The Lord Ordinary says that the defender might have made up his title as heir to his uncle Robert Wilson, the longest liver of the original disponees. As, however, the rights both of the heir and disponee were combined in the person of the defender, it was for him to consider in what manner he should complete his title, and we are not called on to inquire whether he has taken the best method, or to decide what the result would have been had the rights of heir and disponee been vested in different persons. There was one point raised by the Lord Ordinary and discussed in the argument before us, to which I advert only for the purpose of saying that in other circumstances a difficult question might have arisen. The Lord Ordinary holds that the heir is liable for a double feu-duty for all the years during which in his Lordship's opinion he was unentered; and he considers that the stipulation in the feu-contract for this duplicand is for additional feu-duty and not a penalty. His Lordship observes that during the period of non-entry the duplicand becomes the reddendo of the feu-right. Now I am very much disposed to accept the Lord Ordinary's suggestion that we are not lightly to assume that the original feu-contract is a blundered piece of conveyancing, but when one comes to consider the terms of the clause regarding the successor's failure to enter, I am not sure but that it presents an example of the justice of Mr Duff's criticism of all attempts of this kind to provide for what he calls artificial non-entries. It provides—[*His Lordship read the clause*]. Now feu-duties are due only under the contract, and no liability to pay them can attach to anybody who has not taken up the contract by entering with the superior. On the other hand, if there is an entered vassal, then the lands cannot be in non-entry. The notion that any payment exacted on the ground of non-entry can be part of the reddendo exigible from an entered vassal is a legal impossibility; and therefore if the clause is effectual it is only as imposing an additional fine in respect of failure to enter. How far this would affect the present defender we need not consider or decide.

The remaining question is what judgment should be pronounced. The defender tenders the sum of £22, 10s., and therefore as regards that sum no question arises. In regard to the sum of £938, 14s. 4d. also sued for, the defender must be assoilzied from the conclusions of the summons.

The LORD PRESIDENT and LORD GUTHRIE concurred.

LORD M'LAREN and LORD PEARSON were absent.

The Court recalled the Lord Ordinary's interlocutors of 23rd July and 22nd October 1908, decerned against the defender for the sum of £22, 10s. and interest thereon at the rate of five per cent. from 22nd September 1882, and *quoad ultra* assoilzied the defender from the conclusions of the summons.

Counsel for Pursuers (Respondents)—Cooper, K.C.—Chree. Agents—Henry & Scott, W.S.

Counsel for Defender (Reclaimer)—Hunter, K.C.—Sandeman. Agents—Thomas White & Park, W.S.

Tuesday, July 20.

SECOND DIVISION.

[Sheriff Court at Inverness.

NATIONAL TELEPHONE COMPANY, LIMITED *v.* SMITH.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Schedule I, sec.* 17—*Redemption of Weekly Payment—Lump Sum—"Where the Incapacity is Permanent."*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule I, sec. 17, enacts—"Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act. . . ."

A workman sustained injuries in the course of his employment whereby he lost his arm. By memorandum of agreement duly recorded his employers agreed to make him a weekly payment of 16s. from the date of the accident during the period of his incapacity. After the weekly payment had been made for six months, they applied to the Sheriff-Substitute, as arbiter, to have it redeemed by payment of a lump sum in terms of section 17 of the First Schedule of the Workmen's Compensation Act 1906. The Sheriff-Substitute, without inquiry as to the workman's capacity for work, fixed the amount of the lump sum as calculated from the weekly payment, on the footing of permanent incapacity under the first branch of the section.

On a stated case, *held* (*diss.* Lord Low) that the arbiter was right.

In an application under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), made by the National Telephone Company, Limited, for the purpose of redeeming by payment of a lump sum the weekly compensation paid by them to William Smith, residing at 76 Eastgate, Inverness, the Sheriff-Substitute (GRANT) at Inverness, without having any inquiry into Smith's capacity, awarded him £622, 14s.,

and at the instance of the company stated a case for appeal.

