

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

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

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

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

LORD MURE—Under the statute of 1870 the only occasion in which coupons are to escape the duty of 1d. payable on bills of exchange is when under the clause of exemptions they are "attached

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

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

The Court affirmed the determination of the Commissioners.

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

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

Friday, November 9.

FIRST DIVISION.

[Exchequer Cause.

THE TEXAS LAND AND CATTLE COMPANY
(LIMITED) v. COMMISSIONERS OF IN-
LAND REVENUE.

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

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

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

In May 1888 a transfer of the said debenture

was executed by the executors of the said Rev. John Gillies in favour of Miss Ellen Parkin, residing in Dundee.

In June 1888 the company forwarded the deed of transfer to the Commissioners of Inland Revenue in order to have their opinion as to the stamp-duty with which the instrument was chargeable.

Sec. 13 of the Act 51 Vict. c. 8, provides as follows:—"There shall be charged upon a transfer . . . of any debenture . . . being a marketable security . . . the following duties:—Where the transfer, assignment, disposition, or assignation is on sale, the same *ad valorem* duties as are now charged under the Stamp Act 1870 upon a conveyance or transfer on sale of any property by relation to the amount or value of the consideration for the sale."

The Stamp Act 1870 defines a "marketable security" as follows:—"Marketable security" means a security of such a description as to be capable of being sold in any stock market in the United Kingdom." Under this Act the *ad valorem* duty for a transfer on sale is 10s. per £100. By the schedule of the said Act there are also charged the following stamp duties:—" (3) Transfer, assignment, disposition, or assignation of any mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment. For every £100, and also for any fractional part of £100 of the amount transferred, assigned, or disposed, 6d."

The Commissioners were of opinion that the bond or debenture transferred by the instrument was a "marketable security" under the definition above quoted, and that the instrument under the Act 51 Vict. c. 8, sec. 13, was chargeable with *ad valorem* conveyance on sale duty. They accordingly assessed the *ad valorem* conveyance on sale duty of £1 upon the transfer in respect of the consideration of £200, and the instrument being already stamped with the duty of 1s., they required payment of the further sum of 19s. The company thereupon paid the additional duty of 19s., and the instrument was duly stamped. They, however, declared themselves dissatisfied with the determination of the said Commissioners, on the ground that the bond and debenture transferred by the instrument in question was not a "marketable security," and that therefore the transfer was not chargeable under the Act 51 Vict. c. 8, with *ad valorem* conveyance on sale duty, but was chargeable, under the Stamp Act 1870 with the duty of 6d. per £100 or fraction thereof of the amount in the bond or debenture transferred, and that accordingly the instrument was already sufficiently stamped with the duty of 1s., being 6d. per cent. upon the amount in the bond or debenture transferred, viz., £200.

The company therefore demanded the present case.

The question for the opinion of the Court was—"Whether the said instrument is liable to be assessed and charged with the said *ad valorem* conveyance on sale stamp-duty charged under the Stamp Act 1870, or with the said *ad valorem* duty of 6d. per £100 or fraction thereof?"

Argued for the company—The transfer was not a marketable security in the view of the

Act of 1870. Such a security would not obtain a quotation on the Stock Exchange. A quotation contemplated a group or a class. There could be no group or class in the case of a security like the present. It was a purely personal transaction, just as if the company had given its I O U. The Commissioners here had not supplied the grounds of their judgment; they might be in error, and their interpretation of the statute was strained, for it was anomalous to hold that an obligation which 2s. 6d. created and 6d. extinguished should require 10s. in order to transfer it.

Argued for the Commissioners—There was nothing in the nature of this security to prevent it being dealt with by a stockbroker. The word debenture in the Act meant a security granted by a public company as against a bond granted by a private individual, and the value of such a security depended on the stability of the company. In interpreting marketable security the word requiring to be construed was "capable." If it could have been shown that this deed was incapable of being sold on the Stock Exchange the case for the Commissioners would have been less favourable. A stock market was not necessarily, as urged by the other side, synonymous with a stock exchange, and there was nothing in the nature of this debenture to prevent it being dealt with in a stock market. Many stocks not quoted were constantly sold on 'Change. This was just a debenture by a trading company who were entitled to deal in such articles and the transfer of such a security fell to be charged on the scale adopted by the Commissioners.

At advising—

LORD SHAND—The question in this case is, whether the transfer of a debenture of the Texas Land and Cattle Company (Limited) is chargeable with the stamp-duty applicable to an *ad valorem* conveyance on sale under section 13 of the Act 51 Vict. cap. 8, or is only chargeable with a duty of 6d. for every £100, and for any fractional part of £100 of the amount transferred, as a transfer or assignment of a debenture under the Stamp Act of 1870 (33 and 34 Vict. cap. 97), and relative schedule under the head "Mortgage Bond Debenture," &c., head 3? I am of opinion with the Commissioners that the instrument is chargeable with the higher duty under the Statute of 51 Victoria.

