missioners of Income-Tax in dealing with cases of this description.

1. In assessing to the income-tax the profits and gains of a company carrying on the businesses both of fire insurance and life insurance, the nett profits and gains from the two branches of the business must be massed together as one undivided income assessable according to the rules applicable to the first case under Schedule D — *Smiles* v. *The Australasian Mortgage Company*, 15 R. 872, as contrasted with *The Scottish Mortgage Company of New Mexico* v. *Inland Revenue*, 14 R. 98.

2. Interest on investments which has not suffered deduction of income-tax at its source, must be taken into account in ascertaining the assessable amount of profits and gains of the company.

3. Seeing that fire insurance policies are contracts for one year only, the premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period, and ordinary expenses, may be fairly taken as the profits and gains of the company, without taking into account or making any allowance for the balance of annual risks unexpired at the end of the financial year of the company — *The Imperial Fire Insurance Company* v. *Wilson*.

4. That this rule is not applicable to the ascertainment of profits and gains on the life business. That life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contract may endure for the policy-holder's life, or for a certain number of years stated, or till the holder attains a certain age, and the company may be bound, on the expiry of the fixed number of years, or on the attainment of a certain age by the policy holder, either to pay a lump sum or an annuity for the remainder of the policy-holder's life.

The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years or annually during the holder's life, or during the subsistence of the policy. The premiums therefore do in no sense represent the annual profits and gains of the company. In like manner the amount of claims in any one year arising on the death of persons insured, or otherwise, as a deduction from the company's receipts for the year cannot afford any criterion for ascertainment of profits. A recently established company will receive a large amount of premiums, and have few or no claims to meet. The profits and gains can be ascertained only by actuarial calculation, and this actuarial calculation may be obtained by taking the result of the quinquennial investigation prescribed by statute of the periodical investigation in use in companies established before the statute, or by an investigation covering the three years prescribed by Schedule D of the Income-Tax Acts.

In the case of the Northern Insurance Company—(5) Where a gain is made by the company (within the year of assessment or the three years prescribed by the Income-Tax Act, Sched. D) by realising an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the company.

The Court reversed the determination of the Commissioners, and remitted the case to them with instructions.

Counsel for the Scottish Union and National Insurance Company — Balfour, Q.C.—Jameson. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Commissioners of Inland Revenue—Lord Adv. Robertson, Q.C.—Young. Agent—D. Crole, Solicitor of Inland Revenue.

Saturday, February 9.

SECOND DIVISION.

[Exchequer Cause.

MACGREGOR *v.* THE COMMISSIONERS OF INLAND REVENUE.

Revenue—Property and Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 60, *Schedule A, Rules* 9, 10, *and* 14 *of No* 4—*Taxes Management Act* 1882 (43 *and* 44 *Vict. cap.* 19), *sec.* 60—*Assessment Doubly Charged—Superior and Vassal—Casualty—Composition.*

A vassal paid a casualty of composition to his superior, who made a return thereof and was assessed upon the same. The vassal claimed exemption from an assessment of the annual rent of his lands, on the ground that it had already been charged with duty in the hands of the superior. *Held* that as the composition was paid to the superior not as rent, but as the price payable for entry, the vassal was the proprietor of the rent for the year, and was liable to assessment thereof.

The Taxes Management Act 1880 (43 and 44 Vict. cap. 19), by section 60 provides—"*Double Assessments.*—Whenever it appears to the satisfaction of the Board that a person has been assessed more than once to the duties for the same cause and for the same year, they shall direct the whole or such part of such one or more of the assessments as appears to be an overcharge to be vacated, and thereupon the same shall be by such order vacated accordingly."

At a meeting of the Commissioners for the general purposes of the Income-Tax Acts, and for executing the Acts relating to Inhabited House Duties for the Cowal district of the county of Argyll, held at Dunoon on the 5th day of November 1888, Donald Macgregor of Ardgartan appealed against and claimed relief from an assessment of £659, duty £16, 9s. 6d., under Schedule A of the Property and Income-Tax Acts, made upon him for the year 1888-89, being the annual value of the lands of Ardgartan and others belonging to the said Donald Macgregor, and situated in the said district of Cowal, on the ground of having been called upon to pay and having paid to his Grace the Duke of Argyll, as superior of the lands, on 30th May 1888, a casualty of superiority amounting to a full year's rental of the lands, which he claimed to have deducted from or set against the assessment appealed against.

