but not exceeding the rent reserved by the original lease, no reversion duty shall be payable on the determination of the lease:

Provided that the lessor shall, in any case to which this provision applies, deliver an account under section fifteen of the principal Act in the same manner as if reversion duty were payable on the determination of the lease.

P. 168. (5) Sub-section (3) of section fourteen of the principal Act shall cease to have effect and shall be deemed never to have had effect.

Amendment of s. 16 (2) (*b*) of the principal Act. **4.** Twenty years shall be substituted for ten years as the limit of time for taking expenditure into account for the purposes of paragraph (*b*) of sub-section (2) of section sixteen of the principal Act.

P. 182. Amendment of s. 26 (1) of the principal Act. P. 315. **5.** Notwithstanding anything in sub-section (1) of section twenty-six of the principal Act, the Commissioners may, on the request of the owner of any pieces of land which are contiguous, and which do not in the aggregate exceed one hundred acres in extent, value those pieces of land together for the purposes of that Act, although those pieces of land are under separate occupation, if they are satisfied that in the special circumstances of the case it is equitable to do so; and any such valuation may be made under this provision, although any of the pieces of land have been valued before the passing of this Act, if the request for the valuation under this provision is made by the owner of the land within three months after the passing of this Act, and in that case any valuation previously made shall be of no effect.

P. 411. Saving in respect of the payment of increment value duty by certain statutory companies. **6.** Notwithstanding anything contained in the principal Act, where under the provisions of any lease or agreement any statutory company are required to pay over any part of the increment value of any land to His Majesty, or to any person on behalf of His Majesty, or any Department of Government, that part of the increment value shall, for the purposes of the provisions of the said Act as to the collection of increment value duty, be treated as increment value arising in respect of land held by His Majesty.

P. 368. Right of Commissioners of Inland Revenue to appeal against decision of referee. **7.** It is hereby declared that the Commissioners of Inland Revenue, if dissatisfied with the decision of a referee, have under sub-section (4) of section thirty-three of the principal Act a right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision.

PART V.

PROVISIONS AS TO PAYMENTS FOR LOCAL AUTHORITIES.

Repeal of s. 91 of 10 Edw. 7, c. 5. **16.** Section ninety-one of the principal Act (which provides for the payment of half the proceeds of the duties on land values for the benefit of local authorities) shall be suspended in its operation as from the date

of the principal Act until Parliament shall otherwise determine, but not beyond the thirty-first day of March nineteen hundred and fourteen.

PART VII.

MISCELLANEOUS.

Repeal, construction, and short title.

20.—(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part I. of this Act shall be construed together with Part I. of the principal Act.

(3) This Act may be cited as the Revenue Act, 1911.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Edw. 7, c. 8 . .	Finance (1909-10) Act, 1910 . . .	Section fourteen, subsection (3); . . . and section ninety-one.

THE SECTIONS OF THE FINANCE ACT, 1894, AS AMENDED BY ANY SUBSEQUENT ENACTMENTS THOUGHT TO BE MATERIAL TO THE INCREMENT VALUE DUTY.

THE FINANCE ACT, 1894

(57 & 58 VICT. c. 30).

Grant of Estate Duty.

Grant of estate duty. Pp. 15 to 22.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such a person a duty, called "estate duty," at the graduated rates herein-after mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

What property is deemed to pass. *Ib.*

2.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—

(*a*) Property of which the deceased was at the time of his death competent to dispose ;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

44 & 45 Vict. c. 12.
52 & 53 Vict. c. 7.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was bonâ fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

P. 21. Exception for transactions for money consideration.

3.—(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bonâ fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value

of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

Section 4 relates to the aggregation of property and is thought not to be material.

Settled property. P. 66.

5.—(1) Where property in respect of which estate duty is leviable is settled by the will of the deceased or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

(*a*) A further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(*b*) during the continuance of the settlement estate duty shall not be payable more than once.

(2) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property [*and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property].

* Words in brackets added by Finance Act, 1898, s. 13.

(3) In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4) Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

(5) Where any lands or chattels are so settled whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of estate duty, in like manner as for the purpose of succession duty.

Collection and Recovery of Duty and Value of Property.

P. 92. Collection and recovery of estate duty.

6.—(1) Estate duty shall be a stamp duty, collected and recovered as herein-after mentioned.

(2) The executor of the deceased shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

P. 94. (4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest *at the rate of three per cent. per annum* (*a*) on the estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, *and shall form part of the estate duty.*

(*a*) The words in italics were repealed by s. 40 of the Finance Act, 1896, and Part III. of the Schedule to such Act, and s. 18 of the same Act was substituted. See p. 602.

P. 95. (7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

P. 95. (8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, *less income tax* (*b*), and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each

instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

(*b*) *Less income tax.*—These words were repealed by s. 40 of the Finance Act, 1896, and Part III. of the Schedule thereto.