The decision of the question turns on the point whether the debenture in question is a "marketable security" within the meaning of the statutes. By the Act of 1870 a transfer of a debenture was liable only for the smaller duty of 6d. on each £100 or part of £100; but by the later Act it was provided (sec. 13) that in substitution of this duty there should be an *ad valorem* charge the same as is charged under the Act of 1870 on a transfer on sale of any property by relation to the amount or value of the consideration for the sale on a "transfer, assignment, disposition, or assignation, otherwise than on mortgage, of any mortgage, bond, debenture, or covenant (being a marketable security), or of any security for money by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company (being a marketable security)." If then the debenture in question be a "marketable security" within the meaning of the statutes,

the transfer of it on a sale is liable to *ad valorem* duty.

Now, the statute of 1870, sec. 2, assigns to the words "marketable security" a particular meaning. The words of the provision are—"Marketable security means a security of such a description as to be capable of being sold in any stock market in the United Kingdom." If the debenture assigned by the transfer in question falls within this definition or description of a marketable security, then the *ad valorem* duty is chargeable on the instrument of transfer.

The debenture is printed, and forms part of the case. The company registered as a limited company under the Companies Acts, has powers under its articles of association to issue debentures under certain specified conditions, one of these being that a register of debentures shall be kept, in which entries shall be made of every debenture issued, and of all transfers of debentures, and another that the total amount shall not exceed the unpaid capital of the company, and the debenture itself, which bears to be No. 895, is in the terms in which such documents are frequently expressed. As authorised by the articles of association it contains an obligation by the company for the repayment of the sum of £200 lent, and periodical interest, and embodies a reference to the articles of association conferring a right on the debenture-holders to a proportional part with each other of the securities and assets of the company, and the free proceeds of the lands of the company in the event of these being sold.

The Commissioners, in the case stated under the appeal, have given no statement beyond a narration of the articles of association of the terms of the debenture and transfer, and no information as to whether the debentures of this company are *de facto* in use to be sold in any stock market in the United Kingdom. Their judgment is rested on the view that the debenture in question is a marketable security "under the definition above quoted."

For the appellants it was maintained that in order to be a marketable security within the meaning of the statutes (which are to be read as one statute) the security must either be one which has a quotation on the stock exchanges or stock markets, or at least must be one of a mass issued by a company as distinguished from a single deed or instrument such as the debenture in question, which might be the only debenture issued by the company.

It is clear that the term marketable security is used to designate a class or kind of securities. The words of the clause of definition are "a security of such a description." The words defining what the description embraces immediately follow, and the test provided by the statute is this—does the instrument fall within the description, what then is the description? such a description "as to be capable of being sold in any stock market in the United Kingdom." It must be observed on these words that it is not made the test of a security as being marketable (1) that it is a debenture, bond, or covenant of a company whose debentures, bonds, or covenants are in point of fact sold in a stock market, nor (2) that it is a debenture forming one of a class or series issued by a company. If the security be one of that general class of securities which is capable of being sold in stock markets, it is then

a marketable security within the meaning of the statute. The test is whether the security is capable of being so sold. Now, in one sense every security might be included under this description, for I suppose any kind of security, if of value, may find a purchaser in the stock markets through the medium of agents or brokers. But it seems to be clear that the language of the statute is not to be interpreted so as to have this wide signification, for so to read it would be to include all securities of a class having any value, whereas the statute by the expression used professes and intends to include only securities of a particular description, viz., such as are capable of being sold in any stock market. It seems to me that the true interpretation of the clause must be to include as marketable securities all securities of such a description as to be capable, according to the use and practice of stock markets, of being there sold and bought. This will, on the one hand, exclude such securities as mortgages on land or proper heritable bonds, but, on the other hand, will include debentures of companies. If a holder of such a security as a debenture of a public company, which is the description of the security here in question, desire to sell it during its currency, while no doubt he might be able at times to procure a purchaser otherwise, he would, in the general case, resort to an agent or broker who transacts business on the stock markets, and so find a purchaser, and it is notorious that railway bonds and debentures are dealt in on the stock markets, for the quotations for many of these are daily published in the stock lists appearing in the newspapers. This is enough to show that a debenture of a company is not only in a wide but in a proper sense a security of such a description as to be capable of being sold in a stock market. It may be noticed that in section 69 of the statute of 1870, and the schedule under the head "Contract Note," the term marketable security is used with reference to the subject of a broker's or an agent's transactions, and it cannot, I should think, be doubted that debentures of railway or other companies bought or sold by a broker would be entered in his contract note in the same way as debenture stock or shares of a company. It may further be observed that if the provision of section 13 of the Act 51 Victoria is not to include such a debenture as is here in question as a marketable security by or on behalf of a corporation or company, it is not easy to give the words of the statute any practical effect, for by other provisions of the statutes the transfer of all shares and stocks of companies have been otherwise expressly made liable to *ad valorem* duties.

On the whole, I am of opinion that the determination of the Commissioners is right and should be affirmed, and that the transfer in question is liable to be assessed and charged with *ad valorem* conveyance on sale stamp-duty charged under the Stamp Act 1870.

