knowledge, we have in June 1871, before she married him, a minute which I think expressly adopted the act putting her upon the register, and adopted that act after she had become major. In these circumstances I am of opinion with your Lordship that the name of Mrs Hill must remain on the register.

On the question whether Mr Hill's name has also rightly been placed there, section 78 of the statute appears to me to be conclusive. It is there provided that if any female contributory marries, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not been married, and he shall be deemed a contributor accordingly. At the date of her marriage Mrs Hill was bound absolutely in the full liabilities of a partner. The result is, that being a female contributory with this liability, under the statute her husband becomes liable to contribute to the assets of the bank the same sum as she would have been liable to contribute if she had not married, and therefore I think he comes under equal liability with his wife, and his name has been rightly put upon the register.

On these grounds I think that the names of both petitioners must remain on the register.

The Court refused the petition with expenses.

Counsel for Petitioners—M'Laren—Trayner. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Respondents—Kinnear—Balfour—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Saturday, October 25.

FIRST DIVISION.

[Exchequer Cause.

CAMPBELLS *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Property and Income Tax Act 1842 (*5 and 6 Vict. c.* 35), *sec.* 60—*Inhabited House Duty Act* 1851 (*14 and 15 Vict. c.* 36)—*Competency of Proof where subject to be Assessed partly Heritable and partly Moveable.*

A hotel was let on lease at a rent of £500, the tenant to pay interest on sums spent on improvement. Subsequently, and during the currency of the first lease, a second containing numerous additional stipulations, and assigning to the tenant certain rights of stabling accommodation and delivery over to him of certain horses and tools, was substituted for it and the rent fixed at £1000. *Held*, it being stated that part of this rent was paid for moveable subjects, that it was competent to prove how much was paid for the heritable and how much for the moveable, that such sum might be deducted from the £1000 before fixing the assessment under the Property and Income Tax Acts.

This was a Case stated to the Court of Exchequer by the Commissioners for the Lorn district of Argyllshire in a judgment by them under the Property and Income Tax Acts confirming the assessment made by the assessor under Schedule A of the Property and Income Tax Act 1842 (5 and 6 Vict. c. 35), and subsequent Acts, and under the Inhabited House Duty Act 1851 (14 and 15 Vict. c. 36), for year 1878–1879.

The Property and Income Tax Act 1842, sec. 60, and Schedule A, enacted that "the annual value of lands, tenements, hereditaments, and heritages charged under Schedule A shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not let at rack-rent, then at the rack-rent at which the same are worth to be let by the year."

The Inhabited House Duty Act 1851, sec. 1, and Schedule A thereto annexed enacted, that "for every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of twenty pounds or upwards by the year, there shall be charged for every twenty shillings of such value the sum of sixpence."

In 1876 Donald Campbell, proprietor of the Caledonian Hotel, entered into negotiations with Alexander Campbell with a view to a lease of the hotel, and a lease was executed between them for the period of ten years at a rent of £500, with entry at Whitsunday 1876, and in respect of certain improvements to be executed by the proprietor the tenant obliged himself to pay interest on the sum to be so expended at the rate of 7½ per cent., to be paid termly with the rent. This lease was dated 6th and 12th February 1877, and did not include the stables of the hotel, and the tenant further bound himself not to engage in any coaching or posting business during the currency of the tack.

In the course of the year 1877 improvements to the value of £2000 were completed, and by the time of their completion the parties had entered into a new arrangement whereby the proprietor Donald Campbell had disposed to the tenant Alexander Campbell his whole interests in certain coach companies in the district, consisting of the stock of horses and coaches belonging thereto and the stabling accommodation in connection with it. The parties deemed it advisable in the circumstances to cancel the then existing lease and execute a new lease in which all the matters between them should be embodied, and a new lease was accordingly executed, in which an annual rent of £1000 sterling was stipulated to be paid by the tenant. The subjects included in this new lease were the Caledonian Hotel, the coaches and horses therein specified, and stables in Tweeddale Street, which were required by the tenant as additional stabling accommodation. The stables in Tweeddale Street were in no way connected with the hotel. The basis upon which the sum of £1000 of annual rent was fixed was explained to the Commissioners, and by them stated in the Case to be as follows:—"The former rent was £500, and the cost of the improvements was stated to be about £2000, the annual interest of which, at seven and one-half per cent., yielded £150, which interest, being added to the rent stipulated in the first lease, made a total new rental for the Caledonian Hotel of £650. The said Donald Campbell's interest in the said coach-

ing business, consisting of twenty horses, harness, &c., a list of which was produced to the Commissioners—the value of the said coaches enumerated in the said lease, together with certain outlays, amounting to £827, a note of which was also produced, made by the said Donald Campbell in connection therewith, and also including the rental of the stables in Tweeddale Street for the nine years of the lease then to run—was estimated at about £3000, and that this was the true value thereof the appellants offered to prove. To cover this sum of £3000 it was agreed, in terms of the new lease, that a yearly sum of £350 should be paid termly with the rent for the hotel; and it was stated that in order to save the expense of a separate agreement it was agreed between the parties to add this sum of £350 to the said rental of £650, thus bringing out a total sum of £1000 payable annually by the tenant to the proprietor, being the apparent rental due to that amount for the hotel and stables."

