STUDIES IN THE HISTORY OF TAX LAW

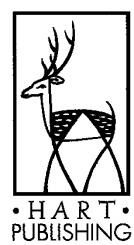
This work contains the full text of the papers presented at the second Tax Law History Conference in July 2004. The Conference was organised by the Cambridge Law Faculty's Centre for Tax Law. The papers range widely in terms of period—from the Old Testament to the twentieth century—and geographical areas, with papers on matters relating not only to the United Kingdom but also Canada, Australia and the US. The matters discussed are also broad and include the concept of taxation developed by Adam Smith and his fellow United Kingdom writers of the Enlightenment, problems of adjudication in tax law and of access to justice for taxpayers, definitions of income and its UK subset 'total income', capital gains tax, stamp duty on newspapers, the wartime excess profits tax, the nature of tithes, the strange tale of Jasper Moore, the real nature of the decision in the *Duke of Westminster* case, the demise of wealth transfer taxes in Canada, the nature of the US corporate tax and debates in the US about whether to raise war finance by issuing bonds or levying tax. As a whole the papers illustrate not only the wide variety but also the real depth of the issues waiting to be investigated in this rapidly growing field of scholarship.

Studies in the History of Tax Law

Volume 2

Edited by

JOHN TILEY



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Preface

Over two almost perfect English summer days in July 2004, the second group of 40 interested people gathered together for the second Tax Law History Conference organised by the Centre for Tax Law which is part of the Law Faculty of the University of Cambridge. As with the first, held two years earlier, our days were passed in the beautiful surroundings of Lucy Cavendish College and this time the air was heavy with the scents of a Cambridge Edwardian garden in full summer. This volume is a collection of the papers delivered over those two days. The occasion would have been impossible without sponsorship from the Chartered Institute of Taxation.

Once again I have taken my role as editor very lightly. As I, in my editorial role, look back I am struck by the great richness and variety of the material waiting to be examined. There have always been writers of the history of taxation, especially in the United Kingdom, but the opportunities for new work has never been greater. As the list of papers below makes clear we were 'discovered' by participants from the United States. The success of the days caused a group led by Steve Bank and based at the University of California, Los Angeles to organise their own conference in co-operation with our own Cambridge Centre for Tax Law in July 2005.

The first two chapters were published in the January 2005 British Tax Review special issue to mark the bicentenary of the Special Commissioners. David Duff has widened his researches in the area of wealth transfer to cover New Zealand; his extended article is due to appear shortly in the Pittsburgh Tax Review.

The third Cambridge conference took place in Cambridge in July 2006 and had more participants from continental Europe. The fourth is scheduled for July 2008.

It remains for me as Director of the Centre once again to express my thanks to all those who gave of their time to attend the conference making it the happy event it was and, in particular, to those who shared their scholarly investigations with us by giving papers and thus focussing our thoughts. Special thanks go to Janet Rogers who helped with the administration of the conference.

Sincere thanks go also Christine Houghton and all the staff of Lucy Cavendish College who made us so welcome and to the President and Fellows of the college for allowing us to stay in their college.

Finally thanks go to Richard Hart and his editorial team for taking this publishing project on and to Mel Hamill as the Managing Editor for all the hard work.

John Tiley
Cambridge
July 2006

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Part 1

The Income Tax Era

1

The Special Commissioners from Trafalgar to Waterloo

JOHN F AVERY JONES

ABSTRACT

THE SPECIAL COMMISSIONERS were introduced by Pitt in 1805 to take some of the work away from the general commissioners by dealing with claims for charitable reliefs under Schedules A and C. This was their sole function until the abolition of income tax in 1816. The problems of interpretation of the oddly-worded charitable exemption were not resolved until Pemsel's case in 1891.

'Practically the Special Commissioners are identical with the Board of Inland Revenue.'[1]

I. INTRODUCTION

THE SPECIAL COMMISSIONERS celebrate their bicentenary in 2005. Their history can be divided into two main eras: the first from their introduction in 1805 to the abolition of income tax in 1816, a period when they dealt with certain claims for exemption from tax (including the still-topical one of determining whether public schools and hospitals qualified for tax relief), relieving some of the burden on the General Commissioners. The second era starts with the reintroduction of income tax in 1842: this time the Special Commissioners also dealt with Schedule D assessments and Schedule D appeals at the option of the taxpayer in order to preserve confidentiality of their affairs from the General Commissioners. This chapter will deal with the first era roughly corresponding to the period from the battle of Trafalgar to that of Waterloo.

[1] *Special Commissioners v Pemsel* (1891) 3 TC 53, 99 *per* Lord Macnaghten. (This was said in relation to their original function of handling claims for exemption, not hearing appeals.)

Originally both assessment and appeals were the province of the General Commissioners and formed a continuous administrative process leading to the correct figure. The Special Commissioners' decisions on claims for exemption were also administrative, but exercised judicially as there was no right of appeal. Although these claims are no longer made to the Special Commissioners, the connection is preserved as the Special Commissioners are the sole appeal body in relation to all such refuted claims.[2] If one of the original Special Commissioners returned today he would find virtually all[3] of these original exemptions still in the Act, and he would even find the statutory wording of them familiar. Remarkably most of the original claims were still being made to his successors until 1965.[4] The Special Commissioners' assessing function started in 1805 since they assessed tax on Schedule C income where the recipient did not make a return or if he made an arrangement to pay the tax direct to the Bank of England without declaring the income to the General Commissioners. This lasted for only one year, becoming unnecessary in 1806 by the introduction of the paying agent deducting tax at source. As well as the taxpayer's option to have his Schedule D assessment made by the Special Commissioners, many other assessing functions followed. All assessing functions ended in 1965 leaving only the appellate function introduced in the second era with the Schedule D appeals heard by the Special Commissioners at the taxpayer's option: this was subsequently expanded beyond Schedule D.

To put the history of the Special Commissioners into perspective, one must start with the state of development of income tax at the time they were first introduced. Land tax, which had existed since 1688 (and under another name effectively from 1671), was the main direct tax in the eighteenth century. In spite of its name, land tax included a tax on deemed income from personal property, including public offices,[5] and annuities and other yearly payments, expressions that would later be taken over by

[2] But see below nn. 169 and 170 for a possible exception.

[3] Except the Schedule C exemptions for non-resident aliens, which was not repeated in the 1842 Act, see below n. 148, and for foreign ministers, which was repealed in 1964, see below n. 161.

[4] Until 1925 for the charitable exemptions, other than for the British Museum, see below n. 120.

[5] Adam Smith fully understood the meaning of the expression: 'The emoluments of offices are not, like those of trades and professions, regulated by the free competition of the market, and do not, therefore, always bear a just proportion to what the nature of the employment requires. They are, perhaps, in most countries, higher than it requires; the persons who have the administration of government being generally disposed to reward both themselves and their immediate dependants rather more than enough. The emoluments of offices, therefore, can in most cases very well bear to be taxed. The persons, besides, who enjoy public offices, especially the more lucrative, are in all countries the objects of general envy, and a tax upon their emoluments, even though it should be somewhat higher than upon any other sort of revenue, is always a very popular tax. In England, for example, when by the land-tax every other sort of revenue was supposed to be assessed at four shillings in

income tax:[6] the operation of the tax on personal property was not particularly effective.[7] The half-way stage in the transition to taxation of actual income was Pitt's Triple Assessment[8] of 1798. This allowed persons to elect to pay 10 per cent tax on their total income (with lower rates for small incomes and nothing on £60 or below) as an alternative to paying a multiple (not always three times despite its popular name) of the amount of the previous year's tax on various items of luxury expenditure (male servants, horses, carriages, hair powder, etc.), but it contained no provisions for computing such income. In other words, the taxpayer had an option

the pound, it was very popular to lay a real tax of five shillings and sixpence in the pound upon the salaries of offices which exceeded a hundred pounds a year, the pensions of the younger branches of the royal family, the pay of the officers of the army and navy, and a few others less obnoxious to envy excepted': *Wealth of Nations* Bk.V, Ch.2, art.3 (1776, not long before the introduction of income tax).

[6] In addition to land, land tax taxed: (a) money, debts, goods, wares, merchandises, chattels or other personal estate at the rate of 4s. in the pound based on an annual yield of 1 per cent.; (b) the holding of 'any publick Office or Employment of Profit', wording that was adopted for income tax; (c) 'an Annuity, Pension, Stipend, or other Yearly Payment', also adopted for income tax; and (d) shares 'in the New River Company [which was logical as they were regarded as realty, see *Townsend v Ash* (1745) 3 Atk. 336, on the theory that the company held its assets on trust for its shareholders; later a trust for conversion was implied and is still found in Companies Act 1985 s.182(1)(a)], in the Thames waterworks, or in Marybone or in Hampstead waterworks, in any office or stock for insuring of houses in case of fire, or in any lights, or in the stock or stocks for printing of books in or belonging to the house commonly called the king's printing house', and all companies of merchants in London and the Bank of England (s.57). The items adopted for income tax can be traced back even further to a 1671 Subsidy (22 & 23 Car 2 c.3 ss.2–8) which taxed land, items (a) and (b) and also contained charitable reliefs: see n. 58, and PE Soos, T*he Origins of Taxation at Source in England* (IBFD Publications, Amsterdam, 1998) 109 ('Soos'). The Land Tax Perpetuation Act 1798 (38 Geo 3 c.60) changed land tax into a perpetual tax with a fixed quota for each town, parish, etc., and moved the taxation of personal property into another Act which was not perpetual, and like income tax today, had to be renewed every year. The first of such Acts was 39 Geo 3 c.3, which covered the same assets and applied for the year beginning 25 March 1799 (for some reason the land tax year never changed to 5 April) and therefore applied at the same time as Pitt's income tax of 1799. Notwithstanding the Perpetuation Act the land tax on item (d) was made redeemable by the Land Tax Redemption Act 1802 (42 Geo 3 c.116 s.13), also suggesting that this item was akin to realty. See Soos at 140. Land tax was finally repealed by FA 1963. On the history of land tax, see W Phillips, *No Flowers, by Request* [1963] *BTR* 285.

[7] Adam Smith had said: 'If the greater part of the lands of England are not rated to the land-tax at half their actual value, the greater part of the [capital] stock of England is, perhaps, scarce rated at the fiftieth part of its actual value' (*Wealth of Nations* Bk 5 Ch.2 art.2 (1776). This resulted from land tax becoming a fixed proportion for each district. M Daunton, *Trusting Leviathan, the Politics of Taxation in Britain 1799 to 1914* (CUP, Cambridge, 2001) at 33 ('Daunton') says: 'In theory, this tax [Land Tax] was a national rate of 1s, 2s, 3s, or 4s in the £ on the income not only of land but also of personal property and office. . . . Reality was different, for the tax was confined to land'. . . . A Hope-Jones, *Income Tax in the Napoleonic Wars* (CUP, Cambridge, 1939) at11 ('Hope-Jones') also states that the attempt to tax offices and personal property failed.

[8] 38 Geo 3 c.16. *Simon's Taxes* (3rd edn., Butterworths, London, looseleaf) at A1.403 records that 'it was associated with a scheme proposed by the Speaker, Addington, from an idea by JBowles in 1796 (Two letters addressed to a British Merchant, 4th ed pp 31 and 76) that voluntary contributions in excess of the Triple Assessment might be made to the Bank of England; this scheme raised almost as much as the main tax itself had produced.'

between paying an income tax or an expenditure tax. That the Triple Assessment yielded only £1.8m, less than half its expected yield,[9] with large numbers of people declaring incomes of under £60, caused Pitt to go back on his promise not to impose an income tax (made in the debates on the Triple Assessment). In 1799 he imposed such a tax (although it was still in relation to land, the main source of wealth and so a tax on deemed income) at 10 per cent,[10] which turned out to be not much more successful than its predecessor, collecting only £6m instead of the estimated £10m, although this was a considerable improvement on the £1.8m yield from Triple Assessment. The income tax removed the voluntary element of the Triple Assessment, i.e. paying tax on one's expenditure without disclosing one's income. It was now necessary to declare one's income; a sensitive issue, particularly so in relation to trading profits, as this was the first time an attempt had been made to tax them. Only 25 years before, Adam Smith had warned:

> the state of a man's fortune varies from day to day and, without an inquisition more intolerable than any tax and renewed at least once every year, can only be guessed at. His assessment, therefore, must, in most cases depend upon the good or bad humour of his assessors and must, therefore, be altogether arbitrary and uncertain.[11]

Income required a definition for the first time; it was divided into four major heads: (1) land (14 Cases, which demonstrates the importance of land at the time), (2) trades, employments and interest and annuities (2 Cases), (3) foreign income (2 Cases[12]), and (4) income not falling under any other head.[13] The tax return merely required a statement that the tax paid was not less than one tenth of the taxpayer's income, although a return under each head could be required as part of the appeal process.

