LORD M'LAREN—At the conclusion of the argument your Lordships were all of opinion that the question of a nominal award under the Workmen's Compensation Act ought to be reconsidered, and I agree with your Lordships in the result of that reconsideration. I may say for myself that, although in deference to the supposed authority of some English cases, and having regard to possible convenience, I assented to the previous decision of this Division for making a nominal award, I was never a convinced adherent of that method of applying the Act, and indeed never could find out for myself that there was any warrant for such a proceeding. It is, I may say, a perfectly futile proceeding for the purpose specified, because at the expiration of six months from the date of the accident the employer has an absolute right to capitalise his liability, or to insist upon a lump sum being substituted for a weekly payment. How the capital value of a penny a-week is to do any good to the injured workman I am unable to see. But I think that it is not really necessary to make a nominal award. The cases in which that has been done have resulted, as I venture to think, from inattention to the provisions of the statute in this respect, that because a workman was receiving from his employer a sum equal to the wages that he earned before the accident it was assumed that that was the man's wage-earning capacity, and therefore that there was no ground for making a substantial award of compensation. Now that is not the intention of the statute at all. What the arbiter has to consider is not what the man is receiving whether under the name of wages or charity from his employer, but what could he earn in the open market after the accident had happened as distinguished from what he actually earned in the open market before the accident. If his wage-earning capacity—the wage that he could earn in the open market—is less than what he earned before, it is an absolutely irrelevant consideration to take into account that the master is paying full wages. The workman is then entitled to have an award of compensation. What the master is to do is for him to consider. He may or may not continue the payment he has been hitherto making *ex gratia*. When the statute is applied according to my reading of it, by taking into account only the wage-earning capacity of the man at the time when the application to the Sheriff was made, whether for the original award or for variation of award, all difficulty disappears. It is quite true that at the end of six months the result may be that the employer's liability comes to an end, but I have no conception that the Legislature intended that this liability should hang like a millstone round the employer's neck during the whole of his life. Six months was the time fixed, because it was supposed that by that time the arbiter would be able to make a fair estimate of the probable loss to the workman and of the principle upon which assessment should be made. If unfortunately a man whose eye was injured and had healed again should suffer a relapse (it might be glaucoma, which could be proved to arise from the accident) that cannot be helped. In so far as this is not foreseen and allowed for at the expiry of six months, that is just the workman's misfortune, for it was never intended that he should be put in the same position as before the accident, but only that he should receive compensation under the conditions and limitations prescribed by Act of Parliament.

LORD KINNEAR concurred.

The Court answered the second alternative of the question of law in the negative, and remitted to the Sheriff-Substitute to proceed in accordance with their finding.

Counsel for the Appellants—Younger, K.C.—Constable. Agents—J. W. & J. Mackenzie, W.S.

Counsel for the Respondent—Campbell, K.C.—Gunn. Agents—Mackay & Young, W.S.

Tuesday, July 18.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

[Lord Stormonth Darling, Ordinary.

LORD ADVOCATE *v.* M'LAREN.

Revenue—Income-Tax—Exemption—Untrue Declaration—Penalties—"Treble the Duty Chargeable"—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 166.

The Income-Tax Act 1842, sec. 164, provides for the making of the claim by a party claiming exemption on the ground of smallness of income, which claim shall be accompanied by a declaration setting forth all the sources of the claimant's income; and sec. 165 for the granting of a certificate with a view to repayment where the claimant is entitled to exemption but has already paid by way of deduction.

Section 166 enacts—"If any person shall be guilty of any fraud or contrivance in making any such claim, or in obtaining any such exemption, or any such certificate as aforesaid, or shall fraudulently conceal or untruly declare any income or amount of income, or any sum which he may have charged or been entitled under the authority of this Act to charge against any other person, or which he may have deducted or retained, or have been or be entitled as aforesaid to deduct or retain, from or out of any payment to which such person claiming exemption as aforesaid may be or become liable, or if any such person shall fraudulently make a second claim for the same cause, every such person so offending in any of the cases aforesaid shall forfeit the sum of twenty pounds and treble the duty chargeable in re-

spect of all the sources of his income, and as if such claim had not been allowed." . . .

