No. 673.—COURT OF SESSION, SCOTLAND (FIRST DIVISION) :—
8TH AND 17TH JUNE, 1927.

HOUSE OF LORDS.—24TH APRIL, 1928.

THE COMMISSIONERS OF INLAND REVENUE v. WILSON.([1])

Income Tax—Ownership of shares purchased by father and registered in name of son—Title to repayment of tax deducted from dividends.

In 1920 *the Respondent purchased out of his own funds shares in a limited company, and directed that the shares should be registered in the name of his son who was then ten years old. The son attained his minority (in Scots law) in September*, 1923. *The share certificates were held by the Respondent until July*, 1925, *when he deposited them with his law agents on behalf of the son. Dividend warrants were issued regularly in the son's name. The Respondent, on behalf of the son, claimed repayment for the year ended 5th April*, 1925, *of the tax deducted from the dividends on the shares.*

The Crown contended (1) *that to make a gift by a father to his son effective there must be a delivery either to the donee or to some third person for him;* (2) *that as the son was a pupil child at the date of the alleged gift he was incapable of acting or consenting, and that the Respondent, as tutor of the pupil child, was the only person who could act for him;* (3) *that as the Respondent had done nothing beyond taking the title to the shares in the son's name, the shares remained under the control and at the disposal of the Respondent.*

The claim was allowed by the General Commissioners who held that the shares had been effectively donated to the son and were his sole property.

Held, *that an effective donation of the shares had been made.*

CASE.

At meetings of the Commissioners for the General Purposes of the Income Tax for Perth City and District held at Perth, on 22nd December, 1925, and 29th July, 1926, for the purpose of hearing and determining appeals, Peter Wilson, farmer,

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([1]) Reported (C. of S.) 1927 S.C. 733; and (H.L.) 1928 S.C. (H.L.) 42.

Lawhill, Auchterarder (hereinafter referred to as the Respondent) appealed against the rejection by the Inspector of Taxes of a claim for repayment of Income Tax in respect of the year ending 5th April, 1925, made by the Respondent on behalf of his son, John Charles Wilson (hereinafter referred to as the son).

I. The Commissioners heard parties and called for written pleadings. On these being lodged the parties were asked whether a formal proof was desired but neither sought such a proof. Thereupon the Commissioners held the following facts admitted or proved :—

(1) On 20th April, 1925, the Respondent on behalf of his son, a minor, lodged a claim for repayment of £11 11*s*. 9*d*. of Income Tax for the year to 5th April, 1925, in respect of the dividends on shares in the Perth Garage, Limited, as aftermentioned.

(2) The son was born in September, 1909, and resides with his father at Lawhill, aforesaid.

(3) In or about January, 1920, the Respondent purchased out of his own funds 425 fully paid ordinary shares of £1 each and 325 fully paid preference shares of £1 each in the Perth Garage, Limited. The Respondent took the title to these shares in name of the son then a pupil who has appeared in the Company's books as the registered proprietor since 26th January, 1920.

(4) On the certificates for the said shares being issued by the Secretary, they were retained by the Respondent till July, 1925, when he deposited them with his law agents on behalf of his son. The certificates are in the following terms :—

(*a*) NO. 13.—SHARE CERTIFICATE.

The Perth Garage, Limited.

THIS IS TO CERTIFY that John Charles Wilson, Esq., of Lawhill, Auchterarder, is the registered proprietor of Four hundred and twenty-five fully paid Ordinary Shares of one pound each numbered 7896 to 8320 inclusive, in the above-named Company, subject to the Memorandum of Association and the Rules and Regulations thereof.

Given under the Common Seal of the said Company the Twenty-sixth day of January 1920.

(L.S.)

E. BEARDSLEY,
GAVIN STRANG,
Directors.

R. MCKINNON,
Secretary.

(b) NO. 9.—SHARE CERTIFICATE.

The Perth Garage, Limited.

THIS IS TO CERTIFY that John Charles Wilson, Esq., of Lawhill, Auchterarder, is the registered proprietor of Three hundred and twenty-five fully paid Preference Shares of one pound each numbered 3001 to 3325 inclusive in the above-named Company, subject to the Memorandum of Association and the Rules and Regulations thereof.

