

the company, and argued that such a change was unnecessary here, for the alteration proposed to be made was not in the character of the business—*Scottish Accident Insurance Company*, March 12, 1896, 23 R. 586, 33 S.L.R. 414; *Foreign and Colonial Government Trust Company* [1891], 2 Ch. 395.

The Court (LORD M'LAREN absent) made no condition as to the alteration of the company's name, and confirmed the alteration of the memorandum of association.

Counsel for the Petitioners—J. B. Young.
Agents—Wishart & Sanderson, W.S.

Saturday, June 4.

SECOND DIVISION.

MARTIN'S TRUSTEES v. MARTIN.

Trust—Administration of Trust—Making up Trust Accounts—“Free Annual Proceeds”—Income Becoming Due in One Year but not Received by Trustees till Following Year.

Held that in making up trust accounts, and dealing with the “free annual proceeds” of a trust estate, sums of income becoming due and payable during one financial year, but not actually received by the trustees until the following year, must be treated as part of the revenue of the first year and not of the second.

By his trust-disposition and settlement, dated 17th February 1898, and relative codicils dated respectively 24th and 25th January 1899, James Martin conveyed his whole estate, heritable and moveable, to trustees for the purposes therein mentioned. *Inter alia* he directed his trustees to pay an annuity of £500 to his wife Mrs Mary Spence Christie or Martin, and in addition to pay to her the “free annual proceeds of the residue of my whole means and estate” after payment of certain legacies and annuities.

The testator died on 2nd July 1899, survived by his widow. The trustees entered on the administration of the trust, and in succeeding years were in use to make up their accounts annually as at 2nd July. The revenue of the trust was variable, and certain items of income (consisting of rents and of interests on loans) which became due and payable in one trust year were not received until a succeeding year.

In these circumstances a question arose between the trustees and Mrs Martin as to whether in calculating the revenue of each year the above items should be treated as belonging to the income of the year in which they became due or of the year in which they were received.

For the settlement of this, among other points, a special case was presented to the Court by, *inter alios*, (1) the trustees, and (2) Mrs Martin.

The questions of law were—“(12) In ascertaining and disposing of the income of each

year, are the first parties bound to have regard only to the income which has actually been received during the year? or (13) Are they bound to include income becoming due during the year but not paid to them until after its close?”

Argued for the first parties—In ascertaining and disposing of the income of each year they were bound to have regard only to the income actually received during the year, and not to income becoming due but not received during the year. In striking the “free annual proceeds” of the residue it was impossible for the trustees to take account of sums which although due might never be paid.

Argued for the second party—The first parties in ascertaining and disposing of the income of any one year were bound to take into account all the sums that became due and payable during that year, although the same might not be received till afterwards. Such sums were part of the free annual proceeds of the year in which they became due and payable. The trustees might not be able to pay them till they received them, but that did not change the character of such sums. In the case of the death of a liferentrix, her representatives would be entitled to all revenue which became due and payable before her death whether it had been received by her or not, and the same principle applied to sums which had become due but had not been paid before the date of making up the trust accounts.

At advising—

LORD TRAYNER—. . . *Ques.* 12, 13—In my opinion the income of the estate in each year is not confined to the money actually received in each year by the trustees. A sum of income due and payable in one year but not actually received until the following year is income of the former year, and should be so treated in dealing with the interests of the respective beneficiaries. The 12th question therefore will be negatived and the 13th affirmed. . . .

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

The LORD JUSTICE-CLERK read the following opinion of LORD MONCREIFF, who was present at the hearing of the case but was absent at the advising:—. . . Under the practice of the trust the financial year has hitherto run from the 2nd of July, and my opinion is that if at the end of the financial year sums were due but not paid they fell to be considered as part of the revenue of that year and not of the next. . . .

The Court answered the 12th question in the negative and the 13th in the affirmative.

Counsel for the First Parties—Chree. Agent—J. P. Watson, W.S.

Counsel for the Second Party—J. H. Henderson. Agents—Bruce & Stoddart, S.S.C.

VALUATION APPEAL COURT.

Saturday, June 4.

