I am therefore of opinion that the rent of the lawn or park (£39) does not fall to be added to the gross rental. (*b*) A sum of £15 is sought to be added to the gross rental for a grazing park. I think this addition should be made for the reasons assigned by the reporter. The petitioner alleges that this rent is included in the shooting rent, and it was suggested that on this matter of fact a proof might be allowed. I think proof would be thrown away (as well as expense) on so trifling a matter. But indeed, as the reporter has dealt with the matter, no proof is necessary, for the rent of this park is certainly not included in the shooting rent as fixed by the reporter. (*c*) I think, for the reasons assigned in the report, that the shooting rent should be increased £50 as suggested.

"II. *Deductions from rental.*—(*a*) I agree with the reporter that the following deductions from the rental cannot be allowed, viz.—£276, 6s. 9d. for general maintenance, &c., and £55, 12s. 10d. in respect of an annual rent charge which was actually paid off before Sir Alexander died. (*b*) With regard to the deduction of £111, 1s. 3d., being the annual interest on an improvement debt, I take a different view from that expressed in the report. Looking to the real nature of the transaction (as admitted), rather than to the form in which this debt was burdened on the estate, I am of opinion that this interest falls within the class of deductions directed to be made by the Aberdeen Act, sec. 1. There can be no doubt that it is the 'yearly interest of debt' affecting the estate; the only difficulty arises from the question whether in the circumstances it was a yearly interest 'diminishing the clear yearly rent or value thereof to such heir of entail in possession.'—that is, the heir in possession who makes the provision. It is clear enough that in one view the interest in question did not diminish the income of Sir Alexander, for he did not pay it, but that does not in my opinion really affect the question. Suppose that Sir Alexander had taken the bonds for the improvement debt to himself and his heirs and executors, and had, as heir of entail, paid to himself as creditor the interest, in that case his income would have been the same, but the interest would have gone so far to diminish the rent or yearly value of the estate to him as heir of entail. The same result would have followed if the improvement debt had been vested in somebody else than Sir Alexander, but who for any reason did not choose to exact payment of the yearly interest, Sir Alexander's income would not have suffered, but the yearly rent or value of the estate was nevertheless affected. Again, if a creditor had adjudged the life interest of Sir Alexander, the adjudication would only have carried the rents under deduction of the interest on the improvement debt, which shows that the interest diminished the yearly value of the estate to the heir of entail. It is probably not correct to introduce the element of Sir Alexander's income into this question at all. The question is whether the rent or yearly value of the estate was diminished to the heir in possession. I think it was; the burden of a debt bearing interest which may be legally exacted must necessarily do so, and it was merely the accident of Sir Alexander being the creditor himself which prevented his being out of pocket the amount of the interest, and the yearly rent of the estate being to that extent diminished.

"The result of the opinion I have expressed is this:—

Gross rental admitted by Petitioner . . .		£3343	17 9
Add—Rent of grass park	£15		
Additional for shootings . . .	50		
		65	0 0
Gross Rental,		£3408	17 9
Deduct—Total deductions claimed by Petitioner . . .	£1031 11 0		
Of which disallowed—			
1. Instalment of annual rent charge. .	£55 12 10		
2. Cost of maintenance, &c.	276 6 9		
3. Expense of management	57 4 0		
	389 3 7		
Total of deduction allowed		642	7 5
Free yearly rental		2766	10 4
		£922	3 5½

One third of which is—say £922, 3s., 6d., to which the annuity of £950 will fall to be restricted."

Counsel for the Petitioner—Salvesen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondent—R. Johnstone. Agents—J. C. & A. Steuart, W.S.

Tuesday, March 20, 1888.

OUTER HOUSE.

[Lord Fraser, Ordinary.

DUNCAN'S TRUSTEE *v.* M'CRACKEN.

Succession-duty—16 *and* 17 *Vict. c.* 51, *sec.* 2—*Foreign Domicile*—*Testament creating a British Trust.*

Although moveable property in Scotland belonging to a person domiciled abroad will not on his death be liable to legacy duty or succession-duty, yet if the deceased has directed part of his estate to be invested in this country in trust for a person in liferent and for another in fee, the fund so settled, as a fund to be administered according to the law of Scotland exclusively, will be subject to succession-duty when the fiar's right to possession emerges on the death of the liferenter.

Miss Margaret Helen Duncan, a native of Scotland, went to reside in Paris in 1847, and remained there till her death in September 1869.

By her will, which was executed on 30th November 1864, she disposed of the residue of her estate as follows—"I give and bequeath the annual revenue of all I possess . . . to my brother-in-law Mr John Hume of Forthill Cottage, Broughty Ferry, for all his life, after his death the same to go to Mrs Elizabeth Cairncross, wife of John William M'Cracken, notary-public, No. 233 York Street, Belfast, Ireland, for her life, when the residue of all I possess shall become the property of Georgina M'Cracken, third daughter of the said John William M'Cracken, subject to the following conditions, viz., that the capital shall be placed in such a way that she can neither lend it nor spend it, but may, if she please, buy an annuity with it."

