in the very cases where it was expedient to redeem as soon as possible) upon terms which were obviously unfair.

It was further argued that to adopt the appellants' contention would limit the application of the first branch of the section to cases where the incapacity was not only permanent but total. I do not think that that would be the result, because I think that there might be many cases in which the prudent course for the employer to follow would be that which it is said the appellants ought to have followed. There must be, I should think, many cases in which it is difficult to foretell what the ultimate condition of the injured workman will be, and in such a case the employer might very well think that it was better for him to await the actual result than to redeem while that result was still a matter of uncertainty, because in the latter case he would run the risk of the arbiter taking a pessimistic view of the workmen's chances of recovery and awarding a much larger sum of redemption money than the actual result, if it could have been foreseen, would have warranted.

For these reasons I am of opinion that the Sheriff-Substitute ought to have ascertained the facts before fixing the amount of redemption money, and that if he found that the incapacity in respect of which the weekly payment had been made was not permanent he should have proceeded under the second branch of the section to fix the amount as arbiter.

The LORD JUSTICE-CLERK was absent.

The Court answered the first, second, and fourth questions in the affirmative, and the third in the negative.

Counsel for the Appellants — Hunter, K.C.—Hon. W. Watson. Agents—Robson & M'Lean, W.S.

Counsel for the Respondent—Constable, K.C.—D. M. Wilson. Agents—Kinmont & Maxwell, W.S.

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*Friday, June* 18.

## FIRST DIVISION.

(COURT OF EXCHEQUER.)

## SCOTTISH WIDOWS' FUND LIFE ASSURANCE SOCIETY *v.* INLAND REVENUE.

*Revenue — Income Tax — Interest from Foreign Investments—"Received in Great Britain"—Income Tax Act* 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100, *Sched. D, Case IV.*

A Scottish Assurance Company which had no agencies for insurance nor any claims to meet outside of the United Kingdom invested part of its funds in American securities—partly in bearer bonds and partly in mortgages over real estate in America. The bonds and mortgages were kept by the company at its head office in Edinburgh — the interest coupons attached to the bonds and the interest notes referable to the mortgages being remitted, when they were becoming due, to America for collection there. The interest so collected was included in the revenue account of the society, and treated as an asset in the general statement of its affairs, but it was not required to meet the yearly obligations of the company and was invested in the purchase of further bearer bonds or on further mortgages. These bonds and mortgages were sent to and kept by the company at its head office, and they were treated in the same way as the original bonds and mortgages.

*Held* that as the interest had not been remitted home either in specie or in any of the forms of remittance known to commerce, it had not been "received" in this country in the sense of the Income Tax Act 1842, sec. 100, and that accordingly it was not chargeable with duty under Case IV of Schedule D of the Act.

*Gresham Life Assurance Society* v. *Bishop*, [1902] A.C. 287, *followed.*

*Revenue — Income Tax — Repayment by Inland Revenue of Income Tax Found by Court not to be Due—Interest—Rate Allowed.*

In a case where the Court found that income tax on the revenue from foreign securities of an assurance company was not due, and ordered the repayment of the sum paid, it allowed interest at four per cent.

The Income Tax Act 1842 (5 and 6 Vict. c. 35), sec. 100, enacts—"The duties hereby granted contained in the Schedule marked D shall be assessed and charged under the following rules. . . ." Schedule D, Fourth Case—"The duty to be charged in respect of . . . foreign securities—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year, without any deduction or abatement."

On 27th November 1907 the Scottish Widows' Fund Life Assurance Society appealed to the Commissioners of Income Tax at Edinburgh against an assessment on the sum of £101,607 (duty £5080, 7s.) made upon it for the year ending 5th April 1907 under the Income Tax Acts (5 and 6 Vict. cap. 35), sec. 100, Sched. D, Case IV; 16 and 17 Vict. cap. 34, sec. 2, Sched. D; and 6 Edw. VII, cap. 8, sec. 6, in respect of interest arising from its colonial and foreign securities, which according to the Society's contention was not received in this country. The Commissioners having in part sustained and in part refused the appeal, cases were stated for the opinion of the Court of Session as the Court of Exchequer in Scotland. Both cases were heard and disposed of together.