Given under the Common Seal of the said Company the Twenty-sixth day of January 1920.

(L.S.)

E. BEARDSLEY,
GAVIN STRANG,
Directors.

R. MCKINNON,
Secretary.

(5) On 1st February, 1926, the Respondent wrote a holograph letter to his agents in the following terms :—

"Lawhill, Auchterarder,
1st February, 1926.

"Messrs. J. W. Wyllie & Henderson,
Solicitors, Perth.

"Dear Sirs,—With reference to the Certificates of the "shares of the Perth Garage Limited in name of my son John "C. Wilson deposited with you on his behalf, I wish to make "it perfectly clear that these shares were originally made over "by me as a complete donation to my son, and that I in no "way retain any interest therein except in so far as the law "imposes upon me the obligation to look after my son's affairs "during the period of his minority,—I am, Yours faithfully,

"PETER WILSON."

(6) Dividends on the said shares were regularly paid by the Company and the dividend warrants were issued in name of the son.

(7) The Respondent's claim was rejected by the Inspector on the ground that the Respondent had not made an effective donation of the shares to the son.

II. Mr. J. T. Henderson, Solicitor, Perth, on behalf of the Respondent contended :—

(1) That there had been complete donation by the Respondent to his son in all respects.

(2) That the fact of the son being in pupillarity at the date of the gift did not affect its validity, as in those circumstances where it is only necessary for him to remain passive, the pupil is treated as if *sui juris* and the deed is taken direct to him alone ; and that in any event the son is no longer a pupil but a minor.

(3) That the fact of the certificates being in name of the son, and deposited with a third party for his behoof, was clear evidence of the transfer of the shares.

(4) That prior to the certificates being so deposited the Respondent, as legal guardian of his son, was the natural custodier of his papers, and that his rights and duties as administrator extended to all his child's property, whether derived from himself or from a third party.

(5) That the holograph letter granted by the Respondent was complete evidence of the *animus donandi*, the principal factor in cases of donation.

(6) In support of his contentions he referred, *inter alia*, to *Green's Encyclopœdia*, 2nd edition, vol. iv, p. 578, and to the following cases :—

Smith v. *Smith's Trustees*, (1884) 12 R. 186.

Crosbie's Trustees v. *Wright*, (1880) 7 R. 823.

Macfarlane's Trustees v. *Miller*, (1898) 25 R. 1201.

Carmichael v. *Carmichael's Executrix*, 1920 S.C. (H.L.) 195.

Napier's Trustees v. *Napier*, (Court of Session, First Division) 9th December, 1925 (not reported).

III. H.M. Inspector of Taxes (Mr. Drummond) on behalf of the Crown contended :—

(1) That the Respondent had not made an effective donation to the pupil.

(2) That to make a gift by a father to his son effective there must be delivery either to the donee or to some third person for him. (*Cameron's Trustees* v. *Cameron*, 1907 S.C. 407).

(3) That the mere taking of the investment in the son's name was not enough. (*Cameron's Trustees*, *cit. sup*, per Lord Dunedin, at p. 412 ; *Carmichael* v. *Carmichael's Executrix*, 1920 S.C. (H.L.) 195, per Lord Dunedin, at p. 201).

(4) That as the son was a pupil child at the date of the alleged gift he had no legal *persona* and was incapable of acting or consenting (*Ersk. Inst.* 1, vii, 14), and that the Respondent, as tutor of the pupil child, was the only person who could act for him. (*Stevenson's Trustees* v. *Dumbreck*, (1857) 19 D. 462, per Lord Curriehill, at p. 472).

(5) That as the Respondent had done nothing beyond taking the title to the shares in the name of the son, the shares remained under the control and at the disposal of the Respondent.

(6) That as no donation had been effected at the date when the shares were purchased, the mere fact that, through lapse of time, the son had become a minor was immaterial. (*Gibson* v. *Gibson*, 1926 S.L.T. (Sh. Ct. Reports 4).)

