is removed. In that summons the word "last" is used in the same sense in which it is used in the statute itself. The words "the death of C, who was the vassal last vest and seised," do not in my opinion mean who was such vassal when he died, but mean who was the vassal last entered, in contrast to the vassal who, previous to C's death, had entry effected for him by statutory implication, and is thus the entered proprietor of the lands. The words in the enacting clauses cannot be read in any other sense, and the words in the schedule can be read in the same sense, and if they can be so read, then they must be so read—it not being allowable to assume repugnancy—and if so read, all the difficulties suggested disappear.

I have only further to add that I do not think the result is affected by the fact that William has succeeded to James. It is said that as James was entered by implication, and William succeeds James as his heir, that therefore William is liable as for relief only. But this contention is directly in the teeth of the statutory proviso that "such implied entry shall not prejudice or affect the right or title of any superior to any casualties, &c., which may be due or exigible in respect of the lands at or prior to the date of such entry." Now, William's entry is an implied entry, and at the time at which it took place a casualty was due and exigible for the enfranchisement of James' entry. William therefore cannot plead his implied entry to debar the superior from making good out of the lands by action of declarator and payment the casualty which at the time of that entry was due and exigible, while William is further debarred from pleading either his own entry or that of James in answer to the action by the express words of the statute that "no implied entry shall be pleadable in defence against such action." William has no entry upon which he can found except either his own or James' entry. But both of these entries being statutory entries by implication only, I hold that under the express words of the statute they cannot be looked at. As regards the determination of any question of class of casualty or exaction of casualty, William's position must be considered as if he had to make up his title by the ordinary method necessary before 1874. This, as he cannot found upon implied entry, he could not now do as heir of John, consolidating by resignation *ad remanentiam* in his own favour. It is only as heir of James that he could proceed. And what would have been his procedure? It would have been to take up and execute the procuratory in the disposition by John to James, thus placing himself in the position to obtain a charter of resignation from the superior. But what would have been the payments he would have had to make in that case? Plainly a composition would have been exigible, and he could not have successfully maintained that he was liable as for relief only.

Although it is not permissible in forming an opinion as to the interpretation of statutory enactment to take into consideration what the effect of a particular interpretation may be, it is satisfactory to know that the judgment which the majority of the consulted Judges recommend will be consistent with the general idea which seems to run through the different clauses. The enactments of the statute are evidently not intended to cut down the superior's pecuniary interests, but are to save these. It is quite certain that if the views of the minority were to prevail, the superior would in many cases be deprived of all chance of obtaining a casualty of composition, and indefinitely. This would be a curious result, in the case of property held by individuals, of an Act which expressly provides in the case of corporations or trusts which have no succession, that a composition is to be paid to the superior at regular intervals. I think that the judgment we must give will bring about a more consistent result in the application of the statute than that of the Lord Ordinary.

On these grounds, and in respect of the opinions of the majority of the consulted Judges, I must move your Lordships to recal the interlocutor, and to decern in terms of the conclusions of the summons.

Lord Young—I am of opinion that the interlocutor of the Lord Ordinary is right and ought to be affirmed.

Lord Rutherfurd Clark—I agree with the Lord President.

Lord Lee—I agree with the Lord Ordinary and his views as stated in his note. I also agree with Lord Adam as to the specialty in the case.

The Court pronounced this interlocutor:—

"The Lords having resumed consideration of the cause with the opinions of the consulted Judges, in conformity with the opinions of the majority of the Judges of the whole Court, Recal the Lord Ordinary's interlocutor of 20th December 1887: Find that the casualty due by the defender to the pursuer is a composition of one year's rent of the lands described in the summons: Find the pursuer entitled to expenses; allow an account thereof to be lodged; and remit the same to the Auditor to tax and to report: Remit the cause to the Lord Ordinary, with power to him to decern for the taxed amount of said expenses, and to proceed further in the cause as may seem just."

Counsel for the Appellant—D.-F. Balfour, Q.C. —Graham Murray—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for the Respondent — Sol. Gen. Robertson, Q.C.— Guthrie. Agents—Campbell & Smith, S.S.C.

Friday, July 12.

FIRST DIVISION.

[Exchequer Cause.

LORD ADVOCATE *v.* LAIDLAY'S TRUSTEES.

Revenue—Indian or British Company—Contract of Copartnery—Death of Partner—Transfer of Shares—Inventory Duty.

The firm of R. W. & Co. carried on an extensive business in indigo, silk, and other produce, which after being grown or manufactured in India was either sold there, and the proceeds remitted to this country, or was

consigned to the London agents of the firm for realisation in Europe. The property of the concern was vested in three trustees, all of whom resided in the United Kingdom. The articles of copartnery also provided that upon the death of a partner his representatives should not become partners in his stead, but that they might, if they chose, within a specified time, sell his share to a person or persons approved of by a committee appointed to decide all matters affecting the interest of the partnership, and if a sale or transfer were not completed within that time, the value of the share was to be ascertained by the London agents of the company, and the price paid by the trustees to the representatives of the deceased partner upon their executing a transfer to the trustees of such share.

A partner of the firm, domiciled in Scotland, died, and his executors transferred his shares to three of his sons, to each one share, at the price of £9000 per share.

Held (*diss.* Lord Shand) that the £27,000 was liable to inventory duty, as it was a debt recovered by the executors in this country, and both creditor and debtor were resident there.

Opinion per Lord Shand that the articles of copartnery, and the manner in which the business of the firm was carried on, showed that this was an Indian Company, and that the £27,000, being a payment in respect of a share thereof, was Indian estate, and was not liable to inventory duty in this country.

This was an action by the Board of Inland Revenue against the trustees and executors of the deceased John Watson Laidlay, concluding for payment of a sum of £756 of additional inventory stamp duty, so as to make up, along with the sums previously paid, the full amount of stamp duty which would have been payable if the recorded inventory had contained a full inventory of the moveable estate of the deceased in the United Kingdom. The action was raised in the following circumstances.

The deceased John Watson Laidlay of Seacliff in the county of Haddington died on 8th March 1885. His trustees and executors gave up an inventory of his personal estate in the United Kingdom, and the appropriate stamp duty was paid by them thereon. At the end of the inventory, under the head "abroad," there was stated a sum of £25,221, 4s. 3d., said to be "the deceased's share in the real and personal estate as a partner in the firm of Robert Watson & Company, Calcutta, as valued by the agents of the company." The value of the deceased's share or interest in the nett balance of the partnership assets was not included in the inventory as estate in the United Kingdom for payment of inventory duty, and inventory duty was not paid upon it. The deceased held three one thirty-second shares in the said firm, and under an agreement taking effect as from 8th September 1885 these shares were transferred by his trustees and executors, one to each of his sons Andrew Laidlay, Robert Watson Laidlay, and Alfred Hope Laidlay, the agreed-on price paid for each share being £9000.

The firm of Robert Watson & Company, which began business in September 1877, was formed under articles of partnership dated in August 1877, which were a renewal of older contracts of copartnery dated in 1855 and 1867. There were nine partners at the date of the action, seven of whom resided in the United Kingdom, and held 30 shares, and two resided in Calcutta, and held two shares, the shares in all being 32. By the preamble of the said contract of 1877 it was declared that the whole real and personal property and effects of the firm should be vested in three parties named (all of whom were resident in the United Kingdom) as trustees for the partnership. The articles also contained the following important provisions:—"2. The business shall be the carrying on and working of indigo and silk concerns and zemindaries for the production or manufacture or working of indigo and silk and other produce, and for the sale in Calcutta or shipment for realisation in Europe of such produce." "7. The style or firm of the partnership shall be 'Robert Watson & Company.'" "8. The said style or firm of 'Robert Watson & Company' may be used by Messrs Jardine, Skinner, & Company or other the managing agents for the time being appointed in their stead, and under the special or general authority in writing of such managing agents, but not otherwise by the Mofussil manager in all dealings and transactions, and in all actions and suits by and against the company, and in all other matters and proceedings which can be conducted in the name of the said firm, but the partners or any of them as such shall not be at liberty to use the said style or firm for any purpose or on any pretext whatsoever. In case of any action, suit, or other proceeding by or against the said partnership, the names of the trustees thereof for the time being may be used."