7. Sub-sects. 1 to 4 inclusive are thought not to be material. Sub-sects. 1 and 2 relate to allowance for debts in determining the value of an estate, sub-s. 3 to expenses incurred in relation to property situate out of the United Kingdom, and sub-s. 4 to an allowance for duty in relation to such property. P. 95.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased; P. 96.

[*Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act*, 1853, *and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.*] 16 & 17 Vict. c. 51.

By s. 60 (1) of the Finance Act, 1910, in the case of any person dying on or after April 30, 1909, this proviso is to cease to have effect (see p. 478). But by s. 61 of the same Act, notwithstanding s. 60 (1) just cited, the proviso is to continue to apply to the valuation of property consisting of a tenancy from year to year and for determining the gross value of property for the purpose of s. 16 of the Finance Act, 1894. Sect. 16 relates to the duties payable on small estates.

(6) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then— P. 97.

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

P. 98.

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable time as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) *Property passing on any death shall not be aggregated more than once*, nor shall estate duty in respect thereof be more than once levied on the same death.

The italicised words have no bearing on increment value duty.

P. 99.

Supplemental provisions as to collection, recovery, and repayment of and exemption from estate duty.

8.—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen, marines, or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

P. 614.

52 & 53 Vict. c. 7.
54 & 55 Vict. c. 66.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

P. 101.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has

received as executor, or might but for his own neglect or default have received.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property. P. 102.

(5) Every person accountable for estate duty, and every peron whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased. P. 103.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised

at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10) Relates to interest, and is repealed by s. 40 of the Finance Act, 1896, and Part III. of the Schedule thereto.

(11) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

P. 104. (12) Where it is proved to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

(13) Where any proceedings for the recovery of estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer
44 & 45 Vict. c. 12. of the Court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a bonâ fide purchaser for valuable consideration without notice.

Charge of estate duty on property, and facilities for raising it.
P. 105. **9.**—(1) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bonâ fide purchaser thereof for valuable consideration without notice.

P. 107. (2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments,

stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of estate duty, the Commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3) Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate. P. 107.

(4) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5) A person authorised or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts. 45 & 46 Vict. c. 38.

10. As to appeals. This section appears not to be applicable except as stated below: appeals, as to the new duties, even in cases where the occasion of payment is death, are regulated by s. 33 of the Finance (1909-10) Act, 1910. P. 108.

By virtue of s. 60 (3) of the Finance (1909-10) Act, 1910, appeals as to the value of real and leasehold property arising under the Act of 1894 are to lie not under s. 10 of that Act, but under s. 33 of the Finance (1909-10) Act, 1910.

But s. 33 (4) of the Finance (1909-10) Act, 1910 (see p. 360), applies to appeals under this Act sub-ss. (2), (3), and (4) of s. 10 of the Finance Act, 1894, which are as follows :—

P. 369.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

Discharge from and Apportionment of Duty.

Release of persons paying estate duty.

P. 109.

11.—(1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2) Where a person accountable for the estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for estate duty and the Commissioners shall give a certificate of such discharge.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such

rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a bonâ fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

Sect. 12 relates to commutation of duties on expectancies; s. 13 to compositions for death duties, where by reason of the numbers of deaths, or of the complicated nature of the interests of different persons, it is difficult to ascertain the exact amount of duty payable; and both sections are probably inapplicable to increment value duty.

Apportionment of duty. P. 110.

14.—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

P. 111.

(2) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

Sect. 15 relates to the exemption of small annuities and annuities and pensions payable by the Government of India from estate duty, to the power of the Treasury to remit estate duty in respect of works of art, etc., and to the exemption of advowsons from that duty.

Sect. 16 relates to certain exemptions from estate duty in the case of small estates.

Sect. 17 sets forth the various rates of estate duty.

Sect. 18 relates to the ascertainment of value for the purpose of the payment of succession duty.

Sect. 20 to a deduction from estate duty where the property in respect of which it is payable has already paid duty in a British possession.

Sect. 21 (1) to (4) relates to certain exceptions to or limitations of the law relating to estate duty, understood not to be material.

P. 112.

Sub s. (5) is as follows, and may possibly be held applicable to increment value duty.

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

Definitions. P. 113.

22.—(1) In this part of this Act, unless the context otherwise requires :—

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act :

(*b* The expression "will" includes any testamentary instrument :

(*c*) The expression "representation" means probate of a will or letters of administration :

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person :

(*e*) The expression "estate duty" means estate duty under this Act :

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :

(*g*) The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :

(*h*) The expression "settled property" means property comprised in a settlement :

(*i*) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust :

(*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases :

(*k*) The expression "incumbrances" includes mortgages and terminable charges :

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally

or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue:

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

(*o*) The expression "prescribed" means prescribed by the Commissioners.

(2) For the purposes of this Part of this Act— P. 114.

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument inter vivos or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased. P. 114.

FINANCE ACT, 1896

(59 & 60 Vict. c. 28).

