interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof." There is no question that this case falls within that general description; and then the other section, which specially applies, is the fourth case of section 100 of the Income Tax Act of 1842, which says that "the duty to be charged in respect of interest . . ." 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."

Now the argument for the Crown is that the interest in question was received in Great Britain in the year of assessment and therefore must be charged. The argument for the Institution is that inasmuch as it was not earned in that year it does not fall within the Income Tax Acts at all.

I am of opinion that the determination of the Commissioners is right. There is nothing said in the Acts about profits or gains being necessarily earned within the year of assessment. No doubt that will be the natural result of the way in which the whole matter is worked; but I would like to make, first of all, this observation, that although the Act is full of the expression "annual profits and gains" in almost every section which deals with this matter, the presence of that word "annual" does not seem to me to connote necessarily the idea of nothing being chargeable which is not earned within the year of assessment, but it is there for the purpose of showing that the tax which is being levied is a tax upon income, or, in other words, upon annual profits and not upon capital. When a profit or an interest is earned in this country, the question really cannot arise, because the profit which is earned in this country is necessarily received in this country. I use the word "received," because you may quite well have a profit which has not been paid to you in hard cash. Many partnerships do not pay profits in hard cash, or a partner does not take his profits in cash, but nevertheless the profits are earned, and being earned they are necessarily received by the partner at the time they are earned. But when the profit is earned abroad it is not necessarily received at the same time in this country. It is, of course, received in the sense of there being a right to it there, but it is not received in this country, and accordingly this fourth case provides that the duty shall only be computed on sums "which have been or will be received in Great Britain in the current year." As soon as they are received I think they become chargeable.

I have only to say another word, and it is this, the case of the *Scottish Provident Institution* v. *The Inland Revenue* (3 F. 874), which is reported in the House of Lords under the name of *Allan* (5 F., H.L. 10), undoubtedly involves this point. The rubric in the Court of Session case is rather misleading upon this matter. If you read the rubric you would think that the only point decided there was with regard to two specific sums of £25,000 and £15,000. Really, as matter of fact, there was a sum of £217,000 adjudicated upon, and there is no doubt whatsoever that a considerable portion of that sum had been earned as here outwith the year of assessment. It is not exactly so stated in the report, but it is very evident, and a very shorthand way of getting at it is to take the figures, and if it was earned within the year of assessment the Scottish Provident Institution had been in the particularly fortunate position of laying out the whole of its money at twelve per cent. The matter, however, of profit so earned, was involved in this decision. I am quite aware that it was not argued, and there is a sentence in the House of Lords report which rather looks as if Mr Blackburn had made a very late attempt to argue it in the House of Lords and was stopped because it had not been argued in the Court of Session. But there it remains, and though I do not think it is conclusive, yet, on the other hand, I think it is unlikely that if the point had been a really good one it would have been missed. On the whole matter I think the determination of the Commissioners is right.

LORD KINNEAR — I am of the same opinion.

LORD JOHNSTON—I concur.

LORD MACKENZIE gave no opinion, not having heard the case.

The Court refused the appeal.

Counsel for the Appellants—Blackburn, K.C. — Macmillan. Agents — Dundas & Wilson, C.S.

Counsel for the Respondents—Morison, K.C. — J. A. T. Robertson. Agent — Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, February 8.

FIRST DIVISION.

[Junior Lord Ordinary.

HALLIDAY'S *CURATOR BONIS*, PETITIONER.

Judicial Factor—Curator Bonis—Discharge and Appointment of New Curator—Expenses of Discharge.

A *curator bonis* on a small estate received the offer, fifteen months after his appointment, of a professional position in the United States, and petitioned for recal of his appointment and discharge and for the appointment of a new *curator bonis*. *Held*, approving the report of the Accountant of Court, that in view of the short period of acting and the reason given for recal, the expenses of the discharge and new appointment did not form a good charge against the estate.