By article 9 it was provided that five partners named "shall constitute a committee to advise with the agents both in London and Calcutta, and to decide, subject to the approval of a general meeting of the partners, in all matters affecting the interest of the partnership, and also to decide as to calling when necessary a meeting of the partners. . . . 10. Messrs Jardine, Skinner, & Company are hereby constituted the managing agents of the partnership in India, and the entire business of the partnership there shall be carried on by them as such managing agents subject to the provisions herein contained, but only so long as the said firm of Jardine, Skinner, & Company or some or one of the partners therein shall in their or his own right hold or be entitled to at least two thirty-second shares in the property of the partnership hereby constituted. . . . 11. Messrs Jardine, Skinner, & Company, as such managing agents, shall have all powers necessary for the efficient carrying on of the business thereof, and are hereby expressly empowered (but subject to the opinion of the committee whenever it shall have been expressed) to decide whether all the said branches of business shall be carried on, or which of them, and to what extent. Provided always, that no branch of business not heretofore undertaken by the partnership shall be taken up without the consent previously obtained of the committee. The said managing agents shall also determine the amount of the outlay to be expended in the business and concerns of the partnership in each year, and the mode and terms of disposal of the produce thereof, and have power to appoint and remove

all persons in the employment of the partnership in India, and to give to such persons all such powers, including a power of substitution, as the said Messrs Jardine, Skinner, & Company may from time to time think proper. And further, the said Messrs Jardine, Skinner, & Company are hereby authorised to enter into all contracts necessary for the carrying on of the business of the company, to institute and defend all suits in which the partnership may be concerned, and also to compromise any such action or suits, and to compound any debts due to the partnership or other claims or demands, and to refer any claim or demand of or against the partnership to arbitration, and generally to manage the said estate and conduct all the affairs in India of the said partnership, and to do and execute all such acts, matters, and things, as they shall deem necessary for the purposes aforesaid. 12. All moneys which shall be borrowed from Messrs Matheson & Company for the purpose of the partnership, and for carrying on the said concerns, shall be drawn for by Messrs Jardine, Skinner, & Company only, and in their own names, and not in the name of the partnership or of the firm thereof, and all the money which shall be required to be remitted to the various concerns of the partnership shall be supplied by Messrs Jardine, Skinner, & Company, and all the produce of the concerns of the partnership shall be received and disposed of by them. . . . 14. All necessary books of account of the partnership, showing the receipts and payments and assets and liabilities of the partnership shall be kept by Messrs Jardine, Skinner, & Company as the managing agents at their usual place of business in Calcutta, and shall be at all times open for the inspection of the partners. . . . 15. As soon as practicable after the 30th day of September in each year, and the realisation of the produce of the season, the managing agents in Calcutta shall prepare a general account or balance-sheet showing the result of the operations of the partnership during the year ending on that day, and the nett profit or gross loss after paying or providing for all the outlay expenses and engagements of the year of every kind, shall be appropriated as follows, the profits to the extent of 8 per cent. on the capital shall be carried to the account of the respective partners in the books of the partnership in proportion to their respective shares, the excess of the profits beyond 8 per cent. shall be set apart and paid to the London agents to form and afterwards maintain a reserve fund. . . . 18. As a remuneration for the trouble as managing agents of the partnership business, Messrs Jardine, Skinner, & Company shall be entitled to receive a commission of 2½ per cent. on the proceeds of sale of the indigo and silk and other produce to be produced in the concerns of the partnership in each year, whether the same shall be sold in Calcutta, or shipped for realisation in Europe. . . . 19. The said Messrs Matheson & Company are hereby declared to be the agents of the partnership in Europe, the entire business of which therein shall be transacted through them, and all the produce of the partnership shall be consigned to them, or if sold in India, the proceeds shall forthwith be remitted to them. The said Messrs Matheson & Company shall supply the necessary funds for the current advances of each season, whether for working the estates, the production of indigo, silk, or other produce, and the same shall be on the security of the mortgages and covenants contained in the indentures of mortgage and confirmation hereinbefore referred to. Any further expenditure of moneys whether for the purchase of new concerns, or for land tenures, or for advances made to secure leases of property, or for any extraordinary expenditure under the heads of law proceedings, land surveying, machinery, or otherwise, shall be provided in such manner as the managing agents shall from time to time determine. . . . 20. The said Messrs Matheson & Company shall be entitled to interest on the general cash balance which may be due to them, at the rate of £5 per cent. per annum, so long as such balance shall not exceed £150,000, and at the minimum rate charged by the Bank of England for the time being for discounts (when above 5 per cent.) on any sum which may exceed that amount; they shall also be entitled to a commission of 2½ per cent. on the sales of the produce of the season, whether such sales are made in India or in Europe. 21. No partner or partners shall contract any debt or draw, accept, or indorse any bill or note, or transact any business in the name of the partnership, nor shall any of the partners, not being a majority of the partners, in any manner interfere with the conduct of the business of the partnership by Messrs Jardine, Skinner, & Company or Messrs Matheson & Company respectively, but all powers for controlling, regulating, ordering, and managing the affairs of the partnership, which consistently with the provisions of these presents may be exercised by all the partners for the time being, may be exercised by a majority of the partners."

By article 25 it was provided that the death of any partner should not cause a dissolution of the partnership as between the other partners; that the representatives of a deceased partner should not become partners in respect of the share of such partner; that the interest of a deceased partner should cease at the 30th September next after his decease; that if the representatives of the deceased partner desired to sell his share and interest to any partner, or to any other person approved of by the committee, they might do so, but that if they did not desire to do so, or did not find a purchaser within six months after the partner's death, the fair value of the share was to be ascertained by Messrs Matheson & Company, and paid by the trustees of the partnership to the representatives of the deceased on their executing a transfer of such share to the trustees.

The following important admissions were made by the parties:—"(1) . . . Of the parties who signed the articles of 1877, two were resident in India and executed them there. (2) The meetings of the committee named and appointed by No. 9 of the articles of 1877 took place in London in the office of Matheson & Company, the London agents of the partnership, and were summoned by Matheson & Company acting in concert with the chairman of the committee who was resident in England. The committee as a rule met prior to the annual meeting of the partners to consider the business to be laid before the meeting, and at other times when any business required it, of which they were informed by Matheson & Company, to

whom the regular advices as to the state of the business were addressed by the managing agents in India. A minute-book of meetings and correspondence was kept for the committee of which Matheson & Company were the custodiers. The committee discharged the duties devolving upon them under the said articles, and were in correspondence with the managing agents in India as shown by the minute-book. (3) The financial year of the partnership closed, in terms of article 15, on 30th September in each year; and as soon as possible thereafter Jardine, Skinner, & Company, on the footing that there was sufficient profit, passed a dividend at the rate of 8 per cent. to the credit of each partner's account in the books of the partnership. Messrs Matheson & Company were advised thereof, and requested to make, and did make, payment of the dividend to the partners respectively. This payment was generally made in or about the month of December. As soon as the result of the year's operations was ascertained, and after receiving the particulars of the London account from Matheson & Company, Jardine, Skinner, & Company made up detailed accounts of such operations, and if there was any profit above the 8 per cent., and the contribution to the reserve fund provided for under the articles of copartnery, they passed the same to the partners' account in proportion to their respective interests in the concern. Those accounts, along with a statement of each partner's own private account, including his share of profits, were sent to Matheson & Company, who transmitted abstracts of the accounts and printed statements and reports relative thereto to the partners along with the statement of their private account. These accounts were generally circulated by Messrs Matheson & Company about June or July in each year; and within a few days after they remitted to each partner his share of the final dividend, or passed same to the credit of his private account with them if he had such. The partners resident in Great Britain were generally in the habit of holding an annual meeting in the course of each summer. These and other meetings were held at Messrs Matheson & Company's office. At these annual meetings the partners discussed the accounts and the general prospects of the company. Decisions were given by the general body of the partners at their annual meeting upon points connected with the business submitted to them for that purpose by the managing agents in India through the committee. (10) The produce of the partnership estates was either realised by Jardine, Skinner, & Company, and the proceeds remitted to the London agents, or it was consigned to the London agents for realisation in Europe, all in terms of article 19. In the latter case Matheson & Company transmitted to Jardine, Skinner, & Company statements showing the realisation for entry in the business books of the partnership in India, which statements were entered accordingly. In carrying out the said article 19 Matheson & Company were during the whole period of the partnership under advance to Robert Watson & Company, as the outlay was chiefly at the beginning of each season, and from the nature of the business no season's accounts could be closed until from six to nine months after the next season had begun."