Addington, who had succeeded Pitt, repealed Pitt's income tax in his budget on 5 April 1802 following the Peace of Amiens on 25 March

[9] The yield was £1,855,996 (1870 Report of the Board of Inland Revenue); Pitt had expected £4.5m.

[10] 39 Geo 3 c.13 ('1799'), although the Schedule is substituted by c.22, an act that also extended the time limit for making returns. For articles on the 1799 Act see BEV Sabine, 'Great Budgets' [1970] *BTR* 201; W Phillips, 'The Origin of Income Tax' [1967] *BTR* 103 and 'The Real Objection to the Income Tax of 1799' [1967] *BTR* 177; C Stebbings, 'The Budget of 1798: Legislative Provision for Secrecy in Income Taxation' [1998] *BTR* 651.

[11] *Wealth of Nations*, Bk V, Ch.2 art.4.

[12] Identical to Addington's Cases IV and V of Schedule D and still effectively unchanged, see the writer's 'Taxing Foreign Income from Pitt to the Tax Law Rewrite—the Decline of the Remittance Basis' in J Tiley (ed.), *Studies in the History of Tax Law* (Hart Publishing, Oxford, 2004), Ch.2. Foreign income was subject to land tax only if it fell within item (a) in n. 6.

[13] This last feature was the main difference from the schedular taxes *(impôts réels)* to be found later in Europe, which covered a specific list of items, such as immovable property, industrial and commercial establishments (including the case of a branch or agency or permanent establishment, shipping enterprises, railway companies, transatlantic cables, aerial navigation companies and electrical power undertakings, insurance companies, banks), mortgages, directors' fees, earned income, transferable securities, and various credits and annuities (League of Nations, Double Taxation and Tax Evasion, Report and Resolutions submitted by the Technical Experts to the Financial Committee of the League of Nations, 1925).

1802.[14] War with France was declared again, and, little more than a year later, on 18 May 1803 he was obliged to reintroduce an income tax, thinly disguised by the name property tax.[15] Like Pitt's tax, Addington's 1803[16] tax was a schedular tax but, unlike with Pitt's, the tax under each schedule was collected separately so that no return of total income was required, thus removing the main concern about Pitt's tax. Addington's tax owed much more to land tax than to Pitt's income tax: many of Addington's schedules corresponded to items taxed by land tax (such as land, public offices and employments, and annuities and other yearly payments[17]), and the tax was administered by General Commissioners chosen from the Land Tax Commissioners. Research by Piroska Soos has shown that claims made (by others) for the originality of Addington's tax have been exaggerated; in particular there was nothing original about deduction of tax at source, a feature of land tax since 1688,[18] the origins of which have been traced back to a lay subsidy granted to Henry VIII in 1512.[19] Three of Addington's 1803 provisions for deduction of tax at source were virtually identical to the 1797 land tax, two were similar and three were new but based on the same principles.[20] Addington merely adopted a collection mechanism contained in another tax in force at the time. The surprise is not that Addington used deduction at source, but that Pitt had failed to do so in his 1799 tax. The result was a great improvement on Pitt's 1799 Act, raising almost twice the tax at half the

[14] This was not all gain, since in 1816 the Chancellor said that Addington imposed other taxes of £5m p.a. (HC Deb, vol.33, col.423). This was denied in evidence to the First Report of the Select Committee on the Income and Property Tax in 1852 ('1852 Select Committee') q.54 but I have not investigated which statement was correct. Although there is no actual First Report of the Committee, the minutes of evidence give a useful contemporary view of the tax about nine years after it was reintroduced from the point of view of all the participants, such as the Board, Special Commissioners, General Commissioners and their clerks and surveyors, plus three witnesses from the United States. (The Second Report 1852 is restricted to Schedules A and B.)

[15] The 1803 Act provided a 'Contribution on the Profits arising from Property, Professions, Trades, and Offices'. Even the 1842 Act was 'An Act for Granting to Her Majesty Duties on Profits arising from Property, Professions, Trades and Offices' and it is indexed under Property and Income Tax in *Chitty's Statutes* (5th edn., Sweet and Maxwell, London, 1895).

[16] 43 Geo 3 c.122 ('1803'). For an article on Addington's Act see W Phillips, 'A New Light on Addington's Income Tax' [1967] BTR 271.

[17] See above n. 6 for the items taxed by land tax.

[18] Soos, above n. 6, at 181, traces the origin of this misconception to the official Exposition of the 1803 tax, the purpose of which was to distinguish Addington's from Pitt's tax, and in doing so the Exposition concentrated on deduction at source as a principle . The Inland Revenue annual reports beginning in 1857, particularly the historical survey in the 1870 and 1885 reports from which historians have frequently quoted, contributed to the misconception by quoting from the Exposition and wrongly stating repeatedly that taxation at source started in 1803 (above n.6 at 186).

[19] Soos, above n.6 at 36.

[20] The three that were the same as land tax were two in Schedule A and one in Schedule E (deputy receiving payment, or fund for division); the two similar ones related to dividends paid by companies and by the Bank of England, etc.; and the three new ones related to annual payments and two within Schedule E (payments to another person, and payments to a clerk or deputy) see Soos, above n.6, at 152–181.

rate.[21] Pitt returned to office in 1804 and in the following year presented his nineteenth and last budget.[22] This 1805 Act[23] increased the rate of tax from 1s (5 per cent) to 1s 3d (6.25 per cent) in the pound; it paid Addington the compliment of merely consolidating Addington's 1803 Act with some amendments, one of which was the introduction of the Special Commissioners.[24] After Pitt's death Lord Henry Petty in the 1806 Act,[25] in spite of the Whigs' opposition, not only re-adopted the tax but increased the rate to 2s in the pound (10 per cent), Pitt's original rate and double Addington's original rate. This continued in force until the repeal of income tax in 1816. Cunningly, one of the 1806 changes reduced the minimum from £60 to £50, thus bringing into charge all those who had been declaring income just below the previous £60 limit, whose assessments could then be raised to realistic amounts. The 1806 Act also formed the basis for the income tax when it was reintroduced in 1842 and many features of it are still in the legislation today.

In 1805 the existing types of Commissioners were first the Commissioners for the Affairs of Taxes,[26] the predecessors of the Commissioners of Inland Revenue, who also administered the assessed taxes on such items as men

[21] Addington's 1803 tax at 1s in the pound raised £5,341,907; Pitt's 1799 tax at 2s in the pound raised £6,046,624 (Annual Report of the Commissioners of Inland Revenue 1870) in the first year, £6,244,438 in the second year and £5,628,903 in the third year.

[22] He had presented 18 successive budgets from 1783 to 1801.

[23] 45 Geo 3 c.49 ('1805'). The Act was passed on 5 June 1805. Pitt returned to office on 16 May 1804; Addington was created Viscount Sidmouth. The long title is 'An Act to repeal certain Parts of an Act, made in the forty-third Year of His present Majesty [*i.e.* Addington's 1803 Act, see above n.16], for granting a Contribution on the Profits arising from Property, Professions, Trades and Offices; and to consolidate, and render more effectual, the provisions for collecting the said Duties.' Regulations in Addington's 43 Geo 3 c.99 ('1803 Management') passed before Addington's 1803 Income Tax Act (or c.150 in Scotland), dealing with management of assessed taxes, were continued by 1805 s.2; 1806 s.4; 1842 s.3; consolidated by TMA 1880. (Here and in subsequent references the 1803, 1805, 1806 and 1842 Acts and subsequent consolidation Acts of 1918, 1952, 1970 and 1988 will be referred to by the year only.)

[24] Other lasting improvements made by the 1805 Act include: adding 'adventure or concern in the nature of trade' to trade for Schedule D; taxing 'the full amount of the balance of the profits and gains' under Schedule D; the 'wholly and exclusively' rule for deductions under Cases I and II of Schedule D, and the prevention of deductions for capital employed and losses not connected with or arising out of such trade (s.93). Contrary to the statements in *Simon's Taxes,* above n.9, at A1.406, the 1805 Act did not transfer assessments on mines and quarries from Schedule D to Schedule A: they were included in Schedule A in 1803; nor did the 1805 Act introduce the provisions charging a husband on his wife's income: they were contained in 1803 s.91.

[25] 46 Geo 3 c.65 ('1806'). Pitt had died in January 1806. With increased efficiency the amount collected was double the 1805 amount at £12,822,056 although the increase in rate was only 60%. W Phillips describes the 1806 Act as what Addington's 1803 Act would have been but for Pitt's opposition ([1967] *BTR* 271, 280), see in particular the deduction at source for Schedule C described in the text below at n.206.

[26] The origins of the Commissioners for the Affairs of Taxes can be traced back to the Agents for Taxes who were established in 1665 and later called the Commissioners for Taxes. In 1670 they managed 'the earth money'. In 1711 they were reconstituted as the Office for Hides, but regained their old title in 1718 when the hide duties were discontinued. They dealt with the land tax and the assessed taxes. In 1785 Pitt transferred to them a miscellaneous collection of duties upon carriages, wagons and horses from the Stamp and Excise Offices (25 Geo.3 c.47). In addition came Pelham's window tax, and Pitt's shop tax, commutation duty and subsequent additions

servants, horses, carriages, and hair powder.[27] Next were the familiar General Commissioners (or Commissioners for the general purposes of the Income Tax Act) chosen from the Land Tax commissioners and using the same districts (or divisions,[28] who were required to have a high property qualification[29] and who

to the assessed taxes, including income tax (I am grateful to John Jeffrey-Cook for this information). They merged with the Board of Stamps (dating from 1694) to become the Commissioners of Stamps and Taxes in 1834 (4 & 5 Will IV c.60 s.8), which was their title in 1842. They subsequently merged with the Board of Excise in 1849 (12 Vict.c.1) to become the Board of Inland Revenue (the Board of Excise were demerged and amalgamated with the Board of Customs in 1908). It is now proposed that the Boards of Customs and Excise and Inland Revenue should merge. They were first referred to in legislation as the *Board* of Inland Revenue by TMA 1880, presumably as a (not very successful) attempt to prevent confusion with the General, and Special, and other types of Commissioners. They are still referred to as 'the Board of Inland Revenue' in the Tax Law Rewrite's draft Income Tax (Trading and Other Income) Bill.

[27] In fact most of the work of the Commissioners for the Affairs of Taxes was done by the Secretary, Matthew Winter, Winterwho was an able administrator. He was originally appointed by Pitt in 1785 to deal with the assessed taxes. See Hope-Jones, above n. 7, at Ch.III.

[28] Originally land tax was collected by reference to counties and to such cities, towns, etc., as were important in the 17th century, with the result that cities that became important later (such as Liverpool, Manchester and Birmingham) did not have land tax commissioners separate from those of the counties in which they were situated, and that some of the towns that had once been important, such as the Cinque Ports, became no longer so and still had commissioners (the ultimate example being the once-important town of Dunwich in Suffolk which disappeared into the sea). Commissioners were authorised to subdivide counties into each 'hundred, lathe, wapentake, rape, ward or other division', which was the origin of the expression 'divisions' (hundreds and wapentakes were Anglo-Saxon districts). Although the city districts did not arise from any division they also became known as divisions. The 1803 Act adopted the land tax divisions for income tax by requiring each land tax division to appoint general commissioners from the land tax commissioners. Special arrangements existed for the appointment of general commissioners in the cities, for example in London appointment was by the Mayor and Aldermen, the Governor and Directors of the Bank of England, the Directors of the East India Company, the South Sea Company, the Royal Exchange Insurance Company and the London Assurance Company. The reason for the special commissioners acting as general commissioners in Ireland when income tax was extended to Ireland in 1853 was that the Land Tax was never imposed in Ireland and so there were no land tax commissioners who could appoint general commissioners. The Customs and Inland Revenue Act 1879 s.24 (consolidated as TMA 1880 s.38) provided a mechanism for substituting poor law parishes where new parishes were created for poor law administration. The Revenue Act 1884 s.6 substituted poor law parishes for land tax parishes for income tax purposes and so the income tax divisions diverged at this point from land tax divisions. The 1918 Act therefore defined divisions as being income tax divisions. Further information about the history of divisions is contained in the Income Tax Codification Committee Report, 1936, Cmd.5131 ('the Codification Committee') notes to cl.346. Finally, ITMA 1964 s.1(6) gave the Lord Chancellor (in Scotland, the Secretary of State) power to alter boundaries of divisions. In 1952 (Sched.. 1 Pt.1 para.5) general commissioners were still appointed from the land tax commissioners; this connection formally ended with the Tribunal and Inquiries Act 1958 s.7.

