

# Access to Justice before the Special Commissioners of Income Tax in the Nineteenth Century<sup>\*</sup>

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When Sir Robert Peel reintroduced the Income Tax in 1842 after a suspension of some 25 years, one of the few major changes he made to Pitt and Addington's legislation was to give the Special Commissioners of Income Tax a new appellate adjudicatory function. He gave commercial taxpayers under Schedule D the option of appealing to that tribunal from their assessment by the local Additional Commissioners and from a new mode of assessment by the Special Commissioners themselves.<sup>1</sup> Peel had revived the tax to address a deficit of some £5 million, and the provisions with respect to the Special Commissioners aimed at fully tapping the immense commercial wealth which an economy at the height of an industrial revolution enjoyed. The aim of the fiscal process was to ensure that the government enjoyed a constant and predictable stream of public revenue through the imposition of taxes which were, virtually by definition, unpopular. The extension of the Special Commissioners'

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<sup>1</sup> *Parliamentary Debates*, series 3, vol.62, cols. 657-8, 18 Apr 1842 (House of Commons) *per* Sir Robert Peel. See Income Tax Act 1842 (5 & 6 Vict. c.35) ss.130-131.

function from a primarily administrative one of granting certain charitable exemptions under Schedule A and performing duties under Schedule C,<sup>2</sup> to an appellate and essentially judicial one was an act of political expediency. It aimed to address the still potent objection of the trading community to an inquisitorial tax which would otherwise require them to disclose their incomes to the local lay Additional and General Commissioners who might well be their competitors in trade and to whom it might be 'prejudicial or vexatious' to give such information.<sup>3</sup> The Inland Revenue wanted and needed to afford every facility to the taxpaying public to ensure that all incomes were returned and fully and properly charged to the tax. Peel's solution was to allow commercial taxpayers to choose to appeal to, and indeed to be assessed by, a tribunal of paid civil servants within a department of central government concerned exclusively with the complex field of tax law and the fiscal process: the Special Commissioners.

The Special Commissioners in their appellate function constituted a practical solution to a very real popular grievance and perceived fiscal shortfall. The unstated premise was to constitute a major element in the legislative regime for taxpayer protection by

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<sup>2</sup> 45 Geo.III c.49 ss.30, 37, 73-85 (1805); J. Avery Jones, 'The Special Commissioners from Trafalgar to Waterloo' (paper presented at the Cambridge History of Tax Law Conference, July 2004). See too A. Hope-Jones, *Income Tax in the Napoleonic Wars* (Cambridge 1939) pp.23-28; A. Farnsworth, 'The Income Tax Commissioners,' (1948) 64 *Law Quarterly Review* 372.

<sup>3</sup> *Parliamentary Debates*, series 3, vol.62, col. 657, 18 Apr 1842 (House of Commons). See too C.Stebbins, 'The Budget of 1798: Legislative Provision for Secrecy in Income Taxation,' [1998] *British Tax Review* 651.

enabling a taxpayer to challenge a decision of the Inland Revenue where he believed it to be unjust and thereby to ensure that the Inland Revenue collected tax only in accordance with the law. Nevertheless the evidence suggests that this tribunal was relatively little used throughout the nineteenth century. Official statistics and other evidence show that the Special Commissioners were not widely employed in their appellate function in terms of numbers of appeals heard nor indeed in their assessing function under Schedule D, though the statistics did not always clearly distinguish between the two functions.<sup>4</sup> Some ten years after the income tax was reintroduced, one Special Commissioner said that the right of appeal to his tribunal from assessments made by the Additional Commissioners under Schedule D had 'very seldom been exercised,'<sup>5</sup> an opinion confirmed by a number of surveyors. Of the three surveyors from London appearing before the Hume Select Committee in 1851-2, none had ever had an instance of a party electing to appeal to the Special Commissioners instead of to the General Commissioners.<sup>6</sup> It was a

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<sup>4</sup> This merely reflected the prevailing school of thought that the determination of an appeal by a tax tribunal was merely part of the assessment. In 1919 the Presiding Special Commissioner observed that 'the duty of assessing [railway companies and their officials] includes the duty of hearing appeals where a right of appeal exists:' Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,408, Command 288-4, per G.F. Howe, Presiding Special Commissioner. This view of the status of the appeal as essentially an administrative act endured into the following century.

<sup>5</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1119, 1553, Command 354, per Edward Cane, Special Commissioner. See too *ibid.* qq. 1564-65 per Edward Hyde, surveyor, and q.806 per Edward Welsh, surveyor.

<sup>6</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1602, Command 354, per Edward Hyde, Charles Levien, Francis Tarleton, surveyors.

particularly rare occurrence for provincial surveyors, at least in the early years. In 1849 a surveyor from Chichester wrote to the Board of Inland Revenue requesting instructions when a taxpayer gave notice of his intention to appeal to the Special Commissioners from an assessment made upon him by the local Commissioners. He was told, somewhat impatiently, that he would, 'of course,' receive instructions from the Special Commissioners.<sup>7</sup> Even in 1863, by which time the Special Commissioners as an appellate body had been established for twenty years, they were hearing only some 150 appeals a year in England.<sup>8</sup> Naturally they heard many more in Ireland, since they constituted the only appellate body in that country when the income tax was extended to Ireland in 1853,<sup>9</sup> and in the same year they heard 3,300 Irish appeals in total, though this figure included appeals settled by correspondence and was not limited to Schedule D appeals.<sup>10</sup> The Board of Inland Revenue regularly expressed their

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<sup>7</sup> The National Archives (TNA): Public Record Office (PRO) Records of the Boards of Stamps, Taxes, Excise, Stamps and Taxes, and Inland Revenue (IR) 86/2, Board Minute, 16 Nov 1849.

<sup>8</sup> *House of Commons Parliamentary Papers*, (1863) vol.xxxi (607), Command 528.

<sup>9</sup> 16 & 17 Vict. c.34 ss.20, 21. As the Assessed Taxes did not apply to Ireland, there was no existing machinery on which to engraft the income tax administration, and accordingly a new system based entirely on the surveyors and the Special Commissioners was introduced. The surveyors acted as assessors, while the Special Commissioners both made the assessments and heard all appeals.

<sup>10</sup> *House of Commons Parliamentary Papers*, (1863) vol.xxxi (607), Command 528. See too Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,728, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner. In 1918-19 there were 2,149 appeals in Ireland as against 446 in Britain: *ibid.* q.13,414.

surprise that so few commercial taxpayers availed themselves of this confidential process.<sup>11</sup>

The tension of an overtly administrative governmental body based in London exercising adjudicatory functions, the economic importance of its role and the complexity and technicality of the law it was implementing combine to suggest that one reason for such slight use of the tribunal could be that it challenged contemporary notions of access to justice and was, as the regular courts of law were perceived to be, inaccessible. The object of this paper is to examine the extent to which the Special Commissioners in their appellate function met that challenge and were, both in fact and in perception, accessible to the taxpaying public in the context of practical litigation and of the esoteric nature of tax and of the fiscal process. The accessibility of the Special Commissioners directly determined the extent of their efficacy as the formal safeguard of Schedule D taxpayers in the legislative regime of income tax.

When Peel engrafted the judicial function on the hitherto exclusively administrative functions of Pitt's Special Commissioners of 1805,<sup>12</sup> he was himself immersed in a legislative, political and ideological culture not only of extra-judicial dispute resolution but of

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<sup>11</sup> First Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* (1857), vol.iv (65) at p.32 of the Report, Command 2199, Sess.1. In 1868-9 there were nearly 2,400 special assessments out of a total of 380,000 people assessed under Schedule D: Thirteenth Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* (1870), vol.xx (193; 377) at p.122 of the Report, Command 82; 82-1.

<sup>12</sup> 45 Geo.III c.49 ss.30, 37, 73-85 (1805).

an acute awareness of the problems of accessibility to the regular courts, both superior and inferior. While in the nineteenth century the concept of access to justice was not articulated as a discrete concept as it is today, that did not mean it was perceived as either unimportant or undesirable. The general consensus – with a few notable exceptions – was that the main elements of accessibility, namely simplicity, cheapness, speed and proximity, were the right of any litigant in the English courts of law. The truth underlying the common saying that justice through the courts was open to all, rich and poor, like the Ritz Hotel, was increasingly uncomfortable. Rather less altruistic was the undeniable need to streamline the procedures of the courts in order to keep pace with the growth in legal business engendered by immense commercial and technological development.

In a masterly overview of the state of the superior courts of the Common Law at the dawn of the Victorian age, Henry Brougham exposed the trouble, expense, delay, inconsistency and technicality which litigants had to endure.<sup>13</sup> The process was overly dependent on form and a rigorous adherence to complex and detailed rules, exacerbated by fictions, verbosity and repetition.<sup>14</sup> He put forward

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<sup>13</sup> *Parliamentary Debates*, New Series, vol.18, cols.127ff, 7 Feb 1828 (House of Commons) *per* Henry Brougham.

<sup>14</sup> See the First Report of the Common Law Commissioners, *House of Commons Parliamentary Papers* (1829), vol.ix (1), Command 46; First Report of the Commissioners for Inquiring into the Process, Practice and System of Pleading in the Superior Courts of the Common Law, *House of Commons Parliamentary Papers* (1851), vol.xxii (567), Command 1389.

comprehensive and pragmatic proposals for reform<sup>15</sup> and called for 'the pure, prompt, and cheap administration of justice throughout the empire.'<sup>16</sup> Though speaking with reference to the work of the Privy Council, his words reflect the views of liberal reformers with respect to the administration of justice in general:

'It is the worst of all follies, the most iniquitous, as well as the most mistaken, kind of policy, to stop litigation – not by affording a cheap and expeditious remedy, but by an absolute denial of justice, in the difficulties which distance, ignorance, expense, and delay produce.'<sup>17</sup>

Delays and expense in the Court of Chancery were notorious, and the court's portrayal by Charles Dickens in *Bleak House* in 1853 was widely accepted as accurate. The process was described in Parliament as 'slow...nearly insensible,'<sup>18</sup> and it was said that 'few entered the court of chancery without alarm, and...none escaped from it without suffering.'<sup>19</sup> Suits took so long that persons interested often died before the action was determined, costs were exorbitant and frequently consumed a large proportion of the property which was the object of the litigation.<sup>20</sup> The debates on the establishment of local

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<sup>15</sup> *Parliamentary Debates*, New Series, vol.18, cols.127ff, 7 Feb 1828 (House of Commons) *per* Henry Brougham.

<sup>16</sup> *Ibid.*, col.131.

<sup>17</sup> *Ibid.*, col.159.

<sup>18</sup> *Parliamentary Debates*, series 2, vol.5, col.1034, 30 May 1821 (House of Commons) *per* M.A. Taylor.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Parliamentary Debates*, series 1, vol.19, col.261, 7 Mar 1811 (House of Commons) *per* M.A. Taylor.

courts for the hearing of small civil cases, which ultimately produced the system of County Courts in 1846, revealed similar perceptions at the very time when the Special Commissioners of Income Tax were being given appellate judicial powers. Pragmatic and rational reformers such as Henry Brougham saw the inconveniences of taking small cases, notably for the recovery of small debts, to the superior courts, where the expense of litigation almost amounted to a denial of justice,<sup>21</sup> and said that inevitably it was bound to deter litigants from pressing even a good cause. Brougham wanted to provide 'cheap justice, and near justice, and speedy justice' for the people of this country.<sup>22</sup>

There were, however, dissenting voices. Traditionalist conservatives such as Lord Lyndhurst argued 'that cheap law did not always mean cheap justice, nor expeditious law expeditious justice.'<sup>23</sup> His view of the administration of English justice was that it 'was more pure than that of any other country in the world...not only uncorrupted and incorruptible...but...above suspicion.'<sup>24</sup> He thought the difficulties of expense and delay were inseparable from any system of justice based on an adherence to rules, and indeed that they might even be desirable in that they served the primary object of the

<sup>21</sup> *Parliamentary Debates*, series 3, vol.18, col.858, 17 June 1833 (House of Lords) *per* Henry Brougham.