Held that the penalty, in addition to the £20, was the forfeiture of a sum equivalent to treble the duty from the whole sources of the declarant's income for the year, not from that only which had not paid duty, and that it was so whether any claim for exemption had been given effect to or not.

Revenue — Administration of Justice — Court of Exchequer—Power of Court—Penalties — Power of Court to Modify Penalties Imposed by Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35) — 6 *Anne, c.* 53, *sec.* 23.

The Court of Exchequer has no power to modify at its discretion the penalties imposed by the Income-Tax Act 1842.

Opinion (*per* Lord President) that any power possessed previously by the Barons of Exchequer to modify penalties was an administrative function and was not transferred by 6 Anne, c. 53, to the Court of Exchequer thereby constituted, but is represented by the power to modify now possessed by the Commissioners of Inland Revenue.

The Act 6 Anne, c. 53, established in Scotland a Court of Exchequer similar to that in England. By section 23 it enacted—"Provided nevertheless that in case any person or persons, bodies politic or corporate, his heir or their heirs, successors, executors, or administrators, shall alledge, plead, declare, or show in the said Court of Exchequer in Scotland, good perfect sufficient cause and matter in law, reason or good conscience in bar or discharge of any fines, issues, amerciaments, forfeited recognizances, or any other forfeitures, debts, or duties due or payable to the Crown, or why such person or persons ought not to be charged or be chargeable to or with the same, and the same cause and matter so alledged, pleaded, declared, or showed sufficiently proved in the said Court of Exchequer in Scotland, that then the said Court shall have full power and authority to accept, adjudge, and allow the same, and wholly and clearly to acquit and discharge all and every the said persons which shall be impleaded or sued for the same, or to make and take any fitting and reasonable composition for the same, as in the judgments and discretions of the Barons of the said Court of Exchequer upon hearing of the attorney or advocate-general or other learned council of Her Majesty, her heirs and successors, shall be found just and reasonable, and to proceed and act therein and give discharges thereupon in such sort and manner as hath been and is used and practised in the like cases in and by the Court of Exchequer in England, anything herein contained to the contrary notwithstanding."

The Court of Exchequer (Scotland) Act 1856 (19 and 20 Vict. c. 56) transferred the whole jurisdiction of the Court of Exchequer to the Court of Session.

The Act 16 and 17 Vict c. 34 (Income-Tax Act 1853) in section 28 alters the amount of income at which exemption may be claimed from the amount fixed by the Income-Tax Act 1842, allowing an abatement on the income between the old and new figure, and it makes applicable to such abatements the provisions of the latter Act dealing with exemptions on the ground of smallness of income.

On 29th June 1904 the Lord Advocate, for and on behalf of His Majesty, presented an information against George M'Laren, plumber, 15 Howe Street, Edinburgh, on two counts—(1) that M'Laren, being liable to income-tax, did by notice and declaration dated 30th June 1902 untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1903 amounted to the sum of £150, and did this in making a claim for exemption, or the relief to which he was entitled in respect of his income as so declared, contrary to the statutes in that case provided, and in particular to the provisions of sections 164 and 166 of the Act 5 and 6 Vict. c. 35, and section 28 of the Act 16 and 17 Vict. c. 34, whereby he had forfeited the sum of £20 and also a sum of £187, 3s. 3d., or such other sum as might be found to be treble the duty chargeable in respect of all the sources of his income; (2) that M'Laren being liable to income-tax, did by notice and declaration dated 3rd July 1903 untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1904 amounted to the sum of £230, and did this in making a claim for abatement, or the relief to which he was entitled in respect of his income as so declared, contrary to the statutes as in the preceding count, whereby he had forfeited the sum of £20 and also a sum of £137, 12s. 5d., or such other sum as might be found to be treble the duty chargeable in respect of all the sources of his income.