[29] The property qualification for general commissioners, but not official commissioners, consisting of real estate of a certain annual value, personal estate of a certain capital or annual value, or a combination of both. It varied between England and Scotland (there was a Scots pound in those days) and between city and county divisions, see the Acts of: 1803 ss.12–15; 1805 ss.14–19 and 21; 1842 ss.10–14; 1918 Sched. 3; 1952 Sched. 1; repealed by the Tribunals and Inquiries Act 1958 s.7(2). The property qualification for additional commissioners was half that of the general commissioners. The property qualification was abolished for land tax commissioners by the Land Tax Commissioners Act 1906 but continued for general commissioners until 1958. For further information on the property qualification for general commissioners, see the Codification Committee (above n. 28) notes to cl.352.

'honourably distinguished this country . . . gentlemen generally of ability, and in every instance strongly impelled by feelings of public spirit'. Additional Commissioners with half the property qualification of the General Commissioners were appointed by the General Commissioners to make assessments subject to appeal by either party to the General Commissioners, and subject to confirmation by the General Commissions in the absence of an appeal.[30] Next were the Governor and directors of the Bank of England, the directors of the East India Company and of the South Sea Company who acted as general commissioners in relation to income on their stocks (later known as Official Commissioners[31]). Lastly, there were commissioners for duties under Schedule E payable by judges, the Houses of Parliament, public departments, corporations, and on public pensions and annuities.[32] The only government employees involved, apart from the Commissioners for the Affairs of Taxes, were the surveyors (originally the same as the inhabited house tax and window tax surveyors),[33] who received an additional £20, on top of their existing £90 *per annum*, for dealing with income tax from 1805,[34] and their overseers, the inspectors.[35]

The 1805 Act added Commissioners (originally *Assistant* Commissioners[36]) for the Special Purposes of the Income Tax Act. The provision appointing them reads:

> That the Commissioners for the Affairs of Taxes for the Time being, together with such other Persons to be appointed as herein-after mentioned, shall be

[30] The Acts of: 1803 s.18; 1805 ss.25–27 (appointment), 126, 128 (assessment); 1806 s.21; 1842 s.16; 1918 s.61; 1952 s.6, repealed by ITMA 1964 Sched. 6. Commissioners were exempt from serving in parochial offices until 1965 on its repeal by TMA 1964. They were also exempt from jury service until 1974 on the coming into force of its repeal by the Criminal Justice Act 1972, although, by Juries Act 1974 Sched. 1, chairmen of tribunals are exempt, and this could apply to chairmen of general commissioners.

[31] 1805 s.31; 1806 s.33; 1842 s.24; 1918 s.68; 1952 s.9, abolished by ITMA 1964 Sched. 6. The commissioners in relation to the Bank of England also assessed the bank under Schedule D: 1805 s.32; 1806 s.35; 1842 s.24; 1918 s.68; 1952 s.9, repealed by ITMA 1964 Sched. 6.

[32] 1805 ss.161–163, 168, 169; 1806 ss.33–41, 44; 1842 ss.30–34; 1918 ss.69, 70; 1952 ss.10, 11. These were not included in 1803.

[33] 1803 Management s.20 appointed inspectors and surveyors 'appointed for the Duties on Houses and Windows and other Taxes charged by Assessment' to act and gave the Treasury power to appoint them; 1805 s.35; 1806 s.48; 1842 s.37; 1918 s.75; 1952 s.13, transferred from the Treasury to the Board by ITMA 1964 s.3.

[34] An Act of 1808 (48 Geo 3 c.141) s.5 permitted the appointment of 10 inspectors general who could visit the surveyor and inspector, ask them questions under oath, and could require the general commissioners to state a case for the opinion of the judges of the Court of Record at Westminster on anything concerning the execution of the Acts or the conduct of the clerk, assessor or collector. Three surveyors giving evidence to the 1852 Select Committee (see n. 14) (which was before the start of appeals to the courts in 1874 and before an earlier procedure introduced by The Queen's Remembrancer Act 1859 of a special case-stated procedure for revenue appeals to the Court of Exchequer) said that fewer than 1 in 2,000 cases went to the judges from which it seems that there were some appeals. The Solicitor's Office said on 17 Dec. 1842 that there was no such appeal (The National Archives (TNA): Public Record Office (PRO) IR99/102, 59).

[35] The inspector was originally the overseer of the surveyors and the title of today's inspector as sole survivor is a case of job title inflation.

[36] References to *assistant* commissioners were dropped in the 1842 Act.

> Commissioners for the special Purposes of this Act; and it shall be lawful for His Majesty, His Heirs or Successors, under the Royal Sign Manual, or the Lord High Treasurer or the Commissioners of His Majesty's Treasury, or any Three or more of them, for the Time being, by Warrant under his or their Hand and Seal or Hands and Seals, from time to time to appoint such and so many other Persons [not exceeding Three[37]] to be Assistant Commissioners for such special Purposes as he or they respectively shall think expedient;[38]

It may come as a surprise today that the Commissioners for the Affairs of Taxes, who are now the Board of Inland Revenue, were *ex officio* special commissioners, and that the Special Commissioners were originally appointed as their assistants, hence their original title of Assistant Commissioners. Even in 1891, Lord Macnaghten could say '[p]ractically the Special Commissioners are identical with the Board of Inland Revenue'.[39] It may be even more of a surprise that this provision was still to be found in the Income Tax Act 1952,[40] although by then it had been regarded as an anachronism for many years. For example, the Codification Committee[41] noted in 1936 that the Board of Inland Revenue never acted as special commissioners except in the performance of purely ministerial duties; they never took part in making any assessment or hearing any appeal. The 1955 Royal Commission said the same:

> In practice they [the Board] take no part in the Commissioners' appellate work, since to do so would be inconsistent with the complete independence of the appellate tribunal. We think that the legal situation should now be brought in accord with the practice and that members of the board should no longer rank as Special Commissioners.[42]

Professor Wheatcroft, writing in 1962 just before the ending of this arrangement, said, with some understatement, of their dual loyalty—to the Board when exercising administrative functions, and independently when exercising appellate functions—that it 'appears theoretically undesirable'.[43]

[37] Not included 1806, and see below n.228 in consequence.

[38] 1805 s.30; 1806 s.31; 1842 s.23; 1918 s.67(1); 1952 s.8, repealed ITMA 1964 Sched. 6. The quoted text is that of the 1805 Act with the 1806 amendments (other than cross-references to the 1805 Act and grammatical changes) being shown in square brackets (continued in the text below at n. 48). The quotations have been separated into paragraphs for ease of reading; the original is in a single paragraph.

[39] *Special Commissioners v Pemsel* (1891) 3 TC 53, 99. This was said in relation to their function of handling claims for exemption, not appeals. In practice, however, by 1851 the Board did not carry out the duties of the Special Commissioners except in the case of illness etc: 1852 Select Committee (see above n.14) q.162.

[40] S.8(1).

[41] See above n.28, notes to cl.345. The committee comprised many well-known names in tax, including A.M. Bremner, Reginald (later Sir Reginald) Hills, E.M. (later Judge) Konstam (author of *Konstam's Law of Income Tax* which ran to 12 editions between 1921 and 1952), and F.D. Morton (later Lord Morton of Henryton).

[42] Cmd. 9474, para.954.

[43] G.S.A Wheatcroft *The Law of Income Tax, Surtax and Profits Tax* (Sweet & Maxwell, London, 1962) para 1-045.

The divorce of the Special Commissioners from the Board of Inland Revenue finally occurred in 1965 by the Income Tax Management Act 1964. This was the first separate taxes management act since 1880,[44] which gave effect to many of the management recommendations of the 1920 and 1955 Royal Commissions. The document appointing special commissioners required them to obey the directions of the Treasury and the Commissioners of Inland Revenue, a somewhat unsuitable requirement for someone exercising appellate functions.[45] The divorce from the Treasury took longer. It was not until 1984 that the Lord Chancellor took over their appointment.[46]

II. THE ORIGINAL SPECIAL PURPOSES

So what were the special purposes for which the new type of commissioners were appointed?[47] Initially there were two, the first relating to claims for relief under Schedule A (then a tax on ownership of land based on the annual value) and the second to claims for exemption under Schedule C (interest on government securities), both involved charitable exemptions and the latter some additional exemptions and an assessing power in the absence of returns. The above quotation continues:

> Which said Commissioners for the Affairs of Taxes and Assistant Commissioners, or any Two or more of them, [without other Qualification being required than the Possession of their respective Offices,[48]] shall have full authority to execute the several Powers given by this Act to Commissioners for special Purposes, either in relation to the Allowances specified in Number Five,[49] Schedule (A) of this Act, or in relation to the special Exemptions granted from the Duties mentioned in Schedule (C) of this Act.[50]

Below we consider the law that the Special Commissioners administered and the problems of interpretation that they faced, necessarily including the subsequent history of its interpretation.

[44] There had been a Revenue Bill in 1921 to give effect to the management provisions of the 1920 Royal Commission but it was never passed.

[45] For examples, see TNA:PRO IR40/1013 (appointment of Col. F. Romilly in 1860) and IR40/1792 (appointment of J. Sanderson , former Chief Inspector of Stamps and Taxes).

[46] FA 1984 Sched. 22, para.1.

[47] The Income Tax Acts have never listed the special purposes; they have to be found in various places in the legislation.

[48] Added 1806. Although the 1805 Act was silent on whether the property qualification for General Commissioners (see above n. 29) applied to Special Commissioners, the qualifications varied according to districts and were therefore inapplicable to the Special Commissioners, and the 1806 Act added these words to clarify this. It therefore never applied to the Special Commissioners.

[49] This became No.VI in 1806.

[50] 1805 s.30; 1806 s.31; 1842 s.23; 1918 s.40, 67; 1952 s.8; TMA 1970 s.4. A further charitable exemption equivalent to the Schedule C exemption for yearly interest and annual payments under Schedule D was introduced by 1842 s.105. This was granted by the Special Commissioners and should have been cross-referenced here but the draftsman was copying out 1806. The quotation continues below at the text to n. 185 after setting out the exemptions from Schedules A and C.

Charitable Exemptions

Schedule A

The allowances, or exemptions, then contained in Part V of Schedule A in respect of which claims were made to the Special Commissioners, related to *rent* received by a charity. In the Schedule this followed exemptions from tax on the deemed income from its own occupation of property for a university,[51] hospital,[52] public school,[53] or almshouse:[54]

[51] See *The College of Preceptors v Jenkins* (1919) 7 TC 162 for a body that did not qualify.

[52] 'Hospital' formerly had a wider meaning than it does today and this wording can be traced back to 1503: see below n. 56. In *Mary Clark Home v Anderson* [1904] 2 QB 645 Channell J said at 653: 'No doubt it is now generally used solely in the sense of an institution for the relief of the sick suffering from physical ailments or physical injuries. No great while ago, at any rate in the time of Lord Coke, the word included institutions for the relief or alleviation of mere poverty, and certainly of the aged. There is an even older and wider meaning than those referred to during the argument, in which the word means little more than a resting-place or guest's place; it is, however, clearly not used here in that very wide sense, and whether it is used in the sense that includes institutions for the relief of poverty does not, I think, arise in the present case for in each of the Acts [income tax and inhabited house duty] words are used which do include institutions of which that is the object.' The *Shorter OED* gives as older meanings 'a charitable institution for the housing and maintenance of the needy, infirm, or aged (obsolete except in English legal use and in proper names); a university hall or hostel (1536); a charitable institution for the education and maintenance of the young (1552);' see below nn.56 and 58 for early statutory use. The mental hospital in *Needham v Bowers* (1888) 2 TC 360 did not qualify because it had no endowment paying running costs; the wealthy patients subsidised the poorer ones. (The same applied to inhabited house duty, which also gave an exemption for a hospital, both in that case and in *Musgrave v Dundee Royal Lunatic Asylum* (1895) 3 TC 363.) On the other hand, the hospital in *Cawse v Committee of the Lunatic Hospital, Nottingham* (1891) 3 TC 39, 42 ('it intends to exempt anything that is practically of the character of a hospital being of an eleemosynary character'), which had endowments contributing to the running costs, and the convalescent home for the benefit of members of a friendly society (for the exemption of such societies, see below text at n. 127 onwards) in *Royal Antediluvian Order of Buffaloes v Owens* 13 TC 176, where the maintenance of members paid for out of the funds of the society did qualify as a hospital. The test for qualifying seems to have been whether the running costs were paid substantially from an endowment or by those using the services; but see the movement away from this approach in relation to public schools in the next note. 1805 covered the necessary repairs of hospital buildings; 1806 said repaired and maintained by the funds of such body. 1806 extended the exemption to such buildings not occupied by a member but by a person paying rent in the case of hospitals, etc., whose income does not exceed £50 p.a. It also added an exemption for cottages with an annual value not exceeding 40s.

