

If the case had depended on these two clauses I should have considered this a good claim.

But the Act of 1868 creates a difficulty, for by it tenants under a long lease are declared to be owners. This point, although in a different shape, came up in the case of *Kirk*, and it was there held that the provision merely gave the voter the privilege of claiming as an owner if he chose to do so, but did not interfere with his proper character as tenant. Now, if this gentleman is only a tenant and not an owner, I cannot see that his qualification should be affected by the limitation of the statute of 1884.

I feel this to be a difficulty, although I do not desire to dissent from the decision.

LORD KINNEAR—I concur. The question before us is, whether the claimant and his partners are owners as joint-tenants of the subjects on which this claim is made? From the case and the facts set forth there is no doubt that the claimant is a joint-tenant. The next point is, is he owner as joint-tenant? I think so, for section 59 of the Act of 1868 says so, and that Act, so far as consistent, is part of the later Act.

But sec. 11 of the Act of 1884 declares that "joint-tenant" shall include *pro indiviso* proprietor. True, but "joint-tenant" is not defined as meaning "*pro indiviso* proprietor," but only as including it. I cannot therefore accept the view that "*pro indiviso* proprietor" in Scotland is equivalent to "joint-tenant" in England.

I agree with Lord Craighill that the difficulty disappears on an examination of the previous statutes, and I also adopt the distinction he has taken between the present case and the case of *Kirk v. M'Gowan*.

The Court refused the appeal.

Counsel for Appellant—Graham Murray.  
 Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Respondent—Shaw. Agents—  
 Mylne & Campbell, W.S.

## COURT OF SESSION.

Friday, November 19.

### FIRST DIVISION.

SCOTTISH MORTGAGE AND LAND INVESTMENT COMPANY OF NEW MEXICO (LIMITED) *v.* THE COMMISSIONERS OF INLAND REVENUE.

*Revenue—Income—Tax—Company Incorporated and Registered in the United Kingdom and Earning Profits Abroad*—"Sums . . . received in Great Britain,"—5 and 6 Vict. c. 35, sec. 100, Sched. D.—16 and 17 Vict. c. 34, sec. 2, Sched. D.

A company incorporated under the Companies Acts, 1862 to 1880, and managed in Glasgow, was formed principally for borrowing money in this country on debentures, which together with its paid-up capital it lent in the United States of America on the

security of land in that country. The interest received in America was brought into account in the books of the head office at Glasgow, by retaining out of the funds raised by the company in this country a sum equivalent to that interest, and the money itself therefore did not require to be sent to this country. The sum thus retained was treated by the company as income. *Held* that it was chargeable with income-tax under the fourth case of Schedule D of the Property and Income-tax Act 1842, sec. 100, as interest arising from foreign securities received in Great Britain.

The Scottish Mortgage and Land Investment Company of New Mexico (Limited) was formed principally for the purpose of borrowing money in this country on debentures at a low rate of interest, and lending the same in the United States of America, together with the paid-up capital, at a high rate of interest on the security of land in that country, and also in the purchase and improvement of land there, and the acting as agents for the investment of money in that country, the collecting and transmitting of interest, and the guaranteeing lenders against loss. The company was managed in Scotland by a board of six directors, having their head office in Glasgow, and there was also an advising board of directors in the United States of America, with a manager there.

Between the date of incorporation in September 1882 and the 31st December 1884, the company received payment from the shareholders in Great Britain of £10,000, being the first call of £1 per share on the subscribed capital, a sum of £700 in anticipation of calls, and a sum of about £70,000 borrowed from debenture-holders and depositors in this country. Of these sums, amounting together to about £80,700, there was remitted to and invested in America the sum of £74,369, 14s. 8d. The interest on the company's investments in America received there during the same period, after deducting working expenses there, amounted to £4914, 2s. 3d., and this sum also was invested in America. The interest received by the company's agents in America was periodically brought into account in the books of the company kept at the head office in Glasgow. Out of the funds raised by the company in this country there was retained a sum equivalent to the interest or gain realised from the American securities after defraying the working expenses in America, and out of this sum was paid all the working expenses in Great Britain, the interest to debenture-holders and depositors, and a dividend at the rate of 7 per cent. to the shareholders for the year 1884. From the date of incorporation to 31st December 1884 no interest arising from foreign securities was remitted to or received in Great Britain.