It was admitted by M'Laren that his income (and that of his wife) exceeded the amount up to which exemption or abatement was allowed, and that for the year 1903-1904 it was—rents £249, 8s., and interests £411, 14s. 3d., less insurance premium £10, 2s. 6d., giving a total of £650, 17s. 9d., in addition to the profits of his business which he estimated at £150, but which had been assessed for some years without appeal as amounting to £350. The £650, 17s. 9d. of other income and the £350 of business income together gave a total income of £1000, 17s. 9d., and the penalties now claimed, in addition to the £20 penalties, viz., £187, 3s. 3d. and £137, 12s. 5d. were treble the duty for the years 1902-3 and 1903-4 from an income of that amount.

The facts of the case are given in the Lord Ordinary's opinion.

On 29th December 1904 the Lord Ordinary (STORMONTH DARLING) pronounced this interlocutor—"Finds for the pursuer on both counts of the information to the extent that the defender has forfeited the the sum of £20 sterling under each count, but finds that the defender has not forfeited any other sum under said counts: Adjudges the defender to pay to the pursuer

the two sums of £20 sterling, and decerns against the defender accordingly," &c.

Opinion.—"This is an information at the instance of the Lord Advocate on behalf of the Crown, claiming penalties against the defender, a plumber in Edinburgh, in respect of two income-tax returns which he made for the years ending 5th April 1903 and 1904 respectively. The allegation is that by the first of these returns, in making a claim of exemption for the financial year 1902-1903 the defender 'untruly declared' that the whole of his income from every source was £150. That is the first count of the information. The second count is that, in making a claim of abatement for the year 1903-1904 the defender untruly declared that the whole of his income from every source amounted £230. The information is founded on sec. 166 of the Income-Tax Act 1842, which relates to claims for exemption, and is made applicable to claims for abatement by sec. 28 of the Act 1853.

"It is not disputed by the defender that in each of these years his total income from all sources was much larger than what he returned, and, indeed, that it was larger than any figure up to which abatement is allowed. Nor can it be disputed that he signed the declaration on the fourth page of the familiar return on yellow paper, which is headed 'Notice and declaration of Claim of Exemption or Abatement,' or that thereby, having filled in £150 in the one year and £230 in the other as the total amount of his income from all sources, he claimed the relief to which he was entitled in respect of such income. That was the only part of the yellow paper which he did fill in, and in particular he made no return of the profits of his trade. But he says that all this was a blunder, that he intended to return £150 in the one case and £230 in the other as the profits of his trade, that he though he was doing so, and that he had no intention to claim either exemption or abatement.

"When the return came into the hands of the Surveyor of Taxes that officer happened to know that the defender had heritable property worth £130 a-year. He also knew that for a number of years the defender had been assessed on £350 as the profits of his business, without appeal. Being thus satisfied that neither £150 nor £230 could possibly be the whole of the defender's income from every source, he thought it probable that the defender had intended the return to represent the profits of his business, but even on that assumption he discarded the return altogether, and treated the defender as having an income of £480, which entitled him to an abatement of £150. Accordingly he sent the defender assessment notices in each year showing the amount of assessment as £350, and the deduction as £150, and bringing out the net amount chargeable as £200. In these assessment notices the defender acquiesced, and paid duty accordingly. It now appears from the defender's admissions, to which I have referred, that he was not entitled to any abatement for either year, and that he ought to have paid tax on the full amount of his business profits, whatever these were.

