fault, and is therefore bound to pay her own expenses.

The Court adhered.

Counsel for the Reclaimer—A. J. Young—Salvesen. Agent — D. Howard Smith, Solicitor.

Counsel for the Respondent—Comrie Thomson—Rhind. Agent—William Officer, S.S.C.

Friday, November 9.

FIRST DIVISION.

[Exchequer Cause.

THE AUSTRALASIAN MORTGAGE AND AGENCY COMPANY (LIMITED) *v.* THE COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 48.—*Bill of Exchange—Clause of Exemption—Security —Renewal of Debenture—Coupon.*

By the Stamp Act 1870, sec. 48 (1) the term "bill of exchange" includes any document (except a bank note) entitling any person, whether named therein or not, to payment by any other person of any sum of money therein mentioned. The schedule to the Act charges a duty of 1d. on bills of exchange payable on demand, but exempts "(9) coupon or warrant for interest attached to and issued with any security." Where the term of payment of a debenture was by minute of renewal extended for a definite period, and additional coupons were issued relative to the interest for the extended period—*held* that these coupons not being issued with the security did not fall under the clause of exemptions, and that they were each chargeable with the stamp-duty of 1d.

This was a case stated by the Commissioners of Inland Revenue under sec. 19 of the Stamp Act of 1870 at the request of The Australasian Mortgage and Agency Company (Limited), to enable them to appeal to the Court of Exchequer against a determination of the Commissioners imposing a stamp-duty of 1d. upon a coupon issued by the said company.

By the Act there are charged the following stamp duties, as set forth in the schedule thereto, viz.—"bill of exchange, payable on demand, 1d." Section 48 (1) of the Act is as follows:—"The term 'bill of exchange,' for the purposes of this Act, includes also draft, order, cheque, and letter of credit, and any document or writing (except a bank note), entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned."

Under the head "bill of exchange" in the schedule to the said Act appear certain exemptions, and the ninth of those exemptions is as follows:—"coupon or warrant for interest, attached to and issued with any security."

In May 1883 The Australasian Mortgage and Agency Company (Limited) borrowed from Ralph Erskine Scott, C.A., Edinburgh, the sum of £2000, and granted therefor a debenture in ordinary form. The loan was for five years, and it bore interest at 5 per cent. per annum.

The debenture was stamped with the *ad valorem* duty applicable to a mortgage, viz., £2, 10s. Unstamped coupons or warrants for interest payable each half-year during the currency of the debenture down to and including 15th May 1888 were attached to and issued with the debenture.

In May 1888 the term of payment was by consent of parties extended to 1893, in terms of the following minute of renewal endorsed on the debenture:—"It is hereby agreed that the term of payment of this debenture shall be extended from the fifteenth day of May Eighteen hundred and eighty-eight, being the date of payment within mentioned, to the fifteenth day of May Eighteen hundred and ninety-three, and coupons for interest at the rate of 4¼ per centum per annum have been delivered to the said M/C trustees of Mr and Mrs John Bruce of Sumburgh, for the interest to become due at and prior to the date of payment hereby agreed on." The new set of coupons issued was attached to the debenture by being pasted thereto, after which the debenture as renewed, along with the coupons attached, were handed back to the holder.

In July 1888 the company presented to the Commissioners (having obtained it for the purpose from the holders thereof) the first of the new set of coupons in order to have their opinion if it was chargeable with stamp duty in pursuance of the Act of 1870. The document was in these terms—"No. 1. The Australasian Mortgage and Agency Company (Limited), £42, 10s., will pay to the bearer, at the Office of the Royal Bank of Scotland, Edinburgh or London, on surrender of this coupon, the sum of forty-two pounds ten shillings sterling, on the 11th day of November 1888, for interest due at that date on debenture No. 2711.—R. & E. Scott, *Secretaries.*"

The Commissioners expressed their opinion that it was a bill of exchange payable on demand, and that it fell to be stamped with the duty of 1d.

The company declared themselves dissatisfied with the determination of the Commissioners, on the ground that the coupon in question fell within the exemptions to sec. 48 of the Act of 1870, as being a "coupon or warrant for interest attached to and issued with any security," and was not liable to stamp duty.

The question for the opinion of the Court was —"Whether the said document was liable to the said duty of 1d. applicable to a bill of exchange payable on demand, or if not, whether it was liable to any duty, or whether it was exempt from duty as a coupon or warrant for interest attached to and issued with any security?"