The case stated—"This is an arbitration or case arising out of a duly recorded memorandum of agreement between the parties. By minute for the appellants, lodged in Court on 13th February 1909, the appellants craved the Court to determine the amount to be paid by them, in terms of section 17 of the First Schedule of the Workmen's Compensation Act 1906, for redemption of a weekly payment of 16s., which, under the said recorded memorandum of agreement, the appellants agreed to pay to the respondent from 16th July 1908, being the date of the accident to the said respondent, during his incapacity, and which weekly payments have been continued by the appellants for over six months. By joint-minute of admission for the parties, lodged in Court on 18th March 1909, the parties agreed on the following admission of fact, viz.—That the respondent William Smith had lost his right arm from the shoulder, caused by an accident in the employment of the appellants at Dingwall Station on 16th July 1908. It was admitted at the bar that the respondent was employed as foreman in charge of the appellants' telephone lines."

The *questions of law* for the opinion of the Court were—"(1) Whether the Sheriff-Substitute was entitled to award a sum *ex facie* determined on the footing of permanent incapacity without any proof or inquiry to establish such incapacity or any findings in fact? (2) Whether he was entitled on the admissions in process and at the bar to infer permanent incapacity, which is disputed by the appellants? (3) Whether he was bound to allow an inquiry into the probable ability of the respondent to earn wages in his former or in some other occupation, and in the event of such ability being established to take the respondent's probable future wage-earning power into account in fixing the redemption money? (4) Whether in the whole circumstances he was entitled to make the award appealed against?"

Argued for the appellants—This case fell under the second part of section 17 of the First Schedule of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58). Inquiry was necessary to show what was reasonable compensation for the injury. "Incapacity" meant incapacity to work. Though it was admitted that the injury was permanent, there was no admission that incapacity to work was permanent. Provision was made for inquiry in every case where the incapacity to work was not permanent. Total incapacity was the only case to which the first half of sec. 17 applied—except where the parties were agreed that the incapacity though not total was permanent. Certain dicta in *Clelland* v. *Singer Manufacturing Company*, July 18, 1905, 7 F. 975, 42 S.L.R. 757, were directly applicable to the present case (Lord President at 7 F. 980, Lord Adam at 982, Lord M'Laren at 984). The Sheriff would have to take into account the possibility of lessening incapacity. The case of a man who had lost an eye was an excellent illustration of the fallacy of the respondent's argument. Compensation here had been fixed under the idea that the man would never be able to do a hand's turn again. He could earn a living though deprived of an arm. Sec. 16 of the First Schedule had nothing to do with the present case; it dealt with weekly payments.

Argued for respondent—The first part of section 17 applied here. The question now was—was the incapacity permanent? If so, the first part of the section applied automatically. This provision was introduced in order to avoid inquiry in the case of permanent incapacity. Incapacity for work did not necessarily mean total incapacity. It could be either total or partial—First Schedule, sec. (1) (*b*) and (3). It was not necessary that at the date of the application the respondent should be under total incapacity. Where the injury (*e.g.* loss of an arm) was permanent the incapacity must be permanent. In nearly every case of injury there was some capacity for work. The appellants' contention was really an application under sec. 16 of the First Schedule and not under sec. 17. They should have made an application under sec. 16 to have the weekly payment reviewed and diminished, and after six months have brought their application under sec. 17.

At advising—

LORD DUNDAS—On 16th July 1908 the respondent, while in the appellants' employment, met with an accident whereby he lost his right arm from the shoulder. By a memorandum of agreement, duly recorded, the appellants agreed to make him a weekly payment of 16s. during his incapacity, being (as I understand) the maximum amount payable on the footing of his total incapacity. It was, I apprehend, open to the appellants at any time thereafter, if the respondent's condition became materially better than it was at the date of the agreement, to apply to the arbiter, in terms of section 16 of the First Schedule of the Act of 1906, to have the weekly payment reviewed and diminished or ended. The appellants did not, however, adopt that course. The weekly payment of 16s. having been continued for more than six months, they have applied to the arbiter to determine the amount to be paid by them, in terms of section 17 of the said Schedule, "for redemption of a weekly payment of sixteen shillings," being the payment agreed to and continued as already explained. The application is thus, *ex facie*, for redemption by a lump sum of this weekly payment of 16s. and not of a weekly payment of any other or less amount. The Sheriff-Substitute has so regarded the matter, and has by a mere process of arithmetic and without inquiry as to the respondent's present capacity for work fixed and determined the lump sum to be paid to him by the appellants at £622, 14s. I think the Sheriff-Substitute was right; and I do not see how, upon the application made to him by the appellants, he could properly have done anything but what he did.

