Thursday, May 30.

SECOND DIVISION.

[Exchequer Cause.

THE STANDARD LIFE ASSURANCE COMPANY *v.* ALLAN.

Revenue—Income-Tax—Interest from Securities Abroad—Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Case IV.—"Received in Great Britain."*

The Income-Tax Act 1842, sec. 100, enacts that the duty chargeable under Schedule D, Case IV., in respect of interest arising from securities abroad, "shall be computed on a sum not less than the full amount of the sums . . . which have been or will be received in Great Britain in the current year, without any deduction or abatement."

Part of the revenue of a proprietary insurance company consisted of interest on investments abroad. This interest, although it entered the company's accounts, and was taken into consideration in estimating the profits divisible among the shareholders, was not required to meet the company's liabilities in the United Kingdom, which were met out of funds at their disposal there, and accordingly did not require to be, and in fact was not remitted home, but was re-invested abroad.

Held (*diss.* Lord Young) that this interest was not chargeable with duty under Case IV. of Schedule D, as having been "received in Great Britain."

Forbes v. *The Scottish Provident Institution*, December 17, 1895, 23 R. 322, *followed.*

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

Gresham Life Assurance Society v. *Bishop* [1901], 1 Q.B. 153, *disapproved* and *not followed.*

The Standard Life Assurance Company appealed to the Commissioners of Income-Tax for the County of Midlothian against an assessment for the year 1899-1900 on the sum of £123,674, being the amount of interests accrued upon investments abroad for the year ending 15th November 1898, which, according to the contention of the company, were not received in this country.

The Income-Tax Act 1842 enacts, sec. 100, that "the duties hereby granted, contained in the schedule marked D, shall be assessed under the following rules . . . "Fourth Case.—The duty to be charged in respect of interest arising from securities . . . in the British Plantations in America, or in any other of Her Majesty's dominions out of Great Britain, and foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C of this Act. 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."

The Commissioners were of opinion that the sum in question (with the exception of a sum of £1962, 10s. 5d., as to which no question was ultimately raised) came within the fourth case of Schedule D, and sustained the assessment to the extent of £121,711, 10s.

The appellants obtained a case.

The following facts were set forth in a joint minute of admissions for the parties:—"1. The Commissioners have assessed the Standard Life Assurance Company for income-tax on interests accruing to them in Canada, India, Denmark, and Hungary. They have taken the figures available at the date of assessment, namely, those for the company's financial year ending 15th November 1898, given in the fifth article hereof. As appears from that article, these interests amounted to . . £136,841

Less interest on annuity fund	£32,594	
Less taxed interest on said fund . . .	19,427	
		13,167
Amount assessed upon . .		£123,674

2. The Standard Life Assurance Company is a proprietary company, which commenced business in 1825, and was established in 1832 by the Act 2 Will. IV. cap. 81. . . . . 3. . . In addition to their business in the United Kingdom, the company carries on a large amount of life assurance business abroad, particularly in Canada, India, Denmark, and Hungary, and had, during the year ending 15th November 1898, investments of considerable amount in each of these four countries. Of said investments, the sum of £672,566, 18s. 10d. in Canada, and £8333, 6s. 8d. in Hungary was invested under the control of the respective government officials of said countries against the due fulfilment of the company's obligations there. 4. The head office of the company is in Edinburgh. The supreme control of the management and administration of the company's affairs is vested in a board of directors there. The company have boards of directors, local managers, and offices in Canada, India, and Hungary, with the power of accepting risks without reference to the board of directors at the company's head office in Edinburgh. All investments, however, must be referred to head office, and be sanctioned there before acceptance. In Denmark there is an advisory board, offices, and local officials, but all business, whether as to lives or investments, must be referred to the head office in Edinburgh." Art. 5 set forth the receipts and expenditure excerpted from the balance-sheets of the above-mentioned foreign offices of the company for the year ending 15th November 1898. In the total receipts, which amounted to £366,677, 3s. 5d., was included the foresaid sum of £136,841, 11s. 6d., being the interest earned upon the company's investments abroad.