The Case for the Society stated—"2. The Society is a corporation which carries on

the business of mutual life assurance and granting annuities within the United Kingdom. The making of investments and the earning of interest both at home and abroad are necessary parts of the ordinary business of the Society.

"3. The Society has no agencies for insurance or annuity business, and has no deposits to make or claims to meet outside of the United Kingdom. It does no insurance or annuity business in America. . . .

"5. Part of the revenue of the Society consists of the income derived from interest on its investments in (1) American railroad and other bearer bonds, and (2) mortgages over real estate in America and British Colonies. Such interest is included in the revenue account of the Society, and is treated as an asset of the Society in the general statement of its affairs. The revenue, apart from such interest, was sufficient to meet all the claims, expenses, and liabilities of the Society in the particular year in question. All surplus revenue not required to meet claims, &c., is invested and added to the funds of the Society.

"6. The aforesaid sum of £101,607 is made up of the following items, viz. (1) a sum of £76,477, which consists of coupon interest collected and dealt with as described in article 7 hereof; and (2) a sum of £25,130, which consists of interest on mortgages over real estate in America, collected and dealt with as described in article 8 hereof. These two sums relate to the Society's year ended 31st December 1905, but it is agreed that for purposes of assessment and appeal they shall be considered as relating to the tax year ending 5th April 1907.

"7. The coupon interest (£76,477) was derived from American railroad and other bearer bonds held by the Society and kept at its head office in Edinburgh. To these bonds are annexed coupons for interest payable to bearer for each half year throughout the currency of the loan. The majority of these coupons are payable in New York or elsewhere in America, but some of them are payable alternatively in America or London.

"The Society had coupons payable alternatively in America or in this country, in all, . . . . . £5,743
Of these there were cashed in this country, . . . . . 2,209
The balance of . £3,534
was cashed in New York.
"In addition there were cashed in New York coupons payable in America, . . . . . 72,943
£76,477

"It is the practice of the Society to send such of these coupons as are not cashed in this country to America to arrive there before they fall due. The interest collected by the Society's agents in America was expended, as directed by the head office in Edinburgh, on the purchase in New York of American railroad and other bearer bonds, and in mortgage over real estate in America. The bonds thus purchased and the mortgages obtained were sent to this country, and are kept at the head office of the Society in Edinburgh.

"8. The mortgage interest (£25,130) was derived from mortgages over real estate in America which are held by the Society and kept at its head office in Edinburgh. The interest was payable in America on presentation of interest notes. Some of these notes were kept by the Society's agents in America, and some were sent to the head office of the Society in Edinburgh. The latter were sent to America to arrive there before they fell due. The interest was received direct into the hands of the Society's agents in America, and was invested, as directed by the head office in Edinburgh, in mortgages over real estate in America and in American railroad and other bearer bonds. The mortgages (with interest notes in respect of part of the mortgages) and the bearer bonds (with all the coupons attached thereto) for the sums so invested were sent to the head office of the Society in Edinburgh and are kept there." . . . . . .

"The Society *contended* that no part of the sum of £101,607 was subject to tax in respect that the whole of said sum was collected abroad, and has always remained invested there. That under the Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Schedule D, Fourth Case, which is the enactment containing the rules for taxation of foreign interest, duty is chargeable on a sum 'not less than the full amount of the sums (so far as the same can be computed which have been or will be received in Great Britain in the current year.' Under this provision only such sums fall to be brought into charge as consist of interest on foreign investments received in this country; before applying this part of the schedule money must be actually received in the year of charge in the United Kingdom, not necessarily *in forma specifica*, but in the form of a remittance recognised as such by business men.

