his behalf, is a necessary condition of payment to him of the legacy. I do not think, however, that this affects the matter. Payment by Government officials of the price of receipt stamps is a necessary condition of cashing the warrants for their salaries. Conceivably the price of the stamps if deducted from the year's income might just avoid the turning of a corner of total income which would infer a higher rate of income tax. But I do not think that there is any warrant for such a deduction, although a benignant provision will mitigate the hardship by permitting the taxpayer to surrender the superplus instead of paying the higher duty.

I accordingly agree in the proposal to affirm the determination of the Commissioners.

The Court answered the question of law in the affirmative.

Counsel for the Appellant — Dean of Faculty (Sandeman, K.C.) — Normand. Agents—J. & J. Ross, W.S.

Counsel for the Respondents—Solicitor-General (D. P. Fleming, K.C.)—Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, February 9.

FIRST DIVISION.

[Bill Chamber.

DICK LAUDER, PETITIONER.

Entail—Disentail—Heir of Entail—Application for Authority to Uplift and Acquire Consigned Money—Money Arising from Redemption of Casualties—Entail (Scotland) Act 1848 (11 *and* 12 *Vict. cap.* 36), *sec.* 26—*Conveyancing (Scotland) Act* 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 18—*Feudal Casualties (Scotland) Act* 1914 (4 *and* 5 *Geo. V, cap.* 48), *sec.* 15.

An heir of entail who was in a position to disentail the whole estate without any consents, in applying for authority to disentail the superiority of a small portion of the estate, also sought authority, under section 26 of the Rutherfurd Act of 1848, to acquire in fee-simple certain moneys, consigned in the hands of the Accountant of Court, arising from the redemption of certain casualties effeiring to the entailed estate. The Lord Ordinary (Murray) having reported the case, *held* (1) that section 26 of the Rutherfurd Act was not limited to the case of money invested in trust for the purpose of purchasing lands, but covered also the case of money arising from the redemption of casualties if carried out under statutory powers, and (2) that neither the Conveyancing (Scotland) Act 1874 nor the Feudal Casualties (Scotland) Act 1914 had any restrictive operation on the effect of the Entail Acts with regard to the rights of heirs of entail *quoad* money derived from entailed estate so as to withdraw it from the operation of section 26 of the Rutherfurd Act, and authority *granted* to the heir of entail in possession to acquire the moneys in fee-simple.

The Entail (Scotland) Act 1848 (11 and 12 Vict. cap. 36) enacts—Section 26—"And be it enacted that in all cases where money has been derived, or may hereinafter be derived, from the sale or disposal of any portion of an entailed estate in Scotland, or of any right or interest in or concerning the same, or in respect of any permanent damage done to such estate under any private or other Act of Parliament, or where any money has been invested in trust for the purpose of purchasing lands to be settled upon the series of heirs entitled to succeed to such entailed estate, and where such money would fall to be invested in lands or heritages to be entailed on the same series of heirs as are called to the succession of such entailed estate by the tailzie thereof, and under the same prohibitions, conditions, restrictions, and limitations as are contained in such tailzie, and where the heir in possession of such entailed estate could by virtue of this Act acquire to himself such estate in fee-simple by executing and recording an instrument of disentail as aforesaid, it shall be lawful for such heir to make summary application to the Court in manner hereinafter provided for warrant and authority, and the Court upon such application shall have power to grant warrant and authority, to and in favour of such heir of entail for payment to such heir of such sums of money as belonging to himself in fee-simple. . . ."

The Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94) enacts—Section 18—"Casualties subject to the fetters of an entail may be redeemed as aforesaid notwithstanding such entail, the redemption money being consigned in one of the banks in Scotland incorporated by royal charter or Act of Parliament in name of the Accountant of the Court of Session, who shall be allowed a reasonable fee for his trouble out of such money, and being applied by the heir of entail in possession under the orders of the said Court for the benefit of the entailed estate, the accruing interest being payable to the heir of entail in possession during the time the same shall arise. . . ."