The total expenditure amounted to £154,725, 4s. 7d., showing a balance in the company's favour of £211,951, 18s. 10d. in respect of their foreign business. "7. . . . No part of the said Canadian, Indian, Danish, and Hungarian receipts was remitted to the United Kingdom *in forma specifica* during the year ending 15th November 1898, the whole being retained in the countries where they arose, and so far as not required for meeting claims and other outgoings, invested or otherwise applied there. 8. The whole of the said receipts and expenditure were for the year ending 15th November 1898 brought into and dealt with in the Standard Company's revenue account submitted to the Board of Trade in pursuance of the provisions of the Life Assurance Companies Act, 33 and 34 Vict. cap. 61, in conformity with the first schedule of that Act." Upon the receipt side of this account there appeared the following item:—Interest and dividends, £348,048, 12s. 1d. "The various items excerpted from the said Canadian, Indian, Danish, and Hungarian balance-sheets are included under their appropriate headings in said revenue account. Thus the said sum of £348,048, 12s. 1d. of interests and dividends includes the sum of £136,841, 11s. 6d. of interests earned in said four countries. 9. By virtue of the principles upon which life assurance companies are conducted, the whole finances, including both capital and income, of the Standard Company are annually concentrated in the revenue account, in which is entered everything received and everything paid by the company. In this account and in point of fact there is no discrimination between the Standard Company's income and the company's capital. When the directors of the company have any payments to make they are entitled to make them out of the first and readiest moneys which may come into their hands belonging to the company. Any one pound subject to their administration is legally as liable for the payment as any other pound. During the year ending 15th November 1898 the directors of the Standard Company paid all their liabilities in the United Kingdom out of the funds in the United Kingdom at their disposal. It was unnecessary to draw upon the foreign receipts referred to in the fifth article hereof for this purpose, and as a matter of fact they did not do so. . . . 10. As appears from said revenue account, the Standard Company's Common Fund amounted as at 16th November 1897 to £8,665,384, 15s. 1d., and at 15th November 1898 it had increased to £8,989,724, 11s. 2d., the difference (£324,339, 16s. 1d.) being the excess of the receipts on account of premiums, interests, &c., over the amount of claims paid, expenses, dividends, and other outgoings, as mentioned in said account. This excess or surplus arising annually is (less such balance as may be added to reserve or carried forward or otherwise kept undivided) finally divisible quinquennially (*a*) amongst those policy-holders entitled to bonuses, and (*b*) amongst the company's shareholders. 11. The affairs of the Standard Company are investigated quinquennially. The last investigation took place as at 15th November 1895, and the next will take place as at 15th November 1900. At these quinquennial investigations stock is taken of the company's assets and liabilities. From the sum total of the funds and investments is deducted the amount of the company's net liability (actuarially ascertained) upon the assurance and annuity contracts, and the liability to the shareholders for paid-up capital and reserve. The difference of the sum by which the former exceeds the latter represents the profits of the quinquennium. The profits of the quinquennium 1890-5, so far as not added to reserve, carried forward, or otherwise kept undivided, were, after the completion of the investigation, mainly distributed by way of bonuses then declared upon policies, and to a much less extent by way of the dividend paid to the shareholders of the company for each of the succeeding five years, including the year ending 15th November 1898. In addition to the distribution of profits or surplus made at the end of each quinquennium, the company find it necessary in a measure to anticipate the results of the quinquennium, and they are in use, as circumstances show prudent, to allow bonuses during the intermediate years both to parties entitled to policies which have matured and become claims in the interim, and also to their shareholders. In this way intermediate bonuses were paid upon policies which had become claims, and a bonus was paid to the company's shareholders for the year ending 15th November 1898. 12. In the case of an assessment of the Standard Company, under Case I. of the Income Tax Act of 1842, section 100, Schedule D, upon profits and gains, the result of the quinquennial investigation last preceding the year of assessment is taken by the surveyor, who adds to the surplus of valuation there shown the dividends paid to shareholders during the five years, and also the income tax disclosed as paid during that period, and the gross total divided by five gives the amount of the year's profits and gains assessable under Case I. Thus, for the year ending 15th November 1898, the quinquennial investigation as at 15th November 1895 is taken, and upon it the surplus of valuation was . £528,005 2 0

to which the surveyor adds the dividends paid to the shareholders during 1890-5	60,000	0	0
and income tax shown as paid by the consolidated revenue account for 1890-5	41,489	16	6
	5)629,494	18	6
	£125,899	0	0

Accordingly the sum of £125,899 is the figure assessable under Case I. as the company's profits and gains for the year ending 15th November 1898. 13. For the year ending 15th November 1898 the Standard Company received, as appears from said revenue account, interest to the

amount of	£348,048	12	1
From which falls to be made a deduction for cross-entries, &c., of . . .	1,395	2	1
	£346,653	10	0
Whereof was foreign interest left abroad as above .	136,841	11	6
Balance of interest .	£209,811	18	6

