only question was whether the directors had proved that they had reasonable grounds for believing them. I thought they had not, one reason being that they had not even attempted to make any provision for outstanding claims. But that is a very different thing from making a substantial estimate which only proves inadequate in the light of subsequent events."

Counsel for the Pursuer—Dundas, Q.C.—Salvesen. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defenders—Ure, Q.C.—Cook — Chree. Agents — Waddell & M'Intosh, W.S., and Morton, Smart, & Macdonald, W.S.

Friday, March 4, 1898.

FIRST DIVISION.

DUNN *v.* CHAMBERS AND OTHERS.

(*Ante*, p. 203.)

Revenue—Income-Tax—Right to Deduct Income-Tax from Interest Due under a Decree—Income-Tax Act 1853 (16 *and* 17 *Vict. cap.* 34), *secs.* 1 *and* 40.

In an action at the instance of a ward for the reduction of the sale of part of her estate, the Court found that on payment by her to the purchaser of the price, with interest at five per cent. from the date of the sale, she would be entitled to decree of reduction.

Held (under reservation of any question that might be raised by the Revenue Department) that the pursuer was not entitled, under sec. 40 of the Income-Tax Act 1853, to deduct from the amount payable by her to the purchaser a sum representing income-tax on the interest.

In this action, which was raised by a ward for reduction of the sale of part of her estate by her *curator bonis*, the Court on December 3, 1897, pronounced the following interlocutor:—"Find that on payment to the defenders first named in the summons, or to Messrs W. & R. Chambers, Limited, of £15,000, being the price of the shares in dispute with interest thereon at the rate of five per cent. from 31st March 1896, the date of the transfer of said shares, the pursuers will be entitled to obtain a decree of reduction of said transfer . . . and continue the cause."

On 3rd February 1898 the Court appointed the defenders to lodge a minute stating the amount of the dividends declared and paid to the defenders first named in the summons in respect of the shares in dispute since said shares were transferred, and the date or dates when said dividends were paid.

The pursuers subsequently made up to 1st March a state of the amount due by them in respect of the £15,000 with interest thereon, under deduction of the amount of the dividends as set forth by the defenders in their minute. This state showed the sum due by them on 1st March to be £14,061, 1s. 8d.; but this sum was arrived at after deduction not only of the dividends on the shares, but also of income-tax on the interest of the capital sum.

The defenders' agent having declined to receive the sum of £14,061, 1s. 8d., the pursuers consigned the money in bank, and presented a note in which they set forth the facts as above stated, and craved the Court to grant the decree of reduction mentioned in the foresaid interlocutor of 3rd December 1897, and to ordain the defenders W. & R. Chambers, Limited, to issue in favour of the pursuer a certificate in her favour of 100 shares of said company.

The Income-Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 1, imposes income-tax for and in respect of, *inter alia*, "all interest of money, annuities, dividends, and shares of annuities payable to any person or persons."

Sec. 40—"Every person who shall be liable to the payment of any rent or any yearly interest of money, or any annuity or other annual payment, either as a charge on any property or as a personal debt or obligation, by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorised, on making such payment, to deduct and retain thereout the amount of the rate of duty which at the time when such payment becomes due shall be payable under this Act . . . and the person liable to such payment shall be acquitted and discharged of so much money as such deduction shall amount unto, as if the amount thereof had been actually paid unto the person to whom such payment shall have been due and payable."

Argued for the defenders — The note should be refused. The debt here due arose out of no contract, nor was the interest "yearly interest of money," which was what sec. 40 had in view. It was a single and exceptional payment of interest which would not be repeated.

Argued for the pursuer—Income-tax was due on the interest. Sec. 1 of the Income-Tax Act of 1853 was very sweeping, and expressly said "all interest of money." The Income-Tax Act of 1842 (5 and 6 Vict. cap. 35), sec. 1, was couched in more restricted language, and referred only to "all profits arising from annuities, dividends, and shares of annuities." If income-tax was due, the pursuer was entitled to make the deduction under sec. 40. This was unquestionably "a personal debt."—*Bebb* v. *Bunny*, 1 K. & J. 216, referred to.