"That American or other foreign or colonial bearer bond are security writs, and are outwith this category; their possession is proof that the actual money, so far from being in this country, is *de facto* employed abroad; they are payable at maturity in America or elsewhere abroad, and contain no obligation in themselves, or in the coupons annexed, prestable at any time in Great Britain. (*The Gresham Life Assurance Company* v. *Bishop*, L.R. 1902, App. Cases, p. 287; *The Standard Life Assurance Company* v. *Allan*, 3 F. 805; *Forbes* v. *Scottish Provident Institution*, 23 R. 322.)

"That the receipt of coupons in this country periodically retransmitted to the foreign country before they fall due for collection, and actually cashed there (the proceeds not being remitted home), does not result in any income being received in this country taxable in the sense of the Income Tax Acts.

"The Surveyor of Taxes maintained—(1) That the coupons for £76,477 of interest derived from American railroad and other bearer bonds, and the notes for £25,130 of interest derived from mortgages over real estate in America, together with the bonds

and mortgages, having been imported by the Society into the United Kingdom, and the coupons and notes being equivalent in the market to money, and convertible into money in this country, the interest represented by the coupons and notes was interest received in the United Kingdom within the meaning of the Fourth Case of Schedule D, and as such chargeable with income tax; (2) that the mere retransmission of the coupons and notes to America before they fell due did not relieve the interest represented by such coupons and notes from liability to income tax, in respect that they could have been converted into money in this country if the Society had pleased to do so; and (3) that the decisions in the cases of *Forbes* v. *Scottish Provident Institution*, 1895, 23 R. 322, 3 T.C. 443; *Standard Life Assurance Company* v. *Allan*, 1901, 3 F. 805, 4 T.C. 446; and *Gresham Life Assurance Society* v. *Bishop*, 1902 A.C. 287, 86 L.T.R. 693, 4 T.C. 464, are not applicable to the present case, in respect that in these cases the foreign securities were not imported into this country, and that nothing was done with them or the interests arising therefrom except to leave them abroad. The Surveyor referred to *Tennant* v. *Smith*, 1892 A.C. 150, 19 R. (H.L.) 1, 3 T.C. 158; *Corke* v. *Fry*, 1895, 22 R. 422, 3 T.C. 335; *Forbes* v. *Scottish Provident Institution*, 1895, 23 R. 322, 3 T.C. 443; *Standard Life Assurance Company* v. *Allan*, 1901, 3 F. 805, 4 T.C. 446; *Scottish Provident Institution* v. *Inland Revenue*, 1901, 3 F. 874, 4 T.C. 409; *Gresham Life Assurance Society* v. *Bishop*, 1902 A.C. 287, 86 L.T.R. 693, 4 T.C. 464; *Californian Copper Syndicate* v. *Harris*, 1904, 6 F. 894, 5 T.C. 159.

"The Commissioners having considered the facts and arguments submitted to them, and for the reasons stated in the note hereto, (1) refused the appeal in so far as it related to the assessment on the sum of £76,477 of coupon interest, and confirmed the assessment thereon; (2) refused the appeal in so far as it related to so much of the assessment on the sum of £25,130, as represented interest invested in American railroad and other bearer bonds brought to this country; (3) sustained the appeal as regards the balance of the assessment; and (4) continued the case for the adjustment of the portion of the sum of £25,130 liable to assessment in conformity with the above finding. Parties subsequently agreed that such portion amounted to £7937, and the Commissioners accordingly reduced the total assessment to £84,414.

"The Society thereupon declared its dissatisfaction with the determination of the appeal as being erroneous in point of law in so far as it confirmed the assessment to the extent of £84,414; and the Surveyor also thereupon declared dissatisfaction with the determination of the appeal as being erroneous in point of law in so far as it reduced the assessment from £101,607 to £84,414; and the Society and the Surveyor having duly required the Commissioners to state and sign a case for the opinion of the Court of Session, as the Court of Exchequer in Scotland, this case is stated and signed accordingly."

