the same way or not. But at any rate I think the way in which the arbiter has proceeded, and which, I think, he has clearly explained in the note upon the rehearing, is quite a fair way. I do not think it is the only way he could have chosen; I think he might have proceeded in another way, and he might have proceeded in the way which began with adjustment of the debt according to the valuation, and proceeded upon the other side of the account to make other calculations.

Upon the whole matter, therefore, I am of opinion that we should answer the first branch of the first question of law in the negative, and the second branch in the affirmative.

These remarks really cover also the questions which arise on the second head of claim. I think the arbiter is entitled to proceed as he proposes, though I do not say that he must necessarily do so.

The third question will be answered in the negative.

LORD KINNEAR—I agree.

LORD JOHNSTON—I also concur.

LORD MACKENZIE—I concur. I do not think there is anything to show that the Sheriff has taken a wrong view in law, or that he will take a wrong view in law in any of the questions which may arise in the course of this arbitration.

The Court answered the first and second questions of law in the negative of the first branch and in the affirmative of the second branch of each of said questions; answered the third question in the negative; and decerned.

Counsel for the Claimants—Clyde, K.C.—Hon. W. Watson. Agents—Ross, Smith, & Dykes, S.S.C.

Counsel for Respondents—Sandeman, K.C.—D. P. Fleming. Agents—Bruce, Kerr, & Burns, W.S.

Friday, July 12.

FIRST DIVISION.

(EXCHEQUER CAUSE).

HILL *v.* INLAND REVENUE.

Revenue — Income Tax — Super Tax — Deductions—Farming Losses—Omission to Claim Deductions in Ordinary Income Tax Return—Bar—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 66 (2)—*Customs and Inland Revenue Act* 1890 (53 *and* 54 *Vict. cap.* 8), *sec.* 23 (1).

The Finance (1909-10) Act 1910, sec. 66 (2), enacts—"For the purposes of the super tax the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Act. . . ."

The Customs and Inland Revenue Act 1890, sec. 23 (1), enacts—"Where any person shall sustain a loss . . . in the occupation of lands for the purpose of husbandry only, it shall be lawful for him, upon giving notice in writing to the surveyor of taxes for the district within six months after the year of assessment, to apply to the Commissioners for the General Purposes of the Acts relating to income tax for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year, estimated according to the several rules and directions of the said Acts."

A, an occupier of agricultural land, was called upon in 1910 to furnish a return of his income for assessment to super tax for the year ending 5th April 1910—his income for that year being as directed by sec. 66 (2) of the Finance Act his total income from all sources for 1908-9. In making his return A claimed to deduct the loss which he alleged he had incurred in connection with the occupation of certain farms. In making his ordinary return for income tax for 1908-9, A had not claimed any deduction in respect of these losses, but had paid tax on the full assessment.

Held (*rev.* the determination of the Special Commissioners) that A was not thereby barred from claiming deduction in respect of his farming losses—the six months' limitation imposed by section 23 (1) of the Act of 1890 not being applicable to estimation of income for assessment to super tax.

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), section 66, enacts—"*Super Tax on Incomes over* £5000.—(1) In addition to the income tax charged at the rate of one shilling and twopence under this Act, there shall be charged, levied, and paid for the year beginning on the sixth day of April Nineteen hundred and nine, in respect of the income of any individual, the total of which from all sources exceeds five thousand pounds, an additional duty of income tax (in this Act referred to as a super tax) at the rate of sixpence for every pound of the amount by which the total income exceeds three thousand pounds."

"(2) . . . [*The sub-section is quoted supra in rubric.*] . . ."

The Customs and Inland Revenue Act 1890 (53 and 54 Vict. cap. 8), section 23 (1), which is noted in the margin, "Relief to . . . Farmers in Case of Losses," is quoted *supra* in rubric.

This was an appeal at the instance of R. Wylie Hill, Balthayoch, Perth, against an assessment to super tax in the sum of £5140 for the year ended 5th April 1910 under the provisions of section 66 of the Finance (1909-10) Act 1910.