"That the defender's conduct in making the returns as he did was careless in the extreme he admits—indeed, that is the gist of his defence. For his defence is that he failed to fill in his business profits at the right place, and that he returned what he intended to represent business profits at the wrong place and under a wrong description, signing at the same time a claim for relief which he never meant to make. If he had no intention of claiming abatement it is rather remarkable that he should have accepted and paid on a return which set out that he was receiving an abatement of £150. But, according to the view which I take of the statute, I think I am relieved from the duty of considering whether the defender's conduct was morally culpable or not. Section 166 no doubt contains the word 'fraudulently' as qualifying some of the acts which it strikes at. Thus concealment of any income in making a claim for exemption must be fraudulent if it is to incur a penalty. But when the statute speaks of 'declaring' the amount of any income it merely uses the adverb 'untruly.' The difference in language is, I think, intelligible. At all events, I find it there, and therefore if a positive statement as to the amount of a man's income is untrue in the sense of being contrary to fact (of course, in some material respect), although it may not be fraudulent but only inexcusably careless, I think the statute intends to make it, and does make it, an offence to which a penalty is attached. I quite admit that each penal section of a statute must be construed according to its own terms, but when I turn to section 178, which deals with the case of a false return of income as distinguished from a false claim for abatement, I find that the section strikes at 'wilful neglect' as well as at falsehood and fraud, and I see in that an instructive guide to the general policy of the statute.

"Next comes the question of the amount of the penalty. £20 for each count is clearly due. But when the advisers of the Crown ask in addition for the sum of £187, 3s. 3d. under the first count and £137, 12s. 5d. under the second, it seems to me that they have not well considered the meaning of the section, for these sums are brought out by taking the defender's whole income, irrespective of whether it has already paid duty or not, and multiplying the duty by three. The words are 'treble the duty chargeable in respect of all the sources of his income, and as if such claim had not been allowed.' That can never mean that you are to take any part of the offender's income which has paid duty already and charge the duty over again, because the duty in that case would not be 'chargeable.' Clearly the meaning is that you are only to take the man's whole income on which duty is still chargeable, and to charge treble duty upon it, notwithstanding that it would have been otherwise (owing to its amount) entitled to exemption or abate-

ment. Again let me refer to section 178 as containing a fuller exposition of what is briefly expressed in section 166 as 'treble the duty chargeable.'

"In this case the defender's income from every source is made up for the most part of items from which tax has been deducted or paid, and the only part of his income on which duty is still chargeable is business profits. The onus of proving the amount of these business profits is on the Crown if they are to demand that part of the penalty which consists of treble the duty chargeable. They have led no proof on that point except by showing that the defender for several years acquiesced in an assessment of £350 as representing his trade profits. He has already paid tax on £200 of that sum, so that treble the duty on a balance of £150 would be a mere bagatelle compared with the large sums concluded for in the information. But in my view it is a sufficient answer to this part of the Crown's demand that the defender's claim for exemption or abatement was not 'allowed.' An abatement, no doubt, was allowed, but at the hand of the Revenue officers and not in terms of the defender's claim. Even if I thought otherwise on the construction of the statute, I should be of opinion that £20 under each of the two counts was a sufficient penalty for the defender's offence, and I have always held it quite within the competence of the Exchequer Court to modify a penalty where it thought proper to do so in the interests of justice. I considered and discussed that question in *Stewart's* case, 30th March 1899, 6 S.L.T. 405, and I respectfully refer to my opinion as there reported.

"I shall therefore find that the defender did, by notice and declaration dated 30th June 1902, untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1903 amounted to the sum of £150, and that the defender did, by notice and declaration dated 3rd July 1903, untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1904 amounted to the sum of £230, and that he has thereby forfeited the sum of £20 for each of the said offences, but that he has not forfeited any other sum for either of the said offences, and I shall find him liable in the expenses of process."

The Lord Advocate reclaimed and argued —(1) The Lord Ordinary had put a wrong construction on the statute. The word "chargeable" must be applied as at the time when the offence was committed. It therefore had reference to the declarant's whole income from every source, and not to that part only which had been untruly declared. The penalty could not be made to depend on how much duty had been paid. (2) The Lord Ordinary had also erred in thinking the Court had a power to modify. The section was imperative that the person offending should forfeit, and no such power had ever been claimed by the Courts in England. The Court only had, under 6 Anne c. 53, the judicial functions of the old Barons of Exchequer. To modify penalties, however, was an administrative act, and was therefore not transferred to the Court. The power was undoubtedly with the Commissioners of Inland Revenue, and was not likely to be in two bodies—*Lord Advocate* v. *Thomson*, February 23, 1897, 24 R. 543, 34 S.L.R. 412; *Pendreigh's Trustee* v. *M'Laren & Company*, May 9, 1871, 9 Macph. (H.L.) 48, 8 S.L.R. 483.

