of this interlocutor, that the opposition to the minute having been withdrawn, the Sheriff appointed the respondent in this appeal in terms of his prayer. It will be observed that this interlocutor does not proceed upon any minute signed by the party withdrawing opposition, but it proceeds upon a statement of what is alleged to have taken place at the bar, namely, that the agent for the respondent in the original petition withdrew his opposition to the minute for the petitioner. Now, we were informed by the counsel for the appellant that that was not true in point of fact, that in reality the agent for the respondent in the Court below had not withdrawn the opposition to the appointment of Mr Whyte as executor-dative. On the other hand, it was distinctly denied by the respondent in this appeal that that was so, and he told us that the interlocutor truly represented what had taken place in the Court below, and that, in point of fact, the agent for Miss Fanny Whyte had intimated the withdrawal of opposition to the petition. I should not regard the statement of fact as to what is alleged to have passed at the bar, even though embodied in an interlocutor, as conclusive of the fact. We all know that misapprehensions and mistakes sometimes take place in such matters, and I think it would not be right that a party should be barred from all redress simply because such a statement was set forth in an interlocutor. But it appears to me that if the question should be settled what in point of fact took place before the Sheriff, the first thing to do would be to remit the case to the Sheriff to report to us whether or not the interlocutor truly set forth what took place before him, and whether there might not have been the possibility of a mistake. On receiving a report from the Sheriff we should have an opportunity of considering its terms, and having so considered it, we should be in a position to say what other steps should be taken in the matter.

Now, I should have been quite ready in this case to follow that course and to remit to the Sheriff to report, but we were very distinctly informed at the bar that the appellant did not desire any such course, and that being so, it appears to me that we are left in this position, that the appellant not wishing that inquiry be made, we must assume that what took place before the Sheriff is properly recorded in this interlocutor, and that being so, that it is impossible for us to review this judgment on the merits because it proceeds on consent. Consequently, I think we should dismiss the appeal

LORD M'LAREN.—I agree with all that Lord Adam has said, and I am anxious that it should be understood that in my opinion, where a judgment or interlocutor bears to proceed upon a consent or concession of the other party, and it is represented to us that the concession was not in fact given, the Court has full power to deal with the representation upon equitable principles, not being tied down to any particular mode of procedure. When a judgment is to be passed upon a consent, the proper mode of recording that consent would be by a minute signed by the procurator of the party granting it, but when the matter at stake is of no great value or importance, and especially when it only relates to procedure, we know that it is common both in the inferior courts and in this Court to state in the interlocutor that it is granted of consent. I should not think it consistent with sound principle to hold that the statement of the Sheriff or inferior judge, to the effect that the defender had consented to a decree, was conclusive, or that we were in any way limited in our mode of correcting what is made to appear to us a mistake. In the present case no pecuniary interests are involved, but only a question of the right to administer a small estate, and the history of the case makes it not at all unlikely that the consent which the Sheriff says was given would be given. There has been no proposal to refer the matter to the Sheriff, and I agree that the appeal should be dismissed.

LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court dismissed the appeal with expenses.

Counsel for the Appellant — Cooper. Agents—Welsh & Forbes, S.S.C.

Counsel for the Respondent—Watt—A. S. D. Thomson. Agents—Cumming & Duff, S.S.C.

Tuesday, December 17.

FIRST DIVISION.

FORBES (SURVEYOR OF TAXES) *v.* SCOTTISH PROVIDENT INSTITUTION.

FORBES (SURVEYOR OF TAXES) *v.* SCOTTISH WIDOWS' FUND SOCIETY.

