

Sir J. ROMILLY, M. R.—I have looked very carefully at the cases, and they all lay down the principle that it is a question of intention to be gathered from the will whether income tax is to be deducted. The expression “free from all deductions” does not of itself include income tax. Suppose a legacy of 1000*l.* or an annuity represented by a sum of 1000*l.* stock is given to A. B., free from all deductions, there can be no question that the person receiving the 1000*l.* will have to pay income tax *de anno in annum* on the dividends as they accrue due. Income tax is not properly a deduction; it is a tax on the income of the legatee from whatever source the income is derived. The whole of the cases which have been referred to proceed upon the foundation, that if the testator expressly points to the income tax, and directs an annuity to be paid free from income tax, that is so much addition to the annuity; and the Exchequer Chamber has determined that, notwithstanding the policy of the law and the provisions in the act of Parliament, a testator may, if he thinks fit, direct an annuity to be paid free from income tax. I am of opinion that the testator has not done so in the present case, and that such an intention is not to be gathered from the language of the will. I am of opinion, therefore, that income tax ought to be deducted.

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#### ABSTRACTS OF RECENT ENGLISH DECISIONS.<sup>1</sup>

*Covenant—Release.*—By a deed of even date with a lease, the lessor covenanted that the lessee should retain part of each year's rent until satisfaction of a debt due from the lessor to the lessee: *Held*, that though the covenant might be pleaded at law as a release *pro tanto* of the rent, this was only to avoid circuity of action, and the covenant was not for all purposes a release: *Ledger vs. Stanton*, 2 Johns. & H. 687.

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<sup>1</sup> From the Digest of English Decisions for 1863. The letters at the end of the paragraphs indicate the courts in which the cases were decided, and the Jurist, Law Times, Law Journal, Weekly Reporter, and other publications in which they are reported.

Therefore, the lessee having specially bequeathed the premises subject to the rent: *Held*, as between the executors and the specific legatees, that the specific legatees took subject to the whole rent, and that the benefit of the covenant for reduction of rent went to the executors: *Id.*

*Covenant—Running with and Binding on Land, and Restrictive.*—A covenant to use a house as a dwelling-house only, is a covenant running with the land: *Wilkinson vs. Rogers*, 12 W. R. 119; 9 L. T., N. S. 434 R.

A sub-lessee who was bound by a covenant in a lease to use a particular house as a dwelling-house only, put up a notice in the window of it as follows: "Alpheus Andrews, Coal-office; and at the Coal Exchange." Orders were taken by him for coal at the house, but no coal was actually supplied there to customers, and the house was in other respects used as a dwelling-house. Upon a motion by the reversioner for an injunction to restrain the lessee and sub-lessee from putting up the notice, or using the house otherwise than as a dwelling-house only: *Held*, that the injunction must be granted: *Id.*

An adjoining house held under the same landlord was, after the granting of the lease, occupied for two years by a photographer, who exposed photographs and frames for sale, but had ceased to be so occupied before the filing of the bill: *Held*, that the right to enforce the covenant was not thereby forfeited under the proviso, as the user of the adjoining house by the photographer had been stopped: *Id.*

*Seemle*, such user was not a conversion into a shop, since the front of the house had not been altered: *Id.*

An owner in fee of two plots of land demised the first for a hotel, and covenanted that he would not let any house or land, within a certain distance of it, to be used as a hotel. He demised the second plot, which was within the distance, to another person. The defendant purchased the reversion of the second plot, and afterwards bought up the lease of it, but with notice of the restrictive covenant relating to the first plot: *Held*, that he was in equity bound by the covenant: *Jay vs. Richardson*, 30 Beav. 563.

*Held*, on the construction of the covenant on the part of a lessor not to "let" any house, or any land for the erection of any house to be used as a hotel, that the lessor, and those who claimed under him, could not allow any of his land to be used for that purpose: *Id.*