On 25th October 1911 Henry Hamilton Fleming, C.A., Glasgow, *curator bonis* to James Halliday, presented a petition for the recal of his appointment and discharge and for the appointment of a new *curator bonis*. The petitioner was appointed *curator bonis* on 5th July 1910, and in consequence of his having been offered a professional appointment of a permanent nature in the United States, which he was desirous of accepting, he presented this petition. On 7th November 1911 the Junior Lord Ordinary (ORMIDALE) recalled the appointment of the petitioner and remitted to the Accountant of Court to examine and audit the accounts of the petitioner and to report.

The Accountant reported:—". . . . . That the estate under the petitioner's management on that date consisted of—

1.	Tenement of Houses, etc., at Poldrate, Haddington — Rental £68, 6s. . . .		
2.	Personal effects . . .	£15 0 0	
3.	£1250 North British Railway Company 3% Debenture tock, cost	1016 16 11	
4.	Cash in Bank:—		
	On Deposit-Receipt, dated 29th September 1911 £30 0 0		
	On Account Current 14 18 6		
		44 18 6	
		£1076 15 5	

. . . . . That in the opinion of the Accountant the petitioner may be judicially discharged and warrant granted for delivery of his bond of caution, but that in view of the short period of acting and the reason given for recal, the expenses of his discharge and the new appointment do not form a good charge against the estate."

On 19th January 1912 the Lord Ordinary exonerated and discharged the petitioner in terms of the prayer of his petition, but found that in the circumstances the expenses of the application did not form a proper charge against the curatorial estate.

The petitioner reclaimed, and argued—The result of the Lord Ordinary's interlocutor would be that the petitioner would be out of pocket by his office. A judicial factor as a matter of course was always entitled to expenses on resignation if he had acted in *bona fide* and without caprice —*Forbes, Petitioner*, 1900, 16 S.L.Rev. 268; *Gordon, Petitioner*, June 2, 1854, 16 D. 884

At advising—

LORD PRESIDENT—The point raised by this reclaiming note involves a very small sum of money, but is one of some interest. The petitioner is the *curator bonis* of a lunatic, who was appointed by the Court and entered upon the office, and has realised and managed the ward's estate. The petitioner was appointed in July 1910. About fifteen months after his appointment he was offered a professional appointment of a permanent nature in the United States, which he was desirous of accepting, and accordingly he made an application for recal of his appointment and discharge and for the appointment of a new *curator bonis*. In November 1911 his appointment was recalled and a new *curator bonis* was appointed. His accounts were entirely in order, and accordingly the Accountant of Court reported that in his opinion "the petitioner may be judically discharged and warrant granted for delivery of his bond of caution, but that in view of the short period of acting and the reason given for recal the expenses of his discharge and the new appointment do not form a good charge against the estate." Now the pecuniary effect of that is that the curator will lose his fee and will be about £8 out of pocket. Upon that statement *prima facie* this case would appear to be one of some hardship, but I have come to be of opinion that the Accountant is right and that your Lordships should not interfere with his finding. It is quite evident that when an appointment is going to be made upon a small estate, if the gentleman proposed by the Lord Ordinary said frankly that he was willing to act but that he could not hold office for more than fifteen months, the Lord Ordinary would not appoint him. A person when accepting such an appointment gives thereby an implied undertaking that he will go on with it, I will not say for an indeterminate period, for no person can give a guarantee that he will not die or get into bad health, but he does give a guarantee that he will not act capriciously in the matter; and under caprice I think you must include steps which the party appointed may be entitled to take in his own interest but which conflict with the interest of the estate. Now all these considerations when they come to be applied will often turn out to be questions of degree, and they are accentuated in the case of a small estate. The office of Accountant of Court and the discretion given to him are designed to save small estates from expenses that should not truly be incurred in the administration of such estates. In a small estate like this, if you had a new curator appointed every few months the ward would never have any income from the estate at all, and I think it is certain from the terms of the Accountant's report that he would not have come to the conclusion stated in his report if the estate had been larger and the period of the curator's service longer. That just shows that it becomes a question of degree, which may well be left to the Accountant to determine. In this case I think that the expenses of the discharge and new appointment should not be allowed, and accordingly I think we are bound, in the interest of the ward whose estate is in our keeping, to adhere to the interlocutor of the Lord Ordinary.

LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE concurred.

The Court adhered.

Counsel for Petitioner—Gilchrist. Agents —H. B. & F. J. Dewar, W.S.