Revenue—Income Tax—Customs and Inland Revenue Act 1893 (56 *Vict. cap.* 7), *sec.* 5—*Property and Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2—*Property and Income Tax Act* 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 102—*Interest on Colonial Securities.*

In an appeal by the Surveyor of Taxes against a decision of the Income Tax Commissioners, to the effect that interests on the colonial investments of a Scottish insurance company not received in the United Kingdom were not liable to be assessed for income tax for the year 1893-4—*held* (1) that under the Customs and Inland Revenue Act 1893, section 5, no species of property was subjected to income tax except what is enumerated in Schedules A, B, C, D, and E of the Property and Income Tax

Act 1853, and that therefore section 102 of the Income Tax Act 1842, in so far as it purports to tax property not included in the lettered schedules, was not in force during 1893-4; (2) that, in any event, section 102 of the Act 1842, being merely administrative or executive, does not remove the limitation imposed by Case 4 of Schedule D of that Act, and consequently does not subject to duty interests on colonial or foreign securities, irrespective of whether they are received in the United Kingdom or not.

Revenue—Income Tax—Property and Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Case* 4—*Interest on Colonial Securities—Constructive Remittance to United Kingdom.*

A portion of the funds of a Scottish insurance company was invested in colonial securities, the interest arising from which, though it appeared in the statutory account rendered by the company to the Board of Trade, was not remitted to this country, but was retained and re-invested in the colonies. *Held* that such interest was not liable to assessment for income tax under Schedule D, Case 4, of the Property and Income Tax Act 1842.

The Scottish Mortgage and Land Investment Company of New Mexico v. *Commissioners of Inland Revenue*, November 19, 1886, 14 R. 98, *distinguished.*

The Scottish Provident Institution, Edinburgh, which is a mutual life assurance society, appealed to the Commissioners of Income Tax for the County of Midlothian against an assessment for the year 1893-4 on the sum of £90,359, being the amount of interests unaccounted for to the Revenue.

The Commissioners sustained the appeal, and at the request of Mr R. S. Forbes, Surveyor of Taxes, on 9th July 1895 stated a case for the opinion of the Court of Exchequer, in terms of the Taxes Management Act 1880 (43 and 44 Vict. cap. 19), section 59.

The case recited a joint-minute of admissions of facts, adjusted and signed by the agent of the institution and Surveyor of Taxes, from which the following is extracted:—

"1. The Scottish Provident Institution was established in the year 1837 on the principle of mutual assurance, and it was incorporated in the year 1848 by its private Act, 11 and 12 Vict. cap. 106.

"Its head office is in Edinburgh, and its ordinary management and administration are wholly vested in a board of directors established there.

". . . The institution's life assurance business is as yet entirely a home business, and it has no agencies outside the United Kingdom other than those employed in the investment of portions of its funds.

"4. At the beginning of the year 1892 the institution's common fund amounted to £7,801,431, 8s. 2d., and at the end of that year it was increased to £8,126,375, 8s. 9d.—the difference (£324,944, 0s. 7d.) being the excess of the receipts on account of premiums, interests, &c., over the amount of claims paid and other expenses, as shown in the revenue account hereinafter mentioned.

"The institution has no shareholders to whom dividends are payable, and there is no discrimination between its capital and income. Surpluses are divisible septennially among the participating members, as after mentioned.

"5. The directors have lent out considerable sums in Australia and elsewhere out of the United Kingdom by virtue of the powers in this behalf conferred upon them by 'The Scottish Provident Institution Act 1884.' The interest derived from these loans in the year 1892 amounted to £90,359, 8s. 9d. That interest was wholly deposited with the company's bankers in the country where it was collected, and, not being required to meet charges against the common fund in the United Kingdom, it was not remitted to this country *in forma specifica*, but in terms of the institution's powers it was lent out as opportunity offered in the name of the corporation. It forms part of the 'interests' which appear in the revenue account mentioned in the next article."

6. This article of the minute contained a copy of the institution's revenue account and balance-sheet for the year ending 31st December 1892, as given up to the Board of Trade in terms of the Life Assurance Companies Act 1876 (33 and 34 Vict. cap. 61), sec. 5. On the charge side of the revenue account appeared the item "interests, dividends, and rents, £342,032," which was stated to include the before-mentioned sum of £90,359 of foreign interests not received in the United Kingdom in *forma specifica*.

