There was a second point referred to by the Lord Ordinary about which nothing was said by your Lordship. It is asserted that even if diligence had been used at an earlier period the money never would have been secured. The *onus* in this matter lies on Mr Cairns, the defender. If he could show that the money could not have been recovered, then no decree would be given against him, but it is almost impossible for him to show that in this case. It is not the case of a debt due to the testator which he himself allowed to continue. The trustees themselves sold the estate, and in the circumstances of the estate it was their duty to see that they got the money for the estate they had parted with. They were bound to see that they were selling to a party who could and would pay, and that payment was made within a reasonable time.

On the question of amendment, as the pursuer and defenders remain the same, and the declaratory conclusions remain the same, and the only purpose of the amendment is to add an additional conclusion not enlarging the defenders' liability in any way, I think it is the kind of amendment authorised by the Act.

LORD ADAM concurred.

LORD M'LAREN—I concur in the opinion expressed by your Lordships, and only wish to make the observation that I sympathise with the remark made by your Lordship as to the unsatisfactory character of the definition of the diligence prestable by trustees. I think everyone must know men of prudence and ability who are in the habit of leaving the management of their own affairs to a factor or junior partner, and who do not give to their own affairs nearly the attention we would require from trustees. Others give far more than we would require from trustees who only exercise a sort of general supervision. In the points of duty which a trustee has to perform in person he must give his mind to the performance of his duties. In this case Mr Cairns did not give the attention which every man, whether clever or stupid, is bound to give, or which he should have given when he became aware that the estate was in danger.

The Court adhered.

Counsel for the Pursuer and Respondent—Sir C. Pearson—C. N. Johnstone. Agent—Andrew Wallace, Solicitor.

Counsel for the Defender and Reclaimer—C. S. Dickson—Lyell. Agent—George Mills, S.S.C.

Thursday, May 22.

FIRST DIVISION.

[Exchequer Cause.

CHARLTON *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Income-Tax—Deductions from Minister's Stipend—Act 16 *and* 17 *Vict. cap.* 34, *sec.* 52.

Section 52 of the Act 16 and 17 Vict. cap. 34, provides that in assessing the duty chargeable under the Act upon any clergyman or minister in respect of the emoluments of his profession, it shall be lawful to deduct expenses incurred by him "wholly, exclusively, and necessarily in the performance of his duty as such clergyman or minister."

Held that under this section it was lawful for a minister to deduct from his stipend (1) the expense of visiting members of his congregation, whether resident within his parish or not; (2) expense of attending meetings of mission board and presbyterial commissions, where these formed part of the duty enjoined on the minister by his ecclesiastical superiors; (3) outlay on stationery; (4) expense of attending meetings of General Assembly, presbytery, and synods; (5) communion expenses;—but that it was not lawful for him to make any deduction in respect that part of his dwelling-house was used as an office for the business of his profession, or for the expense of books.

At a meeting of the Commissioners for General Purposes of the Income-Tax Acts for the county of Wigtown, held at Stranraer on 12th November 1889, the Rev. H. P. Charlton, minister of the parish of Stranraer, appeared in support of the following claim for repayment of income-tax in respect of ministerial expenses for the three years 1886-7, 1887-8, 1888-9, under the Act 16 and 17 Vict. cap. 34, sec. 52:—

	Per annum.		
1. Travelling expenses in visiting members of his congregation, .	£20	0	0
2. Part of his dwelling-house used as an office, ...	8	0	0
3. Books, ...	5	0	0
4. Expenses of attending meetings of mission board, presbyterial commissions, ...	21	10	0
5. Stationery, ...	2	0	0
6. Attending General Assembly, .	4	0	0
7. Attending presbytery and synods, ...	1	10	0
8. Communion expenses, . .	10	0	0
	£72	0	0

Mr Charlton did not exhibit any vouchers or receipts for the sums stated to have been disbursed by him.