Argued for the respondent—(1) This was a penal statute and was to be interpreted equitably. It would be inequitable to demand, as the pursuer here did, in every case treble the income-tax on the whole year's income, however great that income might be, and however small the error in the declaration. "Chargeable" was therefore to be restricted to the amount which the defender had attempted to avoid paying—that was, it meant still chargeable. (2) The Lord Ordinary was right in holding that he had power to modify. It was expressly conferred by 6 Anne c. 53.

At advising—

LORD ADAM—The Lord Ordinary is of opinion that "the defender did, by notice and declaration dated 30th June 1902, untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1903 amounted to the sum of £150, and that the defender did, by notice and declaration dated 3rd July 1903, untruly declare that the whole of his income from every source whatsoever for the year ending 5th April 1904 amounted to the sum of £230, and that he has thereby forfeited the sum of £20 for each of the said offences, but that he has not forfeited any other sum for either of the said offences."

I entirely agree with the Lord Ordinary in so far as he is of opinion that the defender has forfeited the sum of £20 for each of the said offences, and on the grounds on which he has arrived at that conclusion, and desire to add nothing to what he has said, but I differ from him in so far as he is of opinion that the defender has not forfeited any other sum for either of said offences.

The case depends on the construction principally of the 166th section of the Income Tax Act of 1842.

That section, which relates to the making of claims of exemption, enacts that if any person shall be guilty of any fraud or contrivance in making such claim, or, *inter alia*, shall fraudulently conceal or untruly declare any income or amount of income, every such person so offending shall forfeit the sum of £20, and treble the duty chargeable in respect of all the sources of his income and as if such claim had not been allowed.

It will be observed, accordingly, that the Lord Ordinary while finding the defender guilty of the offences charged, and forfeiting the sum of £20 for each offence, has stopped short there, and has not forfeited treble the duty chargeable in respect of all the sources of his income, as the Act directs.

The Lord Ordinary, before stating the grounds on which he exempts the defender

from this part of the penalty, proceeds to consider the amount of the penalty contemplated by the Act, which depends on the construction of the words "chargeable in respect of all the sources of his income." His Lordship thinks that that can never mean that you are to take any part of the offender's income, and which has paid duty already, and charge the duty over again, because the duty in that case would not be chargeable; and he construes the clause as if it had read treble the duty "still" chargeable, that is, still chargeable at the date I suppose of the judgment. I do not agree with that construction of the clause. I think the words "treble the duty chargeable in respect of all the sources of the defender's income" mean treble the duty chargeable on the defender's whole income for the year of the assessment in question.

But the Lord Ordinary further thinks that no treble duty at all is exigible by the Crown, because the defender's claim for abatement or exemption was not allowed, that is to say, that the penalties are not exigible unless the offending person's fraud or offence shall have been successful. But if this be so I do not see why it should not as much apply to the £20 penalties which have been forfeited as to the treble duty. The two penalties seem to be in exactly the same position.

But it is clear that the offence is committed and the penalties incurred when the untrue declaration of income is made, irrespective of its result. The Act says that if any person shall be guilty of any fraud or contrivance in making any such claim, or in obtaining any such exemption (that is to say, whether the claim shall be successful or not), or shall fraudulently conceal or untruly declare any income, the penalties shall be incurred.

But further, the Lord Ordinary holds that it is within the competence of the Court of Exchequer to modify a penalty when it is thought proper to do so in the interests of justice, and he has done so in this case by remitting the treble duty penalty altogether, if it should be legally exigible, and he refers to the case of *Stewart*, 6 S.L.T. 405, for his opinion on that question. I confess that it appears to me that when a statute says that an offender shall forfeit a particular sum (as in this case treble the duty chargeable) the Court must obey the direction and pronounce an order accordingly. It may be, nevertheless, that the Court of Exchequer has power to modify such a penalty, but if so I think it must be made very clear that the Court has the power.

