

daughter and wants to provide for his wife. Then come the words "in the event of her surviving me, over and above the provisions already conceived in her favour." I am far from saying that the inductive cause of a deed in the narrative clause must be commensurate with the dispositive clause. But *in dubio* it is fair to refer back to the narrative in order to see the probable meaning of the dispositive clause. If in all cases the words in the dispositive clause were *voce signata*, then nothing could derogate from their effect, except the inductive clause being so strong as to be equivalent to express direction. But in a case of this sort no such fixed effect is given to the words in the dispositive clause.

I do not attach much importance to the word "therefore," for if that word had been missed out the meaning would have remained exactly the same. In any case we would have been quite entitled to go back to the narrative in order to construe the deed. I think that the beneficiary here being a wife brings the case very nearly within the rule regulating bonds of provision. It is not a deed to settle in succession on a stranger, but to make a suitable provision for a particular individual, and although this deed contains a general conveyance of heritable and moveable estate, it must be kept in mind that the bulk of the estate was Glenduffhill, the moveable property being of small amount. The only respect in which this provision differs from former provisions is, that in them the provision is in *liferent* as well as being dependent on survivorship, whereas here the disposition is out and out, and I think that it was that difference which led the testator to use the words "heirs and assignees." And that is quite an intelligible and legitimate use of the words known to our law, as in a disposition by a seller to a purchaser they are always used to show that the conveyance is absolute. In some such sense the words are used here. To show that, although in supplement of the former provisions the conveyance is not in *liferent* but out and out. I therefore arrive at the same result as the Lord Ordinary, but I think that it is necessary to recal his interlocutor, as we do not arrive at the conclusion on the same grounds.

The Court pronounced this interlocutor:—

"The Lords having heard counsel on the reclaiming-note for the defender against Lord Craighill's interlocutor, dated 5th June 1875, Vary the said interlocutor by deleting the words 'evacuated by her predecease,' and substituting in place of them the words 'conditional on her surviving her husband:' *Quoad ultra* adhere to the said interlocutor, and refuse the reclaiming-note," &c.

Counsel for the Pursuer—Solicitor-General Watson) and Trayner. Agents—Duncan & Black, W.S.

Counsel for Defender—Dean of Faculty (Clark) and Balfour. Agents—Drummond & Reid, W.S.

Saturday, July 10.

FIRST DIVISION.

YOUNG v. SOLICITOR OF INLAND REVENUE.

Income Tax—Act 5 and 6 Vict., c. 35, § 39—Temporary Residence—Ship Captain.

Held that the master of a vessel trading between Glasgow, the Mediterranean, and New York, who earned the greater part of his income upon the high seas, and did not reside in the United Kingdom for three months in the year, but was tenant of a house in Glasgow, occupied by his wife and family, and by himself when in Scotland, was not entitled to exemption from income tax as a temporary resident under the 39th section of the Act 5 and 6 Vict., cap. 35.

The following Case for the opinion of the Court was stated by the Commissioners under the Customs and Inland Revenue Act, 1874:—

Mr H. Young, master of the steamship "Olympia," belonging to Henderson Brothers, of Glasgow, appealed against an assessment for the year 1874-5, made upon him under schedule D of the income tax, in respect of his salary as master mariner, on the ground that he had not been resident within the United Kingdom for a period of three months during the year of assessment.

It was stated on behalf of the appellant that he trades between Glasgow, the Mediterranean, and New York, and that the greater part of his income is earned upon the high seas, and beyond the limits of the United Kingdom; that his arrivals in, and departures from, the United Kingdom were as follows:—

	Period of Residence in United Kingdom.
He left Glasgow for New York on 20th March 1874.	
Arrived, Glasgow, from New York on 17th May 1874.	
Left Glasgow for New York on 28th May 1874,	11 days
Arrived, Glasgow, from New York on 5th July 1874.	
Left Glasgow for New York on 21st August 1874,	47 ...
Arrived, Glasgow, from New York on 28th September 1874.	
Left Glasgow for Mediterranean and New York on 13th October 1874,	15 ...
Arrived, Glasgow, from Mediterranean and New York on 19th January 1875.	
Left Glasgow for Mediterranean and New York on 3d February 1875,	15 ...
Arrived, Glasgow, from Mediterranean and New York on May 1875.	
Total,	88 days

And that his detention in the United Kingdom during the year of assessment was, on account of dull trade, double that of previous years.

That he was therefore only a temporary resident in the United Kingdom during the year of assessment, and as such entitled to exemption under the 39th section of the Act 5th and 6th Victoria, cap. 35.

It was further stated on behalf of the appellant that he had been allowed exemption on these grounds in previous years, and that the Board of Inland Revenue had in several instances ordered repayment to persons charged under circumstances similar to those of the appellant.