The Commissioners, after a careful consideration of the whole facts of the case, were of opinion that they could only allow Mr Charlton expenses actually and necessarily incurred in performing the necessary

duties of a minister, and that these in the circumstances would not exceed—For communion expenses, £5; expenses of attending meetings of synod and presbytery, £1, 10s.; and stationery, £2, amounting together to £8, 10s. per annum for each of the three years 1886-7, 1887-8, 1888-9—in all, £25, 10s., besides £10 for attending the General Assembly in 1886-7, the only one of the said years in which he did attend.

At Mr Charlton's request the present case was stated for the opinion of the Court of Exchequer.

Section 52 of the Act 16 and 17 Vict. cap. 34, provides:—"In assessing the duty chargeable under any schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister; and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty charged and paid by such clergyman or minister shall, on due proof to the Commissioners of such sum or sums having been expended as aforesaid, be paid to such clergyman or minister."

The appellant argued—(1) The duty of visiting was not confined to the limits of his parish, but extended to members of the congregation resident outside the parish. The character of expenses to be allowed was shown by the 51st section of the Act 16 and 17 Vict. cap. 34. (2) There was no manse in the parish, and his house cost him about £35 a-year. This entitled him to a deduction in respect of his study, which was used solely for professional purposes. (3) Books were the tools of his profession, and their cost was allowable under the Act 5 and 6 Vict. cap. 35. (4) It was part of his ministerial duty to attend meetings of the mission board and to attend presbyterial commissions. (8) He was entitled to a deduction of £10 in respect of communion expenses—Duncan's Parochial Law, 706. Vouchers were not asked for, because his claims were objected to in principle.

Argued for Inland Revenue—The Commissioners had treated the appellant's claim with indulgence, making allowance even for stationery. In regard to all the items, with the exception of one year's attendance at the General Assembly, which was allowed for, no details were furnished; there was nothing in the form of a voucher, and there was no precise information on which the Commissioners could form a judgment. They had conceded as much as they could in the circumstances. As for the leading item relating to travelling expenses, they, in knowledge of the appellant's parish, could not countenance any deduction, and they had no facts before them on which they could proceed as to expenses actually incurred beyond the parish bounds. In rural parishes of wide extent an allowance would be given. Before any deduction could be allowed the party claiming it was required by statute to prove that he was entitled to it. Whether there had been an allocation in name of communion expenses as distinct from stipend was not known. The claim on account of a minister's study was novel, and not warranted by statute; and the claim in respect of expenditure for books was a claim on account of conversion of capital, and because of an addition to the value of the minister's library.

At advising—

LORD PRESIDENT—This is a case stated by the Commissioners for General Purposes of the Income-Tax Acts for the county of Wigtown with regard to a claim of Mr Charlton, the minister of the parish of Stranraer, for repayment of income-tax in respect of certain expenses incurred by him in the years 1886-7, 1887-8, and 1888-9, which he maintains he is entitled to have deducted from the assessable income which he receives, under the 52nd section of the Income-Tax Act of 16 and 17 Vict. c. 34.

The case is certainly not in a satisfactory condition, and it is impossible, with the materials before us as stated in the case, to arrive at any definite or complete conclusion upon the matter in dispute between Mr Charlton and the Surveyor of Taxes, but probably it may be sufficient for the Court to indicate, in remitting the case for amendment, what portions of these expenses claimed by Mr Charlton are allowable under the 52nd section of the statute. That section enacts that "in assessing the duty chargeable under any schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him, wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister, and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty charged and paid by such clergyman or minister shall, on due proof to the Commissioners of such sum or sums having been expended as aforesaid, be repaid to such clergyman or minister."

Now, what are the expenses which the clergyman in this case says he is entitled to have deducted from the assessable income? In the first place, there is the head of travelling expenses in visiting the members of his congregation. It was maintained that the duties of a parish minister are, in respect of visitation, confined within the limits of his parish, and that members of the congregation who do not live within the parish are not proper subjects or objects of visitation. I am not disposed to give effect to that view. No doubt there was a time in the history of the Church of Scotland when parishioners were compelled to attend their parish churches, but those were days of intoler-

ance and persecution which have long passed away, and there can be no doubt that in ordinary course in the present day the congregation of the parish church consists partly of parishioners and partly of persons who may live beyond the bounds of the parish, but who are not a bit the less on that account members of the congregation, and as such entitled to the services of the minister.