The appellants, however, say that the first part of section 17 of the schedule does not apply here, because although the respondent's injury is of course permanent, his incapacity to earn wages may not be, and in fact (as they offer to prove) is not permanent. They argue that the first part of Art. 17 relates to cases of permanent total incapacity or to cases (which they say might occur) where the parties are agreed (and the appellants in this case do not agree) that the incapacity though not total is permanent; and that the present case falls, under the second part of section 17, to be settled by arbitration in ordinary course, the arbiter taking into account the whole existing facts as to respondent's wage-earning capacity. But it seems to me that the present case must be considered as one "where the incapacity is permanent," and therefore as falling under the first and not the second part of section 17 of the schedule. Reading section 17 as a whole, in the light of the scheme and language of the Act, I think it provides for two alternative classes of cases in which a weekly payment may, after it has been continued for not less than six months, be redeemed by payment of a lump sum, viz. (1) where the incapacity (whether total or partial) is permanent, and (2) where it is not permanent. Now I consider that the loss of an arm is necessarily a permanent, though it need not be and often is not a total incapacity; for the capacity of a one-armed man can never be of the same quality as that of a man with two arms; though it may be that at certain occupations and under certain conditions the former can earn as good a wage as the latter. If the appellants thought (and it may be the fact) that the respondent has become capable of earning as good wages as before his accident, or at least substantial wages, their proper course under the statute was, in my judgment, to apply under section 16 of the schedule to have the current weekly payment of sixteen shillings reviewed and diminished accordingly. Assuming that it had been materially diminished by the arbiter upon a consideration of the whole facts, it would then have been open to the appellants, after the reduced payment had been continued for six months, to apply for its redemption under the first part of section 17, on the basis of the reduced amount. The time at which and the circumstances under which such an application may be made are left by that section entirely to the choice and discretion of the employer, subject only to the reasonable condition that the weekly payment must have been continued for at least six months and, as I read the section, at a uniform rate. The appellants have chosen to make their application for redemption now, at a time when the current weekly payment is sixteen shillings; and I confess I do not see how the lump sum is to be fixed and determined except upon the redemption value of a weekly payment of that amount. The condition-precedent of an application for redemption under section 17 is that "any weekly payment has been continued for not less than six months"; and "where the incapacity is permanent," as I hold it to be here, the weekly payment may be redeemed by payment of a lump sum calculated with reference to "the annual value of the weekly payment." I am unable to see that the words last quoted—"the weekly payment"—can be read as referring to an amount which has not in fact been paid in any week during the currency of the six months, or to anything else than "the weekly payment" mentioned in the earlier part of the section as having "been continued for not less than six months."

The appellants founded upon certain dicta of the learned Judges of the First Division in the case of *Clelland* (1905, 7 F. 975) as supporting their views. The point actually raised and decided in that case was quite different from that now under consideration; for the question was not one of redemption, and the decision was (as the rubric bears) merely to the effect that in an application by an employer to have a weekly payment to an injured workman reviewed and ended it was incompetent for the arbitrator, under the Act of 1897, if either party objected, to postpone the determination of the question of compensation by making an interim nominal award of one penny per week. The report discloses that the workman Clelland had by an accident on 22nd September 1904 lost two fingers of his right hand; but by January 1905 (I quote Lord Dunedin's words) "the wound was completely healed, by which I mean that it was no longer in the state of an open sore, and that his hand was restored to the complete use that any hand can have which is minus two fingers." Clelland had, as Lord Dunedin put it, "been injured in a permanent way"—just as the respondent here has been, though to a more serious degree, by the loss of his arm. In delivering their opinions the learned Judges made reference by way of analogy to the statutory provisions for redemption of a weekly payment, and pronounced dicta (necessarily, from the nature of the case, *obiter*) to the effect that the employer had an absolute right to redeem the weekly payment by payment of a lump sum assessed by way of arbitration once for all, after expiry of six months from the date of the accident. I do not seek to impugn these dicta in any way; but one must observe that the provision in the then subsisting Act of 1897 (Schedule I (13)) was materially different from the corresponding provision (Schedule I (17)) in the Act of 1906. It enacted that "Where any weekly payment has been continued for not less than six months the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act. . . ." There was therefore no distinction drawn by the legislation of 1897 in regard to the redemption of a weekly payment as to the manner in which the lump sum should be ascertained