"7. The septennial investigation into the affairs of the institution is appointed by the laws to take place at the end of every seventh year. The last investigation took place as at 31st December 1887, and the next will take place as at 31st December 1894. Although there was thus no distribution of surplus in the year 1892 there are now submitted on behalf of the institution the following facts relating to these distributions:—Law 27 provides that the surplus, 'under deduction of such proportion as the directors shall consider necessary and proper in the circumstances to be retained as a guarantee, shall be made available to the members entitled thereto as after provided, and that by additions to the capital sums that will certainly—unless the policies be forfeited or surrendered—become payable on the death of the members or others on whose lives the assurances were effected; but no share of the said surplus shall be apportioned to any assurance which depends on the contingency of one life surviving another, or of the life assured predeceasing or surviving any assigned period. Members may have their shares of surplus applied in diminution of their annual contributions, or in periodical or annual additions to their policies; or they may at any time surrender their vested additions for cash.' It is provided by law 28 that 'the surplus shall eventually belong to those policies only on which

there has been paid into the Common Fund, either by single payment or annual contributions, a sum which, when accumulated with interest at the rate of 4 per centum per annum, shall be equal in amount to the sum originally assured.'

"8. The surplus ascertained at the last investigation (31st December 1887) amounted to £1,051,035, 8s. Of that the sum of £350,345 was retained, and the remainder £700,690 was directed to be apportioned 'among the several policies entitled to participate therein according to the value of the policies respectively as the same are fixed by the foresaid states,' prepared by the actuary; 'and the directors appropriate the said sum accordingly, and order that the sums expressed in the said policies respectively shall be increased in conformity therewith.' [Here follows the following note,—'Members may have their share of surplus applied in diminution of their annual contributions'].—See report of proceedings of annual meeting 1888."

9. This, the final article of the minute, set forth the consolidated revenue account of the institution for the septennium 1881-1887, as returned to the Board of Trade in terms of the said Life Assurance Companies Act.

The case then proceeded to state the ground of appeal and the contentions of the Surveyor, which appear sufficiently from the argument below; and, after setting forth that the Commissioners had sustained the appeal as regards the interests in question "in respect (1) that it had not been remitted to this country *in forma specifica*, (2) that the facts were not sufficient to prove constructive remittance," concluded by stating the following questions of law for the decision of the Court:—"(1) Whether the institution is liable to pay income tax upon the full amount of the interest from investments either under Case 1 of Schedule D in section 100 of the Income Tax Act 1842, or under section 102 of same Act? (2) Whether, if, on the other hand, the institution is assessable under the 4th Case of Schedule D, the facts amount to constructive remittance?"

The same question was raised in another case stated by the Income Tax Commissioners on an appeal made to and sustained by them on behalf of the Scottish Widows' Fund and Life Assurance Society, Edinburgh, another mutual life assurance society.

The amount of interest assessed upon was £119,909, and of this sum £3441 represented the amount applied in defraying the expenses of the society's office at Sydney, New South Wales.

The case contained the following joint admission of facts:—

"1. The society is a corporation for mutual life assurance and the sale of annuities, which has no share capital, the only members being the policyholders. . . .

"2. The society has an office at Sydney, in the colony of New South Wales, for the sole purpose of making investments in Australasia, collecting interests falling due there upon these investments, and receiving payment of principal sums as they fall due. This office is under the charge of a responsible officer of the society, who is assisted and controlled by a committee of advice at Sydney.

"The funds for investment arise from its above-mentioned business and the revenue from investments, and, along with the other funds of the society, are applied or are available only to meet claims and charges against it. Subject to the foregoing explanation concerning the Sydney office, the society does not carry on any separate business of investing money.

"3. In September 1893 a sum of £102,000 was remitted to the Sydney office. Part of this sum was remitted under a misapprehension, and to correct this the Sydney office remitted bills for £80,000, which were received in London on 15th January 1894, and were cashed and credited in the books of the society on 15th March 1894. This cross remittance of £80,000 is the only sum which has been received or remitted from the Sydney office since the time of its establishment up to the close of the year of assessment on 5th April 1894. The interests received at the Sydney office have been applied in payment of the expenses connected with the office and the business there carried on, and the surplus, along with any principal sums repaid, has regularly been re-invested in the colonies.

