Counsel for the Appellant and Defender —J. R. Christie. Agents—Sturrock & Sturrock, S.S.C.

Counsel for the Respondent and Pursuer —Malcolm. Agents—Carmichael & Miller, W.S.

Tuesday, February 6.

FIRST DIVISION.

(COURT OF EXCHEQUER.)

THE SCOTTISH PROVIDENT INSTITUTION *v.* INLAND REVENUE (FARMER, COLLECTOR OF TAXES).

Revenue—Income Tax—Interest on Foreign Investments—"Sums Received in Great Britain in the Current Year"—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Case IV—Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedule D.*

A Scottish insurance company purchased bearer bonds in New York out of funds accumulated there amounting to £15,681, representing interest arising from various foreign and colonial securities in America prior to July 1907. These bonds were despatched to this country and were received at the company's head office in July 1907, and kept there for safe custody till August and October 1908, when they were sold and their proceeds received at the head office in Edinburgh.

In a claim by the Commissioners of Inland Revenue, *held* that the money was subject to income tax, inasmuch as, though it had been earned before the year of assessment, it had been "received in Great Britain in the current year" in the sense of the Income Tax Acts 1842 and 1853.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 100, Schedule D, fourth case, enacts—"The duty to be charged in respect of interest arising from . . . foreign securities. . . . 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 Income Tax Act 1853 (16 and 17 Vict. cap. 34) enacts, section 2—". . . The said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act, . . . and to be charged under such respective schedules (that is to say) . . . Schedule D— . . . For and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof."

The Scottish Provident Institution appealed to the Income Tax Commissioners at Edinburgh against assessments on the sums of £129,019 and £26,557, 10s. of interest made upon it for the year ending 5th April 1909 under the Income Tax Acts 5 and 6 Vict. cap. 35, sec. 100, Schedule D, Case IV; 16 and 17 Vict. cap. 34, sec. 2, Schedule D; and 8 Edw. VII, cap. 19, sec. 7, and claimed that the assessments should be wholly discharged on the ground that no portion of the interest earned abroad within the year of assessment had been remitted to and received in the United Kingdom within the said year of assessment. The Commissioners having in part sustained and in part refused the appeal, a case was stated for the opinion of the Court of Session as the Court of Exchequer in Scotland.

The Case stated, *inter alia* — "1. The agents for the Institution and the Surveyor of Taxes adjusted and signed a joint minute of admissions, a copy of which is as follows:—. . . (2) The Institution is a corporation which carries on the business of mutual life assurance and granting annuities within the United Kingdom. The making of investments and the earning of interest both at home and abroad are necessary parts of the ordinary business of the Institution. The supreme control of the management and the administration of the Institution's business is vested in a board of directors in Edinburgh, where its head office is situated, all its principal books are kept, and the annual meeting of its members held. (3) The Institution's accounts are made up to 31st December each year, and hitherto for convenience the interest on foreign and colonial securities received in the United Kingdom during the Institution's year last immediately preceding the year of assessment for which completed accounts were available has been taken as furnishing the basis figure for the assessment. The assessments now in question were made in respect of sums arrived at in this way. The said sums of £129,019 and £26,557, 10s. represented interests which had accrued to the Institution in the United States of America and Canada, and been paid and invested there during the year ending 31st December 1907, in the purchase of bearer bonds which were thereafter transmitted to this country for safe custody. In respect, however, of the decision in the case of the *Scottish Widows Fund* v. *Surveyor of Taxes*, 1909, Session Cases, p. 1372, 46 S.L.R. 993, to the effect that the transmission of such securities was not equivalent to a remittance of the interest to the United Kingdom, the assessment is no longer maintained on its original ground, but is maintained to the extent of £15,681 on the ground set forth in the immediately succeeding paragraph, and in respect of sums received in the United Kingdom in the year ending 5th April 1909 and not during the year ending 31st December 1907. (4) On 8th and 9th July 1907 the Institution purchased bearer bonds in New York out of funds accumulated there amounting to £15,681. For the purpose of the present appeal the said accumu-

lated funds may be taken as representing interest arising from the various foreign and colonial securities in America prior to said 8th and 9th July 1907. The bonds so purchased were despatched to this country and were received at the Institution's head office on 19th July 1907, and kept there for safe custody until the months of August and October 1908, when the said bonds were sold and the proceeds of the sale received by the Institution at its head office in Edinburgh. . . .