<sup>22</sup> *Ibid.*, col.891, 17 June 1833. Similar arguments were made in the debates on the Supreme Court of Judicature Bill in 1873, for example by the Attorney General in *Parliamentary Debates*, series 3, vol.216, col.643, 9 June 1873 (House of Commons).

<sup>23</sup> *Parliamentary Debates*, series 3, vol.18, col.869, 17 June 1833 (House of Lords) *per* Lord Lyndhurst.

<sup>24</sup> *Ibid.*, col.870.

system, which was to avoid litigation. To make justice too accessible would be to undermine the preventive part of the system. He put the litigiousness of the American people down to an over-accessibility of justice, and argued that this maintained them in an almost constant state of strife. Similarly in 1828 Solicitor General Tindal had argued that if law was too cheap it became 'an unmitigated evil':

'The hand of one man would be perpetually raised against the hand of another; no fancied grievance would be allowed to sink into oblivion; no petty assault would be either forgiven or forgotten; and the courts would be occupied with the endless quarrels of the peevish and the discontented.'

Expensive law, he concluded, 'operates as a wholesome check on the spirit of litigation.'<sup>25</sup>

The widespread fear of litigation among the public was accepted by most legislators and reformers to be unacceptable. Ultimately the demand for an accessible system of regular courts resulted in the complete recasting of the system of superior courts and a uniform code of procedure outlined in the Schedule to the Supreme Court of Judicature Act of 1873, the latter going far towards achieving the 'cheapness, simplicity, and uniformity of procedure'<sup>26</sup> which had been

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<sup>25</sup> *Parliamentary Debates*, New Series, vol.18, col.852, 29 Feb 1828 (House of Commons).

<sup>26</sup> *Parliamentary Debates*, series 3, vol.214, col.337, 13 Feb 1873 (House of Lords) *per* the Lord Chancellor.

desired some forty years before. Within the period of Peel's ministries, it found expression in a continuous programme of legislation simplifying the procedures in the superior Common Law courts by introducing uniform methods of starting actions, reducing or removing technicalities and fictions,<sup>27</sup> and in the creation of the new County Courts system, introduced in 1846 by a Whig administration but on the basis of the legislation undertaken by Peel's ministry.<sup>28</sup> These early reforms were not radical and were limited in their effectiveness, but constituted a considerable step towards the facilitation of the administration of justice in the regular courts.<sup>29</sup>

The desirability of accessible dispute-resolution bodies was the unstated premise in the creation of the new statutory tribunals, though not the prime reason for their creation. Unlike with litigants in the regular courts of law, the new tribunals of the nineteenth century were created in order to implement new, and often controversial, government policy. Pragmatic politicians and legislators recognised that policy could only be implemented if those members of the public with a perceived or real grievance were afforded an accessible and effective process for its resolution. Thus the constitution and

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<sup>27</sup> Uniformity of Process Act 1832 (2 & 3 Will. IV c.39) provided for a uniform writ of summons; Real Property Limitation Act 1833 (3 & 4 Will. IV c.27). See too Common Law Procedure Acts 1852 and 1854 (15 & 16 Vict. c.76; 17 & 18 Vict. c.125); Re simplification of pleading, see W.S.Holdsworth, 'The New Rules of Pleading of the Hilary Term, 1834,' (1923) 1 *Cambridge Law Journal* 261.

<sup>28</sup> Act for the More Easy Recovery of Small Debts and Demands in England 1846 (9 & 10 Vict. c.95).

<sup>29</sup> See generally Baron Bowen, 'Progress in the Administration of Justice during the Victorian Period,' *Select Essays in Anglo-American Legal History* (Boston 1907) vol.1, pp.516ff.

procedures of the new tribunals reflected an acknowledged need for accessibility. The Special Commissioners were like other statutory tribunals in that their function was to implement legislation, in their case certain elements of the income tax legislation. While all statutory tribunals implementing regulatory legislation were required to implement government policy expeditiously, it was of especial importance in the fiscal field for it brought with it a direct and unrelenting pressure and expectation to conclude any litigation before them swiftly and effectively so as to ensure the constant and predictable stream of revenue into the government's hands. Just as the period of Peel's political activity saw the reform of the regular courts to render justice more accessible, so it saw the creation of the early statutory tribunals on a broadly common model, notably the Tithe Commissioners in 1836,<sup>30</sup> the Copyhold Commissioners in 1841,<sup>31</sup> the Inclosure Commissioners in 1845<sup>32</sup> and the Railway Commissioners in 1846.<sup>33</sup> When he strengthened the role of the Special Commissioners in 1842 and gave them judicial powers, Peel did so in a period of particularly dynamic and original law reform and pressing fiscal demands. Not only was it necessary for any income tax tribunal to be accessible in order to achieve its fiscal aims, it would, in the prevailing legal and political culture, be expected. Informed

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<sup>30</sup> Tithe Commutation Act 1836 (6 & 7 Will.IV c.71).

<sup>31</sup> Copyhold Act 1841 (4 & 5 Vict. c.35).

<sup>32</sup> Inclosure Act 1845 (8 & 9 Vict. c.118).

<sup>33</sup> Railway Commissioners Act 1846 (9 & 10 Vict.c.105).

commercial opinion favoured a dispute resolution body which was effective, but which was not too expensive nor too slow. Commercial taxpayers were 'in favour of quick justice, even if it is not the highest.'<sup>34</sup>

The accessibility of the Special Commissioners to the taxpayer had a number of facets. The most obvious was an awareness of their existence and function; the most substantive was expense; the most intangible was the perception of their effectiveness and the most intractable was the intellectual accessibility of the underlying legislation. The Special Commissioners as a tribunal were *prima facie* accessible to the taxpaying public only if the public knew of their existence and functions, and were informed as to how to use the tribunal. Whereas the appellation 'Commissioners' is today perceived as inaccessible in that it is generally not understood, that was not the case in the nineteenth century. Boards of Commissioners were commonplace and while the name conveyed little more than the very broad concept of someone empowered by government to exercise authority in a specialised area of public life, that sufficed to ensure familiarity with the general nature of any body of Commissioners. Familiarity with the notion of Commissioners, however, did not mean that the existence of the Special Commissioners of Income Tax was

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<sup>34</sup> This was the conclusion of the Birmingham Chamber of Commerce in 1905 after extensive debate: Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol. xlv (245), q.1965, Command 2576, *per* Arthur Chamberlain JP.

generally known. The confusion lay in distinguishing between the various bodies of Commissioners, the 'cloud of Commissioners' as Charles Buller called it in the House of Commons in 1842,<sup>35</sup> involved in the administration of income tax. One prominent member of the Tax Bar explained how he constantly had to explain the difference to the public between the Commissioners of Inland Revenue, the Special Commissioners and the General Commissioners. 'There is,' he said, 'extraordinary confusion – more than you would believe possible – about it.'<sup>36</sup> Even as late as 1920, as is the case today,<sup>37</sup> the existence of the Special Commissioners was unknown to most taxpayers and, even if they saw the name on an official form, would not know how those Commissioners differed from the other bodies in the tax sphere.<sup>38</sup> The evidence confirms that the power of recourse to the Special Commissioners for both assessment and appeal under Schedule D was largely unknown, and even where it was realised to be an option, it was rarely used by smaller traders, even when in later years it was found to be a sensible route in areas which felt dissatisfaction with either their surveyor or their local Commissioners. Furthermore,

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<sup>35</sup> *Parliamentary Debates*, series 3, vol.62, col.999, 22 Apr 1842 (House of Commons) *per* Charles Buller.

<sup>36</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.16,032, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>37</sup> See H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax* (Hamlyn Lectures, 33<sup>rd</sup> Series, London 1981) p.78.

<sup>38</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,444, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner. See too *ibid.* q.534, Command 288-1, *per* Sir Thomas Collins, Chief Inspector of Taxes.

while in the early years of the revived income tax the times, dates and location of the appeal hearings of the General Commissioners were regularly announced in *The Times*, even with the order of the wards to be heard, there was no such publicity for the Special Commissioners.<sup>39</sup> This served to reinforce public ignorance of the tribunal. In the absence of any general cultural knowledge of the Special Commissioners as an institution such as existed with Justices of the Peace or even with General Commissioners, taxpayers were dependent on official information for publicising the existence and function of the Special Commissioners. There were three possible sources of this information – the surveyor, the official notices and the clerk to the General Commissioners.

During the nineteenth century, most taxpayers requiring advice as to their tax affairs would ask either the surveyor or the clerk to the General Commissioners. The extent to which the former was approached depended largely on his character and standing in the locality, and the extent to which he was known to act impartially rather than as a ‘government man.’ As far as advising as to approaching the Special Commissioners, however, he had no personal interest in the matter and had no reason to give anything other than honest advice and to fully inform the taxpayer of the options open to him. The clerk to the General Commissioners, was, like his

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<sup>39</sup> See, for example, *The Times*, 7 Dec 1842 p.5 col.e.

Commissioners, independent of the Inland Revenue. He was generally a local solicitor, and was usually clerk to various other bodies of Commissioners such as the Additional Commissioners and the Land Tax Commissioners, as well as being clerk to the Justices of the Peace. He was inevitably a well-known figure in the district. His function was to advise his Commissioners on points of law and procedure, as well as to deal with the administrative aspects of the work of his Commissioners. As such he would certainly have been fully cognizant of the existence and function of the Special Commissioners, and as a usual source of information on tax matters in the nineteenth century, he was in the ideal position to publicise the tribunal. As will be seen below, however, he faced something of a personal conflict in this respect.

The principal and orthodox way in which taxpayers should have been informed of the nature and functions of the Special Commissioners was through the official notices of the income tax process. The notice to make returns under Schedule D consisted of the delivery by the parish assessor to each taxpayer coming within that Schedule<sup>40</sup> of the notorious 'Form 11' and the subsequent circulation of the church door notices, which in clear and

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<sup>40</sup> It seems that the official time limit of 21 days from the issue of the precept to the assessor by the General Commissioners for the giving of such notice was unknown to most taxpayers. It was meant to be affixed in a public place such as the church door, but few examined it: see Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,429, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

straightforward language instructed all taxpayers to make their returns to the assessor.<sup>41</sup> The Form 11 itself was long and detailed, reflecting the complex nature of Schedule D. Being the first step in the assessment process it naturally made no mention of the question of appeals, but it was the first intimation to a taxpayer of the existence of the Special Commissioners in their new assessing function,<sup>42</sup> since taxpayers were asked to indicate if they were 'desirous of being Assessed by the Special Commissioners appointed by the Crown.'<sup>43</sup> As one of ten notices and declarations contained in the return, and with no accompanying explanation, it provided the minimum information and as such was limited in its accessibility. An example of the Form 11 from 1887 shows the right to be assessed by the Special Commissioners as being particularly obscure.<sup>44</sup>

Once the assessment had been made, whether by the local Commissioners or the Special Commissioners, the question of informing a taxpayer as to his right of appeal became relevant. In the case of ordinary Schedule D assessments the notice of the sum with which a taxpayer had been charged, the notice of first assessment, the Form 64, would be issued by the clerk to the Additional Commissioners. Some early notices of first assessment under Schedule D were brief and uninformative with regard to appeals. A

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<sup>41</sup> TNA: PRO IR 9/6A, Form 7 (1854).

<sup>42</sup> Such assessments were known as 'special assessments' and were made under the authority of the Income Tax Act 1842 (5 & 6 Vict. c.35) s.131.

<sup>43</sup> TNA: PRO IR 9/4 Pt 2, Form 11 (1857).

<sup>44</sup> TNA: PRO IR 88/1, Form 11 (1887).

typical such notice issued in Durham in 1868 stated the assessment which the General Commissioners had made and bore the signature of the clerk to those Commissioners. The notice then read:

If you have any cause to appeal against the same, you must give Notice in writing, to Mr KING PATTEN, the Surveyor of Taxes at his Office, situate in Stockton-on-Tees, and appear personally before the Commissioners on the day appointed for hearing the case.

The day of Appeal is fixed for the TWENTY-FIRST DAY OF NOVEMBER INSTANT, at the ATHENAEUM WEST HARTLEPOOL at half past ten.....<sup>45</sup>

The official notice thus made no specific mention of appeal to the Special Commissioners, and is the one reproduced in most income tax manuals of the nineteenth century,<sup>46</sup> itself suggesting the slight use of the Special Commissioners in their appellate function. It would be reinforced by church door notices publicising the time and place of appeals before the General Commissioners, but no such notices existed for appeals to the Special Commissioners.

