The reclaimers fail to show that this falls within the category of cases in which the proceedings were null *ab origine*. This suspension is therefore incompetent unless the value of the cause exceeds £50. Upon this point the value of the cause must be held to be under £50, for we can only have regard to the subject-matter of the action in which the decree was obtained.

LORD SKERRINGTON—I concur.

LORD CULLEN was not present.

The Court adhered.

Counsel for the Complainers—Mackay, K.C.—Aitcheson. Agent—R. S. Rutherford, Solicitor.

Counsel for the Respondents—Mitchell, K.C.—Gilchrist. Agents—Fraser, Davidson & Whyte, W.S.

Thursday, February 16.

FIRST DIVISION.

[Exchequer Cause.

DONALD *v.* INLAND REVENUE.

Revenue—Income Tax—Seasonal Tenancy of Grazings—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 63, *Schedule B, and sec.* 100, *Schedule D, First, Third, and Sixth Cases—Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedules B and D.*

The tenant of a farm was also lessee from May to November of the right to the grass or grazing on two grass parks which he used for grazing young stock brought from his farm and taken back to it at the end of the season to replace old stock that had been sold. He was assessed under Schedule B of the Income Tax Act of 1853 in respect of his occupation of the farm, and under Schedule D in respect of the profits of the grazings, the profits being estimated in the absence of a return according to the rental or double rental of the grass parks. *Held* (1) that the assessment under Schedule B did not cover the profits of the grass parks, (2) that the farmer was assessable in respect of these profits under Schedule D, and (3) that in the absence of evidence as to the amount of the profits there was no ground for interfering with the assessment made by the Commissioners.

The Income Tax Act 1853 enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting such duties respectively, 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—that is to say"—Schedule B—"For or in respect of the occupation of such lands, tenements, hereditaments, and heritages as aforesaid, and to be charged for every twenty shillings of the annual value thereof." Schedule D—"For or in respect of the annual profits or gains arising or accruing . . . from any kind of property whatever, and for and in respect of the annual profits or gains arising or accruing to any person . . . from any profession, trade, employment, or vocation . . . to be charged for every twenty shillings of the annual amount of such profit or gain."

The first, third, and sixth cases under Schedule D of the Income Tax Act 1842 which were applicable to the above schedules are as follows:—*First case*—"Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act." *Third case*—"The duty to be charged in respect of profits of an uncertain annual value not charged in Schedule A." *Sixth case*—"The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules and not charged by virtue of any other of the schedules contained in this Act."

William Donald, farmer, Parkieston, Newmilns, *appellant*, being dissatisfied with the decision of the Commissioners for the General Purposes of the Income Tax Acts at Ayr sustaining assessments in the sums of £56 and £32, appealed by way of Stated Case in which A. Thomson, Surveyor of Taxes, Ayr, was *respondent*.

The assessments were made under Schedule D of the Income Tax Acts for the years 1917-18 and 1918-19 respectively, and were charged as profits arising from his tenancy of grass parks, of which he was lessee from May to November in the years 1916 and 1917.

The Case set forth—"The following *facts* were found proved or admitted:—1. The appellant is tenant of Parkieston Farm at an annual rent of £211. 2. From May to November in each of the years 1916 and 1917 he took in addition certain grass parks at the season rents of £56 and £16 respectively. He used these fields for the grazing of young dairy stock brought from his own farm of Parkieston, which at the end of the season were taken back into stock on his own farm to replace older stock sold during the season. 3. The assessment under Schedule B in respect of the occupation of these grass parks was made each year on the landlord as occupier in terms of Rule 3, No. iv, Schedule A, sec. 60, of the Income Tax Act 1842 (5 and 6 Vict. cap. 35), but relief was given to him under section 27 of the Finance Act 1896 (59 and 60 Vict. cap. 28). 4. Assessment under Schedule B was made on the appellant each year in respect of his occupation of the farm of Parkieston, and no appeal is made against that assessment under Schedule B, but only against the further assessments under Schedule D made in respect of the estimated profits derived from his tenancy of the said grass parks. 5. The appellant stated that he was unable to give particulars to enable the actual profits (if any) to be ascertained. The Additional Commissioners had estimated the

profits in the absence of a return according to the rental or double rental of the grass parks for the year preceding the year of assessment. . . . .