Upon the whole of this £209,811, 18s. 6d. income tax has been paid—as to £201,347, 13s. 8d. thereof by deduction at source, and as to the balance, £8464, 4s. 10d., by direct assessment. The said sum of £209,811, 18s. 6d., upon which income tax has been paid for the year ending 15th November 1898, exceeds the profits and gains of the company assessable under Case I. by £83,912, 18s. 6d." It was further admitted "that the making of investments and the earning of interest are necessary parts of the ordinary business of the Standard Life Assurance Company, and the investments that that Company had abroad during the year ending 15th November 1898, and the foreign interest earned by it specified in the fifth article of the preceding Joint Minute of Admissions, were respectively made and earned by the company in the ordinary course of its business and as a necessary part thereof. The foreign interest is regularly included in the company's annual revenue account as a distinct source of income, and was duly taken into account in arriving at the amount of the profit earned by the company available for distribution by way of bonus, or dividend, or otherwise as set forth in the tenth and eleventh articles of the said joint minute."

Argued for the appellants—The interest arising from investments abroad was liable to duty only if it was "received in Great Britain." Admittedly it was not actually received; on the contrary, it was retained and invested abroad. The only fact to which the surveyor could point as inferring receipt in this country was that the interest was entered in the revenue account, and taken into consideration in ascertaining the profits. But in point of fact this money was not received, and was not required in this country for the discharge of the company's obligations, there being ample funds for that purpose. The point was decided, at least in Scotland, by *Forbes* v. *Scottish Provident Institution*, December 17, 1895, 23 R. 322, which was indistinguishable from the present case. *The Scottish Mortgage Company of New Mexico* v. *Commissioners of Inland Revenue*, November 19, 1886, 14 R. 98, was not inconsistent with, but rather in contrast with *Forbes*. The facts there were that the company had applied capital raised at home towards payment of interest earned abroad, and it was held that the interest, being a *surrogatum* for the capital, had been constructively received in this country, otherwise the company would have been doing an illegal act, viz., paying dividends out of capital. The case of *Gresham Life Assurance Society* v. *Bishop* (1901), 1 Q.B. 153, was no doubt in conflict with *Forbes*, but was not binding on the Court in Scotland, and from the opinions of the judges they appeared to have proceeded on a misapprehension of the decisions in *Forbes* and the *Scottish Mortgage Company*. The contention of the appellants, moreover, was supported by the decisions in *The Bartholomay Brewing Company* v. *Wyatt* (1893), 2 Q.B. 499; *The Nobel Dynamite Trust Company* v. *Wyatt* (1893), 2 Q.B. 499; and *Colquhoun* v. *Brooks* (1889), 14 A.C. 493, *per* Lord Herschell and Lord Macnaghten. The result of holding that these sums had been received in this country would be to read out the limitation altogether.

The appellants also stated that they desired to reserve their right to maintain in a higher court the argument rejected by the Court of Appeal in England in the case of the *Clerical, Medical, and General Life Assurance Society* v. *Carter*, 22 Q.B.D. 444, and by the First Division of the Court of Session in Scotland in the case of the *Scottish Mortgage Company of New Mexico, supra*, to the effect that where the earning of interest is a necessary part of the business of a company, such interest does not fall to be assessed under Case IV. but under Case I. of Schedule D.

Argued for the respondent, the Surveyor of Taxes—The determination of the Commissioners was right. The facts here were indistinguishable from those in *Gresham, supra*, and although not binding on this Court, that decision should be followed. The appellant's business was wholly regulated by a body of directors in this country, who had entire control of the company's funds wherever situated. The interest in question was taken into account in striking a balance, and thus went to swell the dividends and bonuses payable to the shareholders. The result was exactly the same as if the money were sent home and sent out again for investment. The facts in *Forbes* were different. Nothing was done with the colonial interests, except to leave them where they are (per L.-P. Robertson, at p. 327, foot). No dividend or bonus was paid to the members of the society as was done here, and thus it could not be said that the interest had been received in this country. It would equally amount to constructive receipt in this country if the head office should direct its foreign debtor to pay his debt abroad instead of remitting it home, or should direct him to pay periodically into the company's bank account abroad. The respondent also referred to *Universal Life Assurance Society* v. *Bishop*, 1899, 4 Tax Ca. 139; *Norwich Union Fire Insurance Company* v. *Magee* (1896), 3 Tax Ca. 457; *Apthorpe* v. *Peter Schoenhofen Brewing Company*, 1899, 4 Tax Ca. 41; *St Louis Breweries* v. *Apthorpe* (1898), 4 Tax Ca. 111; *Frank Jones Brewing Company* v. *Apthorpe* (1898), 4 Tax Ca. 6.