LORD M'LAREN — In considering this question I may begin by pointing out what has been done or what is ordered to be done by the reductive decree. The action was one of reduction of a sale of a ward's estate, and the judgment of the Court ordered the restitution of a capital

sum consisting of shares in a mercantile firm with the dividends accruing thereon. As the curator had in his hands the price of the shares which he had sold, it was thought right that interest should be allowed on that price from the date of the sale to the date of settlement, considering that this is a prosperous business and that it had been paying dividends considerably exceeding five per cent. it was thought only fair that in settling accounts between the parties interest should be allowed on the price at the highest rate allowed by the Court, viz., five per cent. The result of giving one party the dividends and allowing the other party interest at five per cent. is that the former receives a lesser sum; he receives the dividends minus five per cent. which was considered a fair equivalent of the use of the money.

I cannot see that there exists here the state of facts contemplated by the clause of the Revenue Act to which our attention was called. I think the hypothesis of the Act is that there is an investment yielding interest and having a certain permanence about it; and as we are not to enlarge the effect of taxing statutes by putting a forced and artificial construction upon them, I should not hold under the clause quoted that whenever a decree was given for payment of money with interest, income-tax was due on the interest so paid. Of course I do not desire to prejudge in any way any question that may be hereafter raised by the Inland Revenue Department in the public interest. The Inland Revenue is not here represented, and it is not said by the pursuer that she had paid or intends to pay income-tax upon this sum of interest in account. I confess that the determining consideration in my mind is that I am unable to see how in cases of this kind the sum which is deducted in name of income-tax is ever to reach the Exchequer. If the Exchequer authorities find that they have an interest in it, they will, no doubt, be able to raise the question in another form, but my opinion is that payment under the deduction proposed is not a sufficient payment in terms of our decree.

LORD ADAM, LORD KINNEAR, and the LORD PRESIDENT concurred.

The Court refused the prayer of the note.

Counsel for the Pursuer — Sol.-Gen. Dickson, Q.C. — Cullen. Agents — Ronald & Ritchie, S.S.C.

Counsel for the Defenders — Balfour, Q.C. — W. Campbell. Agent — Lindsay Mackersy, W.S.

Friday, March 4.

FIRST DIVISION.

[Lord Pearson, Ordinary.

WILSON & MACFARLANE *v.* STEWART & COMPANY.

Arbitration—Clause of Reference—Sist of Action till Questions Falling under Reference Clause Disposed of by Arbiter — Form of Plea.

In an action for the price of work done in terms of a contract, which contained an alternative claim for the same sum by way of damages for breach of contract, the defender, founding on an arbitration clause, pleaded that the "action is excluded by the reference clause." The Lord Ordinary, holding that all the questions raised between the parties were not excluded by the reference clause, allowed a proof before answer.

The defender reclaimed and craved the Court to sist the cause pending the decision by the arbiter of the question as to the quantity and quality of the work executed by the pursuers, which clearly did fall within the reference clause.

It was suggested by the Court that the defenders' plea was not the correct one to warrant the adoption of this course.

The defenders, in deference to the views of the Court, added a plea—"In respect that the question raised in condescendence 9 and answer 9, relative to the quantity and quality of the work done by the pursuers, falls to be determined by the arbiter, the action ought to be sisted pending his decision."

The Court *remitted* to the Lord Ordinary to sustain this plea.

In 1896 Messrs Wilson & Macfarlane, plasterers, Glasgow, contracted to do the plaster-work of certain tenements which were being erected by Messrs Stewart & Co., builders, Glasgow. These were to be charged for at schedule rates, and to be paid for by instalments. The contract contained a reference clause by which it was provided—"Should any disputes or differences of opinion arise on any matter connected with the contract or the execution of the work, the same shall be and hereby are referred to the decision of Mr John Sim, clerk of works, whose award shall be final and binding on all parties without appeal. An action was raised by Messrs Wilson & Macfarlane against Messrs Stewart & Co., in which they claimed payment of a sum of £460 for work done under the contract at schedule rates. They amended their record by stating the claim alternatively as a claim of damages through the defenders' breach of contract.

The pursuers averred that in April 1897 they withdrew their men and brought the contract to an end owing to the defenders' failure to observe their part, and in