The following statement shows the gross interest received at the Sydney office, the expenses connected with that office, and the sums remitted to Sydney for the three years noted below:—

Year.	Gross Interest Received.	Expenses.	Sums Remitted to Sydney.
1891, .	£106,319 2 11	£3,991 16 11	£100,318 4 7
1892, .	119,909 9 1	3,441 6 6	819 4 7
1893, .	123,433 2 9	8,725 19 10	230,277 17 0

"These expenses are charged in the revenue accounts under the head of "Expenses of Management." They were deducted from the society's return for assessment of untaxed interest.

"The investments made by the society in Australia are of the nature of loans, and although a considerable part of the expenses of the Sydney office are attributable to the work connected with inquiries necessary to lead to a selection of suitable investments, these expenses have always been regarded by the society as wholly forming a charge against the interest received at Sydney, on the ground that the investments being loans, a loss of principal would arise if the expenses were not entirely defrayed out of interest.

"The society also makes investments in New Zealand, the interest upon which is received in London, and income-tax has been regularly paid in respect of the interest so received.

"In order to comply with the provisions of the Life Assurance Companies Act 1870 (33 and 34 Vict. cap. 61), the whole interest and dividends arising from the society's investments, and the whole of their annual outgoing and yearly expenses, are entered in the society's yearly accounts, but the revenue account, in which these appear, expressly bears to have been made up in

pursuance of the statute referred to, the title being as follows:—'Revenue account and balance-sheet in the forms prescribed by "The Life Assurance Companies Act 1870."' It has no other revenue account for submission to members, and no separate account of investments. A printed copy of the accounts for the year 1892 is produced.

"The interest received at Sydney, though liable along with the other funds of the society to meet annual charges against the society's business, has not been required for that purpose.

"If the interest received at the Sydney office, and the expenses of management connected with that office, are eliminated from the receipts and payments respectively appearing in the revenue account of the society, it will be found that the sums received in the United Kingdom have always been more than sufficient to provide for the whole payments made by the society.—[Here followed certain figures showing a large excess of sums received over payments, even when the interests received at Sydney were excluded.]

The legal questions submitted for the decision of the Court were the same as in the case of the Scottish Provident Institution, with the addition of a third, viz.—"(3) Whether in any case the expenses of the office at Sydney are a legitimate deduction from the amount of untaxed interest liable to assessment."

The Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts that the duties imposed by the Act shall be levied under certain rules which it proceeds to enumerate under the head of numbered cases. Case 3 is "the duty to be charged in respect of profits of an uncertain annual value not charged in Schedule A," and the first rule applicable thereto is, "the duty to be charged in respect thereof shall be computed at a sum not less than the full amount of the profits or gains arising therefrom within the preceding year . . . without any deduction." Case 4 is "the duty to be charged in respect of interest arising from securities in Ireland, or the British plantations in America, or in any other of Her Majesty's dominions out of Great Britain, or foreign securities," except such annuities, &c., as are directed to be charged under Schedule C. The rule applicable to it is as follows—"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."

Section 102 of the same statute enacts that "upon all annuities, yearly interest of money, or other annual payments, whether such payments shall be payable within or out of Great Britain, either as a charge on any property of the person paying the same by virtue of any deed, or will, or otherwise, or as a reservation thereout, or as a personal debt, or obligation by virtue of any contract, or whether the same shall be received and payable half-yearly, or at any shorter or more distant period," income-tax shall be charged. It provides that interest from profits charged shall be liable to deduction, but enacts that all other interest shall be charged according to and under and subject to the provisions for charging the duty in Schedule D, Case 3.