where the incapacity is permanent and where it is not permanent. In all cases the lump sum was to be settled, failing agreement, by arbitration under the Act. But section 17 of Schedule I of the new Act, which is now the law, draws a sharp distinction, as already pointed out, as to the way in which redemption by payment of a lump sum is to be effected (*a*) "where the incapacity is permanent," and (*b*) "in any other case." It is only in the second category that the sum is to be "settled by arbitration under this Act." In the first category—to which, as I hold, this case belongs—redemption is to be by payment of a lump sum computed with reference to the purchase of a Post Office annuity during the workman's life equal to 75 per cent. of the annual value of the weekly payment. I do not therefore see that *Clelland's* case is of any advantage to the appellants' argument upon the Act of 1906.

I reach my conclusion with some regret, because in this particular case I think it may result in hardship to the employers; for a sum of £622, 14s. appears to be an excessive payment by way of compensation for the loss of an arm. But the whole of this procedure is statutory; there is no room for considerations of equity or of convenience; and if my construction of the statute is correct the result of the mode in which the appellants have elected to proceed seems to me to be necessarily that which I have indicated.

In my opinion the 1st, 2nd, and 4th question should be answered in the affirmative, and the 3rd in the negative.

LORD ARDWALL—I have had the advantage of perusing Lord Dundas's opinion, and I concur in it.

LORD LOW—I regret to say that the opinion which I have formed in this case differs from that of your Lordships, and as the question raised is one of importance in regard to the true meaning and effect of the 17th section of the First Schedule of the Workmen's Compensation Act 1906, it is right that I should state the grounds of the conclusion at which I have arrived.

The facts, so far as we know them (there having been no inquiry by the Sheriff), are very simple, and are these. The respondent William Smith, when in the employment of the appellants, received an injury which resulted in the loss of his right arm from the shoulder. By agreement the amount of compensation was fixed at 16s. a week during his incapacity. Compensation at that rate has been paid to him by the appellants for more than six months. It is not stated in the case, but was not disputed, that the compensation agreed upon was the maximum amount allowed by the statute.

The 17th section provides as follows:—"... (*quotes, v. sup. in rubric*). ..."

The question is whether this is a case of permanent incapacity which entitles the respondent to such an amount as would purchase an annuity equal to 75 per cent. of the annual value of the weekly payment which he has received, or whether it is a case in which the amount to which he is entitled falls to be settled by arbitration?

The Sheriff has adopted the former view, and has held that he was bound without further inquiry to ascertain the sum required to purchase an annuity of the statutory amount.

Now it is plain that the respondent must have been at first totally incapacitated for earning wages by the injury which he received, and presumably his total incapacity continued during the whole of the six or seven months during which the appellants paid to him the agreed-on compensation, that being the maximum amount allowed by the statute. But although the injury is permanent there is no reason why the total incapacity should be permanent. No doubt the respondent's capacity for earning wages will be permanently diminished, but if he regains his health he may be as capable of earning wages as a man with only one arm can be. That being so, it is not easy to see why, if the appellants desire to exercise their statutory right to redeem their liability to compensate him by payment of a lump sum, that sum should be calculated on the assumption that the total incapacity will be permanent. Of course if that is what the Act provides effect must be given to it, but I do not so read the section.

To a certain extent I do not think that the section presents any difficulty of construction. It is plain that in order to entitle an employer to redeem weekly payments by payment of a lump sum a weekly payment must have been continued for not less than six months, and the only words in the section which seem to me to create a difficulty are "where the incapacity is permanent." I think that the effect of the enactment depends upon the true meaning of these words.

The words, I think, may either mean (1) where the incapacity (whether total or partial) of the workman is permanent; or (2) where the incapacity in respect of which the weekly payment has been made is permanent.

If the former be the true construction, the Sheriff-Substitute was right, because having lost an arm the respondent is permanently incapacitated, although there is no reason to suppose that the permanent incapacity is total. If, on the other hand, the latter be the true construction, the Sheriff-Substitute was wrong, because the weekly payment has been made in respect of total incapacity, while the probability is that the permanent incapacity is only partial.