[53] For schools qualifying as public schools, see *Ereaut v The Girls' Public Day School Trust Ltd* (1930) 15 TC 529 which discusses the earlier authorities. Originally, the emphasis was on whether the running costs were paid by the fees or by a charitable endowment: see *Blake v Mayor and Citizens of London* (1886): 18 QBD 37; (1887) 19 QBD 79 and the emphasis on the annual grant from the City Corporation as a reason for deciding against the institution in *Needham v Bowers* (1888) 2 TC 360, and for it in *Cawse v Committee of the Lunatic Hospital, Nottingham* (1891) 3 TC 39. By the time of the *Girls' Public Day School Trust* case, when, as Lord Atkin pointed out at 567, there had been a great increase in state and local authority funding for schools, this aspect had become much less important, and was merely a factor to be considered. See TNA:PRO IR 86/6, 164 for a decision of the Special Commissioners in 1859 that the Baptist college qualified even though some students paid fees.

[54] In *Mary Clark Home v Anderson* [1904] 2 QB 645 the court considered both this and the exemption from inhabited house duty for a 'house provided for the reception or relief of poor

claims relating to this deemed income were made to the General Commissioners. The exemption for rents claimed before the Special Commissioners is narrower than the exemption for deemed income since universities (and originally in 1803 public schools) are excluded, but this was widened in 1805 to apply to all charitable trusts and public schools.[55] The exemption for rents developed out of early sixteenth century exemptions for universities, schools and hospitals.[56] Similar wording to the income tax provision can be traced back at least to the forerunner of land tax, a subsidy to Charles II in 1671, and the progression of the income tax exemption is shown in the table.

This history explains a number of puzzling features of the 1805 provision. First, the 1671 and 1688 land tax exemption (and earlier provisions dating

persons', with which an almshouse was equated. The case concerned an institution that was financed entirely by its charitable endowment. The issue was essentially whether the inhabitants were poor when they had to have an income of between £25 and £55 pa; they had to provide their own food and clothing, which presumably those with an income below the lower limit would be unable to do. Channell J said at 654: 'I do not know any standard of poverty, nor how I can lay down any rule; the only thing to guide me is this: these ladies go to the institution for the sole reason that they are poor, and the institution is absolutely charitable; it may fairly be called an "almshouse," although one would not care to hurt the feelings of the residents by so calling it in common parlance.' Presumably in common parlance an almshouse was for the destitute, but that was not true of almshouse in this context. The general charitable exemption was not in issue in the case because it concerned tax on the occupation of the almshouse itself, not rent.

[55] 1803 Sched. A No.IV; 1805 s.37 No.V; 1806 s.74 No.VI; 1842 s.60 Sched. A No.VI; 1918 Sched. A rules No.VI r.1; 1952 s.103, repealed by FA 1963 Sched.13 on the repeal of the original Schedule A. The Codification Committee (see above n.28) drew attention to the disadvantages of hospitals, etc., having a different procedure applying to this and the next exemption, and recommended that the local procedure (see below n.175) should apply to both. The difference in procedure was deliberate in relieving the General Commissioners of investigations into the application of the income which the Special Commissioners were better placed to undertake: see the quotation from the Guide to the 1806 Act below at n.98.

[56] For example, the Subsidy 12 Hen VII c.13 (1496–7) 2 Stat Realm 644, 646 contains an exemption for Oxford and Cambridge, Eton and Winchester.

The Subsidy 19 Hen VII c.32 (1503–4) 2 Stat Realm 675, 677 exempted possessions 'belonging to any Collage Hospitall Hall or House of Scolers in any of the Universites of Oxenford or Cambrigge, the Charterhouses in all Englond, the House of Syon, or to the College of our blessed Lady of Eton the College of our blessed Lady of Wynchestre byside Wynchestre' . . . .

The Subsidy 5 Hen VIII c.17 (1513–14) 3 Stat. Realm 105, 111 exempted: 'Rentys . . . belonging or apperteyning to any College Hospitall Halle or other House of Scolers in any of the said Universities of Oxonford or Cambrigge, or of the said Colleges of Winchester and Eton neither to any of the Charterhouses within this realm of Inglond nor to the House of Syon ne to the House of Dertford . . .'. Oxford, Cambridge, Winchester and Eton were saved from the Dissolution of Colleges Act 1547 (1 Edw. 6 c.14 s.19).

The Subsidy 7 Edw VI c.12 (1552) 4 Stat. Realm 176, 189 exempted: 'the goods or lands of any College Hawll or Hostell w'in the Universities of Oxforde and Cambrige or any of them, or to the goods of lands of the College of Wynton founded by Bisshop Wykam, or to the goods of lands of the College of Eton next Wyndesore, or to the goods or lands of any Comon Free Gramer Scole w'in the Reale of Englande or Wales, of to the goods of any Reader Scole Maister or Scoller w'in the said Universities and Colledges or any of them there remaynyng for Studie w'out fraude or covyn, or to the goods or lands of any Hospitall Measondew or Spytlehouse prepayred and used for the Sustentacon and Relief of poore People.' 1 Eliz 1 c.21 s.54 (1558), 23 Eliz c.15 (1580-1), 4 Stat. Realm 684, 697-8, 1 Car I c.6 (1625), 5 Stat. Realm 9, 21 and 16 Car I c.2 (1640), 5 Stat. Realm 58, 77 are all similar. A measondieu and a spittlehouse are both hospitals.

Table 1: Derivation of the Charitable Exemption

Subsidy of 1671 and first land tax 1688	1803	1805 to 1996[57]
[This named five hospitals (Christ's Hospital, St Bartholomew, Bridewell, St Thomas, and Bethlehem), 'any College or Hall in either of the universities,' three colleges that we would now call public schools ('Eaton', Winchester and Westminster), and then continued]: 'or any hospital, almshouse or free school whatsoever, for or in respect of any Rents or Revenues payable to the said Hospitals, being to be Received and Disbursed for the immediate Use and Relief of the Poor in the said Hospitals.'[58] [From 1693 these exemptions for land tax continued and another section taxed land belonging to a hospital or almshouse that had been assessed at the time of an Act of 1693, adding]: 'and that no other lands, tenements, or hereditaments, revenues or rents whatsoever, then [1693] belonging to any hospital or almshouse, or settled to any charitable or pious uses as aforesaid, shall be charged, taxed or assessed by virtue of this present act.'[59]	'The amount of the Rents and Profits of Messuages, Lands, Tenements, or Hereditaments, belonging to any Hospital, or Alms House on proof before the respective Commissioners of the due Application of the said Rents and Profits to charitable Purposes only.'	'Or on the Rents and Profits of Messuages, Lands, Tenements, or Hereditaments, belonging to any Hospital, public School, or Alms House, or vested in trustees for charitable purposes,[60] [so far as the same are applied to charitable Purposes only[61]].'[62]

[57] The present wording is a general charitable exemption for income from land: 'exemption from tax under Schedules A and D in respect of any profits or gains arising in respect of rents or other receipts from an estate, interest or right in or over any land (whether situated in the UK or elsewhere) to the extent that the profits or gains—(i) arise in respect of rents or receipts from an estate, interest or right vested in any person for charitable purposes; and (ii) are applied to charitable purposes only': 1988 s.505(1)(a) (current).

[58] 22 & 23 Car.II c.3, s.45, V Stat. Realm 693, see Soos, above n.6, at 109. The original land tax is 1 Will & Mar c.20 s.21 (this seems to be the first reference to almshouse). The reference in the quotation to the 'said hospitals' must have included almshouses, universities, public schools and free schools: see the wide former meaning of hospital above in n.52, particularly in the *OED*. Note the reference to relief of the poor before 'charitable' was used.

[59] The 1671 and 1688 exemption ultimately became 38 Geo 3 c.5 (1797) s.25, and the 1693 exemption became s.29. The Act of 4 Will & Mar c.1 s.25 was the first of a succession of land tax acts in the same form. The 1693 Act exempted rents payable to hospitals or almshouses received and disbursed for the immediate use and relief of the poor of such hospital or almshouse only, and so rents applied for other purposes were assessable, as were rents from properties not then belonging to the charity, the exemption attaching to the original site: *Cox v Rabbits* 3 App Cas 473.

[60] The exemption for rents of property vested in trustees for charitable purposes was added by an earlier 1805 Act, 45 Geo 3 c.15 s.4, presumably to correct an oversight in the 1803 Act; such an exemption had applied for land tax: see above n.59. A charitable body corporate is within this expression: 'It cannot be doubted that property held by a body corporate and unincorporated 'for the promotion of education, literature, science, or the fine arts' is technically held upon a charitable trust': *IRC v Scott* 3 TC 134, 141, applied to a body incorporated by Royal Charter in *R v Special Commissioners ex p. The University College of North Wales* (1909) 5 TC 408.

[61] These words were restored to this position in 1806 but were applicable in 1805 in the following paragraph of the quotation: see text below at n.89. They qualify rents, not lands: see *R v Special Commissioners ex p. Essex Hall* (1911) 5 TC 636.

[62] 1805 s.37 No.V; 1806 s.73 No VI; 1842 s.60 No.VI (which adds literary and scientific institutions: see *Mayor of Manchester v McAdam* (1896) 3 TC 491, but not any of the Scots

back to at least 1580) was given in terms of hospitals and other institutions, and so income tax merely continued this practice. Secondly, land tax, which applied only to England, had dealt with 'any College or Hall in either of the universities' in the opening provision, making it unnecessary to add a general reference to universities as well as hospitals, etc. Transferring this exemption into income tax, which initially applied to Great Britain, was therefore defective in two respects: the omission of the opening words and, even if they had been included, the need now to cover Scots universities.[63] Both defects would have been cured if there had been a general reference to universities; the result was that no universities were exempt in 1803, and from 1805 universities had to qualify under the general exemption for charitable trusts. Thirdly, Addington's 1803 provision was seriously defective if it was intended to mirror the land tax exemptions. It included only the 1693 part of the land tax exemption, but no longer restricted to land owned in 1693, and even then the exemption for charitable trusts was omitted in favour of a requirement for the application of the rent to charitable purposes; it overlooked the earlier land tax exemption which was contained in a different section. This had the effect of excluding public schools when free schools had been covered by the land tax provision, hence their addition by the 1805 Act. This is particularly surprising since public schools are included in the Schedule A exemptions for occupying their own buildings in the immediately preceding part in both the 1803 and 1805 Acts.[64] Fourthly, a separate Act in 1805 corrected another error in the 1803 Act by adding all charitable trusts, thus fully reproducing the 1693 land tax exemption which combined hospital and almshouse (but not free schools) with all charitable trusts. What the history does not explain is why institutions as well as charitable trusts were referred to either in 1693 or in 1805.[65] Nor does it explain why all charitable trusts qualify for exemption of their rents but not for their occupation of land.[66]

institutions in *Sulley v Royal College of Surgeons of Edinburgh* (1892) 3 TC 173, *Farmer v The Juridical Society of Edinburgh* (1914) 6 TC 467 or *IRC v The Aberdeen Medico-Chirurgical Society* (1931) 16 TC 237); 1918 s.37(1) (changed from claims being made to the Special Commissioners to appeals to them by FA 1925 s.19: see below n.120); 1952 s.447(1)(a); 1970 s.360(1)(a); 1988 s.505(1)(a), until redrafted by FA 1996 to cover all rents applicable and applied for charitable purposes (see above n.57 for the current wording).

[63] The University of St Andrew's was founded in 1413, Glasgow University in 1451 and Edinburgh University in 1582.

[64] See text above at n.53.

[65] This was the basis for the unsuccessful argument in *R v Special Comrs ex p. The University College of North Wales* (1909) 5 TC 408 at 412 that the general charitable provision was restricted to charities analogous to the named institutions. Normally the named institutions will be charitable, but it is possible that the convalescent home maintained for the benefit of members of a friendly society in *Royal Antediluvian Order of Buffaloes v Owens* 13 TC 176, which was held to qualify as a hospital, was not charitable.

[66] This anomaly was pointed out by Buckley LJ in *R v Special Commissioners ex p. Essex Hall* (1911) 5 TC 636 at 654 where the charity lost the exemption by occupying by itself rather than letting to a related charitable body.

These unanswered questions must have raised the question in the minds of the Special Commissioners whether the explanation was to be found in the meaning of 'charitable purposes' in the Schedule A exemption. Did it have a narrower meaning for income tax? Unfortunately there seems to be no information about how the exemptions were administered before 1816; although assessment records have survived, there are no other records as the Treasury decreed that they should be destroyed.[67] But one can trace the origin of the argument that charitable purposes might have a special meaning for income tax purposes to an opinion of the Law Officers in 1856 who advised the Special Commissioners that there was a distinction between parochial purposes and charitable purposes 'in the sense in which this last phrase is used in the Income Tax Acts'. The opinion argued that because a gift for parochial purposes had the effect of reducing the poor rate for owners of valuable properties it could not be charitable *for income tax purposes*, even though the Master of the Rolls had assumed in a case in 1856 that such a gift was charitable under the law of charities.[68] The Board wondered whether this distinction had wider implications and consulted the Treasury, who wisely told them not to disturb existing practices on the basis of the opinion and to leave any changes to legislation. Gladstone did try to tax charities in 1863 because of the discrepancy he perceived between endowed charities not paying tax on their income while the income of unendowed charities came from donations out of taxed income, but was forced to withdraw the proposal.[69] He succeeded in passing legislation in 1885 to tax some endowed charities by imposing a tax on the property of bodies corporate and unincorporate (except for trading companies) known as corporation duty. This duty contained a strangely-worded exemption for property or income: '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'.[70] In the context of this provision, the draftsman cannot have intended 'charitable

[67] 1852 Select Committee, above n.14, q.14, 1274.