At advising—

LORD JUSTICE-CLERK—The controversy here between the Standard Life Assurance Company and the Inland Revenue, which we are called upon to decide, arises under Schedule D, Case 4, of section 100 of the Income Tax Act of 1842, which relates to

the duty to be charged in respect of interest arising from foreign securities which is to 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. The whole question turns on the words "which have been or will be received in Great Britain." The facts, as stated in the case, are that the appellants had in foreign countries and in India large sums invested under the control of the government officials of these countries, as security for the due fulfilment of the appellants' obligations in these countries. The question relates to the receipts from these investments in certain countries, and the case states that no part of these "was remitted to the United Kingdom *in forma specifica* during the year ending 15th November 1898, the whole being retained in the countries where they arose, and so far as not required for meeting claims and other outgoings, invested or otherwise applied there."

These sums entered the appellants' revenue account for the year submitted to the Board of Trade under the Life Assurance Companies Act, and it is the annual practice to include these interests in the appellants' revenue account, and they are taken into account in arriving at the amount of profit made by the company.

The directors of the appellants' company paid all their liabilities in Great Britain out of funds in their hands in that country. No part of the proceeds of the foreign investments was applied for that purpose, or was distributed among the proprietors.

The real question in the case is whether the words of Case 4 of Schedule D, "received in Great Britain," apply to these proceeds. The respondent maintains that they do, they having entered the revenue accounts of the appellants, and that that amounts to their having been received in account. In support of this view he appeals to the English decision in the case of *The Gresham Life Assurance Society* v. *Bishop*, and to the case of *The Scottish Mortgage Company of New Mexico* v. *The Inland Revenue Commissioners*. The latter of these two cases seems to me to be essentially distinguishable from the present case. In the *New Mexico* case the company saved the expense of the actual transmission of money—I do not mean in specie, but in the ordinary course of mercantile business—from abroad, for the payment of dividends by the expedient of using capital sums raised on debenture loans in this country to pay the dividends, and using the profits in the foreign country instead of the debenture money for investment abroad. In that case plainly the interests earned in the foreign country were brought into account and applied in Great Britain. The company could not legally divide the debenture money as profits, and the investments made abroad were truly representative of the debenture money, and the debenture money applied in Great Britain was truly an application of the profits made abroad. Therefore that money was as truly "received in Great Britain" as if it had been remitted *in forma specifica*, or by the usual modes of transmission by which specie transmissions are avoided. But the "receiving in Great Britain" was indisputable. That case therefore does not in essential particulars resemble the case we are dealing with. The case of the *Gresham Assurance Society* has a much closer resemblance to the present. The learned Judges who decided it seem to have considered that the view they took in that case was supported in the case of *Forbes* v. *The Scottish Provident Institution*, decided in the First Division of this Court. I cannot agree with that view. The case of *Forbes* seems to me to be in direct conflict with the decision in the case of *Gresham*, and, if rightly decided, to rule the present case. The rubric of that case, which very correctly represents the decision given, is—"Where interest derived from the colonial investments of a society for mutual assurance was not remitted home, but was reinvested abroad, *held* that by being entered in the society's accounts it was not constructively remitted to this country so as to be chargeable with duty under Case 4 of Schedule D of the Income Tax Act 1842."

That seems to be an exact description of the present case.

In that case, as in this case, the sums of profit made in the foreign conntry were entered in the company's statement of affairs. The question is, whether that fact alone, which, as the Lord President points out, is common to all business persons and companies having investments out of the kingdom, constitutes receiving of the sums in Great Britain—in other words, does information to the investment holder that he has made that profit on his foreign investment *ipso facto* constitute a receiving of it here? I am of opinion that it was rightly held in the case of *Forbes* that it did not, and therefore that in this case, which seems to me to be practically identical with it, the decision of the Commissioners was wrong.