Argued for the Australasian Company—The coupon in question fell under the exemptions to sec. 48; as it was not of the nature of a promissory-note it was not liable to stamp-duty. It contained no order to pay a sum, but simply a notice that upon presentation of the coupon the money would be paid. A promissory-note itself constituted the obligation, but here the coupon added nothing to the onerosity of the debenture; it was only a receipt. Its contents might have been inserted in the body of the debenture without affecting its character. It only added to the

debenture a stipulation that it (the coupon) was to be presented when the interest was demanded, and that the interest was to be payable to bearer. Coupons were not bills of exchange; this the statute recognised, and allowed them to escape not only the duty exigible on bills of exchange but even on receipts. That was the rule as to coupons issued with the debenture. With regard to the debenture itself the duty upon it was fixed without reference to the period for which the loan was to be taken; it was an *ad valorem* stamp, and when the parties extended the period of the debenture, what the Legislature intended was, that they were to be in the same position (except the payment of an agreement stamp upon the minute of renewal) as if the extended period had been specified in the original debenture. If that had been so no stamp would have been required for this coupon. The effect of the minute of renewal was to incorporate by implication the old obligation, and that being so these additional coupons really were by implication issued with the debenture, and so were not liable in duty.

Argued for the Commissioners of Revenue—Coupons were regarded by the Legislature as bills of exchange; this was implied by the Stamp Act of 1870. Each coupon related to a separate period, and was payable to bearer. There was nothing special about these coupons, they were in ordinary form, but they were not issued with the debenture. The security here was the debenture—not the debenture along with the renewal. In order to fall under the clause of exemptions it was necessary that the coupons should be "attached to and issued with" the security. The coupon in question was not issued until its currency had expired, and but for the renewal the loan would have been repaid.

At advising—

Lord Shand—The question for determination in this case is, whether a coupon or interest warrant for £42, 10s., issued by the Australasian Mortgage and Agency Company (Limited) on 14th May last, and payable on the 11th of the present month, is liable to the duty of 1d., as the Commissioners have held it to be, or is exempt from duty as maintained by the company.

There is no doubt that the document is a bill of exchange within the meaning of that term as defined by section 48 of the Stamp Act of 1870, and it is certainly liable in duty unless it falls under the 9th exemption in that part of the schedule of the Act which deals with bills of exchange and specifies the duty to which they are liable. The exemption is thus expressed—"coupon or warrant for interest attached to and issued with any security."

The Australasian Company on 2nd May 1883 issued a debenture for £2000, having a currency for five years, on which they undertook to pay interest half-yearly at 5 per cent. This document was impressed with a stamp for £2, 10s., being the stamp appropriate to a debenture for the amount of the loan, and attached to and issued with the document or security there were coupons or interest warrants for the ten half-yearly payments of interest to become due before the loan became repayable. These coupons were clearly exempt from all stamp-duty under the words of the exemption already quoted.

Immediately before the debenture became due it was arranged between the company and the creditor that in place of repayment of the money being made, the period of endurance of the loan should be extended for other five years, that the rate of interest for this extended time should be 4½ per cent., and that coupons for interest at that rate should be issued, payable half-yearly, as before. Accordingly a minute embodying this arrangement was endorsed on the debenture, having affixed to it an agreement stamp of 6d., and a new set of coupons was attached to the debenture "by being pasted thereto, and both debenture and coupons were thereupon delivered" to the creditors.

The appellants maintain that these coupons were exempt from duty under the statute because they were attached to and issued with the security, but I am of opinion with the Commissioners that this contention is unsound, because though the coupons were attached to the security they were not issued with it as the first set of coupons was, and it is a condition of the exemption allowed by the statute that the coupons shall be issued with the security.

When the debenture came to maturity the parties might have arranged that it should be given up and cancelled, and the money should be again lent to the company under the new arrangement on a new debenture, issued with its appropriate coupons attached to it. In that case there must have been a payment of a stamp as for a new debenture of £2, 10s., or the proper *ad valorem* amount, and of course the coupons issued with and attached to this debenture would have been exempt from duty.

But that was not the course which the parties took. The debenture was never given up by the creditor. On the contrary, under the arrangement made, the obligation of the company under the terms of that document still subsists, with this alteration on these terms that the period of the loan is extended and the rate of interest reduced. On the assumption that the transaction is not to be regarded as a new debenture, the document embodying the arrangement has been impressed with an agreement stamp of 6d. only. The form and scheme of this transaction is not, according to the view of the parties, a new loan and a new security or document of debt granted for it, but an extension of an existing loan on somewhat altered terms. The agreement expressly bears that "the terms of payment of this debenture shall be extended," and each coupon bears that the payment is made for interest due on debenture No. 2711, being the debenture due at Whitsunday 1888, the term of payment of which had been extended.