IV. The Commissioners, on 29th July, 1926, issued the following determination :—" The Commissioners considering this appeal have " had much difficulty in view of the fact that the question involves " an interpretation of the law of Scotland as regards donations by a " parent to a child. Accordingly, the Commissioners called for " written pleadings by the parties, and these, together with the letter " which the Appellant produced, dated 1st February, 1926, having " been received and considered, the Commissioners find that the " 425 ordinary shares and 325 preference shares of the Perth Garage " Limited were effectively donated to the said John Charles Wilson " by his father, and are the sole property of the said John Charles " Wilson, and accordingly sustain the appeal."

V. The Inspector of Taxes immediately upon the determination of the appeal, expressed dissatisfaction with the decision of the Commissioners as being erroneous in point of law, and having duly required the Commissioners to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

R. W. R. MACKENZIE,
ROBERT BRAND,
THOMAS DEMPSTER, } Commissioners.

Perth, 29th April, 1927.

The case came before the First Division of the Court of Session (Lords Sands, Blackburn and Ashmore) on the 8th June, 1927, when judgment was reserved. On the 17th June, 1927, judgment was delivered unanimously against the Crown, with expenses.

The Solicitor-General (Mr. A. M. MacRobert, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. R. Macgregor Mitchell, K.C., and Mr. W. D. Patrick for the Respondent.

I. INTERLOCUTOR.

Edinburgh, 17th June, 1927. The Lords having considered the Case and heard Counsel for the parties, Affirm the determination of the Commissioners: Refuse the Appeal, and Decern; Find the Apellants liable to the Respondent in expenses and remit the account thereof to the Auditor to tax and to report.

(*Signed*) CHRISTOPHER N. JOHNSTON, I.P.D.

II. OPINIONS.

Lord Sands.—This is a claim for repayment of Income Tax by a father on behalf of his minor son. It is the practice of the Inland Revenue to treat minors in Scotland as if they were pupils. The claim for repayment must be made by the curator as "trustee" for the child, and repayment is made to him without reference to the minor. This explains why the application here in question was made by the Respondent and not by the minor himself, with the Respondent's concurrence as his curator. This practice, however, does not affect the legal position so far as this case is concerned.

It appears that in 1920 the Respondent purchased, out of his own funds, in the name of his son, then a pupil, certain shares in a limited company. The son's name was inserted in the register of the company as proprietor of these shares and they still stand in his name. He attained minority in September, 1923. The present claim concerns the tax upon the dividends on the shares for the year from 5th April, 1924, to 5th April, 1925. During the period in question, therefore, the Respondent's son was a minor.

The Inland Revenue resist the claim for repayment on the ground that, during the year in question, the said shares were truly the property, not of the son, but of the father. I shall consider the matter, in the first place, upon the footing upon which things stood whilst the son was still a pupil. It is well settled that an effectual donation is not made by taking a bond or deposit receipt in the name of another party unless the document of debt is handed to that party. There is, in one aspect, a certain quaintness in this rule. There seems certainly to be a suggestion of irrevocability when a person, in exchange for his money, takes a document of debt upon which he cannot himself sue, and places money in such a position that if he means to assert a right to it himself, he must begin by raising an action of declarator. In the view of the law, however, other considerations prevail, and the rule is firmly fixed. It seems well settled too that effectual donation is not made when a person takes a title to debt or to property in the name of himself alone as trustee for another. Again, there is a certain apparent quaintness in the rule. The alleged gift is ineffectual, because it is in the power of the trustee to re-acquire the money or property himself in disregard of the trust which he himself has purported to create.

Accordingly, where a father takes a bond in the name of himself as tutor for his pupil child, there is no effectual donation. The present case, however, does not concern a bond, but concerns shares in a limited company. There is room for argument that

(Lord Sands.)

this class of investment is on a different footing from a bond, where the title is taken in the name of the alleged donee. I shall deal with this matter later, but meantime I observe that the Revenue maintain that *esto* that in the case of an adult donee an effectual donation is made by taking shares in his name, this does not apply where shares are taken in the name of a pupil by his father, who as his father, is his tutor and as such retains power to deal with the shares. Upon that matter I reserve my opinion.