[68] Correspondence between the Treasury and the Board of Inland Revenue in August and September 1863, Parliamentary Papers 1865 XLI microfiche reference 71.311. This opinion is referred to in *Pemsel* by Lord Halsbury at 70, and see also below n.84 for a different point taken from the same document.

[69] Daunton, above n. 7, at 213. The discrepancy could be avoided by making an annual payment to charity (by deed of covenant) but that may not have been widely used at the time.

[70] Customs and Inland Revenue Act 1885 s.11(3) (part of this wording followed an exemption from local rates for 'societies instituted for the purposes of science, literature or the fine arts exclusively' in the Scientific Societies Act 1843). There were also other exemptions for property applied for the benefit of the public, friendly societies, property voluntarily contributed to the body in the previous 30 years, and acquisitions within 90 years on which legacy or succession duty had been paid. An editorial comment in J.M. Lely (ed.), *Chitty's Statutes* (5th edn.,

purpose' to have its normal legal meaning, as the Court of Appeal later decided,[71] since all the other named purposes are charitable. It seemed possible that the draftsman's use of this wording fortified the Special Commissioners in their view that the same interpretation applied to other references to charitable purposes in income tax, but Parliamentary Counsel's Office has no papers on this Act which suggests that it was drafted within the Revenue; it is understood that this was not unusual at the time. Although the connection with the 1885 Act cannot be proved, it was about the same time as this legislation, in 1885–1886, that the Special Commissioners started to apply a more restricted meaning of charitable purposes for Schedule A, as a change of policy. Lord Macnaghten confirms that this was a recent change of policy:

> What are charitable purposes within the meaning of these Acts the Legislature had nowhere defined. But from the very first it was assumed, as a matter not open to controversy, that the exemption applied to all trusts known to the law of England as charitable uses or trusts for charitable purposes. On that principle, without inequality and apparently without difficulty, the law was administered in England and Scotland, and afterwards when the tax extended to Ireland, throughout the United Kingdom. At length, about three or four years ago, the Board of Inland Revenue discovered that the meaning of the Legislature was not to be ascertained from the legal definition of the expressions actually found in the statute, but to be gathered from the popular use of the word 'charity.' Proceeding on this view, they refused remissions in cases in which the remission

1895) states: 'These exemptions are so numerous as to exhaust by far the greater part of the property held by corporate and unincorporated bodies. The principal property not exempted is that held by the London city companies and not devoted by them to the purposes mentioned in subs.(3).' Daunton, above n.7, gives the yield of the tax in 1912–13 as only £49,441.

[71] *In Re Bootham Strays, York. IRC v Scott* (1892) 3 TC 134, distinguishing *Pemsel* on the basis that here charity comes between other specific exemptions, whereas in *Pemsel* it came after the specific exemptions and so had the effect of including any other charitable purposes. Lord Herschell said that 'It is unnecessay and would be undesirable to attempt a definition of what are "charitable purposes" within the meaning of the exemption. It is sufficient to say, that giving those words the widest interpretation of which they are capable short of the technical one to which I have referred [*i.e.* the meaning in *Pemsel*] the present case is not within them.' The Solicitor's Office, having started by applying the same interpretation as for income tax (see the Shipmasters' Society of Aberdeen, TNA:PRO IR99/1, 12), in the light of *In Re Bootham Strays* they changed to applying the popular meaning of charity as the meaning left open by that case (see IR 99/1, above, at 94). This document shows that many problems of interpretation had to be considered by the Solicitor's Office, which also led to considerable litigation about the exemption, including: *Society of Writers to the Signet v IRC* (1996) 3 TC 257 (taxable except as to the endowment of a chair of conveyancing at the University of Edinburgh), *The Incorporation of Tailors in Glasgow v IRC* (1887) 2 TC 297 and *The Linen and Woollen Drapers' etc Institution v IRC* (1887) 2 TC 651 (both taxable on funds comprising subscriptions and, in the latter case, donations used for paying discretionary pensions to members and their families), *IRC v Forrest (Institution of Civil Engineers)* 3 TC 117 (exempt as being for the promotion of science), *Gresham Trustees v IRC* (1897) 4 TC 304 (surplus rents from the Royal Exchange taxable), *The Royal College of Surgeons of England*

had been claimed and allowed as a matter of right for more than forty years continuously.[72]

The issue of the meaning of charitable purposes in the income tax exemption was ultimately resolved by the House of Lords in the leading case on the law of charities known to every law student, *Pemsel's case*, or to give it its full title, *Special Commissioners v Pemsel*.[73] Although the Special Commissioners' decision was final, the House of Lords decided in *Pemsel* that the remedy of an order ('rule to show cause') calling on the Special Commissioners to show cause why a writ of mandamus should not issue requiring them to give the relief was available to the taxpayer.[74] This enabled the courts to decide whether they were right in law in not doing so. The two opposing views in *Pemsel* were the taxpayer's that 'charitable purposes' in the Schedule A exemption has the meaning in English law (although the taxing statute by then applied to the whole of the UK) applied by the Court of Chancery in interpreting the Statute of Elizabeth,[75] with the references to the institutions being mere tautology; and the Special Commissioners' that the context requires a popular meaning to be given to 'charitable purposes', restricting it to the relief of poverty, in order to remove the tautology. A possible third explanation is that the problem has nothing to do with the meaning of 'charitable purposes' but relates to hospitals, public schools and almshouses, which originally had a specific meaning in English law emphasising their eleemosynary character by requiring their running costs to be paid by charity rather than by the users. In the

v IRC (1899) 4 TC 344 (taxable as no separation between funds for the advancement of surgery and those for the interests of surgeons), *Att.-Gen. v Mayor of London* (1913) 6 TC 313 (taxable on sinking fund), *Grand Lodge of Masons of Scotland v IRC* (1912) 6 TC 116 (exempt on funds for necessitous masons). There is a separate index to corporation duty cases in the early volumes of TC.

[72] (1891) 3 TC 53 at 90.

[73] (1891) 3 TC 53. The passage known to every law student is from Lord Macnaghton's speech at at 96: '"charity" in the legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads.'

[74] It had been argued at 59 that the correct procedure was a petition of right. Lord Halsbury deals with the point at 64, and Lord Herschell at 86. This left the Special Commissioners at risk for costs which at common law the Crown did not pay or receive (*Blackstone's Commentaries* says that 'As it is his [the Crown's] prerogative not to pay them to a subject, so it is beneath his dignity to receive them'), because mandamus lay against them in their capacity of persons charged with a statutory duty, not as agents of the Crown: *R v Special Commissioners ex p. Dr Barnardo's Homes* (1919) 7 TC 646, 652 (on the Schedule D exemption). Other similar cases where the writ of mandamus was used to appeal the Special Commissioners' decision on charitable exemptions are *R v Special Commissioners ex p. University College of North Wales* (1909) 5 TC 408, *R v Special Commissioners ex p. Essex Hall* (1911) 5 TC 636. No right of appeal was ever introduced for Schedule C and so this procedure provided the only remedy.

[75] 43 Eliz c.4.

cases on public schools, this requirement was later relegated to being merely one of the factors to be considered in deciding whether the institution was a public school.[76]

The Special Commissioners in *Pemsel*, showing cause why they had not given the exemption, contended that charity was restricted to the relief of poverty, on the ground that the purpose of the taxing Acts was different from the purpose of the Statute of Elizabeth, the former, for example, being restricted to activities in the UK. They therefore contended that the exemption did not extend to the missionary activities of the Moravian church. A narrower meaning of charitable purposes explained why an exemption for a hospital, public school or almshouse was followed by an exemption for charitable trusts generally.[77] As a contrary argument the taxpayer suggested that the Act drew a distinction between incorporated hospitals, public schools or almshouses, and charitable trusts, which, on the Special Commissioners' argument, meant that there was no exemption for an unincorporated hospital, public school or almshouse.[78] Initially the Special Commissioners' argument succeeded in Scotland. Scots law does not recognise the English law definition of charity,[79] and so it was much easier to argue for an ordinary meaning of the term which could be applied throughout the UK.[80]

As is well known, the decision in the House of Lords, by a majority of three to two and after considerable difference in judicial opinion in the courts below,[81] was that the English law meaning applied. One of the reasons in support mentioned by Lord Macnaghten, which is interesting from our point of view, was that the relief was granted by the Special Commissioners based in London, and so no decisions on the relief had to be made by any Scots body which might not understand English law of

[76] See the cases on the meaning of 'hospital' in above n. 52, and the movement away from this interpretation in the later cases on public schools in above n. 53.

[77] In the Court of Appeal Lopes LJ at 316 argued that including both the named institutions and charitable trusts was surplusage and so the technical meaning could not be intended. Lord Esher MR, however, said that not all the large schools and universities were charities. In the House of Lords Lord Herschell at 87 considered that the listed institutions were there out of caution or to quiet the fears of those who were apprehensive that they might not fall within the general exemption. The Special Commissioners put forward a further argument based on the exemption for the British Museum, which is dealt with below at n. 118.

[78] At 60.

[79] Although the Scots judge in *Pemsel*, Lord Watson, said at 82 that the expression had been used in Scots statutes in substantially the same sense as interpreted by the English courts.

[80] *Baird's Trustees v Lord Advocate* (1999) 25 SLR 535; 15 Sc. Sess. Cas. 4th Ser. 682.

[81] In the High Court, (1888) 22 QBD 296, Lord Coleridge CJ was in favour of the popular meaning of charity applying and found against the taxpayer on that test, and Grantham J was in favour of the technical meaning, but withdrew his opinion to avoid a draw; in the Court of Appeal, (1889) 22 QBD 305, Lord Esher MR and Lopes LJ favoured the popular meaning but gave the taxpayer the exemption on the facts, while Fry LJ was in favour of the technical meaning, and agreed that if he were wrong they were entitled to the exemption on the facts. In the House of Lords, Lord Halsbury LC and Lord Bramwell dissented, doubting whether the gift qualified on the popular meaning.

charities.[82] What is more, Lord Macnaghten referred to the same Parliamentary paper of 1865[83] in which the Special Commissioners stated clearly that the exemption was given pursuant to the Charitable Trusts Act 1853 to all stock in the names of the Official Trustees of Charitable Funds (which obviously applied the English law of charities) without further enquiry. Parliament was therefore aware of the Special Commissioners' practice in applying the English legal meaning of charity when passing subsequent legislation.[84] On the context of the exemption, he turned the argument on its head, saying that it demonstrated that the legislature considered that hospitals, public schools and almshouses were charitable purposes which displaced the popular meaning of charitable purposes,[85] and in any case all of those institutions had a definite meaning in English law. He brushed aside the tautology: 'there may be a superfluous expression here or there, but the Act will be consistent throughout'.[86] Given that the wording of the exemption originated in the early sixteenth century long before the statute of Elizabeth, although the origins were not referred to in argument, the majority in the House of Lords were surely right, although one sympathises with the Special Commissioners' desire to find a logic for the words of the statute.

The Special Commissioners did not accept the decision readily. Initially they considered whether the reliance on the Charitable Trusts Act 1853 meant that they should restrict the exemption to cases covered by that Act, which was restricted to endowed foundations and institutions taking effect in England and Wales, but wisely they decided against it.[87] Even eighteen years after the case, in 1909, they were still trying unsuccessfully to distinguish it by restricting the scope of educational charity, as opposed to the religious one in *Pemsel*, to the education of the poor by virtue of the context of this provision.[88]

This coupling of the income tax relief to the law of charities has resulted in a debate which is still continuing today, particularly in relation to public schools and private hospitals in which, if it is proposed to limit income tax relief, it is necessary to change the law of charities. The latest event is the issue of a draft Charities Bill on 27 May 2004 containing for the first time a statutory definition of charity.

[82] At 99.

[83] This presumably refers to the publication of the correspondence between the Board and the Treasury: see above n.68.

[84] At 101–102. See text below at n.113 for legislation preventing deduction of tax in these circumstances. The Customs and Inland Revenue Act 1885, see above n.70, is, however, an exception which clearly uses a different meaning.

[85] At 99–100.

[86] At 101.

[87] TNA:PRO IR 86/7, 207.

