falls to be construed as limited in its application to consigned money exclusively dedicated to the purchase of land.

2. The second difficulty has reference to the special provisions in regard to the redemption of casualties in sections 14 and 15 of the Feudal Casualties Act 1914, read in reference to section 18 of the Conveyancing Act of 1874. Under the last section the consigned money falls to be applied for the benefit of the entailed estate under the orders of the Court. It is suggested that this special provision takes this money out of the ambit of the Lands Clauses Act and the Rutherfurd Act, being of the nature of a special statutory rule for a special fund. It appears to me that there would be great force in this contention if the present application were one to uplift and apply the money for some special purpose. But the application is one, not for authority to uplift and apply but for authority to uplift and acquire. The 1874 Act and the 1914 Act were not Entail Acts. Entails come into them in this way—that it was deemed desirable to make provision to obviate what was considered a useful reform in regard to casualties being blocked by entails. The fetters of the entail are not dealt with. What happens under these Acts is that "there is a severance of one portion of the estate from the other, and that in consequence there comes in room of a portion of it money obtained by the sale of that portion"—Lord Fullerton's language in *Panmure*, 17 D. at p. 1033. There may be a change in the form of the content of the entailed estate, but *quoad ultra* the entail is left exactly where it was. On the other hand the Rutherfurd Act had two objects. One was to make provision for the improvement and convenient administration of entailed estates. The other and quite separable object was to relax the fetters of entails. Certain interests on succession were deemed so immediate that they must be respected. Others again were treated as so remote that they fell to be disregarded. Subject to provision for the former the entail might as regards the whole or any part of the estate be brought to an end, in the case of land by a disentail process, in the case of consigned money by an application to uplift and acquire. It appears to me that these latter provisions and their exercise, either in regard to the whole or any part of the entailed property, stand apart from and are not limited by the special provisions with reference to the consignation of casualty redemption money. They apply to all the property, be it land or money, which is subject to the fetters of the entail.

I may perhaps add the observation that the words "for the benefit of the entailed estate" occurring in section 18 of the Act of 1874 include in my opinion the case of acquiring land to be added to the entailed estate when such addition can be shown to be for the benefit of the entailed estate. In the case of many entailed estates it might well be for the benefit thereof to acquire additional land, say for amenity, or for the purposes of water supply, drainage, &c.

I am of opinion accordingly that so far as regards the point upon which the Lord Ordinary has reported the case the application may be granted.

The Court found that the petitioner, being entitled to disentail the entailed estate without any consents, was entitled under section 26 of the Act of 11 and 12 Vict. cap. 36, to obtain authority from the Court to uplift and acquire the consigned money as craved, and remitted the petition to the Lord Ordinary to proceed.

Counsel for the Petitioner — Jameson. Agents—Scott & Glover, W.S.

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*Friday, February* 9.

## FIRST DIVISION.

[Exchequer Cause.

## BURNTISLAND SHIPBUILDING COMPANY, LIMITED *v.* WELDHEN.

*Revenue — Income Tax — Method of Assessment — Business Set up within Three Years Prior to Year of Assessment — Whether Profits Made in Year of Assessment to be Taken into Account — Income Tax Act* 1918 (8 *and* 9 *Geo. V, cap.* 40), *Schedule D, Case I, and Rules Applicable thereto.*

A limited company was incorporated on 1st April 1918 and commenced trading on 15th May thereafter. It struck its first balance-sheet upon the completion of the first full year of its existence on 31st March 1919, after a period of ten and a half months' trading. In making their assessment for the financial year 5th April 1919 to 5th April 1920 the Commissioners claimed to be entitled to take into account the company's profits for that year, being profits made in the year of assessment itself – which owing to delay in connection with the adjustment of excess profits duty had then been ascertained — and to base the assessment on the combined results of the first and second balance-sheets. *Held* that where the period of trading preceding the year of assessment is less than three complete years, the artificial amount of profit for the year of assessment falls to be computed solely by reference to the accounts for that lesser period and without reference to the profits of the year in which the assessment is made, the average of the profits and gains for one year being the retrospective average profit per annum from the date of the commencement of trading.

*Steamship "Glensloy" Company, Limited* v. *Inland Revenue*, 1914 S.C. 549, 51 S.L.R. 471, *distinguished.*

The Burntisland Shipbuilding Company, Limited, *appellants*, being dissatisfied with the determination of the General Commissioners of Income Tax for the Division of Kirkcaldy confirming an assessment to

income tax made upon them under Schedule D of the Income Tax Act 1918 (8 and 9 Geo. V, cap. 40) for the year ending 5th April 1920, obtained a Case in which T. P. Weldhen, Inspector of Taxes, was *respondent*.