The Commissioners' *Note* was — "The coupons for the £7677 of interest derived from American railroad and other bearer bonds having been received in the United Kingdom where there is a ready market for the realisation of such coupons, the Commissioners are of opinion that the interest represented by the coupons so received is chargeable with duty, but as there is not a ready market in the United Kingdom for the realisation of interest notes derived from mortgages over real estate in America, only so much of the interest notes for £25,130 is chargeable with duty as is represented by the interest invested in the American railroad and other bearer bonds brought to this country, where there is a ready market for the realisation of such bonds."

[The case for the Surveyor of Taxes was in similar terms.]

Argued for appellants (the Society) — The coupon interest was collected and invested abroad. It was therefore never received here. *Esto* that the voucher was so received and that the appellants' accounts were credited with the amount, that was not receipt in the sense of the Income Tax Acts—*Gresham Life Assurance Society* v. *Bishop*, [1902] A.C. 287, at p. 294. *Esto* that anything equivalent to money (*e.g.*, a bank-draft) would do, a coupon was not equivalent to a bank-draft, and its receipt therefore was not receipt of money. Even receipt of a bank-draft payable here was not receipt of money in the sense of Case IV, Schedule D, until it had been cashed, for till cashed the debt subsisted abroad. The mere transmission of script, therefore, made no difference till the script had been honoured. The cases of *Winans* v. *Rex*, [1908] 1 K.B. 1022, and the *Californian Copper Syndicate* (*Limited and Reduced*) v. *Inland Revenue*, July 1, 1904, 6 F. 894, 41 S.L.R. 691, relied on by the respondent, were not in point.

Argued for respondent (The Surveyor of Taxes) — The coupon interest had been received here. It was received constructively when the bonds bearing the coupons were received, for the coupons were equivalent to money and "anything equivalent to money" would do — *per* Lord Trayner in *Standard Life Assurance Company* v. *Allan*, May 30, 1901, 3 F. 805, at p. 811, 38 S.L.R. 628, at 632. So also would "documents passing as currency"—*per* Lord Lindley in *Gresham Life Assurance Society*, *cit. sup.*, at p. 296. Thus money sent home by bill was money received in the sense of the Income Tax Acts—*Inland Revenue* v. *Scottish Provident Institution*, December 17, 1895, 23 R. 322, at p. 328, 33 S.L.R. 228, at 233—and a transfer of shares fully paid up was a transaction assessable to income tax, for the shares could be turned into money—*Californian Copper Syndicate* (*Limited and Reduced*) v. *Inland Revenue* (*cit. supra*). As regards the principal note, such notes were equivalent to bearer bonds, and these

bonds were negotiable instruments — *London Joint Stock Bank* v. *Simmons*, [1892] A.C. 201, at 224-5. Recipients of such bonds were deemed to be holders for value —*Edelstein* v. *Schuler & Company*, [1902] 2 K.B. 144. For the purpose of probate duty and estate duty such bonds were equivalent to money—*Attorney-General* v. *Bouwens*, 1838, 4 M. & W. 171; *Winans* v. *Rex*, [1908] 1 K.B. 1022, at 1028; Finance Act 1894 (57 and 58 Vict. cap. 30), section 1, sub-section 2.

At advising—

LORD PRESIDENT—The point raised in this case is whether income tax is payable upon the interest coupons attached to certain bearer bonds. The state of facts which raised the dispute is this—The Scottish Widows' Fund, which is an insurance company in this country, and is possessed of accumulated funds, has a large portion of these funds invested in America. These invested funds, of course, bear interest, and with regard to a certain amount of that interest the insurance company are in the habit of investing it in American securities, and, *inter alia*, in what are generally known as bearer bonds, of which I shall say a word or two more particularly in a moment. These bearer bonds have interest coupons attached to them. The Society have been in the practice of sending home the bearer bonds and depositing them, with the coupons attached, in their safe in this country. When the time comes for the payment of interest upon a certain coupon they cut off the coupon, send it over to America, and present it for payment. There it is paid, but that money is not remitted home, but is allowed to accumulate with the other proceeds of their investments in America until the process is, so to speak, repeated. There have been coupons so dealt with during the period in regard to which this question is raised amounting *in cumulo* to £76,000 odds. The point for decision is whether income tax is payable upon that sum of £76,000. That depends on whether that sum of £76,000 has been, in the words of the statute, received in Great Britain during the current year. The actual words are in the Fourth Case of Schedule D (Income Tax Act 1842, section 100), which charge duty on foreign interest. Duty is chargeable—I now quote textually—"on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year." The whole point, therefore, depends upon this—Has this sum of £76,000 been received in this country, or has it not?