The second and third heads of the claim appear to me to be quite inadmissible. The second is for part of his dwelling-house used as an office; but the reverend gentleman himself stated that this was merely what in ordinary language is called a study, in which he receives calls from his parishioners and such like. It is quite plain that that is not a charge which can possibly be deducted from the assessable income. And so also with reference to the third head of the charge,—for books. It is needless to say more upon these.

The fourth head consists of expenses of attending meetings of mission board and presbyterial commissions. In regard to meetings of a mission board, which I understand to be in Edinburgh, and presbyterial commissions, all that one can say as at present advised is this, that if these are part of the duty of this minister of Stranraer, then the deduction ought to be allowed; but to make it part of his duty, it must either be a proper part of his parochial duty, which it certainly is not, or it must be a duty enjoined upon him by his ecclesiastical superiors, and that undoubtedly would require to be proved. But if it be the fact that these meetings and commissions are enjoined on him by the General Assembly or by the presbytery, then I should say the proposed deduction is probably a good one.

The remaining items for stationery, attending General Assembly, attending presbytery and synods, and communion expenses, have been in principle recognised by the Commissioners, and I think the counsel for the Inland Revenue did not dispute that these are within the class of charges which may fairly be held to fall under the 52nd section.

Now, having said so much, I think we can do no more. It is quite impossible to deal with figures. I do not understand in what way the Commissioners arrive at the figures which they have stated. They do not say they had any evidence before them. They do not seem to have examined the claimant Mr Charlton himself, who probably could have explained the whole thing, but they just take up the matter and take a hammer to it as it were, and allow so much for communion expenses, so much for attending presbytery and synods, and so much for attending the General Assembly.

I would therefore propose to your Lordships, if you agree with me in the observations that I have made generally about the class of charges that may be allowed, that this case should be sent back to the Commissioners with instructions to amend the case. To enable them to do that, of course they must have evidence before them, but I would also desire to say that while that will be the form of our interlocutor, I think this is a matter in which the claimant and the surveyor ought to come together and arrange the figures. If your Lordships agree with me about the class of charges to be allowed, all difficulty in principle will be removed, and the only thing to be established by reasonable evidence is, what is the amount in figures of the charges which should be allowed? That is a matter certainly that ought not to be appealed to this Court, but ought to be settled between the parties; and I hope, therefore, that they will both be reasonable in that respect. There is one observation also that perhaps it may be necessary to make, viz., that there are a number of these items of expenditure which do not admit of being regularly vouched, and in a great many cases I suppose the only kind of evidence that could reasonably be expected is a statement by the claimant himself of what he has actually expended upon each different occasion; and if that were given in detail, I have no doubt the Surveyor of Taxes would be perfectly satisfied.

Lord Shand—I concur generally in the opinion which your Lordship has delivered. With regard to the items of stationery, attending the General Assembly, attending presbytery and synods, and communion expenses, the expenses under these four heads have been allowed by the Commissioners, and the only objection that was raised before us was one as to amount. I confess if they had given their mind to the question of amount I should not have been disposed to disturb their finding. The principle is settled that these things are to be allowed, and I see no reason to doubt that the principle is sound. So far as communion expenses are concerned there may be specialties in other cases which do not occur here. It was explained by the appellant, who pleaded his own case, that he does not hold a decree allocating his stipend upon teinds which expressly gives a certain sum for communion expenses. If he did, my impression would rather be that that ought not to go into income at all. In such a case it is given for expenses, it is not intended as income, and I should not regard it as income. In this case the clergyman gets so much a year from different sources, and he has expenses to pay out of his own pocket in connection with the dispensing of the communion, and I think the Commissioners have probably done quite rightly in seeking to ascertain, as I fancy they have done, the actual expense to the minister, and in allowing that. And therefore so far as these four items are concerned, in the view that the principle is right, I think the matter is one of very small detail, and I would not be disposed to disturb the findings of the Commissioners.