[88] *R v Special Comrs ex p. The University College of North Wales* (1909) 5 TC 408 at 413. Such a restricted meaning applied to the earlier subsidies (see above n.56) including the 1671 Subsidy and 1688 land tax exemption for free schools quoted in the text above at n.58.

Application of the Schedule A Income for Charitable Purposes

The 1805 exemption for rents was granted by the Special Commissioners on proof of the application of the income for charitable purposes. The quotation in the table above continues:

> The said Allowances[89] to be granted on Proof before *the Commissioners to be appointed for special Purposes,*[90] under the Authority of this Act, of the due Application of the said Rents and Profits to charitable Purposes only, and in so far as the same shall be applied to charitable Purposes only.
>
> The said Allowances to be claimed and proved by any Steward, Agent, or Factor acting for such College, Hall, School, Hospital, or Alms House, or other Trust for charitable purposes, or by any Trustee of the same, by Affidavit to be taken before any Commissioner for executing this Act, in the District,[91] [where such person shall reside[92]] stating the Amount of the Duties chargeable, and the Application thereof, and to be carried into Effect by *the Commissioners for special Purposes*, to be appointed under the Authority of this Act, and according to the Powers vested in such Commissioners, without vacating, altering, or impeaching the Assessment to be made, under this Act, on or in respect of such Properties; which Assessments shall be in force and levied notwithstanding such Allowances.[93]

Presumably the reason for allowing the assessment to stand is that the tenant deducted and retained tax on paying rent.[94] The charitable landlord therefore needed to reclaim this tax, for which he needed to show how the rent was applied, thus enabling the Special Commissioners to police the exemption. There were, however, cases where by concession the assessment was discharged, thus giving permanent relief without the landlord having to show how the income was applied.[95]

[89] 1806 Sched. A No.VI is clearer in stating that the exemptions for the land occupied by these institutions are to be granted by the General Commissioners. This is followed by the exemption for rents and profits and the statement that it is granted by the Special Commissioners, although the 1805 provision regarding the Special Commissioners relates only to rents and profits and so cannot apply to the first set of exemptions.

[90] In this and subsequent quotations italics have been added to the references to the Special Commissioners to highlight them.

[91] See above n.29 for the origin of divisions.

[92] Clarification added in 1806.

[93] Addington's 1803 Act, Sched. A, gave effect to this exemption either by vacating the assessment or by obtaining a certificate of exemption and so this is a change in the procedure.

[94] This originally applied to all leases. Rent under long leases became an annual payment by FA 1940 s.17.

[95] TNA:PRO IR 86/4, 82. Another reference showed that with Treasury authority from 1845 the assessment was discharged where the annual value of the property was between £2m and £3m, which seems to be an extremely high figure but is clearly stated in the document (TNA:PRO IR 86/7, 190). However, the Schedule C exemption for government securities registered in the name of the Official Trustees of Charitable Funds was applied automatically by preventing the deduction of tax at source by Charitable Trusts Amendment Act 1855 s.28.

The Special Commissioners' task was to see that the income was applied for charitable purposes only. The primary reason for their involvement seems to have been that it was recognised that the General Commissioners were overworked. The justification given in the contemporary Guide to the 1806 Act was:

> These Properties [referring to the introduction of a system of withholding for Schedule C in 1806[96]] being removed from the Jurisdiction of the Commissioners for general Purposes, will relieve them and those who act under them, from a great Load of Duty, and will enable them to apply more directly to the great Objects under their Care, the Profits arising from Land, Trade, and Professions. And even in these a Jurisdiction has been established which will further relieve them, I mean the Jurisdiction of *Commissioners for special Purposes* established in London, under the Authority of the Crown, for granting Exemptions on Account of Charities; the whole Jurisdiction of Commissioners in the Districts being now confined to Exemptions and Allowances on the Ground of Income, except in the Cases of Colleges, Hospitals, and Alms-houses, where they still retain their Authority of granting Exemptions for the Duties charged thereon, and Allowances for necessary Repairs.[97] This will necessarily lessen the Trouble and Attendance of the Commissioners. It will be found too, that the Mode adopted of granting Allowances will be much less troublesome. They will be Matter of easy Calculation, and will require fewer Entries than have been found heretofore necessary. These, with other less momentous Alterations, have been introduced with the view of giving Facility in the Execution of the Act; in which regard has not only been paid to the time and Attention of the Commissioners, but to the Public at large.[98]

This quotation suggests that problems had arisen in relation to the burdens placed on the unpaid general commissioners. Granting a relief depending on the application of income for charitable purposes involved investigation of how the rent was applied, for which the general commissioners' local knowledge was of no advantage, and which would have been an additional burden for them. The task was also unsuited to the general commissioners because the rent might be from land within the jurisdiction of one District (as Divisions[99] were then called) of General Commissioners, but the application for charitable purposes might be made elsewhere.[100] The relief was granted by the Special Commissioners giving a certificate and order for payment to the receiver-general of stamps and taxes[101] who repaid the taxpayer; it was not possible to claim the relief

[96] See text below at n.204.

[97] This is a reference to the exemption from Schedule A for the land they occupied: see text above at n.55.

[98] *Guide to the Property Act* (2nd edn., Joyce Gold, London, 1807) at 11. xviii–xix. This guide does not have an author's name and was presumably written within the Revenue.

[99] See above n.28 for the origin of the expression divisions.

[100] Addington's 1803 Act, Sched. A, required the claims to be made 'before the respective [General] Commissioners'.

[101] The duties of receivers general are contained in 3 Geo 4 c.88 (1822). Receivers-general were abolished by 1 & 2 Will 4 c.18 and their duties were transferred to receiving

before assessment.[102] The tenant would have deducted tax from the rent and so the relief was necessarily given on a repayment claim, which had the added advantage that the application of the income for charitable purposes could be verified.[103] As a matter of practice from the early days, the exemption was granted for reinvested income; the policy was reconsidered in 1893 but no change was made.[104] The repayment system was open to fraud and various safeguards were introduced such as certificates by two special commissioners, one of whom had to present it to the Board personally, and the Receiver-General giving a daily list to the Special Commissioners for cross-checking.[105]

Schedule C Charitable Exemptions

Claims relating to the differently-worded charitable exemption applying to Schedule C were also made to the Special Commissioners; the difference in wording is presumably because the Schedule A exemption was copied from land tax, which had no equivalent to Schedule C. It should be pointed out that to modern eyes the references in Schedule C to annuities, dividends and shares are confusing, although they are still in the legislation today.[106] These are explained in Dowell's *Income Tax Laws*[107] as follows:

> On the creation of the 'consols' in 1752, of annuities 'consolidated into one joint stock of annuities,' the annuities dealt with were made payable in half-yearly dividends on January 5th and July 5th, hence the word 'dividends,' meaning these shares of the bank annuities. The word is now used to mean, in a general sense, interest of money in the funds. Besides the redeemable annuities, the National Debt comprised certain terminable annuities and the 'unfunded debt,'—Exchequer bills and bonds, treasury bills etc., bearing interest, hence the special mention of 'interest' in the schedule of charge.

inspectors of taxes. One may note in passing that Jane Austen's banker brother, Henry Austen, was appointed receiver-general for Oxford in about 1813, with the sureties of £30,000 put up by his brother Edward and his uncle being called on the failure of his bank and his consequent bankruptcy in 1816: C Tomalin *Jane Austen* (Penguin Books, London, 1998) at 242, 257).

[102] 1805 s.214; 1806 s.207 (both made to the receiver-general for the county in which the property was situated); 1842 s.62; ITA 1918 s.40(3); 1952 Sched. 6 para.3, repealed ITMA 1964.

[103] See above n.93.

[104] TNA:PRO IR 86/7, 190. This is still an issue: see *Helen Slater Charitable Trust Ltd v IRC* [1980] STC 150 for the latest case on this topic.

[105] TNA:PRO IR 86/2, 26 (29 July 1847), extended on 17 Aug. 1847 to a procedure involving the Comptroller General.

[106] 1988 s.49(3) applying to the exemption for the Treasury, National Debt Commissioners and the Crown: '"dividends" means any interest, public annuities, dividends or shares of annuities'.

[107] Quoted from the 1926 edn. (Butterworths), at 440. They were probably confusing at the time. On 6 Aug. 1842 the Solicitor's Office advised against an argument put forward by Rothschilds that they were in receipt of interest and not dividends or annuities on a foreign loan on the basis that 'there is no doubt that the term dividends is applicable to interest and is commonly used to designate it' (TNA:PRO IR99/102, 30).

The Schedule C charitable exemption was as follows (with the present equivalent, now applying to Schedules D[108] and F following the abolition of Schedule C in 1996, for comparison, to show how little the wording has changed):

1805	Now
'That nothing herein contained shall be construed to extend to charge any Corporation, Fraternity, or Society of Persons established for charitable Purposes only; nor to charge the Profits arising from any such Annuities, Dividends, or Shares, which, according to the Rules or Regulations established by Act of Parliament, Charter, Decree,[109] Deed of Trust, or Will, shall be applicable by the said Corporations, Fraternities, or Societies, or by any Trustee or Trustees, to charitable Purposes only, and in so far as the same shall be applied to charitable Purposes only; [or the Stock or Dividends in the Names of any Trustees applicable to the Repairs of any Cathedral College Church or Chapel and to no other Purpose and in so far as the same shall be applied to such Purposes[110]], provided the Application	. . . 'where the income in question forms part of the income of a charity, or is, according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only; exemption from tax under Schedule D in respect of public revenue dividends on securities which are in the name of trustees, to the extent that the dividends are applicable and applied only for the repair of—(i) any cathedral, college, church or chapel, or (ii) any building

[108] The Schedule C exemption was extended to yearly interest and annual payments under Schedule D by 1842 s.105. The case of *R v Special Comrs ex p. Dr Barnardo's Homes* (1921) 7 TC 646 relates to the Schedule D exemption. Income during administration of an estate was held not to be income of the charitable residuary beneficiary. This was a Pyrrhic victory since it followed that nor was it income of an individual residuary beneficiary for higher rate tax purposes, thus leading to long drawn-out administration of estates, until reversed by FA 1922 s.30, now 1988 Pt.XVI.

[109] Meaning order of the Court of Chancery: see *Camille and Henry Dreyfus Foundation Inc v IRC* (1955) 36 TC 126 at 152 and 156.

[110] Added by 1806 s.103. It is not clear why this is not already covered by the previous exemption for charitable trustees, but it is still contained in 1988 s.505(1)(d). The Board had pointed out in its correspondence with the Treasury in 1863 (see above n.68) the anomaly that if charitable purposes had a narrower meaning for income tax the Dean and Chapter of St Paul's could claim exemption on Schedule C income, but not on rents, used to repair the Cathedral (Lord Macnaghten makes the same point in *Pemsel* at 100). The existence of this provision was used to support the argument in *Pemsel* (1891) 3 TC 53 at 57 that the scope of the tax exemption was different from the scope of the law on charities, with this anomaly as a consequence; and to the contrary at 61 and 101 that tautology in an Act was not uncommon, and that in 1842 the passage of the Bill would have been facilitated by the Church party seeing the specific exemption (which overlooks the fact that it dates from 1806). H.M. Konstam, *Konstam's Income Tax* (12th edn. Stevens and Sweet & Maxwell, London, 1952) §313: see above n.41 suggested that it covers trusts that are not wholly charitable, such as a charitable trust subject to a power of appointment among the settlor's relatives, as in *R v Special Comrs ex p. Rank's Trustees* (1922) 8 TC 286, which does not seem particularly

1805	Now
thereof to such Purposes shall be duly proved *before the Commissioners for special Purposes to be appointed under this Act*, by any Agent or Factor, on the Behalf of any such Corporation, Fraternity, or Society, or Trustee or Trustees, or by any of the Members or Trustees.'[111]	used only the purposes of divine worship;'[112]

As a mechanism to prevent the need for reclaims by charities the Charitable Trusts Amendment Act 1855 allowed the Charity Commissioners to certify to the Bank of England that interest was payable without deduction of tax on stock in the public funds in the name of the Official Trustees of Charitable Funds, later the official custodian for charities, thus removing any jurisdiction of the Special Commissioners in relation to its exemption.[113] The existence of this provision was strong support for the taxpayer's argument in *Pemsel's case* that the scope of the tax exemption for charities was the same as the scope of English law on charities.[114]

Another provision of the 1805 Act granted the Trustees of the British Museum the same exemptions from tax under Schedules A and C as applied to charities.[115] There may have been doubt at the time whether the British Museum was charitable; the courts did not decide that it was until 1826.[116] The separate exemption of the British Museum is still contained in the Act

convincing. Konstam also pointed out the lack of any equivalent Schedule D exemption. Repairs of collegiate churches and chapels and chancels of churches based on a 21–year average were deductable under Schedule A: 1803 Sched. A No.III Fourth (chancel repairs only); 1805 Sched. A No.IV Fourth; 1806 Sched. A No.V Third; 1842 Sched. A No.V Third; 1918 Sched. A No.V r.1(c); 1952 s.93(1)(c), repealed FA 1963.