The Case stated, *inter alia*—"The following *facts* were admitted or proved:—1. The appellants were incorporated on 1st April 1918 under the Companies Acts 1908 to 1917 as a company limited by shares. 2. The first accounts of the company, which embraced a profit and loss account and balance-sheet, were made up to 31st March 1919. The said accounts were duly certified by the auditors and submitted to and approved by the shareholders at a meeting held on 2nd September 1919. 3. For the purpose of determining the pre-war standard of profits for excess profits duty purposes in respect of the accounting period ending 31st March 1919 (such standard falling to be computed on the basis of a statutory percentage on the average amount of the capital employed in the business during the accounting period, under the provisions of Rule No. 4 of Part II of the Fourth Schedule of the Finance (No. 2) Act 1915) it was necessary to determine the date when the company's trading operations commenced, and it was agreed between the appellants and the Inspector of Taxes that such date should be taken as the middle of May 1918. It has since transpired that the exact date is the 8th of May 1918, but for convenience of calculation in this case the date has been taken as the middle of May 1918. Any necessary alteration of the figures in this case will be duly adjusted between the parties thereto when the principle is decided. 4. Under section 40 (1) of the Finance (No. 2) Act 1915 it is provided that "The profits arising from any trade or business for excess profits duty purposes shall be separately determined, but shall be so determined on the same principles as the profits or gains of the trade or business would be determined for the purposes of income tax," subject to certain modifications which need not be stated, as they are not material for the purposes of this case. 5. For income tax purposes the appellants' profits for the period from the middle of May 1918 to 31st March 1919 were adjusted with the said Inspector of Taxes at £10,431 less £510 allowance for wear and tear, net £9921, and the appellants were duly assessed to income tax thereon for the fiscal year ending 5th April 1919. The liability for this assessment in respect of the financial year ending 5th April 1919 is not disputed. 6. The appellants' second accounts, embracing a profit and loss account and balance sheet, were made up for the year ending 31st March 1920 and were duly certified by the company's auditors and submitted to and approved by the shareholders at a meeting held on 15th June 1920. 7. Pending an examination of the accounts by the inspector an estimated and provisional assessment to income tax was made by the Additional Commissioners for the year ended 5th April 1920 on the sum of £40,000 less £2000 allowance for wear and tear, net £38,000, and tax thereon amounting to £11,400 was paid by the appellants. After examination of the accounts for the company's year ending 31st March 1920 the profits as adjusted for the purposes of income tax were computed at £88,359 (before allowance for wear and tear) and the correctness of this figure is not in dispute. 8. During the month of April to May 1919, being the first two months of their second accounting period, the appellants paid in wages the sum of £17,890, and during the months of February and March 1920, being the last two months of the said period, they paid in wages the sum of £52,763. 9. The subject-matter of the appeal before the Commissioners was the method by which the statutory profits assessable for the year ending 5th April 1920 were to be computed. The inspector's first computation was arrived at on the following basis (hereinafter referred to as method 1):—

| | |
|---|---|
| (1) Adjusted profit for the 10½ months for the period from middle of May 1918 to 31st March 1919 - - | £10,431 |
| Adjusted profits for year ending 31st March 1920 - | 88,359 |
| Total profit for a period of 22½ month - - | £98,790 |
| Proportionate parts thereof for a period of one year - | £52,688 |
| *Less*—Wear and tear - | 3,194 |
| Net liability - - | £49,494 |
| Duty thereon at 6s. - | £14,848 4s. |

The appellants' accountants objected to this proposed method of computation, whereupon the inspector suggested an alternative method (hereinafter referred to as method 2) thus:—

| | |
|---|---|
| (2) Adjusted profits for 10½ months from middle of May 1918 to 31st March 1919 - - - - - | £10,431 |
| *Add*—For the period of 1½ months required to make up a full year's profits 1½/12ths of the adjusted profit for the year to 31st March 1920, or one-eighth of £88,359 - - - - - | 11,045 |
| Profit for one year - | £21,476 |
| *Less*—Wear and tear - | 3,194 |
| Net assessment - - | £18,282 |
| Duty thereon at 6s. - | £5,484 12s. |