In regard to the other matters I entirely concur with your Lordship. The minister is bound to pay income tax upon his free income after deducting the expenses which

attend the proper performance of his duty, and I think it would be much too narrow a view to take of a case like this to say, "We shall allow the expenses which arise within your own parish, which is in the town of Stranraer, but we shall not allow you the expenses which you incur in the performance of your duties several miles, it may be, beyond the parish, in attendance upon persons who go regularly to your church, such attendance having reference to marriages, cases of sickness, funerals, and the like. I think that is too narrow a view to take of this matter. I think that such expenses should be allowed as are really incurred in connection with visiting which the minister is either expected or enjoined by his ecclesiastical superiors to do. As to the part of the dwelling-house used as an office, it is quite clear that neither in this case nor in any case almost that one could figure, does the clergyman take a bigger house for the purpose of having one room in which he may discharge his parochial duties. In the case of a manse that is not so, and no one can suppose that this is not just the case of an ordinary manse with a study which is used for parochial duties. Therefore I do not think that is an expense which should be allowed. As to the expense of attending mission board meetings and presbyterial commissions, I would apply the same rule as in regard to the expense of visiting the congregation. If the duty is one which the minister may be fairly expected to do, or may be enjoined to do by his ecclesiastical superiors, then I think the expense is one which may fairly be deducted from his income before the balance of income is made chargeable with income tax. With these observations I agree with your Lordship that of course we do not expect ever to see this case again. The parties have got the principles settled, and they will settle the details for themselves. I have nothing to add.

LORD ADAM and LORD M'LAREN concurred.

The Court remitted to the Commissioners to amend the case.

Counsel and Agent for Appellant—Party.

Counsel for Inland Revenue—Young. Agent—D. Crole, Solicitor of Inland Revenue.

Tuesday, May 27.

SECOND DIVISION.

[Sheriff of Dumfries and Galloway.

RICHARDSON *v.* COUNTY ROAD TRUSTEES OF DUMFRIESSHIRE.

Contract—Locatio operarum—Completion of Contract—Payment.

A contractor entered into an engagement with a body of road trustees to execute repairs upon certain bridges belonging to the trustees. He had completed the work upon all the bridges but one, and the work on that one was nearly done, when a surfaceman in the employment of the trustees, without the knowledge or leave of the contractor, removed the wooden supports from the uncompleted bridge, with the result that the bridge fell down and the work bestowed upon it was lost.

In an action by the contractor against the road trustees, *held* that the pursuer was entitled to payment for the work expended by him upon the unfinished bridge, the accident not having been caused by any fault on his part. *M'Intyre* v. *Clow*, January 8, 1875, 2 R. 278, *considered.*

In March 1889 the County Road Trustees of the county of Dumfries advertised for offers for repairs to be executed upon three small bridges in the Moffat Water District in that county. The contractor was to provide all materials, cartage, &c., with the exception of wooden centres, for support of the bridge during the operations, which were to be provided by the Trustees. Upon 4th April Peter Richardson, contractor, Moffat, put in an offer to build and repair the bridges for the sum of £88, 10s.; secondly, to do all the concrete work at 5s. 6d. per yard; and thirdly, to build all parapet walls at 5s. 6d. per yard. By letter of 6th April the Road Trustees accepted this offer.

The contractor finished his work on two of the bridges, but a difficulty arose as to the third bridge, which was over the Tail Burn. The work upon this bridge had been finished except the building of the parapet walls, but the wooden centres supplied by the Road Trustees, for holding the bridge in proper position until it was set, were still supporting the mason work of the bridge. Upon 29th May 1889, James Quigley, a surfaceman in the employment of the Road Trustees, with the permission of one of the contractor's workmen, removed the centres, and the next day the mason-work of the bridge fell down and the bridge was destroyed. The Road Commissioners entered into a new contract for rebuilding the bridge, and declined to pay Richardson anything for the work expended upon the former bridge under his contract.

The present action was raised by Richardson in the Sheriff Court at Dumfries, against the Trustees, for payment of the