This being so, I think it follows that the coupon in question, though attached to the debenture by the company, was not issued with that document on security. The debenture was issued in May 1883. The new coupons were issued in May 1888. Nor can it be said that there was a second issue or re-issue of the debenture. That document was never given up to the company, for that would only have been on repayment of the amount, or in exchange for a new debenture, and so it could not be issued a second time. The debenture in its terms bore that the money should be repaid at Whitsunday 1888, or at such date as might "be mutually

agreed on by minute to be endorsed hereon," but this stipulation seems to be of no account in the present question. An agreement to extend the period of payment would be of equal effect though the debenture had no such clause, and would be equally effectual though written not on the debenture but on a separate paper.

It is not easy to understand why a coupon or warrant for interest which is by statute held to be a bill of exchange, and which in practice serves also as a receipt or discharge for money, should in any circumstances be free from stamp duty, while a receipt for interest on a heritable security must bear a stamp. But the exemption given is not universal but limited. The coupon must be attached to and issued with any security. The only explanation of this limitation which occurs to one is, that the privilege or exemption is only to be given where the coupons are issued with the original debenture which has paid debenture duty, and not to be given where, as here, no such duty has been paid, but the transaction stands on the debenture as originally issued, modified only in its terms by an agreement bearing an agreement stamp only.

On these grounds I am of opinion that the determination of the Commissioners should be affirmed

LORD ADAM—I am of the same opinion. The document in question, which was read by Lord Shand, is an ordinary coupon, and there is no doubt that a coupon is just a bill of exchange, and that under the Stamp Act of 1870 it is liable to the duty of 1d. unless it can be shown that it belongs to one of the class of documents dealt with in the clause of exemptions appended to that statute. This then becomes the question which we have to deal with—Does this coupon fall under the clause of exemption? And the answer must depend upon the language of the clause—[*His Lordship here read the clause quoted above*]. Can it be said that this coupon was attached to and issued with any security? Now, the only two documents which have any bearing upon this question are the debenture and the minute of renewal. The only security for the £2000 is the debenture, and it is the existing security. It is the only "principal or primary security" for this money—[*His Lordship here read the terms of the minute of renewal quoted above*]. Now, this minute of renewal contains no obligation to repay, but only an extension of the time within which the £2000 is to be repaid. That brings us then to the further question—Was this coupon "attached to and issued with" the security? It certainly was attached to the security by a process of pasting, but it was not issued with it. For that purpose the debenture would require to have been given up to the company, and a new one would require to have been issued. It is clear therefore that this coupon was not "issued with" the security, and it is equally clear that under the Act of 1870, not being under the clause of exemptions, it must pay the stamp duty of 1d.

LORD MURE—Under the statute of 1870 the only occasion in which coupons are to escape the duty of 1d. payable on bills of exchange is when under the clause of exemptions they are "attached to and issued with any security." It cannot be said in the present case that they were "issued with" this debenture, because they were not in existence at the time this security was granted. They really were issued under an agreement to prolong the loan. If it had been the intention of the Legislature that coupons of the class now before us should escape the duty of 1d. payable by bills of exchange the words of the clause of exemption would have been, "coupon attached to and issued or re-issued with any security." In the absence of any such words I agree with your Lordships in thinking that this coupon does not fall under the clause of exemptions.

The LORD PRESIDENT, who was absent at the hearing, delivered no opinion.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants—D.-F. Mackintosh, Q.C.—Lorimer. Agents—Menzies, Coventry, & Black, W.S.

Counsel for the Commissioners—The Lord Advocate, Q.C.—A. J. Young. Agent—The Solicitor of Inland Revenue.

Friday, November 9.

FIRST DIVISION.

[Exchequer Cause.

THE TEXAS LAND AND CATTLE COMPANY (LIMITED) *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Customs and Inland Revenue Act 1888 (51 *Vict. c.* 8)—*Stamp Act* 1870 (33 *and* 34 *Vict. c.* 97)—*Transfer of Debenture—Marketable Security.*

By the Stamp Act 1870 a marketable security is defined to mean "a security of such a description as to be capable of being sold in any stock market in the United Kingdom." The Customs and Inland Revenue Act 1888 provides, by sec. 13, that there shall be charged upon the transfer of any debenture (being a marketable security), where the transfer is on sale "the same *ad valorem* duties as are now charged under the Stamp Act 1870 upon a conveyance or transfer on sale of any property by relation to the amount or value of the consideration for the sale." Under the Stamp Act of 1870 the *ad valorem* duty for a transfer on sale is 10s. per £100. *Held* that the transfer of a debenture-bond of a land company incorporated under the Companies Acts was a marketable security within the meaning of the Stamp Act of 1870, and that the duty chargeable on the transfer of such a security was 10s. per £100.

In May 1887 the Texas Land and Cattle Company (Limited), under the powers of their articles of association, borrowed from the Rev. John Gillies, Arbroath, the sum of £200, which they bound themselves, in the debenture granted therefor, to repay in May 1890.

In May 1888 a transfer of the said debenture