Miss Duncan appointed Mr Hume and Mr John William M'Cracken to be her executors, and they entered on the administration of her estate and obtained probate of her will in Her Majesty's Court of Probate in England. The property left by Miss Duncan was all personal, and was wholly situated within the United Kingdom, with the exception of some articles of jewellery, and also certain foreign shares which were specially bequeathed. The funds forming the residue liferented by Mr Hume remained situated in this country, being invested in British stocks, and were so at the date of his death. Mr Heron, the sole surviving and acting trustee at the date of this action, was domiciled in Scotland.

Mr Hume, whose ordinary residence was at Broughty Ferry, enjoyed the liferent of the residue until his death on 24th February 1875. He was predeceased by the other liferenter. On his death the residue became the property of Georgina M'Cracken, subject to the provisions of the will.

In a multiplepoinding brought by Miss Duncan's trustee, Miss M'Cracken claimed the whole fund *in medio*, or alternatively the whole fund, "that she may spend the same in buying an annuity." A claim was also lodged by the Crown for succession-duty at the rate of ten per centum on the free residue of Miss Duncan's estate, and on the dividends or interest derived therefrom since the date of Mr Hume's death, or for succession-duty at the rate of ten per centum on the said free residue as at the date of Mr Hume's death, with interest on the said duty at the rate of four per centum per annum from said date.

The Crown maintained that the reason why moveable property belonging to a person domiciled abroad was exempted from succession-duty was that the property was subject to the jurisdiction of the courts of the foreign country, but that did not apply when a fund had been created in this country subject exclusively to the jurisdiction of the courts of this country. It was now a fund which, under the law of the trust, "devolved," in the sense of the second section of the Act, upon the fiar on the death of the liferenter. The point had been decided by the House of Lords in the case of *Attorney-General* v. *Campbell*, April 22, 1872, 5 L.R., Eng. & Ir. App. 524.

Miss M'Cracken maintained that the right vested in her under the settlement and under the law of France. The restrictions imposed by the will, which prevented her getting possession of the fund till a certain event, did not affect the nature of her right, which was a succession to a person domiciled in France. The succession on which the Crown claimed duty was to an English and not to a French predecessor—*Wallace* v. *Attorney-General*, 1 Ch. App. 1.

The Lord Ordinary (FRASER) pronounced this interlocutor:—"Ranks and prefers the claimant the Lord Advocate upon the fund *in medio* for succession-duty, at the rate of ten per cent. on the free residue as at the date of Mr Hume's death, with interest on the said duty at the rate of four per cent. per annum from said date in terms of the alternative of his claim; and, subject to that claim, and to the expenses found due to the pursuer and real raiser, ranks and prefers the claimant Georgina M'Cracken to the whole balance of the fund *in medio* in terms of the first branch of her claim: Finds no expenses due to or by either of the claimants, and decerns.

"*Opinion.*—The Lord Ordinary is of opinion that no proof as to the domicile of the testatrix is necessary in this case, because, assuming the domicile to have been in France, he has come to the conclusion that succession-duty is due.

"The 18th section of the Succession-Duty Act (16 and 17 Vict. cap. 51), enacts that 'no duty shall be payable under this Act upon any succession . . . by any person in respect of a succession who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy-Duty Acts.' Now, as it was decided—*Advocate-General* v. *Thomson*, February 18, 1845, 4 Bell's App. 1—that legacy-duty was not exigible where the legacy was bequeathed by a person domiciled in a foreign country, then it is said that no succession-duty is claimable by the Crown in the present case. This, however, is a misapprehension of the 18th section of the Succession-Duty Act, because it has been decided that the words quoted referred to exemption by express provision contained in the 55th Geo. III. cap. 184, Sched., Part 3—*Attorney-General* v. *Fitzjohn*, 2 Hurlst. & Norman, 465. Therefore, although a bequest may be exempt from legacy-duty because the testator is a foreigner, it does not follow that it may not be a succession, and therefore liable to succession-duty under the wider words of the Succession-Duty Act.

"There are two decisions of the House of Lords of recent date, and the question as to liability for succession-duty depends upon whether the present case comes within the rule laid down in the one case or in the other. The first case was that of *Wallace* v. *Attorney-General*, 1 L.R., Ch. App. 1, the rubric of which is in the following terms—'Succession-duty is not payable on legacies given by the will of a person domiciled in a foreign country.' The testator was domiciled in France, but had large personal estate in the English funds, and he bequeathed the residue of his personal estate to the hospitals of Paris and London, and upon this residue succession-duty was claimed, but the House of Lords held that the claim was untenable. The same learned tribunal had the question before them in 1872 in the case of the *Attorney-General* v. *Campbell*, 5 L.R., Eng. & Ir. App. 524, where it appeared that the testator was domiciled in Portugal. He directed his executors to collect all his property which was in Portugal, to convert it into cash, pay certain legacies, and invest the residue in the English three per cents, to appropriate what they should think necessary to pay a life annuity of £50 to his sister, on the termination of which the appropriated fund was to revert to and form part of his residuary estate, and be divided (like the rest) among his three children. The executors exactly performed the directions of the trust; when the sister died the part appropriated to satisfy her annuity became divisible among the children. It was held that this constituted a succession within the meaning of the 2nd section of the Succession-Duties Act, and was liable to the payment of succession-duty. Now, this case of *Campbell* is very similar to the present one. The testatrix in the present case gives a liferent of the whole of her property to her brother-in-