An assessment was made under Schedule D of the Income Tax Act upon the company for the year ending 5th April 1885, on the sum of £5174, duty £129, 7s., and the company appealed to the Commissioners, under the Property and Income-Tax and Inhabited-House Duty Acts, for the Lower Ward of the county of Lanark.

Under the fourth case of Schedule D it is provided that "The duty to be charged in respect of interest arising from securities in the British Plantations in America, or in any other of Her Majesty's dominions out of Great Britain, and

foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C, shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year without any deduction or abatement."

The sum of £5174 on which duty was charged was computed from the accounts of the company for the year ending 31st December 1884, presented to the annual meeting of the shareholders on 7th April 1885, and it embraced the following sources of profit, viz. —

Interest of money lent by the company on the security of property in the United States of America, earned or accrued and brought into account in the year ended 31st December 1884	£6,926 5 2
Transfer fees received	2 12 6
	£6,928 17 8
Expenses of management in America	£1,193 5 10
Do. do. at home	562 0 7
	1,755 6 5
Amount assessed	£5,173 11 3

The interest paid or due to debenture-holders during the year amounted to £3094, 18s. 1d., and this sum was not deducted in computing the amount for assessment.

The income on which the assessment was charged was applied as follows, as appeared from the company's printed report and accounts for the year ending 31st December 1884:—

Interest on debentures paid and accrued to 31st December 1884	£3,094 18 1
Dividend of 7 per cent. to the shareholders	700 0 0
Extinction of the debit balance of the year 1883	499 10 7
Reduction of preliminary expenses.	508 5 5
Carried forward	370 17 2
	£5,173 11 3

It was contended on the part of the company that the company was of the nature of a banking and trading concern, and that the assessment should be made in terms of case first, section 100, of 5 and 6 Vict., cap. 35, for one year, on the average of the balance of profits and gains from 26th September 1882 (the date when the company commenced operations) till 31st December 1883 (the date of the first balance of the books of the company, and of the balance immediately preceding the year of assessment); that the profits and gains for this period being £334, equal to £239 for one year prior to 5th April 1884, the assessment should therefore be reduced to the said sum of £239, or that if the £834, 7s. 7d. of interest paid on debentures, on which the company had paid the income-tax, were allowed as a deduction, there was no profit or gain during that period, but a loss of £499, 10s. 7d., and therefore no assessment should be made; or alternatively, that if the assessment fell to be made under the fourth case, that no assessment fell to be made in respect that no interest arising from foreign securities had been received in this country during the year of assessment, all such

interest accruing to the company having been retained and invested abroad.

The Surveyor of Taxes maintained that the profits were of the nature described or comprised in the third clause, Schedule D, section 2, of 16 and 17 Vict. cap. 34, and that the assessment fell to be imposed on the actual amounts which have been or will be received in the United Kingdom in the year of assessment, according to the rule contained in the fourth case, section 100, of 5 and 6 Vict. cap. 35. He also maintained that although the interest may not have been sent *in forma specifica* during the year, "yet there was brought into account in the books of the company at Glasgow a sum equivalent to the amount of interest on the American securities, which sum was retained out of the monies raised in this country, and the sum so retained was applied to the payment of the interest on the money borrowed by the company, to the payment of a dividend to the shareholders, and in payment of the expenses of management in this country."

Schedule D of the Act 16 and 17 Vict. cap. 34 sec. 2, provides that duty is to be chargeable "For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom, from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom, from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere."

The first case of Schedule D applies to "Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of this Act," and the first rule provides that "the duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years, . . . provided always that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same."

The Commissioners confirmed the assessment.

The company craved a Case for the opinion of the Court of Exchequer under the Taxes Management Act 1880 (43 and 44 Vict. c. 19), sec. 59, and this Case was stated.

On the 5th of January 1886 the Court of Exchequer remitted the Case to the Commissioners for amendment. In the amended Case the Commissioners restricted the assessment to £4803, being a deduction from the former assessment of £320, 17s. 2d., the portion of profits carried forward.

It was argued for the appellants that they should be charged under the first and not under the fourth case of the Schedule D of the Revenue Act 1842. The interest was not received in the United Kingdom, nor was it taken into account except as forming part of the company's general trade. And in judging of this question it was necessary to look at the company's whole operations, and not one special incident in its method

of bookkeeping. The interest was in a sense brought into account, but only in order to make up the account taken as a whole. All that remained in the company's hands was the true profit after striking the balance, and that alone was properly chargeable. A transfer in the company's books did not operate as a conveyance of these funds into the United Kingdom.