LORD YOUNG—I agree with the opinion expressed by the Commissioners here, and think the appeal ought to be refused.

LORD TRAYNER—I think the decision of the Commissioners is wrong. The duty for which that decision finds the appellants liable is a duty on interest arising from securities held by them in His Majesty's dominions out of Great Britain. But such interest is only liable for duty on the amount thereof "received in Great Britain," and it appears to me that no part of the interest on which duty is now claimed was ever received in Great Britain. The contrary is set forth in the seventh article of the case before us, where it is stated that no part of the interest in question was remitted to the United Kingdom, but was retained and applied in the country where it arose. I do not fail to notice that this statement is qualified by the expression that the interest was never remitted "*in*

forma specifica," and that "the foreign interest is regularly included in the company's annual revenue account as a distinct source of income, and was duly taken into account in arriving at the amount of the profit earned by the company available for distribution by way of bonus or dividend," &c. These facts are not inconsistent with the fact that the interest was not received in Great Britain. I concede that in order to make the foreign interest liable in duty it is not necessary that it should be remitted "*in forma specifica*," if that means remitted in coin. Anything equivalent to money, or which can be turned into money, will do. Nothing of that kind occurred here. The only thing which was done was that the foreign branches reported so much interest earned and obtained, which appeared in the appellants' accounts as part of their assets. But that asset was kept where it was earned and got, and there applied. It was not needed for any disbursement (either in dividend or otherwise) which the appellants had to make in Great Britain, and in fact was not so applied (art. 9 of the case). In the words of the Lord President in *Forbes*' case (23 R. 327). "There is nothing, as far as appears, done with the colonial interests in question except to leave them where they are." I cannot distinguish this case in principle from *Forbes*' case, and I am prepared now to repeat the decision there given.

I respectfully dissent from the judgment given in the case of *Gresham* (1901), 1 Q.B. 153. I venture to think that there is no room for the view that the statute contemplates or provides for any "constructive" remittance. I think there is no remittance provided for except actual remittance—not necessarily of money or coin but of something equivalent in the market to money, and that can there be turned into money. I cannot hold that a mere report by a foreign or colonial branch to the head office in Great Britain that so much interest has been earned and is retained, is a remittance either constructive or real. In the decision in the case of *Gresham* a reference is made to the case of *Scottish Mortgage Company of New Mexico*, decided in the First Division of this Court in 1886, as being a decision "exactly in point." I think, with great deference, that that is not so. In my view the two cases are essentially different. In the *New Mexico* case the facts were that the company had raised capital by debenture in this country which they could not legally apply in payment of dividends, and which was intended for foreign investment; that at the same time they had interest earned abroad which could be, and was at that time, to be applied in payment of dividends in this country. But instead of sending the debenture capital abroad for investment and receiving the foreign interest at home for payment of dividends, they directed the holders of the foreign interest to invest it, and to that extent the capital at home would be retained and applied in payment of dividends. The one was the *surrogatum* for the other. In short, what the company did was this—they held the money in their hands to be interest, and used it as such in Great Britain, directing that an equivalent sum should be held abroad as capital, and used there as such. In this way the company did get money in this country out of foreign interest to pay their dividends, and did pay it. I think that case quite consistent with the case of *Forbes*. The facts are essentially different. But the facts in *Forbes*' case and the present case appear to me to be the same, and the result (as in *Forbes*' case) is that the foreign interests, "left where they are," are not liable in duty.

LORD MONCREIFF—Although the statute which we have to interpret was passed in 1842, there are few decisions to guide us. Two Scottish and two English cases were chiefly relied on. The earlier in date of the Scottish cases, *The Scottish Mortgage Company of New Mexico* v. *Inland Revenue Commissioners*, 19th November 1886, 14 R. 98, is claimed by the surveyor as an authority in his favour; the appellants, on the other hand, found on the later case of *Forbes* v. *Scottish Provident Institution*, 17th December 1895, 23 R. 322.

The English decisions, both of which were decided within the last year, are *The Gresham Life Assurance Society* v. *Bishop*, L.R. [1901], 1 Q.B. 153; and *The Universal Life Assurance Society* v. *Bishop* (1899), 81 L.T.R. 422. They are both adverse to the appellants; but however worthy of respectful consideration they may be, they are not binding on us, and, moreover, they seem to a certain extent to have proceeded upon a misapprehension of the decisions of this Court in the cases of *The Scottish Mortgage Company of New Mexico* and *Forbes*.