Where a taxpayer had been assessed by the Special Commissioners, he would receive notice of the sum in which he had been assessed. The Board of Inland Revenue envisaged that notice would then be given by either party of their wish to appeal, and

<sup>45</sup> TNA: PRO IR 9/2, Form 64 (1868).

<sup>46</sup> See for example Charles Senior, *Hand-Book of Income Tax Law and Practice* (London 1863) pp.42, 213.

desired to be informed so that the necessary arrangements for hearing and determining these appeals could be made.<sup>47</sup> To that end, Form 65, which was the notice of assessment by the Special Commissioners, stated the assessment and included the instruction:

If you have any Cause to Appeal against the Assessment, you must give me Notice in Writing, on or before the \_\_\_\_\_ day of \_\_\_\_\_ addressed to my Office, situate at \_\_\_\_\_ . Due notice will be given you of the time and place appointed for hearing such Appeal.

The signature to the notice was that of the surveyor.<sup>48</sup> The notice did not, therefore, make it explicit that the appeal was to the Special Commissioners, though the Act itself did.<sup>49</sup>

Not only was the bare minimum of information about the Special Commissioners included in the notices, the evidence shows that not every taxpayer received a notice of appeal at all. It was the practice in some areas for only those taxpayers whose assessments did not exactly reflect their returns to be given the opportunity to appeal.<sup>50</sup> Furthermore, each district tended to produce its own

<sup>47</sup> TNA: PRO IR 86/1, Board Minute, 20 Jan 1843.

<sup>48</sup> TNA: PRO IR 9/4 Pt 2, Form 65 (1850s). See too Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), qq.122, 406, Command 370, per Charles Pressly, Chairman of the Inland Revenue Department.

<sup>49</sup> Income Tax Act 1842 (5 & 6 Vict. c.35) s.131.

<sup>50</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1522, Command

personalised income tax forms, notices, receipts and demands, and while they were all broadly in the same format with similar wording, there were often notable divergences from the official form. It was, for example, a common practice to vary the notices with the legitimate object of facilitating the appeal hearings for the appellants. This was because it was usual to ascertain the number of appeals before fixing the days for hearing them. This permitted the clerk to the General Commissioners to give each appellant a more precise time and date for his appeal. In such cases the notice of first assessment read:

N.B.- If you have any cause to appeal against the same, you must give notice in writing within ten days from the date hereof, to Mr \_\_\_\_\_, the Surveyor of Taxes, at his office, situate at \_\_\_\_\_, stating the parish and the number of this notice..... The day of appeal will then be made known to you, but no appeal can be heard unless such notice is given within the proper time.<sup>51</sup>

It was a small step from making such alterations to the benefit of the taxpayer, to making alterations to the benefit of the administration, a point which was vividly illustrated in 1871.

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354, *per* Edward Hyde, surveyor.

<sup>51</sup> Charles Senior, *Hand-Book of Income Tax Law and Practice* (London, 1863) p.214.

The later years of the nineteenth century were a time of particular unrest in relation to the income tax, with numerous local rebellions against assessments and perceived excessive surcharges under Schedule D. One such rebellion in Exeter in 1871 revealed profound discontent within the local administration of the tax. These tensions could have been effectively relieved by appealing against the assessments to the Special Commissioners as a body untainted by any local commercial connection and with no interest in the individuals' professional standing. Nevertheless, it emerged in the course of an official enquiry by the Board of Inland Revenue into the rebellion that the Special Commissioners had not been appealed to because they were almost entirely unknown by the Exeter traders. To the Board's considerable concern<sup>52</sup> it learned that its instruction that notification of the option should be printed on every notice of assessment had been ignored, and some clerks to the local Commissioners had printed their own notices on which the information was omitted.<sup>53</sup>

The official enquiry did not make any suggestion as to the object of the clerks in doing this, but an obvious motive would be financial. Clerks were, until 1891,<sup>54</sup> remunerated by poundage, namely a fixed

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<sup>52</sup> The confidence of the Board in its forms and notices was considerably undermined. See Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), qq.122, 406, Command 370, per Charles Pressly, Chairman of the Inland Revenue Department.

<sup>53</sup> Fifteenth Report of the Board of Inland Revenue, *House of Commons Parliamentary Papers* (1872), vol.xviii (259) at p.54, Command 646; Sixteenth Report of the Board of Inland Revenue, *House of Commons Parliamentary Papers* (1873), vol.xxi (651) at p.36, Command 844.

<sup>54</sup> Taxes (Regulation of Remuneration) Act 1891 (54 Vict. c.13) s.1.

rate in the £ on the sum raised by the tax. The allowance was 2d in the £,<sup>55</sup> and was for all the clerical and administrative duties directed to be done under the General and Additional Commissioners. It was thus in the clerk's interest to keep as many assessments and appeals in the hands of his Commissioners rather than the Special Commissioners. Poundage was undoubtedly lucrative to clerks. It provided their remuneration and the expenses of their office, namely the rent of their premises, the salaries of their assistant clerks, stationery and other routine expenses.<sup>56</sup> When James Dickens, a Special Commissioner, gave evidence before the Select Committee on the Income and Property Tax in 1851, he gave the expenses of his Department since 1842 as £18,000, and observed that some £40,000 had been saved by way of poundage as a result of assessments not being made by the local Commissioners.<sup>57</sup> The poundage was paid to the clerks to the General Commissioners and to their assessors and collectors, and in 1855 the clerk to the City of London Commissioners received £7000 in poundage from income tax.<sup>58</sup> The income tax and

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<sup>55</sup> Income Tax Act 1842 (5 & 6 Vict. c.35) s.183 ; 16 & 17 Vict. c.34 s.57.

<sup>56</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1),qq. 764-9; 2714, Command 354.

<sup>57</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1151-2, Command 354, *per* James Dickens, Special Commissioner.

<sup>58</sup> For details of the clerk's poundage in the City of London in 1849, see Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq. 767-9,Command 354, *per* Edward Welsh, surveyor for the City of London; Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), q.2396, Command 370, *per* Edward Welsh, surveyor for the City of London.

the assessed taxes yielded a total of £78,000 in poundage in the year ending 1861.<sup>59</sup> There was, therefore, a strong incentive to corrupt clerks to fail to draw the attention of taxpayers to the possibility of appealing to the Special Commissioners, and corrupt clerks, unfortunately, were not unknown. In 1862 the surveyor for the City of London expounded at length about the now infamous corruption of the clerk for that division, who had sold the Schedule D returns to use as waste paper. The returns were eventually recovered from Billingsgate market where they were being used to wrap up dried fish.<sup>60</sup> Even if a clerk stopped short of a physical mutilation of the notice, he could always simply fail to mention the option when giving general tax advice to the public.

In the Exeter case, the Board reprimanded the clerks to the local Commissioners for not drawing the attention of the taxpayers to their right to appeal to the Special Commissioners. The Board also took more direct action, and as a result in 1873 an Act was passed which provided that only notices prescribed or approved by the Board were to be used.<sup>61</sup> The legislation was clearly effective since from that

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<sup>59</sup> Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), qq.179-80, Command 370, *per* Charles Pressly, Chairman of the Inland Revenue Department.

<sup>60</sup> *Ibid.* qq. 2414-19 *per* Edward Welsh, surveyor for the City of London. See too the obstructive actions of the clerk at Louth, Sixth Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* (1862), vol.xxvii (327), at pp. 352-54, Command 3047.

<sup>61</sup> Customs and Inland Revenue Act 1873 (36 & 37 Vict. c.18) s.9. See too Taxes Management Act 1880 (43 & 44 Vict. c.19) s.15(2).

date the notices of first assessment, invariably, as in this example from Durham in 1873, included the following additional words:<sup>62</sup>

If you are assessed under Schedule D, and do not claim exemption on the ground of your whole Income from every source being less than £100 or Abatement on the ground of such income being less than £300, you can, if you so desire, Appeal to the Commissioners for Special Purposes, instead of to the Commissioners for General Purposes, on giving Notice to that effect in Writing to the Surveyor within the period above stated, and the day for hearing Appeals by the Special Commissioners will be notified to you in due course....

The Day of Appeal is fixed for \_\_\_\_\_ the \_\_\_\_\_  
November 1873, at 11am at the Court House, Durham.

Signed Clerk to the Commissioners

This was the notice in the correct form, clearly informing the taxpayer of his option of appealing to the Special Commissioners, though giving no information as to the nature of that body nor how it differed from the General Commissioners. The statement did not particularly stand out from the rest of the notice, and, as was remarked, 'no one cares to devote much time to studying these notices. They just look and see

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<sup>62</sup> TNA: PRO IR 9/2, Form 64 (1873).

how much is demanded.’<sup>63</sup> When an accountant was asked in 1919 why appellants went to the General Commissioners, he replied that his experience was that theirs was the first reference on the tax form, and that if they were clearly told otherwise, they would go before another tribunal. The witness thus stressed the importance of the initial notice and agreed that the choice of tribunal was dictated entirely by the taxpayers’ ignorance.<sup>64</sup> This limited degree of public awareness of the Special Commissioners continued at the end of the nineteenth century and beyond. Even well-informed commercial men were not always fully aware of the tribunal and its process.<sup>65</sup>

This general unfamiliarity with the existence and function of the Special Commissioners was compounded by the inaccessibility of the legislation. Even an educated and astute taxpayer found difficulty in ascertaining the nature of the Special Commissioners’ duties from the primary legislation. The problem was not so much one of the physical inaccessibility of the legislation, since a series of the statutes could generally be found in the relatively common private libraries and reading rooms in most towns and cities. Once a series had been

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<sup>63</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q. 15,923, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>64</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.19,854-5, Command 288-5, *per* C. Hewetson Nelson, accountant.

<sup>65</sup> See the confusion of Arthur Chamberlain, representing the Birmingham Chamber of Commerce before the Departmental Committee on Income Tax in 1905, at Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), qq.1950-53, Command 2576.

located, however, the substantive law of income tax was to be found not in one Act, but in several. The principal Act was that of 1842, which was later amended by the Act of 1853 and others, and of course incorporated by reference the various Acts regulating the administration of the taxes, notably those of 1803, 1808 and 1810. The almost insurmountable barrier as far as ordinary taxpayers were concerned was an intellectual one. The statutory provisions were lengthy, each section following the traditional convention of being expressed in one continuous sentence, were rarely in a logical order, were sometimes contradictory and were couched in often archaic language. The expression of complex and technical law in an obsolescent form, and the need to integrate the provisions of the different Acts rendered the law utterly obscure to the taxpaying public.<sup>66</sup> A wine and spirit merchant, who had also been President of the Liverpool Chamber of Commerce, said in 1863 that he knew few men who understood the tax laws, and that he even had to employ more than one solicitor to ensure their full understanding of an issue.<sup>67</sup> Even the new consolidation Act of 1918 was described as ‘a mass of confused patchwork,’ and the complexity of the legislation in

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<sup>66</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.16,028, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>67</sup> Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1863), vol.vi (303), qq.427-40, Command 424, *per* Christopher Bushell, wine and spirit merchant and formerly President of the Liverpool Chamber of Commerce.

turn rendered the simplification of the forms and notices more difficult.<sup>68</sup> The forms and notices had to reflect the legislation accurately, for if they did not, then it amounted to the interpretation of the legislation by the Inland Revenue.<sup>69</sup> A leading member of the Tax Bar maintained in 1919 that tax legislation should be 'clear and simple, or at least expressed in clear and simple language.' 'I do not say,' he continued, 'that you can have a simple tax, but you can have a tax expressed in simple language. Make it as simple as you can.'<sup>70</sup> 'I want to have the whole thing plain,' he said, 'so that any man of ordinary intelligence can look at the Act himself or can look at a pamphlet concerning it and understand it. That would be a splendid thing.'<sup>71</sup> This view had popular support. 'An Englishman,' it was observed in 1905, 'is generally satisfied if he is quite clear what is the law, whether he likes the law or not, but now no Englishman is satisfied that he gets quite the right law in income tax matters.'<sup>72</sup> Taxpayers would have to wait nearly one hundred years for a central initiative such as the Tax Rewrite Project, which aims to recast the

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<sup>68</sup> See Report of the Departmental Committee on the Simplification of Income Tax and Super-tax Forms, *House of Commons Parliamentary Papers* (1924), vol.xi (41), paragraph 6, Command 2019, where the Committee said it was unable to recommend any far-reaching or fundamental re-casting of forms.