This method was also objected to by the appellants' accountants, who contended that assuming the accounts for 1918-19 were not the accounts of a complete year, the computation should be made on the following basis (hereinafter referred to as method 3):—

| | |
|---|---|
| (3) Adjusted profit for 10½ months from middle of May 1918 to 31st March 1919 - - - - - | £10,431 |
| *Add*—To make up a full year's profits 1½/10½ths of adjusted profits for 10½ months to 31st March 1919, viz., one-seventh of £10,431 - - - - - | 1,490 |
| | £11,921 |
| *Less*—Wear and tear - | 3,194 |
| Net assessment - - | £8,727 |
| Duty thereon at 6s. - | £2,618 2s. |

10. Section 1 of Schedule D of the Income Tax Act 1918 enacts—'Tax under this schedule shall be charged in respect of (*a*) the annual profits or gains arising or accruing, (*i*) to any person residing in the United Kingdom from any kind of property whatever....., and (*ii*) to any person residing in the United Kingdom from any trade, profession, employment or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere . . .' 11. Section 2 of the said schedule enacts—'Tax under this schedule shall be charged under the following cases, respectively, that is to say—Case I. Tax in respect of any trade not contained in any other schedule. . . .' 12. Under the rule applicable to Case I of Schedule D it is provided as follows—'The tax shall extend to every trade carried on in the United Kingdom or elsewhere . . . and shall be computed on the full amount of the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the 5th day of April preceding the year of assessment.' 13. Under Rule I (2) of the rules applicable to Cases I and II, Schedule D, it is enacted—'Where the trade . . . has been set up and commenced within the said period of three years, the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of the same, and where it has been set up and commenced within the year of assessment the computation shall be made according to the rules applicable to Case VI.' 14. Rule 2 of the rules applicable to Case VI of Schedule D provides that—'The computation shall be made either on the full amount of the profits or gains arising in the year of assessment, or according to an average of such a period, being greater or less than one year, as the case may require, and as may be directed by the Commissioners.' 15. It was not necessary to invoke the rules applicable to Case VI in considering this appeal, as the business was not 'set up and commenced' in the year of assessment 1919-20. . . . IV. The Commissioners after duly considering the contentions on both sides, decided that method 2 as proposed by the inspector should be adopted, and fixed the assessment at £21,476, *less* wear and tear £3,194. . . ."

The *questions of law* for the opinion of the Court were—"1. Whether for income tax purposes the appellant's accounts for the period ending 31st March 1919 were the accounts of a business carried on for a complete year. 2. Whether the assessment for the fiscal year commencing 6th April 1919, and ending 5th April 1920, should be computed solely by reference to the accounts for the period to 31st March 1919, or by reference also to the profits for the succeeding year; and 3. If the profits for the succeeding year are to be taken into computation, whether method 1 or method 2 is the correct method."

Argued for the appellants—The appellants made up a balance-sheet for the first year of the company's existence, although during that year business was only actually carried on for a period of ten and a half months. That balance-sheet was sufficient to enable the Commissioners to make an assessment. In doing so they were not entitled to take into account the figures for the following year. The present case was distinguishable from *Steamship "Glensloy" Company, Limited* v. *Lethem*, 1914 S.C. 549, 51 S.L.R. 471, as in that case no balance-sheet had been made up.

Argued for the respondent—The Commissioners were entitled in certain circumstances to encroach on the year of assessment in order to strike an average—*Steamship "Glensloy" Company, Limited* v. *Lethem* (*cit.*). The Legislature left the hands of the Commissioners free, and was careful not to lay any express restriction on the date from which they might make their calculation. If the appellants' method were to be followed, the result would be that an estimate and not an average would be obtained.

At advising—

LORD PRESIDENT—The appellant company was incorporated on 1st April 1918 and began to trade on 15th May thereafter. It struck its first annual profit and loss account and balance-sheet upon the completion of the first full year of its existence on 31st March 1919. The company has continued to strike an annual profit and loss account and balance-sheet on 31st March in each of the subsequent years of its existence, following the usual practice of business concerns. It will be seen that the period covered by each balance-sheet, including the first, is a full year of twelve months ending 31st March, that each such year begins and ends five days earlier than the income tax year (Income Tax Act 1918, section 2), that the trading period covered by each such balance-sheet except the first was a full year of twelve months, and that as regards the first balance-sheet the trading period covered by it was a period of ten and a half months. Each annual balance-sheet, including the first, showed that profits and gains arose or accrued to the company from its trade in the trading period covered by it.