We have therefore to interpret the statute for ourselves with the aid of such light as those decisions and the opinions of the learned Judges who decided them afford.

The Crown's claim is made under the 4th Case, section 100, Schedule D, of the statute of 1842. The duty to be charged on securities out of Great Britain is to 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." The words to be construed are "which have been received in Great Britain." The words "or will be received" do not, in my opinion, affect the question. They simply provide for an estimate based upon the practice and requirements of the taxpayer, this being necessary because the return has to be made before the expiry of the financial year.

Parties are agreed on the facts of this case; and amongst the facts admitted are the following:—*First*, that the whole of the interests earned abroad, amounting to £136,841, 11s. 6d., were "retained in the countries where they arose, and so far as not required for meeting claims and other outgoings, invested or otherwise applied there.' Thus the interests in question were not remitted to or received in Great Britain during the year of assessment.

The second point (which is also a matter of admission) is that it was unnecessary to draw on the foreign receipts in question for the purpose of paying the company's liabilities or dividends and bonuses in the United Kingdom. The appellants had ample funds in this country which they were entitled to use for all these purposes.

In my opinion these facts are sufficient to exempt the interests in question from taxation under the 4th case, which, as I read it, requires that the interests to be taxed must either have been actually remitted to and received in Great Britain, or, according to the practice and requirements of the trader, should have been remitted during the year of assessment. This view receives corroboration from the terms of the 108th section of the statute, which prescribes the places at which profits on foreign or colonial possessions or securities (taxed under the 5th Case), which are "*imported into Great Britain*," are to be charged. Those words are used in the same sense as "received" in the 4th Case.

It remains to consider the grounds on which the surveyor contends for a wider construction of the 4th Case. Towards the close of his argument, the learned Solicitor-General (unless I entirely misapprehended his answers to questions from the Bench) pleaded his case as high as this, that if a trader or investor in this country to whom interest on foreign securities becomes due sends directions to his agent abroad not to remit the interest to this country, but to invest it or pay debts with it abroad, or directs the debtor to pay the money into bank abroad, or indeed gives any directions for its disposal, such interest must be held to have been "received in Great Britain." I was at first surprised at the answer, because it appeared to leave no case to which the limiting words in the 4th Case could apply; but I must assume that the Crown's argument required it.

Coming more closely to the facts of this case, the Crown's claim is mainly rested on this, that the interests accrued on foreign securities are regularly entered in the appellants' revenue account for the year, and go to swell the profits for the year, according to the amount of which the dividend and bonus for the year are fixed and paid. It is therefore argued that these interests, having been brought into account and constructively applied in payment of liabilities. or in payment of dividend and bonus, must be held to have been "received" in this country. The answer is, that although the interests on foreign securities are necessarily entered in the annual revenue account, and taken into consideration in ascertaining the amount of the profits and arranging for their division, they are not in point of fact remitted to and received in Great Britain, and they are not required for the discharge of any of the appellants' liabilities or purposes here. It appears from the ninth statement that the company are entitled to treat, and uniformly treat, capital and income on precisely the same footing, and to make any payments which they are required to make out of the first and readiest moneys which come into their hands. Besides, there is nothing in the case to show that the income actually received in this country was not sufficient for all payments which required to be made here. Thus in no sense were the interests in question received in Great Britain—they were not remitted, and they were not required.

Reliance is placed on the fact that the supreme control and management of the company's affairs is vested in a board at Edinburgh. I fail to see the relevancy of this consideration. The statute assumes that the person entitled to the interest is resident in Great Britain; his liability depends on the interest reaching him there, and not upon the directions which he gives as to its application.

This brings me to the *Scottish Mortgage Company of New Mexico* v. *Inland Revenue Commissioners*, 14 R. 98.