The Income-Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 5, enacts that the duties granted by it shall be levied under the regulations and provisions of the Income-Tax Act 1842, and certain subsequent statutes, and that "for this purpose" these Acts shall be revived.

The Customs and Inland Revenue Act 1893 (56 Vict. cap. 7), sec. 5, sub-sec. (1), grants certain duties of income-tax "in respect of all property, profits, and gains mentioned or described as chargeable in the Income-Tax Act 1853, namely, the annual value of property, profits, and gains chargeable under Schedules A, C, D, and E, of that Act, and the annual value of occupation of lands, &c., under Schedule B of that Act. Sub-section (2) enacts that "all such provisions contained in any Act relating to income-tax as were in force on the 5th day of April 1893 . . . shall have full force and effect with respect to the duties of income-tax hereby granted so far as the same are consistent with this Act."

Argued for the appellant the Surveyor of Taxes—(1) These interests were taxable under sec. 102 of the Income-Tax Act of 1842, and that section made reference to a case which does not impose actual reception in this country as a condition of taxation. The Inland Revenue was entitled to tax such interests either under Case 4 of Schedule D, or under section 102, and Case 3 of Schedule D, whichever might be most convenient. (2) In any event the interests were taxable under Case 4, because they were constructively remitted home—*Scottish Mortgage Company of New Mexico* v. *Inland Revenue*, November 19, 1886, 14 R. 98. The moment they entered the accounts of the society they came to this country. They were duly included in the statutory accounts rendered by the insurance companies, and no bonus was paid or declared without their being taken into account. (3) The appellant ultimately gave up his contention that the interests in question were taxable under Case 1 in Schedule D, though he refused to concede that such mutual assurance companies did not earn profits. In connection with this point the following cases were cited—*Colquhoun* v. *Brooks*, L.R., 14 A.C. 493; *London Bank of Mexico* v. *Apthorpe*, L.R. (1891), 2 Q.B. 378; *San Paulo Railway Company* v. *Carter*, L.R. (1895), 1 Q.B. 580; *Last* v. *London Assurance Corporation*, L.R., 14 Q.B.D. 239, 10 A.C. 438; *New York Life Insurance Company* v. *Styles*, L.R., 14 A.C. 381; *Clerical, &c. Life Assurance Society* v. *Carter*, L.R., 22 Q.B.D. 444; *Scottish Union and National Insurance Company* v. *Inland Revenue*, February 8, 1889, 16 R. 461.

Argued for the respondents—(1) The subjects liable to the tax were all embraced in Schedules A, B, C, D, and E of the Act of

1842, which were republished with an addition to D in the Act of 1853. Sec. 102 was consequently not a charging section at all—*Clerical, &c. Life Assurance Society* v. *Carter*, L.R., 21 Q.B.D. 339. It was merely supplementary, and should have been introduced among the rules of sec. 100. It was probably framed with reference to public bodies like parochial boards, who are not assessed to the duty, and yet have to pay interest on bonds and the like—*Bell* v. *Bunny*, 1 Kay & Johnson, 218, *per* V.C. Sir W. Page Wood, p. 219. The Inland Revenue claimed to be entitled to choose whether it should tax under Case 4 of Sched. D, or under sec. 102 and Case 3 of Sched. D. But if such an interpretation of sec. 102 were correct, the Inland Revenue would really have no alternative but to charge under sec. 102, which was much more sweeping. If any such power was given under sec. 102, the whole scheme of the Income-Tax Acts disappeared, for that section could never be worked out consistently with Schedule D, Case 4. (2) There was no remittance, actual or constructive. This case therefore was easily distinguishable from the *Scottish Mortgage Company of New Mexico, ut sup.*, and fell within the category of *Smiles* v. *Australasian Mortgage and Agency Company*, July 12, 1888, 15 R. 872; and *Bartholomay Brewery Company* v. *Wyatt*, L.R. (1893), 2 Q.B.D. 499. (3) On the point raised and abandoned under Case 1, the respondents cited *Gresham Life Assurance Society* v. *Styles*, L.R. (1892), A.C. 309.

