terms of the statement that the ground of action is that the pursuer had been fraudulently induced to take out a certificate with this Insurance Company for £250. Thus the certificate is imported into the summons. That is the pursuer's sole ground of action—that he was fraudulently induced to take out this certificate, and looking at the certificate we find that among other matters there is a provision for settling any dispute between the parties by arbitration. It was argued that inquiry into this matter was not within the jurisdiction of the Sheriff sitting in the Small Debt Court; but we have been referred to the case of *Wilson* (5 R. 981), in which it was held that the provision for objecting by exception to a formal writ applied not merely to the ordinary Sheriff Court but to the Small Debt Court. Speaking with the greatest hesitation, and looking to the eminence of the Judges who decided that case, I have always doubted the soundness of that decision. But there it is, and I think we are bound to follow it. If that be so, I cannot say that it was not competent to the Sheriff-Substitute in this case to consider whether the pursuer had been fraudulently induced to enter into this agreement, and therefore had signed it in error—excusable error. I cannot say that that was not a competent course for the Sheriff to take. I do not think it was a right course. I think that he ought at the least to have remitted the case to the ordinary Court so as to have a record made up and the matter disposed of in a more formal way. But the authorities being as they are, I am not prepared to dissent from the judgment your Lordship proposes to pronounce.

The Court dismissed the appeal.

Counsel for the Appellants—Hunter—Lippe. Agents—Erskine, Dods, & Rhind, S.S.C.

Counsel for the Respondent—Morton. Agent—Gardiner & Macfie, S.S.C.

REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 477 ante).*

HOUSE OF LORDS.

Tuesday, March 15.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Davey, James of Hereford, Robertson, and Lindley.)

HUNTER *v.* ATTORNEY-GENERAL.

(On Appeal from the Court of Appeal in England.)

Revenue — Income-Tax — Deductions — Premium on Life Insurance — Premiums Partly Advanced by Insurance Company —Income-Tax Act 1853 (16 *and* 17 *Vict. c.* 34), *sec.* 54.

A, who had insured his life under a life insurance policy, by arrangement with the insurance company paid in cash only one-half of the annual premium, the company advancing him the other half on the security of the policy, and giving him a receipt for the whole amount of the premiums as "paid."

Held (*diss.* Lord James of Hereford) that A was not entitled under section 54 of the Income-Tax Act 1853 to deduct from his profits and gains liable to income-tax the whole amount of the annual premiums, but only the half actually paid by him in cash.

By section 54 of the Income-Tax Act 1853 it is enacted — "Any person who shall have made insurance on his life . . . in or with any insurance company . . . shall be entitled to deduct the amount of the annual premiums paid by him for any such insurance . . . from any profits or gains in respect of which he shall be liable to be assessed under either of the Schedules (D) or (E) of this Act, or to have any assessment which may be made upon him under either of the said schedules reduced or abated by the deduction of the amount of the said annual premiums from the amount of the profits or gains on which such assessment has been made, or if such person shall be assessed to duties under any of the schedules contained in this Act, and shall have paid such assessment, or shall have paid or been charged with any of the said duties by deduction or otherwise, such person, on claims made to the Commissioners for special purposes, and on production to them of the receipt for such annual payment, and on proof of the facts to the satisfaction of the said Commissioners, shall be entitled to have repaid to him such proportion of the said duties paid by such person as the amount of the said annual premiums bears to the whole amount of his profits and gains on which he shall be chargeable under all or any of the schedules of this Act." . . .

By policy dated 30th June 1896 Robert Lewin Hunter insured his life with the London Life Association, Limited, for £1500, the premium being £66, 17s. 6d., of which £33, 17s. 6d. was paid by Hunter in cash, and as the receipt bore, "including £33 advanced by the Association."

In terms of the policy and of an agreement with the Association dated 19th July 1897 Hunter paid in cash in each of 1897, 1898, and 1899 the sum of £33, 17s. 6d., the remaining £33 being advanced to him by the Association by way of loans on the security of the policy, and interest being paid by him at 4 per cent. on the sums so advanced. The receipts granted by the Association in each year were for "the sum of £66, 17s. 6d., being the amount of one year's premiums due as above for the assurance of £1500 by this policy on the life of Mr R. L. Hunter, £66, 17s. 6d., amount paid."