[111] 1799 ss.5, 88 (general charitable exemption); 1803, s.68 (essentially the same as the text); 1805 s.74; 1806 s.103 (with the addition mentioned in the previous note); 1842 s.88 Sched. C Third (and see the equivalent Schedule D exemption for yearly interest and annual payments in s.105, added by 1842 s.105, and also granted by the Special Commissioners); 1918 s.37(1)(b) applied by the Special Commissioners s.40 (changed by FA 1925 s.19, see n. 120); 1952 s.447(1)(b), 1970 s.360(1)(c); TA 1988 s.505(1)(c)(i) (general charitable) (repealed on abolition of Sched. C by FA 1996). Also 1918 s.37(1)(c), 1952 s.447(1)(c), 1970 s.360(1)(d); 1988 s.505(1)(d) (trusts for the repair of cathedrals etc) changed to Sched. D on the abolition of Sched. C by FA 1996.

[112] TA 1988 s.505(1)(c), (d).

[113] Incorporated into 1952 Sched. 8, para 8 by Charities Act 1960; 1970 Sched. 5, para.4; 1988, Sched. 3, para 4, repealed FA 1996.

[114] *Special Commissioners v Pemsel* (1891) 3 TC 53 at 61 and see 101–102.

[115] 1805 s.170; 1806 s.155; 1842 s.149; 1918 s.38; 1952 s.451; 1970 s.363; 1988 s.507. Before 1970 this was expressed as the same exemptions as are granted to 'charitable institutions', which was not particularly appropriate.

[116] *British Museum Trustees v White* 2 Sim and St 594, although a devise of land to the Museum was void as offending the statute of mortmain. A charitable body corporate qualifies for the Schedule A exemption for rents vested in trustees for charitable purposes: see above n. 60.

today, although it is clear that the Museum would be covered by the general charitable exemptions.[117] The existence of this exemption was a basis for the Special Commissioners' argument in *Pemsel's case* that the scope of the tax exemption for charities was different from the scope of the law on charities.[118] More convincing is Lord Macnaghten's explanation in that case[119] that a specific relief was necessary for Schedule A for the Museum's own buildings, since it was not a university, hospital, public school or almshouse, and so it was natural that the other exemptions were spelt out at the same time because their omission might have cast doubt on whether they applied.

Later History of Claims for Charitable Exemptions

The Special Commissioners' duties in connection with claims for these exemptions for charities continued until 1925,[120] following which claims for exemption were made to the Commissioners of Inland Revenue. The Special Commissioners' connection with these claims was preserved by making them the sole appeal body on refusal of such claims, determining appeals in like manner to an appeal against a Schedule D assessment,[121] which in 1925 was the only jurisdiction of the Special Commissioners in relation to appeals. They still hear such appeals today because appeals against a claim made to the Board lie to the Special Commissioners.[122] The British Museum was for some reason not included in this change in 1925, although it cannot have been overlooked as its exemption was by then contained in the next section of the 1918 Act following the charitable exemptions. The Special Commissioners' jurisdiction over claims for exemption under Schedules A and C for the British Museum continued until 1965,[123] together with the other Schedule C reliefs dealt with next. The Special Commissioners are still the appeal tribunal in relation to claims by the British Museum, since these are also appeals against a claim made to the Board.[124] The Tax Law Rewrite proposes to abolish the distinction between claims made to the Board and to an Inspector by providing for all claims to be made to an Officer of the Board, which will, if enacted, consequently end

[117] TA 1988 s.507 together with the Trustees of the National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England, and the Trustees of the Natural History Museum.
[118] (1891) 3 TC 53 at 57.
[119] At 101.
[120] FA 1925 s.19.
[121] From 1842 Schedule D appeals were the original appellate function of the Special Commissioners. This accounts for the rather puzzling current reference to 'proceedings which under the Taxes Acts are to be heard and determined in the same way as an appeal', the former reference to Schedule D being dropped when in 1965 the choice of appealing to the Special Commissioners was no longer restricted to Schedule D.
[122] TMA 1970 Sched. 1A, para.10.
[123] ITMA 1964 Sched. 2.
[124] See above n.122.

the Special Commissioners' exclusive jurisdiction over these exemptions in their bicentenary year.[125]

Other Schedule C Exemptions

The other Schedule C reliefs for which claims were made to the Special Commissioners were as follows:[126]

(1) Friendly Societies, Savings Banks, Trade Unions, Industrial and Provident Societies

Friendly societies

> Provided always, and be it further enacted, That nothing herein contained shall be construed to extend to charge the Stock or Dividends of any Friendly Society established under or by virtue of an Act, passed in the thirty-third Year of the Reign of His present Majesty, intituled, *An Act for the Encouragement and Relief of Friendly Societies,*[127] provided the Property therein shall be duly claimed and proved by any Agent or Factor on the Behalf of any such Society, or by any Member thereof, *before the Commissioners authorized to be appointed for special Purposes by this Act.*[128]

Friendly societies flourished in the last 40 years of the eighteenth century with the rise in the number of industrial workers.[129] They were mutual insurance societies with their officers being elected from the members; in return for contributions collected at a monthly meeting, usually held in an inn, they provided sickness benefits and money for funerals. Their numbers were significant; it has been estimated that by 1803 there were 9,672 societies with a total of 704,350 members, rising to 925,429 members, or

[125] This is not clear in the draft Income Tax (Trading and Other Income) Bill but is clarified in a subsequent consultation paper: see http://www.inlandrevenue.gov.uk/rewrite/cc-04-06-pers-rel-comm.pdf, para.11 and Annex 1.

[126] 1805 s.92; 1806 s.103; 1842 s.88; 1918 s.39; 1952 ss.438–446. The penalty for fraudulent claims for exemption under Schedule C was £500 plus treble the duty on the Schedule C income. Note that this is the fixed penalty, not the maximum penalty.

[127] 33 Geo 3 c.54 (1793) providing for registration of societies after their rules had been approved by the justices at quarter sessions. There were subsequent Acts dealing with registration in 1896 and 1908.

[128] 1799 s.4; 1803 s.67 (the same but with the exemption being claimed before the General Commissioners for the district where the society was established); 1805 s.73; 1806 s.103; 1842 s.88 Sched. C, First; ITA 1918 s.39(1), claims being made to the Special Commissioners by s.40; ITA 1952 s.440; claims were transferred to the Inspector by ITMA 1964 Sched. 2 with appeals to the Special Commissioners: see above n.147; 1970 s.332; 1988 ss.460–466. The 1842 Act limited the exemption to sums assured of less than £200 and annuities of less than £30 p.a.; currently £750 and £156 (for contracts made before 31 Aug. 1987) but they were higher before then and were reduced because friendly societies became used for tax avoidance.

[129] Information about the history of friendly societies is taken from: P.H.J.H. Gosden, *Self-Help* (Batsford, London, 1973), Ch.1.

8.5 per cent of the population, by 1815. Societies were concentrated in industrial areas, membership being as high as 17 per cent of the population in Lancashire. The Act of 1793 referred to in the quotation above gave advantages to *registered* societies,[130] to which this tax exemption was an additional advantage; many, however, existed in unregistered form.[131] An Act of 1817[132] introducing savings banks enabled registered friendly societies to invest at favourable rates in savings banks, which invested with the National Debt Commissioners. Direct investment with those commissioners was permitted by an Act of 1819, but before that the 1793 Act required investment in public stocks or funds, hence this relief.[133] With the rudimentary actuarial knowledge of the time and the expenditure on drink at their monthly meetings, many were not run on sound principles and failed. The 1819 Act required the justices to approve the tables according to which benefits were paid in order to improve their financial stability.[134] The Income Tax Act 1853[135] extended this Schedule C exemption to Schedule D.

When income tax was reintroduced in 1842 an exemption on income from the National Debt commissioners and interest paid to depositors was introduced for savings banks,[136] which were non-profi-making bodies for the purpose of encouraging savings by the poor. In contrast to friendly societies, trustees rather than their members managed them. As mentioned above, the 1817 Act enabled registered friendly societies to deposit funds with savings banks. Savings banks became large holders of government debt; by 1841 the National Debt Commissioners were indebted to savings

[130] Registration enabled a society to sue (and therefore protect its funds) and be sued. Unregistered societies existed in the form of partnerships, which effectively meant that no action could be taken against a defrauding member because all partners were required to sue on behalf of the society.

[131] An exemption for income of unregistered friendly societies under £160 was introduced by FA 1904 s.8, later 1918 s.39; ITA 1952 s.440; 1970 s.331; 1988 s.459. The figure is still £160.

[132] 57 Geo 3 c.130.

[133] See n.127 s.6.

[134] 59 Geo 3 c.128.

[135] S.49. For a question about exemption for bank interest of friendly societies, see TNA:PRO IR 86/3, 176 and at 205 where it also refers to granting a Schedule A exemption which seems to imply that it must have been a charity.

[136] The tax exemption is found in 1842 s.88 Sched C Second; 1918 s.39(3) (if certified under the Savings Bank Act 1863); an exemption for interest paid to depositors applied to all savings banks, whether or not certified, but limited to £5 p.a. was introduced by FA 1894 s.36 and increased to £15 (but excluding interest from the National Debt commissioners) by FA 1924 s.24; all interest paid to depositors made chargeable by FA 1920, Sched. 3; 1952 s.439; the first £15 of interest exempted by FA 1956 s.9(1) except for surtax; 1970 s.339; 1988 s.484, repealed FA 1996 on the repeal of Sched. C. See *Queen v Special Commissioners In re Yorkshire Penny Bank* (1889) 2 TC 510 for an example of the settlement of a dispute about the exemption for savings banks. Penny banks were a later development from 1850 for poorer people to overcome the one-shilling minimum deposit normally required by ordinary savings banks. The Yorkshire Penny Bank in the case was founded in 1859 by the philanthropist Colonel Akroyd of Halifax who put up a guarantee, thus making it safer than other savings banks. By 1900 it had deposits of more than £12m. See TNA:PRO IR99/103, 143 for an opinion of the Solicitor's Office that stock in the name of trustees for a savings bank was not exempt.

banks to the sum of £24.5m.[137] They were paid a rate of interest fixed by statute which, because of falling interest rates throughout the nineteenth century, became in excess of market rates as soon as rates were fixed, resulting in legislation limiting the amount of deposits.[138] Saving banks appealed more to domestic servants and children than to industrial workers.

Gladstone's Income Tax Act 1853[139] gave relief for life insurance premiums on insurance on the life of the taxpayer or his wife up to a maximum of one-sixth of taxable income. This was added to the list of claims to be made to the Special Commissioners. The relief is interesting as the culmination of a long-running debate on whether there should be differentiation between the taxation of earned income ('precarious income'), out of which savings had to be made for old age and death, and income from land and the funds ('spontaneous income'), which continued after death.[140] Among the proposals were the radical leader Joseph Hume's that income should be taxed in proportion to the capital value so that the capitalisation of earned income took account of the period of earning and the uncertainties of trade, while income from the funds was capitalised in perpetuity. The Revenue regarded this as 'utterly impracticable'. Another was J.G. Hubbard's that a proportion of earned income should be deducted on the basis that it ought to be saved, which was essentially the solution ultimately adopted much later in 1907[141] for earned income relief. John Stuart Mill proposed an expenditure tax under which the deduction for what was actually saved would be automatic, but he accepted that it was impracticable. Disraeli had supported differentiation in his budget of 1852 which was defeated. Gladstone preferred to deal with the issue by imposing death duties on the capital producing spontaneous income. His life insurance relief was a nod in the direction of differentiation by giving relief for a specific form of savings, although it had nothing to do with differentiation, being available to taxpayers with any type of income.

[137] Gosden (see above n.129), Table 8.1. The statements about savings banks are taken from Ch 8.

[138] For example, an Act of 1824 (5 Geo 4 c.62) limited deposits to £200, with a maximum of £50 in the first year and £30 in subsequent years. This was reduced to £150 in total by the Savings Bank Act 1828. By requiring rules of new savings banks to be submitted to a barrister, that Act was the first step in the creation of the Registrar of Friendly Societies.

[139] 1853 s.54 (the relief was also available to employees who were required by Act of Parliament to pay premiums out of Schedule D or E income (Schedule D at the time applied to employment income other than public offices or employments) for a widow's annuity or provision for his children); 1918 s.32, amended FA 1920 to extend the relief described in brackets to payments required by the terms and conditions of employment. There was an earlier life assurance relief of the proportion of the tax corresponding to the proportion of income paid in premiums which was introduced by 1806 s.178 but limited to taxpayers with income below £150 p.a.