<sup>69</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.15,952, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>70</sup> *Ibid.* at q.15,947.

<sup>71</sup> *Ibid.*, at q.16,032.

<sup>72</sup> Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), q.1967, Command 2576, *per* Arthur Chamberlain JP, representing the Birmingham Chamber of Commerce.

direct tax legislation in clearer and simpler language and to restructure it in a more logical form so as to render it easier to use. In the nineteenth century tax law remained isolated by its complexity, and consequently inaccessible to all except those who were involved with it on a daily and professional basis.

Another issue which rendered the Special Commissioners culturally inaccessible was the secrecy of their hearings and the absence of any reporting of their decisions. Both were the result of the oath of secrecy the Commissioners had to take to the effect that they would not disclose any information received in the course of the performance of their duties under Schedule D.<sup>73</sup> Whereas the issue of secrecy had been central to the extension of the Special Commissioners' jurisdiction to Schedule D appeals in 1842, public opinion became less concerned about it as the nineteenth century progressed,<sup>74</sup> but nevertheless the oath and its consequences were retained. Though decisions of principle were recorded, albeit in brief note form, in the Precedent Books of the Special Commissioners for their own internal guidance,<sup>75</sup> there was no public accessibility to such decisions. Had there been so, even at the Commissioners'

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<sup>73</sup> Income Tax Act 1842 (5 & 6 Vict. c.35) Schedule F.

<sup>74</sup> See Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), qq.1941-48, Command 2576, *per* Arthur Chamberlain JP, representing the Birmingham Chamber of Commerce, where he observed that 'There is nothing nowadays to hide. Why should not a man do it? All officials have their income known. Why should it be possible for every official to bear to see his income published in a red book, and business men alone feel that they cannot bear publicity.'

<sup>75</sup> See for example TNA: PRO IR 86/3.

discretion so as to ensure individual privacy, taxpayers would have become more accustomed to the nature and process of the tribunal. While this was first proposed only in 1920,<sup>76</sup> it was not introduced until 1994<sup>77</sup> despite a long standing popular demand for the decisions to be reported. 'Now, half the beauty of the law,' said one Schedule D taxpayer in 1905,

is that when one is arguing before judges one can quote previous cases, and we know where we are. We say, "This has been decided *there*, and *that* has been decided *there*," and so you can go from one to the other. But with the Commissioners we do not know what they have decided in the cases of the last thirty men they have had before them. We do not know how much they have allowed off Brown and refused off Smith, because Brown had a more pleasing manner or a more ready wit. That is where the income tax applier is at a disadvantage , that he has no knowledge of their proceedings.'<sup>78</sup>

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<sup>76</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920) vol.xviii (97), paragraph 362 (c), Command 615; Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.7707, Command 288-3, *per per* H. Lakin-Smith, Association of British Chambers of Commerce; *ibid.*, q.25,406, Command 288-6, *per* Peter Rintoul, on behalf of the Chartered Accountants of Scotland.

<sup>77</sup> Taxes Management Act 1970 s.56D. And see too Stephen Oliver, 'Tax Tribunal Reports,' [1980] *British Tax Review* 229.

<sup>78</sup> Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), q.1940, Command 2576, *per* Arthur Chamberlain JP, representing the Birmingham Chamber of Commerce. See too *ibid* q.1953.

As it was, appellants attended appeal hearings with little informed idea as to the likely outcome of their appeal. As *The Times* described to its readers in 1854,

As each applicant left the room he was met by his fellow-objector at the door with inquiries as to how far he had succeeded, hoping thereby to anticipate the result in their own cases, but the shrugs and nods given in reply announced that they might all as well have remained at home.<sup>79</sup>

The secrecy of proceedings meant that insights into the appellate work of the Special Commissioners were rare and fortuitous. For example, in 1856 *The Times* reported an appeal hearing of Income Tax Commissioners in Ireland, necessarily Special Commissioners, where the appellant, a Roman Catholic priest, took the opportunity of stating his objection specifically to the taxation of his income when it consisted of the voluntary offerings of his flock, and generally to the treatment of the Roman Catholic clergy by the British government.<sup>80</sup> It availed him little, and the Special Commissioners having proved 'inexorable and hard of heart,'<sup>81</sup> he determined to appeal to the regular courts of law. These proceedings only became public because doubtless the appellant, the only participant in the proceedings not bound by an oath of secrecy, disclosed the proceedings in order to further his political aims. This lack of publicity, and the consequent

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<sup>79</sup> *The Times*, 11 Mar 1854 p.8 col.a.

<sup>80</sup> *The Times*, 10 Oct 1856 p.7 col.e.

<sup>81</sup> *The Times*, 13 Oct 1856 p.7 col.d.

reliance on hearsay and gossip, left appellants with a sense of injustice; they suspected, though could not know, that they had not been treated fairly and equally with their fellow taxpayers. Such perceptions undermined the accessibility of the tribunal. Having at least some idea as to how the tribunal might decide in their own particular case, they would have felt more able to approach it.

While ignorance of the existence and functions of the Special Commissioners was an obvious barrier which the evidence shows was relatively common, having become aware of the tribunal and the service it could offer, it could only be accessible if it were not prohibitively expensive. Of course, by definition, the tax tribunals were not for the abject poor. If an individual were paying income tax at all, it meant that his income came above the exemption allowed by the taxing Acts. Accordingly the income tax tribunals were used by the middle and lower middle classes, principally the commercial and professional classes. That was equally so in the regular courts, dominated as they still were by actions concerning land, and suitors in the ordinary legal process had for years complained of the prohibitive cost of litigation. A number of factors contributed to the expense of proceedings before any adjudicatory tribunal, and one of the most evident, if not the most substantial, was that of location. The inconvenience and expense to a litigant of court proceedings in London had been a major complaint against the regular courts for

years. The cost to the parties of taking themselves and their witnesses to London, and remaining there for the possibly long duration of the trial, rendered much litigation prohibitively expensive. The distance a litigant had to travel to recover a small debt – in some instances some 50 miles to recover a debt of less than 40 shillings - was one of the problems which gave rise to the creation of the County Courts in 1846, and when new tribunals were established in relation to the restructuring of land rights in the 1830s and 1840s, the importance of an easily accessible location in the locality and its effect of keeping the cost of summoning witnesses to a minimum was clearly recognised. The primary concern was to establish a convenient location for the geographical area the tribunal was serving.<sup>82</sup> It was maintained in the context of tithe commutation, for example, that the tribunal ‘should go from place to place where the matters in question were to be settled.’<sup>83</sup> Under one general inclosure provision the meetings for conducting business were to be held in one of the parishes or townships where lands were to be inclosed, or within seven miles of the boundary of one of them.<sup>84</sup> In taxation matters the accepted model for two hundred years had been local assessment and appeal, with central control, and so the essential and obvious geographical structure of the administration was to have local

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<sup>82</sup> Inclosure Act 1845 (8 & 9 Vict. c.118) s.55, ‘some convenient place.’

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*Parliamentary Debates*, series 3, vol.33, col.886, 12 May 1836 (House of Commons) *per* William Blamire.

<sup>84</sup> Common Fields Inclosure Act 1836 (6 & 7 Will. IV c.115) s.7.

tribunals and not a centralised one in London. Accordingly the Triple Assessment Act of 1797 specified the appeals location as ‘the usual place of holding parochial meetings,’<sup>85</sup> and the Valuation (Metropolis) Act 1869 specified any local public room.<sup>86</sup> The General Commissioners of Income Tax sat in hundreds of small divisions throughout the country. The Special Commissioners, however, were based in London, and *prima facie* relatively inaccessible. An ancient tenet of the administration of the Common Law in England, however, was that of the circuit, of itinerant judges bringing justice to the doorstep of the people twice each year. The concept was originally introduced in order to ensure a knowledgeable uniformity and consistency in the application of law, free from the influence of local faction. Even though the original purpose of the circuit system was essentially political, it did accustom the people to the availability of central justice in their own locality, and so any centralised tribunal was not necessarily and automatically perceived as inaccessible.

While the Special Commissioners were based in London,<sup>87</sup> their duties extended over the whole country. Since they originally numbered only three,<sup>88</sup> and as such were comparable to a superior court of law, while the General Commissioners numbered in their

<sup>85</sup> Triple Assessment Act 1797 (38 Geo. III c.16) s.63.

<sup>86</sup> Valuation of Property (Metropolis) Act 1869 (32 & 33 Vict. c.67) s.63 provided that appeals were to be heard in ‘any room maintained out of the proceeds of any rate levied wholly or partly in the metropolis...’

<sup>87</sup> Various at Broad Street, Lancaster Place, the Old Jewry, Somerset House, and Kingsway.

<sup>88</sup> Excluding the members of the Board of Inland Revenue who were appointed *ex officio*.

thousands, it was clear that they could only hear cases outside London if they went on circuit. The original legislation of 1842 giving the Special Commissioners adjudicatory duties provided that they would hear any appeal 'in the District in which such Appellant shall be chargeable,'<sup>89</sup> and so, 'for the convenience of taxpayers' they went on circuit all over the country solely to hear appeals.<sup>90</sup> They went out on circuit usually once, sometimes twice, a year, depending on the circumstances,<sup>91</sup> totalling some three to four weeks annually.<sup>92</sup> Thus a taxpayer having chosen to be assessed under Schedule D by the Special Commissioners and then wishing to appeal against that assessment, or wishing to appeal against a Schedule D assessment of the Additional Commissioners, could wait to have his appeal heard when the Special Commissioners came to his town.<sup>93</sup> As a rule taxpayers had to have their appeals heard in their own location. When a taxpayer who could appear before the Special Commissioners in his own district of Newcastle only at 'great inconvenience' to himself asked to appear before them in London, he was firmly told by the Board of Inland Revenue that his assessment by the Special

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<sup>89</sup> Income Tax Act 1842 (5 & 6 Vict. c.35) s. 130.

<sup>90</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920) vol.xviii (97), paragraph 358, Command 615.

<sup>91</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1106, Command 354, *per* James Dickens, Special Commissioner.

<sup>92</sup> Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1863), vol.vi (303), q.2511, Command 424.

<sup>93</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1062, Command 354, *per* Edward Cane, Special Commissioner.

Commissioners would be discharged and a fresh assessment made by the local Commissioners, thus enabling him to appeal to the latter at Newcastle.<sup>94</sup> It seems however, that there was a measure of flexibility and that the Board made every effort to enable taxpayers to appeal to the Special Commissioners. There are many examples of the Board informing taxpayers that they could appeal to the Special Commissioners against an assessment made by the General Commissioners even though the appeals had already been heard in their district, and could do so by attending at the office in London.<sup>95</sup>

Unlike the judicial circuits, the Special Commissioners' itinerary was not fixed. Their provincial sittings depended on which districts gave rise to appeals. Nevertheless, the Special Commissioners did only go to the main towns and cities, and not to smaller communities. It would have been prohibitive in terms of time and expense for them to do so, and in this sense the General Commissioners were more accessible than the Special Commissioners.<sup>96</sup> The 130 appeals to be heard in 1849 entailed only two or three days of appeal hearings in London and visits to 27 towns and cities in England, from Truro to Newcastle.<sup>97</sup> Because appeals to the Special Commissioners were few

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<sup>94</sup> TNA: PRO 1R 86/1, Board Minute, 13 May 1843.

<sup>95</sup> See for example TNA: PRO 1R 86/1, Board Minutes, 4 Dec 1845 and 30 Dec 1845.