14. Where property is settled by a person on himself for life, and after his death on any other persons, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor P. 115. Exemption to passing of property on enlargement of interest of settlor.

being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

P. 116.
Reverter of property to disponer.

15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no interest is created by the said disposition, then on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

16 & 17 Vict. c. 51.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853), of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

Interest upon estate duty and other death duties.
P. 116.

18.—(1) Simple interest at the rate of three per cent. per annum, without deduction for income tax, shall be payable on all estate duty from the date of the death of the deceased or, where the duty is payable by instalments, or become due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2) Extends sub-s. (1) to all death duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

Repeal of Acts.

40. This section, together with Part III. of the Schedule, repeals the words in s. 6 (6) of the Finance Act, 1894, "*at the rate of* 3 *per cent. per annum*," and the words "*and shall form part of the estate duty*" in order to give effect to s. 18 of the Finance Act, 1896, just set out; and also repeals the words in sub-s. (8) of the same s. 6 of the Act of 1894, "*less income tax.*"

FINANCE ACT, 1898

(61 & 62 VICT. c. 10).

PART V.

ESTATE DUTIES.

13. Sect. 5, sub-s. 2, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof: "and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property."

P. 117.

Persons not sui juris not to be deemed competent to dispose for the purpose of breaking settlements.

FINANCE ACT, 1900

(63 VICT. c. 7).

11. In the case of every person dying after the thirty-first day of March, nineteen hundred, property whether real or personal in which the deceased person or any other person had had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased notwithstanding that that estate or interest has been surrendered, assured, diverted, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting or disposition was bonâ fide made or effected twelve months before the death of the deceased, and bonâ fide provision and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise. This section shall, inter alia, apply to Scotland, conveyance or discharge of any life rent in favour of the fiar or to the propulsion of the fee under any simple or tailzied destination.

P. 117.

Amendment of 57 & 58 Vict. c. 30 as to property on death.

13.—(2) See this sub-s. on p. 118 (omitted here *per incuriam*).

14. This section gives power to the Treasury to remit the payment of the whole or any part of the death duties (within s. 13 (3) of the Finance Act, 1894) in the case of persons killed or dying in war, etc., up to 150*l.* if the total value of the property passing does not exceed 5,000*l.*

FINANCE ACT, 1907

(7 EDW. 7, c. 13).

P. 119.

Power to entertain application for discharge from claims for estate duty made at any time.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-s. (2) of s. 11 of the principal Act (which relates to discharge from claims for estate duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881

(44 & 45 VICT. c. 41), s. 65 (see p. 265).

65.—(1) Where a residue unexpired of not less than two hundred years of a term which as originally created was for not less than three

P. 266.

hundred years, is subsisting in land whether being the whole land originally comprised in the term or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent not being merely a peppercorn rent or other rent having no money value originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions in this section provided.

Sub-sect. (2) is a long sub-section indicating the persons who may enlarge the term and the manner in which they may do so.

(3) Thereupon by virtue of the deed and of this Act the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(6) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

THE CONVEYANCING ACT, 1882

(45 & 46 VICT. c. 41), s. 11 (see p. 266).

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not— P. 266.

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple.

THE SETTLED LAND ACT, 1882

(45 & 46 VICT. c. 38).

2.—(1) Any deed, will, agreement for a settlement or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any person by way of succession creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires. P. 412. Definition of settlement and tenant for life.

(2) An estate or interest in remainder or reversion not disposed of by a settlement and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4) The determination of the question whether land is settled land for purposes of this Act or not is governed by the state of facts and the limitations of the settlement, at the time of the settlement taking effect.

(5) The person who is for the time being, under settlement, beneficially entitled to possession of settled land for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6) If, in any case there are two or more persons so entitled as tenants

in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7) A person being tenant for life within the foregoing definition, shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land or his estate or interest therein is encumbered or charged in any manner or to any extent.

(8) The persons, if any, who are for the time being under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

P. 415.

Capital money under Act, investment, etc., by trustees or Court.

21. Capital money arising under this Act subject to payment of claims properly payable thereout and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one or partly in one and partly in another or others of the following modes (namely):

In payment of costs, charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act.

Trustees' reimbursement.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

P. 414.

Enumeration of other limited owners, to have powers of tenant for life.

58.—(1) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services.

(ii.) A tenant in fee simple, with an executory limitation gift, or disposition over, on failure of his issue, or in any other event:

(iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:

(iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:

(v.) A tenant for the life of another not holding merely under a lease at a rent:

(vi.) A tenant for his own or any other life, or for years determinable

on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation or otherwise, or to be defeated by an executory limitation gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose :

(vii.) A tenant in tail after possibility of issue extinct :

(viii.) A tenant by the curtesy :

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

Pp. 426 and 462.

59. Where a person who is in his own right seised of or entitled in possession to land is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Infant absolutely entitled to be tenant for life.

60. Where a tenant for life or a person having the powers of a tenant for life under this Act is an infant, or an infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none then by such person and in such manner as the Court on the application of a testamentary or other guardian or next friend of the infant either generally or in a particular instance orders.

Ib.

Tenant for life infant.

Married women, how to be affected.