"4. The Commissioners having considered the facts and arguments submitted to them were of opinion that the sum of £15,681, representing the proceeds of the bearer bonds realised in the United Kingdom, was interest received in the United Kingdom within the meaning of the fourth case of Schedule D, and as such chargeable with income tax. They confirmed the assessment on said sum, and discharged the balance of the assessments."

Argued for the appellants—The Income Tax Acts were renewed annually, and the Act for each year dealt with the income of that year alone. What was taxed was the income accruing in the year of assessment —Taxes Management Act 1880 (43 and 44 Vict. cap. 19), secs. 52 and 63; Finance Act 1907 (7 Edw. VII, cap. 13), sec. 23 (2). The Crown having accepted that method as their stereotyped standard were not entitled to depart from it and bring something else into the account by taxing income not received in the year of assessment. Surplus income from previous years became capital, and mere realisation in the United Kingdom would not convert it into income. The taxing statutes must be read *in favorem* of the subject, and the Crown's contention carried to its extreme led to the conclusion that money received in all times, even before the Income Tax Acts were passed, could be taxed. There was no provision in these Acts for taxing in one year what is income of another year, and particularly was that so when the income sought to be taxed was income which in the year of assessment was exempt from assessment — *Colquhoun* v. *Brooks*, 1889, 14 A.C. 493, *per* Lord Herschell. The case of *Scottish Provident Institution* v. *Inland Revenue*, June 4, 1901, 3 F. 874, 38 S.L.R. 683; *aff.* April 30, 1903, 5 F. (H.L.) 10, 40 S.L.R. 605, [1903] A.C. 129, founded on by respondents, was not in point, because the question was not really argued either in the Court of Session or House of Lords, and L. P. Kinross's remark on the matter was purely *obiter*. Appellant's year to December 31, 1907, was the standard accepted as being the last year for which completed accounts were available, and the bonds were not realised till the autumn of 1908.

Argued for the respondent—The Income Tax Acts had nothing to do with how, when, or where the income was earned, but only with the question whether it had been received in this country. Schedule D was quite general in its terms and said nothing as to when the income was earned. The proceeds of the bonds as and when realised became a receipt of interest within the meaning of the fourth case of Schedule D, and assessable accordingly. Any other interpretation would render the Acts nugatory and provide a means of evading taxation in respect of foreign interest, as it would only be necessary to hold up interest abroad until the expiration of the year in which it was received to achieve this result — *Scottish Mortgage and Land Investment Company of New Mexico* v. *Commissioners of Inland Revenue*, November, 19, 1886, 14 R. 98, 24 S.L.R. 87; *Surveyor of Taxes* v. *Northern Investment Company of New Zealand, Limited*, May 31, 1887, 14 R. 734, 24 S.L.R. 530; *Universal Life Assurance Society* v. *Bishop*, 1899, 68 L.J., 2 Q.B. 962, 4 Tax. Cas. 139; *Scottish Provident Institution* v. *Inland Revenue* (*cit. sup.*). There were two questions in the present case—(1) Was this sum of £15,000 income? That fact was admitted. (2) Was it received during the year of assessment? and the answer thereto was in the affirmative.

At advising—

LORD PRESIDENT—This is a case under the Income Tax Acts, and the facts upon which it depends have been clearly set forth in a joint minute of admissions for the parties, which forms part of the proceedings.

The Scottish Provident Institution, which is an insurance company in this country, is possessed of considerable funds abroad. Those funds are invested in, among other places, America and Canada, and the dividends from investments become part of the income of the Institution. It is set forth in the case that with about £15,000, which had so accrued, the Institution purchased bearer bonds in New York in 1907. The *corpora* of these bearer bonds were transmitted by them to this country for safe custody.

There was a case before your Lordships in which the Crown contended that receipt of the *corpora* of such bearer bonds was equivalent to receipt of the money they represented, but your Lordships held otherwise. The bonds here in question, after being kept from 1907 till 1908, were sold. It is admitted that the proceeds of the sale were received at the head office of the Institution in Edinburgh. The Crown proposed to charge and have charged income tax upon this sum, and that view has been upheld by the Commissioners, and this case is presented against their determination.