The respondents, the Scottish Widows' Fund Society, further argued on the third question submitted to the Court—At all events, there could be no constructive remittance of money actually spent abroad. The fact that the money was so spent distinguished the case from that of *Aikin* v. *Macdonald*, November 27, 1894, 22 R. 88. The expenses of the society's office at Sydney consequently fell to be deducted from the amount of the interest if they were chargeable.

At advising—

LORD PRESIDENT—The learned counsel for the Crown stated that they considered the facts stated in the case were not sufficient to raise their claim under Case 1 of Sched. D. They were anxious, however, to explain that it was solely on the ground of deficient statement of the facts relating to the two institutions which are respondents in these appeals that they did not on the present occasion advance this claim against these mutual societies.

The claim of the Crown was accordingly rested alternatively on sec. 102 of the Income-Tax Act 1842, and the 4th case of Schedule D.

The argument under sec. 102 is admittedly novel, and it involves surprising consequences.

Case 4 of Schedule D purports to state the duty to be charged on interest arising on colonial and foreign securities, and it limits, by the terms of the rule, the taxable amount to the sums received in the United Kingdom. This reads as if it were, and has hitherto been supposed to be, an exhaustive statement of the liability to duty of this class of securities. The present argument is that sec. 102 subjects to duty the whole of such interests, disregarding the distinction drawn in Case 4 between what is yielded in the country of the security and what is received in the United Kingdom. If this view be sound, sec. 102 subjects to duty a class of property, profits, and gains not included in Schedules A, B, C, D, or E, to wit, interests arising from colonial or foreign securities but not received in the United Kingdom.

The answer to this argument is twofold. First, the statute under which, primarily, the Crown claims duty from the respondent companies is the Customs and Inland Revenue Act 1893, and the operative section is the fifth. Now, the things on which duty is charged by that section are the property, profits, and gains chargeable under Schedules A, C, D, and E of the Income Tax Act 1853, and the occupation of lands (and so on) under Schedule B of that Act. These schedules therefore state the limits of the income tax granted by the Act of 1893. The same section (5) goes on to provide that all such provisions contained in any Income Tax Act as were in force during the preceding year should have full force and effect "with respect to the duties of income tax hereby granted."

If, then, and in so far as, section 102 of the Act of 1842 subjected to tax things not covered by the lettered schedules, it was not in force during the year 1893-94. This seems to me to be a sound answer to the argument for the Crown, and, if sound, it is conclusive.

It would appear, however, that section 102 never had the effect now sought to be ascribed to it. An examination of the Act of 1842 shows that the first section sets forth the schedules as defining the subjects of the tax, and that the group of sections of which section 102 is one, are merely executive or administrative directions for carrying out the schedules and rules. Section 102 certainly is so expressed as, in terms, to charge with duty; but the general words used are, in truth, introductory to the provisos; and they are general because they are introductory, and therefore do not rehearse the limitations which have been already expressed.

Accordingly I am against the Crown on section 102.

On the alternative argument on Case 4 of Schedule D, I think the facts fail the Crown. There is nothing, as far as appears, done with the colonial interests in question, except to leave them where they are. The phrase "constructive remittance," in the second query in these cases, is one which, if used at all, requires to be carefully guarded. As employed in the present argument, it would practically obliterate the limitation in the rule of Case 4. Every man and every company having foreign or colonial investments, of course knows of the interest arising from them, takes note of it, and enters it in any statement

of affairs which may require to be made up. But this will never make the interest "received in the United Kingdom." The *New Mexican* case was totally different. The money there could only be said not to have been received, if money sent home by bill is not received in this country, or if no colonial interests are received in the United Kingdom which do not reach it in specific form.

In the view which I have stated of the second query, the third query in the case relating to the Scottish Widows' Fund does not arise.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellant, the Surveyor of Taxes—Lord Advocate, Sir Charles Pearson, Q.C.—Solicitor-General, Murray, Q.C.—A. J. Young. Agent—P. J. H. Grierson, Solicitor for Scotland to Board of Inland Revenue.