61.—(1) The foregoing provisions of this Act do not apply in the case of a married woman.

(2) Where a married woman who if she had not been a married woman would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without

her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5) The married woman may execute, make and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Pp. 426 and 462.

Tenant for life lunatic.

62. Where a tenant for life or a person having the powers of a tenant for life under this Act, is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor or other person entrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

P. 414.

Provision for case of trust to sell and reinvest in land.

63.—(1) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale or the income of that money or the income of the land until sale, or any part of that money or income for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose or to any other restriction shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid, until sale whether absolutely or subject as aforesaid shall be deemed to be a tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to or approval of, or control over the sale, or if under the settlement there are no such trustees then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2) In every such case the provisions of this Act referring to a tenant for life and to a settlement and to settled land shall extend to the person or persons aforesaid and to the instrument or instruments under which

his or their estate or interest arises, and to the land therein comprised subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life or to the remainderman or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money or the income of the land until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

CUSTOMS AND INLAND REVENUE ACT, 1881 (44 & 45 VICT. c. 12), s. 38, SUB-SS. (2) AND (3).

38.—(2) The personal or movable property to be included in an account shall be property of the following description, viz.— P. 18. Grant of duties on accounts of

(*a*) Any property taken as a donatio mortis causâ made by any person

certain property.

dying on or after the first day of June, 1881, or taken under a voluntary disposition made by any person so dying purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bonâ fide made three months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property.

(3) Where an account delivered duly stamped comprises property passing under a voluntary settlement and, upon the production of the settlement, it shall appear that the stamp duty of 5*s.* per centum has been paid thereon according to the amount or value of the property so passing or any part thereof the amount of such stamp duty shall be returned to the person delivering the account.

CUSTOMS AND INLAND REVENUE ACT, 1885

(48 & 49 VICT. c. 51), SS. 11 TO 19 (1) AND S. 20.

P. 124.

Grant of duty on property of corporate and unincorporate bodies.

11. Whereas certain property, by reason of the same belonging to or being vested in bodies corporate or unincorporate, escapes liability to probate, legacy or succession duties, and it is expedient to impose a duty thereon by way of compensation to the revenue : Be it therefore enacted, that there shall be levied and paid to Her Majesty in respect of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate during the yearly period ending on the fifth day of April in any year, a duty at the rate of five pounds per centum upon the annual value, income, or profits of such property accrued to such body corporate or unincorporate in the same yearly period, after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property.

Subject to exemption from such duty in favour of property of the descriptions following (that is to say):—

(1) Property vested in or under the control or management of "The Commissioners of Works" or "The Commissioners of Woods," or any Department of Government.

(2) Property which, or the income or profits whereof, shall be legally appropriated and applied for the benefit of the public at large or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly described by Act of Parliament.

(3) Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts.

(4) Property of any friendly society or savings bank established according to Act of Parliament.

(5) Property belonging to or constituting the capital of a body corporate or unincorporate established for any trade or business, or being the property of a body whose capital stock is so divided and held as to be liable to be charged to legacy duty or succession duty.

(6) Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within a period of thirty years immediately preceding.

(7) Property acquired by any body corporate or unincorporate within a period of thirty years immediately preceding where legacy duty or succession duty shall have been paid upon the acquisition thereof.

12. In the construction and for the purposes of this Part of this Act— P. 121.

Interpretation of terms.

The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty.

The term "accountable officer" means every chamberlain, treasurer, bursar, receiver, secretary, or other officer trusted or member of a body corporate or unincorporate by whom the annual income or profits of property in respect whereof duty is chargeable under this Act shall be received, or in whose possession, or under whose control, the same shall be.

13. The duty hereby imposed shall be considered as a stamp duty, and shall be under the care and management of the Commissioners of Inland Revenue, herein-after called the Commissioners, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are vested in them for the collection, recovery, and management of the succession P. 125.

Duty to be under the care of the Commissioners of Inland Revenue.

duty, and shall have all other powers and authorities requisite for carrying this Part of this Act into execution.

P. 125.
Duty to be a first charge on property; what parties accountable for the duty.

14. The duty hereby imposed shall be a first charge on all the property in respect whereof the same shall be payable while such property shall remain in the possession or under the control of the body corporate or unincorporate chargeable with such duty, or of any party or parties acquiring the same, with notice of any such duty being in arrear, and every such body corporate or unincorporate, and every accountable officer, shall, to the full extent thereof, be answerable to Her Majesty for the payment of the duty charged thereon.

P. 122.
Return of property to be made to the Commissioners.

15.—(1) Every body corporate or unincorporate chargeable with the duty hereby imposed shall, on or before the first day of October in every year, deliver, or cause to be delivered to the Commissioners or their officers, a full and true account of all property in respect whereof any such duty shall be payable, and of the gross annual value, income, or profits thereof accrued to the same body in the year ended on the preceding fifth day of April, and of all deductions claimed in respect thereof, whether by relation to any of the before-mentioned exemptions from such duty or as necessary outgoings.