My opinion is in favour of the second alternative. All weekly payments to workmen under the Act are in respect of incapacity, because it is provided by section 1 of the First Schedule that "the amount of compensation under this Act shall be ... (*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings." Again, in the section of the schedule under construction (the 17th) there

is nothing mentioned in relation to which the word "incapacity" could be used except the weekly payment. Further, I think that the section was intended to confer a benefit upon the employer by giving him the option of redeeming a continuing liability by a single payment, and the period of six months was, I imagine, taken because it was thought that when that period had expired it would be possible to estimate with reasonable certainty what the ultimate condition of the injured man would be in regard to his wage-earning capacity. That is the view which was taken of the corresponding enactment (section 13 of the First Schedule) of the Act of 1897 by the First Division in the case of *Clelland*, 7 F. 975.

The latter section is in these terms—"Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum." Now these are the very words which are used in the 17th section of the Act of 1906, and presumably their meaning is the same in both Acts, and in the case of *Clelland* the words are considered and construed. The question arose in this way. A workman lost three fingers in the course of his employment, and the employers paid to him the maximum amount of compensation until the wound was completely healed. They then took him back into their employment at the same wages as he had earned prior to the accident, and then they presented an application to the Sheriff to have the weekly payment ended. The Sheriff, in respect that supervening incapacity might occur, instead of ending the payment reduced it to the nominal sum of 1d. per week. The First Division held that that was not a competent course to adopt, and they did so upon a consideration of the rights and liabilities of the employer and workman respectively under the Act. In giving judgment, the Lord President referred to the provisions of section 1 (*b*) of the First Schedule—which are the same as in the present Act—to the provision of section 12, which allows a review of any weekly payment, and of section 13, which I have quoted; and then he said—"All that seems to me to point excessively clearly to the idea that this is a proceeding which has to take place at once and to be done with, and not to be prolonged after the period of six months. The six months' period I think is taken as a rough estimate of the time during which, if I may so use the expression, the result of the injury will have settled down and it will become apparent whether it has been really only temporary or is permanent, and as soon as it has settled down then any liability may be got rid of by one payment." The other Judges (Lords Adam and M'Laren) gave opinions to the same effect.

Now that judgment seems to me to be high authority for holding that although of course the employer is not bound to take action immediately the six months have elapsed, the statute gives him the right to do so; and if he is given the right to do so, it is presumably intended that he should be able to exercise that right upon fair and equitable terms, and a construction of the enactment which would lead to that result is to be preferred. If, however, the view for which the respondent contends is right, that would not be the case. The Sheriff-Substitute has held that the appellants can only redeem by paying a sum calculated upon the assumption that the respondent is not only permanently but totally incapacitated, which, for anything which appears to the contrary, he will not be. No doubt it so happens that the respondent is permanently incapacitated to a very serious extent, but the result would have been the same if, although the accident had totally incapacitated him for more than six months, the chances were that the ultimate and permanent incapacity would be very small. In such a case the employer would either have to forego his statutory right to redeem after continuing weekly payments for six months, or to redeem upon the footing that the workman would never again be able to do any work.

The answer which the respondent makes is, that although the employer cannot make an application to redeem until weekly payments have been continued for six months, he may postpone his application as long as he likes, and it is for him to take care that he does not make the application at a time when the weekly payment is of an amount which is greater than would fairly represent the extent to which the workman's wage-earning capacity is permanently diminished. Accordingly it was argued that if the appellants were not willing to redeem upon the footing that the respondent was permanently totally incapacitated, they should have waited until he had completely recovered (so far as a man who had lost an arm can recover) from the effects of the injury, and then to have applied for a review of the weekly payments. Under that application it was contended they could have had the weekly payments reduced to an amount commensurate to the permanent diminution of the respondent's wage-earning capacity, which (after the payments had been continued for six months) would have given the proper basis for calculating the redemption money under the first branch of the section. I cannot think that such complicated procedure and so much delay was contemplated.

No doubt the appellants might have followed the course suggested, but I have difficulty in affirming that they were bound to do so upon pain of being compelled to pay what might be an altogether extravagant sum. I repeat that my reading of the section is that it gives an employer, who has made weekly payments for six months, an absolute right to redeem the liability therefor without further delay; but that would be a very empty benefit if he could only exercise his right (and that perhaps

in the very cases where it was expedient to redeem as soon as possible) upon terms which were obviously unfair.