One word as to what a bearer bond is. A specimen of the bearer bond is printed with the case. Of course these bearer bonds are not precisely the same; they vary a little, and they vary of course in the matter of the persons by whom they are issued, and the dates, and so on. But the specimen given is a good specimen of the class of bond about which the question is raised. It bears that "The Toledo and Ohio Central Railway Company, a Corporation of the State of Ohio, hereby acknowledges itself indebted to the New York Security and Trust Company of New York, as trustee or bearer, in the sum of One thousand dollars ($1000), which it promises to pay on the first day of October 1935 in gold coin of the United States of the present standard of weight and fineness, with interest at the rate of Five (5%) per cent. per annum payable in like gold coin semi-annually on the first days of April and October in each year until the principal sum is paid, at its office or agency in the city of New York, on the presentation and surrender of the coupons for interest hereto attached." Then there are certain provisions as to what is to happen if there is default of payment of interest. Then there is a certificate by the New York Security and Trust Company that the bond is one of a series of two thousand five hundred bonds mentioned and described in the mortgage within referred to. The bond has the benefit of a mortgage over property in America, which mortgage of course is in name of the trustee. Then there is a coupon which is a mere promise to pay on the first day of October 1907, that being the specimen coupon for the particular day.

Now the law upon this subject has been already investigated, and, if I may say so, authoritatively settled by the case of the *Gresham Life Assurance Company* v. *Bishop*, which is reported in [1902] Appeal Cases, p. 287. The point that was raised in that case was whether the interest which was paid to a company, the company being within the United Kingdom, fell under the words of the statute which I have quoted in respect that the company credited this interest in its accounts and balance sheets, and upon the general results, which, of course, could only be arrived at after crediting that interest, ascertained its profits, and paid its dividends. As the interest itself had not been in any way actually remitted to this country, it was held by the House of Lords, following, or rather confirming, a case in this Court, viz. the *Standard Life Assurance Company*, and overruling the Court of Appeal in England, that the money had not been received in the United Kingdom although it had been brought into account there. The words of the noble and learned Lords, I think, ought to be attended to. The Lord Chancellor (Lord Halsbury) says:—"In no way that I can give any reasonable interpretation to has the money reached this country or been received in this country. It, like the tobacco in the case suggested, has not been imported, and if the Legislature had intended that bringing it into account was to be equivalent to its being received, it would have been easy to say so. It cannot be said that the use of artificial meanings to be attached to ordinary language is either unknown or unusual in legislation; and if it was intended to make this a special subject of taxation to be taxed whenever and wherever an equivalent amount was credited and booked or in any other way recognised as having come

under the dominion of the owner in this country, nothing could have been easier than to enact it in plain terms. I decline to go beyond the words used, and I do not think this money was received in this country." Lord Macnaghten in the same way said, after quoting the words of Lord President Robertson in the case of *Forbes* v. *Scottish Provident Institution* as to the general practice of every company entering in its statement of affairs any interest accrued to it from abroad—"That, as I think, and as the Lord President thought, is a very different thing from bringing the interest home—a very different thing from the receipt of the money here, either *in specie* or as represented by a remittance payable in this country."