Ib.

(2) The account shall be made in such form and shall contain all such particulars as the Commissioners shall, by any general or special notice require, or as shall be necessary or proper for enabling them fully and correctly to ascertain the duty due, and every accountable officer herein-before made answerable for payment of duty in respect of any property chargeable under this Act, shall be answerable also for the delivery to the Commissioners of such full and true account as aforesaid of and relating to such property.

P. 126.
Power for persons answerable to retain moneys for payment of duty.

16. Every accountable officer shall be at liberty to retain or raise out of any moneys of any body corporate or unincorporate which shall be held by him, or shall come to his hands, the full amount of all moneys which he shall pay or have paid on account of the duty hereby imposed, and all reasonable expenses incident to such payments.

P. 127.
Power for Commissioners to assess duty according to accounts rendered or to obtain other accounts.

17.—(1) It shall be lawful for the Commissioners to assess the duty upon the footing of any account rendered to them, or if dissatisfied with such account to cause an account to be taken by any person or persons appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account subject to appeal to a Court in the same manner as in any case of succession duty as herein-after provided.

(2) If the duty so assessed shall exceed the duty assessable according to the account rendered to the Commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account on any funds liable to such duty as an addition thereto and

part thereof, and to recover the same accordingly; but if there shall be an appeal against such assessment, then the payment of such expenses shall be in the discretion of the Court.

(3) The duty shall be payable immediately after the assessment, and notwithstanding any appeal therefrom; provided that in the event of the amount of the assessment being reduced by the order of the Court, the difference in amount shall be repaid with such interest (if any) as the Court may allow.

P. 127. Penalty for not making returns and for non-payment of duty.

18.—(1) Every body corporate or unincorporate, and every accountable officer hereby required to deliver any such account as aforesaid and wilfully neglecting so to do on or before the first day of October in any year, shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable in respect of the property required to be comprised in such account, and a like penalty for every month after the first month during which such neglect shall continue.

(2) Every body corporate or unincorporate, and every accountable officer hereby required to pay any duty, and wilfully neglecting so to do for a space of twenty-one days after the same shall have become payable, shall be liable to pay to Her Majesty a penalty equal to ten pounds per centum upon the amount of such unpaid duty, and a like penalty for every month after the expiration of the said period of twenty-one days during which such neglect shall continue.

P. 128. Application of enactments as to succession duty to this part of this Act.

19.—(1) The Commissioners shall, for the purposes of this Part of this Act, have the same powers in relation to proceedings to enforce the delivery of accounts, and in relation to the verification of accounts, and the production and inspection of books and documents, as they have in relation to succession duty under the law now in force.

* * * * *

Ib. Court to provide for payment of duty

20. In the case of any proceeding in any Court for the administration of any property chargeable with duty under this Act, such Court shall provide out of any such property in its possession or control for the payment of the duty to the Commission.

CUSTOMS AND INLAND REVENUE ACT, 1889

(52 & 53 Vict. c. 7), ss. 11, 12, 13, 14.

P. 18. Amendment of 44 & 45 Vict. c. 12, s. 38.

11.—(1) Sub-section two of section 38 of the Customs and Inland Revenue Act, 1881, is hereby amended as follows:—

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift whenever made, of which property bonâ fide possession and

enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement with any other person.

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property" wherever the same occurs included the proceeds of sale thereof.

LIMITATION OF CLAIMS TO SUCCESSION DUTY OR LEGACY DUTY IN CERTAIN CASES.

P. 100. Purchasers and mortgagees exempted from liability to succession duty after a specified period.

12.—(1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this Part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which give rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him,

or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the person or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise, but a purchaser or mortgagee shall not for the purpose of obtaining the exemption conferred by this section be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

Ib.

Power to deposit copies of documents and liability to cease after specified period.

13.—(1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty herein-before imposed by this Part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2) The officers of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise give a receipt in writing under his hand for the copy. After a receipt has been given by an officer of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The cost of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

Ib.

Liability to duty under documents admitted to probate to cease after specified period.

14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty herein-before imposed by this Part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

LOCAL REGISTRATION OF TITLE (IRELAND) ACT, 1891

(54 & 55 VICT. c. 66), s. 47 (see p. 101).

P. 101. Burdens which are without registration to affect registered land.

Subject to the first proviso in this section contained, all registered land shall be subject to such of the following burdens as for the time being affect the land, whether those burdens are or are not registered, namely—

(*a*) Succession duty, crown rents, quit rents, tithe rentcharges and payments in lieu of tithe or tithe rentcharge;

(*b*) land improvement charges and drainage charges;

(*c*) annuities or rentcharges for the repayment of advances made under the provisions of any of the Purchase of Land (Ireland) Acts on account of purchase money;

(*d*) annuities charged under the provisions of section 27 of the Landlord and Tenant (Ireland) Act, 1870;

(*e*) rights of the public or of any class of the public;

(*f*) customary rights, franchises, seignoral rights, and liabilities arising from tenure;