(Before Lord Kyllachy and Lord Stormonth Darling.)

BEITH v. THE ASSESSOR FOR GLASGOW.

Valuation Cases—Value—Site of Advertising Hoarding—Tenant—Occupier—Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), secs. 1 and 6—Advertising Stations (Rating) Act 1889 (52 and 53 Vict. cap. 27), secs. 2, 3, and 4—Lands Valuation (Scotland) Amendment Act 1895 (58 and 59 Vict. cap. 41), sec. 4.

A billposter was tenant under mis-sives of lease of a piece of ground on which he erected advertising hoardings. Held that he, and not his landlord, was rightly entered in the valuation roll under the Valuation Statutes as tenant and occupier of the site of the hoarding.

Question, whether the Advertising Stations (Rating) Act 1889 applied to the law of valuation in Scotland. *Opinion* that even if it did, the entry was correct, under section 3—*Fry & Sons v. Assessor for Edinburgh*, March 18, 1893, 20 R. 622, 30 S.L.R. 612, commented on.

Robert Beith, billposter, 39 Hope Street, Glasgow, was entered in the valuation roll of the city and royal burgh of Glasgow (1) as tenant and occupier of the site of an advertising hoarding at Agnes Street, Kelvinside Gardens, East, and Cambridge Drive, of which the North Kelvinside Feuing Company, Limited, was the proprietor, at a yearly rent or value of £25; (2) as proprietor and occupier of the advertising hoarding at a value of £6 per annum.

At a Valuation Court held on 14th and 24th September 1903 he appealed against the former of these entries, craving that his name should be deleted from the said entry in the valuation roll, and the yearly rent or value altered to nothing.

The following narrative of facts, admitted and agreed upon by both parties, is taken from the case presented on appeal—"The appellant is a billposter and advertisement contractor in Glasgow, with numerous advertising stations in the city. On the frontage of ground otherwise unoccupied at the junction of Agnes Street, Kelvinside Gardens, East, and Cambridge Drive, the appellant has obtained from the owners of the same the sole and exclusive right to erect and retain billposting hoardings in conformity with the terms and upon the conditions contained in the correspondence between Messrs J. M. Taylor, Foulis, & Company and Mr Alexander Murray, secretary of the North Kelvinside Feuing Company, Limited, dated 23rd, 29th, and 30th October 1902, a copy of which is hereto annexed. He only uses, or has right to use, the frontage, having no right to the ground within the hoardings so far as not required for the

erection of the hoardings. For said sole and exclusive right the appellant pays an annual rent of £25, and he has used the frontage of the said ground for the erection of hoardings, consisting of a framework of wooden beams, the bases of the uprights being fixed in the ground, and the whole being supported by wooden props or stays. To these frames planks are closely nailed, and on the face of the said hoarding, towards the aforesaid thoroughfares, advertisements are affixed. These hoardings have been erected in accordance with plans which have been submitted to and approved of by the Dean of Guild Court."

The Valuation Committee dismissed the appeal, and the appellant obtained a case, the question for the opinion of the Court being whether the appellant, by virtue of the Lands Valuation (Scotland) Act 1854, and the Lands Valuation (Scotland) Amendment Act 1895, and the Advertising Stations (Rating) Act 1889, fell to be entered in the valuation roll as the tenant and occupier of the ground on which the hoarding had been erected.

The sections of the Acts chiefly bearing on the question are the following:—

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), section 1—"The commissioners of supply, and the magistrates of every burgh in Scotland respectively, shall annually cause to be made up a valuation roll showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively . . . and the names and designations of the proprietors or reputed proprietors, and where there are tenants or occupiers, of the tenants and of the occupiers thereof respectively." . . . Section 6—"In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year; and where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year as pasture or grazing lands, and where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof without grassum or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act." . . .

The Advertising Stations (Rating) Act 1889 (52 and 53 Vict. cap. 27), sections 2, 3, and 4:—2. "In this Act the term 'owner' means the person for the time being receiving or entitled to receive the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive or be entitled to receive the same if such lands or premises were let at a rackrent; and the word 'person' shall be deemed to include any body of persons, whether cor-