The new lease, which was dated 7th July 1877, contained, *inter alia*, the following clauses:—*First*, "That the said Donald Campbell should let along with the hotel, as presently possessed by the said Alexander Campbell, the stables belonging to him situated in Tweeddale Street, Oban." Then followed an assignation to the tenant of the proprietor's right in certain coaches. *Third*, "That the said Donald Campbell should forthwith give and deliver to the said Alexander Campbell all the horses used in connection with the coaches above mentioned, being 20 in number, together with all the coach harness and stable tools presently in use for the same, the said horses, harness, and tools to become the property of the said Alexander Campbell." Then followed an assignation to certain rights of stabling, and then this clause—*Fifth*, "That the said Alexander Campbell should pay to the said Donald Campbell a rent of £1000 sterling yearly for the said hotel and stables, and that for a lease of nine years from and after Whitsunday last, when the former lease came to an end."

The assessor, taking the rent at £1000, fixed the assessment on the landlord under Schedule A of the Income Tax Act (5 and 6 Vict. c. 35) at £20, 8s. 4d., and that payable by the tenant under the Inhabited House Duty Act (14 and 15 Vict. c. 36) at £25. The landlord and tenant both appealed againt this assessment, and represented to the Commissioners that the *bona fide* rent paid by the latter was only £650 for the hotel and £150 of interest on the £2000 spent on improvements.

The Commissioners sustained the contention of the assessor, that there being in the lease an obligation to pay a yearly rent of £1000 for the subjects, it was "incompetent to examine into the details of arrangements whereby that sum was fixed by the parties as the annual rent."

No evidence was produced to the Commissioners of the values of the coaches and horses above mentioned, and no other arrangement was alleged than the lease of 7th July 1877.

The appellants argued—*Ex facie* of the lease it appeared that the rack-rent was not so high as £1000. In any event, the appellants had offered to prove that the sum of £1000 mentioned in the lease as rent included the value of the horses and the interest in the coaches mentioned in the lease. The assessor was bound, when the rent shown *ex facie* of the lease was not the true rack-rent, to make inquiry and assess the property at the true rent—sec. 63, rule 10, and sec. 66; *Menzies* v. *Inland Revenue*, Jan. 18, 1878, 5 R. 531; *Jerdan*, May 25, 1876, 4 R. 1148; *M'Gregor* v. *Menzies*, June 3, 1874, 4 R. 1144. The agreement was a composite one, partly lease, partly sale. The horses were "given and delivered."

Argued for the Inland Revenue—The agreement spoke of £1000 as "rent," and it was not competent to go behind it. The Income Tax Acts 5 and 6 Vict. c. 35, sec. 81, and 16 and 17 Vict. c. 34, sec. 47, authorised a valuation when the value was not fixed by the lease. The value in this case was not so fixed. The tenant's case arose under 48 Geo. III. c. 55, Schedule B—rule 2 of that Schedule specially included stables.

At advising—

Lord President—I think we must call for inquiry here. There is no doubt that the Income Tax Act, and the Inhabited House Duty Act as well, prescribe that where there is an existing lease by which the subjects are let at a rack-rent, that is to be taken as the annual value for the purposes of assessment. But if upon the face of the agreement by which the subjects are let it clearly appears that that which is called rent is payable in part at least for something that is not an assessable subject, then I apprehend the clauses of these Acts of Parliament do not apply. For example, if it should clearly appear on the face of an agreement that a heritable subject and a moveable subject were both let, so to speak, to the assessed party for a period of years, and that a *cumulo* rental was payable for both, it could never be said that that was to be taken as the rack-rent of an assessable subject, being the heritable portion of the subject let.

Now, applying that very obvious rule to the case in question, let us see what the agreement of the parties is as disclosed on the face of the lease dated 7th July 1877. It is narrated that there was a previous lease between the parties, the rent under which was £500. It is further stated that the tenant was to pay interest at the rate of 7½ per cent. upon money expended upon the improvements of the subjects, and it appears that the money expended on the improvement of the subjects was of such an amount that the interest payable under the agreement would be £150, so that under the original lease the rent would be £650 and no more. Now, it had been arranged between the parties, as is stated in this recital, that this lease should be renounced, and that a new lease should be entered into on the terms and conditions therein expressed. The first condition is that the tenant is to have in addition to the hotel certain stables situated in Tweeddale Street, Oban. The second condition is that the landlord is to give up and assign to the tenant his whole share, right, and interest in certain subjects which are there specified, meaning thereby, as I understand it, not merely an interest derived from the running of these coaches, but the landlord's share in the property of the coaches also. Thirdly, the landlord is to give and deliver to the tenant all the horses used in connection with the coaches above enumerated, being twenty in number, with the coaches, harness, and stable and tools presently in use, the coaches, harness, and tools to become the property of the said