As I have already stated, the Respondent's son emerged from pupillarity in September, 1923. The shares then stood in his name. In my view the Respondent, by allowing his son to attain minority without disturbing the investment, surrendered his right as tutor, and placed his son in the same position as if the shares had been taken in his name during minority. That position, in my view, does not, as regards the matter here in hand, differ from the position where a person makes an investment in the name of another who has attained majority. The Respondent cannot now deal with the shares and cannot even sign a valid endorsement upon a dividend warrant.

As I have already indicated, donation is not effectually completed by taking a bond payable to the alleged donee. The question therefore arises whether the taking of shares in a limited company is on the same footing. Such taking of shares is of a very different legal character from the taking of a bond or a deposit receipt. In the former case the donee is made a partner in a company and all the incidents, statutory and other, of partnership attach to him. In the second place the ownership of the shares is recorded in a register open to public inspection, and subjected to such inspection for the public protection in view of the privileges accorded to a limited company. In the third place, the document of title is not in the possession of the donor. The document of title is the register of the company. The share certificate is not a document of title, it is merely an acknowledgment on the part of the officials of the company that the name of the person mentioned in it is duly recorded in the proper document of title, the company's register. This is illustrated by the fact that dividend warrants are issued to the shareholders whose names are in the company's register, without any inquiry or concern as to whether the shareholder is in possession of the share certificate. The register of the company bears, in this aspect, a certain resemblance to the Register of Sasines as regards land. It is not, I think, in dispute, that whereas an effectual donation is not made by causing a disposition in favour of the donor as trustee for another to be recorded in

(Lord Sands.)

the Register of Sasines, such a donation is made where the sasine is in name and in favour of the donee. The property has effectually passed. For the reasons indicated I have formed the opinion that a gift is completed where money is applied in acquiring shares in a limited company in the name of the donee (the donor not being the father of a donee who is in pupillarity, a case upon which, as already indicated, I reserve my opinion) and that name is placed upon the register of the company, whereby the donee is made a partner of the company, with the incidents attaching to that position, including the right to receive the dividends, vote at meetings and act as a director.

I am accordingly of opinion that we should affirm the finding of the Commissioners.

Lord Blackburn.—The Respondent in this case purchased shares in the Perth Garage, Limited, and had them registered in the name of his pupil son. The certificates for the shares were sent to him and he retained them in his custody down to the end of the year of assessment now in question. His son attained minority before the commencement of the year of assessment and thereafter the Respondent on his behalf claimed repayment of the Income Tax on the dividends on the shares. The claim was rejected by the Inspector of Taxes and on appeal allowed by the Commissioners. It is against their decision that this case is taken. It is not disputed by the Inland Revenue authorities that the father of a minor child is the proper person to make a claim for relief of Income Tax on income properly belonging to the son. Nor is it disputed that the Respondent registered the shares in his son's name with the intention of donating them to him. But it is maintained that in respect that the Respondent retained the custody of the share certificates there was no delivery of the shares to his son and consequently no completed donation and no transfer of the property in the shares from him to his son. I am unable to agree with this contention. It appears to me to attach a wrong importance to the certificates which are merely vouchers that the Company held the shares for the son. The true subject of the donation was the purchase price of the shares and that is invested in and held by the Company for behoof of the son. It may be that during his son's pupillarity the Respondent as his tutor might have operated on the shares and recovered the purchase price. But the question in this case arises in connection with a minor and it is unnecessary to consider whether the Respondent was or was not completely divested during his son's pupillarity. It appears to me clear that no one except the son has now any *jus quæsitum* to the shares and that no good title to the shares could be given to

(Lord Blackburn.)

anyone except by the son. It is true that a purchaser from the son might require the signature of the Respondent to any transfer from the son. But the consent of the Respondent would only be required as the natural curator of the son and not because the shares had been bought with his money nor because he was the custodier of the share certificates. The case of shares in the company appears to me to be entirely different from that of a bond, and I concur with what your Lordship has said on that matter. In my opinion the conclusion arrived at by the Commissioners is right, and as there is no direct question attached to the Case for us to answer, I think the case should be dismissed.