The only one of the three questions in the case on which we heard argument was the second, which relates to the company's second year of assessment to income tax, namely, that ending 5th April 1920. The parties moved us to answer the first question, of consent, in the negative, and the third question was withdrawn. The Revenue contends that the true principle on which income tax should be computed on the company's "annual profits and gains" under Schedule D (paragraph 1 (*a*) (ii)) in its second year of assessment is that on which the skeleton assessments numbered (1) and (2) in article 9 of the case are based. The principle underlying these two assessments is the same although the precise method of applying it differs. The Commissioners preferred the method adopted in No. (2), but the Lord Advocate, while he did not challenge the adoption of that method in the

present instance, made no secret of the intention of the Department to follow the method adopted in No. (1) in similar cases occurring in future. The appellant company contends that the true principle is that on which the skeleton assessment numbered (3) in article 9 of the case is based.

What then is the principle at stake? It seems that owing to difficulties which arose in connection with the adjustment of excess profits duty very considerable delay took place in assessing the company to income tax. Before the Commissioners actually reached the stage of completing their assessment for the company's *second year of assessment*, and before the present question arose between them and the appellant company, the company had struck its second annual balance-sheet as at 31st March 1920, and the Commissioners claimed to be entitled in their option to take the profits shown in that balance-sheet — being profits arising or accruing to the company *in its second year of assessment*—into account for the purpose of arriving at the measure of its "annual profits" assessable to tax in that year. They maintained that they were so optionally entitled, not because of the accidental delay whereby their assessment had been postponed until after the date of the company's second balance-sheet, but on the ground that they were in any event entitled by the Income Tax Act to hold over their assessment if they chose until after that date, and to base their assessment on the results obtained from the combined showing of the first and second balance-sheets. If the Commissioners are well-founded in the view they take of their rights, the same question may arise in regard to the company's third and fourth years of assessment. Anyhow it is clear that the principle at stake depends on the construction of the Income Tax Act 1918.

Schedule D of that Act submits to tax "the annual profits or gains arising or accruing to any person residing in the United Kingdom from any trade . . . whether the same be . . . carried on in the United Kingdom or elsewhere" (paragraph 1 (*a*) (ii)), and the tax in respect of such trade—unless it consist in quarrying, mining, or in one of the peculiar undertakings covered by Rule No. 3 of Schedule A — is directed to be charged under Case I and the rules applicable thereto (Schedule D, paragraph 2).

There is only one rule exclusively applicable to Case I, but there is a body of rules applicable equally to Cases I and II. These must all be read together as forming one continuous and consistent code of regulations prescribing how the tax is to be computed on the "annual profits" of a trade falling within Case I. The interposition in the schedule of a rule exclusively applicable to Case II (between the rule first above mentioned and the subsequent body of rules) is an accident which has no effect on the construction of the rules as a whole in their application to Case I. The code applying to the present case thus opens with a regulation which according to its own terms is of universal application to all taxpayers carrying on a trade. It extends the tax to "every" trade, and with regard to every such trade it enacts that the tax is to be computed on the average of the profits and gains arising or accruing in a period of three years antecedent to the year of assessment. The comprehensive character of this enactment is, if possible, reinforced by the definition of "trade" in section 237 of the Act. The ascertainment of "annual profits" by a retrospect directed to the results of one or more of the years immediately preceding the year of assessment is a characteristic shared by Cases I, II, and V of Schedule D.

Under this general regulation a taxpayer who has traded for the three years or more immediately prior to the year of assessment, but has made no profits until within the year of assessment, escapes taxation on those profits in that year. They will, however, be capable of being retrospectively regarded in the next year of assessment, and one-third part of them will become his taxable "annual profits" for the purposes of that year. If the general regulation stood alone a taxpayer who set up trade for the first time within the year of assessment would equally escape taxation in that year, however great the profits arising or accruing to him in it. Yet his case is obviously very different from that of the other taxpayer, precisely because the retrospective method of the ascertainment of "annual profits" is altogether inapplicable to it. As will appear shortly, the Act overcomes the difficulty presented by the case of profits arising or accruing from a trade set up for the first time within the year of assessment by removing such profits from the category of "annual profits arising or accruing from trade" (Case I), and relegating them for assessment purposes to the miscellaneous category of "annual profits" dealt with on different principles under Case VI.