<sup>96</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.15,924, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>97</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1068-71, Command 354, *per* James Dickens, Special Commissioner. The places visited were Bury, Norwich, Lynn, Leicester, Derby, Doncaster, Leeds, Normanton, York, Whitby,

in each place, they began hearing them at 10am and completed the hearings in the morning, and moved on to the next place the following day and followed the same pattern, sitting every day except Sunday.<sup>98</sup> In 1863 they attended to hear appeals in 88 places. In England they sat in 39 centres from Plymouth to Liverpool. In most places they heard just one appeal, but in major centres they heard more, though still not a large number. In Plymouth for example they heard five, and in Manchester nine. The greatest number were heard in Somerset House, where they heard 41. In Ireland they heard many more and were on circuit for about three months each year,<sup>99</sup> hearing on average fifty appeals in each of the fifty or so centres at which they sat. In the larger centres such as Dublin and Cork they heard over 300 appeals in each.<sup>100</sup> There was necessarily more predictability of times and locations in Ireland, if only because the Special Commissioners heard so many more appeals in that country. At the end of the nineteenth century they began their appeals in Ireland on the first Thursday in September and had a clear and predictable pattern of hearing appeals thereafter until mid-December.<sup>101</sup> Not only did

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Newcastle, Manchester, Liverpool, Wolverhampton, Birmingham, Kidderminster, Worcester, Gloucester, Stroud, Clifton, Newport, Swansea, Taunton, Plymouth, Truro, Bath and Slough.

<sup>98</sup> *Ibid.*, q.1077 *per* James Dickens, Special Commissioner.

<sup>99</sup> Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1863), vol.vi (303), q.2511, Command 424.

<sup>100</sup> *House of Commons Parliamentary Papers* (1863), vol.xxxi (528) at 607.

<sup>101</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,730, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

appellants always know when they would be heard, they had ample time to prepare for the hearing since assessment notices were always issued in good time.<sup>102</sup> The accessibility of the Special Commissioners in Ireland was in contrast to that of the surveyors, since most surveyors lived in Dublin and had large districts and many taxpayers had to make long rail journeys to discuss their assessments with their surveyors.<sup>103</sup>

One new and important aspect of accessibility was that appeals could be, and in many cases were, settled by correspondence, and this was rendered considerably easier for all parties with the introduction of the uniform penny post by Rowland Hill in 1840. Thereafter instead of letters being paid for by the recipient on the basis of distance and the number of sheets used, with a single letter sent a short distance costing 4d, all letters were to be charged by weight at the flat rate of one penny per half ounce, whatever the distance. The facility of fast, reliable and cheap postage enabled some appeals to be settled without recourse to personal attendance at a hearing, and accordingly cut down considerably on the potential expense to individual taxpayers, notably in not having to take time away from their business or profession. From the first days of the Special Commissioners' appellate jurisdiction, they endeavoured to settle as many appeals by

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<sup>102</sup> *Ibid.*, qq.13,731-32 *per* G.F. Howe, Presiding Special Commissioner.

<sup>103</sup> *Ibid.*, q.13,740 *per* G.F. Howe, Presiding Special Commissioner.

correspondence as possible, particularly for districts where very few appeals were listed.<sup>104</sup>

While the problem of geographical accessibility was understood, that of physical accessibility of the courtroom and its proceedings was not, even after the reforms of the late nineteenth century. While the new Law Courts in the Strand were such as to reflect the majesty of the law, they were inconvenient for litigants, principally because the acoustics were so poor. A well known example is the leading case of *Speight v. Gaunt* in 1883, which in full and well considered judgments gave an invaluable exposition of the rules of delegation and consequent liability of trustees and which few in the crowded courtroom could actually hear on the day.<sup>105</sup> The appropriateness of locations, the desirability to strike a balance between the formality necessary to engender respect for the proceedings and sufficient informality so as not to utterly intimidate the litigants, was to be questioned only by a later age. It is not easy to tell from the few reported cases in the nineteenth century exactly where the Special Commissioners sat when hearing appeals on circuit. Occasionally, however, the precise location is mentioned. When hearing appeals in Chester in 1884 for example, the Special Commissioners sat in the Queen's Hotel,<sup>106</sup> and when hearing an appeal in Leeds in 1896 they

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<sup>104</sup> TNA: PRO IR 86/2, Board Minute, 8 Oct 1850.

<sup>105</sup> *Speight v. Gaunt* (1883) 22 Ch D 727; 9 App Cas 1.

<sup>106</sup> *Broughton and Plas Power Coal Co.Ltd., v. Kirkpatrick* (1884) 2 T.C. 69.

sat at the office of the surveyor of taxes.<sup>107</sup> While few saw anything untoward in hearing income tax appeals at an inn or hostelry, as General Commissioners often did, nor at the discomfort of appellants having to wait in the cold and possibly the rain for hours to be heard by local Commissioners, by 1920 there was some official cause for concern at the use of the premises of the Inland Revenue. The Royal Commission felt it had to recommend that appeal hearings of the Special Commissioners on circuit should not be held in the offices of Inspectors of Taxes, showing an awareness, if little else, of the dangers of any additional evidence of partiality.<sup>108</sup>

The most significant element in expense, however, was undoubtedly that of the charges of solicitors and counsel, if briefed. Litigation before the regular courts showed that expense was almost entirely dependent on the need for professional legal advice and representation, and that in turn depended largely on the complexity and formality of the procedures adopted. Certainly in the regular courts of law, the procedures were notoriously complex and had been the subject of complaints by litigants and reforming lawyers since the early years of the nineteenth century. When tribunals of a new kind began to be introduced in the early nineteenth century, governed by their parent statutes and with dual administrative and judicial powers, the opportunity and the need were there for legislators to design new,

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<sup>107</sup> *Leeds Permanent Benefit Building Society v. Mallandaine* (1897) 3 T.C. 577.

<sup>108</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920) vol.xviii (97), paragraph 365 (d), Command 615.

informal and swift procedures which addressed novel political and social needs. In the context of the fiscal tribunals, and the Special Commissioners in particular, the needs were highly specialised. Procedures had to be precise, clear and expeditious, in order to ensure that flow of public revenue on which the government depended, and yet had to be so within a highly technical and detailed sphere of activity. An accessible system was a simple system, but the desire for simplicity had to be balanced against the need for justice.<sup>109</sup> When the income tax was reintroduced in 1842 the Special Commissioners had no special instructions to follow as to their procedures other than the provisions of their parent Act of Parliament and the most general and apparently informal guidance.<sup>110</sup> In one sense that made them relatively accessible, though that accessibility was limited, as examined above, by the inaccessibility of the legislation itself. The absence of detailed instructions, coupled with the newness of the tribunal in its appellate function, the lack of any previous general cultural knowledge of it in its assessing function and its secret hearings, meant that its procedures, though simple, were largely unknown.

The procedure to be followed in order to be assessed by the Special Commissioners consisted merely of signing and dating a box

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<sup>109</sup> *Ibid.*, paragraph 649.

<sup>110</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1269, 1276-78, Command 354, *per* James Dickens, Special Commissioner.

on the Form 11, the Schedule D tax return, and forwarding it to the local assessor within 21 days,<sup>111</sup> sealed in an envelope addressed to the surveyor and marked 'For Special Assessment.'<sup>112</sup> Bypassing the local Commissioners,<sup>113</sup> the matter was thereafter entirely in the hands of the surveyor and the Special Commissioners, the latter arriving at an assessment largely on the basis of the former's report.

<sup>114</sup> As Edward Hyde, surveyor, observed in 1851, 'It is all under the control of the Government.'<sup>115</sup> The taxpayer had no direct communication with the Special Commissioners.<sup>116</sup>

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<sup>111</sup> It seems that the official time limit of 21 days from the issue of the precept to the assessor by the General Commissioners for the giving of such notice was unknown to most taxpayers. It was meant to be affixed in a public place such as the church door, but few examined it: see Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,429, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

<sup>112</sup> See for example TNA: PRO IR 9/1, Form 11 (1840s). Though the instructions said the return should be sent to the assessor for him to forward it to the surveyor, in practice many taxpayers sent it directly to the surveyor: Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,430, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner. By the Form 11 of the first year in which such assessment was possible, if a taxpayer wanted to be assessed by the Special Commissioners he was to give notice on a form obtainable from the assessor in a process which ensured no confidentiality at all: TNA: PRO IR 9/1, Form 11 (1842).

<sup>113</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.153-4, Command 354, *per* Charles Pressly, Commissioner of Inland Revenue.

<sup>114</sup> *Ibid.*, qq.1039-47, 1050-1, 1158-74 *per* James Dickens and Edward Cane, Special Commissioners, and qq.1589-94 *per* Edward Hyde, surveyor. But see Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.13,686-7, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

<sup>115</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1608, Command 354, *per* Edward Hyde, surveyor.

<sup>116</sup> The claims for exemptions were usually made to the Special Commissioners through the hands of the surveyor too, though some were made by the parties directly to the Special Commissioners, as for example claims for charitable institutions and for repayments on commuted tithes: *Ibid.*, qq.548-9, *per* John Fuller, Special Commissioner.

The institution of an appeal before the Special Commissioners was equally simple and straightforward. An aggrieved taxpayer merely had to give notice to the surveyor as instructed in the notice of first assessment. The Commissioners then had the power to demand any further particulars as they could request under the authority of the Act, but since the Act did not specify which documents they could call for, not only were the Special Commissioners themselves in some doubt as to the extent of their powers in this respect,<sup>117</sup> some appellants were reluctant to co-operate on the basis of an absence of express authority in relation to specific documents. Clearly a wide and potentially intrusive discretion had been left in the hands of the Commissioners, as a result of which appellants did not know precisely what an appeal would entail. In this sense, the procedure was inaccessible.<sup>118</sup> The appellant had to go to the trouble and expense of providing his business accounts for the past three years, but that was not peculiar to the Special Commissioners; he was required to provide this information if he appealed to the General Commissioners. The public perception of this was that it was both onerous and intrusive. The appellant having been informed of the time and place, the Special Commissioners would hear his appeal in person, though where all the

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<sup>117</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1195-1200, Command 354, *per* James Dickens and Edward Cane, Special Commissioners.

<sup>118</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.13,471-75, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

information which the Special Commissioners called for was forthcoming, and all the parties agreed, in practice the appeals were often settled without the appellant having to attend a hearing personally.<sup>119</sup> Though to some observers the system of notices and elections appeared unduly complicated, it was considerably simpler than the formal writs and pleadings of the regular court process, and as such had stood the test of time.<sup>120</sup> And furthermore, there were no court fees to pay.

The procedure during the appeal hearing was also significantly less formal than the regular courts, and accordingly more accessible to the taxpaying public. It was by way of rehearing, originally by two Special Commissioners and a member of the Board of Inland Revenue.<sup>121</sup> Thereafter the appeals were heard by two Special Commissioners, who were assigned to the task by the Board and were granted imposts for the purpose,<sup>122</sup> and who came to specialise in the hearing of appeals, with the rarely used possibility of calling in the third to act as umpire in case of disagreement.<sup>123</sup> James Dickens, a

<sup>119</sup> Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), q. 2709, Command 365, *per* Walter Gyles, Special Commissioner.

<sup>120</sup> Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), q.57, Command 2576, *per* W. Gayler, a member of the Committee.

<sup>121</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1121, Command 354, *per* James Dickens, Special Commissioner.

<sup>122</sup> TNA: PRO IR 86/2, Board Minute, 14 Oct 1848.

<sup>123</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1064-66, Command 354, *per* Edward Cane, Special Commissioner and qq. 545, 620, 624 *per* John Fuller, Special Commissioner. Although the Board of Inland Revenue were *ex officio* Special Commissioners, they only very exceptionally acted as such: see *Ibid.*,

Special Commissioner, observed that on appeals more was settled by means of personal communication with the appellant than by written information. It is clear that oral evidence was integral to the determination of the appeal.<sup>124</sup> The Special Commissioners were empowered to summon any person to appear before them, but only in the context of appeals.<sup>125</sup> Otherwise they had to proceed by affidavit. The hearings were private, with just the Commissioners, the appellant and the surveyor from the appellant's district. Indeed, this was part of the *raison d'être* of the Special Commissioners, to enable the commercial community to be taxed secretly, away from the prying eyes of their rivals. There was some tension between the need for publicity to prevent fraud and the desire for secrecy to protect private commercial interests, but that was the political price which Peel had to pay, as Pitt had had to, for the imposition of the tax.<sup>126</sup> The hearings were in many ways largely in the nature of an arbitration, with all the parties gathered together privately and seated not in a courtroom but at tables in an ordinary chamber. Indeed, hearings before the Special Commissioners had all the advantages of arbitration without its disadvantages – the proceedings were relatively informal and private;

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q.163 *per* Charles Pressly, Commissioner of Inland Revenue.