The pursuer also alleged that the deceased's interest or share in the assets of this partnership was estate situated in this country, and that an inventory to include such share as estate in this country fell to be exhibited duly stamped with inventory duty.

The pursuer pleaded, *inter alia*—"(1) In respect that the said partnership was truly an English company, the interest or share of a deceased partner in the partnership assets is liable to inventory duty."

The defenders pleaded, *inter alia*—"(2) The business of Robert Watson & Company being chiefly carried on in India, where their principal office is, the share and interest of John Watson Laidlay therein at his death was locally situated in India within the meaning of the said statutes, and is not liable to inventory duty."

On 15th March 1889 the Lord Ordinary (FRASER) ordained the defenders to exhibit upon oath and to record in the proper Sheriff Court in Scotland a full and true inventory or additional inventory of all the personal or moveable estate and effects of the deceased John Watson Laidlay not contained in any inventory hitherto exhibited.

"*Opinion.*—The claim is for inventory or probate duty, and the answer to that quesion depends upon whether or not the property of the deceased is held to be situated in India or in the United Kingdom. This property consisted of a share in the real and personal estate as a partner in the firm of Robert Watson & Company of Calcutta, which was sold after the death of Mr Laidlay to his sons at the price of £27,000.

"The firm of Robert Watson & Company consisted at the time of the death of Mr Laidlay of several partners, and its business was 'the carrying on and working of indigo and silk concerns and zemindaries for the production or manufacture or working of indigo and silk and other produce, and for the sale in Calcutta or shipment for realisation in Europe of such produce.' The whole work done under the partnership in the production of the articles dealt in was done in India. Managing agents, in the persons of Jardine, Skinner, & Company, were appointed to superintend the works in India with very extensive powers, and it was declared that all the produce of the concerns of the partnership should be received and disposed of by them. All the necessary books of account of the partnership were to be kept by them, but they were subject to the control of a committee of five members, who had also very extensive powers. They were to advise with the agents both in London and in Calcutta, and to decide, subject to the approval of a general meeting of the partners, on all matters affecting the interest of the partnership. The minute-book which has been produced indicates how close was the supervision which they exercised. Besides the agents in Calcutta, the partnership had also London agents, viz., Matheson & Company, to whom all the produce of the partnership sent to Europe for sale was to be consigned, and if such produce were sold in India, the proceeds were to be forthwith remitted to Matheson & Company by Jardine, Skinner, & Company.

"Now, the deceased Mr Laidlay had three shares in this partnership, and the question comes to be, whether these shares shall be

held as an asset in his possession in Scotland, where he was domiciled and where he died, or whether they shall be held as an asset situated in India, in which latter case no inventory duty as under the statutes mentioned on record could be claimed. The contract of copartnery provides for the case of the death of a partner. In such a case it is declared that his interest in the partnership shall cease as at the 30th day of September after his decease—that is, his representatives shall be entitled to claim profits made between the date of the death and the 30th of September, but not after the latter date, though they are entitled to the value of the deceased's interest in the partnership. Such value may be realised in various ways, as provided by the 25th article of the contract of copartnery. If the representatives of the deceased shall desire to sell the share to any of the partners or to any other person, such other person to be approved by the committee, the same may be sold for such price as may be agreed upon. But if they do not desire to sell, or cannot find a purchaser approved by the committee, then the fair value of the share is to be paid to them by the trustees for the partnership.

"The first of these modes of dealing with Mr Laidlay's shares was adopted. By an agreement between Mr Laidlay's executors and three of his sons, executed partly in England and partly in Scotland, the executors agreed to sell to these sons Mr Laidlay's three shares at the price of £9000 for each share, and the purchasers being approved of by the shareholders, they became partners in room of their deceased father.

"Now, the Lord Ordinary is of opinion that the executors were not entitled to deal with Mr Laidlay's shares in the partnership without giving up an inventory and obtaining confirmation thereto. If the shares had not been sold to the sons, and if the mode of realisation was payment by the trustees to Mr Laidlay's representatives, this would simply be payment by a debtor to his creditor of a simple contract debt, and the mode in which such a debt is regarded is illustrated by the case of *Fernandez' Executors*, February 8, 1870, L.R., 5 Chan. App. 314, the rubric of which is as follows:—'A chartered bank whose head office was in England, but whose business was chiefly carried on in India, was ordered to be wound up, and the Indian assets were remitted to this country. A creditor domiciled in India proved his debt, received a dividend, and died, leaving a will which was proved in India. After his death a final dividend became payable—*held* (*reversing* the decision of the Master of the Rolls) that the dividend ought not to be at once remitted to the executors in India, but could only be paid to them on their producing a properly stamped English probate.' Lord Giffard, in delivering judgment, said—'Probate duty, as we all know, attaches on *bona notabilia* in the place where the goods happen to be situate, wholly irrespective of the question of the domicile of the testator. The moneys now in question are *bona notabilia* in London, and I have no hesitation in saying that this Court cannot authorise the payment of them to a person who, if he were to receive them and administer them, would be going directly in the teeth of the Act of Parliament, and doing a thing for which, if the Crown chose to proceed against him, he would be liable in a penalty. Upon these grounds I am obliged to say that there can be payment only upon production of an English probate.' And Mr Hansen, in his Treatise on the Probate Legacy and Succession Duties Acts, p. 161, further expresses himself as follows:—'The duty is payable in respect of the whole amount which the representatives of a deceased partner in an English firm are entitled to recover and receive from the surviving partner in this country, on account of the share of the deceased, notwithstanding that the partnership assets or any part of them are situate abroad, for the legal interest in the partnership property vests in the surviving partner, who is liable to account for and pay to the representatives of the deceased partner the amount which may ultimately appear due to him after the assets have been realised and the partnership debts discharged, and this liability is in the nature of a personal debt, and situate therefor like other debts within the jurisdiction of that country where the debtor resides.' No doubt, in the present case the profits were earned with the manufacture in India of the articles dealt in, but these profits were obtained not entirely by the exertions and the skill of the Indian managers. They were the servants and bound to obey the instructions of the London committee. Then, further, these profits were all remitted to London, and they were distributed there. Sir James Hannen, in the case of *Ewing*, January 25, 1881, 6 P.D. 23, says—'The share of a deceased partner in a partnership asset is situate where the business is carried on, and shares in a company are locally situate where the head office is.' But the question is more complex when the business is carried on at two places—one at the place of manufacture of the article dealt in, and the other the place of the governing and directing body. One does not get much aid from the latter part of this opinion, for the question always returns, which is the head office, and as regards the present case the Lord Ordinary must hold it to be London."