Mr. Skelton.—Your Lordship might consider affirming the determination of the Commissioners.

Lord Ashmore.—Are you both agreed?

Mr. Skelton.—Yes.

Lord Blackburn.—Well, I am quite agreeable to that.

Lord Ashmore.—The question in this case is whether the claim made by the Respondent for repayment of Income Tax is or is not well founded.

The answer depends on whether there was an effectual donation by the Respondent to his son; and I think the answer must be in the affirmative.

The Respondent in 1920 bought out of his own funds shares in the Perth Garage, Limited; and by his instructions certificates for the shares were made out and issued in name of the Respondent's son, John Charles Wilson, then a pupil, and the dividend warrants were also issued in the son's name.

By Section 23 of the Companies (Consolidation) Act, 1908, it is provided that a certificate specifying the shares held by any member shall be prima facie evidence of the title of the member to the shares; by Section 25 that every company must keep a register and enter therein the names of the members and the shares held by them; and by Section 30 that the register is to be open to the inspection of any member gratis and of any other person on payment of one shilling. These statutory provisions go far to support the contention of the Respondent that the shares in question were donated by him to his son and that the son's title to the shares was effectually completed.

Lord President Inglis gave an opinion in the case of the *Lord Advocate* v. *Galloway*, (1884) 11 R. 541, at p. 549, which seems to me to support the son's right to the shares by reason of his name appearing in the Company's books as the registered proprietor of the shares since 26th January, 1920.

(Lord Ashmore.)

One other fact confirms the opinion which I have expressed in favour of the son's right to the shares. The Commissioners found it admitted or proved that in July, 1925, by which time the Respondent's son was aged 16, the Respondent deposited the certificates for the shares with his law agents on behalf of his son. That meant that the law agents, thereafter, held the certificates for the son, and it confirmed the gift of the shares which the Respondent had made to his son in 1920 when the son was a pupil.

In my opinion the decision of the Commissioners is well-founded and the Respondent is entitled to repayment of Income Tax in respect of the year ending 5th April, 1925, on behalf of his son.

An appeal having been entered against the decision in the Court of Session, the case came before the House of Lords (Viscount Haldane, Viscount Dunedin, Lords Shaw of Dunfermline, Carson and Blanesburgh) on the 24th April, 1928, when judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir Douglas Hogg, K.C.), the Lord Advocate (the Hon. W. Watson, K.C.), the Solicitor-General for Scotland (Mr. A. N. MacRobert, K.C.), Mr. R. P. Hills and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. R. Macgregor Mitchell, K.C., and Mr. W. D. Patrick for the Respondent.

JUDGMENT.

Viscount Haldane.—My Lords, in this case I wish to begin by making a preliminary observation. I think it is much to be regretted that the Crown should have brought the Respondent, a farmer in Scotland, up to this tribunal for a sum amounting to £11. The Crown had had judgment delivered against it by two Courts, the Commissioners and the First Division of the Court of Session, unanimously. The question is one which is really and in substance a mere matter of intention—a question of fact. It is quite true that important points of principle arise collaterally and may have to be discussed in some future case, but I do not think that they arise here, nor do I think that the question was ever more than one of fact. Notwithstanding that there have been two decisions in Scotland in favour of the Respondent, he is brought here for this very small sum of money, but the Crown has graciously—and I think on that that what the Lord Advocate has done is to be much approved—undertaken to pay the costs as between agent and client of this appeal if decided against itself, and that will remain as part

(Viscount Haldane.)

of the Order. But, as regards the substance and as regards the merits, there is shown, I think, in the proceedings of the authorities in this case—not of the Lord Advocate, although he most loyally takes the full responsibility—as manifested also by what they have done in other cases, the tendency to take too light a view of the convenience of the public in cases where really no question of principle and no question of large amount is involved.