<sup>124</sup> *Ibid.*, qq.1225-33 *per* James Dickens, Special Commissioner.

<sup>125</sup> Income Tax Act 1842 (5 & 6 Vict. c.35) s.23. See too Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,489, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

<sup>126</sup> See *Parliamentary Debates*, series 3, vol.62, col.1000, 22 Apr 1842 (House of Commons) *per* Charles Buller; col.1024 *per* Mr Wakley, and col. 1025 *per* Sir Robert Peel.

the judges had the necessary specialised knowledge; the process was inexpensive from point of view of litigant and relatively swift. Indeed while there were many complaints as to the conduct of appeals before the General Commissioners, where appellants might have to wait for hours for their case to be heard, and often had to go home again without it being heard at all, the Special Commissioners, partly because of the small number of appeals but also because of their efficiency and expertise, heard all their appeals on the day appointed.<sup>127</sup>

The simplicity and informality of the procedure was such that an appellant could argue his case himself and so professional legal representation was unnecessary. Legal representation was deemed undesirable in that it could only add complexity, delay, formality and, of course, expense, unnecessarily and was accordingly prohibited. This provision was found in the Taxes Management Act of 1803, which applied to all taxes under the management of the Commissioners for the Affairs of Taxes and thus included the income tax. That Act prohibited the representation of either party by any 'barrister, solicitor, attorney, or any person practising the law,'<sup>128</sup> in the course of an appeal before the 'said Commissioners.' Those Commissioners were 'the Commissioners for putting in Execution the said Act or

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<sup>127</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1308, Command 354, *per* James Dickens, Special Commissioner.

<sup>128</sup> 43 Geo.III c.99 s.26 (1803).

Acts,' and necessarily excluded the Special Commissioners since the legislation predated them. The Act was incorporated by reference into the Income Tax Act of 1842, and constituted a formal prohibition on solicitors or barristers appearing before all Commissioners,<sup>129</sup> but in the Taxes Management Act of 1880 the prohibition was expressly applicable to General Commissioners.<sup>130</sup> In 1898, however, that provision was repealed and it became lawful for the General Commissioners to hear any barrister or solicitor in any appeal, either *viva voce* or by writing,<sup>131</sup> on the basis that the prohibition had both caused resentment among appellants and the professions, and had been ignored to a large extent. Certainly there had been complaints that appellants before the General Commissioners could not be represented by their solicitor or counsel. It seems that the practice had grown up of allowing solicitors and barristers to appear before the General Commissioners, at the request of the appellants and the consent of the Commissioners, and that experience had shown that proceedings had been unchanged in terms of delay and cost. It was pointed out in Parliament that the prohibition caused hardship in some parts of the country, particularly in the case of female appellants.<sup>132</sup> While it kept costs relatively low, the prohibition

<sup>129</sup> The Land Tax Commissioners were expressly excluded: see 38 Geo.III c.16 s.65, (1798).

<sup>130</sup> Taxes Management Act 1880, (43 & 44 Vict. c.19) s.57(9).

<sup>131</sup> Finance Act 1898 (61 & 62 Vict. c.10) s.16.

<sup>132</sup> See the introduction of the new clause by Lord Edmond Fitzmaurice in *Parliamentary Debates*, series 4, vol.59, cols.128-9, 13 June 1898 (House of Commons). See too Minutes of Evidence before the Departmental Committee on Income Tax, *House of Commons Parliamentary Papers* (1905), vol.xliv (245), q.55,

undoubtedly undermined a taxpayer's accessibility to justice from the Special Commissioners, since he had nothing with which to combat the considerable collective experience of the Inland Revenue against whose decision he was appealing. When the substantive income tax legislation and the taxes management legislation were combined in a single statute in 1918, the provision permitting the General Commissioners to hear legal representation was unchanged.<sup>133</sup> In 1903 the Revenue Act provided that if the General Commissioners refused to allow a barrister, solicitor or accountant to plead before them, as they were entitled to do since the wording of the provision was merely permissive, the appellant could transfer his appeal to the Special Commissioners, who were required to hear the appellant's professional representative. It was ultimately made mandatory for General Commissioners to hear barristers, solicitors and accountants in 1923.<sup>134</sup>

In all the legislation on the point of legal representation before the income tax tribunals, only the General Commissioners were expressly referred to, leaving the position of the Special Commissioners in some theoretical doubt. Special Commissioners were thus not mentioned in the context of legal representation in the legislation and it could accordingly be argued that legal

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Command 2576, *per* W. Gayler, a member of the Committee.

<sup>133</sup> Income Tax Act 1918 (8 & 9 Geo.V c.40) s.137(3)(a).

<sup>134</sup> Finance Act 1923 (13 & 14 Geo. V c.14) s.25. See too *Parliamentary Debates*, series 5, vol.166, cols.269-70, 3 July 1923 (House of Commons).

representation was always permitted before them. The practice, however, suggests that it was not, since the reports of cases in the regular courts which began as appeals before Special Commissioners, though few, invariably show lay representation before the tribunal. So, for example, when in 1875 a company appealed against an assessment to the Special Commissioners at Somerset House, the Commissioners told the company's solicitor that though he could remain in the room, he could take no part in the proceedings.<sup>135</sup> As a result the appellants, who were often companies or partnerships, were generally represented before the Commissioners by one of their partners,<sup>136</sup> directors<sup>137</sup> or officers.<sup>138</sup> Once permitted, however, eminent tax counsel were employed to come before the tribunal in important cases, notably A. M. Bremner, described by D.M. Kerly K.C. to the Royal Commission of 1920 as having more experience in Income Tax cases than anybody else.<sup>139</sup> Where the sums at stake were large, and where the Inland Revenue would fight the case to the highest court, appellants with the resources and determination would match the

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<sup>135</sup> *Imperial Fire Insurance Company v. Wilson* (1875) 1 T.C. 71.

<sup>136</sup> In *Watney & Co. v. Musgrave* (1880) 1 TC 272, when the Special Commissioners heard an appeal by a brewing partnership against an assessment, the younger partner, James Watney junior, represented the partnership. See too *Goslings and Sharpe v. Blake* (1889) 2 T.C.450.

<sup>137</sup> In *Andrew Knowles & Sons Ltd v. McAdam* (1877) 1 TC 161 the company was represented by David Chadwick MP, who was also one of its directors. See too *Reid's Brewery Co.Ltd.,v. Male* (1891) 3 T.C. 279.

<sup>138</sup> In *San Paulo (Brazilian) Railway Co.Ltd., v. Carter* (1895) 3 T.C.344 the appellant company was represented by its Secretary.

<sup>139</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,612, Command 288-4, per D.M.Kerly, KC, member of the Commission.

government as far as possible and appoint the most experienced and able counsel.<sup>140</sup> In smaller cases, and sometimes in those before the General Commissioners, accountants were often employed to represent appellants.

A significant deterrent to any litigant, both from the point of view of expense and of delay, was the provision for numerous appeals. Litigation was always expensive, even without the employment of lawyers, since it occupied the time and attention of the parties, and where the appeal provisions allowed recourse to the regular courts of law, the full expense of appointing attorneys and counsel and of court fees, made the costs rise alarmingly. Furthermore, the danger of having costs awarded against him were he to lose his appeal to the courts constituted a real deterrent to the taxpayer. When the Special Commissioners were given their adjudicatory duties in 1842 there was no appeal from their decisions to the regular courts of law. In this the income tax tribunals were distinct from other statutory tribunals, since most of the new tribunals were given the right of appeal on a point of law to a court of law. The Special and General Commissioners were denied this right for reasons of public policy. Throughout the nineteenth century the income tax was unpopular, and though a right of appeal might have been desirable to mitigate any resentment to the tribunals, the political judgment was that the degree of unpopularity

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<sup>140</sup> *Ibid.*, q.15,927, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

was such that appeals could well be so numerous as to severely cripple the assessment and collection of tax. Accordingly initially the only permitted recourse was an internal one to the Board of Inland Revenue in London, by an early form of case stated.<sup>141</sup> If a taxpayer appealed to the Board of Inland Revenue from the decision of the Special Commissioners, he was heard by some five or six men,<sup>142</sup> and had some opportunity of putting further evidence to the Board though still, it seems, without legal representation. He would be written to by the secretary to the Board to give such information as would be necessary to elucidate the case.<sup>143</sup> The decision of the Board was final.<sup>144</sup> It seemed that this provision soon ceased to be used. Only in Ireland was an appeal allowed from the Special Commissioners' assessment to the assistant barrister for the county.<sup>145</sup> There was therefore no danger of the cost of appealing to the Special Commissioners escalating through the possibility of further appeals. If appeal to the courts of law had been permitted, it would have operated as a considerable deterrent to ordinary taxpayers because of the inequality in the respective standing of the parties. This was equally seen in relation to the right of appeal given from the decisions

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<sup>141</sup> Income Tax Act 1842 (5 & 6Vict. c.35) s.131; Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1061, 1124, Command 354, *per* James Dickens, Special Commissioner.

<sup>142</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1125, Command 354, *per* Edward Cane, Special Commissioner.

<sup>143</sup> *Ibid.*, q.1136.

<sup>144</sup> *Ibid.*, q.1067.

<sup>145</sup> 16 & 17 Vict. c.34 s.22 (1853).

of the Railway Commissioners, where traders were inhibited from approaching the tribunal knowing that the immensely wealthy and powerful railway companies would not hesitate to fight an adverse decision through every court open to them. Appellants would have been similarly wary of the Board of Inland Revenue and its unlimited resources to fight a point of principle had wide appellate powers been given to the Special Commissioners. The restriction on the right of appeal to the regular courts from the Special Commissioners endured until it could no longer be sustained in the light of a general and uniform power of appeal given to the regular courts by the Judicature Act of 1873. Accordingly in 1874 the surveyor and the appellant were permitted to appeal to the High Court by way of case stated on a point of law.<sup>146</sup> The process was criticised as being excessively technical for an appellant, particularly in relation to strict and short time limits,<sup>147</sup> and, of course, professional legal representation then became necessary. The permitting of appeal on a point of fact was always strenuously resisted. It was in opposition to the central tenet of English law that questions of fact were best decided by a jury, of whose nature even the Special Commissioners partook. Furthermore, the added delay and expense which the parties would have to endure

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<sup>146</sup> Customs and Inland Revenue Act 1874, (37 & 38 Vict. c.16) s.9. See generally C. Stebbings, 'The Appeal by way of Case Stated from the Determinations of General Commissioners of Income Tax: An Historical Perspective,' [1996] *British Tax Review* 611.

<sup>147</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.23,895, Command 288-6, *per* Randle F. W. Holme, solicitor, on behalf of the Law Society.

if such appeal were allowed, since it could only satisfactorily be addressed by the judge retrying the case with the witnesses or going through the shorthand notes himself, were not regarded as acceptable.<sup>148</sup>

One of the principal reasons why the General Commissioners were perceived by some taxpayers as untrustworthy as a dispute resolution body was the domination of that tribunal by the surveyor, and, therefore, by the government. The domination undoubtedly existed, principally because the lay, part-time and unremunerated nature of the General Commissioners led to their being insufficiently informed and knowledgeable about income tax in general and individual taxpayers' financial affairs in particular, and so tended to accept the assessments of the surveyor unquestioningly. Since the surveyor was the representative of the crown, a common feeling was that he was primarily motivated to secure as high a revenue as possible. Another cause of distrust was a perception that the lay General Commissioners, being often rivals in trade to commercial taxpayers, might use the financial information about the taxpayers to their own advantage. Though this perception was unsubstantiated, when allied to a natural disinclination to divulge private financial details to friends and colleagues, it limited a free and open access to the tribunal.