Now, I think your Lordships will recognise that the point of that case as put by the noble and learned Lords was that they held themselves bound by the strict word of the statute, and that word is "receipt," and nothing less than actual receipt will do. Actual receipt of money, it seems to me, can only be effected in one of two ways. Either the money itself must be brought over in specie, or the money must be sent in the form which according to the ordinary usages of commerce is one of the known forms of remittance. The learned counsel for the Crown here pressed very hard the consideration that these bearer bonds were and have by actual decision in England been held to be negotiable instruments. That is quite true, but I cannot see the relevancy of it. The whole point of whether a thing is a negotiable instrument or not depends upon this, that if it is a negotiable instrument, then the holder for value will in no case whatsoever be affected by claims or equities against his assignor; whereas if they were not negotiable instruments, then he would be under the general rule *assignatus utitur jure auctoris*. That, it seems to me, has nothing to do with the question whether a thing is received here or not. It is an interesting fact about the bonds, but a fact which, I think, has no bearing upon the point in question.

How can this money be said to have been received in this country? As far as the bond itself is concerned, it is of course merely a piece of paper, but it represents a debt. The debt is not presently payable, and taking the bond we have here as an illustration, is not payable till the year 1935, and then is not payable in this country but in New York. In the same way the interest is not payable here; it is only payable, again taking the specimen coupon as an example, on the first day of October 1907, at the agency in the city of New York. Now, it is quite certain that that debt is still extant until it is paid. That is to say, there is still the debt of the principal till 1935; and if one were speaking of a period before the 1st of October 1907 the interest is not payable until October 1907 comes, when it is paid. What I have been unable to understand is the answer to the question I put, and put in vain so far as any answer was given—how money could be in two places at once. According to the argument of the Crown the money was received in this country the moment the bond came into the company's safe in London or in Edinburgh. Equally it was in America, because the day of payment had not yet come, and therefore it was, so to speak, in the pocket of the debtor. How it can be at the one time both in America and in this country is, I think, a difficulty which surpasses even the powers of legal fiction.

The only argument, it seemed to me, of any weight was the argument which was founded on the decisions of the Probate Court. Now, it is quite true that bearer bonds by foreign governments—it does not matter whether they are by foreign governments or not—but bearer bonds of this character have been held liable to probate or estate duty. The most recent decision on the matter seems to be the case of *Winans* ([1908] 1 K.B. 1022), and there it was pointed out by the Master of the Rolls that "seventy years ago the case of *Attorney-General* v. *Bouwens* (1838, 4 M. & W. 171) was decided by a very strong Court consisting, among others, of Lord Abinger, C.B., and Parke, B., and that case (which, so far as I am aware, has never been questioned) has certainly been followed and possibly carried further in the case of *Stern* v. *Reg.*, [1896] 1 Q.B. 211." The case of *Attorney-General* v. *Bouwens* laid it down in perfectly clear terms that "probate duty is payable in respect of bonds of foreign governments, of which a testator dying in this country was the holder at the time of his death and which had come to the hands of his executor in this country, such bonds being marketable securities within this kingdom saleable and transferable by delivery only, and it not being necessary to do any act out of this kingdom in order to render the transfer of them valid."

I have no doubt that that decision, fortified by the length of years it has stood, is quite unimpeachable. While I say that, do not let it be for a moment supposed that I am even hinting it was wrong—so far as I know it was perfectly right—but it does not seem to me to have much effect on this question. As Lord Halsbury said in the *Gresham* case, we have got to do with the words of the Income Tax Act, not with other Acts, and, more than that, I can see, if one comes to principle, a perfectly good reason which makes such things liable to probate duty which would not apply to the case of income tax. The puzzle I have put as to the money not possibly being in more than one place at one time would of course equally exist although you were considering the matter of probate duty instead of income tax. But then you have not got to do with the same words. What you have to do with in the case of probate duty is the question of giving somebody an active title. A man dies and leaves behind him every class of investment, and among other things he leaves in his safe a set of bearer bonds. Who has got a right to touch them? Anyone as soon as he obtains the

key of the safe, but he has no legal right to intromit with them. The only person who has a right to take these things which the dead man has left behind him and turn them into money is the executor after he has got probate. One can quite understand, therefore, the principle upon which it was right that the executor should, so to speak, pay for what he gets.

