specified. I am therefore of opinion that there is a case to go to a jury, and I quite agree with your Lordships that the amendment should be allowed without any conditions in the circumstances in which the pursuer was placed in the Court below.

The Court allowed the proposed amendment, and appointed the pursuer to lodge issues.

The following issue was afterwards approved for trial of the cause:—"Whether on or about the 28th day of October 1893, the defenders, or those for whom they are responsible, having undertaken to convey Elizabeth Thomson Sutherland, daughter of the pursuer, from pursuer's house at Chapel Street, aforesaid, to the City Hospital, wrongfully failed to take due and proper precaution for her safety, and to afford proper medical treatment to her in said hospital, in consequence of which or part thereof she died, to the loss, injury, and damage of the pursuer."

Counsel for the Pursuer—Watt—A. M. Anderson. Agent—R. J. Gibson, S.S.C.

Counsel for the Defenders—Lord Adv. Balfour, Q.C.—W. Brown. Agents—T. J. Gordon & Falconer, W.S.

Tuesday November 27.

FIRST DIVISION.

[Court of Exchequer.

AIKIN (SURVEYOR OF TAXES) *v.* MACDONALD'S TRUSTEES.

Revenue — Income-Tax — Money Remitted from Abroad—Deductions—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *Sched. D, Case* 5—*First Rule Applicable to First and Second Cases.*

The profits returned by a body of testamentary trustees for assessment under Schedule D of the Income-Tax Act 1842 consisted entirely of moneys remitted from India, being the annual profits of indigo and tea estates in that country belonging to the trust.

Held that duty fell to be charged on the whole amount of the sums received by the trustees from India without deduction of expenses incurred in this country in connection with the management of the trust.

The trustees of the late Charles Macalister Macdonald were part proprietors of the Dowlutpore Indigo Concern, Tirhoot, and of certain tea estates in India. The average annual profits received in this country by remittances from said concern and estates amounted to the sum of £1684, 2s. 2d., and the whole income of the trust (other than dividends on shares from which income-tax was deducted before payment) was derived from said concern and estates. The trustees in making their return for the year ending 5th April 1894 for the assessment of profits under Schedule D of the Income-Tax Acts deducted from the above sum of £1684, 2s. 2d. the sum of £200 as the average annual expenses incurred in this country in connection with the management of the trust. The Surveyor of Taxes assessed the trustees on the full sum of £1684, 2s. 2d., and the trustees appealed against this assessment to this Commissioners for General Purposes.

The Commissioners held that, in computing the assessable profits under the provisions of the fifth case, effect fell to be given to the directions contained in the first of the rules described in the 100th section of the Income-Tax Act 1842 (5 and 6 Vict. c. 35) as applying to the first and second cases of Schedule D, and that the average annual expenses incurred in this country formed a proper deduction from the average annual sums received in this country.

Upon the motion of the Surveyor of Taxes, who was dissatisfied with their determination, the Commissioners stated a case for the opinion of the Court of Exchequer.

The Income-Tax Act 1842 (5 and 6 Vict. c. 35), sec. 100, provides—"Fifth Case. The duty to be charged in respect of possessions . . . in any of Her Majesty's dominions out of Great Britain. . . . The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the actual sums annually received in Great Britain either for remittances from thence payable in Great Britain, . . . computing the same on an average of the three preceding years as directed in the first case without other deduction or abatement than is hereinbefore allowed in such case." The first rule applying to both the first and second cases provides that "In estimating the balance of the profits or gains to be charged . . . no sum shall be set against or deducted from . . . such profits and gains for any disbursements or expenses whatever, not being money wholly and exclusively laid out or expended for the purposes of such trade, manufacture, adventure, or concern, . . . nor for any disbursements or expenses of maintenance of the parties, their families or establishments, . . . nor for any sum expended in any other domestic or private purposes distinct from the purposes of such trade, manufacture, adventure, or concern." . . .

Argued for the Surveyor of Taxes—The deductions proposed to be made were clearly in the teeth of the precise provisions of the Act. They were for private or domestic purposes, and not for the purposes of trade. The only allowable deductions were those incidental to earning the money abroad, sending it home, and (possibly) turning produce into money. Here it was admitted that £1684, 2s. 2d. had been remitted. That was the nett sum which could be uplifted from the bank by those at home entitled to the money. The Inland Revenue had no concern with how it was spent. Income-tax must be paid on the nett amount. If it belonged to an individual, it was out of the question that he could pay the expenses of a secretary or law-agent out of it. That it belonged to

trustees who had to allocate it made no difference.