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<sup>148</sup> See *ibid.*, qq.15,928-31, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

The establishment of the Special Commissioners as an appellate tribunal for Schedule D fully addressed the second complaint, since they were entirely independent of the General Commissioners and were untainted by local vested interests. They did not, for example, give instructions to the General Commissioners, and never had any contact with them,<sup>149</sup> even when they were hearing appeals against local assessments on circuit.<sup>150</sup> Their sole communication with the locality was with the surveyor. Indeed, proceedings to hear appeals on circuit were postponed until all the surveyors' reports had been made.<sup>151</sup>

It might be thought, however, that the establishment of the Special Commissioners would exacerbate the first source of concern. The Special Commissioners were, after all, paid civil servants, members and servants of the government department responsible for the direction and control of the machinery and systems necessary to raise the revenue, and who possessed clear assessing duties as well as judicial ones. They were based in London, appointed by the Treasury, remunerated out of an annual vote of Parliament,<sup>152</sup> and were

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<sup>149</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.1303, Command 354, *per* Edward Cane, Special Commissioner.

<sup>150</sup> *Ibid.*, q.1305 *per* James Dickens, Special Commissioner.

<sup>151</sup> TNA: PRO IR 86/2, Board Minute, 8 Oct 1850.

<sup>152</sup> In 1851 each of the three Special Commissioners was paid a fixed salary of £600 p.a. and two guineas a day when out hearing appeals: Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), q.160, Command 354, *per* Charles Pressly, Commissioner of Inland Revenue; Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), q.121, Command 370 *per* Charles Pressly. In 1920 the

pensionable under the Civil Superannuation Acts. They were generally experienced Inland Revenue officials or men with legal training.<sup>153</sup> Furthermore, while most people were not familiar with the nature and duties of the Special Commissioners, if they had heard of them they almost invariably believed, rightly, that they were members of the Inland Revenue.<sup>154</sup> The Special Commissioners said they made every effort to stress their independence and concern for the truth, and in the opinion of one Special Commissioner this perception was beginning to become established by the close of the nineteenth century.<sup>155</sup> If, however, the General Commissioners, as laymen with no connection with the Inland Revenue, had difficulty persuading the public that they were independent and impartial, how much more so for the Special Commissioners.

And yet, despite the distrust of the General Commissioners and a common antipathy to the surveyor, the Special Commissioners were rarely if ever accused of any partiality whatever. The intimate relationship with the Executive was made quite clear at the inception

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Presiding Special Commissioner was paid £1,200 p.a. and the others were paid between £850 and £1,000 p.a: Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,609, Command 288-4, per G.F. Howe, Presiding Special Commissioner.

<sup>153</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920) vol.xviii (97), paragraph 360, Command 615; Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.13,599-603, Command 288-4, per G.F. Howe, Presiding Special Commissioner.

<sup>154</sup> *Ibid.*,q.15,923, Command 288-5 per A.M Bremner, barrister, on behalf of the General Council of the Bar of England.

<sup>155</sup> See Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), q.2709, Command 365, per Walter Gyles, Special Commissioner.

of the judicial function of the tribunal, for in 1842 Peel referred to them as 'appointed by the Government' and expressly distinguished them from the local Commissioners who were 'appointed by parties independent of the Government.'<sup>156</sup> In juxtaposing the tribunals in this way, he was unambiguous as to their status as a government and a local tribunal respectively.<sup>157</sup> The point was not taken by the opponents to the Bill. Indeed, the anomalous position of the Special Commissioners, and the conflict of interests inherent in their position, were only exceptionally questioned over the next hundred years. Randle Holme, a solicitor giving evidence to the Royal Commission on the Income Tax on behalf of the Law Society in 1919, was tenacious in revealing his concerns. Although the tribunal stood '...as appellate tribunal without appeal from their decisions on questions of fact, between the Inland Revenue and the taxpayer, and called upon frequently to decide questions involving enormous sums of money, the same men also exercise other functions in the capacity of Inland Revenue officials.' He urged '...that these conflicting duties should not be reposed in one set of men. Those who exercise judicial should not also be called upon to exercise administrative functions – a distinction which, so far as I know, is carefully preserved in all other judicial bodies in the country.'<sup>158</sup> The same witness saw how inappropriate it

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<sup>156</sup> *Parliamentary Debates*, series 3, vol.62, col.657, 18 Apr 1842 (House of Commons) *per* Sir Robert Peel.

<sup>157</sup> *Ibid.*, col.1384, 2 May 1842.

<sup>158</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.23,891;24,017,

was to appoint ex-surveyors and inspectors as Special Commissioners<sup>159</sup> and appreciated the absurdity not only of the Special Commissioners hearing appeals against their own assessments but of an appeal to the Board of Inland Revenue from the determination of the Special Commissioners, where one party had been the Board itself.<sup>160</sup> Mr Holme was, however, a lone voice. As a lawyer he saw and understood the conflict of interest, the possibility of bias, and the need for justice to be seen to be done, but his concerns and those of the Law Society were not, it seems shared by the public. The prejudices of the taxpaying public against 'government men' were only rarely directed to the Special Commissioners,<sup>161</sup> possibly because the fear of local commercial espionage outweighed the fear of government rapacity.<sup>162</sup> Certainly public attitudes were gradually changing in this respect. By the close of the nineteenth century a declining reluctance to disclose private financial affairs to an official body could be discerned.<sup>163</sup>

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Command 288-6, *per* Randle F. W. Holme, solicitor, on behalf of the Law Society. In practice the Special Commissioners ensured as far as they could that the same two Commissioners who signed the assessment did not also hear the appeal, though as for many years as they numbered only three in total, this was not entirely possible.

<sup>159</sup> *Ibid.*, q.23,891.

<sup>160</sup> *Ibid.*, q.23,898.

<sup>161</sup> There is an allusion to some public apprehension that taxpayers did not receive fair treatment because the Special Commissioners were Revenue officials in the evidence of G.O. Parsons, the Secretary to the Income Tax Reform League: *ibid.*, q.1853, Command 288-1.

<sup>162</sup> Minutes of Evidence before the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862), vol.xii (131), q.473, Command 370, *per* Charles Pressly, Chairman of the Inland Revenue Department.

<sup>163</sup> Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), q.3259, Command 365, *per* Sir Henry Primrose, Chairman of the Board of Inland Revenue.

A representative of the Association of British Chambers of Commerce told the Royal Commission on the Income Tax in 1920 that after many years of experience his opinion of the Special Commissioners was 'that they are absolutely excellent and fair in every particular,'<sup>164</sup> and the Secretary to the Income Tax Reform League said that he felt the taxpayer received 'the best of treatment.'<sup>165</sup> Members of the Bar too were entirely satisfied with the Special Commissioners, for in saying so in 1919, D.M. Kerly KC added that '...appeals to them are regarded as likely to be thoroughly well considered and thoroughly well decided.'<sup>166</sup> Official inquiries of the early twentieth century confirmed the public perception of the Special Commissioners as an impartial and expert tribunal. The Report of the Royal Commission in 1920 spoke about the public confidence in and approval of the tribunal,<sup>167</sup> and the Committee on Ministers' Powers in 1932 said that it was generally agreed that it was impartial, but recognised that this was despite its conflicting functions and unusual status. 'All we can say about it,' continued the Report, 'is that it is a standing tribute to the fair-mindedness of the British Civil Service: but the precedent is not one which Parliament should copy in other

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<sup>164</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.8185, Command 288-3, per H. Lakin-Smith, on behalf of the Association of British Chambers of Commerce.

<sup>165</sup> *Ibid.*, q.1853, Command 288-1, per G.O. Parsons, Secretary to the Income Tax Reform League.

<sup>166</sup> *Ibid.*, q. 13,770, Command 288-4, per D.M.Kerly, KC, member of the Commission.

<sup>167</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920), vol.xviii (97), paragraph 359, Command 615.

branches of the administration.<sup>168</sup> In commenting on this, Hubert Monroe detected 'a note of complacency.'<sup>169</sup>

This perception was, unsurprisingly perhaps, shared by the Special Commissioners themselves.<sup>170</sup> They appreciated their unique position as civil servants performing important judicial functions,<sup>171</sup> but saw no inconsistency, at least in practice, in performing both administrative and judicial duties.<sup>172</sup> A Special Commissioner in 1906 said his tribunal was 'actually independent in every way of the Inland Revenue in the consideration of appeals, and we do our utmost to convey that fact to the public.'<sup>173</sup> The Presiding Special Commissioner in 1919 maintained robustly that in their appellate function his Commissioners constituted 'an entirely impartial body between the taxpayer and the Revenue,'<sup>174</sup> and indeed was sensitive to any imputation to the contrary, as when he was questioned about 'his' Department, and promptly responded: 'I am not a Revenue Department witness, please.'<sup>175</sup> The Special Commissioners did not act

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<sup>168</sup> Report of the Committee on Ministers' Powers, *House of Commons Parliamentary Papers* (1831-2), vol. xii (341), p.86, Command 4060.

<sup>169</sup> H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax* (Hamlyn Lectures, 33<sup>rd</sup> Series, London 1981) p.81.

<sup>170</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,612, Command 288-4, per G.F. Howe, Presiding Special Commissioner.

<sup>171</sup> *Ibid.*, q.13,811.

<sup>172</sup> *Ibid.*, q.13,781.

<sup>173</sup> Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), q.2709, Command 365, per Walter Gyles, Special Commissioner.

<sup>174</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,582, Command 288-4, per G.F. Howe, Presiding Special Commissioner.

<sup>175</sup> *Ibid.*,q.13,574.

under the formal directions of the Board of Inland Revenue in their judicial function and the Presiding Special Commissioner said that never had the Board of Inland Revenue made the slightest attempt to influence his decision,<sup>176</sup> though as Hubert Monroe observed, ‘absence of pressure and ambiguity of position, perhaps, involve different issues.’<sup>177</sup> They were undoubtedly, however, dedicated civil servants, maintaining the highest traditions of the service in the nineteenth century, a picture vividly and convincingly drawn by Anthony Trollope in *The Three Clerks*, published in 1858, himself a civil servant in the Post Office.<sup>178</sup>

The Special Commissioners in their appellate function constituted, with the General Commissioners, the most formal and the oldest legal expression of taxpayer protection in income tax. While they were undermined in their accessibility by their anomalous position as an arm of the Executive performing judicial functions and the complexity of the legislation they were created to implement, these were matters which were largely beyond their control. In their procedures, location and cost they were a very accessible tribunal which provided swift, cheap, expert and effective justice. Unlike the regular courts of law, they constituted a real service to the public and not, as has been said of the regular courts, “an adjunct of the honours

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<sup>176</sup> *Ibid.*, q.13,812.

<sup>177</sup> See H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax* (Hamlyn Lectures, 33<sup>rd</sup> Series, London 1981) p.80.

<sup>178</sup> Anthony Trollope, *The Three Clerks* (1858).

system.”<sup>179</sup> This counted for little, however, if their existence was unknown. The Special Commissioners failed in the pre-requisite of accessibility, namely publicity.

The reasons for this lie in the demands of the fiscal process and the culture of the civil service. In order to ensure co-operation with the fiscal process and guarantee the commercial profits of the country were fully taxed, the Board of Inland Revenue had to be able to offer the taxpayer a right of appeal to a tribunal which was accessible and effective. The Board saw the existence of the right rather than the use of the process as its real value, since while it shared with the taxpayer the desire to have appeals determined promptly and effectively, it had the further interest in that it wanted to keep the number of appeals low. It was well known that in all spheres of litigation a simple and cheap appeals system would probably, if not certainly, lead to a substantial increase in litigation. That would have overwhelmed the Special Commissioners already busy with exemptions and other administrative duties and would have unacceptably hindered the fiscal process rather than expedited it. Similar considerations had resulted in a reluctance to allow appeals to the regular courts from the decisions of all the income tax commissioners. The Board realised that it had to keep some control over the right of appeal to the Special Commissioners, to decide as far as possible when it was used rather

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<sup>179</sup> B. Abel-Smith and R. Stevens, *Lawyers and the Courts*, (London 1967) p.98.

than to facilitate widespread public demand for it. So while the Board could not and would not wish to ignore the existence of the Special Commissioners, it had no real incentive to publicise them widely. The evidence suggests that the Board paid lip service to publicity. It could have arranged for the existence and function of the tribunal to have been better publicised on the notices of first assessment. It was aware that individual districts and towns were producing their own forms and introducing amendments, and indeed there are complaints in the minutes of the Board about the cost of this printing from the 1840s. If only to ensure economies of scale, the Board could have insisted, through legislation if necessary, that only official forms be used, and it could have ensured that those forms carried the necessary notification of the appeal option to the Special Commissioners. This was not done until 1873 when the Board's hand was forced.