The Case, which was stated under section 72 (6) of that Act and section 59 (1) of the Taxes Management Act 1880 (43 and 44 Vict. cap. 19), was as follows:—"2. On the 2nd November 1910 the appellant made

a return for the year ending 5th April 1910, for the purposes of super tax, in the sum of £7289, 10s., arrived at as follows—

The annual value of properties owned and also in some cases occupied by him assessed under Schedule A (as reduced for the purpose of collection under sec. 35 of the Finance Act 1894) for the year ending 5th April 1909 (including 140 Sauchiehall Street) .	£4,763	8	0
The annual value of properties occupied by him assessed under Schedule B for the year ending 5th April 1909 (including the properties in respect of which the alleged farming losses were incurred)	146	7	0
Income from investments .	5,769	18	8
Wife's income	84	15	10
	£10,764	9	6
Deductions	3,474	19	6
	£7,289	10	0

"3. Included in the sum of £3474, 19s. 6d. for 'deductions' were . . . the following amounts, viz.—£727, 6s. 10d., being the amount of the alleged losses on Mains and Oliverburn Farms, and £124, being the alleged loss of rent on 140 Sauchiehall Street. The Special Commissioners by whom the said assessment of £5140 was made disallowed the said sums of £727, 6s. 10d. and £124 as deductions, the assessment being arrived at as follows:—

Total income returned .	£7289	10	0
Add said deductions disallowed	851	6	10
Total .	£8140	0	0
Statutory allowance . .	3000	0	0
Amount of assessment .	£5140	0	0

"4. The appellant claimed to deduct from the said sum of £5140— . . . (*b*) A sum of £146, 7s., being the amount of the assessment to the income tax, Schedule B, for the year ended 5th April 1909, in respect of certain farms on said Balthayock estate on which the appellant alleges he sustained a loss. The said sum of £146, 7s. is included as one of the appellant's sources of income in arriving at the total aggregate income of £8140 shown in paragraph No. 3 of this case. (*c*) A sum of £727, 6s. 10d., representing the extent of the losses alleged to have been incurred by him in farming operations in the year ending 5th April 1909, in respect of certain farms, viz., Mains and Oliverburn Farms on the said Balthayock estate. . . .

"5. . . . As regards items (*b*) and (*c*), the appellant admitted that he had not claimed relief from income tax for the year ended 5th April 1909 in respect of these items under section 23 (1) of the Customs and Inland Revenue Act 1890, within the time therein prescribed, or at all, or any other relief in respect thereof. This being so, we were of opinion that these deductions could not be allowed."

[With regard to the claim for alleged loss of rent on 140 Sauchiehall Street, Glasgow, referred to in article 3 of the case, counsel for the parties stated that the facts were not fully before the Court, and craved time for further inquiry.]

Argued for appellant—*Esto* that the appellant did not claim a deduction in respect of items (*b*) and (*c*) when making his return for income tax for 1908-9, he was not barred thereby from claiming such deduction now. This was a new tax imposed for the first time in 1910, and it might well be that a man might not claim deduction for income tax and yet be desirous of doing so *quoad* assessment to super tax. There was nothing in the Act of 1910 to suggest that the appellant was foreclosed from claiming these deductions now; all that the Act prescribed was that the deductions should be claimed at the same time as the return was made.

Argued for respondents—The method of estimating income for the purposes of claiming exemption was prescribed by the Income Tax Act 1842 (5 and 6 Vict. c. 35), Schedule G, Rule 17—*vide* Dowell's Income Tax Laws, 6th ed. p. 317. A claim for deduction of farming losses was first allowed by the Customs and Inland Revenue Act 1890 (52 and 53 Vict. c. 42), sec. 23—*vide* Dowell, *op. cit.* p. 591. That Act, however, provided that such a claim must be made within six months of the expiry of the financial year for which the assessment was made, and that it must be accompanied by a certificate of the loss incurred. The appellant had made no such claim when making his return for income tax for 1908-9, and he was therefore barred from doing so now.

At advising—

LORD JOHNSTON—The appellant was in 1910—the first year when super tax became exigible—called on for a return. Now the Finance Act 1910 was passed on 29th April 1910. It imposed a super tax of sixpence in the pound on all incomes over £5000, to the extent to which they are in excess of £3000 a-year, for the year 6th April 1909 to 5th April 1910, that is, on a year already expired; but in estimating the income on which the tax was to be assessed the income of the year 1908-9 was directed to be taken.