Alexander Campbell. Then, fourthly, the landlord is to assign to Campbell his right to stabling accommodation and some other place connected with these coaches. Fifthly, the tenant is to pay the landlord a rent of £1000 sterling yearly for the said hotel and stables, under the lease, for nine years. Sixthly, the tenant is to be allowed the privilege of using a certain portion of the yard therein mentioned. Seventhly, the tenant's right to a share in the coaching profits is to commence at the 2d of July current on undertaking corresponding obligations. Then there is a certain arrangement about some hay and oats which are in hand; and with the exception of a further arrangement as to the posting establishments connected with the hotel, which really do not enter into the question at all, that is the agreement referred to.

Now, supposing the instrument to have stopped there, it would have been a perfectly good agreement for a period of nine years, with all these several stipulations forming part of a general agreement; and stopping there, and reading no further, I do not see how anybody could possibly say that the £1000 a-year stipulated to be paid by the tenant is to be paid for a heritable assessable subject only, and not also for those other privileges and advantages which he is to obtain under the agreement, and in particular for the conveyance of the right of property in the horses, coaches, and harness, stable, and a great many other things of the same kind. The £1000 a-year is the only consideration given for everything the tenant gets under that new agreement; and therefore it is perfectly clear that some portion of that £1000 a-year must be given for subjects which he is to receive, not in lease but in property, and subjects which are not of an assessable but of a moveable character. I should say in the case I have supposed that it would be quite impossible to take this £1000 a-year as the rent of a heritable subject. Then, does it make any difference that this agreement, instead of stopping there, proceeds formally to let in lease to the tenant the hotel and the stables in Tweeddale Street, and that the tenant becomes bound in consideration of that to pay the £1000 a-year in name of rent. That does not alter the substance of the agreement, which puts the thing in a different form, and in such a form that if it stood alone, that is to say, if there were nothing in the instrument except the letting of the heritable subject, and, on the other hand, the obligation to pay £1000 a-year for the lease, a different case would be presented. It might then be a question how far in such an appeal as this either the landlord or the tenant could get behind the terms of their own lease. But on the very face of this lease we see perfectly well that that which is called rent is only partly rent, and partly also an annual payment in consideration of other things conveying the property to the tenant.

In these circumstances I am very clearly of opinion that the Commissioners were wrong in coming to the conclusion that it was incompetent to examine into the details of the arrangements whereby the sum of £1000 was fixed by the parties as annual rent. They seem to have considered themselves not entitled to make any inquiry. On the other hand, I think they were entitled and bound in the circumstances to inquire how much of this £1000 a-year was, according to a fair valuation, payable in respect of heritable and assessable subjects, and how much for the other things the tenant obtained under his agreement. I am therefore for altering the judgment of the Commissioners.

Lord Deas—The views which your Lordship has just stated are those which occurred to me as soon as this matter was fully and distinctly explained. I am strongly of your Lordship's opinion.

Lord Mure—I am of the same opinion. It is clear on the face of the lease that part of the £1000 rent must have been paid with reference to the purchase of subjects not assessable subjects; and that being the case, I concur with your Lordship that it is not incompetent for the Commissioners to go into the investigation and see what was the fair rent payable for the subjects as assessable subjects, and separate from that which is plainly applicable to moveable property.

Lord Shand—I am entirely of the same opinion. The only observation I have to make in addition is, that even on the appellant's own statement it does not appear that the sum of £650 would be the sum to be taken as his rent, for upon the statement we have in the case it appears that that in any view is the rent of the hotel only, to which some addition must be made in respect of the stables, which are also subject to the lease.

The Court reversed the order of the Commissioners, and remitted to them to make an inquiry.

Counsel for Appellants — Dean of Faculty (Fraser)—J. P. B. Robertson. Agent—J. Young Guthrie, S.S.C.

Counsel for Inland Revenue—Lord Advocate (Watson) — Solicitor-General (Macdonald) — Rutherfurd. Agent—David Crole, Solicitor to Inland Revenue.

Saturday, October 25.

SECOND DIVISION.

SPECIAL CASE—DONALD OR M'NISH AND OTHERS *v.* DONALD'S TRUSTEES.

Succession—Vesting—Accrued Share.

In a case of succession, where the period of vesting and of payment is postponed, a lapsed share will not fall under an ordinary institution of issue.

A testator directed his trustees to dispone and make over to his four daughters equally, on the youngest of them attaining majority, or as soon thereafter as the trustees should find expedient, certain property, declaring that in the event of any of them dying before the period of payment without leaving issue, her share was to go to the survivors; "but in the event of any of my said daughters dying as aforesaid and leaving lawful issue, then the child or children of such predeceaser shall be entitled to the share of their mother as if she had been in life." Two of the daughters predeceased the period of payment—the first left no issue, but the second did. *Held*, in a question between the issue and the two surviving daughters of the truster, that the former