law Mr Hume, whom failing to Mrs M'Cracken. This liferent corresponds to the annuity given in the case of *Campbell*. The executors continued to hold the property, and to pay the liferent to Mr Hume. The original executors were Mr Hume and Mr M'Cracken. Mr Hume having died, Mr M'Cracken continued to be the sole trustee in the administration till 1878, when he assumed two new trustees and executors in the persons of Francis Cairncross and George Heron, the pursuer and real raiser in this action. The whole property was conveyed over to these new trustees in trust to be applied for the purposes of the will. A further change in the administration took place in October 1878, when Mr M'Cracken died and Mr Cairncross resigned his office of trustee, thus leaving the administration alone in the hands of Mr Heron, the pursuer, who has continued to administer the estate for behoof of Georgina M'Cracken, to whom the revenues have been paid since Mr Hume's death. The only difference between this case and the case of *Campbell* is this, that in the case of *Campbell* the property was at the time of the death in Portugal and brought to this country by the executors, whereas in the present case the property was within the United Kingdom at the time of the death, but this, according to the English decisions as cited by Mr Hanson in his treatise on the Succession-Duties Acts (p. 225), is immaterial—'It is to be observed that in this case the testator expressly directed that his property should be invested in this country, but the principle of the decision equally applies to cases where the trustees have power to invest it here or abroad at their discretion, or where the property itself is already actually invested in this country. For when once the property has been appropriated to answer the specific gift, it acquires the character of a trust-fund as distinguished from an ordinary legacy.' Now, then, let us see what were the grounds upon which the case of *Campbell* was decided. The Lord Chancellor (Lord Hatherley) said (p. 528)—'In order to have the personal property administered you must seek the *forum* of that country where the person whose property is in question had acquired a domicile. Then, when you obtain possession of that property, you do all which has to be done in the country to which the testator belonged. The question is afterwards, when the property has been so obtained and administered, and is in the state in which the testator desired it to be placed, in what condition do you find the fund? You find it in the condition of a settled fund. That condition arises no doubt from the operation of the testator's will; but I can see no difference in consequence of that circumstance from its having arisen in any other manner, as, for instance, from a deed executed in his lifetime, as might have been the case, or supposing he had transmitted to his bankers a sum of money to be invested upon the same trusts. When there is any fund standing in this country in the names of trustees in consols or other property which has a *quasi* local settlement, which stock in the funds has all the dividends having to be received in this country, and the persons who have to be dealt with in respect of it being persons residing in this country, that fund is subject to succession-duty. The settlement provides for the succession, and the interest of each person on coming into possession is liable to the payment of duty upon that interest to which he so succeeds. That is really the whole question involved in this case.' Now, applying these reasons to the present case, we have an estate situated in, and with executors resident in, the United Kingdom. They obtain probate as such executors, and they and the assumed trustees vest themselves with the administration of this estate, which they continue until the life-renter dies. The fund which is to be given to Georgina M'Cracken upon the expiry of the liferents has as much the character of a settled fund as the sum which was appropriated to paying the annuity in the case of *Campbell*.

"The executors in the present case are required by the will to give the property over to Georgina M'Cracken under conditions, viz., 'that the capital shall be placed in such a way that she can neither lend it or spend it, but may, if she please, buy an annuity with it.' It is very clear that a person to whom money has been bequeathed, without any right overgiven to any other person, cannot be deprived of the *jus disponendi* by a mere prohibition against alienation; nor can the executor insist, and he does not insist, upon purchasing an annuity for Georgina M'Cracken." . . .

Counsel for the Pursuer and Real Raiser—G. R. Gillespie. Agents—Drummond & Reid, W.S.

Counsel for the Crown—A. J. Young. Agent—D. Crole, Solicitor of Inland Revenue.

Friday, June 1.

FIRST DIVISION.

[Lord Trayner, Ordinary.

HEDDLE *v.* M'LAREN (MARWICK & HOURSTON'S TRUSTEE).

Partnership—Liability of New Firm for Debts of Old.

The mere fact that a new firm takes over the whole assets of the old business will not *per se* render the new firm liable for the debts of the old. It is in all cases a question of circumstances, and must be proved that the new firm agreed to adopt the debts of the old firm and become liable for them.

M, who had carried on business as an ironmonger and general merchant, died in 1873, leaving his widow with no means to carry on the business. In these circumstances A, who had been M's law agent, came to Mrs M's assistance, and found the necessary funds. The business was carried on by managers until July 1878, when Mrs M took H into partnership. Down to this date the whole receipts, with some small exceptions, were daily paid to A, who paid the accounts for goods furnished. The result of these transactions as at the date when Mrs M assumed H as a partner was a debit balance due by Mrs M to A of £2347, 4s. 5d. The firm of M & H was sequestrated in 1886, and