Counsel for the Respondents, the Scottish Provident Institution — Balfour, Q. C. — Maconochie. Agent—G. M. Paul, W.S.

Counsel for the Respondents, the Scottish Widows' Fund Society — Balfour, Q. C.— Fleming. Agents—Tods, Murray, & Jamieson, W. S.

Wednesday, December 18.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

BARTSCH *v.* POOLE & COMPANY.

Bill of Exchange—Protest—Undertaking to Pay at Creditor's Office—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 51, *sub-sec.* (7).

The creditor in a bill payable on demand at his own office presented the bill there, and payment not having been made by the debtor, protested the bill under deduction of certain sums paid to account. The narrative of the protest bore that "I, J. A., notary-public, presented the said bill at the place where payable to a clerk there, who made answer that no funds had been provided to meet said bill, and payment was refused accordingly." The creditor having charged the debtor on the protest, the debtor raised a suspension of the charge. *Held* (*rev.* judgment of the Lord Ordinary) that the protest was invalid, on the ground that, the place of payment named in the bill being the creditor's office, all that the protest recorded was the presentation of the bill for payment by the creditor to the creditor; that the creditor was not an agent of the debtor for payment to himself, and that the debtor not having been present at the place where he undertook to make payment, the protest should have specified the fact, as required in such cases by the Bills of Exchange Act, section 51, sub-section (7) (*b*), "that the drawee or acceptor could not be found."

Opinion (*per* Lord Ordinary, Kincairney) that a presentment for payment implies a demand for payment, and that the protest, in stating that the bill was presented, sufficiently complied with the statutory requirement that the protest should state the demand made.

On 14th May 1895 Gustav Herman Bartsch, hotel-keeper, Edinburgh, and R. M. Douglas, S.S.C., in consideration of a loan of £250 granted to Bartsch by Poole & Co., corporate accountants, Edinburgh, accepted a bill for £350 drawn by Poole & Co., bearing to be for value received, and payable on demand at the office of Poole & Co. in Edinburgh.

Of the same date, by a writing signed by the acceptors and addressed to the drawers, the following agreement was entered into between the parties:—"Sirs,—We have this day accepted a bill drawn by you upon us for £350, payment of which you have agreed to receive in weekly instalments of ten pounds sterling, commencing on Monday, 27th May 1895, and continuing till the whole be paid up. But in the event of our failing to call upon you and pay said instalments, you are to be entitled to recover from us, at any time thereafter, the whole sum or balance due on the said bill, with the expenses thereof, as if the same were now payable in full." Sundry further penalties were imposed upon the acceptors by this agreement in the event of such failure.

The instalments of £10 due on 27th May and 3rd June were duly paid; but the instalment falling due on 10th June was not then paid. Accordingly, on 14th June, Poole & Co., after communicating their intention to Bartsch and Douglas by letter, protested the bill. The protest began by reciting the bill, and proceeded—"At Edinburgh, upon the fourteenth day of June, in the year of our Lord, One thousand eight hundred and ninety-five, at request of Poole & Company, corporate accountants, No. 4 North Saint Andrew Street, Edinburgh, drawers and holders of the original bill above copied, I, James Andrews, of the city of Edinburgh, notary-public, presented the said bill at the place where payable to a clerk there, who made answer that no funds had been provided to meet said bill, and payment was refused accordingly. Wherefore I, at request foresaid, do hereby protest the said bill against Gustav Herman Bartsch, 25 Hanover Street, and R. M. Douglas, 5 Annandale Street, all Edinburgh, conjunctly and severally, the acceptors thereof, for non-payment of the contents, and for all interest, damages, and expenses, as accords; but always under deduction of the sum of nineteen pounds, nineteen shillings, sterling, paid to account, before and in presence of John Alexander Robertson, solicitor, Edinburgh, and John Low, clerk to the said Poole & Company, witnesses specially called to the premises. (Signed) *Veritas*