In each of the years 1896-7, 1897-8, and 1898-9 Hunter was assessed to income-tax under Schedule (D) on the assumption that he was entitled to relief to the amount of £33, 17s. 6d. only in respect of the premiums for the policy, and in each year the special Commissioners on appeal refused to grant relief in respect of the whole £66, 17s. 6d.

In 1900 Hunter presented a petition of right claiming £3, 6s., the income-tax paid in respect of the balance of £33 for the three years. PHILLIMORE, J., held that the petitioner was entitled to deduct £66, 17s. 6d. as the annual premiums paid by him. This decision was reversed by the Court of Appeal (WILLIAMS, STIRLING, and MATHEW, L.JJ.), who held that Hunter had been rightly assessed.

Hunter appealed.

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (HALSBURY)—It appears to me that this judgment ought to be affirmed. The whole point is that the exemption or deduction, or whatever it is to be called, is to be allowed to the assured if the premium has been "paid by him," and the sole reason which I give for my judgment is that it has not been paid by him. I move your Lordships that the appeal be dismissed with costs.

LORD MACNAGHTEN—I quite agree.

LORD DAVEY—I am of the same opinion. No doubt the argument based on the charge on the policy appears to have some weight, because it appears, as between the appellant and the Insurance Company, that the premium has been paid. But that is not the question. The question is whether the appellant has paid the premium so as to obtain the benefit of the exemption. Looking at the whole transaction, it appears to me that it was a scheme of some ingenuity whereby the Insurance Company invited people to insure their lives in their office on the footing of half the annual premiums for seven years not having to be found in cash, and the very merit of the scheme, as pointed out in some of the documents, in the invitations or prospectus, or whatever it is called, is that the insured will not have to pay in cash the whole of the premiums. In these circumstances I think that the entry in the ledger is a perfectly accurate entry, that £33, 17s. 6d. is paid and £33 remained "on credit." It may be that the insured was liable to be sued for that £33, but he was willing to run that risk, no doubt, for the sake of obtaining the very favourable terms which were offered to him by the Insurance Company, who were not likely to spoil their business by taking such a step.

LORD JAMES OF HEREFORD—I have entertained considerable doubt in this case, and I express the opinion which I now do express before your Lordships with very great hesitation as to whether I am right or not, but on the whole I have come to the conclusion that this payment does in fact exist, and therefore that the appellant is entitled to succeed. I am aware of the statement that this transaction as regards the £33 was described as "on credit." That, of course, is substantially in favour of the opinion which your Lordships have expressed. But I am disposed to look rather at the real substance of the transaction as it is found in the charge on the policy. It is admitted that the parties have acted in perfect good faith in this arrangement which has taken place; whether it is an ingenious one or not it is certainly an honest transaction, and in it as between the two parties this sum is treated as an advance upon loan, and it is admitted that upon that document between them an action could have been brought, so that at any time, if the company chose to take that course, although it may be one which they would not have taken in fact, they could have sued upon it. It appears to me there is nothing in the transaction which can be condemned either in the nature of the transaction itself or as being legally in fault. If one party chose to say to the other, "I will lend you money with one hand and receive it with the other," it seems to me to be a transaction of loan with a charge of interest upon that loan, and it was treated by the parties in good faith as a loan, and that being so, it would be a "payment" in the same way, as had been mentioned at the bar, as if the money had been borrowed from a third person, or as if there had been two different departments in the same office in which the transaction had taken place. For these reasons, with very great diffidence, I differ from my noble and learned friends who have expressed their opinions, for looking at the case as a whole—and it is full of difficulties though it is a short one—it appears to me that the appellant is entitled to succeed.

LORD ROBERTSON — I agree with the motion which has been proposed upon the very simple and sufficient ground stated by the Lord Chancellor. The whole argument of the appellant has been, that as in a question between the assured and the Insurance Company he must be held to have

paid the larger sum. But in point of fact, in a question of the extent by which his income has been diminished during the year by the payment, there can be no doubt that it was only by £33 and not by £66.