(*g*) easements and profits à prendre, unless they are respectively created by express grant or reservation after the first registration of the land;

(*h*) tenancies created for any term not exceeding thirty-one years, or for any less estate in cases where there is an occupation under such tenancies; and

(*i*) statutory tenancies;

Provided as follows:—

(i.) Where it is proved to the satisfaction of the registering authority that any land registered or about to be registered is exempt from, or has ceased to be subject to, succession duty, crown rent, quit rent, tithe rentcharge, payments in lieu of tithe or tithe rentcharge, land improvement charge, drainage charge, or annuity or rentcharge for the repayment of any advance made on account of purchase money as hereinbefore is mentioned, the authority may enter on the register notice of the fact; and

(ii.) Where the existence of any of the burdens in this section mentioned is proved to the satisfaction of the registering authority, the authority may, with the consent of the applicant or registered owner, or in pursuance of an order of the Court, enter notice thereof on the register.

STAMP DUTIES.

The following extracts from the Acts relating to stamps are thought to be specially useful in considering the question of increment value duty. But it is not suggested that other sections of the Stamp Acts will not apply to the increment value stamp.

THE STAMP DUTIES MANAGEMENT ACT, 1891

(54 & 55 VICT. c. 38), s. 1.

1. All duties for the time being chargeable by law as stamp duties shall be under the care and management of the Commissioners, and this Act shall apply to all such duties and to all fees which are for the time being directed to be collected or received by means of stamps.

P. 70.
Act to apply to all stamp duties.

THE STAMP ACT, 1891

(54 & 55 VICT. c. 39).

2. All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained, and except where express provision is made to the contrary are to be denoted by impressed stamps only.

P. 71.
All duties to be paid according to regulations of Act.

5. All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud Her Majesty,

Ib.
Facts and circumstances affecting duty to be set forth in instruments.

(*a*) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances

shall incur a fine of ten pounds.

12.—(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions:—

P. 80.
Assessment of duty by Commissioners.

(*a*) Whether it is chargeable with any duty;

(*b*) With what amount of duty it is chargeable.

(2) The Commissioners may require to be furnished with an abstract of the instrument, and also with such evidence as they may deem necessary in order to show their satisfaction whether all the facts and

circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein.

(3) If the Commissioners are of opinion that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it is not chargeable with any duty.

(4) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.

(5) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence and available for all purposes notwithstanding any objection relating to duty.

(6) Provided as follows :

(*a*) An instrument upon which the duty has been assessed by the Commissioners shall not if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment :

(*b*) Nothing in this section shall extend to any instrument chargeable with ad valorem duty and made as a security for money or stock without limit, or shall authorise the stamping after the execution thereof of any instrument which by law cannot be stamped after execution :

(*c*) A statutory declaration made for the purpose of this section shall not be used against any person making the same in any proceeding whatever, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such declaration is made shall on payment of the duty chargeable upon the instrument to which it relates be relieved from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstances required by this Act to be stated therein.

P. 72. Persons dissatisfied may appeal.

13. Relates to appeals by special case to the High Court from the Assessment Commissioners as to a stamp. Whether it is superseded by s. 33, so far as increment value duty is concerned, or still remains in force, appears doubtful.

P. 81. Terms upon which instruments not duly stamped may be received in evidence.

14.—(1) Upon the production of an instrument chargeable with any duty as evidence in any Court of civil judicature in any part of the United Kingdom or before any arbitrator or referee notice shall be taken by the judge, arbitrator, or referee, of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof it may, on payment to the officer of the Court whose duty it is to read the instrument, or to the arbitrator

or referee, of the amount of the unpaid uty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence saving all just exceptions on other grounds.

(2) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose of the payment and of the amount thereof and shall communicate to the Commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the Commissioners may appoint the money received by him for the duty and penalty.

(3) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

(4) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating wheresoever executed, to any property situate, or to any matter or thing done or to be done in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence or be available for any purpose whatever unless it is duly stamped in accordance with the law in force at the time when it was first executed.

15. See a note on p. 83 as to this section.

16. Every public officer having in his custody any rolls, books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorised by the Commissioners to inspect the rolls, books, records, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or reward, and in case of refusal shall for every offence incur a fine of ten pounds.

P. 346.
Rolls, books, &c., to be open to inspection.

54. For the purposes of this Act the expression "conveyance on sale" includes every instrument, and every decree or order of any Court or of any Commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.

Pp. 7, 71.
Meaning of "conveyance on sale."

55.—(1) Where the consideration or any part of the consideration for a conveyance on sale consists of any stock or marketable security the conveyance is to be charged with ad valorem duty in respect of the value of the stock or security.

(2) Where the consideration or any part of the consideration for a conveyance on sale consists of any security not being a marketable security the conveyance is to be charged with ad valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

Pp. 71, 351.
How ad valorem duty to be calculated in respect of stock and securities.