"We, the Commissioners, after consideration of the facts and arguments submitted to us, were of opinion that the subjects were liable to assessment under Schedule D, and that the sums of £56 and £32 represented reasonable profits for the income tax years 1917-18 and 1918-19 from the lands of which the appellant had beneficial occupation. We therefore dismissed the appeal and sustained the assessments."

The *question of law* for the opinion of the Court was — "Whether the appellant is assessable to income tax under Schedule D in respect of the profits derived from the occupation of the fields taken by him for grazing purposes in addition to the assessment upon him under Schedule B in respect of the occupation of his own farm."

Argued for the appellant—The appellant could not be assessed in respect of the grass parks under Schedule D. Case 3 was inapplicable, because he was not a cattle dealer or dairy keeper, but occupied the parks merely as an incident of the farm, the rents being part of the expense of carrying it on. To make cases 1 or 6 applicable there must be something of the nature of a trade or business in the grazing, as in the case of *Malcolm* v. *Lockhart*, 1919 S.C. 33, 56 S.L.R. 224. That was not the situation here. There was no distinction in principle between using the parks as the appellant did and buying grown grass or artificial feeding, or bringing manure on to the farm to increase its production. The profits from the parks could not be estimated apart from those of the farm and were covered by the assessment under Schedule B, while the assessment for occupancy of the parks fell to be made on the owner. The necessity of providing for the assessment of cattle dealers and dairy keepers (case 3) showed that it was not intended that farmers should be assessed separately for grazings which were merely incidental to the farm.

Counsel for the respondent was not called upon.

LORD PRESIDENT—The appellant in this case is tenant of Parkieston Farm at a rent of £211, and during the years of assessment he was also the seasonal lessee of grazings on a couple of parks at the gross rent of £72. He is a farmer, not either a cattle dealer or a milk dealer. He has been submitted to assessment under Schedule B in respect of his occupation of Parkieston Farm, the basis of that assessment being of course the rent paid for it. He has also been assessed under Schedule D in respect of the profits and gains made by him out of the seasonal grazings on the two parks, and it is against the latter assessment that he brings his appeal. His case is that the assessment imposed upon him under Schedule B ought to be regarded as covering all the profits and gains which are made by him in his vocation as a farmer; and secondly, that it is impossible, as his counsel put it, to assess separately any profits or gains as arising from the seasonal lets of the grazings so as to justify a separate assessment.

I do not think that the case presents any difficulty upon either head. Assessment under Schedule B covers, of course, all profits and gains made out of the occupation of the farm, the annual gains of which are assessed under that schedule. "Occupation" covers all the processes of agricultural management and industry which are carried out upon the lands of the farm. But assessment under Schedule B covers no profits or gains arising from any business carried on outside the farm, nor from any operations (even though agricultural in character) which are carried on on premises elsewhere. It must be remembered that the appellant is not really occupier of the grass parks at all. All that he has under the seasonal let is a right to the grass or grazing on them from May to November. He has no let, and no occupation of, the lands composing the grass parks themselves, and accordingly it is impossible to bring him under assessment in respect of the grass parks within Schedule B. On the contrary, the occupier of the lands which compose the grass parks is the owner of the grass parks. The proprietor accordingly has to pay both tax in respect of them under Schedule A as owner and under Schedule B as occupier.