It is impossible to read the anxiously expressed opinion of the Lord President Inglis without seeing that he regarded it as a very special case. The business of the company was carried on by borrowing money in this country at low rates and lending it on American securities at high rates, the profit consisting of the difference. The only money which was properly applicable to payment of dividends and liabilities in this country was the interest earned abroad upon foreign securities, which accordingly ought to have been regularly remitted to this country. Strictly speaking, the company had no right to apply the money which they borrowed in this country to those purposes, but for the sake of convenience and to avoid trouble and expense, the company, instead of ordering all the interest to be sent home, and sending out all the borrowed money raised on debenture to be invested in America, retained out of the borrowed money a sum sufficient to pay all the working expenses in Great Britain, interest to debenture-holders and depositors, and a dividend, and directed an equivalent amount of the interest which would otherwise have been remitted, to be retained abroad and invested. Thus one sum was set against the other, and formed a proper *surrogatum* for it. The Lord President concludes his opinion thus (p. 102)—"So that, according to the way in which this company keeps its books, it has really converted a sum which was received in this country as capital into an equivalent for the interest upon the foreign securities, and *it represents in their books interest upon these foreign securities.* Now, in these circumstances it appears to me quite impossible for the company to maintain that they have not received that interest. They have received it in this most proper sense of the term, that it enters their books in this country as such interest, and is paid away as such. I am therefore of opinion that the duty is rightly charged under the fourth case, and that the deliverance of the Commissioners ought to be affirmed."

The finding of the Commissioners, which the Court affirmed, was in these terms (p.

100) — "19. The Commissioners found (1) that the profits of the company were of the nature described in the third clause, Schedule D, section 2, of 16 and 17 Vict. c. 34; (2) that the assessment fell to be imposed on the full amount of the sums which had been received in the United Kingdom in the year of assessment, and that, according to the rule in the fourth Case, section 100, of 5 and 6 Vict. c. 35, duty was chargeable on the profits of the company, which had been brought into account in their books in Glasgow in so far as such profits had been applied to the payment of interest, dividends, debit balance, and preliminary expenses, in respect that by being so brought into account and applied they must be held to have been received in this country in exchange for an equivalent sum raised in this country and invested abroad, but not upon the profits which had been carried forward, even although such profits had been brought into account in the books of the company at Glasgow, in respect that they had not yet been actually dealt with and applied as money received in this country."

The difference in the facts from those in the present case will at once be observed. Here it was not necessary that the interests should be remitted, and they were not dealt with as having been remitted, because there were ample funds which, according to the practice and powers of the company, they were in use legitimately to apply to all payments to be made in Great Britain or elsewhere. In my opinion the true explanation of the judgment in the *Scottish Mortgage Company of New Mexico* is that it proceeded upon the footing of bar or estoppel. The funds raised in this country for the purpose of investments abroad could not legally be applied in payment of debts and liabilities due in this country, and therefore the company could not be heard to plead that the interest which was entered in their books as having been received had not been remitted.

The material facts in *Forbes'* case, 23 R. 323, were simply these. The directors had lent out considerable sums in Australia and elsewhere out of the United Kingdom. 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 power it was lent out as opportunity offered in the name of the corporation. It formed part of the interest entered in the revenue account of the institution for the year ending 31st December 1892 as given up to the Board of Trade in terms of the Life Assurance Companies Act 1870 (33 and 34 Vict. c. 61), sec. 5. No distribution of surplus took place in the year 1892, the last septennial investigation into the affairs of the institution having taken place in 1887, when out of a surplus, amounting to £1,051,035, 8s., £350,345 had been retained, and £700,690 apportioned among the participating members.

It was held that upon these facts the case for the Crown failed. Lord President Robertson said (p. 327)—"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."

These words seem to me exactly to fit the present case. They have been interpreted as meaning merely that all that was done in *Forbes'* case was that the interest entered the corporation's accounts. But that is not so, because it appears from the statement of admitted facts with reference to which the Lord President was speaking, that the interest was not only left abroad, but, as here, "was lent out as opportunity offered in name of the corporation."

The only difference that can be suggested is that, as there was no division of surplus during the year of assessment, the foreign interest had not been taken into consideration for the purpose of fixing the amount and division of profits. But that is surely not a material fact. The fact that the taxpayer takes note of the amount of interest received abroad in regulating his expenditure (whether in payment of dividend or otherwise) cannot affect the question unless the interest either has been or should have been remitted in order to meet the expenditure.

I therefore regard the case of *Forbes* as an authority of our own Court in favour of the appellants.