This claim, as I understand, is founded on the 23rd section of the 6th of Queen Anne, c. 53, which established the Court of Exchequer in Scotland. That section enacts that if any person shall plead or show in the Court of Exchequer in Scotland good and sufficient cause and matter in law, reason, or good conscience in bar or discharge of any fines, issues, amerciaments, forfeited recognisances, or any other forfeitures, debts, or duties due or payable to the Crown or why such person ought not to be charged or chargeable to or with the same, that the said Court shall have power to allow the same, and to acquit or discharge all persons sued for the same, or to make any reasonable composition for the same as in the judgment and discretion of the Barons shall be found and thought just and reasonable, and to proceed and act therein as hath been and is used and practised in the like cases in and by the Court of Exchequer in England. It is on this power of making "reasonable composition" that the respondent founds as conferring on the Court the power of modifying the penalty in question. It appears to me, however, that this does not refer to penalties such as this at all. The Court may remit or modify a penalty, but it does not make reasonable compositions with the offenders in such cases. No evidence was laid before us that the Court of Exchequer in England is or had been in use to remit or modify a penalty as has been done in this case. No authority was quoted to us except the case of *Stewart* aforesaid that it had ever been the practice in Scotland so to do, and on the whole matter I am of opinion that the Lord Ordinary should have enforced the penalty of treble duty as directed by the statute.

LORD KINNEAR—I also think that the interlocutor is right in so far as it finds the offence charged against the defender proved, but not in so far as it modifies the statutory penalty. I cannot agree with all that the Lord Ordinary has said as to the construction of the statute. The offence charged in terms of the 166th section is not in my opinion an inaccurate, but a false or untruthful declaration. I should be slow to adopt a construction which should place innocent error in the same category and punish it with the same severity as the other offences defined in this section, namely fraud or contrivance in making a claim or obtaining an exemption, and I do not think that this is within the ordinary meaning of the words of the enactment. A charge of untruly declaring seems to me to imply the intention to deceive, and the adverbial form of the phrase confirms this implication, because it directs attention to the action and intent of the declarant, and not merely to the contents of the declaration itself. When a man is said to make a declaration untruly, that means in ordinary language that the man himself is untrue, and not merely that his declaration is inaccurate. It makes no difficulty in my mind that the corresponding offence is described as fraudulently concealing, because non-disclosure does not necessarily imply wrongful intention, and it was therefore necessary or at all events natural to add the qualification "fraudulently" in order to bring the concealment into line with the other offences with which it is associated—fraud, contrivance, and untrue declaration. But taking that to be the meaning of the enactment, I think the charge is proved, because the excuse put forward by the defender cannot in my judgment be accepted, and I rather think

that the Lord Ordinary was of the same opinion. The words of the declaration have a perfectly plain meaning, and the defender must be held to have intended that meaning, unless he can displace the unfavourable inference by some much more convincing explanation than that which he has given.

The offence being proved, I agree with all that Lord Adam has said as to the penalty. I cannot say I have any doubt as to the meaning of the words "treble the duty chargeable in respect of all the sources of income," and I cannot assent to the argument that the Crown's demand is excluded because the claim for abatement was not allowed. There are two offences of quite different kinds described in the section. One is obtaining an exemption or abatement by fraud, and the other is fraudulently concealing or untruly declaring income, and the latter offence is complete in my judgment when a false declaration is made, whether the declarant succeeds in obtaining the exemption or abatement which he asks for or not. The words "as if such claim had not been allowed" appear to me to be entirely in accordance with this reading of the section. The statute includes a variety of offences, some of which may have been successful, so that a claim may have been allowed, and others may have been completed without the allowance of the claim; and when it goes on to say that the penalty is to be "treble the duty chargeable as if such claim had not been allowed," that only shows more clearly to my mind that the penalty is not to be measured by any gain which the taxpayer may have made by making a false return, but by his actual income, the total income for the year of charge.