Again, under the general regulation, if it stood alone, two taxpayers who have traded profitably, one for three years or more immediately prior to the year of assessment, and the other for less than three years immediately prior to that year, would be most unequally dealt with if their "annual profits" for the purposes of the year of assessment were arrived at, in the case of each of them alike, on the basis of a hard-and-fast three years' average. The retrospective method is indeed in itself equally applicable to the profits of both of them, but it is only reasonable that it should be applied on the basis of three years in the one case, and on the basis of the period (less than three years) during which the trade was actually carried on in the other case. This is precisely the modification of the general rule which—as I understand the Act—is effected by Rule 1 (2) of the body of rules applicable to Cases I and II. That rule enacts that if the trade "has been set up and commenced *within the said period of three years*"—this refers back to the period within which under the general rule the annual profits of "every" trade are to be retrospectively ascertained—"the computation shall be made on the average of the profits or gains

for one year from the period" (by which I understand to be meant the *date*) "of the first setting up of the same." Thus, if the trade was set up and commenced, say, two and a half or one and a quarter years before the commencement of the year of assessment, the "average of the profits and gains for one year" will be, not the retrospective average profit per annum from the commencement of the triennium, but the retrospective average profit per annum from the "period" (*i.e.*, date) "of the first setting up of the same"—two and a half or one and a quarter years ago, as the case may be. The divisor in the average calculation will therefore be two and a half or one and a quarter instead of three. So far the meaning of the Act appears to me to admit of no reasonable doubt.

The Revenue, however, quite fairly made the most that could be made out of the difficulty which occurs in applying Rule 1 (2) to the case where, as here, the trade was set up less than one full year before the commencement of the year of assessment. How, it was asked, can an "average of the profits for one year" be struck with reference to a trading period of only ten and a half months? If the word "average" is read in its strict sense of an arithmetical mean, the difficulty is a real one. But, as has been very frequently observed, the expressions used in the Income Tax Act are by no means always employed strictly or even consistently, and light on their true meaning has to be sought from the context and the scheme of taxation with reference to which they are used. It is a simple matter to arrive at the average profits for any constituent unit of the full year of twelve months to which the ten and a half months belonged—say, a month or a day—and to arrive at a corresponding "average for one year" by the rule of three. This is the principle on which the skeleton assessment, numbered (3), is framed. It proceeds upon an interpretation of the rule which seems to me to be preferable to that contended for by the Revenue authorities. According to their argument they are entitled, if they choose, to get an "average for one year" by departing *ad hoc* from the retrospective ascertainment of trading profits, and by bringing into account profits which cannot be ascertained until a future balance-sheet is struck. It is obvious that if the Commissioners held over their assessment with this alleged option in view, they would decline to exercise it in the event of the future balance-sheet turning out to show a loss. For if they did exercise it in those circumstances, the result would be to water down the profits shown by the balance-sheet struck in the year before the commencement of the year of assessment. So far as the argument went, I see no reason why in such a state of matters the Commissioners should not be held entitled to hold their assessment over for another year or for two years more on the speculation that a bumper year of profits might save the situation. I think the effect of sustaining the argument would be to throw the statutory scheme of taxation on "annual profits and gains arising from trade" into utter confusion. Moreover, if the Act is to be read as conferring an option on the Commissioners to hold over their assessment, what reason could be found for not equally reading it as conferring an option on the taxpayer to hold over his return? The supposed option, whether it be regarded as unilateral or bilateral, is irreconcilable with the machinery of the Act under which the taxpayer is required to make his return within a prescribed time (twenty-one days according to practice) soon after the year of assessment begins, and according to which the notices of assessment are deliverable in time to enable the tax to be paid on the statutory date, namely, the 1st of January occurring in the year of assessment. It seems to me to be confirmatory of my view that the concluding part of Rule 1 (2) enacts that where the trade "has been set up and commenced within the year of assessment the computation shall be made according to the rules applicable to Case VI." That case is the one which deals with "annual profits and gains not falling within any of the foregoing cases"—that is to say, not arising or accruing from trade. The ratio of this provision seems to me to be that profits arising within the year of assessment are incapable of being the subject of the retrospective method of computation applying to trade profits generally throughout Case I. Again, if the Revenue exercises the option it claims in the second year of assessment of a company which began to trade, say, ten and a half months before the commencement of that year, but in the third year of assessment declines to exercise a similar option, the remarkable result is produced that the assessment for each of those years must be identical, both in their amounts and in the materials from which they are derived, however much the prosperity of the company may be waxing or waning. Lastly, suppose the Revenue elects to use the same option in the second and in each succeeding year of assessment until the fifth (in which there will for the first time be three complete trading years of twelve months each in retrospect), the yet more surprising result is produced that the computation of tax in the fourth year of assessment will proceed on (1) the ten and a half months' trading in the first year of assessment, and (2) the three full years' trading in each of the second, third, and fourth years of assessment—in other words, the average "annual profits" will be computed in the fourth year of assessment on the unique average of three years and ten and a half months. I have not been able to find anything in the Act to warrant the option which the Revenue claims.