The Feudal Casualties (Scotland) Act 1914 (4 and 5 Geo. V, cap. 48) enacts—Section 15 "Subject to the provisions of this Act the provisions of section 18 of the principal Act shall apply to the redemption of casualties under this Act. . . ."

Sir George William Dalrymple Dick Lauder of Grange and Fountainhall, Baronet, *petitioner*, presented an application to the Court craving authority to disentail and acquire in fee-simple part of the lands of Grange. No answers were lodged. The petition showed that the petitioner was entitled to disentail without any consents in respect that he was in possession of the lands under a deed of entail dated prior to 1st August 1848, and that he was born after 1st August 1848.

In the course of the proceedings the

petitioner obtained leave to amend the petition by adding the following crave to the prayer—"Also to grant warrant to and authorise the petitioner to uplift and acquire in fee-simple the foresaid funds consisting of the price of casualties belonging to the entailed estate and amounting to about £3567, 1s. 1d., at present consigned in the hands of the Accountant of Court with the interest accruing thereon, and for this purpose to grant warrant to and ordain the Accountant of Court to pay over the said funds to the petitioner on his granting a valid receipt therefor." And also the following additional paragraphs to the narrative of the petition—"By the Act 11 and 12 Vict. cap. 36, section 26, it is provided that an heir of entail in possession of an entailed estate entitled to disentail the same may with the sanction of the Court uplift and acquire consigned money, the proceeds of the sale of or compensation for damage done to any portion of the entailed estate under the authority of any Act of Parliament.

"There is at present consigned in the hands of the Accountant of Court the redemption price of certain casualties belonging to the entailed estate of Grange.

"The consigned money is invested in the following securities, viz.— . . .

"The money value of the said investments is about £3567, 1s. 1d.

"The petitioner is also desirous of uplifting and acquiring in fee-simple the said funds amounting in value to £3567, 1s. 1d. with the interest accrued thereon."

After hearing counsel, the Lord Ordinary (MURRAY) reported the case to the First Division.

The Lord Ordinary's *report* was as follows:—"This petition in its original form was presented for the purpose of disentailing the superiority of a small parcel of land forming part of the entailed estate of Grange and which had been feued out by a predecessor of the present petitioner.

"The entail is an old entail, and the petitioner is entitled to disentail without consents.

"The usual procedure followed, and no difficulty has arisen in regard to the matter of disentail. Thus far the crave of the petition clearly falls to be granted.

"In the course of the proceedings, however, the petition was amended and a crave added for authority to the petitioner to uplift and acquire in fee-simple certain moneys consigned in the hands of the Accountant of Court which stand at present invested in War Stock and bank deposit-receipts. The face value thereof is some £3500.

"These moneys represent the redemption price of certain casualties effeiring to the entailed estate of Grange. No details in regard to these are before the Court, but it may be taken that these casualties have no relation to the superiority of the small parcel of land sought to be disentailed.

"The reporter has reported in favour of granting the required authority, but the *curator ad litem* appointed to certain minor heirs has lodged a minute drawing the attention of the Court to and expressing a doubt as to the applicability to the moneys in question of section 26 of the Entail Act of 1848, which is founded on in the petition.

"Section 26 of the Entail Act of 1848 enables an heir in possession in certain cases to obtain, under authority of the Court, direct payment out of moneys arising from a sale or disposal of part of the entailed estate.

"As the Lord Ordinary reads the section these conditions, however, must concur—(1) The moneys must be derived from the 'sale or disposal of any portion of an entailed estate . . . or of any right or interest in or concerning . . . the same . . . under any private or other Act of Parliament'; (2) the moneys must be such as would fall to be invested in lands to be entailed on the same series of heirs; and (3) the heir in possession must be *in titulo* to disentail and acquire the estate in fee-simple.