As to the only remaining point, I also agree with Lord Adam that the Lord Ordinary's view cannot be sustained, and that it is not competent to modify the penalty. It is not left to the discretion of the Court, but is fixed absolutely by statute, and the Court can have no power to alter what is so fixed unless the statute confers it. The ground on which the Lord Ordinary has held the modification competent, as I understand his Lordship's exposition of it in the case to which he refers, is that a general and apparently arbitrary power to mitigate penalties has been conferred by the Act of Queen Anne. As I read the section in question, the jurisdiction which it confers arises only in the case of persons who have shown good cause in bar or discharge of fines and duties; and if I had to read it for myself as a statute presented for construction for the first time, I should find nothing in the language to support the Lord Ordinary's view that it gave the Court an absolute power of modification or mitigation of penalties, "whenever," as the Lord Ordinary puts it, "the Court thinks proper to do so." The only ground of modification which is suggested in the present case is his Lordship's opinion that £20 is sufficient, but then the Legislature has determined that nothing shall be sufficient short of treble duty; and I cannot find any ground in the statute to enable us to override that conclusion of the Legislature. But then I do not think we are to construe this Act of Queen Anne as if it were a new Act and as if we had to find out for ourselves for the first time what it means, because it gives us a guide for the exercise of the jurisdiction which it confers by saying that we are to follow the use and practice of the Court of Exchequer in England. Now, we cannot tell of our own knowledge what the use and practice of that Court was, as if it were our own use and practice, except upon such evidence as we are accustomed to receive as to the use and practice of English courts. It appears to me, therefore, that the party maintaining that this statute gives us the power to modify a penalty, was required to show us that according to the use and practice referred to by the statute such penalties were in practice modified. Nothing of the kind has been shown, and on the contrary counsel for the Crown stated quite distinctly and positively that the practice of the Court of Exchequer in England is against the notion that the Court has any power to modify penalties of this kind, and I accept a statement of that kind made by Crown counsel as a statement made on the authority of the department which he represents in the case. I have no doubt, and I therefore agree with Lord Adam, that in so far as it modifies the penalty, the Lord Ordinary's judgment must be recalled and the statutory penalty must be enforced.

LORD PRESIDENT—I agree with your Lordships. The first question is after all a question of fact, and I should be slow to come to a different conclusion from that come to by the Lord Ordinary.

The second question is as to the true meaning of the word "chargeable." Now, if you were to adopt the Lord Ordinary's reading of the word "chargeable," the result would be that there would never be any charge in respect of income of such a character as lends itself to deduction at the source. But the heinousness of the crime or fault that is struck at by the penalty is the concealment of the true state of the man's income apart from tax, and a man who conceals £1000 of income which has tax deducted at the source conceals it just as wrongly when claiming total or partial exemption as he who conceals £1000 of income which is directly charged upon profits. I therefore agree with your Lordships in holding that the Legislature fixed that the penalty here should be treble the duty chargeable upon the whole income. Upon the third point, the Lord Ordinary's judgment in that other case to which his Lordship referred, really turns, as his Lordship has said, upon the provisions of the Act of Queen Anne. I agree with what your Lordship who has last spoken says, but apart from that I find this—there is no doubt that the body dealt with in that Act had functions both administrative and judicial. There is also no doubt that we, sitting here as the Court of Exchequer, are, so

to speak, the heirs of the judicial functions not of the administrative, and I think this power of modifying the penalty, if it existed, was certainly part of the administrative functions, and is represented now by the undoubted power which the Commissioners of Inland Revenue have to modify any penalty they please. Further, with your Lordship I am greatly strengthened in this view by finding what I take to be proved by the authoritative statement at the bar, namely, that the Court of Exchequer in England have never conceived that they had this general power of modifying any penalty. The interlocutor will be therefore to recal the Lord Ordinary's interlocutor and to give decree in terms of the information with expenses.