The surveyor replied, that Captain Young is the tenant of a house in Glasgow, occupied by his wife and family, and by himself when in this country, and must therefore be held to be domiciled in Scotland; that, under the section of the Act referred to, he is only a temporary absentee, and "notwithstanding such temporary absence" as that given above, "chargeable to the duties granted by the Act as a person actually residing in the United Kingdom, upon the whole amount of his profits or gains, whether the same shall arise from property in the United Kingdom or elsewhere, or from any profession, employment, trade, or vocation in the United Kingdom or elsewhere; and that even if Captain Young were only a temporary resident within the meaning of the Act, and as such had claimed exemption, he would become chargeable to income tax if he returned to the United Kingdom on or before the 5th day of April next after such claim had been made.

The Commissioners having considered the whole case, were of opinion that the appellant was assessable, and therefore confirmed the assessment—with which decision the appellant declared his dissatisfaction, and craved a case for the opinion of the Court of Exchequer, which is hereby stated accordingly.

Authorities cited—*Greig v. Myles & Simpson*, 19th July 1867, 5 Macph. 1132; *Moncrieff v. Ross*, 5th Jan. 1869, 7 Macph. 331; *Jackson v. Robertson*, 7th Jan. 1874, 1 Rettie, 342; *M'Gregor v. Watson*, 7th March 1860, 22 D. 965.

At advising—

LORD PRESIDENT—The assessment here complained of was laid on under the 17th section of the Income Tax Act, and the assessment is on the appellant's salary as master mariner.

The question is, whether Captain Young is resident in Great Britain. The expression in the schedule is very simple, being "person residing in Great Britain." Now there are many persons so residing who do not go away very often, but there are a great many more who do, and this class is increasing every day. Therefore anything like continuous residence is not contemplated by the statute,—if by that was meant constant personal presence. So I think that the poor law decisions which were quoted to us have no application, and the statute alone is to be looked to. Under the statute, if a man has his ordinary residence in this country, it does not matter if he is absent for a greater or less portion of the year. Some people's business takes them constantly from home, such as travellers or Queen's messengers. Then the class to which the appellant belongs comes under this category, and is an extensive one. He is the master of a trading vessel belonging to Glasgow. When he is not at sea he resides in Glasgow, and when he is at sea he is represented there by his wife. In the ordinary and plain meaning of the words the appellant has thus his residence in Glasgow, and has no residence anywhere else, unless his ship could be called a residence, which I do not think can be suggested. A residence is a dwelling place on

land, and the only one which the appellant has is in Glasgow.

The 39th section of the statute contains several parts, but the only part of importance here is the first. It is as follows:—[*His Lordship read the first paragraph of the section.*]

There is some doubt whether that part applies to the present case—whether a trader between Glasgow and New York goes there only for the purposes of occasional residence. It is not necessary to decide that point, but I should be inclined to answer the question in the affirmative. But even if the provisions in the 39th section do not apply to this case, still it throws light on section 17, as it shows that the residence there meant is the ordinary residence which may be broken by occasional residence abroad—ordinary residence in the country fixes the liability notwithstanding visits abroad, if these are not of such a nature as to be more enduring than the residence in this country. In this case the appellant's absences are longer or shorter according to the fluctuations of trade; so it is a mere accident how long he may be away, and his absence is merely temporary. I do not think it is necessary to show that the absence abroad is shorter than that in this country if in its nature it is temporary.

The case of *M'Callum* referred to by Lord Ardmillan is very much in point. There citation by a messenger, which by statute is required to be made at the dwelling place, was made in this way:—"by leaving said copy of certified copy of petition and deliverance, and certificate, with short copy of service and citation subjoined, for the said John M'Callum, with his father, within his father's dwelling house at Newburgh, with whom he lives and resides when not at sea, to be given to him because I could not find him personally." The Judges held that that was a good execution at the dwelling place, which I think means the same thing as residence. The Lord President says:—"Where a man lives and resides is his dwelling house. An execution, bearing that that citation was left at Blackhouse or Whitehouse, where the debtor lives and resides, would be clearly sufficient. Saying that it is his father's house is clearly descriptive, just as Whitehouse or Blackhouse is. The statement that the debtor lives and resides there is fulfilment of the Act." Then Lord Mackenzie says:—"The expression is, that it was left at his father's dwelling house 'with whom he resides when not at sea.' The construction I put on that is that he has a residence at his father's house. Every sailor has a residence on land. We have no persons who are born and live and die on the water. The execution just certifies that he is a sailor, and has a residence on land with his father." Lord Jeffrey says:—"The addition here, when not at sea, just means that his father's house is where he lives and resides when not absent on business." The views as to the construction of the words dwelling house are equally applicable here. But apart from authority, I think that the statute is quite clear. So I think that the Commissioners' deliverance should be sustained.

The other Judges concurred.

The Court adhered.

Counsel for Appellant—Balfour.

Counsel for Respondents—Solicitor-General (Watson) and Rutherford. Agent—David Crole, Solicitor of Inland Revenue.