[140] For a more detailed summary of the debate see Daunton, above n.7, at 83–85, 91–102. Even in 1803 *The Times* (11 July 1803) records this point as the objection most generally urged against income tax.

[141] FA 1907 s.19.

Further exemptions from tax under Schedules A and C were added to the Special Commissioners' claims jurisdiction for industrial and provident societies, which date from 1862 and are similar in nature to friendly societies except that they have corporate status.[142] Their exemption was repealed in 1933 by the same section that unsuccessfully attempted to tax mutual trading, and was held by the House of Lords to be ineffective in *Ayrshire Employers Mutual Insurance Association Ltd v IRC*.[143] An exemption from tax under Schedules A, C and D was added for trade union provident funds in 1893,[144] 22 years after trade unions became legal in 1871; trade unions had been prohibited by the Combination of Workmen Acts 1799 and 1800, which were relaxed in 1824 and tightened again in 1825.[145]

Claims by friendly societies and the bodies covered by these subsequent exemptions continued to be made to the Special Commissioners until 6 April 1965, following which they were made to an Inspector;[146] but appeals against refusal of the claim still lay to the Special Commissioners, thus preserving the original link between these claims and the Special Commissioners, a link which continues today.[147]

(2) Non-residents

Stock of Foreigners exempted

> Nothing in this Act contained shall be construed to extend to the Profits arising from any Annuities, Dividends and Shares, *bona fide* belonging to any Person not being a Subject of His Majesty, and not being resident in Great Britain, during such Time as the same shall continue the Property of such Person, provided that such Property shall be duly claimed and ascertained in the Manner herein-after mentioned.[148]

[142] Industrial and Provident Societies Act 1862, s.15; 1867 Act ss.12, 13, limiting the exemption to societies not allowing a member to have an interest in it exceeding £200; 1893 Act s.24 granted exemptions under Scheds A and C; 1918 s.39(4), repealed by FA 1933 s.31(2). A 1905 Departmental Committee on Income Tax (1905 XLIV microfiche ref.111.405) suggested that the possibility of limiting the transactions with non-members, which were taxable, should be looked into. This shows that the practice of limiting mutual trading to transactions with members was already in place. Subsequent provisions were introduced for payment of interest gross: FA 1933 s.32; 1952 s.442; 1970 s.340; 1988 s.486.

[143] (1946) 27 TC 331. The section taxed profits from transactions with members that would be taxable if there were transactions with non-members. It is, however, possible to have mutual trading with non-members, for example insurance where the insured shared in surpluses but was not constituted a member.

[144] Trade Unions (Provident Funds) Act 1893 granted exemptions from tax under Scheds A, C and D, later 1918 s.39(2); 1952 s.440; 1970 s.338; 1988 s.467.

[145] 39 Geo 3 c.81; 39 & 40 Geo 3 c.106; 5 Geo 4 c.95; 6 Geo 4 c.129.

[146] ITMA 1964, Sched. 2.

[147] TMA 1970 s.46C(3)(b) applying from 1996–1997, previously Sched.2, referring to TA 1988 s.459, 460. TMA 1970 s.46C also gives the Special Commissioners exclusive jurisdiction over appeals relating to the exemptions for trade unions; and Sched. 1A, para.10 for savings banks (until 1995–1996) as this was a claim made to the Board, but see above n.125.

[148] 1803 s.71; 1805 s.77; 1806 s.103 5th (relief was not necessary in 1799 because foreigners were not taxed on British income). By 1805 s.90 if the stock was in the name of a trustee, agent or factor, he had to prove on oath that the income belonged to a foreigner entitled to the

This exemption had existed since 1803 apparently for the benefit of Dutch merchants who invested[149] in the Funds, but it was not continued in the 1842 Act. From 1842 non-residents were taxed on a source basis on domestic Schedule C income. In 1915, however, a measure of relief for non-residents was reintroduced for this income. Initially, during the First World War and for one year after, the Treasury had the power to issue securities, free of both income and capital taxes when in the beneficial ownership of persons not ordinarily resident in the UK and not domiciled: this condition was subsequently deleted.[150] Appeals relating to such relief lay to the Special Commissioners.[151] The relief also applied to such securities held within a foreign life assurance fund, being a fund representing liabilities to non-resident policyholders, of a UK insurance company.[152] Foreign income of a foreign life assurance fund, which was remitted to the UK and invested in such securities, was also exempt; the exemption was claimed before the Special Commissioners.

The 1906 Act introduced a system of deduction at source by paying agents.[153] At the same time this Act extended tax under Schedule C to *foreign* public revenue 'dividends'[154] payable in Great Britain,[155] with the result that this this foreign income belonging to a non-resident alien was

exemption. 1806 s.110 (First) required all Schedule C exemptions to be verified by affidavit and the Special Commissioners could also require examination of persons on oath. While this exemption was not repeated in the 1842 Act the Special Commissioners have always dealt with matters relating to non-residents, no doubt because there were no relevant General Commissioners for non-residents, for example FA 1924 s.27 appeals on domicile, residence or ordinary residence; FA 1925 s.20 appeals on claims for reliefs for non-residents such as British subjects, persons in the service of the Crown, residents of the Isle of Man or Channel Islands, resident abroad for health reasons, widows of husbands in Crown service (FA 1920 s.24); exemption for interest on certain government securities held by non-residents (until 1995–1996), exemption of foreign dividends of non-residents (F(1909–1910)A 1910 s.71(2)); deduction of tax from non-residents' copyright royalties (FA 1927 s.25).

[149] Although the Netherlands was under French rule about this time.

[150] F(No.2) A 1915 s.47 (the non-domiciled condition was repealed by FA 1916 s.44); 1918 s.46; 1952 s.195; 1970 s.99; 1988 s.47, repealed FA 1996. By FA 1916 s.63 the relief for securities issued free of tax to non-ordinarily residents was extended to securities issued in the United States by local authorities in the UK held by non-domiciled persons or non-ordinarily resident British subjects. The scope of the relief was therefore the same as what remained of the remittance basis for foreign stocks, shares and rents after FA 1914 s.5.

[151] FA 1924 s.27.

[152] FA 1916 s.44.

[153] See text above at n. 25. The 1806 Act provided that Schedule C 'shall extend to all publick Annuities whatever payable in Great Britain out of any publick Revenue in Great Britain *or elsewhere* [italics added], and to all Dividends and Shares thereof which shall become payable after the Fifth Day of April One thousand eight hundred and six . . .' (s.103).

[154] See above n.107.

[155] 1806 s.108; 1842 s.96; expanded upon by another Act in the same year, 5 & 6 Vict. c.80; extended to foreign companies by 1853; amended 19 & 20 Vict. c.36; extended to colonial companies by Revenue (No.2) Act 1861; extended to cases where the stock was on a UK register by Revenue Act 1866 s.9; extended to income from Indian institutions by Revenue Act 1868 s.5; amended by Customs and Inland Revenue Act 1885, which states that the previous

exempted when it was paid in Great Britain. This exemption was not included in the 1942 Act, when it was presumably overlooked that the effect was that tax became payable (and was in fact collected as it was deducted at source) on all foreign public revenue dividends paid in Great Britain, regardless of the residence and citizenship of the owner.[156] The reason seems to have been that such interest was usually paid by bearer coupons, and so the Revenue effectively had to assume that the person collecting the interest in Great Britain was the owner. Not only was this a claim to extra-territorial taxation,[157] but it also created the anomaly that foreign interest on non-public securities, which was taxable under Schedule D, was exempt in the hands of non-residents. Not surprisingly, this gave rise to problems for the Special Commissioners. Almost immediately the Treasury granted a concession for foreign Schedule C income of foreigners, and that of Colonialists, but only where the income arose and the foreigner resided in the same colony.[158] Following this, fraud was detected when residents gave coupons to non-residents for collection, with the consequence that an affidavit from a non-resident was a prerequisite when claiming exemption.[159] An exemption for foreign Schedule C interest payable in the UK where the owner or beneficiary was not resident was eventually introduced in 1910; the Special Commissioners dealt with appeals against refusal of the exemption.[160]

(3) The Crown and Foreign Ministers

A further Schedule C exemption for the Crown and foreign ministers, also to be claimed before the Special Commissioners, was added by the 1806 Act:

enactments had been found inadequate for assessing foreign dividends and adds the provisions about bankers selling coupons; and again by Customs and Inland Revenue Act 1888. The frequency of these amendments shows that, not surprisingly, taxing foreign dividends paid in Great Britain even when owned by non-residents created difficulties.

[156] The Solicitor's Office had to advise on this as early as 6 Aug. 1842, adding that practical experience may suggest points upon which the property tax is capable of being improved (TNA:PRO IR99/102, 30) and see also the record of advice on 20 Sept. 1842 (TNA: PRO IR86/5, 1), in which it was recorded that the intention of the Chancellor was not to tax them. It also advised in 1849 on similar problems relating to a loan raised by the British Guiana Bank (TNA: PRO IR99/103, 592, 603).

[157] This was not unique; a non-resident director of a UK resident company working wholly outside the UK held a public office 'within the UK' in *McMillan v Guest* (1942) 24 TC 190.

[158] TNA:PRO IR99/103, 604 gives the date of the Treasury letter as 7 Oct. 1842, thus showing that the problem arose immediately after the 1842 Act. For an example of the problems of a Canadian temporarily in the UK receiving US income in the UK, see TNA:PRO IR 83/23; and see also IR 86/2, 64. The Treasury decided in 1856 not to extend the concession (TNA: PRO IR 86/2, 12). In 1853 when the paying agent system was extended to dividends of foreign companies the concession was extended to them (TNA: PRO IR 86/6, 57).

[159] TNA:PRO IR 86/7, 4 (9 Apr. 1866).

[160] F(1909–10)A 1910 s.71(2); Revenue Act 1911 s.13 (beneficiary of a trust with power to call for transfer of the securities); 1918 Sched. C General Rule 2(d); 1952 s.190; 1970 s.100; 1988 s.48, repealed FA 1996. By FA 1924 s.27 appeals to the Special Commissioners were determined in like manner to an appeal against a Schedule D assessment.

Table 3. Exemption for the Crown and Foreign Ministers in 1806 and Now

1806	Now
Stock belonging to His Majesty and Foreign Ministers exempted	
The Stock or Dividends belonging to His Majesty, in whatever Name the same may stand in the Books of the Bank of England, and also the Stocks or Dividends of any accredited Minister of any Foreign State resident in Great Britain, provided the Property thereof shall, if standing in the Name or Names of any Trustee or Trustees, *be duly proved before the said commissioners for special purposes* by such Trustee or any One of such Trustees.[161]	No tax shall be chargeable in respect of the stock or dividends belonging to the Crown, in whatever name they may stand in the books of the Bank of England.[162]

The Crown is exempt from tax by virtue of the prerogative right to claim immunity and so no such exemption is found for other types of income.[163] This exemption may have been needed because it was the paying agent and not the recipient who was assessed; it has survived the abolition of both Schedule C and the assessment of paying agents. A similar issue arises when tax is deducted at source from a payment to the Crown,[164] except under Schedule A which provided that a receiver on behalf of the Crown shall allow the deduction.[165] The Special Commissioners are still the appeal tribunal in relation to claims by the Crown, being an appeal against a claim made to the Board.[166]

[161] 1806 s.103 Sixth; 1842 s88 Fifth; 1918 r.2(b), (c) Sched. C general rules; 1952 s.119; the exemption for foreign ministers was repealed by the Diplomatic Privileges Act 1964 which came into force on 1 Oct. 1964 before ITMA 1964 Sched. 4 Table came into force, which transferred these claims to the Board with the General or Special Commissioners having jurisdiction to review the Board's decision on an appeal Sched. 4, para. (3) (this review jurisdiction was not continued after 1970, except in relation to surtax in 1970 s.33(2)); 1970 s.106(2) (now the Crown only); 1988 s.49(2).

[162] 1988 s.49(2). See previous note for the repeal of the foreign ministers' exemption. There was also an exemption from Schedule A for the house occupied by a foreign minister in 1805 Sched. A III Seventh, with which the Special Commissioners were not concerned.

[163] *Boarland v Madras Electric Supply Corporation Ltd* (1955) 35 TC 612. FA 1960 s.39, reversing *IRC v Whitworth Park Coal Co Ltd* (1959) 38 TC 531, imposed tax on the Crown where it was not ultimately borne by the Crown; 1970 s.524; 1988 s.829. The 1955 Royal Commission had foreseen this problem (Cmd.9474, para. 994).

[164] FA 2000 s.112.

[165] 1805 Sched. A No.III Ninth; 1806 Sched. A No.III Ninth; 1842 s.60 Sched. A No.IV Ninth; 1918 Sched. A No.VIII r.4; 1952 s.174; repealed FA 1963 Sched.13 on the repeal of the original Schedule A.

[166] See above n.122.