Court here, for the debtor cannot be required to pay more than that amount, as to which there is no doubt whatever. The trustee for the creditors may come down on M'Knight for the balance.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Mrs Oliver and husband against Lord Craighill's interlocutor of 21st October 1874, Adhere to the said interlocutor on the merits, with expenses since the date of the Lord Ordinary's interlocutor; and remit to the Auditor to tax the same and to report; and before answer as to the question of modification of the pursuers' expenses, reserve consideration till the account thereof is lodged."

Counsel for Reclaimer and Pursuer—M'Laren and Brand. Agents—J. & A. Hastie, S.S.C.

Counsel for Reclaimer and Defender—Balfour and Lorimer. Agents—Ronald, Ritchie, & Ellis, W.S.

Saturday, January 30.

FIRST DIVISION.

[Court of Exchequer.

ADDIE & SONS *v.* SOLICITOR OF INLAND REVENUE.

Income-Tax—Profits—Act 5 and 6 Vict., c. 55, § 100, case 1, rule 3.

Certain coal and iron masters held mineral fields under leases of thirty-one years, and sunk from time to time the pits from which the minerals were raised, and also furnished the buildings and machinery necessary for working the pits at their own expense. *Held* that in estimating their annual profits for the purposes of the Income-Tax Acts they were not entitled to deduct a percentage for pit sinking and for depreciation of buildings and machinery, the money expended on pit sinking and providing buildings and machinery being a "sum employed as capital" within the meaning of the Property Tax Act.

This was an appeal by Messrs Robert Addie & Sons, coal and iron masters, Lanarkshire, against the judgment of the Commissioners for General Purposes acting under the Property and Income-Tax Acts for the Middle Ward of the county of Lanark.

The following case was stated by the Commissioners:—"Messrs Robert Addie & Sons, coal and iron masters, carrying on business at Langloan and elsewhere in the parish of Old Monkland and county of Lanark, appealed against the assessment made on them under schedule D of the Act 5 and 6 Vict., chapter 35, entituled, 'An Act for granting Her Majesty duties on profits arising from Property, Professions, Trades, and Offices,' and subsequent Income-Tax Acts referring thereto in respect of the profits arising from their business for the year preceding, in so far as the said assessment includes two sums of £5525, 19s. 9d. and £4435, being a percentage which they claimed to deduct for pit sinking and for depreciation of buildings and machinery respectively, and for which they maintained they were not assessable.

"Messrs Addie & Sons stated that they carry on, and have for a number of years past carried on, business as coal and iron masters. They manufacture pig-iron at their works at Langloan, and they hold a number of mineral fields under leases of thirty-one years, which leases are in various periods of their currency. The minerals wrought under these leases are coal, ironstone, and fireclay. As such lessees Messrs Addie have sunk, at there own expense, the pits from which the minerals are raised. They also require to erect, and do erect at their own expense, machinery and buildings of various kinds, including winding and pumping engines, pithead buildings, and the like.

"The appellants submitted that in ascertaining the profits upon which they are liable to be assessed under the said Act there ought to be deducted from the gross annual receipts derived from their business—(1) A sum in respect of the cost of sinking the pits; and (2) a sum in respect of the cost of buildings and machinery.

"(1) With respect to their pits, they explained that most of them are sunk and used for working ironstone, and are wrought only for comparatively short periods, as the ironstone seams are wrought out more speedily than seams of coal usually are, and that when a pit has ceased to be wrought they do not receive any payment from the landlord or any one else in respect of it, and that they are not recouped in the cost of sinking their pits in any other way than out of the gross annual returns derived from the minerals raised from them. There is scarcely any year in which the appellants are not engaged in sinking one or more pits. In these circumstances, they contended that the share of the gross annual receipts corresponding to the proportion of the cost of sinking the pits affeiring to the current year (regard being had to the number of years during which the several pits have been and will still continue to be wrought) was in no sense a profit, and that therefore it ought to be deducted from the gross annual receipts in arriving at the assessable profit.

"(2) With respect to machinery and buildings, the appellants explained that where a pit is wrought out the price or value obtainable for the machinery and buildings thereat is very small as compared with the original cost, being what is generally known as breaking up value, and that they are not recouped in the difference between the original cost of the machinery and buildings and the price or value obtainable therefor when the pits are exhausted otherwise than out of the gross annual receipts derived from working the minerals.

"They therefore contended that this difference is in no sense a profit, and that consequently in arriving at the profits upon which they are assessable there ought to be deducted from the gross receipts of each year a sum corresponding to the share of that difference effeiring to such year."

Argued for the appellants—Under the statutes every person must pay tax upon what he received during the year of profits and gains. But how could there be profit without deducting what was expended to produce that profit? Thus, in this case there was no profit until the outlay made to reach the minerals had been deducted. The appellants were just as much entitled to make deductions claimed as to deduct miners' wages.