A few cases, on the other hand, were beneficial in publicly confirming the existence of provision for taxpayer protection and building confidence in the taxation process. The minutes of the Board show a steady number of queries relating to such appeals and show the Board jealously protecting the right of appeal. When a taxpayer complained that he had been denied the right to appeal to the Special Commissioners from an assessment made upon him by the Additional Commissioners, and 'insisting upon his right so to do,' the Board ordered that the necessary arrangements should be made for his

appeal to be heard by the Special Commissioners when they were next in the district. The surveyor was instructed, the Special Commissioners informed, and the taxpayer given notice.<sup>180</sup> This, however, as with the Board's repeatedly expressed concern as to the paucity of numbers of taxpayers using the Special Commissioners, was somewhat disingenuous.

The Board was reactive and very rarely proactive in relation to the Special Commissioners. In the matter of appeals it was far more proactive in encouraging taxpayers to appeal to the General Commissioners, a finding supported by a survey of the Inland Revenue forms and notices. A simple example is the proliferation of church door notices for the General Commissioners and their absence for the Special Commissioners. The whole system was based on central control and local administration, which was of course the original conception of tax administration. The attitude of the Board to the right of appeal to the Special Commissioners is an expression of the attitude of the wider Executive to their administrative tribunals, and indeed of the Victorian Legislature as a whole. The Executive was entirely pragmatic about the dispute resolution function of administrative tribunals. They were not created in order to provide an accessible and effective service to the public but primarily to implement government policy in controversial areas. These bodies had

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<sup>180</sup> TNA: PRO 1R 86/1, Board Minute, 13 Apr 1843.

to be accessible in order to achieve that, but it was not the prime objective. From this perspective the Special Commissioners existed as part of the fiscal process to implement the tax legislation relating, among other things, to Schedule D. Their judicial function was a mere adjunct to their administrative function. By the same token, the swift, efficient and expert adjudication of the Special Commissioners unfortunately had no wider impact on the administration of justice, because they, like all statutory tribunals in the nineteenth century, were regarded not as organs exercising the judicial power of the state but as part of the administration of the state. This was reflected in the indifference with which the judiciary and legal profession regarded the income tax tribunals. This was even in contrast to the attitudes of lawyers to other administrative tribunals, since on the whole they resented them when it appeared that they were rivalling their own traditional role in the courts. The fact that this was less marked in relation to the Special Commissioners constitutes an early example of the legal profession's perception of tax law as an alien field, not really law at all, and so lying outside their particular expertise.<sup>181</sup> Neither judges nor lawyers regarded the income tax tribunals as part of the regular legal system. Such attitudes, along with a narrower conception of justice than is prevalent today, resulted in adjudication

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<sup>181</sup> Hubert Monroe observed the lack of interest shown by the Bar in the evidence given on their behalf to the Royal Commission on the Income Tax in 1920: H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax* (Hamlyn Lectures 33<sup>rd</sup> Series, London 1981), pp.78-9.

before the Special Commissioners being regarded as something quite outside the legitimate sphere of judicial concern. The culture of the civil service in the nineteenth century strengthened this perception of the Special Commissioners.<sup>182</sup> It enjoyed a particularly strong *esprit de corps* since it was still relatively small, and was united by strong central leadership, common interests and uniform and rigid methods of administration. It esteemed process highly, and was often accused of valuing it as an end in itself. 'It is an inevitable defect,' it was said in 1866,

that bureaucrats will care more for routine than for results...  
.Their whole education and all the habit of their lives make them do so. They are brought young into the particular public service to which they are attached; they are occupied for years in learning its forms – afterwards, for years too, in applying those forms to trifling matters...Men so trained must come to think the routine of business not a means, but an end – to imagine the elaborate machinery of which they form a part, and from which they derive their dignity, to be a grand and achieved result, not a working and creaking instrument.<sup>183</sup>

In so doing it sometimes distanced itself from the wider context of its activity and was not always sensitive to the practical needs and aspirations of the general public. Again, its total familiarity with the

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<sup>182</sup> See generally Martin Daunton, *Trusting Leviathan* (Cambridge 2001), pp.180-223.

<sup>183</sup> See *The Times*, 17 Oct 1866, p.10 col.c.

existence of the Special Commissioners lessened its sensitivity to the lack of awareness in the general taxpaying public and the need to publicise the tribunal strongly and widely. To this extent familiarity did indeed breed if not contempt for the needs of the taxpayer, certainly a striking degree of detachment.

The inertia of the Executive in publicising the Special Commissioners left the majority of taxpayers with little practical option but to accept the actions of the Inland Revenue, and as such undermined the value of the Commissioners as a tool of taxpayer protection. Well informed, robust and articulate taxpayers could perhaps penetrate the system, though the ignorant and meek had little chance of doing so. The great majority of taxpayers accepted the payment of income tax as a necessary evil and all wanted a system which they could understand so as to be able to assert their rights. That included legislation and regulations they could follow, and an accessible appeals process. They did not want to have to search for information; they wanted and needed a clear and prominent notice as to their rights of appeal in their notices of assessment, which of course they read primarily to find out how much they owed the Revenue. It was understood that complex law and complex administration were counter-productive and ultimately reduced the public revenue, because 'the taxpayer dreads having to master what

his rights and duties are,'<sup>184</sup> but little was done to address this. Most taxpayers were daunted by the bureaucracy of the Inland Revenue, which was highly specialised, dealing with particularly complex law and regulations, and were suspicious of all government departments at a time when the central administration increasingly interfered in a variety of aspects of citizens' private lives.

Reasons other than inaccessibility were suggested for the slight use of the Special Commissioners. In the decade following the reintroduction of income tax it was suggested that they were underused because taxpayers much preferred the local knowledge of the General Commissioners.<sup>185</sup> It was later suggested that the Special Commissioners were avoided because they were perceived as being part of the Inland Revenue,<sup>186</sup> and again that the very *raison d'être*, namely privacy, was increasingly unimportant to taxpayers. However the evidence consistently shows that throughout the nineteenth century the issue of privacy remained a very real one, that the local knowledge of the General Commissioners was becoming gradually less important and that the role of the surveyor in making assessments was slowly becoming accepted as necessary. This

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<sup>184</sup> Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), qq.2781-2, Command 365, *per* Walter Gyles, Special Commissioner.

<sup>185</sup> Minutes of Evidence before the Select Committee on the Income and Property Tax, *House of Commons Parliamentary Papers* (1851-2), vol.ix (1), qq.1587-8, Command 354, *per* Edward Hyde, surveyor.

<sup>186</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.8280, Command 288-3, *per* William Cash on behalf of the Institute of Chartered Accountants.

should have led the Special Commissioners to grow in popularity, but the evidence shows that the numbers of appeals before them remained constant throughout the nineteenth century,<sup>187</sup> and only grew markedly after they were entrusted with the new super-tax in 1909-10.<sup>188</sup>

No clear pattern of use had emerged during the nineteenth century. The Presiding Special Commissioner in 1919, himself an ex-Revenue official, believed that this was partly due to fashion and circumstance. In relation to assessments by the Special Commissioners he believed that a large number indicated some local tensions between the taxpaying public and the surveyor or the General Commissioners, and that once the taxpayers had chosen this kind of assessment, they tended to remain with it.<sup>189</sup> Those choosing a special assessment and expecting thereby to bypass the surveyor were mistaken.<sup>190</sup> Some trends could be discerned, notably the use of special assessment by the more prosperous tradesmen as opposed to

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<sup>187</sup> *Ibid.*, qq.13,681-4, Command 288-4, per G.F. Howe, Presiding Special Commissioner.

<sup>188</sup> See analysis by V. Grout, 'The First Hundred Years of Tax Cases,' [1976] *British Tax Review* 75 at 78. By the end of the second decade of the twentieth century, the Special Commissioners were hearing about 1500 income tax appeals a year: Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.13,414, Command 288-4, per G.F. Howe, Presiding Special Commissioner. He also pointed out that about 100 super-tax appeals a year and some 350 excess profits duty appeals were listed each year.

<sup>189</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), qq.13,624; 13,627, Command 288-4, per G.F. Howe, Presiding Special Commissioner, a view supported by Sir Thomas Collins, Chief Inspector of Taxes: *ibid.*, qq.559, 562, Command 288-1.

<sup>190</sup> *Ibid.*, q.13,626, Command 288-4, per G.F. Howe, Presiding Special Commissioner. See too *ibid.*, q.560, Command 288-1, per Sir Thomas Collins, Chief Inspector of Taxes.

those in a small way of business, and the considerable use of assessment by the Special Commissioners by professional men, mainly medical practitioners and also solicitors, probably because they particularly did not want their private financial concerns to become known by men who were in all likelihood their patients or clients.<sup>191</sup> These were, however, issues on the fringes of the problem. The slight use was predominantly the outcome of the inertia of the Inland Revenue in adequately publicising and promoting the role of the Special Commissioners.

The numbers mask another and ultimately more important issue, namely the type of appeal the Special Commissioners were hearing. The expertise of the Special Commissioners, their complete mastery of the increasingly complex law and process of taxation, the growing confidence in their impartiality felt by the admittedly small section of the taxpaying public and the legal profession with whom they came into contact, and, paradoxically, the limited pressure of business, led to their evolution into a highly specialised body. Though initially their appellate powers constituted a relatively minor element in their overall duties, they quickly grew in significance. In 1906 a Special Commissioner said that the chief duties of his tribunal were the making of special assessments and hearing appeals, and of the

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<sup>191</sup> *Ibid.*, qq.13,634-47, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner.

two he felt the latter was the more significant,<sup>192</sup> and by 1920 it was confirmed as their most important and characteristic duty.<sup>193</sup> The duty was important not because of the mere numbers of appeals which they heard, but because they heard only the most difficult, intractable or financially substantial cases.<sup>194</sup> Members of the Tax Bar would always advise taxpayers whose cases turned on difficult points of law to appeal to the Special Commissioners, for only they could fully understand the issues involved.<sup>195</sup>

The modern character of the Special Commissioners is as an expert tribunal with a highly specialised jurisdiction playing a significant part in the development of tax law. It is a character which was determined by the very consequences of the Commissioners' exclusivity and failure to be widely accessible to the taxpaying public. The principal reason behind their original appellate powers was essentially a political and transient one, and their subsequent evolution was shaped by pragmatic considerations and cultural influences. In a sense their development confirmed the inequality in

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<sup>192</sup> Minutes of Evidence before the Select Committee on Income Tax, *House of Commons Parliamentary Papers* (1906), vol.ix (659), q.2707, Command 365, *per* Walter Gyles, Special Commissioner.

<sup>193</sup> Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920), vol.xviii (97), paragraph 358, Command 615.

<sup>194</sup> *Ibid.*, paragraph 362.

<sup>195</sup> Minutes of Evidence before the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1919-20), vol.xxiii (Pts 1 & 2), q.15,921, Command 288-5, *per* A.M Bremner, barrister, on behalf of the General Council of the Bar of England and q. 19,798 *per* C. Hewetson Nelson, accountant. See too *ibid.*, q.13,769, Command 288-4, *per* G.F. Howe, Presiding Special Commissioner; Report of the Royal Commission on the Income Tax, *House of Commons Parliamentary Papers* (1920), vol.xviii (97), paragraph 358, Command 615.

strength between the Inland Revenue and the taxpayer, in that it revealed a major tool of taxpayer protection being undermined to serve the ends of the administration rather than of the taxpayer it was seeking to safeguard. That is not to say the safeguard was eliminated; merely that its scope was significantly less than the legislators had originally envisaged through the majority of taxpayers being unaware of their rights of appeal to the Special Commissioners. For those who were aware, however, the tribunal was, as it is today, a model of efficient, swift, affordable and expert adjudication.