The defenders reclaimed, and argued—The asset upon which inventory duty was claimed was truly an asset situated in India in the sense of the revenue statutes. The *persona* of the company was in India, no matter where the individual partners might for the time being happen to be, and the seat of the business was there also. While the *locus* of the registered office of a company might be of importance in determining the residence of the company, it was not conclusive of the matter—*Cesena Sulphur Company* v. *Calcutta Mills Company*, L.R., 1 Exch. Div. 428; *Werle* v. *Colquohoun*, L.R., 20 Q.B.D. 753; *Colquohoun* v. *Brooks*, L.R., 21 Q.B.D. 52. Nor did the residence of the individual partners necessarily determine whether the concern was, for Revenue purposes, to be viewed as an English or an Indian copartnery. The articles of association and the actings of the parties alone determined the question, and showed that in the view of those most interested it was considered to be an Indian copartnery. The *locus* of the corporeal assets was also an element of importance; here it consisted of real and personal property in India, where in fact the whole assets of the company were situated, as any money belonging to the company in this country was borrowed from its financial agents. As the business was an

Indian one, a share thereof must necessarily be an Indian asset, and not liable to inventory duty.

Authorities—Cases cited by the Lord Ordinary and *Attorney-General* v. *Bouwens*, 4 Mac. & Wels. 171; *Loyd* v. *Solicitor of Inland Revenue*, 12 March, 1884, 11 R. 687; statutes regulating the exhibition of inventories—48 Geo. III. c. 149; 55 Geo. III. c. 184, Sched. pt. 5; 16 and 17 Vict. c. 59; 21 and 22 Vict. c. 56; 23 and 24 Vict. c. 80; 39 and 40 Vict. c. 70; 44 Vict. c. 12 sec. 27.

Argued for the respondents—Liability for probate duty depended upon the locality of the property at the time of the decease. In the present case the articles of copartnery established the rights of the representatives of a deceasing partner, and made it clear that what his executry estate possessed thereunder was a right of claim against the trustees of the company for a sum of money, which sum was a debt due to the executors by their debtors in this country. It was this sum of money which was recoverable, and was recovered in this country by persons resident and domiciled here, which the respondents claimed should be entered in the inventory of the deceased's estate. The actings of the parties as interpreting the articles of association showed that the respondents' contention was right. Probate duty was exigible wherever property was recovered by the judicial authority of probate. The executors of the deceased Mr Laidlay had a claim for a share of this estate measured by the value of the deceased's interest in the copartnery, and it was upon the value of this share that the Crown claimed inventory duty, which was fairly due.

Authorities—Cases cited by the Lord Ordinary, and *Attorney-General* v. *Hubback*, L.R., 13 Q.B. Div. 275; Lindley on Partnership (last ed.), p. 339.

At advising—

Lord President—The late John Watson Laidlay of Seacliff, in the county of Haddington, died on the 8th of March 1885. The defenders are his trustees and executors, and they gave up an inventory of his personal estate, upon which they obtained confirmation in April 1885. That inventory showed a nett personal estate in the United Kingdom amounting to £294,345, and upon that amount stamp duty was paid. But at the end of the inventory, under the head "abroad," there was a sum stated of £25,221, which is said to be "the deceased's share in the real and personal estate as a partner in the firm of Robert Watson & Company, Calcutta, as valued by the agents of the company;" and it is alleged and admitted that "the value of the deceased's share or interest in the nett balance of the partnership assets was not included in the inventory as estate in the United Kingdom for payment of inventory duty, and inventory duty has not been paid upon it."

This company of Robert Watson & Company was a common law partnership. It was not in any respect a statutory or corporate body, and therefore the rights and interests of the partners depend of course entirely upon the provisions of the contract.

The contract was executed in August 1877, and the nature of the business is determined by the second article—"The business shall be the carrying on and working of indigo and silk concerns and zemindaries for the production or manufacture or working of indigo and silk and other produce, and for the sale in Calcutta or shipment for realisation in Europe of such produce." There were nine partners in the concern; seven of these were resident in the United Kingdom, and held 30 shares in the concern, and two were resident in Calcutta and held one share each, the shares amounting in all to 32. The shares were declared by the contract to be personal estate. For carrying on the business there were several provisions made. In the first place, there were three trustees in whom the property of the concern was vested, and these were all resident in the United Kingdom. There was also a committee of five, all resident in the United Kingdom, and their duties are specified in the 9th head of the contract. They "shall constitute a committee to advise with the agents both in London and in Calcutta, and to decide, subject to the approval of a general meeting of the partners, on all matters affecting the interest of the partnership, and also to decide as to calling when necessary a meeting of the partners."

The financial agents were Messrs Matheson & Company, of London, and their duties are described in the 19th head of the contract —"Messrs Matheson & Company are hereby declared to be the agents of the partnership in Europe, the entire business of which therein shall be transacted through them, and all the produce of the partnership shall be consigned to them, or if sold in India, the proceeds shall forthwith be remitted to them. The said Messrs Matheson & Company shall supply the necessary funds for the current advances of each season, whether for working the estates, the production of indigo, silk, or other produce, and the same shall be on the security of the mortgages and covenants contained in the indentures of mortgage and confirmation hereinbefore referred to. Any further expenditure of moneys, whether for the purchase of new concerns or for land tenures, or for advances made to secure leases of property, or for any extraordinary expenditure under the heads of law proceedings, land surveying, machinery, or otherwise, shall be provided in such manner as the managing agents shall from time to time determine, either by a rateable contribution from the partners, which they hereby agree to make, or by charge on the profits, or by advances from the said Messrs Matheson & Company." The managing agents were of course resident in Calcutta, because there the business of the company was to be carried on in so far as concerned the production of the produce which was to be either disposed of in India or sent home; and these gentlemen were to have a commission of 2½ per cent. upon the sales. Their powers and duties of course in carrying on the business as managing agents were very large, and just such as we might expect from the nature of the business which I have already stated as appearing from the second head of the contract.

The business was carried on very much in the way that might be expected, and quite in conformity, I think, with the provisions of the contract. There is a minute of admissions regarding this matter, some parts of which

it may be necessary to read. The meetings of the committee named and appointed took place in London, "in the office of Matheson & Company, the London agents of the partnership, and were summoned by Matheson & Company, acting in concert with the chairman of the committee, who was resident in England. The committee as a rule met prior to the annual meeting of the partners to consider the business to be laid before the meeting, and at other times when any business required it, of which they were informed by Matheson & Company, to whom the regular advices as to the state of the business were addressed by the managing agents in India. A minute book of meetings and correspondence was kept for the committee, of which Matheson & Company were the custodiers. The minute book in use from and after 1st October 1877 is produced and admitted as correct. The committee discharged the duties devolving upon them under the said articles, and were in correspondence with the managing agents in India, as shown by the minute book." The financial year ended on the 30th September, and as soon as possible after that the managing agents at Calcutta, "on the footing that there was sufficient profit, passed a dividend at the rate of 8 per cent. to the credit of each partner's account in the books of the partnership. Messrs Matheson & Company were advised thereof, and requested to make, and did make, payment of the dividend to the partners respectively"—that is, in this country—"as soon as the result of the year's operations was ascertained, and after receiving the particulars of the London account from Matheson & Company, Jardine, Skinner, & Company"—that is, the managing agents—"made up detailed accounts of such operations, and if there was any profit above the 8 per cent. and the contribution to the reserve fund provided for under the articles of copartnery, they passed the same to the partners' accounts." Then, with reference to the annual meeting of the partners, these meetings "discussed the accounts and the general prospects of the company. Decisions were given by the general body of partners at their annual meeting upon points connected with the business submitted to them for that purpose by the managing agents in India through the committee." The proceeds of the partnership estates was either realised by Jardine, Skinner, & Company at Calcutta, and the proceeds remitted to the London agents, or it was consigned—that is, the produce was consigned to the London agents for realisation in Europe. "In the latter case, Matheson & Company transmitted to Jardine, Skinner, & Company statements showing the realisation for entry in the business books of the partnership in India, which statements were entered accordingly. In carrying out the said article 19, Matheson & Company were during the whole period of the partnership under advance to Robert Watson, & Company, as the outlay was chiefly at the beginning of each season, and from the nature of the business no season's accounts could be closed until from six to nine months after the next season had begun."