Authorities for the appellants—*Sully v. The Attorney-General*, May 11, 1860, 29 L.J., Exch. 464; *Cezena Sulphur Company v. Nicholson*, February 2, 1876, L.R., 1 Exch. 428; *Attorney-General v. Alexander*, November 20, 1874, L.R., 10 Exch. 20.

The argument for the Crown fully appears from the contention stated above and from the opinions *infra*.

At advising—

LORD PRESIDENT—The question in this case is, whether the duty has been properly charged under the fourth case of Schedule D, sec. 100, of 5 and 6 Vict. c. 35, or whether it ought not to have been charged according to the rules applying to the first case?

The first case is that of “duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other Schedule of this Act.” And under that case the first rule provides that the duty to be charged “shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern upon a fair and just average of three years. . . . Provided always that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of profits and gains from the period of first setting up the same.” . . .

The fourth case deals with “the duty to be charged in respect of interest arising from securities in Ireland or in the British Plantations in America, or in any other of Her Majesty's dominions out of Great Britain, and foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C of this Act.” In this case the duty to be charged is to be computed “on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year without any deduction or abatement.”

Now, this is undoubtedly a trading company, and I do not doubt that they might have been charged under the first case, but that is not the question here. The question here is, Can it be lawfully charged under the fourth case? One can quite understand that in peculiar circumstances the duties may be charged under one or other of the cases. In that case it would be in the option of the Commissioners to select the case most favourable to themselves. Now, I think that although they might have been charged under the first case, the fourth is equally applicable. The sum on which duty is charged—a sum of £5174—is, we are told in article 12, computed from the account of the company for the year ending 31st December 1884, presented to the annual meeting of the shareholders on 9th April 1885, and it embraces the following source

of profit, viz.—Interest of money lent on the security of property in America, amounting to £6926, 5s. 2d. To this there is a slight addition for transfer fees. Then there is a deduction of the expenses of management in America. That is quite right. But there is a further deduction of the expenses of management at home. Why this deduction is made I do not know, but as the Income-Tax Commissioners have made it, the company must benefit from it.

The income upon which the assessment is charged was applied as follows:—Interest on debentures paid and accrued to 31st December 1884, £3094, 18s. 1d.; dividend of 7 per cent. to the shareholders, £700; extinction of the debit balance of the year 1883, £499, 10s. 7d.; reduction of preliminary expenses, £508, 5s. 5d.; and a balance is carried forward of £370, 17s. 2d.

Now, it will be observed that these items are properly chargeable against income and not against capital, and that shows that the company are dealing with their income which they have disposed of and paid away in this country. The peculiarity in their method of dealing appears from the statement in article 8—“The interest received by the company's agents in America was periodically brought into account in the books of the company kept at the head office in Glasgow. Out of the funds raised by the company in this country there was retained a sum equivalent to the interest or gain realised from the American securities after defraying the working expenses in America, and out of this sum was paid all the working expenses in Great Britain, the interest to debenture-holders and depositors, and a dividend at the rate of 7 per cent. to the shareholders for the year 1884.”

Now, in these circumstances the company contend that the sum of £5174 cannot be interest from securities in foreign countries, because the rules for charging duty under the fourth case provides that it is to be computed “in a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year, without any deduction or abatement.” And they say that the statement of fact in article 8 shows that this interest was not received in Great Britain. In one sense this is true. The interest received by the company's agent is not received *in forma specifica* in this country, it remains in America for re-investment. But a sum is retained as an equivalent by the manager here out of the money borrowed by the company here on debentures for the purpose of investment in foreign securities. Now, I have already indicated the way in which the equivalent sum was disposed of in this country. It was dealt with as income. It was received no doubt as capital. But if it was not converted in the process of book-keeping into income, the payments made were altogether illegal. In my opinion this conversion has really taken place—a sum received in this country as capital becomes a sum representing the interest derived from these foreign securities. In these circumstances it is impossible for the company to maintain that they have not received interest, for it is entered in their books on that footing.

LORD MURE concurred.