"The earliest statutory provisions for the redemption of casualties are contained in the Conveyancing Act of 1874 now largely replaced by the Feudal Casualties Act of 1914. Such redemption moneys were obviously not within the original contemplation of the Act of 1848. The Lord Ordinary, however, is of opinion that the words of the section, and in particular the words 'any right or interest in or concerning' the entailed estate are sufficiently wide to cover the case in hand, and that accordingly the moneys being the result of a statutory 'disposal' the first of the above conditions may be deemed satisfied. The third condition is also satisfied. The second condition, however, gives rise to difficulty. There is here a plain reference to the provisions of section 67 of the Lands Clauses Act of 1845 which provides for the disposal, under authority of the Court, of compensation moneys resulting from the sales of entailed estate in virtue of the statute. Such compensation moneys may be applied, *inter alia* (*a*) in payment of debt affecting the estate, or (*b*) in the purchase of land to be settled on the same series of heirs.

"Section 26 of the Act of 1848 accordingly appears to contemplate a case in which the Court in the exercise of its discretion has directed the compensation money to be applied in such a purchase, the intention of the section in such a case being to dispense with a step which, if taken, could be immediately defeated by the heir in possession.

"The special statutory provisions, however, in regard to redemption of casualties also require attention.

"The provisions in regard to redemption of casualties contained in sections 15, 16, 17 of the Act of 1874 are repealed and replaced by the provisions of the Act of 1914, but section 15 of the latter statute saves and carries forward section 18 of the Act of 1874, which remains the governing section in regard to the redemption price of 'casualties subject to the fetters of an entail.'

"The last section provides that the moneys are to be consigned in bank in name of the Accountant of Court, and are to be 'applied by the heir of entail in possession under the orders of the said Court for the benefit of the entailed estate.'

"The Lord Ordinary does not doubt that in the exercise of its discretion the Court could, if satisfied that such a course was for the benefit of the estate, direct the moneys to be laid out in the purchase of lands to be entailed. But it appears to the Lord Ordinary to be a condition-precedent to the applicability of section 26 of the Act of 1848, and therefore to the granting of the amended crave, that the Court should, after inquiry and report upon the circumstances of the estate (including incumbrances, necessity for improvement expenditure, and the like), come to a definite finding that the consigned moneys ought in the interests of the estate to be applied in re-purchase of entailed lands, and that in preference to any other form of application of the moneys; and that then and then only does the right of the heir in possession to demand payment in fee-simple emerge.

"If the above views be sound, there is at present nothing in the present process to enable the Court to arrive at such a finding, and the Lord Ordinary would have been disposed to have allowed the petitioner an opportunity by amendment or minute to raise the point and to have then re-remitted to the reporter.

"The Lord Ordinary, however, has been informed that in a number of preceding cases the Court, taking a broad view of the intendment of the Entail Acts, has sanctioned under section 26 the payment out of such redemption moneys to heirs in possession. It would rather appear that in certain of these precedents such payment-out has been incident to an application for disentail of the estate, and that the moneys in question had arisen from casualties affecting the actual estate sought to be disentailed. Such moneys may, in short, have been regarded as accessory to and following the fate of the entailed estate itself. That feature is not present in the present petition. The Lord Ordinary is further informed that the point now raised has not hitherto been brought to the attention of the Court or formed the subject of argument.

"In view of the past practice of the Court, the Lord Ordinary accordingly thinks it right to report the position to the Inner House."

Argued for the petitioner—The first four lines of section 26 of the Rutherfurd Act applied to the present petition, the redemption moneys here having been derived from the sale of a portion of the entailed lands. Section 26 of the Rutherfurd Act rendered the petitioner's right to the moneys absolute. Neither the Conveyancing (Scotland) Act 1874 nor the Feudal Casualties (Scotland) Act 1914 were Entail Acts and they did not curtail the powers of heirs of entail to disentail either lands or money.