56.—(1) Where the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically for a definite

Pp. 71, 351.
How consideration

consisting of periodical payments to be charged.

period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with ad valorem duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3) Where the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with ad valorem duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4) Provided that no conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing the payments is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than ten shillings.

Pp. 71, 354. How conveyance in consideration of a debt &c., to be charged.

57. Where any property is conveyed to any person in consideration wholly or in part of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with ad valorem duty.

P. 8. What is to be deemed a conveyance on any occasion not being a sale or mortgage.

62. Every instrument, and every decree or order of any Court or of any Commissioners, whereby any property on any occasion, except a sale of mortgage, is transferred to or vested in any person is to be charged with duty as a conveyance or transfer of property.

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings.

FINANCE ACT, 1898

(61 & 62 VICT. c. 10).

P. 8. Removal of doubts as to 54 & 55 Vict. c. 39, s. 54, so far as regards foreclosure decrees.

6. For the removal of doubts with reference to the effect of sections fifty-four and fifty-seven of the Stamp Act, 1891, it is hereby declared that the definition of "conveyance on sale" in the said section fifty-four includes a decree or order for or having the effect of an order for foreclosure.

Provided that—

(*a*) The ad valorem stamp duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates and where the decree or order states that value that statement shall be conclusive for the purpose of determining the amount of the duty; and

(*b*) where ad valorem stamp duty is paid upon such decree or order, any conveyance following upon such decree or order shall be exempt from the ad valorem stamp duty.

FINANCE ACT, 1911

(1 & 2 GEO. 5, c. 48).

PART V.

DEATH DUTIES.

18. It is hereby declared that, in estimating for the purposes of subsection (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of and value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

P. 478. Valuation of cottages for purposes of Estate Duty.

57 & 58 Vict. c. 30.

COUNTY COURT RULES REGULATING APPEALS FROM A REFEREE TO THE COUNTY COURT UNDER SECT. 33 (4).

These Rules are based upon and are substantially the same as the Rules regulating Appeals to the High Court from the Referee (see *ante*, p. 583) The only differences between the two sets of rules arise from the ordinary differences in the constitution and procedure of the High Court and the County Court. It will be observed that the County Court Rules, like the High Court Rules, make no provision for appeals by the Crown from the referee, although such an appeal is expressly given by s. 7 of the Revenue Act, 1911. No doubt they will be allowed in this respect.

STATUTORY RULES AND ORDERS, 1911.

No. $\frac{342}{\text{L. } 10}$.

COUNTY COURT, ENGLAND.

Procedure.

THE COUNTY COURT RULES, 1911. DATED APRIL 11, 1911.

These Rules may be cited as the County Court Rules, 1911, or each rule may be cited as if it had been one of the County Court Rules, 1903, and had been numbered therein by the number of the order and rule placed in the margin opposite such rule.

An order and rule referred to by number in these rules means the order and rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be.

These Rules shall be read and construed as if they were contained in the County Court Rules, 1903. The forms in the Appendix shall be used as if the were contained in the Appendix to the County Court Rules, 1903, and when it is so expressed shall be used instead of the corresponding forms contained in such last-mentioned Appendix, or in the Appendix to any County Court Rules of subsequent date, as the case may be.

Where any rule or form hereby annulled is referred to in any of the County Court Rules, 1903, or any County Court Rules of subsequent date, or in the Appendix to any of those Rules, the reference to such rule or form shall be construed as referring to the rule or form hereby prescribed to be used in lieu thereof

ORDER XLII.

THE SUCCESSION DUTY ACT, 1853, SECTION 50. THE FINANCE ACT, 1894, SECTIONS 10 AND 14.

The following rules shall be added to Order XLII., viz. :—

THE FINANCE (1909-10) ACT, 1910, SECTION 33 (4).

ORDER XLII., Rule 13.

Appeal under 10 Edw. 7. c. 8, s. 33 (4),

33. Where any person aggrieved by the decision of a referee under the Finance (1909-10) Act, 1910, desires to appeal to the Court against the decision, he shall proceed by filing a petition setting forth specifically the several facts and contentions of law upon which he alleges that the decision

of the referee was erroneous, and stating an address at which documents may be served on him

to be by petition.

34. Subject to the provisions of these rules, a petition of appeal must be filed within one month from the date of the decision of the referee.

ORDER XLII., Rule 14. Time for appealing.

35.—(1) The petition shall be intituled "in the matter of the Finance (1909-10) Act, 1910, and in the matter of an appeal by , of under section 33 of the said Act."

ORDER XLII. Rule 15. Title, date of hearing, and service of petition.

(2) On the filing of a petition the registrar shall fix a day and hour on and at which the petition will be heard, the day to be fixed at a date not less than sixty days from the filing of the petition, so as to allow time for the provisions of these rules to be complied with.

(3) On the day of hearing being fixed, the registrar shall seal a copy of the petition, and shall deliver to the appellants two copies of a notice according to the form in the Appendix, signed by the registrar and under the seal of the Court; and the sealed copy of the petition, with one of such notices annexed thereto, shall within seven days after the filing of the petition be served by the appellant upon the Commissioners of Inland Revenue.