Now, I shall reserve what I have to say in the meantime as to what the nature of this company is, whether it was a company in the United Kingdom or a company in India, but it appears to me that the decision of this case depends not so much upon that consideration as upon the provisions made for the way in which the representatives of a deceased partner are to be dealt with, which is fixed by the 25th article of the contract. That provides not only for the mode of dealing with a deceased partner's interest, but also with the interest of a bankrupt or insolvent partner, and in the expression of that article these things are so mixed up throughout that the reading of it leads to a little confusion, but I shall take the liberty of stating what I conceive to be the import of this clause as applicable to the case of a deceased partner, only omitting all reference to the case of a bankrupt or insolvent partner. Now, with reference to the death of a partner, it is provided, in the first place, that the death of a partner shall not cause a dissolution of the company; in the second place, the representatives of a deceased partner are not to become partners of the company; in the third place, the interest of a deceased partner ceases at the termination of the current financial year—that is to say, on the 30th September after his death; fourth, the value of the deceased partner's share at 30th September is to be determined by Matheson & Company, and on the executors executing a transfer to the trustees of the deceased's share and interest in the concern the trustees shall pay the ascertained value to the executors in cash, either in whole or by half yearly instalments, in the option of the trustees, extending over a period of not more than three years, interest running at the rate of 5 per cent. on the unpaid instalments. The trustees undertake also to indemnify the executors and the executry estate of liabilities incurred by the deceased as a partner. Fifth, the executors may, if they prefer it, within six months after the 30th of September, sell the shares of the deceased to any other person to be approved by the committee, at such price as they can obtain therefor. This is the course which was adopted in the present case. The three shares held by the deceased in the firm under an agreement, taking effect on the 8th of September 1885, were transferred by the executors, one to each of his sons Andrew Laidlay, Robert Watson Laidlay, and Alfred Hope Laidlay, the agreed-on price paid for each share being £9000.

Now, though the executors did not become partners, and were not entitled to become partners, it will be observed that they have a right to transfer the shares to the other partners to the company, or if they prefer it, to sell them at such a price as they can obtain. This right of transferring the deceased's shares, or selling and transferring them does not in the slightest degree imply that the executors were vested with tth property of these shares. It is expressly provided that the executors are not to become partners, and therefore they could not sell the shares in their character of partners. It is a power of sale, and nothing else, just analogous to those powers of appointment with which we are quite familiar in many trust-deeds, and it is perhaps still more clearly analogous to a power which is given in the Companies Act of 1862 to executors without becoming partners of the company to sell the shares of the deceased, as provided for by the 24th section of the Act of 1862 and the 14th head of Table A. In

short, what the executors have a right to do under this 25th head of the contract is to sell that which originally belonged to the deceased, but which upon his death no longer belonged either to him or his representatives. In short, the right of the deceased partner came to an end at his death, saving of course his right to the balance upon the current financial year, but from his death the share in the partnership concern was no longer *in bonis defuncti*, and formed no part of the executry estate.

It seems to me to follow from this that what the executry estate possesses under the operation of this clause is a right of claim against the trustees of the company for a sum of money; in short, the trustees become indebted to the executors in a sum of money, or the executors by means of a sale realise a sum of money, and in either case that sum of money is a debt due to the executors by their debtors in this country. It seems to me therefore, as the result of the whole examination of this contract, the manner in which the business was carried on, and the nature of the business itself, that even if it cannot be pronounced with certainty that this is an English or a British company, or a company belonging to the United Kingdom, and carrying on business in the United Kingdom, it still is perfectly clear that what is to enter the inventory and what the Crown demands shall enter the inventory of the deceased's estate is a sum of money recoverable and recovered in this country by persons resident and domiciled here—I mean that both the creditor and the debtor in that money are resident in this country. That, I think, brings the money within the operation of the statutes regarding inventory duty as being executry estate in the United Kingdom, and therefore I am for adhering to the Lord Ordinary's interlocutor.

Lord Mure—I have nothing to add to the exposition which your Lordship has given of the position of this case as shown mainly in the articles of partnership and the minutes of admission of the parties in regard to the question raised. I therefore simply state that I concur with your Lordship in thinking that the question here raised depends entirely, or at all events mainly, upon the true construction of the 25th section of the articles of copartnership, and that, reading that carefully, I can come to no other conclusion than that the claim which is made by the executors of the deceased partner in this case is a claim for payment of a sum of money in England to be paid by the trustees for the company in this country, and upon that ground the sum so due to the estate of the late Mr Laidlay must enter the inventory as the Lord Ordinary has found.

Lord Shand—I think the question raised in this case is very well stated in two passages of the Lord Ordinary's opinion—"The claim is for inventory or probate duty, and the answer to that question depends upon whether or not the property of the deceased is held to be situated in India or in the United Kingdom. This property consisted of a share in the real and personal estate as a partner in the firm of Robert Watson & Company, of Calcutta, which was sold after the death of Mr Laidlay to his sons at the price of £27,000." And in a subsequent part of his opinion his Lordship says—"The deceased Mr Laidlay had three shares in this partnership, and the question comes to be, whether these shares shall be held as an asset in his possession in Scotland, where he was domiciled and where he died, or whether they shall be held as an asset situated in India, in which latter case no inventory duty as under the statutes mentioned on record could be claimed." I am of opinion—differing from the Lord Ordinary, and I understand from all of your Lordships—that the property was an asset of the deceased's estate situated in India, and which is therefore not liable for probate duty in this country.

The deceased, as explained in article 1 of the condescendence, seems to have been possessed of very considerable wealth.

The inventory of his personal estate in the United Kingdom is given up as £294,345, and has borne already a stamp duty of £8832. At the end of the inventory, under the head "abroad," there is stated a sum of £25,221, said to be "the deceased's share in the real and personal estate as a partner in the firm of Robert Watson & Company, Calcutta, as valued by the agents of the company." That sum was not given up for inventory duty, but I rather suppose that this note appended as to estate abroad is given in terms of some enactment in the statutes which requires a full disclosure of the personal estate to be made, in order that the Crown may consider whether they have or have not a claim for duty upon it.

Having regard to the terms of the contract of copartnery of this company, and the minute of admissions in regard to the actings under it, and to the statements and admissions generally on record, I have come to the conclusion without difficulty that this company was an Indian company, and not an English company in any proper or reasonable sense—that it was an Indian company having its capital, its property, and its whole assets in India, and carrying on its business in India, and from Calcutta as its centre, where alone it had its head office. The Lord Ordinary seems to have taken the view—although his note is not so distinct on the subject as might be desired—that the head office of this company was in London, and that London was the centre of its business. The earlier part of his opinion leaves it doubtful whether he did not regard the company as having its business centre in Calcutta, but in the concluding sentence, after referring to a passage in the opinion of Sir James Hannen in the case of *Ewing*, his Lordship says—"One does not get much aid from the latter part of this opinion, for the question always returns, which is the head office, and as regards the present case the Lord Ordinary must hold it to be London." If I had concurred with the Lord Ordinary in so thinking I should have been for affirming his Lordship's judgment. I do not understand that your Lordships agree with the Lord Ordinary in that view. The judgment which is to be pronounced proceeds, I think, not on the view, so far as I understand your Lordships' opinions, that this was an English company. If, however, it is an Indian and not an English company, then I think it follows that the funds in question are Indian assets, and as such are not subject to probate in this country.