Argued for the respondent—The object of the Act was to impose a tax upon income—upon profits as destinguished from capital. But the expendi-

ture here sought to be deducted was undoubtedly an expenditure or investment of capital. If that were so the provisions of the 3d rule of the 1st head of section 100 of the Property Tax Act was conclusive, and the judgment of the Commissioners should be affirmed.

At advising—

LORD PRESIDENT—The appellants Messrs Addie & Sons have been assessed under schedule D of the Income-Tax Act in respect of profits arising from their business as ironmasters, and they say there ought to have been deducted from the amount of profits upon which they were so assessed two sums of £5525 and £4435, being a percentage for pit-sinking and for depreciation of buildings and machinery: and this they maintain upon the ground that the sinking of new pits, although it be only an occasional thing, is still part of what may fairly be called the annual expenditure which they necessarily incur in realising the profits from their trade. I think there is only one point to be determined here, and not two as represented, because the machinery and buildings connected with a pit appear to me to be just part of the pit itself. It is one compound structure necessary for the working of the mine; and the question comes to be, whether, under the special rules of the Income-Tax Act, they are entitled to deduct something on account of the amount expended in making a new pit. Now, I am quite clear that the making of a new pit in a trade of this kind is, in every sense of the term, just an expenditure of capital. It is an investment of money, of capital, and must be placed to capital account in any properly kept books applicable to such a concern. Now, if that be so, it seems to me that the provision of the 3d rule under the 1st head of section 100 of the Property Tax Act is conclusive upon the question before us, because it is there provided that in estimating the balance of profits and gains chargeable under schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains on account of any sum employed or intended to be employed as capital in such trade. It seems to me that it is quite unnecessary to go beyond that one part of the statute. No doubt some support may be had also from the 159th section, but I think this rule is in itself perfectly conclusive. As soon as you ascertain that this is an expenditure of additional capital, there is an end to any proposal to deduct anything in respect of it; and on that simple ground I think the judgment of the Commissioners right.

LORD DEAS concurred.

LORD ARDMILLAN—I am of the same opinion. I think the two sections, taken together, are quite conclusive.

LORD MURE—I think the third rule of section 100 is quite conclusive on the point.

The Court affirmed the judgment of the Commissioners.

Counsel for the Appellants—Dean of Faculty (Clark), and Balfour. Agents—Gibson-Craig, Dalziel & Brodies, W.S.

Counsel for the Respondent—Solicitor-General (Watson), and Rutherfurd. Agent — Angus Fletcher, Solicitor of Inland Revenue.

Tuesday, February 2.

FIRST DIVISION.

[Court of Exchequer.

CASE FOR THE EDINBURGH LIFE ASSURANCE CO. *v.* SOLICITOR OF INLAND REVENUE, AND THE SCOTTISH WIDOWS FUND AND LIFE ASSURANCE CO.

(Under the Customs and Inland Revenue Act, 1874 37 Vict. c. 16.)

Taxation—Inhabited House Duties—57 *Geo. III, c.* 25, § 1—5 *Geo. IV., c.* 44, § 4—32 *and* 33 *Vict., c.* 14, § 11.

Held that Insurance Companies, whether proprietory or mutual, are not entitled to have their premises exempted from Inhabited House Duties, in terms of section 11 of the Act 32 and 33 Vict. c. 14—not being companies engaged in trade within the meaning of the statute.

The Edinburgh Life Assurance Company, 22 George Street, Edinburgh, appealed to the Commissioners for executing the Acts relating to the Inhabited House Duties for the County of Edinburgh against the charge of £13, 2s. 6d. made upon them for Inhabited House Duty, at the rate of 9d per pound on £350, the annual value of the premises occupied by them at the above-mentioned address. The Company (which was a proprietory Company), occupied the premises in question for the purpose of carrying on their business of life insurance. The area flat, consisting of four apartments, having internal communication with the offices above, was occupied as a dwelling-house by a servant of the Company, who went messages, superintended the cleaning of the premises, and acted as a clerk to the Company to the extent of addressing and booking letters, and with whom resided his wife and a female servant, whose wages were paid by the Company. The appellants claimed relief from the assessment under the Act 14 and 15 Victoria, cap. 36, and under the 11th section of 32 and 33 Victoria, cap. 14, on the ground that they were a proprietory company engaged in trade; that the business carried on for the benefit of, and at the risk of the shareholders, of insuring lives, buying and selling annuities, reversions, &c., was essentially a trading business that the part of the tenement occupied by them in 22 George Street was used "for the purpose of trade only;" and that the person dwelling in the area flat, lived there "for the protection thereof," and to take care of the premises.

The Commissioners were of opinion that the business carried on was not of the nature of trade, and that therefore the premises did not come within the exemption granted by the statute, and they accordingly refused the appeal and confirmed the assessment.

The appellants craved a case for the opinion of the Court of Session, which was accordingly stated by the Commissioners.

The appellants argued—The business of insurance was a trade within the meaning of the Act. An insurance company dealt with risks, undertaking to pay so much in case of death for the price of an annual premium. The Company also dealt to a large extent in money-lending. In regard to the duties performed by their servant or