The whole of the argument before your Lordships turned upon this fact, as will be apparent from the statement which I have made, viz., that the actual earning of the interest upon which the charge is now proposed to be made was not in the year of assessment with which we are dealing, but the realisation of the earnings by means of the sale of the bonds in this country was in the year of assessment.

The matter really turns upon two parts of the Income Tax Acts, and two alone. First of all the charging section is under Schedule D in the Act of 1853, and it is in these terms—"For and in respect of all

interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof." There is no question that this case falls within that general description; and then the other section, which specially applies, is the fourth case of section 100 of the Income Tax Act of 1842, which says that "the duty to be charged in respect of interest . . ." 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."

Now the argument for the Crown is that the interest in question was received in Great Britain in the year of assessment and therefore must be charged. The argument for the Institution is that inasmuch as it was not earned in that year it does not fall within the Income Tax Acts at all.

I am of opinion that the determination of the Commissioners is right. There is nothing said in the Acts about profits or gains being necessarily earned within the year of assessment. No doubt that will be the natural result of the way in which the whole matter is worked; but I would like to make, first of all, this observation, that although the Act is full of the expression "annual profits and gains" in almost every section which deals with this matter, the presence of that word "annual" does not seem to me to connote necessarily the idea of nothing being chargeable which is not earned within the year of assessment, but it is there for the purpose of showing that the tax which is being levied is a tax upon income, or, in other words, upon annual profits and not upon capital. When a profit or an interest is earned in this country, the question really cannot arise, because the profit which is earned in this country is necessarily received in this country. I use the word "received," because you may quite well have a profit which has not been paid to you in hard cash. Many partnerships do not pay profits in hard cash, or a partner does not take his profits in cash, but nevertheless the profits are earned, and being earned they are necessarily received by the partner at the time they are earned. But when the profit is earned abroad it is not necessarily received at the same time in this country. It is, of course, received in the sense of there being a right to it there, but it is not received in this country, and accordingly this fourth case provides that the duty shall only be computed on sums "which have been or will be received in Great Britain in the current year." As soon as they are received I think they become chargeable.

I have only to say another word, and it is this, the case of the *Scottish Provident Institution* v. *The Inland Revenue* (3 F. 874), which is reported in the House of Lords under the name of *Allan* (5 F., H.L. 10), undoubtedly involves this point. The rubric in the Court of Session case is rather misleading upon this matter. If you read the rubric you would think that the only point decided there was with regard to two specific sums of £25,000 and £15,000. Really, as matter of fact, there was a sum of £217,000 adjudicated upon, and there is no doubt whatsoever that a considerable portion of that sum had been earned as here outwith the year of assessment. It is not exactly so stated in the report, but it is very evident, and a very shorthand way of getting at it is to take the figures, and if it was earned within the year of assessment the Scottish Provident Institution had been in the particularly fortunate position of laying out the whole of its money at twelve per cent. The matter, however, of profit so earned, was involved in this decision. I am quite aware that it was not argued, and there is a sentence in the House of Lords report which rather looks as if Mr Blackburn had made a very late attempt to argue it in the House of Lords and was stopped because it had not been argued in the Court of Session. But there it remains, and though I do not think it is conclusive, yet, on the other hand, I think it is unlikely that if the point had been a really good one it would have been missed. On the whole matter I think the determination of the Commissioners is right.

LORD KINNEAR — I am of the same opinion.

LORD JOHNSTON—I concur.

LORD MACKENZIE gave no opinion, not having heard the case.

The Court refused the appeal.

Counsel for the Appellants—Blackburn, K.C. — Macmillan. Agents — Dundas & Wilson, C.S.

Counsel for the Respondents—Morison, K.C. — J. A. T. Robertson. Agent — Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, February 8.

FIRST DIVISION.

[Junior Lord Ordinary.

HALLIDAY'S *CURATOR BONIS*, PETITIONER.

Judicial Factor—Curator Bonis—Discharge and Appointment of New Curator—Expenses of Discharge.

A *curator bonis* on a small estate received the offer, fifteen months after his appointment, of a professional position in the United States, and petitioned for recal of his appointment and discharge and for the appointment of a new *curator bonis*. *Held*, approving the report of the Accountant of Court, that in view of the short period of acting and the reason given for recal, the expenses of the discharge and new appointment did not form a good charge against the estate.