The Court recalled the Lord Ordinary's interlocutor reclaimed against and gave decree in terms of the information.

Counsel for the Complainer and Reclaimer—H. Johnston, K.C.—A. J. Young. Agent—P. J. Hamilton Grierson (Solicitor of Inland Revenue.)

Counsel for the Defender and Respondent — Campbell, K.C. — Wm. Thomson. Agents—Lister, Shand, & Lindsay, S.S.C.

Tuesday, July 18.

SECOND DIVISION.

[Sheriff Court at Glasgow.

STEVENSON *v.* NORTH BRITISH RAILWAY COMPANY.

Master and Servant—Agent and Principal — Contract — "Shipping-Agent" — Engagement "for One Year Certain" and Services Tacitly Continued for a Number in Employment of an Annual Nature with Salary Paid Once a-Year — Dismissal—Tacit Relocation.

A shipping agent was appointed by a railway company in December 1891 in connection with the export of coal at a specified salary, "for one year certain." The contract was renewed in writing for another year in December 1892. Thereafter the agent continued to discharge his duties until 1900, and received payment of his salary in one sum for each year ending 31st October. The agent's duty was to arrange that the shipments of Scotch coal should be from certain ports in which the railway company were interested. Such arrangements required to be made for each year ending 31st October before the 1st January preceding. On 2nd January 1901 the railway company gave notice to the agent that his services would not be required after three months from that date. In an action at his instance for recovery of salary due from 31st March to 31st October 1901, *held*, on evidence led, that the contract between the pursuer and defenders was a yearly one, and that the defenders were not entitled to terminate it when they chose by three months' notice.

D. M. Stevenson, coal exporter, 12 Waterloo Street, Glasgow, raised an action in the Sheriff Court there against the North British Railway Company for arrears of salary alleged to be due to him as one of the company's shipping agents.

In 1886 the pursuer, an exporter of coal, entered into certain arrangements with the defenders, whereby it was arranged that he, in consideration of certain payments by them, was to endeavour to get coal for Hamburg shipped at ports on the Forth in which the defenders were interested.

These arrangements were acted on until 29th December 1891, when the pursuer was appointed shipping agent for the defenders in terms of the following letter of that date addressed to him by the defenders' manager, viz.—"Dear Sir,—With reference to our interview to-day, I hereby appoint you agent for this company as from 1st ulto. (for the purpose of attending to the Company's interests in connection with their shipping trade to Hamburg at Bo'ness, Burntisland, and Methil), at a salary of £450 per annum, for one year certain. If at the end of that year the services which you have undertaken to render to the company are such as to justify an increase in the salary, the additional value of such services shall be taken into account in fixing any salary which may be attached to a further engagement. In the event of any material reduction taking place in the rates charged by the company, consequent on the revision now being made by Parliament, the company reserve the right to take the effect of such reduction into account as from 1st November 1892."

On 30th December 1891 the pursuer wrote to the defenders' manager in the following terms—"Dear Sir,—I have your letter of y'day, which is in order, and for which I am much obliged."

On 7th December 1892 the pursuer's appointment was renewed in terms of the following letter received by him from the defenders' manager—"Dear Sir,—Confirming the arrangement made at Bo'ness yesterday, I have pleasure in renewing for another year from 1st ultimo your appointment as agent to this Company for the purposes described in my letter of 29th December 1891 on the same terms and conditions. Please acknowledge receipt."

The pursuer acknowledged receipt on 8th December.

The pursuer's salary, which was raised to £550 per annum, was paid in one sum annually for the year ending 31st October, and the arrangement embodied in the letters was acted on by the parties without further stipulation as to the conditions of the appointment down to and including the year ending 31st October 1900.

On 2nd January 1901 the defenders' manager wrote to the pursuer in the following terms—"Dear Sir,—I beg to intimate that we will not require your services as shipping agent for this company after three months