[*See* Form 341.]

36. Within ten days after service of the petition the Commissioners shall serve upon the appellant a notice stating whether, and to what extent, they admit the facts stated in the petition.

ORDER XLII., Rule 16. Notice of admissions by respondents.

37.—(1) Within twenty-eight days after service of the petition the Commissioners shall serve upon the appellant a further notice stating the facts and the contentions of law upon which they themselves intend to rely at the hearing, and (if they so think fit) requiring the appellant to admit those facts.

ORDER XLII., Rule 17. Notice to be given by respondents of facts and contentions of law relied on.

(2) The appellant, if he is so required to admit facts shall, and in any case may, within ten days after service upon him of the notice required to be served by the Commissioners under this rule, serve upon the Commissioners a notice stating whether, and to what extent, he admits the facts stated in the notice served by the Commissioners.

38. Upon the expiration of ten days after the service of the notice required to be served by the Commissioners under the last preceding rule all matters shall, except to the extent admitted by both parties, be deemed to be at issue.

ORDER XLII., Rule 18. Matters, when deemed to be at issue.

39. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

ORDER XLII Rule 19. Oral evidence.

40. The appellant shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the petition, and the Commissioners shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the notice required to be served by them under these rules.

ORDER XLII., Rule 20. Parties limited to grounds stated in petition and notice.

41.—(1) It shall be the duty of the appellant and the Commissioners respectively to exchange lists of all documents in their possession relating to the matters at issue, and to give to each other inspection, at all reasonable times, of any of those documents which may not be protected by any privilege, and, if so required, to provide copies thereof on the usual terms.

ORDER XLII., Rule 21. Discovery and inspection of documents.

(2) If the Commissioners are dissatisfied with the list so supplied by the appellant, they may apply to the Court for an order for discovery of documents in the same manner and to the same extent as a party to an action

in the Court, but in considering any such application the Court shall take into account the willingness or otherwise of the Commissioners to disclose or allow inspection of any documents in their possession.

ORDER XLII., Rule 22. Admission of certain material as *primâ facie* evidence.

42. The judge may, at any stage of the proceedings, either upon or without the application of either party, order that any material, whether strictly admissible as evidence or not, which in the opinion of the judge ought, having regard to the question of costs or otherwise, fairly to be admitted as *primâ facie* evidence of any fact, shall be *primâ facie* evidence of that fact, so as to shift the burden of proving the contrary on to the other party.

ORDER XLII., Rule 23. Extension of time for appealing and for serving documents.

43. The judge may extend the time for filing or serving a petition of appeal or for serving any notice under these rules, upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these rules.

ORDER XLII., Rule 24. Amendment of petition or notices.

44. The judge may at any stage of the proceedings allow the amendment of the petition, or of any notice under these rules, upon such terms as the judge may think right.

ORDER XLII., Rule 25. Power to stay proceedings till duty paid or secured.

45.—(1) Where the Commissioners claim that any sum is due from the appellant by way of duty, they may apply for an order that proceedings on the appeal shall be stayed until the appellant has paid or has given security for the duty claimed.

(2) Any such application shall be made to the judge in accordance with the rules as to interlocutory applications, subject to the following modifications:—

(i.) The application shall be made on notice in writing, and on affidavit;

(ii.) The Commissioners shall serve notice of the application on the appellant three days at least before the hearing of the application, and shall deliver to the appellant, together with such notice, a copy of any affidavit which they intend to use at the hearing of the summons.

(3) The judge shall make such order on any such application as seems to him reasonable in the circumstances of the case, and any order so made may, on an application made in accordance with this rule either by the Commissioners or the appellant, be subsequently varied or discharged.

ORDER XLII., Rule 26. Service of documents.

46. Any notice or other document required or authorised to be served upon or sent to the Commissioners under these rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to the Solicitor of Inland Revenue, Somerset House, London, W.C., and any notice or other document required or authorised to be served upon or sent to an appellant under these rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to him at his address for service as stated in his petition; and unless the contrary is proved, any notice or document served as aforesaid shall be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

ORDER XLII., Rule 27. Order on petition.

47. Where the judge makes an order upon a petition under this Order, the registrar shall as soon thereafter as conveniently may be draw up, seal, and file such order.

ORDER XLII., Rule 28. Saving for right of Crown.

48. Nothing in these rules shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative.

We, William Lucius Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being Judges of County Courts appointed to frame rules and orders for regulating the practice of the Courts and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules and Orders, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.
Wm. C. Smyly.
R. Woodfall.
T. C. Granger.
H. Tindal Atkinson.

Approved,

Loreburn, C.
Alverstone, C.J.
Herbert H. Cozens-Hardy, M.R.
Roland L. Vaughan Williams, L.J.
R. J. Parker, J.
P. Ogden Lawrence.
Wm. H. Winterbotham.
C. H. Morton.

I allow these Rules, which shall come into force on the first day of May, 1911.

The 11th day of April, 1911.

Loreburn, C.

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