Now, as I regard this question of fact whether these are Indian assets as really at the root of the proper decision of this case, I must, with your Lordships' leave, notice, perhaps with some degree of detail, the provisions of the contract of copartnery of this company which bear upon that subject, and which, I think, bear out the opinion I have expressed. In the first place, I find that in the narrative of the contract which was entered into in 1877 as a renewal of an older contract about to expire in that year, or rather a new contract framed upon the basis of the former contract, this is directly set forth in the preamble, "that whereas the capital of the said partnership consists of real and personal estate in India which by virtue of an indenture," &c., had been held by other parties named, it was thereby declared that this property should be vested in three persons thereby named and appointed "as trustees for the said partnership." On the face of the deed it is thus clearly expressed, and the whole of the deed otherwise shows that the capital of the company consisted of real and personal estate locally situated in India, and nothing else. Article 2 of the contract provides that the business is to be the "manufacture or working of indigo and silk and other produce," and the sale in Calcutta or shipment for realisation in Europe of indigo, silk, and other produce. That describes the business which the company were carrying on, and carrying on clearly, as I think, from its head office in Calcutta, for any sales which were made of produce from India sent home to Europe for the purpose of realisation were sales made by the Indian house through the London agency, the accounts for which had at once to be sent back to Calcutta to enter the books there, and to form part of the general balance of the company. So much for the capital and business of this company.

Then, as regards the management of the company, nothing is more clear than that this was a company that was being carried on and managed entirely at Calcutta as its centre. There is one peculiarity in the deed that I do not remember to have seen in the case of any common law copartnership before, though I daresay it may be common enough in these Indian companies—I mean the provision that none of the partners individually are entitled to interfere in the business. There is an express provision to that effect in section 21—"No partner or partners shall contract any debt, or draw, accept, or indorse any bill or note, or transact any business in the name of the partnership, nor shall any of the partners, not being a majority of the partners, in any manner interfere with the conduct of the business of the partnership by Messrs Jardine, Skinner, & Company, or Messrs Matheson & Company respectively." As the partners have no right to interfere in the business it is provided that there shall be certain managing agents or, I should rather say, managing partners of this company. They are appointed by this deed, viz., Jardine, Skinner, & Company, of Calcutta, one of the provisions of the deed being that this firm or its partners must hold two shares of the company. Therefore the company at Calcutta has its managing agents or, I should rather say, managing partners there. It further appears that all the powers which partners usually have in managing their own business are conferred upon Jardine, Skinner, & Company. They are acting in Calcutta in the management of the business just as partners would do if they were themselves conducting the business with one exception, and that is, that from time to time they may consult, if they desire it, a committee of three or four of the partners who are in London, but who appear to me to exercise no function except that of a consulting committee. The views I have now stated of the contract are, I think, borne out by the sections from 8 to 15 of the contract. Section 7 provides that "the style or firm of the partnership shall be Robert Watson & Company;" section 8 that "the said style or firm of Robert Watson & Company may be used by Messrs Jardine, Skinner, & Company, or other the managing agents for the time being appointed in their stead," and they alone are entitled to use the said style or firm or to authorise its use for any company purpose, and for instituting or carrying on any suits on behalf of the company. Article 10 provides that "Messrs Jardine, Skinner, & Company are hereby constituted the managing agents of the partnership in India, and the entire business of the partnership there shall be carried on by them as such managing agents, subject to the provisions herein contained." Section 11 is perhaps the most important on the subject, and it provides that "Messrs Jardine, Skinner, & Company, as such managing agents, shall have all powers necessary for the efficient carrying on of the business thereof, and are hereby expressly empowered (but subject to the opinion of the committee whenever it shall have been expressed) to decide whether all the said branches of business shall be carried on, or which of them, and to what extent. . . . The said managing agents shall also determine the amount of the outlay to be expended in the business and concerns of the partnership in each year, and the mode and terms of disposal of the produce thereof, and have power to appoint and remove all persons in the employment of the partnership in India, and to give to such persons all such powers, including a power of substitution as the said Messrs Jardine, Skinner, & Company may from time to time think proper. And further, the said Messrs Jardine, Skinner, & Company are hereby authorised to enter into all contracts necessary for the carrying on of the business of the company, to institute and defend all suits in which the partnership may be concerned, and also to compromise any such actions or suits, and to compound any debts due to the partnership, or other claims or demands, and to refer any claim or demand of or against the partnership to arbitration, and generally to manage the said estate and conduct all the affairs in India of the said partnership, and to do and execute all such acts, matters, and things as they shall deem necessary for the purposes aforesaid." It is further provided that moneys which have been borrowed from Matheson & Company, as to whose position I shall say a few words immediately, "for the purpose of the partnership and for carrying on the said concerns shall be drawn for by Messrs Jardine, Skinner, & Company only," "and all the money which shall be required to be remitted to the various concerns of the partnership shall be supplied by Messrs Jardine, Skinner, & Company, and all the produce of the concerns of the partnership shall be

received and disposed of by them." Then there is a provision that in regard to their counting-house business premises, they are to bear the expense of that themselves. Then comes this important provision in regard to the books of the company, and in passing I may say that it has always been regarded in these cases as the determining or leading element in the question where the head office is to be found, that you shall ascertain where the books of the company are kept, and where the balance-sheets are struck —(Section 14) "All necessary books of account of the partnership showing the receipts and payments and assets and liabilities of the partnership shall be kept by Messrs Jardine, Skinner, & Company, as the managing agents, at their usual place of business in Calcutta, and shall be at all times open for the inspection of the partners." Then follows a provision with reference to the balance-sheet, and even in the striking of the balance-sheet the partners do not interfere, nor have Matheson & Company in London anything whatever to do with that. The provision as to the balance-sheet is—(Section 15) "As soon as practicable after the 30th day of September in each year, and the realisation of the produce of the season, the managing agents in Calcutta shall prepare a general account or balance-sheet showing the result of the operations of the partnership during the year ending on that day, and the nett profit or gross loss, after paying or providing for all the outlay expenses and engagements of the year of every kind, shall be appropriated as follows—the profits to the extent of 8 per cent. on the capital shall be carried to the account of the respective partners in the books of the partnership in proportion to their respective shares, the excess of the profits beyond 8 per cent. shall be set apart and paid to the London agents to form and afterwards maintain a reserve fund." Then article 18 provides—"As a remuneration for their trouble as managing agents of the partnership business Messrs Jardine, Skinner, & Company shall be entitled to receive a commission of 2½ per cent. on the proceeds of sale of the indigo and silk and other produce to be produced in the concerns of the partnership in each year, whether the same shall be sold in Calcutta or shipped for realisation in Europe, they paying thereout all the Calcutta charges and expenses of managing the business of the partnership." Now, that settles, I think, the position of Jardine, Skinner, & Company. They are no doubt to act subject to the opinion of a certain committee that meets in London, but I think it appears that it was only to a very limited extent that there was any opinion or advice ever given to them by this committee. We have had before us the minute book for a number of years, and it seems to me that they have scarcely interfered in the business at all, and if they did interfere it was only when their advice was asked. They were gentlemen of experience in Indian matters, and could give the managers of the company—the partners who were carrying it on—the benefit of this experience by their advice. Such matters as the settlement of very important litigations that had arisen in regard to heritable property belonging to the company or the like are brought before them, and little if anything else, as appears from the minute book which has been printed, and so very unimportant does the business appear to have been that from 1881 to the present day there is not a minute of any business done recorded in the book.