The facts in the case of *Gresham* closely resemble those in the present case, as appears from the concise statement of them in the rubric—"An insurance society carried on their business in the United Kingdom, and, by means of local agents or managers, in foreign countries. The business was entire and indivisible, and was managed by a board of directors in London. The society possessed funds invested in foreign countries in which they did no business. The interest on these investments was either re-invested in those countries, remitted directly to other foreign countries for investment, or remitted to London. They also possessed funds invested in foreign countries in which they carried on business. The interest on these investments was either re-invested in those countries, applied in establishment and other charges in those countries, remitted direct to other foreign countries for investment or for the general purposes of the

society, or remitted to London. Yearly accounts were prepared on which all the interest on investments in foreign countries was included, and out of the profits shewn by the accounts a dividend was paid yearly to the shareholders. The surplus funds of the society divisible as profits were ascertained by actuarial valuation once in three years, and all the interest on investments in foreign countries was included in the triennial account."

On these facts the Court of Appeal held that all the interest on foreign investments was received in the United Kingdom within the meaning of the 4th Case. They did so on the ground that the terms of the statute were sufficiently satisfied by a receipt in account. All their Lordships held that the Scottish case, *The Scottish Mortgage Company of New Mexico*, was an authority directly in point, and they all agreed in distinguishing the case of *Forbes*. Speaking of the former case, the Master of the Rolls, after stating that in his judgment the true meaning of the 4th case was satisfied by a receipt in account, adds—"And I think that is the reading of it arrived at by the judges in the Scottish case—*Scottish Mortgage Company of New Mexico* v. *Inland Revenue Commissioners*. They did not put this in so many words, but they came to the conclusion in that case that there had been a receipt in account of foreign dividends, and they held, that being so, that the Crown was entitled to income tax upon the dividends so received." Lord Justice Collins is of the same opinion, and he further states that, as he reads the Lord President's opinion, the latter did not proceed on the footing that the corporation was barred from saying that the interest had not been received.

Lord Justice Stirling is of the same opinion. For reasons which I have already stated, I think their Lordships were mistaken as to the import of the decision in that case. No doubt it was decided that in that case the cross-entry in the corporation's books was equivalent to receipt of foreign interest; but that was solely on account of the peculiar circumstances of the case which I have described.

Then as to the decision in the case of *Forbes*, their Lordships all treated it as proceeding on the footing that there was nothing in the case except that the interest appeared in the annual account. But here again I think their Lordships are mistaken.

On the whole matter I am of opinion that the deliverance of the Commissioners, which I have no doubt was greatly influenced by the English cases, is in this respect erroneous.

The Court reversed the determination of the Commissioners in so far as it found the appellants liable to income-tax under Schedule D on the foreign interests amounting to £121,711, 10s., as having been received by the appellants in the United Kingdom: Found that the said foreign interests were not received in the United Kingdom, and accordingly ordained the respondent to repay to the appellants the amount of the income-tax which had been paid on the said sum of £121,711, 10s., with interest from the date of payment at 4 per cent. until repaid.

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Counsel for the Respondent, the Surveyor of Taxes—Solicitor-General (Dickson, K.C.) —A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, May 31.

SECOND DIVISION.

[Sheriff-Substitute at Dundee.

DUNDEE AND ARBROATH JOINT-RAILWAY *v.* CARLIN.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 4—*Railway—Work "Ancillary or Incidental to" Business of Undertakers—Erection of Wall for Protection of Signal Cabin.*

A workman in the employment of a sub-contractor, who had a contract with a railway company to construct a stone and lime wall to prevent the soil from the bank of a cutting falling down and obstructing the access to a signal cabin belonging to the company, was knocked down and killed by a passing train.

Held (*diss.* Lord Young) that the work on which the deceased was employed was not part of the business of the railway company, but was "merely ancillary or incidental thereto," within the meaning of section 4 of the Workmen's Compensation Act 1897, and that the railway company were not liable to pay compensation.

Burns v. *North British Railway Company*, February 20, 1900, 2 F. 629, *distinguished, commented on*, and *doubted*.

Pearce v. *London and South-Western Railway* [1900], 2 Q.B. 100, *approved and followed*.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, before the Sheriff-Substitute at Dundee (CAMPBELL SMITH), between the Dundee and Arbroath Joint Railway, appellants, and Mrs Bridget Carlin, widow of James Carlin, mason's labourer, Dundee, claimant and respondent.

The facts stated by the Sheriff-Substitute to be proved were as follows:—"On 22nd June 1900, at the time of receiving his fatal injuries, the deceased James Carlin was working as a mason's labourer in the employment of Robert Sheach, builder, who was sub-contractor for the masonwork of a new station at Stannergate, Dundee, under Messrs D. P. How & Son, contractors with the appellants for the construction of the station buildings and premises. Sheach was at the time employed