LORD SHAND—Two alternative views have here

been presented. On the one hand it is maintained that this company sends large sums of money to America for the purpose of being invested there at a rate of interest higher than is obtainable here. That is a proceeding which falls under the fourth case. On the other hand it was maintained that the sum here liable to assessment was the sum brought out as the full balance of profits; and that accordingly the duty should be determined by the rules applicable to the first case. I suppose this company satisfied themselves that the latter mode of assessment would be most advantageous to them. The question depends on this, Whether they would be entitled even in that view in striking their balance for the year to deduct, in a question as to income-tax, interest on borrowed capital. The company has many shareholders, and provides its own capital. But, in addition, it borrows a large amount of capital on debenture, and if in striking profits it is proper to deduct interest on borrowed capital, then undoubtedly they would have the advantage which they claim. As to the effect of the words "interest received in this country," I have no doubt. As your Lordship showed, if it is not in substance received in this country they would have no right to treat it as profit and divide it. It is treated as profit and divided, and therefore must be taken to be received in this country. But I think it plain that it is so received, because in article 8 of the Case the Commissioners tell us that in place of bringing their money home *in forma specifica* the company retain and divide it instead of sending it out to America for investment. The only other course would be that the company should send out so much money to America, and get exactly the same sum sent home. To avoid that they refrain from sending out money which otherwise they would send to America, and as a matter of account they treat that money which was obtained in America as having been sent home. I cannot doubt that within the meaning of the statute the money was so treated as being received in this country from investments abroad, and therefore I think that the argument of the company fails. On that matter we are not called upon to decide, and I express no opinion. But I observe that one of the rules applicable to the first case provides that in estimating the balance of profits and gains no deduction shall be allowed on account of any capital withdrawn from such trade.

Assuming, however, that it would be advantageous to the company to be assessed under the first case, I agree with your Lordship that they are not entitled to object to be assessed under the fourth case. It is worthy of notice that the first case is headed "Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act." This does appear to be contained in other schedules of this Act; and I agree that the Crown are entitled to take the case most advantageous to themselves.

As to the nature of the money received I have no doubt if it were not in substance received in this country they would have no right to treat it as they have done.

LORD ADAM concurred.

The Court affirmed the determination of the Commissioners.

Counsel for Scottish Mortgage Co.—Balfour, Q.C.—Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Counsel for Crown—Sol.-Gen. Robertson, Q.C.—A. J. Young, Agent—David Crole, Solicitor of Inland Revenue.

Saturday, November 20.

## FIRST DIVISION.

[Lord Lee, Ordinary.]

EVANS AND HUSBAND *v.* STOOL AND OTHERS.

(*Ante*, July 15, 1885, vol. xxii. p. 872, and July 8, 1886, vol. xxiii. p. 781; 12 R. 1295, 13 R. 1108.)

*Reparation—Seduction—Excessive Damages.*

A woman obtained a verdict against the representatives of a man deceased who, falsely representing himself to be a single man, had married her, and so seduced her under colour of marriage. The action was not brought till sixteen years after the man's death, during which period the woman had married again, but it was brought very shortly after she learned of the fraud practised upon her. The jury awarded her £200 as damages. The Court, on a motion for a new trial, *held* that the damages were not so excessive as to justify the granting of a new trial.

The parties in this action, which has been previously reported, went to trial upon the issue, "Whether the deceased Alexander Stool, during the period from March 1867 to November 1868, courted the pursuer Mrs Fanny Evans, and professed honourable intentions towards her, and by means of such courtship and professions induced her to go through a pretended ceremony of marriage with him on or about 9th November 1868, and seduced her, and prevailed upon her to permit him to have carnal connection with her, to the loss, injury, and damage of the pursuers. Damages laid at £1500 sterling." It was proved at the trial that the pursuer was unaware of the injury done her for sixteen years, *viz.*, from 1869 till 1885. Stool died in 1869, and she married her present husband in 1872. The jury awarded her a sum of £200. The defender moved for a new trial on the ground of excessive damages. A rule was granted. After hearing counsel the rule was discharged, the Lord President observing, and the other Judges concurring in the observation, that he was of opinion that damages were excessive in amount, but not so excessive as to justify the Court in granting a new trial.

Counsel for Pursuers (Respondents)—Rhind—A. S. D. Thomson. Agent—Wm. Officer, S.S.C.

Counsel for Defenders (Reclaimers)—M'Kechnie—G. W. Burnet. Agent—George Andrew, S.S.C.