It was further argued that to adopt the appellants' contention would limit the application of the first branch of the section to cases where the incapacity was not only permanent but total. I do not think that that would be the result, because I think that there might be many cases in which the prudent course for the employer to follow would be that which it is said the appellants ought to have followed. There must be, I should think, many cases in which it is difficult to foretell what the ultimate condition of the injured workman will be, and in such a case the employer might very well think that it was better for him to await the actual result than to redeem while that result was still a matter of uncertainty, because in the latter case he would run the risk of the arbiter taking a pessimistic view of the workmen's chances of recovery and awarding a much larger sum of redemption money than the actual result, if it could have been foreseen, would have warranted.

For these reasons I am of opinion that the Sheriff-Substitute ought to have ascertained the facts before fixing the amount of redemption money, and that if he found that the incapacity in respect of which the weekly payment had been made was not permanent he should have proceeded under the second branch of the section to fix the amount as arbiter.

The LORD JUSTICE-CLERK was absent.

The Court answered the first, second, and fourth questions in the affirmative, and the third in the negative.

Counsel for the Appellants — Hunter, K.C.—Hon. W. Watson. Agents—Robson & M'Lean, W.S.

Counsel for the Respondent—Constable, K.C.—D. M. Wilson. Agents—Kinmont & Maxwell, W.S.

Friday, June 18.

FIRST DIVISION.

(COURT OF EXCHEQUER.)

SCOTTISH WIDOWS' FUND LIFE ASSURANCE SOCIETY *v.* INLAND REVENUE.

Revenue — Income Tax — Interest from Foreign Investments—"Received in Great Britain"—Income Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100, *Sched. D, Case IV.*

A Scottish Assurance Company which had no agencies for insurance nor any claims to meet outside of the United Kingdom invested part of its funds in American securities—partly in bearer bonds and partly in mortgages over real estate in America. The bonds and mortgages were kept by the company at its head office in Edinburgh — the interest coupons attached to the bonds and the interest notes referable to the mortgages being remitted, when they were becoming due, to America for collection there. The interest so collected was included in the revenue account of the society, and treated as an asset in the general statement of its affairs, but it was not required to meet the yearly obligations of the company and was invested in the purchase of further bearer bonds or on further mortgages. These bonds and mortgages were sent to and kept by the company at its head office, and they were treated in the same way as the original bonds and mortgages.

Held that as the interest had not been remitted home either in specie or in any of the forms of remittance known to commerce, it had not been "received" in this country in the sense of the Income Tax Act 1842, sec. 100, and that accordingly it was not chargeable with duty under Case IV of Schedule D of the Act.

Gresham Life Assurance Society v. *Bishop*, [1902] A.C. 287, *followed.*

Revenue — Income Tax — Repayment by Inland Revenue of Income Tax Found by Court not to be Due—Interest—Rate Allowed.

In a case where the Court found that income tax on the revenue from foreign securities of an assurance company was not due, and ordered the repayment of the sum paid, it allowed interest at four per cent.

The Income Tax Act 1842 (5 and 6 Vict. c. 35), sec. 100, enacts—"The duties hereby granted contained in the Schedule marked D shall be assessed and charged under the following rules. . . ." Schedule D, Fourth Case—"The duty to be charged in respect of . . . foreign securities—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year, without any deduction or abatement."

On 27th November 1907 the Scottish Widows' Fund Life Assurance Society appealed to the Commissioners of Income Tax at Edinburgh against an assessment on the sum of £101,607 (duty £5080, 7s.) made upon it for the year ending 5th April 1907 under the Income Tax Acts (5 and 6 Vict. cap. 35), sec. 100, Sched. D, Case IV; 16 and 17 Vict. cap. 34, sec. 2, Sched. D; and 6 Edw. VII, cap. 8, sec. 6, in respect of interest arising from its colonial and foreign securities, which according to the Society's contention was not received in this country. The Commissioners having in part sustained and in part refused the appeal, cases were stated for the opinion of the Court of Session as the Court of Exchequer in Scotland. Both cases were heard and disposed of together.

The Case for the Society stated—"2. The Society is a corporation which carries on