My Lords, having said that, I pass to the case itself. Here there was a farmer in Scotland, who had a young son, born in 1909, and who was minded to put some shares, which he appears to have considèred of a valuable description, in the name of his boy. Accordingly in January, 1920, the Respondent, Peter Wilson, applied for 425 fully paid up ordinary shares of £1 each in the Perth Garage, Limited, and 325 fully paid up preference shares in the same Company. The money, £750, was paid by the Respondent out of his own funds, and he requested that his son, John Charles Wilson, should be entered in the register of members kept by the Company under the Companies Acts. Since that date the Respondent's son, John Charles Wilson, has appeared in the register of members of the Company as the proprietor of the two sets of shares. There were the usual certificates in the form prescribed by the Companies Act issued in respect of the purchase and title. Then subsequently this happened: The dividends in respect of the shares were regularly paid by the Company, the dividend warrants being issued in the name of the son; Income Tax was deducted by the Company on the amount of the dividends payable to the son, who attained minority, passing out of the state of pupillarity, in September, 1923. On the 30th April, 1925, the Respondent, on behalf of his son, who was then still only 15½ years of age, claimed repayment of £11 11*s*. 9*d*. Income Tax which had been deducted by the Company from the dividends paid to the son for the fiscal year 1924–25. The son was not in receipt of an income sufficient in amount to render him liable to payment of Income Tax, including that amount. The Respondent made the claim on his son's behalf, because that appears to be the usual practice. The Inspector of Taxes rejected the claim on the ground, in substance, that there had never been really a donation by the father to the son and that the income was, therefore, the father's and there was no title to the benefit of the exemption.

The matter came before the Commissioners and the Commissioners heard parties, called for written pleadings, and asked the parties whether a formal proof was desired, but neither of the parties sought such a proof. Then the Commissioners found the facts, as I have stated them, and in the course of the proceedings before them there was put in, by or on behalf of the Respondent, a letter written to his solicitors: " With reference to the certificates

(Viscount Haldane.)

" of the shares of the Perth Garage, Limited, in name of my son, " John C. Wilson, deposited with you on his behalf, I wish to " make it perfectly clear that these shares were originally made over " by me as a complete donation to my son, and that I in no way " retain any interest therein except in so far as the law imposes " upon me the obligation to look after my son's affairs during the " period of his minority ". My Lords, that letter was before the Commissioners, they had it before them when they gave their judgment and their judgment was this: Having considered the whole matter they found that the shares were effectively donated to John Charles Wilson, the son, by his father, and were the son's sole property, and they sustained the appeal against the decision of the official.

My Lords, there was then an appeal to the Court of Session, and the First Division gave a unanimous judgment affirming the decision of the Commissioners that there was a donation. I do not think it necessary to take your Lordships through the judgments of Lord Sands, Lord Blackburn and Lord Ashmore, because they all come to this, that there is nothing in what had happened to displace the inference that the shares were bought and entered in the name of the son as a donation from his father to him.

My Lords, this case may give the opportunity for raising questions of law relating to donations, but we are dealing here with the case of a purchase of shares in a company where registration takes place, and with the utmost publicity the donee is held out to the public as the owner of the shares. That puts the matter in a somewhat different form from a case like that of a mere deposit receipt. On the whole of the circumstances I have no hesitation in advising your Lordships that this appeal should be dismissed, and should be dismissed with costs as between agent and client in accordance with the undertaking which the Lord Advocate has so properly given.

Viscount Dunedin.—My Lords, I concur, and I associate myself with the opening remarks of the noble Viscount on the Woolsack. I should have been prepared to use very much stronger language had it not been for the very proper undertaking which the Lord Advocate gave and which makes any stronger language unnecessary.

My Lords, I cannot help thinking that the fears of the Crown in this case are quite groundless. I find I said in the case of *Carmichael*(1), which was the last case in this House: " After all it " is a question of evidence " and that is what it is here. The evidence is, I think, really quite clear. What I think the Crown have all along been unable to feel the full weight of is that here you have the donor coming before the Court and in the written pleadings necessarily saying: " I did give these shares and I say

(1) Carmichael v. Carmichael's Executrix, 1920 S.C. (H.L.) 195, at p. 203.

(Viscount Dunedin.)