At advising—

Lord President—The heir of entail in possession is entitled to disentail the estate without consents. His application is for authority to disentail only a small portion of the estate, but he also seeks authority to uplift and acquire for himself certain casualty redemption moneys at present consigned in the hands of the Accountant of the Court of Session. The casualties to which the redemption moneys apply were an incident of superiorities which form part of the entailed estate and are not affected by the present application for disentail. They reached the hands of the Accountant of Court by virtue of section 18 of the Conveyancing Act of 1874 and section 15 of the Feudal Casualties Act of 1914, and in terms of the former enactment (so far as unrepealed by the latter) they are available in his hands to be "applied by the heir of entail in possession under the orders of the said Court for the benefit of the entailed estate, the accruing interest being payable to the heir of entail in possession during the time the same shall arise." The crave to uplift and acquire these redemption moneys is presented under section 26 of the Rutherfurd Act of 1848. The question which is the subject of the Lord Ordinary's report is whether that section applies in the circumstances.

Section 26 in terms applies to cases in which money is derived from the sale or disposal of entailed estate in Scotland or any right or interest in or concerning the same under any private or other Act of Parliament. While no doubt the kind of "sale or disposal" mainly in view was that which results from the exercise of compulsory powers conferred on statutory undertakings by existing or future Acts of Parliament, whether special or general, it is clear that any kind of "sale or disposal" (such as the extinction of a casualty belonging to the estate in consideration of the payment of a sum of redemption money if carried out under the power and authority of statute) is covered by the words of the section. Whether the provisions of the Conveyancing Act or those of the Feudal Casualties Act are such as to prevent the redemption moneys being dealt with accordingly will be considered hereafter.

The section also deals with the case of "money invested in trust for the purpose of purchasing lands to be settled upon the series of heirs entitled to succeed to such entailed estate" (*i.e.*, entailed estate in Scotland), provided that under the trust the contemplated entail is to be both (1) "on the same series of heirs as are called to the succession of such entailed estate by the tailzie thereof," and (2) "under the same prohibitions, conditions, restrictions, and limitations as are contained in such tailzie"—if, in short, both the destination of the estate and the conditions of the deed are directed to be identical throughout with the existing entail. The Lord Ordinary's report suggests that this proviso (which begins with the words "and where") may be read as applying not merely to money invested in trust for the purpose of purchasing land to be entailed but also to money derived from the sale or disposal of entailed estate. The introduction of the conjunctive "and" gives a grammatical support to this construction which at the first blush commends it; but it is certainly not the necessary construction, and if it were the true

one it would render the section almost, if not quite, useless in its application to cases of sale and disposal. The cases in which money derived from sale and disposal of entailed estate "would fall" (*i.e.*, would require) to be invested in land to be entailed, rather than in redeeming land tax, paying off debt, improving the estate, or in some other similar way beneficial to the entailed lands (see *e.g.*, section 67 of the Lands Clauses Consolidation (Scotland) Act 1845), must be very rare; and where purchase of land to be entailed is only one out of several purposes to any of which the money may be devoted, the condition of the heir of entail's right to uplift and acquire the money could only be satisfied if he first made out that the money for some reason ought to be used for the particular purpose of purchasing land to be entailed and for none other, and then, founding on that as an established proposition, made it the ground for asking authority to uplift and acquire the money for himself. This reading looks more like a contortion than a construction of the section, but I have given it careful consideration, and in the result I have no hesitation in rejecting it.