Then what is the position of Matheson & Company and the office they have in London? I describe them, I think, properly when I say they are financial and commercial agents for the company in London. The company seems in its operations to require in the early part of each season a large advance of money, and Matheson & Company agree to make that advance, and as moneys come in in the course of the sales of produce, the managers of the company carrying on its business in India remit from time to time the sums which they are able to give towards the reduction of the balance in Matheson & Company's books against the company, towards which of course also is placed the proceeds of sales made in Europe. So far as I can see Matheson & Company had practically nothing else to do, at least nothing else of importance, with this company, except that when the committee or the partners if at anytime called together to talk over the business that was going on they found a room for the purpose in Matheson & Company's premises. That this was the position which Matheson & Company held is, I think, quite clear from sections 19 and 20 of the contract. The 19th section provides that "the said Messrs Matheson & Company are hereby declared to be the agents of the partnership in Europe, the entire business of which therein shall be transacted through them, and all the produce of the partnership shall be consigned to them, or if sold in India the proceeds shall forthwith be remitted to them. The said Messrs Matheson & Company shall supply the necessary funds for the current advances of each season, whether for working the estates, the production of indigo, silk, or other produce, and the same shall be on the security of the mortgages and covenants contained in the indentures of mortgage and confirmation hereinbefore referred to. Any further expenditure of moneys, whether for the purchase of new concerns, or for land tenures, or for advances made to secure leases of property, or for any extraordinary expenditure under the heads of law proceedings, land surveying, machinery, or otherwise, shall be provided in such manner as the managing agents shall from time to time determine." And in article 20 Matheson & Company are to be "entitled to interest on the general cash balance which may be due to them, at the rate of £5 per cent. per annum so long as such balance shall not exceed £150,000, and at the minimum rate charged by the Bank of England for the time being for discounts (when above 5 per cent.) on any sum which may exceed that amount; they shall also be entitled to a commission of 2½ per cent. on the sales of the produce of the season, whether such sales are made in India or in Europe."

Matheson & Company, as agents of the company in this country, are thus paid a sum of 2½ per cent. mainly because they are advancing in a great measure the funds which from time to time are required for carrying on the company. They are the agents in London merely of a company which is carrying on its business in Calcutta. They have no right or power to use the company name or form—a circumstance of itself, I think, sufficient to show that their office is not the head

office of the company, but the office of agents only. On the other hand, Messrs Jardine, Skinner, & Company are the managing partners at the head office of the business. It is only necessary that I should notice further that in addition to these officials there are several trustees named, being the persons to whom I have already alluded in referring to the preamble of the contract, but these trustees have no functions other than to hold the property. They hold the property in trust. It was necessary to give some persons a title to hold the property just as is done in the case of the large insurance companies we have in this city. Certain trustees are named in whom the property is vested in trust. Beyond the holding of that property I do not see that these trustees had any functions or duties whatever. They are not persons who intromit with the money in any way whatever in the conduct of the business.

Now, such being the terms of the contract, and the way in which the contract was worked, there appears to me to be no doubt that the company is not an English company, but that it is an Indian company carrying on its business in India, and which has its head office in Calcutta. The assets of the company are Indian assets, and the share which any person has in the copartnery is a share of an Indian business. Mr Laidlay when he died was a partner in this Indian business. Part of his personal estate therefore was locally situated in India, that estate being his share in this business. Whether his right is to be regarded as being a certain proportion or share of the company's capital and assets, or whether we regard the company (as it is in Scotland) as a separate *persona*, which it is not in India, and his right is to claim a share in the business, the assets of which belong to the company, the result is the same. The asset or right has as its subject, property in India. It is a share in a business carried on in India.

That being so, I confess myself unable to see that by his death all this was changed, and that what was an Indian asset immediately before his death instantly became an asset of his estate locally situated in Scotland in consequence of his death. I think it quite proper to put the test proposed in the argument. I think the proper test in a question of this kind is, was confirmation necessary to enable the executors to deal with that part of the testator's estate? and I answer that question in the negative. The estate, or (as I see in the English cases estate of this kind is called) the *bona notabilia*, being situated in India, probate there would necessarily be required in order to authorise realisation, and we see from the defender's statement on record that probate in India was taken out accordingly. What has happened is this, that Indian estate and no other has been realised. Now, I cannot see that the mode in which the property or right vested in Mr Laidlay was realised could in the persons of the executors realising it convert it from Indian estate into Scotch estate. What in point of fact occurred was this, that under section 25 of the contract of copartnership, which empowers the executors of partners who die to dispose of their shares in the company, the shares of Mr Laidlay were sold and disposed of by the executors to persons who assumed precisely the rights in the partnership assets or business which Mr Laidlay had. There were sons of Mr Laidlay who were anxious to get his share of the business apparently, and they agreed to take it and to pay for it, and accordingly the share or interest which Mr Laidlay had in this business was bought by these sons, and transferred to them. The subject of that sale, however, surely was Indian estate, or Mr Laidlay's right to shares of an Indian business which was Indian estate, *bona notabilia* situated in India. It was a sale. It has been suggested that there was no right in the assets of this company at the time of sale. It is true the executors were not entitled to become partners of the company, but they were entitled to sell or otherwise to receive from the company the value of Mr Laidlay's interest in the business. I ask what was sold? The interest of Mr Laidlay in this Indian firm was the subject of the sale. Accordingly, you have nothing here but the deceased's executors realising his interest in that Indian company, and therefore you have them realising an asset situated in India. Suppose this sale had happened to be to two gentlemen residing in Calcutta, instead of being to the sons of Mr Laidlay at home, would the value of the property or interest have required to enter a Scotch confirmation in order to make it a good sale—a sale by persons having a title? I answer, plainly not, and the liability for probate duty cannot depend upon the accident of whether the purchaser happens to be in this country or in India. The question is not from whose sons the purchase money came, but where is the subject of the purchase belonging to the executry estate, the interest in the Indian business, situated?

But, as your Lordship pointed out, there is a further provision in this contract which, however, was not brought into operation in this case, by which, if the shares had not been sold, the company themselves or the other partners would have retained the interest of Mr Laidlay as a shareholder in the company, and paid out the value of it. "The fair value of the share" is to be determined by Messrs Matheson, and paid over to the executors. In point of fact that was not done. What was done was simply the executors realising by a sale to partners who assumed the deceased's place in the copartnery. But suppose the company had themselves taken and paid for the shares, it does not appear to me that it would have made the slightest difference in the case. The company say, "We will not allow executors to come into our copartnery," but surely the interest in the copartnery of the gentleman who has gone out remains, and though that interest is converted into a sum of money, it is a sum of money which represents his interest in an Indian firm, whether you call it assets or a share of the assets of the firm, or his right to a share in the company. It is said that if the company had so taken over his share this would have created a contract debt, and I suppose that would be so, but that contract debt was not in respect of a share or interest in an English company but of an Indian company, and though the money might by arrangement or by contract be paid in this country for the convenience of all concerned, the right or property in respect of which the payment would be made was situated in India. I am unable to see that if a man sells either to a third party or to the company itself a share of an Indian business he is not thereby realising as part of his estate an asset which is situated

in India. Article 25 of the contract no doubt bears that "the trustees of the partnership shall pay, or cause to be paid or secured, as hereinafter mentioned, the sum so determined;" but the obvious meaning of that is merely that they are to authorise payment. The funds of the company are all in the hands and under the management of the managing partners in India, who may no doubt require Matheson & Company to make advances when required. And the contract in that article goes on to provide at the close of it "the funds to be paid by the said trustees of the partnership shall be provided by the partners rateably." What is that but the purchase by the remaining partners of this company of Mr Laidlay's share in the Indian business? And in that view of the case the question always comes back to this—What is the nature of the asset sold or taken over? Is it an asset situated in India or not? It is said these trustees are in this country, and it is a payment from one person in this country to another. Well, if the trustees lived in India would it make any difference? I apprehend not. Although it is a payment by one set of partners in this country to another, what is the payment in respect of? It is payment in respect of a share in an Indian business. Therefore it is an Indian estate, and therefore it is not liable to probate duty in this country.

