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provides that in estimating the balance of profits and gains no deduction shall be allowed on account of any capital withdrawn from such trade.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.