LORD LINDLEY—I am of the same opinion. I think the judgment of Mathew, L.J., absolutely unanswerable. I say this bearing in mind that under the old common law plea of payment you could prove the plea by a settlement of account on a balance payment, but that is not such a payment as is contemplated by the Income-Tax Acts at all.

Judgment appealed from affirmed and appeal dismissed.

Counsel for the Petitioner and Appellant —Dankwerts, K.C.—Acland, K.C. Agents —Hunter & Haynes.

Counsel for the Respondent—Attorney-General (Sir Richard Finlay, K.C.)—Solicitor-General (Sir E. Carson, K.C.)—Rowlatt. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

HOUSE OF LORDS.

Friday, March 25.

(Before Lords Macnaghten, Davey, James of Hereford, Robertson, and Lindley.)

NEW BALKIS EERSTELING, LIMITED *v.* RANDT GOLD MINING COMPANY, LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Company — Shares — Sale of Shares Forfeited for Non-Payment of Calls—Liability of Purchaser for Fresh Calls—Terms of Certificate — Construction of Contract—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *Sched. I., Table A, art.* 22.

In 1895 an incorporated company issued shares of the nominal value of 5s. On these shares 3s. 4d. was paid by the holders. In 1898 a call for the remaining 1s. 8d. per share was made on the holders, but it was not paid, and the shares were forfeited to the company. In 1900 the shares thus forfeited were sold by the company, the certificate of proprietorship granted to the purchaser under article 22 of Table A of the Companies Act 1862 stating that the remaining 1s. 8d. per share had been called up and was payable by the former holders, and that the purchaser was to be deemed to be holder of the shares "discharged from all calls due prior to the date" of the certificate. Thereafter a call of 1s. 3d. per share was duly made by the company on the purchaser.

Held that the purchaser was in the same position as if the former call of 1s. 8d. had never been made, and that he was liable to pay the call of 1s. 3d.

Among the regulations in Table A of the First Schedule of the Companies Act 1862 applying to incorporated companies limited by shares is the following—"22. A statutory declaration in writing that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale."

In 1901 the Randt Gold Mining Company, Limited, raised an action in the King's Bench Division against the New Balkis Eersteling, Limited, for £2605, 5s. 10d.

The following were the facts leading to the action—In 1895 the plaintiffs were incorporated under the Companies Acts 1862 to 1890 as a company limited by shares, with a nominal capital of £80,000 in 320,000 shares of 5s. each, on which 3s. 4d. per share was paid. Of these shares 40,000 were held by the African Gold Properties, Limited.

In 1898 a call of 1s. 8d. per share was made upon the holders. The African Gold Properties, Limited, failed to pay this call, and their shares were duly declared forfeited to the plaintiffs.

In 1900 the plaintiffs sold these 40,000 shares to the defendants, and granted them a certificate under article 22 of Table A of the Companies Act 1862, in the following terms—"The Randt Gold Mining Company, Limited, Registered Office, 19 and 21 Queen Victoria Street, E.C., Capital £80,000, divided into 320,000 shares of 5s. each. Certificate.—This is to certify that the New Balkis Eersteling Limited, of Winchester House, Old Broad Street, London, E.C., is the registered holder of 40,000 shares of 5s. each, numbered 103,341–108,340, 220,808–247,507, 92,966–103,265 inclusive, in the above-named company, upon which the sum of 3s. 4d. per share has been paid. The remaining 1s. 8d. per share has been called up, and is payable by the African Gold Properties, Limited, who were the holders of the said shares prior to the same being forfeited, and the said the New Balkis Eersteling, Limited, is to be deemed to be the holder of the said shares discharged from all calls due prior to the date hereof. Given under the common seal of the company this 17th day of May 1900.—F. CATESBY HOLLAND, Director; C. F. WAINWRIGHT, Secretary." (Seal.)

Thereafter the plaintiffs resolved that a call of 1s. 3d. per share be made on the