I have only further to add that I think every-one of the authorities referred to by the Lord Ordinary, or that were referred to in the argument, support the view that I have now stated. I have looked over them. The case of *Fernandez' Executors* was one of a contract debt, and the decision proceeded entirely on the view to which I should now give effect. A gentleman in India was receiving dividends from England. He died, and his executors desired to get the unpaid dividends free from probate duty, but it was held, that though a number of the assets of the company were in India, the duty must be paid, because the company was an English company, and had its head office in England. That is precisely the principle which I apply to this case. Mr Hansen, in the passage which was referred to by Sir James Hannen in the case of *Ewing*, says at p. 160 of his book on Probate Duties—"Property which consists of shares in or claims upon any company or society must be taken to be locally situate in the place where the company has its head office, and to be *bona notabilia* accordingly." And the passage which Lord Fraser has quoted in his note is to the same effect. Finally, in the case of *Ewing* Sir James Hannen says, with reference to an asset of Mr Ewing which was said to be situated in England—"I am not aware that the point has been the subject of judicial determination, but all analogies seem to lead to the conclusion that Scotland is the local situation of this asset of W. Ewing. Thus, the share of a deceased partner in a partnership asset is situate where the business is carried on, and shares in a company are locally situate where the head office is." Now, the Lord Ordinary in quoting these authorities properly applied them, because he concluded his opinion by saying—"The question always returns, which is the head office? and as regards the present case, the Lord Ordinary must hold it to be London." If he had held that the head office of the company was in Calcutta his judgment would have been against the Crown. I do not understand that your Lordships hold that the head office of Robert Watson & Company is in London, and if the head office be in India, as I certainly hold it to be, then according to all the authorities a share of the business is an asset in India of the person who holds it.

I am on these grounds of opinion—and although differing from your Lordships I am humbly clearly of opinion—that this fund is not subject to probate duty in this country.

Lord Adam—The late Mr Laidlay died possessed of three shares in the company of Robert Watson & Company. These shares were sold by his representatives to three of his sons (one share to each) at the price of £27,000, and the question is, whether or not this sum so realised by the trustees, and paid to them in this country, ought to have been included in the inventory of the moveable estate given up by the trustees in this country. As I understand the plea maintained against the giving up of these shares in this country is this, that they were shares in an Indian company, and being shares in an Indian company, the assets were locally situate in India, and therefore did not require to be given up, and ought not to be given up in this country but in India. Now, for my part, I have not found it necessary to make up my mind at all whether the the Lord Ordinary is right in saying that this is an English company, or whether Lord Shand is right in saying that it is an Indian company, because my opinion is entirely founded upon the 25th section of the contract of copartnership, and would be the same whether this company is to be considered an Indian company or an English company. I think that the 25th section is clear enough upon a little examination, and it appears to me that the most important section in it is the first, which provides that the representatives of a deceased partner shall not "become a partner in respect of any share of such partner," but the interest shall cease as from the 30th of September after the partner's death. Now, there is a clear statement as matter of contract between the parties that the partnership should not be dissolved by the death of a partner, and that the representatives of the deceased partner should have no right whatever to become partners of the company. It humbly appears to me to follow from that, that in no view could the representatives of a deceasing partner make up a title to the three shares which belonged to the deceasing partner. They could by no possibility do this, and so acquire a right to the property or a share of the property of the company of Robert Watson & Company. They had no such right under this contract. And accordingly it humbly appears to me that this is, if I may say so, where the fallacy of Lord Shand's judgment lies, because if it be the case, as I think it is, that these representatives never acquired themselves, and never could acquire a right to the property of the company, which is clear from the contract, I think it follows that it does not matter in the least where that property is situated, whether it is held to be situated in India, or whether it is held to be situated in this country. That being so, the question comes to be, what is to be done with the shares of a deceased partner, and what right his represen-

tatives have in these shares? That right is set forth in the 25th section, that if they choose they may sell within six months after the death of the partner to a partner approved of by the committee, or if they do not choose to sell they may have the value of the shares assessed or estimated by Messrs Matheson & Company, and the fair value having been so ascertained the trustees who are in this country are to pay to the representatives of the deceased partner the amount or value of the shares as so ascertained. Now, in my humble opinion that is nothing but a contract debt against this company for a sum of money. It is not a claim or a sale of a right to a proportional part of the property of the company wherever it is situated. That is not the nature of the claim. In my opinion it is clearly and simply a claim of debt, which the representatives have by this clause of the contract against the trustees in this country for payment of a sum of money. If that be so, I think there is no further question in this case about the local situation of the assets of the company, which they are not selling, and have no power to sell any right of property to. That is not what is done here. But Lord Shand says there is no difference between that case and the sale of the same subject or the same right for a sum of money to the sons. It is the sale of a right to a sum of money payable to the sons in this country, and being a sum due and paid to them in this country, I can see nothing in this case different from the ordinary case of an asset in this country, realised in this country, and properly realised in this country by the representatives of the deceased. That being so, I think the case falls under the ordinary rule, and that the asset must be given up as an asset in this country. On that short ground I concur with your Lordship.

The Court adhered.

Counsel for the Lord Advocate—Sol.-Gen. Darling, Q.C.—Young. Agent—D. Crole, Solicitor for Inland Revenue.

Counsel for the Defenders—D.-F. Balfour, Q.C.—Lorimer. Agent—W. M. Morris, S.S.C.

Tuesday, July 16.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

GORDON *v.* WILLIAMS' TRUSTEES.

Judicial Factor—Title to Sue.

Held, following *M'Gregor* v. *Beith*, 6 S. 853, that a judicial factor appointed on heritable subjects "with the usual powers" has no title to sue parties who have intromitted with the rents prior to his appointment.

In July 1888 A. W. Gordon, judicial factor on heritable subjects in Redford's Land, St Andrew's Street, Leith, which had belonged to John Young and David Young, woollen manufacturers in Leeds, raised this action against the testamentary trustees of the deceased John Williams, in which he sought to have the defenders ordained (1) to produce a full account of the intromissions had by John Williams and themselves with the rents of the heritable subjects on which the pursuer had been appointed judicial factor; and (2) to pay over to the pursuer the balance which should be found due.

The petition under which the pursuer was appointed judicial factor on the heritable subjects above mentioned was at the instance of Mrs Ellen Waite, and set out that—"The petitioner is one of the next-of-kin of the said John and David Young, and until it has been ascertained who is their heir-at-law, desires that a judicial factor be appointed on the said property, with power to recover the rents and arrears of rent thereof, and to preserve the subjects from dilapidation." The petition prayed that Mr Gordon should be appointed judicial factor "with all the usual powers, and in particular, with power to sue for and receive the arrears of rents due from said subjects." The extract decree of his appointment bore that he had been appointed "to be judicial factor with all the usual powers."

The subjects in question consisted of four small houses in the tenement known as Redford's Land, the rest of which had been purchased by Mr Williams in January 1862.

The pursuer averred—"On his appointment as judicial factor foresaid, the pursuer made the necessary inquiries as to the position of the estate under his charge, and ascertained that the defenders were in the possession of the said heritable subjects, were drawing the rents thereof and acting as proprietors therein; and farther, that their author and predecessor, Williams, had been also in possession thereof since the term of Martinmas 1861. . . . Neither the said John Williams nor the defenders have ever accounted for their intromissions with the said rents, although the defenders have recently admitted their liability to account therefor. . . . The defenders are bound to account to the pursuer for the said rents for the period mentioned, subject to annual feu-duty, taxes, and repairs, as the same may be vouched or instructed."

The defenders in answer admitted that the defenders and their author Mr Williams have collected the rents of the said dwelling-houses since Martinmas 1861, and that they are bound to account for their and his intromissions since said term to the party in right of the subjects.

In a statement of facts they further averred that it had been absolutely necessary for Mr Williams, in order to protect his own interests, (the Messrs Young by their neglect having practically abandoned the subjects), to take control of the tenement, which he accordingly had done.

The defenders pleaded—(1) "No title to sue."

On 21st June 1889 the Lord Ordinary (Wellwood) repelled the 1st plea-in-law for the defenders, and ordained them to lodge accounts of their intromissions within ten days.

"*Opinion.*—The defenders' plea to title is rested on the ground that the pursuer has no title to sue for arrears of rent which were paid before his appointment to the defenders. In the circumstances I think the plea is ill founded. The authorites relied on by the defenders—*Swinton* v. *Gawler*, June 20, 1809, F.C.; *M'Gregor* v. *Beith*, 6 Sh. 853—were