The contention of the Revenue in the present case was confessedly suggested by the case of *Steamship "Glensloy" Company* v. *Inland Revenue*, 1914 S.C. 549. In that case the company had commenced to trade in the middle of September 1911, and its first year of assessment (under Case VI) was accordingly the year ending 5th April 1912, being the year in which it had first set

up trade. It had struck no balance-sheet in that year, but the amount to which it was assessed to income-tax was adjusted without dispute. The year ending 5th April 1913 became the company's second year of assessment; and when called upon (on 20th April 1912) to make a return for that year the company replied that it had only recently started operations and that "the profits will not be ascertained till the end of this year," *i.e.*, the end of the calendar year 1912. It actually struck its first balance-sheet on 20th November 1912 (this was about the middle of its second year of assessment) and thereafter made a return. This first balance-sheet covered a trading period of fourteen months, of which only six belonged to the year preceding the second year of assessment. In these circumstances the Commissioners not unnaturally used this balance-sheet as the only evidence presented to them by the taxpayer of his "annual profits," and fixed them as 12/14 of the amount shown. This was sustained notwithstanding that the company objected to it as being contrary to the retrospective method of assessment prescribed by the Income Tax Acts. But the company put forward no alternative except a voyage account which, as the Lord President pointed out, was not itself brought to a balance until some three or four months after the commencement of the year of assessment. It will be seen that there was in that case no question of any claim by the Revenue authorities to be entitled to hold over an assessment in order to await the striking of a second balance-sheet at some date within the year of assessment; and the supposed option upon which the controversy in this case turns played no part, indeed was never suggested, in either the argument or the opinions. Great stress was laid in the judgment of the majority—very properly, as I venture to think—on the fact that there was no balance-sheet, and therefore no profits ascertained, until after the commencement of the second year of assessment; and where that is the case, I desire to say nothing against the view that a first balance-sheet, though struck within the second year of assessment, may—at any rate in circumstances such as were present in the *Glensloy* case—be used evidentially in order to ascertain the "average of the profits for one year from the period of the first setting up" of the trade. I frankly admit that there are some observations in the opinions of the majority which seem to go further than this, but they were not made in reference to any claim of the kind which has been advanced on behalf of the Revenue in the present case, and if they should be considered in their own terms wide enough to cover such a claim, then I desire respectfully to express my disagreement with them.

I think the second question should be answered as regards its first alternative branch in the affirmative, and as regards the second in the negative.

LORD SKERRINGTON concurred.

LORD CULLEN—I think the natural reading of the statutory enactment in question is that where the period of trading antecedent to the year of assessment is shorter than three complete years the materials for computing the artificial amount of profit for the year of assessment consist of the results of the trading for such shorter antecedent period. Thus if that period had been 2½ years, the *cumulo* profits made during that period fall to be divided by 2½, similarly as would the profits of three complete years' antecedent trading be divided by three. And if, as here, the antecedent period of trading has been less than one complete year, I think that the profits made during it are to be expanded by rule of three as for a complete year. The course proposed by the Crown, which is to take into account profits made in the year of assessment itself, has no direct warrant in the words of the enactment, and seems to me to be inconsistent with the normal statutory programme of annual assessment under which returns fall to be given in and assessments made *currente anno*, when the results of the current year's trading have not been ascertained. It is merely an accidental circumstance in the present case that there was a provisional assessment, and that the assessment for the year came to be finally adjusted when the end of the year had come and the results of the trading during it were to hand.

With these general observations I entirely concur in the opinion of your Lordship in the chair.

LORD SANDS was not present.

The Court answered the first question, of consent, in the negative, and the second question as regards its first alternative branch in the affirmative, and as regards the second in the negative. The third question was withdrawn.

Counsel for the Appellants—Macmillan, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—Solicitor-General (D. P. Fleming, K.C.)—Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

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*Friday, February 9.*

## FIRST DIVISION.

[Sheriff Court at Kirkcaldy.

## GATES *v.* BLAIR.

*Landlord and Tenant — Lease — Urban Subjects Embracing Dwelling-house and Shop—Inclusive Rent—Notice to Remove from Shop—Whether Notice Effective to Terminate the Tenancy as a Whole — Tacit Relocation.*

The tenant of urban subjects which consisted of two parts, a house and a shop, separated from each other structurally except for a door communicating between them, and which were held