Argued for the trustees—It was admitted that what was expended in bringing the money home was a proper deduction. The deduction here claimed was an expense incurred in bringing it home to the beneficiaries. It was only the nett amount that reached the beneficiaries that was subject to assessment. The trust was not a luxury set up by the beneficiaries like the secretary of an individual. They only got the money through the trustees, and should only pay on what they got. Although the Inland Revenue might be entitled to intercept the money in the hands of the trustees, they must look to the ultimate amount that would reach the beneficiaries.

At advising—

LORD PRESIDENT — The appellants are testamentary trustees, and in that capacity they are part proprietors of certain estates in India. In the year ending 5th April 1894 there was remitted to the appellants from India, as the annual proceeds of those properties, a sum of £1684, 2s. 2d., and that was a sum of money which came home nett. That sum came into the hands of the appellants free for them to spend or distribute according to the rights of their beneficiaries. They now propose to deduct certain expenses incurred in this country in connection with the management of the trust. Now, it is for them to point to the section of the statute which entitles them to make such a deduction, and I think they have entirely failed to do so. It seems to me that all the authorised deductions and charges occur at an earlier stage than that at which these expenses have been incurred. When the nett sum was placed in the hands of the trustees it had passed through all the vicissitudes which entitled anyone to make deductions. It had come home and was in their hands for them to apply to their uses. The fact that their uses are trust uses does not seem to me to make any difference in the present question, and the fact that this is a trust for the children of a person deceased again does not make any difference, as is shown by the fact that the trustees themselves are going to pay income-tax upon this sum, and merely question the right of the Government to refuse the deduction in question. I am of opinion that the determination of the Commissioners is wrong, and should be reversed.

LORD ADAM—I am entirely of the same opinion, and I cannot say I entertain any doubt about it. In these taxation statutes we are to read the words in the sense in which they are ordinarily used, and if a particular case falls clearly within the words we are not at liberty to consider whether it is equitable or inequitable. Now, it appears to me that the words "the full amount of the actual sums annually received in Great Britain either for remittances," &c., apply to this case. I think we could not have words more clearly applicable to the remittances in question. It is said, however, by the appellants that they fall within the section providing for deduction or abatement, and that takes us back to the rule applicable to cases one and two, but, as your Lordship has pointed out, that rule clearly refers to money expended in earning the nett sum, and it is not to be for disbursements for the maintenance of parties nor for any sum expended in any domestic or private purposes, as distinct from the purposes of the trade, manufacture, adventure, or concern. I do not know whether this would be a sum expended in domestic purposes. It looks very like it, and, if so, that very clearly applies.

LORD M'LAREN—Though the case we are considering is raised under the fifth case of the section of the statute, there is a reference made under that enactment to rules which are primarily applicable to the first and second cases, and in considering the present question it is of course legitimate to see how these rules would be worked from what is the ordinary case of profits earned within the country. If we suppose the ordinary case of a commercial firm earning profits, and that one of the partners has died and left his share to be managed by trustees for the benefit of his family, the firm make a return to Government of their nett profits, and they are assessed upon those profits. Can it be for a moment maintained that after that return had been made the family of the partner who had left his money to trustees are entitled to a further reduction in respect of the cost of administering this revenue through the trustees? It seems to me that in such a case the deduction would be no more claimable than in a case where an individual partner having money in many concerns chooses to employ a private secretary for the purpose of keeping an account of his income and his expenditure. The management of the trustees is really, I venture to think, of the nature of what is described in one of the rules as a private or domestic use, and is so described for the purpose of making it clear that it is not to be allowed as a deduction. I think it is plain enough, reading these rules, that the only kind of deductions allowed is expenditure incurred in earning the profits, and that there is no deduction under any circumstances allowable for expenditure incurred in managing profits which have been already earned and reduced into money. If this were under cases one and two, it must necessarily be a sum under rule five. There is a distinction, no doubt, but a distinction which is wholly immaterial to the present case. The distinction under rule five is that only so much of the profits of business as are remitted to Great Britain shall be charged. The owner of the business may reside in India and spend the greater part of his income there, and it is only so much as he remits to Great Britain that is assessable as money coming into the country which must pay for the protection which that property receives. Now, in this case

I am of opinion with your Lordships that the sum assessable is the sum appearing in the books of the bank as having been remitted to this country and placed to the credit of the trust.