" now that I gave them, and there has never been any difference ". The Lord Advocate had to admit at once, as he would, quite candidly, that there is not a single case in the books where donation has been held not proved where the donor all along said : " I did " give the donation ". The whole of the cases divide themselves into the cases where either the donor says " I did not give it " or where, he being dead and his testimony, therefore, not being directly available, it remains to show whether he has left behind him sufficient evidence of the donation being made. That is what distinguishes this case from every other case hitherto, and which, as I say, makes it a case that cannot be a precedent.

My Lords, my view is, not only that this case is very clear, but also that it leaves the law of Scotland on donations precisely where it was before this case came up.

Lord Shaw of Dunfermline.—My Lords, it has been challenged at the Bar of the House whether there was established an *animus donandi* in this case, that is to say, an *animus donandi* by father to son. On that topic I will only read from the judgment of Lord Blackburn this passage in which he says[1] : " Nor is it " disputed "—dealing there with the argument addressed to the First Division—" that the Respondent registered the shares in his " son's name with the intention of donating them to him." That cannot be gone back upon, I think, with any propriety at your Lordships' Bar.

If it were, however, gone back upon, we should have to ask ourselves what was the course of this litigation. The Company's register was plain that the son was the owner. The register was quite as plain that the father was not the owner. Both father and son maintained, and maintain, that there was a donation, and there was no dispute in the Court of Session that such a donation was intended. In these circumstances the case appears to me to fall within the well-known distinction between cases of imperfect or uncompleted tradition—the bank deposit receipt cases—and those of absolute transfer of shares given effect to upon the register as per the intention of parties. The decision in *Lord Advocate* v. *Galloway*, 11 R. 541, and in particular the judgment of Lord President Inglis, appears to me to settle the distinction and to clinch this case adversely to the Crown.

There is only one other point to which I desire to allude. The argument has gone so far, in my mind, as to raise a question which may hereafter have to be determined, namely, whether the Crown has any right to propone such a plea as we have in the present litigation. The Crown received Income Tax from the son. It is a mere juggle to say that because it received it by way of the Company—the source—it did not receive it from the son. It received it from the son, as the registered holder of shares in the

(1) Page 796 *ante*.

(Lord Shaw of Dunfermline.)

Company, and now—he having demonstrated that he is not liable to Income Tax at all, having an income below the taxable limit—when confronted with a claim for the return of that money the Crown denies his title, apparently, to be on the register at all. I question whether the Crown has any right superior to an ordinary subject in this regard and I should greatly doubt whether a subject proponing such a plea would have a right to maintain it.

Lord Carson.—My Lords, I entirely concur with the judgment that has been pronounced by my noble and learned friend upon the Woolsack and I would especially like to emphasise the preliminary part of his judgment as to the question of taking a case of this kind, after the decision of two Courts in Scotland, and under the circumstances, to this House for discussion. In my opinion the whole question is purely one of an inference of fact to be drawn from all the circumstances of the case. It is unnecessary to reiterate what those circumstances are, but when I asked the Lord Advocate whether he had not to go so far as to contend that there was no evidence to uphold the finding that had been given of this being a proper donation, he very frankly, as he always would, admitted that his argument had to go to that extent. My Lords, I think it is impossible to say that there was no evidence on which the Commissioners could come to the conclusion they did, a conclusion which was affirmed by the Court of Session in Scotland. This is decisive and it therefore appears to me that there ought to have been much stronger grounds than have been shown for bringing the case to this House.

My Lords, the one point on which I think the Crown is to be commended is the announcement which the Lord Advocate, in an early part of his argument, made, that the Crown had undertaken in any case, and in any event, to pay the costs of the Respondent—a precedent which might very well be followed in many cases where the Crown desire to obtain a decision on a point of principle, and where the litigation may prove oppressive to the subject.

Lord Blanesburgh.—My Lords, I am of the same opinion.

Questions put:

That the judgment of the Court below be reversed.

The Not Contents have it.

That the appeal be dismissed with costs to include the costs to be taxed in accordance with the undertaking of the parties as between agents and clients.

The Contents have it.

[Agents :—The Solicitor of Inland Revenue, England, for the Solicitor of Inland Revenue, Scotland; Messrs. Dinn & Son for Messrs. Bruce & Black, W.S., and Messrs. J. W. Wyllie & Henderson, Perth.]