It remains to determine whether the terms of the Conveyancing Act and the Feudal Casualties Act, as applying to the redemption moneys at present in the hands of the Accountant of Court, are such as to take them out of the application of section 26. It is not to be expected that either of those Acts should deal with money derived from entailed superiorities except on the footing of the continuance and permanence of the conditions created by the entail, for they are neither of them Acts dealing with entails or entailed estate as such. Equally it cannot be supposed that they were intended to have any restrictive operation on the effect of the special group of statutes dealing with the rights and powers of heirs of entail, and with their relief from disabilities imposed directly or indirectly by the entail, with respect to the disposition of the land itself or the disposal of moneys derived from it. Accordingly section 18 of the Conveyancing Act of 1874 makes no provision for what is to happen in the event of a disentail of the estate, but leaves that to the special statutes which authorise disentail and the acquisition in fee-simple of money derived from entailed estate. It provides machinery for administering the money so long as matters remain as they are in relation to the fetters of the entail and the rights of the heir under it. But there is no reason to suppose that it withdraws the money in the hands of the Accountant of Court from the operation of section 26.

There appears therefore to be no good reason why the heir of entail should not be entitled to use the powers of section 26 in relation to the moneys at present in the hands of the Accountant of Court.

LORD SKERRINGTON and LORD CULLEN concurred.

LORD SANDS—This is an application by an heir of entail for authority, *inter alia*, to uplift and acquire in fee-simple certain sums of money which have been consigned in the hands of the Accountant of Court, being the redemption price of certain casualties effering to the entailed estate. The Lord Ordinary has reported the case on account of a difficulty which has presented itself to his mind in regard to the competency of the application in view of the terms of section 18 of the Conveyancing Act of 1874, section 15 of the Feudal Casualties Act of 1914, and section 26 of the Rutherfurd Act of 1848. In one aspect of the matter the difficulty is a purely technical one. The petitioner is in a position to disentail the whole estate without any consents, and if he did so the consigned money, as part of the entailed estate, would pass to him without the necessity of any separate application to the Court—*Panmure*, 1853, 17 D. 1031, footnote; *Wauchope*, 1855, 17 D. 1031.

The application to uplift and acquire the consigned money proceeds under section 26 of the Rutherfurd Act, and the difficulty in relation to that section presents itself in two aspects—1. It is suggested that the section is limited in its application to consigned money which "would fall to be invested in lands and heritages" entailed on the same series of heirs, reading "would fall to" as equivalent to "must." That, however, is a reading which has never been put upon the section, and its effect would be to render the provision of the section almost nugatory. An examination of the reported cases (and only a very small proportion of entail petitions reach the reports) confirms what is in accordance with my own recollection of practice, viz., that this section has been constantly invoked for the uplifting and acquiring or the uplifting and applying of consigned entailed money not dedicated either exclusively or even primarily to the purchase of lands. Doubtless there is a certain difficulty in the construction of the section. Lord President Colonsay appears to adopt the reading contended for by Mr Jameson in this case, which limits the application of the words "would fall to be invested" to the case of money settled in trust for the purchase of lands—*Richardson*, 1853, 15 D. 762; see also *Leith*, 1855, 17 D. 511. I understand your Lordship in the chair to take the same view and I am not constrained to differ. I realise, however, that Lord Neaves seems to take the view that the meaning is "would fall to be invested in lands to be settled on the same series of heirs *if not otherwise disposed of for entail purposes*"—*Strathmore*, 1856, 18 D. 1212, at p. 1217. This seems to imply that the meaning is that the money must be so conditioned that if it is applied in the purchase of lands, the lands will fall to be settled upon the same series of heirs, &c. In other words, the "must" element in the "would" is to be regarded as applicable to the order of succession and to the fetters, not to the purchase of lands. But whatever view be taken, I think that it would be out of the question now to hold that in the face of practice of seventy-five years the section

falls to be construed as limited in its application to consigned money exclusively dedicated to the purchase of land.