It still remains to inquire whether any profits and gains are made by the appellant out of the use of these grazings which are outside the lands of the farm and not comprehended within its annual value, and if there are, what is their amount. I see no impossibility in assessing—that is to say, estimating—these profits. Such assessment might perhaps involve, if it was to be accurately made, a comparison of the profits that could be made out of farming operations on Parkieston Farm unsupplemented by the convenience afforded by the grass parks, and the higher profit that could be made by using the grazings as an adjunct. But whatever may be the proper method to be followed, there is no more difficulty in estimating profit in such a case than there is in any other case where profits depend upon valuations and to some extent upon hypothetical conditions. It seems that the attitude which the appellant assumed before the Commissioners was that he was unable to give any particulars to enable the profits made by means of the grazings, if any, to be ascertained. He did not attempt either to allege or to prove that the use of the grazings at a rent of £72 involved neither profit nor gain to him; and in the circumstances the Commissioners were compelled to make an assessment as best they could. They have done so, and I do not think any legal ground has been submitted entitling us to interfere.

LORD MACKENZIE—I am of the same opinion.

The appellant says he is unable to give particulars to enable the actual profits to be ascertained. I think, if that is his position, then he has neglected to do what ought to

be done in every business, and apply the proper principles of costing in order to find out how he stands in regard to any particular part of his business.

LORD CULLEN—I also agree. I am unable to see how the assessment under Schedule B in respect of the occupation of the lands of Parkieston only can possibly include profit which has been made through the leasing of grazings on different land.

LORD SKERRINGTON was absent.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellant — Hunter. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent — Solicitor-General (Murray, K.C.) — Wark, K.C. — Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Thursday, February 16.

FIRST DIVISION.

[Exchequer Cause.

SCOTTISH AND CANADIAN GENERAL INVESTMENT COMPANY *v.* INLAND REVENUE.

Revenue — Income Tax — Profits — Interest on Colonial Investments — Debentures of Reorganised Company Equivalent to Arrears of Interest—Income Tax Act 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedule D.*

An investment company held as an investment first mortgage bonds in a Canadian company, the coupons attached to which were for interest at 5 per cent. The Canadian company having become embarrassed and made default in payment of interest, a new company was organised on a plan agreed to by the first mortgage bondholders, as the result of which the investment company received in exchange for the original bonds and remaining coupons first mortgage bonds in the new company equivalent in number and face value to the original holding, and bearing interest from a date two years after the last payment by the old company, and in addition debentures of the new company representing in face value 10 per cent. of the surrenderd bonds. In arriving at the profits of the investment company for the year in which the debentures were received the assessor for income tax included 75 per cent. of their face value as representing their value when received. *Held* (1) that there was material before the Commissioners upon which they were entitled to conclude that the debentures were issued as payment of the two years' arrears of interest, and (2) that in the absence of evidence that the debentures were not marketable, or that their value was not the value taken, they were properly included in the computation of profits of the investment company.

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 the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the annual amount of such profits and gains. . . . And 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 and Canadian General Investment Company, *appellants*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Edinburgh sustaining an assessment for the year ending 5th April 1919 made upon the company under the Income Tax Acts, appealed by way of Stated Case, in which A. Easson, Surveyor of Taxes, Edinburgh, was *respondent*.

The assessment which was in respect of the profits of the business carried on by the appellants was made under Schedule D of section 2 of the Income Tax Act 1853 (16 and 17 Vict. cap. 34) and section 17 of the Finance Act 1918 (8 and 9 Geo. V, cap. 15). It was objected to on the ground that it took into account a sum of £773 as received by the appellants in respect of interest on certain first mortgage bonds of Western Canada Power Company, Limited, which the appellants maintained they had not received.

The Case set forth, *inter alia* — "The following *facts* were admitted or proved:— (1) The company was incorporated on 30th December 1910 under the Companies (Consolidation) Act 1908 as a company limited by shares. The authorised share capital of the company is £500,000, of which £250,000 has been issued and fully paid up. The company has in addition £113,192 raised by the issue of debenture stock and terminable debentures. The registered office of the company is in Edinburgh, where the directors and shareholders meet, whence the affairs of the company are managed, and where all the profits of the company are assessable. (2) The principal objects of the company as set forth in the third clause of its memorandum of association are, shortly stated, to carry on the business of an investment, mortgage, and financial company in all its branches, and to invest in or upon securities or investments of all classes and descriptions, including bonds of any company carrying on business in the Dominion