LORD ADAM—The materials for the decision of this question are contained within a very narrow compass. The security transferred was a debenture of the Texas Land Company, and what we have to decide is, whether such an instrument is a marketable security within the meaning of 33 and 34 Vict. cap. 97. If it is, the stamp-duty

chargeable is 10s. per cent. ; if it is not, then the security escapes with 6d. per £100.

The Act supplies us with a definition of the words "marketable security"—[*His Lordship here read the clause quoted above*—]—and the question comes to be, whether the transfer of this debenture bond was a security "capable of being sold in any stock market of the United Kingdom." Now, I can hardly imagine more comprehensive words. There must be some limitation contemplated by the Legislature, but I do not know where it is to be found. As regards the present case, however, there can be no doubt that this is a security which is saleable in a stock market. It is just the place to take such a security in order to sell it. The words of the clause "capable of being sold" point to a kind or description of security, and it certainly appears to me that the transfer of a debenture bond is a security which is capable of being sold in a stock market. I therefore think that this security falls to be dealt with under the Act 51 Vict. cap. 8, as liable for *ad valorem* conveyance on sale duty.

LORD MURE concurred.

The LORD PRESIDENT, who was absent at the hearing, did not deliver any opinion.

The Court affirmed the determination of the Commissioners.

Counsel for the Texas Company—Balfour, Q. C.—Lorimer. Agents—Morton, Neilson, & Smart, W. S.

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

Friday, November 9.

FIRST DIVISION.

[Lord Lee, Ordinary.]

MORLEY v. JACKSON AND OTHERS.

Jurisdiction—Arrestments ad fundandam jurisdictionem—Question of Status—Amendment of Summons—Forum Conveniens.

The child of a deceased person raised an action against his trustee, his widow, and his sister, concluding (1) for declarator of legitimacy on the ground of a putative marriage between the pursuer's parents; (2) for payment of legitim; (3) for payment of aliment in the event of decree not being obtained under the first two conclusions. The defenders were not resident within the jurisdiction of the Court, but it was averred that by arrestments *ad fundandam jurisdictionem*, jurisdiction had been constituted as regarded the trustee. By leave of the Lord Ordinary the pursuer amended her summons, and sued for decree under the summons, as the offspring of a legal marriage. *Held* that the principal question in the action being one of status, jurisdiction could not be founded by arrestments, and the action dismissed.

Opinions (per Lord Shand and Lord Adam) that the question of jurisdiction fell to be determined under the action as originally laid, and could not be affected by subsequent amendments; and further, that as the parties really interested as defenders were beyond the jurisdiction of the Court of Session, it was not *forum conveniens* to try the question with a party merely interested as trustee.

This action was raised by Agnes Mary Morley, against James Allen Jackson, as sole surviving trustee under the deed of settlement of the deceased Thomas Morley, Catherine Anderson or Morley, "widow of the deceased Thomas Morley," and Mary Ann Morley or Jackson, his sister. The pursuer concluded (1) for decree of declarator that she was the legitimate child of Thomas Morley; (2) for decree ordaining the defender Jackson to pay her legitim out of his estate; and (3) for decree ordaining the same defender to pay her an annual sum of aliment in the event of her not obtaining decree under the first two conclusions of the summons.

The pursuer was the daughter of Thomas Morley and Agnes Newberry or Morley, and in the action as brought, declarator of legitimacy was sought on the ground that there had been a putative marriage between her parents.

In support of the above conclusion the pursuer averred—" (Cond. 2) The late Mr Morley first married Helen Hunter, who belonged to Dumfries. She died without issue, and thereafter, in or about March 1868, he married the defender Catherine Anderson. He lived with her in lodgings, first at Newcastle-on-Tyne, and afterwards at Carlisle, until about 1873, when owing to disagreements between them they separated. They never lived together again, and they had no communication thereafter with each other. No children were born of the marriage with the said Catherine Anderson. After the separation Mr Morley returned to Scotland. (Cond. 3) Whilst living in Edinburgh in 1876, and in the beginning of 1877, Mr Morley courted Agnes Newberry, daughter of William Newberry, fishing-rod maker, Canongate, Edinburgh, with a view to marriage. He fraudulently represented himself as being free to marry, telling her that he was a widower, and she, being in complete ignorance that he had then a living wife, relying upon his representations, and *bona fide* believing that no impediment existed, agreed to marry him. Accordingly, after due proclamation of banns they were regularly married by the Reverend James Macnair, minister of the parish of Canongate, on 28th April 1877. A certificate of the proclamation of banns and of the marriage is produced. Thereafter they lived together as husband and wife at 27 Elder Street, Edinburgh, and on 22nd December 1877 the said Agnes Newberry or Morley gave birth to the pursuer. Mr Morley was father to the pursuer. On 2nd January 1878 he registered the pursuer's birth at the register of births for St Andrew's District, Edinburgh. The registration bears to be made by him as the father, and the pursuer is registered as a lawful child of his marriage with the said Agnes Newberry or Morley. An extract of the entry is produced. Mr Morley and the said Agnes Newberry or Morley con-