2. The second difficulty has reference to the special provisions in regard to the redemption of casualties in sections 14 and 15 of the Feudal Casualties Act 1914, read in reference to section 18 of the Conveyancing Act of 1874. Under the last section the consigned money falls to be applied for the benefit of the entailed estate under the orders of the Court. It is suggested that this special provision takes this money out of the ambit of the Lands Clauses Act and the Rutherfurd Act, being of the nature of a special statutory rule for a special fund. It appears to me that there would be great force in this contention if the present application were one to uplift and apply the money for some special purpose. But the application is one, not for authority to uplift and apply but for authority to uplift and acquire. The 1874 Act and the 1914 Act were not Entail Acts. Entails come into them in this way—that it was deemed desirable to make provision to obviate what was considered a useful reform in regard to casualties being blocked by entails. The fetters of the entail are not dealt with. What happens under these Acts is that "there is a severance of one portion of the estate from the other, and that in consequence there comes in room of a portion of it money obtained by the sale of that portion"—Lord Fullerton's language in *Panmure*, 17 D. at p. 1033. There may be a change in the form of the content of the entailed estate, but *quoad ultra* the entail is left exactly where it was. On the other hand the Rutherfurd Act had two objects. One was to make provision for the improvement and convenient administration of entailed estates. The other and quite separable object was to relax the fetters of entails. Certain interests on succession were deemed so immediate that they must be respected. Others again were treated as so remote that they fell to be disregarded. Subject to provision for the former the entail might as regards the whole or any part of the estate be brought to an end, in the case of land by a disentail process, in the case of consigned money by an application to uplift and acquire. It appears to me that these latter provisions and their exercise, either in regard to the whole or any part of the entailed property, stand apart from and are not limited by the special provisions with reference to the consignation of casualty redemption money. They apply to all the property, be it land or money, which is subject to the fetters of the entail.

I may perhaps add the observation that the words "for the benefit of the entailed estate" occurring in section 18 of the Act of 1874 include in my opinion the case of acquiring land to be added to the entailed estate when such addition can be shown to be for the benefit of the entailed estate. In the case of many entailed estates it might well be for the benefit thereof to acquire additional land, say for amenity, or for the purposes of water supply, drainage, &c.

I am of opinion accordingly that so far as regards the point upon which the Lord Ordinary has reported the case the application may be granted.

The Court found that the petitioner, being entitled to disentail the entailed estate without any consents, was entitled under section 26 of the Act of 11 and 12 Vict. cap. 36, to obtain authority from the Court to uplift and acquire the consigned money as craved, and remitted the petition to the Lord Ordinary to proceed.

Counsel for the Petitioner—Jameson. Agents—Scott & Glover, W.S.

Friday, February 9.

FIRST DIVISION.

[Exchequer Cause.

BURNTISLAND SHIPBUILDING COMPANY, LIMITED *v.* WELDHEN.

Revenue—Income Tax—Method of Assessment—Business Set up within Three Years Prior to Year of Assessment—Whether Profits Made in Year of Assessment to be Taken into Account—Income Tax Act 1918 (8 *and* 9 *Geo. V, cap.* 40), *Schedule D, Case I, and Rules Applicable thereto.*

A limited company was incorporated on 1st April 1918 and commenced trading on 15th May thereafter. It struck its first balance-sheet upon the completion of the first full year of its existence on 31st March 1919, after a period of ten and a half months' trading. In making their assessment for the financial year 5th April 1919 to 5th April 1920 the Commissioners claimed to be entitled to take into account the company's profits for that year, being profits made in the year of assessment itself—which owing to delay in connection with the adjustment of excess profits duty had then been ascertained—and to base the assessment on the combined results of the first and second balance-sheets. *Held* that where the period of trading preceding the year of assessment is less than three complete years, the artificial amount of profit for the year of assessment falls to be computed solely by reference to the accounts for that lesser period and without reference to the profits of the year in which the assessment is made, the average of the profits and gains for one year being the retrospective average profit per annum from the date of the commencement of trading.

Steamship "Glensloy" Company, Limited v. *Inland Revenue*, 1914 S.C. 549, 51 S.L.R. 471, *distinguished.*

The Burntisland Shipbuilding Company, Limited, *appellants*, being dissatisfied with the determination of the General Commissioners of Income Tax for the Division of Kirkcaldy confirming an assessment to