LORD KINNEAR—I am clearly of the same opinion. The trustees say that the average annual profits received in this country from a certain tea estate in India amount to £1684, 2s. 2d. Now, the statute says that the duty to be charged in respect of such property in the Colonies or in Her Majesty's possessions or dominions out of the United Kingdom is to be computed on a sum not less than the full amount of the actual sums annually received in the United Kingdom by remittances from Her Majesty's Colonies or dominions outside the United Kingdom. That is the case we have to consider. It is to be computed on a sum not less than the full amount received in this country on remittance from India; and then it goes on to say that in charging the duty the sum is to be computed on an average of the three preceding years, as directed in the first case, without any deduction other than hereinbefore allowed in such case. Now, there is no deduction or abatement expressly allowed in the case there referred to, but the statute prohibits the deduction of any disbursements or expenses whatever, not being money wholly or exclusively laid out or expended for the purpose of such trade or concern; and therefore the only question we have to consider is whether the Lord Advocate is not quite right in saying that the deduction claimed here is not a deduction of money laid out or expended for the purpose of the trade or concern at all, but merely a deduction of the cost of distributing nett income after it has come into this country. I am of opinion it does come into this category, and therefore I think the decision should be reversed.

The Court reversed the determination of the Commissioners and found that the deduction was not admissible.

Counsel for the Inland Revenue—Lord Adv. Balfour, Q.C.—Sol.-Gen. Shaw, Q.C. —A. J. Young. Agent—Solicitor of Inland Revenue.

Counsel for the Trustees — D.-F. Sir Charles Pearson, Q.C. — Clark. Agents —Adam & Sang, W.S.

Thursday, November 29.

FIRST DIVISION.

[Lord Low, Ordinary.

SMITH *v.* STUART.

Jurisdiction—Ownership of Heritage in Scotland—Trust—Unrecorded Trust Purposes—Right of Reversion.

By antenuptial marriage-contract a proprietor of heritable subjects in Scotland conveyed them to trustees, who were directed to hold the subjects conveyed for the liferent use of the truster's wife, and, in case of his surviving her, of the truster. Subject to these liferents the subjects were to be held for the truster's children, their rights being contingent upon their surviving the liferenters and attaining majority. In terms of a direction contained in the contract, the only portions of it which were recorded in the register of sasines were the disposition to trustees and the description of the subjects conveyed. The truster subsequently became a domiciled Englishman, and an action having been raised against him in the Court of Session, he pleaded no jurisdiction.

Held that he was subject to the jurisdiction of the Scots Courts, in respect that, as the purposes of the marriage-contract conveyance had not been recorded, he had never been feudally divested of the heritable estate thereby disponed.

Held further (by Lord M'Laren, *approving* judgment of Lord Low) that, the interests of the children under the marriage contract being contingent, the defender retained a radical right in the subjects conveyed, which was sufficient to found jurisdiction against him.

On 25th June 1878 Peter Stuart entered into an antenuptial marriage-contract with Miss Jane Eliza Hanson, whereby he conveyed certain heritable subjects in Edinburgh and Leith, of which he was proprietor, to trustees, of whom he himself was one, for, *inter alia*, the following purposes—"In the second place, the said trustees shall hold said subjects . . . for the sole liferent use and behoof of the said Jane Eliza Hanson, as from and after the date of said marriage exclusive of the *jus mariti*, right of administration, courtesy and other rights of the said Peter Stuart . . . but as an alimentary provision to the said Jane Eliza Hanson. In the third place, the said trustees shall, in the event of the said Peter Stuart surviving the said Jane Eliza Hanson, hold said subjects for behoof of the said Peter Stuart so long as he shall survive, for his liferent use allenarly. . . . In the fifth place, the said trustees shall hold the whole of the means and estate hereinbefore conveyed to them . . . for the whole children already born to the said Peter Stuart by his former marriage, and any child or children that