I need not go into the history of how probate duty originally came to be levied, and its strictly ecclesiastical origin. It is enough to come to the modern development of it, viz., that probate duty in one sense is a return for giving somebody an active title which he would not otherwise get. That is quite a different state of things from what you have to do with in the case of income tax. Although the bearer bonds are marketable securities, that is surely neither here nor there, because in one sense everything is a marketable security at a price. The fact that a bearer bond is a marketable security and easily marketable, and therefore a negotiable instrument, does not seem to me to touch the question whether it is an ordinary form of remittance. Nobody ever heard of remitting money by means of a bearer bond, for the very good reason that you could not know exactly what you were doing, because the price of bearer bonds fluctuates in the market every day, and a bond might start from New York at one price and arrive in London at a different one. It is not at all in the same category as the way which modern arrangements have perfected, by which you may send money from one country to another in the form of hard cash consigned in a package or box or by means of a bank draft, which is of course simply a transaction of debtor and creditor between different persons on different sides of the Atlantic. Those are well-known methods of remitting money. The furthest that the Court has gone was in the case of *Scottish Mortgage, &c., Company of New Mexico, Limited* v. *Inland Revenue* (1886, 14 R. 98, 24 S.L.R. 87), decided in this Court, where it was held that money was actually received in this country, although money had not come in hard cash, and had not been remitted by bank draft, where it had really been got in this country by a company performing its remittance for itself. That is to say, money which on this side was not available for dividend they had made available for dividend and paid away here, making a cross entry upon the other side of the Atlantic, and there putting the money available for dividend into a form which made it not available for dividend. That case was a good deal discussed in the House of Lords in the *Gresham* case. One of the noble Lords had doubts about it, but the general result was that the case was approved. It was pointed out what a very special case it was, and Lord Lindley, who was one of those who approved of it, said the exchange was effected by a book entry, but that entry was a good business mode of carrying out cross remittances which it would have been unbusinesslike and really childish to have effected in any other way. On the whole matter I am clearly of opinion that this money has not been received in the United Kingdom. It is perfectly easy for the Legislature, if they so wish, to make money in this condition fall within the net of the tax gatherer. At present I do not think they have done so, and accordingly I think the determination of the Commissioners ought to be reversed. In the case of the mortgage interest I do not need to say anything separately, because the considerations are precisely the same.

LORD KINNEAR—I concur for the reasons your Lordship has given.

LORD PEARSON—I also concur with your Lordship.

Counsel for appellants asked for expenses and for an order for repayment of the tax with interest. He founded on the *Standard* case, where the Court allowed four per cent. In the *Gresham* case, however, the House of Lords had only allowed three per cent.

LORD PRESIDENT—Four per cent is really about the rate on an average of investments in such a company, and I do not see why they should not get four per cent.

LORD M'LAREN was absent at advising.

The Court reversed the determination of the Commissioners in regard to £84,414 of the assessment on £101,607; affirmed their determination in regard to the balance of the assessment, viz., £17,193; and ordered repayment of the income-tax paid on said sum of £84,414, with interest thereon at the rate of four per cent per annum from the dates of payment thereof until repaid.

Counsel for the Society—Blackburn, K.C. —Macmillan. Agent — Sir Henry Cook, W.S.

Counsel for Surveyor of Taxes—Lorimer, K.C.—Umpherston. Agent—Solicitor of Inland Revenue (Philip J. Hamilton Grierson).

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*Saturday, June* 19.

## FIRST DIVISION.

(SINGLE BILLS.)

## HERRIOT *v.* JACOBSEN AND ANOTHER.

(*Ante sub nom. Paxton and Others* v. *Brown*, 45 S.L.R. 323, 1908 S.C. 406.)

*Expenses—Husband and Wife—Joint and Several Decree for Expenses—Motion on Auditor's Report.*

During the dependence of an action against an unmarried woman she married, and intimation having been made to the husband, he lodged a minute of sist and was sisted "as administrator-in-law for the defender, his wife, for any interest he might