The appellant was not asked to make a return until long after 5th April 1910, that is, long after the expiry of the year for which the tax was to be paid, and a good deal more than twelve months after the expiry of the year the income of which was to be the basis of assessment. He was thus called on in the later half of 1910 to make a return of his income from all sources for 1908-9. One source of his income for that year was profit from the occupation of land for agricultural purposes, that is, of income under Schedule B. He alleges that he made a loss on the occupation of certain farms. In making his ordinary return for income tax for 1908-9 he had not claimed any deduction in respect of these losses, but had paid tax on the full assessment. But now that he is charged super tax he has claimed such deduction in estimating his income for 1908-9, and the Special Commissioners refuse to entertain his claim because he did not make it, as they think, in due

course—when being assessed for income tax in the year 1908-9—and paid income tax for that year without claiming any return. The question thus raised depends on the meaning of section 66 (2) of the Finance Act 1910, and particularly of the words "estimated in the same manner as," contained in that sub-section. That section says that "For the purposes of the super tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year." Pausing there, the first thing that is apparent is that a new return and a comprehensive return is required, embracing every item of income, whether falling under Schedule A, B, C, D, or E, and whether the tax has been assessed or has been deducted at the source. Is that return to be merely a combination of previous returns made under the different schedules? Clearly not; for no previous return includes income which is taxed at the source. Nor is there anything to indicate that the Special Commissioners are bound by the previous assessments or barred from going behind them.

The sub-section then proceeds to say that the total income from all sources is to be "estimated in the same manner as the total income from all sources is estimated for the purpose of exemptions or abatements under the Income Tax Acts." It says it is *to be estimated*, not is *to be taken as it has been estimated*, and accordingly an estimate in "manner" prescribed is required.

"In manner" prescribed throws the individual making the return back immediately on the Customs and Inland Revenue Act 1890, section 23 (1), which provides that where any person shall sustain a loss in the occupation of land for the purposes of husbandry only, it shall be lawful for him, upon giving notice in writing to the surveyor of taxes for the district within six months after the year of assessment, to apply to the General Commissioners under the Income Tax Acts "for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to the several rules and directions of the said Acts." It does not appear to me that the six months' limitation applicable to adjustment of liability by reference to the loss and to the aggregate amount of income, in regard to the assessment for ordinary income tax, has anything to do with the "manner" of estimating income, or is a condition of the operation which the individual is called on to perform for the benefit of the Special Commissioners dealing with super tax. The manner of estimating total income is clearly that of the "several rules and directions" of the Income Tax Acts.

That super tax and everything connected with it is something quite apart from income tax is, if it were necessary, clearly shown by the four special rules which are appended to the sub-section (2) which I have just examined.

I therefore think that the Special Commissioners are bound to consider the appellant's demand for deduction in respect of his farming losses.

A subsidiary question is raised in the case. But it became clear at the bar that there had been a misapprehension, which renders it impossible to determine that question on the case as stated, and leaves it very probable that on fuller explanation the matter may be adjusted.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD MACKENZIE did not hear the case.

The Court reversed the determination of the Special Commissioners in article 5 of the Case allowed deductions under heads (*b*) and (*c*) of article 4 of the Case of such losses as the appellant might instruct, and remitted to the Special Commissioners to determine the amount of the said losses to be allowed under heads (*b*) and (*c*).

Counsel for Appellant—Horne, K.C.—Lippe. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for Respondents — Sol.-Gen. Anderson, K.C. — J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson, Solicitor for Inland Revenue.

Friday, July 12.

FIRST DIVISION.

[Lord Hunter, Ordinary.

BROWER'S EXECUTOR *v.* RAMSAY'S TRUSTEES.

Trust—Administration—Duty of Trustees—Security Writs Kept in Foreign Country—Effect of Legal Assignation of Fee on Duty of Trustees.

A testatrix directed her trustees to pay the whole free income of her estate to her husband during his life and on his death to pay over her whole estate to her brother, a domiciled American. She gave special power to her trustees to retain the securities in which her estate was invested at the time of her death, or to alter and vary them, and to invest in similar securities, and with regard to her American securities she expressed her desire that her trustees should be guided by the advice of a certain American trust company, and she further gave her trustees power to invest in any American security approved of by the said trust company. During the subsistence of the liferent an American creditor of the fiar obtained in absence a decree for a debt, and in the furthcoming following thereon, after the fee had been unsuccessfully exposed for sale, obtained a decree adjudging it.

Held (1) that the trustees might in the ordinary course of administering the trust keep the American securities