The appellant contended that he had derived

no income for the year from the estate; that payment of the casualty was made by the appellant to the Duke without deduction of income-tax, because his Grace refused to allow deduction thereof, in respect that, as was admitted by the Surveyor, he was required by the Commissioners to make a special return of, and pay income-tax directly upon, all casualties received by him, and that had he allowed the appellant to retain tax in the manner provided by rules 9 and 10 of No. 4 of the general rules enacted under Schedule A of 5 and 6 Vict. cap. 35, sec. 60, he would have been submitting to a double charge. The said Duke had since made his special return, and been assessed upon the casualty. The assessment sought to be imposed upon the appellant was thus doubly charged, and as an overcharge fell to be vacated in manner provided by the Taxes Management Act 1880, section 60. The appellant therefore claimed relief from the assessment made upon him.

The Surveyor of Taxes maintained that the casualty of superiority paid by the appellant in the circumstances set forth was of the nature of a capital payment; the statute contained no provision for allowing such a payment to be deducted from or set against the rent or yearly value in assessing lands and heritages to property and income-tax, and that it was incompetent to make any such allowance. He referred to the deductions and allowances detailed in No. 5 of Schedule A of 5 and 6 Vict. cap. 35, sec. 60, also to rule 14 of No. 4 of the said section, and section 159 of the said Act, providing that no other deductions are to be allowed than such as are expressly enumerated in the Act.

The Commissioners found that the statute contained no provision authorising any allowance from an assessment under Schedule A in respect of the payment of a casualty of superiority, and therefore refused the appeal.

The appellant took a case, and argued—What was demanded was not a deduction of an assessment; it was the vacating of an assessment which was not chargeable. The rent for the year was not income or profit in the hands of the appellant, because he had been obliged to pay it all to the superior. The superior under the former law could have entered into possession to recover the amount—*Hill* v. *Caledonian Railway Company*, Dec. 21, 1877, 5 R. 86, *per* Lord Deas, 390; *Allan's Trustees* v. *Duke of Hamilton*, Jan. 12, 1858, 5 R. 510, where the Lord Justice-Clerk pointed out that where lands were in non-entry the superior is presumed to be in possession, and what the singular successor must render for his entry is the value of the beneficial enjoyment or income of the lands. See also *Sharpe* v. *Parochial Board of Latheron*, July 12, 1883, 10 R. 1163, where subjects being twice entered in a valuation-roll did not warrant the collection of poor-rate in assessing twice for them. He paid the whole rent of the lands for the year to the superior, he himself derived no benefit from them. The superior paid income-tax upon the sum so paid to him, and if the vassal was required to pay income-tax he not only paid upon value he did not receive, but the Commissioners exacted the duty twice upon the same sum, which was contrary to the terms of the Taxes Management Act 1882, sec. 60.

The respondents argued—A composition was not payment to the landlord of the rent actually drawn from the lands for that year, it was the price paid for the entry. It was a mere accident that the two sums corresponded in amount. They were two different subjects. The superior was therefore not the proprietor of the rent as contended by the appellant. The superior could only uplift the rents by virtue of legal proceedings.

At advising—

Lord Lee—This is an appeal from the decision of the Income-tax Commissioners by which the appellant was found liable to pay income-tax upon the annual value of certain lands in Argyllshire. The objection of the appellant is that the effect of the assessment imposed upon him is to charge doubly the rent for the year 1888-9—that is, to charge it with duty firstly in his hands, and again in the hands of his superior the Duke of Argyll.

This view is founded on the idea that a composition paid to a superior by a singular successor for his entry makes the superior the proprietor in right of the rents for the year in which the entry is obtained.

My opinion is that this is a fallacious view. I think that the composition is exigible not as rent, but as the price payable for the entry, and that it is a mere accident that in some cases the amount of the price is measured by a year's rent.

The vassal's right to the rents remains unimpaired so long as the superior is not in possession, and the superior could not uplift the rents without legal proceedings equivalent to declarator of non-entry. I therefore think that the determination of the Commissioners was right, and should be affirmed with expenses.

The Lord Justice-Clerk and Lord Rutherfurd Clark concurred.,

Lord Young was absent.

The Court held that the decision of the Commissioners was right.

Counsel for the Appellant—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—Sol.-Gen. Darling—A. J. Young. Agent—David Crole, Solicitor for the Inland Revenue.

Saturday, February 9.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

MACRAE *v.* SUTHERLAND.

Process—Caution for Expenses—Pursuer Living in England—Notour Bankruptcy—Debtors Scotland Act 1880 (43 *and* 44 *Vict. c.* 34).

Held that the pursuer of an action of damages for slander, who was living in England, and was notour bankrupt in the sense of the Debtors (Scotland) Act 1880, was not bound to find caution for expenses.